



Proving The State Of Dwang, Dwaling And Bedrog In A Lawsuit For Annulment Of An Agreement In An Indonesian Civil Court

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Abstract

A lawsuit to cancel an agreement is one of the legal remedies that can be taken by a party who feels disadvantaged due to the existence of dwang (coercion), dwaling (negligence) or bedrog (fraud) in the agreement. In Indonesian civil courts, proving the existence of dwang, dwaling, and bedrog is very important in determining the validity of an agreement. The purpose of this study is to identify and analyze the process of proving the existence of dwang, dwaling, and bedrog circumstances in a lawsuit for cancellation of an agreement in an Indonesian civil court. This research uses normative legal research methods, while data collection techniques are carried out by literature study. The data that has been collected is then analyzed with three stages, namely data reduction, data presentation and conclusion drawing. The results showed that the proof of the state of dwang, dwaling, and bedrog in the lawsuit for the cancellation of the agreement in the Indonesian civil court is based on article 1866 of the Civil Code, the evidence recognized in civil cases consists of written evidence, witness evidence, suspicion, recognition and oath.

Keywords: Dwang, Dwaling, Bedrog, Cancellation of Agreement, Civil Law

INTRODUCTION

An agreement is an action taken by individuals or groups in society to bind themselves to each other in order to fulfill their needs. Although many people may not realize the importance of agreements, agreements have a very significant role. An agreement is defined as an act by which one or more persons tie themselves to one or more other people in Article 1313 of the Civil Code (Wijayanti & Sudiarta, 2019).

The provisions of this agreement law regulatory system are listed in Article 1338 paragraph (1) of the Civil Code. This agreement legislation regulates the requirements for an agreement's validity, including the capacity of individuals who make it, their ability to agree, the presence of a certain item, and a halal reason. In the meanwhile, Article 1320 of the Civil Code outlines the prerequisites for an agreement's legality. These terms serve as the foundation for any agreement. The agreement may be deemed void and unenforceable or subject to cancellation if one of the aforementioned requirements is not met (Muljadi, 2008).

The lawsuit for cancellation of an agreement is one of the legal remedies that can be taken by parties who feel disadvantaged due to the existence of dwang (coercion), dwaling (negligence) or bedrog (fraud) in the agreement. Cancellation of the agreement itself is recognized and regulated in the Civil Code, precisely in Articles 1446 to 1456. However, not all agreements can be canceled. Cancellation of the agreement must meet the cancellation requirements specified in the law. The parties to an agreement would undoubtedly face additional legal repercussions in the event that the agreement is canceled and is afterwards regarded to have never existed (Dewitasari & Tuni, 2011). In Indonesian civil courts, proving the existence of dwang, dwaling, and bedrog conditions is very important in determining the validity of an agreement.

In previous research conducted by (Kurniawati & Yusuf, 2023) examined legal agreements made under duress (dwang). Whereas in research (Pangalanan, 2022) the discrepancy between

advertisements and the actual state of goods in online buying and selling, is generally classified as a form of defect in the will of oversight or dawning. Similar research was conducted by (Isnandya, 2020) which examined the state of bedrog in the lawsuit for cancellation of the agreement. Thus, the absence of previous research that examines the three conditions, namely dwang, dawning and bedrog simultaneously, is the novelty of this research. This study's goal is to recognize and evaluate the process of proving the existence of dwang, dawning, and bedrog conditions in a lawsuit for cancellation of an agreement in an Indonesian civil court.

METHOD

Normative legal research methodologies are used in this study. Doctrinal legal research is another name for normative legal study. Finding legal regulations, legal precepts, and legal doctrines to address the pertinent legal questions is the process described by Peter Mahmud Marzuki as normative legal research (Prahassacitta, 2019). By gathering, reviewing, or tracking documents and literature that can supply information or information requested by researchers, literature study carries out data collection strategies. Secondary data is the information source employed in normative legal study. The obtained data is subsequently subjected to three steps of analysis, including data reduction, data presentation, and conclusion drafting.

DISCUSSION

Article 1313 of the Civil Code determines that *eene overeenkomst is eene handling waarbij een of meer personen zich jegens een of meer andere verbinden* (an agreement is a transaction in which one or more parties commit themselves to another one or more parties). Henry P. Panggabean writes in the agreement, also known as the principles of the agreement, that understanding the many laws pertaining to the legality of the agreement depends heavily on understanding the principles of the agreement (Sukanada & Mudiparwanto, 2020). Four requirements must be met for an agreement to be valid:

1. agreement between parties that are already bound;
2. Capable of reaching a consensus;
3. Regarding a specific issue;
4. A halal cause;

Consequently, in accordance with Civil Code Article 1320. The last two conditions are known as objective conditions because they pertain to the agreement itself or the topic of the legal action being carried out, whereas the first two conditions are known as subjective conditions because they concern the individuals or subjects who engage into an agreement (Nurhidayati, 2020).

If an agreement is canceled, the Civil Code (KUHPerdata) recognizes the cancellation, and the cancellation must adhere to the established cancellation standards. Cancellation of a contract that has the results that the contract is thought to have The Civil Code (KUHPerdata) acknowledges cancellations of agreements, and cancellations must follow the predetermined cancellation conditions in order to be recognized. In order for the court to issue a constitutive decision to cancel the agreement rather than issuing a court order, the court must be sued in order to dissolve the agreement (Nugroho, 2022).

The prosecution for annulment will not be accepted by the judge if it turns out that there has been good acceptance from the injured party, which means that he has waived his right to request annulment. Therefore, it is necessary for a judge to be careful in examining and deciding whether an agreement is declared null and void. Judges are not allowed to decide null and void without considering the applicable legal principles. So in this case, the judge should not be fixated on the postulates of the lawsuit alone (Amalia, 2017). An agreement's unilateral cancellation might be understood as one party's refusal to carry out the goals that both parties set forth in the agreement (Pahlefi, et al, 2019).

Unilateral termination of an agreement can be sued with a tort claim, because unilateral cancellation is not based on reasons justified by the agreement; violates legal obligations, namely to always act in good faith and act in accordance with propriety; contains arbitrariness, or uses its dominant position to take advantage of the weak position of the opposing party as in the Supreme Court Decision No. 1051 K/Pdt/2014 dated November 12, 2014, stating: "That the

actions of the Defendant/Case Petitioner in canceling the agreement made with the Plaintiff/Case Petitioner unilaterally are qualified as unlawful acts because they are contrary to Article 1338 of the Civil Code, which states that an agreement cannot be revoked other than by agreement of both parties." (Syamsudin, 2021).

The foundation for the creation of an agreement is the conformity of the will and the statement. A legal action may nevertheless be withdrawn even if the will and the statement are in agreement. According to Sumriyah (2019) the imperfectly formed will can occur due to the following things:

1. Threat/coercion (bedreiging, dwang)

Threat/coercion (bedreiging, dwang) occurs when a person moves another person to perform a legal act, using unlawful means, expressing a threat to hurt that person, his property, as well as the property of third parties and that person's third party. A threat may be made or carried out by using legal or illegal means.

2. Misrepresentation (dwaling)

The mistake in question is that there is conformity between the will and the statement, but the will of one or both parties is defective. Beyond this, the consequences of the mistake must be borne by and become the risk of the party who made it.

3. Fraud (bedrog)

Fraud (bedrog) is regulated in Article 1328 BW and is a form of defect of will. What is meant by fraud is when someone intentionally with the will and knowledge causes misunderstanding to others. Fraud can occur when a fact is intentionally concealed or when information is intentionally given falsely or by using other tricks.

4. Misuse of circumstances (misbruik van omstandigheden)

The misuse of circumstances in practice is based on the jurisprudence of the Supreme Court of the Republic of Indonesia Number 3431K/Pdt/1985 dated March 4, 1987 with a case known as the pension book case. The birth of this abuse of circumstances is caused by the need for practice in the community to overcome or resolve the practice of abuse of circumstances in the closing of the agreement.

When an agreement contains a defect of will, then the agreement is considered to be absent, is when there are things: dwang (coercion); bedrog (fraud); dwaling (error / mistake); misbruik van omstandigheden (abuse of circumstances). However, if there is an agreement, a lawsuit can be filed with proof of dwang, dwaling, and bedrog (Putra, 2015). Evidence in civil cases is an effort to obtain formal truth (formeel waarheid). The formal truth is based on legal formalities so that authentic deeds have perfect and binding evidentiary power. Perfect means that the judge does not need other evidence to decide the case other than based on the authentic evidence in question. Meanwhile, binding means that the judge is bound by the authentic evidence unless it can be proven otherwise (Rokhayah, 2020).

Based on Article 1328 of the Civil Code, the defrauded party is obliged to prove that his opponent has committed fraud. To prove the arguments of the lawsuit, the plaintiff can submit evidence. The means of proof that can be submitted by the plaintiff as stated in Article 1866 of the Civil Code (Isnandya, 2020). Ongkowiguno & Winarti (2021) citing Article 1866 of the Civil Code states that the means of proof include:

1. Written evidence

The types of "written evidence" or letters or deeds that have been regulated in civil procedural law divide into three types and have different evidentiary value. the types are:

a. Authentic Deed

Article 1868 of the Civil Code establishes what constitutes an authentic deed, namely "An authentic deed is a deed made in the form prescribed by law by or before a public official authorized to do so at the place where the deed is made."

b. Letter Under Hand

The definition of a deed under hand is seen in Article 1869 of the Civil Code, namely, "A deed that cannot be treated as an authentic deed, either because of the lack of authority or

competence of the public official concerned or because of defects in its form, has the force of a writing under hand when signed by the parties."

c. Ordinary Letter

This ordinary letter in some literature is explained as a letter in which the writing is not intended or not intended to be used as evidence either in front of or outside the trial, but if at any time the letter is used as evidence then it is only incidental.

2. Witness evidence

Witnesses presented before the judge aim to corroborate the events argued before the court. The number of witnesses presented can be at least two adults and legally capable, the testimony of one witness before the court cannot be trusted as long as it is not supported by other evidence, in accordance with the provisions of Article 1905 of the Civil Code which states "the testimony of a witness alone without other means of proof, in court cannot be trusted".

3. Presumption

Evidence recognized in law is "presumption" which in Article 1915 of the Civil Code is given the definition, namely "Presumption is a conclusion drawn by the Law or by the Judge from an event known to the public towards an event that is not known to the public. There are two presumptions, namely a presumption based on the law and a presumption that is not based on the law."

4. Confession

There are confessions that are expressed in front of the judge and some that are not in front of the judge or outside the trial. Confessions in front of a judge in a trial have perfect evidentiary power, whether expressed alone or through a proxy. This is as stated in the provisions of Article 1925 of the Civil Code which states "Confession given before the Judge, is a perfect evidence against the person who has given it, either alone or through a person who is given special power for that".

5. Oath

The definition of an oath as evidence is an information or statement that is strengthened in the name of God.

Thus, an agreement will be considered valid if it complies with the conditions contained in article 1320 of the Civil Code. However, when the cancellation of the agreement will be carried out, the cancellation of the agreement is recognized by the Civil Code (KUHPerdara) and the cancellation of the Agreement shall comply with the applicable cancellation provisions. Cancellation can be carried out if both parties agree to cancel.

The unilateral termination of the agreement can be sued with a tort lawsuit, because the unilateral cancellation is not based on reasons that are justified according to the agreement. So that it can be considered as *dwang*, *dwaling*, and *bedrog* can be sued for breach of the contract by proving the state of *dwang*, *dwaling*, and *bedrog* in accordance with Article 1328 of the Civil Code regarding the means of proof that can be submitted by the plaintiff.

CONCLUSION

In a lawsuit for annulment of an agreement in an Indonesian civil court, proof of the state of *dwang*, *dwaling*, and *bedrog* is very important. This proof is based on the provisions of Article 1866 of the Civil Code which regulates the evidence recognized in civil cases. This article states that there are several types of evidence that can be used, including written evidence, witness evidence, testimony, confessions, and oaths. Written evidence includes documents or letters that become evidence in the trial. The conditions for the validity of written evidence must be met, such as a valid signature, a clear date, and no suspicious changes. This written evidence is very important because it can provide written records that become concrete evidence in the lawsuit to cancel the agreement. In addition, witness evidence is also an important piece of evidence. Testimony from individuals who have direct knowledge or experience related to the events or facts that are the subject of the trial can help strengthen the claim for annulment of the agreement. This testimony becomes evidence based on real experience and can provide an

objective view of the circumstances of *dwang*, *dwaling*, or *bedrog*. Presumption is also a permissible evidence in civil court. In presumption, the judge can draw conclusions based on existing facts or evidence, even though there is no direct evidence that shows the truth of the claim submitted. This presumption can be used to help prove the state of *dwaling* or *bedrog* in a lawsuit to cancel the agreement. Furthermore, confessions from the parties involved in the agreement can also be strong evidence in a lawsuit for annulment of the agreement. The confession is an official statement that recognizes the existence of a state of *dwang*, *dwaling*, or *bedrog*. This acknowledgment can provide legal force in determining the cancellation of the agreement. Lastly, an oath is also a permissible evidence in civil court. The swearing party will give an official statement by swearing to the truth of the claim submitted. This oath has legal force and can be strong evidence if the swearing party is truly committed to revealing the truth.

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