

## Abuse of Power in Land Sale and Purchase Agreements and Its Legal Impact

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**Abstract.** Land is a strategic asset with high economic, social, and legal value, so that every transfer of land rights must be carried out legally and guarantee legal certainty. In land sales and purchases, granting power of attorney is often used to facilitate the implementation of legal acts. However, this power of attorney relationship, which is based on the principles of trust and good faith, often gives rise to legal problems due to abuse of authority by the recipient of the power of attorney. Abuse of power of attorney in a land sale and purchase agreement has the potential to create a defect in will, violate the principle of good faith, and disrupt the validity of the agreement and the transfer of land rights. This study aims to analyze the abuse of power of attorney in a land sale and purchase agreement from a conceptual and legal perspective, and to examine its legal impact on the validity of the agreement and legal protection for the parties. The research method used is normative juridical with a statutory and conceptual approach, and uses primary, secondary, and tertiary legal materials. The results of the study indicate that abuse of power of attorney is a legal defect that can result in the land sale and purchase agreement being void or being canceled, and creates legal uncertainty regarding the transfer of land rights and certificates. Therefore, it is necessary to clarify the limits of power of attorney, apply the principle of prudence, and have an active role for PPAT and judges to guarantee legal protection and legal certainty in land sale and purchase transactions.

**Keywords:** Abuse of power, buying and selling land, validity of agreements, legal protection.

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### 1. Introduction

Land is a resource that holds a very strategic position in human life, from an economic, social, and legal perspective. In social life, land serves as a place to live, a source of livelihood, and a means for carrying out economic and cultural activities.<sup>1</sup> From an economic perspective, land has a continuously increasing value and is often used as an investment and as a financial guarantee. Meanwhile, from a legal perspective, land is an object of rights whose control is strictly regulated by the state to ensure order, justice, and legal certainty for all citizens. The importance of land in social life makes it directly related to the fulfillment of citizens' basic rights.<sup>2</sup> Land rights serve as a means to achieve prosperity, security of residence, and the survival of individuals and families.<sup>3</sup> Therefore, land conflicts and disputes often have far-

<sup>1</sup> Rasyidi and Mudemar A, "Hukum Tanah Adalah Hukum Yang Sangat Penting, Dibutuhkan Oleh Masyarakat/Bangsa Indonesia Di Dalam Kehidupan Sehari-Hari," *Jurnal Mitra Manajemen* 12, no. 2 (2021): 53–60, <https://doi.org/10.35968/jmm.v12i2.747>.

<sup>2</sup> Irwant et al., *Hukum Agraria* (CV Eureka Media Aksara, 2025).

<sup>3</sup> Suartining and Djaja, "Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960."



reaching impacts, not only on individual interests but also on social stability and public order. This situation demands legal regulations capable of providing effective legal protection for land rights holders.

The state, as the highest power organization, has the constitutional authority to regulate the control, use and utilization of land through national land law.<sup>4</sup> Through these regulations, the state is obligated to guarantee legal certainty, justice, and protection of community rights to land. This principle is reflected in land policies, which position the law as a controlling instrument to ensure that land use does not harm the public interest or the rights of other parties. One of the most common forms of land use and control in legal practice is the transfer of rights through a land sale and purchase agreement. Land sale and purchase is a civil legal act and is the primary mechanism for transferring ownership rights from one legal entity to another.<sup>5</sup> The high intensity of land buying and selling transactions is in line with the community's need for certainty of land ownership status as part of legal certainty and protection of property rights.

However, buying and selling land cannot be conducted as simply as buying and selling movable property in general. The validity of a land sale and purchase agreement must meet the requirements for a valid agreement as stipulated in civil law, namely, agreement, capacity of the parties, a specific object, and a lawful cause.<sup>6</sup> Furthermore, land sales and purchases must comply with specific provisions of land law, including the obligation to create authentic deeds and register transfers of rights to ensure legal certainty for the parties. In this context, the role of the Land Deed Official (PPAT) is crucial. PPATs function as public officials authorized to create authentic deeds for certain legal acts related to land rights. The existence of PPATs is not merely administrative but also plays a crucial role in ensuring orderly land law, preventing disputes, and ensuring that transfers of land rights are carried out in accordance with applicable laws and regulations.<sup>7</sup>

As societal needs evolve, land sales and purchases often involve the granting of power of attorney from one party to another. This granting of power of attorney is a practical solution when the parties concerned cannot be present in person during the transaction, either due to time constraints, distance, or other circumstances. With this power of attorney, legal proceedings can proceed without impeding the interests of the parties. However, granting power of attorney in land sales and purchases has complex legal implications. Legally, a power

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<sup>4</sup> Iwan Permadi, "Konstitusionalitas Keberadaan Bank Tanah Dalam Pengelolaan Dan Penguasaan Atas Tanah Oleh Negara," *JURNAL USM LAW REVIEW* 6, no. 1 (2023): 291–309, <https://doi.org/10.26623/julr.v6i1.6678>.

<sup>5</sup> Amir and Arivan, "Pengalihan Hak Penguasaan Tanah Menurut UUPA Dalam Rangka Pendaftaran Tanah Pertama Kali," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 2019, 51–65, <https://doi.org/10.28946/rpt.v8i1.311>.

<sup>6</sup> Indarta et al., "Pemisahan Kepemilikan Tanah Dan Bangunan Dalam Perjanjian Jual Beli Ditinjau Dari Pasal 1320 Kuh Perdata."

<sup>7</sup> Wahid et al., "Kekuatan Alat Bukti Akta Otentik Terhadap Akta Pejabat Pembuat Akta Tanah (PPAT) Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2016 Juncto Pasal 1868 KUHP Perdata," *Mahkamah: Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 205–19, <http://dx.doi.org/10.24235/mahkamah.v4i2.5372>.



of attorney is a fiduciary relationship, in which the recipient of the power of attorney is obligated to act on behalf of and for the benefit of the grantor.<sup>8</sup> Therefore, the use of power of attorney in land sales and purchases must be carried out carefully so as not to cause abuse of authority or loss to the party granting the power of attorney.

The principle of good faith is a fundamental principle in the implementation of a power of attorney. The power of attorney is obliged to exercise their authority within the given limits and not deviate from the purpose of the power of attorney. In practice, power of attorney often becomes a source of legal problems, especially when used to deceive other parties or circumvent land law provisions, thus potentially giving rise to disputes and legal uncertainty. While power of attorney in land sales practices is intended to provide convenience for the parties, it also opens up room for abuse of authority by the power of attorney. Legal relationships based on trust have the potential to be abused if not accompanied by clear limitations on authority and adequate supervision. In practice, abuse of power often occurs when the power of attorney acts inconsistently with the wishes of the power of attorney or exceeds the limits of authority expressly granted in the power of attorney.

One form of irregularity that is often encountered in land transactions is the actions of the power of attorney that exceeds its authority, such as transferring rights at a value that has not been agreed upon, transferring land to another party without the consent of the power of attorney, or using power of attorney for personal gain.<sup>9</sup> Furthermore, the practice of using absolute power of attorney, which is expressly prohibited by national land law, is still common in society. Absolute power, which essentially transfers rights covertly, contradicts the principle of legal certainty and opens up opportunities for manipulation in the transfer of land rights. This abuse of power not only raises ethical issues but also becomes a serious legal problem. Actions by the power of attorney that deviate from their authority have the potential to cause harm to both the principal and good-faith third parties. These losses can include loss of land rights, economic losses, and even the emergence of protracted legal disputes. In the context of civil law, abuse of power can create a flawed will in the agreement, thus contradicting the principles of freedom of contract and good faith.<sup>10</sup>

Within the framework of the National Land Law, the regulation on the transfer of land rights cannot be separated from Law Number 5 of 1960 on the basic agrarian principles (UUPA) as a fundamental foundation. The UUPA affirms that any transfer of land rights must

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<sup>8</sup> Andryawan Andryawan et al., “Akibat Hukum Penyalahgunaan Surat Kuasa Melampaui Kewenangan Yang Diberikan Berdasarkan Hukum Perdata Di Indonesia (Putusan Pengadilan Cirebon Nomor 104/PDT.G/2012/PN.Cbn),” *Ranah Research : Journal of Multidisciplinary Research and Development* 7, no. 1 (2024): 133–41, <https://doi.org/10.38035/rrj.v7i1.1236>.

<sup>9</sup> Pastika et al., “Tinjauan Yuridis Terhadap Sertipikat Hak Atas Tanah Yang Dibalik Nama Tanpa Persetujuan Pemegang Hak (Studi Kasus: Mafia Tanah ART Nirina Zubir),” *Gorontalo Law Review* 5, no. 1 (2022): 212–27, <https://doi.org/10.32662/golrev.v5i1.2105>.

<sup>10</sup> Abbas and Mohamad Nur Muliatio, “Penyalahgunaan Keadaan Dalam Kontrak Baku Perjanjian Kredit Bank,” *Gorontalo Law Review* 3, no. 2 (2020): 188–204, <https://doi.org/10.32662/golrev.v3i2.1162>.



be made in real, clear, and cash in order to ensure legal certainty. These provisions were later confirmed through Government Regulation No. 24 of 1997 on Land Registration which requires the transfer of rights to be done by PPAT deed and prohibits the use of absolute power as a means of transfer of rights. The Prohibition of absolute power of attorney is also emphasized in various technical regulations of the National Land Agency (BPN) as an effort to prevent legal smuggling and abuse of authority in the practice of buying and selling land.

Furthermore, abuse of power can be qualified as an unlawful act if it fulfills the elements specified in civil law, namely the existence of an unlawful act, error, loss, and a causal relationship between the act and the loss.<sup>11</sup> Furthermore, under certain circumstances, abuse of power can also be viewed as a form of abuse of circumstances, particularly when the power of attorney exploits the dominant position or weakness of the principal to obtain an improper advantage. This legal qualification strengthens the position of the injured party to demand legal accountability. The impact of abuse of power is very significant for the validity of a land sale and purchase agreement. If it is proven that the power of attorney acted beyond or deviated from his authority, the sale and purchase agreement has the potential to be declared void or at least can be canceled. This condition creates legal uncertainty regarding the status of the transfer of land rights, including regarding land certificates that have been issued based on the agreement, thus shaking the principle of legal certainty that should be guaranteed by the land law system.

Abuse of power in the land sale and purchase agreement also has implications for the authority of the National Land Agency (BPN) as an institution that organizes land registration. Under certain conditions, BPN has an administrative role to follow up on the cancellation of certificates that contain legal defects, especially administrative defects originating from illegal legal acts. However, this authority is still limited by the Precautionary Principle and the supremacy of court decisions, so that the cancellation of certificates that are substantive in nature generally requires the basis of court decisions that have permanent legal force.

In judicial practice, civil disputes resulting from abuse of power in land sales and purchases often result in the cancellation of the agreement through a court decision. This cancellation not only impacts the parties directly involved but can also harm third parties who acquired the rights in good faith. This demonstrates that abuse of power is not merely a private matter but has broader implications for the rule of law and public trust in the land administration system. This situation emphasizes the importance of legal protection and legal certainty for parties in land sales and purchases. To date, legal protection for parties harmed by abuse of power remains suboptimal, both in terms of normative regulations and legal implementation in the field. Therefore, it is necessary to clarify the limits of power of attorney in land sales and purchases, accompanied by the application of the principle of prudence by the parties and the

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<sup>11</sup> Yuflikhati et al., “Perbuatan Melawan Hukum Dalam Perspektif Hukum Perdata Dan Hukum Pidana Studi Kasus Putusan No. 28/Pdt.G/2024/PN Tmg & 113/Pid.Sus/2023/PN Tmg.”

active role of Land Deed Officials (PPAT) in ensuring that the granting of power of attorney does not conflict with applicable legal provisions.

Based on this reality, this research is crucial because the practice of granting power of attorney in land sale and purchase agreements often creates detrimental legal issues, particularly for the principal. A lack of adequate understanding of the limits of power of attorney leads to abuse, which results in legal uncertainty regarding the transfer of land rights. This research is expected to provide legal clarity regarding the legal consequences of abuse of power of attorney on the validity of land sale and purchase agreements, while also strengthening legal protection for the injured party.

## 2. Research Methods

This research uses a normative juridical research method, namely legal research that places law as a norm or rule that applies in society.<sup>12</sup> According to Petter Mahmud Marzuki, normative legal research is research conducted by examining library materials or secondary data which includes legal principles, legal systematics, the level of legal synchronization, as well as legal history and comparative law.<sup>13</sup> Through this method, the research is directed to examine the legal norms governing the granting of power of attorney in land sale and purchase agreements, including provisions of laws and regulations, principles of civil law and land law, as well as relevant doctrines and court decisions in order to assess the legal consequences of abuse of power of attorney on the validity of the agreement.

The research approaches used in this normative juridical research include a statutory approach and a conceptual approach. The statutory approach is used to analyze legal provisions governing the granting of power of attorney and the sale and purchase of land, while the conceptual approach is used to examine legal concepts such as power of attorney, good faith, unlawful acts, and abuse of circumstances. The conceptual approach was chosen because this study focuses on the analysis of legal norms and conceptual constructions related to abuse of power, so it does not focus on one or several specific decisions as a case approach, but rather on a systematic understanding of the principles and doctrines of applicable law. The legal materials used consist of primary legal materials, in the form of relevant laws and court decisions; secondary legal materials, in the form of textbooks, scientific journals, and opinions of legal experts; and tertiary legal materials, in the form of legal dictionaries and legal encyclopedias, all of which are analyzed qualitatively to obtain prescriptive conclusions.

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<sup>12</sup> Sukmawan et al., "Metode Penelitian Hukum Normatif Dan Empiris Sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum," *Notary Law Journal* 4, no. 3 (2025): 114–28, <https://doi.org/10.32801/nolaj.v4i3.116>.

<sup>13</sup> Marzuki, *Pengantar Ilmu Hukum*, 2021 (Prenada Media, 2021).

### 3. Result and Discussion

#### 3.1 Abuse of Power in Land Sale and Purchase Agreements Reviewed from Conceptual and Legal Aspects

The concept of power of attorney in civil law is a legal instrument that allows a person to perform legal acts through the intermediary of another party. In the Civil Code (KUH Perdata), power of attorney is defined as an agreement in which one person grants authority to another person, who accepts the power, to conduct a matter on their behalf.<sup>14</sup> This definition demonstrates that power of attorney is not simply a delegation of authority, but rather a legal relationship that gives rise to rights and obligations for both parties, the principal and the person receiving the power of attorney. As an agreement, power of attorney is subject to the general provisions of contract law as stipulated in the Civil Code. This means that the validity of a power of attorney must meet the requirements for a valid agreement, namely agreement between the parties, capacity to enter into a contract, a specific object, and a lawful cause.<sup>15</sup> Thus, power of attorney cannot be viewed as a unilateral action, but rather as a legal relationship that arises from the agreement and free will of the parties involved.

A power of attorney also has the unique characteristic of being a fiduciary agreement. The principal places trust in the principal to act on their behalf and in their interests. Therefore, the principal is obligated to exercise their power responsibly and in good faith, and not to abuse the authority granted. This element of trust is the primary foundation of the power of attorney relationship and distinguishes it from other, more impersonal legal relationships. In civil law, a power of attorney is generally positioned as an accessory agreement to the principal agreement. This means that the existence of the power of attorney depends on the existence of the principal interest or agreement to be implemented.<sup>16</sup> A power of attorney does not stand alone without a purpose, but rather serves as a means to carry out certain legal acts that are the object of the principal agreement. If the principal agreement is terminated or voided, the accompanying power of attorney will, in principle, also lose its relevance.

The scope of power of attorney is determined by the contents and limitations expressly stated in the power of attorney agreement. The Civil Code recognizes general and special powers of attorney, each with a different scope of authority.<sup>17</sup> The power of attorney is only authorized to perform legal acts as explicitly granted by the principal. Any action taken outside or exceeding this authority is essentially not binding on the principal and has the potential to result in legal consequences for the power of attorney. In the context of land sales and purchases, the use of power of attorney is a common phenomenon. Powers of attorney are often used for various reasons, including time constraints, long geographic distances, or certain conditions that prevent the seller or buyer from being present in person during the transfer of

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<sup>14</sup> Aprilia et al., “Analisis Yuridis Penyalahgunaan Surat Kuasa Dalam Perspektif Hukum Pembuktian,” *Iuris Studia: Jurnal Kajian Hukum* 5, no. 2 (2024): 582–88, <https://doi.org/10.55357/is.v5i2.658>.

<sup>15</sup> R. M. Panggabean, “Keabsahan Perjanjian Dengan Klausul Baku,” *JURNAL HUKUM IUS QUIA IUSTUM* 17, no. 4 (2010): 651–67, <https://doi.org/10.20885/iustum.vol17.iss4.art8>.

<sup>16</sup> Salim and H. Sidik, *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak*, 2021 (Sinar Grafika, 2021).

<sup>17</sup> Andryawan Andryawan et al., “Akibat Hukum Penyalahgunaan Surat Kuasa Melampaui Kewenangan Yang Diberikan Berdasarkan Hukum Perdata Di Indonesia (Putusan Pengadilan Cirebon Nomor 104/PDT.G/2012/PN.Cbn),” *Ranah Research : Journal of Multidisciplinary Research and Development* 7, no. 1 (2024): 133–41, <https://doi.org/10.38035/rrj.v7i1.1236>.



rights. Through the granting of power of attorney, land sales and purchases can still be carried out without hindering the interests of the parties, as long as they are carried out in accordance with applicable legal provisions.

The form of power of attorney used in land practice is generally a special power of attorney which expressly states the authority to carry out certain legal acts, such as signing a deed of sale or handling the registration of the transfer of rights.<sup>18</sup> This power of attorney is usually expressed in an authentic deed, or at least a legalized private deed, to provide certainty regarding the identity of the parties and the scope of the granted authority. This form of power of attorney is chosen to minimize the potential for future disputes and abuse of authority. The relationship between power of attorney and the authority to transfer land rights is very close. The transfer of land rights is a legal act with significant legal consequences, and therefore can only be carried out by the authorized party or by another party legally granted power of attorney.<sup>19</sup>

In this regard, the role of the Land Deed Official (PPAT) is crucial in assessing the validity and scope of the power of attorney used in land sale and purchase transactions. The PPAT is obligated to verify that the proposed power of attorney meets formal and material requirements, including ensuring that it does not constitute absolute power of attorney prohibited by law. This review is part of the application of the principle of prudence to protect the interests of the parties and maintain orderly land administration. The concept of power of attorney in civil law and its application in land sale and purchase practices cannot be separated from the principles of trust, limitation of authority, and legal certainty. Power of attorney must be understood as a legal instrument that assists and complements the main agreement, not as a means to transfer rights covertly. A proper understanding of the concept and practice of power of attorney, coupled with the active role of the PPAT, is key to preventing abuse of authority and ensuring the validity of the transfer of land rights within the national land law system.

The principle of good faith is a fundamental principle in contract law, inspiring the entire process of forming, implementing, and terminating an agreement, including power of attorney agreements. Good faith is not only subjectively defined as the parties' inner honesty, but also objectively as a standard of propriety and appropriateness in acting in accordance with legal norms and the values of justice that exist in society.<sup>20</sup> In the context of granting power of attorney, the principle of good faith is the main basis that determines whether or not the actions of the power of attorney are valid in carrying out the authority given to him. As an agreement that is in the nature of a fiduciary relationship, the granting of power of attorney places the recipient of the power of attorney in a position that is legally and morally bound to act in the interests of the person giving the power of attorney. This trust creates a legal obligation for the recipient of the power of attorney to carry out their power of attorney carefully, honestly and responsibly. Every action taken by the recipient of the power of attorney must always be

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<sup>18</sup> Hamonangan et al., "Perjanjian Pengikatan Jual Beli (PPJB) Dalam Transaksi Peralihan Hak Atas Tanah Dan Atau Bangunan.," *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 3, no. 2 (2021): 239–55, <http://dx.doi.org/10.46930/jurnalrectum.v3i2.1180>.

<sup>19</sup> Vania Digna Anggita and Mohamad Fajri Mekka Putra, "Implikasi Hak Atas Tanah Yang Diperoleh Secara Melawan Hukum," *JURNAL USM LAW REVIEW* 5, no. 2 (2022): 782–95, <https://doi.org/10.26623/julr.v5i2.5724>.

<sup>20</sup> "Peranan Asas Itikad Baik Dalam Mewujudkan Keadilan Para Pihak Dalam Perjanjian," *JURNAL ILMIAH M-PROGRESS* 8, no. 1 (2015), <https://doi.org/10.35968/m-pu.v8i1.186>



directed at protecting and realizing the interests of the power of attorney, not for personal interests or other parties' interests that could harm the power of attorney.

Subekti emphasized that the implementation of the agreement must be based on good faith, which means that the parties are obliged to carry out the agreement not only according to the wording of the agreement, but also according to the intent and purpose of the agreement.<sup>21</sup>In the context of power of attorney, this view emphasizes that the power of attorney must not only adhere to the formal formulation of authority stated in the power of attorney, but must also understand and respect the wishes and substantive interests of the principal. The obligation to act in the best interests of the principal also implicitly prohibits the principal from acting beyond the established authority. Actions exceeding authority not only harm the trust relationship between the parties but also have the potential to result in legal consequences in the form of non-binding of the principal.

In addition to exceeding authority, abuse of trust can also occur when the power of attorney uses its authority formally legitimately, but substantially contrary to the interests of the principal. Such practices are often difficult to detect administratively, but have serious legal consequences because they violate the principle of good faith. In such circumstances, the power of attorney can be held legally responsible for losses arising from its actions, either through a civil lawsuit mechanism or through the annulment of the legal act performed. The relevance of the principle of prudence in the exercise of power of attorney becomes increasingly important given the high legal risks inherent in certain legal acts, particularly in land sales transactions. The principle of prudence requires the power of attorney to not only act within its authority but also to consider the legal consequences and potential losses that may arise for the principal. The application of this principle is a concrete indicator of the implementation of objective good faith.<sup>22</sup>The principle of prudence is also closely related to the professional responsibility of parties involved in the exercise of power of attorney, including Land Deed Officials (PPAT) in land transactions. Although PPATs are not parties to the power of attorney agreement, their role in verifying the validity and scope of the power of attorney is a form of institutional prudence to prevent abuse of authority.

Abuse of power of attorney in land sales and purchases is a common legal phenomenon that gives rise to various serious problems in land law. Although power of attorney is principally granted to facilitate the implementation of legal acts, in practice, this authority is often abused by the authorized party. This abuse generally occurs due to weak supervision, a lack of understanding by the authorized party of the limits of the granted authority, and bad faith on the part of the authorized party who exploits this position of trust. The most common form of abuse of power is the exercise of power of attorney beyond the limits of the authority

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<sup>21</sup> Muhammad Adhi Utomo and Tundjung Herning Sitabuana, "Penyalahgunaan Keadaan Pada Asas Itikad Baik Dalam Perjanjian Kerja Sama Bagi Hasil," *Jurnal Supremasi*, September 13, 2023, 50–59, <https://doi.org/10.35457/supremasi.v13i2.2211>.

<sup>22</sup> Andryawan Andryawan et al., "Akibat Hukum Penyalahgunaan Surat Kuasa Melampaui Kewenangan Yang Diberikan Berdasarkan Hukum Perdata Di Indonesia (Putusan Pengadilan Cirebon Nomor 104/PDT.G/2012/PN.Cbn)," *Ranah Research : Journal of Multidisciplinary Research and Development 7*, no. 1 (2024): 133–41, <https://doi.org/10.38035/rrj.v7i1.1236>.

expressly granted in the power of attorney agreement.<sup>23</sup>The power of attorney takes legal action outside the permitted scope, such as selling land at an unagreed price or transferring rights to another party not specified by the principal. Such actions not only violate the terms of the power of attorney agreement but also violate the principle of good faith that should be inherent in every legal relationship based on trust.

In addition to exceeding authority, abuse of power also often occurs in the form of using power for the personal benefit of the power holder. In this situation, the power holder uses their authority as a means to obtain personal gain, either directly or indirectly, at the expense of the principal's interests. This practice represents a serious violation of the fiduciary nature of the power of attorney relationship, as the power holder has deviated from the primary purpose of granting the power of attorney itself. Abuse of power is even more evident when the power holder transfers land rights without the principal's consent. This transfer is often carried out unilaterally using a power of attorney, even though the principal never gave consent to the transfer of rights. As a result, the principal loses their land rights without any valid will, resulting in significant losses and potentially triggering complex legal disputes.

In certain practices, abuse of power is also manifested through the use of absolute power of attorney in land purchase transactions. Absolute power of attorney is essentially irrevocable and grants the power of attorney full authority, as if it were the rightful owner.<sup>24</sup>This practice violates land law because absolute power of attorney is often used as a means to transfer land rights covertly without following the legal transfer procedures. The prohibition on the use of absolute power of attorney in land transactions aims to prevent legal smuggling and protect the interests of the weaker party. However, in practice, absolute power of attorney is still frequently used with various wording modifications to circumvent the formal prohibition. This situation indicates a gap between legal norms and practice in the field, ultimately harming legal certainty and justice for the parties. These forms of abuse of power not only create problems in the relationship between the grantor and grantee of power of attorney but also have a broad impact on the land administration system. Land certificates issued based on flawed legal acts resulting from abuse of power have the potential to create legal uncertainty and protracted disputes. This can undermine public trust in the land registration system as an instrument for guaranteeing legal certainty. The defects referred to here are divided into two, namely administrative defects and juridical defects. Administrative defects are related to procedural errors in the land registration process, such as non-conformity of physical or juridical data, which in principle are within the realm of the administrative authority of the National Land Agency for rectification or cancellation in accordance with applicable regulations. Meanwhile, juridical defects arise from the illegitimacy of legal acts that are the basis for the transfer of rights, for example because the power is used beyond the authority or contrary to the principle of good faith. In the event of a juridical defect, the land certificate does not necessarily lose its legal force administratively, but its enforceability can be terminated by a court decision declaring the sale and purchase agreement null and void or the transfer of the underlying rights.

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<sup>23</sup> Mulyani et al., "Tinjauan Hukum Penggunaan Surat Kuasa Khusus Guna Memberikan Perlindungan Hukum Bagi Pemilik Hak Atas Tanah.," *JURNAL PENELITIAN SERAMBI HUKUM* 17, no. 01 (2024): 158–69, <https://doi.org/10.59582/sh.v17i01.1095>.

<sup>24</sup> Abdullah et al., "TANGGUNG JAWAB PEJABAT PEMBUAT AKATA TANAH DALAM PEMBUATAN AKTA JUAL BELI BERDASARKAN SURAT KUASA MUTLAK.," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 2 (2022): 143–51, <https://doi.org/10.28946/rpt.v11i2.1620>.



More deeply, the abuse of power of attorney in a land sale and purchase agreement can essentially be viewed as a serious legal flaw in the contractual relationship. This is because the granting of power of attorney is an agreement built on the principles of good faith and trust between the grantor and the grantee. When the grantee abuses the granted authority, this action not only violates the contents of the power of attorney agreement but also violates the fundamental principle of contract law that requires the implementation of the agreement honestly, properly, and responsibly. Direct abuse of power is a form of violation of the principle of good faith, both subjectively and objectively. Subjectively, the grantee acts with intentions that deviate from the purpose of granting the power of attorney. Objectively, this action contradicts the standards of propriety that should be met by a party exercising authority based on trust.<sup>25</sup> Violations of the principle of good faith are an early indicator of defects in the implementation of the agreement which can have implications for the validity of the legal acts carried out.

Furthermore, abuse of power is closely related to the concept of defective will in contract law. Defective will occurs when the will of one party to the agreement is not formed freely and purely, but is influenced by certain circumstances that are detrimental to that party. In the context of abuse of power, the will of the principal is often manipulated or distorted by the recipient of the power, so that legal acts carried out on the basis of that power no longer reflect the true will of the principal. In the development of civil law doctrine, abuse of power can also be analyzed from the perspective of abuse of circumstances (*misbruik van omstandigheden*).<sup>26</sup> This concept emphasizes the imbalance of positions between the parties, where one party exploits the weakness, dependence, or trust of another party to gain an improper advantage. In a power of attorney relationship, the power of attorney is often in a dominant position due to their control of information and authority, potentially abusing this situation to commit legal acts that are detrimental to the principal.

The definition of abuse of power extends beyond contractual breaches and can also be categorized as an unlawful act. If the agent's actions meet the elements of an unlawful act, namely, an unlawful act, a mistake, a loss, and a causal relationship, the injured party has the right to seek compensation.<sup>27</sup> Thus, abuse of power opens up broader legal liability, both based on breach of contract and unlawful acts. The implications of abuse of power for land sale and purchase agreements are significant, particularly in assessing the validity of such agreements. A sale and purchase agreement made based on abused power of attorney has the potential to lose its legitimate basis and, therefore, be declared void or at least annulled. This depends on the extent and form of the abuse of power and the evidence of loss and bad faith on the part of the authorized party.

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<sup>25</sup> Clara Vania and Gunawan Djajaputra, "Keabsahan Penggunaan Kuasa Mutlak Dalam Perjanjian Pengikatan Jual Beli (PPJB) Tanah Yang Dibuat Oleh Notaris," *Jurnal Hukum Adigama* 1, no. 2 (2018): 301, <https://doi.org/10.24912/adigama.v1i2.2747>.

<sup>26</sup> "Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (*Misbruik Van Omstandigheden*)," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020), <https://doi.org/10.35968/jh.v11i1.653>.

<sup>27</sup> Marhaeni Ria Siombo and Nada Davinia, "Gugatan Perbuatan Melawan Hukum Karena Pembatalan Perjanjian Dalam Sengketa Tanah (Studi Putusan Pengadilan Tinggi Nomor 639/PDT/2016/PT.DKI)," *Jurnal Paradigma Hukum Pembangunan* 7, no. 1 (2022): 114–31, <https://doi.org/10.25170/paradigma.v7i1.3206>.



The legal standing of agreements made based on abused power of attorney becomes uncertain, as they are based on legally flawed authority. This uncertainty not only harms the principal but also potentially harms third parties who acquire rights to the land. As a result, civil disputes are often unavoidable and lead to the cancellation of agreements through judicial mechanisms. This situation emphasizes the importance of clarifying the limits of power of attorney in land law practice. Clarity of authority is a key instrument for preventing abuse of power while providing legal protection for the principal and third parties. This affirmation needs to be realized not only in the formulation of power of attorney but also in the practice of inspection and supervision by Land Deed Officials (PPAT), the official authorized to draw up land transfer deeds. From a conceptual perspective, the discussion of abuse of power as a legal flaw provides a strong analytical framework for understanding its legal impact. This conceptual analysis is crucial for connecting legal norms with practical realities, thereby identifying potential points of vulnerability that could give rise to disputes.

### **3.2 The Legal Impact of Abuse of Power on the Validity of Land Sale and Purchase Agreements and Legal Protection of the Parties**

Abuse of power of attorney in a land sale and purchase agreement is closely related to the fulfillment of the valid conditions of the agreement as recognized in civil law. The valid conditions of an agreement essentially consist of subjective and objective conditions, where the subjective conditions relate to the will and capacity of the parties. In the context of granting power of attorney, the fulfillment of subjective conditions is not only seen from the will of the power of attorney acting formally, but also from the will of the principal as the party substantially bound by the legal act. Abuse of power of attorney has the potential to disrupt the fulfillment of the subjective conditions of the agreement, particularly regarding the element of agreement. A valid agreement requires a meeting of free will between the parties without coercion, error, or fraud. When the power of attorney acts beyond its authority or deviates from the purpose of granting power of attorney, the agreement reflected in the land sale and purchase agreement no longer fully reflects the free will of the principal.<sup>28</sup>

The impact of abuse of power on the agreement of the parties becomes increasingly apparent when the agent uses his authority to carry out legal acts that were never intended by the principal. In this condition, the agreement formed is illusory, because formally the agreement is made in the name of the principal, but substantially not based on the actual will. This indicates a distortion of will that can be qualified as a defect in the will in the agreement. The position of the principal's will in the agreement made by the agent is a crucial aspect in assessing the validity of the agreement. The agent is in principle bound by the legal acts of the agent as long as the actions are carried out within the limits of legitimate authority. However, if the agent abuses his authority, then the will of the principal cannot be considered to have been given legally, so that the agreement made becomes problematic from a civil law perspective.

The legal consequences of failing to fulfill the valid conditions of an agreement due to abuse of power depend on the type of condition violated. If the subjective conditions are not met, the agreement can, in principle, be canceled at the request of the injured party. This

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<sup>28</sup> Sitanggang et al., "Gugatan Wanprestasi Dari Penerima Kuasa Menjual Atas Tanah," *MAJALAH KEADILAN* 23, no. 2 (2023): 36–51, <https://doi.org/10.32663/fzbg6451>.



situation provides the principal with the opportunity to file for cancellation of the agreement through legal mechanisms to protect their violated rights and interests. The issue of abuse of power also directly impacts the validity of the land sale and purchase deed drawn up based on the power. In land law, the sale and purchase deed holds a crucial position as authentic evidence of the transfer of land rights.<sup>29</sup>This deed is the basis for registering the transfer of rights and issuing certificates, so its validity is very important in determining the legal certainty of the land status.

If a land sale and purchase deed is executed based on a power of attorney that exceeds its authority, the power of attorney's authority to act becomes legally flawed. A deed born of such flawed authority has the potential to lose its legal legitimacy, even if formally executed by a PPAT in accordance with procedures.<sup>30</sup>Thus, the material aspect of power of attorney is a determining factor in assessing the validity of a land sale and purchase deed. Abuse of power of attorney also has implications for the evidentiary power of the land sale and purchase deed. Although the sale and purchase deed is an authentic deed with perfect evidentiary power, this power can be revoked if it is proven that the deed was made based on abuse of authority. In this case, the deed still has formal evidentiary value, but its material truth can be questioned and tested through the judicial process. The potential for cancellation of the land sale and purchase deed due to abuse of power is an unavoidable legal consequence. Through the civil court mechanism, the aggrieved party can file a lawsuit to annul the sale and purchase deed on the grounds of a defective will and a violation of the principle of good faith. A court decision granting the annulment will result in the annulment of the transfer of land rights that has occurred.

Abuse of power of attorney in a land sale and purchase agreement has a direct impact on the validity of the transfer of land rights carried out based on the agreement. The transfer of land rights can, in principle, only be considered valid if it is based on a legal act that meets formal and material requirements. When the sale and purchase agreement as the basis for the transfer of rights is flawed due to abuse of power of attorney, the legitimacy of the transfer of land rights originating from that agreement becomes legally questionable. The validity of the transfer of land rights originating from a flawed agreement cannot be separated from the principle that the transfer of rights must reflect the legitimate will of the rights holder. In cases of abuse of power, the will of the land rights holder, namely the principal, is not fully realized in the transfer.<sup>31</sup>As a result, the transfer of rights that occurs formally can lose its material legal basis, so that it has the potential to be declared invalid or cancelled by a court decision.

The impact of abuse of power also extends to land registration and certificate issuance. Land certificates issued based on transfers of rights stemming from legally flawed agreements

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<sup>29</sup> Aroffa et al., "Legalitas Akta Jual Beli (AJB) Sebagai Bukti Peralihan Hak Atas Tanah Dalam Perspektif Kepastian Dan Perlindungan Hukum.," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 5 (n.d.): 6940–49, <https://doi.org/10.61104/alz.v3i5.2327>.

<sup>30</sup> Pranata, A et al., "Problematika Tanggung Jawab Pejabat Pembuat Akta Tanah Dalam Peralihan Hak Atas Tanah Di Provinsi Kalimantan Timur," *Jurnal Tana Mana* 6, no. 2 (n.d.): 258–76, <https://doi.org/10.33648/jtm.v6i2.1177>

<sup>31</sup> Rahadiyan Veda Mahardika et al., *Kedudukan Subyek Hukum Ditinjau Dari Hak Keperdataan: Refleksi: Terjadinya Tumpang Tindih Lahan Hak Guna Usaha.*, 2022 (UM Jember Press, 2022).



have the potential to contain administrative and substantive defects.<sup>32</sup> Although a certificate is a strong piece of evidence, its validity is not absolute and can be revoked if it is proven that the legal data underlying its issuance is invalid due to abuse of power. This situation creates serious problems in the land registration system, which aims to provide legal certainty. When a certificate is issued based on a flawed legal act, its function as a guarantee of legal certainty is diminished.<sup>33</sup> Land disputes are unavoidable, as the injured party will seek to restore their rights, while the other party relies on the certificate as the basis for their claim. In the context of land transfers, the status of third parties acting in good faith becomes a complex legal issue. Third parties who acquire land rights in good faith and comply with legal procedures are, in principle, entitled to legal protection. However, when the transfer of rights stems from abuse of power of attorney, protection for third parties often conflicts with the rights of the injured principal, requiring careful judicial assessment by the court.

The tension between the protection of good-faith third parties and the restoration of the principal's rights demonstrates that abuse of power creates legal uncertainty in land disputes. This uncertainty not only harms the parties directly involved but also impacts public trust in the land law system as a whole. Therefore, abuse of power must be viewed as a factor that can disrupt the stability and order of land law. In addition to impacting the validity of the transfer of rights, abuse of power also results in legal liability for the principal. In the civil realm, the principal is responsible for all losses arising from the abuse of authority. This liability can be based on breach of contract or unlawful acts, depending on the character and consequences of the principal's actions.<sup>34</sup>

The obligation to compensate and restore the principal's rights is a concrete form of this civil liability. Compensation can take the form of compensation for material or immaterial losses, while restoration of rights can be achieved through cancellation of the agreement and return of land rights to the principal.<sup>35</sup> This mechanism aims to restore the situation to a position as if the abuse of power had never occurred. Under certain circumstances, abuse of power can also give rise to criminal liability, particularly if the agent's actions are accompanied by elements of fraud, document falsification, or false statements. If these elements of a crime are met, the agent can be held criminally liable without absolving the person of any civil liability. This demonstrates that abuse of power can have multiple legal dimensions.

Legal protection for the principal and other parties harmed by the abuse of power is an integral aspect of efforts to uphold legal certainty in land sale and purchase transactions. Given that a power of attorney is a trust-based agreement, the potential for abuse of authority must be anticipated from the outset through preventive legal protection mechanisms. This preventive

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<sup>32</sup> Sihombing and Romi, *Cacat Administrasi: Pembatalan Sertifikat Tanah Oleh BPN Tanpa Putusan Pengadilan*, 2022 (Prenada Media, 2022).

<sup>33</sup> Masri and Esther, "Kebijakan Penerbitan Sertipikat Elektronik Pada Sistem Pendaftaran Tanah Di Indonesia Untuk Mewujudkan Kepastian Hukum," *Krtha Bhayangkara* 17, no. 1 (2023): 157–74, <https://doi.org/10.31599/krtha.v17i1.827>.

<sup>34</sup> Alfianto et al., "Pertanggungjawaban Perdata Dan Tanggung Gugat Dalam Perkara Wanprestasi Dan Perbuatan Melawan Hukum," *Jurnal Pengabdian Masyarakat: Pemberdayaan, Inovasi Dan Perubahan* 4, no. 6 (2024), <https://doi.org/10.59818/jpm.v4i6.986>.

<sup>35</sup> Ivanna Isya Putri Aleska et al., "Ganti Rugi Karena Perbuatan Melawan Hukum Dalam Sengketa Penguasaan Tanah Adat," *JURNAL USM LAW REVIEW* 8, no. 2 (2025): 687–708, <https://doi.org/10.26623/julr.v8i2.11838>.



protection aims to prevent disputes by minimizing the potential for abuse of authority by the principal. Preventive legal protection can be realized through explicit and detailed limitations and clarity of the power of attorney. The power of attorney must explicitly state the scope of authority, the limits of legal actions that may be taken, and the purpose of the power of attorney. This clarity not only serves as a guideline for the principal but also as a control tool for the principal in case of future abuse. With clear limitations, the power of attorney is less likely to be misused for purposes beyond the principal's wishes.

If abuse of power persists, repressive legal protection becomes an important instrument for the injured party. Repressive protection is carried out through filing a civil lawsuit with the court, either in the form of a lawsuit for cancellation of the agreement, a lawsuit for unlawful acts, or a claim for compensation. Through this mechanism, the principal or injured party can obtain restoration of rights and compensation for losses arising from the actions of the power recipient who did not act in good faith. In the process of enforcing this repressive legal protection, the role of the judge is crucial. The judge has the authority to comprehensively assess whether there has been an abuse of power, including assessing the limits of the authority granted, the exercise of the power, and the good or bad faith of the parties.<sup>36</sup> The judge's assessment of the substance of the agreement and the legal facts is key in determining the validity of legal acts carried out under a power of attorney. In addition to the judge, the role of Land Deed Officials (PPAT) and notaries is also very strategic in preventing abuse of power. As public officials, PPATs and notaries have an obligation to apply the principle of prudence by examining the validity of the power of attorney, ensuring that the power of attorney is not an absolute power of attorney, and assessing the adequacy and clarity of the authority granted. This preventive role is crucial because PPATs and notaries are at a crucial point before the legal act of buying and selling land is formally executed.

From a broader perspective, legal protection against abuse of power has significant practical implications for legal certainty in land transactions. The use of power of attorney in land transactions requires a high degree of caution, both from the grantor and the recipient of the power of attorney, as well as the officials involved. Without such caution, power of attorney has the potential to become a source of disputes that undermine the primary objective of land law, namely to create legal certainty and order. Repeated abuse of power in land transactions also has an impact on declining public trust in the land legal system.<sup>37</sup> When the public perceives that certificates and deeds of sale and purchase can still be disputed due to abuse of power, trust in the land rights transfer mechanism is undermined. This situation can hinder land transactions and create prolonged legal uncertainty. Therefore, strengthening consistent legal practices oriented toward legal protection and legal certainty is needed. This strengthening can be achieved by increasing legal awareness among the parties, upholding the principles of good faith and prudence, and optimizing the roles of Land Deed Officials (PPAT), notaries, and the courts in overseeing the validity of land sale and purchase transactions. These efforts are expected to minimize abuse of power and create a safer and more trustworthy legal climate.

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<sup>36</sup> Aleska et al., "Ganti Rugi Karena Perbuatan Melawan Hukum Dalam Sengketa Penguasaan Tanah Adat."

<sup>37</sup> Sasikirana Anastasia et al., "Implikasi Hukum Agraria Terhadap Konflik Pertanahan Indonesia," *Arus Jurnal Sosial Dan Humaniora* 4, no. 2 (2024): 545–53, <https://doi.org/10.57250/ajsh.v4i2.485>.



#### 4. Conclusion

Abuse of power in a land sale and purchase agreement can be understood as an act by the power of attorney that exceeds or deviates from the authority granted, thereby contradicting the principle of good faith and the purpose of the power of attorney itself. Conceptually, abuse of power is closely related to defects in will and abuse of circumstances (*misbruik van omstandigheden*), which create an imbalance in the positions of the parties in the agreement. Legally, abuse of power is a legal defect that can result in the agreement losing its legitimate basis, thus opening up space for it to be qualified as an unlawful act and becoming the basis for testing the validity of the land sale and purchase agreement.

Furthermore, from a legal perspective, abuse of power has direct implications for the validity of land sale and purchase agreements and the resulting transfer of land rights. Agreements made based on abused power of attorney are potentially void or can be revoked, and affect the evidentiary power of the sale and purchase deed and the validity of land title registration. In the context of legal protection, the principal and the injured party are entitled to preventive protection through clarity and limitation of power of attorney, as well as repressive protection through civil lawsuits and judges' assessments of the parties' good faith. Therefore, strengthening the principle of prudence and consistent law enforcement are key to ensuring legal certainty and fair legal protection in land sale and purchase practices.

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