

JURIDICAL REVIEW OF BANKRUPTCY IN SIGNING AGREEMENT ON BUYING SELLING OF FLAT IN MEDAN

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ABSTRACT

Flats as a place to live with the hope of meeting the needs of the community, especially those who live in cities, there is no reduction in excessive land use and creating infiltration areas for water. With the increase in the number of people in 2010-2020 with an annual average of around 1.25%, it indirectly results in greater decent housing due to the dense population and limited land in the city, thus creating flats. The purpose of the study is to analyze the signing of the Sale and Purchase Binding Agreement (PPJB) for flats, the legal consequences if the developer of the flat goes bankrupt and dispute resolution if the settlement period by the developer defaults on the PPJB flats. The normative juridical method used in this study. With the results, the process of making PPJB flats must meet Article 1320 of the Civil Code as a condition for the validity of the agreement and be made before a Notary. Consequence with a declaration of bankruptcy against the developer resulting in general confiscation of the assets of all assets owned by the developer. Settlement of disputes caused by the inappropriateness of the apartment unit building or the lapse of the settlement period carried out by the developer, is carried out through a non-litigation process (out of court) and if there is no reconciliation, it can be continued with the litigation process (through the court process).

Keywords: Signing, PPJB, Flats.

INTRODUCTION

The house is part of basic human rights as a means for families to gather and live the process of life taking place and creating national character to build every individual who is fully in the Republic of Indonesia (RI), wise and productive. This is following the 1945 Constitution of the Republic of Indonesia Article 28 H paragraph (1) which means that all individuals have the right to prosper in their lives, have a place to live/home, and obtain a decent, healthy environment and obtain health services.

Population growth can be seen from the last few years, namely from 2010 to 2020 around 1.25% for each year with population growth in Indonesia (Badan Pusat Statistik, 2020). With this growth, there are consequences for decent and adequate housing. Flats as a breakthrough to meet the housing needs of people in urban areas, dense population and limited land in urban areas, especially in big cities such as Medan City, flats are expected to meet the housing needs for residents.

With the increasing development, there is often a sale and purchase of apartment units when they are still in the design stage. Houses (series, single and stacked) in the development process may be marketed in the presence of a preliminary agreement on the sale and purchase which is regulated in Law No. 11/2020 regarding work creation

contained in Article 42 paragraph (2) and (1), which mandates the predecessor agreement. the sale and purchase can be carried out when the necessary conditions have been fulfilled. The certainty of ownership of the object of the agreement, approval of the building from the building, the availability of facilities and infrastructure, as well as public utilities, and a minimum of twenty percent completion of construction.

The implementation of the apartment unit transaction is carried out first by ordering the apartment unit and then it will be carried out on a preliminary engagement or PPJB as stated in PP no. 12/2021 as amended from PP No. 14/2016 concerning the implementation of housing and residential areas. PPJB as the handle of the parties during the transaction, for payment will be determined in PPJB generally done through installments until settlement, the process of flats under construction until the delivery of the object. At the time of the completion of the construction of the flat (flat) and various requirements have been completed, the flat has completed the construction process, then the parties carry out the signing of the Sale and Purchase Deed (AJB). The procedure for obtaining a flat/residential, namely by (Kallo, 2008): Signing an order letter by the buyer and then paying the booking fee to the contractor, then after fourteen days the buyer must make an down payment of 10% of the agreed selling value, the buyer and the developer sign the PPJB . Generally, the PPJB draft is given to the buyer to be understood in advance, at the time of booking the fee and 10% down payment is paid off. If there is no agreement regarding what is contained in the PPJB draft, the down payment that has been given to the developer has become the developer's matter (non-refundable).

PPJB was signed as a guide by the parties. However, due to Law No. 20 of 2011 concerning Flats, the signing of PPJB cannot be carried out in the early stages, thus the relationship between the developer and the buyer is not legally carried out in writing as strong evidence. Although an agreement in the form of an agreement must be in written form, as a guide and strong evidence as a sale and purchase has been carried out with the aim of minimizing the occurrence of disputes. Based on the above study, the author is interested in researching with the title that will be discussed regarding **JURIDICAL REVIEW ON BANKRUPTCY IN SIGNING AGREEMENT ON SALE BUYING FLAT IN MEDAN.**

METHODOLOGY

This study is normative legal research as a method of legal research using secondary data sources, based on literature materials related to those being studied, such as laws, court decisions, legal theories and legal opinions (Waluyo, 1996). With primary, secondary and tertiary legal materials as material used in this study.

DISCUSSION

A. Juridical Review Signing of the Sale and Purchase Binding Agreement Flats

Agreement as a related legal relationship which is the object of the agreement between the parties, with an agreement to do something / not to do something by the first party, but the second party has the right to collect the fulfillment of the promise (Prodjodikoro, 1981). Meanwhile, J. Satrio, dividing the agreement in two senses, broadly the agreement means that the agreement will have legal consequences that the parties want, such as a sale and purchase agreement, lease and others, simply the agreement is only directed

based on legal relationships in the context of property as contained in the -III of the Civil Code (Satrio, 1995). With the legal subject of persons and legal entities. As stated in Article 1320 of the Civil Code as a condition of the validity of the agreement (H. . Salim, 2010): containing the agreement of the parties, skills, existence of objects, legal causes (not contrary to the law).

The public official in question is a Notary in carrying out his duties as a profession to make an authentic deed which has the power of perfect and strong legal proof (Supriadi, 2008). Notaries in carrying out their professions are not influenced by external parties, therefore the position of a Notary is expected to work professionally and be prosecuted based on own qualifications (Usman, 2008). In carrying out his/her position, a notary must:

1. Behave honestly;
2. Act with care;
3. Act independently;
4. Not taking sides with either party;
5. Maintain interest in legal actions.

In order to ensure certainty, order, and legal protection, written evidence is needed with authentic nature in its actions, PPJB, as well as legal actions before a Notary, performing a profession by providing services in the field of law to the community, it is necessary to obtain guarantees so that there is legal certainty. The guarantee for the protection of the implementation of the Notary's duties has been stated in Law no. 30/2004 as amended into Law no. 2/2014 concerning the Position of Notary.

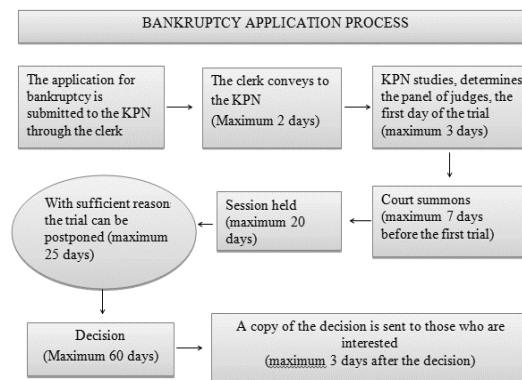
The authentic deed contains the formal truth that was conveyed to him by the parties. However, the Notary is obliged to guarantee that the contents of the Notary deed have been understood and as desired by the parties, by reading the contents of the deed to the parties clearly regarding the contents of the deed, providing an opportunity to conduct questions and answers regarding the deed to be signed. Therefore, the parties may agree or not regarding the contents contained in the deed (Pongantung, 2018).

As written evidence, what is contained in the notary deed must be accepted as perfect evidence, it is different if there are other parties who can prove doubts about the truth of the deed but the proof must be done in a court of authority to examine the truth or not of the deed. the. Notary positions are supervised by legal experts in their fields and academics, and with the existence of an institution in charge of supervising the position of a notary, which is accompanied by the presence of a notary organization that participates in carrying out supervision in order to maintain the quality of notary services and as a protection to a better society. as a notary service user (Pongantung, 2018).

Based on the duties and functions of the Notary that have been described above, the Notary plays a very important role in the process of making PPJB for the apartment unit which is carried out between the buyer and the developer who works as written evidence regarding the agreement of the parties who made the purchase of the apartment unit while still guided by the applicable law.

B. Legal Consequences If the Developer of Flats Banks

Banks If the developer from the flat bearer goes bankrupt, the consequences of the bankruptcy will result in general confiscation of all assets owned by the developer, both currently existing and those that will be obtained by the developer in the future at the time of reading and termination of the bankruptcy statement. The proceeds from the general confiscation of the developer's assets are used to fulfill obligations to the debtor or in this case what is meant is the buyer of the apartment, in accordance with Article 21 of Law no. 37/2004 concerning Bankruptcy and PKPU, with the timeframe and process flow for the implementation of the bankruptcy application, namely as contained below:



Picture 1 The Implementation of The Bankruptcy

Based on the chart above, it can be concluded that the process of bankruptcy starts from the stage of submitting an application to the KPN through the clerk then the clerk submits it to the KPN within a maximum period of 2 days, then the KPN studies and determines the panel of judges and the first trial day with a maximum period of 3 days, then a summons is made for a maximum period of 7 days before the day the trial is conducted and then a trial is held for a maximum period of 20 days, however, with sufficient reasons the trial may be postponed for a maximum of 25 days until the bankruptcy decision is rendered within a maximum period of 60 days.

C. Dispute Resolution If Completion Period By Developer Do Default Against Sales and Purchase Binding Agreement Flats

Default has a close relationship with subpoena. The non-fulfillment of the obligations as contained in the agreement agreed by the parties is a breach of contract. Failure to fulfill the agreement intentionally or unintentionally (H. Salim, 2018). One party can be categorized as negligent, because it does not carry out its obligations/ does not comply with its obligations as agreed (Miru, 2007).

Efforts that can be made to resolve disputes in the event of default by the parties in the purchase of units for flats can be done by resolving disputes outside the court or in court as described below.

- 1) Settlement of disputes out of court. In this case, it is known that the term non-litigation settlement is a settlement carried out by deliberation and consensus. This is as stated in the Consumer Protection Law which provides an alternative with the settlement not going through the courts (Shidarta, 2004). In this dispute resolution is carried out by means of: Mediation, through the Consumer Dispute Settlement Agency (BPSK), by

prioritizing win-win solutions.

- 2) Settlement of disputes in court. In this case, it is known as litigation settlement, which is a dispute resolution carried out by court. Regarding the procedures and processes in the judiciary, it is guided by the existing rules of the judicial system (Barkatullah, 2010).

Thus, if a dispute occurs if the settlement period by the developer defaults on the binding agreement for the sale and purchase of flats, the settlement of the settlement can be carried out outside the court and in court, but based on the analysis of the author, the dispute resolution in the flats is carried out first based on consensus or consensus agreement. mediation is carried out outside the court, but if there is no solution to the problem then it is carried out through the court.

CONCLUSIONS

Based on various descriptions of the problems above, the following conclusions can be drawn:

1. To fulfill a legal treatment, namely PPJB flats in accordance with Article 1320 of the Civil Code as a condition for the validity of the agreement and required before a Notary who has a profession to make an authentic deed as a perfect means of proof and there is no doubt about its existence.
2. The consequence of a declaration of bankruptcy against a developer who builds an apartment will result in the general confiscation of his assets or assets that will be owned by the developer in the future, in accordance with Article 21 of Law no. 37/2004 concerning Patronage and PKPU.
3. Dispute settlement caused by the incompatibility of the apartment unit building or the lapse of the settlement period carried out by the developer in completing the apartment unit building will cause a dispute between the consumer and the developer. litigation (out of court) and if there is no reconciliation, it can be continued with the litigation process (through the court process).

REFERENCES

- Badan Pusat Statistik. (2020). *Hasil sensus penduduk 2020*. Bps.Go.Id. <https://www.bps.go.id/pressrelease/2021/01/21/1854/hasil-sensus-penduduk-2020.html>
- Barkatullah, A. H. (2010). *Hak-hak konsumen*. Nusa Media.
- Kallo, E. (2008). *Perspektif hukum dalam dunia properti*. Minerva Athena Pressindo.
- Miru, A. (2007). *Hukum kontrak dan perancangan kontrak*. Rajawali Pers.
- Pongantung, R. Y. (2018). Perjanjian pengikatan jual beli oleh para pihak menurut undang-undang nomor 20 tahun 2011 tentang rumah susun. *Lex Privatum*, 6(10), 183–194.
- Prodjodikoro, W. (1981). *Hukum perdata tentang persetujuan-persetujuan tertentu*. Sumur Bandung.
- Salim, H. (2018). *Hukum kontrak (Teori dan teknik penyusunan kontrak)*. Sinar Grafika.
- Salim, H. . (2010). *Perkembangan teori dalam ilmu hukum*. Rajawali.
- Satrio, J. (1995). *Perikatan yang lahir dari perjanjian*. PT Citra Aditya Bakti.
- Shidarta. (2004). *Hukum perlindungan konsumen Indonesia*. PT Grasindo.
- Supriadi. (2008). *Etika dan tanggungjawab profesi hukum di Indonesia*. Sinar Grafika.

- Usman, S. (2008). *Etika dan tanggungjawab profesi hukum di Indonesia*. Gaya Media Pretama Jakarta.
- Waluyo, B. (1996). *Penelitian hukum dalam praktik*. Sinar Grafika.

