PURCHASE BINDING AGREEMENT FOR PARTIES
(PURCHASER AND DEVELOPER)

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Abstract: Purchase Binding Agreement on housing is a preliminary agreement between a
seller and a potential buyer as it is stipulated in Article 42, paragraph 1 of Law No. 1/2011 on
Housing and Residence and in Kemenpera (the Decree of the Minister of Low-
Cost Housing) No. 9/1995 which become the basis for PPJB as the preliminary
agreement. Even though PPJB is consensual, it is made by paying attention to good faith
principle as it is stipulated in Article 1338, paragraph 3 of the Civil Code this thesis
attempted to analyze the legal consequence of PPJB. The research used judicial
normative (doctrinal) with descriptive analytic and explanatory method. The result of
the research showed that the legal consequence of PPJB was binding for the parties
concerned and the legal ground of PPJB was Law No. 1/2011 on Housing and Residence,
Kemenpera No. 9/1995 on the Guidance for Purchase Contract, and Article 1338,
paragraph 1 of the Civil Code.

Keyword: Legal Consequence; Purchase Binding Agreement; Buyers; Developers

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1 Noralia Artnia Sirena, Thesis of Master Program Law Faculty: Asas Ikhlas Bait Dalam Perjanjian
Pendekatan (Four Overviews) Perjanjian Jual Beli (PPJB) Rumi. Law Faculty University of
INTRODUCTION

The definition regarding preliminary agreement is not regulated in Private Law Book, but is inside Article 42 paragraph (1) Act number 1 of 2011 regarding Housing and Residence, which mention that: “single house, series of houses and/or flats which still on development can be marketed through a preliminary agreement system according to the legislation”. Preliminary Purchase Agreement especially in housing is then known as Purchase Binding Agreement. The making of this agreement must be adjusted to the Decree of Low-Cost Minister number 09 of 1995 regarding the Guidance on Purchase Contract. In the consideration, Low-Cost Minister said that there must be a guidance in House purchase contract to secure the interest of the purchaser and the seller, with the Purchase Binding Agreement, it is hoped that the interest of the purchaser and the seller to be more guaranteed.

According to Mariam Darus, before the parties transfer the right on land or house purchased, they would be agreed on a contract binding them to do the purchasing. This contract is consensual, obligator (pacta de contrahendo) and a causa (title) of the purchasing. The contract made by the parties must be made by concerning good will principle, as regulated in Article 1338 (3) Private Law Book, the provision of the Article menas that the agreed contract must be implemented according to the good will (adjusted to decency).

Purchase Binding Agreement is a preliminary contract which must consider the balance and good will principle so that the agreement can guaranty the right certainty of the parties minimize the dispute that may occur. But in its implementation, the contract tends to be hampered. This can be seen in the suit of the verdict in Simalungun District Court No. 37/Pdt/Plw/2012/PN. Sim).
In March 11\textsuperscript{th} 2013, the panel of judges issued the verdict to reject the objection of the purchaser and stated that the purchasers are the incorrect objector. The consideration of the panel of the judges of Simalungun District Court is based on the evidence proposed by the purchaser in the Purchase Binding Agreement which is the preliminary contract along with the receipt of credit which is considered as not fully paid; considering the legal existence between Purchase Binding Agreement of land and house with the cancelation of cooperation between the owner of the land (the heir of Alm. R. Hutabarat) and the developer, which has been cancelled based on the legal verdict; stating that any contract and legal action conducted by the developer based on cooperation contract on 17\textsuperscript{th} October doesn’t bind the land owner, so that he will not be at loss; stating that the purchaser is the incorrect objector, so that the objection is rejected.\footnote{Novalia Amila Simamora, Ass Ikikad Baik dalam Perjanjian Pendahuluan (Foor Overvasskonsart) pada Perjanjian Penjualan Jual Beli (study of the verdict of Simalungun District Court No. 37/PDT/PLW/2012/PN. SIM), Jurnal Hukum, Vol.3 No.3 November 2015, p.1.}

The meaning and measurement of good will is not explained in Private Law Book, because of that, the judge hold an important role in translating or widening the good will teaching. Because of that, the meaning and standard of good will is more depended on the character and the view of the judge developing case by case. So it is quite important to be reviewed regarding the legal consequence of Purchase Binding Agreement which has been agreed by the developer and purchaser as the basis of house purchasing in Griya S Residence.

\textbf{METHOD}

This research is normative legal research (doctrinal). As a normative legal research, the main point is on the library research to obtain secondary data. This research is descriptive analytic and explanatory to describe completely in a whole the relevant legal rule in regards to this research, based on explanations or arguments related to the view of the judges in providing legal protection according to the rule of law principle. Because of that, the approach is statute approach. Besides that, to support the approach, analytical approach is also conducted. Statute approach is used based on good will given the main base of the research is Private Law Book. Good will in the contract implementation first introduced by Private Law Book, as mentioned in Article 1338 (3) Private...
Law Book. Analytical approach was used to know the development of goodwill development in Indonesian practice of contract, especially related to Purchase Binding Agreement as Preliminary Contract.

ANALYSIS AND DISCUSSION

Based on the explanation in background, we can line up the main issue: How and What is the legal consequence from Purchase Binding Agreement of Housing as preliminary contract for purchaser and developer?

Legal Consequence on Purchase Binding Agreement as Preliminary Contract (Voor Overeenkomst)

General Provision regarding Contract

Definition of Contract

The definition of contract has been regulated in Article 1313 Private Law Book that contract or agreement is an action where one or more persons bind themselves to each other or to one other person or more. According to Tan Kamello, contract is "a legal relation between two person or more based on agreement to bind themselves regarding one object with certain goal, causing legal consequence."\(^9\)

Valid Requirement of Contract

According to Article 1320 (1) Private Law Book, an agreement is valid when fulfilling 4 requirements:

a. Being agreed;
b. Capable of making agreement;
c. Regarding one specific matter;
d. An acceptable cause.

The first and second requirements are the subjective requirements to be fulfilled in an agreement, the third and fourth are the objective ones. The burden regarding subjective and objective requirements are important which mean they are related to the consequences they are not fulfilled. Unfulfilled subjective requirements cause the agreement is able to be cancelled. If the objective is not fulfilled, the agreement is completely cancelled by law, which means it is considered to never been existed in the first place. Because of that, the fulfillment of the four requirements in a contract (both subjective and objective) is legal.


**The Birth of a Contract**

According to Article 1233 Private Law Book "each contract is being made, both because agreement, or because of law". By that, agreement is one of the two legal foundations beside law which can cause contract. If we see it based on the practice in society, contract based on agreement is dominating. Based on the sources, the most important one is agreement. With the agreement, parties have every right to make any kind of contract as long as it is not violating the law, contradicting the decency and public order. With the freedom of contract, (partij onomnie, contractvrijheid) the agreeing subjects are not only bound to make agreement which name is appointed by law (Benoede Overeenkomsten) as mentioned in Chapter V to Chapter XVIII Private Law Book III, but are entitled to make agreements which names are not appointed by law, or known as special agreement (Onbenoemde Overeenkomsten).

Contract based on agreement, in principle has the same power the the contract based on law. The basis of the power of an agreement is Article 1338 (1) Private Law Book stating that "every legal agreement is as the law of the parties who made it". The parties can regulate anything in the agreement as long as it is not forbidden by law, decency and customary.

**Principles of Contract**

Contract made by parties must concerns the principles according to Private Law Book as the reference or guidance, and as the limit in regulating and forming the contract so it can be valid for the parties, which can be forced in its implementation. There are some principles which must be concerned in making contract:

1) Consensualism principle (adjusted will);

Consensualism principle appoints that an agreement made by two or more person has bound them so that it has created obligation for the parties in the agreement, right after they agree or reach consensus, even though the agreement only though verbal. This principle can be found in Article 1320 (1) Private Law Book.

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2) Freedom of contract principle

Based on freedom of contract principle, anyone in principle can make any agreement with any kind of content as long as it is not contradicting the law, decency, and public order. The provision on freedom of contract is in Article 1338 (1) Private Law Book stating that “any agreement binds as law for them who made it”.14

3) Binding power principle;

The binding power principle is also called as pacta sunt servanda contained in Article 1338 (1) Private Law Book stating that “any agreement made legally is the law for them who made it”.15

4) Good will principle;

Good will principle can be found in Article 1338 (3) Private Law Book appointing that the agreements must be implemented with good will. Good will can be differed in subjective and objective meaning.16

5) Balance principle;

Balance principle is the continuance of legal equation. Creditor has the power to demand and even claim on payment from the wealth of the debtor. But creditor is also having the burden to implement the contract with good will.17

6) Legal certainty principle;

Contract as one legal figure must contain legal certainty. Certainty can be seen from the binding power as the law for parties.

7) Decency principle;

This principle can be found in Article 1339 Private Law Book explaining that “Agreement is not only binding for the matters firmly stated inside, but also for anything which according to the character of the contract must be subjected to decency, customary and law”.

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14 Saida dan Taufiq El Rahman, Hubungan Asas Kebebasan Berkontrak dan Asas Iktad Bank Pada Saat Prakontrakual Dalam Hukum Perjanjian Indonesia, Jurnal Hukum Perdata, Vol.2 No.5 February 2012, p.3.


General Provision of Purchase Binding Agreement as Preliminary Contract

General Definition of Purchase Binding Agreement

With the freedom of contract, the subject is not only bound to make contracts which names are appointed by law, but also is entitled to make contracts which names are not appointed by law, namely, special agreement or contract. Purchase Binding Agreement is an allowed contract in Private Law Book (special agreement) conducted before the purchase, and the object can be moving or non moving object.

Purchase Binding Agreement is a consensual agreement, which means that the agreement is created when both parties reach a deal regarding the material (moving or non moving object) and agree on the price even though the transfer has not been made or the payment has not been done. (Article 1320 (1) jo. Article 1458 (Private Law Book).

Purchase Binding Agreement is a preliminary agreement subjected to Act number 1 (2011) regarding House and Residence (as lex specialist) Article 42 (1) states that “single house, series of houses, and/or flats in development can marketed through preliminary purchase agreement according to the legislation”. The definition of preliminary purchase contract or agreement is explained in the explanation Article 42 (1) that preliminary purchase contract is an agreement to purchase houses in development between the purchaser and house provider known by authorized official. Preliminary purchase contract is then further regulated in the Decree of Low Cost Housing Minister Number 9 of 1995 regarding Purchase Binding Guidance.

Subject and Object of Purchase Binding Agreement

The subject of Purchase Binding Agreement is the seller and purchaser which has been agreed to buy and sell the object of the purchasing. Indeed, the seller and buyer who bound themselves in Purchase Binding Agreement must fulfill the requirement of capable in making the contract as has been written in Article 1330 Private Law Book.

According to the Decree of Low Cost

The objects of the purchase binding agreement are: 21

a. The width of the building along with architectural picture, map, and building technique specification. The width of the building is mentioned in detail in the purchase binding agreement but the architectural picture, map, and building technique specification are as attachments in the agreement;

b. The width of the land, the status, consent and the rights on it. In purchase binding agreement, the land status in the house is the building rights in process of National Land Institution. The mentioning of the land status is to guaranty that the land is under the authority of the developer and to avoid any unwanted interruption from third party;

c. The land location by mentioning the number of the land, the detail of village, district, county in the purchase binding agreement;

d. The price of the house, land, and the payment process in Article 1 and Article 2 in the Decree of Low Cost Housing Minister number 9/1995.

**Legal Consequence of Purchase Binding Agreement for parties (Buyer and Developer)**

The legal consequence is the consequence of an action conducted to obtain the expected cause by the doer, admitted by law. The conducted action is a legal action done to obtain a cause admitted by law. Because of that, legal consequence is any cause happened from any legal action conducted by legal subject in legal object or any other causes which has considered as legal consequence by law. 22

Legal consequence is the source of the birth of right and obligation for the related legal subjects such as having purchase agreement means creating one legal consequence of the agreement where the legal subject has the right to

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21 Article 1 The decree of Low Cost Housing Minister number 9 of 1995 regarding the guidance of purchase binding agreement, mentioning in detail regarding the land and the house price and the payment process.

have the item and to pay for it. And also, other legal subject has the right to be paid and must transfer the item. So it is obvious that the action of legal subject on the legal object will cause legal consequence. The form of legal consequence is when someone do the purchase, a legal relation is created between both parties.

The purchase binding agreement is a consensual preliminary agreement, but it has created the right and obligation between the parties who made it. In the purchase binding agreement, there are actually provisions regarding the rights and obligations for the purchaser and the seller. Even though basically between purchase binding agreement made by one developer and other developer has no similarity in regulating the right and obligation, but commonly it has the almost similar line up in its regulation according to Act number 1 of 2011 regarding House and Residence. Because of that the legal consequence by the purchase binding agreement is to bind the parties, the developer and the buyer, the legal standing is Act number 1 of 2011 regarding House and Residence as lex specialist, Decree of Low Cost Housing number 8 of 195 regarding Guidance of Purchase Binding Contract related to Article 1320 (1) and Article 1338 (1) Private Law Book as \textit{lex generalis}.

Even though Purchase Binding Agreement is not known in Private Law book, but if its related to the contract factors and the third book of Private Law book regarding contract, Purchase Binding Agreement fulfills the factors as a contract (Article 1320 (1)). According to Article 1338 (1) Private Law Book, stating that contract made legally is as the law for the parties who made it. Because of that, based on the provision Purchase Binding Agreement also cause legal consequence for the parties that is to do everything which has been agreed upon the contract. The consequence of the Purchase Binding Agreement is not the transfer of the material right from the seller to buyer but the contract between the developer and the buyer to do the purchase where the agreement in the purchase binding agreement will be put in the Purchase deed as main agreement.


CONCLUSION

Legal consequence of purchase binding agreement as preliminary contract (voor overeenkomst) is to bind the parties who made it (the developer and the buyer). The legal standing used in purchase binding agreement is Act number 1 of 2011 regarding House and Residence as lex specialist, Decree of Low Cost Housing number 9 of 1995 and Article 1320 (1) and Article 1338 (1) Private Law Book as lex generalis. Preliminary contract of purchase agreement is also further regulated in The Decree of Low Cost Housing Minister number 1 of 1999 regarding the Guidance of Purchase contract. Even though Purchase Binding Agreement is not known in Private Law Book, if it is related to the factors of contract in the third book of Private Law Book, it fulfills the requirement as a contract (Article 1320 (1)). Article 1338 (1) states that the contract made is as the law for the parties who made it. Because of that, based on the provision, purchase binding agreement also cause legal consequence for the parties who made it to do what has been agreed upon the contract to be then written in the Purchase deed.

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