Cancellation Of Agreement: A Comparison Between The Indonesian Legal System And Common Law System

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ABSTRACT

In the current era of globalization, it is very important to consider the characteristics of treaty law, both from the Continental European system (civil law system) adopted by the State of Indonesia, as well as from the system of countries that adhere to the common law system. When the universally applicable freedom of contract can be used as the basis for conducting business transactions between Indonesian entrepreneurs and entrepreneurs from common law countries. Nowadays, the influence of the common law system is increasingly significant in Indonesia, so knowledge of agreements in both legal systems is very much needed for the people of Indonesia. Sometimes after the agreement, one of the parties enters into an agreement that has been agreed upon, so that in this case knowledge and understanding of the agreement according to the Indonesian system with the common law system is very much needed. The cancellation of the agreement can be done if the terms of the agreement and in Article 1320 BW are not fulfilled because there is a defect or it was not made by an invalid person. Meanwhile, cancellation according to the common law system can be done if the agreement that forms the basis of all agreements contains defects, or the agreement is carried out by people who do not have the ability to enter into an agreement.

Keywords: Globalization, Comparison of Legal Systems, Cancellation of Agreements

ABSTRAK

Pada era globalisasi sekarang ini, sangat penting untuk mempertimbangkan ciri-ciri hukum perjanjian, baik dari sistem Eropa Kontinental (civil law system) yang dianut oleh Negara Indonesia, maupun dari sistem negara-negara yang menganut common law system. Asas kebebasan berkontrak yang berlaku secara universal dapat dijadikan dasar untuk mengadakan transaksi bisnis antara pengusaha Indonesia dengan pengusaha dari negara-negara common law. Dewasa ini pengaruh sistem common law semakin signifikan di Indonesia, sehingga pengetahuan mengenai perbandingan perjanjian pada kedua sistem hukum tersebut sangat diperlukan bagi masyarakat Indonesia. Seringkali setelah terjadi perjanjian, salah satu pihak mengajukan pembatalan perjanjian yang telah disepakati, sehingga dalam hal ini sangat diperlukan pengetahuan dan juga pemahaman mengenai pembatalan perjanjian menurut sistem Indonesia dengan sistem common law. Pembatalan perjanjian menurut sistem Indonesia dapat dilakukan apabila syarat subjektif perjanjian dan kecakapan dalam Pasal 1320 BW tidak terpenuhi karena terdapat cacat atau dibuat oleh orang yang tidak berwenang. Sedangkan Pembatalan menurut common law system dapat dilakukan apabila perjanjian yang menjadi dasar semua perjanjian mengandung cacat, atau kesepakatan tersebut dilakukan oleh orang-orang yang tidak mempunyai kemampuan untuk melakukan perjanjian.

Kata kunci: Globalisasi, Perbandingan Sistem Hukum, Pembatalan Perjanjian.

A. Introduction

In a legal relationship between one person and another, the parties can regulate themselves by making an agreement to create rights with obligations between them. The definition of an agreement is contained in Article 1313 BW, which reads: An agreement is an act in which one or more persons commit themselves to one or more persons.

R. Subekti provides a definition of an agreement as follows: An agreement is an event where one person promises to another person or where two people promise each other to carry out something.[2]

Furthermore, according to R Setiawan, if we look at Article 1313 of the Civil Code, it does discuss what is called an agreement, but what is referred to is incomplete and too broad.[3] Basically every agreement made by the parties is not bound by a certain form, either oral or written as long as it fulfills the requirements of validity as regulated in Article 1320 BW, so that the agreement is binding on the parties. Agreements made in writing have more legal force to provide legal certainty, because it will be easier in terms of proof when compared to agreements made orally.

Regarding the form of this agreement, certain agreements are a condition for the validity of the agreement. For example, for a formal agreement, it must be made in writing. Then for the land sale and purchase agreement, an authentic deed must be made by the Land Deed Making Officer (PPAT), and for real agreements there is only the surrender of objects that are the object of the agreement.

If certain agreements are not fulfilled in terms of form, then the agreement in Indonesia for certain fields is almost the same as common law agreement law, but for other fields it is different, because the underlying cultural and traditional backgrounds are different. In the context of current globalization, for Indonesia it is necessary to consider the characteristics of common law contract law which regulates in detail down to the smallest details based on the principle of freedom of contract.

The principle of freedom of contract that applies universally can be used as the basis for conducting business transactions between Indonesian entrepreneurs and entrepreneurs

[2] Subekti, *Hukum Perjanjian*, PT.Intermasa Jakarta, 2001, hal. 1.
[3] R.Setiawan, *Pokok-Pokok Hukum Perikatan*, Bina Cipta, Bandung, 1999, hal. 49.

from common law countries. In today's era of globalization, the influence of the common law system is increasingly significant in Indonesia, so knowledge of the principles and their development is needed for the Indonesian people to evaluate these principles when facing contract law in Indonesia. Often after an agreement occurs, one of the parties proposes to cancel the agreement that has been agreed upon, so that in this case knowledge and understanding of the cancellation of the agreement according to the Indonesian system with the common law system is very much needed.

The validity of the agreement according to the provisions of Article 1320 BW is 4 conditions. namely agreement, skill, certain object, and lawful cause. If the legal conditions of the agreement are not fulfilled, the closed agreement can be canceled (vernietigbaar/voidable) and even null and void (nietig/void).

Meanwhile, according to the common law legal system, there are 5 conditions for a valid agreement, namely: offer, acceptance, consideration, capacity, and legality of the contract objective. If the parties close the agreement by not fulfilling the legal requirements of the agreement, then the agreement can be canceled or can be null and void by law. For example, if the consideration requirements are not met, then the agreement is invalid and therefore null and void. In this case, R. Soeroso argues that the Law of Contact in the UK will not be valid without consideration.[4]

B. Focus of Problems

Based on the preliminary description above, the formulation of the problem raised is:

1. How is the cancellation of the agreement according to the Indonesian system?
2. How to cancel an agreement according to the common law system?

C. Research Methodology

This legal research uses a normative juridical approach, which is a problem approach by examining and reviewing a valid and competent statutory regulation to be used as a basis for carrying out problem solving. The specifications of this research are analytical descriptive,

[4] R. Soeroso, *Perbandingan Hukum Perdata*, Sinar Grafika, Jakarta, 2014, hal. 21.

namely research whose nature and purpose is to provide a description or describe the arrangements regarding the implementation of the agreement and the impact of the Covid 19 pandemic in the implementation of the agreement. The data to be used in this research is secondary data obtained by conducting a document study consisting of law and research tools used in the study of documents carried out by searching the literature. The analysis chosen in this study is qualitative analysis.[5]

D. Finding and Discussion

1. The Birth of the Covenant and the Power of the Covenant

The agreement contained in Article 1320 BW is one of the subjective conditions for the validity of the agreement, it is also a condition for the birth of an agreement made on two interrelated statements of will, namely offer and acceptance.

An agreement is an agreement between one or more people and another party. The appropriate understanding here is the statement, because the will cannot be seen or known to others. It is impossible for the other party to know the will or desires that are kept in the heart and therefore it is impossible to agree that money is needed to make an agreement. Expressing this will is not limited to the pronunciation of words, but it can also be achieved by giving any signs that can interpreting the will, either by the party taking the Initiative, namely the party offering and the party receiving the offer.[6]

Agreement also means that the parties who make the agreement mutually express their respective will to make an agreement, where the statement of one party is in accordance with the statement of the other party. The statement of will is divided into two elements, namely the will element and the statement element. For normal situations, the elements of the will and the elements of the statement can match one another, meaning that what is expressed or what is stated is the same as what is desired. If what is desired and what is stated is the same, it means that there is conformity in the statement of will, so that an agreement has been reached. On the other hand, if what is desired and what is stated there is no match in the statement of will, then there is no agreement and such a situation indicates that there has been

[5] Soerjono Soekanto, Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta, 2003, hal.11.

[6] Firman Floranta Adonara, *Aspek-Aspek Hukum Perikatan*, CV Mandar Maju, Bandung, 2014, hal.76.

a defect in the will. This defect of will can be used as a reason to file a lawsuit for cancellation of the agreement. The statement of will is not only with words that are clearly stated, but also behavior that reflects the will to enter into an agreement.

So the agreement is the result of suitable statements of will between the parties. With an agreement between the parties based on the consensual principle, the agreement they made is considered to have occurred or has been born. Regarding the occurrence of this agreement, there are two elements that underlie the agreement, namely the offer and acceptance of the offer (acceptance). Both offer and acceptance are expressions of will. An offer is a statement of will containing a proposal to enter into an agreement, while an acceptance is a statement of will stating the acceptance of the offer or proposal. With the compatibility between the two statements of will, there has been an engagement that gave birth to rights and obligations for them.

Indeed, the basic statement required for the conclusion of an agreement is the offer and acceptance of the offer. This acceptance must be in accordance with the offer, so this means that the intentions and desires of both parties must be in accordance with one another. However, this is often not always the case, if the offeror makes a renewable offer where the offeror no longer expects the offer to be effective at the time the offer is accepted, or if one party does not wish to enter into an agreement, but the other party relies on the belief of the first party. , and therefore hopes to enter into the agreement so that the agreement will be effective. So the birth of the agreement because of an offer followed by acceptance (acceptance) or in other words as a result of acceptance of the offer.

Even though according to the consensual principle the agreement has occurred when there is an agreement between the two parties, it does not mean that the agreement is valid. If the subjective conditions in the form of agreement and skills in Article 1320 BW are not fulfilled, then the agreement can be canceled, meaning that the agreement has a defect of will or was made by an incompetent person, then the closed agreement can be canceled.

Such an agreement still has legal force as a valid agreement until the time for cancellation. In respect of an agreement that can be canceled because it was made without fulfilling the first or second subjective elements (agree and capable) for the validity of the agreement, a prosecution for cancellation, or strengthening/stipulation can be carried out so

that the agreement remains valid and has binding force.[7] This means that if the injured party does not ask the judge to cancel the agreement that has been closed, then such an agreement still has legal force. In certain events where there is a defect of will, then in principle an agreement remains binding, however such an agreement can be cancelled. Only the party whose will is violated can declare the agreement void. This party can do this through a written statement given to the other party, or through a trial in the District Court. The cancellation of this agreement has a retroactive effect, wherein the interested party can also file a complaint for the losses suffered in these circumstances.

Furthermore, it is related to objective conditions, namely about certain objects and halal causes. If the objective requirements in Article 1320 BW are not fulfilled, then the agreement made is null and void, meaning that by law it is considered that there has never been an agreement. Such an agreement has no legal force, meaning that since the closing of an agreement like this it is considered as if it never existed.

Then all the subjective and objective conditions in Article 1320 BW are fulfilled, then the agreement made is considered valid. Regarding this legal agreement, the agreement is binding on the parties like a law. This is an Implementation of the adigum Pacta Sunt Servanda, and this principle is a very important principle in the law of the covenant. With this principle, the parties who want to make an agreement are given the freedom not only to determine the form, but also to determine its content.

Thus the agreement made legally carries the consequence that the agreement must be obeyed by both parties, because such an agreement applies as law for those who made it. This is not only a moral obligation, but also a legal obligation. If one of the parties does not fulfill the contents of the agreement that has been legally made, then the other party has powers which the judge can enforce, namely in the form of a claim for compensation, and a demand for dissolution of the agreement if it is a reciprocal agreement.

2. Cancellation of Agreements In the Indonesian System

a. Misguidance / Mistake (Dwaling)

[7] Elly Erawati & Herien Budiono, *Penjelasan Hukum Tentang Kebatalan Perjanjian*, PT.Gramedia, Jakarta, 2010, hal.21.

Misguidance is one of the defects of will. According to the provisions in Article 1321 BW, there are 3 (three) types of will defects, namely error/mistake (dwaling), fraud (bedrog), and coercion (dwang).

These are three types of will defects that can be used as the basis for filing a lawsuit for cancellation of an agreement.

According to R. Soetojo Prawitohamidjojo, misguidance or dwaling occurs when a person has a different picture of the actual situation than the other party with whom or on an item regarding which he or she is carrying out a legal act.[8]

The error is caused by internal factors, namely himself which causes a wrong picture of the true nature of an object or person as the other party in the agreement. A person experiences an agreement, if between what is stated is different from what he wants, it means that what he says there is an error with what he wants. This error is regulated in Article 1322 BW.

So that to be able to cancel the agreement or the basis of heresy, it is necessary to meet the following requirements:

a. The agreement relates to the nature or condition or dominant feature of an object, where the statement is the same as the will but the will is wrong.

b. Misguidance should not be based on expectations that will occur in the future, meaning that misguidance cannot be done by using reasons that are associated with future conditions.

c. In error, the other party understands or at least normally should understand about the nature and circumstances that cause the error is very decisive. Misguidance from one party cannot be recognized by the other party, but with the other party being able to recognize the characteristics or circumstances that give rise to the error for one party it has a very stunning meaning.

d. Misguidance must not arise because of one's own fault, or because of an agreement or according to public opinion the error is indeed a burden.

b. Fraud (Bedrog)

[8] R.Soetojo Prawirohamidjojo, *Hukum Perikatan*, PT.Bina Ilmu, Jakarta, 1984, hal.34.

Fraud (bedrog) is regulated in article 1328 BW and is one of the second forms of will records. The definition of fraud here is a series of actions carried out by one party against another party with a deception (kunstgrepen), with the intention of causing misguidance to the other party. A valid lie or an exaggerated compliment by a merchant of his wares, is not a fraud.

Fraud occurs when one party intentionally provides untrue information, accompanied by cunning, so that the other party is persuaded by it to grant a permit.[9]

Fraud is basically the same as misguidance, the difference is that if the fraud is due to internal factors, it means that the wrong description of the properties and conditions of the object occurs due to internal factors, while fraud is caused by external factors. This means that the wrong description of the nature and condition of the objects occurs due to external factors, namely from other parties in the agreement. "Fraud (bedrog) occurs when there is intentional use of kunstgrenpen (deception) and causes misguidance (dwaling) on the other party."

In order for the intention to cause a misunderstanding, there needs to be a trick as specified in Article 1328 BW.

For example: If A sells a bicycle to B, which bicycle is 2 years old, but according to the information given by A to B, he has only used the bicycle for a few years. So in this case it cannot be said that there is a bedrog. This is just a lie. However, if A before explaining as mentioned above ordered to weld the frame and paint it, so that it looks new and A explained to B, that the bicycle is new, then only here can a lawsuit be filed on the basis of bedrog.

To be able to cancel the agreement on the basis of fraud, conditions are needed, namely the agreement will not be closed or at least the agreement will not be closed with the same conditions. In this case, there is a causal relationship between the fraud committed and the occurrence of the agreement.

c. Coercion (Dwang)

Coercion (dwang) is one of the third defects of will, regulated in Article 1323 BW. Defect of will is coercion arising under threats that violate the law such as murder, torture,

[9] Subekti, *Pokok-Pokok Hukum Perdata*, PT Intermasa, Jakarta, 2003, hal.135.

false reports of destruction and arson and others that cause fear and harm to people or goods. The defect of will which is a compulsion lies in the fear and loss that may occur to people or goods, not in a false description of the nature and conditions of things such as misguidance and deception. The definition of coercion in this case is a threat made by one party against another party that creates a fear of loss of property, even if the threat is directed against the body and or honor and independence. In giving an agreement, the party being threatened is not free. He was gripped with fear, and he had no choice but to make a deal.

According to Prof. Subekti, coercion occurs when someone gives their consent because they are afraid of a threat.[10] Coercion here in the sense of spiritual coercion or coercion of the soul (psychic), so it is not coercion of the body (physical). For example, if one of the parties is threatened or intimidated, they are forced to agree to an agreement.

To be able to cancel an agreement on the basis of coercion, the following conditions are required:

a. The threat is given by one or more people to impose losses on people or objects owned by that person, and the losses can be in the form of material or non-material losses.

b. The coercion must be unlawful

Threats can be unlawful:

1. Something that is threatened is in itself a violation of the law: murder, molestation, false reporting, and so on.

2. Something that is threatened in itself does not violate the law, but the threat is aimed at achieving something that cannot belong to the perpetrator. If the threat is in the form of an action that does not violate the law, then it is not a coercion.

c. There is a causal relationship between coercion and the implementation of the agreement that causes material and non-material losses.

d. Abuse of Circumstances (Misbrik Van Omstedigheden)

The abuse of its application in practice is based on the jurisprudence of the Supreme Court of the Republic of Indonesia Number 3431K/Pdt/1985 dated March 4, 1987 in a case known as the pension book case. The birth of this abuse of circumstances is caused

[10] Ibid.

by the need in practice in society to overcome or resolve the practice of abusing circumstances in the closing of the agreement. The abuse of this condition is a form of willpower defect, because the abuse of the circumstances that occur is not solely related to the content or purpose of the agreement, but is related to what happened at the time the agreement was born.

In an abuse of circumstances, one party gives his consent in an atmosphere in which he is not free. Because the situation is in the pre-contractual phase, and is related to the situation at the time the statement of will is made, it is generally agreed that abuse of the situation is a form of disability and is not a causa.

The condition of the agreement in which there is an element of abuse of circumstances, can be canceled, because the subjective conditions in Article 1320 BW are not fulfilled, namely the agreement is not given freely by will. Prior to the cancellation of the agreement, it is still valid and has legal force.

To be able to cancel the agreement on the basis of abuse of circumstances, the following conditions are needed:

a. The plaintiff must have a reason that the agreement is actually not desired with the conditions specified in the agreement.

b. In the abuse of the situation, the other party (the defendant) has forced both actively and passively on the implementation of an agreement even though he knows or has reason to know that one party (the plaintiff) is under the influence of the abuse of the situation, and what he knows does not prevent him from being implementation of the agreement.

c. The other party (the defendant) has abused the situation because of the economic advantage and psychological advantage.

d. In the misuse of this situation, one party (the plaintiff) suffers a loss.

e. There is a causal relationship between the abuse of circumstances and the implementation of the agreement that caused the loss.

e. Incapable

In article 1330 BW mentions people who are not capable of making an agreement, namely:

1.) People who are immature;

2.) Those who are put under pardon;

3.) Women in matters stipulated in the law, and all persons with whom the law has prohibited making certain agreements.

A woman who marries based on Article 31 paragraph (2) of Law Number 1 of 1974 concerning marriage is capable of achieving competence. Minors according to the provisions of Article 330 BW are those who have not reached the age of 21 years and have not been married before. If an agreement is closed by incompetent people, then the position of the agreement can be canceled (venietogbaar). Such an agreement is still legally enforceable as a valid agreement until it is cancelled. The exception to this provision is if the incompetent person acts with the consent of his parents, or by using the funds that have been given to him by his parents. This incompetence is relevant only to individuals, and not to legal entities.

Cancellation of Agreements in the Common Law System

1. Defect of Will

The basic of all agreements is an agreement that contains the approval of one party on the proposal of another party. However, not every approval of a proposal results in a binding agreement. The general principle is that the consent of the parties to an agreement must be serious, because otherwise the agreement can be canceled. A revocable agreement is an agreement that can be denied at the option of one of the parties. The party can if it really wants to avoid carrying out the agreement. For example, when a person is deceitfully persuaded to take part in an agreement, then the agreement is of such a nature or position that it can be canceled (viodabel) at the option of the deceived person.

So the agreement that forms the basis of all agreements will not always give birth to a valid agreement, if it occurs in the event that the agreement contains a defect of will. The legal force of an agreement containing a defect of will is that it can be canceled (voidable/vernietigbaar). Prior to the cancellation of the agreement, it still has legal force such as a valid agreement.

The types of volitional defects include the following:

a. Misrepresentation

The definition of misrepresentation or misdirection is a certain statement that is not true before the agreement is closed which is conveyed by one party to the other which affects the closing of the agreement. In the Indonesian system, this misrepresentation can be compared to the error in Article 1322 BW, which is a wrong picture that comes from internal factors regarding the properties and conditions of objects.

b. Fraud

The definition of fraud or fraud is a certain untrue statement that is intentionally made before the agreement is closed which is conveyed by one party to the other party with the aim of moving the other party to be willing to close the agreement. In an agreement that occurs due to fraud or obtained through an error of fact that is considered legally is not a real agreement, however, such an agreement can invalidate an agreement. Fraud will always appear in a form of cheating when there are people who are dishonest. In the Indonesian system, fraud can be equated with fraud in Article 1328 BW, but there is no need for deception. If in the agreement there is a defect of will in the form of fraud, basically it can be canceled.

c. Duress

The definition of duress or coercion is that one party threatens the other party or also to his family, by violating the law whose purpose is to force the other party to be willing to close the agreement. There are 4 categories of duress, namely:

(1) Violence or threats of use of force;

(2) Imprisonment or threat of imprisonment;

(3) Taking or taking possession of another party's property illegally, or threats to do so.

(4) Threats to breach a contract or to perform illegal acts.

In the Indonesian system, duress can be equated with coercion in Article 1323 BW.

d. Undue Influence

In unmdue influence, a person is under great psychological influence from another party (eg social status, doctor-patient relationship, lawyer and client, etc.) or influence under an emergency (eg urgently needs money).

Undue influence in the Indonesian system can be equated with abuse of circumstances whose reference is based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 343K/Pdt/1985 dated March 4, 1987 with a case known as the pension book case.

This undue influence occurs when the parties make a bargain to obtain an agreement in order to close an agreement, and when there is a defect of will, namely the fact that the will is not free in giving an agreement.

e. Mistake

Mistake is another form of error besides misrepresentation. When compared to misrepresentation, then a mistake is an untrue error, while a misrepresentation is a true error. There is an untrue error when someone wants something, but the statement does not match what he wants. For example, it happened to a drunk person, or a wrong message delivered by an authorized person. Mistakes are usually unintentional and are only the fault of the person doing it, while misrepresentations are often intentional, carried out with the intent of getting wrong.[11]

In the Indonesian system, mistake can be interpreted or equated with no agreement according to article 1320 sub 1 BW, or there is no certain object in article 1320 sub 3 BW. With a mistake, the agreement can not only be canceled, even the agreement is considered null and void by law.

f. Unconscion ability

Actually, Undue Influence or abuse of circumstances that have been discussed above are including Unconscion ability and adhesion contracts (adhesion contracts) or standard agreements. This standard agreement or book agreement contains many written terms that have not been negotiated and drafted by one of the parties, the terms are complicated and unclear, and are very beneficial for the parties who compose them. The advantage of standard agreements, especially for businesses, is to reduce costs and time in negotiating the closing of the agreement from the parties. On the other hand,

[11] Sawakinome, Perbedaan Antara Kesalahan Representasi Dan Kesalahan, https://id.sawakinome.com/articles/language/difference-between-misrepresentation-and-mistake-2.html, 30 Juni 2022, Pukul 10.44 WIB.

the bad side or negative aspect is that the interested party cannot do anything unless they are "forced" to accept the conditions offered along with the embellishment of "take it or leaveit". Next about Unconscion ability is an agreement in which exoneration clauses are contained. Unconscion ability is widely used to cancel standard agreements (adhesion contracts or standard contracts), and is usually used by consumers who feel aggrieved. In the Indonesian legal system, unconscionability has not been enforced.

2. Has no capacity

The following persons do not have the capacity to enter into agreements, namely:

a.) Minor, namely persons who are less than 18 years of age and are not and are not married;

b.) People who are still in care or care or supervision.

If an agreement is made by people who do not have the capacity, then the agreement can be canceled (voidable). The exception to this arrangement is if the minor acts with the consent of his parents, or uses the funds his parents have given him. So there is a reason for the cancellation of the agreement, namely if the agreement is made by a person who does not have the capacity.

According to the Indonesian system, people who do not have the capacity are people who are not capable of making agreements or legal actions. People who are not authorized to carry out legal actions are:[12]

a) Minors (minderjarigheid);

b) People who are put under custody;

c) Wife (Article 1330 of the Civil Code), but in its development, the wife can take legal actions as regulated in Article 31 of Law no. 1 of 1974 Jo SEMA No. 3 of 1963.

[12] *Firman Floranta Adonara, Op.cit, hal.84*

E. Closing

1. Conclusion

Based on the discussion of the previous chapters, the following conclusions can be drawn:

a. The cancellation of the agreement according to the Indonesian Legal System can be carried out if the subjective conditions in the form of agreement and skills contained in Article 1320 BW are not fulfilled because there is a defect of will or made by incompetent people. Such an agreement still has legal force as a valid agreement until the time of cancellation. There are four types of willpower defects in giving the agreement, namely astray (dwaling), fraud (bedrog), coercion (dwang), and abuse of circumstances (misbruik van omstandigheden). Then those who are not capable of making agreements, are people who are not yet mature, namely people who have not reached the age of 21 years or before marrying, people who are placed under guardianship, and all those who are prohibited by law. to make certain agreements.

b. Cancellation according to the common law system, which can be done if the agreement that forms the basis of all agreements contains a defect of will, or the agreement is closed by people who do not have the capacity. There are six types of willpower defects in giving the agreement, namely misrepresentation (misleading), fraud (fraud), duress (coercion), undue influence (abuse of circumstances), mistake (error) and Unconscion ability. Then people who do not have the capacity to close the agreement are minor, namely people who are less than 18 years old and are not or have not married, as well as people who are still in care or custody unless in closing the agreement they have obtained approval from the other person. old.

2. Suggestions

Based on the discussion of the previous chapters and the conclusions mentioned above, it is necessary to have the following suggestions:

a. In today's era of globalization, the influence of the common law legal system is increasingly significant in Indonesia. Thus, knowledge of the principles of agreement according to the common law system in order to get more attention from legal observers

so that the public gains knowledge of assessment, especially when facing contract law issues in Indonesia.

b. So that the principle of freedom of contract that applies universally can be used as the basis for conducting business transactions between Indonesian entrepreneurs and entrepreneurs from common law countries such as England, America, Australia, New Zealand, Singapore, Malaysia, and others.

c. Based on the principle of freedom of contract, the defect of will in the form of unconscion ability can be applied in Indonesia to be used as an agreement cancellation, especially in the cancellation of standard agreements that can harm consumers. Such a suggestion is to protect the interests of the weak.

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