International Journal of Social Science and Human Research

ISSN (print): 2644-0679, ISSN (online): 2644-0695

Volume 07 Issue 05 May 2024

DOI: 10.47191/ijsshr/v7-i05-122, Impact factor- 7.876

Page No: 3480-3491

Buy Back Guarantee between Developer and Creditors: Study of Apartment Sale and Purchase Agreements Based on the Pre-Project Selling System

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ABSTRACT: This research aims to understand the Buy Back Guarantee guarantee for the Apartment sale and purchase agreement based on the Pre-Project Selling System in home ownership credit and efforts to resolve the sale and purchase of Apartments between the Developer and the buyer from the realization of the Buy Back Guarantee guarantee which can provide justice for the parties. The main focus of this research is guaranteeing the repurchase of apartment units for mortgage debtors, to efficiently resolve defaults or payment failures and protect banks. Even though it is not yet strictly regulated in Indonesian law, the Buy Back Guarantee fulfills the elements of Article 1820 of the Civil Code. The dispute resolution clause prioritizes deliberation, but goes to court if that fails, which takes time and costs too much. This research uses a normative juridical approach with a qualitative descriptive analysis method, examining various regulations, legal literature and relevant cases. The research results show that buy back guarantees play an important role in maintaining trust and legal certainty for creditors. However, the effectiveness of this guarantee is highly dependent on the clarity of the clauses in the PPJB, the developer's compliance with the agreement, as well as supervision from the relevant authorities. This study provides recommendations for improving legal protection for creditors through improving regulations and stricter law enforcement.

KEYWORDS: Buy back guarantee, developer, creditor, sales and purchase agreement, pre-project selling.

I. INTRODUCTION

The Republic of Indonesia is a country that has a legal basis for carrying out the state life of its people, this is as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as "UUDNRI 1945") Article 1 paragraph (3) UUDNRI 1945 reads:

"Indonesia is a country of law."

And therefore, in order for there to be legal certainty regarding an applicable law, all actions and actions carried out by citizens must be based on statutory regulations.

In the concept of the State of Law, it is idealized that what must be the commander-in-chief in the dynamics of state life is law, not politics or economics. Therefore, the jargon commonly used in English to refer to the principle of the rule of law is 'the rule of law, not of man'. What is called government is essentially the law as a system, not individuals who only act as 'puppets' in the scenario of the system that regulates it.[1]

Paying attention to the provisions of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which expressly grants rights to citizens, Article 28H paragraph (1) reads:

> "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment."

This is in line with the intent of preamble (b) of Law Number 1 of 2011 concerning Housing and Settlement Areas as well as Law Number 39 of 1999 concerning Human Rights Article 40 of Precaution (b) No. 1 of 2011 concerning Housing and Settlement Areas, reads:

> "The state is responsible for protecting the entire Indonesian nation through the provision of housing and residential areas so that people are able to live and live in decent and affordable houses in healthy, safe, harmonious and sustainable housing throughout Indonesia."

Article 40 of Law Number 39 of 1999 concerning Human Rights reads:

[1] https://www.pn-gunungsitoli.go.id/artikel/gagasan-negara-hukum-indonesia, Gagasan Negara Hokum Indonesia, Prof. Dr. Jimmy Asshiddiqie, S.H, diunduh tanggal 2 Januari 2024.

"Everyone has the right to live and live a decent life."

The right as an individual to housing or residence is a basic right or human right to continue living or live sustainably and maintain human dignity. The state is obliged to be present to protect, respect and implement it, as in Article 8 of Law Number 39 of 1999 concerning Human Rights which reads:

"The protection, promotion, enforcement and fulfillment of human rights is primarily the responsibility of the state."

The rule of law guarantees the physical and spiritual welfare of its people, as well as achieving this prosperity through national development. National development also realizes prosperity in a fair and equitable manner, as one of the ideals of the Indonesian people's struggle for the realization of a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and the main elements of people's welfare are the fulfillment of the need for housing and housing area.[2]

Housing or settlement is a basic need for every human being. As the population increases, the need for housing and/or settlements or residences increases, while the available land in the form of land is very limited. Apart from being a basic human need as intended, a house also functions as a residence or shelter that humans use to shelter from climate disturbances and other living creatures.[3] In line with the community's need for housing with an apartment concept and the existence of developers who have both financial capabilities and expertise in building apartments. The Government of the Republic of Indonesia also supports developing the concept of housing development that can be lived in together in a multi-storey building, where the units can be owned separately and built both horizontally and vertically. Such housing development is in accordance with the needs of our society today, especially urban communities.[4] The construction of flats can also include meeting the needs of upper, middle and low income people.[5]

The construction of flats is generally carried out by the government, regional government, regionally owned enterprises, state-owned enterprises, limited liability companies (entrepreneurs) or by an Indonesian citizen. Entrepreneurs who operate in the property sector, especially developers, develop multi-storey residential buildings in the form of flats. Flats are multi-storey buildings built in an environment that are divided into sections that are structured functionally in both horizontal and vertical directions, and are units that can each be owned and used separately, especially for residential areas, which equipped with shared parts, shared objects, and shared land.[6]

The support of the Government of the Republic of Indonesia for the fulfillment of condominium construction is proven by the issuance of Law Number 16 of 1985 concerning Condominiums, the concept of which adopts the condominium concept. The concept of condominium is a legal term used in the United States and parts of Canada. Australia and British Columbia in Canada call it strata title.[7] Strata title is the ownership right to an apartment unit.

The implementation of these flats is regulated in Article 1 of Law no. 20 of 2011 concerning Flats (hereinafter referred to as the Flats Law), states:

"a multi-story building constructed in an environment that is differentiated into functionally structured sections, both horizontally and vertically, and are units that can each be owned and utilized separately, especially for residential areas equipped with common parts, common objects, and common land."

In general, flats are divided into 4 (four) types, namely:[8]

1) Public flats are flats that are constructed to meet housing needs intended for low-income people;
2) Special flats are flats that are built to meet certain needs;
3) State Flats are flats that are controlled by the State and used as a means of family development, residence or residence, as well as supporting the implementation of the duties of officials and/or civil servants;
4) Commercial Flats are flats that are constructed to make a profit.

The construction of commercial flats or better known as apartments is carried out by private limited companies/developers. Therefore, we will discuss further about commercial flats, namely apartments. In general, when building apartments, problems often occur between developers and buyers, which often arise during the process of implementing apartment unit transactions.

Often the developer's apartment sales marketing department carries out sales strategies using the Pre-Project Selling system, namely promotion or marketing carried out before the construction of the apartment is carried out, so that what the developer offers

[2] Adrian Sutedi, *Hukum Rumah Susun dan Apartemen,* (Jakarta:Sinar Grafika), 2010, Hlm.157.

[3] Yunesha Ratih Fitriani *Implementasi Subrogasi dan Lastgeving sebagai Instrument Hukum Dalam Peralihan Hak Atas Tanah*", 2017.

[4] Arie S Hutagalung, "*Dinamika Pengaturan Rumah Susun Atau Apartemen, Hukum dan Pembangunan"* (Vol. 34, No. 4 (2004), Hlm. 317.

[5] Urip Santoso, *Op.Cit,* Hlm. 402.

[6] Urip Santoso, *Hukum Perumahan,* (Jakarta: Kencana Prenada Media Group, 2014), Hlm. 53.

[7] Adrian Sutedi, Op.Cit, Hlm. 138.

[8] Wibowo Tunardy, Hak Milik Atas Satuan Rumah Susun, http://www.jurnalhukum.com/hak-milik-atas-satuan-rumah-susun/, diakses 23 Agustus 2023.

is in the form of illustrations, drawings or designs. Pre-Project Selling marketing is often carried out by developers so that consumers understand market interest in the construction they are marketing.

The marketing of the Pre-Project Selling system is stated in Article 42 Paragraph (1) of the Sarusun Law as long as the developer fulfills the provisions specified in Article 42 Paragraph (2) of the Sarusun Law must at least:

(1) Certainty of spatial targets;
(2) Certainty of the status of land rights;
(3) Certainty of ownership status of the condominium;
(4) Have complete permits for building flats;
(5) Guarantee for the construction of the flat from the guarantor institution.

In the Flats Law, developers are allowed to sell flats or apartment units that have not yet been built or are being built to buyers by signing a Sale and Purchase Agreement (hereinafter referred to as PPJB) before the construction of the flats begins or through a Pre-Project Selling system which contains authority. and the obligations of the parties are then stated in a deed of sale and purchase and the settlement is carried out by cash or cash payment, gradual payment, and Home Ownership Credit at a Bank or Financing Institution.[9]

According to Herlien Budiono, PPJB functions as a preliminary agreement from which the main or main agreement will be made at a later date.[10] Thus PPJB is classified as an obligatory agreement, where the seller agrees to give the house being sold to the buyer. However, legally PPJB does not cause a transfer of rights between the seller and the buyer, because PPJB is only an agreement, where to transfer a right a transfer must be carried out (levering). The PPJB must be made legally as regulated in Article 1320 of the Civil Code which contains, namely:

(1) Agreement between the parties making it;
(2) The parties making it are adults or legally competent;
(3) The agreement is made because there is something agreed upon;
(4) The object of the agreement must not be an object prohibited by law.

Implementation of PPJB is contained in Law no. 1 of 2011 concerning Housing and Settlement Areas and is further regulated in PUPR Ministerial Regulation (Permen) No. 16 of 2021 concerning the Implementation of Preliminary Sale and Purchase Agreements or Sale and Purchase Agreements for Public Houses and Public Flats, which allows for a house sale and purchase agreement to be made. The purpose of creating PPJB is confirmed in SEMA No. 4 of 2016, is generally made to make it easier or faster for developers to sell residential property to buyers, where the main agreement, namely the making of a Sale and Purchase Deed (hereinafter referred to as AJB) is carried out at a later date. So PPJB is intended to create a house sale and purchase agreement between the seller and buyer while preparing the main agreement, namely AJB.

Considering that property prices are expensive and increase every year and only people with middle and upper class economic status can own land, this is a factor in the difficulty of buying property in cash so this becomes an alternative for buyers to pay in installments, generally called credit. through a banking institution by applying for a Home Ownership Credit (KPR). So in this case the bank's position is the embodiment of an agent of development which plays a role in credit distribution activities.[11] In line with its role in the national economy, banks act as collectors and distributors of public funds.[12]

The definition of credit is formulated in article 1 point 11 of Law Number 10 of 1998 as providing funds for people in need in the form of loans, which creates an obligation for the borrower to return the money borrowed within a certain time period along with the accompanying interest, as well as giving rise to the right to collect from the bank to collect the money borrowed from the borrower. Based on this understanding, the legal relationship between a borrower (debtor) and a lender (creditor) is a loan agreement or debts based on an agreement or agreement on the amount borrowed, the payment period and the agreed interest.[13] When buying and selling land using a KPR facility, it is possible for buyers not to pay in cash. Banks play the role of providing financing by charging credit to debtors.[14]

For the purposes of purchasing a house, banks provide loan facilities in the form of KPR based on the Attachment to Bank Indonesia Circular Letter Number 12/38/DPNP concerning Guidelines for Preparing Standard Operating Procedures for Home

[9]Maria S. W. Sumardjono, *Kebijakan Pertanahan Antara Regulasi & Implementasi*, Buku Kompas, Jakarta Tahun 2001, Hlm. 161.

[10]Dewi Kurnia Putri, Amin Purnawan, *Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas*, Jurnal Akta, Vol. 4, No. 4, Desember 2017, Hlm. 632.

[11]Trisadini dan Shomad, *Hukum Perbankan Nasional Indonesia*, Kencana, Jakarta, 2016, Hlm. 9.

[12] Pasal 3 Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 Tentang Perubahan Atas Undang-UndangNomor 7 Tahun 1992 Tentang Perbankan.

[13] Hermansyah, *Hukum Perbankan Nasional Indonesia*, Prenada Media, Jakarta, 2005, Hlm. 55.

[14] Abdul Kadir, *Op. Cit.,* Hlm. 181

Ownership Credit Administration in the Context of Securitization (hereinafter referred to as SEBI No. 2/38/DPNP) KPR is defined as credit intended for the purchase of property by individual debtors, where the property purchased becomes collateral and the value of the loan provided does not exceed the value of the property purchased. It can be understood that KPR is a real credit agreement. Where it requires a gift of the object used as collateral so that the collateral is the assessor, the existence of the agreement depends on the main agreement.[15]

Credit agreements by banks are generally standard contracts, meaning that the agreement is made by one party, namely the bank, so that it is not possible for the debtor to bargain or negotiate the contents of the agreement, the debtor can only learn to accept or reject the contents of the agreement.[16]

Because it was made unilaterally, the Consumer Protection Law (UUPK) limits provisions that cannot be included in a standard agreement, including:[17]

(1) Provisions stating that the business actor is not responsible for the object agreed upon.
(2) Provisions that explain the prohibition on returning objects purchased by consumers.
(3) Provisions that include a power of attorney from the consumer.
(4) Provisions that eliminate consumer rights.
(5) Provisions that regulate consumers to comply with other regulations.
(6) Provisions explaining the power to guarantee goods purchased by consumers to business actors.

Apart from that, UUPK also requires business actors to make agreements that can be read and understood by consumers. Furthermore, in the KPR disbursement process, debtors are required to:

(1) Submit land title certificate, PPJB or AJB, building construction permit (IMB) and mortgage rights certificate signed by the prospective debtor.
(2) Sign a guarantee binding agreement.
(3) Authorize a notary or PPAT to submit collateral binding documents such as mortgage deeds or fiduciary deeds.
(4) Create a savings account at the designated bank and authorize the debit of the account for installment payments.
(5) Make KPR installment payments until they are paid in full.[18]

In this way, a mortgage can be realized if the house object that is mortgaged by the bank or purchased by the debtor has been signed by the AJB before the PPAT and the certificate has been registered in the name of the debtor so that it can be guaranteed by means of a mortgage right.[19] So the legal position of the debtor as the guarantor and the bank's position as the recipient of the collateral or preferred creditor takes precedence over the collateral as an effort to guarantee repayment of the KPR facility received by the debtor.[20] This is regulated in Article 2 of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 (hereinafter referred to as the Banking Law). In particular, the regulation of guarantees is one of the prudential principles of banks as stipulated in the explanatory provisions of Article 8 Paragraph (1) of the Banking Law that guarantees are an important factor in preventing the risk of problems in lending, including in KPR for developers as well as Article 11 of the Banking Law It also contains regulations regarding guarantees in credit distribution as an effort to maintain and increase bank resilience. However, the provisions of these articles have not yet regulated further regarding the types of collateral that can be provided in credit agreements, which indicates that there are still unclear norms in the provisions of Article 8 Paragraph (1) and Article 11 of the Banking Law.

In relation to KPR for developers, there is an additional agreement (accessoir) which regulates the guarantee for the debtor's debt to the bank which is carried out by the developer as ordered by the bank as creditor, which is called a Buy Back Guarantee. The definition of a Buy Back Guarantee is a guarantee given by the developer to the Bank to buy back the credit collateral in a bad mortgage by transferring the remaining credit receivables to the Developer. Buy Back Guarantee refers to the definition of guarantee based on the provisions in Article 1820 of the Civil Code, namely an agreement in which a third party (guarantor) binds himself to the creditor to guarantee the repayment of the debtor's debt to the creditor if the debtor is in default. The legal relationship that occurs is between the guarantor and the creditor, after the guarantor makes payment to the creditor, the guarantor has the right to

[15] *Ibid.,* Hlm. 66.

[16] *Ibid.,* Hlm. 66.

[17] Pasal 18 ayat (1) Undang - undang Nomor 8 tahun 1999 tentang Perlindungan Konsumen.

[18] Lampiran Surat Edaran Nomor 12 / 38 / DPNP tentang Pedoman Penyusunan Standard Operating Procedure Administrasi Kredit Pemilikan Rumah Dalam Rangka Sekuritisasi, Bank Indonesia, 2010

[19] Abdul Kadir, *Hukum Perdata Indonesia*, Citra Aditya Bakti, Bandung, 1990, Hlm. 181

[20] Frieda Hasbullah, *Hukum Kebendaan Perdata Hak – Hak yang Memberikan Jaminan Jilid 2*, CV Indhill CO,Jakarta, 2009, Hlm. 143

demand payment from the debtor. However, in fact, the Buy Back Guarantee is very detrimental to the debtor because the debtor is not aware of the existence of a Cooperation Agreement between the developer and the Bank providing the credit facility which includes a clause on the existence of a Buy Back Guarantee Agreement and a Subrogation Agreement which form the legal basis (legal standing) for the repurchase of the debtor's house. if the debtor experiences a default.

The agreement ends because payment is narrowly defined as repayment of a debt by the debtor to the creditor.[21] The definition of payment is interpreted broadly in Article 1382 of the Civil Code which states that payments can not only be made by the parties appointed in the debt-receivable agreement but can be made by third parties acting in the interests of the debtor.[22]

As mentioned above, it has been mentioned that there is a possibility of replacing the rights of a debtor, which is called subrogation.[23] Regulations regarding subrogation are contained in Article 1400 of the Civil Code, which defines subrogation as replacing the creditor's position by a third party.[24] The purpose of subrogation is to strengthen the position of a third party who has paid off the debtor's debts and to lend money to the debtor. Subrogation results in the transfer of claim rights and the creditor's position to a third party. The transfer of position includes all rights and demands including privilege rights.[25]

Subrogation is the replacement of the rights (receivables) of an old creditor by a third party/new creditor who has paid, so it can be concluded that subrogation occurs because of payments made by a third party to the previous creditor.[26] The regulation of regulations regarding subrogation in KPR into a statutory regulation is intended to ensure legal certainty, so that legal protection for legal subjects who wish to carry out legal actions is protected by all their rights and obligations. Subrogation can occur either through agreement or as determined by law

According to Charles Mtichell in his book The Law of Subrogation, it is important to know that in the common law system subrogation can be divided into simple subrogation and reviving subrogation.[27] In simple subrogation, payments made by a third party to the creditor are deemed by law not to eliminate the debtor's obligations to the creditor. Therefore, a third party who has paid the debtor's debt to the creditor cannot immediately demand repayment from the debtor. Even creditors who have received payments from third parties can demand further payments from debtors. However, this will lead to unjust enrichment, because creditors receive payments twice and cause losses to third parties. Thus, to avoid unjust enrichment, a third party can request that subrogation be carried out. In this case, a third party acts using the creditor's name to request payment from the debtor. On the other hand, in reviving subrogation, payments made by a third party to the creditor result in the elimination of the debtor's obligations to the creditor. Therefore, the law gives third parties the right to carry out subrogation by taking the place of the old creditor, demanding payment from the debtor. Subrogation is seen as a legal remedy for unjust enrichment received by the debtor for costs incurred by a third party. In this case, the third party submits a request for payment to the debtor using his own name and not the name of the old creditor. Thus, in simple subrogation, subrogation is seen as restitution for the creditor's unjust enrichment (don't let the creditor get two payments for the same debt, from a third party and from the debtor, or in insurance, don't let the insured get two payments, namely from the insurer and from the perpetrator unlawful act), whereas in reviving subrogation, subrogation is seen as restitution for the debtor's unjust enrichment (don't let the debtor obtain debt relief at the expense of a third party free of charge to the detriment of the third party).

This is very interesting to study. There are examples of cases that are used as case studies in this thesis. The breach of contract (default) committed by the Serpong Garden Apartment Developer to the buyer. Where the developer and buyer have agreed to sign a Sales and Purchase Agreement (PPJB) for an apartment unit object. In accordance with the PPJB, the developer will carry out the delivery of apartment units in accordance with the agreement. However, due to the Covid-19 pandemic which has rocked the world economy, the developer has not completed the construction of the apartment building, this has resulted in the developer being unable to fulfill its obligations to buyers regarding the delivery of units in accordance with the clauses contained in the PPJB. As a result of this default, there is compensation given by the Serpong Garden Apartment Developer to the buyer, namely by relocating the unit to another apartment that has been completed along with other additional compensation. So that in not building an apartment building, there is good faith that has been carried out by the developer as a form of accountability in default. But in this case the buyer did not respond to the offer made by the developer.

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[21]Salim H.S, *Hukum Kontrak Teori & Teknik Cetakan Keempat belas*, Sinar Grafika, Jakarta, 2019, Hlm. 175.

[22] Pasal 1382 Kitab Undang – Undang Hukum Perdata.

[23]Subekti, *Pokok – Pokok Hukum Perdata Cetakan ke Dua Puluh Sembilan*, PT Intermesa, Jakarta, 1992, Hlm.154.

[24]Pasal 1400 Kitab Undang – Undang Hukum Perdata.

[25]Salim H.S, *Hukum Kontrak Teori & Teknik Cetakan Keempat belas*, Sinar Grafika, Jakarta, 2019, Hlm. 177.

[26] Arthur Daniel P. Sitorus, *Perbedaan Cessie, Novasi dan Subrogasi*, https://indonesiare.co.id/id/article/perbedaan-cessie-novasi-dan-subrogasi, diakses tanggal 26 September 2023 Pukul 13:00 WIB.

[27] Suharnoko,Endah Hartati, Doktrin Subrogasi, Novasil Dan Cessie, Jakarta: Ke n ca na Prenada Group, 2008), Hlm. 4.

In this case, the buyer purchases an apartment with a KPR financing facility called PT SFK. In the credit process, even after being offered compensation from the developer, the buyer experiences a default on PT SFK, resulting in an obligation for the developer to pay the debtor's remaining debt to PT SFK, which is based on:

(1) Financing Facility Cooperation Agreement and Buy Back Guarantee Agreement between the developer and PT SFK.

(2) Credit Agreement and Power of Transfer Agreement that have been signed between PT SFK and the Buyer, as well as;

(3) PPJB between the developer and the buyer.

Based on the description above, the author can formulate the problem, namely how the Buy Back Guarantee in the Apartment Sale and Purchase Agreement is based on Pre-Project Selling at the Serpong Garden Apartment which is in conflict with Land Law and how the Settlement of the Sale and Purchase of Apartments between the Developer and the Buyer results from the Realization of the Buy Guarantee Back Guarantee which can provide justice for the parties.

II. RESEARCH METHODS

The type of research that the author will use in this research is Normative Juridical. Normative legal research is research that is based on studies that are in accordance with established legal theories and rules. Normative Juridical also functions to provide juridical arguments when there is a vacuum, ambiguity and conflict of norms. Normative legal research aims to provide an overview regarding the material that the author will discuss, in this case regarding the legal aspects that must be considered before entering into a Sale-Purchase Agreement on a collateral unit object, theoretically and analytically along with the juridical aspects.

The data used in normative legal research is primary data in the form of observations, and secondary data in the form of primary legal materials, secondary and tertiary materials.

III. RESULTS AND DISCUSSION

A. Guaranteed Buy Back Guarantee in the Apartment Sale and Purchase Agreement under the Pre-Project Selling System

Currently, the conditions above are mostly applied or implemented in the house sales business, where for the sale of a house by way of indent (order) a credit contract can be implemented under the right of a binding sale and purchase agreement.

Based on the explanation above, the current conditions above mean that the parties involved in house buying and selling transactions are consumers, developers and credit granting banks. Judging from the title of the agreement made between the consumer and the developer, between the consumer and the bank, and between the developer and the bank, in general the legal/agreement relationship 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, home ownership credit).
3) The relationship between the developer and the bank is one of guarantee (in this case the Buy Back Guarantee by the developer).[28]

The author found and obtained 4 (three) agreements for the purchase of flats (apartments) made between buyers as debtors. The developer is the developer and the bank is the creditor. The agreement is as follows:

1. **Cooperation Agreement for Financing Sale and Purchase of Residential and Non-Residential Flats Number: 012/BD/PKS/SFK-HAP/062020:**
   a. Date: July 23, 2020.
   b. Party: PT. Hutama Anugrah Propertindo (Developer) and PT. Family Financial Friends (SFK).
   c. Contents: Developer and SFK agree to work together in financing the purchase of units at the Serpong Garden Apartment. The developer provides a guarantee for repayment of the debtor's debt to SFK if there is a default such as a delay in installment payments 3 times in a row or more than 90 days. The developer is responsible for paying off the debtor's debt, including interest and other costs, up to a maximum of the facility disbursement proceeds received by the debtor.
2. **Buy Back Agreement "Buy Back Guarantee" No. 013/BD/BBG/SFK-HAP/062020:**
   a. **Date**: July 23, 2020.
   b. **Party:** PT. Hutama Anugrah Propertindo (Guarantor) and PT. Family Financial Friends (SFK).
   c. Content: The guarantor is committed to paying off the debtor's obligations to SFK if the debtor defaults, after SFK provides three warning letters. Guarantee applies if the debtor is in arrears in installments 3 times in a row or more than 90 calendar days.
3. **Apartment Unit Reservation Agreement (PPSA) Number: 0445/PPSA-APT/UID/SGA-HAP/12/2020:**
   a. **Date**: December 22, 2020.
   b. **Party:** PT. Hutama Anugrah Propertindo (Developer) and Erlina Fitri Setyowati (Buyer).

[28] http://www.hukum123.com/trik-menyelesaikan-kredit-bermasalah-di-bank/diakses pada tanggal 11 November 2023.

c. **Contents:** This agreement regulates the ordering of apartment units by the buyer. If payment is made through a credit facility and the buyer is in default, the Developer has the right to cancel the agreement and all money received will be forfeited. The developer also has the right to collaborate with third parties in improving facility services without further notification to the buyer.

4. **Subrogation Deed Number 90:**
   a. **Party:** PT. Hutama Anugrah Propertindo (Developer) and PT. Family Financial Friends (SFK).
   b. **Content:** Developer takes over the obligations of debtors who are in arrears in payments for apartment units after SFK sends a warning letter. The developer paid the debtor's debt to SFK in full on February 22 2021 and obtained subrogation rights over the collateralized property.

Based on observations made by the author, in home ownership loans, 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 transaction for procuring or purchasing an apartment via KPR is as follows:

1. The debtor buys the apartment from the developer by paying a down payment (part of the total house price) of 10% of the overall selling price of the apartment, while the remaining 90% of the debtor borrows/credits through the guarantor bank as creditor, which the creditor then distributes/disburses to the developer as payment for the purchase of the house after the implementation of the credit agreement on the basis of the rights to the sale and purchase agreement/apartment unit reservation agreement (PPSA) which is also known as the preliminary sale and purchase agreement.
2. There was a breach of contract (default) committed by the Serpong Garden Apartment Developer to the buyer. Where the developer and debtor have agreed to sign a PPSA, in accordance with the clauses in the PPSA, the developer will carry out the handover of the apartment units in accordance with the agreement. However, due to the Covid-19 pandemic which has rocked the world economy, the developer has not completed the construction of the apartment building, this has resulted in the developer being unable to fulfill its obligations to debtors regarding the delivery of units in accordance with the clauses contained in the PPJB. As a result of this default, there is compensation given by the Serpong Garden Apartment Developer to the buyer, namely by relocating the unit to another apartment that has been completed along with other additional compensation. So that in not building an apartment building, there is good faith that has been carried out by the developer as a form of accountability in default.
3. The good faith made by the developer in his offer was not responded to by the debtor.
4. In this case the debtor purchased an apartment with a KPR financing facility called PT SFK. In the credit process, even after being offered compensation from the developer, the debtor experiences default (default) to PT SFK, resulting in an obligation for the developer to pay the debtor's remaining debt to PT SFK, which is based on:
   1) Financing Facility Cooperation Agreement and Buy Back Guarantee Agreement between the developer and PT SFK.
   2) Credit Agreement and Power of Transfer Agreement that have been signed between PT SFK and the debtor, as well as;
   3) PPSA between the developer and the debtor.
5. In the event that the debtor defaults on payments to the creditor, the creditor provides a Buy Back settlement letter, and the developer sends a notification letter to the debtor that as a result of the default, the developer will carry out a Buy Back. This is done before the developer makes payment for the Buy Back.
6. The debtor rejected the notification letter from the developer, on the grounds that the developer had also defaulted on the delivery of the unit, therefore the developer had to compensate the debtor for all of his money.
7. The developer mediates with the debtor and informs him that at the beginning before the debtor defaulted on payment, the developer had tried to communicate and offer compensation due to the failure to deliver the apartment units, but all the efforts made by the developer were ignored by the debtor. So in this case, if the debtor wants to obtain rights in accordance with the PPSA clause, then the debtor is not allowed to default on creditors.
8. Mediation between the developer and the debtor did not reach an agreement on the resolution (solution), therefore the debtor invited the creditor to help the debtor become a mediator to mediate this problem.
9. Mediation between the developer and the debtor did not reach an agreement on a resolution (solution), therefore the debtor complained to agencies or other parties such as: PUPR, Tangerang Regency Government, the Indonesian Consumers Foundation, with a copy to the developer.
10. Regarding complaints to the 3 (three) agencies above, the Developer is only invited for clarification by the Indonesian Consumers Foundation. And the developer fulfilled the invitation for clarification through zoom meetings which were held 2 (two) times.
11. In a meeting memo via zoom meeting between developers, debtors, the Indonesian Consumers Foundation and creditors. An agreement was reached that the debtor wanted to refund all funds for the developer's default, in this case the developer was open to reaching an agreement on the condition that the debtor continued to follow the administrative procedures requested

by the developer and creditors, and this was agreed upon by the developer, the Indonesian Consumers Foundation and creditors, but not agreed upon by the debtor.

12. The debtor does not want to follow these conditions, and due to the meeting via zoom meeting in the point above, there is no subsequent meeting, so this process is quite difficult (long-winded).
13. Meanwhile, on the other hand, developers continue to be charged interest, fines and Buy Back bills by creditors which must be paid immediately.
14. Because the debtor remains in his decision of not wanting to follow the administrative procedures which at the meeting via zoom meeting were agreed upon by many parties, based on this, the developer continues to pay the Buy Back settlement, and this is in accordance with the procedural provisions stated in the signed Agreement The parties.
15. That the developer as guarantor hereby binds himself to guarantee the Debtor's obligations to the creditor and will pay off the Debtor's Huang if the Debtor defaults.
16. After the payment has been made by the developer, the developer and the creditor will make a Subrogation Agreement which will be executed before a Notary.
17. The implementation of subrogation is stated in Article 1400 of the Civil Code which stipulates that subrogation is the replacement of rights by a third party who pays the creditor.

Buy Back Guarantee arrangements are currently widely used in providing mortgage facilities. This guarantee for the Buy Back Guarantee occurs because the development project with credit guarantees (house building) which has been financed by banking institutions is still in the process of being built by the developer, the title certificate has not yet been completed in the name of the developer (it is still in the processing process at the Land Office, either in the form of transferring the name in the name of the developer or still in the process of splitting/breaking the certificate), so that in the process of binding with banking it is not yet possible to sign the sale and purchase deed in the name of the buyer or sign for binding collateral, while the building or house has become collateral in banking . Under these conditions, the bank will accept the guarantee, even though the guarantee cannot be tied perfectly, namely by encumbering the collateral object with a mortgage. With this in mind, a bond is needed between the bank and the developer, namely in the form of a Buy Back Guarantee, as an effort to protect the interests of banking institutions/creditors.

Buy Back Guarantee is an English term which literally means buy back guarantee. So far there is no literature or references written about the first use of the term Buy Back Guarantee to mean or guarantee from developers for credit received by consumers/debtors from banks in cooperation agreements providing home ownership credit facilities in Indonesia. Buy Back Guarantee is closely related to home ownership credit.

Use of Underwriting

Buy Back Guarantee in this case, namely when the consumer does not fulfill the bank's achievements, namely fulfilling the obligations contained in the credit agreement, so that in the interests of the bank, the Buy Back Guarantee is described as a guarantee for the debtor's debt payment obligations if the debtor defaults.

The emergence of the Buy Back Guarantee guarantee in the practice of guarantee law is a consequence of the open nature of contract law in Book III of the Civil Code in article 1338 paragraph (1) of the Civil Code:[29]

“All agreements made legally apply as law to those who make them. An agreement cannot be withdrawn other than by agreement of both parties, or for reasons deemed sufficient by law. An agreement must be carried out in good faith.”

The principle of freedom of contract is adhered to as stated in Article 1338 BW, which gives the widest possible freedom to every person or legal entity to make and determine their own contract, as long as the contract does not conflict with legislation, morality and order. generally applicable. This principle of freedom of contract provides flexibility for any party to make their own contract, determine the contents of the contract according to their wishes, as long as the contract clauses do not violate or conflict with statutory regulations (Article 1337 BW).

Guarantee with a Buy Back Guarantee was initially unknown in the practice of guarantees in banking institutions, both for collateral for movable objects and for collateral for immovable objects, both before and after the enactment of Law Number 4 of 1996 concerning Mortgage Rights and Law Number: 42 1999 concerning Fiduciary Guarantees, because of the normative provisions of guarantee law regulated in the Civil Code and these two laws are considered to represent the interests of creditors in binding credit guarantees.[30]

In line with the development of guarantee practices, especially in banking institutions, even though guarantees have been tied perfectly by Notaries and Land Deed Making Officials (PPAT) in accordance with legislation related to guarantee law with executorial power, banking institutions still require that there be guarantees that are considered more efficient and effective even though it does not have executive power in the event of default.

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[29] R Subekti dan R Tjitrosudibio. “*Kitab Undang-Undang Hukum Perdata (Burgelijk Wetboek),”* Cet 35, PT. Pradnya Paramita, Jakarta (2004): Hlm. 342.

[30] R Subekti dan R Tjitrosudibio. Ibid. Hlm. 415.

The role of the Buy Back Guarantee in KPR is a guarantee for the repurchase of housing units purchased by consumers, which in practice is due to the existence of debts and receivables between the bank and the KPR debtor. The form of development is as a guarantee for the repayment of the KPR given by the bank to the debtor. If a claim occurs, the payment to the bank is considered by the developer as a repurchase of the consumer's housing unit and by the bank is considered as repayment of the mortgage debtor's debt. So with the Buy Back Guarantee the bank gets certainty regarding mortgage repayment.

The Buy Back Guarantee provided by the developer to the bank in the KPR Cooperation Agreement aims to facilitate or make it easier for consumers to find sources of funds to make payments on the purchase of housing units from the developer. So the Buy Back Guarantee facility is only provided for home ownership credit facilities by developers. Which has the aim of purchasing a housing unit by disbursing funds from banking funding sources.

The existence of a Buy Back Guarantee in this case should still be able to accommodate and play a role in providing legal protection and preferences for the parties, just like the existence of guarantee institutions that already exist and are known in the guarantee legal system.

It should be noted that the Buy Back Guarantee agreement was initially the will of the seller to provide a guarantee to the buyer if in the future there is a loss or risk to the goods purchased, then the seller will buy back the goods/objects. However, currently this is no longer the case, it is creditors who request and want a Buy Back Guarantee agreement. This is driven by the principles of prudential banking which have been applied by banks to streamline auction efforts which have been used by banking institutions to resolve problematic or bad loans if debtors default.

To facilitate the implementation of the Buy Back by the developer, even though the credit agreement has included a clause regarding settlement of the debtor's debt through a Buy Back Guarantee instrument, the debtor must still make a statement that if the debtor is in default then he agrees to be taken over by the developer and calculations will be carried out. The notary must assist in implementing the Buy Back Guarantee. At the time of transfer, you must provide an explanation and suggest completing these calculations before the collateral is transferred to a third party. Apart from the statement, there is also a power of attorney to sell to the bank to sell the collateral object either with a Buy Back Guarantee or with other instruments.

This opinion is in line with expert opinion,[31] The issue of guarantees is strictly regulated in juridical norms regarding how to carry out or implement obligations and rights, so that for example, to facilitate the implementation of the Buy Back Guarantee, the developer must provide a statement and give the bank the freedom to debit the developer's account, where the developer must prepare funds in escrow account to fulfill its obligations, so that, without the debtor's objection, the bank can transfer or sell the debtor's collateral goods/objects to the developer. In this implementation, the most important thing is the settlement of the debtor's rights, such as down payments and installments that have been paid during the time until the default, must still be calculated and handed over to the debtor after the Buy Back is carried out by the developer.

So, the research results show that the developer's position in the buying and selling relationship of housing units with the Buy Back Guarantee provisions is as a guarantor when consumers or banking customers or financial institutions default on mortgage agreements. Buy Back Guarantee is a guarantee by a third party which is not identical to the guarantee agreement (borgtocht) as regulated in Article 1820 of the Civil Code, Article 1400 of the Civil Code, and Article 1401 of the Civil Code, because the guarantor by a third party in a borgtocht is not limited, in other words, the third party can be anyone. as long as they are willing to guarantee the debtor's debt, while in the Buy Back Guarantee the specific guarantor is only the developer. The implementation of the Buy Back Guarantee stated in the cooperation agreement is very dependent on the good faith of the parties themselves without being able to carry out real execution against the developer.

Almost all cooperation agreements providing home ownership credit facilities between developers and banks always regulate or agree on a Buy Back Guarantee (developer's guarantee for repayment of the debtor's debt). The use of the Buy Back Guarantee guarantee often causes problems between developers and banks and between banks and consumers due to the lack of clarity or detail in the Buy Back Guarantee arrangements in the agreement so that each party interprets their own wishes (multiple interpretations) so that they are not harmed.

B. Settlement of sale and purchase of apartments between developers and buyers which can provide justice for the parties

In the Buy Back Guarantee agreement there is a clause that regulates dispute resolution issues, so the parties agree to resolve it through deliberation and consensus. If deliberation and consensus cannot resolve the dispute, the parties agree to resolve it through court (litigation). If the court route is not successful, of course this procedure will take longer and be more lengthy because it has to go through a lawsuit process and can go through several levels of justice.

Regarding this research, the first step that has been taken by the bank and developer is to carry out deliberation and consensus, namely by settling outside of court (non-litigation), which is sometimes called Alternative Dispute Resolution (ADR).[32] According

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[31] Masjchoen Sofwan dan Sri Soedewi, *Hukum Jaminan di Indonesia Pokok- Pokok Hukum Jaminan dan Jaminan Perorangan*, (Yogyakarta: Liberty Offset,. 2003)*, Hlm.*. 11.

[32] Racmadi Usman, 2012, *Mediasi di Pengadilan : dalam Teori dan Praktek*, Sinar Grafika, Jakarta, Hlm.. 8

to Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Arbitration and APS Law) "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, settlement outside the court with consultation, negotiation, mediation, conciliation, or expert assessment". According to Agus Yudha Hernoko, dispute resolution needs to be sought for the best and most elegant resolution, fast, effective and efficient resolution. In this case, the best and ideal solution is a win-win solution pattern, especially through non-litigation, namely through negotiation, mediation, arbitration.[33]

1. Arbitrage

   Arbitration is the resolution of disputes through discretion. Arbitration is different from court in that the court uses a permanent court or standing court, while arbitration uses a tribunal forum which was formed specifically for this activity. Arbitration is regulated in Article 5 of the Arbitration Law and APS which states that:

   "Disputes that can be resolved through arbitration are only disputes in the field of trade and rights which according to law and statutory regulations are fully controlled by the parties to the dispute."[34]

   In disputes that occur regarding the implementation of the subrogation deed or the implementation of the Buy Back Guarantee, both parties can resolve it at the Indonesian National Arbitration Board (BANI). BANI as an institutional arbitration institution in the national scope aims to provide resolution of disputes that arise regarding trade, industrial and financial issues, both national and international, fairly and quickly.[35] Settlement of disputes that occur between developers and debtors can be carried out based on an arbitration agreement made in writing by the parties to the dispute. The arbitration agreement regulated in Article 1 point 3 of the Arbitration Law and APS is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before a dispute arises or a separate arbitration agreement made by the parties after a dispute arises. The arbitration agreement must be made in writing. The existence of a written agreement agreed to by the parties eliminates the parties' right to submit dispute resolution or differences of opinion contained in the agreement to the State court.

2. Negotiation

   Negotiation is the process of achieving mutual satisfaction through discussion and bargaining, deliberation to reach an agreement. The parties come face to face and thoroughly discuss the problems they face in a cooperative and open manner. Negotiation through direct discussion or deliberation between the disputing parties whose results are accepted by the parties. To discuss differences that arise between debtors and developers regarding the implementation of the subrogation deed, this is done through deliberation to reach consensus with the aim of achieving a win-win solution. So, whether the dispute can be resolved or not really depends on the wishes of both parties who have good faith in the problem.[36]

   In implementing a subrogation deed where a dispute occurs between the developer and the debtor, negotiations can be carried out to discuss ownership of the house. The debtor remains firm in his reasons for asking for a down payment for the purchase of the house and credit installments to be paid to the bank. On the other hand, the developer also expressed his opinion that the developer already has a subrogation deed and has authority over the house. In carrying out negotiations, the developer and debtor have prepared negotiations regarding the dispute between the two parties. Next, prepare a strategy to convey the intended offer and the goals of the developer and debtor in order to achieve the offer optimally. After reaching the intended offer, both parties agree to the negotiations and make a commitment.

3. Mediation

   Mediation is intervention in a dispute by a third party (mediator) who is acceptable, impartial and neutral and helps the disputing parties reach a voluntary agreement on the disputed issue. Mediation is almost the same as negotiation, but in mediation there is a mediator who mediates between the debtor and the developer.

   The mediator acts as a facilitator. This shows that the mediator's job is only to assist the disputing parties in resolving problems and does not have the authority to make decisions. The mediator's position is to help the parties reach an agreement that can only be decided by the parties to the dispute. The mediator does not have the authority to force, but is obliged to bring together the disputing parties. The mediator must be able to create conducive conditions that can guarantee the creation of a compromise between the disputing parties to obtain mutually beneficial results.[37]

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[33] Agus Yudha Hernoko, op.cit, Hlm.. 310.

[34] Tampubolon, Wahyu Simon. "Peran*an Seorang Arbiter dalam Penyelesaian Sengketa melalui Arbitrase."* Jurnal Ilmiah Advokasi 7, No. 1 (2019): Hlm. 23-24.

[35] Sudini, Luh Putu, dan Arini, Desak Gede Dwi. "*Eksistensi Badan Arbitrase Nasional Indonesia (BANI) Dalam Penyelesaian Sengketa Perusahaan."* Notariil Jurnal Kenotariatan 2.2 (2017): Hlm. 141-142.

[36] Dewi, Sandra. *"Penyelesaian Sengketa Bisnis antara Negara dan Perusahaan Asing dalam Perdagangan Internasional."* Journal of Criminology and Justice 2, No. 1 (2022); Hlm. 9.

[37] Mamudji, Sri. "*Mediasi Sebagai Alternatif Penyelesaian Sengketa Di Luar Pengadilan."* Jurnal Hukum & Pembangunan 41, No. 1 (2017): Hlm.198.

Dispute resolution through litigation can be done through the courts. The developer or debtor can file a lawsuit with the local District Court to resolve the dispute. However, most dispute resolution through court will take quite a long time to resolve. If one of the parties is not satisfied with the decision issued by the District Court, they can submit an appeal to the High Court so that the dispute can be evaluated and decided again. If you are still not satisfied with the appeal decision, the party who feels aggrieved can file an appeal to the Supreme Court. Furthermore, the final effort that can be taken is to submit a request for judicial review to the Supreme Court, but with certain requirements that must be met in order for the request for judicial review to be approved.

From the description above, it can be seen that the efforts that can be taken are technically, litigation efforts through the Courts require quite a long time, it could even take years to obtain a decision that has permanent legal force. Dispute resolution through litigation also requires quite a bit of money. However, for the most part, this is the route chosen by people in resolving disputes, because generally people only know that dispute resolution is through the courts. And academically, to provide justice to consumers and for the public interest, in the application of land acquisition law it is necessary to adjust the theoretical pattern of movement of legal norms or specific laws, for example from one country to another during the law-making or reform process. law (legal transplantation theory) regarding the Buy Back guarantee concept in pre-project selling of apartments based on the PPJB concept in Indonesian customary law and land law, where there is the power to sell from the developer to the consumer.

CONCLUSIONS

Based on the description in the previous chapters of this research, the following conclusions can be made: Buy Back Guarantee is a guarantee for the repurchase of apartment units purchased by mortgage debtors, which in practice is due to the existence of a legal debt-receivable relationship between the bank and the mortgage debtor. This Buy Back Guarantee is also an implementation in streamlining the resolution of default or failure to pay problems from debtors and developers as well as protecting banks in distributing KPR credit. Even though the Buy Back Guarantee has not been explicitly regulated in Indonesian laws and regulations, the elements of guarantee in Article 1820 of the Civil Code are fulfilled. The Buy Back Guarantee Agreement also does not provide legal certainty for creditors because it does not have the same executorial power as material guarantees. In the Buy Back Guarantee agreement there is a clause that regulates dispute resolution issues, so the parties agree to resolve it through deliberation and consensus. If deliberation and consensus cannot resolve the dispute, the parties agree to resolve it through court (litigation). Litigation efforts take quite a long time because they have to go through a lawsuit process and can go through several levels of justice, and it can even take years to get a decision that has permanent legal force. Dispute resolution through litigation also requires quite a bit of money. However, for the most part, this is the route chosen by people in resolving disputes, because generally people only know that dispute resolution is through the courts.

REFERENCES

1) Abdul Kadir, Hukum Perdata Indonesia, Citra Aditya Bakti, Bandung, 1990.
2) Adrian Sutedi, Hukum Rumah Susun dan Apartemen, (Jakarta:Sinar Grafika), 2010.
3) Arie S Hutagalung, “Dinamika Pengaturan Rumah Susun Atau Apartemen, Hukum dan Pembangunan” (Vol. 34, No. 4 (2004).
4) Arthur Daniel P. Sitorus, Perbedaan Cessie, Novasi dan Subrogasi, https://indonesiare.co.id/id/article/perbedaan-cessie-novasi-dan-subrogasi, diakses tanggal 26 September 2023 Pukul 13:00 WIB.
5) Dewi Kurnia Putri, Amin Purnawan, Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas, Jurnal Akta, Vol. 4, No. 4, Desember 2017.
6) Dewi, Sandra. "Penyelesaian Sengketa Bisnis antara Negara dan Perusahaan Asing dalam Perdagangan Internasional." Journal of Criminology and Justice 2, No. 1 (2022).
7) Frieda Hasbullah, Hukum Kebendaan Perdata Hak – Hak yang Memberikan Jaminan Jilid 2, CV Indhill CO, Jakarta, 2009.
8) Hermansyah, Hukum Perbankan Nasional Indonesia, Prenada Media, Jakarta, 2005.
9) http://www.hukum123.com/trik-menyelesaikan-kredit-bermasalah-di-bank/diakses pada tanggal 11 November 2023.
10) https://www.pn-gunungsitoli.go.id/artikel/gagasan-negara-hukum-indonesia, Gagasan Negara Hokum Indonesia, Prof. Dr. Jimmy Asshiddiqie, S.H, diunduh tanggal 2 Januari 2024.
11) Lampiran Surat Edaran Nomor 12 / 38 / DPNP tentang Pedoman Penyusunan Standard Operating Procedure Administrasi Kredit Pemilikan Rumah Dalam Rangka Sekuritisasi, Bank Indonesia, 2010
12) Mamudji, Sri. "Mediasi Sebagai Alternatif Penyelesaian Sengketa Di Luar Pengadilan." Jurnal Hukum & Pembangunan 41, No. 1 (2017).
13) Maria S. W. Sumardjono, Kebijakan Pertanahan Antara Regulasi & Implementasi, Buku Kompas, Jakarta Tahun 2001.
14) Masjchoen Sofwan dan Sri Soedewi, Hukum Jaminan di Indonesia Pokok- Pokok Hukum Jaminan dan Jaminan Perorangan, (Yogyakarta: Liberty Offset. 2003).

15) Pasal 1382 Kitab Undang – Undang Hukum Perdata.
16) Pasal 1400 Kitab Undang – Undang Hukum Perdata.
17) Pasal 18 ayat (1) Undang - undang Nomor 8 tahun 1999 tentang Perlindungan Konsumen.
18) Pasal 3 Undang-Undang Republik Indonesia Nomor 10 Tahun 1998 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan.
19) R Subekti dan R Tjitrosudibio. "Kitab Undang-Undang Hukum Perdata (Burgelijk Wetboek)," Cet 35, PT. Pradnya Paramita, Jakarta (2004).
20) Racmadi Usman, 2012, Mediasi di Pengadilan: dalam Teori dan Praktek, Sinar Grafika, Jakarta.
21) Salim H.S, Hukum Kontrak Teori & Teknik Cetakan Keempat belas, Sinar Grafika, Jakarta, 2019.
22) Steven J. Heim, "Predicting Legal Transplants: The Case of Servitudes in The Russian Federation", Symposium: Social Justice and Development: Critical Issues Facing the Bretton Wood System, Transnational Law & Contemporary Problems, (Spring 1996).
23) Subekti, Pokok – Pokok Hukum Perdata Cetakan ke Dua Puluh Sembilan, PT Intermesa, Jakarta, 1992.
24) Sudini, Luh Putu, dan Arini, Desak Gede Dwi. "Eksistensi Badan Arbitrase Nasional Indonesia (BANI) Dalam Penyelesaian Sengketa Perusahaan." Notariil Jurnal Kenotariatan 2.2 (2017).
25) Suharnoko,Endah Hartati, Doktrin Subrogasi, Novasil Dan Cessie, Jakarta: Ke n ca na Prenada Group, 2008).
26) Tampubolon, Wahyu Simon. "Peranan Seorang Arbiter dalam Penyelesaian Sengketa melalui Arbitrase." Jurnal Ilmiah Advokasi 7, No. 1 (2019).
27) Trisadini dan Shomad, Hukum Perbankan Nasional Indonesia, Kencana, Jakarta, 2016.
28) Urip Santoso, Hukum Perumahan, (Jakarta: Kencana Prenada Media Group, 2014).
29) Wibowo Tunardy, Hak Milik Atas Satuan Rumah Susun, http://www.jurnalhukum.com/hak-milik-atas-satuan-rumah-susun/, diakses 23 Agustus 2023.
30) Yunesha Ratih Fitriani Implementasi Subrogasi dan Lastgeving sebagai Instrument Hukum Dalam Peralihan Hak Atas Tanah", 2017.

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