



Action of Abuse of Conditions (Misbruik Van Omstandigheden) in Making of the Deed of Sale and Its Implications on the Position of PPAT

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ACTION OF ABUSE OF CONDITIONS (MISBRUIK VAN OMSTANDIGHEDEN) IN MAKING OF THE DEED OF SALE AND ITS IMPLICATIONS ON THE POSITION OF PPAT

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ABSTRAK

The deed of sale and purchase of land is made on the basis of an act of misuse of circumstances (*misbruik van omstandigheden*) which violates the provisions and principles of the contract law. Misuse of circumstances (*Misbruik van omstandigheden*) is interpreted as an act of signing an agreement in a blank deed/power of attorney of any kind in a blank condition, by way of the PPAT requesting, initiating or ordering to sign on blank paper against the will of one of the parties. This act can be categorized as an unlawful act according to the law: civil vide Article 1365 in conjunction with Article 1320 of the Civil Code, criminal Article 266 Paragraph (1) of the Criminal Code and the code of ethics for Land Deed Officials. The research aims to analyze the binding strength of Sale and Purchase Deed made on the basis of the act of misusing circumstances (*misbruik van omstandigheden*) and critically-rationally reflecting on the legal impact (implications) on the PPAT's position, as well as to examine the appropriate form/model of legal protection for parties who are harmed by the use of a signed blank deed form.

Research methods using analytical descriptive, with a prescriptive nature that tests normative things in the form of legal rules and is falsified (detects errors through scientific and non-scientific statements) with dogma or law in reality). Normative juridical approach, using secondary data which is inventoried in the form of primary, secondary and tertiary legal materials, then analyzed with qualitative juridical relating to normative rules and legal documents regarding sale and purchase agreements in general and land sale and purchase agreements in particular those relating to acts of abuse state (*misbruik van omstandigheden*) as the basis for making the deed of sale and purchase of land.

The research results obtained: **First**, that the deed of sale and purchase made on the basis of *bedrong* or misuse of circumstances (*misbruik van omstandigheden*) is contrary to the principles of the parts of the deed or the elements of the agreement, namely values: *essentialia, naturalia and accidentalia* and violates the provisions of Article 1320 & 1321 of the Civil Code which regulates the legal requirements an agreement, especially objective or causal conditions that are considered unlawful and *dwalling* (defective of intention), therefore it can be null and void by law and must be considered as the agreement never existed. **Second**, the juridical implication for the PPAT's position is that the PPAT has the potential to be sued by the aggrieved partie with charges of criminal offenses placing false statements in an authentic deed as stipulated in Article 266 Paragraph (1) of the Criminal Code for violating the principle of mens rea, the element of an act against the law vide Article 1365 of the Civil Code and also violating the PPAT Professional Code of Ethics. **Third**, legal protection for the aggrieved partie can sue civilly for compensation in accordance with Article 1365 of the Civil Code (material and immaterial), demands for 7 years in prison as stipulated in Article 266 paragraph (1) of

the Criminal Code and demands for dishonorable dismissal of the PPAT from his position as stipulated in Article 10 paragraph (2) PP 37 of 1998 concerning Land Deed Officials through a code of ethics hearing and dismissal by the Minister of Agraria and Spatial Planning/Head of the National Land Agency.

Provisions of articles 1320-1321 of the Civil Code. Therefore a violation of the subjective/objective requirements of an agreement (Article 1320 of the Civil Code) carries the consequence of the legal force of the deed of sale and purchase of land made by the PPAT contains legal defects and is null and void, and the PPAT is proven to have committed (*bedrong*) abuse of circumstances and proven negligent in exercise their authority, must be responsible full private. PPAT which is proven to have violated will receive administrative sanctions up to the heaviest penalty that can be dishonorably discharged, civil and even criminal sanctions through a court suit.

Kata Kunci:

Deed of Sale and Purchase, Binding Strength, Acts of Abuse of Circumstances

PENDAHULUAN

A. Background

A sale and purchase agreement is a legal act carried out between parties (seller and buyer) either authentically or under hand witnessed by two persons who meet the requirements as witnesses, and ends with levering, all of which must fulfill the transaction conditions as follows: evidence that legal action has taken place from the registered parties (nokta) either directly

or represented.

The sale and purchase agreement is reciprocal (obligatory), the seller is obliged to deliver the object and is entitled to receive payment, whereas the buyer is obliged to make payments and is entitled to receive the object (object of the sale and purchase agreement). Buying and selling institutions arise from the need for association of fellow human beings who require evidence regarding existing and/or existing civil law relations between the parties.

Article 1457 of the Civil Code states "a sale and purchase agreement is an agreement between the seller and the buyer in which the seller binds himself to surrender his right to an item to the buyer, and the buyer binds himself to pay the price of the item". Essentially, the meaning of the institution of buying and selling land has shifted in meaning since the arrangement of land objects came out of civil law with the enactment of Law no. 5 of 1960 concerning the Basic Agrarian Basic Regulations (hereinafter referred to as UUPA) on September 24, 1960 Land buying and selling is not fully subject to the provisions in Article 1457 in conjunction with 1458 of the Civil Code, except for buying and selling rules that are not contradictory and or have not been regulated in the UUPA.

Considering that the UUPA bases its arrangements on customary law as stipulated in Article 3 of the UUPA, the principle of buying and selling land is cash and clear. The legal rules of buying and selling are regulated by PP No. 10 of 1961 which was amended by

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Government Regulation Number 24 of 1997, concerning Land Registration, which was also amended by Government Regulation Number 24 of 2016, regarding Land Registration. Article 37 paragraph (1) PP No. 24/1997 states: Transfer of land rights and ownership rights to apartment units through sale-purchase, swaps, grants, entry of company data and legal acts of transfer of rights due to auctions can only be registered if proven by a deed drawn up by the authorized PPAT according to the provisions of the applicable laws and regulations.

Deed of sale and purchase of land is the basis for recording the transfer of land rights, in the context of continuous registration (change of data) of land from the original owner to the final owner. The deed of sale and purchase must be drawn up in an authentic form made by and before the PPAT (verlijden), as proof that a transaction has occurred which will be followed up with the transfer of land rights. Therefore, the deed of sale and purchase is the basic requirement for the recording of the transfer of rights at the local Land Office.

Article 2 paragraph (1) of Government Regulation Number 37 of 1998 concerning Regulations for the Position of PPAT states that the PPAT has the main duty to carry out some land registration activities by making land deeds as evidence that certain legal actions have been taken regarding land rights or land ownership rights or property rights. apartment units that will be used as the basis for land registration resulting from the said legal action. The

position of the Land Deed Making Officer (PPAT) is confirmed through various laws and regulations, namely:

- 1) Article 1 paragraph (4) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to Land, the meaning of Officials for PPAT who are authorized to make deed of transfer of Land Rights, Deed of Assignment of Land Rights Land and Deed of Authorization Imposing Mortgage according to the applicable laws and regulations;
- 2) Government Regulation Number 24 of 1997 concerning land registration, Article 1 point 24 states that PPAT is a public official who is authorized to make land deeds..
- 3) Government Regulation Number 37 of 1998 concerning Position Regulations for PPAT, specifically regulated in Article 1 number (1), states that: PPAT are public officials who are authorized to make authentic deeds regarding certain legal actions regarding land rights or ownership rights to apartment units.

An authentic deed is strong evidence as a fact that a legal act has been carried out. Article 1868 of the Civil Code states that an authentic deed is a deed which, in the form determined by law, is made by or before public officials who have the power to do so at the place where the deed is made. Article 1868 of the Civil Code inspires the fulfilment of the requirements for the authenticity (binding force) of a deed or commonly known as the elements of the authenticity of a deed, as follows: The deed must be drawn up by or before a public official;

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1. The deed must be made in the form determined by law;
2. The public official by or before whom the deed was made must have the authority to make the deed.

A sale and purchase deed is said to be valid and fulfills the requirements as an authentic deed if it fulfills the procedures and conditions for the transaction as the basis for the transfer of ownership rights to land made before the PPAT, namely the seller and the buyer who wish to carry out the sale and purchase face the PPAT by submitting documents, namely attaching: photos copy of Identity card of each parties, SSB BPHTB, original certificate of land rights, copy of NPWP of the parties, SPPT PBB. If one of the parties is unable to attend, it is obligatory to attach a power of attorney from the party concerned. These documents serve as the basis for filling out the blanks in the Sale and Purchase Deed drawn up by the PPAT. Filling must be adjusted to the facts based on the data of the parties. After the Sale and Purchase Deed is drawn up, it is read out, given a full and thorough explanation of the contents and intent of the deed made to the parties and ensured that all tax payments had been paid (*verlijden not just opmaken*), then the parties (two witnesses who are employees at the PPAT office, as well as the PPAT) signed the Sale and Purchase Deed. However, in carrying out his position the opposite often happens, that PPATs are still involved in cases of abuse of circumstances using a power of attorney for certain purposes. The power of attorney is signed blank, so the function of the office is changed from tax management to power of attorney to sell land, and PPAT) signed

the Deed of Sale and Purchase. However, in carrying out his position the opposite often happens, that PPATs are still involved in cases of abuse of circumstances using a power of attorney for certain purposes. The power of attorney is signed blank, so the function of the office is changed from tax management to power of attorney to sell land, and PPAT) signed the Deed of Sale and Purchase. However, in carrying out his position the opposite often happens, that PPATs are still involved in cases of abuse of circumstances using a power of attorney for certain purposes. The power of attorney is signed blank, so the function of the office is changed from tax management to power of attorney to sell land, as happened in the case of the extended family of artist Nirina Zubir who complained about alleged forgery of letters and/or forgery of authentic deeds, embezzlement and money laundering to Polda Metro Jaya, which according to populist terms among land observers is called a Land Mafia Crime involving intellectual and professional actors, such as PPAT. This case began when six land certificates belonging to the late Cut Indria Martini, Nirina Zubir's mother, were misplaced because the power of attorney was allegedly signed on blank paper by Riri Khasmita (Assistant of the Trusteeship of Mother Nirina Zubir). With the help of (pleger) Farida, as the PPAT in Tangerang City (currently the suspect in the aquo case) the power of attorney was from the owner's plan to give power of attorney to Riri Khasmita (the suspect in the aquo case) for the payment of PBB, a power of attorney was written to sell, and then a deed of sale was drawn up bought from the owner to Riri Khasmita and her husband (Edrianto),

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and the family of the deceased (Cut Indria Martini), Nizrina Zubir, on Thursday, 18 November 2021, Polda Metro Jaya has named five suspects in the land mafia case which cost the artist Nirina Zubir's family up to billions of Rupiah, and have been named suspects: Riri Kasmita and Edrianto (Husband and wife of ART Nirna Zubir Family), Farida (PPAT in Tangerang City), Rosiana and Edwin Ridwan (PPAT in Jakarta). For their actions, the suspects were charged with multiple articles, namely Article 378, Article 372 and Article 263 of the Criminal Code concerning Fraud and Forgery of Documents with a penalty of up to five years in prison, which in this case can be categorized as an act of misuse of circumstances (*Misbruik van omstandigheden*).

The subsequent case of abuse of circumstances occurred in the Palembang District Court Decision Number 44/Pdt.G/2020/PN Plg, there are legal issues as the subject of the research. Whereas based on this decision, there has been an unlawful act committed by a notary by misusing a blank deed signature in making an authentic deed. The examples of cases in this case are as follows: M. Machmud Bin Hasim as the plaintiff against Rolly, SH., M. Kn. as Defendant I, Chandra Wijaya as Defendant II, Leni Merlina as Defendant III, and PT. Bank BTN Palembang Sharia Branch Office As Co-Defendant. The object of the case is a Town House Sales and Purchase Agreement in the Pratama Townhouse Complex No. 1 Jalan Seduduk Putih, 8 Ilir ward, Ilir Timur II subdistrict, Palembang with an agreed price of Rp. 780,000,000.-. Whereas before the agreement was made, the Plaintiff had

informed Defendant I and Defendant II that the TownHouse in Komplek Pratama No.1 was certified as SHM Number 12086 and SHM No.12087 and is now still being used as collateral by the Co-Defendant to the Plaintiff with a loan value of Rp.1,550,000,000. - at Bank BTN KC Syariah Palembang (Co-Defendant).

Whereas because the Plaintiff has not been able to redeem the SHM certificates No. 12086 and SHM No. 12087 and return them to Defendant II and Defendant III, the plaintiff is subject to a fine by Defendants II and III from 2018 to 2019 in the amount of Rp. 276,500,000.- (two hundred seventy six million five hundred thousand rupiah) and added a certificate in accordance with evidence of Certificate of Deposit Receipt No. 4261 with a land area of 91 M2 located in Permata Village Housing Talang Betutu with an estimated value of IDR 160,000,000 (one hundred sixty million rupiah).

The plaintiff and Defendants II and III have made an agreement to make a private agreement regarding the object of the case. Defendants II and III asked the Plaintiffs to come to the house of Defendants I and Defendants II and III to intimidate and threaten the Plaintiffs to report the Plaintiffs to the authorities if the Plaintiffs did not come to Defendant I's house, that it turned out that the Plaintiffs only knew that Defendants I was a Notary and the Defendants Defendant I and II asked the Plaintiff to sign a blank form at Defendant I's house which was only witnessed by Defendants II and III and no employees of Defendant I. That the Plaintiff was notified by Defendant I, Based on the explanation

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above, Defendant I as a Notary is suspected of having abused the signature of a blank form in making an authentic deed.

Article 2 paragraph (1) of PP 37 of 1998 states that: "PPAT has the main duty to carry out some land registration activities by making deeds as proof that certain legal actions have been carried out regarding land rights or ownership rights to flats units which will be used as the basis for registration of changes data on land registration resulting from the legal act." Change of data or known as transfer of rights (transfer of rights), is a legal act aimed at transferring rights, including: Buying and selling, grants, swaps, separation and distribution of joint assets and income in a company or inbreng.

PPAT has an important role in the institution of transfer of rights whose goal is to provide protection and legal certainty for the parties through making an authentic deed of transfer of rights. PPAT is required to apply the precautionary principle in making deed of transfer of rights by reflecting on the process of recording the transfer of rights (transfer of title) in the land book and certificate so that problems do not arise in the future. Provisions regarding the duties of the PPAT are regulated in Government Regulation Number 37 of 1998 and Regulation of the Minister of Agrarian Affairs/Head of BPN Number 3 of 1997. Article 22 of Government Regulation Number 37 of 1998 states that making a deed is not only sufficient to be "attended" by the parties, but the contents of the deed are read and explained to the party in the presence of 2 (two) witnesses who also put their signatures on the deed. Article 95 of the

Regulation of the State Minister for Agrarian Affairs/Head of BPN Number 3 of 1997 regulates the types of land certificates made by PPATs to serve as the basis for registration of changes to land registration data, as follows:

- a) Deed of sale & purchase;
- b) Deed of Exchange;
- c) Grant Deed;
- d) Deed of Entry into the Company;
- e) Shared Rights Deed;
- f) Mortgage Granting Deed;
- g) Deed of Granting Right to Build/Use Right to Freehold Land
- h) Power of Attorney Imposing Mortgage Rights which is used in making the Deed of Granting Mortgage Rights.

Intentionally or not, PPAT's attitude that inspired the birth of *Bedrong's* crime cannot be justified. The term *bedrong* (Dutch) is the abuse of a state or a condition that is suppressed. The elements (*bedrong*) of abuse of circumstances include: fraud (*bedrog*), misguidance (*dwaling*) and or coercion (*dwang*). Article 132-328 BW, that "agreement" which is given on the basis of an act (*bedrong*) of misuse of circumstances by misguidance, coercion and fraud), is not "agreed" as referred to in Article 1320 and Article 1321 of the Civil Code, because the agreement has been given as a result the existence of deception, coercion, fraud and abuse of circumstances, is not a valid agreement and therefore can be sued for cancellation. Agree that is not based on a will that actually does not give birth to a valid agreement or is null and void because it violates the terms of causality (causes that are not lawful as stipulated in Article 1320 of the Civil Code).

PPAT in carrying out its position still exists deed being questioned because one of the parties feels aggrieved, even if there is no mediation settlement it can result in a lawsuit or lawsuit before the court.

Problems arising as a result of the negligence of the Land Deed Official (PPAT) due to an act of misuse of circumstances (*bedrong/ Misbruik van omstandigheden*) in the case of dishonesty related to the correctness of the administrative requirements used as the basis for making the deed, where the PPAT requests, orders or initiates one of the parties to sign a blank form first, without the presence of all parties and without reading the contents of the deed. This is an unlawful act and against the law. The mal-administration occurred because the PPAT allegedly sided with one of the parties who had the will to sign a blank form of the Sale and Purchase Deed.

PPAT must be accountable for the authenticity of the deed he made, which causes harm to one of the parties so that sanctions can be imposed by an institution or agency authorized to impose sanctions.

, in the form of light sanctions, moderate to the heaviest sanctions, namely dishonorable dismissal, civil sanctions and even criminal sanctions. PPAT who is proven to have committed a violation of authority, more subject to Article 266 of the Criminal Code concerning false statements or forgery of letters. In addition, Article 55 and Article 56 of the Criminal Code regarding inclusion of criminal acts.

Article 266 paragraph (1) of the Criminal Code reads: "Whoever orders to enter a false statement into an

authentic deed regarding something whose truth must be stated by the deed, with the intention of using or ordering other people to use the deed as if the statement is in accordance with truth, shall be punished, if said use can cause harm, by a maximum imprisonment of seven years. Article 55 paragraph (1) 1st of the Criminal Code, states: convicted as perpetrators of criminal acts: 1st those who commit, order to commit, and those who participate in committing the act. Based on Article 266 paragraph (1) of the Criminal Code, the action of the subject (perpetrator) is to order a false statement to be entered into an authentic deed, so that the word "ordered" in Article 266 paragraph (1) of the Criminal Code is interpreted that the will is only in the messenger (perpetrator /subject).

Considering that there are still many PPATs in carrying out their positions involved in cases of misuse of circumstances, namely by asking, initiating, ordering to sign blank forms first, as well as flegering for the act of falsifying documents or false information on landowner data, further demonstrating the importance of studying research with the title "The Act of Misuse of Circumstances (Misbruik Van Omstandigheden) in Making the Sale and Purchase Deed and its Implications for the Position of the Official Making the Land Deed.

B. Identification of problems

From the description of the background above, which examines the legal phenomena (resistance between *das solen* and *das sein*) related to discrepancies between regulations and reality in PPAT practice, problem

constancy as follow, problem constancy as follows:

- 1) What is the binding power of the Sale and Purchase Deed made by PPAT on the basis of misuse of circumstances (misbruik van omstandigheden) ?
- 2) What are the juridical implications for the PPAT position due to acts of misuse of circumstances (bedrong or *Misbruik van omstandigheden*) in making the deed of transfer of rights?

C. Frame Work

PPAT as a state official who carries out the task of land registration related to certain legal actions, is very special in handling the making of agreement deeds and the assignment of land rights, inseparable from their role as a mouthpiece between the community and the government. This is intended to record the transition from the initial owner, the next owner to the name of the final owner of land rights.

The act of maladministration (mal-administration) in the misuse of circumstances instructing, tricking and/or patronizing one of the parties in making a sale and purchase deed by signing the deed and/or paper as one of the conditions for a transaction to occur through its accuracy in an authentic deed, is inseparable from data embezzlement that has the potential to placement of false statements in authentic deeds through agreements, which can be reconceptualized from various levels of theory, as follows :

1. Theory of Assets (Property)

which he found in natural law theory. John Lacke postulates that all individuals are endowed by nature with inherent rights to life (life), freedom (liberty), and property (property) which are their own and cannot be transferred or revoked by the state, to avoid the uncertainty of living in nature, humans have taking part of a social contract, in which rights that cannot be revoked are left to the state. Regarding property which is part of human rights and human rights derived from the concept of natural law, Thomas Aquinas stated that natural law is God's perfect law which can be known through human reason. The position of each is determined by God, but all people regardless of their status are subject to the authority of God who is endowed with a unique individual identity and separate from the state, thus everyone has an autonomous individual. Hugo Groteus stated that the existence of natural law is the basis for all positive laws (written law) that can be rationalized on a non-empirical basis by examining the axioms of geometry. Groteus's views were refined by his followers, and turned into a theory of natural rights, meaning that individual rights are subjectively recognized. In this regard, John Austin said, rights are only rules that are enforced by the state to protect individuals and their property. The state provides immunity to individuals and at the same time comparable powerlessness to the state, so that the state cannot interfere with this immunity.. Jhom Locke as the successor to Groteus' theory of natural property rights inspired the birth of Article 1338 of the Civil Code known as the theory of freedom of contract, which in legal adage is more populist with the

term *pacta sunt servanda*.

2. *Pacta Sun Servanda* Theory

The agreement basically gives birth to a binding legal relationship for the parties who agree to make it, whether it is made orally or in writing, this is commonly referred to as an agreement that was born due to legal actions. An agreement made into law (statute) that is binding on the parties since it was agreed by both. Therefore, for the parties who have declared themselves to be bound by the agreement that has been agreed upon, they must comply with the implementation of the agreement. The obedience of the parties to implement the agreement that has been agreed upon is the implementation of the *pacta sunt servanda* principle. *Pacta sunt servanda* was first introduced by Hugo de Grotius, a Dutch legal expert, who later inspired the enforcement of the principles in the Dutch BW, which through the principle of concordance were enforced in Indonesia.

3. Achievement Fulfillment Theory

The achievement fulfillment doctrine is a doctrine that teaches that even if one party does not carry out his achievements perfectly, if he has carried out these achievements substantially, then the other party must also carry out his achievements perfectly. The deep meaning of performance is contained in the terms of the contract, namely carrying out or carrying out the entire contents of the contract that has been agreed upon. Everything that has been implemented is based on the good intentions of each party that agreed to run it. That is, each party has integrity, which must be in accordance with what

was written (agreed on) with what was implemented. The form (form) of an achievement on a contract as referred to in Article 1234 of the Civil Code/BW is:

Giving something, such as: paying the price of goods or handing over power over an object, for example in the case of buying and selling; lease; grant; pawn agreement; debts and receivables.

- 1) Giving something, such as: paying the price of goods or handing over power over an object, for example in the case of buying and selling; lease; grant; pawn agreement; debts and receivables;
- 2) Doing something, such as: repairing damaged goods; dismantle the wall; vacate the house; build a house; paint a painting for the customer).
- 3) Not doing anything, such as: agreement not to build a building; do not make high walls obstruct the view; the agreement will not use certain trademarks).

The obligation to fulfill performance in an agreement (legal relationship) will result in an agreement between the two parties, and this is regulated in Article 1233 of the Civil Code which states that an agreement is born because of an agreement or law. Thus the agreement is one of the sources of engagement. The engagement arises because of a contractual relationship that is deliberately made and agreed upon by the parties. Agreements give birth to agreements that occur in everyday life. That is, the agreement (*verbinten*) is born because of the perfect form of the promise, the promise (*Overeenkomst*) is

born because of the agreement (*toetiskom*) and the agreement exists because there is an offer (offer) and acceptance (receiver). Article 1313 of the Civil Code states, an agreement is a legal relationship of wealth between two or more people, which gives the power of right to one party to obtain an achievement and at the same time obliges the other party to carry out an achievement, namely :

- 1) To give something
- 2) To do something
- 3) To do nothing

The achievements that have bound the parties must be fully based on good faith to carry out these obligations to completion.

RESEARCH METHODS

The study uses a normative legal research method with an analytical descriptive type, is prescriptive in nature which examines law from a normative view (Article 22 PP 37 of 1998 concerning PPAT related, regarding the making of a deed that must fulfill *verlijden* actions / present the parties, read out in a clear and paid manner cash accompanied by levering) and falsified (sorting and selecting appropriate data through inventing scientific and non-scientific statements) with legal documents (cases of misuse of circumstances by PPAT in Decision Supreme Court with case number 249/Pid.B/2022/PN.Jkt.Brt). Normative juridical and normative juridical approaches. It means that this research is focused on research on in concreto legal findings on the abuse of

circumstances (*bedrong*) by signing a blank form as the basis for the making of a sale and purchase deed and by taking an inventory of: data collected as primary legal material vide UU 5 of 1960, PP 24 of 1997, PP 24 of 2016, PP 37 of 1998, Article 266 of the Criminal Code and Articles 1320 and Article 1365 of the Civil Code. Secondary legal material consists of the opinions of experts in reference books related to agreements, transfer of rights and acts of misuse of circumstances in making land deeds. Tertiary legal materials in the form of legal dictionaries related to financial abuse. The data were analyzed in a qualitative juridical manner, to seek and find a basis for analysis of the binding power of land sale and purchase deed made on the basis of *bedrong* actions and juridical implications for PPAT positions as well as a model of legal protection for the aggrieved party.

RESULTS AND DISCUSSION

3.1. Juridical Analysis of the Status of the Deed of Sale and Purchase of Land Made on the Basis of *Bedrong's* Actions.

The agreement in Dutch is known as *overeenkomst*, comes from the verb *overeenkomen*, meaning to agree or agree. Scientifically, the agreement contains promises, in other words the ability which contains the reciprocal rights and obligations of the parties. Land sale and purchase agreements are classified as obligatoir agreements, so they must fulfill the elements, legal requirements and must also comply with the principles of contract law in

general. The implementation (fulfillment of achievement) of the agreement can be forced because it is stated in an authentic deed as a form of perfection of the agreement which is the basis for the transfer of land rights in the certificate, and the certificate of land rights has an executive power (title executorial), as regulated in Article 1178 of the Civil Code. This means that the execution is not only based on a court decision as stipulated in Article 224 HIR, but can also be carried out by force of promise.

Article 1178 of the Civil Code states "All agreements which stipulate that the creditor is authorized to make the mortgaged items his property are null and void. However, the first mortgage creditor, at the time of submission of the mortgage may stipulate strictly, that if the principal debt is not repaid properly, or if the interest payable is not paid, then he will be given absolute power to sell the tied parcels in public, so that from the results are paid off, both the principal amount and the interest and costs. The agreement must be registered in the public registers, and the auction must be held in the manner ordered in Article 1211". Article 224 HIR states "Original letters of mortgage and debt securities, made before a notary in Indonesia and which uses the words: "in the name of justice" in its head, have the same strength as a judge's decision. In the case of carrying out such a letter, if it is not fulfilled in a peaceful way, then the regulations in this section can be treated, but with the understanding that force can only be carried out after being permitted by a Judge's decision. If the matter of implementing said decision must be carried out completely or partly outside the jurisdiction of the district court,

whose chairperson orders it to be carried out, then the regulations in Article 195 paragraph two and the following shall be followed.

Agreements have legal requirements as stipulated in Article 1320 of the Civil Code and engagements have elements that are mandatory and at the same time must be fulfilled, and the fulfillment of the achievements can be forced as a debt agreement (*schuld and Haftung*). Terms of the validity of an agreement consists of two, namely: conditions that are subjective and objective. The juridical consequence of non-fulfillment of subjective conditions can be sued for cancellation through the judiciary (*vernietigbaar*), and non-fulfillment of objective conditions results in an agreement being null and void (*nietig*), meaning that the agreement was deemed to have never existed from the start so it is not binding on the parties from the start. Article 1320 of the Civil Code contains the principle of consensualism, which requires agreements to fulfill agreements (*toestemming*) as a condition for the birth of agreements. Just agreeing without formalities can be concluded that there has only been an agreement (*toeteskom*), and there has not been an agreement (*overeenkomst*). Agreement can be interpreted as an offer (*aanbod*) received by the opponent's promise.

From this description, the argument can be built that: there is no receipt (*receiptie*) without an offer (*aanbod*), there is no approval (*toestemming*) without acceptance, no agreement (*overeenkomst*) without approval and no engagement without agreement. This argument is considered something that is principal to show that

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the concept of an engagement will only have binding force, if all of the said elements are fulfilled.

The agreement is in abstract, what is concrete is the agreement (*verbinten*). Therefore, the perfect form of the agreement is an agreement embodied in an authentic deed. The elements of the agreement that must be contained as an absolute part in the engagement, consist of: essentialia parts, naturalia parts and accidental parts, and these three parts must be included in the land sale and purchase deed, if otherwise it can be said to violate material truth, and the deed deemed null and void.

The essentialia part is part of an agreement that must exist. If otherwise, the agreement cannot be considered as the agreement intended by the parties such as, the clause "agreement and a certain thing". Both are essential for the agreement to occur.

Sale and purchase transactions as one of the bases for the transfer of land rights are carried out before the authorized official, namely the PPAT, whose working area covers the area in the district/city where the land is located. Article 39 PP 24 of 1997 requires that before carrying out the making of transaction deeds as a basis for transferring land rights in the context of continuing land registration (data changes) to the local land office, the PPAT must first check the authenticity of the land certificate to the local land office.

The deed of sale and purchase of land must be made in an authentic form, because with an authentic deed, the recording of the transfer of land rights from the original owner, the next owner

to the final owner can be recorded as the transfer of rights by the state (local land office). The deeds made by the PPAT are intended as strong evidence and are considered perfect, as evidence that binds the parties. Therefore, in making a deed, the PPAT must base it on the terms and procedures determined by laws and regulations so that it fulfills the requirements as an authentic deed which can or is the basis for attaching an executorial title (power of execution).

Article 1868 of the Civil Code states: "an authentic deed is a deed which in the form determined by law is made by or before public officials who have the power to do so at the place where the deed was made". Article 1 paragraph (4) of Government Regulation Number 37 of 1998 states that a PPAT deed is a deed made as evidence that legal actions have taken place over land rights or ownership rights over flats. Making a PPAT Deed must comply with the provisions stipulated in the applicable legislation, so that it can be used as a strong basis for registration of the transfer of rights and the encumbrance of the rights concerned. Initially, the sale and purchase agreement was regulated in Article 1457 of the Criminal Code which was nominal in nature (named agreement), which stated an agreement in which one party binds himself to surrender an object, and the other party to pay the price that has been promised.

Since the enactment of the BAL on 24 September 1960, the buying and selling provisions stipulated in Articles 1457-1540 (book III of the Pdt Criminal Code) no longer apply to buying and selling land. The conception of buying and selling land in national land law is

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grounded in the principles of customary law as stipulated in Article 5 of the BAL, namely: The principle of light and cash. Thus, the meaning of buying and selling land rights is an act legal transfer of rights forever from the seller to the buyer and the payment of a good price in full or part of the buyer to seller, which is carried out by Clear and Cash. It is clear that the legal act of buying and selling land is carried out before the PPAT in accordance with the compensation, witnessed by 2 (two) witnesses. Cash, means that there are two actions that are carried out simultaneously or simultaneously, namely:

- a. Transfer of rights (juridical transfer of control) from the seller to the buyer;
- b. Payment of price (whether in part or in whole) from the buyer to the seller.

The consequences of the nature of selling clear land and cash, are:

- a) The sale and purchase of land rights cannot be canceled, because it is not a former agreement on western land law.
- b) If paid in part (unpaid), it does not affect the act of buying and selling land rights, because it is considered to fulfill the cash requirements (vide Supreme Court Decision Number 27K/Sip/1956). The remaining price that has not been paid, is considered as debts and receivables outside of the sale and purchase of land rights.

The clear and cash requirements are deemed fulfilled by the completion of the sale and purchase carried out by and before the PPAT, namely since the signing of the deed of sale and purchase. The buyer becomes the

holder of the land rights calculated from the signing the deed by the parties.

Deed of sale and purchase of land functions:

- a. As proof that the sale and purchase transaction has been made before the relevant PPAT.
- b. As proof that land rights are being traded as a basis for transferring from the seller to the buyer (proof of the transaction that the buyer is the final owner the).
- c. As a basis for registering the registration of transfer of land rights due to sale and purchase at the local Land Office/BPN.

The term buying and selling in laws relating to land is regulated in Article 26 paragraph (1) and (2) of the UUPA and Article 16 paragraph (2) sub letter a and Article 34 paragraph (2) sub letter a and Article 54 paragraph (3) sub letter a PP 40/1996, and Article 37 paragraph (1) PP 24/1997. The requirements for making a deed by the PPAT are procedurally appropriate, aiming to fulfill the formal and material requirements, so that the legal product of the PPAT deed is protected from formal and material defects. Material requirements for sellers.

The land rights holder has the right and authority to sell his land rights:

- a. Whose name is listed in the land title certificate or other evidence that shows the holder of land rights. strong vide Article 31 paragraph (1) Jo. Article 1 point 20 PP 24/1997}
- b. The seller is grown.
- c. Evidence of forgiveness if the seller is incapacitated (mentally disabled)

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- d. Guardianship if not yet an adult
 - e. Power of attorney, if represented
 - f. Approval of one of the parties if the assets of the husband and wife vide Article 34 of Law 1 of 1974
 - g. Submit the legal basis and supporting documents for the warkah data as referred to in Articles 23, 24, PP 24 of 1997 in conjunction with Article 76 PMA 3 of 1997
 - h. Pay and attach SSB PPH.
- e) Submit warkah data in the form of rights and supporting ata;
 - f) Pay and submit SSB PBHTP
 - g) Licensing or aspects of land reform related to the prohibition of gungunti, absentees and excess of the maximum area.

Material requirements for buyers, consisting of:

- a) The buyer fulfills the subject rights as a buyer, both individuals and legal entities as referred to in Article 1 of the Criminal Code, Law No. 40 of 2007 concerning PT, Law 16 of 2001 concerning Foundations and Law 17 of 2012 concerning Cooperatives;
- b) Buyers of property rights are only individual Indonesian citizens vide Articles 9 and 20 of the UUPA for legal entities, only Bank Indonesia, Indonesian People's Banks and Cooperatives are allowed based on PP 38 of 1962 and Waqof based on Law 41 of 2004 concerning waqof;
- c) If the object of sale and purchase is land with Building Use Rights, then the buyer is an individual (WNI for residential use), and if a legal entity must be a legal entity established under Indonesian law;
- d) If the object is selling usufructuary rights, then the buyer may only be individual Indonesian citizens with private usufructuary status over management rights, foreigners for residential housing of foreigners with a certain price standard and legal

Material requirements for an object deed of sale and purchase consist of all types of rights (rights: ownership, building use, business use, private use, ownership of an apartment unit whose nature can be transferred as referred to in Article 16 of the UUPA. The object of sale and purchase is principally land the rights in question may be traded and are not in dispute and or are not being guaranteed debt/mortgages or land in a state of confiscation/confiscation status by the court and/or investigators vide Articles 20, 28, 35 and 41 of the UUPA.

Formal requirements for the PPAT in making a sale and purchase deed:

a. Priority to Making Sale and Purchase Deed;

- 1) Say the oath of office of the PPAT.
- 2) Make a contract for: - "Person" for the benefit who the AJB was made, meaning that the seller or buyer is not a person prohibited from being a party to the deed drawn up by the PPAT vide Article 23 P 37/1998.

- "Place" PPAT is only authorized to make AJB on land located within the work area of the PPAT concerned. {Article 4 PP 37/1998}.

- "At the time" the PPAT is not authorized to make a deed, if at the time the deed was drawn up, the

PPAT had not taken the oath of office or was on leave vide Article 18 PP 37/1998, Article 34 PMNA 4/1999.

- 3) Checking the Certificate at the local Land Office/BPN vide Article 97 PMNA/KaBPN 3/1998 in the context of the correctness of the documents that the title certificate relates to the legitimacy of the sale and purchase.

b. At the time of making the deed of sale and purchase;

- 1) Make the minutes of Sale and Purchase Deed vide Article 17 PMNA/Ka.BPN 4/1999;
- 2) Present the parties or their proxies accompanied by a written power of attorney vide Article 38 paragraph (1) PP 24/1997 Jo. Article 101 paragraph (1) PMNA/Ka.BPN 3/1997};
- 3) witnessed at least by 2 (two) persons qualified witnesses vide Article 38 paragraph (1) PP 24/1997 Jo. Article 101 paragraph (1) PMNA/Ka. BPN 3/1997 and Article 18 paragraph (3) PMNA/Ka. BPN 4/1999);
- 4) Read and explain the contents of the deed to the parties and two witnesses who see Article 101 paragraph (3) PMNA/Ka.BPN3/1997};
- 5) Asking the parties and witnesses concerned for signed the AJB concerned immediately after the word is finished and explained by PPAT and after that too signed the deed.

c. Post Signing of AJB By The parties;

The PPAT is required to submit the deed the following documents to the land office for registration No later than 7 (seven) working days from the date the AJB was signed, vide Article 40 paragraph (1) PP 24/1997 Jo. Article 103 paragraph (1) PMNA/Ka.BPN 3/1997}.

d. Requirements that must be met for registration of sale and purchase of land rights.

- 1) Registration of sale and purchase of land rights at the local Land Office.
- 2) PPAT submits document data, physical data and juridical data as well as the deed of sale and purchase.
- 3) After that the local Land Office records the existence the legal act of buying and selling land rights in the land book and certificate of land rights, consisting of a copy of the book land and certificates)
- 4) The Land Office crosses out the seller's name and replaces it with the Buyer's name).

A PPAT deed is considered legally problematic if the process of making it as stated deviates or contradicts the procedural operational standards as described above in the process of making a land sale and purchase deed, and that thing is populist, it is called a deed administration mall. The authority and position of the deed PPAT in practice is still questioned by the parties, because of various defects both formal and material. If the mediation settlement is not completed, it will lead to a civil or criminal lawsuit before the Court.

Problems can arise when making a sale and purchase deed or when registering and issuing land certificates. In the

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PPAT deed, it can occur due to misuse of circumstances (*bedrong*) which is carried out directly, namely by the PPAT himself or indirectly through other people, as in the case of Nirina Zubir's parents and the Tower House Sales Case in Palembang City (Decision of Palembang District Court Number 44/Pdt.G/2020/PN Plg) both of them, under the instructions of the PPAT/Notary, ordered the bogus seller to use a Power of Attorney signed by the real seller on a blank form. Both in the case of Nirina Zubir's parents in Jakarta and the sale of the Tower House in Palembang, both were initiated/on the advice of a Notary/PPAT who were deemed to have committed the *Bedrong* or *Misbruik Van Omstandigheden*.

Bedrong in the sense that there is an abuse of circumstances including elements of fraud (*bedrog*), misguidance (*dwalig*) and/or coercion (*dwang*), in the production of physical data and juridical data recorded in the land book. Such as: arising from client dishonesty regarding the correctness of administrative requirements as the basis for making a deed. Signing a blank form as the basis for making a sale and purchase deed.

If the cause of the problem arises due to intentional or unintentional negligence of the Land Deed Official, then the result is that the deed only has the power of proof as an underhand deed or becomes null and void by law, which can be a reason for the party suffering a loss to demand reimbursement from the Official. Land Deed Maker. The act of buying and selling can be said to be an agreement in which the seller binds himself to deliver an object and the buyer promises to make payments according to the

agreed price. In addition, buying and selling land must be carried out by observing the principle of "bright and cash". The signing of the "deed of sale and purchase" which is still in the form of a blank form is prohibited. This is because blank blanks can be misused, for example filled with things that are unwanted by the parties and can cause losses to the parties in the future.

In the Jurisprudence of the Supreme Court of the Republic of Indonesia, if the seller and/or buyer has signed a "deed of sale and purchase" which is still in the form of a blank form, it can be ensured that the PPAT does not carry out the process of "reading the deed" first to the parties concerned. The PPAT deed which is still in the form The blank form is then requested to be filled in and signed by the PPAT. Such a land sale and purchase transaction is legally flawed. Thus the resulting certificate can result in null and void. Whereas for subjects who do this, it can be said that they have committed acts against the law (*onrechtmatigedaad*). If the act is carried out by state apparatus/BPN, then the act can be categorized as *onrechtmatige overheidsdaad* or abuse of authority from State Administrative officials. Errors in physical data and juridical data in land registration will eliminate the element of legal certainty of land rights, so that people who are entitled to the land will be harmed. Mistakes will also result in misinformation at the National Land Agency as an instrument of the state, which in turn means creating disorderly land administration.

The cause of the problem can arise directly due to the negligence of the Land Deed Making Official, it can also

arise indirectly in the event that it is carried out by someone else. For example, arising from the client's dishonesty regarding the correctness of the administrative requirements as the basis for making the deed. If the cause of the problem arises due to intentional or unintentional negligence of the Land Deed Official, then the result is that the deed only has the power of proof as an underhand deed or becomes null and void by law, which can be a reason for the party suffering a loss to demand reimbursement from the Official. Land Deed Maker.

A certificate of land rights is a product of a State Administrative Officer (TUN) so that the provisions of State Administrative Law apply to it. For this legal action, a person as a TUN official may commit an act that is classified as an unlawful act either due to a mistake (schuld) or due to negligence in carrying out his legal obligations. The wrong or negligent act resulted in the wrong certificate legal product, both an error in the legal subject in the certificate and an error in the law in the certificate. Which errors are suspected to occur in various land registration processes. According to Adrian Sutendi, the main problems behind the issuance of fake certificates are:

- 1) Mistakes in understanding, recognizing and applying the position in cases where fake certificates are issued.
- 2) This problem is strengthened by the lack of understanding about land ownership rights institutions or land rights transfer institutions, ignoring and allowing mismanagement of land ownership rights transfers and ignoring the link points in legal

institutions between legal systems.

- 3) there was an action to legalize the mutation document for legal defects, the making of a deed of transfer of rights which was not carried out by the PPAT.
- 4) the land administration system is not good, so it is unable to prevent fake certificates from being born.

In the case of letter forgery, forgery can be against the contents of the letter or the origin of the letter that is not true and makes a fake letter, it can also be an incorrect signature. For example, by imitating the signature of someone who doesn't exist, such as someone who has died or fictitiously and can also make it by imitating someone else's signature either with their consent or not.

According to Adami Chazawi, counterfeiting is a crime which contains an element of untruth or falsification of something (object), which looks from the outside as if it is true, when in fact it is contrary to the truth. According to Adami Chazawi, making fake letters can be in the form of:

- a) Make a letter that part or all of the contents of the letter are not in accordance with or contrary to the truth. Making such fake letters is called intellectual forgery.
- b) Make a letter as if the letter came from someone other than the author of the letter. Making such fake letters is called material forgery (*materiale Valschbeit*). Forged letters or the untruth of a letter lies in its origin or the maker of the letter.

Evidence or means of proof according to Sudarsono is something

that states the truth or events, real statements, witnesses and things that become signs. Meanwhile, there are at least 2 things that must be met for the punishment of the Land Deed Making Officer (Adjie, 2008):

- 1) There is legal action from the Land Deed Making Official regarding the formal aspect of the deed which is deliberately full of awareness and conviction and is planned, that the deed made before the Land Deed Making Official or by the Land Deed Making Official together to be used as a basis for committing a crime.
- 2) According to the competent authority, the actions of the Official for Making Land Deeds, in this case the Supervisory Board for Making Officials for Land Deeds.

Determining the existence of a civil or criminal liability carried out PPAT must fulfill three conditions, namely:

- 1) there must be an act of PPAT which can be punished whose elements are expressly formulated by law;
- 2) The actions of PPAT were against the law, and there must be an error on the part of PPAT. Errors or omissions in the criminal sense include elements contrary to law and there must be unlawful acts. So that basically every form of violation or negligence committed by the Land Deed Official is always unlawful in that act;
- 3) PPAT for Making the Land Deed which contains legal defects due to the mistake of the Official for Making the Land Deed.

Violation of the objective requirements of an agreement (Article 1320 of the Civil Code) carries the legal force of the deed of sale and purchase of land made by the PPAT which contains legal defects and is null and void by law, and the PPAT which is proven to have committed (*bedrong*) abuse of circumstances and proven negligent must be administratively responsible, civil, even criminal through a court suit so that it can cause the PPAT to get the heaviest punishment, namely being dismissed with no respect.

3.2 Juridical Implications for the PPAT who made the Deed of Sale and Purchase of Land on the basis of *Bedrong's* actions

Bedrong's act with the modus operandi of using a blank form signed by the aggrieved party in making the deed of sale and purchase of land. In fact, the act of misuse of circumstances is contrary to the principles in the parts of the deed or the elements of the deed that must be in the deed. *Bedrong* acts in the Civil Code can be threatened with unlawful acts. Article 1365 of the Civil Code states that an unlawful act must contain the following elements:

- 1) The existence of an act An unlawful act begins with an act of the perpetrator. It is generally accepted that the deed here is intended, either to do something (in an active sense) or not to do something (in a passive sense),
- 2) The said action is against the law;
- 3) There is an error on the part of the perpetrator that can be proven;
- 4) There is a victim's loss;
- 5) There is a Clause Relationship

between Actions and Losses.

Since 1919, this element against the law has been interpreted in the broadest sense, which includes the following matters:

- a) Acts that violate applicable laws.
- b) Violating other people's rights guaranteed by law, or
- c) Actions that conflict with the legal obligations of the perpetrator, or;
- d) Actions that are contrary to decency (*geoden zeden*), or e). Actions that are contrary to good behavior in society to show the interests of others.

PPAT in carrying out his duties as a Public Official is also not free from administrative sanctions to civil and criminal penalties. The existence of malpractice, especially mal-administration in the making of deeds can cause the PPAT concerned to be subject to civil lawsuits and it is also possible to receive criminal charges. PPAT may be subject to criminal sanctions at any time related to the legal product that has been made, namely the deed..

The basis of the existence of a criminal act is the principle of legality, while the basis of a person's being able to be convicted is a mistake, which means that a person cannot be held accountable and sentenced if he does not have a fault. Criminal liability in foreign languages is referred to as "*toereken-baarheid*", "criminal responsibility", "criminal liability", criminal responsibility here is meant to determine whether a person can be held accountable for a crime or not for the actions he has committed.

Criminal liability is the responsibility of a person for a criminal act he has committed. In essence, criminal responsibility is a mechanism built by criminal law to react to an agreement to refuse a certain act. The agreement to refuse can be in the form of written rules or unwritten rules that are born and develop in society.

Criminal responsibility is aimed at the perpetrators of criminal acts who commit mistakes. Regarding mistakes that are one of the elements of this responsibility, it can be done on purpose and because of negligence. Deliberation is a human act that has errors, there are two characteristics in terms of carrying out these actions, namely intentional (*dolus*) and negligence (*culpa*). Deeds done intentionally are actions that are desired and done with full awareness.

According to Martiman Prodjohamidjojo, a person getting a sentence depends on two things, namely: a. There must be an act that is against the law or in other words, there must be an element against the law so there must be an objective element; b. Against the perpetrator there is an element of error in the form of intentional and or negligence, so that the unlawful act can be accounted for to him, so there is a subjective element.

Regarding the duties of the PPAT are as follows: a. Assist parties who carry out legal actions to submit applications for permits for the transfer of rights and requests for confirmation of conversion and registration of land rights; b. Make a deed regarding legal disputes related to land rights and mortgage rights (deeds of sale, exchange, etc.). The Land Deed Making Officer (PPAT) has the authority to:

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- a) Authorized to make authentic deeds related to legal actions and actions whose object is registered or certified land, specifically for legal actions regarding land rights or ownership rights to flats. (listed in PP number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations for the Positions of Officials Making Land Deeds).
 - b) PPAT as a General Official has the authority to draw up deed of transfer of land rights and other deeds in the context of encumbrance of land rights, the form of which is determined, as proof of the execution of certain legal actions regarding land located within their respective working areas. (as stated in Law No.4/1996 concerning the Law on Mortgage Rights on Land and Objects related to land).
 - c) The PPAT is appointed by the Minister of Agrarian Affairs and Spatial Planning/National Land Agency based on a Decree of the State Minister for Agrarian Affairs/Head of the National Land Agency dated June 2, 1998 number 8-XI-1998 concerning Appointment of Officials for Making Land Deeds and Designation of Work Areas.
- deed must comply with applicable regulations to pour out the contents set forth in the form of the PPAT deed that has been stipulated by the Government, in this case the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. Norms, types of sanctions, and officials authorized to impose sanctions on PPATs are regulated in the Regulation of the Minister of ATR/Head of BPN Number 2 of 2018 concerning the PPAT Advisory and Supervisory Board and its attachments.

Article 53 paragraph (2) Regulation of the Head of BPN Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds, stipulates that in order to fill in blank forms, this must be in accordance with what the parties wish. . Filling in blanks must be in accordance with the facts submitted, regarding the place, time and other related data. Filling in blanks must be in accordance with applicable regulations. If the PPAT asks to sign a "deed" which is still in the form of a blank form, the deed produced from the blank is not in accordance with the applicable provisions because the PPAT does not read the deed.

In relation to the duties and authorities carried out by a PPAT, that PPAT is given authority by the Government in matters relating to PPAT forms. The PPAT still has to carry out the precautionary principle and comply with the conditions that have been set, and that does not mean that a PPAT can misuse the PPAT form. Making a PPAT

Before signing the deed of sale and purchase (AJB), PPAT has the obligation to read the deed to the parties who will sign the deed of sale and purchase (AJB). This is intended to find out whether each party has understood the contents of the deed. If something is not in accordance with the wishes of the parties or one of the parties, the party concerned can refuse to sign the deed.

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In the event that the deed is still in the form of a blank form, it is impossible for the PPAT to fulfill the obligation to "read the deed". This causes the deed to be misused by parties who will commit a crime, for example entering false statements in an authentic deed as stipulated in Article 266 of the Criminal Code.

Based on the case study on the Supreme Court Decision Number 249/Pid.B/2022/PN Jkt.Brt the resigning of the "Sale Purchase Deed" which is still in the form of a blank form that is not in accordance with the laws and regulations in force in Indonesia. In 2017 the Plaintiff "CM" initially realized that his land certificate had been lost and asked the Defendant "RK" to take care of it with the PPAT. In this case, the Defendant "RK" cooperated with the PPAT who he knew had bad intentions and intentions, namely to transfer the name of the certificate to the name of the Defendant "RK" and his marriage partner "E". with the aim of obtaining profits from the sale and purchase of the land. The Land Deed Making Officer (PPAT) in this case asked both parties to sign a blank deed form with the excuse that one of the parties would not change his mind. However, these blank blanks are used to make a sale and purchase deed between the defendant "RK" and a third party (another new person), so that the What happened was the reversal of the name of the lost land certificate to another person without the consent and knowledge of the real land rights holder, namely the plaintiff "CM". This caused losses to the plaintiffs, because the plaintiffs claimed to have never sold the land, never before the PPAT and never signed the sale and purchase document.

The plaintiffs "CM" only realized in 2019 that the certificate had been transferred to a third party. Decision of the Supreme Court Number 249/Pid.B/2022/PN Jkt.Brt decided that the said Sale and Purchase Deed was null and void, with all its legal consequences and imposed a criminal sentence on the Defendant "RK" with a penalty of 13 (thirteen years in prison) because it had been proven falsifying documents, as well as possessing ownership certificates for the land and selling it to third parties.

The example of the case described above, that the act of the PPAT asking the parties to sign a blank form is an unlawful act because it has fulfilled the elements of an unlawful act. The court decided that the Land Deed Making Officer (PPAT) had been negligent in carrying out his responsibilities or it could be said that the PPAT had committed mal-administration. The actions taken by the PPAT in this case do not really reflect the attitude of the PPAT which is trustworthy, honest, impartial, safeguarding the interests of the serious parties, honorable and noble, because the PPAT has committed an act that is very inconsistent with the attitude of the PPAT required by the applicable laws and regulations.

The land deed making official in the above case is subject to Article 266 of the Criminal Code regarding false statements or forgery of documents. In addition, there are also articles 55 and 56 of the Criminal Code regarding inclusion of criminal acts. Article 266 paragraph (1) of the Criminal Code reads: "Whoever orders to enter a false statement into an authentic deed regarding something whose truth must be stated by the deed, with the intention

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of using or ordering other people to use the deed as if the statement is in accordance with truth, is threatened, if the use of it can cause harm, with imprisonment for a maximum of seven years "Article 55 paragraph (1) 1st of the Criminal Code, reads: Sentenced as a perpetrator of a crime: 1st those who commit it, who ordered it to be committed, and who participates in the deed." Based on Article 266 paragraph (1) of the Criminal Code.

In this case, the PPAT was decided to receive administrative sanctions, civil and criminal sanctions. The sanctions include :

- 1) Administrative Sanctions: PPAT is subject to dishonorable dismissal for violating the PPAT's code of ethics;
- 2) Civil Sanctions: For serious violations committed by Land Officials, they will be subject to sanctions for not respecting their position and replaced with costs, compensation and interest to the injured party as a form of responsibility;

Criminal Sanctions: PPAT who is proven to have violated the law which fulfills the elements of a criminal act, namely forgery of authentic deeds. Received a sentence of 2 (two) years 8 (eight) months. The decision on the case is correct, because the deed of sale and purchase was not based on legal rights.

Indeed abuse of circumstances (*misbruik van omstandigheden*) happens if someone moved due to special circumstances (*bijzondere omstandigheden*) to do action law and the opposing parties abuses this matter. Circumstances as one of the reasons for the form of disability of will is more in line with the needs of legal constructions in

the case of someone who is harmed demanding the cancellation of the agreement. The starting point that makes an agreement unbalanced is due to the influence of economic factors, where due to the creditor's economically strong position, the opportunity for creditors to abuse economic power (*misbruik van economisch overwicht*), so that the debtor's position is so weak. There is compulsion and unbalanced circumstances or misuse of circumstances or abuse of opportunity (*undue influence; misbruik van omstandigheden*) in the process of making and or implementing an agreement, especially an agreement constituting an unlawful act, has been accepted in Indonesian judicial practice and has become Indonesia's permanent jurisprudence as reflected in law rules in which there is a decision of the Supreme Court, in principle, among others, as follows:

- a) "When concluding the agreement, including the land sale and purchase agreement, the Plaintiff is in a pressured position, not independent, due to threats from the Defendant who will sue the Plaintiff and or his family, so this constitutes an abuse of circumstances or opportunity (vide *Decision* Supreme Court Number 1979 K/Pdt/2010 dated 23 November 2010 Jo. Magelang District Court decision No. 27/Pdt.G/2008/PN.Mgl., dated 1 June 2009).
- b) "The land sale and purchase agreement made by the parties is unequal, so that the freedom to determine one's attitude is flawed (vide *Decision* Supreme Court

Number 2131 K/Pdt/2011 dated 30 April 2012)

c) "Whereas the signing of the sale and purchase agreement in a deed of agreement by the plaintiff/applicant for cassation while he was in custody occurred because there was an abuse of circumstances or opportunity, so that the plaintiff/applicant for cassation as one of the parties to the agreement including the agreed sale and purchase is under the condition of not being free to express his will, means that the legal consequences made as stated in the agreement stated in the deed of the agreement along with other agreements issued or made based on the two agreements must be canceled (vide *Decision* Supreme Court Number 3641 K/Pdt/2001 dated 11 September 2002). When an agreement is obtained due to the existence or due to a condition that is not free, then in it there are unbalanced conditions or misuse of circumstances.

There are indicators of misuse of circumstances in making agreements, including sale and purchase agreements as follows:

- 1) There are conditions agreed upon that are unreasonable or inappropriate or contrary to humanity.
- 2) It appears or appears that the debtor is in a state of distress.
- 3) If there are circumstances for the debtor there are no other options except entering into an agreement *aquo* agreement with conditions.

4) The value of the results of the agreement very unbalanced, when compared to the mutual achievements of the parties.

CLOSING

A. Conclusion

1. The deed of sale and purchase made on the basis of the act of *bedrong* or misuse of circumstances (*misbruik van omstandigheden*) contradicts the principles of the parts of the deed or the elements of the agreement, namely the values: essentialia, naturalia and accidentalia and violates the provisions of Article 1320 & 1321 of the Civil Code which regulates the legal requirements of a the agreement, especially the objective or causal conditions which are deemed unlawful and *dwalling* (defective of intention), therefore it can be null and void by law and must be considered as the agreement never existed.
2. The juridical implication for the PPAT's position is that the PPAT has the potential to be sued by the aggrieved party with charges of criminal acts of placing false statements in an authentic deed as stipulated in Article 266 Paragraph (1) of the Criminal Code for violating the principle of mens rea, elements of acts against the law vide Article 1365 of the Civil Code and also violate the PPAT Professional Code of Ethics.

B. Recommendation

The party who was harmed by the PPAT's legal action to commit a *bedrong* act or abuse the situation by ordering, recommending or asking the aggrieved party to sign a blank deed which is clearly detrimental to him, can ask for legal protection (for the aggrieved party) to sue in a civil lawsuit with a claim for compensation. in accordance with Article 1365 of the Civil Code (material and immaterial), demands for 7 years of confinement as stipulated in Article 266 paragraph (1) of the Criminal Code and demands for dishonorable dismissal of the PPAT from his position as stipulated in Article 10 paragraph (2) PP 37 of 1998 concerning Deed Making Officials The land goes through a code of ethics hearing and dismissal by the Minister of Agraria and Spatial Planning/Head of the National Land Agency.

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