

Parameters of Abuse of Circumstances in Indonesian Civil Judicial Practice

Parameter Penyalahgunaan Keadaan dalam Praktik Peradilan Perdata Indonesia

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Abstract

Abuse of circumstances is not codified in the Indonesian Civil Code, yet Indonesian courts have annulled contracts on that ground since Supreme Court Decision No. 3431 K/Pdt/1985. The absence of a statutory formulation leaves the parameters of the doctrine to judicial construction, which raises a problem of legal certainty. This study compares the parameters applied in Supreme Court Decision No. 705 PK/Pdt/2023 and Decision No. 3406 K/Pdt/2019, both concerning deeds of sale and purchase of land. Employing normative legal research with statutory, case, and conceptual approaches, the study finds that the courts consistently assess the position of the parties, the formulation of the clauses, and good faith in performance, but diverge on the legal consequence, alternating between nullity and voidability. It recommends the formulation of cumulative parameters and the express placement of the doctrine within the regime of voidable contracts, consistent with its character as a defect of will.

Abstrak

Penyalahgunaan keadaan tidak diatur dalam KUHPerdata, namun pengadilan Indonesia telah membatalkan perjanjian atas dasar tersebut sejak Putusan Mahkamah Agung Nomor 3431 K/Pdt/1985. Ketidadaan rumusan normatif menyerahkan parameter doktrin ini kepada konstruksi hakim, sehingga menimbulkan persoalan kepastian hukum. Penelitian ini membandingkan parameter yang diterapkan dalam Putusan Mahkamah Agung Nomor 705 PK/Pdt/2023 dan Putusan Nomor 3406 K/Pdt/2019, yang keduanya menyangkut akta jual beli tanah. Dengan penelitian hukum normatif melalui pendekatan perundang-undangan, kasus, dan konseptual, penelitian ini menemukan bahwa pengadilan secara konsisten menilai kedudukan para pihak, formulasi klausul, dan itikad baik dalam pelaksanaan, tetapi berbeda dalam menentukan akibat hukumnya, berganti-ganti antara batal demi hukum dan dapat dibatalkan. Penelitian ini merekomendasikan perumusan parameter kumulatif dan penempatan doktrin tersebut secara tegas dalam rezim perjanjian yang dapat dibatalkan, sesuai dengan karakternya sebagai cacat kehendak.

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A. INTRODUCTION

1. Background

Consent lies at the heart of every contractual relationship. Article 1320 of the Indonesian Civil Code makes the agreement of those who bind themselves the first of the four conditions for a valid contract, and Article 1321 provides that no consent is valid where it is given by reason of mistake, or obtained by coercion or fraud.¹ Read together, the two provisions establish that the binding force of a contract rests not upon the outward declaration alone but upon the correspondence between that declaration and the free will of the party who made it.² Where that correspondence is absent, the contract is defective in its subjective condition and may be annulled at the instance of the party affected.

The enumeration in Article 1321 is, however, closed and dated. It was drafted for a commercial world in which the principal threats to free consent were thought to be error, physical or psychological compulsion, and deliberate deception. It does not reach the situation in which no party has lied, threatened, or misled, yet one party has exploited the distress, dependence, inexperience, or ignorance of the other to extract terms that no person in a position of genuine freedom would have accepted.³ That situation is addressed in Netherlands law by the doctrine of *misbruik van omstandigheden*, codified in Book 3, Article 44 of the Nieuw Burgerlijk Wetboek alongside threat and fraud as a ground for annulment.⁴ Indonesian law contains no equivalent provision.

The doctrinal origin of the Indonesian reception is well documented. The Hoge Raad held in *BOVAG II* that where a person, under the pressure of circumstances, unfairly bears a gravely prejudicial burden, the contract may be declared to rest upon an unlawful cause.⁵ Henry P. Panggabean traced that development for Indonesian readers and argued that abuse of circumstances ought to be received as a new ground for the annulment of

¹ Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek), trans. R. Subekti and R. Tjitrosudibio (Jakarta: Pradnya Paramita), arts. 1320, 1321, 1322, 1323, 1324, and 1328.

² I Ketut Widia and I Nyoman Putu Budiarta, "Cacat Kehendak sebagai Dasar Batalnya Perjanjian," *Kertha Wicaksana* 16, no. 1 (2022): 2, <https://doi.org/10.22225/kw.16.1.2022.1-6>.

³ Fani Martiawan Kumara Putra, "Paksaan Ekonomi dan Penyalahgunaan Keadaan sebagai Bentuk Cacat Kehendak dalam Perkembangan Hukum Kontrak," *Yuridika* 30, no. 2 (2015): 229, <https://doi.org/10.20473/ydk.v30i2.4658>.

⁴ Nieuw Burgerlijk Wetboek, Book 3, art. 44(1) and (4).

⁵ Hoge Raad der Nederlanden, *BOVAG II*, 11 January 1957, NJ 1959, 37.

contracts rather than forced into the existing categories.⁶ Jan van Dunne, whose analysis has become the standard reference in Indonesian practice, distinguished two sources of the abuse, namely the exploitation of economic superiority and the exploitation of psychological superiority.⁷

Indonesian courts received the doctrine in advance of the legislature. In Decision No. 3431 K/Pdt/1985 the Supreme Court considered a loan on which the interest charged and the security demanded were contrary to propriety and justice, and the decision has since been treated as the gateway through which abuse of circumstances entered Indonesian practice.⁸ Decision No. 1329 K/Pdt/2001 developed the same line, holding that although a penalty had been agreed between debtor and creditor, the economic position of the creditor being stronger than that of the debtor rendered the imposition excessive.⁹ Decision No. 3641 K/Pdt/2001 formulated the rule that in a situation of abuse of circumstances one of the parties to the contract is not in a position of freedom.¹⁰

Four decades of judicial practice have therefore produced a doctrine that is applied regularly but nowhere defined. Scholarship is unanimous that the existence of the doctrine has been established through doctrine and jurisprudence rather than through legislation,¹¹ and that its juridical consequence is that the contract is voidable rather than void by operation of law.¹² The unanimity ends there. Because no statutory text fixes the elements, each court must construct the parameters afresh, and litigants cannot predict with confidence what they must plead or prove.

The practical cost of that indeterminacy is visible in the case law. Heris Suhendar and Mohamad Anton Athoillah examined a dispute over a credit agreement, its addendum, and its restructuring, in which the defendant imposed a high rate of interest

⁶ Henry P. Panggabean, *Penyalahgunaan Keadaan (Misbruik van Omstandigheden) sebagai Alasan (Baru) untuk Pembatalan Perjanjian: Berbagai Perkembangan Hukum di Belanda* (Yogyakarta: Liberty, 1992), 43–52.

⁷ J. M. van Dunne and Gr. van der Burght, *Penyalahgunaan Keadaan*, trans. Sudikno Mertokusumo (Yogyakarta: Dewan Kerjasama Ilmu Hukum Belanda dengan Indonesia, 1987), 13–18.

⁸ Supreme Court of the Republic of Indonesia, Decision No. 3431 K/Pdt/1985.

⁹ Supreme Court of the Republic of Indonesia, Decision No. 1329 K/Pdt/2001.

¹⁰ Supreme Court of the Republic of Indonesia, Decision No. 3641 K/Pdt/2001.

¹¹ Salsabila Mumtaz Azzahra and Djumadi Purwoatmodjo Gozali, “Penerapan Doktrin Penyalahgunaan Keadaan (Misbruik van Omstandigheden) dalam Sengketa Perjanjian,” *Jurnal Kolaboratif Sains* 8, no. 6 (2025): 3, <https://doi.org/10.56338/jks.v8i6.7917>.

¹² Jeanette Agire Medahalyusa and Achmad Busro, “Akibat Hukum Pembatalan Perjanjian yang Dibuat atas Dasar Penyalahgunaan Keadaan,” *Notarius* 16, no. 2 (2023): 633, <https://doi.org/10.14710/nts.v16i2.38358>.

while aware that the plaintiffs were in financial difficulty following the failure of a planned business expansion. The court of first instance granted the claim and the appellate court affirmed it, but the appellate judgment was set aside on cassation by the Supreme Court in Decision No. 3550 K/Pdt/2021.¹³ A doctrine capable of producing opposite outcomes on identical facts at successive levels of the same proceedings is a doctrine whose parameters require examination.

The difficulty is compounded in disputes over land. The deed of sale and purchase executed before a Land Deed Official is an authentic instrument that carries perfect evidentiary force, and Article 37(1) of Government Regulation No. 24 of 1997 makes such a deed the condition for the registration of a transfer of rights.¹⁴ A party who alleges abuse of circumstances must therefore displace the presumption of regularity attaching to an authentic instrument.¹⁵ Where the transfer has been effected through a power of attorney, the difficulty is greater still, since Instruction of the Minister of Home Affairs No. 14 of 1982 prohibits the use of absolute powers of attorney as a means of transferring rights over land, yet the practice persists in disguised forms.¹⁶

Two decisions of the Supreme Court offer an unusually good opportunity to examine how the parameters are in fact constructed. The first is Decision No. 3406 K/Pdt/2019 of 16 December 2019, rendered on cassation from Jakarta High Court Decision No. 301/Pdt/2017/PT DKI, itself on appeal from South Jakarta District Court Decision No. 475/Pdt.G/2014/PN Jkt.Sel.¹⁷ The Court annulled a deed of sale and purchase of land on the ground of abuse of circumstances, the seller having been in a vulnerable condition by reason of advanced age and a want of understanding of the substance of the transaction, the deed not having been read out, and payment having

¹³ Heris Suhendar and Mohamad Anton Athoillah, "Pertimbangan Hakim dalam Perkara Penyalahgunaan Keadaan (Misbruik van Omstandigheden)," *Jurnal Yudisial* 16, no. 2 (2023): 252, <https://doi.org/10.29123/jy.v16i2.628>.

¹⁴ Government Regulation No. 24 of 1997 concerning Land Registration, art. 37(1), and Government Regulation No. 37 of 1998 concerning the Regulations on the Office of Land Deed Officials.

¹⁵ Fariz Rachman Iqbal, "Kekuatan Pembuktian Akta Notaris yang Cacat Formil (Studi Kasus Perkara Nomor 1769 K/Pdt/2011)," *Jurist-Diction* 3, no. 1 (2020): 79, <https://doi.org/10.20473/jd.v3i1.17624>.

¹⁶ Instruction of the Minister of Home Affairs No. 14 of 1982 concerning the Prohibition of the Use of Absolute Powers of Attorney as a Means of Transferring Rights over Land.

¹⁷ Supreme Court of the Republic of Indonesia, Decision No. 3406 K/Pdt/2019, 16 December 2019, in conjunction with Jakarta High Court Decision No. 301/Pdt/2017/PT DKI and South Jakarta District Court Decision No. 475/Pdt.G/2014/PN Jkt.Sel.

been diverted to another party.¹⁸ The second is Decision No. 705 PK/Pdt/2023, rendered on judicial review from Decision No. 603 K/Pdt/2022, itself on cassation from Mataram High Court Decision No. 86/Pdt/2021/PT Mtr, which concerned the legal consequences of a power of attorney embodied in a deed of sale and purchase where no underlying transaction of sale had taken place.¹⁹

The two cases are comparable in their subject matter and complementary in their procedural posture. Both concern deeds of sale and purchase of land executed before a Land Deed Official; both turn upon the exploitation of a party who was not in a position of genuine freedom; and between them they traverse every level of the Indonesian civil judicial hierarchy, the first through three instances and the second through four. Comparing them therefore permits the parameters to be extracted not from a single ruling but from a sequence of judicial constructions.

The existing literature supplies the doctrinal framework but not the comparison. Annisa Syaufika Yustisia Ridwan analyses undue influence and unconscionability as parallel mechanisms against unfair contracts and shows that they share the objective of protecting weaker parties from exploitation arising from unequal bargaining positions and defective bargaining processes, while differing in their focus of protection, their remedies, and their scope.²⁰ Syaiful Azam, Mulhadi, and Dedi Harianto demonstrate that the terminology of undue influence is absent from the Civil Code but shares the character of the defect of will regulated in Article 1321, which is itself an integral part of the consensual principle in Article 1320.²¹ Salsabila Mumtaz Azzahra and Djumadi Purwoatmodjo Gozali identify three indicators of abuse of circumstances, namely the position of the parties, the formulation of the contractual clauses, and good faith in the performance of the contract.²² None of these studies, however, compares the two decisions that are the object of the present analysis, nor derives from them a set of operative parameters. That gap constitutes the novelty of this article.

¹⁸ Universitas Sumatera Utara, *Analisis Penyalahgunaan Keadaan oleh Salah Satu Pihak pada Akta Jual Beli (Studi Putusan Mahkamah Agung Nomor 705 PK/Pdt/2023 dan Putusan Mahkamah Agung Nomor 3406 K/Pdt/2019)* (Medan: Repositori USU), 99–120.

¹⁹ Supreme Court of the Republic of Indonesia, Decision No. 705 PK/Pdt/2023, in conjunction with Decision No. 603 K/Pdt/2022 and Mataram High Court Decision No. 86/Pdt/2021/PT Mtr.

²⁰ Annisa Syaufika Yustisia Ridwan, "The Role of Undue Influence and Unconscionability as Mechanisms against Unfair Contracts," *Veritas et Justitia* 12, no. 1 (2026): 26, <https://doi.org/10.25123/vej.v12i1.10120>.

²¹ Syaiful Azam, Mulhadi, and Dedi Harianto, "The Undue Influence Doctrine and Its Function in Consumer Financing Cases," *Jurnal Media Hukum* 27, no. 2 (2020): 242, <https://doi.org/10.18196/jmh.20200154>.

²² Azzahra and Gozali, "Penerapan Doktrin Penyalahgunaan Keadaan," 8.

This study finds that Indonesian courts assess abuse of circumstances along three recurrent axes, namely the relative position of the parties, the disproportion between the terms and the underlying reality, and the conduct of the dominant party at the moment of formation; that these axes are applied with reasonable consistency; and that the divergence between decisions arises not in the identification of the abuse but in the characterisation of its legal consequence.

2. Research Questions

Proceeding from the background set out above, this study addresses three questions. First, what is the position of abuse of circumstances as a form of defect of will within Indonesian contract law, given that it is not regulated in the Civil Code? Second, what parameters of abuse of circumstances were applied by the courts in Supreme Court Decision No. 705 PK/Pdt/2023 and Supreme Court Decision No. 3406 K/Pdt/2019? Third, what are the legal consequences of the annulment pronounced in those decisions, and what do they imply for legal certainty in Indonesian civil judicial practice?

The three questions are sequential. The first establishes the doctrinal position of the ground of annulment; the second extracts from the two decisions the operative criteria by which that ground is tested; and the third examines the consequences that follow once the ground is established, together with the difficulties that the present arrangement produces.

3. Research Methods

This study employs normative legal research, which treats law as a system of norms and seeks a prescription concerning what ought to be done in respect of a given legal issue rather than a description of social behaviour.²³ Three approaches are combined. The statutory approach is directed at Articles 1320, 1321, 1322, 1323, 1324, and 1328 of the Civil Code, at Government Regulation No. 24 of 1997 concerning Land Registration, and at Instruction of the Minister of Home Affairs No. 14 of 1982, with Book 3, Article 44 of the *Nieuw Burgerlijk Wetboek* as a comparator. The case approach is directed principally at Supreme Court Decision No. 705 PK/Pdt/2023 and Supreme Court Decision No. 3406 K/Pdt/2019, and subsidiarily at Decisions No. 3431 K/Pdt/1985, No. 1329 K/Pdt/2001, No. 3641 K/Pdt/2001, and No. 3550 K/Pdt/2021, together with Mataram District Court Decision No. 234/Pdt.G/2020/PN Mtr. The

²³ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana Prenada Media, 2014), 133–137.

conceptual approach draws upon the doctrine of defects of will, upon Van Dunne's distinction between economic and psychological superiority, and upon the principles of good faith and balance in contract.²⁴

The legal materials are of three orders. Primary legal materials comprise the Civil Code, the regulations identified above, and the judicial decisions enumerated. Secondary legal materials comprise scholarly monographs and peer-reviewed articles, together with published case studies of the decisions under examination. Tertiary legal materials comprise legal dictionaries and encyclopaedias. The materials were collected through documentary study and analysed qualitatively by means of interpretation, systematisation, and comparison, the parameters being extracted inductively from the decisions and then tested deductively against the doctrinal framework.

B. DISCUSSION/ ANALYSIS

The discussion follows the sequence of the three research questions. The first section establishes the doctrinal position of abuse of circumstances within the Indonesian law of defects of will. The second extracts the parameters applied in the two decisions under examination and sets them against a third decision for control. The third analyses the legal consequences of annulment and their implications for legal certainty.

1. The Position of Abuse of Circumstances as a Form of Defect of Will

a. The Closed Enumeration of Article 1321 of the Civil Code

Article 1321 of the Civil Code provides that no consent is valid where it is given by reason of mistake, or obtained by coercion or fraud. Articles 1322 to 1328 then delimit each of the three grounds. Mistake vitiates a contract only where it concerns the essence of the thing forming the subject matter of the agreement, and not where it concerns only the identity of the person with whom the agreement is made.²⁵ Coercion requires an act capable of inspiring in a reasonable person the fear of exposure to considerable and present injury. Fraud, under Article 1328, is a ground for annulment where the artifices employed by one party are such that it is clear and manifest that the other party would not have entered into the engagement had those artifices not been used, and fraud may not be presumed but must be proved.²⁶

²⁴Muhaimin, *De Jure: Jurnal Penelitian Hukum* 20 (2020): 277, <https://doi.org/10.30641/dejure.2020.V20.275-288>.

²⁵ Kitab Undang-Undang Hukum Perdata, arts. 1320 and 1321.

²⁶ Husnul Hatimah and Djumardin Wagian, "Bedrog sebagai Dasar Pembatalan Perjanjian," *Private Law* 5, no. 1 (2025): 180, <https://doi.org/10.29303/prlw.v5i1.5051>.

Each of the three grounds presupposes an identifiable wrongful act attributable to the other contracting party. Mistake is the least demanding in this respect, but it is confined by Article 1322 to the essence of the subject matter. Coercion requires an act of intimidation. Fraud requires a contrivance. Mariam Darus Badruzaman's reading of Article 1328 makes the point plainly: the artifice must be of such a kind that the engagement would manifestly not have been made without it.²⁷ What none of the three grounds reaches is the case in which the dominant party has done nothing that can be characterised as intimidation or contrivance, but has simply taken advantage of a pre-existing condition of weakness.

That lacuna is not accidental. The Civil Code was framed upon the assumption that parties to a contract meet as formal equals and that the freedom of contract expressed in Article 1338 is therefore a sufficient guarantee of fairness.²⁸ Agus Yudha Hernoko observes that the assumption of formal equality has been progressively displaced by a concern with proportionality, which requires the court to examine not merely whether the parties consented but whether the exchange they agreed upon is defensible in view of their respective positions.²⁹ Abuse of circumstances is the procedural expression of that concern.

b. Reception through Jurisprudence and Its Conceptual Placement

Because the legislature has not acted, the doctrine entered Indonesian law through judicial decision. The sequence running from Decision No. 3431 K/Pdt/1985, through Decisions No. 1329 K/Pdt/2001 and No. 3641 K/Pdt/2001, to the decisions under examination in this article has produced what the literature describes as a relatively consistent body of jurisprudence.³⁰ Rendy Saputra argues that this body of decisions has given the doctrine a settled place in Indonesian contract law notwithstanding the silence of the Code.³¹

The conceptual placement of the doctrine remains contested, and the choice made determines the legal consequence. Three positions may be distinguished. Upon the first,

²⁷ Mariam Darus Badruzaman, *Hukum Perikatan dalam KUH Perdata Buku Ketiga: Yurisprudensi, Doktrin serta Penjelasan* (Bandung: Citra Aditya Bakti, 2015), 116.

²⁸ Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2018): 109, <https://doi.org/10.37893/jbh.v7i2.20>.

²⁹ Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial* (Jakarta: Prenadamedia Group, 2010), 84–91.

³⁰ Azzahra and Gozali, "Penerapan Doktrin Penyalahgunaan Keadaan," 8.

³¹ Rendy Saputra, *Kedudukan Penyalahgunaan Keadaan (Misbruik van Omstandigheden) dalam Hukum Perjanjian Indonesia* (Yogyakarta: Gadjah Mada University Press, 2016), 55–62.

abuse of circumstances is an extension of coercion, the pressure arising not from an act of the dominant party but from the circumstances that the dominant party exploits. Upon the second, it is a matter of unlawful cause under Article 1335, which is the route taken by the Hoge Raad in *BOVAG II*.³² Upon the third, it is a fourth and autonomous defect of will, which is the position adopted by the Nieuw Burgerlijk Wetboek.³³

The distinction is not academic. If the doctrine is classified as a species of coercion or as an autonomous defect of will, it attaches to the subjective condition of consent and the contract is voidable at the instance of the injured party. If it is classified as a defect of cause, it attaches to the objective condition and the contract is void by operation of law. Jeanette Agire Medahalyusa and Achmad Busro state the orthodox Indonesian position: abuse of circumstances renders the contract voidable rather than void.³⁴ I Ketut Widia and I Nyoman Putu Budiarta reach the same conclusion by reference to the structure of Article 1320, the defect residing in the first condition rather than in the fourth.³⁵ As the third section of this discussion will show, the courts have not always followed that orthodoxy.

c. Doctrinal Parameters: Van Dunne, Setiawan, and Contemporary Formulations

Three formulations of the elements of abuse of circumstances circulate in Indonesian practice. Van Dunne's is the oldest and the most frequently cited. He distinguishes abuse arising from economic superiority, in which the dominant party exploits a disparity of bargaining power or financial necessity, from abuse arising from psychological superiority, in which the dominant party exploits a relationship of trust, a condition of dependence, or a deficit of understanding.³⁶ The distinction matters evidentially, since economic superiority is ordinarily established from the documents while psychological superiority must be inferred from the circumstances of the parties.

Setiawan supplied a more operational formulation, framed as a set of cumulative indicators relating to the state of necessity of the weaker party, the awareness of that state on the part of the dominant party, the absence of any real alternative, and the

³² Hoge Raad, *BOVAG II*, NJ 1959, 37.

³³ Nieuw Burgerlijk Wetboek, Book 3, art. 44(4).

³⁴ Medahalyusa and Busro, "Akibat Hukum Pembatalan Perjanjian," 641.

³⁵ Widia and Budiarta, "Cacat Kehendak sebagai Dasar Batalnya Perjanjian," 5.

³⁶ Van Dunne and Van der Burght, *Penyalahgunaan Keadaan*, 21.

resulting disproportion of the exchange.³⁷ J. Satrio identified as characteristic of contracts arising from abuse of circumstances that the debtor is manifestly in a position of pressure.³⁸ The expert evidence recorded in the decision analysed by Suhendar and Athoillah expresses the same idea in the negative form that the other party is compelled to enter into the contract because no other choice is available.³⁹

Contemporary Indonesian scholarship has reformulated these elements in terms better suited to judicial application. Azzahra and Gozali propose three aspects, namely the position of the parties, the formulation of the contractual clauses, and good faith in the performance of the contract.⁴⁰ Their formulation has the merit of distributing the inquiry across the three phases of the contractual life, that is to say formation, content, and performance, rather than concentrating it upon the moment of signature. Xavier Nugraha and his colleagues add a temporal dimension by analysing the limitation period applicable to an action for annulment founded upon abuse of circumstances, an issue that arises precisely because the weaker party frequently becomes aware of the exploitation long after the event.⁴¹ Table 1 sets out the three formulations.

Table 1. Doctrinal Formulations of the Elements of Abuse of Circumstances

Aspect	Van Dunne	Setiawan	Azzahra and Gozali
Basis of classification	Source of the superiority exploited	Cumulative indicators of the transaction	Phases of the contractual life
First element	Economic superiority	State of necessity of the weaker party	Position of the parties
Second element	Psychological superiority	Awareness of that state by the dominant party	Formulation of the contractual clauses
Third element	—	Absence of any real alternative	Good faith in the performance of the contract
Fourth element	—	Disproportion of the resulting exchange	—
Evidential orientation	Inference from the condition of the parties	Reconstruction of the moment of formation	Assessment across formation, content, and performance

Source: processed from Van Dunne and Van der Burght (1987); Setiawan (2008); and Azzahra and Gozali (2025).

³⁷ Setiawan, *Aneka Masalah Hukum dan Hukum Acara Perdata* (Bandung: Alumni, 2008), 173–180.

³⁸ J. Satrio, *Hukum Perikatan: Perikatan yang Lahir dari Perjanjian, Buku I* (Bandung: Citra Aditya Bakti, 1995), 302–310.

³⁹ Suhendar and Athoillah, “Pertimbangan Hakim dalam Perkara Penyalahgunaan Keadaan,” 264.

⁴⁰ Azzahra and Gozali, “Penerapan Doktrin Penyalahgunaan Keadaan,” 8.

⁴¹ Xavier Nugraha, Jason Emanuel Pratama Putra, and Kadek Dede Hendra Putra, “Analisa Daluarsa Gugatan Pembatalan Perjanjian akibat Adanya Penyalahgunaan Keadaan (Misbruik van Omstandigheden),” *Jurnal Ilmiah Galuh Justisi* 8, no. 1 (2020): 57, <https://doi.org/10.25157/justisi.v8i1.3242>.

Table 1 shows that the three formulations are complementary rather than competing. Van Dunne identifies the source of the abuse, Setiawan the indicators by which it is recognised, and Azzahra and Gozali the phases across which it is assessed. The analysis that follows therefore employs all three, using Van Dunne to characterise the abuse, Setiawan to test its constituent elements, and Azzahra and Gozali to organise the material.

2. Parameters Applied in Decision No. 705 PK/Pdt/2023 and Decision No. 3406 K/Pdt/2019

a. The Procedural Trajectory of the Two Cases

Before the substance is examined, the procedural trajectory of the two cases deserves attention, because the number of instances through which a case passes is itself a measure of the determinacy of the doctrine applied. Decision No. 3406 K/Pdt/2019 was rendered on 16 December 2019 on cassation from Jakarta High Court Decision No. 301/Pdt/2017/PT DKI, itself on appeal from South Jakarta District Court Decision No. 475/Pdt.G/2014/PN Jkt.Sel. The dispute therefore occupied the courts for rather more than five years across three instances.⁴² Decision No. 705 PK/Pdt/2023 was rendered on judicial review from Decision No. 603 K/Pdt/2022, itself on cassation from Mataram High Court Decision No. 86/Pdt/2021/PT Mtr, the dispute thus traversing four instances.⁴³

A doctrine whose application is settled does not ordinarily generate four levels of review. That it does so here is consistent with the observation of Agus Nurudin that where the governing norm is indeterminate, the judicial function shifts from the application of rules towards discretion, with a corresponding loss of predictability.⁴⁴ The comparison undertaken in this section is accordingly directed not only at what the courts decided but at the criteria by reference to which they decided it.

b. Decision No. 3406 K/Pdt/2019: Psychological Superiority and Vulnerability

The material facts of the first case are well documented. The seller of the land was a person of advanced age who did not understand the substance of the documents presented to her; the deed of sale and purchase was not read out to the parties; and the

⁴² Supreme Court, Decision No. 3406 K/Pdt/2019.

⁴³ Supreme Court, Decision No. 705 PK/Pdt/2023.

⁴⁴ Agus Nurudin, "Diskresi Yudisial: Antara Keadilan dan Pencitraan," *Masalah-Masalah Hukum* 45, no. 1 (2016): 20, <https://doi.org/10.14710/mmh.45.1.2016.18-24>.

payment due under the transaction was diverted to a third party rather than made to the seller. Upon those facts the Supreme Court annulled the deed on the ground of abuse of circumstances.⁴⁵

Measured against the doctrinal formulations, the decision discloses a clear structure. The abuse was of the psychological rather than the economic kind in Van Dunne's sense, since the superiority exploited lay not in financial leverage but in the age, inexperience, and want of comprehension of the seller.⁴⁶ Each of Setiawan's four indicators is satisfied: the seller was in a condition of vulnerability; the counterparty was aware of it, having presented documents that were not read out; the seller had no real alternative, being unable to evaluate what she was signing; and the exchange was manifestly disproportionate, since the consideration was diverted elsewhere.⁴⁷

Two features of the reasoning deserve emphasis. The first is the weight given to the failure to read the deed aloud. That failure is not merely a formal irregularity. Where a deed is read out, the party is placed in a position to align her declaration with her will; where it is not, the authentic instrument records a declaration whose correspondence with the will of the signatory has never been tested. The literature on deeds not read out before the parties treats the omission as going to the substance of the instrument rather than to its form.⁴⁸ The second is the diversion of payment. Consideration flowing to a party other than the seller is objective evidence that the transaction recorded in the deed was not the transaction the seller believed herself to be entering into.

The decision has since been followed. In Decision No. 234/Pdt.G/2020/PN Mtr the Mataram District Court, deciding *ex aequo et bono*, declared the conduct of the first and second defendants to constitute abuse of circumstances, and did so with express reference to Decision No. 3406 K/Pdt/2019.⁴⁹ The citation of a cassation decision by a court of first instance in a jurisdiction that does not formally operate a doctrine of binding precedent is a significant indicator of the persuasive authority the decision has acquired.

⁴⁵ Universitas Sumatera Utara, *Analisis Penyalahgunaan Keadaan oleh Salah Satu Pihak pada Akta Jual Beli*, 114.

⁴⁶ Van Dunne and Van der Burght, *Penyalahgunaan Keadaan*, 21.

⁴⁷ Setiawan, *Aneka Masalah Hukum dan Hukum Acara Perdata*, 176.

⁴⁸ Akibat Hukum atas Pembuatan Akta Jual Beli yang Tidak Dibacakan oleh Notaris/PPAT di Hadapan Para Pihak," *Jurnal USM Law Review* 6, no. 2 (2023): 691, <https://doi.org/10.26623/julr.v6i2.6850>.

⁴⁹ Mataram District Court, Decision No. 234/Pdt.G/2020/PN Mtr.

c. Decision No. 705 PK/Pdt/2023: Powers of Attorney without an Underlying Transaction

The second case presents the same doctrine in a different factual configuration. The published study of the decision locates the dispute in the legal consequences of a power of attorney embodied in a deed of sale and purchase where no transaction of sale in fact took place, and examines alongside it the role of the Land Deed Official in the execution of such an instrument.⁵⁰ The configuration is a familiar one in Indonesian land practice: a debtor executes in favour of a creditor a power to sell, ostensibly as security for a loan, and the creditor subsequently employs the power to transfer the land to himself or to a third party.

Such an arrangement engages two distinct prohibitions. The first is the Instruction of the Minister of Home Affairs No. 14 of 1982, which forbids the use of absolute powers of attorney as a means of transferring rights over land.⁵¹ The second is the principle that a deed of sale and purchase presupposes an actual transaction of sale, since Article 37(1) of Government Regulation No. 24 of 1997 makes the deed the instrument by which a transfer effected by a legal act is registered, not a device by which a transfer may be created in the absence of such an act.⁵² A deed recording a sale that never occurred is, on its face, an instrument whose content does not correspond to the will of the party who granted the power.

Characterised in Van Dunne's terms, the abuse in this configuration is ordinarily economic rather than psychological: the party granting the power does so because he requires credit and has no other means of obtaining it, and the party receiving it exploits that necessity to obtain security in a form that permits appropriation of the asset.⁵³ The structural resemblance to the credit cases is close. Rizky Marpaung and his colleagues find clauses amounting to abuse of circumstances in working capital credit agreements and conclude that the doctrine protects consumers who are frequently in a weak position in negotiations with banks.⁵⁴ Sabrina Nur Ilmi Sari Dalimunthe reaches an analogous

⁵⁰ Universitas Sumatera Utara, *Analisis Penyalahgunaan Keadaan oleh Salah Satu Pihak pada Akta Jual Beli*, 114.

⁵¹ Instruction of the Minister of Home Affairs No. 14 of 1982.

⁵² Government Regulation No. 24 of 1997, art. 37(1).

⁵³ Van Dunne and Van der Burght, *Penyalahgunaan Keadaan*, 21.

⁵⁴ Rizky Marpaung, Suhendro, and Yetti, "Penyalahgunaan Keadaan (Misbruik van Omstandigheden) dalam Perjanjian Kredit Modal Kerja pada Perbankan," *Innovative: Journal of Social Science Research* 4, no. 4 (2024): 14178, <https://doi.org/10.31004/innovative.v4i4.14623>.

conclusion in respect of preliminary agreements for the sale of apartments, treating abuse of circumstances as a limit upon the satisfaction of the principle of balance.⁵⁵

The involvement of the Land Deed Official introduces a further dimension absent from the first case. The Official is required to satisfy himself that the legal act recorded in the deed has actually occurred and that the parties before him understand what they are executing. Imam Surya Saputra and his colleagues analyse the legal consequences of a deed of sale and purchase that is defective in law and conclude that the defect exposes the Official to liability in addition to affecting the status of the instrument.⁵⁶ Dimas Almansyah and Mohamad Fajri Mekka Putra reach a corresponding conclusion in respect of notaries who execute deeds for parties acting under pressure or compulsion, holding that the professional duty extends to an assessment of the freedom of the parties before them.⁵⁷ Rizki Fitria Sari and Nabitatus Sa'adah note that the same duties attach to a sub-district head acting as temporary Land Deed Official, a common circumstance in rural transactions.⁵⁸

d. A Third Point of Comparison: Decision No. 3550 K/Pdt/2021

A third decision serves as a control upon the comparison, because it is one in which the doctrine was invoked and ultimately rejected. Suhendar and Athoillah analyse a claim founded upon abuse of circumstances in a credit agreement together with its addendum and restructuring, the alleged abuse consisting in the imposition of a high rate of interest upon plaintiffs whose financial difficulty was known to the defendant. The first-instance court granted the claim and the appellate court affirmed; the Supreme Court set the appellate judgment aside on cassation.⁵⁹

The authors conclude that the reasoning of the cassation panel was correct. Their argument proceeds in two stages. First, the doctrine as expounded by Van Dunne was properly employed as the legal basis of the reasoning, given that abuse of circumstances

⁵⁵ Sabrina Nur Ilmi Sari Dalimunthe, "Penyalahgunaan Keadaan dalam Perjanjian Pengikatan Jual Beli Apartemen sebagai Pembatas Pemenuhan Asas Keseimbangan," *Jurnal Yuridis* 8, no. 2 (2021): 311, <https://doi.org/10.35586/jyur.v8i2.3720>.

⁵⁶ Imam Surya Saputra, Ilyas Ismail, and Darmawan, "Akibat Hukum terhadap Akta Jual Beli yang Cacat Hukum," *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 2 (2020): 285, <https://doi.org/10.29303/ius.v8i2.758>.

⁵⁷ Dimas Almansyah and Mohamad Fajri Mekka Putra, "Tanggung Jawab Notaris dalam Pembuatan Akta Para Pihak di bawah Tekanan dan Paksaan," *Jurnal USM Law Review* 5, no. 2 (2022): 756, <https://doi.org/10.26623/julr.v5i2.5728>.

⁵⁸ Rizki Fitria Sari and Nabitatus Sa'adah, "Penunjukan Camat sebagai PPAT Sementara di Wilayah Kerja yang Formasi PPAT Telah Terpenuhi," *Notarius* 15, no. 1 (2022): 421, <https://doi.org/10.14710/nts.v15i1.46051>.

⁵⁹ Suhendar and Athoillah, "Pertimbangan Hakim dalam Perkara Penyalahgunaan Keadaan," 264.

in contract is not regulated in the Civil Code or in any other legislation, and given that the doctrine has been used in a considerable number of decisions at various levels. Second, upon the facts, the elements of abuse of circumstances were not found to be present.⁶⁰ The decision therefore demonstrates that the doctrine is not a general licence to revise improvident bargains: a party who agrees to onerous terms with knowledge of what he is agreeing to, and who had the option of declining, does not thereby acquire a ground of annulment.

That control is important for the present analysis. It shows that the operative distinction is not between advantageous and disadvantageous bargains but between bargains in which the weaker party retained a real choice and bargains in which he did not. Table 2 sets the three decisions side by side.

Table 2. Comparison of the Parameters Applied in the Three Decisions

Parameter	Decision No. 3406 K/Pdt/2019	Decision No. 705 PK/Pdt/2023	Decision No. 3550 K/Pdt/2021
Object of the dispute	Deed of sale and purchase of land	Power of attorney within a deed of sale and purchase without an underlying transaction	Credit agreement, addendum, and restructuring
Instances traversed	District court, high court, cassation	District court, high court, cassation, judicial review	District court, high court, cassation
Type of superiority exploited	Psychological: advanced age and want of comprehension	Economic: need for credit and absence of alternative security	Alleged economic superiority of the creditor
Position of the parties	Manifestly unequal	Unequal, debtor dependent upon the creditor	Unequal but the debtor retained a choice
Formulation of the clauses	Deed not read out; payment diverted to a third party	Deed recording a sale that did not occur	High rate of interest agreed by the parties
Outcome	Deed annulled on the ground of abuse of circumstances	Abuse of circumstances established through judicial review	Appellate judgment set aside; elements not established

Source: processed from Supreme Court Decisions No. 3406 K/Pdt/2019, No. 705 PK/Pdt/2023, and No. 3550 K/Pdt/2021, together with the published studies of those decisions.

Table 2 supports the principal finding of this study. The courts converge upon three parameters, corresponding to the three aspects proposed by Azzahra and Gozali. The first is the relative position of the parties, assessed at the moment of formation and encompassing both economic and psychological dimensions. The second is the correspondence between the content of the instrument and the transaction that actually took place, which in the first case was disturbed by the diversion of payment and in the

⁶⁰ Suhendar and Athoillah, "Pertimbangan Hakim dalam Perkara Penyalahgunaan Keadaan," 264.

second by the absence of any sale at all. The third is the conduct of the dominant party, assessed by reference to good faith, which in the first case was impugned by the failure to read the deed and in the second by the employment of a power granted for one purpose to achieve another. Where all three are present the claim succeeds; where the weaker party retained a real choice, as in the third decision, it does not.

3. Legal Consequences and Implications for Legal Certainty

a. Nullity or Voidability: An Unresolved Inconsistency

Once abuse of circumstances is established, the question arises what consequence follows. Doctrine returns a clear answer. Because the defect resides in consent, which is the first of the subjective conditions in Article 1320, the contract is voidable at the instance of the injured party and not void by operation of law.⁶¹ Widia and Budiarta state the same proposition in terms of the structure of the Article: the objective conditions of a determinate subject matter and a lawful cause attract nullity, whereas the subjective conditions of consent and capacity attract voidability.⁶² The practical difference is considerable. A void contract produces no effect and requires no judicial pronouncement; a voidable contract produces its effects until annulled, the annulment must be sought by the party entitled, and the right to seek it is subject to a period of limitation.⁶³

Judicial practice has not followed the doctrine consistently. Reports of Decision No. 3406 K/Pdt/2019 describe the deed of sale and purchase as having been declared void by operation of law by reason of abuse of circumstances.⁶⁴ Studies of first-instance decisions record the same characterisation; the analysis of the deed executed in Decision No. 91/Pdt.G/2019/PN Pms treats the presence of abuse of circumstances as rendering the deed invalid and void by operation of law. Yet the same body of scholarship, sometimes in the same paragraph, describes the doctrine as a ground of annulment. The inconsistency is not confined to the courts: Aditya Chandra Saputra and his colleagues note that abuse of circumstances may be placed as a modern form of defect of will closely connected with the principles of propriety, justice, and good faith, which are the very

⁶¹ Medahalyusa and Busro, "Akibat Hukum Pembatalan Perjanjian," 641.

⁶² Widia and Budiarta, "Cacat Kehendak sebagai Dasar Batalnya Perjanjian," 5.

⁶³ Nugraha, Putra, and Putra, "Analisa Daluarsa Gugatan Pembatalan Perjanjian," 62.

⁶⁴ Universitas Sumatera Utara, *Analisis Penyalahgunaan Keadaan oleh Salah Satu Pihak pada Akta Jual Beli*, 114.

principles that Article 1338 attaches to performance rather than to formation.⁶⁵

The source of the inconsistency is the conceptual placement discussed in the first section. A court that follows *BOVAG II* in treating the abuse as vitiating the cause will pronounce nullity; a court that follows the *Nieuw Burgerlijk Wetboek* in treating it as an autonomous defect of will will pronounce voidability.⁶⁶ Both routes are available under Indonesian law precisely because the legislature has chosen neither. Dwi Ayu Oktafiana and her colleagues demonstrate the practical consequences of this indeterminacy in the context of unilateral termination, where the characterisation determines whether a party may simply treat the contract as spent or must first obtain a judgment.⁶⁷

The consequences for the parties are substantial. If the contract is void, third parties who have acquired rights in reliance upon the registered transfer are exposed, since a void instrument confers nothing. If the contract is voidable, the position of such third parties is protected until annulment, but the injured party bears the burden of commencing proceedings within the applicable period. Nugraha and his colleagues show that the limitation period is itself a contested question, since the weaker party frequently discovers the exploitation only long after the instrument has been executed.⁶⁸ An arrangement in which neither the consequence nor the period is settled is difficult to reconcile with legal certainty.

b. The Evidentiary Burden and Its Distribution

A second source of difficulty lies in proof. The party alleging abuse of circumstances must displace the evidentiary force of an authentic instrument. Fariz Rachman Iqbal's analysis of a notarial deed defective in form shows how demanding that task is, the presumption of regularity operating until the contrary is established.⁶⁹ Where the abuse is psychological, the difficulty is acute: the plaintiff must prove a state of mind, and frequently the state of mind of an elderly or deceased person, against a document that records on its face a free and informed declaration.

⁶⁵ Aditya Chandra Saputra, Tiara Farina, and Ilham Januardy, "Penyalahgunaan Keadaan (Misbruik van Omstandigheden) sebagai Dasar Pembatalan Perjanjian: Analisis Yuridis dalam Perspektif KUHPerdata," *Journal of Innovative and Creativity* 5, no. 3 (2025): 36169, <https://doi.org/10.31004/joecy.v5i3.5577>.

⁶⁶ Hoge Raad, *BOVAG II*, NJ 1959, 37.

⁶⁷ Dwi Ayu Oktafiana, Nurul Arijasakinah, and Luthfi Dhofir Nugroho, "Penyalahgunaan Keadaan terhadap Pembatalan Kontrak secara Sepihak," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 962, <https://doi.org/10.61104/alz.v3i2.1197>.

⁶⁸ Nugraha, Putra, and Putra, "Analisa Daluarsa Gugatan Pembatalan Perjanjian," 62.

⁶⁹ Iqbal, "Kekuatan Pembuktian Akta Notaris yang Cacat Formil," 84.

Two features of the decisions under examination mitigate that difficulty and deserve to be generalised. The first is the treatment of procedural irregularity as evidence of substantive defect. The failure to read out the deed in Decision No. 3406 K/Pdt/2019 operated not as an independent ground of annulment but as a circumstance from which the absence of informed consent could be inferred.⁷⁰ The second is the treatment of objective disproportion as evidence of exploitation. Where consideration is diverted to a third party, or where a deed records a sale that did not occur, the disproportion is apparent from the documents and does not require proof of a state of mind at all.

This evidential structure has a doctrinal foundation. Article 1328 provides that fraud may not merely be presumed but must be proved, and the courts have applied an analogous requirement to abuse of circumstances.⁷¹ Yet proof by inference from objective circumstances is proof, and the two decisions demonstrate that the requirement is satisfied where the documents themselves disclose a transaction that no free and informed party would have entered into. The literature on electronic contracting reaches a parallel conclusion in a different context, holding that the elements to be proved remain constant even where the modes of proof change.⁷²

c. Comparative Perspective: Undue Influence and Unconscionability

The Indonesian difficulty is not unique, and comparative material assists in resolving it. Ridwan shows that undue influence and unconscionability share the objective of protecting weaker parties from exploitation arising from unequal bargaining positions and defective bargaining processes, ultimately reflected in the substantive terms of the contract, while differing in their primary focus of protection, their available remedies, and their scope of application.⁷³ That distinction corresponds to the Indonesian question with which this section began, since a doctrine focused upon the process of bargaining attracts voidability whereas a doctrine focused upon the substance of the terms tends towards nullity.

Hugh Beale's analysis of the two English doctrines makes the same point from the perspective of the defendant, treating them as defences whose boundaries are

⁷⁰ "Akibat Hukum atas Pembuatan Akta Jual Beli yang Tidak Dibacakan," 695.

⁷¹ Hatimah and Wagian, "Bedrog sebagai Dasar Pembatalan Perjanjian," 185.

⁷² "Aspek Perjanjian Electronic Commerce dan Implikasinya pada Hukum Pembuktian di Indonesia," *Masalah-Masalah Hukum* 39, no. 2 (2010): 175, <https://doi.org/10.14710/mmh.39.2.2010.172-184>.

⁷³ Ridwan, "The Role of Undue Influence and Unconscionability," 33.

determined by the kind of unfairness each is designed to address.⁷⁴ Dharmita Prasad and Pallavi Mishra demonstrate that adhesion contracts have a strong likelihood of being unconscionable and that the difficulty is compounded in electronic contracting, where the common law duty to read is undermined by the mechanics of assent.⁷⁵ The comparative literature has also noted the broader divergence between civil and common law approaches to judicial intervention in agreed terms, Larry DiMatteo showing in relation to penalties that the divergence has narrowed as both traditions have accepted a supervisory jurisdiction.⁷⁶ The editorial framing of that comparative project observes that concern about how parties contract is not new to the common law and that it produced both the unconscionability doctrine and statutory intervention in unfair terms.⁷⁷

Two further comparative observations bear upon Indonesian practice. The first concerns vulnerability defined by status rather than by circumstance. Subhash Gangwar's analysis of minors' contracts shows that legal systems protect certain classes of person by rules of incapacity rather than by doctrines of exploitation.⁷⁸ Indonesian law treats advanced age, which was decisive in Decision No. 3406 K/Pdt/2019, as a matter of circumstance rather than of status, with the consequence that vulnerability must be proved in each case. The second concerns supervening as against original unfairness. Bashayer Al Majed and Aseel AlMajed examine the inflexibility of the English doctrine of frustration by comparison with *imprévision*, and their analysis underlines that abuse of circumstances is concerned with the moment of formation and not with subsequent hardship.⁷⁹ Kristin Cornelius's study of standard form contracts makes the connected point that the formal act of assent may be entirely disconnected from any real

⁷⁴ Hugh Beale, "Undue Influence and Unconscionability," in *Defences in Contract*, ed. Andrew Dyson, James Goudkamp, and Frederick Wilmot-Smith (Oxford: Hart Publishing, 2017), 89, <https://doi.org/10.5040/9781509902156.ch-005>.

⁷⁵ Dharmita Prasad and Pallavi Mishra, "Unconscionability of E-contracts: A Comparative Study of India, the United Kingdom, and the United States," *Liverpool Law Review* 43, no. 2 (2022): 342, <https://doi.org/10.1007/s10991-022-09306-6>.

⁷⁶ Larry A. DiMatteo, "Civil-common Law Divergence on Penalties: Is it a Thing of the Past?," *Liverpool Law Review* 43, no. 3 (2022): 424, <https://doi.org/10.1007/s10991-022-09297-4>.

⁷⁷ "Contract Law in Common Law Countries: A Study in Divergence," *Liverpool Law Review* 43 (2022), <https://doi.org/10.1007/s10991-022-09312-8>.

⁷⁸ Subhash Gangwar, "Minors' Contracts in the Digital Age," *Liverpool Law Review* 43, no. 2 (2022): 240, <https://doi.org/10.1007/s10991-022-09298-3>.

⁷⁹ Bashayer Al Majed and Aseel AlMajed, "Frustration v Imprévision, Why Frustration is so 'Frustrating': The Lack of Flexibility in the English Doctrine's Legal Consequence," *Liverpool Law Review* 45, no. 1 (2024): 28, <https://doi.org/10.1007/s10991-023-09327-9>.

engagement with the terms assented to.⁸⁰

d. Prescriptive Implications

Three measures follow from the analysis. The first is the express placement of abuse of circumstances within the regime of voidable contracts. The most economical route is a conditional construction of Article 1321 of the Civil Code so that the enumeration of mistake, coercion, and fraud is read as including the exploitation of a state of necessity, dependence, inexperience, or want of comprehension. That placement resolves the inconsistency identified above, protects third parties who have acquired rights in reliance upon a registered transfer, and accords with the orthodox doctrinal position.⁸¹ The Nieuw Burgerlijk Wetboek supplies a drafting model that requires no conceptual innovation.⁸²

The second is the formulation of cumulative parameters to guide judicial assessment. The comparison undertaken in the second section suggests four: a condition of necessity, dependence, inexperience, or want of comprehension on the part of one party; knowledge of that condition on the part of the other; the absence of any real alternative available to the weaker party; and a manifest disproportion between the terms recorded and the transaction that actually occurred. The requirement that the elements be cumulative answers the concern that the doctrine might become a general power to revise improvident bargains, which is precisely the concern that the cassation panel addressed in Decision No. 3550 K/Pdt/2021.⁸³ Rendy Saputra's systematisation of the doctrine provides the conceptual foundation for such a formulation.⁸⁴

The third concerns the professional duties of Land Deed Officials and notaries. Both decisions examined here turned in part upon the conduct of the officer before whom the instrument was executed: in the first, the failure to read out the deed; in the second, the execution of a deed of sale where no sale had taken place. Strengthening and enforcing the duty to verify that the legal act recorded has actually occurred, and that the parties understand what they are executing, would prevent a substantial proportion of these disputes from arising.⁸⁵ Almansyah and Putra's analysis of the notary's responsibility

⁸⁰ Kristin B. Cornelius, "Standard Form Contracts and a Smart Contract Future," *Internet Policy Review* 7, no. 2 (2018): 4, <https://doi.org/10.14763/2018.2.790>.

⁸¹ Medahalyusa and Busro, "Akibat Hukum Pembatalan Perjanjian," 641.

⁸² Nieuw Burgerlijk Wetboek, Book 3, art. 44(4).

⁸³ Suhendar and Athoillah, "Pertimbangan Hakim dalam Perkara Penyalahgunaan Keadaan," 264.

⁸⁴ Saputra, *Kedudukan Penyalahgunaan Keadaan*, 78.

⁸⁵ Saputra, Ismail, and Darmawan, "Akibat Hukum terhadap Akta Jual Beli yang Cacat Hukum," 290.

where parties act under pressure supports the extension of that duty to an assessment of the freedom of the parties,⁸⁶ and Sari and Sa'adah's study indicates that the same standard must apply to temporary officials.⁸⁷ Herlien Budiono's treatment of the general doctrine of contract in its notarial application supplies the framework for such a duty.⁸⁸

Taken together, the three measures would convert a body of decisions into a rule. The jurisprudence has already supplied the substance, and the parameters set out in Table 3 are extracted from the decisions themselves rather than imposed upon them. What is required is that the substance be given a form in which litigants can predict it and courts can apply it uniformly.

Table 3. Legal Consequences and Prescriptive Framework

Issue	Present position in practice	Doctrinal position	Prescription
Legal consequence	Alternates between nullity and voidability	Voidable, the defect residing in the subjective condition	Express placement within the regime of voidable contracts
Elements of the doctrine	Constructed afresh in each decision	Van Dunne, Setiawan, Azzahra and Gozali, with variations	Four cumulative parameters formulated as a rule
Burden of proof	Borne wholly by the weaker party against an authentic instrument	Abuse may not be presumed but must be proved	Proof admitted by inference from objective disproportion
Limitation period	Contested, running from an uncertain moment	Five years from the occurrence of the defect	Period running from discovery of the exploitation
Role of the executing officer	Assessed only incidentally	Duty to verify the legal act and the understanding of the parties	Duty strengthened and expressly enforceable

Source: processed from the decisions analysed and the doctrinal literature cited in this study.

C. CONCLUSIONS

Abuse of circumstances occupies a position in Indonesian contract law that is doctrinally settled but normatively unanchored, having been received through a line of decisions running from Decision No. 3431 K/Pdt/1985 to the present without ever acquiring a statutory formulation, with the consequence that its elements are constructed afresh in each case. The comparison of Decision No. 705 PK/Pdt/2023 and Decision No. 3406 K/Pdt/2019 shows that the courts in fact apply three convergent parameters, namely the relative position of the parties at the moment of formation, the

⁸⁶ Almansyah and Putra, "Tanggung Jawab Notaris dalam Pembuatan Akta Para Pihak," 762.

⁸⁷ Sari and Sa'adah, "Penunjukan Camat sebagai PPAT Sementara," 426.

⁸⁸ Herlien Budiono, *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2010), 97–104.

correspondence between the content of the instrument and the transaction that actually occurred, and the good faith of the dominant party, the first case turning upon psychological superiority and the second upon economic superiority exercised through a power of attorney unsupported by any underlying sale. The divergence between decisions arises not in the identification of the abuse but in the characterisation of its consequence, which alternates between nullity and voidability according to whether the court locates the defect in the cause or in consent, and that alternation, together with an unsettled limitation period and an evidentiary burden borne wholly by the weaker party, is difficult to reconcile with legal certainty. It is accordingly recommended that abuse of circumstances be expressly placed within the regime of voidable contracts through a conditional construction of Article 1321 of the Civil Code, that its elements be formulated as four cumulative parameters, and that the duty of Land Deed Officials and notaries to verify both the reality of the legal act recorded and the understanding of the parties before them be correspondingly strengthened.

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