

ABSTRACT

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“THE LEGALITY OF THE BUYBACK GUARENTEE CLAUSE IN COOPERATION AGREEMENTS BETWEEN DEVELOPMENT AND THE BANK BASED ON THE PRICNIPLE OF FREEDOM OF CONTRACT AND CONTRACT BINDING (COURT DECISION NUMBER 733 / Pdt.G / 2018 / PN Jkt.Utr)”

(v + 95 pages)

Preliminary Agreement Deed of Sale and Purchase Agreement on Apartment Ownership (PPJB) is one among two methods of Sale and Purchase of Apartment done by the Indonesia's citizen in Indonesia. Inside the Preliminary Agreement Deed of Sale and Purchase on Apartment, developers are able to market their apartments' unit while the construction is not in a fully completed state. Though permitted, developers are still needed to obey the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11 / PRT / M / 2019 concerning the Preliminary House Buying Agreement System. Other than being beneficial for the developers as the reason of the additional capital that they will receive, this system is also beneficial for the consumers. The consumers are able to pay cheaper than they usually do. Before distributed to the consumers, the developers made an agreement with the bank. One of the clause that exist in cooperation agreement and is often an issue is the buy back guarantee clause. This clause is often at issue with the freedom of contracts principle. The purpose of this clause is to give protection to the bank and to the developers if in time the consumer perform negligence in payment. With this research, the writer tries to see the legality in the buy back clause in an agreement of sale and purchase of apartments/flats that is linked with the freedom of contracts principle and the binding force of the contract principle. This research is done through normative research, legislation approach, and also a case approach. By this research, the writer concludes that the buy back guarantee clause does not violate the freedom of contracts principle and by that binds both party.

Keywords: Apartment, Buy back guarantee, Preliminary Agreement Deed of Sale and Purchase Agreement (PPJB), Freedom of Contract, The Principle of Pacta Sunt Servada

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