

## **Legal Protection for Debtors in the Pre-Project System of Sale of Credit Agreements Ownership of Apartments**

**Nafsi Khotimah Disty Astari, Surahmad Surahmad**

Faculty of Law, University Pembangunan Nasional "Veteran" Jakarta, Jakarta, Indonesia  
2010611183@mahasiswa.upnvj.ac.id

### **Abstract**

This research aims to find out the validity of the apartment ownership credit agreement (KPA) with PPJB as collateral and legal protection for debtors if the developer of the pre-project selling system defaults. This research is motivated by cases of developers of pre-project selling systems that default and cause losses to consumers who have been bound in KPA with the bank. This research is needed because there are no regulations governing PPJB as collateral and there is an imbalance of power between the debtor and the creditor because of a standard agreement. The discussion on this topic has not been comprehensively explained in previous studies. This research uses normative legal research with a statutory approach with data collection techniques in the form of a literature study. The results show that PPJB as collateral is not ideal, but it does not affect the validity of the KPA agreement. Then, in terms of legal protection for debtors who are harmed by developers, they can refer to Law 8 of 1999 concerning Consumer Protection because the position of debtors is equated with consumers.

**Keywords:** Collateral; Debtor; Law; Protection

### **1. INTRODUCTION**

Human needs for goods and/or services are an effort to sustain their lives where the satisfaction can be physical and spiritual.<sup>1</sup> A place to live 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 their needs, including in this case regarding a place to live. From this situation, developers bring a system that is considered to alleviate problems related to the ability to buy in fulfilling the need for a place to live, namely the pre-project selling system. The pre-project selling system means the sale of buildings to be constructed using a special type of agreement.

The sale of the building that will be built cannot be separated from the will of the parties based on an agreement realized through a binding agreement.<sup>2</sup> Principally, the Civil Code does not require the form of the expression of will, but there are exceptions such as the requirement that it be realized in written form or an authentic deed.<sup>3</sup> In the pre-project selling system, the agreement is expressed through a Sale and Purchase Binding Agreement (PPJB). This PPJB is made as an

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<sup>1</sup> 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>.

<sup>2</sup> Suharnoko, *Hukum Perjanjian : Teori Dan Analisa Kasus* (Jakarta: Kencana, 2008).

<sup>3</sup> Suryati, *Hukum Perdata* (Yogyakarta: Suluh Media, 2017).

initial agreement so the sale and purchase agreement can be implemented and realized in the future.<sup>4</sup>

Entrepreneurs who offer pre-project selling apartments apply the concept of payment by making a cooperation agreement with the bank to provide payment facilities through installments commonly known as apartment ownership credit (KPA) with PPJB as collateral. However, a pre-project selling system can be a problem if the developer is not responsible for his obligations, considering that the promised object is still in the process of development, causing the potential for "stalled" development. If the developer is not responsible or negligent in fulfilling his obligations, the developer is said to be in default.

The default of the developer also opens up opportunities to place the buyer/consumer in a situation full of risks of default by the buyer itself. Basically, buyers hope to get cheaper prices with this pre-project selling system, but transactions with this pre-project selling system also bring buyers into trouble. Buyers are often faced with the risk of developer failure to hand over apartment units on time, the problem of stalled projects occupies the second position of all complaints in the property sector received by YLKI throughout 2023.<sup>5</sup> A concrete example of this occurred is 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. 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 become an act of default by the debtor because the debtor is still required to pay installments every month due to the KPA agreement between the bank and the buyer.

If the debtor has bad credit, the usual thing to do by the bank is to execute the object used as collateral. However, in the KPA for apartment units with the pre-project selling system, the collateral object is the PPJB which is not a tangible/material object, causing confusion if execution is needed. The legality of the implementation of KPA with PPJB as collateral needs to be studied because it is related to the legal protection of the parties, especially the debtor. In civil law, the principle of protection is known that debtors and creditors must be protected by law, especially protection for debtors because debtors have a weak position.<sup>6</sup> The standard agreement for KPA provided by the bank caused the debtor to have a weaker position than the other parties. So the legality of the implementation of KPA with

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<sup>4</sup> Siti Nurul Intan Dalimunte and Wardani Rizkianti, "Jual Beli Apartemen Kepada Pihak Ketiga Atas Dasar Perjanjian Pengikatan Jual Beli (PPJB)," *Adil Jurnal Hukum* 11, no. 1 (2020), <https://doi.org/10.33476/ajl.v11i1.1445>.

<sup>5</sup> Tim Indonesia CNN, "YLKI Minta Pemerintah Bentuk Pengawas Perlindungan Konsumen Properti," *CNN Indonesia*, January 20, 2023.

<sup>6</sup> Asyhadie Zaeni, *Hukum Keperdataan* (Depok: PT. Raja Grafindo Persada, 2018).

PPJB collateral needs to be studied because it is related to the legal protection of the parties, especially the debtor 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 a novelty that is not owned by previous studies. In previous research, there is no discussion that is the same as this research. The previous studies related to this writing are first, research by Sifa (2021). Sifa's research discusses the existence of apartment units as credit collateral and how to execute them. The weakness is this research does not examine flats used as credit collateral that are still under construction and only discusses how to execute flats that already exist physically.<sup>7</sup>

Second, research by Arivin (2022). The strength of this research is that it discusses the position of the PPJB made by the developer with regard to the validity of the PPJB as an agreement. The weakness is that it does not specifically discuss the PPJB as a collateral object and the validity of the KPA.<sup>8</sup>

Third, research by Vira (2023). Vira's research discusses legal protection for banks in the case of mortgage loans without collateral. The concept of home ownership credit in Vira's research and this research is both related to the pre-project selling system, where in this research KPR can be disbursed because of the cooperation agreement between the bank and the developer, then burden on PPJB as guarantee. The weakness this research does not discuss legal protection for debtors.<sup>9</sup>

There are differences between previous research and this research. This research focuses on the validity of the KPA agreement with PPJB as a collateral and legal protection for debtors who are buyers of apartment units in the pre project selling system in KPA. This research aims to examine the existence of a specific legal basis in the implementation of pre project [puing , especially in terms of legal protection.

## **2. METHOD**

This research is written using a legal research method with a statute approach. The statute approach is carried out by examining laws and regulations related to the

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<sup>7</sup> Sifa F Mokodompit, "Eksistensi Terhadap Hak Atas Satuan Rumah Susun Sebagai Jaminan Kredit," *Lex Privatum* 9, no. 12 (2021).

<sup>8</sup> Arivan Halim, "Kedudukan Perjanjian Pengikatan Jual Beli (PPJB) Yang Dibuat Pengembang Dalam Pre Project Selling," *Justice Voice* 1, no. 2 (December 24, 2022), <https://doi.org/10.37893/jv.v1i2.192>.

<sup>9</sup> Vira Aprilia, "Perlindungan Hukum Bagi Bank Dalam Perkara Kredit Pemilikan Rumah (KPR) Tanpa Jaminan Hak Tanggungan," *Jurnal Education and Development* 12, no. 1 (2024), <https://doi.org/10.37081/ed.v12i1.5508>.

problem under study, in this case regarding legal protection for debtors due to defaulted pre-project selling developers.<sup>10</sup> The data collection technique in this research is library research. In normative method research, library research is the main data collection technique, because the research is centered on positive legal norms, and academic research results, whose data are contained in written documents.<sup>11</sup> This research is written by an in-depth examination of positive legal norms such as the Civil Code (KUHPerdata) as well as regulations related to the topic 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 topic raised in the research. The data analysis technique used is descriptive qualitative so all data obtained is not numerical data but in the form of statements that describe and explain the results of the research systematically.<sup>12</sup>

### **3. RESULTS AND DISCUSSION**

#### **3.1 The Validity of the KPA Agreement with PPJB as a Collateral**

##### **3.1.1 PPJB as a Collateral**

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 collateral as an effort to pay off the debtor's debt in default because the main function of collateral is to secure the granting of credit by the bank as the creditor against the debtor.<sup>13</sup> 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 collateral for all their obligations.

There are at least 7 (seven) reasons why encumbrance of mortgage rights is chosen in giving credit. First, according to Article 1 Point 1 of Law Number 4 of 1996 on Mortgage Rights (UUHT), The creditor of the holder of the mortgage right becomes a preferred creditor so that it is entitled to receive debt repayment ahead of other creditors from the sale of the security object either due to execution or sale and purchase under the hand. Secondly, Article 7 of the UUHT states that the property rights over this security object will continue to follow where the object is located (*droit de suite*). Third, mortgage rights cannot be divided as mentioned in Article 2 paragraph (1) of UUHT. Fourth, according to Article 8 of UUHT, a mortgage right is born because of the land that is charged. Fifth, it fulfills the

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<sup>10</sup> Djulaeka and Devi Rahayu, *Buku Ajar Metode Penelitian Hukum* (Surabaya: Scopindo Media Pustaka, 2020).

<sup>11</sup> Bachtiar, *Mendesain Penelitian Hukum* (Sleman: Deepublish, 2021).

<sup>12</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

<sup>13</sup> Citra Amira Zolecha, "Perlindungan Hukum Bagi Kreditur Atas Jaminan Kebendaan Yang Terindikasi Bukan Milik Debitu" (Universitas Sebelas Maret, 2018).

principle of specialty, namely that the encumbrance of a mortgage right must contain information related to the identity of each party, namely the grantor and the holder of the mortgage right, the credit value, the value of the mortgage right, information about the object of collateral as stipulated in Article 11 of the UUHT. Sixth, it fulfills the principle of publicity so that the object of collateral is known by the public in general through an announcement in accordance with Article 13 of the UUHT. Seventh, the execution is easy and certain. If the debtor is proven to be in default, the execution can be carried out without the need for a court order first as stated in Article 6 and Article 20 of the UUHT.

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 collateral without going through a court decision and it can also be seen that the mortgage guarantee (collateral) is a material or property guarantee. This provides legal certainty and legal protection for the holder. The case is different if the collateral is not a material guarantee, such as a PPJB.

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 to live. In the implementation of the KPA, credit is given with PPJB as a guarantee object (collateral).

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 (collateral) so that it can be traded in general and freely.<sup>14</sup> The assessment of this guarantee object is a form of application of the prudential principle by banks in providing credit facilities.

If analyzed more deeply, PPJB should not meet the "pass" criteria in the assessment from a legal and economic perspective. From a legal perspective, the PPJB used as collateral in the KPA is not secured. The disbursement of KPA with PPJB as collateral is done due to an internal agreement and the provisions are not regulated explicitly or implicitly in Indonesian laws and regulations. This is related to legal

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<sup>14</sup> Etty Mulyati and Fajrina Dwiputri, "Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan," *Acta Diurnal Jurnal Hukum Kenotariatan Dan Ke-PPAT-An* 1, no. 2 (June 2018), <http://jurnal.fh.unpad.ac.id/index.php/jad/issue/archive>.

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 collateral.<sup>15</sup> Therefore, the implementation of the Sale and Purchase Deed (AJB), Deed of Encumbrance of Mortgage Rights (APHT) and Power of Attorney to Enforce Mortgage Rights (SKMHT) cannot be implemented. The UUHT also explicitly stipulates that banks can only accept objects in the form of land and buildings that can be encumbered by mortgage rights. Land and buildings that will be used as collateral must have the status of property rights, business use rights or building use rights. Meanwhile, PPJB is only a form of agreement that has no status as property rights, business use rights and building use rights, so it cannot be encumbered with a mortgage right.

Then from an economic perspective, PPJB is not markable, the object used as collateral 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 (collateral) is not easy to monetize. Therefore, the PPJB has no economic value.<sup>16</sup> The PPJB is not encumbered with a mortgage or any other form of collateral. This is confirmed in Article 47 paragraph (1) of the Flat Law, which states that what can be encumbered by a mortgage is the Certificate of Ownership of a Flat Unit (SHMSRS). Thus, the PPJB is not a special collateral that has executorial power if the debtor defaults, the PPJB cannot be sold or cashed to pay off the debtor's debt.

The opinion of the panel of judges in the Tangerang District Court Decision Number 778/Pdt.G/2017/PN. Tng, which is a case settlement decision regarding a sale and purchase transaction whose actions were carried out involving 3 (three) parties, namely the developer, the buyer, and the bank where in the sale and purchase a credit was made between the buyer and the bank with the PPJB being used as collateral for debt repayment in the credit agreement, agreed that the use of PPJB as collateral is not based on the law. Expert witness Elijana S.H also argued that there is no definite legal basis to allow PPJB to be used as collateral. Collateral law has closed provisions, which means that there can be no collateral other than what has been regulated in the legislation.<sup>17</sup>

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<sup>15</sup> Debby Shara, Djuhaendah Hasan, and Wahyuni Sari, "Hak Bank Sebagai Kreditur Dalam Pemberian Kredit Pemilikan Apartemen Dengan Jamimam Perjanjian Pengikatan Jual Beli Apartemen," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad* 2, no. 2 (June 2019).

<sup>16</sup> Abdul Basit, "Jaminan Kredit Pemilikan Rumah Dengan Perjanjian Pemberian Jaminan Dan Kuasa," *Lambung Mangkurat Law Journal* 1, no. 1 (2016), <https://doi.org/10.32801/lamlaj.v1i1.2>.

<sup>17</sup> Muhammad Aziz Ridwansyah and Widodo Suryandono, "Akibat Hukum Perjanjian Cessie Yang Memuat Perjanjian Pengikatan Jual Beli Untuk Dijadikan Jaminan Dalam Perjanjian Kredit (Studi Kasus: Putusan Pengadilan Negeri Tangerang Nomor 778/Pdt.G/2017/Pn.Tng)," *Indonesian Notary* 2, no. 2 (2020), <https://scholarhub.ui.ac.id/notary/vol2/iss2/26>.

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 without transferring rights to an object.<sup>18</sup> 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 this explanation, 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.<sup>19</sup> This is because the transfer of title to the apartment has not yet occurred in the PPJB.

With no transfer of ownership of the apartment from the developer to the buyer, the apartment is not yet controlled by the buyer. So it can be said that the KPA is carried out with credit collateral that has not been controlled. This has happened and has been resolved in Semarang High Court Decision Number 64/Pdt/2019/PTSMG where the panel of judges has stated that credit collateral that has not been controlled is invalid to be used as credit collateral. The invalidity of the credit collateral used as collateral in the credit facility means that the perfect binding cannot be carried out according to the provisions regarding Mortgage Rights. Credit collateral that has not been controlled is declared invalid, resulting in the creditor being unable to execute the collateral and the creditor is not a preferred creditor but a concurrent creditor.

The validity of PPJB as a collateral 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 right to collect the debtor because it has a bill that can be collected against the debtor based on the

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<sup>18</sup> Audina Sintasari, "Pembatalan Akta Jual Beli Yang Tidak Sesuai Perjanjian Pengikatan Jual Beli (Studi Kasus Putusan Pengadilan Negeri Labuan Bajo Nomor 8/Pdt.G/2018/Pn/Lbj)," *Indonesian Notary 2* (June 2020), <https://scholarhub.ui.ac.id/notary/vol2/iss2/4>.

<sup>19</sup> Regita A Mumek, "Hak-Hak Kebendaan Ditinjau Dari Aspek Hukum Perdata," *Lex Administratum* 5, no. 2 (March 2017).

agreement.<sup>20</sup> Therefore based on the above explanation, placing PPJB as an object of guarantee (collateral) is not appropriate and not ideal because it does not meet the requirements of property that can be used as a 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.<sup>21</sup> 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.

In this case, we know that the existence of credit collateral is to be disbursed in order to fulfill the debtor's obligations to the bank at the maturity of the loan as agreed if the debtor defaults. Covenant collateral refers to collateral generated in accordance with the law by a security agreement made between the creditor (bank) and the debtor (buyer). Such collateral is referred to as special collateral. Special collateral in this case arises due to a special agreement between the creditor and the debtor. Basically, property agreements can be divided into 2 (two) types. First, the main agreement is an agreement to obtain credit facilities from banking institutions or non-bank financial institutions. Second, additional or assesoir agreements are agreements that are additional and associated with the main agreement. KPA carried out by apartment buyers in the pre-project selling system with banks is included in the main agreement which then has an additional agreement (regarding guarantees) whose object is in the form of PPJB. This is in

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<sup>20</sup> Raden Nurul, "Perlindungan Hukum Terhadap Anggota Sebagai Kreditor Konkuren Dalam Kepailitan Koperasi Simpan Pinjam Pada Masa Pandemi Covid-19," *Jurnal Law Studies* 2, no. 1 (2022). <https://doi.org/10.29313/bcsls.v2i1.933>

<sup>21</sup> 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>.



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. Regarding the validity of KPA, it needs to be reviewed from the provisions of the legal requirements of an agreement.

In pre-project selling, the buyer agrees to buy an object that will basically only be built by the developer and the developer will carry out the construction in accordance with the terms agreed in the agreement. A sale and purchase are considered to have occurred if the seller and buyer, agree on the object and price, even though the object has not been delivered and/or has not been paid for. This is 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.<sup>22</sup> The sale and purchase process in this case is carried out with an agreement between the buyer and the bank for the KPA facility with PPJB as collateral. 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.<sup>23</sup> Whereas, the debtor is the party who gets a loan from another institution or individual.<sup>24</sup> Therefore, we can see the frame of the legal relationship between the buyer and the bank. The credit agreement that has been carried out by both parties creates a legal relationship of debt and credit between the debtor and the creditor.<sup>25</sup> From the description of the process of KPA, we know that the parties involved (buyer and bank) have agreed to bind themselves in KPA so that the element of agreement has been fulfilled.

Then the element of capacity in the KPA has also been fulfilled. Where the capacity is seen in the identity format stated in the KPA like an agreement in general. The implementation of KPA is carried out by a person who is capable or able to perform legal acts. What is meant by this capacity is a person's authority to perform legal acts, including in this case regarding agreements, except for people who are declared incapable by law.<sup>26</sup> A capable person is one who has reached the age of 21 years and is of sound mind. Article 330 of the Civil Code

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<sup>22</sup> Kartini Muljadi, *Perikatan Yang Lahir Dari Perjanjian* (Jakarta: PT. Raja Grafindo, 2014).

<sup>23</sup> Tambunan, Toman Sony, and Wilson RG Tambunan, *Hukum Bisnis* (Prenada Media, 2019).

<sup>24</sup> Thirani Viona Mberu, Natalia Magdalena Mamulak, and Paskalis Andrianus Nani, "Rancang Bangun Sistem Informasi Geografis Lokasi Debitur Berbasis Web," *Jurnal Teknik Informatika Dan Sistem Informasi* 5, no. 1 (2018), <https://doi.org/10.35957/jatinsi.v5i1.105>.

<sup>25</sup> Nuri Hidayati and Sutiyati, "Keabsahan Perjanjian Kredit Dengan Jaminan Tanah Dan Bangunan Letter C Tanpa Diikat Oleh Akta Notariil," *Jurnal Lawnesia* 1, no. 1 (June 2022).

<sup>26</sup> Desi Syamsiah, "Kajian Terkait Keabsahan Perjanjian E-Commerce Bila Ditinjau Dari Pasal 1320 KUHPerdara Tentang Syarat Sah Perjanjian," *Jurnal Inovasi Penelitian* 2, no. 1 (2021), <https://doi.org/10.47492/jip.v2i1.1443>.

also stipulates that a person who is under 21 years of age but has married is considered an adult by law. Meanwhile, people who are included in the incapable group are minors and people placed under guardianship, namely people whose interests are managed and represented by other people (parents, guardians, curators). People who are placed under guardianship according to Article 433 of the Civil Code are every adult who is always in a state of imbecility, insanity or dark eyes, must be placed under guardianship, even though he is sometimes capable of using his mind. Based on the explanation above, it is clear that the subjective requirements of the agreement are fulfilled.

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, and services that can later be calculated and determined.<sup>27</sup>

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 sale and purchase 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. Regarding the validity of the credit agreement, if the Guarantee is considered legally defective based on Article 1131 of the Civil Code, it explains that "the debtor still has to pay off his debt to the creditor for all property belonging to the debtor to become a lien for his debt, even though the object of collateral provided to the creditor is legally defective, the creditor still has the right to take repayment of the credit he has given to the

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<sup>27</sup> Wahyu Parluhutan Silalahi, "Penerapan Asas Itikad Baik Dalam Perjanjian Jual Beli Kelapa Sawit" (Universitas HKBP Nommensen, 2022).

debtor".<sup>28</sup> Basically, in the implementation of the sale and purchase of apartment units in the pre-project selling system, there is a principal agreement, in this case, KPA, and additional agreements (assesoir) regarding guarantees/collateral. In this case, what needs to be known is the characteristics of the additional agreement. The characteristics of 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.<sup>29</sup>

In the Meikarta case, where there was a delay in the handover of units, many buyers felt disadvantaged both in terms of time and cost. Buyers feel aggrieved to make installments without objects and wait for an uncertain period of time. This has caused buyers who are debtors in the KPA to request cancellation and refund of apartment unit installments. However, Nobu Bank Corporate Secretary Mario Satrio emphasized that debtors who are still in the process of making installments to the bank cannot cancel the unit sale and purchase agreement unless the installments have been paid off. Or, the debtor canceled directly to the developer (PT Mahkota Semesta Utama) with the consequences agreed in the credit agreement.<sup>30</sup>

The way the bank credit agreement ends can refer to Article 1381 of the Civil Code. First, by credit payment or credit repayment by the debtor to the creditor, which includes the delivery of a sum of money and/or delivery of objects. Second, credit payment through consignment, namely if the debtor has made a payment offer with a notary or bailiff of the District Court but is rejected by the bank, upon the bank's refusal the debtor can deposit the payment with the local District Court to be deposited with a note, the payment is in accordance with the agreed bank credit agreement. Third, debt renewal or novation. Debt renewal occurs by replacing old debt with new debt, namely by renewing the credit agreement that was previously made. So that the credit agreement is made before the debt renewal ends. Fourth, the occurrence of debt set-off or compensation, which is when the debts and receivables of the debtor and the bank are reciprocally calculated, where the calculation of the old debt and receivables ends. Fifth, is the occurrence of debt relief where the bank expressly states that it no longer wants

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<sup>28</sup> Fet Chan Luwesi, "Pembatalan Akta Pengakuan Hutang Dengan Jaminan Berdasarkan Putusan Pengadilan ( Studi Kasus Putusan Mahkamah Agung Nomor 1691 K/Pdt/2011)" (Universitas Sebelas Maret, 2015).

<sup>29</sup> Sri Soedewi Masjchun, *Himpunan Karya Tentang Hukum Jaminan* (Yogyakarta: Liberty, 1998).

<sup>30</sup> Kiki Safitri and Akhdi Martin Pratama, "Biaya Cicilan Apartemen Meikarta Tak Bisa Dikembalikan, Bank Nobu Sarankan Debitur Langsung Ke Pengembang," *Kompas.Com*, December 15, 2022.

the debtor's performance and waives its right to payment or fulfillment of the credit agreement. Sixth, due to cancellation or the enactment of void conditions.

Regarding the cancellation of an agreement according to Elly Erawati and Herlien Budiono, a credit agreement can be declared null and void if there are several things such as the conditions of the formal agreement are not fulfilled, where the legal provisions of the form of the agreement, the procedure for the agreement, and the procedure for approving the agreement provided by the legislation will result in the cancellation of the formal agreement. If the objective requirements for the validity of the agreement are not met, then the agreement, in this case, a credit agreement, is invalid and has no legal effect. Credit agreements are also void if they are made by persons who are not authorized to perform legal acts or those who are prohibited by law from performing certain legal acts. In addition, agreements with invalid conditions become invalid because they fulfill the conditions of cancellation, so that the situation returns to the original state at the time the agreement occurred or the agreement never existed.

Based on the description above, it can be seen that although the PPJB as a collateral object is not ideal in an additional agreement (*assesoir*), the KPA as the main agreement 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 collateral object does not necessarily make the KPA agreement null and void. The *assesoir* nature of collateral does not cancel the credit agreement. 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**

In general, an agreement is an agreement made by the parties regarding a matter so as to give birth to an engagement or legal relationship which then creates rights and obligations which, if not fulfilled, will lead to sanctions. According to Subekti, it is stated that an agreement is an event where someone commits an act.<sup>31</sup> A credit agreement is a form of loan or debts and receivables agreement which in the Civil Code is regulated in Articles 1754 to 1769 of the Civil Code. The credit agreement is a standard agreement. A standard agreement is an agreement whose contents have been determined and have been outlined in a certain format by the first party so (bank/creditor) that the second party or other parties (buyer/debtor) only need to accept the contents and sign the agreement. Apartment Ownership Credit (KPA) for the sale and purchase of apartment units with a pre-project selling system is also classified as a standard agreement, because the contents of the KPA have been

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<sup>31</sup> Joko Sriwidodo and Kristiawanto, *Memahami Hukum Perikatan* (Yogyakarta: Kepel Press, 2021).

provided by the bank without involving prospective debtors in the preparation of the agreement, which makes it impossible to negotiate or bargain. In this case, the debtor is only given the choice of "take it" or "leave it".<sup>32</sup> 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.<sup>33</sup>

In the sale and purchase 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. One of the most fundamental principles in the law of agreements is the principle of protection for the parties, especially the disadvantaged party.<sup>34</sup> 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.

The laws and regulations that can be associated as a legal basis for consumer protection regarding the marketing of flats/apartments with a pre-project selling system are, a. The 1945 Constitution, Article 28H paragraph (1); b. Law Number 20 of 2011 concerning Flats; c. Law Number 8 of 1999 concerning Consumer Protection; d. Law Number 11 of 2020 concerning Job Creation as amended by Law Number 6 of 2023 concerning Job Creation; e. The Third Book of the Civil Code concerning Bonds; f. Government Regulation Number 13 of 2021 concerning the Implementation of Flat Houses; g. Government Regulation No. 58 of 2001 on the Development and Supervision of the Implementation of Consumer Protection; h. Government Regulation No. 4 of 2019 on the National Consumer Protection Agency; i. Government Regulation No. 59 of 2001 on Non-Governmental Consumer Protection Institutions; j. and Minister of Public Works and Public Housing Regulation No. 14 of 2021 on Association of Owners and Occupants of

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<sup>32</sup> Apul Oloan Sipahutar et al., "Pelaksanaan Eksekusi Jaminan Fidusia Dalam Praktek Pada Debitur Yang Wanprestasi," *Jurnal USM Law Review* 5, no. 1 (June 18, 2022), <https://doi.org/10.26623/julr.v4i1.3369>.

<sup>33</sup> Zaenal Arifin, Soegianto, and Diah Sulistiyani RS, "Perlindungan Hukum Perjanjian Kemitraan Pengadaan Barang/Jasa Pemerintah Pada Bidang Konstruksi," *Jurnal USM Law Review* 3, no. 1 (2020), <https://doi.org/10.33558/akp.v1i1.572>.

<sup>34</sup> Muhammad Riandi Nur Ridwan and Yana Sukma Permana, "Wanprestasi Dan Akibatnya Dalam Pelaksanaan Perjanjian," *Jurnal Ilmu Hukum "The Juris"* 6, no. 2 (December 2022), <https://doi.org/10.56301/juris.v6i2.616>.

Flat Units.<sup>35</sup> The only regulation that explicitly regulates the legal protection of consumers is Law Number 8 Year 1999 on Consumer Protection (UUPK).

Debtors as consumers have been explained in Article 1 Paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection (UUPK) which explains that 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. In the UUPK, there are several principles that need to be considered in pre-project selling transactions to ensure consumer protection, namely benefits, justice, balance, security, and legal certainty. Legal certainty in this case covers all aspects including legal remedies to enable prospective buyers to defend their rights if they are harmed.<sup>36</sup>

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.<sup>37</sup> 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.<sup>38</sup> 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 buyback guarantee system.<sup>39</sup> A buyback guarantee is an additional agreement made between the bank and the bank in order to obtain legal certainty in the KPA process with PPJB collateral, to ensure the legal certainty of the debtor's debt repayment if the debtor has bad credit. The buyback guarantee itself means buyback guarantee or the right to buy back. Provisions regarding buy-back guarantees can be found in Article 1519 of the Civil Code which determines that the seller has the right to take back objects that have been sold to consumers by replacing them according to the original price. With the buyback guarantee, the developer acts as a guarantor for the repayment of the debtor's debt. 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

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<sup>35</sup> Renti Maharaini Kerti, "Menguntungkan Atau Merugikan : Pemasaran Secara Pre-Project Selling Sektor Hunian Vertikal Dalam Perspektif Perlindungan Konsumen," *Hukum Pidana Dan Pembangunan Hukum* 4, no. 1 (2021), <https://doi.org/10.25105/hpph.v4i1.12900>.

<sup>36</sup> Rani Shahira and Surahmad, "Perlindungan Konsumen Dalam Jual Beli Properti (Studi Kasus PT Developer Properti Indoland)," *Al-Maslahah Jurnal Hukum Islam Dan Pranata Sosial Islam* 10, no. 1 (2023), <https://doi.org/10.30868/am.v10i001.3585>.

<sup>37</sup> Marhais Abdul Miru, *Hukum Perbankan Di Indonesia* (Bandung: Alumni, 2004).

<sup>38</sup> Nanang Setyono, "Rekonstruksi Kebutuhan Hidup Layak (KHL) Melalui Koperasi Karyawan Dalam Kajian Undang-Undang No.13 Tahun 2003 Tentang Ketenakerjaan," *Jurnal Ius Constituendum* 3, no. 2 (October 2018), <https://doi.org/10.26623/jic.v3i2.1039>.

<sup>39</sup> Dayan Panaya, "Perlindungan Hukum Bagi Pihak Perbankan Melalui Perjanjian Buy Back Guarantee Sebagai Pendukung Jaminan Pembelian Rumah Dengan Sistem Kredit Pemilikan Rumah " (Universitas Islam Sultan Agung , 2022).

many debts incurred, then the bankrupt developer will be taken care of and resolved by a curator appointed by the court.

Based on the Bankruptcy and Postponement of Debt Payment Obligations Law (UUKPKPU), buyers can file PKPU and bankruptcy applications against developers if there is a delay in construction. This is because the developer is obliged to complete the construction that has been promised to the buyer as agreed in the PPJB. In the PPJB, the developer acts as a debtor, which has the obligation to deliver the apartment unit on time while the buyer acts as a creditor. The PPJB itself is a form of legal protection for pre-project selling buyers because basically the contents of the PPJB clause must refer to the Decree of the Minister of State for Public Housing (SK Menpera) No. 11/KPTS/1994 concerning Guidelines for Sale and Purchase Agreements for Flats. With the issuance of the SK Menpera, it is intended to uphold the fairness of both parties, so before signing it is necessary to compare the clauses in the PPJB version of the developer with the SK Menpera version. The requirements in filing for bankruptcy are that the developer has two or more creditors and does not pay in full at least one debt that is due and collectible. The developer does not have power over all of its assets and switches to the power of the curator, buyers can only submit themselves as concurrent creditors to the curator. This is in accordance with the provisions of Article 37 paragraph (1) UUKPKPU, where the bankruptcy of the developer results in the annulment of the PPJB.<sup>40</sup>

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. This is emphasized in Article 19 of UUPK which states that business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.<sup>41</sup> 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,

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<sup>40</sup> Bernadheta Aurelia Oktavira, "Kepailitan Developer Apartemen Mengakibatkan Hapusnya PPJB," *Hukum Online.com*, September 17, 2020.

<sup>41</sup> Subaidah Ratna Juita, Dhian Indah Astanti, and Dian Septiandani, "Perlindungan Hukum Terhadap Nasabah Bank Korban Kejahatan Skimming," *Jurnal USM Law Review* 6, no. 1 (November 27, 2023), <https://doi.org/10.31328/wy.v3i2.1663>.

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. But if considered, 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 compensation and the provision of compensation is carried out within 7 (seven) days.<sup>42</sup> UUPK does not contain a definite and clear legal rule concerning compensation to the consumer of property for the malfunction of the developer. In fact, certainty about the law relating to the rules of law that apply in a country or what is commonly referred to as positive law has the aim of creating a certain situation in social life.<sup>43</sup>

Therefore, based on the explanation above, it can be seen that the characteristics of GCPL as a legal protection instrument are only suitable for consumers who purchase consumptive goods/services such as cosmetics, medicines, and similar things. 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. The purpose of UUPK is to raise the value of consumer life and to avoid all harmful consequences of the activity of the entrepreneur, which in this case includes developers who are not performing.<sup>44</sup> 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.<sup>45</sup>

In the Meikarta case, where buyers were disadvantaged due to delays in construction which resulted in the late handover of units, buyers could not file a PKPU application or civil lawsuit based on the PPJB. This is due to the PKPU

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<sup>42</sup> Sulasa Agus Triyono et al., "Tinjauan Yuridis Perlindungan Hukum Bagi Konsumen Atas Garansi Produk Elektronik Dalam Undang-Undang," *Court Review: Jurnal Penelitian Hukum* 4, no. 1 (2023).

<sup>43</sup> Dwitama Ryan Hutadjulu, Lastuti Abubakar, and Tri Handayani, "Akibat Hukum Terhadap Bank Atas Pembatalan Hak Tanggungan Melalui Putusan Pengadilan Berkekuatan Hukum Tetap," *Jurnal USM Law Review* 6, no. 1 (2023), <https://doi.org/10.21107/ri.v13i1.4032>.

<sup>44</sup> Carissa Amanda Siswanto et al., "Perlindungan Konsumen Terhadap Pembelian Obat Mengandung Psikotropika Pada Online Marketplace," *Jurnal USM Law Review* 5, no. 2 (November 23, 2022), <https://doi.org/10.26623/julr.v4i2.4249>.

<sup>45</sup> 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>.



decision of the Central Jakarta Commercial Court No. 328/Pdt.Sus-PKPU/2020/PN.Niaga Jakarta where the decision was related to the PKPU status of PT MSU which was sued for bankruptcy by PT Graha Megah Tritunggal for not paying security fees. Based on this decision, the developer, namely PT MSU, is in PKPU and based on Article 37 paragraph (1) and Article 250 paragraph (1) of the UUKPKPU, all agreements regarding the delivery of traded objects including the PPJB are automatically nullified and do not have any legal force.

However, there are still other alternatives in which UUPK also allows buyers to claim compensation through mutual agreement outside the court by the Consumer Dispute Resolution Body (BPSK), namely: conciliation, mediation, and arbitration as contained in Article 1 point (10) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The presence of BPSK is strengthened by the regulation of the Minister of Trade No. 72 of 2020 on the Consumer Dispute Resolution Agency and the Decree of the Minister of Industry and Trade 350/MPP/Kep/12/2001 on the Implementation of the Duties and Authority of the Consumer Dispute Resolution Agency as amended by the Regulation of the Minister of Trade No. 06/M-DAG/PER/2017 on the Consumer Dispute Resolution Agency. BPSK itself is an out-of-court forum to resolve disputes arising between business actors and consumers. BPSK opens opportunities for buyers to take non-litigation legal remedies. Based on this, buyers of Meikarta apartments can mediate through the BPSK forum in accordance with its duties and authority. However, considering that the developer PT.MSU is in PKPU, the mediation must be carried out by taking into account the provisions in decision No. 328/Pdt.Sus-PKPU/2020/PN.Niaga and UUKPKPU and with the appointed management.

Thus, based on the description above, it can be seen that there are many regulations that act as legal protection for apartment buyers in pre-project selling. Starting from the PPJB whose contents must be guided by the Decree of the Minister of State for Public Housing (SK Menpera) No. 11/KPTS/1994 concerning Guidelines for the Sale and Purchase of Flats, UUPK which provides protection and the right to obtain compensation for losses suffered by consumers due to the actions of developers, and BPSK which can be used as an alternative dispute resolution where BPSK accommodates the prosecution of compensation outside the court.

#### **4. CONCLUSION**

Based on the discussion above, it can be concluded that PPJB as collateral is not ideal because PPJB is not a material collateral because it does not meet the requirements of a material that can be used as collateral, namely safe, can be handed over / transferred, has economic value, and gives direct power. Meanwhile, Indonesian law only regulates material security contained in Law Number 4 of

1996 on Mortgage Rights. Nevertheless, this does not make the KPA, which is an agreement, void. This is because the collateral agreement (asessoir) will not affect the validity of the main agreement as long as the main agreement fulfills the legal requirements of the agreement. Basically, the PPJB is a form of legal protection for buyers of the pre-project selling system by upholding balanced justice between business actors and buyers. Legal protection of the debtor in the event that the developer defaults in building apartment units is also seen in the role of the developer as the guarantor of the debtor through the buy-back guarantee system, the buyer can also apply for PKPU and bankruptcy against the developer, and can be guided by the UUPK in making civil legal efforts to claim compensation against the developer. Meikarta apartment buyers who are harmed by developers due to delays in construction completion can mediate at the BPSK forum.

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