

THE ROLE OF JUDGES IN ADJUDICATING DEFAULT CASES CONTAINING ELEMENTS OF ABUSE OF CIRCUMSTANCES IN THE BANKING SECTOR

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Abstract

In the Indonesian civil law system, the role of judges is crucial in adjudicating cases involving contractual legal relationships, particularly in banking default cases. Injustice often arises from the abuse of circumstances, where debtors who are in a weak position are often victims of adverse bank policies. Additionally, high interest rates and oppressive contractual clauses pose significant challenges for judges. This research shows that disparities exist in court decisions on abuse of circumstances, creating legal uncertainty. Using a normative juridical approach, this research examines the need for clear legal guidelines from the Supreme Court to establish uniformity in the handling of default cases. Stronger regulations are expected to ensure that judges make more judicious decisions and uphold justice for all parties. This research emphasises the importance of applying the principle of fairness in contracts, so that freedom of contract does not neglect the rights of weaker parties.

Keywords: *Judges, Abuse of Circumstances, Fairness in Banking Contracts*

INTRODUCTION

In the Indonesian civil law system, the role of judges is vital in adjudicating cases involving legal relationships between parties in a contract, including default cases that occur in the banking sector. One of the problems that often arises is the injustice in law enforcement related to contracts that contain elements of abuse of circumstances. Abuse of power in the banking world is often a serious problem that harms one of the parties, especially debtors, who are often in a weak position. (Kusmiati 2016) his issue involves excessively high interest rates, late payment conditions that lead to heavy financial burdens, and unfair clauses in loan agreements. Banks as financial institutions that have a major role in the economy have a higher position of power compared to customers, especially in drafting contracts that can burden debtors. This imbalance requires the role of judges to uphold the principles of justice wisely in deciding civil cases related to defaults in the banking sector, especially those that contain elements of abuse of circumstances. (Ardiansyah, Marjon, and Mannas 2023)

Several simple lawsuit cases submitted to the court show that there are claims regarding late interest that reach very high figures, such as a simple lawsuit filed at the Pati District Court with case number 77/Pdt.G.S/2024/PN.Pti where the Creditor sued the debtor by charging moratoir interest of 900% of the principal loan amount of IDR 30,000,000.00 (Thirty million rupiah) with moratoir interest charged to the debtor in the amount of IDR 226,000,000.00 (two hundred sixty six million rupiah). Another example is Case Number 269/Pdt.G.S/2024/PN.Pti where the amount of moratoir interest charged to the Debtor is Rp227,969,000.00 (two hundred twenty seven million nine hundred sixty nine thousand rupiah) with a principal loan of Rp200,000,000.00 (two hundred million rupiah). However, in practice, court decisions in adjudicating such cases are often not uniform. From the two examples of cases, there are differences where in case number 77/Pdt.G.S/2024/PN.Pti the judge made a decision by rejecting the amount of moratoir interest requested by using the consideration of abuse of circumstances. Meanwhile, in Case Number 269/Pdt.G.S/2024/PN.Pti, the judge ruled in favour of the plaintiff's petition without any consideration of the abuse of circumstances. This raises concerns, highlighting the need for clear boundaries and indicators of abuse of circumstances. This indicates that there is a lack of clarity in the regulations governing the limits of abuse of circumstances, which should be a clear guideline for judges in deciding these cases.

In this context, there needs to be uniformity of understanding among judges regarding the indicators of abuse of circumstances and the legal implications that arise as a result. Based on the theory of freedom of contract, which reflects reflects the development of free market ideology pioneered by Adam Smith. Classical economic theory based

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on *laissez-faire* is in line with the development of the principle of freedom of contract, which is essentially rooted in liberalism. However, as we have travelled through the last few decades, the existence of the principle of freedom of contract has created a choking injustice. A comprehensive level of welfare based on justice cannot be achieved. To stop this injustice according to Article 1338 of the Civil Code, it is appropriate that we do not give it a dominant role and then override other principles that are equally regulated in the article. This principle is the main foundation of agreement law. In order to keep this freedom under control, it is necessary to control it so that the function of the law continues to prioritise justice. (Moch. 2018) Based on the theory of justice according to John Rawls, it becomes a relevant basis in analysing the contractual relationship between the bank and the customer, where freedom of contract should not ignore aspects of justice, especially when one party is in an unequal position. Freedom of contract must be limited by the principle of justice, which demands the protection of the weaker party. (Faiz 2009)

This aligns with study by Mohammad Kamil Ardiansyah from the Master of Law program at Andalas University examines the role of judges in intervening in bank credit agreement cases that contradict justice and the principle of contractual balance. This research highlights the importance of the role of judges to overcome the injustice that arises due to imbalances in credit agreements. The main focus of this research is how judges can explore and apply the values of justice and the principle of balance in the context of agreement law in Indonesia, in order to ensure fair protection for all parties involved in the agreement. This research does not only use the theory of judicial activism by judges but focuses more on the legality and references that become the basis for judges in Indonesia in deciding a default lawsuit filed by banks that often contain elements of abuse of circumstances. Therefore, the role of the Supreme Court as an institution responsible for providing clear legal guidelines is very important to establish uniformity in deciding default cases in the banking sector that contain elements of abuse of circumstances. The regulations must contain clear boundaries related to what is meant by abuse of circumstances, as well as the legal consequences arising from such actions, in order to create justice for all parties involved. With more detailed and uniform regulations in the courts, it is hoped that judges can be fairer and wiser in deciding default cases in the banking sector and can reduce the potential for abuse of circumstances that harm one party, especially weak customers.

LITERATURE REVIEW

The concept of abuse of circumstances, especially in the banking sector, remains a controversial issue. This is evident from numerous studies that have focused on abuse of circumstances as their main topic. A Study by Mohammad Kamil Ardiansyah from the Master of Law at Andalas University examines the role of judges in intervening in the settlement of bank credit agreement cases that are contrary to the values of justice and the principle of balance of contract. This research highlights the importance of the role of judges to overcome the injustice that arises from imbalances in credit agreements. This study focuses on how judges can interpret and apply justice and contractual balance principles within Indonesian contract law to ensure fair protection for all parties involved. (Ardiansyah, Marjon, and Mannas 2023)

Similarly, Suhendar from UIN Sunan Gunung Djati Bandung conducted research examining judicial decisions on cases of abuse of circumstances in credit agreements, addenda, and restructuring. This research aims to analyse the judges' considerations in the decisions of the courts of first instance, appeal, and cassation regarding the issue of abuse of circumstances. The main focus of this research is to analyze disparities in how abuse of circumstances is applied across different judicial levels, from first instance to cassation. Through this analysis, this research aims to provide insights into how judges apply the concept of abuse of circumstances in court decisions. (Suhendar, Heris Arhoillah, and Muhammad Anton 2023)

Another research conducted by Araningrum Widiati Hutami (2024) from Brawijaya University focuses on legal protection for debtors against abuse of circumstances committed by creditors in the making of sale and purchase agreements. This research highlights the urgency of legal arrangements related to abuse of circumstances as a form of defect of will in the agreement. This is very important to ensure that debtors, especially in land rights sale and purchase transactions, receive adequate legal protection. Without a clear regulation, debtors are vulnerable to harmful abuse practices, which until now have not been fully accommodated by legislation. (Hutami, Sulistyarini, and Masykur 2023)

Rawls delves deeper into the principle of justice by using his concept known as the 'original position' and the 'Veil of ignorance'. In general, every contract theory has assumptions, and Rawls' concept of contractual justice is no exception. He seeks to position everyone in society as equal and equal, and neither party has a higher status than the other, such as status, social status, level of intelligence, ability, power, and others. So, these people can balance with other parties. (Faiz 2009)

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METHOD

This research uses normative juridical research methods. In other words, this research is based on library legal materials or secondary legal materials as the basis for research. This research also searches for literature and regulations relevant to the problem under study. Statute Approach is a method chosen by using legislation and regulations as well as a conceptual approach. The conceptual approach is an approach based on theories and perspectives developed in legal science. Theory or doctrine will provide an understanding of the relevant laws, concepts, and principles to explain the concept. The type of data collection technique uses secondary data, the type of data collection that comes from official documents, books related to the research subject, reports, theses, dissertations, and laws and regulations.

RESULTS AND DISCUSSION

The activeness of judges in adjudicating cases of bank credit agreements that contain abuse of circumstances

Credit agreements in the banking sector currently use a type of standard agreement where in practice the form of the credit agreement has been provided by the bank as a creditor, while the debtor learns and understands it well or is commonly referred to as a standard agreement (standard contract). This creates an imbalance of power, where the bank has a stronger position than the debtor. A fair contract should ensure that neither party dominates the other. (Mohammad Wisno Hamin 2017) In practice, there are bank credit agreements that cause injustice or one-sidedness due to the unbalanced position of the parties, namely the position of the bank as a creditor is stronger than the debtor, this situation causes unfair achievement coverage.

Such credit agreements are often brought to court through a simple lawsuit mechanism, especially for cases whose material loss value does not exceed Rp500,000,000.00 (five hundred million rupiah) as stipulated in Supreme Court Regulation Number 4 of 2019 concerning Amendments to Supreme Court Regulation Number 4 of 2015 concerning Procedures for Settlement of Simple Lawsuits. In adjudicating such cases, it is not uncommon for a judge to find articles in an agreement that are contrary to the values of justice and the principle of balance of contract. For example, in case number 77/Pdt.G.S/2024/PN.Pti where the Creditor sued the debtor by charging moratour interest of 900% of the principal loan amount of IDR 30,000,000.00 (Thirty million rupiah) with moratour interest charged to the debtor in the amount of IDR 226,000,000.00 (two hundred sixty-six million rupiah). Another example is Case Number 269/Pdt.G.S/2024/PN.Pti where the amount of moratour interest charged to the Debtor is IDR227,969,000.00 (two hundred twenty seven million nine hundred sixty nine thousand rupiah) with a principal loan of IDR200,000,000.00 (two hundred million rupiah).

Against these conditions, the justice-seeking community hopes that judges can be responsive and active in order to seek the creation of justice and balance in a credit agreement. On the other hand, in the principles of agreements, the principle of freedom of contract is known, which gives the parties the freedom to determine the contents of the agreement and the principle of *pacta sunt servanda*, which means that the agreement is the law to those who bind it, so that a judge is also obliged to respect the contents of the agreement and base the contents of the agreement in deciding the parties' disputes. In addition, the principle of civil procedural law is also known as the Passive Judge Principle, where the judge is passive in adjudicating a civil case.

In Indonesia, judges play a central role in adjudicating cases and providing legal considerations. Unlike common law countries that rely on juries, the Indonesian legal system depends entirely on judicial decisions. According to Law No. 48 of 2009, the Indonesian judiciary has the authority to administer justice based on Pancasila. Judges must be free from the influence, pressure or coercion of other powers, according to the principle of independent judicial power. In carrying out their duties to examine, hear and decide a case, judges must be guided or subject to legal principles, one of which is passivity. (Sarwono, 2011) Judges in examining civil cases are passive in the sense that the scope or subject matter of the case submitted to the judge for examination is basically determined by the litigants and not by the judge. Judges only assist justice seekers and try to overcome all obstacles and obstacles to the achievement of justice (Article 4 paragraph (2) of Law No. 48 of 2009). So, the passive definition is simply that the judge does not determine the extent of the subject matter of the case. The HIR system states that judges are active, but the Reglement op de Rechtsvordering (RV) adheres to the principle of passive judges. This is because the HIR/RBg is a procedural law for the indigenous population who in colonial times were considered ignorant of the law and backward. In contrast to the RV which is used for Europeans who are considered to be more aware of the law so that the RV adheres to the principle of passive judges. (Afriana et al., 2022)

The concept of 'Judicial Activism' is widely recognized in legal systems worldwide. Judges in the United States adhere to this doctrine, and judgements are issued to protect minorities. In Indonesia, judicial practice relating to complex issues should lead to validity, or be adopted to broaden the perspective that the law is always evolving, dynamic based on the development of society. (Ahulul Fiqri, 2023) The activism of judges in assessing an agreement

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whether it contains abuse of circumstances can be seen through several aspects. First, the judge must assess the balance of the parties' positions. In bank credit agreements, there is often an imbalance of power between the bank and the debtor. Banks, as institutions that have greater resources, often take advantage of this position to set terms that are very favourable to them and detrimental to the debtor.

The judge must be able to recognise this imbalance and ensure that the terms of the credit agreement do not unfairly burden the debtor. The judge needs to assess whether the bank is taking advantage of the emergency or the debtor's ignorance to gain a disproportionate advantage. Second, Applying the principles of justice and propriety in the case of bank credit agreements that contain abuse of circumstances, judges can not only stick to existing legal provisions, but must also pay attention to the principles of justice. Credit agreements should not only benefit one party, but should also take into account the economic and social conditions of the weaker party. The judge's role is to ensure that the agreement is applied with the principles of justice, namely by considering the balance between the rights and obligations of both parties.

Legal certainty with uniformity of perception by judges to assess an agreement containing abuse of circumstances and its legal consequences

Legal certainty is a fundamental principle in Indonesia's legal system. This certainty requires that every individual can clearly know their rights and obligations in society based on applicable regulations. As emphasized in the ethical guidelines for Supreme Court judge candidates, judges must uphold the three primary objectives of law: certainty, benefit, and justice

In Indonesia, the concept of misuse of circumstances (*misbruik van omstandigheden*) has not been regulated in legislation. The doctrine of abuse of circumstances is recognized and applied by Indonesian judges in cases involving contract annulment. In its development, abuse of circumstances is defined as a condition that can cause one of the parties to change their will so that the agreement is made without perfect agreement. In other words, if there is an abuse of circumstances, the agreement is made not with the free will of both parties. Z. Asikin Kusuma Atmadja discussed this issue on 21 November 1985 in Jakarta, stating that abuse of circumstances limits contractual freedom as outlined in Article 1320 of the Civil Code. (Fatmah Paparang 2018)

For example, in two similar cases at the Pati District Court, judges applied different legal principles where in Case Number 269/Pdt.G.S/2024/PN.Pti the Judge ruled in favour of the plaintiff's petition without any consideration of the abuse of circumstances. Of course, when viewed from the objectives of the law, namely certainty, benefit and justice, this can certainly harm the goal of certainty itself so that it can hinder the realisation of justice. Judges' decisions that appear to be inconsistent and change significantly without rationally understandable reasons can reduce public trust in the Court Institution, the public will begin to question the credibility of the judicial system. (Yusuf, Wantu, and Muhtar 2025) This distrust can have wider impacts, including on compliance with the law and social order. People who do not trust the legal system are more likely to resolve conflicts independently, which can lead to an increase in the abuse of circumstances in debt and credit agreements such as directly and immediately binding the debtor's collateral object with a mortgage.

This uniformity is intended to unify the perspective of judges in adjudicating civil cases, especially in the banking sector. So that judges need references and limitations regarding the terms of an agreement can be categorised as an abuse of circumstances. This abuse of circumstances has been regulated in the new Dutch Civil Code (NBW), 'abuse of circumstances exists when a person knows that another person is driven by special circumstances, such as emergency, dependence, rashness, abnormal mental state, which causes the legal act to occur, even though what is known or should be understood by him, should prevent it'. As the needs of the law became more pressing, the doctrine of abuse of circumstances emerged. Community practice shows that the reluctance to include provisions on abuse of circumstances in the NBW was triggered by the fact that the legal tools governing abuse of circumstances were not available. The doctrine of abuse of circumstances has long existed in the common law system, where it is known as 'undue influence.

According to Book 3 Article 44 paragraph (1) NBW, abuse of circumstances is one of the reasons why an agreement can be canceled along with threats (*bedreiging*) or fraud (*bedrog*). The NBW itself also suggests 4 (four) conditions for the existence of abuse of circumstances, namely first special circumstances (*bijzondere omstandigheden*) such as: emergencies, dependence, carelessness, mental illness, and inexperience. Second, a real thing (*kenbaarheid*) is required that one of the parties knows the special circumstances, so he is moved to close an agreement. Third misuse (*misbruik*) one of the parties understands that he should not do. And the last is the causal relationship. To establish an agreement there is an abuse of circumstances, there are four conditions that must be met. First, there is an imbalance of position or one has an advantage in economic or psychological terms. Secondly, the coercion of the other party is due to the weaker circumstances of the superior party when making the agreement. thirdly, *misbruik*, this requirement is fulfilled when one of the parties implements the agreement, even though he

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knows or should understand that he should not do so. That is, the weaker party must know that it is accepting the agreement out of compulsion due to its weaker state and dependence on the stronger party. The weaker party should clearly know that under normal circumstances, he would not have agreed to the agreement. Finally, the causal relationship requirement is only fulfilled when there is a causal or causal relationship between the abuse of circumstances that occurred and the consent given.(Clarins, 2022)

The Indonesian Civil Code does not explicitly regulate abuse of circumstances. The gap between civil law and societal developments has created a legal vacuum, leading to inconsistent interpretations. The Supreme Court has the authority to issue regulations as a complement to fill any deficiencies or legal gaps necessary for the smooth running of the judiciary, in accordance with General Elucidation number 2 letter c of Law Number 14 of 1985. Furthermore, Article 79 of Law No. 14 of 1985 stipulates that the Supreme Court may issue further regulations on aspects necessary to ensure the smooth running of the judiciary when there is a gap in the law. In the literature, this kind of authority and duty is often referred to as the regulatory function or “regelende functie” of the Supreme Court.

In this situation, the Supreme Court issues various legal products that help set rules for courts, judges, and parties involved in the judicial process. Supreme Court Circulars (SEMA) are official legal products issued by the Supreme Court of the Republic of Indonesia. SEMA covers a wide range of topics, such as instructions for judges in adjudicating certain cases, summons procedures and notices by registered mail, Although SEMA cannot act as laws, they act as internal guidelines within the judiciary. Bagir Manan revealed that policy rules (beleidsregel, pseudowetgeving, policy rules) refer to rules that are not made on the basis of legislation, delegation, or mandate. Instead, these regulations are formed on the basis of authority arising from freies ermesen, which is the authority given to the state administration to achieve certain legally valid objectives. Examples of this type of regulation include circulars, technical guidelines, and implementation instructions.(Rihdo Al Fasil et al., n.d.) So that with the establishment of SEMA regarding guidelines for adjudicating cases of default lawsuits containing elements of abuse of circumstances in the banking sector, it is hoped that it will create uniformity of perception from judges so as to create harmonious decisions and can increase public confidence in the Court Institution.

CONCLUSION

The Indonesian civil law system faces significant challenges related to the role of judges in adjudicating contracts, particularly in the banking sector where abuse of circumstances often occurs. The imbalance of power between banks and debtors creates an environment where unfair contract terms can thrive, leading to serious injustices. Recent case studies highlight inconsistencies in judicial rulings on moratory interest., highlighting the urgent need for clearer guidelines on what constitutes abuse of circumstances. The lack of uniformity in judicial interpretation can erode public trust in the legal system and further disadvantage weaker parties. To rectify these issues, it is essential for the Supreme Court to establish definitive legal standards and indicators for judges to assess abuse of circumstances effectively. By integrating principles of justice and equity into contract law, judges can ensure fair treatment for all parties involved. This approach aligns with John Rawls' theory of justice, advocating for protections for weaker parties in contractual agreements. Ultimately, balancing contractual freedom with the imperative of justice is crucial for fostering a fairer legal landscape in Indonesia. This, in turn, enhances the credibility and effectiveness of its judicial institutions.

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