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LEGAL EXISTENCE OF BROKERS IN LAND SALE AND PURCHASE BINDING AGREEMENT

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ABSTRACT

This study aims to analyze the legal position of the broker (broker) as an intermediary trader in the binding agreement for the sale and purchase of land in Indonesia, as well as the legal implications of the actions of the land broker in the binding sale and purchase agreement (PPJB) which resulted in the occurrence of defect of will(wilsgebreken/ defect of consent). This type of research uses the normative type, normative legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. The results of this study indicate that legal position of a broker (broker) as an intermediary trader in a binding agreement for the sale and purchase of land in Indonesia in the KUHD arrangement is classified based on an official broker and an unofficial broker. Related official brokers have been regulated in the provision of Article 62 of the KUHD that he must obtain an official appointment fromrequired state officials. Meanwhile, unofficial brokers through the provisions of Article 63 of the KUHD do not grant a monopoly position to brokers, in fact there is an article that allows the existence of unofficial brokers, namely without an appointment from the Minister of Justice and without an oath, namely Article 63 of the KUHD bsd 1792 of the KUHPER. In this case, this unofficial broker is seen as a normal power holder.

INTRODUCTION

The nature of land is considered as one of the valuable assets that has high economic valuebecause it can encourage the acceleration of development that occurs in various parts of the country, the same problem also occurs in third world countries such as Indonesia. The problem of land is not an easy problem. Human life on earth is always related to land from birth until later when he dies also cannot be separated from the issue of land as a primary need. Land commonly refers to parts of the planet that sustain agriculture, provide home for humans, and include other natural resources (Tamasang, 2022). Thus, land is a vital object in human life, which has various values. Starting from social values, economic values, aesthetic values, and cultural values. Thus, in fulfilling their life needs such as a place to live or the availability of a conducive house, humans always need land to live their lives.

Community escalation inan area makes the land into an object that is very much needed. Because its availability is dwindling. Variations or disparities in land rights refer to variances in

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land entitlements, which reflect the socioeconomic structure of communities to a considerable extent (Nara, 2021). Therefore, land becomes a very valuable object and of course makes many people justify any means to obtain land. The imbalance between the limited land supply and the need for land greatly results in the emergence of problems related to land, the community's need for land will definitely be more massive and this will also encourage an increase in land buying and selling activities as a means and form of the process of transferring rights to land.

The transfer of land rights can be done in several ways, one of which is:namely by buying and selling. Sale and Purchase Binding Agreement is an agreement made by the buyer and seller which is carried out prior to the sale and purchase because of the factors that need to be fulfilled before the sale and purchase occurs (Amir, 2019). In the lawIndonesia, related to the transfer of land rights based on the Sale and Purchase Binding Agreement (here in after in this paper will be abbreviated as *PPJB*).

Sale and Purchase Binding Agreement (*PPJB*) is an agreement between the seller to sell his property to the buyer made by a notarial deed. *PPJB* may occur as land prices are increasingly expensive so that there is a legal vacuum to cover themcommunity needs for legal certainty, especially in the realm of buying and selling land. Thus, PPJB occurs because the requirements for the Sale and Purchase Deed (*AJB*) have not been fulfilled because the payment factor has not been paid off, the certificate is still in the process of splitting or other processes, has not been able to pay taxes, or other legal conditions. PPJB land and buildings is a preliminary agreement with the intention of transferring rights to land and buildings between the seller and the buyer before the sale and purchase is carried out because there are elements that have not been met for further processing, namely through the Sale and Purchase Deed.

The term sale and purchase of land rights is mentioned in Article 26 Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) namely regarding the sale and purchase of property rights over land. The provisions contained in other articles do not contain phrases that mention buying and selling, but are stated as being transferred. The meaning of being transferred indicates a deliberate legal act to transfer land rights to other parties through buying and selling, grants, exchange and testamentary grants. Thus, although the provisions of the article only mention being transferred, including one of them is the legal act of transferring land rights due to buying and selling (Sutedi, 2013).

The sale and purchase of land rights as a process that is justified in law, is not explicitly and in detail regulated in the Basic Agrarian Law (UUPA). Even now, there is no regulation that specifically regulates the implementation of the sale and purchase of land rights. In addition, the problem that occurs is the opportunity for the world of buying and selling land to form a community for distributing land and buying and selling with the aim of making a profit. Legal subjects who seek profit by facilitating between sellers and buyers of land are known as brokers selling (Sugianto, 2017).

The existence of a broker (broker) can be interpreted as an intermediary that connects entrepreneurs withthe second party to enter into various agreements. Because, as a legal subject who acts as a liaison between two interested parties, because in practice more and more parties are buying and selling land through intermediary traders. The broker is in charge ofbridge the interests between the seller and the buyer. The function of a broker is as a guide and cause between the seller and the buyer, so the presence of a broker should be able to assist in the process of selling goods of a company or individual property. However, on the contrary, the existence of brokers is troubling the people who use their services. Thus, in this study, the researcher wants to distinguish the difference between an official broker and an unofficial broker (Christiana, 2018).

Regarding the position of an official broker, it has actually been mentioned in the second part of the Commercial Code (KUHD) articles 62-73. Where in article 62 of the KUHD it is explained that:Land brokers are traders who are appointed by the Governor General(in this case the President) or by the authorities that the President has declared authorized for it. They run the company by doing the work as intended in their field, before being allowed to carry out their work they must take an oath before the court where it belongs to their jurisdiction, that they will fulfill their obligations honestly.

Unofficial land brokers are regulated in Article 63 of the KUHD which states thatthe legal actions of intermediary traders who are not appointed in this way will not have further consequences than those arising from the agreement to grant the mandate. As isa provision that allows the existence of unofficial brokers, namely without an appointment from the Minister of Justice and without an oathcause there are no rulescertain and binding regarding fairness in providing services to brokers. So, it seems that the law of the jungle applies in the world of brokers, where brokers dominate the sale and purchase of land with a system that they created themselves by means of funding games or locking up strategic lands and then reselling them at a higher value.

For example, a broker who hasthe buyer, will close access between the seller and the buyer in negotiating so that the brokers will hold a monopoly in the sale and purchase transaction and price negotiations only occur between the broker and the new seller then the broker conveys to the buyer, this is where the price game and the provision of services (broker fees) will arise. to the broker because the seller and the buyer have a great interest in the broker, in the world of land brokering, currently, the broker's fees range from 15% to 30% (Dewi, 2020).

The current problem is that special arrangements regarding the provision of official brokerage services are only regulated in the Regulation of the Minister of TradeNo.51/M Dag/PER/7/2017 concerning Property Trade Intermediary Company. In the new regulation, the government limits the commission for brokers who carry out buying and selling, which is a minimum of 2% and a maximum of 5% of the transaction value and is adjusted to the scope of services provided to service users (Article 12, 2017). Trade IntermediaryProperty is a person who has expertise in the field of property trade intermediary as evidenced by a certificate of competence of property trade intermediary (Article 1, 2017b).

Despite the TermsThe regulation states thatProperty is property in the form of land and/or buildings as well as other facilities and infrastructure which are an integral part of the said land and/or buildings which carry out business activities of buying and selling intermediaries, lease intermediaries, research and assessment, marketing, as well as consultation and information dissemination. relating to property based on the instructions of the Service User as regulated in a written agreement (Article 1, 2017a). However,does not comprehensively regulate the appointment procedure and sanctions due to the legal actions of a land broker. In addition, not all transactions madewith a broker a written agreement is made, but rather an oral agreement on the basis of trust, what often happens is that land owners who are urged to sell their land immediately become dependent on the broker, so without careful calculation in agreeing to provide land broker services that exceed the justified rules by applicable law.

Based on the narrow range of land brokers seen from the provisions of the KUHD and the Regulation of the Minister of Trade above, the reality is that the actions of land brokers have caused public unrest by not having good intentions falsify a number of land ownership documents to convince the victim, make fake girik (Girik letter is often used for adat land). This document is not a proof of land ownership, but a proof as a payer of Land and Building Tax

(PBB) (BDO, 2018). Armed with a blank that remains to be filled in, removes the land parcel,falsify a power of attorney to administer certificate substitutes, as well as other legal actions. On that basis, researchers are interested and feel it is very important to conduct further research on this issue.

Based on the background of the problem above, this research formulates the problem as follows:

1) What is the legal position of a broker as an intermediary in a land sale and purchase agreement in Indonesia?
2) What are the legal implications of the actions of a land broker in the sale and purchase binding agreement (PPJB) which resulted in the occurrence of defect of will (wilsgebreken/ defect of consent)?

METHOD

This type of research uses the normative type, normative legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Marzuki, 2016). Scientific logic in normative legal research is built based on scientific disciplines and the workings of normative legal science, namely legal science whose object is law itself (Ibrahim, 2022). By identifying, describing and analyzing the importance of a regulation regarding the provision of brokerage services, where the regulation is binding and brokers must comply with the regulation in order to maintain land price stability. Especially in this case regarding the analysis of the existence of a broker in the binding agreement for the sale and purchase of land. The normative research approach used in legal writing according to Peter Mahmud Marzuki is as follows:

1. Legislative approach (statute approach);
2. Case approach (case approach);
2. Conceptual approach (conceptual approach).

The approach used by the author from the above approaches is the statutory approach and the case approach. The statutory approach is an approach taken by examining all laws and regulations related to the legal issues being handled. The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force (inkrach).

The technique of collecting legal materials/data is intended to obtain legal materials in research. The technique of collecting legal materials that support and relate to the presentation of this research is document (library research). The library research meaning this research data taken according to yuridical normative approach. This is because authors get data not from the field or sociological research.

Document study is a tool for collecting legal materials through written legal materials using content analysis (Ibrahim, 2022). This technique is useful for obtaining a theoretical basis by reviewing and studying books, laws and regulations, documents, reports, archives and other research results both printed and electronic related to research.

Library research is a type of research that is used to collect in-depth information and data through various literatures, books, notes, magazines, other references, as well as relevant previous research results, to obtain answers and theoretical foundations regarding the problems to be studied.

The analysis of legal materials in this study will use the method of deductive logic analysis with the method of qualitative normative analysis (Hanitijo, 2014). The method of deductive logic analysis is to draw conclusions from a general problem to the concrete problem

under study. While the normative qualitative analysis method, namely the discussion and explanation that is arranged logically on the results of research on norms, rules, and legal theoretical foundations that are relevant to the subject matter. Qualitative data analysis, what the author means is to describe objectively in order to make improvements to the existence of broker law in the binding agreement for the sale and purchase of land in Indonesia.

RESULTS AND DISCUSSION

A. Legal Position of Brokers as Intermediary Traders in Binding Agreements for the Sale and Purchase of Land in Indonesia

1. Official Realtor Existence

Intermediary institutions in the field of commerce show their existence. In today's practice of trade or business transactions,such business transactions should be supported through intermediary traders. The intermediary referred to in a business relationship includes a broker with an emphasis on the aspect of trust. The presence of a broker is actually intended to connect entrepreneurs with second parties to enter into various agreements, including land or property brokers.

An official broker is not acting on his own behalf. Hehave their own company, but do not have a permanent relationship with principal and he can provide his services as a broker to traders. A broker who tells people the name of the person giving the order with who he trades, binds the one who gave the order and not himself.

As an intermediary, a broker is different from an agentcommerce, which usually has a permanent relationship with several entrepreneurs served by the trading agency. It is different with a broker, which is expressly stated in Article 62 of the KUHD paragraph (1) that he is not in a permanent relationship with the people on whose behalf the broker enters into the said agreements (Kansil, 2017).

The provisions of Article 62 of the KUHD that he must obtain an official appointment fromrequired state officials. During the Dutch East Indies era, the official was governor general or other officials required by the governor general who has the right to appoint the broker, among others by official appointment and taking the oath, then mayIt is considered that the position of a broker is that of a notary or lawyer.

According to article 65 paragraph (1) of the KUHD, there are two kinds of appointments for a broker types, namely as follows.

a) General appointments, i.e. for all typescommercial field/branch.
b) Appointments that are limited in nature, namely that in the deed
   it is determined for what type or types of field/branch of commerce they are allowed to hold their briefing.

If the appointment is limited in nature, according to article 65 paragraph (2) of the KUHD, then the broker is not allowed (forbidden) to trade for his own interests in the branch or branches of commerce that he does, either personally orwork alone or through the intermediary of another person, or together with other people or become a guarantor (borg) for actions that are closed through his intermediary.

The broker also obeys the prohibition stated in Article 65 paragraph (2) of the KUHD but in practice it often turns out that the prohibition is always violated without harming the brokers. Broker is an official position that getsprovision of the people who use his services. Thus, brokers are not paid by the state and are not subject to state employment regulations. Brokers cannot be retired and so on. However, a broker can be suspended (geschorst) or dismissed from his position (vervallen verklaard), if he violates the provisions in part ii, chapter iv, book i. KUHD (Article 71).

Broker whose position has been abortedmay not be reappointed (Article 73 of the KUHD). If a broker goes bankrupt, he is temporarily dismissed from his job and may be aborted by a local district court judge (Article 72 of the KUHD). If the memelar act is not refuted (completely justified) then of course this has nothing to do with proof. On the other hand, if the agreement concerned is entirely denied by the opposing party, then according to Prof. Sukardono, the broker's records can still prove necessary, howeverno longer by necessity, but according to the discretion of the judge. In this case the evidence obtained from the broker's record can be defeated by the proof of retaliation (Kansil, 2017).

Broken responsibility should beit is seen that he is the buyer himself, but it is not based on the existence of a sale and purchase agreement between the person concerned and the seller, but the responsibility that arises from the expected wishes (opgewete verwathtingen).

In practice there are many illegal brokers or unofficial brokers who perform tasks such asbroker, but without government permission and without being sworn in. They are more of a liaison between, and are not subject to the provisions that apply to brokers so that they are outside the control of the government. Meanwhile, one of the obligations of a broker is to carry out related tasks by buying and selling samples/monsters (article 69 of the *KUHD*).

This type of buying and selling by Article 1463 of the Civil Code is considered a sale and purchase conditional responsibility (opschortend), namely that with conditions that must be met for the agreement to be implemented. In terms of trial and error, it depends on the opinion of the buyer when trying the goods, whether the sale and purchase will be continued or not, as long as the the buyer has not yet determined his opinion about the item, the sale and purchase has not been received held. However, the sale and purchase agreement has occurred, only by condition. The reason for rejecting the item must lie in the opinion about good bad goods purchased, if the goods turned out to be good, buying and selling must be continued. In this case, the buyer who has the power to determine whether the something good or not. It is different from buying and selling by example (koop op monster).

*Koop op monster*not regulated in the Criminal Code Per.This type of buying and selling is only mentioned in Article 69 of the KUHD, but furthermore it is not regulated by law, but in everyday practice it often happens. The occurrence of this kind of buying and selling is if at the time the sale and purchase is held, the buyer has not seen certain goods to be traded.

In the event of a case, the judge may order the broker to show the example so he can see it, besides that the judge can also ask for an explanation of the example, the example can be used as evidence. InIn the case of buying and selling bills and other securities, each broker (according to Article 70 of the KUHD) who has closed the sale and purchase of securities, bills of exchange, and other securities, must deliver the securities to the buyer, in addition to he is also responsible for the authenticity of the seller's signature on the securities.

2. The Existence of an Unofficial Broker

Different in that the official broker must get his appointment from the Presidentor parties authorized by him such as the Minister of Justice and before carrying out his duties he must first swear in front of the chairman Local District Court (Article 62 of the KUHD). It seems that the legislatordoes not give a monopoly position to brokers, it turns out that there is an article that allows the existence of unofficial brokers, namely

without an appointment from the Minister of Justice and without an oath, namely article 63 of the Criminal Code bsd 1792 of the Criminal Code. In this case, this unofficial broker is seen as a normal power holder. The difference with the official broker isas follows (Purwosutjipto, 1980):

a) The power of attorney will receive a wage, if it is determined so in theagreement (article 1794 KUH per), while the broker must get a wage
the so-called provision (courtage), when the work has been completed (article 62 of the KUHD);
b) The power of attorney must make his records according to article 6,
while the broker must make his pocket book and diary according to
articles 66 and 68 of the KUHD;
c) Brokers are obliged to keep samples of goods in the sale and purchaseexample (article 69 of the KUHD), while the power holder is not obliged to do so;
d) The broker must bear the validity of the signature of the seller of the money order or other documents.
other securities (article 70 KUHD), while the holder of the power of attorneythis doesn't exist.

B. Legal Implications for the Actions of a Land Broker in a Sale and Purchase Binding Agreement (PPJB) which results in the occurrence ofDefect of Will (Wilsgebreken/ Defect Of Consent)

Basically a contract starts from a difference or unequal interest between the parties. The formulation of the contractual relationship generally always begins with a negotiation process from the parties. It is through the negotiation process that the parties seek to create forms of agreement for mutual benefit or to bring together something they want (interests) through a bargaining process (Rosmidah, 2013).

In short, in general, a contract or agreement often begins with different interests that are tried to be brought together through the contract negotiation process in the pre-contract phase, the differences and interests of each party are negotiated, then brought together, then framed with a legal instrument called a contract so that can bind the parties. In a contract, the question of certainty and fairness will actually be achieved if the differences that exist between the parties are accommodated through a contractual relationship mechanism that works proportionally (Hermoko, 2008).

Freedom of contract which is the "spirit" and "breath" of a contract or agreement, implicitly provides guidance that in contracting the parties are assumed to have an equal position. Thus, it is hoped that a fair and balanced contract will emerge for the parties. However, in practice there are still many standard models of contracts and contracts that have the potential to contain defects of will (wilsgebreken/ defect of consent).

There is no further explanation regardingWhat elements include mistakes, coercion and fraud, some include them as defects of will, some include pseudo-consensus or impure agreements (Widia & Budiartha, 2022). Article 1321 of the Civil Code only confirms that there is noagreement, which is caused by mistake, coercion and deception. The following is a description of oversight, coercion and fraud and added to the abuse of circumstances that are not regulated in Article 1321 of the Civil Code, but develop through jurisprudence.

1. Mistake (dwaling/mistake)

The one who made the pact isgood. An error occurs when a person in a conformity of will has a wrong picture of the person (error in persona) or the item (error in substance). The nature of objects includes intangible objects. An example of an error

in substantia is buying an antique that turns out to be not antique and an example of an error in persona is buying a Basuki Abdullah painting, but Subaki Abdilla is wrong. In addition to having the essence of an object in error, the error must also meet the following conditions: Known, meaning that the opposing party knows or should know as a normal human being that an error has occurred. It can be forgiven, that is, an error cannot be asked if the person asking it is based on his stupidity. Errors may only exist at the time of the agreement or already exist.

Regarding the cancellation of the agreement or also called breaking the agreement as a sanction for the negligence of a debtor, there may be people whocannot see the nature of the cancellation or the resolution as a punishment. Cancellation of the agreement aims to bring both parties back in the pre-contract conditions. If one party has receivedsomething from the other party, whether money or goods, then it must be returned, and the agreement is void. In the event that it is cancelled, then both parties are brought in a state before the agreement was made. This cancellation applies retroactively until the moment the agreement is born. What has already been accepted by one party must bereturned to the other party. This is in accordance with Article 1267 of the Civil Code which stipulates that a party who feels the agreement has not been fulfilled may choose whether he will force the other party to fulfill the agreement, or he will demand the cancellation of the agreement accompanied by reimbursement of costs, losses and interest.

Based on the description above, the sale and purchase agreement of ownership rights on land containingon the element of error, the agreement is void, and there is an explanation in Article 1321 and Article 1449 of the Civil Code, that there is no valid agreement if the agreement was given due to mistake, or obtained by coercion or fraud, while the engagement was made by force, oversight or fraud. , issued a claim to cancel it.

2. Coercion (dwang)

Coercion in a broad sense includes good threatswith words and actions. The coercion in question is not coercion in the absolute sense, because in that case the agreement does not occur at all (null and void), the person under the threat of his will is not free, then the agreement can be canceled. People who are under physical torture or whose hands are held by a stronger person to be forced to sign a letter (for example an acknowledgment of debt), then this agreement can be canceled. Threats must be carried out with tools that are not allowed but threats that are legal means are allowed, as long as the aim is not to harm the person being coerced. For example, A will cancel his agreement if B breaks his promise. Third parties can also put pressure on one of the parties (see article 1323 of the Civil Code).

3. Fraud (Bedrog)

An agreement made because there are elements ofthe fraud can be reversed. Fraud is a lie or misrepresentation for the purpose of personal gain. The difference with coercion, in coercion the person realizes that his will is not
desired, but he must want, whereasin deception the will is wrong, so is the error. The fraud is done intentionally to influence the other party to the wrong goal or to have a wrong image.

Fraud is not justlies, but with every effort of reason, trickery with words or silence that causes errors in his will. For fraud to occur, the party requested to cancel the agreement must show that the fraud resulted in an agreement. The opposing party must be able to show or prove thatagreement on the basis of fraud. Thus, there must be a

causal relationship between the fraud itself and the occurrence of the agreement and if there is no causal relationship at all, then the deceived party cannot demand the cancellation of the agreement. Infraud, there is a possibility of the deceived party: Cancellation of the agreement can sue the fraudster on the basis of unlawful acts (based on HR Jurisprudence December 16, 1932).

Humans in carrying out interactions with other humans can not always run smoothly. Sometimes the bond achieved in an interaction relationship is not fulfilled by one of the parties. One of the reasons for not achieving the agreed ties is due to fraud. The concept of fraud in the Civil Code can be found in Article 1328, namely: "Fraud is a reason for the cancellation of the agreement, if the ruse, used by one party, is such that it is clear and real that the other party has not made the agreement if it is not carried out. the ruse. Fraud is not suspected, but must be proven.

Article 1328 of the Civil Code concerning fraud in civil law, is the same as Article 378 of the Criminal Code concerning fraud in criminal law. Fraud conceptwhich is contained in Article 1328 of the Civil Code, namely, the existence of a will defect. The defect of will is caused by an error or negligence, coercion and fraud. Then the concept of fraud in Article 378 of the Criminal Code, namely the existence of a series of lies, deception, false circumstances, false dignity. These two legal corridors can be taken or used as the basis for someone who is harmed by one of the parties in closing a contract or agreement to carry out a criminal complaint or claim for compensation (Yahman, 2014).

4. Abuse of Circumstances (Undue Influence/ Misbruik Van Omstadigheden)

Misuse of circumstances isdevelopmental and based on the analogy of coercion, oversight and deception, namely the abuse of circumstances (undue influence) and emerged with the presence of Arrest Bovag III. HR February 26, 1960, NJ. 1965,373 and has been accepted in The Netherlands as the reason for the cancellationagreement (Widia & Budiartha, 2022).

The teaching of abuse of circumstances can beincludes the three regarding oversight, coercion and fraud, meaning that in one agreement it can contain all three of these things. Article 44 paragraph (1) Book III of the Dutch Nieuw Burgerlijk Wetboek mentions 4 conditions for abuse of the situation, namely: Special circumstances (bijzondere onstandigheden), such as an emergency, dependence, carelessness, insanity and inexperience; A real thing (kenbaarheid), it is required that one party knows or should know that the other party is in a special condition moved (his heart) to close a deed of agreement (Widia & Budiartha, 2022).

Misuse (misbruik), one of the partieshad carried out the agreement even though he knew he should not have done so. Causal relationship (causal verband), it is important that without abuse of the circumstances the agreement is not closed. Abuse of circumstances in Dutch is called misbruik van omstandigheden according to the Fockema Andreae Dictionary of Legal Terms, misbruik van omstandigheden is a condition to abuse another person's emergency situation, dependence (powerlessness), recklessness, an unhealthy state of mind, or lack of experience in doing actions. laws that harm themselves and others (Fockema, 2015).

In contrast to the abuse of circumstances agreed upon by Indonesian writers as misbruik van omstandigheden, Indonesian writers still disagree about the term abuse of circumstances in English where Mariam Darus Badrulzaman refers to abuse of circumstances as undue influence, while Djasadin Saragih refers to abuse of circumstances as unconscionability. SudiknoMertokusumo said that if it is consistent with

the Dutch language, misbruik van omstandigheden in English should be called abuse of circumances. When examined further, England and the United States recognize duress, undue influence, and unconscionability as different rules, although at first glance it will appear that the three rules are almost the same (Saputra, 2016).

Misuse of circumstances is related to the subjective terms of the agreement. One of the parties abuses the situation which results in the other party being unable to express his/her will freely. Van Dunne distinguishes abuse into 2, namely because of economic advantages and psychological advantages as follows (Panggabean & Bastian, 2013):

1) Terms of abuse of economic advantage:

a) One party must have an economic advantage over the other;
b) The other party is forced to enter into an agreement.

2) Requirements for abuse of psychological or psychiatric advantage:

a) One party abuses relative dependencies, such as the special trust relationship between parents and children, husband-wife, doctor-patient, pastor-church;
b) One of the parties abuses the special mental state of the opposing party, such as a mental disorder, inexperience, recklessness, lack of knowledge, poor physical condition, and so on.

Based on the description above, the benchmark or indicator of abuse of circumstances in the agreement, in general there are two kinds of abuse of circumstances, namely: First, when someone uses his dominant psychological position unfairly to pressure weak parties so that they agree to an agreement that they actually don't. want to agree. Second, when someone uses the authority of his position and trust that is used unfairly to persuade other parties to carry out a transaction.

According to doctrine and jurisprudence, it turns out that agreements containing such defects are still binding on the parties, only those who feel they have given statements containing these defects, Article 1321 of the Civil Code states that if in the agreement there is an error, coercion, or fraud, means that in the agreement there is a defect in the agreement between the parties and therefore the agreement can be canceled.

The construction of the abuse of circumstances as a defect of will brings consequences for the agreement to be canceled (vernietigbaar) to the judge by the aggrieved party. As long as the agreement has not been canceled, the agreement remains binding on the parties who made it. Claims for cancellation can be made for part or all of the contents of the agreement.

CONCLUSION

The legal position of a broker (broker) as an intermediary trader in the binding agreement for the sale and purchase of land in Indonesia in the KUHD arrangement is classified based on official brokers and unofficial brokers. Related official brokers have been regulated in the provision of Article 62 of the KUHD that he must obtain an official appointment fromrequired state officials. Meanwhile, unofficial brokers through the provisions of Article 63 of the *KUHD* do not grant a monopoly position to brokers, in fact there is an article that allows the existence of unofficial brokers, namely without an appointment from the Minister of Justice and without an oath, namely Article 63 of the KUHD bsd 1792 of the *KUHPER*. In this case, this unofficial broker is seen as a normal power holder.

The legal implications of the actions of the land broker in the sale and purchase binding agreement (*PPJB*) which resulted in the occurrence of defect of will (wilsgebreken/ defect of

consentbased on the provisions of Article 1321 of the Civil Code confirms that the absence ofagreement, which is caused by mistake, coercion and deception. coupled with the abuse of circumstances that are not regulated in Article 1321 of the Civil Code, but which develops through jurisprudence is null and void.

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