

A CRITICAL REVIEW OF SALE AND PURCHASE AGREEMENTS IN THE TRANSFER OF LAND RIGHTS: AN ANALYSIS OF DWALING AS A DEFECT OF CONSENT

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Article history: received 19 May 2026; revised May 26, 2026; accepted 26 June 2026

DOI: <https://doi.org/10.33751/jhss.v10i02.355>

Abstract. A land sale and purchase agreement is a legal act that involves not only private law relations but also land administration and legal certainty. One of the key issues arising in such transactions is *dwaling* or mistake, a defect of consent that occurs when a party enters into an agreement based on an erroneous understanding of the essential elements of the contractual object. This study aims to analyze the legal regulation of *dwaling* in land sale and purchase agreements, identify the forms of mistake that occur in practice, and examine its legal consequences and possible remedies. This research employs normative legal research using statutory, conceptual, and case approaches. The legal materials are analyzed qualitatively through legal interpretation of the Indonesian Civil Code, land law regulations, legal doctrines, and relevant court decisions. The findings indicate that the regulation of *dwaling* under Indonesian positive law remains general and has not been specifically harmonized with the characteristics of land transactions. Mistakes in land sale and purchase agreements commonly concern land area and boundaries, land title status, the authority of the seller, the existence of disputes, legal encumbrances, and restrictions on land use. The legal consequence of an agreement containing *dwaling* is that the agreement may be annulled, provided that the mistake concerns an essential element of the contract. Therefore, strengthening the precautionary principle for Land Deed Officials, improving the accuracy of land data, and ensuring balanced legal protection between transactional certainty and justice for the mistaken party are necessary.

Keywords: *dwaling*; defect of consent; land sale and purchase; Land Deed Official; legal protection.

I. INTRODUCTION

A sale and purchase agreement is one of the most important legal instruments in civil law relations, as it serves as the basis for the creation of a legal relationship between the party who transfers an object and the party who pays the price for that object. Under Indonesian civil law, sale and purchase is not merely understood as an economic relationship, but also as a legal act that gives rise to legal consequences for the parties. Article 1457 of the Indonesian Civil Code states that sale and purchase is an agreement in which one party binds themselves to deliver an object, while the other party binds themselves to pay the agreed price. This formulation shows that sale and purchase is based on consent, a specific object, and reciprocal performance. However, in practice, consent that appears formally valid is not always formed from a will that is truly free, conscious, and complete, particularly when one party gives consent due to a mistake concerning the object or substance of the agreement (Sugiasuti & Purnamasari, 2023).

In the context of the transfer of land rights, a sale and purchase agreement has a more complex character than the sale and purchase of movable objects. Land does not only have economic value, but also possesses strong social, administrative, and juridical dimensions. Therefore, the

transfer of land rights cannot be based solely on the will of the parties, but must also comply with the applicable land law provisions. Land sale and purchase must be conducted openly, in cash, and in accordance with land administration procedures, including the making of a deed by a Land Deed Official, or PPAT, as the basis for registering the transfer of rights. The involvement of PPAT in land transactions is intended to provide legal certainty, ensure the validity of legal acts, and minimize potential disputes that may arise after the transaction is completed (Saputra, 2022).

One important issue in land sale and purchase agreements is the existence of defects of consent, particularly *dwaling* or mistake. *Dwaling* occurs when one party gives consent based on an erroneous understanding of an essential element of the agreement. In contract law, consent is indeed a subjective requirement for the validity of an agreement, but such consent must arise from a will that is not tainted by mistake, duress, or fraud. Article 1321 of the Indonesian Civil Code states that consent is not valid if it is given due to mistake, duress, or fraud. Thus, mistake in an agreement cannot be regarded as a minor matter, since it may affect the validity of consent and open the possibility of annulment of the agreement by the injured party (Sugiasuti, Desmayanti, & Shahin, 2023).

In the sale and purchase of land rights, *dwaling* may appear in various forms, such as mistake concerning land area, land boundaries, the status of land rights, dispute status, mortgage encumbrances, the physical condition of the land, or restrictions on land use. Mistakes concerning these elements are important because land as the object of sale and purchase must have clear physical and juridical data. If the buyer agrees to the transaction because they assume that the land being purchased is under ownership right, while in fact it is only under right to build that is about to expire, such mistake is not merely an administrative error but concerns the substance of the contractual object. Similarly, if the buyer agrees to a price based on information regarding a certain land area, but later discovers that the actual area differs significantly, the resulting consent may be challenged because it was formed based on inaccurate information.

The issue of *dwaling* becomes increasingly important because proving defects of consent in judicial practice is not always easy. The party alleging mistake must be able to show that the mistake relates to an essential element of the agreement, not merely an ordinary error or personal negligence. In addition, judges must also assess whether the opposing party knew or should have known of the mistake. In practice, judicial assessment of Article 1321 of the Indonesian Civil Code may vary because defects of consent concern the internal state of the parties at the time the agreement was made, while proof in civil cases heavily depends on written evidence and legal facts revealed during trial (Sugiasuti et al., 2023).

On the other hand, the law must also maintain certainty in land transactions. An agreement that has been made and signed cannot easily be annulled merely because one party feels dissatisfied after the transaction has taken place. The principle of *pacta sunt servanda* requires that a legally made agreement shall bind the parties as law. However, this principle should not be understood rigidly, since an agreement arising from defective consent does not fully reflect contractual justice. In this regard, contract law must be able to balance legal certainty for completed transactions with legal protection for parties who genuinely experience mistake concerning an essential matter in the agreement (Sugiasuti & Purnamasari, 2023).

The balance between legal certainty and legal protection is also reflected in the concept of a good-faith buyer. In land sale and purchase transactions, a good-faith buyer should in principle receive legal protection if they have made the purchase in a reasonable manner, paid the price, examined the documents, and were unaware of any defect in the transaction object. However, protection for a good-faith buyer is not absolute. The buyer is still required to act carefully, examine the status of the land, verify the seller's authority, and trace the possibility of disputes or legal encumbrances attached to the land being purchased. Therefore, the concept of good faith in land sale and purchase must be understood as a combination of subjective honesty and objective prudence in conducting the transaction (Larasati & Bakri, 2018).

The role of PPAT in land sale and purchase transactions is highly strategic because PPAT serves as a public official authorized to make authentic deeds concerning legal acts over land. Ideally, PPAT does not only act as an administrative deed maker, but also as an initial safeguard to ensure that land

transactions are conducted in accordance with the law. The precautionary principle must be applied through examination of the identities of the parties, the status of authority to act, the conformity of the physical and juridical data of the land, and the completeness of supporting documents. If the precautionary principle is not implemented adequately, the potential for mistake in land sale and purchase transactions will increase and may ultimately give rise to civil disputes as well as land administration problems (Saputra, 2022).

Based on the foregoing discussion, the study of *dwaling* in land sale and purchase agreements has both academic and practical urgency. Academically, this discussion is important to clarify the position of *dwaling* as a form of defect of consent in contract law and its relationship with the principles of good faith, legal certainty, and legal protection. Practically, this study is important for the public, PPAT, notaries, advocates, and judges so that they may more carefully understand the boundary between a mistake that may serve as a basis for annulling an agreement and transactional risks that should have been prevented through reasonable legal examination. Thus, this discussion is not only oriented toward the norms contained in the Indonesian Civil Code, but also toward their application in land sale and purchase practice in Indonesia.

On that basis, this article is directed toward critically examining the legal regulation of *dwaling* in land sale and purchase agreements under Indonesian positive law, the forms of *dwaling* that arise in land transaction practice, and the legal consequences and settlement mechanisms available when a land sale and purchase agreement is proven to contain mistake. This focus is important because the issue of *dwaling* in the transfer of land rights is not only related to the validity of the parties' consent, but also to orderly land administration, the professional responsibility of PPAT, protection of good-faith buyers, and legal certainty within the national land law system.

Theory of Defects of Consent in Contract Law

Indonesian contract law recognizes consent as one of the subjective requirements for the validity of an agreement. Under Article 1320 of the Indonesian Civil Code, an agreement is valid if it fulfills four requirements, namely the consent of the parties, legal capacity, a specific object, and a lawful cause. However, consent cannot be understood merely as the existence of a signature or formal approval. Consent must arise from a free, conscious, and genuine will. If the will of one party is formed under circumstances that impair the quality of consent, the agreement may be challenged on the basis of a defect of consent (Sugiasuti & Purnamasari, 2023).

Defects of consent occupy an important position in contract law because they directly affect the validity of the parties' agreement. Article 1321 of the Indonesian Civil Code provides that no consent is valid if it is given due to mistake, duress, or fraud. This provision shows that contract law does not only assess the existence of consent externally, but also examines whether such consent was formed through a proper and legally acceptable process. In judicial practice, the application of Article 1321 is often complex because defects of consent concern the internal process of will formation, while civil procedure tends to rely heavily on written evidence and formal proof (Sugiasuti, Desmayanti, & Shahin, 2023).

One form of defect of consent that is particularly relevant in land sale and purchase agreements is *dwaling* or mistake. *Dwaling* occurs when a party gives consent based on an erroneous understanding of an essential element of the agreement. In the context of land transactions, mistake may concern the legal status of land rights, the area of land, land boundaries, the authority of the seller, the existence of disputes, mortgage encumbrances, or restrictions on land use. If such mistake substantially affects the buyer's decision to enter into the agreement, it may be categorized as an essential mistake and may serve as a basis for annulling the agreement (Widia & Budiarta, 2022).

In doctrinal terms, *dwaling* must be distinguished from an ordinary error. Not every mistake in a contractual relationship can automatically be used as a basis for annulment. A mistake must concern an essential element of the agreement and must have a direct influence on the formation of consent. In a land sale and purchase agreement, elements such as land area, boundaries, land title status, and the legal capacity of the seller are essential because they determine the economic value, legal certainty, and utility of the land. Therefore, mistake concerning these elements may affect the validity of the buyer's consent and create grounds for legal correction through annulment.

The Principle of Good Faith and Legal Certainty in Agreements

The principle of good faith is a fundamental principle in contract law and plays an important role in assessing agreements that are allegedly affected by *dwaling*. Good faith does not merely require the absence of bad intention, but also demands honesty, transparency, and propriety in the formation and performance of agreements. In land sale and purchase transactions, the seller has a duty to provide accurate information regarding the land object, while the buyer has a duty to conduct reasonable examination before entering into the transaction. This means that good faith has both subjective and objective dimensions: subjective honesty and objective prudence (Larasati & Bakri, 2019).

In the context of *dwaling*, good faith functions as a balancing principle between the protection of the mistaken party and the need to maintain certainty in contractual relations. A seller who conceals material information concerning land status, boundaries, disputes, or restrictions on land use may contribute to the formation of defective consent. Conversely, a buyer who fails to conduct reasonable due diligence may not automatically be protected merely by claiming ignorance. Thus, the principle of good faith requires both parties to act carefully and transparently before the agreement is concluded.

Legal certainty is also a central principle in land sale and purchase agreements. The transfer of land rights must be carried out through clear legal procedures so that the acquired rights can be registered and recognized by law. In land law, legal certainty is realized through land registration, document verification, deed-making by authorized officials, and the recording of juridical data changes. However, formal legal certainty does not always guarantee substantive justice. An agreement may appear valid from an administrative perspective, yet remain problematic if one party's consent was formed on the basis of an essential mistake (Sugiasuti & Purnamasari, 2023).

Therefore, the relationship between good faith and legal certainty must be understood in a balanced manner. Legal certainty requires that agreements that have been validly concluded should be respected, in line with the principle of *pacta sunt servanda*. However, this principle cannot be applied rigidly when the agreement is proven to have been formed through a defect of consent. In such circumstances, the law must provide space for correction so that contractual certainty does not sacrifice substantive justice for the party who entered into the agreement under mistake.

Theory of Legal Protection for the Parties in Land Sale and Purchase Agreements

Legal protection in land sale and purchase agreements may be understood through two main forms, namely preventive legal protection and repressive legal protection. Preventive protection is provided before a dispute arises, for example through certificate checking, verification of the parties' identities, examination of the seller's authority, confirmation of land status, and the making of a deed by an authorized official. Repressive protection, on the other hand, is provided after a dispute occurs, for example through claims for annulment, compensation, or dispute resolution before the court or through alternative mechanisms.

In relation to *dwaling*, preventive protection is particularly important because mistake often occurs due to weak verification of physical and juridical land data before the transaction. Land as an object of sale and purchase has both physical and legal dimensions. Physical data include land area, boundaries, location, and factual condition, while juridical data include the status of rights, ownership history, encumbrances, and legal restrictions. Failure to verify these aspects may create a gap between the information understood by the buyer and the actual condition of the land, which may later give rise to a dispute.

The concept of a good-faith buyer is a key element in the legal protection of land transactions. A good-faith buyer is generally understood as a party who purchases land through proper procedures, pays the agreed price, does not know of any legal defect, and conducts reasonable examination before entering into the transaction. Legal protection for good-faith buyers is necessary to prevent land transactions from being placed in continuous uncertainty. However, such protection is not absolute. The buyer must demonstrate that they acted carefully, did not ignore relevant information, and took reasonable steps to examine the legal status of the land (Larasati & Bakri, 2019).

In judicial practice, the protection of good-faith buyers increasingly depends on the standard of objective prudence. This means that a buyer cannot rely solely on the claim that they did not know of the defect in the land object. The buyer must also prove that they performed a reasonable examination, such as checking the certificate, verifying the seller's authority, confirming that the land was not under dispute, and ensuring that there were no legal encumbrances affecting the object. If these steps are ignored, the claim of good faith may be weakened because the buyer is considered to have failed to exercise due care.

The Role of Land Deed Officials in Preventing Dwaling

The Land Deed Official, or PPAT, has a strategic role in preventing dwaling in land sale and purchase agreements. PPAT is not merely an administrative deed maker, but a public official who is expected to ensure that legal acts concerning land are carried out in accordance with applicable law. In land sale and purchase transactions, the deed made by PPAT serves as the basis for the registration of the transfer of land rights. Therefore, the accuracy and legality of the deed-making process are essential for ensuring legal certainty and preventing future disputes.

The precautionary principle is central to the role of PPAT. This principle requires PPAT to examine the identities of the parties, their legal capacity, the authority of the seller, the validity of supporting documents, the status of the land certificate, and the conformity between physical and juridical data. PPAT must also ensure that the parties understand the contents and legal consequences of the deed to be signed. If PPAT merely examines documents formally without assessing the substance of the transaction, the risk of mistake in the formation of consent may increase (Saputra, 2022).

The role of PPAT is closely connected to the prevention of defects of consent. A party may enter into a land sale and purchase agreement under mistake because the information received before signing the deed is incomplete, inaccurate, or not properly explained. In this context, PPAT should function as a preventive legal instrument by ensuring that the parties have adequate knowledge of the object, legal status, and consequences of the transaction. This role is particularly important in transactions involving complex land status, differences between physical and juridical data, or potential restrictions on land use.

However, the responsibility to prevent dwaling does not rest solely on PPAT. The seller, buyer, and relevant land administration institutions also have important roles. The seller must disclose material information concerning the land object, the buyer must conduct reasonable due diligence, and the land administration system must provide accurate and accessible data. The failure of any of these actors may increase the risk of defective consent. Therefore, the prevention of dwaling requires an integrated approach involving good faith, due diligence, accurate land data, and the professional conduct of PPAT.

Based on the foregoing discussion, dwaling in land sale and purchase agreements should be understood as a legal issue located at the intersection of contract law and land law. From the perspective of contract law, dwaling concerns the validity of consent and may serve as a basis for annulling an agreement if it relates to an essential element. From the perspective of land law, dwaling is closely connected to the accuracy of physical and juridical data, the reliability of land registration, and the role of PPAT in ensuring the validity of land transactions. Therefore, the study of dwaling must not be limited to the interpretation of Articles 1321 and 1322 of the Indonesian Civil Code, but must also be linked to good faith, legal certainty, legal protection for good-faith buyers, and the precautionary principle in the making of land deeds.

II. RESEARCH METHODS

This study employs normative legal research, also known as doctrinal legal research, which positions law as a set of norms, principles, doctrines, and court decisions to be systematically analyzed in order to address the legal issues under examination. This method is selected based on the nature of the research problem, which focuses on the legal regulation of *dwaling* or mistake in land sale and purchase agreements, its forms of application in practice, and the legal consequences arising when a land sale and purchase agreement is concluded on the basis of a defect of consent. Doctrinal legal research is relevant because it aims to identify, explain, interpret, and evaluate applicable legal norms, particularly in relation to the intersection between contract law and land law (Hutchinson & Duncan, 2012; Majeed, Hilal, & Khan, 2023).

The approaches used in this research consist of the statutory approach, conceptual approach, and case approach. The statutory approach is used to examine positive legal provisions concerning the validity requirements of agreements, defects of consent, sale and purchase, transfer of land rights, and the role of Land Deed Officials. Through this approach, the study examines, among others, Articles 1320, 1321, 1322, 1338, and 1457 of the Indonesian Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, and other provisions related to the implementation of the duties of Land Deed Officials. The statutory approach is necessary to determine the extent to which Indonesian positive law regulates *dwaling* in agreements and how such norms relate to the mechanism for transferring land rights.

The conceptual approach is used to construct an analytical framework concerning the concepts of *dwaling*, defect of consent, *error in substantia*, good faith, legal certainty, legal protection, good-faith buyers, and the precautionary principle of Land Deed Officials. This approach is important because the regulation of *dwaling* in the Indonesian Civil Code remains general in nature, requiring conceptual clarification to determine the boundary between an ordinary mistake and an essential mistake in land sale and purchase agreements. Through the conceptual approach, this study does not merely read legal norms textually, but also assesses the meaning, function, and doctrinal implications of defects of consent in land transactions (Negara, 2023).

The case approach is used to examine patterns in the application of norms concerning defects of consent in contractual disputes, particularly disputes related to sale and purchase or the transfer of land rights. This approach is not intended as empirical research into social behavior, but rather as an analysis of judicial reasoning and legal argumentation patterns in court decisions. The cases examined are positioned as materials for understanding how the element of mistake is assessed, how judges distinguish between formal consent and defective consent, and how legal consequences are determined when an agreement is proven to contain *dwaling*. Thus, the case approach is used to examine the consistency of the application of Articles 1321 and 1322 of the Indonesian Civil Code in the context of land sale and purchase agreements.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials

include relevant statutory regulations, court decisions, and official legal documents related to agreements, defects of consent, land registration, and the transfer of land rights. Secondary legal materials include scholarly journal articles, legal textbooks, research findings, and expert opinions discussing contract law, land law, the protection of good-faith buyers, and the responsibilities of Land Deed Officials. Tertiary legal materials are used as supporting materials, including legal dictionaries, legal encyclopedias, and legal indexes that assist in clarifying technical terms used in the research.

The technique for collecting legal materials is conducted through library research and document study. Library research is carried out by tracing relevant legal literature, particularly reputable journal articles, legal books, and research findings discussing defects of consent, *dwaling*, and land transactions. Document study is conducted by examining statutory regulations and court decisions relevant to the research object. All legal materials are then classified according to their relevance to the research problems, namely the legal regulation of *dwaling*, the forms of *dwaling* in land sale and purchase practices, and the legal consequences and settlement mechanisms. This step is necessary to ensure that the analysis is not merely descriptive, but also argumentative and problem-oriented.

The analytical technique used is juridical-qualitative analysis with a prescriptive-analytical pattern. Juridical-qualitative analysis is carried out by interpreting legal materials based on relevant norms, principles, doctrines, and judicial considerations. The prescriptive nature of the analysis is used because legal research is not only intended to describe applicable norms, but also to provide an assessment of whether the regulation and application of such norms have provided adequate legal certainty and protection for the parties. In this regard, the study assesses whether the provisions on *dwaling* in the Indonesian Civil Code are sufficient to resolve land sale and purchase disputes, or whether they still require strengthening through evidentiary standards, the precautionary principle, and the active role of Land Deed Officials.

Legal interpretation in this study is conducted through grammatical, systematic, and teleological interpretation. Grammatical interpretation is used to understand the textual meaning of provisions concerning defects of consent, particularly Articles 1321 and 1322 of the Indonesian Civil Code. Systematic interpretation is used to read these provisions in relation to other norms, such as the validity requirements of agreements, the principle of good faith, sale and purchase, land registration, and the authority of Land Deed Officials. Meanwhile, teleological interpretation is used to understand the protective purpose behind the regulation of defects of consent, namely to ensure that consent in an agreement truly arises from a free, conscious, and accurate understanding of the essential elements of the agreement.

To maintain analytical accuracy, this study applies a three-stage evaluation technique for legal materials. First, normative inventory is conducted to identify legal provisions governing agreements, defects of consent, and the transfer of land rights. Second, normative synchronization is carried out to assess the relationship between contract law under the Indonesian Civil Code and land law under the Basic Agrarian Law and its

implementing regulations. Third, legal argumentation is constructed to formulate the relationship between *dwaling*, the validity of agreements, the protection of good-faith buyers, and the responsibility of Land Deed Officials. Through these stages, the research is directed toward producing an analysis that not only explains legal norms, but also presents legally accountable academic arguments.

The limitation of this research lies in its normative focus. This study does not conduct interviews, surveys, or field data collection involving parties in land transactions. The cases used in this research are positioned as legal materials and juridical illustrations for examining the application of norms, rather than as empirical data intended to measure the frequency of *dwaling* disputes. Therefore, the term “phenomenon” in this study is understood as a legal phenomenon identified through norms, doctrines, literature, and court decisions, rather than as a statistical claim regarding the number of cases. This limitation is important to ensure that the research remains consistent with normative legal research and does not make empirical claims unsupported by field data.

Through this method, the study is expected to provide a sharper analysis of the position of *dwaling* in land sale and purchase agreements. This method enables the research to critically assess the relationship between formal consent and defective consent, between legal certainty and legal protection, and between the responsibilities of the parties and the role of Land Deed Officials in preventing mistake. The findings are expected not only to explain the applicable legal framework, but also to provide conceptual recommendations for strengthening legal protection in land transactions.

III. RESULTS AND DISCUSSION

Inventory of the Phenomenon of *Dwaling* in Land Sale and Purchase Agreements

The findings of this study show that *dwaling* or mistake in land sale and purchase agreements is an issue directly related to the quality of consent between the parties. Consent in an agreement cannot be proven merely through a signature or formal approval; it must arise from free will and a proper understanding of the essential elements of the agreement. In the context of land sale and purchase, mistake may occur when one party, particularly the buyer, gives consent based on incorrect or incomplete information regarding the land object being transferred. This is consistent with the position of Article 1321 of the Indonesian Civil Code, which places mistake, duress, and fraud as forms of defects of consent that may affect the validity of consent (Sugiasuti, Desmayanti, & Shahin, 2023).

The phenomenon of *dwaling* in land sale and purchase generally appears in two major forms, namely mistake concerning the physical data of land and mistake concerning the juridical data of land. Mistake concerning physical data may include errors regarding land area, land boundaries, location, physical condition, or factual circumstances of the land. Meanwhile, mistake concerning juridical data may include errors regarding the status of land rights, the authority of the seller, the existence of disputes, mortgage encumbrances,

or certain legal restrictions on land use. The difference between the information received by the buyer and the actual condition may become a basis for the emergence of a dispute if the mistake concerns an essential element that affects the buyer's decision to enter into the transaction.

From the perspective of contract law, mistake may serve as a basis for annulment only if it concerns an essential matter in the agreement. This means that not every error of information can immediately be qualified as *dwaling* resulting in the annulment of an agreement. Mistake must be assessed objectively, namely whether the error could reasonably affect the will of the party entering into the agreement. In land transactions, the elements of area, boundaries, status of rights, and the object's freedom from dispute are generally regarded as important aspects because they affect the economic value, certainty of ownership, and legal benefits of the land. Therefore, errors concerning these aspects may serve as a basis for examining the validity of consent in land sale and purchase agreements (Widia & Budiarta, 2022).

Chronology of Case I: Mistake Concerning Land Area and Boundaries

Mistake concerning land area and boundaries is one of the dispute patterns that frequently arises in the practice of land sale and purchase. In this pattern, the buyer approves the transaction based on information that the land has a certain area, but after the transaction is completed, it is discovered that the actual land area differs significantly. For example, the buyer agrees to the purchase price based on information that the land has an area of 500 m², but after re-measurement by the land authority, the actual area is found to be only 350 m². A difference of 150 m², or approximately 30% of the agreed area, cannot be regarded as a minor error because it directly affects the economic value and utility of the object of sale.

Juridically, mistake concerning land area and boundaries may be categorized as mistake concerning the substance of the contractual object if the land area becomes the main basis for the formation of the buyer's will. In land sale and purchase, the price is usually determined based on area, location, access, and the legal status of the land. Therefore, a significant difference in area indicates a discrepancy between the object imagined by the buyer and the object actually received after the transaction. This condition may indicate that the buyer's consent was not fully formed because it was given based on information that did not correspond to the actual circumstances.

In assessing such disputes, judges need to consider whether the buyer conducted a reasonable examination before the transaction and whether the seller knew or should have known of the difference in land area. If the seller provided incorrect information regarding the area while the buyer did not have adequate access to determine the actual condition, the argument of mistake becomes stronger. However, if the buyer had the opportunity to examine the land object but neglected to do so without proper reason, the claim of mistake may become weaker. This assessment is important because the law does not only protect the mistaken party, but also requires due care in land transactions (Larasati & Bakri, 2019).

Mistake concerning land area and boundaries also demonstrates the importance of accurate physical data in the land administration system. Land certificates, survey letters,

situation maps, and field measurement results should serve as the main instruments for preventing misperceptions regarding the object of sale. If physical data are not adequately examined before the sale and purchase deed is made, the potential for dispute will increase. Therefore, such cases show that *dwaling* does not stem solely from the relationship between seller and buyer, but is also related to orderly land administration and the quality of verification before the transaction is carried out.

Chronology of Case II: Mistake Concerning the Status of Land Rights

The second pattern is mistake concerning the status of land rights. In practice, a buyer may approve a transaction because they receive information that the land being purchased is under Hak Milik, or Right of Ownership, but after the transaction takes place, it is discovered that the land is actually under Hak Guna Bangunan, or Right to Build, Hak Pakai, or Right of Use, or another right with different characteristics, duration, and limitations. The difference in the status of rights is not merely an administrative matter, but concerns the substance of the right that constitutes the object of the agreement. Hak Milik has the strongest and hereditary character, whereas Hak Guna Bangunan has a limited period and requires procedures for extension or renewal.

Mistake concerning the status of land rights may affect the buyer's decision because the status of rights determines the certainty of control, economic value, and future use of the land. If a buyer purchases land on the assumption that it is under Hak Milik, while in fact it is only under Hak Guna Bangunan whose term is about to expire, then there is a fundamental difference between the object intended and the object obtained. In this context, the mistake may be qualified as *error in substantia* because it concerns the essential nature of the object of sale.

The analysis of this case pattern shows that examination of the status of rights is a crucial stage before a land sale and purchase is carried out. Buyers should not merely rely on oral statements from the seller, but must verify the status of the land through certificates, land office data, and other supporting documents. On the other hand, sellers have an obligation to provide accurate and non-misleading information regarding the status of land rights. If the status of rights is conveyed incorrectly or concealed, the consent arising from such transaction may be challenged on the basis of a defect of consent (Sugiasuti et al., 2023).

The role of the Land Deed Official, or PPAT, is highly important in this case pattern. The PPAT should examine the conformity of the juridical data of the land, including the type of right, the name of the right holder, the duration of the right, mortgage encumbrances, and any other notes that may affect the validity of the transaction. The precautionary principle in deed-making requires the PPAT not only to record the will of the parties into a deed, but also to ensure that the parties understand the legal status of the object being sold. If the precautionary principle is neglected, the deed made may become a source of dispute and potentially create legal liability for the official who made it (Saputra, 2022).

Chronology of Case III: Mistake Arising from Restrictions on Land Use

The third pattern is mistake arising because the buyer is unaware of restrictions on land use. In land transactions, a parcel of land may have a valid certificate, but it may not be used freely because of spatial planning provisions, river border areas, protected areas, green belts, limited access, or restrictions on building permits. If the buyer purchases the land with the intention of building a house, business premises, or commercial building, but later discovers that part or all of the land cannot be developed due to certain restrictions, this condition may cause mistake concerning the main utility of the object of sale.

Mistake in this pattern differs from mistake concerning land area or the status of rights. Formally, the land object may be correct, the certificate may be valid, and the seller may be registered as the right holder. However, the problem arises because the buyer does not obtain complete information regarding restrictions on land use. In such circumstances, mistake is not always caused by active deception by the seller, but may arise from the absence of disclosure of material information. Information regarding restrictions on land use is important because it may determine whether the land is suitable for the buyer's intended purpose.

From the perspective of the principle of good faith, the seller should not conceal important information that could reasonably affect the buyer's decision. Good faith requires not only that the parties refrain from committing fraud, but also that they act openly and do not take advantage of the other party's lack of knowledge. However, the buyer is also required to conduct proper examination of spatial plans, permits, and the factual condition of the land. Thus, the assessment of *dwaling* arising from restrictions on land use must be carried out in a balanced manner between the seller's duty of disclosure and the buyer's duty of care.

This case pattern shows that *dwaling* disputes in land sale and purchase often cannot be resolved merely by reading the content of a certificate. A certificate does provide certainty regarding the subject and object of a right, but it does not always contain all information concerning restrictions on land use. Therefore, preventing *dwaling* requires cross-document examination, including information on spatial planning, land utilization permits, road access, environmental conditions, and relevant regional regulations. In this context, preventive legal protection becomes more important than dispute settlement after the transaction has occurred.

Analysis of the Regulation of *Dwaling* under Indonesian Positive Law

The regulation of *dwaling* under Indonesian positive law is based on the general provisions of contract law in the Indonesian Civil Code. Article 1321 of the Indonesian Civil Code states that there is no valid consent if such consent is given because of mistake, duress, or fraud. This provision indicates that Indonesian contract law recognizes the importance of purity of will in the formation of consent. However, the regulation remains general and has not provided detailed parameters regarding the forms of mistake that may serve as a basis for annulling an agreement, particularly in the context of land transactions, which have special characteristics.

In the context of land sale and purchase, the absence of more specific regulation creates its own legal problems. Land

law primarily regulates the procedures for the transfer of rights, land registration, and the authority of deed-making officials, while contract law regulates the validity requirements of agreements and defects of consent in general. As a result, when a land sale and purchase dispute arises on the basis of *dwaling*, its resolution requires the combination of contract law norms and land law norms. This condition requires judges to interpret the law carefully so that they do not focus merely on the formal validity of the deed, but also consider whether the will of the parties was properly formed (Sugastuti et al., 2023).

The main weakness in the regulation of *dwaling* lies in the absence of a clear standard for determining an essential mistake. In practice, the party filing a claim for annulment must prove that the mistake concerns an essential element of the agreement, not a minor error that does not affect the decision to contract. In land sale and purchase, essential elements may include area, boundaries, status of rights, the authority of the seller, freedom from dispute, and the possibility of using the land according to the intended purpose. Without a clear standard, the assessment of *dwaling* depends heavily on the legal arguments of the parties and the judicial considerations in each case.

Analysis of the Phenomenon of *Dwaling* in the Practice of Land Sale and Purchase Agreements

The phenomenon of *dwaling* in land sale and purchase practice shows that disputes often occur because of weak verification of information before the transaction is conducted. Buyers often rely on the seller's statements or available documents without conducting a deeper examination of the physical and juridical data of the land. On the other hand, sellers do not always provide complete information, whether due to lack of knowledge, negligence, or the desire to expedite the transaction. This situation creates room for the formation of consent that appears formally valid, but is substantively based on incomplete information.

Another factor contributing to *dwaling* is weak legal literacy among the public in land transactions. Many buyers do not yet understand that land as an object of sale and purchase should not only be assessed from its location and price, but also from its status of rights, transfer history, boundaries, legal encumbrances, and spatial utilization plan. This limited knowledge makes buyers vulnerable to accepting information as it is. In such circumstances, protection for good-faith buyers becomes important, but such protection must still be linked to the buyer's obligation to act carefully and conduct a reasonable examination (Larasati & Bakri, 2019).

The phenomenon of *dwaling* is also related to the suboptimal role of PPAT as an instrument for dispute prevention. Normatively, PPAT has a strategic position because the deed it makes serves as the basis for the registration of the transfer of land rights. However, if the examination conducted is merely administrative and is not accompanied by adequate application of the precautionary principle, the potential for mistake remains open. The precautionary principle must be applied not only at the stage of document checking, but also at the stage of providing explanations to the parties so that they understand the object, status, and legal consequences of the transaction being carried out (Saputra, 2022).

In judicial practice, the issue of *dwaling* is also influenced by judges' attitudes in assessing defects of consent. There is a tendency for some judges to adopt a formalistic approach by emphasizing the existence of signatures, deeds, and written documents. This approach does support legal certainty, but it may ignore factual circumstances showing that the consent of one party was formed through mistake. Conversely, a substantive approach requires judges to assess the process of consent formation more comprehensively, including the information provided before the agreement, the position of the parties, and the relationship between the mistake and the decision to contract (Sugiasuti et al., 2023).

Analysis of the Legal Consequences of *Dwaling* in Land Sale and Purchase Agreements

The main legal consequence of a land sale and purchase agreement containing *dwaling* is that the agreement may be annulled by the court. An agreement arising from a defect of consent is not automatically null and void, but falls into the category of voidable agreements. This means that the agreement remains valid as long as no party files a claim for annulment and as long as there is no court decision declaring the agreement annulled. This consequence is important because *dwaling* does not automatically eliminate the legal effects of the agreement, but gives the injured party the right to seek annulment on the basis of a defect of consent.

In a claim for annulment of an agreement, the party alleging *dwaling* must prove that the mistake concerns an essential element of the agreement. Such proof is not sufficient merely by showing that there is a difference between expectations and reality after the transaction. The plaintiff must be able to explain that if the correct information had been known from the outset, they would not have given consent or at least would not have agreed to the agreement under the same terms. Thus, the causal relationship between the mistake and the formation of consent becomes an important element in proving *dwaling*.

If the court grants the claim for annulment, the legal consequence is that the parties should, as far as possible, be restored to their original position. In the context of land sale and purchase, this may include annulment of the deed, refund of payment, restoration of land status, or an order to carry out certain administrative actions in accordance with the court decision. In the study by Widia and Budiarta (2022), defects of consent under Article 1321 of the Indonesian Civil Code may be used as a basis for annulling a land sale and purchase agreement if it is proven that the agreement did not arise from free and proper will. This confirms that *dwaling* has practical implications for the legal relationship of the parties and is not merely a theoretical concept in contract law.

In addition to annulment, *dwaling* disputes may also result in claims for compensation if one party has suffered actual loss. Such claims may be brought if the mistake arose from actions of the other party who provided misleading information, concealed material information, or failed to fulfill the duty of care properly. In certain circumstances, *dwaling* may intersect with fraud or unlawful acts if there is an element of intent to create an erroneous understanding on the part of the other party.

Settlement and Prevention of *Dwaling* in Land Transactions

The settlement of *dwaling* disputes in land sale and purchase may be pursued through litigation or non-litigation mechanisms. Litigation is carried out by filing a claim for annulment of the agreement before the court on the basis of a defect of consent. This route is necessary when the parties cannot reach an agreement regarding the restoration of rights, refund of payment, or cancellation of the transaction. However, court settlement often requires time, costs, and complex evidentiary processes. Therefore, non-litigation settlement such as mediation may be a more efficient option if the parties still have room to negotiate.

Preventing *dwaling* is more important than resolving disputes after they arise. Preventive efforts may be carried out through a comprehensive examination of the physical and juridical data of the land before the agreement is made. This examination includes checking the certificate, measuring the land area and boundaries, tracing the ownership history, checking for disputes, checking mortgage encumbrances, and examining the conformity of land use with spatial planning regulations. Such examination forms part of the due diligence that should be conducted in every land transaction with significant legal and economic value.

PPAT has a central role in preventing *dwaling* because it is involved at an important stage before the transfer of rights is registered. PPAT needs to apply the precautionary principle consistently, not only by examining the completeness of documents, but also by ensuring that the parties understand the contents and legal consequences of the deed to be signed. In the making of deeds related to land sale and purchase, the precautionary principle includes examination of the identities of the parties, legal capacity, authority to act, certificate status, conformity of the object, and clarity of the parties' will (Saputra, 2022).

In addition to the role of PPAT, protection for good-faith buyers is also an important instrument for maintaining the balance between legal certainty and justice. Good-faith buyers need to be protected if they have purchased land through proper procedures, paid the price appropriately, and conducted a reasonable examination. However, such protection is not absolute. Buyers must still prove that they were not negligent and had taken precautionary steps before the transaction. This construction is important so that legal protection is not granted solely on the basis of subjective claims, but also on the basis of objective conduct showing due care in land transactions (Larasati & Bakri, 2019).

Based on the overall discussion, it can be affirmed that *dwaling* in the sale and purchase of land rights lies at the intersection between contract law and land law. From the perspective of contract law, *dwaling* relates to a defect of consent that may affect the validity of the agreement. From the perspective of land law, *dwaling* relates to the accuracy of physical and juridical land data, orderly land administration, and the responsibility of deed-making officials. Therefore, the settlement of *dwaling* should not be carried out merely by examining the existence of signatures or deeds, but must also consider the process of will formation, the quality of

information, the due care of the parties, and the role of PPAT in ensuring a valid, fair, and legally certain transaction.

IV. CONCLUSIONS

Based on the discussion above, it can be concluded that the legal regulation of *dwaling* or mistake in land sale and purchase agreements in Indonesia has not yet been adequately integrated. The Indonesian Civil Code has indeed regulated defects of consent as a basis for challenging the validity of an agreement, particularly through provisions concerning mistake, duress, and fraud. However, such regulation remains general in nature and has not specifically addressed the complexity of land transactions. On the other hand, land law tends to emphasize the administrative aspects of the transfer of rights, land registration, and the authority of land deed officials, and therefore has not fully provided clear parameters regarding the extent to which a mistake may serve as a basis for annulling a land sale and purchase agreement. This condition indicates the need to harmonize contract law and land law so that cases involving *dwaling* can be resolved in a more certain, fair, and consistent manner. The phenomenon of *dwaling* in land sale and purchase practices generally occurs due to a discrepancy between the information received by the buyer and the actual condition of the land being transferred. Such mistake may relate to the area and boundaries of the land, the status of land rights, the physical condition of the land, the existence of disputes, legal encumbrances, the authority of the seller, or restrictions on land use. This issue is not only caused by the low level of legal literacy among the public, but also by the suboptimal examination of physical and juridical data before the transaction is carried out. In certain circumstances, the weak preventive role of the Land Deed Official may also create room for mistake, particularly when document verification and explanations to the parties are conducted merely as a formality without adequate application of the precautionary principle. The legal consequence of a land sale and purchase agreement containing *dwaling* is that the agreement may be annulled at the request of the party who experienced the mistake. Such an agreement is not automatically null and void, but remains valid as long as there is no court decision declaring its annulment. Therefore, the party alleging *dwaling* must be able to prove that the mistake concerns an essential element of the agreement and substantially affected their will in giving consent. Dispute resolution may be pursued through litigation or non-litigation mechanisms, such as mediation, particularly where the parties still have the opportunity to achieve a more prompt, efficient, and proportional restoration of rights. As a recommendation, the reform of national civil law should be directed toward clarifying the regulation of defects of consent, particularly *dwaling* in land transactions. More specific regulation is needed to establish clearer standards regarding essential mistakes, the burden of proof, and the legal consequences arising when a land sale and purchase agreement is proven to have been concluded on the basis of mistake. In addition, the land registration system should continue to be strengthened through digitalization, data updating, and increased transparency of information so that prospective buyers may obtain accurate data concerning the status, area, boundaries, encumbrances, and history of the land

before entering into a transaction. Strengthening the professionalism of Land Deed Officials is also an important measure in preventing *dwaling*. Land Deed Officials must apply the precautionary principle in a more substantive manner, not merely by examining administrative completeness, but also by ensuring the clarity of the parties' identities, their authority to act, the legal status of the land object, and the parties' understanding of the contents and legal consequences of the deed to be signed. In addition, legal education for the public concerning safe land transactions should be carried out continuously so that people do not rely solely on trust or oral statements in land sale and purchase transactions. Through the strengthening of legal norms, land administration, the professionalism of Land Deed Officials, and public legal literacy, the potential occurrence of *dwaling* in land sale and purchase agreements can be minimized more effectively.

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