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THE PRINCIPLE OF *MABDA' AR-RADA'IYYAH* IN LAND PURCHASE AGREEMENTS WITH FRAUD ELEMENTS IN STATE COURT JUDGMENT NUMBER 12/Pdt.G/2017/PN.Mlg

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ABSTRACT

Court Judgment Number 12/Pdt.G/2017/PN.Mlg became a decision on Kartono's request to cancel the land sale and purchase agreement because it contained elements of fraud. The purpose of this study is to analyze the principle of *mabda' ar-raḍa'iyyah* in the land sale and purchase agreement with an element of fraud in Court Judgment Number 12/Pdt.G/2017/PN.Mlg. Types of normative juridical research with a statutory approach and a case approach. Primary, secondary and tertiary legal materials are analyzed using descriptive qualitative methods. The results of this study indicate that based on the request for annulment of the agreement submitted by Kartono which was granted by the Panel of Judges, it resulted in the cancellation of the land sale and purchase agreement and returned to the original owner, namely Kartono. The agreement violated subjective requirements because the sale and purchase contained elements of persuading, influencing, and deceiving or using false prestige towards Kartono during the land purchase process. This agreement does not fulfill the principle of *mabda' ar-raḍa'iyyah*, because the agreement/will to enter into the agreement was given on the basis of an element of fraud committed by the buyer, causing the agreement to be void/invalid.

Keywords: The Principle of *Mabda' ar-Raḍa'iyyah*; Sale and Purchase Agreement; and Fraud;

ABSTRAK

Putusan Nomor 12/Pdt.G/2017/PN.Mlg menjadi putusan atas permohonan pembatalan perjanjian jual beli tanah oleh Kartono karena mengandung unsur penipuan. Tujuan dari penelitian ini adalah untuk menganalisis asas *mabda' ar-raḍa'iyyah* dalam perjanjian jual beli tanah dengan unsur penipuan pada Putusan Nomor 12/Pdt.G/2017/PN.Mlg. Jenis penelitian yuridis normatif dengan pendekatan perundang-undangan dan pendekatan kasus. Bahan hukum primer, sekunder dan tersier di analisis dengan metode deskriptif kualitatif. Hasil penelitian ini menunjukkan bahwa berdasarkan permohonan pembatalan perjanjian yang diajukan oleh Kartono yang dikabulkan oleh Majelis Hakim berakibat pada batalnya perjanjian jual beli tanah dan kembali kepada pemilik awalnya, yaitu Kartono. Perjanjian tersebut melanggar syarat subjektif karena jual belinya mengandung unsur membujuk, mempengaruhi, serta membohongi atau menggunakan martabat palsu kepada Kartono ketika proses untuk pembelian tanah. Perjanjian ini tidak

memenuhi asas *mabda' ar-raḍa'iyyah*, karena kesepakatan/kehendak dalam mengadakan perjanjian tersebut diberikan atas dasar adanya unsur penipuan yang dilakukan oleh pembeli sehingga menyebabkan perjanjian tersebut menjadi batal/*batil*.

Kata Kunci: Asas *Mabda' ar-Raḍa'iyyah*; Perjanjian Jual Beli; dan Penipuan;

Introduction

Kota Malang Court Judgment No. 12/Pdt.G/PN.Mlg is a decision in a case regarding the land sale and purchase agreement between Kartono and Achmad Hari Bowo. Kartono as the seller in the agreement filed a lawsuit against Achmad Hari Bowo as the buyer to the Kota Malang Court. The basis for filing the lawsuit was because Kartono felt disadvantaged over the Sale and Purchase Agreement (in Indonesia called PPJB means *Perjanjian Pengikatan Jual Beli*) that had been agreed with Achmad Hari Bowo for the sale and purchase transaction of his land. In obtaining the transfer of rights over the land, Achmad Hari Bowo, as the buyer, persuaded Kartono to sell the land to him. Apart from that, Achmad Hari Bowo also had bad faith by claiming to be a developer, but it turned out to be a false confession and at the time of settlement, Achmad Hari Bowo did not pay off the payment for the purchase of the land.

Both parties in buying and selling should have good faith in entering into an agreement so as not to harm each other. In general, the range of meanings of bad faith according to Amalia Rooseno includes acts of fraud, undue influence to other people, and behavior that ignores legal obligations to gain profit. The parties must fulfill the legal terms of the agreement. The first legal condition of the agreement, namely "the agreement of those who bind themselves" is an important point to be discussed in this study. "Agreement of those who bind themselves" implies that the parties who make the agreement have agreed or there is conformity of will or mutually agreed to each other's will, which was born by the parties with no elements that can cause defects in will, namely oversight, coercion, fraud and undue influence. In line with the provisions of one of the contract principles in sharia contract law, namely the principle of *mabda' ar-raḍa'iyyah* (voluntary principle). The principle of *mabda' ar-raḍa'iyyah* states that in making/conducting a contract (agreement) it must be based on willingness or mutual

consent between the parties, elements of pressure, coercion, fraud and false statements are not allowed.¹

In the Kota Malang Court Judgment Number 12/Pdt.G/PN.Mlg it is possible that the parties in obtaining the transfer of land rights are made on the basis of the unwillingness of one of the parties or this willingness was made compulsorily because it had been influenced by the buyer. For this reason, it is interesting to know the legal consequences of the land sale and purchase agreement with elements of fraud, study the Court Judgment Number 12/Pdt.G/2017/PN.Mlg and to know the review of the principle of *mabda' ar-raḍa'iyah* on land sale and purchase agreements with elements of fraud in Court Judgment Number 12/Pdt.G/2017/PN.Mlg.

Previous studies that examined problems of default and fraud in buying and selling were carried out by Syahsyahubin Arifin,² Zuhdan Fajrin Candra Ridha,³ Matius Hanungka Jinawi,⁴ Dudung Mulyadi⁵ next Siti Zalifah Firdausiah Fila⁶ examine general principles in sharia contracts. While the study of the principle of *mabda' ar-raḍa'iyah* in relation to the problem of fraud in buying and selling has not yet been carried out. The purpose of this study is to analyze the principle of *mabda' ar-raḍa'iyah* in the land sale and purchase agreement with an element of fraud in Court Judgment no. 12/Pdt.G/2017/PN.Mlg.

¹Rahmani and Timorita Yulianti, "Asas-Asas Perjanjian (Akad) Dalam Hukum Kontrak Syari'ah," *La_Riba* 2, no. 1 (July 3, 2008): 100, <https://doi.org/10.20885/LARIBA.VOL2.ISS1.ART7>.

²Syahsyahudin Arifin, "Kajian Yuridis Terhadap Kasus Wanprestasi Jual Beli Tanah (Studi Kasus Putusan No. 358/Pdt.G/2014/PN.Jkt.Tim Antara Hj. Faridah Melawan Nani Suniarti)" (Universitas Sumatera Utara Medan, 2019), <https://repositori.usu.ac.id/handle/123456789/13901?show=full>.

³Zuhdan Fajrin Candra Ridha, "Penyelesaian Wanprestasi Terhadap Jual Beli Rumah Melalui Peralihan Hak Atas Tanah Tinjauan Hukum Positif Dan Hukum Ekonomi Syariah Studi Putusan No. 71/Pdt.G/2018/PN.Blt" (UIN Maulana Malik Ibrahim Malang, 2020), <http://etheses.uin-malang.ac.id/22534/>.

⁴Matius Hanungka Jinawi, "Pembuktian Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Sebagai Dasar Pembatalan Perjanjian" (Universitas Katolik Soegijapranata Semarang, 2020), <http://repository.unika.ac.id/24743/>.

⁵Dudung Mulyadi, "Unsur-Unsur Penipuan Dalam Pasal 378 KUHP Dikaitkan Dengan Jual Beli Tanah," *Galuh Justisi* 5, no. 2 (2017): 206–23, <https://doi.org/10.25157/jigi.v5i2.798>.

⁶Siti Zalifah Firdausiah Fila, "Kajian Teoritik Terhadap Urgensi Asas Dalam Akad (Kontrak) Syariah," *Al-Muamalat* 5, no. 1 (2020): 48–67, <https://doi.org/10.32505/muamalat.v5i1.1519>.

Method

This research is normative legal research⁷ done using statute approach dan case approach.⁸ Case in Court Judgment Number 12/Pdt.G/2017/PN.Mlg examined to find out the form of violation of the subjective terms of the agreement in the form of fraud at the level of agreement by using Law of Indonesia Number 5 Year 1960 on Basic Agrarian Regulations (in Indonesia called UUPA means Undnag-Undang Pokok Agraria), Indonesia Government Regulation Number 24 Year 1997 on Land Registration (PP No. 24 of 1997). 1997), Indonesia Civil Code (KUH Perdata), and Indonesia Compilation of Sharia Economic Law (KHES) to find out violations of agreements according to Islamic law. The legal materials used in this study are divided into three types, namely primary legal materials, secondary legal materials, and tertiary legal materials. The three legal materials were collected using the literature study method and then analyzed using a qualitative descriptive method.

Findings and Discussion

Legal Consequences of the Land Purchase Agreement with Fraudulent Elements of Court Judgment Number 12/Pdt.G/2017/PN.Mlg

Based on Article 1457 of the Indonesia Civil Code (KUH Perdata), it can be understood that a sale and purchase agreement is an act in which two parties bind themselves, one party binds himself to surrender an item, and the other party binds himself to pay the price promised. The sale and purchase agreement is a consensual agreement, in which to create an agreement it is enough to reach an agreement between the parties entering into the agreement.⁹ In line with the provisions of Article 1458 of the Indonesia Civil Code (KUH Perdata) which states that buying and selling is considered to have occurred and has legal force that binds both parties after an agreement is reached between the two parties regarding the goods being traded and the price, even though the goods have not been delivered and the price has not been paid.

⁷Zainal Muttaqin, "Formalization of Islamic Law in Indonesia in the Framework of Social Engineering Theory by Roscoe Pound," *El-Mashlahah* 11, no. 2 (2021): 97–115, <https://doi.org/10.23971/elma.v11i2.2825>.

⁸Sabarudin Ahmad, "Hukum Aborsi Akibat Perkosaan (Analisis Hukum Islam Terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi)," *El-Mashlahah* 8, no. 2 (2018): 162–83, <https://doi.org/https://doi.org/10.23971/el-mas.v8i2.1321>.

⁹Magister Ilmu Hukum Pasca Sarjana Universitas Medan Area, "Asas-Asas Perjanjian," *PDAI-Universitas Medan Area*, 8 Januari 2021, diakses 27 November 2021, <http://mh.uma.ac.id/2021/01/asas-asas-perjanjian/>

Thus, it can be seen that the agreement is the basis for the existence of an agreement, therefore the agreement is the main condition that determines whether or not an agreement is valid.

Agreement

An agreement must be made with the agreement of the parties. Given that the sale and purchase agreement is a consensual agreement, it is enough to create a sale and purchase agreement by reaching an agreement or conformity of will between the parties entering into the agreement.¹⁰ In giving an agreement to enter into an agreement, the parties must have free will, in other words the agreement or conformity of the will must be given by the parties freely. Free is meant in this case, namely the parties who enter into an agreement in giving their agreement not because of something that results in defects of will.¹¹ Based on the provisions of Article 1321 of the Indonesia Civil Code (KUH Perdata), it can be seen that the elements that can cause defects in the agreement/will that has been given in the agreement are oversight, coercion, fraud, and one other element is added, namely the abuse of circumstances which was first recognized in Indonesia through jurisprudence, namely Supreme Court Judgment No 3641 K/Pdt/2001.¹²

The land sale and purchase agreement between Kartono and Achmad Hari Bowo as stated in the Kota Malang Court Judgment Number 12/Pdt.G/2017/PN.Mlg, it can be seen that Kartono agreed to enter into a land sale and purchase agreement due to the actions committed by Achmad Hari Bowo as the buyer, namely in the form of persuading, influencing, and deceiving Kartono or using false dignity as a housing complex developer and his presence on behalf of the owner of PT. Harie Karya Mandiri.¹³ Achmad Hari Bowo's statement as a developer of the housing complex and his presence on behalf of the owner of PT. Harie Karya Mandiri was said to be a false prestige because during the land sale and purchase agreement, Achmad Hari Bowo never showed documents stating that he was a housing complex developer and acting

¹⁰Taryana Soenandar, *Kompilasi Hukum Perikatan* (Bandung: Citra Aditya Bakti, 2016).

¹¹Soenandar, *Kompilasi Hukum Perikatan*.

¹²Sandi Prisma Putra, "Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Sebagai Bentuk Cacat Kehendak Ke-4 Dalam Perjanjian," STH Garut, 2020, <https://sthgarut.ac.id/blog/2020/02/24/penyalahgunaan-keadaan-misbruik-van-omstandigheden-sebagai-bentuk-cacat-kehendak-ke-4-dalam-perjanjian/>.

¹³Putusan Nomor 12/Pdt.G/2017/PN.Mlg.

for and on behalf of PT. Harie Karya Mandiri.¹⁴ Thus, Achmad Hari Bowo's statement cannot be proven true and can be stated as an act of fraud in the agreement.

Fraud in an agreement is an act that contains deception in the form of persuading/tricking, influencing, providing incorrect/false information/statements, leading the true will to something that is contradictory, and various other actions committed by one of the parties to the agreement with The purpose is that the other party is willing to enter into an agreement.¹⁵ Based on this opinion, the actions carried out by Achmad Hari Bowo in entering into a land sale and purchase agreement with Kartono can be said to be fraud in the agreement, because Achmad Hari Bowo committed acts of persuading, influencing, and deceiving Kartono by using false dignity with the aim that Kartono was willing to hold land sale and purchase agreement with him.

In order to strengthen the author's opinion that Achmad Hari Bowo's actions were a fraud in the agreement, in this case the author will describe an incident taken from two news published by MalangTIMES.com.¹⁶ The two reports stated that a resident of Desa Dadaprejo Village, Kecamatan Junrejo, Kota Batu named Haydar Muhammad experienced an incident caused by the actions of an illegal property developer. Haydar bought a plot of land from a property services company called Harie Properti. The products offered for sale by Harie Properti are plots of land and also buildings under the name Teratai Regency Housing.

When he decided to buy a plot of land from Harie Properti, Haydar came to meet a housing developer named Hadi Suprayitno. During the meeting, Hadi Suprayitno told Haydar that the certificate for the land being sold by Harie Properti was still D, however Hadi Suprayitno promised to arrange it until the land title certificate (In Indonesia SHM means Sertifikat Hak Milik), and at that time Hadi Suprayitno also brought Haydar with Kasmani who is the owner of the land. From Hadi Suprayitno's statement, Haydar knew that Harie Properti had not purchased the land to be built into the Teratai Regency

¹⁴Putusan Nomor 12/Pdt.G/2017/PN.Mlg.

¹⁵Subekti, *Hukum Perjanjian* (Jakarta: Intermedia, 2008).

¹⁶Hendra Saputra, "Beli Rumah Tak Dapat Surat, Warga Batu Tak Tenang Tinggal Di Rumah Sendiri," Malang Times, 2022, <https://www.malangtimes.com/baca/76523/20220202/072200/beli-rumah-tak-dapat-surat-warga-batu-tak-tenang-tinggal-di-rumah-sendiri>; Irsya Richa, "Hiruk Pikuk Kawasan Jalan Teratai, Rumah Warga Kota Batu 9 Tahun Belum Kantongi Surat Tanah," Malang Times, 2022, <https://www.malangtimes.com/baca/76705/20220206/184500/hiruk-pikuk-kawasan-jalan-teratai-rumah-warga-kota-batu-9-tahun-belum-kantongi-surat-tanah>.

Housing Complex or had not paid for it in full. Hadi Suprayitno said that Harie Properti was still making advance payments to Kasmani as the land owner. At that time, Hadi Suprayitno also invited Haydar to come to see a notary named Wijaya Kusuma to conduct *waarmerking*.

Haydar bought the land from Harie Properti for Rp. 83.250.000,- (eighty three million two hundred and fifty thousand rupiah). Payment for the purchase of the land was made by Haydar in installments over a period of approximately 5 months. Haydar makes payments for the purchase of the land periodically with a fairly close distance between one payment and the next payment until it is paid off. Prior to the full payment, Haydar had started building his own house. The construction carried out by Haydar has received approval from Hadi Suprayitno. After the construction had been running for several months and was almost complete, Haydar began to have suspicions because the construction process at Teratai Regency Housing had not made any progress at all, but at that time Haydar chose to be indifferent because he felt he was building his own house.

The construction of the house, which was carried out by Haydar himself without the intervention of Harie Properti, made several people who had bought the housing question Haydar, and Haydar explained to them that he was only buying the land. From there, Haydar felt that there was something wrong, so he finally invited the housing buyers to meet Achmad Hari Bowo, the owner of Harie Properti, to demand the rights they should have as buyers who had fulfilled their obligations. The meeting did not result in anything, because Achmad Hari Bowo had many reasons why the buyers had not yet received land certificates. After the meeting took place, Achmad Hari Bowo was not found, therefore Haydar chose to report the incident to the Malang Police. The case reported by Haydar was handled by the police, but as time went on the investigator handling the case changed assignments, eventually the case was neglected and there is no way out until now.

If the case described in the news is related to the case in Court Judgment Number 12/Pdt.G/2017/PN.Mlg, it can be seen that Achmad Hari Bowo is an illegal property developer who acts as the owner of a property company called Harie Properti. The missions carried out by Achmad Hari Bowo in carrying out his role as an illicit property developer were: first, to buy several plots of land from different owners. It can be seen

that in the news the name of the land owner concerned is Kasmani, whereas in the case of Decision Number 12/Pdt.G/2017/PN.Mlg the name of the land owner concerned is Kartono, and in both cases Achmad Hari Bowo was not paid off the payment for the purchase of the land in question, but he resold the land to other parties through Harie Properti on the pretext that it would be converted into Teratai Regency Housing. Second, do not provide land certificates to the parties who have purchased land from him, because Achmad Hari Bowo himself does not actually have the land documents in question because he has not paid off the payment for the purchase of these lands.

Based on the description as mentioned above, Achmad Hari Bowo's actions in terms of persuading and influencing and lying to Kartono or using false dignity in entering into a land sale and purchase agreement with Kartono were fraudulent acts in the agreement, because Achmad Hari Bowo never proved the truth of the statement he conveyed. by showing documents stating that he is a housing complex developer and acting for and on behalf of PT. Harie Karya Mandiri. If investigated based on the description of the news as mentioned above and also the case in Court Judgement Number 12/Pdt.G/2017/PN.Mlg, this is because Achmad Hari Bowo is indeed a developer of illegal property or a fake housing developer, which is of course a statement what he said that he was a developer was an untrue/false statement that he deliberately created to commit fraud to various parties.

Fraud in agreements is recognized through Article 1328 of the Indonesia Civil Code (KUH Perdata), which according to this article fraud is an act of deception by one of the parties to the agreement so that the other party is willing to enter into an agreement, so that the other party will not be willing to enter into the agreement without deception. The deception referred to as an act of fraud under the provisions of the article can be in the form of an act in terms of giving an incorrect/false statement/statement, leading the true will to a conflicting matter, and various other actions that are deliberately carried out by one of the parties in the agreement to make the other party agrees to enter into an agreement. Thus, the actions of Achmad Hari Bowo in terms of persuading and influencing and deceiving Kartono or using false dignity which were deliberately carried out with the aim that Kartono would be willing to sell his land and enter into a land sale and purchase agreement can be categorized as an act of fraud in the agreement.

In terms of committing acts of fraud, Achmad Hari Bowo also committed acts of undue influence. Undue influence is an act that occurs when one of the parties to the agreement abuses the condition of the other party/offender, either in the form of an emergency, dependency/powerlessness, carelessness, unhealthy state of mind, or inexperience in carrying out a legal action that can harm him/herself.¹⁷ Another opinion states that undue influence is an act committed by one of the parties in the agreement to abuse the special circumstances of the other party/offender which results in that party not giving/expressing his will freely.¹⁸ The act of undue influence was deliberately carried out by one of the parties to the agreement because he knew that the special circumstances that existed on the other party/opposite would make him move to take a legal action..¹⁹

Achmad Hari Bowo, in entering into a land sale and purchase agreement with Kartono, took advantage of his knowledge of housing complex developers, which he did deliberately to abuse Kartono's situation as a farmer who had no experience in carrying out legal actions that could potentially harm him and Kartono's lack of knowledge about everything that was done by Achmad Hari Bowo, especially regarding housing complex developers. Achmad Hari Bowo knew/aware of the opportunity/opportunity to make Kartono agree to enter into a land sale and purchase agreement with him, therefore Achmad Hari Bowo took advantage of Kartono's situation as a way to commit fraud in entering into a land sale and purchase agreement with Kartono.

Based on the provisions of the terms of the agreement in Article 1320 paragraph (1) of the Indonesia Civil Code (KUH Perdata), the fraudulent act committed by Achmad Hari Bowo in entering into a land sale and purchase agreement with Kartono was a form of violation of the subjective terms of the agreement, because this act caused defects in the agreement/will that had been given by cardboard. Kartono gave his agreement/will to enter into a land sale and purchase agreement due to an act of fraud

¹⁷Eva Wulandari, "Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Dalam Hukum Perjanjian," Isdiyanto Law Office, 2022, <https://isdiyantolawoffice.com/penyalahgunaan-keadaan-dalam-hukum-perjanjian/>.

¹⁸Hasanudin, "Penyalahgunaan Keadaan Sebagai Alasan Pembatalan Perjanjian," Pengadilan Negeri Tilamuta Kelas II, 2016, <https://pn-tilamuta.go.id/2016/05/18/penyalahgunaan-keadaan-sebagai-alasan-pembatalan-perjanjian/>.

¹⁹Redaksi, "Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Dalam Perjanjian," Hukum Online, 2019, <https://www.hukumonline.com/klinik/infografik/penyalahgunaan-keadaan-imisbruik-van-omstandigheden-i-dalam-perjanjian-lt5dc3ecd9332f7>.

committed by Achmad Hari Bowo, namely in the form of an act of persuading and influencing and deceiving Kartono or using false dignity. If Achmad Hari Bowo had not committed such an act, then Kartono would not be willing to sell his land and enter into a land sale and purchase agreement with Achmad Hari Bowo. Thus, the agreement/will that has been given by Kartono in entering into the land sale and purchase agreement is not an agreement referred to in Article 1320 paragraph (1) of the Indonesia Civil Code (KUH Perdata), because the agreement is not an agreement that should have been given if there had been no fraudulent act by Achmad Hari Bowo.

Ability to Make a Agreement or Contract

Based on the provisions of Article 1329 of the Indonesia Civil Code (KUH Perdata) which states that everyone has the authority to make or enter into agreements, except for people who are declared incompetent. A person is declared incapable of making/entering into an agreement if that person fulfills the provisions stipulated in Article 1330 of the Indonesia Civil Code (KUH Perdata), namely first, a child who is not yet an adult. Second, people who are under guardianship. Third, married women. From the provisions of Article 1329 and Article 1330 of the Indonesia Civil Code as mentioned above, it can be seen that one of the conditions for making/entering into an agreement is that the parties concerned are people who by law are deemed capable and authorized, in which a person is deemed capable and authorized to carry out a legal act. If the person is an adult, of sound mind or not under guardianship, and is not married for a woman.

The legal subjects in the land sale and purchase agreement as stated in the Kota Malang Court Judgement Number 12/Pdt.G/2017/PN.Mlg are Kartono and Achmad Hari Bowo, in which both Kartono and Achmad Hari Bowo are both adults and have good sense or not. are under guardianship, in other words Kartono and Achmad Hari Bowo do not meet the criteria of people who are legally declared incapable of making/entering into agreements as stated in the provisions of Article 1330 of the Indonesia Civil Code (KUH Perdata). Because Kartono and Achmad Hari Bowo are people who are seen as capable and authorized to make/enter into agreements, then based on the qualification requirements in Article 1320 paragraph (2) of the Indonesia Civil Code the land sale and purchase agreement made and agreed upon by Kartono and Achmad Hari Bowo is a valid agreement .

Agreement or Contract on a Certain Subject Matter

The parties in terms of making/entering into an agreement are of course based on the existence of a certain subject matter. A certain subject matter referred to in this case is the object of the agreement or the achievement promised. In the sale and purchase agreement, what is meant by a certain subject matter is the goods that are the object of the agreement and the price of the goods. The object in the agreement is required to be goods that are allowed by law to become the object of the agreement, whether in the form of objects or rights as stipulated in Article 499 of the Indonesia Civil Code (KUH Perdata) which states that what is referred to as goods according to law are every object and every right that can become an object of property rights. Provisions regarding goods that can be used as objects in agreements are explained in the Indonesia Civil Code (KUH Perdata) starting from Article 1332 to Article 1334. That which can be objects of agreements are goods that can be traded, their type can be determined, and can be in the form of goods that exist at the time of occurrence new agreements or goods exist in the future.

The object in the sale and purchase agreement between Kartono and Achmad Hari Bowo as stated in the Kota Malang Court Judgement Number 12/Pdt.G/2017/PN.Mlg is land, which according to Article 506 of the Indonesia Civil Code land is immovable property that can become an object of property rights. The legal provisions that apply in the sale and purchase of land are that the party entitled and authorized to sell the land is the owner/holder of the property rights to the land in question, in other words the party acting as the seller must be the owner/holder of the property rights to the land in question.²⁰ From these provisions, it can be said that the object in the sale and purchase agreement between Kartono and Achmad Hari Bowo, namely land, is a valid item to be used as the object of the agreement, and the land is legal to be traded/traded because the person acting as the seller is Kartono who is the owner/holder of the ownership right to the land, thus the land sale and purchase agreement between Kartono and Achmad Hari Bowo is reviewed based on certain subject matter requirements in Article 1320 number 3 of the Indonesia Civil Code (KUH Perdata) is a valid agreement.

²⁰A H Wilharley, *Akibat Hukum Atas Batalnya Akta Jual Beli Tanah Karena Wanprestasi*, 2020.

Agreement or Contract on an Unforbidden Cause

Because what is meant in this case according to jurisprudence is the content or intent of the agreement itself.²¹ An agreement must be made for reasons that are not prohibited by law, because based on the provisions of Article 1335 of the Indonesia Civil Code (KUH Perdata), an agreement will not have legal force if it is made based on a false reason or a prohibited cause. The content or intent of an agreement, in this case referred to as a cause, will be declared a prohibited cause if the cause is indeed a cause prohibited by law or if the cause is contrary to decency or public order, this is as stated in the provisions of Article 1337 of the Indonesia Civil Code (KUH Perdata).

Everything that was agreed upon in the land sale and purchase agreement between Kartono and Achmad Hari Bowo as stated in the Kota Malang Court Judgment Number 12/Pdt.G/2017/PN.Mlg can be said to be a cause that is lawful or not prohibited, because when viewed from the substance The Land Sale and Purchase Agreement between Kartono and Achmad Hari Bowo does not contain matters prohibited by law from being agreed upon in an agreement and the substance of the Land Purchase Agreement itself is not contrary to decency or public order. When viewed based on the terms of a cause that is not prohibited in Article 1320 paragraph (4) of the Indonesia Civil Code (KUH Perdata), it can be said that the land sale and purchase agreement made and agreed upon by Kartono and Achmad Hari Bowo is a valid agreement.

Based on the provisions regarding the legal terms of the agreement as referred to in Article 1320 of the Indonesia Civil Code which has been described above, it can be seen that the problem in the land sale and purchase agreement between Kartono and Achmad Hari Bowo is related to the legal terms of the first agreement, namely the agreement of those who bind themselves to the agreement. Their agreement which binds itself implies that the parties to the agreement have agreed or there has been an agreement of will or have mutually agreed to each other's will which is achieved without error/oversight, coercion, fraud, and undue influence.²² In the land sale and purchase agreement between Kartono and Achmad Hari Bowo, it is known that Kartono gave his agreement/will to enter into the land sale and purchase agreement due to an act of fraud committed by Achmad Hari Bowo, namely in the form of persuading and

²¹Soenandar, *Kompilasi Hukum Perikatan*.

²²Putusan Nomor 12/Pdt.G/2017/PN.Mlg.

influencing and deceiving Kartono or using false dignity . Thus, the agreement that was given by Kartono in entering into the land sale and purchase agreement was a flawed agreement/will, because the agreement/will was not in accordance with the provisions referred to in Article 1320 paragraph (1) of the Indonesia Civil Code.

The action taken by Achmad Hari Bowo in entering into a land sale and purchase agreement with Kartono was an act of fraud at the level of the agreement, which violated the subjective terms of the agreement which of course gave rise to a legal consequence. Legal consequences are consequences that arise because of a legal event or action of a legal subject.²³ Legal consequences of the land sale and purchase agreement between Kartono and Achmad Hari Bowo which was made/held by not fulfilling/violating the subjective terms of the agreement because it contains elements of fraud and also undue influence committed by Achmad Hari Bowo, resulting in defects in the will given by Kartono in the agreement is the agreement can be canceled (voidable). Voidable in this case, namely by requesting the cancellation of the agreement to the Panel of Judges by a party that does not agree freely in the agreement.²⁴ Parties who feel their interests have been harmed have the right to request/apply for cancellation of the agreement, demand for recovery, and demand compensation.²⁵

The act of requesting the cancellation of an agreement that violates the provisions of the subjective terms of the agreement can be carried out when the party who cannot give his consent freely realizes that the agreement/will he has given at the time of closing/signing the agreement is a flawed agreement/will.²⁶ Based on the Lawsuit Letter that was received and registered at the Kota Malang Court Registrar with Registration Number 12/Pdt.G/2017/PN.Mlg, it is known that Kartono's status is as Plaintiff, meaning that Kartono is the party acting in filing a lawsuit to the Kota Malang Court against Achmad Hari Bowo who is referred to as the Defendant. In essence, Kartono

²³Kamus Hukum Online Indonesia, "Kamus Hukum," n.d., <https://kamushukum.web.id/?s=akibat+hukum>.

²⁴Agra Verta Ardi Nugraha, "Keabsahan Perjanjian Jual Beli Tanah Yang Di Dalamnya Mengandung Cacat Hukum (Studi Putusan Nomor 178/PDT.G/2012/PN.Sda)" (Universitas Jember, 2016), <https://repository.unej.ac.id/handle/123456789/73592>.

²⁵Yulianti, "Asas-Asas Perjanjian (Akad) Dalam Hukum Kontrak Syari'ah."

²⁶Bernadeta Resti Nurhayati, "Penyalahgunaan Keadaan Sebagai Dasar Pembatalan Perjanjian," *Jurnal Komunikasi Hukum (JKH)* 5, no. 1 (February 2019): 66–75, <https://doi.org/10.23887/jkh.v5i1.16752>.

requested/begged the Panel of Judges at the Kota Malang Court to agree to cancel the private Land Sale and Purchase Agreement that had been drawn up and mutually agreed upon with Achmad Hari Bowo. The actions taken by Kartono as stated above were correct and in accordance with the applicable legal provisions.

The lawsuit for the cancellation of the agreement submitted by Kartono was granted by the Malang District Court Panel of Judges who examined and tried the case through Kota Malang Court Judgement Number 12/Pdt.G/2017/PN.Mlg. Based on the provisions of Article 1452 of the Indonesia Civil Code, the cancellation of an agreement based on the presence of elements that cause defects of will results in the goods and people concerned returning to the state they were before the agreement was made. So, the legal consequence of canceling a sale and purchase agreement is that all the achievements that have been given must be returned to each party as a form of restoring the situation to how it was before the agreement was made.²⁷ Achievements that have been reciprocally submitted must be returned to each party.²⁸ Achievements referred to in this case can be in the form of goods and money/purchase price that has been given.²⁹ In this case, the land which was the object of the sale and purchase agreement between Kartono and Achmad Hari Bowo fully returned to Kartono, in other words the ownership rights to the land fully returned to Kartono. In addition, Kartono was obliged to repay Achmad Hari Bowo for the payment he had received.

Regarding the facts disclosed in the Kota Malang Court Judgement Number 12/Pdt.G/2017/PN.Mlg, that Achmad Hari Bowo had sold the land for which he had not paid off the payment to Purnomo and Heru Puji Santoso, and both parties had paid in full to Achmad Hari Bowo.³⁰ Bearing in mind that the agreement between Kartono and Achmad Hari Bowo was set forth in a private Land Sale Purchase Agreement, in which the Land Sale Purchase Agreement is a form of a Sale Purchase Agreement (PPJB).

²⁷Eka Priambodo, "Penipuan Sebagai Alasan Pembatalan Perjanjian Jual Beli Dan Tuntutan Ganti Rugi" (Universitas Islam Indonesia, 2011), <https://dspace.uui.ac.id/handle/123456789/8699>.

²⁸Jatmiko Winarno, "Kajian Normatif Tentang Akibat Hukum Pembatalan Perjanjian Pengikatan Jual Beli Tanah Menurut Kitab Undang-Undang Hukum Perdata (KUHPerdata)," *Jurnal Independent* 5, no. 1 (June 2017): 60–70, <https://doi.org/10.30736/JI.V5I1.62>.

²⁹Felly Yanti Sheilli Lumempouw, "Kedudukan Hukum Pihak Pembeli Terhadap Pihak Penjual Yang Melakukan Perbuatan Melawan Hukum Dalam Perjanjian Jual Beli Tanah Menurut Kitab Undang-Undang Hukum Perdata," *Lex Crimen* 6, no. 4 (2017): 112–18, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/16445>.

³⁰Putusan Nomor 12/Pdt.G/2017/PN.Mlg.

PPJB is a preliminary agreement made before the parties to the agreement carry out legal actions of transferring land ownership rights through buying and selling before the Land Deed Making Officer (PPAT) which is marked by the making of the Sale and Purchase Deed (in Indonesia called AJB means Akta Jual Beli).³¹ The making/holding of the PPJB by the parties does not result in a transfer of ownership rights to the land that is the object of the agreement, because the transfer of ownership rights to land occurs when the parties make a sale and purchase before the PPAT by making an AJB.³² The PPJB is only a sign that the parties agree to buy and sell at a later date, while the substance regarding the transfer of rights has not been included in it.³³ PPJB itself has two forms, namely Paid PPJB which is accompanied by a power of attorney to sell and Unpaid PPJB which is not accompanied by a power of attorney to sell.³⁴

The Land Purchase Agreement made and agreed upon by Kartono and Achmad Hari Bowo is a form of Unpaid PPJB, because Achmad Hari Bowo as the buyer in the agreement has not paid off the payment for the purchase of the land that is the object of the agreement. Whereas the unpaid PPJB does not have/is not attached to the power to sell, thus Achmad Hari Bowo's actions in selling land without rights and without the knowledge of Kartono as the owner/holder of ownership rights to the land he is selling is an act that violates the provisions of objective requirements agreement. Thus, the land sale and purchase agreement between Achmad Hari Bowo and Purnomo and Heru Puji Santoso was declared null and void. Null for the sake of law means that the agreement is considered never existed.³⁵ Because the land sale and purchase agreement between Achmad Hari Bowo and Purnomo and Heru Puji Santoso was declared null and void,

³¹Fatmawati and I Gusti Ayu Ketut Rachmi Handayani, "Kajian Yuridis Pembatalan Perjanjian Pengikatan Akta Jual Beli Tanah Terkait Syarat Subjektif," *Repertorium* 6, no. 1 (2019): 1–14, <https://jurnal.uns.ac.id/repertorium/article/view/27810>.

³²Galuh Hapsari, "Kedudukan Hukum Perjanjian Pengikatan Jual Beli (PPJB) Dalam Hal Terjadi Sengketa" (Universitas Islam Indonesia Yogyakarta, 2018), <https://dspace.uui.ac.id/handle/123456789/5876>.

³³Satria Ginting, "Analisis Yuridis Terhadap Kedudukan Hukum Perjanjian Pengikatan Jual Beli Hak Atas Tanah Yang Bersertifikat Yang Dibuat Di Bawah Tangan (Studi Putusan No. 130/PDT.G/2012/PN. MLG)," *Ilmu Hukum Prima (IHP)* 3, no. 1 (October 3, 2020), 11-12, <https://doi.org/10.34012/JIHAP.V3I1.934>.

³⁴Irma Devita Purnamasari, "Pengikatan Jual Beli Dan Kuasa Untuk Menjual," *Hukum Online*, 2015, <https://www.hukumonline.com/klinik/a/pengikatan-jual-beli-dan-kuasa-untuk-menjual-lt548f3f2f8a900>.

³⁵Lumempouw, "Kedudukan Hukum Pihak Pembeli Terhadap Pihak Penjual Yang Melakukan Perbuatan Melawan Hukum Dalam Perjanjian Jual Beli Tanah Menurut Kitab Undang-Undang Hukum Perdata."

that is, it was deemed that the agreement had never existed or had never been born, then in this case Achmad Hari Bowo had to make a return to Purnomo and Heru Puji Santoso for the payment he has received.

The Principle of *Mabda' ar-Raḍa'iyah* in the Land Purchase Agreement with Fraudulent Elements in Court Judgement Number 12/Pdt.G/2017/PN.Mlg

The case in the Kota Malang Court Judgement Number 12/Pdt.G/2017/PN.Mlg is regarding the land sale and purchase agreement between Kartono and Achmad Hari Bowo. Kartono, who is the owner/holder of the property rights to the land which is the object of the agreement, actually has no intention or is unwilling to sell the land, but due to persuasion and influence from Achmad Hari Bowo, finally Kartono is moved to sell the land to Achmad Hari Bowo. To support the words of persuasion and influence that had been conveyed to Kartono, and so that Kartono had confidence and trust in entering into a land sale and purchase agreement, Achmad Hari Bowo told Kartono that he was a developer of a housing complex who at that time was developing a housing complex. Teratai Regency, which owns and/or controls several plots of land located in the area where Kartono lives, and acts on behalf of the owner of PT. Harie Karya Mandiri.

The agreement between Kartono and Achmad Hari Bowo to carry out the sale and purchase of land was stated in the Private Land Sale and Purchase Agreement. In essence, the Land Sale and Purchase Agreement contained an agreement between Kartono and Achmad Hari Bowo that Kartono's 1,327 m² of land was to be sold at a price of Rp. 450,000,-/m² (four hundred and fifty thousand rupiah per square meter), so the total selling price of the land is Rp. 597.150.000,- (five hundred ninety seven million one hundred and fifty thousand rupiah), and contains the stages/methods of payment that must be made by Achmad Hari Bowo along with the time of payment and the amount to be paid at each stage of payment. However, in terms of its implementation, Achmad Hari Bowo made payments not in accordance with the agreement set forth in the Land Purchase Agreement, instead he made payments at will. The total payment given by Achmad Hari Bowo to Kartono was Rp. 95,000,000.- (ninety five million rupiah), so there is still a payment shortfall that must be paid, namely Rp. 502.150.000,- (five hundred two million one hundred and fifty thousand rupiah).

In the event that there is still an underpayment that Achmad Hari Bowo must give to Kartono, Achmad Hari Bowo does not have good faith in paying off the

underpayment, because even though Kartono has issued several warnings/subpoenas, Achmad Hari Bowo has never paid heed to the warning, even in the end Achmad Hari Bowo was difficult to find and subsequently could not be contacted. Apart from that, in this case a fact was revealed that Achmad Hari Bowo had sold the land for which he had not paid off the payment to Purnomo and Heru Puji Santoso, and both parties had made payment for the purchase of the land in full to Achmad Hari Bowo. On the basis of all the actions that had been carried out by Achmad Hari Bowo as mentioned above, Kartono finally took action to file a lawsuit against Achmad Hari Bowo to the Kota Malang Court Judgement to ask for the void of the Land Purchase Agreement that had been made and agreed upon with Achmad Hari Bowo.

According to the author, in entering into a land sale and purchase agreement, Achmad Hari Bowo committed fraud, namely persuading and influencing Kartono to agree to sell his land and deceive Kartono or use false dignity as a housing complex developer and his presence on behalf of the owner of PT. Harie Karya Mandiri so that Kartono would agree to enter into a land sale and purchase agreement with him. Achmad Hari Bowo's statement as a housing complex developer and his presence on behalf of the owner of PT. Harie Karya Mandiri was not proven to be true, because Achmad Hari Bowo never showed documents stating that he was a housing complex developer or other documents proving that he was acting for and on behalf of PT. Harie Karya Mandiri. Thus, Achmad Hari Bowo's actions included in the act of fraud in the agreement.

In committing fraud, Achmad Hari Bowo also committed an act of misuse of circumstances, in which case Achmad Hari Bowo deliberately used his knowledge of housing complex developers and utilized his knowledge of the procurement of the Teratai Regency housing complex which was currently underway in the area Carton's residence. This was deliberately done by Achmad Hari Bowo to abuse Kartono's situation as a farmer who had no experience in carrying out legal actions that could potentially harm him and Kartono's lack of knowledge about everything Achmad Hari Bowo was doing. In this case, Achmad Hari Bowo knew/aware that there was an opportunity/opportunity to make Kartono agree to enter into a land sale and purchase agreement with him, therefore Achmad Hari Bowo took advantage of this situation as a way to commit fraud in entering into a land sale and purchase agreement with Kartono.

The act committed by Achmad Hari Bowo in terms of committing fraud by abusing Kartono's situation was a violation of the subjective terms of the agreement, namely the terms of the agreement in Article 1320 paragraph (1) of the Indonesia Civil Code (KUH Perdata). The agreement of the parties who bind themselves to the agreement as referred to in Article 1320 paragraph (1) of the Indonesia Civil Code (KUH Perdata) means that the parties to the agreement have agreed or there has been a conformity of will or have mutually agreed to each other's will which is achieved without oversight, coercion, fraud, and undue influence. In the land sale and purchase agreement between Kartono and Achmad Hari Bowo, it is known that Kartono gave his consent to the agreement due to an act of fraud committed by Achmad Hari Bowo, in the form of an act of persuading and influencing and deceiving Kartono or using false dignity. This caused a defect in the agreement/will that had been given by Kartono in entering into the land sale and purchase agreement. As for the legal consequences of the land sale and purchase agreement between Kartono and Achmad Hari Bowo which was held by violating the subjective terms of the agreement, the agreement can be cancelled. It can be canceled, namely by requesting/requesting the cancellation of it to the Panel of Judges by Kartono as a party that cannot give its consent freely.

In sharia contract law, the term used to refer to agreements and/or contracts is contract. The word contract comes from the Arabic word *al-'aqdu* which means bond or knot. In terms of the contract is an agreement either in the form of oral, written, or gestures between two or more parties that have a binding legal relationship to be implemented.³⁶ *Akad* is a meeting between the *ijab* (an offer statement from the first party) and *qabul* (an answer to the agreement from the second party as a form of response to the offer from the first party) which is legal according to the *syar'ah* and has legal consequences for the object of the agreement.³⁷ The statement of consent and *qabul* is a sign that there has been a reciprocal willingness between the parties who entered into the contract regarding the substance of the contract. The contract must be made/held by fulfilling the pillars and conditions of the contract. Given that this research discusses the case in the Kota Malang Court Judgement Number

³⁶Emanuel Raja Damaitu, "Perbandingan Asas Perjanjian Dalam Hukum Islam Dan KUHPerdata," *Repertorium* 1, no. 1 (2014), <https://www.neliti.com/id/publications/212969/perbandingan-asas-perjanjian-dalam-hukum-islam-dan-kitab-undang-undang-hukum-per>.

³⁷Yulianti, "Asas-Asas Perjanjian (Akad) Dalam Hukum Kontrak Syari'ah."

12/Pdt.G/2017/PN.Mlg, which case concerns the land sale and purchase agreement between Kartono and Achmad Hari Bowo, what needs to be studied in this case is the pillars and terms of sale and purchase based on sharia contract law. In Book II of the Indonesia Sharia Economic Law Compilation (KHES) Article 56 it is stated that the pillars of buying and selling consist of 3 (three) things, the contracting parties, the object of the contract, and the agreement/*sigat*.

In the Kota Malang Court Judgement No. 12/Pdt.G/2017/PN.Mlg, it is known that in entering into a land sale and purchase agreement Achmad Hari Bowo committed fraud in the form of persuading and influencing and deceiving Kartono or using false dignity. The fraudulent act was carried out by Achmad Hari Bowo by abusing Kartono's condition as the opposite of his promise. Achmad Hari Bowo did all of these actions with the aim that Kartono would be willing to enter into a land sale and purchase agreement with him, and it turned out that this action succeeded in getting Kartono to agree to make a land sale and purchase agreement privately. Thus, the agreement given by Kartono in entering into the land sale and purchase agreement was not an agreement that should have been given had Achmad Hari Bowo not committed such fraudulent acts. In fact, the fraudulent act committed by Achmad Hari Bowo had damaged the willingness given by Kartono in agreeing to enter into the agreement, even though this willingness was one of the conditions attached to the pillars of the "agreed parties" contract as stated in on.

In sharia contract law, there are 3 (three) divisions regarding contract law, namely contracts that are valid, contracts that are flawed/*fasad*, and contracts that are void/invalid. A valid contract is a contract that has fulfilled the pillars and conditions of the contract. A contract that is defective/*facade* is a contract that has fulfilled the pillars and conditions of the contract, but contains something that damages the contract, so that the contract can be cancelled. A contract that is void/invalid is a contract that lacks or does not fulfill the pillars and/or terms of the contract.³⁸ Another opinion perfects that a contract that is void/false is a contract that does not fulfill the pillars of the contract or does not fulfill the conditions that must be attached to the pillars of the contract, so that

³⁸Cut Lika Alia, "Akad Yang Cacat Dalam Hukum Perjanjian Islam," *Premise Law Journal* 2, no. 2 (2015), <https://jurnal.usu.ac.id/index.php/premise/article/view/9328>.

based on sharia agreement law the contract is deemed invalid or null and void by law.³⁹ As stated above, the fraudulent act committed by Achmad Hari Bowo in entering into a land sale and purchase agreement had damaged Kartono's willingness as the opponent of his promise, even though in the pillars of the contract "the contracting parties" attached a condition that between the parties entering into a contract contract must be willing.⁴⁰ Thus, the land sale and purchase agreement between Kartono and Achmad Hari Bowo was declared a contract that was void/null, because the agreement was made/held without fulfilling the conditions that must be attached to the pillars of the contract, namely willingness.

Willingness is also an element in one of the principles of contract based on sharia contract law, namely the principle of *mabda' ar-raḍa'iyyah*. According to Syamsul Anwar, this principle is a principle which states that an agreement can be created simply by reaching an agreement between the parties entering into the agreement without the need for certain formalities.⁴¹ Agustianto in his article states that all transactions must be carried out on the basis of mutual consent between the parties involved in the transaction. The form of the willingness of the parties is realized when an agreement is made without having to fulfill certain formalities. The agreement must be given freely and there must be no elements of coercion, pressure, fraud or misstatement. If in a transaction there is coercion, pressure, fraud, and misstatement, then the transaction cannot be said to have reached a form of activity based on the willingness of the parties. For example, if someone buys an item and then feels cheated because the item turns out to be counterfeit, then the sale and purchase can be canceled by the buyer because it contains an element of deception (*khilābah*).⁴² The willingness of the contracting parties is a prerequisite for the realization of a contract based on sharia contract law, therefore the agreement will be declared invalid if there is a defect in it that can eliminate the willingness / pleasure of some parties to the contract. There are several factors that can

³⁹Alia.

⁴⁰Yulianti, "Asas-Asas Perjanjian (Akad) Dalam Hukum Kontrak Syari'ah."

⁴¹Syamsul Anwar, *Hukum Perjanjian Syariah: Studi Tentang Teori Akad Dalam Fikih Muamalat* (Jakarta: Rajawali Press, 2010).

⁴²Agustianto, "Asas-Asas Akad (Kontrak) Dalam Hukum Syariah," Iqtishad Consulting, 2015, <https://www.iqtishadconsulting.com/content/read/blog/asas-asas-akad-kontrak-dalam-hukum-syariah>.

damage someone's willingness / pleasure are as follows:⁴³ Coercion/Intimidation (*ikr ikrāh/duress*); Errors (*al-Khatā'/al-Galaṭ*); Masking the price of goods (*al-Gubn*); and Deception (*al-Khilābah*).

From all the descriptions of the *mabda' ar-raḍa'iyah* principle, it can be seen that willingness is an element that must exist or must be fulfilled in every contract, because the basis for creating a contract is an agreement between the parties which must be given based on willingness. This is in accordance with the words of the Prophet Muhammad SAW. which states that "Verily buying and selling is based on an agreement".⁴⁴ The hadith explicitly mentions only buying and selling contracts, but this hadith is the legal basis that justifies other contracts in buying and selling contracts, so from this hadith it can be understood that every contract must be made based on the agreement/voluntary of the parties.⁴⁵

In terms of the *mabda' ar-raḍa'iyah* principle, the land sale and purchase agreement between Kartono and Achmad Hari Bowo as stated in the Kota Malang Court Judgement Number 12/Pdt.G/2017/PN.Mlg is an agreement made/held by not fulfilling the basic provisions *mabda' ar-raḍa'iyah*, because in entering into the agreement Achmad Hari Bowo as the buyer committed an act of fraud (*al-Khilābah*), which caused damage to Kartono's willingness. *al-Khilābah* is a term in the perspective of Islamic commerce fiqh which means deception.⁴⁶ *Al-Khilābah* is an attempt at deception carried out by one of the parties in a contract through deceptive means, both verbally and in action. *Al-Khilābah* is one of the acts that are prohibited from being carried out in muamalat according to Islamic law.⁴⁷ In addition, if investigated it turns out that at first Kartono had no intention or was not willing to sell his land, but due to persuasion, influence and false statements from Achmad Hari Bowo, finally Kartono

⁴³Leni Taufik Rohman, "Pelaksanaan Jual Beli Gabah Di Desa Kertamukti Kecamatan Sindangbarang Cianjur" (UIN Sunan Gunung Djati, 2016), <http://digilib.uinsgd.ac.id/27829/>.

⁴⁴Muhammad Ardi, "Asas-Asas Perjanjian (Akad), Hukum Kontrak Syariah Dalam Penerapan Salam Dan Istisna," *Diktum: Jurnal Syariah Dan Hukum* 14, no. 2 (December 10, 2016): 265–279, <https://doi.org/10.35905/Diktum.V14I2.237>.

⁴⁵Miftahus Salam, "Asas-Asas Perjanjian Dalam Hukum Perjanjian Syariah," *Asy-Syari'ah : Jurnal Hukum Islam* 3, no. 2 (June 2017): 112–125, <https://doi.org/10.55210/assyariah.v3i2.256>.

⁴⁶Muhammad Afif Makari, "Rayuan Manis Bulan Diskon: Perspektif Perniagaan Islam," *Kompasiana*, 2017, <https://www.kompasiana.com/karim99/5a3bab0bab12ae54c47091b2/rayuan-manis-bulan-diskon-perspektif-perniagaan-islam>.

⁴⁷Pira Soviana Ulfa, "Pilar Dasar Fiqih Muamalat Dan Transaksi Yang Dilarang," *Retizen.id*, 2021, <https://retizen.republika.co.id/posts/17773/pilar-dasar-fiqih-muamalat-dan-transaksi-yang-dilarang>.

was moved to sell his land and made/entered into a land sale and purchase agreement under hand in hand with Achmad Hari Bowo, so that the agreement given by Kartono in entering into the agreement was not an agreement given on a voluntary basis as meant in the provisions of the *mabda' ar-raḍa'iyah* principle.

A contract made/held without fulfilling the principles of *mabda' ar-raḍa'iyah* will be declared to have been carried out in a vanity manner.⁴⁸ In sharia contract, the legal provisions that apply are that it is not permissible to enter into contracts in a vanity manner. This is in line with Allah's Word in Surah An-Nisa verse 29. Based on the verse, it can be understood that every contract must be carried out based on the willingness of the parties, things that contain pressure, coercion, fraud, and misstatement are not allowed.⁴⁹

Thus, it can be seen that the land sale and purchase agreement between Kartono and Achmad Hari Bowo violated the provisions of the sharia agreement law because it was carried out in a vanity manner, that is, it was made/held by not fulfilling the *Mabda'ar-Radha'iyah* principle. As for the legal consequences of the land sale and purchase agreement between Kartono and Achmad Hari Bowo as stated in the Decision of the Kota Malang Court Judgement Number 12/Pdt.G/2017/PN.Mlg which was made/held by not fulfilling the *mabda' ar-raḍa'iyah* principle, the agreement is null and void. Null for the sake of law, that is, the agreement is deemed to have never existed or an agreement was never created from the outset.⁵⁰

Based on the review of the *mabda' ar-raḍa'iyah* principle as described above, that because the land sale and purchase agreement between Kartono and Achmad Hari Bowo was declared a null contract, the land sale and purchase agreement between Kartono and Achmad Hari Bowo was considered there never was. As a form of embodiment that based on the legal provisions of the sharia agreement the land sale and purchase agreement between Kartono and Achmad Hari Bowo is declared null and void, so that between Kartono and Achmad Hari Bowo are not bound by anything and/or are not bound by any agreement, then In this case, it is proper for Kartono to return to Achmad Hari Bowo the amount of money paid to him, and Achmad Hari Bowo has

⁴⁸Damaitu, "Perbandingan Asas Perjanjian Dalam Hukum Islam Dan KUHPerdara."

⁴⁹Yulianti, "Asas-Asas Perjanjian (Akad) Dalam Hukum Kontrak Syari'ah."

⁵⁰Si Pokrol, "Batalnya Suatu Perjanjian," Hukum Online, 2004, <https://www.hukumonline.com/klinik/a/batalnya-suatu-perjanjian-cl3520>.

absolutely no right to the land that is the object of the agreement, because the land remains the property of Kartono.

Conclusion

The legal consequence of a land sale and purchase agreement made/held by violating the provisions of the subjective terms of the agreement is that the agreement is voidable. In concluding the land sale and purchase agreement there was a violation of subjective conditions, namely the buyer committed fraudulent acts, namely persuading, influencing, deceiving and using false dignity, which resulted in defects in the agreement/will of one of the parties to the agreement. Legal steps taken, namely the party who feels aggrieved by the violation of subjective conditions can apply for the cancellation of the agreement to the Panel of Judges before the court. The cancellation that was granted by the panel of judges resulted in the status of ownership rights to the land returning to how it was before the agreement occurred. The land sale and purchase agreement that occurred in the above case was a contract made/held by not fulfilling the *mabda' ar-raḍa'iyyah* principle, because the agreement/will in entering into the agreement was given on the basis of an element of fraud committed by the buyer. The sale and purchase agreement becomes a void contract, the agreement is deemed to have never existed or the agreement has never occurred.

BIBLIOGRAPHY

- Agustianto. "Asas-Asas Akad (Kontrak) Dalam Hukum Syariah." Iqtishad Consulting, 2015. <https://www.iqtishadconsulting.com/content/read/blog/asas-asas-akad-kontrak-dalam-hukum-syariah>.
- Ahmad, Sabarudin. "Hukum Aborsi Akibat Perkosaan (Analisis Hukum Islam Terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi." *El-Mashlahah* 8, no. 2 (2018): 162–83. <https://doi.org/https://doi.org/10.23971/el-mas.v8i2.1321>.
- Alia, Cut Lika. "Akad Yang Cacat Dalam Hukum Perjanjian Islam." *Premise Law Journal* 2, no. 2 (2015). <https://jurnal.usu.ac.id/index.php/premise/article/view/9328>.
- Anwar, Syamsul. *Hukum Perjanjian Syariah: Studi Tentang Teori Akad Dalam Fikih Muamalat*. Jakarta: Rajawali Press, 2010.
- Ardi, Muhammad. "Asas-Asas Perjanjian (Akad), Hukum Kontrak Syariah Dalam Penerapan Salam Dan Istisna." *DIKTUM: Jurnal Syariah Dan Hukum* 14, no. 2 (December 2016): 265–79. <https://doi.org/10.35905/DIKTUM.V14I2.237>.
- Arifin, Syahsyahudin. "Kajian Yuridis Terhadap Kasus Wanprestasi Jual Beli Tanah (Studi Kasus Putusan No. 358/Pdt.G/2014/PN.Jkt.Tim Antara Hj. Faridah <https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/index>

- Melawan Nani Suniarti).” Universitas Sumatera Utara Medan, 2019. <https://repositori.usu.ac.id/handle/123456789/13901?show=full>.
- Damaitu, Emanuel Raja. “Perbandingan Asas Perjanjian Dalam Hukum Islam Dan KUHPerdota.” *Repertorium* 1, no. 1 (2014). <https://www.neliti.com/id/publications/212969/perbandingan-asas-perjanjian-dalam-hukum-islam-dan-kitab-undang-undang-hukum-per>.
- Fatmawati, and I Gusti Ayu Ketut Rachmi Handayani. “Kajian Yuridis Pembatalan Perjanjian Pengikatan Akta Jual Beli Tanah Terkait Syarat Subjektif.” *Repertorium* 6, no. 1 (2019): 1–14. <https://jurnal.uns.ac.id/repertorium/article/view/27810>.
- Fila, Siti Zalifah Firdausiah. “Kajian Teoritik Terhadap Urgensi Asas Dalam Akad (Kontrak) Syariah.” *Al-Muamalat* 5, no. 1 (2020): 48–67. <https://doi.org/10.32505/muamalat.v5i1.1519>.
- Ginting, Satria. “Analisis Yuridis Terhadap Kedudukan Hukum Perjanjian Pengikatan Jual Beli Hak Atas Tanah Yang Bersertifikat Yang Dibuat Di Bawah Tangan (Studi Putusan No. 130/PDT.G/2012/PN. MLG).” *Ilmu Hukum Prima (IHP)* 3, no. 1 (October 2020): 1–32. <https://doi.org/10.34012/jihap.v3i1.934>.
- Hapsari, Galuh. “Kedudukan Hukum Perjanjian Pengikatan Jual Beli (PPJB) Dalam Hal Terjadi Sengketa.” Universitas Islam Indonesia Yogyakarta, 2018. <https://dspace.uui.ac.id/handle/123456789/5876>.
- Hasanudin. “Penyalahgunaan Keadaan Sebagai Alasan Pembatalan Perjanjian.” Pengadilan Negeri Tilmuta Kelas II, 2016. <https://pn-tilmuta.go.id/2016/05/18/penyalahgunaan-keadaan-sebagai-alasan-pembatalan-perjanjian/>.
- Indonesia, Kamus Hukum Online. “Kamus Hukum,” n.d. <https://kamushukum.web.id/?s=akibat+hukum>.
- Jinawi, Matius Hanungka. “Pembuktian Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Sebagai Dasar Pembatalan Perjanjian.” Universitas Katolik Soegijapranata Semarang, 2020. <http://repository.unika.ac.id/24743/>.
- Lumempouw, Felly Yanti Sheilli. “Kedudukan Hukum Pihak Pembeli Terhadap Pihak Penjual Yang Melakukan Perbuatan Melawan Hukum Dalam Perjanjian Jual Beli Tanah Menurut Kitab Undang-Undang Hukum Perdata.” *Lex Crimen* 6, no. 4 (2017): 112–18. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/16445>.
- Makari, Muhammad Afif. “Rayuan Manis Bulan Diskon: Perspektif Perniagaan Islam.” *Kompasiana*, 2017. <https://www.kompasiana.com/karim99/5a3bab0bab12ae54c47091b2/rayuan-manis-bulan-diskon-perspektif-perniagaan-islam>.
- Mulyadi, Dudung. “Unsur-Unsur Penipuan Dalam Pasal 378 KUHP Dikaitkan Dengan Jual Beli Tanah.” *Galuh Justisi* 5, no. 2 (2017): 206–23. <https://doi.org/10.25157/jigj.v5i2.798>.
- Muttaqin, Zainal. “Formalization of Islamic Law in Indonesia in the Framework of Social Engineering Theory by Roscoe Pound.” *El-Mashlahah* 11, no. 2 (2021): 97–

115. <https://doi.org/10.23971/elma.v11i2.2825>.
- Nugraha, Agra Verta Ardi. “Keabsahan Perjanjian Jual Beli Tanah Yang Di Dalamnya Mengandung Cacat Hukum (Studi Putusan Nomor 178/PDT.G/2012/PN.Sda).” Universitas Jember, 2016. <https://repository.unej.ac.id/handle/123456789/73592>.
- Nurhayati, Bernadeta Resti. “Penyalahgunaan Keadaan Sebagai Dasar Pembatalan Perjanjian.” *Jurnal Komunikasi Hukum (JKH)* 5, no. 1 (February 2019): 66–75. <https://doi.org/10.23887/jkh.v5i1.16752>.
- Pokrol, Si. “Batalnya Suatu Perjanjian.” *Hukum Online*, 2004. <https://www.hukumonline.com/klinik/a/batalnya-suatu-perjanjian-cl3520>.
- Priambodo, Eka. “Penipuan Sebagai Alasan Pembatalan Perjanjian Jual Beli Dan Tuntutan Ganti Rugi.” Universitas Islam Indonesia, 2011. <https://dspace.uui.ac.id/handle/123456789/8699>.
- Purnamasari, Irma Devita. “Pengikatan Jual Beli Dan Kuasa Untuk Menjual.” *Hukum Online*, 2015. <https://www.hukumonline.com/klinik/a/pengikatan-jual-beli-dan-kuasa-untuk-menjual-lt548f3f2f8a900>.
- Putra, Sandi Prisma. “Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Sebagai Bentuk Cacat Kehendak Ke-4 Dalam Perjanjian.” STH Garut, 2020. <https://sthgarut.ac.id/blog/2020/02/24/penyalahgunaan-keadaan-misbruik-van-omstandigheden-sebagai-bentuk-cacat-kehendak-ke-4-dalam-perjanjian/>.
- Redaksi. “Penyalahgunaan Keadaan (Misbruik van Omstandigheden) Dalam Perjanjian.” *Hukum Online*, 2019. <https://www.hukumonline.com/klinik/infografik/penyalahgunaan-keadaan-imisbruik-van-omstandigheden-i-dalam-perjanjian-lt5dc3ecd9332f7>.
- Richa, Irsya. “Hiruk Pikuk Kawasan Jalan Teratai, Rumah Warga Kota Batu 9 Tahun Belum Kantongi Surat Tanah.” *Malang Times*, 2022. <https://www.malangtimes.com/baca/76705/20220206/184500/hiruk-pikuk-kawasan-jalan-teratai-rumah-warga-kota-batu-9-tahun-belum-kantongi-surat-tanah>.
- Ridha, Zuhdan Fajrin Candra. “Penyelesaian Wanprestasi Terhadap Jual Beli Rumah Melalui Peralihan Hak Atas Tanah Tinjauan Hukum Positif Dan Hukum Ekonomi Syariah Studi Putusan No. 71/Pdt.G/2018/PN.Blt.” UIN Maulana Malik Ibrahim Malang, 2020. <http://etheses.uin-malang.ac.id/22534/>.
- Rohman, Leni Taufik. “Pelaksanaan Jual Beli Gabah Di Desa Kertamukti Kecamatan Sindangbarang Cianjur.” UIN Sunan Gunung Djati, 2016. <http://digilib.uinsgd.ac.id/27829/>.
- Salam, Miftahus. “Asas-Asas Perjanjian Dalam Hukum Perjanjian Syariah.” *Asy-Syari'ah: Jurnal Hukum Islam* 3, no. 2 (June 2017): 112–25. <https://doi.org/10.55210/assyariah.v3i2.256>.
- Saputra, Hendra. “Beli Rumah Tak Dapat Surat, Warga Batu Tak Tenang Tinggal Di Rumah Sendiri.” *Malang Times*, 2022. <https://www.malangtimes.com/baca/76523/20220202/072200/beli-rumah-tak-dapat-surat-warga-batu-tak-tenang-tinggal-di-rumah-sendiri>.

- Soenandar, Taryana. *Kompilasi Hukum Perikatan*. Bandung: Citra Aditya Bakti, 2016.
- Subekti. *Hukum Perjanjian*. Jakarta: Intermedia, 2008.
- Ulfa, Pira Soviana. "Pilar Dasar Fiqih Muamalat Dan Transaksi Yang Dilarang." Retizen.id, 2021. <https://retizen.republika.co.id/posts/17773/pilar-dasar-fiqih-muamalat-dan-transaksi-yang-dilarang>.
- Wilharley, A H. *Akibat Hukum Atas Batalnya Akta Jual Beli Tanah Karena Wanprestasi*, 2020.
- Winarno, Jatmiko. "Kajian Normatif Tentang Akibat Hukum Pembatalan Perjanjian Pengikatan Jual Beli Tanah Menurut Kitab Undang-Undang Hukum Perdata (KUHPerduta)." *Jurnal Independent* 5, no. 1 (June 2017): 60–70. <https://doi.org/10.30736/JI.V5I1.62>.
- Wulandari, Eva. "Penyalahgunaan Keadaan (Misbruik Van Omstandigheden) Dalam Hukum Perjanjian." Isdiyanto Law Office, 2022. <https://isdiyantolawoffice.com/penyalahgunaan-keadaan-dalam-hukum-perjanjian/>.
- Yulianti, Rahmani Timorita. "Asas-Asas Perjanjian (Akad) Dalam Hukum Kontrak Syari'ah." *La_Riba* 2, no. 1 (July 2008): 91–107. <https://doi.org/10.20885/lariba.vol2.iss1.art7>.