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Comparison Of Judicial Decisions on the Validity of Waarmerking Agreements as Evidence in Court

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Abstract

Private agreements registered through a notary's waarmerking mechanism are often used in practice as the basis for legal relationships, including in the event of a dispute, where the waarmerking agreement is used as evidence in court. However, a waarmerking agreement still does not have the full evidentiary force of an authentic deed, because the agreement is not drawn up by a notary, but by the parties privately. Therefore, the parties entering into the agreement should understand and comply with the provisions in making the agreement so that the waarmerking agreement has legal force. The research method used is the normative juridical method. The novelty of this research fills the gap by conducting a comparative study of cases of default on waarmerking land sale agreements in the Bandung Appellate Court Decision Number 376/PDT/2021/PT BDG, which declared it "valid," and the Yogyakarta High Court Decision Number 75/PDT/2024/PT YYK, which declared it "canceled." From this research, it can be seen that the judge's assessment regarding the validity of the waarmerking agreement is not only based on the formal form of the agreement, but also on consideration of the substance of the agreement in fulfilling the provisions of applicable laws and regulations.

INTRODUCTION

In social life, generally, every individual is inseparable from legal acts throughout their existence. One of its applications is the implementation of an agreement as a legal relationship conducted by two or more parties who bind themselves to rights and obligations.[1] Every person has the right and is free to enter into an agreement as long as it complies with the prevailing legal provisions. Regarding the freedom of contract, it has been regulated in Article 1338 of the Indonesian Civil Code, which stipulates that agreements can be made between two or more people in good faith and have freely agreed to determine the content, type, and form of the contract to hold an agreement for a specific purpose as long as it does not conflict with the law, because all agreements are made legally and apply as law for the parties who make them.[2]

In the Indonesian Civil Code and the Law of Civil Procedure, it is regulated that documents are distinguished into two types, namely authentic deeds and private deeds (under-hand deeds), which are used as evidence.[3] Regarding the issuance of a deed by a notary, it must fulfill the elements and requirements for the creation of an authentic deed as regulated in Article 1868 of the Indonesian Civil Code, which is that it must be made by or in the presence of (*ten overstaan*) a public official and must be made in a form determined by law by the official authorized for the creation of said deed. A deed has a formal function (formalis causa) and an evidentiary function (probationis causa), meaning that a legal act will be more complete if it is made in a deed and can be used as proof that the parties have been bound in an agreement.[4]

In a private deed, it is drafted and signed directly by the parties in a document that has been mutually agreed upon without involving a notary, as regulated in Articles 1874-1880 of the Indonesian Civil Code (Note: referencing the standard range) regarding private agreements. The probative force of a private agreement highly depends on the truth and acknowledgment of the parties within the agreement. An agreement conducted privately that is made legally and acknowledged by each party has legal force, however, its probative strength is imperfect and remains weak if there is a denial from one of the

[1] Sulastri, Chintya Rachma, and Muhammad Farrel, "Analisis Yuridis Terhadap Perjanjian Jual Beli Dalam Hukum Perikatan Di Indonesia," *Cahaya Ilmu Bangsa* 8, no. 1 (2024), https://doi.org/10.3783/causa.v2i.
[2] I Ketut Oka Setiawan, *Hukum Perikatan* (Bumi Aksara, 2021).
[3] R I Sinaga, E Paransi, and M H Soepeno, "Kekuatan Pembuktian Akta Di Bawah Tangan Menurut Hukum Perdata. Lex Privatum, 10 (5), 1-11," 2022.
[4] Eko Rial Nugroho, *Penyusunan Kontrak: Kontrak Konvensional Dan Syariah Di Bawah Tangan* (Depok: Rajawali Pers, 2021).

parties.[5] The fundamental difference from an authentic deed is the absence of a notary as the authorized official in the creation of the agreement.

In practice, the majority of the public generally prefers private agreements because they are considered more practical and economical.[6] Nonetheless, private agreements often give rise to legal problems because the parties do not understand the provisions in making an agreement so that the agreement is made in conflict with the prevailing laws. However, actually, private agreements can also be made by involving a notary so that they have added value for the acknowledgment of their proof without changing the status of the agreement into an authentic deed.

As constitutes the legal basis for the authority of a notary in Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Office of Notaries, to guarantee certainty, order, and legal protection, written evidence of an authentic nature is needed regarding legal acts, agreements, stipulations, and events made by authorized officials.[7] Private agreements conducted before a notary refer to two types, namely legalization (*legalisasi*) and registration (*waarmerking*). The execution of legalization for an agreement is performed by a notary by ensuring the date of the deed and the date of legalization are the same, as well as the authenticity of the signatures of the parties. Regarding a legalized private agreement, it will bind the parties since the affixing of the signatures in the presence of the notary.[8]

Meanwhile, *waarmerking* is a document conducted by making an agreement first, complete with signatures by the parties, which is then registered by the notary into a special book (register) at the request of the appearers (penghadap), with the provision that the date of the letter or document must exist prior to the date of registration by the notary. The responsibility of the notary toward a *waarmerking* agreement is limited only to confirming that the creation of the agreement made by the parties has been registered and listed in the registration book of private letters.[9] The notary is not responsible for the

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[5] Fauziah Lubis and Halimahtusadiah, "Kedudukan Akta Dibawah Tangan Sebagai Ketetapan Hukum," *Jurnal Hukum* 5, no. 2 (2024).

[6] Dhira Utari Umar, "Penerapan Asas Konsensualisme Dalam Perjanjian Jual Beli Menurut Perspektif Hukum Perdata," *Lex Privatum* VIII, no. 1 (2020): 1.

[7] A Gotama et al., "Analisis Yuridis Perlindungan Hukum Terhadap Notaris Sebagai Pejabat Umum Dalam Sistem Peradilan Pidana Terkait Kewenangan Membuat Akta Otentik (Studi Penelitian Di Kota Batam)," *UNES Law Review* 6, no. 1 (2023): 3731–42.

[8] Michael Nugroho Widjaja, "Peran Notaris Dalam Penerapan Prinsip Mengenali Pemilik Manfaat Dalam Pendirian Korporasi," *Indonesian Notary Journal* 1, no. 1 (2019): 31, http://dx.doi.org/10.37146/ailrev.v3i1.64.

[9] Ferna Tamagangka and Mella Ismelina, "Tugas Dan Kewenangan Notaris Terhadap Keabsahan Dokumen Pada Legalisasi Waarmerking Dan Legalisir Ditinjau Dari Undang-Undang," *Jurnal Ilmiah Indonesia* 7, no. 10 (2022).

validity of the signatures on behalf of the parties therein and is also not required to explain the contents of the private agreement made by said parties.

By performing *waarmerking* on the agreement, it provides additional evidentiary strength, even though the agreement is still in the form of a private agreement. Because in reality, even though the agreement has been legalized before a notary, it does not necessarily prevent the occurrence of a violation of the agreement that has been agreed upon by the parties. In reality, it is still found that one of the parties does not fulfill their obligations toward the agreement they have agreed upon, or it is also called an act of breach of contract (*wanprestasi*).

A breach of contract can occur if, in an agreement, one of the parties fails to fulfill the performance that has been mutually agreed upon. An agreement essentially gives birth to rights and obligations for each party.[10] However, if these rights and obligations cannot be fulfilled as they should be and are even accompanied by a lack of good faith, then the purpose of the agreement cannot be implemented in accordance with the consensus bound within it; this is then referred to as an act of breach of contract.[11] However, regarding the act of breach of contract committed by one of the parties in an agreement, it can only be declared through a court decision that has permanent legal force (*inkracht van gewijsde*).

Agreements, whether conducted privately or agreements made as authentic deeds, should be carried out on the basis of good faith by the parties who have bound themselves in the agreement. Not all implementations of agreements can run as they should; in practice, failure to fulfill an agreement can occur.[12] The reason an agreement cannot be implemented can arise due to force majeure or a situation where one of the parties is in an urgent situation that makes it impossible for them to carry out the obligations of their agreement. Meanwhile, in several other cases, the agreement cannot be fulfilled due to a lack of good faith, which is then categorized as a breach of contract.[13]

The case then becomes the focus of this research, which originates from the Appellate Decision Number 376/PDT/2021/PT BDG. In that case, the parties had agreed to make

[10] Kristiane Paendong, "Kajian Yuridis Wanprestasi Dalam Perikatan Dan Perjanjian Ditinjau Dari Hukum Perdata," *Lex Privatum* 10, no. 3 (2022).
[11] Mega Indah, "Analisis Pencantuman Klausula Eksonerasi Ditinjau Dari Asas Kebebasan Berkontrak Di Indonesia (Exoneration Clause Inclusion Analysis Based On The Principle Of Freedom Of Contract In Indonesia)," *Jurnal Hukum Lex Generalis* 5, no. 4 (2024).
[12] M Izzaddin, Endang Suprapti, and Riana Wulandari, "Penyelesaian Perkara Wanprestasi Terhadap Perjanjian Utang Piutang Dengan Jaminan (Putusan Nomor: 58/Pdt.G.S/2023/ Pn Jmr)," *Jurnal Hukum Dan Kewarganegaraan* 15, no. 10 (2025).
[13] Dwi Desi Yayi Tarina et al., "Analisis Akibat Hukum Wanprestasi Ingkar Janji Sengketa Tanah Berdasarkan Putusan Nomor 5/PDT.G/2023/PN BJR," *Jurnal Pendidikan Tambusai* 8, no. 2 (2024).

a waarmerking agreement before a notary regarding a land sale and purchase agreement for Rp9,636,650,000 (Nine billion six hundred thirty-six million six hundred fifty thousand Rupiah) with the object of three plots of land. Regarding the payment details, they were already stipulated in the waarmerking agreement, but subsequently, the buyer, alias the Plaintiff, stopped their installment payments because the land they bought was suddenly guarded and occupied by unknown persons claiming to be security staff.

This situation finally caused the land sale and purchase to be canceled, and the Defendant promised to return the money that had been received previously through a statement letter agreed upon by both parties. However, in fact, the promise was never implemented at all by the house owner, who in this case is the Defendant. Thus, for such an act, the house buyer then sued the land seller for an act of breach of contract. This case continued until the lawsuit at the Bandung High Court. This issue, after being decided by the Bandung High Court, resulted in the ruling that the act of the Defendant or the land seller was a breach of contract and the waarmerking agreement that had been agreed upon by the parties as the land sale and purchase agreement was declared to have binding force and be legally valid.

However, not all cases end with a similar decision; in another case in Decision No. 75/PDT/2024/PT YYK, the judge's decision instead ruled that the waarmerking agreement regarding the land sale and purchase was annulled even though it was in the same problem, namely an act of violating the agreement (breach of contract). In this case, it began with the Defendant who bought a plot of land from the Plaintiff as the seller, who then committed an act of breaking the promise due to not settling the payment in accordance with the provisions agreed upon in the sale and purchase agreement between the parties. Although absolutely, evidence is an important supporting tool in a case. In this matter,[14] one of the attached pieces of evidence is in the form of a *waarmerking* agreement. Upon that case, the judge gave a decision by declaring the Defendant had committed an act of breach of contract and declared the waarmerking sale and purchase engagement was void.

A number of studies have discussed the issue of the strength of waarmerking agreements as private deeds, namely a study conducted by Farhana Thahira titled "Kekuatan Hukum Pembuktian Waarmerking Di Pengadilan (Studi Kasus Putusan Mahkamah Agung Nomor 08 K/TUN/2013)"; this research highlights the strength of a waarmerking letter that is denied by one of the parties in giving their signature, for which

[14] Dwi Aryanti Ramadhani, Rahel Rezky, and Muhammad Hafidz, "Analisis Pembuktian Dalam Sengketa Wanprestasi Perjanjian Jual Beli Tanah," *Jurnal Ilmu Hukum Dan Tata Negara* 2, no. 3 (2024).

the parties then brought this case to the Administrative Court. As for the novelty of the author's research, it lies in examining the research through an in-depth analysis by conducting a comparison with two court decisions that declared the agreement valid and those that declared it void.

This situation shows a difference in judicial assessment regarding the validity of waarmerking agreements, thus raising the question of how the validity of a waarmerking agreement as evidence in a breach of contract dispute is based on statutory provisions. Furthermore, how is its validity reviewed from a comparative study of Decision Number 376/PDT/2021/PT BDG, which declared it valid, and Decision No. 75/PDT/2024/PT YYK, which annulled it. Therefore, the author is interested in examining this research under the title "Comparison Of Judicial Decisions On The Validity Of Waarmerking Agreements As Evidence In Court."

METHODS

This research method uses normative juridical research by examining the law as a norm or rule lifted from legislation, legal principles, and doctrine in legal science.[15] The theoretical foundation used lies within normative or contemplative legal theory. With a statutory approach, it is used to analyze legal norms and rules relevant to the research; a case approach is used by reviewing relevant court decisions to analyze how judges classify the evidentiary system and consider the validity of waarmerking in forming legal conviction.[16] Furthermore, a comparative approach is used to compare two court decisions with different ruling results regarding the validity of the *waarmerking* agreement; through this approach,[17] it can be seen how such differences in assessment affect legal certainty for the parties in the agreement.

Data collection was carried out using primary data as a reference in the research, namely the Indonesian Civil Code, Law Number 2 of 2014 concerning the amendment to Law Number 30 of 2004 concerning the Office of Notaries (hereinafter abbreviated as UUJN), Herzien Inlandsch Reglement (HIR), Decision Number 376/PDT/2021/PT BDG, and Decision Number 75/PDT/2024/PT YYK. As for the secondary legal materials used in this research, they include legal literature books, legal journals, legal articles, and legal studies relevant to the author's research. Furthermore, the tertiary legal sources in this

[15] Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).
[16] Paendong, "Kajian Yuridis Wanprestasi Dalam Perikatan Dan Perjanjian Ditinjau Dari Hukum Perdata."
[17] Habib Adjie, *Memahami Dan Menerapkan Covernote, Legalisasi, Waarmerking Dalam Pelaksanaan Tugas Jabatan Notaris* (Bandung: PT Refika Aditama, 2022).

research include the Great Dictionary of the Indonesian Language (KBBI) and internet media used as pointers and guides.

RESULTS AND DISCUSSION

1. Validity of *Waarmerking* Agreements in Breach of Contract Disputes Based on the Indonesian Civil Code

The parties, in establishing legal relationships, particularly through agreements, carry them out in order to fulfill life necessities or to obtain profits. As enshrined in Book III of the Indonesian Civil Code (ICC), it grants freedom to the parties to create engagements with anyone and in any form whatsoever, whether the engagement is in the form of an authentic deed or a private deed (under-hand deed). The provisions regarding private deeds according to Article 1874 of the ICC encompass various writings such as letters, registers, household papers, and other writings containing a declaration of the will of the parties.[18] Because they are made privately, they are drafted without the mediation of a public official and do not possess an authentic nature.

The provisions regarding the legal requirements for the validity of an agreement consist of: (1) The existence of consensus among the parties binding themselves, (2) The capacity of the parties to create an agreement, (3) A specific matter, and (4) A lawful cause (causa).[19] The first and second requirements are referred to as subjective requirements, in which if these requirements are not met, the agreement made may be requested for annulment through the court. Meanwhile, the third and fourth requirements are called objective requirements; if both are not fulfilled, then the agreement is null and void.[20] An agreement made by the parties is granted freedom in determining the content of the agreement, the form of the agreement, and the type of the agreement as long as it does not conflict with statutory provisions, as formulated in the regulations under Article 1338 of the Indonesian Civil Code.[21]

Outside the provisions of the Civil Code, matters related to the types of agreements made in the form of an agreement deed, whether in the form of an authentic deed or a

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[18] Royke Y J Kaligis, "Penggunaan Alat Bukti Sumpah Pemutus (Decisoir) Dalam Proses Pemeriksaan Perkara Perdata Di Pengadilan Menurut Teori Dan Praktek," *Jurnal Hukum Unsrat* 23, no. 8 (2017).
[19] Retna Gumanti, "Syarat Sahnya Perjanjian (Ditinjau Dari KUHPerdata)," *Jurnal Pelangi Ilmu* 5, no. 01 (2012).
[20] Rianda Dirkareshza, Andri Ardiantor, and Roni Pradana, "Penafsiran Hukum (Legal Interpretations) Terhadap Undang-Undang Nomor 25 Tahun 2009 Tentang Pelayanan Publik Demi Masyarakat Yang Sejahtera, Adil, Dan Makmur (Walfare State)(Standpoint Usul Perubahan Terhadap UU Pelayanan Publik)," *Reformasi Hukum* 25, no. 2 (2021): 127–46, https://doi.org/10.46257/jrh.v25i2.202.
[21] Tamagangka and Ismelina, "Tugas Dan Kewenangan Notaris Terhadap Keabsahan Dokumen Pada Legalisasi Waarmerking Dan Legalisir Ditinjau Dari Undang-Undang."

private deed, are specifically regulated in Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Office of Notaries (hereinafter abbreviated as UUJN), as regulated in Article 15 (2), which states that the authority of a notary is to register private papers by entering them into a special book.[22] In this case, a *waarmerking* agreement is made privately based on the will of the parties,[23] including everything articulated in the sale and purchase deed regarding the contents of the agreement, and is signed by the parties.

Sale and purchase deeds and gift deeds must be made before a notary so that said deeds are considered valid and possess legal force. Therefore, some members of the public choose to make agreements through a private waarmerking process because it is considered more economical and simple, and such an agreement is deemed to have sufficient legal force.[24] A waarmerking agreement is made by the parties privately but still involves a notary. Although it does not possess legal force as significant as an authentic deed, a private agreement that has been registered via *waarmerking* adds legal proof that the parties have indeed reached an agreement by signing the agreement, which is also acknowledged by the notary as an authorized official.[25] Although it is not an authentic deed, a waarmerking private agreement must still be made in accordance with prevailing legal provisions so that its validity requirements are met and it does not conflict with the law.

In practice, many people still do not understand the provisions for creating agreements, resulting in private agreements being made by the parties without considering the legal provisions in drafting an agreement. Consequently, such agreements may contain legal defects and have the potential to trigger legal disputes in the future. This is because, even though the agreement has been registered as a *waarmerking* agreement, it does not serve as a guarantee that the agreement has met the legal requirements for a valid agreement.[26]

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[22] Nafisatul Lu'luil Maknun, "Pembagian Harta Bersama Dalam Hukum Islam Dan Hukum Positif Bagi Istri Yang Bekerja," *Mabahits* 4, no. 01 (2018): 47–56.
[23] Rahayu Febriani, "Kekuatan Hukum Perjanjian Dibawah Tangan Dalam Proses Jual Beli Tanah," *Jurnal Pendidikan Sosial Dan Humaniora* 4, no. 2 (2025).
[24] Paul Michael Gilmour, "Lifting the Veil on Beneficial Ownership: Challanges of Implementating The UK'S Registers of Beneficial Owners," *Journal of Money Laundering Control* 23, no. 4 (January 2020): 717–34, https://doi.org/10.1108/JMLC-02-2020-0014.
[25] Atha Raihan Azayaka and Eko Wahyudi, "Perlindungan Hukum Kepada Konsumen Terhadap Produk Skincare Tanpa Izin Edar Yang Dijual Secara Online," *Jurnal Hukum, Politik Dan Ilmu Sosial* 2, no. 2 (2023): 147–59, https://doi.org/10.55606/jhpis.v2i2.1622.
[26] Fitri Radityani, "The Existence of Customary Law in Managing Fishery Resources in Indonesia," *Maiyah* 3, no. 1 (2024): 52, https://doi.org/10.20884/1.maiyah.2024.3.1.11529.

Based on the facts above, the author discusses High Court Decision Number 75/PDT/2024/PT YYK. The legal standing of this case essentially concerns a private agreement made by the parties and used as a waarmerking agreement, the validity of which was questioned during the trial process. This case originated from an agreement between the parties to carry out a legal relationship of land sale and purchase, which was articulated in a private agreement and subsequently registered as a waarmerking agreement to be recorded in the notary's register. Although the probative force of a private agreement is not perfect, as long as the agreement is not denied by the parties, the agreement is considered valid.

In this case, the disputing parties consist of the Plaintiff, who feels their civil rights have been harmed as the landowner, who then sold their land to the Defendant as the buyer of said land. The dispute arising in this case is due to an act of breaking a promise (breach of promise) committed by the Defendant during the implementation of the agreement. Previously, it had been agreed upon by both parties in a waarmerking sale and purchase agreement for the purchase of two land objects with SHM (Right of Ownership) certificates for a price of Rp1,201,375,000.00 (one billion two hundred one million three hundred seventy-five thousand rupiah). Furthermore, the payment system was articulated in the agreement that the settlement must be paid in stages, namely: the first payment or DP (down payment) of Rp100,000,000.00 (one hundred million rupiah) paid on October 24, 2022; the second payment of Rp1,081,375,000.00 (one billion eighty-one million three hundred seventy-five thousand rupiah) paid on December 31, 2022; and the third payment of Rp20,000,000.00 (twenty million rupiah) paid at the time of signing the AJB (Sale and Purchase Deed) on January 15, 2023.

In this matter, the parties had obligations that had to be fulfilled respectively as they had agreed in the agreement. The Plaintiff had obligations articulated in Article 4 of the waarmerking agreement, which states "that even though the land has not been paid in full, the first party agrees and permits the sale of lots to consumers." Thus, the Plaintiff subsequently granted permission for the sale of the land lots to the Defendant. After that, the Defendant began processing the sale of the land to third parties; however, the process of selling the land was never disclosed by the Defendant to the Plaintiff. Nevertheless, the authority granted by the Plaintiff certainly does not erase the primary obligation of the buyer or the Defendant to settle the land price. In fact, the obligation of the Defendant regarding the settlement of the two land objects he purchased, until the lawsuit was filed, was never settled in the second payment and subsequent payments to the Plaintiff as the land seller, reaching only the DP payment of Rp100,000,000.00 (one hundred million rupiah) and a fine payment of Rp28,000,000.00 (twenty-eight million rupiah).

As a result of feeling aggrieved by the Defendant for not carrying out obligations and violating the agreement mutually agreed upon in the waarmerking land sale and purchase agreement, the land seller finally filed a lawsuit against the Defendant for an act of breach of contract (*wanprestasi*).[27] An act of breach of contract is a situation where one of the parties commits a violation of the agreement by not fulfilling the promise as agreed. In this case, the act met the elements of breach of contract due to failure to fulfill performance in accordance with the agreement's provisions, causing losses to the other party in the agreement, and there was no legally justified reason or force majeure that served as an excuse for the fault.

However, this breach of contract lawsuit was declared inadmissible (niet ontvankelijk verklaard) at the first instance level because, based on the assembly's consideration, it was of the opinion that, according to the agreement made, the time limit for suing had not yet been reached, making the Plaintiff's lawsuit premature. As stipulated in the contents of the waarmerking agreement used as the basis for the lawsuit, it was written in the clause of Article 5 "that this agreement does not end with the death of one of the parties and remains binding upon all heirs of both parties without exception." Because according to the contents of said clause, the agreement used as the basis for the lawsuit could not be accepted by the court of first instance because its expiration period had not yet concluded.

Ultimately, on the basis of the rejection of the lawsuit at the first instance, the land seller as the aggrieved party subsequently filed an appeal with reasons of objection toward the decision of the Sleman District Court. The Plaintiff argued that the agreement used as the basis for the lawsuit was not considered comprehensively based on the substantive aspects of the agreement.[28] This is because the agreement made by the Defendant by inserting a lifetime agreement clause that does not end even if the parties die and remains binding on the heirs is an act prohibited by law. This is also as regulated in Articles 1335 and 1337 of the Indonesian Civil Code regarding prohibited causes.

In the legal considerations at the appellate level of the Yogyakarta High Court, the panel of judges assessed that the waarmerking land sale and purchase agreement which became the consensus of the parties conflicted with the legal requirements for the validity of an agreement as regulated in Article 1320 of the Indonesian Civil Code.[29] Finally, the

[27] Dwi Atmoko and Otik Handayani, *Hukum Kontrak (Teori Dan Perancangan Kontrak)* (Kota Malang: PT Literasi Nusantara Abadi Group, 2023).
[28] M Syamsudin, "Keadilan Substantif Yang Terabaikan Dalam Sengketa Sita Jaminan," *Jurnal Yudisial* 5, no. 1 (2012): 36–50.
[29] Yusuf Syakir and Herman Sujarwo, "Kebijakan Pemaafan Hakim (Rechterlijk Pardon) Dalam KUHP Baru," *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 9, no. 1 (2023): 109–18.

decision at the appellate level resulted in a ruling declaring that the waarmerking sale and purchase engagement was void and granted the demands sought by the Plaintiff, who requested that the waarmerking agreement be given a verdict of null and void (*batal demi hukum*).[30] The act of the Defendant in not fulfilling the promise as agreed is a form of breach of contract (*wanprestasi*). The panel of judges assessed that an agreement clause that is unclear and has no specific time limit is inappropriate and inconsistent with the provisions in Article 1320 of the Indonesian Civil Code, thus it cannot be continued and must be annulled.[31]

In this case, the background of the validity of the waarmerking agreement was caused by the non-fulfillment of the elements of the legal requirements for a valid agreement based on Article 1320 of the Indonesian Civil Code, namely "a lawful cause," because there had been an abuse of circumstances as per the provisions of Articles 1335 and 1337 of the Indonesian Civil Code.[32] If an agreement contains clauses that conflict with legitimate legal objectives, violate the principles of propriety, custom, and statutory provisions, then the substance of the agreement remains legally unjustifiable. Therefore, the validity of a *waarmerking* agreement remains dependent on the fulfillment of the requirements in Article 1320 of the Indonesian Civil Code.[33] The consequence of annulling the waarmerking agreement is for the sake of guaranteeing legal certainty and protection for the parties who have acted in good faith.

2. Evidentiary Strength of *Waarmerking* Agreements as Evidence in Court Based on the Bandung Court Decision Declaring "Valid" and the Yogyakarta Court Decision Declaring "Void"

In the agreements made by the parties in this case, they constitute registered private agreements (waarmerking), which subsequently became the object of dispute in court within a lawsuit for breach of contract (*wanprestasi*).[34] Formally, the standing of a waarmerking agreement provides legal certainty as an evidentiary function (probationis

[30] Sahat Maruli Tua Situmeang and Krusitha Meilan, "Evolusi Kejahatan Dan Pemidanaan: Tantangan Dalam Penegakan Hukum Dan Penologi Modern," *Res Nullius Law Journal* 7, no. 2 (2025): 87–97, https://doi.org/10.34010/rnlj.v7i2.15913.
[31] R Oetomo Hermawan, Huala Adolf, and Edy Santoso, "Kajian Hukum Penerapan Pasal 1320 Kuhperdata Dalam Kontrak Elektronik," *Iustitia Omnibus Jurnal Ilmu Hukum* 5, no. 2 (2024).
[32] Sri Maharani M.T.V.M and Rhevy Ramadhan Permadi, "Kajian Yuridis Perbuatan Melanggar Hukum Oleh Penjual Skincare Yang Iklannya Menyesatkan Berdasarkan Pasal 1365 KUHPerdata," *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 4 (2025): 1–14.
[33] M.T.V.M and Permadi.
[34] Bagus Oktafian Abrianto, Xavier Nugraha, and Nathanael Grady, "Perkembangan Gugatan Perbuatan Melanggar Hukum Oleh Pemerintah Pasca-Undang-Undang Nomor 30 Tahun 2014 Development of Lawsuit for Law Violation by the Government of the Post Law Number 30 of 2014," *Jurnal Hukum & Pembangunan* 48, no. 4 (2018).

causa) that can be utilized in the future.[35] In this regard, the status of a waarmerking agreement is that of a private deed (under-hand deed), wherein the notary does not guarantee the material content of the document created by the parties because the notary did not draft the agreement.[36] This is because the notary is only responsible for ensuring that the agreement letter has been registered in the notary's office as evidence for the parties who bind themselves.

In the disclosure of facts or the process of proof in court, in order to be able to convince the judge before the court, the civil procedure regarding valid evidence has been mentioned in Article 164 of the HIR and Article 1866 of the Indonesian Civil Code, which includes:[37]

a. Written evidence;
b. Witness evidence;
c. Inference/Presumption evidence; and
d. Oaths.

In Decision Number 75/PDT/2024/PT YYK, the parties submitted written evidence in the form of a private agreement that had been registered (waarmerking) through a notary. Subsequently, the issue that arose was that the judges at the Yogyakarta appellate court declared the agreement void because it contained clauses that violated the provisions of the legal requirements for the validity of an agreement under Article 1320 of the Indonesian Civil Code.[38] The judge's assessment stated the existence of a defect in the elements of the agreement because no specific time limit was regulated and the agreement clause was considered obscure (*vague*),[39] as stated in Article 5 of the waarmerking agreement which stipulated that "this agreement does not end with the death of one of the parties and remains binding upon all heirs of both parties without exception."

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[35] Unggul Basoeky, *Analisis Yuridis Autentisitas Akta Notaris Yang Dipalsukan* (Banyumas: Cv Amerta Media, 2021).
[36] Niru Anita Sinaga, "Peranan Perjanjian Kerja Dalam Mewujudkan Terlaksananya Hak Dan Kewajiban Para Pihak Dalam Hubungan Ketenagakerjaan," *Jurnal Ilmiah Hukum Dirgantara* 7, no. 2 (2018).
[37] Junaidi Junaidi and M Martindo Merta, "Asas Hakim Pasif Dalam Reglement Op de Rechtsvordering (RV) Dan Prinsip Hakim Aktif Dalam Herziene Indonesisch Reglement (HIR) Dalam Penyelesaian Perkara Perdata Di Pengadilan," *Qistie* 13, no. 1 (2020): 60–77.
[38] Muhammad Kandriana and others, "Syarat Subjektif Dan Objektif Perjanjian Jual Beli: Relevansi Pasal 1320 KUHPerdata Dalam Praktik Modern," *Unes Law Review* 8, no. 1 (2025).
[39] Zubaida Abdel Hadi Atim and AbdulHameed Al-Qahum, "Legislative Sustainability of the Contract for the Sale of Goods in the Saudi Sy1stem and International Agreements," *Kurdish Studies* 11, no. 3 (2023): 553–68.

Regarding the disputed *waarmerking* agreement clause, it contained regulations involving an imbalance that potentially harms one of the parties in an unfair manner. The act of the Defendant in including an agreement clause that does not expire and lasts until the heirs of both parties is an act that violates the provisions of Article 1320 of the Indonesian Civil Code, specifically regarding the element of a lawful cause (causa).[40] This condition renders the agreement no longer functional as an instrument of fair interest, but instead deviates from the purpose, which deviates from the principles of propriety and good faith.[41] Therefore, the Plaintiff demanded the panel of judges, specifically regarding the waarmerking agreement, to declare the waarmerking sale and purchase engagement null and void (batal demi hukum) because the Defendant had abused the circumstances by inserting a lifetime agreement clause that binds the heirs.

Through the filing of said appeal, the disputed agreement clause indicates a problem that places one of the parties in an unbalanced and disadvantaged position. An agreement must have a valid cause, or in this case, there must be a purpose that can be legally justified in the birth of the agreement. It is stated to have violated the provisions of the legal requirements for a valid agreement regarding "lawful cause" because the agreement made contains elements of an unlawful nature; thus, the agreement does not have force as intended in Article 1335 of the Indonesian Civil Code. Furthermore, because the content of the agreement contains prohibited elements, in this case, it no longer reflects the purpose of the agreement as a tool to fulfill the legal interests of the parties fairly, and it is utilized as a means to benefit one party in a way that conflicts with the principles of justice and propriety prevailing in society as regulated in Article 1337 of the Indonesian Civil Code.

Conversely, at the Bandung High Court in Decision Number 376/PDT/2021/PT BDG, with the same case and object, namely a waarmerking land sale and purchase agreement used to sue for a breach of contract, it was instead declared valid and acceptable by the panel of judges as valid evidence. The validity of this agreement was based on the substance of the agreement because it did not conflict with the law and all elements of the legal requirements for the validity of an agreement in Article 1320 of the Indonesian Civil Code were fulfilled. Therefore, because the agreement was accepted, this waarmerking agreement was positioned as valid written evidence and used as proof

[40] Kandriana and others, "Syarat Subjektif Dan Objektif Perjanjian Jual Beli: Relevansi Pasal 1320 KUHPerdata Dalam Praktik Modern."
[41] Saumya Uma, "Clash of the Titans or Friendly Bedfellows? Freedom of Religion or Belief and Women's Rights in India," *The Review of Faith & International Affairs* 20, no. 2 (2022): 81–95.

in court as the basis for the existence of a breach of contract caused by non-compliance with the agreement that had been mutually agreed upon in the waarmerking agreement.

A comparison of the two decisions shows that judges can accept a waarmerking agreement to have valid legal force if the agreement is made by complying with legal provisions and fulfilling the elements of the legal requirements for the validity of an agreement. On the contrary, judges can declare a waarmerking agreement void as a consequence of not fulfilling the requirements for the validity of an agreement according to Article 1320 of the Indonesian Civil Code.[42] The basis for an agreement to be binding and have legal force is that it does not conflict with the law and fulfills the provisions of the legal requirements for the validity of the agreement. For an agreement, although it has been registered through a notary (waarmerking), is still determined by compliance with legal requirements and statutory provisions.

As is also reflected in the principle of good faith, where an agreement must be implemented by observing propriety, with full responsibility, and without prohibited intentions that harm others, so that it is not misused as a tool to disadvantage other parties. This foundation guides that an agreement, although freedom has been given to the parties in determining the creation of the agreement, must observe propriety and a balance of the parties' interests fairly in its implementation and substance. As is also the nature of an agreement, it is required by propriety, custom, and statutory provisions. Therefore, every implementation of an agreement must be carried out in good faith in accordance with the norms of propriety, morality, and statutory regulations.

CONLUSION

The validity of a waarmerking agreement remains subject to the provisions regarding the fulfillment of the elements for the legal requirements of a valid agreement as regulated in Article 1320 of the Indonesian Civil Code. A private waarmerking agreement can be declared valid and have legal force as evidence in court as determined by the fulfillment of the four requirements for a valid agreement, namely the consensus of the parties, capacity, a specific object, and a lawful cause. The force of a private waarmerking agreement is not perfect like an authentic deed; therefore, its evidentiary strength depends on the acknowledgment of the parties and is determined by the substance of the agreement being legally valid. As occurred in the case at the Yogyakarta High Court, the panel of judges decided to declare the waarmerking agreement void because the

[42] Hermawan, Adolf, and Santoso, "Kajian Hukum Penerapan Pasal 1320 Kuhperdata Dalam Kontrak Elektronik."

agreement was deemed to violate the provisions of Article 1320 of the Indonesian Civil Code. Conversely, in the considerations of the Bandung High Court Decision with a similar dispute, namely a breach of contract regarding a waarmerking land sale and purchase agreement, the panel of judges declared the agreement valid because it was proven that the parties consciously made the agreement and the agreement was made on the basis of good faith despite being in the form of a private *waarmerking* deed.

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