

A CRITICAL ANALYSIS OF THE INBRENG AGREEMENT BETWEEN PTPN II AND PT NUSA DUA PROPERTINDO FROM THE PERSPECTIVE OF DEFECTIVE CONSENT DOCTRINE: MISBRUIK VAN OMSTANDIGHEDEN

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Abstract. This article critically examines the *inbreng* agreement concerning land assets under Hak Guna Usaha (HGU/Right to Cultivate) from PTPN II to PT Nusa Dua Propertindo (PT NDP) from the perspectives of contract law, company law, land law, state-owned enterprise law, and the doctrine of defective consent in the form of abuse of circumstances (*misbruik van omstandigheden*). This study is motivated by the use of corporate instruments to optimize or transfer state-owned enterprise assets through capital contribution in the form of land, which is subsequently connected to the conversion of HGU into Hak Guna Bangunan (HGB/Right to Build), operational cooperation with property developers, and allegations of state financial losses. This research applies a normative legal method with descriptive-analytical specifications, using statutory, conceptual, and case approaches. The legal materials consist of primary, secondary, and tertiary legal materials, which are analyzed through qualitative juridical analysis. The findings indicate that *inbreng* is, in principle, a lawful legal act under Article 34 of the Indonesian Company Law, provided that it involves transferable objects, fair valuation, and proper corporate procedures. However, when the object of *inbreng* is HGU land belonging to a state-owned enterprise, its validity cannot be assessed merely on formal grounds. It must be substantively examined through the authority of corporate organs, the principles of good corporate governance, compliance with land law, the governance of state-owned enterprise assets, the state's entitlement arising from the conversion of HGU into HGB, and the quality of corporate consent. This article argues that *misbruik van omstandigheden* is relevant in assessing whether the consent to the *inbreng* was formed freely and proportionally, or instead resulted from the exploitation of special circumstances, such as pressure to optimize assets, dependency on development schemes, information asymmetry, conflicts of interest, and imbalance of economic benefits. If proven, the legal consequence may be the annulment of the agreement; whereas if the defect concerns the object or causa that is contrary to law, the agreement may be declared null and void, accompanied by the recovery of state assets.

Keywords: *inbreng*; state-owned HGU; abuse of circumstances; defective consent; state assets.

I. INTRODUCTION

A limited liability company is a legal entity established on the basis of a capital association. Within the legal construction of a company, capital is not always contributed in the form of money, but may also be contributed in other forms, provided that such contribution has economic value, can be valued in monetary terms, can be transferred, and is actually accepted by the company. In corporate practice, capital contribution in a form other than money is commonly referred to as *inbreng*. The object of *inbreng* may include land, buildings, machinery, shares, receivables, proprietary rights, or other rights that are legally and economically appropriate to be placed as part of the company's capital structure. Article 34 paragraphs (1), (2), and (3) of Law Number 40 of 2007 concerning Limited Liability Companies provides that payment for shares may be made in money and/or in other forms; if payment is made in a form other than money, its valuation must be based on fair value; and if the object of payment is immovable property, such payment must be announced in a newspaper within the period stipulated by law (Law Number 40 of 2007, Article 34 paragraphs (1)–(3)).

Normatively, *inbreng* is a lawful and neutral legal instrument. It may be used to strengthen the capital structure, optimize assets, and support business expansion. However, its neutral character becomes problematic when the object contributed is not an ordinary private asset, but land under Hak Guna Usaha (HGU/Right to Cultivate) managed by a State-Owned Enterprise (SOE). SOE HGU land cannot be positioned merely as a private corporate asset because it contains public dimensions, state interests, community interests, the principle of managing separated state assets, and restrictions under land law. Therefore, *inbreng* involving SOE HGU land cannot be assessed solely under company law, but must also be examined under SOE law, land law, administrative law, contract law, and the principles of protection of state finances and state assets.

The position of an SOE as a business entity in the form of a Persero creates a distinctive legal character. On the one hand, an SOE Persero is subject to the principles of a private legal entity, corporate organs, and business mechanisms as regulated under limited liability company law. On the other hand, SOE capital originates from separated state assets, so the management of its assets must still observe public

accountability, compliance with good corporate governance, and protection of state interests. The development of SOE regulation through amendments to Law Number 19 of 2003, including the most recent amendment through Law Number 16 of 2025, also indicates that SOE governance is increasingly directed toward the separation of supervisory and operational functions, the strengthening of accountability, and the affirmation of good corporate governance principles. In this context, every legal act that results in changes to ownership structure, transfer of economic benefits, or changes in the status of SOE assets must be placed within a stricter framework of examination than ordinary private transactions.

The case of PTPN II and PT Nusa Dua Propertindo (PT NDP) is relevant as an object of analysis because it demonstrates the complexity of the relationship between corporate legal acts, the management of SOE assets, changes in land-right status, and allegations of state financial losses. Based on publicly available information, the case concerns allegations of corruption in the management, sale, or transfer of assets of PTPN I Regional I by PT NDP through operational cooperation with PT Ciputra Land for the Citraland housing project. Trial reports also mention the approval of land *inbreng* from PTPN II to PT NDP as share capital contribution, asset write-off and transfer, as well as the issuance of Hak Guna Bangunan (HGB/Right to Build) over part of the land that was previously under HGU status (Kejaksaan Tinggi Sumatera Utara, 2025; IDN Times Sumut, 2026). Accordingly, *inbreng* in this case cannot be understood merely as an administrative corporate act, but as part of a series of transactions that raises questions concerning authority, fairness of value, balance of benefits, land-law compliance, conflicts of interest, and protection of state assets.

The issue becomes increasingly significant because the conversion of HGU into HGB carries its own legal consequences. HGU is essentially granted to cultivate land directly controlled by the state for certain activities, such as agriculture, plantations, fisheries, or livestock. HGB, by contrast, grants its holder the right to construct and own buildings on land that is not owned by the holder. The conversion of HGU into HGB, particularly when related to commercial property projects, does not merely alter the juridical status of land rights, but also substantially changes the economic function and market value of the land. Article 165 of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 provides that where the conversion of HGU occurs due to a revision of spatial planning, HGU shall be adjusted into HGB or Hak Pakai, with the obligation of the HGU holder to surrender at least 20% of the area of the converted HGU land to the state; where the HGU constitutes an asset of an SOE or a Regional-Owned Enterprise, the implementation shall be carried out in accordance with laws and regulations governing SOE or Regional-Owned Enterprise assets (Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021, Article 165). This norm affirms that the change in the status of SOE land rights contains a public dimension that cannot be ignored.

From the perspective of contract law, the central issue in an *inbreng* agreement does not merely concern the existence of a

deed, approval by the General Meeting of Shareholders, share recording, or administrative transfer. The more fundamental question is whether corporate consent in the agreement genuinely arose from free, conscious, proportional will and was based on adequate information. Article 1320 of the Indonesian Civil Code requires four elements for the validity of an agreement, namely consent, capacity, a specific object, and a lawful causa. Consent, as a subjective requirement, must arise from free will. Article 1321 of the Civil Code further affirms that no valid consent exists if it is given by mistake, obtained by coercion, or obtained through fraud (Indonesian Civil Code, Articles 1320–1321). However, developments in doctrine and judicial practice show that defective consent is not limited to mistake, coercion, and fraud as expressly formulated in the Civil Code.

Modern contract law recognizes the doctrine of abuse of circumstances or *misbruik van omstandigheden*. This doctrine is used to assess agreements that appear formally valid but are substantively formed from unequal bargaining positions, urgent circumstances, dependency, economic domination, information asymmetry, or the exploitation of one party's special circumstances. Several Indonesian legal studies show that *misbruik van omstandigheden* has been recognized in Indonesian doctrine and judicial practice as a ground for annulment of agreements, although it has not been explicitly regulated in the Civil Code (Clarins, 2022; Hernoko & Anand, 2017). Fidhayanti (2018) also emphasizes that abuse of circumstances is related to the loss of freedom of the weaker party in assessing and making decisions independently. Thus, this doctrine may be positioned as a corrective instrument against the principle of freedom of contract when applied in an overly formalistic manner.

The application of *misbruik van omstandigheden* in the corporate context requires a broader reading. A corporation does not possess psychological will as a natural person does, but it has juridical will formed through corporate organs, particularly the board of directors, board of commissioners, and the General Meeting of Shareholders. Therefore, defective corporate consent cannot be understood merely as an individual's internal condition, but must be traced through the corporate decision-making process, the quality of available information, the independence of corporate organs, compliance with procedures, the existence of conflicts of interest, and the balance of economic benefits. A corporate decision may be criticized as containing defective consent where it arises from a process that is non-transparent, not free, disproportionate, or embedded in a transaction structure that objectively places the SOE in a disadvantaged position.

At this point lies the urgency of this research. Studies on *inbreng* have generally been placed within the framework of company law and the registration of land-right transfers. Hamisa, Suryanti, and Rubiati (2018), for example, emphasize that the contribution of land as company capital must be carried out through the mechanism of a General Meeting of Shareholders, an authorized deed, and land-right transfer registration so that the land's status as part of company assets has legal certainty. Meanwhile, studies on *misbruik van omstandigheden* have generally discussed contractual relationships between parties with strong bargaining positions

and weaker parties in private agreements. There remains an underdeveloped area of study, namely the use of the doctrine of *misbruik van omstandigheden* to assess the quality of corporate consent in *inbreng* transactions involving SOE assets in the form of HGU land, which are subsequently related to the conversion of HGU into HGB and operational cooperation with private parties.

The novelty of this research lies in its attempt to connect three legal regimes that have often been discussed separately, namely company law concerning *inbreng*, land law concerning the conversion of HGU into HGB, and contract law concerning defective consent in the form of *misbruik van omstandigheden*. This research does not intend to prematurely conclude wrongdoing or criminal liability of any party, but rather to develop a normative legal argument to examine whether the *inbreng* agreement between PTPN II and PT NDP may be criticized as an agreement that formally satisfies corporate documents, yet substantively has the potential to contain imbalance of benefits, information asymmetry, conflicts of interest, and abuse of circumstances. Through this approach, this research is expected to contribute to the development of contract law, company law, SOE law, and land law, particularly in constructing a substantive testing model for SOE asset transactions that have implications for state interests.

Based on the foregoing background, the main issue in an *inbreng* agreement involving SOE HGU land does not only concern whether the formal requirements for capital contribution under the Limited Liability Company Law have been fulfilled. The more fundamental issue lies in whether the transaction has fulfilled the principles of corporate organ authority, fair value, compliance with SOE governance, land-law compliance, protection of state assets, and the quality of corporate consent free from abuse of circumstances. Accordingly, this research examines three legal issues: first, the legal construction of an *inbreng* agreement involving SOE-owned HGU land contributed to a subsidiary or affiliated entity from the perspectives of company law, SOE law, land law, and contract law; second, the parameters of the doctrine of *misbruik van omstandigheden* in assessing the quality of corporate consent in the *inbreng* agreement between PTPN II and PT Nusa Dua Propertindo; and third, the legal consequences and model of state asset protection where an *inbreng* agreement involving SOE HGU land formally satisfies corporate documents but substantively has the potential to contain imbalance of benefits, conflicts of interest, information asymmetry, and abuse of circumstances.

The theoretical framework of this research is built upon five main concepts. First, contract law theory concerning the requirements for a valid agreement. Article 1320 of the Civil Code places consent as one of the subjective requirements for the validity of an agreement. Such consent must arise from free will and must not be tainted by defective consent. If the defect concerns a subjective requirement, the legal consequence is that the agreement may be annulled. Conversely, if the defect concerns a specific object or lawful causa as an objective requirement, the legal consequence may be nullity by operation of law. Second, the concept of *inbreng* in company law, which permits capital contribution in forms other than money, provided that the object can be valued in monetary terms, is

valued based on fair value, and, for immovable property, is announced to the public. In the context of land, *inbreng* is also related to the validity of the transfer of rights and land registration. Therefore, land *inbreng* is not merely an act of capital contribution, but also a legal act that requires clarity of object, land-right status, party authority, economic value, and compliance with land procedures.

Third, this research uses the concept of separated state assets in SOEs. An SOE Persero is indeed subject to the regime of private legal entities, but its capital is related to separated state assets. The separation of state assets grants SOEs business capacity, but it does not eliminate the obligations of accountability, governance, supervision, and protection of state interests. Therefore, transactions involving SOE assets, especially strategic assets such as HGU land, must be examined with a higher standard of prudence than ordinary private asset transactions. Fourth, this research relies on land law theory concerning HGU and HGB. HGU and HGB are land rights with different characteristics, purposes, and legal consequences. HGU relates to the cultivation of land in certain fields, while HGB relates to the right to construct and own buildings. The conversion of HGU into HGB may result in a change of function and an increase in the economic value of land. Therefore, such conversion must be placed within the framework of compliance with land law, including the obligation to surrender part of the land to the state under conditions determined by laws and regulations.

Fifth, this research applies the doctrine of *misbruik van omstandigheden*. This doctrine assesses defective consent based on the existence of special circumstances that weaken one party, the other party's knowledge of such circumstances, the exploitation of those circumstances by the stronger party, imbalance of performance or benefits, and the causal relationship between the weakened circumstances and the formation of the agreement. In the corporate context, this doctrine is used to examine the quality of corporate consent through the decision-making process of corporate organs. Accordingly, corporate consent may be considered defective if the *inbreng* decision arises from pressure to optimize assets, dependency on a development scheme, information asymmetry, conflicts of interest, or a transaction structure that places the SOE in a disproportionate position.

II.

RESEARCH METHODS

This study employs a normative or doctrinal legal research method with descriptive-analytical specifications. Normative legal research was selected because the issue examined in this study centers on legal norms, legal principles, legal doctrines, the construction of agreements, and the relationship between company law, state-owned enterprise law, land law, and contract law in an *inbreng* agreement involving state-owned enterprise HGU assets. In doctrinal legal research, law is understood as a set of norms, principles, concepts, and juridical arguments that can be examined through legal materials in order to produce prescriptions for a legal issue (Hutchinson & Duncan, 2012; Smits, 2017). Therefore, this research is not directed at measuring the empirical behavior of the parties, but rather at assessing the legal construction, normative validity,

and legal consequences of the *inbreng* agreement in relation to the theory of defective consent in the form of *misbruik van omstandigheden*.

The specification of this research is descriptive-analytical. The descriptive aspect is used to describe the legal regulation of capital contribution in forms other than money, the legal status of state-owned enterprise assets, the status of HGU and HGB, and the requirements for the validity of agreements. The analytical aspect is used to examine the relationship between legal norms, interpret relevant legal principles, and assess whether an *inbreng* agreement involving state-owned enterprise HGU land may be criticized as an agreement that potentially contains defective consent. Thus, this study does not stop at describing legal norms, but seeks to develop legal arguments concerning the limits of the validity of *inbreng* involving state-owned enterprise assets and the parameters of abuse of circumstances in corporate decision-making.

The approaches used in this research consist of the statutory approach, conceptual approach, and case approach. The statutory approach is used to examine the Indonesian Civil Code, the Limited Liability Company Law, the State-Owned Enterprises Law and its amendments, the Basic Agrarian Law, Government Regulation Number 18 of 2021, Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 18 of 2021, as well as regulations concerning governance and significant corporate actions of state-owned enterprises. This approach is used to identify the synchronization, consistency, and relevance of norms governing capital contribution, the transfer or optimization of state-owned enterprise assets, and the change in land-right status.

The conceptual approach is used to examine the legal concepts that form the basis of the analysis, namely the concepts of *inbreng*, separated state assets, good corporate governance, HGU, HGB, the requirements for a valid agreement, defective consent, and *misbruik van omstandigheden*. This approach is important because the doctrine of *misbruik van omstandigheden* has not been explicitly regulated in the Indonesian Civil Code. Therefore, its argumentative construction must be developed through legal doctrine, scholarly opinions, developments in jurisprudence, and principles of contract law. The conceptual approach is also used to assess the quality of corporate consent, since the will of a company cannot be understood as individual psychological will, but rather as juridical will formed through corporate organs.

The case approach is used to examine the PTPN II–PT Nusa Dua Propertindo case as the object of normative analysis. This approach is not intended to prove criminal liability or to replace judicial examination, but rather to place publicly available legal facts within a normative analytical framework. Therefore, official releases from law enforcement agencies, trial reports, and public information regarding alleged release or transfer of assets are used as supporting factual materials to assess the relevance of the legal norms and doctrines discussed. If a court decision with permanent legal force is available, such decision may be used as primary legal material to strengthen the case analysis.

The type of data used in this research is secondary data. The secondary data consist of primary legal materials, secondary legal materials, tertiary legal materials, and supporting factual materials. Primary legal materials include relevant statutory regulations, among others the Indonesian Civil Code, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 19 of 2003 concerning State-Owned Enterprises as amended several times, Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 18 of 2021, Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 18 of 2021, and state-owned enterprise regulations concerning governance and significant corporate actions. Secondary legal materials include legal books, scholarly journals, academic articles, research findings, and expert opinions discussing contract law, company law, state-owned enterprise law, land law, and the doctrine of *misbruik van omstandigheden*. Tertiary legal materials include legal dictionaries, legal encyclopedias, and legal indexes used to clarify terms or concepts. Supporting factual materials include official releases from law enforcement institutions and trial reports, which are used in a limited manner to describe the context of the case.

The technique for collecting legal materials was conducted through library research and legal document tracing. Legal materials were collected by identifying relevant statutory regulations, tracing legal doctrines and academic literature concerning *inbreng* agreements and abuse of circumstances, and gathering public information regarding the PTPN II–PT Nusa Dua Propertindo case. Each legal material was then classified based on its relevance to the three main issues of this research, namely the legal construction of *inbreng* involving state-owned enterprise HGU land, the application of the doctrine of *misbruik van omstandigheden* to corporate consent, and the legal consequences and model for protecting state assets.

The legal materials were analyzed qualitatively and juridically by using systematic, conceptual, and prescriptive legal reasoning. Systematic analysis was conducted by interpreting the relationship between the legal norms of company law, state-owned enterprise law, land law, and contract law. Conceptual analysis was used to construct the parameters of *misbruik van omstandigheden* in the context of corporate decision-making. Prescriptive analysis was used to formulate the legal consequences and a model for protecting state assets where an *inbreng* agreement formally complies with corporate procedures but substantively has the potential to contain an imbalance of benefits, information asymmetry, conflicts of interest, or abuse of circumstances. The results of the analysis are then formulated to provide legal arguments concerning the limits of the validity of an *inbreng* agreement involving state-owned enterprise HGU land and the corrective measures that may be taken if the transaction is proven to contain defective consent or to be contrary to law.

III. RESULTS AND DISCUSSION

The Legal Construction of an *Inbreng* Agreement Involving State-Owned Enterprise HGU Land at the Intersection of Private Law and Public Law

Normatively, *inbreng* constitutes a lawful form of capital contribution in a limited liability company. Law Number 40 of 2007 concerning Limited Liability Companies does not limit capital contribution solely to money, but also allows contribution in other forms, provided that the object has economic value, can be valued in monetary terms, and can be included as part of the company's capital. This provision is consistent with the needs of modern business practice, as shareholder contributions in a company are not always made in cash, but may also take the form of land, buildings, machinery, shares, receivables, or other proprietary rights. However, because *inbreng* may affect the capital structure, shareholders' interests, creditors, and third parties, company law requires fair valuation and transparency, particularly where the object of contribution is immovable property (Republic of Indonesia, 2007).

In the context of land, *inbreng* is not merely an act of capital contribution, but also a legal act related to the transfer or alteration of land-right status. Hamisa, Suryanti, and Rubiati (2018) emphasize that the contribution of land as capital in a limited liability company must be carried out through a General Meeting of Shareholders, made by an authorized deed, and registered as a transfer of rights so that the land genuinely becomes part of the company's assets. Thus, land *inbreng* cannot be assessed solely on the basis of corporate approval, but must also be examined through the status of the object, the authority of the parties, the mechanism for transferring rights, and certainty in land registration. Without compliance with these aspects, the status of land claimed as capital contribution may give rise to legal uncertainty.

The issue becomes more complex when the object contributed is land under Hak Guna Usaha (HGU/Right to Cultivate) managed by a state-owned enterprise. Unlike land owned by individuals or ordinary private legal entities, HGU land owned by a state-owned enterprise has a dual legal character. On the one hand, a state-owned enterprise in the form of a Persero is a private legal entity subject to the regime of limited liability company law. On the other hand, a state-owned enterprise manages separated state assets and performs an economic function that remains connected to state interests. Therefore, legal acts concerning state-owned enterprise assets, especially strategic land assets, cannot be positioned merely as private commercial transactions. Such transactions must be understood as corporate acts that contain public, administrative, agrarian, and state financial dimensions.

The legal construction of *inbreng* involving state-owned enterprise HGU land must be examined through at least four layers of norms. The first layer is company law, which includes the authority of corporate organs, approval by the General Meeting of Shareholders, the validity of capital contribution, fair valuation, share recording, and compliance with deed formalities. Within this layer, *inbreng* is considered valid if it is carried out by an authorized party, based on proper corporate organ approval, and in compliance with Article 34 of the Limited Liability Company Law. The second layer is state-owned enterprise law, which includes asset governance, the principle of prudence, approval by the state as shareholder, compliance with regulations on significant corporate actions, and assessment of economic benefit for the state-owned

enterprise. The third layer is land law, which includes the status of HGU, the possibility of conversion into HGB, conformity with land-use designation, administrative land obligations, and the obligation to surrender a certain portion of land to the state where the normative requirements are fulfilled. The fourth layer is contract law, which includes the requirements for a valid agreement, lawful causa, specific object, free consent, and the absence of defective consent.

Failure to comply with one of these normative layers may render an *inbreng* transaction legally problematic. From the perspective of company law, an *inbreng* may appear valid because it is supported by a deed, corporate organ resolution, and share recording. However, from the perspective of state-owned enterprise law, the transaction may still be challenged if it is not supported by a benefit assessment, independent valuation, proper approval, or a rational business justification. From the perspective of land law, the transaction may also be questioned if the conversion of HGU into HGB fails to comply with statutory requirements or disregards obligations to the state. From the perspective of contract law, the transaction may be challenged if corporate consent was formed under circumstances that were not free, transparent, proportional, or free from conflicts of interest.

Within this framework, the business judgment rule cannot be used absolutely to protect every business decision made by directors of state-owned enterprises. Protection of directors' decisions is relevant only where such decisions are made in good faith, with prudence, in the interest of the company, based on adequate information, and without conflicts of interest. This principle is consistent with Article 97 of the Limited Liability Company Law, which places directors as corporate organs responsible for the management of the company and subject to liability where they are at fault or negligent in performing their duties (Republic of Indonesia, 2007). In modern corporate governance standards, the OECD also emphasizes that a corporate governance framework should help ensure corporate direction, performance oversight, and accountability of corporate organs (OECD, 2023). For state-owned enterprises, this standard becomes even more important because business decisions are not only related to shareholders' interests, but also to public and state interests.

In the case of PTPN II and PT Nusa Dua Propertindo, the use of *inbreng* must be examined to determine whether it genuinely constituted an instrument for asset optimization or instead became a means of transferring economic benefits from a state-owned enterprise to another entity. This distinction is crucial. Asset optimization is a lawful business action where it produces measurable added value for the state-owned enterprise, is based on objective assessment, and provides proportional economic benefit. Conversely, the disproportionate transfer of economic benefits may give rise to legal issues, ranging from violations of corporate governance and unlawful acts to potential corruption offenses where state financial losses arise.

One sensitive point in the case is the write-off of assets. Based on reporting that refers to the prosecutor's indictment, following the *inbreng* of PTPN II's HGU land to PT NDP, PTPN II wrote off the HGU assets from the company's asset records (IDN Times Sumut, 2026). Asset write-off cannot be

regarded as an ordinary administrative act. It changes the position of assets in the state-owned enterprise's balance sheet and affects control, economic benefits, and asset supervision. Therefore, the write-off of state-owned enterprise assets must be supported by a legal basis, valid approval, objective valuation, and accountable benefit justification. If the write-off occurs after an *inbreng* whose value or benefit is disproportionate, such write-off may strengthen indications that state-owned enterprise assets have been released without adequate legal protection.

From the perspective of land law, the conversion of HGU into HGB also cannot be separated from the original purpose of granting HGU. HGU is granted for the cultivation of land for certain activities, including agriculture, plantations, fisheries, or livestock. If the land is later converted into HGB for commercial property purposes, there is a change in function, economic orientation, and land value. Article 165 of Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 18 of 2021 should be read as a control instrument to ensure that the change in land status originating from HGU is not merely capitalized by the right holder or private parties, but continues to take state interests into account. Where the land constitutes an asset of a state-owned or region-owned enterprise, the provision also affirms the need to connect land law with the legal regime governing state-owned enterprise assets.

Accordingly, the analysis in this section shows that *inbreng* involving state-owned enterprise HGU land cannot be constructed as an ordinary private capital contribution agreement. It is a corporate legal act located at the intersection of private law and public law. Its validity must be examined through multiple layers: validity under company law, compliance with state-owned enterprise governance, conformity with land law, and freedom from defective consent. Formal examination through deeds and corporate organ resolutions is insufficient where, substantively, the transaction contains imbalance of benefits, information asymmetry, or potential abuse of circumstances.

Parameters of *Misbruik van Omstandigheden* in Assessing the Quality of Corporate Consent

The doctrine of *misbruik van omstandigheden*, or abuse of circumstances, emerged as a correction to an overly formalistic understanding of freedom of contract. In the classical paradigm, an agreement is often deemed to have arisen from free consent as long as there is approval and signatures from the parties. In reality, however, formal consent does not always reflect freedom of will. A party consenting to an agreement may be under pressure, economically dependent, lacking adequate information, or in an unequal position vis-à-vis the other party. Therefore, modern contract law requires an instrument to assess the quality of consent substantively.

In Indonesian law, abuse of circumstances has not been explicitly regulated in the Civil Code. Article 1321 of the Civil Code only mentions mistake, coercion, and fraud as forms of defective consent. Nevertheless, Indonesian doctrine and judicial practice have recognized *misbruik van omstandigheden* as a ground for annulment of agreements beyond those three forms of defective consent. Clarins (2022)

shows that the doctrine of abuse of circumstances has been recognized in Indonesia through court decisions, although its application remains inconsistent due to the absence of uniform parameters. Hermoko and Anand (2017) also position abuse of circumstances as an instrument for limiting freedom of contract in Indonesian judicial practice. Thus, this doctrine may be used as an analytical tool for agreements that appear formally valid but are substantively born from unequal circumstances.

Conceptually, *misbruik van omstandigheden* may be formulated through several elements. First, there must be special circumstances that weaken one party. Such circumstances may include economic pressure, urgent need, dependency, lack of information, domination by another party, or transactional complexity. Second, the other party knows or ought to know of those special circumstances. Third, the stronger party exploits those circumstances to induce the formation of the agreement. Fourth, the content of the agreement creates an imbalance of performance or an unreasonable benefit. Fifth, there is a causal relationship between the weakened circumstances and the formation of consent. If these five elements are fulfilled, the consent arising from the agreement cannot be regarded as fully free consent.

The application of this doctrine to corporations requires adaptation. A corporation does not possess psychological will as a natural person does. A corporation has juridical will formed through its corporate organs, especially the board of directors, board of commissioners, and General Meeting of Shareholders. Therefore, defective corporate consent must be traced through the decision-making process rather than through an individual's inner psychological condition. The parameters to be examined include whether the corporate organs obtained complete information, whether there was adequate risk assessment, whether there was independent valuation, whether conflicts of interest existed, whether the decision was made transparently, and whether the economic benefit received by the company was proportionate to the assets released.

In the context of PTPN II and PT NDP, the first special circumstance that can be examined is the pressure to optimize assets. Plantation state-owned enterprises often face problems involving unproductive assets, changes in spatial planning, land occupation by third parties, capital limitations, and the need to increase the economic value of assets. Such circumstances may encourage a state-owned enterprise to accept a development scheme that appears formally rational. However, these circumstances may also create room for abuse if another party exploits the pressure to optimize assets in order to structure a transaction that is more beneficial to itself. In other words, the need of a state-owned enterprise to optimize assets must not be used as a reason to disregard objective valuation, asset protection, and proportionality of benefits.

The second special circumstance is information asymmetry. Property developers or parties experienced in land commercialization generally possess better information regarding the prospective value of land after the conversion of HGU into HGB, potential increases in area value, sales projections, and long-term profits. If the state-owned enterprise values the land only based on its value at the time of

inbreng, while another party obtains benefits from the increase in value after the change of land-right status and commercial development, legally relevant information asymmetry arises. This information asymmetry may become an entry point for abuse of circumstances where the party possessing stronger information knows the position of the state-owned enterprise and continues to promote a disproportionate transaction structure.

The third special circumstance is the affiliated relationship between a parent company, subsidiary, and third parties. Affiliation is not automatically unlawful. In business practice, the use of subsidiaries may serve as an instrument of efficiency, business specialization, and asset development. However, in transactions involving state-owned enterprise assets, affiliated relationships must be examined strictly because they may create the illusion that a transaction is safe merely because it is carried out within the same corporate ecosystem. In reality, a subsidiary has its own interests, organs, and contractual relationships, including the possibility of cooperation with private parties. Therefore, *inbreng* transactions involving subsidiaries or affiliated entities must be assessed as transactions potentially containing conflicts of interest, especially where the ultimate economic benefit flows more substantially to third parties.

The fourth special circumstance is regulatory complexity. The conversion of HGU into HGB, the obligation to surrender a portion of land to the state, the write-off of state-owned enterprise assets, non-cash capital contribution, and operational cooperation are technical issues requiring legal, economic, land, and governance expertise. Such complexity may be exploited by parties with a better understanding of transaction structures to create an agreement that appears formally lawful but is substantively detrimental to another party. In the context of abuse of circumstances, pressure does not always appear as direct coercion. Abuse may arise through transaction designs that are complex, technical, non-transparent, and difficult for stakeholders to examine.

Based on these parameters, the application of *misbruik van omstandigheden* to the *inbreng* involving PTPN II and PT NDP can be tested through several normative questions. Did PTPN II have alternative schemes for asset optimization other than *inbreng* to PT NDP? Did the land valuation account for the prospective value after the conversion of HGU into HGB? Did PTPN II receive shares or economic benefits proportionate to the assets contributed? Were land-law risks and the obligation to surrender part of the land to the state properly considered? Did the corporate organs obtain complete information before approving the transaction? Were there conflicts of interest in the approval process? Did the beneficiary party know PTPN II's position and nevertheless promote an imbalanced transaction structure?

If the answers to these questions indicate significant imbalance, the *inbreng* agreement deserves criticism from the perspective of defective consent. This criticism does not mean that every *inbreng* of state-owned enterprise assets is automatically invalid. What is questioned is an *inbreng* arising from circumstances that weaken the state-owned enterprise, are unsupported by adequate information, fail to produce proportional benefits, or involve exploitation of special

circumstances by a stronger party. Thus, *misbruik van omstandigheden* functions as a substantive test of the quality of corporate consent.

The analysis in this section shows that the doctrine of *misbruik van omstandigheden* can be applied in the corporate context by positioning corporate consent as juridical consent formed through corporate organs. Such consent may be considered defective if the decision of corporate organs arises from institutional pressure, information asymmetry, economic dependency, conflicts of interest, or a disproportionate transaction structure. In transactions involving state-owned enterprise assets, this approach is important to prevent legal formalism that assesses validity only on the basis of deeds and corporate organ resolutions while disregarding the substantive quality of consent.

Legal Consequences and a Model for Protecting State Assets in *Inbreng* Agreements Involving State-Owned Enterprise HGU Land

The legal consequences of a problematic *inbreng* agreement depend on the type of defect identified. If the defect lies in consent, namely where consent is formed through an abuse of circumstances, the agreement may in principle be annulled. This is because defective consent relates to the subjective requirement for the validity of an agreement. The agreement remains in existence and binding until annulled by a court. This construction is consistent with the distinction under Article 1320 of the Civil Code between subjective and objective requirements. Defects in consent or capacity render an agreement voidable, whereas defects in a specific object or lawful causa may render an agreement null and void.

If the defect concerns the object or causa, the legal consequence is more serious. An agreement may be deemed null and void if the object of the *inbreng* cannot be transferred, if the release or change of rights violates land law, if the write-off of assets is carried out without authority, or if the transaction structure is used to avoid legal obligations to the state. Article 1337 of the Civil Code provides that a cause is prohibited if it is prohibited by law, contrary to morality, or contrary to public order. Therefore, if an *inbreng* involving state-owned enterprise HGU land is proven to contradict land law, state-owned enterprise asset governance, or public obligations attached to the change of land status, the issue does not only fall within the realm of defective consent, but may also concern unlawful causa or an improper object.

In the case of PTPN II and PT NDP, these two paths of legal consequence can be examined in parallel. The first path is the civil-contractual path, namely annulment of the agreement if it is proven that the *inbreng* consent arose from abuse of circumstances. The second path is the objective path, namely nullity by operation of law if it is proven that the object, causa, or transaction structure violates land law, state-owned enterprise law, or administrative law. In addition, if state financial losses and criminal elements are proven, a corruption law pathway may proceed without eliminating the need for civil and administrative recovery. Accordingly, the analysis of legal consequences must not be reduced to whether the deed is valid, but must also include asset recovery, accountability of corporate organs, and correction of governance.

Asset recovery becomes a central issue in transactions involving state-owned enterprise assets. In cases concerning state assets, annulment of the agreement alone is insufficient. Further measures are required, including correction of asset records, return of land, adjustment of shareholding structure, restitution of state financial losses, cancellation or revision of operational cooperation, and restoration of state rights over land whose status has changed. Public information from the Prosecutor's Office indicates that in the alleged corruption case concerning the sale of PTPN Regional assets by PT NDP through an operational cooperation scheme with PT Ciputra Land, the recovery of state financial losses formed part of the law enforcement process (Attorney General's Office of the Republic of Indonesia, 2025). This fact shows that the recovery dimension cannot be separated from the legal assessment of state-owned enterprise asset transactions.

From the perspective of corporate organs, directors and commissioners may be held liable if they fail to fulfill their fiduciary duties. Directors of a state-owned enterprise Persero cannot simply show that the transaction obtained formal approval. They must be able to prove that the decision was made in good faith, with prudence, in the interest of the company, based on sufficient information, without conflicts of interest, and accompanied by measures to prevent losses. If these elements are not fulfilled, the business decision does not deserve protection under the business judgment rule. In strategic transactions, particularly those involving state-owned enterprise HGU land, the directors' standard of prudence must be higher because the transaction object has significant economic value, land-law consequences, and implications for state interests.

From the perspective of notaries and Land Deed Officials, the making of an *inbreng* deed involving state-owned enterprise assets also requires a higher standard of prudence. Notaries and Land Deed Officials should not merely verify the identity of the appearers and their formal authority. In transactions involving state-owned enterprise assets, the examination must include the status of land rights, the basis of corporate organ approval, authority to write off or transfer assets, fair valuation, potential disputes, land-law obligations, and indications of conflicts of interest. An authentic deed must not become an instrument that legitimizes a substantively defective transaction. Therefore, the function of notaries and Land Deed Officials in *inbreng* transactions involving state-owned enterprise HGU land is not merely administrative, but also preventive in maintaining legal certainty and preventing abuse of corporate instruments.

To prevent similar problems from recurring, this study proposes a model for testing the protection of state assets in *inbreng* agreements involving state-owned enterprise HGU land. This model consists of eight tests. First, the authority test, which ensures that the directors, commissioners, General Meeting of Shareholders, minister, or authorized state shareholder have granted approval in accordance with applicable provisions. Second, the object test, which ensures that HGU can serve as the object of the transaction and is not subject to legal restrictions or disputes that prevent transfer or conversion of rights. Third, the fair value test, which ensures that valuation is conducted by an independent appraiser and

does not only calculate the land value at the time of *inbreng*, but also accounts for prospective value after conversion from HGU into HGB.

Fourth, the corporate benefit test, which ensures that the state-owned enterprise obtains economic benefits proportionate to the assets released. Such benefits may take the form of shares, profit sharing, increased company value, or other objectively measurable benefits. Fifth, the public compliance test, which ensures that obligations to the state, including land-related obligations, taxes, levies, and the obligation to surrender a portion of land where required, have been fulfilled before commercial cooperation proceeds. Sixth, the conflict-of-interest test, which ensures that affiliated transactions or cooperation with private parties are transparently disclosed and approved through the proper mechanism.

Seventh, the free consent test, which ensures that the *inbreng* decision does not arise from pressure of circumstances, dependency, information asymmetry, or exploitation of the weakened position of the state-owned enterprise. This test constitutes the direct application of the doctrine of *misbruik van omstandigheden* in the corporate context. Eighth, the recovery test, which ensures the existence of clauses and corrective mechanisms if the transaction is later proven to be defective, detrimental to the state-owned enterprise, or contrary to legal provisions. Recovery clauses may include asset return, adjustment of share value, compensation, cancellation of cooperation, or transaction restructuring.

This testing model demonstrates that the protection of state assets must operate from the planning stage of a transaction, not only after losses occur. The more strategic the asset contributed, the higher the standard of prudence that must be applied. In the context of state-owned enterprise HGU land, such standards must include legal due diligence, asset audits, independent valuation, economic benefit assessment, land-law risk assessment, conflict-of-interest assessment, and transparent corporate organ approval. Thus, law does not merely function repressively after a dispute or state loss occurs, but also preventively in controlling the risk of abuse of corporate instruments.

The analysis in this section shows that the legal consequences of *inbreng* involving state-owned enterprise HGU land may take the form of annulment if abuse of circumstances is proven, and nullity by operation of law if the defect concerns the object or causa that is contrary to law. In the context of state-owned enterprise assets, the ideal legal consequence should not stop at annulment of the agreement, but must include asset recovery, restitution of state financial losses, accountability of corporate organs, strengthening the role of notaries and Land Deed Officials, and reforming the governance of strategic state-owned enterprise asset transactions.

IV. CONCLUSIONS

Based on the discussion, it can be concluded that an *inbreng* agreement involving state-owned enterprise HGU land cannot be positioned as an ordinary private capital contribution agreement. Although Article 34 of the Indonesian Company Law allows capital contribution in forms other than money,

HGU land owned by a state-owned enterprise has a more complex legal character because it is related to separated state assets, state control over land, state-owned enterprise governance, and the protection of state finances. Therefore, the validity of an *inbreng* involving state-owned enterprise HGU land cannot be assessed merely on formal grounds through the existence of a deed, corporate organ approval, and share recording. It must also be substantively examined through company law, state-owned enterprise law, land law, contract law, and the principles of good corporate governance.

The doctrine of *misbruik van omstandigheden* is relevant as a legal instrument to examine the quality of corporate consent in the *inbreng* agreement between PTPN II and PT Nusa Dua Propertindo. In the corporate context, defective consent is not merely understood as an individual psychological impairment, but as a defect in the decision-making process of corporate organs. Corporate consent may be considered not fully free if the *inbreng* decision was made under unequal, non-transparent circumstances, marked by information asymmetry, conflicts of interest, or the exploitation of pressure to optimize state-owned enterprise assets. Thus, abuse of circumstances in corporate transactions does not always take the form of direct coercion. It may also arise through a transaction structure that is formally valid but substantively places the state-owned enterprise in a disproportionate position.

The legal consequence of an *inbreng* agreement containing abuse of circumstances is, in principle, that the agreement may be annulled because it concerns a defect in the subjective requirement of a valid agreement. However, if the defect concerns the object or causa, for example where the object cannot be transferred, the change of land status violates land law, or the transaction structure is used to avoid obligations to the state, the legal consequence may be nullity by operation of law. In the context of state-owned enterprise assets, the ideal legal consequence should not stop at the annulment of the agreement, but must also include asset recovery, restitution of state financial losses, correction of corporate records, accountability of corporate organs, and strengthening the governance of strategic asset transactions.

First, every *inbreng* agreement involving state-owned enterprise assets in the form of HGU land must be preceded by legal due diligence, asset audits, independent valuation, economic benefit assessment, land-law risk assessment, and conflict-of-interest assessment. These documents must serve as the basis for decision-making by corporate organs so that approval of the *inbreng* is not only formally valid, but also reflects rational, free, transparent, and accountable corporate consent.

Second, the Ministry of State-Owned Enterprises and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency need to establish a special coordination mechanism for state-owned enterprise asset transactions involving the conversion of HGU into HGB, particularly where such conversion is directed toward commercial property projects. Such coordination is necessary to ensure that changes in land-right status do not disregard obligations to the state, do not result in a disproportionate transfer of economic benefits, and do not reduce legal protection over state-owned enterprise assets.

Third, notaries and Land Deed Officials involved in preparing *inbreng* deeds for state-owned enterprise assets must apply a higher standard of prudence. Their examination should not stop at verifying the identity and formal authority of the appearers, but must also cover the status of the land object, the basis of corporate organ approval, authority to transfer or write off assets, independent valuation results, land-related obligations, potential disputes, and indications of abuse of circumstances. Accordingly, an authentic deed should not become an instrument that legitimizes a transaction that is substantively defective.

Fourth, courts need to develop clearer parameters for applying *misbruik van omstandigheden* in corporate cases, particularly transactions involving state-owned enterprises and strategic state assets. These parameters should at least include information asymmetry, institutional pressure, economic dependency, conflicts of interest, complexity of transaction structure, and imbalance of economic benefits. The development of such parameters is important so that the doctrine of abuse of circumstances is not applied only to individual contractual relationships, but can also be used to examine the quality of corporate consent in transactions affecting the public interest.

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