

# LEGAL PROTECTION FOR CONSUMERS TO PURCHASING FLAT UNITS BASED ON THE SALE AND PURCHASE AGREEMENT REGARDING THE BANKRUPTCY OF THE DEVELOPER

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## ABSTRACT:

Population growth now today is getting denser and residence needs increase and the supply of land is increasingly limited so the construction of flats is one solution to solve the problem. The number of flats construction has caused problems, which have not been carried out handover of flats. The implementation of sale and purchase of apartment units is in the Sales and Purchase Agreement (SPA). When the developer of a flat is bankrupt is declared by the court, considering that new buyers are limited to conducting SPA and is not proof of ownership.

The Research method is normative legal research, to obtain the necessary data in connection with the period issues. The data used secondary data in consisting of primary legal materials, secondary legal materials, tertiary legal materials. Beside that it used primary data to support secondary data legal materials. Data analysis be done with juridical analysis of qualitative. The research problem formulation is how the existence of consumers and legal protection for the purchase of apartment units based on the sale and purchase agreement are related to the bankruptcy of the developer. To answer this problem the author uses 2 (two) legal theories, namely the Theory of Legal Protection from Phillipus M. Hadjon and Bankruptcy Legal Theory from Bankruptcy

and Suspension of Payment Obligations Act, Number 37 Year of 2004.

From the results of the study, it was found that legislation did not provide maximum legal protection to consumers because concurrent creditors did not have special rights, in the bankruptcy process, especially the results of bankrupt bundles were distributed to preperen creditors and separatist creditors and concurrent creditors did not have the right to obtain bankrupt as expected. And concurrent creditors are represented by the curator in filing a lawsuit for actio pauliana as a form of objection to the actions or transactions made by the bankrupt debtor.

**KEY WORDS:** legal protection, consumers because concurrent creditors the bankruptcy process

## INTRODUCTION:

One of the basic needs in household life is a house that functions as a place to live, rest, protect themselves from the threat of weather, wild animals, and thieves and also humans, of course, will get psychological disorders. In an effort to equalize basic needs for the community, it is necessary to increase efforts to provide adequate housing at prices that can be reached by the purchasing power of people who have low incomes. Flats investment and lack of knowledge of the law relating to flats in the wider community pose a big problem, actually setting the flats have a fairly fundamental

differences with the construction of residential houses with land on private property rights (*private*).

Law No. 8 of 1999 on Consumer Protection, when content of the material examined UUP potential protective pretty much set the behavior of business. It understandable considering the disadvantages consumer suffered often the result of the behavior of businesses, so it is natural if there is the demand that the behavior of the regulated businesses and violation of the rules sanctioned accordingly. Behavior effort in pursuing a strategy to grow its business that often times cause harm to consumers. According U UP potential protective Article 1 (2), the Consumer is any user of goods and/or services available in the community, for the benefit of themselves, their families, other people and other living beings and not for trading. Article 1 paragraph (3), Business Actors are every individual or business entity, whether in the form of legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, both individually and jointly through agreements to conduct business activities. in various fields of economics. Viewed from the notion of consumers and businesses above, any person who purchases the house either credit or cash can be categorized as a consumer, while the developer (*developer*), namely a person or a company that expects to development activities are categorized as business actors.

When the Company or businesses housing has been declared bankrupt by the decision of the Commercial Court, since the decision of the declaration of bankruptcy is pronounced immediately lose the right to conduct the maintenance and control of its assets that entered into the bankruptcy estate, resulting in consumers who have conducted transactions with Developers or housing businesses, do not get legal protection, because

within the scope of bankruptcy, consumers are classified as concurrent creditors because their receivables are not guaranteed with material rights and the nature of their receivables is not guaranteed as a loan privileged by law. (M. Hadi Shubban , 2009). In Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter abbreviated as the Bankruptcy Act), in Article 2 paragraph (1) of the Bankruptcy Law explicitly stipulates that "Debtors who have two or more Creditors and do not pay off at least one debt which is due and collectible, is declared bankrupt by a court decision, both at its own request and at the request of one or more of its creditors." (C. Asser`s, 2011)

But without realizing it, the bankruptcy decision an enterprise developers provides enormous consequences for buyers of the initial purchase units of the development company. Bankruptcy decisions result in all company assets declared bankrupt being monitored, expropriated and confiscated for the purpose of paying off or paying debts to creditors. For this action, the buyer as a consumer and also one of the creditors is basically a very weak and disadvantaged party, because consumers' rights are not fulfilled.

## LITERATURE REVIEW:

### Legal Protection Theory:

Legal protection must see the stages of the legal protection born of a legal provision and all the laws that society which is basically an agreement such communities to regulate behavioral relationships among members of society and between liability company g 's with a government yes ng considered to represent Public.

In the opinion of Phillipus M. Hadjon that legal protection for the people is a government action that is *preventive* and *repressive in* nature. (Phillipus M. Hadjon, 1987). Legal protection *preventive* aims to prevent disputes, which

directs government action careful in making decisions based on *discretion*, and the protection of the *repressive* aims to resolve disputes, including judiciary. (Maria Alfons)

This legal protection is needed for p embroider flats/a compartment with evidence PPJB who suffered losses due to bankruptcy of developers. This is related to buy flats compartment that held usually still under construction, was not even built, by instead of house, which contains the rights and obligations of the buyer and the developer. This apartment building PJB is arranged unilaterally by the developer, and in the form of a standard form of the agreement made by this standard, indeed makes it easy for the parties to make transactions.

But on the other hand, given that PPJB makers are developers, of course there is a tendency to benefit developers more and can be detrimental to buyers. Therefore, legal protection is needed for buyers of flats who can only get PPJB in advance.

### **Theory of Bankruptcy Law:**

To find out what is meant by the bankruptcy law it is necessary to see what the bankruptcy, can be found in Article 1, paragraph (1) Bankruptcy Law states that, bankruptcy is the confiscation common to all riches bankruptcy the maintenance of and the order performed by curator in under the supervision of the Supervising Judge as regulated in this Law.

Poewadarminta said that the meaning of the word "bankrupt" meant to be bankrupt and bankrupt meant to suffer a great loss until it fell. (Jono, 2008). The views Radbruch highly colored UU Bankruptcy in Indonesia. Whoever becomes the discharge he still must be responsible to the credit or on all debts owed. Walaupundebit or it is the developer, he remains. should be responsible to the credit or over all uta ng-debt. The entire wealth is a

guarantee for repayment of debt. This is a form of justice in the relationship of debt and debt which is in line with the Radbruch concept, equality of rights before the law. Whoever is in debt must pay it off. If you do not pay off the debt that should have been paid, then it can be bankrupt . Article 2 (1) of the Bankruptcy right that the discharge o r which has or more credits or and did not pay off at least one debt (principal or interest) are due and billable, declared bankrupt by the decision of the Court Commerce either on the request for discharge o r itself and on request of one or IEB ihredito paint a mixed picture.

In this study that the developers, which acts as a debtor, in certain circumstances have a problem debts, when the developer stops compartment correspond the agreement, so that the developer are considered to be not able to fulfill obligations to credit or-credit or to the buyers of flats/a compartment. Such conditions can certainly interest credit or, so in that state or supposed to be enforced access to a wealth of discharge o r to obtain repayment of loans, so the credit rights or protected. Presumably this is the aspect of benefits to be provided from the enactment of the bankruptcy institution. Bankruptcy developers in the Law on Bankruptcy should be able to provide legal certainty would protect the rights of buyers from developers for compensation materially.

### **Research methods:**

The method of approach used in this study is the normative juridical approach supported by Empirical and the *statute approach* because this study examines the rules or regulations on the application of the legal method, including laws and regulations that apply in society and become a reference the behavior of every person, the prevailing legal norms are in the form of positive legal norms formed by authorized institutions in the form of the Constitution, Laws, Government

Regulations, Presidential Regulations, Presidential Decrees, etc. and norms established by judicial institutions and government agencies. Empirical legal research aims to find out how far the law works in society. Empirical legal research as a result of the interaction between legal science and other disciplines, especially sociology and anthropology gave birth to legal sociology and legal anthropology. The research method used in this study is normative juridical. The use of this method is because normative juridical writing in the field of law is a process of finding legal rules that can be used to answer certain legal problems encountered.

This method relates to the principles and legal norms concerning Legal Protection of Consumers for the Purchase of Flat Units Based on the Agreement on Binding of Purchases Regarding the Bankruptcy of its Developers according to Indonesian Laws, as well as examining the rules or norms in positive law.

A descriptive study, intended to provide as detailed data as possible about humans, circumstances or other symptoms. This study is a specification descriptive study is that the procedures and problem solving research carried out by exposing the object under investigation as they are based on actual facts in the present is not limited to data collection, but the norms of are practiced on legal Protection to consumer-related according to the legislation in Indonesia.

Data collection techniques used in this study are the study of documents or literature and literature research, by studying and reading the legal materials related to this research.

The method of analysis is research by describing the conditions and facts about the object of research. Analysis of legal materials is how to utilize the sources of legal materials that have been collected to be used in solving problems in a study. Basically, data analysis can be done qualitatively. Sometimes the results of

a study are combined through the analysis of both. Research analysis contains descriptions of ways of analysis that illustrate how data is analyzed and what are the benefits of the data collected to be used in solving problems in research.

This research was conducted by examining the legislation in force on the potential protective to consumer a bag unit based on developer bankrupted by Legislation in Indonesia as well as reviewing the implementation of the rules or norms of positive law, so that the research location is only done through library research and Case Decision Number 20/Bankrupt/2011/PN Niaga Sby, Government Decision Number 3/PKPU/2013/PN.JKT.PST and Case Decision Number 6/Pdt. Sus-PKPU/2017/PN SBY.

## **RESEARCH RESULTS AND DISCUSSION:**

### **A. Position of Consumers and Business**

#### **Actors:**

According UUP potential protective consumer Article 1 (2), the consumer is everyone user of goods and / or services available in the community, for the benefit of themselves, their families, other people and other living beings and not to flats / the apartment here is intended for buyers of flats / apartments who have chosen and intend to buy units or units of flats that exist in a particular building / apartment / apartment building and is proven by an Order Letter that has been signed as an agreement to purchase a unit or unit of flats.

Legal protection for consumers according to Law No. 8 of 1999 concerning Consumer Protection, which consists of 15 Chapters and 65 Articles. The essence of the promulgation of Law No. 8 of 1999 The Consumer Protection Policy is to regulate the behavior of business actors with the aim that consumers can be protected legally. This means that efforts to protect the interests and rights of

consumers made through legal instruments are expected to be able to create legal norms for consumer protection. The Consumer Protection Act in an effort to provide protection to consumers stipulates the six main material items which become the contents of the Act, which are restrictions, producer responsibilities, product liability, standard agreements or clauses, dispute resolution and criminal provisions. Nurmandjito, 200).

### **B. Role and Position of Notary on PPJB Flats:**

Talking about the binding purchase agreement, is an agreement that is no different from the agreement in general. This agreement was born as a result of the open nature of Book III of the Civil Code, which gives freedom to the broadest possible extent for legal subjects to enter into agreements that contain anything and anything, as long as it does not violate the laws, public order and morality. PPJB is basically consensual in nature. Consensual because the agreement exists or was born since the agreement between the two parties, namely the developer and the consumer regarding the making of an agreement to buy and sell houses with the price of the house that has been determined or the price has not been fully paid (Article 1320 paragraph (1) jo Article 1458 Civil Code). In the PPJB contains agreements, such as the price, when the repayment time is made and the AJB. (R.Subekti, 2005) With the said agreement the PPJB is binding on both parties meaning that the parties cannot cancel the PPJB without the approval of the other party.

PPJB is one form of agreement that is subject to the provisions of Law No. 1 of 2011 concerning Housing and Settlements and Minister of Public Housing Decree No. 9 of 1995 concerning Guidelines for Binding of Buy and Sell as *lex specialis*, and if it is related to the provisions of Article 1320 paragraph (1) of the Civil Code (*lex generalis*), the PPJB fulfills the elements as an agreement, which can lead to an

engagement that is sourced from the agreement. Although the PPJB is not regulated in the Civil Code, but the PPJB is valid as long as it meets the following conditions:

1. Qualify as an agreement
2. Not prohibited by law
3. In accordance with applicable customs
4. As long as the agreement is implemented in good faith

If the PPJB is canceled or decided unilaterally then the other party can sue. Basic legal reasoning, the SPA is not a legal act of buying and selling that is both real and cash. PPJB is an agreement between the two parties to carry out their respective achievements in the future, namely the implementation of buying and selling in front of the PPAT (Land Deed Making Official), if the building has been certified and is livable.

According to Maria Sumardjono, the PPJB issue was included in the scope of the agreement, while the sale was included in the scope of the national land law which was subject and its implementing regulations. (Maria Sumardjono, 1994) In the PPJB the contents of the contract are determined in advance by the developer, this agreement is called a standard agreement (*standard*). In the PPJB even though the contract content is determined by the developer, consumers are always given the opportunity to study, pay attention and read the contents of the contract first, so that consumers can understand the contents of the agreement.

In practice standard agreements grow as written agreements in the form of forms. These are similar legal acts that always occur repeatedly and regularly involving many people, to prepare the contents of the agreement in advance, so it is easy to provide at any time if the community needs. This standard agreement is intended for each debtor who engages in a similar agreement, without regard to the different conditions between one debtor and another.

According to R Subekti, said that "the agreement binding sale and purchase is an agreement between the seller and the buyer prior to the implementation of purchase due to the elements that must be met prior to do buying and selling among others, is a certificate yet because it is still in the process, the price has not been paid yet". (R. Subekti, 1998) Meanwhile, according to Herlien Budiono, it was said that "the binding purchase agreement is an aid agreement that functions as a preliminary agreement in the form of free". (Herlien Budiono, 2004)

### C. Purchase Arrange By PPJB Relating to Bankruptcy Developers:

In an effort to obtain and/or use of goods/services consumer usually make an agreement with developers of (*developer*). In the purchase agreement is usually developers have an obligation to deliver goods or services, while consumers have an obligation to make a payment. The payment that has been done by the consumer means that there is a bill that can be collected. The nature of Article 1(2) Bankruptcy Law, that consumers can be categorized as creditors because it has receivables arising from treaties or laws that can be charged in court. The potential protective consumers is "all efforts which ensure legal certainty to provide protection to consumers". Housing Project is a multi-storey buildings are structured functionally in the horizontal direction and the vertical direction is divided into units, each of which clearly demarcated, size and extent, and can be owned and occupied separately. Consumers in the apartment are the people who buy the goods in the form of apartment units were purchased on development actors/businesses and residents. Residents are people who occupy both as owner and not the owner.

Legal protection for consumers is described in terms of consumer protection.

Legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that incarnate in attitudes and actions in creating an order in the association of life between fellow humans. (Muchsin, 2003).

Legal protection is providing protection for human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights provided by law. The law can function to realize protection that is not merely *adaptive* and *flexible*, but also *predictive* and *anticipatory*. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice. (Satjipto Rahardjo, 2000).

Legal protection is a guarantee or certainty that a person will get what he has rights and obligations, so that the person feels safe.

In terms of protection law against the consumers shortly, the author uses the theory of legal protection and bankruptcy law theory to analyze and answer the question that is in this study.

The author uses the theory of legal protection of Philipus M.Hadjon to analyze and answer the formulation of the problems/problems that exist in this study, that there are two kinds of means of legal protection :

1. Means of *Preventive Legal Protection*. In this *preventive* legal protection legal subjects are given the opportunity to submit objections or opinions before a government decision gets a *definitive* form. The aim is to prevent disputes. Legal protection *preventive* great significance for acts of government based on freedom of action due to the absence of legal protection that *preventive* government pushed to be careful in making decisions based on *discretion*.
2. *Repressive* legal protection aims to resolve disputes. The handling of legal protection by general courts and administrative courts

of Indonesia falls into this category of legal protection. The principle of legal protection against government actions rests and comes from the concept of the recognition and protection of human rights because according to western history, the birth of the concepts of recognition and protection of human rights is directed at the limitations and placement of community obligations and government. Attributed to the recognition and protection of the law of human rights has a primary place and can be linked to the objectives of the rule of law. The author examines consumer protection in three cases:

1. PT. Bali Mainstay Dwimas (DAB) is bankrupt through decision No. 20 / Bankrupt / 2011 / PN Niaga Sby . This decision results in consumers losing money because they have not obtained their rights in accordance with PPJB. This decision resulted in consumers experiencing losses where the cessation of operational development of PT. Dwimas Andalan Bali consumers who should get their rights become neglected. This case began with PT. Karsa Industama Mandiri (PT. KIM) bankrupt PT. Dwimas Andalan Bali, where PT. KIM as the party that entered into a work contract with PT. DAB for mechanical and electrical works with a contract value of Rp. 11,100,000 (eleven billion one hundred million rupiah) and 75% progress. Susanti Agustina bought two apartments in May 2009. She have seen the location, he was interested in buying because his unit was ready for habitation, and the payment of installments in full at some stage and November 2009. On the other hand, Handoko apparently pledged the land and building to the bank in 2007. Later PT. Bali Mainstay Dwimas was convicted bankrupt by the Surabaya Commercial Court on August 11, 2011 and had an impact on the ownership of the apartment. Susanti did not accept and criminalize Handoko Putra
2. PT. Menara Karsa Mandiri (MKM) is bankrupt by the Central Jakarta District Court (PN Jakpus) as the developer of Buah Batu Park apartment, Bandung, West Java. PT. MKM proved negligent in carrying out its agreements with its creditors. The Assembly has also canceled the peace agreement No. 3 / PKPU / 2013 / PN.JKT.PST between the developer and its creditors. The bankruptcy case itself was filed by Er Ummi Kalsum and Tresna T. Cahyadi as buyers of the Buah Batu Park apartment . In the peace agreement, the respondent promised to complete the handover of the key and the building for the purchase of the apartment units of the applicant no later than August 2013, to break the master certificate, and to sign the sale and purchase deed (AJB) no later than February 2014. But until maturity on March 20, 2015, there was no realization from the developer. As a result, the panel of judges stated that the developer company was in bankruptcy. Consumer power attorney, Bambang Siswanto, appreciated the decision that for his clients who had not been entitled to become consumers of the apartment.
3. PT. Sipoa Internasional Jaya, who had been sued by PKPU in the Commercial Court at the Surabaya District Court, but PKPU's application was rejected (Case Number: 6/Pdt.Sus-PKPU/2017/PN SBY). Sipoa Group itself has 32 companies affiliated with 20 companies engaged in property. The facts and development progress

promised by the management of Sipoa Group are indeed many false promises and do not fulfill the commitments of consumers who have deposited a lot of money. And the Sidoarjo Regent and the developer and 14 development companies were sued by 29 plaintiffs. Where is the promise of the developer (*developer*) of PT. Bumi Samudra Jadine will complete its apartment building in 2017, this year the unit handover is scheduled. However, the reality stage of development has not been implemented, even though some buyers had made payments totaling 12 billion of money has entered the developers (*developers*) as proof of purchase. Problems that occur developer (developer) PT. Sipoa Internasional Jaya there is a breach of contract or breach of contract as an apartment/apartment developer, meaning that it does not fulfill the obligations as specified in the agreement or agreement. Consumers never get the certainty of the construction of flats/apartments in The Royal Business Park Royal, Mutiara Residence 3 and Royal Afatar World. So that Sipoa residential and apartment consumers are incorporated in the Sipoa Project Buyer Association (P2S) reporting allegations of Sipoa Group management fraud to the East Java Regional Police Integrated Service Center (SPKT). Finally the Sidoarjo Regent and the developer and 14 developer companies were sued by 29 plaintiffs. Where is the promise of the developer (developer) of PT. Bumi Samudra Jadine will complete its apartment building and is scheduled to handover the unit in 2017. However, in reality the construction phase has not

yet been carried out, even though some buyers have made a total payment of 12 billion in cash that has been entered into the developer as proof of purchase receipt. Finally Hariyono Soebagio sued Pt. Sipoa Internasional Jaya at the Commercial Court at the Surabaya District Court, but PKPU's request was rejected.

From the third case above this page is certainly very detrimental to the rights of consumers who were ignored due to the decision. Among consumers and apartment developers, there has been a contractual relationship between housing units ordered in the PPJB, the PPJB is made between the *developer* and the consumer that contains the rights and obligations of the parties. If one party experiences a loss, the party causing the loss must be held responsible. According to the authors prime Frame selling apartment units unfinished increasing even not infrequently happens selling apartment units done while still in planning, as in the case of the three developers (*developers*) PT. Sipoa Internasional Jaya. In June 2015, The Royal Business Park on Tambak Oso Street was still not registered to have a complete IMB, but it was boldly openly marketed. Such as the construction of the Royal Afatar World (RAW) apartment located in Kedung Rejo, Waru, Sidoarjo, which is still a square pole. And the stalled construction of the Royal Mutiara Residence apartment 3. The participation of the Sidoarjo Regent as Sipoa marketing as an attraction for the interest of Sipoa Group property buyers, but in normative legal rules there is clearly a violation because a Regent is a public official who publicly advertises and promotes the products of a private company.

#### **CONCLUSION:**

That consumers of flats are based on evidence of the Binding Agreement of Purchase



in the process of bankruptcy of the developer as a concurrent creditor where the definition of the creditor based on article 1 paragraph (2) of the Bankruptcy Act is a person who has a debt due to an agreement or law that can be billed before the court. Agreement in Article 1 (2) of the Act Bankruptcy is Per pact Sale and Purchase Agreement, se to the position of consumers as a creditor concurrent, but creditors concurrent in bankruptcy did not have the privilege, while in the process of bankruptcy if the result bu del bankruptcy was distributed to creditors and creditors and concurrent creditors do not have the right to get a share bu del bankruptcy as where expected. In protecting the rights of concurrent creditors, the concurrent creditors represented by curators may file an Actio Pauliana lawsuit to the court to cancel the legal actions of the bankrupt debtor as a form of objection to the actions or transactions committed by the bankrupt debtor to a third party. Investigate the assets of other debtors so they can repay debts to creditors.

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