

Legal Aspects of House Sales Agreement With Inhouse

Method

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ABSTRACT

House buying and selling can be performed with cash or installments through bank or KPR/PPR. In addition, a method of buying and selling houses between housing developers and buyers by installments can be also done without mortgage process called inhouse system. The purpose of this study is to determine and analyze the legal aspects of the house sale and purchase agreement using the in-house method. A house sale and purchase agreement and land rights must pay attention to the elements of Article 1320 BW regarding the validity of an agreement. Buyers are required to check the legality of a housing development company and the legality of the housing unit to be built. Prospective buyers are expected not to be tempted by prices far below the housing market price, even though the company offers credit facilities without usury and bank mortgages. It's a good idea for buyers to make transactions if the building has been built, although partly to avoid fraud by the developer. To prevent development companies that do not comply with statutory regulations on settlements, the Regional Government should supervise and enforce the law regarding the legality of housing and infrastructure development, facilities and utilities as well as other environmental permits so that buyers' rights can be fully guaranteed.

***Keywords:** buying and selling of houses, inhouse, agreement*

1. INTRODUCTION

Every person 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, which is a basic human need, and which has a very strategic role in shaping the character and personality of the nation as one of the efforts to develop Indonesian people. completely, self-aware, independent, and productive. The government is still pursuing the right to an adequate place to live for Indonesian citizens (Li, 1999).

A proper form of residence such as a landed house, flat, or other forms as in the statutory regulations, the term House according to is a building that functions as a habitable place to live, a means of fostering family, a reflection of the dignity of its inhabitants, as well as assets for the owner. In several cases, it was found that there were legal problems in housing construction up to the handover of the house, given that the housing construction process takes a long time, and of course a lot of money (Ashworth & Perera, 2018). Housing developers can sell housing units without a Home Ownership Credit, there are advantages that are felt by buyers in this case such as the amount of installments that are lower than those offered by the bank and without interest as well. However, it is necessary to remember that KPR has a plus value, namely the security of the

building object and the legality of the housing unit. This research will discuss more deeply about the aspects of the house sale and purchase agreement with the INHOUSE

2. RESEARCH METHODS

Legal research is a process to find the rule of law, legal principles, and legal doctrine in order to answer the legal issues at hand. This is in accordance with the character of law science. There are two types of legal research proposed by Soerjono Soekanto, namely normative legal research and empirical legal research. The type of research used in this research is normative legal research, which is a study that primarily examines positive legal provisions and legal principles. To support legal research, a research method is used which consists of the approaches used in this legal research, namely the statute approach, the case approach, the comparative approach and the conceptual approach.

This research uses the empirical juridical method, namely juridical research carried out by examining library materials called library research with a statute approach. Sources of legal materials used in this legal research use primary legal materials which are legal materials that are authoritative in nature, meaning they have authority. Primary legal material consists of legislation and judges' decisions. The primary legal material in this research is Law Number. 4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land, Law Number 10 of 1998 concerning Banking, Law Number 8 of 1999 concerning Consumer Protection, Law Number 1 of 2011 concerning Housing and Settlement Areas and Law Number 20 of 2011 concerning Flats, as well as Ministerial regulations as implementing regulations. Meanwhile, secondary legal materials are all legal publications that are not official documents. Publications on law that are used as secondary legal material in research are text books, legal dictionaries, literatures, scientific journals, and other dictionaries as a support.

3. RESULTS AND DISCUSSION

Buying a House with an inhouse installment system

The meaning of an agreement according to Article 1313 BW is an act whereby one or more people bind themselves to one or more other people. The definition of an agreement according to the expert opinion of R. Subekti is a legal event where a person promises to another person or where the two people promise each other to carry out something (Raden Subekti, 1987). In contrast to R Wirjono Projodikoro's opinion, the Agreement is a legal relationship regarding property between two parties where one party promises to do something or does not make a promise while the other party demands its implementation (Prodjodikoro, 1981). According to Subekti, the principle of freedom of contract is a principle which states that basically everyone is

allowed to make a contract (agreement) which contains and of any kind as long as it does not conflict with law, morals and public order. This principle is implied in Article 1338 BW, which in essence states that there is freedom to make any contract as long as it does not conflict with law, order and morality. The freedom to enter into agreements gives birth to various forms and forms of agreement which suit the parties. Buying and selling is included in a group of named agreements, meaning that the law has provided its own name and special arrangements for this agreement. The mutual agreement has been regulated in both BW and WVS.

According to Article 1457 BW that a sale and purchase agreement is an agreement whereby one party binds himself to deliver an object and the other party to pay the promised price. According to R. Subekti in his book, defining buying and selling is a reciprocal agreement in which the seller promises to hand over property rights to an item while the other party to the buyer who promises to pay a price consisting of an amount of money in return for the acquisition of the property rights (Retno Subekti, 2009) . According to Wirjono Prodjodikoro stated that buying and selling is an agreement in which a party binds itself to be obliged to deliver an item and the other party is obliged to pay the price, which both of them agreed (Prodjodikoro, 1981). Furthermore, according to Volmar's opinion, as quoted by Suryodiningrat as saying that:

"buying and selling is a party where one seller (Verkopen) binds himself to another party, the buyer (Loper) to transfer an object in eigendom by obtaining payment from the latter, a certain amount. , in the form of money (Suryodiningrat, 1996).

According to Salim HS, a sale and purchase agreement is an agreement made between the seller and the buyer. In the agreement, the seller is obliged to hand over the object of sale and purchase to the buyer and is entitled to receive the price and the buyer is obliged to pay the price and is entitled to receive the object (Hayyuroza Sofyan Salim & Marietza, 2017)

Objects that can become objects of sale and purchase are all movable and immovable objects, both according to the pile of weight, size, and scales, while those that are not allowed to be traded are (H S Salim & Ali, 1996).

- a. Other people's objects or belongings;
- b. Items that are not permitted by law such as illegal drugs;
- c. Contrary to order,
- d. Good morality.

In essence, the seller's obligations under Article 1474 of the Civil Code consist of two, namely:

- a. The seller's obligation to deliver the goods sold to the buyer;
- b. b.The obligation of the seller is under coverage or guarantee (vrijwaring), that the goods sold do not have any connection, either in the form of claims or differences.

The main obligation of the buyer is to pay the price of the goods purchased at the time and place as agreed in the agreement. Besides the main obligations, there are 3 main obligations of the buyer, namely checking the goods sent by the seller, paying the price of the goods in accordance with the contract, accepting delivery of the goods as stated in the contract. The principle of freedom of contract gives freedom to the parties to determine the form of a treaty, there are two forms of the purchase agreement, namely:

1. The agreement in oral form, which is an agreement made by the parties in an oral form and only by consensus and trust among parties.
2. the agreement in written form, the agreement which is poured into the writing or deed, the deed is divided into two kinds:
 - a. Authentic deed The definition of authentic deed is contained in Article 1868 of the Civil Code, which is a deed made in the form prescribed by law by or before a public official who has the authority to do so at the place where the deed was drawn up. Authentic deed can be in the form of notary deed, deed of official land deed maker (PPAT), deed of mortgage. If there is a dispute regarding the content or implementation of the agreement, then everything contained in the deed is always considered to be true.
 - b. Underhanded Deed Deeds under hand or onderhands are deeds made by the parties without the intermediary of an official. Article 1874 BW states that the deed below is a written signed and made without the intermediary or assistance of a public official.

Regarding the object of the agreement, it can be in the form of sale and purchase of a residential house along with land rights. A house is a building that functions as a place to live that is suitable for habitation, a means of fostering family, a reflection of the dignity of the occupants, as well as assets for the owner. Housing can be provided by means of transfer or relinquishment of land rights by land owners, utilization and transfer of state-owned or regional property lands in accordance with the provisions of laws and regulations, utilization of former state land abandoned lands, land acquisition for development for the public interest in accordance with the provisions. legislation. Legal entities play an important role in housing development, however, there are restrictions on buying and selling houses to consumers, including:

- a. Everyone is prohibited from selling residential neighborhood units or Lisiba that have not completed their land title status.
- b. conduct handover and / or withdraw funds of more than 80% (eighty percent) of the buyer
- c. build housing and / or settlements outside the area specifically designated for housing and settlements
- d. it is prohibited to transfer public infrastructure, facilities and utilities outside of their functions.

- e. it is prohibited to sell ripe land without a house.

The developer can sell before the unit is built or what is known as *pre project selling* which is regulated in Article 42 of the Housing and Settlement Area Law that single houses, row houses, and / or flats which are still in the construction process stage can be marketed through the preliminary sale and purchase agreement system according to with the provisions of laws and regulations. Then in this provision it is stipulated that the preliminary sale and purchase agreement is carried out after meeting the certainty requirements for:

- a. land ownership status;
- b. things that were promised;
- c. ownership of the main building construction permit;
- d. availability of infrastructure, facilities and public utilities; and
- e. housing development at least 20% (twenty percent).

Buyers are obliged to clearly ask about the status of the land rights to be built housing, referring to Article 43 of the Law on Housing and Settlements that construction for houses can be carried out on land:

- a. right of ownership;
- b. right to build
- c. management rights; or
- d. use rights over state land.

Not all consumers or home buyers use KPR as a means of installment for home purchases. In fact, it is found in the field that the sale and purchase of house objects with land and buildings is carried out under the hands of the seller / developer and the buyer. Whereas the sale and purchase of house buildings and land rights using the inhouse system are carried out by:

- a. giving Down Payment of 30% of the selling price of the house that has been set by the developer, or the DP can be paid in installments within a certain period, accompanied by the signing of the Reservation Letter for the housing unit.
- b. After the DP is granted, a sale and purchase agreement is signed between the developer and the buyer which can be done under the hand or in front of a notary
- c. drawing up a PPJB deed by a notary as a binding between the developer and the buyer explaining the installment amount and the period as well as other matters
- d. PPJB as the basis for signing the sale and purchase deed between the buyer and seller if the house unit has been paid in full by the buyer and the house building has been built, do not forget the PPH and BPHTB tax payments.

In-house purchases of houses are in demand by the public due to several factors such as high bank interest which according to certain religious beliefs violates the principles of sharia in

bermuamalah, namely business activities that do not contain elements of usury, maisir, gharar, haram, and zalim. The definition of usury in the Elucidation of Article 2 of the Sharia Banking Law is Article 2 Business activities based on Sharia Principles, among others, are business activities that do not contain the following elements: a. usury, which is an increase in income illegally (vanity), among others in the exchange of similar goods that are not of the same quality, quantity and time of delivery (fadhl), or in lending and borrowing transactions that require the Facility Recipient Customer to return the funds received in excess of the loan principal because the passage of time (nasi'ah). For example, in East Java, there are many Islamic home offers without usury using the in-house installment method, which attracts buyers who avoid usury transactions. Installments using this in-house method have legal issues that have been decided by the Surabaya District Court in decision No. 86 / PDT GS / 2020 / PN.Sby which will be discussed in a special sub-chapter.

Analysis of the Decision of the Surabaya District Court No 86 / Pdt Gs / 2020 / Pn.Sby

Whereas at the beginning the Plaintiff entered into a House Sale and Purchase Agreement with the Defendant as stated in the House Sale and Purchase Agreement (SPJBRI) Number 04 / PING-L / SPJBR / X / 2017 with the Defendant (PT. PIG) represented by the SS Director on the date 21 October 2017. That the price of the house that the Plaintiff has agreed to buy from the Defendant is IDR 303,600,000 (three hundred three million six hundred thousand rupiah) located in Aparna Wiyung Kav.15 with LB / LT: 40m2 / 20 m2. This is stated in the SPJBRI House Sale and Purchase Agreement (Inhouse House Sale and Purchase Agreement) No. 04 / PING-L / SPJBR / X / 2017 article 1 and on the installment table, with a down payment of Rp. 30,000,000 ., (thirty million rupiah) and monthly installments of Rp. 2,850,000 (two million eight hundred and fifty thousand rupiah) for 8 (eight) years. Whereas before signing the SPJBRI House Sale and Purchase Agreement (Letter of Sale and Purchase Agreement) No. 04 / PING-L / SPJBR / X / 2017 and the Advance Payment between the Plaintiff and Defendant. PT PIG stated that it would build the house that had been purchased (Aparna Wiyung Kav.15) then would hand over the house in accordance with Article 4 number (5) in the SPJBRI House Sale and Purchase Agreement (Inhouse House Sale and Purchase Agreement) No.04 / PING -L / SPJBR / X / 2017 After the down payment is paid in full. Whereas then on December 23, 2017, the Plaintiff had paid the down payment for the purchase of a house in Aparna Wiyung Kav. 15 as stated in article 8 number 2 (two) in the SPJBRI House Sale and Purchase Agreement (Letter of Sale and Purchase Agreement) No. 04 / PING-L / SPJBR / X / 2017 amounting to Rp. 30,000,000 ., (Thirty million rupiah).

Then the Plaintiff paid installments for the purchase of a house in the Aparna Wiyung Kav. 15 for 23 (twenty three) months. starting January 2018 - February 2020. with a total paid amounting to Rp. 2,850,000 x 23 = Rp. 65,550,000., (Sixty five million five hundred and fifty).



Whereas later after the Plaintiff paid the down payment for the purchase of the house and paid the installments for the house in Aparna Wiyung Kav.15 up to the 23rd (twenty three) installments, the Defendant had not yet built and made the handover of the house to the Plaintiff in accordance with what had been agreed both. in writing and orally. Whereas on June 3, 2020 the plaintiff sent a request for clarification number: 01 / SNP / KIs / 2020 which in essence requested the settlement of the dispute in accordance with article 9 paragraph 1 of the SPJBRI House Sale and Purchase Agreement (Letter of Sale and Purchase of House Houses) No. 04 / PING-L / SPJBR / X / 2017. That because there was no response to our first letter of clarification on June 10, 2020, we sent a Return letter which basically stated that the request for clarification was not responded to with the number: 02 / SNP / KIs / 2020.

Whereas on June 10, 2020, the Defendant sent a response to a request for clarification which stated that the Defendant admitted that he had not built the object of the house in Aparna Wiyung Kav.15 which had been purchased by the Plaintiff. Whereas on July 1, 2020, we sent a letter of notice / warning Number: 01 / SNP-ADV / Somasi / VI / 2020, asking the Defendant to immediately carry out the obligation to construct the housing unit purchased by the Plaintiff or to return all costs paid by the Plaintiff. . on July 9, 2020, the Defendant sent a letter of response to a summons / warning, which basically admitted that the Defendant had not carried out the construction of the housing unit purchased by the Defendant and offered to move the housing unit with an increase in price. The plaintiff objected because there were additional costs that were requested. Therefore, asked the Defendant to continue to build the Aparna Wiyung Kav.15 unit which had been purchased by the Plaintiff or return the fees paid by the Plaintiff. That on July 20, 2020, the Defendant sent a subpoena response letter, in which the Defendant agreed to carry out the obligation to build a house unit that had been purchased by the Plaintiff, and asked the Plaintiff to pay the unpaid installments for the purchase of a house.

According to the Defendant, the mechanism for the in-house purchase of the Defendant's house was that down payments had been paid, the installment payments had reached 24 times, then the construction would be carried out and after that the handover would be carried out. However, the Plaintiff has not yet reached 24 installments and a fine has been incurred for the late payment of the Plaintiff's installments which have been paid in 23 installments belonging to the Plaintiff so that the Defendant has not yet carried out construction because the Plaintiff has not made the payment as agreed in the SPJBRI No. 04 / PING-L / SPJBRI / X / 2017 PT. PIG has clearly written sanctions and fines in Article 6, which in this case is that if the Plaintiff is in good faith, then it is appropriate to understand the rights and obligations of each party.

In this case, it is necessary to study whether the Defendant has broken his promise or in default on the basis that the Defendant did not carry out his obligation to build the house that the

Plaintiff had purchased and made the handover of the House after the down payment was paid in full in accordance with the SPJBRI House Sale and Purchase Agreement (Sale and Purchase Agreement). Inhouse House) No. 04 / PING-L / SPJBR / X / 2017. In this case, there is an element of default, namely default, namely the failure to carry out the construction of the house as promised by the seller, the doctrine of default according to Salim HS carrying out the agreement is said to have committed an act of default. The concept of Default according to Salim HS is a person or party who cannot or does neglect in the implementation of the obligations stipulated in the agreement made between the parties. Ahmad Qirom Syamsudin argues that default can take the form of (Miru, 2007).

1. Unable to carry out the contents of the agreement clause Is a debtor who is negligent of his obligations / achievements whole;
2. Fulfill the achievement but it is too late. Parties who are late in fulfilling the achievements can include parties who default on their promises;
3. Fulfill the achievement but not in accordance with the clause

It was explained that the debtor carried out the agreement but it was not in accordance with the agreement clauses. Evidence that a person has committed default is required to send a subpoena as stated in Article 1238 of the Civil Code that the Debtor is declared negligent with a warrant, or with a similar deed, and in fact that the buyer has sent a warning letter to the seller to immediately build the house according to what was promised. However, until the defendant was challenged the defendant had not been built, according to the judge, from the evidence and witnesses submitted by the Defendant, none of the evidence indicated that there was an obligation for the plaintiff to pay installments to the 24 new houses purchased by the plaintiff to build or not to build houses. purchased by the plaintiff because of forced circumstances or (*overmacht*), or because the plaintiff is also in default. However, based on witness testimony, Pendik, who is legal from the defendant as well as a contractor partner, testified that the LETTER OF WORKING ORDER kav.15 had only been discharged and worked for the last 2 weeks, because the Defendant did not have the funds to build it. because if it hasn't been paid yet, the witness doesn't dare to build it.

Based on the aforementioned considerations, it is clear that the Defendant has been proven to have broken his promise or default and can prove the arguments for his lawsuit while the defendant cannot prove the arguments for his denial, therefore the plaintiff's petitum number 3 can be granted. Considering that because the Defendant was proven to have broken his promise or default and the Plaintiff asked for the Inhouse House Sale and Purchase Agreement (SPJBRI) Number: 04 / PING-L / SPJBR / X / 2017 Broken due to default (default), the panel of judges granted plaintiff's lawsuit. As a consequence of not building the house, based on article 1243 BW

the debtor is obliged to compensate the creditors for fees, losses and interest if they default. The judges' decisions in this case included:

1. Partially granted the Plaintiff's claim;
2. Declare and Bind the Inhouse House Sale and Purchase Agreement (SPJBRI) Number: 04 / PING-L / SPJBR / X / 2017;
3. To declare that the Defendant committed Default;
4. Declare the Letter of Agreement for the Sale and Purchase of House Houses (SPJBRI) Number: 04 / PING-L / SPJBR / X / 2017 Disconnected due to default (default);
5. Sentenced the Defendant to reimburse costs, losses and interest as well as fines to the Plaintiff with details of the Advance Fee of: Rp. 30,000,000.00 (Thirty Million Rupiah) installments for 23 months amounting to Rp. 2,850,000.00 (two million eight hundred and fifty thousand rupiah) per month x 23 months = Rp. 65,550,000.00 (sixty-five million five hundred and fifty thousand rupiah). So that the total cost is IDR 95,550,000.00 (Ninety Five Million Five Hundred Fifty Thousand Rupiah), Interest: IDR 95,550,000.00 (Ninety Five Million Five Hundred Fifty Thousand Rupiah) X 6% = IDR 5,733,000.00 (Five Million Seven Hundred Thirty Three thousand rupiah) X 3 Years from 2017 to 2020 = so that the total interest to be paid by the Defendant to the Plaintiff is Rp.17,199,000.00 (Seventeen Million One Hundred and Ninety Nine Thousand Rupiah) Fines: Rp. 100,000,000.00 (One Hundred Million Rupiah) and an amount of Rp. 212,749,000. So that the total amount that must be paid by the Defendant to the Plaintiff is Rp. 212,749,000, - (two hundred and twelve million seven hundred and forty-nine thousand rupiah).

4. CONCLUSION

A house sale and purchase agreement and land rights must pay attention to the elements of Article 1320 BW regarding the validity of an agreement. Buyers are required to check the legality of a housing development company along with the legality of the housing units to be built and do not be tempted by prices that are far below the housing market price even though the company offers credit facilities without usury and KPR Bank. It's a good idea for buyers to make transactions if the building has been built, although partly to avoid fraud by the developer.

To prevent construction companies that do not comply with statutory regulations on settlement, the Regional Government should supervise and enforce the law regarding the legality of housing and infrastructure development, facilities and utilities as well as other environmental permits so that the buyer's rights can be fully guaranteed.

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