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**Analysis of Legal Protection for the Debtors Against Abuse of Circumstances Committed by Creditors in Forming a Sale and Purchase Agreement**

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**Abstract**

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*In a debt contract for a large nominal amount, there is a guarantee objects for which the debtor is responsible for the loan received from the creditor, one of the objects is land rights. Creditor often take a shortcut to execute collateral assets through the use of land rights sale and purchase contract procedures when debtor is unable to pay their debts, the establishment of the sale-purchase agreement was made with unbalanced circumstances between the parties. In Indonesia there are no legal regulations about the abuse of circumstances as a form of defect in the will of an agreement, therefore the debtor in forming a land rights sale and purchase agreement also does not get legal protection from legal regulations.*

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## **A. Introduction**

A person will always try to meet his daily needs and sometimes need others to achieve the fulfillment of these needs. Not infrequently, in terms of meeting his needs and interests, someone will work with other parties to make an agreement. Agreements as a mechanism in society to meet daily needs and desires are certainly protected by legal norms that apply in society with the aim of protecting expectations arising from parties who enter into agreements with other parties, this legal mechanism is called the law of agreements.<sup>1</sup> One of the legal regulations regarding agreements is the Civil Code, which was created during the colonial era and remains in force today. The regulation of agreements for the personal interests of each party in the field of property in civil law is a form of legal protection for the parties and their property. In an

agreement arising from an agreement, legal relations related to property must occur between two or more people, namely the party entitled to the achievement, which can be referred to as the creditor, and the party who is obliged to fulfill the achievement, which can be called the debtor, these two parties can be called the subjects of the agreement.<sup>2</sup>

One of the legal agreements for the fulfilment of daily needs and desires is the credit agreement. Debt and credit agreement is a term often used in everyday language, but the specific term used in the Civil Code is credit agreement, as defined in Article 1754 of the Civil Code:

*“A loan for consumption is an agreement, in which one party provides another with a specific amount of consumable items, subject to the condition that the latter mentioned shall return similar types of items of the same amount and quality.”*

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<sup>1</sup> Salim HS. *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2008), hlm. 3-4

<sup>2</sup> Mariam Darus Badruzaman. *Kitab Undang-Undang Hukum Perdata Buku III*

*Tentang Hukum Perikatan Dengan Penjelasan* (Bandung: PT Alumni, 2011), hlm. 3.

Based on this article of the Civil Code, it can be interpreted that the subject matter of the contract is goods that can be valued in money, including the loan of money itself, which is included in the subject matter. Furthermore, Article 1756 of the Civil Code states that "the debt created by the loan of money consists only of the amount of money specified in the agreement". It is therefore possible that the subject matter of the loan agreement may be money by agreement between the parties. As a rule, in a loan agreement with a large nominal amount of money there is a guarantee, which is the dependence of the debtor on the loan received from the creditor as a result of the imposition of the debt. The emergence of collateral with the existence of an agreement between the creditor and the debtor becomes the focus for the fulfilment of the debtor's obligations to the creditor, whose form of collateral is conditioned by

the fact that it can be valued in money.<sup>3</sup>

In debt and credit agreements, issues frequently arise concerning the collateral object and the agreed-upon clause. Such situations involving debt agreements result in contention between the parties. One of the common problems encountered is that one party has the ability to exploit the other party's disadvantaged situation, resulting in self-benefit and harm to the other party. Nowadays, a growing number of debt and credit agreements are offered as a manifestation of the freedom of contract ideology. Nonetheless, inadequate regulation of their execution, despite their diverse variations, gives rise to loopholes that can negatively affect one of the parties. An illustration of this is when debt and credit agreements use land as collateral without establishing mortgage rights on it. Instead, a land rights sale and purchase agreement are executed

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<sup>3</sup> Salim HS. *Perkembangan Hukum Jaminan Di Indonesia* (Depok: Rajawali Pers, 2019), hlm. 22

as collateral for the debt and credit agreement.

The transfer of property requires a contract of sale and purchase, pursuant to Article 1457 of the Civil Code, based on a clearly defined object, either movable or immovable, and an agreement on a negotiated price.<sup>4</sup> A sale-purchase agreement with land rights as the subject matter must comply with the laws and regulations pertaining to land transfers. These laws are based on Basic Agrarian Principles Law Number 5 of 1960 and its implementing regulations, which fall under Article 5 of the Basic Agrarian Law. It's worth noting that the national agrarian law is subject to customary law. Furthermore, the article states that:

*“The agrarian law applicable to the earth, water, and airspace is adat provided that it is not contrary to the national interest and the interest of the State, which are based on national unity, to Indonesian socialism, to the provisions stipulated in*

*this Act, nor to other legislation, all with due regard to elements which are based on religious law.”*

The agreement to sell or purchase land rights based on customary law is explicit and involves direct payment. In relation to the term explicit and involves direct payment in the sale and purchase of land rights, Effendi Perangin explains that explicit refers to carrying out the legal act of sale and purchase in the presence of the local village head or customary head. The head acts not only as a witness but also as a responsible party to ensure that the legal act does not violate existing law, while what is meant by direct payment refers to the option of paying the full price of the land object immediately or in partial instalments.<sup>5</sup>

The distinction between a debt and credit agreement and a sale and purchase agreement is noteworthy. Nevertheless, it is

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<sup>4</sup> R. Subekti and R. Tjitrosudibio, “Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek) Dengan Tambahan Undang-Undang Pokok Agraria Dan Undang-Undang Perkawinan” (2004).

<sup>5</sup> Effendi Perangin, *Hukum Agraria Indonesia Suatu Telaah Dari Sudut Pandang Praktisi Hukum* (Jakarta: Rajawali Pers, 1989), hlm. 16.

common for the parties to use debt and credit agreements as a foundation to sell and purchase collateral for debt and credit. This is executed by concluding a power of sale deed, an obligatory sale and purchase agreement, and a deed of sale and purchase based on the debtor's collateral to reimburse the debt. The above legal construction facilitates the creditor's enforcement of the land title guarantee by concluding a sale agreement with a debtor unable to repay its debt to the creditor. Any agreement, including the conclusion of debt and credit agreements and sale and purchase agreements, must comply with the conditions for the validity of the agreement set out in Article 1320 of the Civil Code, namely:

1. there must be consent of the individuals who are bound thereby;
2. there must be capacity to conclude an agreement;
3. there must be a specific object;
4. there must be an admissible cause.

The consent of the individuals who are bound thereby and their capacity to conclude an agreement are subjective conditions that must be fulfilled in the agreement; if this does not happen, the agreement can be cancelled, while the specific object agreed upon and the admissible cause in the agreement are objective conditions that must be fulfilled; if the objective conditions are not fulfilled, the agreement made becomes null and void.<sup>6</sup> The agreement made by the parties is driven by the will of each party without the elements contained in Article 1321 of the Civil Code. If an agreement granted by error, obtained by duress or by fraud, it means that the agreement can be cancelled, including the element of abuse of circumstances because it is related to the subjective requirements of the agreement.

Abuse of circumstance is one of the factors leading to a lack of will in the agreement, but abuse of circumstance has not been

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<sup>6</sup> Riduan Syahrani, *Seluk-Beluk Dan Asas-Asas Hukum Perdata* (Bandung: PT Alumni, 2013), hlm. 213.

regulated in the Civil Code in force in Indonesia. The doctrine of abuse of circumstances concerns the embodiment of the principle of freedom of contract because abuse prevents the existence of freedom of will to enter into an agreement.<sup>7</sup> The occurrence of abuse of circumstances is not a new thing in the conclusion of agreements between the parties, because abuse of circumstances is more about influencing the will in the conclusion of an agreement, and abuse of circumstances is part of the defect of will. By not regulating the doctrine of abuse of circumstances in the Civil Code, there is no legal protection for the parties who experience it and their property. In the absence of a legal basis, parties who feel abused may apply to the court for legal protection.

However, judges in Indonesia are not bound by previous judges'

decisions in resolving a case, but they are bound by the legislation because the Indonesian judicial system follows the continental judicial system, so court decisions on similar cases are persuasive precedents.<sup>8</sup> Court decisions regarding the issue of abuse of circumstances are not constrained by prior court rulings in case resolution.

Therefore, interpretations of abuse of circumstances vary and impact the expected legal protection for parties who perceive themselves as wronged. As can be seen in Supreme Court Decision No. 2237 K/PDT/2017 on cassation of tort against the law in the case of Siti Aminah vs. Ida Ayu Gede Muryani, S.E., et al. dated October 19, 2017 and Supreme Court Decision No. 2878 K/PDT/2013 on civil cassation in the case of Sigit Setiawan vs. Tuan Mohamad

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<sup>7</sup> H. P. Panggabean, *Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Sebagai Alasan (Baru) Untuk Pembatalan Perjanjian (Berbagai Perkembangan Hukum Di Belanda Dan Indonesia)* (Yogyakarta: Liberty, 2010), hlm. 89.

<sup>8</sup> Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar (Edisi Revisi)* (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2010), hlm. 149.

Artasim bin Basari et al. dated April 16, 2014.

In the legal issues examined, the sale and purchase agreement of land rights to settle the debtor's debt and a credit agreement with the creditor were made when the debtor was unable to repay the debt, and there was no alternative to the sale and purchase agreement. This situation has the potential to result in the abuse of circumstances. The abuse of circumstances extends beyond the content of the agreement, which may be contrary to the law, public order or good morals. Damaging results may also arise from the circumstances surrounding the agreement at the time of its formation.<sup>9</sup> The absence of regulations in Indonesia concerning indications of abuse of circumstances in land rights sale and purchase agreements, which include debt agreements secured by land rights, has created legal uncertainty for individuals. This has resulted in a lack of protection

for parties harmed by creditors. Regarding the issue of abuse of circumstances in this case, the court can exercise its power to assess and decide whether there is any such abuse, in line with Article 10 (1) of the 2009 Law on Judicial Power, this reflects the principle of *ius curia novit*, which states:

*"The court is prohibited from refusing to examine, hear, and decide a case submitted to it on the pretext that the law is absent or unclear, but is obliged to examine and hear it."*

As a form of judicial duty, the judge will pay attention to the legal doctrine (doctrine) proposed by legal experts; the legal doctrine is used in court decisions, which play a very important role in resolving differences of interest that arise in social life, so that legal certainty and legal order can be properly maintained in social life, including parties who file a lawsuit for abuse of circumstances in making the agreement. On the basis of the problems described, a formulation

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<sup>9</sup> J. Satrio, *Hukum Perjanjian (Perjanjian Pada Umumnya)* (Bandung: PT Citra Aditya Bakti, 1992), hlm. 231.

of the problem to be studied can be drawn up, namely:

1. How is the concept of abuse of circumstances in a land rights sale and purchase agreement that covers a debt and receivables agreement together with a guarantee of land rights that does not carry a mortgage right, viewed from the principle of balance?
2. What is the legal protection of the debtor against abuse of circumstances committed by the creditor in forming a sale and purchase agreement?

## **B. Method**

The research method used to examine the legal vacuum related to the legal protection of the debtor against the abuse of circumstances committed by the creditor in the formation of the sale-purchase agreement is normative jurisprudence,<sup>10</sup> by using the

statutory approach, conceptual approach, and case approach,<sup>11</sup> based on primary legal materials in the form of Article 1321 of the Civil Code, Supreme Court Decision No. 2878 K/Pdt/2013, and Supreme Court Decision No. 2237 K/Pdt/2017, as well as secondary legal materials in the form of relevant legal literature. The legal materials were collected using data collection techniques in the form of searching and collecting through libraries, and then analyzed using analytical techniques in the form of teleological interpretation and systematic interpretation.<sup>12</sup>

## **C. Results and Discussion**

### **1. The Concept of Abuse of Conditions in Sale and Purchase Agreements Covering Debt and Receivable Agreements and Guarantees of Land Rights**

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<sup>10</sup> Soerjono and H. Abdurrahman, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2003), hlm. 56.

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana, 2019), hlm. 133.

<sup>12</sup> Sudikno Mertokusumo, *op,cit*, hlm. 221-222.



### **Viewed from the Principle of Balance**

The principle of balance within an agreement is defined as the underlying premise for the exchange of rights and obligations between the parties involved, based on their respective shares, and is evident throughout the agreement process, from pre-agreement through to agreement formation and implementation.<sup>13</sup> In general, agreements must adhere to the principle of balance in order to result in the emergence of a legal transfer of property through the agreement without any party feeling disadvantaged because of their unbalanced position in transferring their property to other parties. The principle of balance is one of the limitations of the principle of freedom of contract for the parties who make an agreement, both on the performance and binding force of

the agreement, because the balance of the parties in forming and implementing the agreement can be realized if the parties are in an equally strong position, or it can be said that the position of the parties is comparable to each other. The comparable position makes the parties each have the freedom of contract as desired by each party.<sup>14</sup> The imbalance that arises in the agreement is due to the parties' own behavior or as a consequence of the substance of the agreement or the implementation of the agreement, so that to prevent one of the two parties in the agreement from being harmed, the principle of balance is needed in it.<sup>15</sup> The unequal position of the parties in entering into the contract, not only in terms of the equality of the agreed benefits but also in terms of the expressed intention of both parties to ensure

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<sup>13</sup> Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial* (Jakarta: Kencana, 2023), hlm. 29.

<sup>14</sup> Edy Lisdiyono, *Kapita Selekta Hukum Perdata* (Malang: Setara Press, 2019), hlm. 12.

<sup>15</sup> Herlien Budiono, *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia: Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia* (Bandung: PT Citra Aditya Bakti, 2006), hlm. 317-318.

fairness in the exchange of economic benefits.<sup>16</sup>

One of the factors that can disturb the balance of mutual agreements is the abuse of circumstances resulting from the unequal position of the parties, leading to a situation in which the will of the parties as expressed in the agreement does not embody fairness. With the growing prevalence of the doctrine of abuse of circumstances, the principle of freedom of contract, which is restricted by the principle of balance when making agreements, is also understood as ensuring that each party has an equally strong bargaining position, including rights and obligations, in order to enter into an agreement to ensure that each party is positioned as an equally strong partner in the agreement.<sup>17</sup> The doctrine of abuse of circumstances as a limitation of

the principle of freedom of contract in agreements is not currently present in the legislation of the Civil Code or other laws and regulations. However, in Indonesian court practice, abuse of circumstances in making agreements has been acknowledged as one of the factors leading to defects in will. Therefore, abuse of circumstances could serve as a valid reason for the cancellation of an agreement.<sup>18</sup>

So far, the concept of abuse of circumstances is divided into two categories, namely the existence of superiority in one of the two parties that is economic and/or psychological in nature. In his book entitled "Hukum Perjanjian," J. Satrio outlines several factors that characterise the existence of abuse of circumstances in an agreement, including the following:<sup>19</sup>

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<sup>16</sup> Muhammad Syaifuddin, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)* (Bandung: Mandar Maju, 2016).

<sup>17</sup> Fatmah Paparang, "Misbruik Van Omstandigheden Dalam Perkembangan

Hukum Kontrak," *Jurnal Hukum Unsrat* 22, No. 6 (July 2016): 46–59, hlm. 46.

<sup>18</sup> Rendy Saputra, *Kedudukan Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Dalam Hukum Perjanjian Indonesia* (Yogyakarta: Gadjah Mada University Press, 2016), hlm. 9.

<sup>19</sup> J. Satrio, *op.cit.*, hlm. 231-233.

1. One party may be in a difficult situation at the time of entering into the agreement, due to economic factors like urgent financial difficulties or one party being economically superior, or due to circumstances such as a patient requiring the assistance of a specialist doctor.
2. The agreement may entail an imbalanced relation of mutual obligations between the parties (unbalanced performance in the agreement). The agreement is not deemed contrary to decency merely due to an imbalance of performance, but rather based on the surrounding circumstances of its occurrence.
3. There is a substantial loss to one of the parties as a result of the agreement, for a claim based on abuse of circumstances to succeed there must be a loss suffered by one of the parties.

Despite the above indications, claimants who seek to cancel an agreement in court for losses incurred due to the abuse of circumstances by the counterparty during the formation and execution of the agreement may not necessarily be granted the lawsuit. This is because there are still

various discrepancies in the interpretation of the abuse of circumstances during the trial. One of them concerns a legal case regarding the exploitation of circumstances during the formation of a sales and purchase contract, which involves a debt and credit agreement with land rights as security. In court proceedings, it is not uncommon for creditors to expedite the execution of collateral by proposing a sale and purchase agreement of land rights without placing a mortgage on the debtor's property. This is done to mask the debt and credit agreements along with the property as collateral, allowing for automatic ownership by the creditor in the event of debtor default.

**a. Supreme Court Decision No. 2878 K/PDT/2013**

Based on the First Decision with Number 10/Pdt.G/2012/PN.Krw., The Court was of the opinion that the sale and purchase intended by the Plaintiff as the purchaser and creditor began with the signing of a receipt, after which when there were conditions that did not allow

the Defendants as debtors to pay on time, the Plaintiff followed up with the making of an Act of Sale and Purchase in front of a PPAT as an official authorised, this was in accordance with the applicable laws and regulations (Government Regulation No. 24 of 1997 concerning Land Registration) that to conduct a sale and purchase agreement of land rights must be carried out in front of a PPAT as an official authorised to make an Act of Sale and Purchase. In relation to the legal act of sale and purchase, the Court was of the opinion that the legal act of sale and purchase occurs when there is an agreed price or the buyer pays the agreed price; however, in the trial, there was no evidence of an agreement on the price, while the general market price for the disputed object should be much more than what was agreed upon. In this case, the Panel of Judges was guided by Articles 1457 and 1458 of the Civil Code.<sup>20</sup>

The actions of the Plaintiff were carried out by taking advantage of the ignorance of the Defendants and the coercion of the Defendants, so that the agreement did not reflect an agreement in determining the price as is generally done by the parties in buying and selling. If the debt as an achievement of the debtor is not paid to the creditor, then legally it cannot simply be withdrawn into the creditor's possession through sale and purchase.

*“Considering that the agreement was a mere pseudo-agreement to replace a debt and credit agreement and Defendants I and II were in a vulnerable and pressurized position and were willing to sign the documents even though they were burdensome, and therefore the agreement was a one-party agreement and was an abuse of circumstances (misbruik van omstandigheden) by the Plaintiff so that the principle of agreement which is the basis of the Plaintiff's claim is invalid.”<sup>21</sup>*

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<sup>20</sup> Ratio Decidendi Hakim dalam Putusan Pengadilan Negeri Karawang Nomor 10/Pdt.G/2012, hlm. 37.

<sup>21</sup> Putusan Pengadilan Negeri Karawang Nomor 10/Pdt.G/2012, hlm. 49.

Due to the existence of legal defects in the agreement between the plaintiff and the defendants in the form of abuse of circumstances in a weak and urgent position, the Act of Vacant Agreement Letter and the Act of Sale and Purchase mean the agreement becomes null and void. Apart from the abuse of circumstances that occurred between the parties due to the economic downturn and the Defendants' ignorance, the Court stated that the legal relationship between the parties initially consisted of debts and receivables, in which case the Defendant had a principal debt to the Plaintiff of IDR 45,000,000. - along with interest of 1.5% per month on the principal debt, starting from December 2002 to March 2012, so that the Defendant has been declared in default which has caused losses to the plaintiff and requires payment of the debt owed to the Plaintiff with a total payment of Rp. 119,925,000,-, so even though the legal relationship of sale and purchase entered into by the parties to settle the Defendant's debt contained an element of abuse

of circumstances, the Defendant was still obliged to settle his debt to the Plaintiff.

The court decision at the first level was then strengthened by the court decision at the appeal level. Appeal Decision Number 24/Pdt/2013/PT.Bdg. and the cassation level in Supreme Court Decision Number 2878 K/Pdt/2013. Based on Supreme Court Decision Number 2878 K/Pdt/2013, adding that the sale and purchase agreement that is the basis of the lawsuit is legally flawed because it violates the principle of balance and constitutes an abuse of circumstances (*misbruik van omstandigheden*), the sale and purchase deed is therefore invalid.

**b. Supreme Court Decision No. 2237 K/Pdt/2017**

The plaintiff in this case was secured by a debt agreement backed by five certificates of land rights, which were then transferred to defendant II. The plaintiff claimed that this transfer constituted an unlawful act on the basis that it contained a defect of will in the form of abuse of

circumstances and the existence of a false causa.

On the contrary, as per the defendants, Defendant I did not entail a debt agreement but rather a purchase and sale legal action between Defendant I and the plaintiff that included the plaintiff's right to buy back by selling to a third party at a higher cost. The transfer of rights to the disputed land is founded on a notarial deed, which is a document that has impeccable evidential value. The Judges' Panel opined that the transfer of rights to the contested property was executed through a notarial deed, which holds conclusive evidentiary weight.

Despite the false causa argument, there is no definitive court ruling confirming its existence. Further, the Judges' Panel holds the firm belief that the loan and borrowing agreement between the Plaintiff and the First Defendant is non-existent, taking into consideration the following:

*“The Court concludes that if it is true that a loan and borrowing agreement was signed at Notary I Putu Hamirtha, SH (Defendant III), then the Plaintiff and Defendant I should have received a copy of the agreement from the Notary, but according to the evidence submitted by both the Plaintiff and Defendant I, no such evidence was ever presented during the trial. Even if a witness testified about the borrowing, the Tribunal concluded that the witness's testimony was only Testimonium de Auditui and therefore could not strengthen the proof of a claim.”<sup>22</sup>*

In relation to the previous loan agreement between the parties, there was no copy of the deed provided by the Notary to the parties and submitted in court. Even though there were witnesses who testified about the existence of the loan, the Panel concluded that the witness testimony was only Testimonium de Auditui, and such witness testimony could not strengthen the proof of a lawsuit, so the Panel of Judges concluded

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<sup>22</sup> Putusan Pengadilan Negeri Denpasar Nomor 909/Pdt.G/2015, hlm. 40-41.

that the loan agreement between the parties never existed because there was no copy of the deed submitted in court. The Panel of Judges in the First Decision did not find any defect of will in the form of misuse of circumstances and false causation contained in the Deed of Sale and Purchase Agreement, Deed of Power of Sale, and Deed of Vacation Agreement executed by the parties, but rather the deeds were made in an authentic deed as a form of good faith of the Defendants, especially Defendant II and Defendant III, and were not made on the basis of unlawful acts.<sup>23</sup> In the appeal and cassation level decisions, the Court concluded that the legal considerations contained in the Denpasar District Court Decision were not contrary to the law.

Based on the two court decisions that have been described, the problem that arises in a debt and credit agreement with land rights as collateral is that the unbalanced position of the parties

makes the creditor encourage the debtor to agree to a sale and purchase agreement of the land rights as a form of debt repayment because the debtor is not in a condition that allows him to settle his debt payments to the creditor, so that the class of abuse of circumstances that causes great harm to the debtor and provides great benefits to the creditor is an economic abuse of circumstances. In the case of surrendering the object of land title security through a land title sale agreement, the debtor, as the seller, has the possibility of being in a squeezed condition due to the existence of these debts, which then become a sale and purchase made in the form of a Power of Attorney to Sell Deed, a Sale and Purchase Binding Agreement, and a Sale and Purchase Deed. The unbalanced position of the parties in carrying out the legal acts agreed upon by the debtor and the creditor is that the debtor whose economic position is squeezed at a certain

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<sup>23</sup> Putusan Pengadilan Negeri Denpasar Nomor 909/Pdt.G/2015, hlm. 42.

point when the debtor cannot pay off his debt or is in a condition that does not allow him to agree on this matter to be utilized by the creditor in carrying out this legal smuggling, gets a greater profit because he automatically owns the land title security object with a pseudo agreement.

Based on these two decisions, there is an economic advantage that occurs when the position of the economic capacity of the parties is not balanced, so that one party is dependent on the other party. The existence of economic power abuse in an agreement will generally be seen in the contents of the parties' agreement. According to Setiawan, these characteristics are as follows:<sup>24</sup>

1. There are conditions in the contract, which are improper and against humanity;
2. The debtor is under a particular circumstance;
3. There are circumstances for the debtor that leaves no other options, other than entering into an

agreement with onerous conditions;

4. The value of the results of the agreement is significantly unbalanced, in comparison with the reciprocal achievements of the parties to the agreement.

The circumstances that can affect the parties in making an agreement can be in the form of limited fulfillment of economic factors experienced by someone as a party to the agreement because they need more funds than they have to meet the needs of life that are difficult to obtain. In general, a debt and credit agreement will be supplemented by an additional agreement to bind collateral. The purpose of the collateral agreement is to guarantee the repayment of the debtor's debt to the creditor, including any levies, taxes, and/or additional costs agreed upon by the parties. The parties' positions in a debt and credit agreement may become uneven without necessarily violating the principle of balance. However, the debtor is

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<sup>24</sup> Rendy Saputra, *op.cit.*, hlm. 64.



the party in need of the agreement to fulfill their requirements, while the creditor has the option to lend funds. The agreement requires further attention to ensure it fulfills the legal requirements, including the element of abuse of circumstances as a defect of will when making an agreement.

If the debtor is unable to repay or make repayments to the creditor as agreed in the debt and credit agreement, the collateral - which may take the form of land rights - must be sold and the creditor is entitled to recover its debt from the proceeds of the sale of the collateral, with any surplus being returned to the debtor. In security of law, as a form of preventing injustice in a debt agreement, one of the applicable principles is that the creditor cannot request a pledge which is then manifested in the form of a deed to own the object pledged by the debtor for the repayment of the debtor's debt to the creditor, because if the creditor takes over

the debtor's collateral object whose value is higher than the amount of the debtor's debt to the creditor, there will be injustice and imbalance between the debtor and the creditor.<sup>25</sup> In both cases, however, the creditor became the owner of the pledged property, which was used to repay the debtor's debt, without following the procedures prescribed by law and regulation: instead of mortgaging the land rights given as security, the creditor entered into a sale-purchase agreement on the land rights in order to obtain ownership of the pledged property.

In order to achieve certainty and justice in an agreement, the parties' varying interests must be accommodated appropriately through a mechanism of binding relations that operates in a balanced manner. If the agreement is unbalanced, the party in a weaker position has only two choices: to accept or reject the agreement. In this situation, the law questions the existence of the

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<sup>25</sup> Suharnoko, *Hukum Perjanjian: Teori Dan Analisis Kasus* (Jakarta: Kencana, 2014), hlm. 25.

agreement as a condition for the validity of the contract.<sup>26</sup> According to the will theory, an agreement is formed when a party expresses its will, and this expression must be pure, free and unconstrained.<sup>27</sup> The author argues that parties entering into an agreement must ensure a compatibility between their intended will and the statements made by both parties. If the circumstances are abused, it can be said that the actual desired will and the parties' statements are not in line. This occurs when one party cannot choose anything other than being bound by their statement when forming the agreement.

In the debt and credit agreement, the purchase of the collateral item was carried out through a sale contract due to economic inequality between the debtor and creditor. The debtor attempted to repay their outstanding debts to the creditor. The debtor eventually encountered difficulties in settling their debts as

agreed. Consequently, they were left with no other option but to sell the collateral to the creditor at a below-market value. This conveys that the debtor and the creditor were not in a balanced position when expressing their willingness to enter into a sale and purchase agreement for land rights. The difference between the two court decisions is that the debtor was constrained and had no alternative but to accept the creditor's proposal. The disproportionate position of the parties does not automatically imply an abuse of circumstances in the creation of the sale and purchase agreement for the object of the land title security in the debt repayment agreement. However, the circumstances of the debtor are crucial in determining whether there has been an abuse of circumstances, as it may have had no other choice but to be bound by the sale and purchase agreement

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<sup>26</sup> Rendy Saputra, *op.cit.*, hlm. 50.

<sup>27</sup> Mariam Darus Badruzaman, *Kontrak Baku (Standard Perkembangannya Di*

*Indonesia)* (Medan: Penerbit Universitas Sumatera Utara, 1980), hlm. 98.

in order to settle its debt repayment agreement.

According to the case referred to in Supreme Court Decision Number 2878 K/Pdt/2013, the debtor succeeded in proving that there was an abuse of circumstances with an indication of ignorance of his legal actions, as well as the economic pinch suffered by the debtor, the creditor used this situation to carry out a sale-purchase transaction of the land title security object, which then the land title security object became the full property of the creditor. On the contrary, the debtor in the position of the case referred to in Supreme Court Decision Number 2237 K/Pdt/2017 was unable to prove the existence of elements of abuse of circumstances and false causa, and based on the arguments of the parties being sued that the sale and purchase agreement with the right to repurchase also gave the Plaintiff the right to be able to sell the object of his land rights to a third party at a higher price, this shows that the Plaintiff was not in a tight situation as the elements of

abuse of circumstances occurred because he still had the option to sell his land rights at a higher price.

## **2. The Legal Protection for The Debtors Against Abuse of Circumstances Committed by Creditors in Forming a Sale and Purchase Agreement**

One of the aims of law in society is to reconcile potentially conflicting interests by limiting and protecting them. By giving individuals the power to act within the limits of their interests, the law protects their interests.

On the most fundamental level, the theory of legal protection can be interpreted as a theory that analyses the form of legal protection or the purpose of protection, the legal subject that is protected and the object of protection that the law provides to

the subject.<sup>28</sup> In each regulation, legal protection is granted differently to the subject and object of protection, with the aim of avoiding arbitrariness on the part of third persons. This differentiation serves to ensure that the community receives the adequate legal protection required.<sup>29</sup> According to the theory of legal protection proposed by Phillipus M. Hadjon, the form of legal protection is theoretically divided into two forms, namely preventive protection (prevention) and repressive protection (dispute resolution).<sup>30</sup> The abuse of circumstances (*misbruik van omstandigheden*) has not been regulated in statutory regulations, but it has often occurred, people who feel aggrieved seek legal protection through dispute resolution in the general court, because the doctrine of abuse of circumstances has been accepted in jurisprudence as a form of defect

of will, including in the case of abuse of circumstances in the making of a sale and purchase agreement of land rights as collateral to cover the debt agreement together with land rights as collateral.

In the case of the abuse of circumstances in the making of a series of sale-purchase agreements of land rights objects in order to repay the debtor's debts, the debtor in making an agreement that is not based on a true will is invalid, so the legal consequence based on the will theory mentioned above is that if a person gives a statement that does not align with their true intentions, the statement should not be binding.<sup>31</sup> This is not in line with the reality that has occurred so far, with a defect of will, namely that there are abnormal circumstances, but the agreement is still binding on the parties who make it, but the debtor as a party who feels aggrieved can request the

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<sup>28</sup> Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi (Buku Kesatu)* (Jakarta: Rajawali Pers, 2013), hlm. 263.

<sup>29</sup> *Ibid*, hlm. 263-265.

<sup>30</sup> Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: PT Bina Ilmu, 1987), hlm. 2.

<sup>31</sup> J. Satrio, *op.cit.*, hlm. 139.

cancellation of the agreement made to the court. The loss in this case arises from the fact that the debtor, due to an economic recession, is unable to pay the debt and has no other option but to sell his land rights at a price significantly below the market value by way of a suggested sale and purchase agreement with the lender in order to pay the outstanding debt. The lender, although aware of the situation of the debtor, has suggested this course of action as a way of paying the debt.

A willingness issued to express an agreement by the parties must not contain elements of error, obtained by duress and fraud, and as the times develop, there is an abuse of circumstances, which makes the statement of agreement as a valid condition of the agreement a defect of will, as contained in Article 1321 of the Civil Code, except for the element of abuse of circumstances, which has not yet been regulated by laws and regulations that regulate in more detail. According to doctrine and jurisprudence, an

agreement containing a defect of will remains binding on the parties, however, at any time the party who feels that they have given a statement containing a defect of will may require the agreement to be cancelled.<sup>32</sup>

The circumstances of the debtor who is experiencing difficulties and injustice because of the economic conditions that have deteriorated, making the creditor get a greater profit by owning the object of collateral for land rights immediately become one indication of the economic abuse of circumstances. The circumstances that contribute to the occurrence of an agreement, then these circumstances affect the subjective conditions in an agreement, causing the legal relationship of the agreement to be unbalanced in the bargaining position of one party who is in a weak position in determining the will, in this case the settlement of a debt and credit agreement with a sale-purchase agreement of a collateral object owned by the debtor to the creditor,

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<sup>32</sup> *Ibid*, *hlm.* 188.

which ultimately triggers problems of injustice in making agreements can be called abuse of circumstances (*misbruik van omstandigheden*) as one of the elements of defects in the will that affect subjective conditions.<sup>33</sup> Due to the problem of imbalance in forming a sale-purchase agreement of land rights that covers a debt-debt agreement with land rights as collateral, the legal protection that can be provided to debtors who sustain losses because of the agreement to make and implement the agreement is that the debtor may require the agreement to be cancelled.

The legal regulations that regulate the rights and obligations of legal subjects that can be valued in money in order to fulfil their needs are called property law, including the law of agreements.<sup>34</sup> Because the agreement is part of

civil law, the author also applies the theory of civil law protection by Paul Scholten, which states that:<sup>35</sup>

*“A similar statement can be made as to the personality (persoonlijkheid) of the individual who is regarded as subjective law; the protection which the civil law affords to the person precisely in the development of the tort (the same care which is due to the person of others) shows that there is also a complex of powers which recognise and limit the law but do not regulate it by regulations.”*

Therefore, it can be said that the form of civil law protection to individuals is in the form of legal recognition and restrictions that regulate and form legal relations between individuals, including the distribution of rights and obligations of each party. The recognition and restrictions are contained in laws and regulations, those in the legal relationship have obligations that must be fulfilled

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<sup>33</sup> Fatmah Paparang, *op.cit.*, hlm. 51.

<sup>34</sup> Tim Pengajar Matakuliah Pengantar Hukum Indonesia, *Pengantar Hukum Indonesia Jilid II (Pembidangan Dan Asas-Asas Hukum)* (Malang: UBPress, 2015), hlm. 24.

<sup>35</sup> Paul Scholten, *Mr. C Asser Handleiding Tot De Beoefening van Het Nederlandsch*

*Burgerlijk Recht: Algemeen Deel. Terjemahan Oleh Siti Soemarti Hartono. Penuntun Dalam Mempelajari Hukum Perdata Belanda: Bagian Umum* (Yogyakarta: Gadjah Mada University Press, 1992), hlm. 19-21.

and have rights that must be obtained, concrete legal relations depend not only on laws and regulations, but also on their decisions. Thus, the legal relationship in the agreement does not only depend on legislation, in this case the Civil Code, for the distribution of rights and obligations of each party, but also from legal principles to become the legal basis of all arrangements relating to the field of law, in this case the field of agreement law, as contained in positive law, in the system of applicable regulations, court decisions and institutions as a whole, however, in addition to legal principles also contain moral judgments, which distinguish right from wrong.<sup>36</sup>

If it is related to the abuse of circumstances in the sale-purchase agreement of land rights that covers the debt and credit agreement with land rights as a guarantee, indeed the abuse of circumstances and legal force in the agreement has not been regulated in the statutory

regulations, but this does not mean that the individuals involved in the legal relationship of the agreement do not get legal protection, the principles contained in the substance of the debt and land rights guarantee agreement can be seen to provide legal protection to each party in the form of recognition of rights and legal restrictions to provide freedom of will so that there is no abuse of circumstances which are then formed by the sale-purchase agreement of land rights for the settlement of debts owed by the debtor to the creditor and the limitations that must be fulfilled by the parties, namely the debtor and the creditor, so that the debtor and the creditor can fulfil their rights, Debtors and creditors, so that the opposing parties in forming an agreement are not violated of their rights and there is no arbitrariness due to an unbalanced position and leads to the making of a sale-purchase agreement of land rights as a settlement of a debt and credit

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<sup>36</sup> *Ibid*, hlm. 89.

agreement with a land rights guarantee.

The Supreme Court Decision No. 2237 K/Pdt/2017 stated that the Panel of Judges could not provide legal protection because the abuse of circumstances and false causa that were transferred were not proven. However, in contrast to Supreme Court Decision No. 2878 K/Pdt/2013, the pretext of abuse of circumstances by the creditor to the debtor who did not understand his legal actions and could not pay off his debt to the creditor was proven in the trial. Debtors and creditors that make an agreement and will later be bound to fulfil an achievement stemming from the agreement must be responsible for the legal actions contained in the agreement. Both sides in the termination of this case received mutual legal protection provided by the court, namely the declaration of the legal act of sale and purchase of the land title security object contained in the receipts, vacating agreement letter and sale and purchase deed to be null and void

because there was an element of abuse of circumstances experienced by the debtor and used by the creditor to transfer the object of land rights guarantee into the full property of the creditor. and by declaring that the debtor had failed to fulfil the obligations of the creditor, and by declaring that the debtor had defaulted in the payment of debt to the creditor, the Judges also provided legal protection to the creditor by obliging the debtor to settle his debt along with the interest that must be paid to the creditor.

As a result, the sale-purchase agreement of the land rights to cover the debt and credit agreement together with the land rights as collateral is cancelled or null and void, and the object that has already passed into the creditor's property will return to its original condition, i.e. the debtor becomes the legal holder of the land rights to the collateral object. This is in accordance with the Law on Mortgage Rights which declares null and void a promise that authorizes the creditor to take



possession of the security object if the debtor defaults, which is contained in Article 12 of the Law on Mortgage Rights which states:

*“A contract that authorizes the holder of a Mortgage Right to take ownership of the object of the Mortgage Right in the event of the debtor's default is null and void.”*

On the other hand, a debtor who perceives a disadvantage when agreeing to a sale-purchase arrangement for a land title security object to cover a joint debt obligation with a creditor and a land title guarantee, may seek legal protection. However, if the Panel of Judges specified by a court ruling with permanent legal force denies the debtor's request, they will not be granted legal protection in the form of the recognition of collateral object rights transferred to the creditor through the security object sale-purchase agreement for debt repayment. If the Panel of Judges does not grant relief for abuse of circumstances in the making of the agreement, then the agreement remains enforceable and cannot be terminated. As a consequence, the debtor is unable to retrieve the object of collateral that was sold to

the creditor under the sale and purchase agreement.

#### **D. Conclusion**

Based on two court decisions, the concept of abuse of circumstances refers to situations where a debtor is unable to pay its debts to creditors due to economic downturns. In such circumstances, the debtor may have no choice but to agree with creditors on a sale and purchase agreement for a joint debt and credit agreement with security in the form of joint land rights. On the contrary, despite being aware of the debtor's situation, the creditor suggests a land rights sale contract, allowing them to gain complete possession of the debtor's land without following the legal procedures. As a result, the creditor gains a significant advantage.

Debtors who have no other recourse for repaying their debts to creditors are afforded legal protection in the form of the ability to file a lawsuit requesting cancellation. If the court grants

such a request, the debtor is entitled to recognition of their ownership of the secured land rights object. Consequently, any transfer of land rights via a sale and purchase agreement becomes invalid, with the object reverting to its original state. This means that the debtor will once again become the holder of the rights to the land.

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