



Legal Protection for Consumers Owning Apartment Units in PPJB for Developers Declared in Bankruptcy

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ABSTRACT

This research is aimed at finding out the form of legal protection for apartment consumers based on PPJB which has been declared bankrupt in the decision of the Medan Commercial Court Number 51/Pdt.sus-PKPU/2023/PN Niaga Mdn. In this study, a normative juridical research type is used and then a descriptive qualitative data analysis technique is used. The results of this study show that preventive efforts are efforts that can be made before a dispute occurs, the nature of this effort aims to prevent. Preventive is carried out in 3 stages, namely the pre-transaction, transactional, and post-transaction stages. Repressive efforts are efforts made to resolve disputes that occur. through the legal process of consumer protection, namely Law number 8 of 1999 and through bankruptcy law, Law number 34 of 2007.

INTRODUCTION

With the increasing population limited land for house construction and the economic growth of the developing community, some people will choose ownership for one of the interests for the sustainability of their lives, one of which is home ownership. The need for housing is important because to realize home ownership is not easy to see in terms of cost and investment value, in the end most people have not met the needs of the house. In terms of development in the form of verticals, a concrete example of the first government's role in housing development or the provision of housing facilities is the construction of flats which were built as an effort by the government to meet the needs of urban communities for decent boards in a healthy environment but difficult to obtain in large urban areas of developing countries such as Indonesia due to population density due to the urbanization cycle.(Alif, 2009, 16. p.)

Housing development activities themselves can be carried out by the government, private parties engaged in housing development, and individuals independently. Private parties engaged in the business of building and selling housing are commonly referred to as developers. 3 Based on the Law of the Republic of Indonesia Number/10 Years/2011 concerning Flats Article 1 number 15, "Developers are every person and/or the government who carry out housing and settlement development". Meanwhile, according to Article 1 number (1) of Government Regulation of the Republic of Indonesia Number 14 Year/1016 concerning the Implementation of Housing and Residential Areas which states that "The Implementation of Housing and Residential Areas is planning, development, utilization, and control activities, including institutional development, funding, and financing systems, as well as the role of the community in a coordinated and integrated manner".

Based on Article 43 paragraph (1) of the Law on Flats (UURS) to obtain ownership of the apartment/flat unit is carried out in the form of an order stated in the Purchase and Sale Binding Agreement (PPJB) Sale And Purchase Binding Agreement. (PPJB) Sale And Purchase Binding Agreement is a standard deed of agreement and contains the purchase and sale price, repayment time, unit delivery schedule and the reason for the failure to carry out the the (AJB) Deed Of Sale And Purchase Agreement. The (PPJB) Sale And Purchase Binding Agreement is used as a juridical basis that the buyer has seriousness in the transaction and facilitates the transaction of the transfer of rights to the object of sale and purchase either in the form of land or the form of land and buildings in order to achieve the occurrence of the (AJB) Deed Of Sale And Purchase Agreement as the basis for the transfer of rights.

However, if apartment marketing does not run smoothly, some developers experience difficulties in marketing their room units and also the property developer's way of dealing with this is by postponing debt payment obligations or even through bankruptcy. It is the simplest solution to solve the problem of bills that have been in a payment deadline or even in bankruptcy(Anggraini, 2018, 1212-1236. pp.). In other words, bankruptcy occurs when the debtor is no longer able to fulfill its obligations to creditors, which then leads to a legal process to settle the debt through the distribution of the debtor's

assets. In the bankruptcy process, the core is the condition of the debtor's inability to pay his debts. (Sa'adah, 2024, 1. p.) The regulations governing Bankruptcy are like a double-edged sword. On the one hand, the Bankruptcy Law can be used by creditors to pressure debtors to pay off their debts. On the other hand, in practice in the field, the bankruptcy law and PKPU for the Suspension of Debt Payment Obligations are used by companies as one of the cunning efforts to avoid fulfilling their obligations to their creditors. (Zidan et al., 2023, 136. p.)

For developers who are declared in bankruptcy, the owner of the apartment unit is positioned as a concurrent creditor, namely a creditor who does not have material collateral and in the payment of the debt will be paid last with the condition of the buyer (concurrent creditor) who will be paid the last brings losses to the buyer. (Adichandra and Setianingrum, 2022, 3. p.) The case that can be used as a reference for the problems that have been described is the case of PT Kinarya Rekayasa based on the decision of the Medan Commercial Court Number 51/Pdt.sus-PKPU/2023/PN Niaga Mdn in bankruptcy, which is a developer company that develops properties including flats or apartments owned by "Puri Kahyangan" located in Batam, Riau Islands.

With the PKPU decision to postpone the debt payment obligation, the owners of apartment units experienced losses because there was no legal protection against the transfer of rights to the apartment units that had been purchased. Also the provision of facilities promised in the brochure has not been implemented by the developer and the fulfillment in the PPJB Binding Sale and Purchase Agreement, both developers and consumers has not been fulfilled. Making apartment unit owners ask for their rights back.

THEORETICAL REVIEW

Protection Theory

Legal protection leaves a form of effort to provide protection for human rights that are violated by others so that they harm themselves and the protection provided to the community is so that the community can enjoy the rights and rights that have been given, protection is present in the community to integrate for the sake of achieving an interest that is revealed by coordinating these various interests is through restrictions and protection Regarding these interests, it was emphasized by Satjipto Rahardjo that a person's interests are related to human rights in which there is the power to fight for the interests of that person. (Rahardjo, 2014, 44-46. pp.)

According to Philipus M Hadzon, legal protection is the protection of the dignity and dignity as well as the recognition of human rights owned by legal subjects in the country of law based on the provisions of the law that apply in the country of law by referring to the provisions of the law that apply in the country in order to protect against arbitrariness. The form of legal protection is generally stipulated in a written regulation that has a more binding nature and will bring sanctions that must be given to the parties who violate it (Hadjon, 1987, 7. p.)

The form of legal protection based on the source is divided into 2 (two) types that are expressed According to M. Isnaeni, internal legal protection, namely, legal protection designed by the parties and when designing an agreement where when formulating a clause in the agreement, the parties want

their interests so that they can be accommodated based on an agreement. Likewise, all forms of risks can be avoided through the provisions stipulated in the agreement that has been agreed, so that with these provisions the parties get balanced legal protection based on the agreement between the two. The internal legal protection can then only be obtained by the parties when they are in a relatively equal position, meaning that the parties have relatively the same bargaining power, therefore based on freedom of contract, each party has the right to express its will by its interests. This pattern is used as the basis when the parties make or compile the content of the agreement they make so that the legal protection of each party can be achieved directly on their initiative. (Isanan, 2016, 160. p.)

Absolute legal protection is legal protection created by the competent authority through regulations for the benefit of weak parties. Per zero laws and regulations that must not be partial, proportionally as soon as possible, the other party must be given balanced legal protection. It can be known from the beginning of the agreement that there is a position of one party that is stronger than the other, but in the agreement, the strong party at first is the aggrieved party, for example, when the debtor defaults or is declared bankrupt in his debts, the creditor also needs to be protected by law. (Isanan, 2016, 163. p.)

METHODOLOGY

This study uses a juridical-normative approach. In this study, a juridical-normative legal approach is used. The data processing technique uses a descriptive qualitative method, which will then be compiled systematically. The data used is literature data. The data that has been collected is then analyzed in a qualitative normative manner, namely by analyzing which then produces qualitative reasoning logic. The analysis carried out qualitatively applies to the data and cases studied.

RESEARCH RESULTS

Sale and Purchase Binding Agreement of Flats/Apartments between developers and consumers

An Assistance Agreement is an agreement in preparing, affirming, strengthening, regulating, changing or settling a legal relationship, which is contained in the Binding Agreement of Sale and Purchase ((PPJB) Sale And Purchase Binding Agreement. Therefore, the agreement can be a preliminary agreement *pactum de contrahendo* If one of the parties binds itself so that a new agreement occurs which is the goal of the parties. (Joeseof, 2022, 85. p.) The legal consequences born from the contract are desired by the parties because the contract is made on the basis of the agreement of the parties, while the legal consequences that are non-actual or born from the law are determined by the law, the party who commits the act may not want the legal consequences. (Purba, 2022, 3. p.)

If the seller and buyer have not met the elements that must be met for buying and selling, but want to carry out the purchase and sale, the (PPJB) Sale And Purchase Binding Agreement is the right implementation in the agreement because it is born due to the inhibition of several requirements that must be

met.(Subeki, 2002, 7. p.) (PPJB) Sale And Purchase Binding Agreement as a law of agreement is based on the principles of contract law which can be concluded from the provisions of articles 1313, 1338 and 1340 of the Civil Code which consist of:(Joeseof, 2022, 84. p.)

- a. Freedom of contract (*nudus consensus obligati*)
- b. Consensualism (simply an informal consensual)
- c. Binding force (is the law for those who make it)

The legal force of the evidentiary of the binding sale and purchase agreement depends on where the sale and purchase agreement is made, if not in the presence of a public official, it will be a deed under the hand of a sendangkan if the deed is made before a notary as a public official, it becomes a notary word that is an authentic deed. The notary must pay attention to important conditions that will later become the basis for the transfer of rights or the buyer's name at the time of making the PPAT sale and purchase deed.(Hartanti, 2018, 113. p.)

Based on the instruction of the Minister of Home Affairs number 14 of 1982 concerning the prohibition of the use of absolute power which describes the elements of absolute power, it can be understood that the power used in binding the sale and purchase is not included in the absolute power. This is because the deed of binding sale and purchase is a prior agreement that contains conditions that must be fulfilled first before arriving at the main agreement, the transfer of rights to the ownership of the flats is carried out by making a Deed of Sale and Purchase Agreement and purchase in front of the authorized official on the basis of including the granting of power of attorney with irrevocable provisions.

As the implementing regulations of Law No. 1 of 2011 and Law No. 20 of 2011, Government Regulation No. 12 of 2021 regulates two things in the housing sale and purchase agreement system. First, marketing activities are regulated in article 22 B to article 22H of Government Regulation No. 12 of 2021. Second, the implementation of the sale and purchase agreement regulated in articles 221 to 22M of PP No. 12 of 2021.(Rahim, 2022, 264. p.) The article provides an affirmation of the regulation that the (PPJB) Sale And Purchase Binding Agreement of houses/housing/residential areas must be stated in a notary deed. Mutandisingly, the formulation of the norm requires the role of the notary in making the (PPJB) Sale And Purchase Binding Agreement of residential houses must use the principle of prudence to properly verify the conditions for the implementation of PJJB for residential houses between development actors and buyers(Uhim, 2022, 265. p.) in accordance with Government Regulation No. 12 of 2021 stipulates that:

PPJB Binding Sale and Purchase Agreement is carried out after the developer meets the requirements of certainty for:

1. The status of land ownership as referred to in paragraph (1) letter a is evidenced by the certificate of land rights shown to the prospective buyer at the time of signing the PPJB Binding Agreement On Sale And Purchase.
2. IMB Ownership.
3. Availability of infrastructure, facilities, and public utilities.

4. The buildability of at least 20% (twenty percent) which means the buildability of at least 20% (twenty percent) is 20% (twenty percent) of the construction volume of the flats that are being marketed.
5. The thing that was agreed. as intended in paragraph (1) at least consists of:
 - a. The condition of the sarusun built and sold to consumers.
 - b. Infrastructure, Facilities, and Public Utilities that are marketing information include through promotional media, among others, the location of the flats, the shape of the flats, the specifications of the buildings, the price of the flats, the infrastructure, facilities, and public utilities of the flats, other facilities, and the time of handover of the flats.

In the (PPJB) Sale And Purchase Binding Agreement that has not been paid off, it is agreed that if within the agreed grace period the buyer (potential) cannot pay off the purchase price in full, then the sale and purchase agreement is void and the advance payment or payment money part of the total price becomes forfeited/remains the right of the seller (potential) which cannot be recollected by the buyer (potential) in any way and in any form. Or sometimes it is agreed that the purchase money that has been paid by the (potential) buyer will be partially refunded by the prospective seller at the time or after the cancellation in question. To avoid the arising of disputes, it should be agreed in the (PPJB) Sale And Purchase Binding Agreement that if at the agreed time limit (candidate) the buyer cannot pay off the purchase price, then the (PPJB) Sale And Purchase Binding Agreement will continue to be a sale and purchase of an area of land that is worth the purchase price that has been paid by the (candidate) buyer. (Kusuma, 2021, 16. p.)

The parties usually carry out the (PPJB) Sale And Purchase Binding Agreement first because the buyer has not been able to carry out the repayment or the developer is still taking care of the development permit, so that only then will the transfer of the right then carry out the Sale and Purchase Deed. The signing of the (AJB) Deed Of Sale And Purchase is a sheet of legal physical ownership document, with one of the requirements for ownership of the (AJB) Deed Of Sale And Purchase is the repayment of the entire remaining funds of the payment installment or the developer has completed the management of the development permit. If the (AJB) Deed Of Sale And Purchase has been bunched, PPAT will submit the (AJB) Deed Of Sale And Purchase Tfile to be registered in accordance with the transfer of rights carried out by PPAT based on the provisions of article 2 of government regulation number 37 of 1998 concerning the regulation of the acting deed maker. (Hartanti, 2018, 10. p.) With the existence of the (PPJB) Sale And Purchase Binding Agreement of the Buyer and Developer, the consumer and the developer declare their will to each other in the future to carry out the actual purchase and sale transaction.

Consumer protection in sale and purchase agreements for bankrupt apartments (PT kinarya Rekayasa based on the decision of the Medan Commercial Court Number 51/Pdt.sus-PKPU/2023/PN Niaga Mdn)

Bankruptcy debtors (developers) who are in the process of construction. In the event of bankruptcy, the construction has not been completed, while parts of the existing units have been sold (some have been paid off and some are still in installments and everything has not been handed over), such objects or parts of bankruptcy assets can be categorized as objects that cannot be disposed of immediately. The provisions (UUK) of the Bankruptcy Law and (PKPU) for the Suspension of Debt Payment Obligations do not receive an explanation of how the process of taking curatorial actions against objects that cannot be resolved immediately or that cannot be resolved at all. (Nymph, 2014, 82-83. pp.) In the sale of bankruptcy assets which will eventually be distributed to creditors, to provide protection to creditors in the contract agreement with the bankrupt debtor, the theory can be used, namely "creditors' bargain theory" or known as "creditor wealth maximization", which is the theoretical basis in the development of bankruptcy. This theory aims to protect the interests of creditors who are bound by agreements with debtors.

In bankruptcy, 3 (three) types of creditors are known, namely separatist creditors, preferred creditors, and concurrent creditors. Article 1 number 2 of the UUKPKPU defines a creditor as a person who has a receivable due to an agreement or law that can be collected in court. The level of creditors in bankruptcy shows the prior right to bankruptcy assets, meaning that one creditor has the right to obtain receivables from the bankruptcy boedel first compared to other creditors. The level of creditors in bankruptcy from the former, is preferred/preferential creditors, separatist creditors, and the last is concurrent creditors.

The bankruptcy process of PT Kinarya Rekayasa was filed by PT Swakarsa Palamarta Utarindo which is an investor of PT kinarya rekayasa in the subject matter of the case The management team of PT Kinarya Rekayasa (In PKPU) has held a voting meeting (Voting) of the equality proposal on Monday, October 7, 2024 at the Commercial Court courtroom at the Medan District Court which then with a meeting of the supervisory judge provides opportunities to creditors and debtors regarding If there is anything else that wants to be conveyed, the debtor conveys that the main thing is to withdraw the peace plan proposal because of the withdrawal of the investor so that payment to all creditors is guaranteed as well as the remuneration for services and fees incurred by the management, with the withdrawal of the peace plan proposal from the debtor, the debtor does not submit a peace plan proposal within 270 days so that peace is not achieved and payment to all is not guaranteed creditors as well as remuneration for services and fees incurred by the management as stipulated in Article 228 paragraph (6), Article 230 paragraph 1, and Article 285 paragraph (2) concerning bankruptcy and postponement of debt payment obligations, in essence, the Supervisory Judge declares the debtor bankrupt on the next day after 270.

228 verses (6)

"If the postponement of the obligation to pay fixed debts as referred to in paragraph (4) is approved, the postponement and its extension shall not exceed 270 (two hundred and seventy) after the decision on the postponement of the obligation to pay the debt of the universe is pronounced" ,

Article 230 paragraph 1

"If the period of postponement of the temporary debt payment obligation ends because the creditor does not agree to the granting of a postponement of the fixed debt payment obligation or the extension has been given, but until the deadline as referred to in Article 228 paragraph (6) has not reached an agreement on the peace plan, the management on the expiration date of the time is obliged to notify it through the supervising judge to the court who must declare the debtor bankrupt at the most slow the next day"

and article 285 paragraph (2)

"The court is obliged to refuse to ratify peace, if the remuneration for services and fees incurred by the experts and administrators has not been paid or given no guarantee for its payment"

The delay in making the Sale and Purchase Deed (AJB) by the developer in the above case where this delay has been running for quite a long time to reach several years since several apartment buildings have been established and operated. Therefore, it can be seen that the developer committed a violation, especially the flats law where the Flats Law (UURS) stipulates that after the apartment building is completed, every unit sale must be carried out in the form of an (AJB) Deed Of Sale And Purchase Agreement and transactions that have been carried out previously using (PPJB) Binding Sale and Purchase Agreement must be immediately followed by a sale and purchase transaction using the (AJB) Deed Of Sale And Purchase Agreement (Hukum et al., 2018, 84. p.)

It needs to be reaffirmed that PPJB is not proof of the transfer of rights. PPJB is a form of agreement between the seller to sell to the buyer and the buyer to buy from the seller, which is accompanied by a deposit or down payment, where PPJB will then be followed by the signing of the the (AJB) Deed Of Sale And Purchase Agreement. In this the (AJB) Deed Of Sale And Purchase Agreement, there is a transition from the seller to the buyer, with the fulfillment of certain conditions. With the issuance of a bankruptcy declaration decision against the developer, (PPJB) Sale And Purchase Binding Agreement was deleted. This is following Article 37 paragraph (1) of the UUKPKPU.

Curators often get the fact that using the Sale and Purchase Agreement (PPJB) between creditors (in this case, residential or apartment consumers) who do not or have not signed the (AJB) Deed Of Sale And Purchase Agreement not because of the desire of the Creditor or Buyer but due to problems with the Debtor or Developer so that the process the (AJB) Deed Of Sale And Purchase Agreement and then the name change has not been implemented. One of them is because the certificate has not been broken. Therefore, in bankruptcy practice, many curators do not include the land and buildings as bankruptcy bodel, especially if the object has been occupied or used for many years, so that if the curator considers a sense of justice to continue the signing of the the the (AJB) Deed Of Sale And Purchase Agreement, even though it is contrary to article 34 of the Bankruptcy Law and PKPU that "unless otherwise specified in this Law, an agreement that intends to transfer land rights, The change of the name of the ship, the imposition of dependent rights, mortgages, or fiduciary guarantees that have been agreed upon in advance, cannot be carried out after the bankruptcy declaration verdict is pronounced." (Saribanun and Anggriani, 2023, 71. p.)

In this case, the weakness of the legal protection of the binding of Apartments/Flats is that there is no standard implementation arrangement regarding legal protection that will be given to consumers, while the usual solution is that consumers add a certain amount of money for the completion of public facilities such as roads, independently which has not been completed by the developer or receive a certain amount of money in lieu of the down payment that has been handed over without receiving the unit that Promised. Then related to the declaration of bankruptcy of the developer, the legal consequences for consumers/buyers need to be seen from two perspectives, namely: 1) For buyers/consumers who have paid in full and have made a Deed of Sale and Purchase Agreement and Purchase at PPAT; 2) For consumers who have not completed the payment for the house purchased from the developer, and only have a PPJB Binding Sale and Purchase Agreement. (Amal et al., 2024, 163. p.)

That the author concludes that PT kinarya Rekayasa based on the decision of the Medan Commercial Court Number 51/Pdt.sus-PKPU/2023/PN Niaga Mdn in a state of bankruptcy there is an object of apartment units/flats that have not been transferred ownership rights or SHGB (Sertifikat Hak Guna Bangunan or Building Use Rights Certificate) to the buyer so that even though there has been an agreement to buy and sell house units by the buyer of PT kinarya Rekayasa, the ownership has not been transferred to the buyer. With the absence of the transfer of SHGB (Sertifikat Hak Guna Bangunan or Building Use Rights Certificate) to buyers, it will result in the house unit becoming an object which is then included in the bankruptcy boedel. to protect the buyer (concurrent creditor) of PT kinarya Rekayasa's house in the distribution of bankruptcy assets. Namely by applying the principle of *pari passu pro rata parte*. That there needs to be protection for concurrent creditors (buyers) who are really dependents and recognized by PT kinarya Rekayasa.

CONCLUSIONS AND RECOMMENDATIONS

Preventive efforts are efforts that can be made before a dispute occurs, the nature of this effort aims to prevent. Preventive efforts are carried out in 3 stages, namely the pre-transaction, transactional, and post-transaction stages. The pre-transaction stage is the stage that occurs before the relationship between consumers and business actors, the transaction stage is the stage carried out in the buying and selling process between consumers and business actors, and the last is the post-transaction process where achievements between the two parties must be carried out after the transaction. Repressive efforts are efforts made to resolve disputes that occur. In resolving disputes between consumers and bankrupt business actors, it can be done through the legal process of consumer protection, namely Law number 8 of 1999 and through bankruptcy law, namely Law number 34 of 2007. Dispute resolution can be done through litigation or non-litigation processes. Through the litigation process, civil lawsuits, miscellaneous lawsuits, and criminal lawsuits can be carried out.

ADVANCE RESEARCH

Advanced research on preventive and repressive efforts in consumer dispute resolution requires an in-depth analysis of legal frameworks, regulatory

mechanisms, and case studies to evaluate their effectiveness. Preventive measures, including consumer education, transparent business practices, and strict regulatory oversight, play a crucial role in minimizing disputes before they arise. Meanwhile, repressive measures focus on resolving disputes through legal avenues, either via litigation or alternative dispute resolution (ADR) mechanisms such as mediation and arbitration. A comparative study of consumer protection laws, particularly Law No. 8 of 1999 on Consumer Protection and Law No. 34 of 2007 on Bankruptcy, can provide valuable insights into their practical application and challenges. Additionally, exploring international best practices and technological advancements in consumer dispute resolution, such as online dispute resolution (ODR) systems, can contribute to enhancing legal enforcement and efficiency.

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