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Juridical Review of Consumer Protection in Conduct Buying Transactions When the Developer Experiences Bankruptcy

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ABSTRACT

The development of property investment in Indonesia in the form of condominium hotels (condotels) is of interest to the public because it promises double profits, both from unit ownership and hotel management results. In practice, legal problems arise when developers fail to fulfill the terms of the agreement. The aim of this research is to analyze legal protection for consumers in condotel buying and selling transactions when the developer is declared bankrupt, the implementation of Law Number 8 of 1999 concerning Consumer Protection, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, as well as Regulations from the Minister of Public Works and Public Housing regarding property sale and purchase agreements (PPJB). The methods are normative juridical, statutory approach and conceptual approach. Primary legal materials from relevant laws and regulations

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INTRODUCTION

The development of the world of property business in Indonesia is increasingly rapid in line with the increasing public need for housing and long-term investment. One form of investment that has become popular in recent years is condotels, namely properties that combine the concept of apartment ownership with commercial hotel management. In this scheme, the buyer not only obtains the rights to a particular unit, but is also promised profits from the results of hotel management carried out by the hotel developer or operator. This concept offers attractive economic prospects, especially in tourist areas such as Bali, Jakarta and Surabaya, where demand for accommodation continues to increase along with the growth of national tourism. However, behind the attractiveness of this investment, there are quite complex legal issues, especially when the developer fails to fulfill the terms of the agreement due to bankruptcy. Developer bankruptcy often has direct implications for the rights of buyers as consumers who have paid part or all of the condotel unit price. In such conditions, buyers often do not receive legal certainty regarding the ownership status of their unit or a refund of the funds that have been paid.

In practice, condotel buying and selling is usually carried out through a Sales and Purchase Agreement (PPJB) mechanism before a sale and purchase deed (AJB) is carried out in the presence of an authorized official. The PPJB contains the developer's obligation to build and hand over condotel units within the specified time. However, if the developer goes bankrupt before the project is completed, then all of the developer's assets will be controlled by the curator to be distributed to creditors in accordance with the provisions of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK and PKPU). In this situation, the condotel buyer is only positioned as a concurrent creditor, namely an ordinary creditor who does not have special rights over the object agreed upon. As a result, the buyer's legal position becomes very weak and is vulnerable to losing rights to the unit that has been paid for. This phenomenon reflects weak legal protection for property consumers, especially in condotel ownership schemes. Law Number 8 of 1999 concerning Consumer Protection (UUPK) has provided a legal basis for every consumer to obtain security, comfort and legal certainty in transactions. However, in bankruptcy practice, this protection is often not effective because there is a conflict between consumer interests and the interests of other creditors who also claim their rights to bankruptcy assets.

From a civil aspect, the legal relationship between buyers and developers is based on a sale and purchase agreement, which is regulated in Book III of the Civil Code (KUH Perdata). In this case, the developer is the seller, while the buyer is the party entitled to receive the achievement in the form of a condotel unit. The developer's failure to fulfill its obligations due to bankruptcy can be categorized as a default, although legally bankruptcy is also considered a situation that cannot be fully accounted for. The problem becomes even more complicated when the condotel unit has not been completed, so ownership cannot be transferred to the buyer. In this context, questions arise regarding what legal protection should be given to consumers as parties who have good intentions and have fulfilled their payment obligations, as well as what their legal position is in the developer's bankruptcy process. This issue is important to study because it concerns justice and legal certainty for people who are victims of failure to build property projects. Therefore, this research seeks to provide a juridical review of consumer protection in condotel buying and selling transactions when the developer experiences bankruptcy, both from the perspective of civil law, bankruptcy law and consumer protection law. Legal protection for consumers basically aims to provide guarantees of legal certainty, justice and balance between business actors and consumers. In the context of buying and selling condotels, the legal relationship between the developer and the buyer does not only include aspects of civil agreements, but also aspects of trust and social responsibility of the developer as a business actor.

LITERATURE RIVIEW

According to Philipus M. Hadjon, legal protection can be divided into two forms, namely preventive legal protection and repressive legal protection. Preventive legal protection is carried out by giving the public the opportunity to raise objections or opinions before a government decision is made, while repressive legal protection is carried out after a dispute or violation of rights occurs. In the context of condotel buying and selling, preventive protection can take the form of requiring transparency of information and strict supervision of development permits, while repressive protection can be carried out through civil suit mechanisms or bankruptcy proceedings. Apart from that, the theory of legal justice put forward by Aristotle and John Rawls is an important basis for analyzing consumer protection. Aristotle emphasized the importance of distributive and corrective justice, namely giving everyone what is their right and correcting injustices that arise. Meanwhile, Rawls emphasized the principle of justice as fairness, that legal protection must ensure that weak parties, in this case consumers, do not become victims of a legal system that favors strong parties such as developers or large creditors.

METHODOLOGY

The research method used in this writing is normative legal research or also known as doctrinal research. Normative legal research is carried out by examining library materials or secondary data in the form of statutory regulations, legal literature, doctrine, and relevant court decisions. This research focuses on applicable positive legal norms and how these norms regulate and protect consumers in condotel buying and selling transactions when developers experience bankruptcy. Thus, this research aims to find legal principles, principles and concepts that can provide legal certainty for condotel buyers as consumers.

1. Research Approach

In this normative legal research several approaches are used, namely:

a. Legislative Approach (Statute Approach)

This approach is carried out by examining various laws and regulations governing consumer protection, bankruptcy and property sale and purchase agreements. Some of the regulations studied include:

- Law Number 8 of 1999 concerning Consumer Protection;
- Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations;
- Civil Code (KUHPerdata), especially regarding engagements and breaches of contract;
- Regulation of the Minister of Public Works and Public Housing concerning Guidelines for Sale and Purchase Agreements (PPJB) for Houses and Flats.

This approach is useful for analyzing the suitability and integration between applicable regulations, as well as seeing the extent to which these norms provide legal protection for condotel consumers.

b. Conceptual Approach (Conceptual Approach)

A conceptual approach is carried out by examining relevant legal concepts, such as legal protection, consumers, default, agreements and bankruptcy. This approach is used to understand the theoretical basis and legal principles that underlie the legal relationship between developers and condotel buyers.

2. Types and Sources of Legal Materials

In normative legal research, the legal materials used consist of:

a. Primary Legal Material, namely legal material that is binding and comes from applicable laws and regulations. Primary legal materials in this research include:

- Law Number 8 of 1999 concerning Consumer Protection;
- Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations;
- Civil Code (KUHPerdata);
- Law Number 20 of 2011 concerning Flats;
- Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019 concerning the Sale and Purchase Agreement System for Flat Units.

b. Secondary Legal Materials, namely materials that provide explanations of primary legal materials, such as books, scientific journals, research results, legal

articles and expert opinions. Examples include the scientific work of Rachmadi Usman on consumer protection law and Munir Fuady on bankruptcy law, both of which are the conceptual basis for this research.
c. Tertiary Legal Materials, namely materials that provide instructions or explanations for primary and secondary legal materials, such as legal dictionaries, legal encyclopedias, or indices of statutory regulations.

3. Legal Material Collection Techniques

Legal materials are collected through library research by searching legal literature, statutory documents and relevant court decisions. The collection technique is carried out using the following steps:

1. Identify legal regulations related to consumer protection, property buying and selling, and bankruptcy;
2. Take an inventory of legal doctrine, expert opinions, and previous research results;
3. Analyze court decisions that describe legal protection practices for property consumers.

RESULT AND DISCUSSION

In the context of buying and selling condotels, the legal relationship between the buyer and the developer arises from a sales and purchase agreement or Sales and Purchase Agreement (PPJB) which regulates the rights and obligations of both parties. Forms of Legal Protection for Consumers in Condotel Buying and Selling Transactions. Legal protection for consumers is basically a form of responsibility of the state and business actors in guaranteeing consumers' rights to security, comfort and legal certainty in every economic transaction. However, in practice, there are many cases where developers go bankrupt and are unable to fulfill their obligations to consumers. This causes the buyer to lose their rights to the condotel unit and the funds they have paid. In such circumstances, legal protection becomes very important to ensure justice and legal certainty for consumers. Based on the provisions of Law Number 8 of 1999 concerning Consumer Protection (UUPK), consumers have the right to obtain comfort, security and safety in consuming goods and/or services, as well as the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services. When a developer fails to hand over a condotel unit due to bankruptcy, it means that there has been a violation of the consumer's rights. Apart from the UUPK, consumer protection is also regulated in Article 1320 of the Civil Code, which confirms that the validity of an agreement requires agreement, skill, a certain object and a halal cause. If one of the elements is not fulfilled due to the bankruptcy of the developer causing the object of the agreement not to be delivered, then the agreement has the potential to be null and void or at least give rise to an obligation for compensation.

In this case, legal protection for condotel consumers can be divided into two forms: Preventive Legal Protection. This protection is carried out before a dispute occurs, for example through clear regulations in the PPJB regarding developer responsibilities, guarantees for project completion, and protection of consumer funds. The government can also require developers to have an escrow account or financial guarantee before marketing a condotel project. Repressive Legal Protection. This protection is provided after a dispute occurs, namely through the mechanism of civil lawsuits, criminal reports of fraud or default, or through the bankruptcy process itself. In this case, the buyer can claim his rights as a concurrent creditor in the bankruptcy process. However, the position of condotel buyers in bankruptcy is still weak because they are only categorized as concurrent creditors (Articles 1131–1132 of the Civil Code), which means their rights are equal to other creditors without special collateral. As a result, consumers often do not obtain adequate refunds from bankruptcy assets.

The Legal Position of Condotel Buyers in Developer Bankruptcy, Bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and PKPU, which states that debtors who have two or more creditors and cannot pay debts that are due can be declared bankrupt by a court decision. After the bankruptcy decision is handed down, all of the debtor's assets become bankruptcy assets (bankruptcy boedel) which are controlled by the curator under the supervision of the supervising judge. In the context of condotel developers, all project assets, including land and buildings that have not been handed over, are included in the bankruptcy estate. In this case, condotel buyers who have made partial or full payments will be considered concurrent creditors, because they do not have material rights to the condotel units purchased before the sale and purchase deed and transfer of name certificate are issued.

Analysis of the Developer's Legal Responsibility towards Consumers. In a condotel sale and purchase agreement, the developer is obliged to build and deliver the unit according to the promised schedule and specifications. If the developer cannot fulfill these obligations due to bankruptcy, the developer is deemed to have committed a default. Based on Article 1243 of the Civil Code, a default can occur due to the debtor's negligence or inability to fulfill his obligations, thereby causing losses to the creditor (in this case the condotel buyer). Thus, the developer has a legal responsibility in the form of a refund or compensation to consumers. However, in bankruptcy, this responsibility will shift to the curator, who is tasked with managing and distributing bankruptcy assets to all creditors according to their levels. Meanwhile, Article 19 paragraph (1) UUPK confirms that business actors are responsible for providing compensation for damage, pollution or loss to consumers resulting from consuming traded goods/services. Thus, even if the developer goes bankrupt, the principle of legal responsibility towards consumers remains attached to the developer's legal entity, and the curator is obliged to take into account consumer claims as part of the company's debt. However, in practice, curators often prioritize creditors who have material collateral, so that consumer claims are only paid a small portion of the proceeds from asset liquidation. This situation shows that normatively, legal protection for condotel consumers has been regulated, but practically it is not yet effective because there is no special mechanism in bankruptcy that prioritizes the rights of property consumers.

Legal Protection Efforts for Condotel Consumers

To strengthen consumer protection in buying and selling condotels, several strategic steps need to be taken, both from regulatory and institutional aspects, including:

Strengthening Regulations

The government needs to add special provisions to the UUK and PKPU that provide preferential standing to property buyers, especially for projects that have not yet been delivered. In addition, the UUPK needs to be expanded to include protection for consumers in property investments such as condotels.

Escrow Account Obligations and Project Insurance

Developers are required to place consumer funds in an escrow account and have project insurance coverage, so that these funds are safe if the developer fails or goes bankrupt.

Transparency and Oversight

Regional governments together with the PUPR Ministry need to tighten supervision of condotel construction permits and implementation of PPJB, so that no developer markets a project without adequate financial certainty.

Protection Through Alternative Dispute Resolution Institutions

Consumers can take the non-litigation route through the Consumer Dispute Resolution Agency (BPSK) or arbitration to obtain compensation quickly without having to wait for the bankruptcy process to complete.

With legal reform and a strong monitoring mechanism, it is hoped that condotel consumers will receive real and fair legal protection, in accordance with the legal principles of consumer protection and the principles of justice in civil law.

CONCLUSIONS

Based on the results of research and discussion regarding legal protection for consumers in condotel buying and selling transactions when the developer goes bankrupt, it can be concluded that the legal system in Indonesia does not yet provide optimal legal protection for property consumers, especially condotel buyers, even though there are several relevant regulations. The legal relationship between consumers and developers is based on a sales and purchase agreement or Sales and Purchase Agreement (PPJB). When the developer is declared bankrupt, the rights of buyers as consumers who have paid part or all of the condotel price change to receivables which must be submitted to the curator in the bankruptcy process. As a result, the buyer loses legal certainty over condotel ownership rights because his position is the same as other concurrent creditors, not as a preferred creditor guaranteed by material rights.

RECOMMENDATIONS

As a step to strengthen legal protection for consumers in condotel buying and selling transactions when the developer goes bankrupt, namely as follows: Reformulation of Property Consumer Protection Regulations: The government needs to revise and refine Law Number 8 of 1999 concerning Consumer Protection, by adding regulations that explicitly protect consumers in the property sector, especially buyers of flats, apartments and condotels. These provisions must include mechanisms for protecting consumer funds, developer legal responsibilities, and consumer rights in the event of bankruptcy. Thus, several things are needed: Reformulation of Property Consumer Protection Regulations, Revision of the Bankruptcy Law. Increased Government Supervision of Developers. Strengthening the Role of Consumer Dispute Resolution Institutions. Preventive Legal Protection through Contract Instruments. Strengthening Consumer Legal Awareness.

FURTHER STUDY

This research still has limitations so that further research is needed on the topic of Juridical Review of Consumer Protection in Conduct Buying Transactions to perfect this research and increase insight for readers and writers.

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