

Implementation of Buy Back Guarantee for Buyers and Developers Based on the Consumer Protection Law

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Abstract

Housing is one of the needs that must be met by all people in the world, both in developing and developed countries, in addition to food needs, appropriate housing certainly influences the formation of the nation's personality so that they can socialize well in society. Every year the need for houses as a place to live or occupancy is increasing due to the increasing population both in rural and urban areas. Basically, meeting housing needs is the responsibility of each community itself, but the state helps the community to obtain and provides convenience in obtaining housing through housing developers. Housing developers or developers who have built their homes can sell to debtors with a gradual cash payment system and Home Ownership Credit (KPR), a gradual cash payment system. For KPR, a credit agreement can be signed which contains the approved credit value and the credit loan repayment period. The credit agreement made must be known to the housing developer or developer, which can be in the form of a private deed, or a deed drawn up before a notary or land deed official.

Keywords : *Buy Back Guarantee Agreement, Consumer Protection Law, Developer.*

A. INTRODUCTION

1. Background Behind

Place stay is one of necessary needs _ fulfilled all over people in the world, both developing countries as well as developed countries besides need food , place decent stay _ naturally give influence in formation personality nation so that it can socialize with Good in society . But in reality in Indonesia Still Lots people who still have a place stay not enough worthy , so the country is expected can help society in fulfil need House as place all that remains is for one to be created the country's goals viz advance well-being general .

Place stay can form housing and settlements , of course has arranged in Constitution Number 1 of 2011 concerning Housing and Residential Areas . In Article 1 paragraph (2) it has explained that housing area is gathering House as part from settlement , OK urban nor rural , which is equipped with prasana , advice, and utility general as results effort fulfillment a decent house inhabit , meanwhile in article 1 paragraph (3) is explained that area settlement is part from environment live outside _ area protect , okay form area urban nor rural , which works as environment place stay or environment residence and place supporting activities _ life and livelihood .

Every year need House as place stay or residence the more increase because increase amount resident OK , in the countryside nor urban big . Basically _ fulfillment need House is not quite enough answer each public That Alone but the state helps society get and give convenience in acquisition House through developer housing area . Developer housing area or developers who have build his house can sell to debtor with system payment cash in a way gradual and Credit Ownership Home (KPR), System payment cash in a way gradually is one of method payment made _ directly by the buyer to developer housing area without mix bank hand , deep practice often buyer give *downpayment* (DP) especially formerly Then the rest paid direct to developer housing area or appropriate *developer* with period time that has been determined by the developer Alone Then tied with agreement standard or standards that have been created by the developer housing area alone and throughout fill from agreement the must fulfilled by buyers or debtor .

Practically _ agreement standard or standards created by developers often harm debtor Where fill from agreement the No explain How rights , obligations , as well as sanctions obtained by the parties when later day happen consequence law that harms one _ parties , agreements the only benefit one _ party Because No made based on agreement together between party buyers and developers .

Meanwhile , System Credit Ownership Home (KPR) is something form credit buyer or debtor to the bank for purchase A the house and land that have been built by developers housing , and inside period time certain party debtor must return the credit with accompanied flowers , which are tied with agreement credit where are the parties in operate agreement has rights For fulfil interest each .

Johannes Ibrahim said that the mortgage is addressed for debtors in need House used For importance personal No used For nature of interest commercial and has no increase mark goods and services in society . KPR is something product banking in financing purchase A houses that are ready stock or those that are still indent, ready stock houses are house that has built by developers and ready For inhabited , meanwhile the house that is still indented is A home yet _ built by current developers form land .¹

There is a number of parties involved _ in mortgage activities , namely party buyer as debtor , party developer housing area or developer as sellers , and banks as creditor who provides loan funds to debtor For payment home , with provision that debtor fulfil the conditions that have been submitted by the bank. If the bank approves the mortgage then can done signing agreement containing credits _ about mark credit that has been approved and term time repayment loan credit . Agreement credit made _ must known to the developer housing area or developers can shaped deed under hand , or deed made _ in front of Notary Public or Official Maker Land certificate .

Agreement credit between the bank and the buyer naturally need collateral as guarantee credit , object collateral No can burdened with right dependents if the status of the land is mortgaged certified parent and still in process, so need agreement addition for building mortgages indent house . Agreement the explain about developer guarantee if happen default or object collateral No can pair right his dependents because certificate that is not yet

¹ Johannes Ibrahim, *Peeling Complete Credit Commercial and Consumptive In Agreement Bank Credit* , Bandung: Mandar Maju , 2004, p.229

published , as well development a house that doesn't visit finished in period time certain , developers will do something guarantee on purchase return object collateral that has been financed by the bank in the form of housing units that have been purchased by the debtor . Agreement addition or agreement buy return can called as agreement *buy back guarantee*.

Viewed from form and content agreement *buy back guarantee* almost The same with agreement suspension (*borgtocht*) described in Article 1820 Civil Code that suspension is something agreement made by the parties third For responsible answer on interest debtor if No can fulfil his obligations . Agreement *borgtocht* and agreement *buy back guarantee* is available difference in subject where is the law ? in agreement *borgtocht* which become subject law is party the third is unrelated _ law with debtor , meanwhile agreement *buy back guarantee* subject the law is party the third who had been in a relationship law with debtor .

Besides agreement *borgtocht* , subrogation is also almost The same with agreement *buy back guarantee* that has been mentioned in Article 1400 Civil Code that displacement right creditor to party the third one pays to creditor on agreement or provision regulation legislation . Agreement *buy back guarantee* or subrogation explain about diversion right from debtor to creditor if happen default . Agreement *buy back guarantee* appears because one _ principle law form of engagement freedom contract in accordance with Article 1338 of the Civil Code explains that every subject law can create and determine fill the agreement Alone provided No contradictory with law , justice , as well order general .

Agreement *buy back guarantee* is agreement collaboration carried out between the developer and the bank, agreement This happen Because exists connection law debts and receivables between the bank and the debtor No can pay loan credit in accordance with period time that has been agreed in the agreement credit . Agreement *buy back guarantee* is also one of them method solution credit problematic as well as as principle bank prudence , but in

reality agreement *buy back guarantee* actually very harm debtor , because debtor No understand which part or clause which agreement explains that purchase return House debtor will done if debtor experience something condition fail pay or credit congested .

In frame For protect consumer or debtor in a way general , which has arranged in Constitution Number 8 of 1999 Concerning Protection Consumer . Constitution the addressed For become base strong law _ between public as consumer with perpetrator business in field sell buy housing , then perpetrator business has responsibilities answer For finish development in accordance with period time that has been determined and appropriate with specifications that have been offered and promoted . In law , advertising or moderate housing _ offered is promise unilateral in nature tie perpetrator business housing area Because debtor given guarantee will facility stunning housing . _

Before do agreement credit , usually done Agreement Binding Sell Buy (PPJB) first formerly between buyer with developers directly under hand or can improved become Deed Sell Buy (AJB) done Notary Public or Official Maker Land Deed to get connection more laws _ clear . Agreement Binding Sell Buy (PPJB) is agreement made _ between developers and buyer For tie accompanied self _ with giving Money advance based on agreement that has been made done .

Its creation relationship that occurs between the parties started with payment Money advance made by the parties buyer to the developer as form sign So purchase home , provisions magnitude Money face given _ to the developer already arranged in Bank Indonesia Regulation (PBI) Number 21/13/PBI/2019 concerning Change on Bank Indonesia Regulation Number 20/8/PBI/2018 concerning *Loan to Value Ratio* for Credit property , Financing *Ratio to Value* for Financing property , and money advance For credit financing vehicle motorized . Remainder from payment A House distributed by the Bank

to the developer through system KPR payments taken by the party buyer House as debtor .

2. Formulation Problem

- 1) How implementation of buy back guarantee for parties If linked with Constitution protection consumers ?
- 2) How effort the law is taken For protect consumer as debtor in accordance with Constitution protection consumers ?

3. Method Legal Research

Study This is study law normative practice _ with using 3 (three) approaches that is regulation legislation (*statute approach*), approach conceptual (*conceptual approach*), as well approach case (*case approach*) used For sharpen analysis . Approach case in study used For observe and understand events as well as problems that occur in in appointment acting head area in the period transition approaching election head area simultaneously national 2024 with gather various type information from letter news as well as *online* media (in network) later processed For get solution from issues raised _ in study This .

B. DISCUSSION

1. Application *Buy Back Guarantee* For the Parties If linked With Constitution _ Protection Consumer

Buy back guarantee is something agreement used _ in purchase House in a way credit that has been purchased by the debtor , where in agreement the explain about guarantee purchase return made by the developer to the bank obtain certainty law on repayment mortgage loan .²

² Hesti Ningtyas , *Legal Status of Agreements Sell Buy Back Provided by Bankrupt Developer To the Bank* , p. 440

Buy back guarantee appears because a number of one thing _ when debtor No can continue payment creditor For pay off the mortgage accordingly with agreement that has been made agreed , apart from arise Because debtors who do not can continue payment , *buy back guarantee* available arise Because developer housing area or developers who don't carry out development in accordance with period time that has been agreed with the bank . Branch Manager at a bank said that without exists agreement *buy back guarantee* made by the developer, then search KPR facilities are not will carried out by the bank.

Strength law *buy back guarantee* is one of consequence principle freedom contract listed _ in Article 1337-1338 of the Civil Code , where in chapter the explain that every party free do the agreement yourself , decide fill agreement in accordance with his will , as long as agreement the No violates and contradicts with regulation current regulation . _ There is form agreements and relationships binding law _ each parties , namely :

- 1) Connection the law that occurred between debtor with developer housing area or developer is connection related laws _ about agreement sell buy .
- 2) Connection law between debtor with the bank is connection the law that occurred Because agreement credit .
- 3) Connection law between developer housing area or developer with the bank is connection the law that occurred Because agreement guarantee return object collateral that has been purchased by the debtor or usually called with agreement *buy back guarantee* .

2. Rights and obligations The Bank is Compliant With Constitution Protection Consumer

Article 1 paragraph (3) of the Law Protection Consumer explain about The definition of a bank is that a bank is perpetrator effort that provides service banking used _ debtor or consumer that is bank customers , relationships law between the Bank and debtor Yangt do purchase House

along with KPR facilities have arranged in agreement credit , so the bank can operate his rights . With enactment Constitution Protection Consumer give mandatory provisions _ carried out by the service banking in serve customers so they can have faith Good in do activity his business in field banking , yes give correct , clear and honest information _ about guarantee services that will given to customer , give treatment or serve bank customers or debtor without there is a sense of discrimination shown by the bank , and it is convincing to bank customers or debtor that activity efforts made _ has in accordance with regulation current regulation . _

important thing in Protection Consumer is at the moment making agreement , in fact No direct nature tie between the bank with party debtor , where agreement credit become agreement main thing to do whereas buy back guarantee agreement becomes agreement additions that follow rule appropriate law _ with main agreement . _ Protection consumer is important thing _ in beginning making agreement Because must explain fill protective agreement _ debtor if later day No can continue payment credit .

In article 7 of the Law Protection Consumer explain more details about Bank's rights and obligations as perpetrator effort , that is as following :

- 1) Have faith Good in do activity his business
- 2) Give correct , clear and honest information _ about conditions and guarantees goods and/ or service as well as give explanation use , repair and maintenance
- 3) Treat or serve consumer in a way true and honest as well as No discriminatory
- 4) Ensure quality goods and/ or services produced and / or traded based on provision standard quality goods and/ or applicable services _
- 5) Give chance to consumer For test and/ or try goods and/ or service certain as well as give guarantee and/ or warranty Tasa goods made and / or traded _

- 6) Give compensation , replace loss , and/ or replacement on loss consequence use , usage and utilization goods and/ or traded services _
- 7) Give compensation , replace loss and/ or understanding if goods and/ or services received _ or utilized No in accordance with agreement .

Besides in Constitution Protection Consumer there is rights and obligations as perpetrator businesses are also regulated in Article 6 of the Law Number 10 of 1998 Concerning Banking , that is as following :

- 1) Collect funds from public in form savings in the form of current accounts, deposits futures , certificates deposits , savings , and/ or form others presented _ with That
- 2) Give credit
- 3) Publish letter confession debt
- 4) Buy , sell , or ensure on risk Alone nor For interests and above order its customers
- 5) Move Money Good For interest Alone nor For interest customers
- 6) Placing funds in, lending funds from , or lend funds to other banks, fine with use letter , means telecommunications , as well as with money order for , check or For means other
- 7) Do placement of funds from customers to customers other in form letter valuable ones that are not listed on the stock exchange
- 8) Provide financing and/ or do other activities based on principle Sharia compliant _ with provisions set by Bank Indonesia
- 9) Do other activities are common carried out by the Bank throughout No contradictory with Constitution _ Banking and other applicable provisions

3. Rights and obligations Consumer As Debtor In accordance With Constitution Protection Consumer

Understanding consumer has arranged in Constitution Protection Consumers in article 1 paragraph (2), which explains that consumer is every user goods and/ or services available _ in public Good for interest self yourself

, family , other people , or creature another life and no For traded .

Rights and obligations consumer as debtor realized in form must achieve _ fulfilled by the Bank and the debtor is achievements that have been made determined in agreement between Bank and Customer to product banking , for example savings and deposits .

Right consumer has arranged in article 4 of the Law Protection Consumers , that is as following :

- 1) Right on comfort , security and safety in consume goods and/ or service
- 2) Right For choose goods and/ or service as well as get goods and/ or service the in accordance with mark exchange and consume as well as promised guarantee _
- 3) Right on correct , clear and honest information _ about condition as well as guarantee goods and/ or service
- 4) Right For heard opinion or his complaint on goods and/ or services used _
- 5) Right For get advocacy , protection , and effort solution dispute protection consumer in a way proper
- 6) Right For get coaching and education consumer
- 7) Right For treated or served in a way true and honest as well as No discriminatory based on ethnicity , culture , region , education , rich, poor, and social status other
- 8) Regulated rights _ in provision regulation other legislation . _

As for obligations consumer as debtors are also regulated in article 5 of the Law Protection Consumers , that explains that obligation consumer as debtor , that is as following :

- 1) Read and follow instruction information And procedure usage or utilization goods and/ or services for security and safety
- 2) Have faith Good in do transaction purchase goods and/ or service
- 3) Pay in accordance with agreed value _
- 4) Follow effort solution law dispute protection consumer in a way proper .

After knowing rights and obligations debtor as consumers and banks as

_ perpetrator existing business _ in Constitution Protection Consumers , yes concluded that there is connection lead behind what happened Where right for debtor or consumer is mandatory obligations _ fulfilled by the perpetrator effort , too on the contrary what to be right perpetrator business is mandatory obligations _ fulfilled by debtors as consumer .

4. Appropriate Developer Rights and Obligations With Constitution Protection Consumer

In context Constitution Protection Consumer about connection between debtor with in-house developers sell buy field housing , then there is developer's obligation to finish development housing area in accordance with specification buildings that have been promoted . The developer's obligations are the same with regulated Bank obligations in article 7 of the Law Protection Consumers , however there is A little addition about advertisement or promotions offered by the developer are promise unilaterally binding the developer because give guarantee building House with facility best to debtor .

Promise or guarantees provided by the developer can grouped become two categories , namely :

- 1) *Express Warranty* which is A stated promise _ in a way firm And plain .
- 2) *Implied Warranty* is A stated promise _ in a way quietly , as well divided return become two that is something decent guarantee _ traded , and a guaranteed compatibility _ For objective certain .

With stated agreement _ with firm , doer business can ensure traded goods _ between other :

- 1) Goods being traded in accordance with agreement like that appearance so that can accepted in trading generally .
- 2) On sale buy quality it should worthy
- 3) Goods should suitable For objective goods certain used
- 4) Similar items _ something contract should the same and the same shape

- 5) If agreement or characteristic goods requires that must wrapped , then must held in a way neat accompanied with information and instructions enough
- 6) Quality and quantity goods should in accordance with promises and images the real thing given and what is in the goods or the wrapper
- 7) Expressed warranties _ in a way quietly other Can originate from habit trading goods certain or area / location certain or from customs of the parties that arise from transaction moreover formerly .

Basically _ main obligation _ from seller is give the goods and suspend them about enjoyment , tranquility , as well guarantee a sense of security for buyers or the debtor will buy housing area spared from people who want to do naughty , so seller obliged to all something about demands party three related ones with the goods he sells .

5. Legal Actions Taken For Protect Consumer As Debtor In accordance With Constitution Protection Consumer

Agreement *buy back guarantee* is also called as agreement standard , agreement standard originate from the words of the standard contract in Language English , standard or standard is reject measure what you can used For A benchmark , size , and reference . So that agreement standard is A agreement used _ as benchmark or guidelines for consumers who have relationships law with entrepreneurs which include models, formulations , and also measurements .

Sutan Remy Sjahdeini , provided his opinion about understanding from agreement standard , according to him agreement standard is something almost agreement _ all over the clauses standardized by its use , and others are not have opportunity For request change , which has not yet standardized just a number of matter just , for example a number of related matters _ about specification from the object that becomes something agreement can form type , price , place , color , and time .

Based on expert information says _ _ that fill from agreement *buy back guarantee* carried out between debtors and developers are detrimental debtor specifically mortgage debtors and conflicting with Article 18 UUPK explains that there is a number of fill or prohibited clause _ For be included in agreement , namely :

- 1) Transition not quite enough answer perpetrator business
- 2) Perpetrator business entitled reject submission return items that have been purchased by consumers
- 3) Perpetrator business entitled reject submission return money paid _ on goods and/ or purchased services _ consumer \
- 4) Giving power from consumer to [perpetrator business Good in a way direct nor No direct For do all action related parties _ with goods purchased by consumers _ in a way installments
- 5) Arrange regarding proof on disappearance utility goods or utilization services purchased by consumers _
- 6) Give right to perpetrator business For reduce benefit service or reduce treasure riches consumers who become object sell buy service

Submit consumer to regulations in the form of rule new , additional , continued , and/ or change continuation made _ unilaterally by the perpetrator business in consumer times utilise the services purchased State that consumer give power to perpetrator business For loading right dependents , rights pawn , or right guarantee to goods purchased by consumers _ in a way installments

Explanation in article 18 paragraph (1) explains that objective prohibition inclusion clause agreement to get it put position consumer as debtor equivalent with perpetrator , based on principle freedom contract , so debtor No Again become weak party _ in agreement made _ with perpetrator effort , meanwhile in article 18 paragraph (2) states that perpetrator business forbidden For sleepy clause the location and form of the agreement difficult seen so that difficult debtor in understand a number of matter small from agreement .

By criminal developer who commits it development housing area No in accordance as stated at the time offer can reported with accusation violation article 8 paragraph (1) letter f of the Law Protection Consumers , who stated that perpetrator business forbidden producing and/ or trade goods and/ or services that are not in accordance with stated promise _ in table , label , caption , advertisement , or promotion sale goods and/ or service the .

In case this is what the developer built housing that does not in accordance with brochure at the time promotional or not in accordance with agreement . When _ offer done the developer explained in a way clear that building intact foundation , wall Already in condition of paint, floor tiled , roofed roof tiles , but in fact circumstances House No visit fixed until limit time that has been promised . Perpetrator infringing business _ provision the threatened maximum sentence of 5 years or with fine maximum 2 billion rupiah is appropriate provision Constitution Protection Consumer article 62.

Besides in Constitution Protection Consumers are also regulated about threat criminal for developers who build No in accordance with agreed criteria , namely _ arranged in Constitution Number 1 of 2011 Concerning Housing and Settlement Areas article 134 in conjunction with article 151, which explains that everyone is prohibited organize development housing that does not build housing area in accordance with criteria , specifications , requirements , infrastructure , facilities and utilities generally agreed _ will charged with maximum 5 billion rupiah.

Developers aside get penalty penalties and fines are also imposed penalty regulated administration _ in article 150 paragraph (1) of the Law Number 1 of 2011 Concerning Housing and Settlement Areas , which reads that everyone who organizes it housing and areas settlements that do not in accordance with provision article 26 paragraph (1), article 29 paragraph (1), article 30 paragraph (2), article 34 paragraph (1), and paragraph (2), article 36 paragraph (1) and paragraph (2), article 38 paragraph (4), article 45, article 47 paragraph (2) and paragraph (3), paragraph (4), article 49

paragraph (2), article 63, article 71 paragraph (1), article 126 paragraph (2), article 134- 146 paragraph (1) will charged penalty administrative form warning written , restrictions activity housing , termination temporary or stay on the job implementation and management development .

C. CLOSING

From the description on can stated that a number of conclusion including , among others following :

- 1) Agreement *buy back guarantee* is agreement collaboration carried out between the developer and the bank, agreement This happen Because exists connection law debts and receivables between the bank and the debtor No can pay loan credit in accordance with period time that has been agreed in the agreement credit *Buy back guarantee* appears because a number of one thing _ when debtor No can continue payment creditor For pay off the mortgage accordingly with agreement that has been made agreed , apart from arise Because debtors who do not can continue payment , *buy back guarantee* available arise Because developer housing area or developers who don't carry out development in accordance with period time that has been agreed with the bank .
- 2) Legal measures taken For protect consumer as the developer debtor did it development housing area No in accordance as stated at the time offer can reported with accusation violation the threatened maximum sentence of 5 years or with fine maximum 2 billion

Notice results conclusion above , yes stated some suggestions, viz as following :

- 1) Expected for developers to really do it heed his obligations in build building House in accordance with agreement that has been made agreed and recommended there is party debtor monitor development development that has been done For avoid things that don't desired

- 2) For party debtor who finds the developer doing it default Can direct reported to institution protection consumers so that the injured party get change appropriate loss . _

BIBLIOGRAPHY

Regulation Legislation _ _
Civil Code

Constitution Number 1 of 2011 Concerning Housing and Settlement Areas

Bank Indonesia Regulation (PBI) Number 21/13/PBI/2019 concerning
Change on Bank Indonesia Regulation Number 20/8/PBI/2018

Constitution Number 8 of 1999 Concerning Protection Consumer