



## Implementation of the Principle of Balance in the Sale and Buy Agreement of Households in Waarmeking by Notary in Banda Aceh City

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### **Abstract**

Article 1313 of the Civil Code states that an agreement is an act whereby one or more people bind themselves to one or more other people. One example of a form of agreement is a house sale and purchase agreement. In the process of making a house sale and purchase agreement, the parties must apply the principles of contract law and also the principle of balance to achieve justice in an agreement that is made. So to protect the parties in the home sale transaction activity, it is necessary to have an agreement deed drawn up by the parties which is then recorded and registered in a notary called waarmeking. The purpose of this study is to determine and explain the application of the principle of balance to the sale and purchase of a house that is waarmeking by a notary in the city of Banda Aceh and the legal consequences of the sale and purchase of a house that is waarmeking by a notary in the city of Banda Aceh but does not apply the principle of balance. This type of research used in this research is empirical legal research with a statutory approach (Statute Approach). The results showed that the implementation of the principle of balance in the waarmeking house sale and purchase agreement by the notary in its implementation has not gone well. The legal consequence of the House Sale and Purchase Agreement which was waarmeking by a notary in Banda Aceh City but did not apply the principle of balance, then one of the parties was disadvantaged.

**Keywords:** *Agreement; Buying and Selling of Houses; Principle of Balance; Waarmeking; Notary*

### **Introduction**

Article 1313 of the Civil Code (KUHPerdara) states that an agreement is an act whereby one person or more bind themselves to another or others.<sup>1</sup> An agreement is formed used by parties who make the agreement. In Article 1338 paragraph (1) of the Civil Code which states that all agreements made legally valid.<sup>2</sup> The agreement must be in accordance with objective of law, namely justice for the parties

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<sup>1</sup> R. Subekti dan R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata: Burgerlijk Wetboek*, Cetakan 8, Jakarta: Pradnya Paramita, 1976, hlm. 338

<sup>2</sup> Indri Srimenganti, *Peran Notaris dalam Menerapkan Asas Keseimbangan Serta Prinsip Kehati-hatian pada Pembuatan Akta Perjanjian Kredit*, Tesis, Depok, Fakultas Hukum, Program Studi Magister Kenotariatan, 2011, hlm. 2.

who make it.<sup>3</sup> Positioning parties is very important in a balanced position because essentially each party is bound in a reciprocal relationship. Agreements are usually made either orally or writtenly. In the case of a written agreement, it has an important purpose as a basis for resolving a problem that will arise in the future when disagreement happens between the parties. In making the agreement, the principles of contract law must be applied and there is also a balance to achieve agreement's justice.<sup>4</sup>

One example of an agreement that is currently developing is the sale and purchase agreement. To protect the parties participating in the home sale and purchase transaction activities, it is very necessary to have an agreement deed drawn up by the parties which is recorded and registered by a notary. Article 15 Paragraph (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning Position of Public Notary (hereinafter referred to as UUJN): Notaries are authorized to make authentic deeds regarding all actions, agreements, and provisions required by the regulation, legislation, and/ or interested parties whom stated in the authentic deed, guaranteeing certainty of making deed, keeping deed, giving grosse, copying, and excerpting the deed.

The notary's authority is not only to make deeds, but also to provide legal advice and check whether or not an agreement made has fulfilled correct agreement rules and does not harm both parties. Deeds that are registered (legalized) and recorded (waarmeking) by the notary neither authorized to change contents of deed nor provide legal counseling, because in the case of deeds that are legalized parties only sign in the presence of a notary where notary does not confirm whether or not deed contents are true or not, as well as waarmeking. In the case the notary is authorized to record letters under hand by registering in a special book called the Under-Handed Letter List.

A house sale and purchase agreement made by the parties is then recorded and registered by a notary but in fact, the agreement is burdensome for one party and does not apply principle of balance, for example, developer stipulates a clause on the release of claims from buyer in the event of late house settlement. When delaying completion building, the buyer does not enable to insist that the house on time. Of course this is an act of default of developer.

Based on the background of the problems above, there are several problems related to this research. The problem examines absorption of balance principle in house sale and purchase agreement that is waarmekinged by a Notary in Banda Aceh and legal consequences that occur in the agreement but does not apply principle of balance.

### **Research Methods**

This research used empirically legal research that examines primary data and secondary data. The approach used is statutory approach reviewing the laws and regulations that explain role of business parties in the sale and purchase agreement for consumers, as well as responsibilities and authority of notaries in carrying out their duties. Data collection techniques used in this study is interview by asking questions to sources and respondents either freely or guidedly, and by using literature study to examine books, legislation, book materials, and supporting literature related to research material and the questionaris analyzed qualitatively.

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<sup>3</sup>Teguh Wicaksono Saputra, *Penerapan Asas Keseimbangan dan Asas Kebebasan Berkontrak Dalam Putusan Pengadilan*, Tesis, Program Pasca Sarjana Magister Hukum Universitas Indonesia, 2011, hlm. 76.

<sup>4</sup>Nuri Anita Sinaga, *Peranan Asas-Asas Hukum Perjanjian dalam Mewujudkan Tujuan Perjanjian*, Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma Jakarta, 2018

## **Results and Discussion**

### **Application of balance principle in house sale and purchase in waarmekinged by a notary in Banda Aceh**

Article 1458 of the Civil Code explains that "buying and selling is deemed to occur between two parties, as soon as the parties agree on a product and price, even though the product has not been submitted yet, or has not been paid". Therefore, it can be concluded that sale and purchase is considered to occur as long as the parties have agreed on all the terms of sale and purchase, even though the seller's obligation to deliver the goods and the buyer's obligation to pay the price of the goods have not been fulfilled.

Application of principle of balance in the house sale and purchase agreement is reflected in Article 1320 of the Civil Code, paragraph (1). The agreed clause means that two parties stating the agreement must agree on the main points of the coincided agreement that is concluded in Article 1320 paragraph (1) of the Civil Code indirectly wishes has mutual relationship.

Main purpose of conducting an agreement is to balance both parties interests.<sup>5</sup> According to Agus Yudha Hernoko, objective of balance principle is to balance rights and obligations of the parties.<sup>6</sup> Herlien Budiono stated that there are three interrelated agreements aspects that can be used as a testing power factor of the principle, namely actions of the parties, contents of the agreement/ contract, and implementation of the contract.<sup>7</sup> One developer of the house sale and purchase agreements that took place in Banda Aceh is PT. Main Power Pillar which is located in Zeans Residence Housing, in Lamteumen Timur, Banda Aceh City with 83 M2 house type and 180 M2 land area with agreement number 008 / ZR / PKU / XII / 2016 dated 21 December 2016.

Based on the research results, it is known that there was an agreement in the house sale and purchase agreement held in 2016. In its implementation, construction was completed in 2019, this made consumers disappointed. In Article 5 of the agreement number 008 / ZR / PKU / XII / 2016 dated December 21, 2016, it is explained that the developer is obliged to complete the house not longer than 8 (eight) months from the signing contract of agreement or after signing of financing agreement by the bank.

Consumers protect their right by making complaints and demands directly to the marketing office of PT. Pilar Kuasa Utama as party in charge for the house construction. This action was carried out because costumers is disappointed of developer negligence in fulfilling the house specifications.

The developer has defaulted. In addition, the developer does not apply balance principle of house sale and purchase agreement. This can be seen from duration of completing house construction and consumers feel that their rights have been harmed by the developer.

Party who can determine whether or not an agreement is balanced in completion process is a notary. Notaries officially have authority to make agreements as regulated in the Law on Notary Position. The registration process is carried out at the notary office and referred to Warmerking.

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<sup>5</sup>Siti Malikhatun Badriyah, *Sistem Penemuan Hukum dalam Masyarakat Prosmatik*. Jakarta: SinarGrafika. 2016, hlm. 139

<sup>6</sup>Agus Yudha Hernoko, *Hukum Perjanjian Asa Proporsionalitas dalamKontrak Komersil*, Jakarta: Prenada Media Kencana, 2014.hlm.80

<sup>7</sup> *Ibid*, hlm 19

Waarmerking is registration by affixing a stamp and then registering it in the registration book provided for that.<sup>8</sup> Waarmeking is a deed under the hands of the parties in an agreement to be registered and dated in the notary book. In Waarmeking, the deed has been signed by the parties who made the agreement not before a notary. The signed deed is given to the Notary to be registered and give a definite date. Waarmeking did not explain about who signed the deed and whether the signatories understood the contents of the deed. It only has a certain date and no signature.<sup>9</sup> So for Waarmerking deeds under the signers' hands, there is no need to come to the notary, just a letter or deed that is brought to the notary, regarding the date of the letter or deed does not need to be the same as the date of registration.

In Waarmerking, the Notary only registers, so it is not responsible for the following matters:

1. That the contents are permitted by law;
2. It was really the person who signed it;
3. What date is written on the deed or letter was indeed signed at that time.<sup>10</sup>

Based on the foregoing waarmerking only has the meaning of affirming the date, meaning that on the diwaarmerking date, the deed already exists, otherwise, the notary does not read the diwaarmerking deed. If the letter or deed is more than one page, then each page is given a serial number and at the beginning of each page by the notary.

In waarmerking, the notary only confirms the registration of the agreement in the notary book without knowing the contents of the contract and when the contract is signed. The position of waarmerking on the application of the principle of balance in the house sale and purchase agreement in Banda Aceh City above can be seen that waarmerking in an agreement has a position as certainty regarding the date of registration before a notary public. In addition, if in the application of the principle of balance to the agreement the business actor commits default by not applying the principle of balance, then waarmerking can be used as evidence in court. Because waarmerking in the agreement also has perfect legal force if the parties acknowledge the signature and date of the deed, then the contents of the deed carried out are considered as the agreement of the parties which have perfect proof as long as no one denies it. This is as the researcher explained in the previous paragraph above.

Waarmerking as a means of evidence for the parties who are litigating in court have the power of law, but the legal force that is in waarmerking is not the same as the power of law with deeds in general. Because deeds made before a notary have perfect legal force when compared to the legal force that is in waarmerking.

The application of the principle of balance in a deed of agreement on the sale and purchase of a house in waarmerking should go well. The purpose of applying the principle of balance in the deed is so that no parties have their rights eliminated or reduced. Because the principle of balance provides rights and obligations to the parties in an equal position.

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<sup>8</sup> Ida Rosita Suryana, *Serba-Serbi Jabatan Notaris*, Bandung: Universitas Padjajaran, 1999. hlm. 19

<sup>9</sup> A. Kohar, *Notaris Berkomunikasi*, Bandung: Aumni, 1984, hlm.34

<sup>10</sup> G.H.S.Lumban Tobing, *Peraturan Jabatan Notaris*, Cet.3, Jakarta: Erlangga. 1992. hlm. 289

## **Legal consequences for house sale and purchase in Waarmeking by a notary but do not apply principle of balance**

The legal consequences of an agreement have basically been regulated in Article 1338 Burgelijke Wetboek, namely agreement is a law for those who make it, and the agreement can not be withdrawn based on agreement of both parties, and must be carried out in good will. " Provisions described in this article state that an agreement considered valid if it has a position and power as a Law. Thus, principle can provide a balanced position for parties who involve in an agreement.

Notary has responsibility to reveal truth that there is an agreement made by participated parties and registered with the notary. However, the notary has no right on contents of agreement made by the parties, except the parties want to change the contents before waarmeking is carried out. The deed of the agreement that has been protected by a notary is legally registered and can be used as evidence in court if the parties feel that their rights have been harmed and a dispute occurs. Legal consequence is that application of balance principle in house sale and purchase agreement which has been waarmeking by the notary is null and void, and also a party who feels aggrieved can ask for compensation and can sue another party.

Contract that sometimes not fulfilled properly can disappoint some parties. If the contract potentially harms one party, then it does not rule out that it has legal consequences that causes a lot of losses to both parties making the contract and to contract itself which is categorized as violating principle of balance, which leads to cancellation or termination of the contract.

As the aggrieved party, debtor can give a warning to creditor to fulfill his performance. The warning can be made either orally or writtenly. If the creditor has not fulfilled his obligations, then it can be said that the creditor has defaulted. Cause of default is the creditor does not fulfill and agreement, not fulfill an action on time, and does something not in accordance with agreement agreed upon by both parties.

Actions taken by the developer are categorized as default, because the developer has been negligent completion of house construction. Article 5 of the agreement Number 008 / ZR / PKU / XII / 2016 dated December 21, 2016 explains that:

If PT. Pilar Kuasa Utama neglected to hand over house of sale and purchase to a client of PT. Main Power Pillar, except for matters caused by or occurrence of force majeure which is a factor beyond the capability of PT. Pilar Kuasa Utama include natural disasters, fires, wars, strikes, riots and government regulations/ policies in monetary sector, PT. Pilar Kuasa Utama is obliged to pay the late penalty in amount of 1/1000 (one per thousand) of house total price for each day of delay counted after 30 (thirty) days late from contract period.

Business parties are required to pay a late fee in the event of default in the sale and purchase agreement. This is due to a factor that causes the parties to not complete the house construction as an object of sale and purchase. As for the legal consequences that arise if a house sale and purchase agreement is waarmeking by a notary but does not apply balance principle, each party thinking that has been aggrieved right to ask for compensation or sue to demand compensation, this is explained in article 1243 of the Civil Code.

"Compensation for costs, losses and interest due to non-fulfillment of an agreement are mandatory, if the debtor, even though has been declared negligent, will remain negligent to fulfill the agreement, or if an action that must be done within particular time has exceeded the predetermined time.

Other than that, Article 1276 of the Civil Code explains that:

1. Fulfill / implement the agreement;
2. Fulfill the agreement accompanied by obligation to pay compensation;
3. Pay compensation;
4. Cancel the agreement; and
5. Cancel the agreement accompanied by compensation.

Application of balance principle in house sale and purchase that has been warmerkinged by a notary does not run well. This can be seen from the agreements that have been implemented above, which do not apply the balance principle to contract contents.

### ***Conclusion***

Implementation of principle of balance of house sale and purchase agreement which is applied by the notary has not been gone well. There are still problems in applying principle of balance by house developer. Legal consequences that arise on a house sale and purchase agreement that is waarmekinged by a notary but does not apply balance principle is each party aggrieved has right to sue to demand compensation, both civilly and criminally if there is a fraud element. It is expected that consumers must pay attention to their rights and obligations. This aims to protect their rights in process of buying and selling a house. In addition, business parties or developers can apply principle of balance of process of buying and selling houses. In addition, business parties should provide certainty in constructing houses.

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Law Number 2 of 2014 Amendment to Law Number 30 of 2004 concerning Notary Position (hereinafter referred to as Law Number 2 of 2014 concerning Notary Position)

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