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# Assessing the Legal Strength of the Exceptio Non Adimpleti Contractus (ENAC) in Residential Sale and Purchase Disputes in Indonesia

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## Abstract

Disputes over home sales and purchases constitute one of the most common forms of contractual conflict, particularly when one party fails to fulfill its obligations under the agreement. In this context, the *exceptio non adimpleti contractus* (ENAC) serves as a crucial mechanism for maintaining a balance of rights and obligations. This study aims to analyze the legal foundations, concepts, and principles of ENAC as reflected in the Civil Code, scholarly doctrine, and jurisprudence, and to examine its application in home sale and purchase disputes through judicial interpretation and evidentiary patterns related to default. Employing normative legal research methods with statutory, doctrinal, and case-based approaches, the study finds that ENAC is consistently applied by judges through the principles of proportionality, good faith, and the evidentiary strength of documentary proof. These findings confirm that ENAC plays a significant role in ensuring legal protection and preventing contractual inequities. The study concludes that the application of ENAC reinforces legal certainty and promotes compliance with contractual obligations in property transactions in Indonesia.

**Keywords:** *Exceptio Non Adimpleti Contractus, Home Sale and Purchase Disputes, Default*

## Abstrak

Sengketa jual beli rumah merupakan salah satu bentuk sengketa kontraktual yang paling sering muncul, terutama ketika salah satu pihak tidak memenuhi prestasi sesuai perjanjian. Terkait hal ini, *exceptio non adimpleti contractus* (ENAC) menjadi instrumen penting untuk mempertahankan keseimbangan hak dan kewajiban. Penelitian ini bertujuan menganalisis dasar hukum, konsep, dan prinsip ENAC berdasarkan KUHPerdara, doktrin, dan yurisprudensi, serta mengkaji penerapannya dalam sengketa jual beli rumah melalui penilaian yudisial dan pola pembuktian wanprestasi. Menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, doktrinal, dan studi putusan, penelitian ini menemukan bahwa ENAC diterapkan secara konsisten oleh hakim melalui prinsip proporsionalitas, iktikad baik, dan validitas bukti dokumenter. Temuan ini menegaskan bahwa ENAC berperan signifikan dalam menjamin perlindungan hukum dan mencegah ketidakseimbangan perjanjian. Penelitian ini menyimpulkan bahwa penerapan ENAC memperkuat kepastian hukum dan mendorong kepatuhan prestasi dalam transaksi properti di Indonesia.

**Kata kunci:** *Exceptio Non Adimpleti Contractus, Sengketa Jual Beli Rumah, Wanprestasi*

## 1. INTRODUCTION

Contracts constitute a fundamental mechanism for maintaining social order and ensuring stability within modern economic systems. In various transactions, contracts function as instruments for regulating the rights and obligations of the parties, enabling social interactions and economic activities to proceed predictably, fairly, and securely. Without legally enforceable agreements, uncertainty and the potential for disputes increase substantially. This is particularly evident in property transactions, which are high-value in nature and rely heavily on legal certainty, accurate information, and consistent performance by all parties. The sale and purchase of a house represent one of the most complex forms of property transactions, involving high-value assets, multilayered legal processes, and interdependent performance requirements that demand a balance between the buyer's payment and the seller's delivery of the property.

In practice, residential sale and purchase agreements frequently present challenges because their implementation depends on the simultaneous or sequential fulfillment of obligations. Delays in payment, defects in the property, documentary inconsistencies, or failure to transfer rights commonly trigger disputes. When one party feels disadvantaged or suspects that the other party has failed to perform its contractual duties, a claim for breach of contract often becomes the legal course of action. A central issue that frequently arises, however, concerns the identification of the party actually responsible for the breach. This determination is critical because it defines whether a party has a legal basis to file a claim, rescind the agreement, or postpone performance.

In this context, the doctrine of *exceptio non adimpleti contractus* (ENAC) plays a pivotal role. ENAC allows a party to defer performance if the counterparty has not fulfilled its obligations. Rooted in continental civil law traditions, the principle ensures that reciprocal agreements are not enforced in a disproportionate or unilateral manner. ENAC operates not only as a defensive mechanism against breach-of-contract claims but also as an instrument for maintaining balance and proportionality within contractual relationships. Its application is particularly significant in residential sale and purchase agreements, where installment payments, object verification, and the transfer of rights often occur concurrently and are mutually dependent.

Despite its importance, the application of ENAC in residential property disputes often generates uncertainty. Courts must determine whether obligations have been substantially fulfilled, whether the party invoking ENAC has itself performed in good faith, and how the contractual balance should be preserved. Judicial decisions show that the application of ENAC is highly case-specific and dependent on judicial interpretation, evidentiary strength, and the structure of the agreement. This lack of uniformity presents challenges for establishing legal certainty for parties engaged in property transactions. Clarifying how ENAC should be applied is essential to

minimizing litigation risks, strengthening public confidence in the property market, and ensuring equal legal protection for buyers and sellers.

Contracts thus remain essential instruments for upholding legal certainty and socio-economic stability, particularly in high-value transactions such as property sales. Within this framework, the doctrine of *exceptio non adimpleti contractus* (ENAC) gains heightened relevance as a legal basis for withholding performance when the counterparty fails to comply. Although previous studies have examined the application of ENAC in various contractual contexts, few have specifically analyzed its implementation in residential sale and purchase agreements, which are inherently reciprocal, financially substantial, and characterized by heightened legal risk.

An early study by Yulia confirms that ENAC applies exclusively to reciprocal contracts, particularly when a debtor fails to fulfill its obligations due to a prior breach committed by the creditor. Through an examination of the bankruptcy cases involving PT Telkomsel and PT Prima Jaya Informatika, Yulia demonstrates that ENAC is frequently incorporated into contractual clauses, yet its implementation remains highly dependent on judicial interpretation. These findings underscore the crucial role of jurisprudence in ensuring consistent application of ENAC, especially in large-scale commercial disputes. However, Yulia's research does not extensively connect these insights to property transactions, which possess distinct characteristics and risks compared to typical commercial contracts.<sup>1</sup>

Research by Mulyani focuses on contractual freedom in sale and purchase agreements and the conditions under which they may be annulled due to default. She highlights how Civil Code provisions—particularly Articles 1266 and 1267—are often overlooked in the interest of efficient contract execution. Although the study does not directly address ENAC, it establishes that default in sales and purchase agreements constitutes a critical issue that necessitates a proportionate defense mechanism, including ENAC. Nonetheless, it has yet to explore in detail how ENAC may be applied to maintain the balance of rights and obligations in residential sale and purchase agreements.<sup>2</sup>

In the context of bankruptcy, Ramos contributes significantly by examining ENAC as a defensive instrument available to debtors in PKPU (debt restructuring) proceedings. Ramos emphasizes that ENAC is frequently invoked to challenge creditors' claims of default by asserting that the creditor was the first party to breach the contract. This study illustrates that ENAC functions not merely as a passive principle but as an active tool for defending a debtor's legal position. However, because

<sup>1</sup> Yulia Yulia, "Penerapan Prinsip Exceptio Non Adimpleti Contractus Dalam Perkara Kepailitan: Studi Kasus Putusan Mahkamah Agung No. 704 K/Pdt.Sus/2012 Antara PT. Telkomsel Melawan PT. Prima Jaya Informatika," *Premise Law Journal* 4 (2015): 1–15.

<sup>2</sup> Tri Mulyani, "Penerapan Asas Kebebasan Berkontrak Dalam Perjanjian Jual Beli Dikaitkan Dengan Batalnya Suatu Perjanjian Disebabkan Oleh Wanprestasi," *Jurnal Hukum Media Justitia Nusantara* 6, no. 1 (2016): 39–47, <https://doi.org/10.30999/mjn.v6i1.484>.

the study focuses on bankruptcy disputes, it does not comprehensively address the application of ENAC in real-property transactions.<sup>3</sup>

Research conducted by Brilianto and Marpaung analyzes the regulation of ENAC in Indonesian positive law and its implications for sales and purchase disputes. They find that ENAC is codified in Article 1478 of the Civil Code and reinforced by Supreme Court decisions such as Decision No. 156 K/SIP/1955. Their findings indicate that the application of ENAC may weaken a plaintiff's position when it is proven that the plaintiff has not fulfilled their own obligations. While this research is highly relevant for understanding the normative basis of ENAC, it does not explore how ENAC is applied in practice within the specific context of residential property transactions involving authentic deeds, phased payment schemes, and the principle of cash, clear, and real.<sup>4</sup>

Saputro and Huda address legal certainty in PPAT-issued sale and purchase deeds with regard to outstanding land payments. They argue that the legal transfer of land rights (*juridische levering*) satisfies the requirements of a sale and purchase, even if full payment has not yet been made. This finding is particularly relevant to ENAC, as it demonstrates that in land transactions, the fulfillment of obligations is often sequential rather than simultaneous. Their study underscores the importance of analyzing how ENAC operates when payment delays occur or when the property is not delivered as contractually agreed.<sup>5</sup>

Further research by Fanani et al. explores the application of ENAC in oral agreements between artists and their personal managers. Their findings reveal that ENAC requires a balance of obligations and good faith between the parties. This research broadens the understanding of ENAC by showing that it applies not only to written contracts but also to oral agreements. Nevertheless, the complexity of residential property transactions—characterized by formal documentation and high-value assets—makes the application of ENAC more intricate than in oral agreements.<sup>6</sup>

Fauzi examines ENAC within the context of housing development, specifically in contractual relationships between developers and contractors. The results indicate that ENAC serves as an effective mechanism when one party fails to perform the agreed

<sup>3</sup> Klose Mikhael Ramos, "Analisis Yuridis Perihal Implementasi Dari Prinsip Exceptio Non Adimpleti Contractus Pada Prakteknya: Studi Kasus Sengketa Kepailitan PT Anema Villas & Hotels" (Universitas Indonesia, 2024), <https://lib.ui.ac.id/detail?id=9999920549817&lokasi=lokal>.

<sup>4</sup> Hasna Farida Brilianto and Devi Siti Hamzah Marpaung, "Exceptio Non Adimpleti Contractus Pada Kasus Wanprestasi Dalam Perjanjian Jual Beli," *Widya Yuridika: Jurnal Hukum* 5, no. 2 (2022): 253–64, <https://doi.org/10.31328/wy.v5i2.3476>.

<sup>5</sup> Agus Purwo Saputro and Miftakhul Huda, "Kepastian Hukum Pembuatan Akta Jual Beli Oleh Pejabat Pembuat Akta Tanah Atas Pembayaran Harga Tanah Yang Belum Dilunasi Pembeli," *Collegium Studiosum Journal* 7, no. 2 (2024): 374–80, <https://doi.org/10.56301/csj.v7i2.1310>.

<sup>6</sup> Miftahul Fanani, Sigit Nurhadi Nugraha, and Muhamad Hasan Muaziz, "Penerapan Prinsip Exceptio Non Adimpleti Contractus Dalam Perkara Wanprestasi Pada Perjanjian Lisan," *Jurnal Pendidikan Indonesia* 6, no. 2 (2025): 933–943, <https://doi.org/10.59141/japendi.v6i2.7389>.

obligations. However, this study focuses primarily on construction-related disputes, rather than on the direct legal relationship between home sellers and buyers.<sup>7</sup>

Sholihah analyzed five judicial decisions concerning the application of ENAC in default disputes. Of the five cases, two decisions upheld the use of ENAC, while three rejected it. This pattern indicates that the application of ENAC is highly case-specific and dependent on proving which party first committed the default. These findings contribute to an understanding of the judicial dynamics surrounding ENAC, but they have not been specifically examined within the context of residential sale and purchase disputes.<sup>8</sup>

Existing studies have explored ENAC primarily in relation to bankruptcy, commercial contracts, oral agreements, and housing development, yet none have specifically addressed its application in home sale and purchase disputes, which possess distinct legal characteristics. To date, no research has integrated normative analysis, jurisprudence, and the unique features of residential sale and purchase transactions to assess the practical relevance and limitations of ENAC. This study offers an original contribution by focusing on the application of ENAC in residential sale and purchase agreements as high-value reciprocal contracts. Against this background, the objectives of this research are to:

- 1) Analyze the concept, principles, and legal foundations of *exceptio non adimpleti contractus* in home sale and purchase agreements based on the Civil Code, doctrinal scholarship, and jurisprudence; and
- 2) Examine the application of *exceptio non adimpleti contractus* in residential sale and purchase disputes, including judicial considerations, evidentiary patterns related to default, and its implications for maintaining a balanced distribution of rights and obligations between the parties.

## 2. RESEARCH METHODOLOGY

This study employs a normative legal approach to analyze the principles, doctrines, and legal provisions related to *Exceptio Non Adimpleti Contractus* (ENAC) in home sale and purchase disputes. The research adopts a doctrinal legal methodology that integrates several approaches, including statutory analysis, conceptual examination, case studies, and historical interpretation. This combination is used to explore the normative construction of the Civil Code, assess contractual principles such as balance and good faith, and evaluate the application of ENAC in Indonesian court decisions.

<sup>7</sup> Mochammad Virgiawan Fauzi, “Kedudukan Prinsip Exceptio Non Adimpleti Contractus Pada Wanprestasi Pengembang Terhadap Kontraktor Dalam Perjanjian Pekerjaan Borongan: Studi Putusan Nomor 169/Pdt/2021/PT SMG” (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2025), <https://repository.uinjkt.ac.id/dspace/handle/123456789/84751>.

<sup>8</sup> Nia Amiroh Sholihah, “Prinsip Exceptio Non Adimpleti Contractus Dalam Putusan Sengketa Wanprestasi Di Indonesia” (Universitas Gadjah Mada, 2025), <https://etd.repository.ugm.ac.id/penelitian/detail/262204>.

The legal materials consist of primary sources (the Civil Code, Supreme Court rulings, court decisions involving residential sale and purchase disputes, land-related regulations, and contractual documents), secondary sources (books, scholarly articles, and academic studies on breach of contract and ENAC), and tertiary sources (legal dictionaries and encyclopedias). Data were collected through library research by examining relevant legislation, jurisprudence, and scholarly literature.

Data analysis was conducted qualitatively and prescriptively using descriptive, interpretive, argumentative, and prescriptive techniques to evaluate the consistency of ENAC's application and to formulate normative recommendations. Validation was carried out through source triangulation and comparative analysis of jurisprudence. This study is limited to examining the application of ENAC in residential sale and purchase disputes involving mutual default.

### 3. RESEARCH RESULT AND DISCUSSION

#### 3.1. Concept, Principles, and Legal Basis of *Exceptio Non Adimpleti Contractus* in Residential Sale and Purchase Agreements

This study examines the concept, principles, and legal foundations of *Exceptio Non Adimpleti Contractus* (ENAC) in residential sale and purchase agreements based on the Civil Code, doctrinal scholarship, and jurisprudence, and evaluates how the doctrine operates in practice to provide legal protection for the parties. Specifically, the study analyzes the application of ENAC within the contractual relationship between home sellers and buyers as a form of reciprocal agreement (*wederkerige overeenkomst*), in which the performance of one party is directly dependent on the performance of the other.

The findings indicate that ENAC is a fundamental doctrine in civil law designed to maintain the balance of rights and obligations in reciprocal contracts. Residential sale and purchase agreements—characterized by high economic value and significant legal risk—rely heavily on this principle of reciprocity. The seller is obligated to deliver the property properly and on time, while the buyer is required to pay the agreed price. Any imbalance or imperfect performance by one party provides legal justification for the other party to suspend its performance under the ENAC doctrine.

The normative analysis shows that ENAC has a strong legal foundation in the Civil Code, particularly through a systematic interpretation of Articles 1238, 1243, 1266, and 1338. Article 1238 outlines the framework for breach of contract and its legal consequences, while Article 1266 emphasizes that cancellation or suspension of obligations may occur when one party fails to perform. Accordingly, ENAC represents the legal right of the non-breaching party to withhold performance until the other party fulfills its obligations. Article 1338, which affirms the principle of *pacta sunt servanda*, further positions ENAC as a mechanism for achieving contractual justice. The doctrine

ensures that contractual obligations are not imposed unilaterally but are performed equitably. ENAC as an expression of fairness in reciprocal agreements prevents injustice and unjust enrichment.

In practice, ENAC typically arises in two scenarios: (1) when the buyer delays payment of the purchase price, and (2) when the seller delays or fails to deliver the property. In the first scenario, the seller is entitled to postpone delivering the certificate, keys, or possession of the property until full payment is made. In the second, the buyer may refuse further payments or withhold installments until the seller completes construction, repairs, or handover in accordance with the agreed specifications.

The research findings reveal that courts generally consider two factors before accepting an ENAC defense: (a) whether the claimant has failed to perform or has performed imperfectly, and (b) whether the suspension of performance by the party invoking ENAC is proportionate. This demonstrates that ENAC is not merely a formal defense against obligations but a contractual balancing mechanism rooted in the principles of proportionality and good faith. Courts are more likely to uphold ENAC when objective evidence is present, such as delayed delivery, incomplete title documents, deviations from agreed building specifications, or the buyer's failure to meet payment schedules.

This study concludes that ENAC is an effective instrument for maintaining contractual equilibrium in residential sale and purchase agreements. The doctrine not only provides legal protection for parties who act in good faith but also functions as a dispute-prevention mechanism and a practical negotiation tool. The study identifies three key findings:

- 1) ENAC is substantively embedded within the Civil Code, even though it is not explicitly termed as such. Provisions such as Articles 1238, 1266, and 1338 collectively form the doctrinal basis for ENAC.
- 2) ENAC ensures balanced legal protection for both sellers and buyers. Sellers may retain the property when buyers default, while buyers may withhold payment when sellers fail to meet their obligations.
- 3) Courts frequently rely on ENAC as a preliminary means of resolving contractual disputes before ordering cancellation or awarding damages, demonstrating a judicial preference for contractual continuity and proportionate remedies.

The findings of this study align with previous research emphasizing that ENAC is a crucial doctrine for maintaining balance in reciprocal agreements. Studies by Fitzmaurice and Zelenovskaya et al. highlight that ENAC—*exceptio non adimpleti contractus*—is a logical consequence of the principle of reciprocity and an instrument of

contractual justice.<sup>9</sup> Research conducted in the Indonesian context similarly demonstrates that ENAC functions as a legal safeguard in property sale and purchase transactions, as reflected in analyses of Supreme Court jurisprudence concerning residential and land disputes.<sup>10</sup>

However, this study underscores the doctrinal connection between ENAC and specific provisions of the Civil Code, an aspect often overlooked in prior scholarship. While earlier studies generally focused on normative principles, this research integrates statutory analysis, doctrinal perspectives, and court decisions within the specific context of residential sale and purchase agreements. ENAC operates not only as a passive defense but also as a contractual risk-management mechanism.<sup>11</sup> In residential transactions, the risks of performance uncertainty—particularly regarding payment and delivery—are substantial. ENAC serves as a stabilizing mechanism that ensures the burden of risk is borne by the party failing to perform.

ENAC also acts as a safeguard against opportunistic behavior.<sup>12</sup> Without this doctrine, a buyer could compel a seller to deliver a property despite incomplete payment, or a seller could demand payment without meeting agreed construction standards. Accordingly, ENAC harmonizes the principle of freedom of contract with the obligation of good faith in the performance of contractual duties. It also strengthens the bargaining position of the compliant party. By invoking ENAC, parties are incentivized to pursue amicable dispute resolution, thereby reducing litigation costs and promoting legal certainty.

This study confirms that ENAC is a pivotal doctrine in ensuring legal protection within residential sale and purchase agreements. Its significance is not only theoretical but also highly practical. Supported by a robust legal foundation, the doctrine enhances legal certainty, prevents unfair practices, and promotes stability in property transactions. The direct implications of these findings include the need to explicitly incorporate

<sup>9</sup> Malgosia Fitzmaurice, “Angst of the Exceptio Inadimplenti Non Est Adimplendum in International Law,” in *Exceptions in International Law* (ed. Lorand Bartels and Federica Paddeu (Oxford: Oxford Academic, 2020), 285–304, <https://doi.org/10.1093/oso/9780198789321.003.0016%0A>; Tatiana Zelenovskaya, Valeria Matorina, and Anastasia Fomenko, “Non Adimpleti Contractus and a Problem of Overinclusiveness in International Law,” *HSE University Journal of International Law* 1, no. 1 (2023): 26–38, <https://doi.org/10.17323/jil.2023.17443>.

<sup>10</sup> Fanani, Nugraha, and Muaziz, “Penerapan Prinsip Exceptio Non Adimpleti Contractus Dalam Perkara Wanprestasi Pada Perjanjian Lisan”; Elisatris Gultom, Joshua Alexander, and Nadela Angelina, “Efektivitas Implementasi Ajaran Exceptio Non Adimpleti Contractus Berdasarkan Dinamika Hukum Berdasarkan Konduktor Putusan 747/PDT.G/2019/PN JKT.UTR,” *Causa: Jurnal Hukum Dan Kewarganegaraan* 8, no. 12 (2024): 51–60, <https://doi.org/10.3783/causa.v8i12.8038>; Ramos, “Analisis Yuridis Perihal Implementasi Dari Prinsip Exceptio Non Adimpleti Contractus Pada Prakteknya: Studi Kasus Sengketa Kepailitan PT Anema Villas & Hotels.”

<sup>11</sup> Michael J. Bowman and Dino Kritsiotis, “Conceptual Perspectives,” in *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (Cambridge: Cambridge University Press, 2018), 477–506, <https://doi.org/10.1017/9781316179031>.

<sup>12</sup> Tjakie Naude, “The Principle of Reciprocity in Continuous Contracts Like Lease: What Is and Should Be the Role of the Exceptio Non Adimpleti Contractus (Defence of the Unfulfilled Contract),” *Stellenbosch Law Review* 27, no. 2 (2016): 323–53, <https://juta.co.za/products/3603-stellenbosch-law-review/>.



ENAC clauses into residential sale and purchase agreements so that both parties clearly understand the limits and consequences of their obligations; increase public awareness—particularly among property owners—regarding their legal rights in cases of suspended performance due to non-compliance; and strengthen judicial consistency in applying the ENAC doctrine through proportional and good-faith interpretation.

In conclusion, this study affirms that ENAC is a vital legal instrument for maintaining contractual fairness in residential sale and purchase agreements. The doctrine ensures that legal relationships remain balanced, equitable, and aligned with the fundamental principles of contract law articulated in the Civil Code.

### **3.2. Application of *Exceptio Non Adimpleti Contractus* (ENAC) in Home Sale and Purchase Disputes**

The primary objective of this study is to examine the application of *Exceptio Non Adimpleti Contractus* (ENAC) in home sale and purchase disputes, with particular emphasis on how judges assess proof of contractual breach, the pattern of reversal of the burden of proof, and the implications of this doctrine for maintaining a balance of rights and obligations under the Civil Code, legal doctrine, and jurisprudence. The findings indicate that Indonesian courts apply ENAC with relative consistency, although variations remain in the assessment of proportionality and evidentiary sufficiency. An analysis of judicial decisions provides a detailed account of how ENAC operates as a protective mechanism in reciprocal contracts, particularly in home sale transactions that involve significant financial and legal risks.

Based on the jurisprudential analysis, courts generally recognize ENAC as a valid legal basis when a breach occurs in a reciprocal contract. In most decisions, judges begin by determining whether the alleged non-performing party has committed a substantial breach. This approach aligns with Article 1238 of the Civil Code, which provides that a debtor is considered in default if they fail to perform their obligations within the stipulated timeframe or following a formal warning.

The data demonstrate that the standard of proof for default plays a critical role in determining the success of ENAC claims. A buyer or seller seeking to suspend performance must establish that the counterparty's performance is deficient—whether through delay, nonconformity of the object, or failure to pay the agreed price. Thus, ENAC cannot be invoked automatically; it must be supported by compelling evidence demonstrating the sequence and substance of the breach.

Several decisions highlight the importance of documentary evidence—including handover reports, payment records, correspondence, and sale and purchase agreements—in supporting ENAC claims. This pattern reflects judicial prudence, as courts rigorously assess whether the evidence sufficiently demonstrates an imbalance in the performance of contractual obligations. The findings further show that judges apply

ENAC not only on the basis of normative provisions in the Civil Code but also by considering fundamental principles such as proportionality and good faith (*bona fide*). This is consistent with the doctrinal character of ENAC as a mechanism designed to restore equilibrium in reciprocal contracts.

In the examined decisions, judges distinguished between substantial breaches and minor defects. When the breach is considered insignificant, courts typically deny ENAC claims on the grounds of disproportionality. Conversely, when delays or defects in the delivery of the property pose a significant risk of harm, courts consistently uphold the right of the non-breaching party to suspend performance. These judicial considerations are in line with Article 1266 of the Civil Code, which permits suspension of performance when a counterparty fails to fulfill a prerequisite obligation. Courts rely on this provision to assess the causal link between the breach and the suspension.

Good faith also constitutes a decisive factor. In several cases, although a breach was technically present, judges rejected ENAC claims upon finding evidence that the withholding party acted in bad faith—either to evade obligations or to exert disproportionate pressure on the counterparty. This judicial stance is consistent with Article 1338(3) of the Civil Code, which requires contracts to be performed in good faith. Evidentiary strength plays a determining role in ENAC adjudication. To successfully invoke ENAC, a party must prove two key elements: (1) the existence of an unfulfilled contractual obligation, and (2) that the suspension of performance was taken as a proportionate and good-faith response to the breach.

In cases where buyers withhold payment, courts generally require evidence such as an untransformed title deed, proof that the building fails to meet the agreed specifications, or evidence showing that the seller unlawfully delayed handover. Conversely, when sellers suspend delivery of the house, judges typically consider evidence of irregular payments, a history of delays, or failure to meet payment milestones. Courts tend to reject ENAC claims when the evidence of default is ambiguous or insufficient. Accordingly, the evidentiary framework underlying the ENAC doctrine preserves a balance between protecting the non-breaching party and preventing misuse of the doctrine to evade contractual responsibilities.

This study reinforces previous findings indicating that ENAC operates as a mechanism to prevent unfairness in reciprocal contracts. Earlier studies concluded that ENAC serves to prevent a defaulting party from unilaterally demanding performance from the other party.<sup>13</sup> While consistent with these conclusions, the present study offers two key contributions.

<sup>13</sup> Fanani, Nugraha, and Muaziz, “Penerapan Prinsip Exceptio Non Adimpleti Contractus Dalam Perkara Wanprestasi Pada Perjanjian Lisan”; Fauzi, “Kedudukan Prinsip Exceptio Non Adimpleti Contractus Pada Wanprestasi Pengembang Terhadap Kontraktor Dalam Perjanjian Pekerjaan Borongan: Studi Putusan Nomor 169/Pdt/2021/PT SMG”; Febrian Pratama, Diana Ria W Napitupulu, and Binoto Nadapdap, “Juridical Review of Defects Made by PT. Perhutani (Persero) in the Purchase of the Building Owned by PT. Visi Investama Properti: Case Study of South Jakarta District Court Decision Number 735/Pdt.Gl2021lpn.Jkt.Sel. Jo Jakarta

First, it demonstrates that the application of ENAC in home sale and purchase disputes increasingly emphasizes the principle of proportionality, with courts making clearer distinctions between serious and minor contractual breaches. This indicates a more advanced judicial development compared to earlier studies, which tended to focus primarily on formal legal aspects. Second, this study highlights the importance of evidentiary patterns as a decisive factor in ENAC adjudication—an issue that has received limited attention in previous research. Thus, the findings expand the understanding that ENAC is not solely normative but also highly sensitive to evidentiary considerations.

ENAC plays a pivotal role in maintaining contractual equilibrium. First, it functions as a corrective mechanism, preventing a defaulting party from compelling performance by the non-breaching party. Second, it serves a preventive function by encouraging parties to perform their obligations punctually and in accordance with the agreement to avoid forfeiting their right to demand performance.<sup>14</sup>

This understanding is reinforced by the characterization of ENAC as a mechanism of temporary suspension rather than contractual termination.<sup>15</sup> ENAC does not eliminate the parties' fundamental obligations; rather, it suspends performance until reciprocity is restored. In this respect, ENAC aligns with the principles of prudence and risk mitigation in property transactions.

This study confirms three key findings. First, the application of ENAC in home sale and purchase disputes depends heavily on proof of breach and supporting documentation. Second, courts apply the principles of proportionality and good faith as primary determinants of the legitimacy of ENAC claims. Third, the application of ENAC contributes to maintaining a balance of rights and obligations, thereby preventing structural injustice in reciprocal contracts. This study demonstrates that ENAC is an essential instrument for resolving home sale and purchase disputes in Indonesia. Its consistent application by the judiciary not only reinforces contractual legality but also underscores the courts' role in safeguarding balance, fairness, and legal certainty in high-value property transactions.

#### 4. CONCLUSION

This study aims to analyze the concept, principles, and legal basis of *exceptio non adimpleti contractus* (ENAC) in residential sale and purchase agreements based on the Civil Code,

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High Court Decision Number26,” *International Journal of Social, Policy and Law* 5, no. 3 (2024): 30–45, <https://doi.org/10.8888/ijospl.v5i3.172>; Sholihah, “Prinsip Exceptio Non Adimpleti Contractus Dalam Putusan Sengketa Wanprestasi Di Indonesia.”

<sup>14</sup> Bowman and Kritsotis, “Conceptual Perspectives”; Naude, “The Principle of Reciprocity in Continuous Contracts Like Lease: What Is and Should Be the Role of the Exceptio Non Adimpleti Contractus (Defence of the Unfulfilled Contract).”

<sup>15</sup> Maria Xiouri, “The Exceptio Non Adimpleti Contractus in Public International Law,” *International Community Law Review* 21, no. 1 (2019): 56–92, <https://doi.org/10.1163/18719732-12341390>.

legal doctrine, and jurisprudence. It also examines the doctrine's practical application in disputes, including judicial considerations, evidentiary patterns in establishing default, and its implications for maintaining the balance of rights and obligations between the parties. The findings indicate that ENAC functions as a valid legal mechanism that allows a party to proportionally suspend performance when the counterparty fails to fulfill its obligations, primarily grounded in Articles 1238, 1266, and 1338 of the Civil Code. Empirical evidence from court decisions demonstrates judicial consistency in applying the principles of proportionality, good faith, and evidentiary completeness through contractual documents, payment records, and proof of delivery.

This study confirms that ENAC plays a significant role in maintaining the equilibrium of parties' positions in residential property transactions, preventing abuse of rights, and reinforcing legal certainty. The study contributes to improving contractual practices and strengthening judicial interpretation. Its limitations lie in the restricted scope of cases, which are confined to first-instance decisions. Therefore, this study recommends regulatory harmonization through the explicit incorporation of ENAC clauses in standard property contracts, as well as further research involving appellate and cassation decisions to enrich doctrinal understanding.

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