

## ABSTRAK

### **PENJAMINAN *BUY BACK GUARANTEE* ANTARA DEVELOPER DAN KREDITUR: STUDI PERJANJIAN PENGIKATAN JUAL BELI APARTEMEN BERDASARKAN SISTEM *PRE-PROJECT SELLING***

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*Buy Back Guarantee* merupakan suatu penjaminan atas pembelian kembali unit apartemen yang dibeli oleh debitur KPR, yang di dalam praktek karena adanya hubungan hukum hutang-piutang antara bank dan debitur KPR. *Buy Back Guarantee* ini juga merupakan implementasi dalam mengefisienkan penyelesaian masalah wanprestasi atau gagal bayar dari pihak debitur dan developer serta melindungi bank dalam penyaluran kredit KPR. Walaupun *Buy Back Guarantee* belum diatur secara tegas dalam peraturan perundang-undangan di Indonesia, namun terpenuhi unsur-unsur penanggungan dalam Pasal 1820 KUHPerdara. Perjanjian *Buy Back Guarantee* juga kurang memberikan kepastian hukum bagi kreditur dikarenakan tidak mempunyai kekuatan eksekutorial layaknya jaminan kebendaan. Dalam perjanjian *Buy Back Guarantee* terdapat klausul yang mengatur masalah penyelesaian perselisihan maka para pihak sepakat menyelesaikan melalui jalur musyawarah dan mufakat. Apabila jalan musyawarah dan mufakat tidak dapat menyelesaikan perselisihan maka para pihak sepakat untuk menyelesaikan melalui Pengadilan (Litigasi).. Namun kebanyakan, jalur inilah yang dipilih oleh orang-orang dalam penyelesaian sengketa, karena umumnya masyarakat hanya mengetahui penyelesaian sengketa hanyalah melalui Pengadilan. Penelitian ini menggunakan pendekatan yuridis normatif dengan sifat penelitian *Preskriptif Analitis*, memberikan gambaran atau merumuskan permasalahan sesuai dengan keadaan atau fakta yang ada. Tesis ini mengkaji berbagai peraturan, literatur hukum dan kasus relevan. Hasil penelitian menunjukkan bahwa jaminan *Buy Back Guarantee* berperan penting dalam memberikan keadilan dan kepastian hukum dengan menyesuaikan antara norma transplantasi hukum dengan konsep dasar transaksi jual beli tanah yaitu terang dan tunai, serta adanya kuasa menjual terhadap objek tanah atau bangunan yang diberikan oleh developer kepada pembeli sesuai dengan Hukum Adat maupun Hukum Pertanahan di Indonesia.

**Kata Kunci:** *Buy Back Guarantee, Developer, Kreditur, PPJB, Sistem Pre-Project Selling.*

## **ABSTRACT**

### ***BUY BACK GUARANTEE BETWEEN DEVELOPER AND CREDITOR: STUDY OF APARTMENT SALE AND PURCHASE BINDING AGREEMENT BASED ON PRE-PROJECT SELLING SYSTEM***

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*Buy Back Guarantee is a guarantee for the repurchase of apartment units purchased by KPR debtors, which in practice is due to the existence of a legal debt-receivable relationship between the bank and the KPR debtor. This Buy Back Guarantee is also an implementation in making efficient resolution of default or payment failure problems from debtors and developers as well as protecting banks in distributing mortgage 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). 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. This research uses a normative juridical approach with the nature of analytical prescriptive research, providing a picture or formulating problems according to existing circumstances or facts. This thesis examines various regulations, legal literature and relevant cases. The research results show that the Buy Back Guarantee guarantee plays an important role in providing justice and legal certainty by adapting legal transplantation norms to the basic concept of land sale and purchase transactions, namely clear and cash, as well as the power to sell land or building objects given by the developer to the buyer in accordance with Customary Law and Land Law in Indonesia.*

**Keyword:** *Buy Back Guarantee, Developer, Creditor, PPJB, Pre-Project Selling System.*