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Legal Protection of Debtors Due to Default By Apartment Developer Pre Project Selling System in Apartment Ownership Credit Agreement

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Abstract

When granting credit, creditors want collateral as a guarantee of debt repayment by the debtor. In implementing KPA in buying and selling apartment units using a pre-project sales system, credit can be given with PPJB guarantees and there is a cooperation agreement between the bank and the developer. Basically PPJB as collateral only protects the interests of creditors. However, PPJB is not included in material guarantees as regulated in Indonesian law. Therefore, the legal provisions governing PPJB as collateral objects need to be studied and their influence on the validity of the KPA itself known. On the other hand, KPA is generally a standard agreement which in practice tends to place the debtor in a weak position. If the developer defaults, then consumers who are also debtors in the KPA agreement will be the party who suffers the most losses. For this reason, this research was carried out using normative research methods which are descriptive analytical in nature to determine the validity of KPA with PPJB guarantees and how debtors are legally protected. The research results show that PPJB as collateral is not ideal, but does not affect the validity of the KPA agreement. Then, in terms of legal protection for debtors who suffer losses, developers can use Law 8 of 1999 concerning Consumer Protection.

Keywords: Protection; Law; Debtor; Guarantee

1. INTRODUCTION

Humans in their life sustainability require needs that must be fulfilled. Human needs have a dynamic nature, which continues to develop and increase along with the times and is endless. Human needs for goods and/or services must be fulfilled, which if not fulfilled will have an impact on human sustainability. Basically, human needs for a goods and services are an effort to sustain their lives where the satisfaction can be physical and spiritual.¹ Of the many types of needs that exist, house is one of the crucial needs for humans. House is a basic need that should be fulfilled for every human being. However, the ability of each human being to fulfill the needs of life is different. Not all humans are accompanied by the ability to buy the desired goods and/or services to fulfill their needs, including in this case regarding house.

n fulfilling human needs, apart from being an individual interest, it is also the interest of the state in terms of creating prosperity and welfare for its people. The government has made development a solution as an effort to improve the physical and mental welfare in a fair and equitable manner, both in the physical and non-physical fields. The development of housing development in recent years has been very progressive, especially in the form of flats or apartments and condominiums. The concept of multi-storey housing is in great demand, especially for residents of large cities because it is considered more practical and efficient by considering the ratio of high urban population but has limited land. This is supported by

¹ Suhandi, M. Yasir Nasution, and Sugianto, "Konsep Manusia Dalam Ekonomi Islam (Homo Economicus Versus Homo Islamicus)," *AT-TIJARAH: Jurnal Penelitian Keuangan Dan Perbankan Syariah* 4, no. 2 (2023), <https://doi.org/10.52490/attijarah.v4i2.1196>.

the existence of Law Number 20 Year 2011 on Flats, where the government as the interpretation of the Indonesian state is actively carrying out development in all fields, including in this case regarding the housing

Although the government has accommodated these needs in the form of legality, but the ability of purchasing power returns to each individual. From this situation, developers have come up with a system that is considered to alleviate problems related to the purchasing power of the community in fulfilling the need for housing, namely the pre project selling system. The pre project selling system has existed since 1967 and has been included in the French Civil Code (KUHPerdata). In the French Civil Code, the pre project selling system is referred to as "vente d'immeuble a'construire / a sale of building to be constructed", namely the sale of a building to be built using a special type of agreement.

The sale of the building to be built cannot be separated from the will, the will of the parties based on the agreement is implemented through a binding agreement.² Agreement is the meeting of two desires that complement each other.³ Even though the agreement is not in the same direction, there is a conformity of understanding and will between the two parties to meet reciprocally.⁴ In this case, the reciprocity that is meant that both the building builder or seller and the buyer achieve their initial goal, namely the sale and purchase of buildings so that they both benefit from the application of the sale and purchase system. However, agreeing is not enough because the agreement on the will needs a statement. In principle, the Civil Code does not require a form of expression of will, but there are exceptions such as the requirement that it be realized in written form or an authentic document.⁵

In the pre-project selling system, the agreement is stated through a Sale and Purchase Binding Agreement (PPJB). This PPJB is made as an initial agreement so that the sale and purchase agreement can be implemented and realized at a later date.⁶ Based on that agreement, the buyer will pay an initial amount of money to the developer followed by successive payments (credit) as the development progresses. This is due to the principle of consensualism and the legal consequences which according to the classical theory of the agreement is a "legal act based on an agreement to cause legal consequences".⁷ Accordingly, the agreement in the PPJB results in the buyer having to pay and the seller having to complete and hand over the building to the buyer with the provisions stipulated in the PPJB. Generally, entrepreneurs who offer housing with the concept of pre-project selling apartments apply the concept of paying in installments first until the agreed object is ready to be handed over. In terms of installment payments, the developer will make a cooperation agreement with several banks to provide payment facilities through installments commonly known as apartment ownership credit (KPA) with PPJB as a guarantee. During the construction

² Suhamoko, *Hukum Perjanjian : Teori Dan Analisa Kasus* (Jakarta: Kencana, 2008).

³ J. Satrio, *Hukum Perikatan (Perikatan Pada Umumnya)* (Bandung: PT. Citra Aditya Bakti, 1992).

⁴ R Subekti, *Hukum Perjanjian* (Jakarta: PT. Intermasa, 1987).

⁵ Suryati, *Hukum Perdata* (Yogyakarta: Suluh Media, 2017).

⁶ Siti Nurul Dalimunthe, "Jual Beli Apartemen Kepada Pihak Ketiga Atas Dasar Perjanjian Pengikatan Jual Beli (PPJB)," *ADIL : Jurnal Hukum* 11, no. 1 (2017).

⁷ Wahyuningsih Salim, H. Abdullah, H. Wiwiek, *Perancangan Kontrak Dan Memorandum of Understanding (MoU)* (Jakarta: Sinar Grafika, 2008).

process, the developer is allowed to receive money and installments from the buyer. This is to ensure that the developer is in a position and condition to afford the construction of the building to completion. In addition, the developer can borrow more easily from financial institutions so that the developer can then pay the building contractor with the money it gets from the buyer.⁸

The legal basis that is often associated as a reference in the pre project selling process is the Civil Code, Law Number 1 Year 2011 on Housing and Settlement Areas, and Law Number 20 Year 2011 on Flats. Article 42 Paragraph (2) of Law Number 20 Year 2011 on Flats is the key to pre-project selling which contains marketing requirements before construction which must fulfill 5 (five) provisions, namely certainty of space allocation, certainty of land rights, certainty of use of flats, licensing of construction of flats, and guarantees from guarantor institutions. From the legal basis above, it can be seen that the legal basis for the implementation of the pre project selling system is still limited, especially in terms of legal protection for buyers who are debtors in the KPA agreement. This pre project selling system can become a problem if the developer is not responsible for his obligations as a developer. If the developer is not responsible or negligent in fulfilling his obligations, the developer is said to be in default. Default in English is known as "default", "nonfulfillment" or "breach of contract" which essentially means not fulfilling obligations or not carrying out the contents of a previously agreed agreement.⁹ As according to Abdulhay, default is the parties who should have obligated but did not fulfill their obligations.¹⁰

On the other hand, the default of the developer also opens up opportunities or the potential to place the consumer or buyer in a situation full of risks of default by the buyer itself. A concrete example of this occurred in the Meikarta project where Meikarta consumers were promised the handover of units in 2019-2020, which in fact missed far until now it has not yet been completed. The delays that occurred caused unrest for the parties who had entered into an apartment credit agreement, which was the buyer and the third party that provided the payment facility, the Bank. Many debtors have gone on an installment strike against the ongoing KPA because the promised apartment is not clear. The installment strike has the potential to be an act of default because the debtor as the buyer of the apartment unit has been bound by the KPA agreement. In civil law, the principle of protection is known, which means that debtors and creditors must be protected by law, especially protection for debtors because debtors have a weak position.¹¹ The standard agreement for KPA provided by the bank without including the debtor in the drafting process caused the debtor to have a weaker position than the other parties.

If faced with a situation like the above, namely if the debtor has bad credit, the usual thing to do by the bank in a debt and credit agreement is to execute the object used as guarantee. Generally, objects used as guarantee are tangible objects such as houses and land so that

⁸ Van Der Merwe, *European Condominium Law* (Cambridge University Press, 2015).

⁹ Munir Fuady, *Konsep Hukum Perdata* (Jakarta: PT. Raja Grafindo, 2014).

¹⁰ Abdulhay Marhainis, *Hukum Perdata Materiil* (Jakarta: Pradnya Paramita, 2004).

¹¹ Zaeni Asyhadie, *Hukum Keperdataan* (Depok: PT. Raja Grafindo Persada, 2018).

banks can clearly and easily execute these objects. However, in the KPA for apartment units with the Pre Project Selling system, the guarantee object is the PPJB which is not a tangible object, causing confusion if execution is needed. The guarantee object used in the KPA is fairly uncommon so that it raises its own questions about the legality or validity of the KPA agreement. The legality of the implementation of KPA with PPJB as a guarantee needs to be studied because it is related to the legal protection of the parties, especially the debtor, which if the KPA proves to be problematic then the most disadvantaged is the buyer who is the debtor in the KPA.

Research on the Legal Protection of Debtors Due to Default by Apartment Developers Pre Project Selling System in KPA Agreement discussed by the author, basically has novelty or novelty that is not owned by previous studies. Based on the results of the author's review related to previous research, there is no discussion that is the same as the author's research. Research conducted by most previous researchers only focuses on discussing the rights of banks as creditors in the KPA agreement, as well as discussing the cooperation agreement between the developer of apartment construction and banks. It is different from the author who discusses the validity of the KPA agreement with PPJB as guarantee and legal protection of the debtor as the buyer of the pre-project selling system apartment unit in the KPA. This research proposes a specific legal protection in the implementation of pre project selling, which is intended to fulfill the element of legal certainty in the implementation of the apartment sale and purchase agreement with the pre project selling system .

Based on the description of the problems above, this research will discuss 2 things. First, regarding the validity of the apartment ownership credit agreement with PPJB as guarantee of the pre-project selling system apartment; and second, how is the legal protection for the debtor in the apartment ownership credit agreement due to the default of the apartment developer.

2. METHOD

This research is written using normative legal research which is a type of research centered on positive legal norms such as the Civil Code, as well as regulations related to the topics discussed such as Law Number 4 of 1996 concerning Mortgage Rights, Law Number 8 of 1999 concerning Consumer Protection, and other regulations related to the topics discussed in the research. This research is conducted using a qualitative approach method, therefore all data obtained is not numerical data but in the form of statements by conducting library research on Indonesian law.

3. RESULTS AND DISCUSSION

3.1 The Validity of the KPA Agreement with PPJB as a Guarantee Object

3.1.1 PPJB as a Guarantee Object

In the practice of credit agreements at banks, there are generally certain objects that are

used as collateral for credit debt (collateral) to ensure the repayment of debtor debts. This is a form of preventive action that if the debtor defaults, the creditor (bank) can immediately execute the guarantee object as an effort to pay off the debtor's debt in default because the main function of guarantee is to secure the granting of credit by the bank as the creditor against the debtor.¹² The basis for securing credit is found in Article 1131 of the Civil Code which stipulates that all existing and future assets of a person, both movable and immovable objects, become guarantee for all their obligations.

Before providing credit agreement facilities to debtors, banks conduct an assessment of the proposed credit guarantee object both from a legal and economic perspective. Assessment from a legal perspective is of course to ensure that the object of collateral has been regulated and guaranteed by law to avoid legal problems that will occur in the future. While the assessment from an economic point of view has the purpose of knowing the economic value or price of the guarantee object so that it can be traded in general and freely.¹³ The assessment of this guarantee object is a form of application of the prudential principle by banks in providing credit facilities.

In the sale and purchase of apartment units with a pre-project selling system, the PPJB becomes a binding sign between the buyer and the apartment developer. Then, the developer will cooperate with several banks to provide financing facilities in the form of apartment ownership credit (KPA) to buyers. KPA is a type of financing from banks to debtors for credit to purchase apartments with the purpose of being owned and used as a place of residence. In the implementation of the KPA, credit is given with PPJB as a guarantee object.

The imposition of mortgage rights in the KPA places the creditor in a special position, bank becoming a preferred creditor. This is regulated in Article 1 Point 1 of Law Number 4 of 1996 on Mortgage Rights (UUHT) "Mortgage rights on land and objects related to the land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or excluding other objects that are an integral part of the land, for the repayment of certain debts, which give priority to certain creditors against other creditors". Based on this explanation, it can be seen that the bank as a creditor has a priority position so that it can carry out execution on the guarantee without going through a court decision and it can also be seen that the mortgage guarantee is a material or property guarantee.

However, the encumbrance of mortgage rights on PPJB in KPA is not appropriate because basically PPJB is not a material guarantee. This is because PPJB is only an agreement

¹² Citra Amira Zolecha, "Perlindungan Hukum Bagi Kreditur Atas Jaminan Kebendaan Yang Terindikasi Bukan Milik Debitur," *Universitas Sebelas Maret* (2017).

¹³ Etty Mulyati and Fajrina Aprilianti Dwiputri, "Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 1, no. 2 (2018), <https://doi.org/10.24198/acta.v1i2.112>.

without transferring rights to an object.¹⁴ In Article 1 Point 10 of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the implementation of Housing and Settlement Areas, it is stated that "The PPJB system is a series of agreement processes between each person and development actors in marketing activities as outlined in a preliminary sale and purchase agreement or a Sale and Purchase Binding Agreement before the sale and purchase deed is signed". From these explanations and provisions, it is clear that the PPJB is limited to a system in the agreement process realized through an agreement and the PPJB does not fulfill property rights, namely absolute rights to an object where the right gives direct power over the object and can be defended against anyone, considering that the PPJB does not have the power to transfer rights to an object.¹⁵

If analyzed more deeply, the PPJB that is encumbered by a mortgage is increasingly clear that it does not qualify as a material guarantee so that it is not an ideal guarantee. As explained earlier in relation to the assessment of guarantee objects carried out by banks from a legal and economic perspective, PPJB should not meet the "pass" criteria in the assessment. From a legal perspective, the PPJB used as guarantee object in the KPA is not secured. This is related to its legal basis because the binding in the PPJB is not held in a formal juridical manner considering the unavailability of regulations in Indonesian law governing PPJB as guarantee.¹⁶ Then from an economic perspective, PPJB is not markable, the object used as guarantee is not easy to sell. This is because the object in the PPJB is still under construction, there is no certainty that the object promised in the PPJB will be completed, this means that if the object needs to be executed by the bank, the guarantee is not easy to monetize. Therefore, the PPJB has no economic value.¹⁷ Thus, it can be seen that the granting of KPA with PPJB as guarantee is not regulated in the law and has no economic value, the elements of legal certainty and economic value are not fulfilled because basically the granting of KPA to the debtor is only based on internal provisions due to the cooperation agreement between the bank and the developer.

The validity of PPJB as a guarantee object is also related to Article 44 paragraph (1) letter b of Bank Indonesia Regulation Number 14/15/PBI/2012 concerning Asset Quality Assessment of Commercial Banks which reads "bound in accordance with applicable laws and regulations so as to provide preference rights for the Bank; ..." which means that if it is not in accordance with applicable laws and regulations, preference rights for banks cannot be given. The bank's preference right as a preferred creditor is no longer attached but becomes a concurrent creditor, the creditor who does not hold a security right but has the

¹⁴ A Sintasari, "Pembatalan Akta Jual Beli Yang Tidak Sesuai Perjanjian Pengikatan Jual Beli (Studi Kasus Pengadilan Negeri Labuan Bajo No 8/PDT. G/2018/PN LBJ)," *Indonesian Notary* 2 (2020), <https://garuda.kemdikbud.go.id/documents/detail/2984071>.

¹⁵ Regita A Mumek., "Hak Kebendaan Ditinjau Dari Aspek Hukum Perdata," *Occupational Medicine* 5, no. 2 (2017).

¹⁶ Debby Shara, Djuhaendah Hasan, and Sari Wahjunic, "Hak Bank Sebagai Kreditur Dalam Pemberian Kredit Pemilikan Apartemen Dengan Jaminan Perjanjian Pengikatan Jual Beli Apartemen," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 2, no. 2 (2019), <https://doi.org/10.24198/acta.v2i2.234>.

¹⁷ Abdul Basit, "Jaminan Kredit Pemilikan Rumah Dengan Perjanjian Pemberian Jaminan Dan Kuasa," *Lambung Mangkurat Law Review* 1, no. 1 (2016).

right to collect the debtor because it has a bill that can be collected against the debtor based on the agreement.¹⁸ Therefore based on the above explanation, placing PPJB as an object of guarantee is not appropriate and not ideal because it does not meet the requirements of property that can be used as guarantee, including being secure, can be handed over / transferred, has economic value, and gives direct power.

3.1.2 Validity of KPA Agreement

The validity of an agreement is usually reviewed from Article 1320 of the Civil Code, which in this Article contains the valid terms of the agreement which consists of 4 (four) provisions, agreeability, capability, a certain thing and a halal cause. These requirements include the subject and object of the agreement. Requirements relating to the subject or subjective conditions are related to the first and second criteria, the agreement between the parties binding themselves in the agreement and the capability of the parties in making an agreement. While the objective requirements are related to the third and fourth requirements regarding a certain thing and a halal cause. The differentiation of the two requirements is related to the consequences that will arise if one of the requirements is not fulfilled. If the subjective requirements are not fulfilled, the agreement can be canceled or as long as the agreement has not been canceled by the court, the agreement can still be valid. This means that it can be canceled if one of the parties requests the cancellation of the agreement.¹⁹ On the other hand, if the objective conditions are not fulfilled, the agreement is legally null and void. Therefore, an agreement that is legally null and void is considered to have never existed.

Selling and buying is an agreement between the party who hands over the object being sold and the party who gives a certain amount of money according to the agreed price. In the selling and buying of apartment units with a pre project selling system, the PPJB is a binding sign between the buyer and the apartment developer. The buyer agrees to buy an object that basically will only be built by the developer and the developer will carry out the construction in accordance with the provisions agreed upon in the agreement. Selling and buying are considered to have occurred if seller and buyer, agree on the object and price, even though the object has not been delivered and/or has not been paid for. PPJB can be done because the parties are considered to have "agreed" and are also based on the principle of freedom of contract contained in Article 1338 of the Civil Code, even though the essential elements have not been fulfilled. The essential elements are elements in an agreement or contract that represent provisions in the form of achievements that must be performed by one or more parties that reflect the nature of the agreement that distinguishes it in principle from other types of agreements.²⁰

¹⁸ Raden Nurul et al., "Perlindungan Hukum Terhadap Anggota Sebagai Kreditor Konkuren Dalam Kepailitan Koperasi Simpan Pinjam Pada Masa Pandemi Covid-19," *Jurnal Law Studies* 2, no. 1 (2022).

¹⁹ Fandy Ahmad, "Keabsahan Kuasa Untuk Menandatangani Akta Oleh Lembaga Pembiayaan Jaminan Fidusia Suatu Kajian Peraturan Pemerintah Nomor 21 Tahun 2015," *Jurnal Ius Constituendum* 3, no. 2 (2018), <https://doi.org/10.26623/jic.v3i2.1037>.

²⁰ Kartini Muljadi, *Perikatan Yang Lahir Dari Perjanjian* (Jakarta: PT. Raja Grafindo, 2014).

From the PPJB, the selling and buying process is followed by an agreement between the buyer and the bank for the KPA facility. With the KPA, the buyer's position is as a debtor and the bank as a creditor. Creditors are institutions or individual parties that provide loans.²¹ Whereas, the debtor is the party who gets a loan from another institution or individual.²² Therefore, we can see the frame of the legal relationship between the buyer, the developer and the bank. The buyer has a legal relationship with the developer because it is tied to the PPJB, and is also attached to the bank as a debtor because of the KPA. While the developer and the bank have a legal relationship due to the existence of a cooperation agreement. Based on the explanation above, it is clear that the subjective requirements of the agreement are fulfilled. The parties concerned, namely the buyer, developer and bank, both agree and have the capacity to make agreements, both PPJB and KPA, where the capacity is seen in the identity format stated in the KPA like an agreement in general.

If viewed in terms of objective requirements, from the requirements of a certain thing, then KPA fulfills these requirements. This is because KPA is born from the intended thing, the provision of credit, a debt and credit agreement between the debtor and the creditor, the main thing that is the object of the KPA agreement is services in providing credit facilities. The objective requirements regarding a matter have been determined in Article 1333 of the Civil Code which determines that an agreement must have a subject matter (zaak) which can at least be determined. Zaak in Dutch does not only mean objects in a narrow sense, but also means something broader, namely the subject matter, services that can later be calculated and determined.

In terms of a lawful cause, this refers to the substance and purpose of the agreement itself. KPA is an agreement between the creditor and the debtor where the creditor provides credit to the debtor which then arises the rights and obligations of the KPA. The creditor provides funds to the developer for payment in the sale and purchase made by the developer and the debtor. While the debtor pays in installments a certain amount of money to the bank that has provided the credit facility. In this case, the content and purpose of the KPA in providing credit is not contrary to law, decency, and public order. As a result, KPA in the selling and buying of apartment units with a pre project selling system has fulfilled the legal requirements of both subjective and objective agreements.

However, considering that the collateral object used in the KPA is the PPJB which is not legally ideal to be used as a collateral object, the objective requirement is blurred because it relates to the juridical. Basically, in the implementation of the selling and buying of apartment units in the pre project selling system, there is a principal agreement in this case KPA and additional agreements regarding guarantees. This is in accordance with the provisions in civil law, especially guarantee law, where the guarantee agreement is an additional agreement and the credit agreement is the main agreement. In this case, what needs to be known is the characteristics of the additional agreement. The characteristics of

²¹ Toman. Wilson RG Tambunan. Sony, *Hukum Bisnis* (Prenada Media, 2019).

²² Thirani Viona et al., "Design and Build a Web-Based Geographic Information System for Debtor Locations," *Jurnal Teknik Informatika Dan Sistem Informatika* 5, no. 1 (2018).

the agreement, if parsed, are that the additional agreement depends on the existence of the main agreement, the expiration depends on the main agreement, if the main agreement is canceled then the additional agreement is canceled, if the main agreement is transferred then the additional agreement is also transferred, in the event that the main agreement is transferred due to cessie, subrogation, then the additional agreement is also transferred without any special submission.²³

Based on the characteristics of the additional agreement, it can be seen that although the PPJB as a guarantee object in the KPA is not ideal, the KPA is still a valid agreement. This is based on the concept that it is the additional agreement that depends on the main agreement. The invalidity of the guarantee object does not necessarily make the KPA agreement legally null and void. As long as the KPA as the main agreement fulfills the legal requirements of the agreement regulated in Article 1320 of the Civil Code, the KPA remains valid.

3.2 Legal Protection of Debtors in the Implementation of KPA Due to Default by Developers

Credit agreement is a form of loans or debts and receivables agreement which in the Civil Code is regulated in Articles 1754 to 1769 of the Civil Code. Credit agreement is a standard agreement. Standard agreement is an agreement whose contents have been determined and have been outlined in a certain format by the first party so that the second party or other parties only need to accept the contents and sign the agreement. Apartment Ownership Credit (KPA) for the selling and buying of apartment units with a pre-project selling system is also classified as a standard agreement, because the contents of the KPA have been provided by the bank without involving prospective debtors in the preparation of the agreement, which makes it impossible to negotiate or bargain. This causes an imbalance of power between the creditor and the debtor, which in this case tends to burden the debtor. Disputes may arise from the implementation of the agreement or contract.²⁴

In the selling and buying of apartment units in the pre project selling system, there are often problems that arise due to the default of the developer regarding the handover of apartment units where it is due to hand over the unit but the construction has not been completed which is indicated by the unavailability of AJB which is submitted under the name of the buyer. On the other hand, the buyer who is also a debtor must continue to pay KPA installments to the bank considering that he has signed the credit agreement. If the bank as the drafter of the standard agreement gets protection through the contents of the agreement which favors its position as a creditor, then it is necessary to know that the debtor also gets equal legal protection as a consumer. Debtors as consumers have been explained in Article 1 Paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection (UUPK) which explains that

²³ Sri Soedewi Masjchun, *Himpunan Karya Tentang Hukum Jaminan* (Yogyakarta: Liberty, 1998).

²⁴ Zaenal Arifin, Soegianto Soegianto, and Diah Sulistyani, "Keabsahan Dan Perlindungan Hukum Perjanjian Kemitraan Jasa Konstruksi," *Jurnal Usm Law Review* 6, no. 1 (2023).

consumers are every person who uses goods and / or services available in the community, both for the benefit of themselves, families, people and other living beings, and not for trade. In this case, the debtor is a party who uses goods and/or services provided by the bank not for trade.

Legal protection for debtors as consumers in the banking sector is an urgency in itself, because factually the position between the parties is often unbalanced as previously explained.²⁵ This relates to the necessity of a balanced position between creditors and debtors. Balance is closely related to justice. According to Hans Kelsen, justice is legality in relation to its implementation.²⁶ The situation of the debtor's unwillingness to complete the KPA installments which is the effect of the developer's default, then the developer is fully responsible for the problem by buying back the unit and paying the penalty determined by the bank as the buy back guarantee system. However, this can only be done if the developer is in good health and not bankrupt. If the developer is in a state of bankruptcy due to the many debts incurred, then the bankrupt developer will be taken care of and resolved by a curator appointed from the court.

The legal regulations that can be used as a legal basis for consumers who suffer losses as a result of the performance of the developer in support of the development are to demand in a civil manner by directing the UUPK. In Article 4 letter h of the UUPK it is stated that the right of the consumer is to obtain compensation, damages, and / or replacement when the goods and/or services obtained are not in accordance with the agreement or as it should be. The debtor as a consumer as the party who feels injured as a result of the malfunction of the developer has the right to claim compensation for the losses incurred, which is based on Articles 1243 and 1244 of the Covenant. Then, continued with the affirmation that is in Article 19 UUPK which carries the responsibility of the entrepreneur in this case the developer that contains: (1) The entrepreneur is liable to provide compensation for damage, pollution, and/or consumer losses resulting from the consumption of goods and/or services produced or traded; (2) the compensation as referred to in paragraph (1) may be a refund or replacement of the similar or equivalent goods or services, or health care and/ or provision of security in accordance with the provisions of the applicable legislation; (3) the payment of compensation is made within 7 (seven) days after the date of the transaction; (4) the granting of damages as described in the paragraphs (1) and (2) does not exclude the possibility of criminal claims based on further proof of the existence of the element of the fault; The provisions referred in the (1) paragraph and (2) do not apply if the entrepreneurs can prove that the faults are consumer's fault.

Based on this explanation, it is clear that the debtor as a consumer can prosecute the developer to be responsible for compensation as an effort to obtain legal protection. However, if you pay attention, compensation in the UUPK only includes a refund or replacement of goods and/or services of a similar or equivalent value or health care and/or

²⁵ Marhais Abdul Miru, *Hukum Perbankan Di Indonesia* (Bandung: Alumni, 2004).

²⁶ Nanang Setyono, "Rekonstruksi Kebutuhan Hidup Layak (KHL) Melalui Koperasi Karyawan Dalam Kajian Undang-Undang No.13 Tahun 2003 Tentang Ketenagakerjaan," *Jurnal Ius Constituendum* 3, no. 2 (2018).

compensation, the UUPK does not contain definite and clear legal rules regarding compensation for property consumers for developer defaults. Therefore, it can be known that the characteristics of UUPK as a legal protection instrument are only applicable to consumers who purchase consumer goods/services. Nevertheless, UUPK is the closest legal instrument and can be applied in terms of the liability of the developer against the consumer injured by it. UUPK exists to elevate the dignity of consumers and avoid all things that result in bad consequences from the activities of business actors, which in this case includes defaulting developers.²⁷ In other words, the UUPK was set up to provide legal protection. Legal protection is a form of legal function that has worked well to provide justice, utility and legal certainty.²⁸ Knowing that there are no provisions governing the legal protection of debtors as property consumers indicates that the legal function has not worked well.

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4. CONCLUSION

Based on the discussion above, it can be concluded that the credit facility in this case KPA in the purchase of the apartment system pre project selling can be liquidated by giving PPJB as guarantee. However, giving PPJB as a guarantee is not ideal because PPJP is not a material guarantee of authenticity. While the laws in Indonesian only regulates material guarantees as contained in Law Number 4 of 1996 concerning Mortgage Rights. PPJB as guarantee also does not meet the material requirements that can be used as guarantee, namely that it is safe, can be handed over/transferred, has economic value, and provides direct power of attorney. However, this does not make the KPA which is an agreement invalid. This is because, basically, the validity of an agreement has its own legal conditions which are regulated in Article 1320 of the Civil Code which contains provisions on agreement, capability, certain things, and a lawful cause. As long as the KPA as the main agreement fulfills the legal requirements of the agreement, the KPA remains valid.

The legal protection of the debtor in the case of a developer defaulting in building an apartment unit can be seen in the developer's role as guarantor for the debtor through a buy back guarantee system and can also refer to the UUPK by taking civil legal action to demand compensation for the developer. Debtors in this case are equated with consumers. However, the implementation of the UUPK in protecting property consumers is still weak because there are no specific provisions regarding compensation for property consumers for developer default.

REFERENCES

Ahmad, Fandy. "Keabsahan Kuasa Untuk Menandatangani Akta Oleh Lembaga Pembiayaan Jaminan Fidusia Suatu Kajian Peraturan Pemerintah Nomor 21 Tahun 2015." *Jurnal Ius Constituendum* 3, no. 2 (2018).

²⁷ Carissa Amanda Siswanto et al., "Perlindungan Konsumen Terhadap Pembelian Obat Mengandung Psikotropika Pada Online Marketplace Bagi Pengidap Virus Covid-19 Dengan Atau Tanpa Gejala Melalui Telemedicine Konvensional Yang Membedakan Adalah Media Yang Digunakan , Seoerti Halnya," *Jurnal USM Law Review* 5, no. 2 (2022).

²⁸ Zaenal Arifin and Muhammad Iqbal, "Perlindungan Hukum Terhadap Merek Yang Terdaftar," *Jurnal Ius Constituendum* 5, no. 1 (2020), <https://doi.org/10.26623/jic.v5i1.2117>.

- <https://doi.org/10.26623/jic.v3i2.1037>.
- Arifin, Zaenal, and Muhammad Iqbal. "Perlindungan Hukum Terhadap Merek Yang Terdaftar." *Jurnal Ius Constituendum* 5, no. 1 (2020). <https://doi.org/10.26623/jic.v5i1.2117>.
- Arifin, Zaenal, Soegianto Soegianto, and Diah Sulistyani. "Keabsahan Dan Perlindungan Hukum Perjanjian Kemitraan Jasa Konstruksi." *Jurnal Usm Law Review* 6, no. 1 (2023).
- Asyhadie, Zaeni. *Hukum Keperdataan*. Depok: PT. Raja Grafindo Persada, 2018.
- Basit, Abdul. "Jaminan Kredit Pemilikan Rumah Dengan Perjanjian Pemberian Jaminan Dan Kuasa." *Lambung Mangkurat Law Review* 1, no. 1 (2016).
- Dalimunthe, Siti Nurul. "Jual Beli Apartemen Kepada Pihak Ketiga Atas Dasar Perjanjian Pengikatan Jual Beli (PPJB)." *ADIL : Jurnal Hukum* 11, no. 1 (2017).
- Fuady, Munir. *Konsep Hukum Perdata*. Jakarta: PT. Raja Grafindo, 2014.
- Marhainis, Abdulhay. *Hukum Perdata Materiil*. Jakarta: Pradnya Paramita, 2004.
- Masjchun, Sri Soedewi. *Himpunan Karya Tentang Hukum Jaminan*. Yogyakarta: Liberty, 1998.
- Merwe, Van Der. *European Condominium Law*. Cambridge University Press, 2015.
- Miru, Marhais Abdul. *Hukum Perbankan Di Indonesia*. Bandung: Alumni, 2004.
- Muljadi, Kartini. *Perikatan Yang Lahir Dari Perjanjian*. Jakarta: PT. Raja Grafindo, 2014.
- Mulyati, Ety, and Fajrina Aprilianti Dwiputri. "Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 1, no. 2 (2018). <https://doi.org/10.24198/acta.v1i2.112>.
- Mumek., Regita A. "Hak Kebendaan Ditinjau Dari Aspek Hukum Perdata." *Occupational Medicine* 5, no. 2 (2017).
- Nurul, Raden, Fadlilah Roshadi, Yeti Sumiyati, Prodi Ilmu Hukum, Fakultas Hukum, and Universitas Islam Bandung. "Perlindungan Hukum Terhadap Anggota Sebagai Kreditor Konkuren Dalam Kepailitan Koperasi Simpan Pinjam Pada Masa Pandemi Covid-19." *Jurnal Law Studies* 2, no. 1 (2022).
- Salim, H. Abdullah, H. Wiwiek, Wahyuningsih. *Perancangan Kontrak Dan Memorandum of Understanding (MoU)*. Jakarta: Sinar Grafika, 2008.
- Satrio, J. *Hukum Perikatan (Perikatan Pada Umumnya)*. Bandung: PT. Citra Aditya Bakti, 1992.
- Setyono, Nanang. "Rekonstruksi Kebutuhan Hidup Layak (KHL) Melalui Koperasi Karyawan Dalam Kajian Undang-Undang No.13 Tahun 2003 Tentang Ketenagakerjaan." *Jurnal Ius Constituendum* 3, no. 2 (2018).
- Shara, Debby, Djuhaendah Hasan, and Sari Wahjunic. "Hak Bank Sebagai Kreditor Dalam Pemberian Kredit Pemilikan Apartemen Dengan Jaminan Perjanjian Pengikatan Jual Beli Apartemen." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 2, no. 2 (2019). <https://doi.org/10.24198/acta.v2i2.234>.
- Sintasari, A. "Pembatalan Akta Jual Beli Yang Tidak Sesuai Perjanjian Pengikatan Jual Beli (Studi Kasus Pengadilan Negeri Labuan Bajo No 8/PDT. G/2018/PN LBJ)." *Indonesian Notary* 2 (2020). <https://garuda.kemdikbud.go.id/documents/detail/2984071>.
- Siswanto, Carissa Amanda, Astrid Athina Indradewi, Carissa Amanda Siswanto, Astrid Athina Indradewi, Ketzia Xavier, Emmanuella Pallo, and Anandita Zefanya Purba. "Perlindungan Konsumen Terhadap Pembelian Obat Mengandung Psikitropika Pada Online Marketplace Bagi Pengidap Virus Covid-19 Dengan Atau Tanpa Gejala

- Melalui Telemedicine Konvensional Yang Membedakan Adalah Media Yang Digunakan , Seoerti Halnya.” *Jurnal USM Law Review* 5, no. 2 (2022).
- Subekti, R. *Hukum Perjanjian*. Jakarta: PT. Intermasa, 1987.
- Suhamoko. *Hukum Perjanjian : Teori Dan Analisa Kasus*. Jakarta: Kencana, 2008.
- Suhandi, M. Yasir Nasution, and Sugianto. “Konsep Manusia Dalam Ekonomi Islam (Homo Economicus Versus Homo Islamicus).” *AT-TIJARAH: Jurnal Penelitian Keuangan Dan Perbankan Syariah* 4, no. 2 (2023).
<https://doi.org/10.52490/attijarah.v4i2.1196>.
- Suryati. *Hukum Perdata*. Yogyakarta: Suluh Media, 2017.
- Tambunan. Sony, Toman. Wilson RG. *Hukum Bisnis*. Prenada Media, 2019.
- Viona, Thirani, Therezia Mberu, Natalia Magdalena R Mamulak, and Paskalis Andrianus. “Design and Build a Web-Based Geographic Information System for Debtor Locations.” *Jurnal Teknik Informatika Dan Sistem Informasi* 5, no. 1 (2018).
- Zolecha, Citra Amira. “Perlindungan Hukum Bagi Kreditur Atas Jaminan Kebendaan Yang Terindikasi Bukan Milik Debitur.” *Universitas Sebelas Maret*, 2017.

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