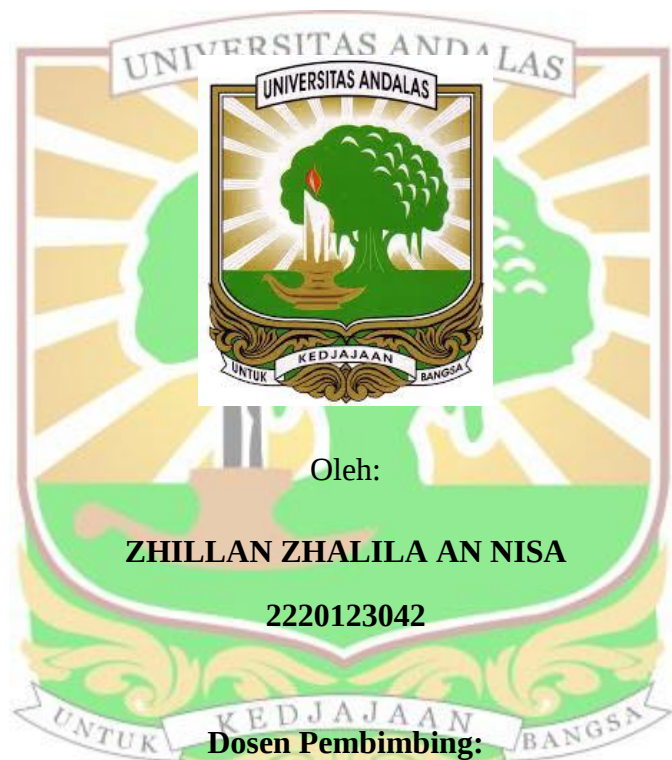


**GUGATAN PERBUATAN MELAWAN HUKUM TERHADAP
NOTARIS ATAS PENAHANAN SERTIFIKAT
BERDASARKAN PERJANJIAN PENGEMBALIAN UANG
MUKA (*DOWN PAYMENT*) YANG DIWAARMERKING
(STUDI PUTUSAN NOMOR: 47/PDT.G/2020/PN MJK)**

TESIS

*Diajukan Untuk Memenuhi Persyaratan Guna Memperoleh Gelar Magister
Kenotariatan Pada Fakultas Hukum Universitas Andalas*



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**PROGRAM MAGISTER KENOTARIATAN
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UNIVERSITAS ANDALAS
2025**

**GUGATAN PERBUATAN MELAWAN HUKUM TERHADAP NOTARIS
ATAS PENAHANAN SERTIFIKAT BERDASARKAN PERJANJIAN
PENGEMBALIAN UANG MUKA (*DOWN PAYMENT*) YANG
DIWAARMERKING (STUDI PUTUSAN NOMOR 47/Pdt.G/2020/PN Mjk)**

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ABSTRAK

Notaris adalah pejabat umum yang berwenang membuat akta autentik dan memiliki kewenangan lain sebagaimana diatur dalam Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (UUJN). Perkara bermula dari wanprestasi pembeli yang tidak melunasi pembayaran meskipun Sertifikat Hak Milik telah dibalik nama ke atas nama pihak pembeli. Para pihak kemudian membuat perjanjian pengembalian uang muka (*down payment*) yang memuat klausul penyerahan sertifikat setelah uang muka (*down payment*) dikembalikan. Notaris menahan sertifikat berdasarkan perjanjian tersebut, namun penjual menggugat notaris atas dasar perbuatan melawan hukum (PMH). UUJN dan Peraturan PPAT tidak mengatur dan melarang Notaris/PPAT menerima titipan sertifikat hak atas tanah dari para pihak. Berdasarkan hal tersebut, penulis kemudian tertarik untuk melakukan penelitian tentang 1) Bagaimana kedudukan hukum surat perjanjian pengembalian uang muka (*down payment*) yang diwaarmerking menjadi dasar penahanan Sertifikat Hak Milik berdasarkan putusan nomor: 47/Pdt.G/2020/PN Mjk? 2) Bagaimana pertimbangan hakim terhadap gugatan Perbuatan Melawan Hukum terhadap notaris atas Penahanan Sertifikat Hak Milik berdasarkan perjanjian pengembalian uang muka (*down payment*) yang diwaarmerking berdasarkan putusan nomor: 47/Pdt.G/2020/PN.Mjk. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan (*statute approach*), dan pendekatan kasus (*case approach*). Data dianalisis secara kualitatif melalui telaah peraturan perundang-undangan, doktrin, dan putusan pengadilan. Hasil penelitian menunjukkan bahwa perjanjian pengembalian uang muka (*down payment*) yang diwaarmerking memiliki kekuatan pembuktian sebagai akta di bawah tangan yang diakui tanda tangan dan tanggal pembuatannya. Notaris yang menahan sertifikat berdasarkan isi perjanjian tersebut bertindak sesuai kewenangannya, sehingga tidak memenuhi unsur PMH sebagaimana diatur dalam Pasal 1365 KUH Perdata. Pengadilan menyatakan gugatan terhadap notaris tidak dapat diterima karena didasarkan pada perjanjian yang sah dan mengikat para pihak.

Kata kunci: Notaris, Waarmerking, Perjanjian Pengembalian Uang Muka, Penahanan Sertifikat, Perbuatan Melawan Hukum

**LAWSUIT FOR UNLAWFUL ACT AGAINST A NOTARY FOR
WITHHOLDING A CERTIFICATE BASED ON A WAARMERKING OF
DOWN PAYMENT REFUND AGREEMENT
(STUDY OF DECISION NUMBER 47/Pdt.G/2020/PN Mjk)**

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ABSTRACT

A notary is a public official authorized to draw up authentic deeds and exercise other authorities as regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Office of Notary (UUJN). The case originated from the buyer's breach of contract for failing to complete payment despite the Land Ownership Certificate having been transferred to the buyer's name. The parties subsequently executed a down payment refund agreement containing a clause stipulating that the certificate would only be handed over after the down payment was refunded. The notary withheld the certificate based on this agreement; however, the seller filed a tort lawsuit against the notary. The UUJN and PPAT regulations neither prohibit nor regulate notaries/PPAT from receiving a land title certificate deposit from the parties. Based on this, the author conducted research to examine: (1) the legal status of a down payment refund agreement subject to waarmeking as the basis for withholding a Land Ownership Certificate under Decision No. 47/Pdt.G/2020/PN Mjk; and (2) the judges' considerations regarding the tort claim against the notary for withholding the Land Ownership Certificate under such an agreement, based on 47/Pdt.G/2020/PN Mjk. This study adopts a normative juridical method with a statute approach and case approach. Data were qualitatively analyzed through a review of laws, doctrines, and court decisions. The findings indicate that a waarmeking-endorsed down payment refund agreement holds evidentiary weight as a private deed, the signatures and date of which are acknowledged. The notary, by withholding the certificate in accordance with the agreement, acted within their authority and thus did not fulfill the elements of a tort as stipulated in Article 1365 of the Indonesian Civil Code. The court declared the lawsuit against the notary inadmissible, as it was based on a lawful agreement binding on the parties.

Keywords: Notary, Waarmeking, Down Payment Refund Agreement, Waarmeking, Notary, Withholding Certificate, Unlawfull Act Against