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## Abuse Of Circumstances In The Act Of Borrowing Money Into Land Buying And Selling Actions

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### Abstract

An agreement can be born when an agreement has been reached from the parties concerned. In this case, a unanimous agreement must be reached, which does not contain elements of coercion, misguidance, or deception, and is given in a free atmosphere without any pressure. In practice, it is not uncommon to find conformity between the will and the statement which contains defects in the will. As happened in the case of abuse of circumstances in the act of borrowing and borrowing into the act of buying and selling land experienced by Nurhaidah Tomeys in the Supreme Court Decision Number 617 PK/Pdt/2016. This study aims to determine the regulation of abuse of circumstances in Indonesian positive law, the elements of abuse of circumstances contained in borrowing and borrowing into buying and selling land,

The method used in this study is a normative juridical approach, with research specifications using qualitative research with descriptive analysis, data collection methods using primary data and secondary data, for data analysis methods using qualitative data analysis. The results obtained from the study are that abuse of circumstances in the Indonesian judiciary has been accepted as one of the reasons for defects in the will followed by jurisprudence. There is an element of abuse of circumstances in the form of abuse of economic and psychological conditions carried out by creditors against debtors whose economic and psychological conditions are lower in the case of the Supreme Court decision No. 617 PK/Pdt/2016. And the judge's consideration on the Supreme Court's decision no.

*Keywords: Agreement, Defect of Will, Misuse of Circumstances.*

### A. INTRODUCTION

Relationships that occur in community interactions lead to the emergence of various forms of legal relations between people, especially in the field of engagement law, where the

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majority of engagement relationships that occur between people are based on agreements. There are four elements contained in the law of engagement, namely, legal relations, wealth, parties, and achievements. Each party occupies a different place, where one person becomes the creditor, namely the party who is entitled to achievements and another person becomes the debtor, namely the party who is obliged to fulfill the achievements. The agreement can be made by anyone if it fulfills the conditions contained in Article 1320 of the Civil Code, namely:

- 1). Agree on those who bind themselves;
- 2). The ability to make an engagement;
- 3). A certain thing;
- 4). A lawful reason.

Agreement is a very important moment for the formation of an agreement. However, in practice, it is not uncommon to find conformity between the will and the statement which contains defects in the will. In Article 1321 of the Civil Code, there are three factors that cause defects in the will, namely:

- 1). error or oversight (*dwaling*);
- 2). coercion (*dwang* or *bedreiging*);
- 3). fraud (*bedrog*).

Later in its development, contract law accepts abuse of circumstances (*misbruik van omstandigheden* or *undue influence*) as the fourth factor that causes defects of will. As happened in the case of abuse of circumstances in the act of borrowing and borrowing into the act of buying and selling land experienced by Nurhaidah Tomeys in the Supreme Court Decision Number 617 PK/Pdt/2016. In this case there is an element of fraud as well as an element of abuse of circumstances (*misbruik van omstandigheden*). So, the sale and purchase that was sued by the respondent at the review was null and void as referred to in Article 1321 of the Civil Code that "there is no valid agreement if the agreement was given due to an oversight, or obtained by coercion or fraud". As is the case with the study in this study relating to the principle of abuse of circumstances, Since there are currently no laws and regulations that clearly state the criteria for abuse of circumstances, the author intends to discuss and present data on how to regulate the abuse of circumstances in Indonesian positive law, how the elements of abuse the circumstances in the Supreme Court's decision

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No. 617 PK/Pdt/2016, and what the judges considered in the Supreme Court's decision No. 617 PK/Pdt/2016. This research was conducted with the aim of knowing the development of a new principle in will disability, namely the principle of abuse of circumstances (*misbruik van omstandigheden*). So the author intends to discuss and present data on how to regulate the abuse of circumstances in Indonesian positive law, how the elements of abuse of circumstances are in the Supreme Court decision No. 617 PK/Pdt/2016, and what are the judges' considerations in the Supreme Court decision No. 617 PK/Pdt/2016 .

This research was conducted with the aim of knowing the development of a new principle in will disability, namely the principle of abuse of circumstances (*misbruik van omstandigheden*). So the author intends to discuss and present data on how to regulate the abuse of circumstances in Indonesian positive law, how the elements of abuse of circumstances are in the Supreme Court decision No. 617 PK/Pdt/2016, and what are the judges' considerations in the Supreme Court decision No. 617 PK/Pdt/2016 . This research was conducted with the aim of knowing the development of a new principle in will disability, namely the principle of abuse of circumstances (*misbruik van omstandigheden*).

## B. Formulation of the Problem

Based on the description of the background above, there are problems that are formulated as follows:

1. How is the regulation of abuse of circumtains in the law of borrowing money into an act of buying and selling land in Indonesian positive law?
2. What are the elements of abuse of circumtains in the actof borrowing money into the act of buying and selling land?
3. What is the judge’s consideration regarding the abuse of circumtains in the act of borrowing money into the act of buying and selling land in the Supreme Court’s decision Number 617 PK/Pdt/2016?

## C. Research Methods

This research method uses a normative juridical method, which is an approach method with laws and regulations and a case approach with research specifications using

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qualitative research. According to Poerwandari, qualitative research is research that processes and produces descriptive data or provides explanations<sup>4</sup>. This research is descriptive analysis, namely the research method by collecting data according to the truth then the data is compiled, processed and analyzed to be able to provide an overview of the existing problems.<sup>5</sup>. The data collection method uses primary and secondary data, while the data analysis method uses qualitative data analysis.

#### D. Research Results and Discussion

##### a. Regulation of Misuse of Circumstances in the Law of Borrowing and Borrowing into an Act of Buying and Selling Land in Indonesian Positive Law

The case used in this research is an act of borrowing money with a guarantee of SHM Number 1030 which is carried out not formally as in general agreements are made. Looking at Article 1754 of the Civil Code which states that the lender will get back the same amount of money including interest in accordance with the agreed agreement. If the Respondent gets a land certificate in exchange for the money lent to the Petitioner in the amount of Rp. 5,000,000 while the price of vacant land around the object of the dispute with an area of 200 m<sup>2</sup> in 1990 has reached a minimum of Rp. 26,000,000 or the equivalent of Rp. 130,000/m<sup>2</sup>. Then it appears that the land price difference is very far and irrational with the postulated purchase price of Rp. 5,000,000 for a land area of 1,020 m<sup>2</sup> or the equivalent of approximately 4,900/m<sup>2</sup> in 1995.

In addition, in this case there is no agreement with the sale and purchase agreement. If the transaction is a sale and purchase, it is logically impossible for the payment to be made in stages because the Respondent is an entrepreneur, let alone one of the payments is in the form of a used motorcycle. Moreover, in the sale and purchase of land that has been registered with the land office, it must be carried out in the right way through the Land Deed Making Officer (Notary or Camat) because the principle of buying and selling land must be based on "agree, cash and clear" in accordance with the Jurisprudence of the Supreme Court. Number 952 K/Sip/1974.

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<sup>4</sup>E. Ktisti Poerwandari. 1988. Qualitative Approach in Research. Jakarta: Institute for Development and Measurement of Psychology, Faculty. UI Psychology, Pg. 34.

<sup>5</sup>Sugiyono, 2008. Quantitative, Qualitative and R&D Research Methods. Bandung: PT Alfabeta. Pg.105.

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Because there is an element of fraud and or deception or at least contains an element of abuse of the situation (*misbruik van omstandigheden*), the sale and purchase of the object of dispute as argued by the Respondent can be canceled as referred to in Article 1321 of the Civil Code that there is no valid agreement if the agreement is given because of an oversight, or obtained by coercion or fraud or abuse of circumstances developed in the doctrine of law and jurisprudence. The presence of abuse of circumstances (*misbruik van omstandigheden*) in the development of this law is accepted in Indonesian judicial practice as a reason that can be used for contract cancellation even though it is not explicitly regulated in the Civil Code such as Article 1322 (mistake), Article 1323 (coercion).

**b. The Elements of Misuse of Circumstances in the Acts of Borrowing and Borrowing into an Act of Buying and Selling Land**

Based on Article 1267 of the Civil Code, the party whose engagement is not fulfilled can choose to force the other party to fulfill the agreement, or will demand the cancellation of the agreement, with reimbursement of costs, losses and interest. The Civil Code does not adhere to the principle of *justum pretium*, which means that for a contract to be valid it must meet the conditions for a balance between achievement and counter-achievement.<sup>6</sup> Unbalanced achievements and counter-achievements are not enough to prove abuse of circumstances.

The pressure of circumstances and imbalances is also not enough, what is important in proving the existence of abuse of circumstances is that there is evidence of abuse from economic or psychological conditions<sup>7</sup>. This means that a party can be declared to have abused the situation (*misbruik van omstandigheden*) when that party has an advantage over the other party, both in economic advantage and psychological advantage and then uses it to get approval for the provisions in the agreement that he drafted himself to get more profit.

Misuse of circumstances (*misbruik van omstandigheden*) has 2 (two) elements,

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<sup>6</sup>Source:[https://www. Hukumonline.com/stories/article/lt60059fc198c17/doktrin-dan-jurisprudensi-pesalahahan-keadaan-dalam-percepatan](https://www.Hukumonline.com/stories/article/lt60059fc198c17/doktrin-dan-jurisprudensi-pesalahahan-keadaan-dalam-percepatan)

<sup>7</sup>Nurmantias, N. 2020. Unilateral Contract Cancellation Due to Misuse of Conditions in the Contract. Journal of Legal Ideas, 2(2), p.163.

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namely:

- 1). The element of loss for one party;
- 2). The element of abuse of opportunity for the other party<sup>8</sup>.

Like the case in the Supreme Court decision Number 617 PK/Pdt/2016 In this case there are elements of abuse of economic conditions, abuse of psychological conditions, and abuse of opportunities that are used to obtain large profits, causing losses to other parties. The description of the factors mentioned above are as follows:

1). Misuse of economic conditions

This happened because Nurhaidah (the Petitioner) who was seriously ill and was in a difficult economic situation compared to Ruddy (the Respondent) was forced to borrow money from the Respondent for treatment. This borrowing and borrowing of money was also carried out by the Petitioner by providing a guarantee in the form of a certificate of land ownership which was the only deposit belonging to the Petitioner. Then the Respondent was given a blank receipt as proof of borrowing and in the end the editor of the blank receipt was written as a land sale and purchase agreement by the Respondent without the knowledge of the Petitioner.

2). Psychological state abuse

Due to the feeling of the Respondent who felt that his position was higher than the Petitioner's because the Petitioner at that time was only a retired prosecutor while he was a successful businessman who had good and extensive social relations with certain officials, by providing a house next to the object of the dispute to be loaned to each person. The Head of the State Prosecutor's Office who gets a job in Palu for free. This case was also reported to the Palu Police with a lawsuit against Article 242 (false oath) at the suggestion of the Palu District Prosecutor's Office because the person who served as the Head of the Palu District Prosecutor's Office had an interest in owning the land belonging to the Petitioner which was next to the house belonging to the Respondent who was used to being loaned out. In addition, the Respondent's brother once said to the Petitioner's mediator while clarifying.

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<sup>8</sup>Henry Panggabean. 1992. Misuse of Circumstances (Misbruik van Omstandigheden) as a new reason for the cancellation of the Agreement. Yogyakarta: Liberty. page. 39.

3). Misuse of opportunity

The Respondent succeeded in exploiting the negligence of the Petitioner who signed a blank receipt brought by Amiruddin as a representative from the Respondent who did not know that there was no agreement or payment for the object of the dispute as the object of the land sale and purchase transaction because the original legal event was borrowing and borrowing money. The second opportunity used by the Respondent was the opportunity to collude with the former head of the public prosecutor's office who wished to own the object of the dispute.

**c. Judge's Considerations Regarding Misuse of Circumstances in the Acts of Borrowing into Acts of Selling and Buying Land in Decision Number 617 PK/Pdt/2016**

In the provisions of the Civil Procedure Code Article 183, Article 184, and Article 187 HIR / Article 195 and Article 19B, Article 4 paragraph (1) and Article 23 of Law No. 14 of 1970 which specifically regulates decisions, can It is known that basically a judge's decision must always consist of 4 (four) parts, namely: Head of the decision, Identity of the parties, Considerations, and Amar or Dictum<sup>9</sup>. Based on the Civil Procedure Code, judges are only limited to accepting and examining lawsuits that are submitted. Therefore, the role and function of judges in civil case proceedings is limited to:

- 1). Seek and find formal truth;
- 2). The truth is realized in accordance with the basic reasons and facts presented by the parties during the trial process<sup>10</sup>.

In examining a case, evidence is needed because proof is important to get certainty that an event or fact submitted is true and is useful for obtaining a true and fair decision from the judge.<sup>11</sup>. Based on the reasons given by the Petitioner in the trial, the fact that the sale and purchase in the case was brought was revealed without the agreement of the parties' will because the Petitioner as a party to the a quo was in a state of not being careful in giving signatures. Therefore, the land sale and purchase

<sup>9</sup> Opan Satria, M, & Suarjana, S. 2021. Critical Constructive Study of Judges' Considerations in Supreme Court Decisions on Land Sale and Purchase Disputes. Jatiswara, 36(3). page. 284.

<sup>10</sup>Yahya, Harahap. 2005. Civil Procedure Law. Jakarta: Sinar Graphic. Pg.499.

<sup>11</sup>Ibid. page. 141.



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agreement was not based on the good faith of the Respondent. Therefore, the land sale and purchase agreement with certificate 1030/Kamonji was implemented because of the abuse of the economic and psychological pressure experienced by the Petitioner and carried out by the Respondent. .

## E. Conclusion

- a. The regulation of abuse of circumstances (*misbruik van omstandigheden*) in the act of borrowing and borrowing becomes an act of buying and selling land in Indonesian positive law using the Civil Code and Jurisprudence. Because in general the judiciary in Indonesia has accepted the abuse of circumstances as one of the reasons for the cancellation of the agreement as well as other reasons for the defect of will in Article 1321 of the Civil Code. The development of abuse of circumstances in Indonesia was followed by Jurisprudence No. 3641 K/Pdt/2001 and several judges' decisions in the Indonesian judiciary.
- b. The element of abuse of circumstances in the Supreme Court's decision Number 617 PK/Pdt/2016 is the abuse of economic conditions and abuse of psychological conditions. Misuse of circumstances occurs when a party whose economic and psychological situation is in a superior position forces a party whose condition is weak to agree to an unwanted agreement or takes advantage of the condition of another party who is forced to move due to a special situation and takes a big advantage.
- c. The judge's consideration regarding the abuse of circumstances in the act of borrowing and borrowing into the act of buying and selling land in the Supreme Court's decision Number 617 PK/Pdt/2016 there are several benchmarks used by judges in determining the application of the principle of abuse of circumstances, namely, first, moral benchmarks which include propriety and Justice. Second, the benchmark of good faith.



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