

Legal Consequences of Abuse of Circumstances in Sale and Purchase Binding Agreement on Land and Building

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ABSTRACT

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This study aims at understanding the legal consequences of abuse of circumstances (*misbruik van omstandigheden*) in sale and purchase binding agreements on land and buildings. This study used a descriptive-analytical method, including the description, explanation, and analysis of the issues that occurred, followed by drawing conclusions to find the correct answers as solutions to the problems being analyzed. The results showed that, in practice, incidents indicating a defect of will, such as fraud and duress, are often encountered. This can be referred to as abuse of circumstances or *misbruik van omstandigheden*, leading to the issue of the legal consequences of abuse of circumstances in sale and purchase binding agreements on land and buildings. Yet, regulation on *misbruik van omstandigheden* (abuse of circumstances) has not been established in law. The legal consequence of the transfer of land rights carried out based on abuse of circumstances is a violation of the subjective condition of the agreement, namely the agreement of the parties, so the agreement can be annulled. Considering the numerous cases of abuse of circumstances, the authorities are required to consider and formulate applicable law to further strengthen the doctrine of abuse of circumstances used by judges.

Introduction

Indonesia is a rule of law country so as legal acts have become a common occurrence. One of these legal acts is the legal act of a sale and purchase binding agreement on land and building. For Indonesian, one of the important assets with economic value is land.¹ Land is often used as an object of the transfer of land rights as land is one of human needs, even though the land area in this country is still very limited. Hence, land prices are relatively higher than other human needs.² Article 19 paragraphs (1) and (2) of Law of the Republic of Indonesia No. 5 of 1960 on Basic Agrarian Principles (UUPA) state that the government implements the land registration throughout the whole territory of the Republic of Indonesia to guarantee legal certainty in accordance with provisions that are stipulated in a Government Regulation. In Article 26 paragraph (1) of the UUPA, it is described that the transfer of land rights is a legal act arising due to a legal relationship between the parties. This legal relationship results in legal consequences in the form of rights and obligations for the parties involved in the legal act.³

The transfer of land rights conducted through a sale and purchase can be carried out by making a sale and purchase binding agreement as the initial transaction for the transfer of

¹ Bronto Susanto, "Kepastian Hukum Sertipikat Hak Atas Tanah Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 1997," *DiH: Jurnal Ilmu Hukum* 10, no. 20 (2014): 76–82.

² Haris Budiman, Bias Lintang Dialog, and Mimin Mintarsih, "The Transfer of Ownership Rights of Bengkulu Land Through Land Swap Agreements," *UNIFIKASI: Jurnal Ilmu Hukum* 7, no. 1 (2020): 9–16.

³ Naflah Faadiyah, Muhammad Syaifuddin, and Agus Trisaka, "Validitas Perjanjian Pengikatan Jual Beli: Dasar Terutangnya Bea Perolehan Hak Atas Tanah Dan Bangunan," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 13, no. 1 (2024): 14–22.

land rights.⁴ The sale and purchase binding agreement is a sale and purchase binding agreement on land or building made between two parties, namely the seller and the buyer, and executed before the signing of the Sale and Purchase Deed in front of a Notary. Herlien Budiono stated that the sale and purchase binding agreement is an auxiliary agreement functioning as a preliminary agreement with a free nature so as the sale and purchase binding agreement can be categorized as a preliminary agreement made before the main agreement is executed.⁵ The sale and purchase binding agreement does not always proceed in accordance with the applicable laws or regulations. In practice, incidents indicating a defect of will, such as fraud and duress, are often encountered. However, it cannot be said that there has been a declaration of will agreeing to the agreement without defects. This often happens in an agreement in which one party suffers significant financial losses, but due to certain circumstances, they are forced to close the agreement.⁶ This condition has a high possibility to occur as one party has an advantage over the other, whether from an economic or psychological standpoint. This situation is known as abuse of circumstances or *misbruik van omstandigheden* (Dutch).⁷

Abuse of circumstances (*misbruik van omstandigheden*) occurs when there is a failure to meet a valid condition of an agreement due to an imbalance in legal equation where one party is in a strong psychological, physical, and economic position, while the other is in a weak position or an ordinary person who does not understand and comprehend the content of a sale and purchase binding agreement. If the abuse of circumstances (*misbruik van omstandigheden*) is linked to a defect of will or used as one of the elements causing a defect of will, then the annulment of deed can be requested in court.⁸ Several studies have addressed the issue related to *misbruik van omstandigheden*, including 1) Feryanti Simarsoit in an article entitled "Analysis of *misbruik van omstandigheden* by sellers in the creation of a sale and purchase agreement and power of attorney (A study of Supreme Court Decision No. 3176k/pdt/2020)"⁹; 2) Heris Suhendar and Mohamad Anton Athoillah in an article entitled "Judge's considerations in abuse of circumstances (*misbruik van omstandigheden*) case on Decision No. 3550K/Pdt/2021"¹⁰; and 3) an article by Bagas Febrianto and Akhmad Budi Cahyono entitled "Implementation of the doctrine of abuse of circumstances (*misbruik van omstandigheden*) in sale and purchase agreement with handwritten letters (A case study: Decision No. 243/Pdt.G/2020-PN Mdn and Decision No. 101/Pdt/2021/PT Mdn)".¹¹ Based on the description and the issues discussed in the previous studies, this study tries to address the

⁴ Aprilia Wulandari, "Konsekuensi Yuridis Penyalahgunaan Keadaan Dalam Akta Pengikatan Jual Beli Hak Atas Tanah," *Universitas Islam Indonesia*, 2022.

⁵ Dewi Kurnia Putri and Amin Purnawan, "Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas," *Jurnal Akta* 11, no. 1 (2017): 623-634.

⁶ Dikha Anugrah, "Strategi Pembaharuan Hukum Transaksi Jual Beli Online Dengan Metode Pembayaran Cash on Delivery," *Logika : Jurnal Penelitian Universitas Kuningan* 13, no. 01 (2022): 85-93.

⁷ Faadiyah, Syaifuddin, and Trisaka, "Validitas Perjanjian Pengikatan Jual Beli: Dasar Terutangnya Bea Perolehan Hak Atas Tanah Dan Bangunan."

⁸ Heris Suhendar and Mohamad Anton Athoillah, "Pertimbangan Hakim Dalam Perkara Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)," *Jurnal Yudisial* 16, no. 2 (2023): 250-268.

⁹ Feryanti Simarsoit, "Analisis Terhadap Penyalahgunaan Keadaan Oleh Penjual Dalam Pembuatan Perikatan Jual Beli Dan Surat Kuasa (Studi Putusan Mahkamah Agung Nomor 3176K/PDT/2020)," *Jurnal Notarius* 2, no. 2 (2023): 320-330.

¹⁰ Suhendar and Athoillah, "Pertimbangan Hakim Dalam Perkara Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)."

¹¹ Bagas Febrianto and Akhmad Budi Cahyono, "Implementasi Doktrin Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Dalam Perkara Jual Beli Dengan Surat Di Bawah Tangan (Studi Kasus: Putusan Nomor 243/Pdt. G/2020/PN.Mdn Dan Putusan Nomor 101/Pdt/2021/PT.Mdn)," *Lex Patrimonium* 2, no. 2 (2023): 1-17.

following question: What are the legal consequences of abuse of circumstances (*misbruik van omstandigheden*) in sale and purchase binding agreement on land and building?

Research Methods

This study used a descriptive-analytical method including the description, explanation, and analysis of the issues occurred, followed by drawing conclusions to find the correct answers as solutions to the problems being analyzed. To solve legal issues and formulate regulations on what should be done, the researchers used sources called legal documents, including primary, secondary, and tertiary. This study applied a conceptual and statute approach.

Results and Discussion

1. *Sale and Purchase Binding Agreement on Land and Building*

Articles 1457 to 1540 of the Civil Code or general law states that a sale and purchase is an agreement (*nominaat*). As stated in Article 1457 of the Civil Code, a sale and purchase is an agreement by which one party is bound to deliver a certain matter, for which the other party shall pay stipulated price. The definition of a sale and purchase according to national land law is a legal act of transferring rights permanently and paying the price, either in full or in installment from buyer to seller, which is carried out clearly and in cash. That definition is also based on the understanding of a sale and purchase according to customary law. The clear and cash condition is fulfilled by the completion of a sale and purchase conducted in the presence of Land Deed Official (hereinafter referred to as PPAT). The buyer will become the legal holder of the land rights from the date of signing of Sale and Purchase Deed (hereinafter referred to as AJB) by the parties in the presence of an authorized PPAT.¹² Based on the applicable legal provisions, the transfer of land rights through a sale and purchase can only be registered if it is proven by a Deed made by PPAT. The functions of signing the Sale and Purchase Deed (AJB) in front of PPAT include: a) as an evidence that the sale and purchase has been carried out in front of an authorized PPAT; b) as an evidence that the rights to the land and/or building have been transferred from one party or seller to another party or buyer; and c) as a tool for the registration of the transfer of land and/or building rights due to a sale and purchase of land and/or building rights to the local National Land Agency (BPN) or the local land office.

The Sale and Purchase Binding Agreement (hereinafter referred to as PPJB) is an agreement that serves as a preliminary or initial agreement containing several promises that must firstly be executed and fulfilled by one or both parties before the main agreement is made as the final step of the agreement, namely Sale and Purchase Deed, serving as a proof or an evidence of the transfer of land rights (Putri and Purnawan 2017). PPJB is a preliminary agreement that serves as assistance since its existence helps to carry out an actual legal act, namely a sale and purchase of land. The sale and purchase of land is marked by the signing of a Sale and Purchase Deed (AJB) made in the presence of Land Deed Official (PPAT).¹³ PPJB can be divided into two types, namely; a) PPJB in the form of promises as the price has not yet

¹² Ilham Abbas and Aan Aswari, "The Application of Barcodes on Deed of Land Made by Land Deed Officials," *UNIFIKASI: Jurnal Ilmu Hukum* 6, no. 2 (2019): 146-155.

¹³ Elvira Elvira, Kornelius Simanjuntak, and Mohamad Fajri Mekka Putra, "Penyelundupan Hukum Kepemilikan Tanah Pada Akta Perjanjian Pengikatan Jual Beli Yang Memuat Klausul Hak Membeli Kembali (Studi Kasus Putusan Peninjauan Kembali Nomor 539 PK/Pdt/2020)," *Indonesian Notary* 3, no. 3 (2021): 64-88.

been fully paid by the buyer, meaning the buyer is still paying in installments or making several payments, this PPJB is called PPJB not paid off; and b) PPJB in which transaction has been fully executed but cannot be proceed with the preparation of a sale and purchase deed in front of an authorized PPAT due to not meeting the requirements, preventing the AJB from being made, is referred to as PPJB paid off.¹⁴

2. Legal Consequences of Abuse of Circumstances (*Misbruik Van Omstandigheden*) in Sale and Purchase Binding Agreement on Land and Building

Indonesian law describes abuse of circumstances to be equivalent to the terms 'undue influence' and *misbruik van omstandigheden*. Meanwhile, in the common law system, 'undue influence' is also known as 'unconscionability', where the two are different, yet both share the similarity of being based on an imbalance of bargaining power between parties. If an agreement is drawn up based on injustice occurred in an unbalanced relationship between parties, it is called 'undue influence' (an unbalanced relationship), but if injustice occurs in a situation, it is called 'unconscionability' (one-sided situation).¹⁵ The balance of both parties is strongly needed in an agreement. The definition of the word "equality-equal-equilibrium" which lexically means "equal-comparable", and in Dutch, "*evenwichtveevenwichting*," which means "balance," refers to a state, degree, position, weight, etc.¹⁶ The definition of *misbruik van omstandigheden* (abuse of circumstances) is a new form of legal defect in the Dutch contractual law system. Currently, the doctrine of abuse of circumstances is regulated in Book III Article 44 paragraph (1) of the Dutch Civil Code (DCC), where it is described that "an agreement (a legal act) can be annulled if there is deception (*bedrog*), threat (*bedreiging*), and abuse of circumstances (*misbruik van omstandigheden*)."¹⁷

Abuse of circumstances is not a new case in contract law. Abuse cannot be justified, but the depiction of abuse has now changed compared to the past. In the past, abuse of circumstances was depicted as contrary to public order or good manners (*geode zeden*), thus it was associated with a defect in cause and effect of an agreement. In essence, abuse of circumstances is not only related to an unbalanced content of an agreement, but also to an agreement considered contrary to morality based on the circumstances surrounding the formation of the agreement. Hence, the issue is not the "cause/effect" that is prohibited, but a defect of will, a way to "coerce" an "abused" agreement.¹⁸ This doctrine is closely related to the principle of balance emphasizing the bargaining position of the parties in an agreement.¹⁹

¹⁴ Selamat Lumban Gaol, "Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (*Misbruik Van Omstandigheden*)," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 80-106.

¹⁵ Rikardo Marpaung, Suhendro Suhendro, and Yetti Yetti, "Penyalahgunaan Keadaan (*Misbruik van Omstandigheden*) Dalam Perjanjian," *INNOVATIVE: Journal Of Social Science Research Volume* 4, no. 4 (2024): 14175-14185.

¹⁶ Michael Imgran Hetarie, "Penyalahgunaan Keadaan Di Perjanjian Pengikatan Jual Beli Oleh Developer," *Jurnal Ilmiah Universitas Batanghari Jambi* 22, no. 1 (2022): 468-476.

¹⁷ Rezky Muharjo and Habib Adjie, "Akibat Hukum Penyalahgunaan Keadaan Dalam Perjanjian Jual Beli Tanah Dan Bangunan (Analisis Putusan Mahkamah Agung Republik Indonesia No . 3182 K / PDT / 2010)," *Res Judicata* 2, no. 1 (2019): 200-212.

¹⁸ Rifqi Fadillah, Faisal Faisal, and Fatahillah Fatahillah, "Pertimbangan Hakim Terhadap Penyalahgunaan Keadaan (*Misbruik Van Omstandigheden*) Dalam Perjanjian Kredit Bank (Studi Kasus Terhadap Putusan Mahkamah Agung Nomor 2039 K/Pdt/2014)," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 2, no. 3 (2021): 118-127.

¹⁹ Febrianto and Cahyono, "Implementasi Doktrin Penyalahgunaan Keadaan (*Misbruik van Omstandigheden*) Dalam Perkara Jual Beli Dengan Surat Di Bawah Tangan (Studi Kasus: Putusan Nomor 243/Pdt. G/2020/PN.Mdn Dan Putusan Nomor 101/Pdt/2021/PT.Mdn)."

According to J. Satrio, taking advantage of someone else's condition does not constitute a denial of the content and purpose of an agreement, but leads to the abuse of a will that is not freely given. Thus, the issue is not the "cause or effect" that is prohibited, but a defect of will, a way to "coerce" an "abused" agreement. The most common abuse of circumstances is the abuse of circumstances for financial gain, which often results in a decision by a judge.²⁰ Abuse of circumstances caused by financial superiority, namely:

- a. One party in an agreement is better than the other in its economic side, and
- b. The other party is coerced to fulfill an agreement.

Meanwhile, abuse caused by psychological superiority includes:

- a. The dependence of the weaker party is exploited by the party with psychological superiority, and
- b. There is an extraordinary psychological superiority between one party and another.

Abuse (*misbruik*) can be occurred when one party enters into an agreement, even though the party knows or understands that it should not be done. In other words, the party in a weaker position knows that they are entering into an agreement due to duress resulting from their weak position and dependence on the stronger party. The weaker party understands that under normal circumstances, they would not enter into the agreement.²¹ The doctrine of abuse of circumstances concerns the embodiment of the freedom principle of a contract, as it involves the abuse of interfering with a free will to give consent.²² Generally, Sale and Purchase Binding Agreement (PPJB) on land and building contains promises that must firstly be fulfilled by one party or both parties in the PPJB on land and building, before the main agreement, which is the final goal of both parties, namely the sale and purchase deed (AJB) on land and building, is signed. The AJB is signed in the presence of an authorized Land Deed Official (PPAT) in accordance with its working area. The working area of PPAT involves the region or location of the land and/or building that are the objects of the PPJB and AJB deed. To assess the validity of a notarial deed as an authentic deed, it must refer to the regulation of Article 1868 of the Civil Code Jo. Notary Office Law (Law No. 30/2004 Jo. Law No. 2/2014). Meanwhile, to examine the existence of abuse of circumstances (*misbruik van omstandigheden*), more attention is needed regarding the sequence of circumstances or events occurred before, at the time of, and after the execution of an agreement.

In practice, an agreement can result from mistakes, fraud, or duress. An agreement may have been made, but it may contain elements of duress or even fraud. Such an agreement has a defect of will. Article 1321 of the Civil Code emphasizes that if it is proven that there is duress or threat in an agreement that makes a person has no other choice but to sign the agreement, then the deed can be annulled. The starting point for an agreement becoming unbalanced is due to economic or financial factor, where one party's strong economic or financial position gives them the opportunity to abuse economic power (*misbruik van economisch overwicht*), thereby making the other party's position too weak.

Abuse of circumstances as a defect of will brings consequences for the aggrieved party to request the judge to annul the agreement (*vernietigbaar*). As the agreement has not been

²⁰ Xavier Nugraha, John Eno Prasito Putra, and Krisna Darari Hamonangan Putra, "Analisa Daluarsa Gugatan Pembatalan Perjanjian Akibat Adanya Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)," *Jurnal Ilmiah Galuh Justisi* 8, no. 1 (2020): 54-72.

²¹ Sharon Clarins, "Penerapan Doktrin Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Dalam Putusan Pengadilan Indonesia," *Dharmasisya* 1, no. 4 (2021): 2143-2158.

²² Fatmah Paparang, "Misbruik Van Omstandigheden Dalam Perkembangan Hukum Kontrak," *Jurnal Hukum Unsrat* 22, no. 6 (2016): 46-59.

annulled, the agreement remains binding on both parties. A request for annulment can apply to the entire content of an agreement or part of the content of an agreement. One example of a case related to the issue of abuse of circumstances is the Supreme Court Decision No. 3176K/Pdt/2020.²³ In this case, the First Instance Court Judges have fundamentally misinterpreted the evidence and facts presented in the trial. The description by the Judges can be said to be unfounded and incorrect as the Judges was misled by the arguments constructed by the Plaintiffs regarding the coerced conditions and the clauses that were not in accordance with the agreement previously made by Defendant I. In stating that there is a defect of will due to abuse of circumstances in this case, the Judges only concluded that the doctrinal and jurisprudential descriptions related to abuse of circumstances based on the subjective tendencies of the Plaintiffs.

In Indonesia, the doctrine of abuse of circumstances can be said to be relatively new. This doctrine essentially teaches that an agreement can be requested for annulment by one party who feels aggrieved, if the socio-economically weaker party is exploited by the other party and coerced to enter into an agreement.²⁴ The recognition of the doctrine of good faith in court practice is due to the society's development and needs. This cannot be separated from the reality that laws are not perfect; it is impossible for them to regulate all aspects of human life. Therefore, the law develops beyond codification to fulfill the sense of justice of society through court rulings. A measure that can be taken against an agreement perceived as unfair due to a defect of will is to request for annulment of the agreement in court. This annulment can be based on the presence of defect of will as regulated in Article 1321 of the Civil Code. In its development, there are several factors causing defect of will used as the basis for annulling an agreement, one of them is abuse of circumstances that disturb the free will to express consent. There is no regulation in the legislation regarding the doctrine of abuse of circumstances (*mibsruiik van omstandigheden*). Yet, in practice, this doctrine of abuse of circumstances is known and used by judges in Indonesia as a consideration in cases related to the annulment of agreements. In its development in Indonesia, abuse of circumstances is considered a condition that can cause a defect of will among parties, so as the agreement made is not based on a perfect agreement between both parties. The existence of coercive situations and imbalance of circumstances or abuse of circumstances or abuse of opportunity (undue influence; *misbruik van omstandigheden*) during the drafting, creation, and/or execution of an agreement is an unlawful act that has been accepted in Indonesian judicial practice and has become a permanent jurisprudence, as described in legal provisions found in the Supreme Court's decision.

In other words, if there is an abuse of circumstances, then the agreement is not made with the free will of both parties. By considering the valid conditions of an agreement in Indonesia as explained in Article 1320 of the Civil Code, the consequence of exploiting or abusing the situation is the same as intimidation, threat, or deception by the parties to an agreement, specifically default. Therefore, the cause of abuse of circumstances is the violation of the subjective condition of an agreement, which is the agreement among parties. Consequently, the agreement becomes void. Abuse of circumstances (*misbruik van*

²³ Simarsoit, "Analisis Terhadap Penyalahgunaan Keadaan Oleh Penjual Dalam Pembuatan Perikatan Jual Beli Dan Surat Kuasa (Studi Putusan Mahkamah Agung Nomor 3176K/PDT/2020)."

²⁴ Nabhila Natasyia Maharani, "Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Sebagai Suatu Alasan Batalnya Perjanjian" (Universitas Borneo Tarakan, 2022).

omstandigheden) that serves as the basis for a lawsuit in court is influenced by several factors,²⁵ including:

- a. The doctrine of abuse of circumstances, at the time of the introduction or signing of an agreement, one party feels confused or duressed, because:
 - 1) The low economic condition leading to a lack of ownership, an urgent financial need, and an increasing debt.
 - 2) Another situation is when one party has a higher education level and a more dominant personality.
- b. When entering or executing an agreement, there is an unequal relationship between parties in terms of reciprocal obligations, in this case, in the form of unequal or unbalanced performances.
- c. A very significant loss for one party, for example, if the object price is not at a reasonable level.

In Indonesia, the doctrine of abuse of circumstances (*misbruik van omstandigheden*) cannot be found in legislation, but it has been accepted in jurisprudence as the fourth form of defect of will. The development of the doctrine of abuse of circumstances in Indonesia has been supported by several judicial decisions through court rulings issued by the judicial authorities as considerations in a civil dispute involving an agreement between the plaintiff and the defendant, in which the facts revealed in the trial is considered unfair and detrimental to the positions of the parties.²⁶

The consequence of a breach of agreement based on an abuse of circumstances is that the agreement will be null and void (*nietig*) in its entirety. This is considered unfair as only part of the agreement is deemed unjust by the aggrieved party. The agreement can be annulled by both parties, including the party committed the abuse of circumstances if the agreement is deemed to be detrimental to them. In essence, committing an abuse of circumstances is not only related to the content of an agreement considered to be disproportionate or unbalanced. An agreement is considered contrary to good ethics or morality due to the abuse of circumstances accompanying the formation of the agreement. It is true that taking advantage of someone else's situation does not mean that the content and purpose of an agreement become forbidden, but it does mean that the person who is the target of the abuse of circumstances will not be returned to a state of freedom. Therefore, the issue is not the "cause/reason" that is prohibited, but rather the defect of will, a way to "coerce" an "abused" agreement to be "exploited."

In its development, people view the abuse of circumstances from the perspective of agreement. An agreement is a subjective condition, so as if the conditions of the agreement are not met, it will result in a consequence where the agreement can be requested to be annulled. Annulment can be in the form of the annulment of the entire agreement, or the annulment of certain clauses deemed unacceptable if there is no defect of will. In general, the basis for the formation of an agreement is that the parties must act based on free and pure will, expressed in a free atmosphere. However, there are times when agreement is not reached with pure will. Their will may have been intentionally diverted in another direction or expressed in a non-free atmosphere.

²⁵ Clarins, "Penerapan Doktrin Penyalahgunaan Keadaan (*Misbruik Van Omstandigheden*) Dalam Putusan Pengadilan Indonesia."

²⁶ Muharjo and Adjie, "Akibat Hukum Penyalahgunaan Keadaan Dalam Perjanjian Jual Beli Tanah Dan Bangunan (Analisis Putusan Mahkamah Agung Republik Indonesia No . 3182 K / PDT / 2010)."

Conclusion

This study concludes that the doctrine of abuse of circumstances (*mibsruiik van omstandigheden*) has not yet been regulated in legislation. However, in practice, the doctrine of abuse of circumstances is known and used by judges in Indonesia when considering cases related to the annulment of an agreement. The legal consequence of the transfer of land rights conducted based on abuse of circumstances and false or fictitious payments is that it has violated the first subjective condition of an agreement, which is the agreement between parties. Therefore, the agreement can be annulled. The annulment can be in the form of the annulment of the entire agreement or the annulment of one or several specific clauses deemed unacceptable if there is no defect of will.

Suggestion

Considering the numerous cases of abuse of circumstances, the authorities are required to consider and formulate applicable law to further strengthen the doctrine of abuse of circumstances used by judges. Thus, the victims of abuse of circumstances can resolve the issues as there will be applicable official regulations.

References

- Abbas, Ilham, and Aan Aswari. "The Application of Barcodes on Deed of Land Made by Land Deed Officials." *UNIFIKASI : Jurnal Ilmu Hukum* 6, no. 2 (2019): 146–155.
- Anugrah, Dikha. "Strategi Pembaharuan Hukum Transaksi Jual Beli Online Dengan Metode Pembayaran Cash on Delivery." *Logika : Jurnal Penelitian Universitas Kuningan* 13, no. 01 (2022): 85–93.
- Budiman, Haris, Bias Lintang Dialog, and Mimin Mintarsih. "The Transfer of Ownership Rights of Bengkulu Land Through Land Swap Agreements." *UNIFIKASI : Jurnal Ilmu Hukum* 7, no. 1 (2020): 9–16.
- Clarins, Sharon. "Penerapan Doktrin Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Dalam Putusan Pengadilan Indonesia." *Dharmasiswa* 1, no. 4 (2021): 2143–2158.
- Elvira, Elvira, Kornelius Simanjuntak, and Mohamad Fajri Mekka Putra. "Penyelundupan Hukum Kepemilikan Tanah Pada Akta Perjanjian Pengikatan Jual Beli Yang Memuat Klausul Hak Membeli Kembali (Studi Kasus Putusan Peninjauan Kembali Nomor 539 PK/Pdt/2020)." *Indonesian Notary* 3, no. 3 (2021): 64–88.
- Faadiyah, Naflah, Muhammad Syaifuddin, and Agus Trisaka. "Validitas Perjanjian Pengikatan Jual Beli: Dasar Terutangnya Bea Perolehan Hak Atas Tanah Dan Bangunan." *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 13, no. 1 (2024): 14–22.
- Fadillah, Rifqi, Faisal Faisal, and Fatahillah Fatahillah. "Pertimbangan Hakim Terhadap Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Dalam Perjanjian Kredit Bank (Studi Kasus Terhadap Putusan Mahkamah Agung Nomor 2039 K/Pdt/2014)." *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 2, no. 3 (2021): 118–127.
- Febrianto, Bagas, and Akhmad Budi Cahyono. "Implementasi Doktrin Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Dalam Perkara Jual Beli Dengan Surat Di Bawah Tangan (Studi Kasus: Putusan Nomor 243/Pdt. G/2020/PN.Mdn Dan Putusan

- Nomor 101/Pdt/2021/PT.Mdn)." *Lex Patrimonium* 2, no. 2 (2023): 1-17.
- Gaol, Selamat Lumban. "Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)." *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 80-106.
- Hetarie, Michael Imgran. "Penyalahgunaan Keadaan Di Perjanjian Pengikatan Jual Beli Oleh Developer." *Jurnal Ilmiah Universitas Batanghari Jambi* 22, no. 1 (2022): 468-476.
- Maharani, Nabhila Natasyia. "Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Sebagai Suatu Alasan Batalnya Perjanjian." Universitas Borneo Tarakan, 2022.
- Marpaung, Rikardo, Suhendro Suhendro, and Yetti Yetti. "Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Dalam Perjanjian." *INNOVATIVE: Journal Of Social Science Research Volume* 4, no. 4 (2024): 14175-14185.
- Muharjo, Rezky, and Habib Adjie. "Akibat Hukum Penyalahgunaan Keadaan Dalam Perjanjian Jual Beli Tanah Dan Bangunan (Analisis Putusan Mahkamah Agung Republik Indonesia No . 3182 K / PDT / 2010)." *Res Judicata* 2, no. 1 (2019): 200-212.
- Nugraha, Xavier, John Eno Prasito Putra, and Krisna Darari Hamonangan Putra. "Analisa Daluarsa Gugatan Pembatalan Perjanjian Akibat Adanya Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)." *Jurnal Ilmiah Galuh Justisi* 8, no. 1 (2020): 54-72.
- Paparang, Fatmah. "Misbruik Van Omstandigheden Dalam Perkembangan Hukum Kontrak." *Jurnal Hukum Unsrat* 22, no. 6 (2016): 46-59.
- Putri, Dewi Kurnia, and Amin Purnawan. "Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas." *Jurnal Akta* 11, no. 1 (2017): 623-634.
- Simarsoit, Feryanti. "Analisis Terhadap Penyalahgunaan Keadaan Oleh Penjual Dalam Pembuatan Perikatan Jual Beli Dan Surat Kuasa (Studi Putusan Mahkamah Agung Nomor 3176K/PDT/2020)." *Jurnal Notarius* 2, no. 2 (2023): 320-330.
- Suhendar, Heris, and Mohamad Anton Athoillah. "Pertimbangan Hakim Dalam Perkara Penyalahgunaan Keadaan (Misbruik Van Omstandigheden)." *Jurnal Yudisial* 16, no. 2 (2023): 250-268.
- Susanto, Bronto. "Kepastian Hukum Sertipikat Hak Atas Tanah Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 1997." *DiH: Jurnal Ilmu Hukum* 10, no. 20 (2014): 76-82.
- Wulandari, Aprilia. "Konsekuensi Yuridis Penyalahgunaan Keadaan Dalam Akta Pengikatan Jual Beli Hak Atas Tanah." *Universitas Islam Indonesia*, 2022.

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