

Analysis Of Defects Of Consent Due To Mistake (*Dwaling*) In The Annulment Of A Lease Agreement (A Case Study of Judgment No. 41/Pdt.G/2025/PN Gin)

Dhina Yustisia Arinta Putri⁽¹⁾ Dona Budi Kharisma⁽²⁾

^{1,2} Faculty of Law, Universitas Sebelas Maret

¹yustisiadhina@student.uns.ac.id, ²donabudikharisma@staff.uns.ac.id

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Abstract

*This article examines the treatment of a mistake (*dwaling*) concerning the size of leased land as a potential defect of consent in Gianyar District Court Judgment No. 41/Pdt.G/2025/PN Gin and its implications for the parties' rights. In 2016, the Plaintiff subleased 265 m² of a 1,950 m² parcel to Defendant I. However, Notarial Deed of Assignment of Lease Agreement No. 02, dated 9 March 2018, recorded the entire 1,950 m² as the leased object. This study employs normative legal research using statutory and case approaches, with deductive qualitative analysis of Articles 1320, 1321, and 1322 of the Indonesian Civil Code (KUHPerdata). The findings identify three indicators of mistake: the transaction value, the physical condition of the land established through an on-site inspection (*descente*), and the parties' subsequent conduct. These indicators support the interpretation that the parties' actual intention was limited to 265 m² and that the discrepancy concerned the substance of the leased object (*error in substantia*). The Court declared the deed null and void. However, this ruling must be distinguished from the authors' legal interpretation: under the Civil Code, a defect of consent due to mistake generally provides grounds for seeking annulment of an agreement rather than automatically rendering it void by operation of law. The authors argue that the additional 1,685 m² may be understood as falling outside the parties' actual agreement, although this interpretation must be distinguished from the legal consequences of *dwaling* affecting an agreement that was formed. The judgment removed the basis for Defendant I's claim under the annulled deed, while the legal status of the original 2016 sublease must be assessed separately. The Court's refusal to order the execution of a new deed also underscores that a new agreement requires the parties' consent.*

1. Introduction

Contracts fix the terms of economic exchange, and Article 1320 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*, hereinafter KUHPerdata) makes the parties' consent the first condition of a valid agreement (Ratnaningsih & Dewi, 2023). Consent requires more than a signature; it must reflect what each party actually meant to be bound to. A lease (*sewa-menyewa*) is a nominate contract (*benoemde overeenkomst*) under which, by Article 1548 KUHPerdata, one party grants the other the enjoyment of a thing for a certain period in return for an agreed price (Bramantya et al., 2023). In a land lease, the identity and size of the plot determine the rent, the lessee's permitted use, and the lessor's control over the remaining land. These questions weigh heavily in Bali, where long-term leases held by foreign nationals for tourism and residence generate recurring legal problems (Sukartha et al., 2026).

Civil law protects the formation of will through the doctrine of defects of consent (*wilsgebreken*). Article 1321 KUHPerdata denies validity to consent given by mistake (*dwalig*), obtained by duress (*dwang*), or procured by fraud (*bedrog*), and doctrine has added abuse of circumstances (*misbruik van omstandigheden*) as a fourth ground (Fachriah & Rahmayani, 2026). Mistake arises when a party consents on a false picture of a fact decisive to the decision to contract (Sukananda & Mudiparwanto, 2020). Article 1322 confines relevant mistakes to errors concerning the substance of the object (*error in substantia*) or, in limited cases, the person of the counterparty (Putra et al., 2026), but offers judges no further criteria. Sugiastuti et al. (2022, 2023) found that Indonesian courts are divided: some treat a signed agreement as conclusive proof of consent, while others test the surrounding facts to see whether the signature reflected a sound will.

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to the second group. The Plaintiff, head lessee of a 1,950 m² parcel in Tegallalang, had subleased 265 m² of it to Defendant I. When the parties went before a notary to assign and extend that sublease, Deed of Assignment of Lease Agreement No. 02 of 9 March 2018 recorded the leased object as the whole 1,950 m². Such errors in authentic deeds raise a direct question about the relation between what the parties agreed and what the notary recorded (Heriyanti et al., 2026; Widia & Budiarta, 2022). The Panel of Judges read the discrepancy as a mistake vitiating consent and declared Deed No. 02 null and void, leaving three questions: which facts proved the mistake, whether the sanction matches the doctrinal classification of mistake, and what the annulment did to the parties' rights under the earlier sublease.

Earlier studies have examined defects of consent in land sales (Widia & Budiarta, 2022), prenuptial agreements in mixed marriages (Rahma, 2026), and the consequences of annulment generally (Arrodli et al., 2024; Medahalyusa & Busro, 2023). None addresses a mistake about land area recorded in a notarial deed that formalises an earlier private lease. This article therefore examines two issues: first, the indicators the Court used to establish mistake (*dwalang*) as a ground for annulling the lease deed in Judgment No. 41/Pdt.G/2025/PN Gin, and whether they satisfy Article 1322 KUHPerdata; second, the legal consequences of the annulment for the parties' contractual rights.

2. Research Method

This article uses prescriptive normative legal research, assessing not only how the Court applied the law but whether that application fits the doctrine of defects of consent. Following comparable case studies (Heriyanti et al., 2026; Rahma, 2026), it combines two approaches. The statutory approach examines Articles 1266, 1320 to 1322, 1338, 1342 and 1343, 1359, 1365, 1446 to 1456, 1548, and

1865 KUHPperdata, together with Law No. 30 of 2004 on the Office of Notary as amended by Law No. 2 of 2014 (UUJN). The case approach examines the facts, legal issues, and reasoning of the Panel of Judges in Judgment No. 41/Pdt.G/2025/PN Gin.

The primary legal materials comprise the KUHPperdata, the UUJN, Supreme Court Circular (SEMA) No. 7 of 2001 on Local Inspection, and the judgment itself. The secondary legal materials comprise journal articles and scholarly works on contract law, defects of consent, notarial deeds, and civil procedure, prioritising publications from the last seven years. They were collected through library research and analysed qualitatively by deductive syllogism, with the norms on consent and mistake as the major premise and the facts found by the Court as the minor premise.

3. Results and Discussion

A. Indicators of Mistake (*Dwaling*) as Grounds for Annulling the Lease Deed in Judgment No. 41/Pdt.G/2025/PN Gin

Indonesian contract law inherited from the Dutch *Burgerlijk Wetboek* the idea that an agreement arises from the meeting of two declared wills. Three theories explain the relation between will (*wil*) and declaration (*verklaring*): the will theory privileges what the party wanted, the declaration theory what the party said, and the reliance theory protects the declaration insofar as the counterparty could reasonably trust it (Wicaksono, 2022). The KUHPperdata adopts none in full, but Article 1321 assumes that consent may exist in form while lacking a sound factual basis; Article 1322 targets that gap between the will as formed and the real state of affairs (Arrodli et al., 2024; Sukananda & Mudiparwanto, 2020).

Article 1322 limits relevant mistakes to the substance of the object (*hakikat*

barang), which scholars read broadly to cover the material qualities that induced the party to contract; for land, these include location, boundaries, and area (Putra et al., 2026). Two further conditions keep the doctrine from unsettling ordinary bargains: the quality must have been decisive for the mistaken party, and the counterparty must have known, or ought to have known, that it was decisive (Sukananda & Mudiparwanto, 2020). Unlike the detailed rules of the Dutch *Nieuw Burgerlijk Wetboek*, these brief provisions leave Indonesian judges to build the criteria themselves (Ariyanto, 2023). In a lease, land area easily meets both conditions: rent is the price for using a defined space, so leasing 265 m² and leasing 1,950 m² are different bargains.

On 16 March 2015, the Plaintiff, Stephan Max Reinhold, and his former wife leased a 1,950 m² parcel under Certificate of Ownership No. 403 in Tegallalang, Gianyar, until 27 May 2040 for Rp990,000,000. On 14 December 2016, the Plaintiff signed a handwritten sublease with Defendant I, Lucie Aujeska, over 265 m² (2.65 *are*) on the eastern side of the parcel until 2040 for €23,600. On 12 May 2017, he extended the head lease to 27 May 2047 for a further Rp415,000,000. The parties then appeared before Defendant II, the notary, to formalise the sublease and extend it to 2047 for an additional €5,000, yet Deed No. 02 of 9 March 2018 described the leased object as the whole 1,950 m². The Plaintiff discovered the error about six years later and, when both Defendants refused to correct it, filed suit.

The Panel first had to decide whether the figure of 1,950 m² reflected a genuine mistake or a deliberate bargain. The wording of Deed No. 02 left no room for interpretation: Article 1342 KUHPerdata forbids a judge to depart from clear contractual words, and Article 1343 permits a search for the parties' intention only where the words admit several meanings. The Plaintiff therefore could not ask the Court to read 1,950 m² as 265 m²; he had to attack the consent behind the deed,

bearing the burden under Article 1865 KUHPdata of proving through objective facts that the declaration departed from the parties' will. The Defendants' absence did not lift that burden.

The first indicator was the economic value of the transaction. The Plaintiff paid Rp1,405,000,000 in total for the head lease of the full 1,950 m² until 2047, whereas Defendant I paid €23,600 for the sublease and agreed to a further €5,000 for the extension, €28,600 in total, as confirmed by the witness I Wayan Ardana. On the authors' calculation, at the exchange rates of the time (about Rp14,000 per euro in late 2016 and close to Rp17,000 in early 2018), these payments come to roughly Rp420 million, against a pro rata head-lease cost of about Rp191 million for 265 m². The price thus fits a 265 m² plot sublet at the margin a sublessor ordinarily seeks. It cannot fit a transfer of the whole parcel, which would mean the Plaintiff surrendered his entire leasehold, including the land under his own villa, for less than one third of what he had paid. The Court could therefore legitimately read the price as evidence of what the parties meant.

The second indicator came from the local inspection (*pemeriksaan setempat or descente*) that the Panel conducted on 9 May 2025. SEMA No. 7 of 2001 directs courts to inspect the object of land disputes so that the judgment describes it with certainty and can be executed (Benu et al., 2024). The inspection found that the eastern 265 m² was vacant land under Defendant I's control, while the Plaintiff's villa stood on the western portion. The identity of land depends on boundaries verified on the ground, a principle that also governs land registration (Harahap, 2021), and the boundaries observed matched the 2016 sublease rather than Deed No. 02. The deed's silence on the villa's use, upkeep, and fate at the end of the term makes sense only if the villa was never part of the bargain.

The third indicator was the parties' conduct after signing. According to the

Plaintiff's evidence, Defendant I paid extension fees, Land and Building Tax (*Pajak Bumi dan Bangunan*), *subak* irrigation contributions, and maintenance costs in proportion to 2.65 *are*, and when she later offered the plot through a property agent, she advertised 2.65 *are*, not 19.5 *are*. A party who believed she held 1,950 m² and a villa would hardly market one seventh of it. Later conduct cannot alone prove a mistake at contracting, but the Court rightly treated it as corroborating how the parties understood the object. Read with the price and the inspection, it leaves little doubt that Defendant I never relied on the figure of 1,950 m², and under the reliance theory a counterparty who did not trust the erroneous declaration cannot claim its protection (Wicaksono, 2022).

Taken together, the three indicators establish a divergence between will and declaration on an essential element of the lease. The error concerned the substance of the object within the meaning of Article 1322 and affected the consent required by Article 1320(1). The Panel's method matches the comprehensive approach recommended by Sugiastuti et al. (2023), under which the judge tests the signature against the economic and physical facts of the transaction instead of treating it as conclusive. Nor was the claim time-barred: although Article 1454 KUHPdata limits an action for annulment to five years, in cases of mistake the period runs from the day the mistake is discovered (Nugraha et al., 2020), and the Plaintiff sued in 2025 after discovering the error about six years after the deed.

B. The Court's *Ratio Decidendi* and the Legal Consequences of Annulment for the Parties' Rights

The Panel treated Deed No. 02 as a continuation of the sublease of 14 December 2016. Because the original sublease concerned 265 m² on the eastern side, its continuation could not enlarge the object to 1,950 m². Relying on the documentary evidence, the testimony of Ni Made Ira Suparni and I Wayan

Ardana, and the inspection, the Panel held that the parties' consent had been formed under a mistake about the leased area and, in point 3 of the operative part, declared Deed No. 02 legally defective and null and void.

The sanction deserves closer scrutiny. Indonesian doctrine places consent and capacity among the subjective conditions of Article 1320, whose absence makes an agreement voidable (*vernietigbaar*), and reserves nullity by operation of law (*nietig*) for defects in the objective conditions of a definite object and a lawful cause (Arrodli et al., 2024; Ratnaningsih & Dewi, 2023). The distinction has practical weight. A voidable agreement binds until a court annuls it, may be confirmed expressly or tacitly under Article 1456, and is subject to the five-year period in Article 1454, whereas a void agreement produces no effect from the start and cannot be cured by confirmation. On a strict reading, a judgment that finds *dwaling* ought to annul the deed rather than declare it void.

The Panel's choice can still be defended once the 265 m² is separated from the remaining 1,685 m². For the eastern plot, the deed restated what the parties had agreed. For the additional 1,685 m², neither party formed any will at all, so the deed recorded a declaration with no matching will on either side. Dutch-derived doctrine calls this improper mistake (*oneigenlijke dwaling*): the error lies in the expression of the will, and the result is an absence of consensus. For that part, the agreement also fails the objective requirement of a definite object under Article 1320(3), because the deed identifies an object that neither party intended; read this way, nullity follows for the excess area. The Panel would have strengthened its reasoning by drawing this distinction expressly instead of moving straight from a finding of *dwaling* to nullity, a gap that reflects the absence of statutory criteria noted by Sugiastuti et al. (2022).

The role of the notary explains why the dispute had to reach court. Article 51

UUJN authorises a notary to correct writing or typing errors in a signed *minuta* through a record of correction (*berita acara pembetulan*), but that power covers only clerical slips. A change from 1,950 m² to 265 m² alters the object of the agreement and can be made only by the parties, appearing again before the notary, or by a court; a notary cannot cancel or rewrite a signed deed on the notary's own initiative (Hutasoit & Silviana, 2024). Yet the notary must read the deed to the appearers and ensure that it records their will, and failure may entail civil and administrative liability (Grazetta et al., 2025; Kharizma, 2022).

The annulment of Deed No. 02 operates under Articles 1451 and 1452 KUHPerdara. The judgment is constitutive: it changes the parties' legal position and removes the binding force that Article 1338(1) would otherwise attach to the deed under the principle of *pacta sunt servanda* (Jamil & Rumawi, 2020). Its effect reaches back to the moment of contracting (*ex tunc*), and the parties must be restored as far as possible to their prior position (*restitutio in integrum*), which may require the return of payments and of possession received under the deed (Citrayani et al., 2025; Medahalyusa & Busro, 2023). Concretely, Defendant I lost any basis to claim lease rights over the 1,685 m² beyond the eastern plot, including the land under the Plaintiff's villa, while the Plaintiff's position as head lessee of the full parcel until 2047 remained intact.

A harder question concerns the 2016 sublease. Because the Panel characterised Deed No. 02 as a continuation of that sublease, annulling the continuation did not reach the original: the handwritten agreement of 14 December 2016 remains a lease of 265 m² until 2040. Lease is a consensual contract, and Article 1548 imposes no notarial form, so a private writing binds the parties as long as it satisfies Article 1320 (Bramantya et al., 2023). Defendant I therefore keeps her rights over the eastern plot until 2040 and loses only the extension to

2047, which existed solely in the annulled deed. Whether such leases by foreign nationals comply with agrarian law lies beyond this article (Sukartha et al., 2026). The outcome shows that annulment for mistake removes the defective instrument without stripping a party of rights that rest on a separate and valid agreement (Putra et al., 2026).

The Plaintiff also asked the Court to order Defendant I to appear before Defendant II and sign a corrected deed over 265 m² until 2047 (fourth claim), to treat the judgment as a substitute for her signature if she refused (fifth claim), and to order the notary to draw up that deed (sixth claim). The Panel rejected all three, reasoning that an agreement rests on the free meeting of the parties' wills and that annulling a defective deed creates no new agreement with corrected terms. The reasoning draws on freedom of contract, which entitles each party to decide whether to contract, with whom, and on what terms, within the limits of law, public order, and morality (Alpayid et al., 2023).

A comparison with conditional sale agreements (*perjanjian pengikatan jual beli* or PPJB) clarifies the rejection. In PPJB disputes, courts sometimes declare that the judgment takes the place of a seller's signature on the deed of transfer, because the seller is already bound by a valid preparatory agreement whose obligations a court can enforce or, upon breach, dissolve (Rizki et al., 2025). In the Gianyar case no such obligation survived. The only source of a duty to extend the sublease to 2047 was Deed No. 02, which the Plaintiff himself asked the Court to annul; he could not destroy the instrument and enforce its obligation at the same time. The dependent fifth and sixth claims fell with the fourth.

The Plaintiff further claimed that the Defendants' refusal to correct the deed amounted to an unlawful act (*perbuatan melawan hukum*) under Article 1365 KUHPerdara, causing him a loss of Rp1,405,000,000. Liability under Article 1365

requires an unlawful act, fault, loss, and causation, and the Panel found the first element missing. Until a court annulled Deed No. 02, the deed bound the parties, so neither Defendant had a legal duty to amend it at the Plaintiff's request: Defendant I was free to decline a new contract, and Defendant II could not alter a signed deed without both parties (Hutasoit & Silviana, 2024). The claimed loss also lacked a causal link to the refusal, since the Plaintiff never lost his head lease and obtained the removal of Defendant I's claim through the annulment itself.

The Panel supported this conclusion by referring to Article 1266 KUHPerdata, which governs the judicial dissolution of reciprocal agreements for breach (*ontbinding*), whereas Articles 1446 to 1456 govern the annulment of agreements tainted by defective consent. Article 1449 read with Article 1454 would have supplied a more accurate basis. The outcome remains correct: a defect of consent and tortious liability are separate questions, and proof of the first does not establish the second.

The last consequence concerns money. The Panel left the return of payments to the parties, although *restitutio in integrum* points to a more definite answer for the €5,000 that Defendant I paid for the extension to 2047. That payment had no legal basis other than Deed No. 02, so once the deed fell she could reclaim it under Article 1452 or, alternatively, as a payment made without obligation (*onverschuldigde betaling*) under Article 1359 KUHPerdata, unless the parties agree on a new extension that absorbs it. The €23,600 paid in 2016 stands on a different footing, because it remains the price of the valid sublease until 2040. Separating the two payments follows the logic of the judgment: the annulled deed loses its effects, while rights grounded in a valid prior agreement survive (Medahalyusa & Busro, 2023; Widia & Budiarta, 2022).

4. Conclusion

Judgment No. 41/Pdt.G/2025/PN Gin shows how a court can prove a mistake (*dwalig*) about the object of a lease with objective evidence. A price of €28,600, far below the value of the whole leasehold, an inspection that found a vacant eastern plot beside the Plaintiff's villa, and Defendant I's own conduct in paying charges and marketing the land as 2.65 *are* together established that the parties meant to lease 265 m² rather than the whole 1,950 m². Because the area of leased land forms the substance of a lease, the error qualifies as *error in substantia* under Article 1322 KUHPerdota and affected the consent required by Article 1320(1). The Court's declaration of nullity departs from the usual rule that mistake renders an agreement voidable, but it is justified for the 1,685 m² over which the parties formed no will at all.

The annulment removed Defendant I's basis for claiming the whole parcel and the extension to 2047, while the 2016 sublease of 265 m² until 2040 remains in force. The Court rightly refused to order a new deed, because annulment cannot generate an agreement without the parties' consent, and rightly kept the annulment apart from the claim for an unlawful act. The €5,000 paid for the failed extension should be returned unless the parties agree otherwise. Notaries should verify the object of a deed against prior agreements, certificates, and site plans before signing, and courts should distinguish more clearly between defective consent, which makes an agreement voidable, and the absence of consent over part of the object, which makes that part void.

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