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Developer's Responsibility To Banks And Customers In Home Ownership Credit (KPR) Agreements With Buy Back Guarantees

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Abstract : Buy back guarantee is a guarantee from the developer for mortgage repayment provided by the bank to customers / debtors by buying back housing units purchased by buyers / customers. In practice, the buyback made by the developer from the bank is in accordance with the remaining debt(outstanding) of the last home ownership loan in the bank. This means that the buy back guarantee made by the developer is the price of the house at the time of purchase minus the down payment cost of the house that has been received by the developer and the installment of home ownership loans that have been received by the bank from customers. The purpose of this study is to analyze the developer's responsibility to banks that provide Home Ownership Loans (KPR) to customers with a buy back guarantee and to analyze the legal protection of customers in buying back guarantees for down payments that have been paid to developers and credit installments that have been paid to banks. This research uses normative juridical research methods or doctrinal legal research, namely research that emphasizes the analysis of legal issues by using legal principles, laws and literature materials related to the legal issues researched and analyzed in this study.The result of this study is the developer's responsibility for banks that provide Home Ownership Loans (KPR) to customers with a buy-back guarantee guarantee is to carry out a buyback of the house that is collateral by paying the remaining debt from the customer to the bank. Legal protection for customers in buying back guarantees for advances that have been paid to developers and credit installments that have been paid to banks has not been regulated in the legislation, so that the status of advances in the event of cancellation of the agreement (default) by the buyer is the buyer / customer Cannot ask for back the down payment that has been given to the seller. In addition, the developer only returns to the buyer/customer the mortgage installment money that the buyer/customer has paid to the bank, because it is considered a customer's risk as a defaulting debtor.

Keywords : Responsibility, Home Ownership Credit, Buy Back Guarantee

1. Introduction

A. Background

There are government arrangements for equitable development and welfare of the people, the government provides facilities in the form of assistance in acquiring houses for the community in the form of credit, arrangements on Home Ownership Loans (KPR) are available at bank financial institutions addressed to customers / debtors or through developer intermediaries. Home Ownership Credit (KPR) for developers has a very important meaning in helping to reduce the cost of buying a house for developer consumers.

Bank as a distributor of funds to the public has been regulated in Article 8 Paragraph (1) of Law Number 7 of 1992 concerning Banking as amended by Law

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Number 10 of 1998 (UUPerbankan) regulates, in the distribution of bank credit must be based on confidence in debtors which in the provisions of this belief explanation relates to the existence of credit guarantees, and in Article 11 of the Banking Law regulated the provisions for providing guarantees by Bank Indonesia.

In this case, Buy Back Guarantee is an agreement between banks and developers related to guarantees in Home Ownership Loans (KPR) for developers because it is an important factor in avoiding non-performing loans. To overcome the problem of these risks, then in

The Cooperation Agreement between the bank and the developer includes a promise from the developer to buy back collateral if the credit facility provided by the Bank to the debtor is not smooth payment or

In the Buy Back Guarantee, the guarantee is carried out by the developer on the basis of the right to "buy back" as stipulated in Article 1519 of the Civil Code. "Buying back" which is interpreted in this Buy Back Guarantee is the repayment of the credit debtor's debt to the bank accompanied by the withdrawal of the debtor's housing unit that had previously been sold by the developer against it. Thus, the developer is considered to have bought back the customer/debtor's housing unit through payment of a sum of money used by the developer to pay off the customer/debtor's debt to the bank.

Here it can be concluded that the responsibility of the developer in the Buy Back Guarantee is to carry out the buyback of the house that is collateral by paying the remaining debtfrom the customer to the bank.

The buy back guarantee is currently widely used in providing Home Ownership Credit (KPR) facilities. This guarantee occurs because the project (house building or house) financed by the bank is still in the process of construction by the developer, the certificate has not been completed to register its rights on behalf of the developer (it is still in the process of being managed at the land office), so it cannot be signed a sale and purchase deed on behalf of the buyer, while the house or house building will be guaranteed to the bank. In such conditions the bank will accept the guarantee, even though the binding of the guarantee cannot be done perfectly, namely charging the object of the guarantee with the right of dependent. Therefore, a form of bond is needed between the bank and the developer in the form of a buy back guarantee, as an effort to protect the interests of creditors / banks.1

The provision of buy back guarantee by the developer to the bank is based on the distribution of mortgage loans to consumers whose funds are received directly by the developer as repayment of housing units, while the bank has not been able to bind the guarantee of Liability Rights for the housing units it finances. Therefore, banks require a buyback guarantee from the developer until the certificate of the housing unit is completed.

Inpractice, the developer in carrying out the buyback of the house does not return the down payment of the house that has been paid by the buyer /

[1] Ariadin Nadjamuddin, "Legal Aspects of the Deed of Buy Back Guarantee and Its Implications for Banking Institutions", Journal of Legal Research, Volume 1 Number 3, May 2012, Makassar, p.16.

customer to the developer and only returns the buyer / customer money for Home ownership loan installments that have been paid to the bank. Thebuyback that the developer does from the bank is to pay according to the remaining debt (outstanding) of the last home ownership loan. This means that the *buy back guarantee* made by the developer is the price of the house at the time of purchase minus the down payment cost of the house that has been received by the developer and the installment of home ownership loans that have been received by the bank.

In home ownership credit, usually the parties involved are consumers as buyers / debtors, developers as sellers, and banks as creditors. Briefly, the relationship between the parties above in the house procurement transaction through home ownership credit is the consumer as a buyer, buying a house with the developer (seller) by paying a down payment (part of the total house price) for example 30% of the overall selling price of the house, meaning that the remaining 70% of consumers borrow / credit through the bank, by the bank the loan / consumer credit is then channeled / disbursed to the developer as repayment for the purchase of a house.

After the consumer pays the down payment to the developer, then the consumer applies for a home ownership loan to the bank appointed by the developer. Then after the bank approves the request from the consumer/debtor, then between the consumer and the developer signs a Sale and Purchase Binding Agreement (PPJB), simultaneously the bank and consumer/debtor carry out a credit contract, namely the signing of a credit agreement/debt recognition with the power of attorney over the rights of the sale and purchase binding agreement. This method is done considering that the house that is the object of sale and purchase has not been completed (purchase by indent) and the certificate is still the status of the parent certificate (has not been broken down per plot).

So broadly speaking there is a legal relationship / agreement as referred to above can be categorized into the following forms:

1) The relationship between consumers and developers is a buying and selling relationship (in this case it is buying and selling houses)
2) The relationship between consumers/debtors and banks is lending and borrowing (in this case it is home ownership loans)
3) The relationship between the developer and the bank is the underwriting (in this case the guarantee of buying back the *Buy Back Guarantee by the* developer).

Based on the background mentioned above, it is considered important to conduct research entitled "DEVELOPER'S RESPONSIBILITY TO BANKS AND CUSTOMERS IN HOME OWNERSHIP CREDIT (KPR) AGREEMENTS WITH *BUY BACK GUARANTEE*".

B. Problem Formulation

This paper raises two problems including the following:

1) What is the developer's responsibility to banks that provide Home Ownership Loans (KPR) to customers with *a buy-back guarantee*?

2) What is the legal protection for customers in *buying back guarantees* for advances that have been paid to developers and credit installments that have been paid to banks?

C. Research Methods

In writing this journal using the type of juridical research - doctrinal law or normaticf which is meant by juridical is a method used in a research that uses principles and laws and regulations to review, see and analyze a problem, while doctrinal or normative legal research is a process to find legal rules, legal principles, legal theories and legal doctrines to use Answering legal issues faced is done by researching library materials (library based) which focuses on reading and studying primary and secondary legal materials.2

So that what is meant by juridical-doctrinal law ornormatic f is a study that emphasizes the reality of law implementation, using principles and regulations

legislation to review, see and analyze a problem and literature legal research carried out by examining library materials or secondary legal materials only.

Secondary Legal Material is material that provides an explanation of primary legal material, such as draft laws, textbooks, research results in journals and magazines, or opinions of experts in the field of law. While Peter Mahmud explained secondary legal material in the form of all publications about law that are not official documents. Publications on the law include; textbooks, legal dictionaries, law journals, and commentaries on court decisions. In accordance with the type of research, this study uses secondary data types in the form of legal materials.[345]

2. Discussion

A. Developer responsibility to banks that provide Home Ownership Loans (KPR) to customers with *a Buy Back Guarantee*

In KPR for developers, an additional agreement (accesoir) can be arranged from the main agreement, namely the mortgage agreement. This additional agreement is a guarantee binding agreement between the bank (creditor) and developer (guarantor) with a guarantee for the repayment of the customer/debtor's debt to the bank called the *Buy Back Guarantee agreement.*[6]

Buy back guarantee is basically a guarantee for creditors from developers to buy back land and house units for the debtor's default . Default is not fulfilling

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[2] Ani Purwati, , *Legal Research Methods Theory and Practice*, Jakad Media Publising, Surabaya, 2020, p. 11.

[3] Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods*RaJa Grafindo Persada, Jakarta, 2004, pp. 29-30

[4] Peter Mahmud Marzuki, *Legal Research*, Kencana, Jakarta, 2005, p. 141

[5] Suratman and H. Philips Dillah, *Legal Research Methods*, alphabetaBandung, 2013, p. 66.

[6] Retno Wahyurini Dominika, 2017, *A buyback guarantee agreement made between the developer and the bank in resolving the problem of bad debts,* Lex Journal : Law & Justice Studies, Vol. 1 No. 2, p.7,URL: http://ejournal.unitomo.ac.id/index.php/hukum/asticle/view/561/340,

or neglecting to carry out obligations as specified in the agreement made between creditors and debtors. 7

The buy back guarantee provided by the developer to the bank in the KPR PKS aims to facilitate or facilitate consumers in finding sources of funds to pay off the price of the housing unit they buy.

The existence of this *Buy Back Guarantee* has consequences for developers to be responsible for taking over all debtor obligations if they neglect their obligations to the Bank providing Home Ownership Credit (KPR) facilities. Thus, there is legal certainty for banks as creditors, customers as debtors, and developers.

In the Buy Back Guarantee, the guarantee is carried out by the developer on the basis of the right to "buy back" as stipulated in Article 1519 of the Civil Code. "Buying back" which is interpreted in this Buy Back Guarantee is the repayment of the debtor's credit debt to the bank accompanied by the withdrawal of the debtor's housing unit that had previously been sold by the developer against it. Thus, the developer is considered to have bought back the debtor's housing unit through the payment of a sum of money used by the developer to pay off the debtor's debt to the bank.

The concept of buying back regulated in BW with the concept of buy back guarantee are two different concepts. The engagement arising in the buy back guarantee is an obligation for the developer as a seller to buy back goods that have been purchased from the debtor as a buyer to pay off the debtor's debt to the creditor. While in Article 1519 BW the purpose of the engagement is only to protect the right of the seller to buy back the goods he has sold.

That the legal position of the buyback guarantee agreement as a guarantee for the purchase of a house through home ownership credit is in accordance with the Theory of Legal Certainty is a feature that cannot be separated from the law, especially for written legal norms. The benefits of the buy back guarantee are the guarantee of buying a house through home ownership credit is very important that the default buyer can be repaid by the developer, the certainty of the repurchase by the Developer is poured through a buy back guarantee, and the fairness of the purpose of the buy back guarantee as an accesoir agreement (supplementary agreement) in the principal agreement that can provide justice to the bank in case of bad credit or default.

In the opinion of Subekti and the provisions of Article 1238 of the Civil Code, default can be in the form of a debtor not paying off the loan at all, paying off the loan but not on time, paying off the loan but not in accordance with the agreement, or doing something that according to the agreement should not be done.8

The engagement arising from the buy back guarantee agreement will only be fulfilled by the developer if the debtor defaults, in other words, the obligation

[7] Salim H.S. ,2007, Introduction to Written Civil Law (BW), Jakarta p.180.

[8] Djaja S. Meliala, 2015, *Development of Civil Law on Objects and the Law of Engagement*,Bandung, Nuansa Aulia, p. 75.

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for the developer to fulfill the engagement in the buy back guarantee agreement has a requirement, namely when the debtor defaults. When the debtor is declared in default by the creditor, then immediately the developer is required to fulfill the engagement in the buy back guarantee.

Buy Back Guarantee, guarantee is carried out by developers on the basis of the right to "buy back" as stipulated in Article 1519 of the Civil Code. "Buying back" which is defined in is the repayment of the debtor's debt to the bank accompanied by the withdrawal of the debtor's housing unit that had previously been sold by the developer against it. Thus, the developer is considered to have bought back the debtor's housing unit through the payment of a sum of money used by the developer to pay off the debtor's debt to the bank. From this explanation, the *Buy Back Guarantee* agreement can be classified as material collateral, precisely the guarantee of immovable objects, with the object of the guarantee, namely the debtor's house.

Credit by banks has the purpose, among others, to provide loans of money to debtor customers for later repayment by installments. 9

This indicates that credit can be channeled on the basis of trust from the creditor to the debtor to be able to fulfill his promise as stated in the credit agreement.

The arrangements/terms of cooperation between banks and housing developers in providing Indent Home Ownership Loans (KPR) are determined by the internal in accordance with the Standard Operating Procedure (SOP) in collaborating with developers at the Bank, regulated by a special division that handles consumer and retail products at the head office.

In Bank Indonesia Circular Letter number 15/40/DKMP dated 24 September 2013 concerning the Application of Risk Management to Banks that provide credit or financing for property ownership, property-backed consumer loans or financing, and motor vehicle loans or financing, as referred to in number IV letter f it is stated that in order to apply the precautionary principle in providing mortgages, the Bank may enter into cooperation agreements with developers that at least contain The ability of the developer to complete the property or house in accordance with what was agreed with the debtor or customer.

From this event arose a relationship between the two people called an engagement. The covenant establishes an alliance between the two men who make it. In its form, the covenant is a series containing promises or undertakings spoken or written. The purchase of houses, both ready stock and indent through bank mortgages, especially mortgages, begins with a house sale and purchase agreement between consumers and developers, an engagement born by agreement. This process is then continued with the making of a credit agreement between the home buyer (debtor) and the bank as the party that finances the purchase of the house, along with the encumbrance of the house with the Right of Dependent.

[9] Hermansyah, *Indonesian National Banking Law*, Gold Jakarta 2014, hlm. 57.

In such a legal construction, henceforth the buyer is the debtor of the Banking is the creditor, and the house and land belonging to the debtor will be collateral for repayment during the agreed period. Therefore, the occurrence of legal responsibility between the developer and the bank is due to the emergence of a legal event born through an agreement between the bank and the debtor with the provision that the condition of the house purchased by the debtor is still indented so that the developer is fully responsible for the completion of the construction of the house financed by the bank as a provider of funds.

Thus, the developer is fully responsible for completing the construction of the debtor/consumer house as a form of fulfilling the promises that have been mutually agreed upon and stated in the cooperation agreement. The procedure for granting credit is the stages that must be passed before a credit is decided to be disbursed. The goal is to make it easier for banks to assess the feasibility of a credit application.10

The bank's assessment is seen from the credibility of the developer listed in the Bank Indonesia (BI) info and the project proposed for cooperation with the bank. In general, banks always implement a risk management system before cooperating with developers. So, only developers who are eligible or in accordance with the bank's criteria can cooperate with the bank. This means that this cooperation facility is not given to developers carelessly, but through a selection process from the bank.

Developers who want to cooperate with the bank in *indent* home financing through a loan system or Home Ownership Credit (KPR), must first meet several requirements that must be met in accordance with bank rules, In general, customers who come to the bank to obtain credit, of course, the bank does not immediately give credit just like that. Banks need information about the data owned by prospective credit recipients. Where the data is important for banks to assess the condition and ability of customers, so as to foster bank confidence in providing credit. With supporting data, banks can assess customers' ability to manage their business. The bank can also assess the customer's ability to credit requested, whether it can later return or not.

Legal protection for banks through buy-back guarantee agreements greatly protects banks in the event of default constraints, so developers can buy the unit and reduce bank losses in the future. Legal protection for banks through buy-back guarantee agreements provides protection to banks against defaults from debtors is very beneficial for banks because it is deferred to developers in the event of bad loans.

B. Legal protection for customers in the buy back guarantee for advances that have been paid to developers and credit installments that have been paid to bank

Legal Protection is an element that must exist in a state, in every state formation there must be laws to regulate its citizens. In a country, there is a relationship between the state and its citizens. It is this relationship that gives birth to rights and obligations. Legal Protection will be a right for citizens, but on the other hand Legal Protection will be an obligation for the state.

[10] Cashmere *Banking Basics*, King Grafindo Persada, Jakarta 2002Hlm. 124.

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In BW, a sale and purchase based on a previous agreement is allowed for the seller to buy back the goods sold by him to the buyer, with the obligation to return the entire money of the original purchase price at legal costs that have been incurred by the buyer. Thus, the seller has the right to buy back the goods he sold.

In the Buy Back Guarantee, the parties who promise to buy back the house are between the developer and the bank (creditor), not between the developer and the consumer. Even Buy Back Guarantee agreements are often made without the consumer's knowledge.

A buyback guarantee agreement is a guarantee agreement that is different from the right to buy back as stipulated in Article 1519 BW which contains a rule that: "The power to repurchase goods that have been sold, arises because of an agreement, which still gives the right to the seller to take back the goods he sold by returning the original purchase price and providing compensation referred to in Article 1532".

Furthermore, based on the provisions of Article 1532 BW that:

"The seller who uses the purchase agreement shall not only refund the entire purchase price but also reimburse all legal costs, which have been incurred during the purchase and delivery, as well as the costs necessary for corrections and costs that cause the goods sold to increase in price, i.e. the additional amount thereof. He cannot gain possession or goods purchased by him again, other than after fulfilling all these obligations. If the seller regains the price as a result of the repurchase agreement, the goods shall be delivered to him free from all encumbrances and mortgages placed upon him by the buyer, but he shall keep the lease agreements which in good faith have been made by the buyer".

Then, Article 1338 of the Civil Code explains, all consents made in accordance with the law apply as law to those who make them. The agreement is irrevocable other than by agreement of both parties, or for reasons prescribed by law, so the agreement must be executed in good faith.

In this case regarding the down payment, it can be an option for buyers to get a guarantee of the goods they want so that it can be said to be a milestone. Down payment is money given by the buyer to the seller as a sign of the purchase of goods by the buyer to the seller where the remaining payment will be given after the goods are received.

Down payment is money given by the buyer to the seller (developer) as a sign of the purchase of goods by the buyer to the seller. Buyers who want to cancel a sale and purchase agreement, then the sale and purchase agreement will be void, but the buyer cannot receive or withdraw the down payment. Down Payment (DP) in buying and selling occurs between the agreement of two parties when buying and selling. The implementation of this sale and purchase agreement must meet the legal conditions of the agreement stipulated in Article 1320 of the Civil Code.

However, what is the down payment status if the trade is cancelled? When the buyer wants to cancel a sale and purchase agreement, the sale and purchase agreement will be void, but the buyer cannot receive or withdraw the down payment. Likewise, in customary law, it is explained, if the advance giver keeps the agreement, the advance is declared lost. Exception, if in an agreement there is an article in which both the buyer and the seller can cancel a sale and purchase agreement in accordance with what has been agreed,

But in this case it is caused because the buyer defaults (breaks promises) so that the buyer cannot ask to return the down payment (panjar) that has been given to the seller / developer.

Meanwhile, if the person who neglects the agreement is the recipient of the down payment or the seller / developer, then the seller must return the down payment in the amount of the down payment given by the buyer. This is in accordance with Article 1464 of the Civil Code which explains, if the purchase is made by giving a stipend, then either party cannot cancel the purchase by ordering to have or return the money.

The legal basis, Article 1464 of the Civil Code, reads: "If the purchase *is made by giving a deposit,* then either party cannot cancel the purchase by ordering to have or return the money".

In judicial practice, there have also been several Supreme Court rulings that essentially affirm that buyers are not obliged to return advances (panjar), as follows:

1) Decision of the Supreme Court of the Republic of Indonesia No. 2661 K / Civil / 2004 dated February 28, 2006, with legal considerations:
   "Since it turns out that the Plaintiff/Appellant defaulted on not paying the remaining shortfall in the payment of Rp. 375,000,000 (three hundred and seventy-five million rupiah) until the agreed date i.e. March 22, 2003, then according to custom in the world of business/trade the Defendant/Appellant has no obligation to return the advance payment to the Plaintiff/Appellant".
2) Tanjung Karang PN Decision No. 5/Pdt.G/2015/PN.Tjk (has permanent legal force) dated August 31, 2015, states:
   "That because it cannot be canceled unilaterally, if the cancellation is due to the Seller's default, he must return the deposit along with the costs incurred to the buyer, while if the cancellation is due to the buyer's default, the Seller is not obliged to return the deposit *(see Supreme Court Decision. RI. No. 2661 K/Civil/2004)".*

Based on the description above, it can be concluded that the legal protection of customers in buying back guarantees for advances that have been paid to developers and credit installments that have been paid to banks has not been regulated in the legislation, so that the status of advances in the event of cancellation of the agreement (default) by the buyer is the buyer / customer Cannot ask for back the down payment that has been given to the seller. In addition, the developer only returns the mortgage installments that have been paid by the buyer / customer to the bank, because it is considered a customer's risk as a defaulting debtor.

3. Conclusion

Based on the previous discussion, two conclusions can be drawn, namely the developer's responsibility to the bank that provides Home Ownership Loans (KPR) to customers with *a buyback guarantee* is to carry out a buyback of the house that is collateral by paying the remaining debt from the customer to the bank. *Buy back* guarantee is a guarantee for the repurchase of housing units purchased by consumers. Due to the legal relationship between banks and mortgage debtors, the form of return is described as collateral for mortgage repayment provided by the bank to the debtor.

Legal protection for customers in *buying back guarantees* for advances that have been paid to developers and credit installments that have been paid to banks has not been regulated in the law, so that the status of advances in the event of unilateral cancellation of the agreement by the buyer is the buyer / customer Cannot ask for back the down payment that has been given to the seller. In addition, the developer only returns to the buyer/customer the mortgage installment money that the buyer/customer has paid to the bank, because it is considered a customer's risk as a defaulting debtor.

4. Suggestion

Although the deed of the *Buy Back Guarantee* agreement adheres to the principles of consensualism (based on agreement) and freedom of contract, it is better in the deed involving developers, banks, and customers / debtors clearly stated the legal clauses, so that the faces have legal protection and there will be no conflicts and things that are detrimental to all parties.

5. Referances

Books

Amiruddin And Zainal Asikin, 2004, Introduction To Legal Research Methods, Raja Grafindo Persada, Jakarta.

Ani Purwati, 2020, Legal Research Methods Theory And Practice, Jakad Media Publishing, Surabaya.

Djaja S. Meliala, 2015, Development Of Civil Law On Objects And Binding Law, Nuansa Aulia, Bandung.

Hermansyah, 2014, Indonesian National Banking Law, Kencana, Jakarta.

Kasmir, 2002, Banking Basics, Raja Grafindo Persada, Jakarta.

Peter Mahmud Marzuki, 2005, Legal Research, Kencana, Jakarta.

Salim H.S., 2007, Introduction To Written Civil Law (Bw), Jakarta.

Suratman And H. Philips Dillah, 2013, Legal Research Methods, Alfabeta, Bandung.

Journal

Ariadin Nadjamuddin. 2012. " Legal Aspects Of The Buy Back Guarantee Act And Its Implications For Banking Institutions". Journal Of Legal Research. Volume 1 Number 3. Makassar

Retno Wahyurini Dominika, 2017, "Buy Back Guarantee Agreement Made Between Developer And Bank In Resolving Bad Credit Problem", Lex Journal : Law & Justice Study, Vol.1 No. 2, Url :

Http://Ejournal.Unitomo.Ac.Id/Index.Php/Hukum/Asticle/View/561/340, Laws And Regulations

Civil Code (Civil Code)

Law Number 7 Of 1992 Concerning Banking, State Gazette Of The Republic Of Indonesia Of 1992 Number 31 Supplement To The State Gazette Of The Republic Of Indonesia Number 3472, As Amended By Law Number 10 Of 1998, State Gazette Of The Republic Of Indonesia Of 1998 Number 182 Supplement To The State Gazette Of The Republic Of Indonesia Number 3790.