



## SETTLEMENT OF APARTMENT ARREARS ON A NON-LITIGATION BASIS BETWEEN MRS. MP AND PT. ELITE ON CONSUMER PROTECTION LAWS

Indra Gunawan\*, Romainur\*\*

### ABSTRACT

Consumer protection is a consequence of the force of law in meeting the interests of consumers. This requires a balance between the quality of service so that creditors/banks improve the quality of service in a fair (honest) manner to inform in detail about advertising and other services. to the ever-changing demands of this era of globalization. The legal force in information is a means of consumer protection in an agreement that is mutually binding between rights and obligations. Consumer protection law as the basis for the settlement of peace underhand on the heading "Settlement of Apartment Arrears in Non-litigation Between Mrs. Mut Pen and PT. ELITEE Related to Consumer Protection Act", is the title that the author gives in this Thesis. With the negotiations, the parties to the dispute where the case is a settlement are willing to continue the process of the rights and obligations of the parties to the dispute under mutually beneficial conditions, by waiving or relinquishing part of their rights in reaching an agreement on certain rights based on the principle of reciprocity to the word agree and there is no element of coercion from the other party.

**Keywords:** consumer protection law; non-litigation; dispute resolution; rights and obligations.

### I. INTRODUCTION

Based on the results of the Central Statistics Agency, Indonesia's gross domestic product growth in the first quarter of 2020 was 2.97 percent, and in the second quarter it contracted by 5.3 percent, and in the third quarter of the same year it also contracted again by 3.49 percent. This is a gross domestic product that has declined for two consecutive quarters which reflects that the Indonesian state has officially experienced an economic recession in this case the Indonesian economic recession must be overcome properly. Policies that can be applied to overcoming the economic downturn are in the financial sector. Financial policy is to increase the percentage of economic growth, price stability, equitable distribution, and balance of payments to recover. The Covid-19 pandemic has had a major impact on the Indonesian economy and the world, especially in the property sector which has weakened credit handling, as we know that this disaster is a comprehensive disaster and has shaken the world economy. Entrepreneurs and consumers have become sluggish as world economic activity weakens. For this reason, expansive financial policies must be applied in increasing the circulation of money in order to increase the amount of money purchased in an effort to recover the economy in times of economic recession. Instruments used in government financial policy, namely: market operations, financial reserve ratios, discounts or reductions in interest payable, effectiveness in credit ratios, and a moral approach to society in dealing with the circulation of money In this situation requires a free credit

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\* National University, Jl. Sawo Manila, Pejaten Ps. Minggu Jakarta, email: indraseds@gmail.com.

\*\*National University: Jl. Sawo Manila, Pejaten Ps. Minggu Jakarta, emai: rumainur@civitas.unas.ac.id.

policy, in which the central bank in channeling and increasing the amount of money in circulation, to facilitate the acquisition of credit as an effort to create and encourage growth economy with increasing money circulating in a weakened society in this Covid condition. Thus, it will revive the project of flats and public housing. Although many invest in housing/apartments as an effort to save the personal lives of consumers who are strong in their finances, many collapses due to the weakening of the economy so that credit drags, many developers/banks/creditors are in arrears, namely pressuring weak consumers to divert their credit to cover their finances by utilizing take over or subrogation to third parties.<sup>1</sup>

### **Background to the Problem**

Flats/apartments are a modern residential governance concept where the maximum possible use of space or land is in meeting the needs of densely populated urban communities with a very high population. The use of space or land in the millennium era is the main choice of multicultural urban communities in search of life, each of which has an economic layer with a class or class of society, such as the Low-Income Community (MBR) group has its own social economy which is then called flats or flats. Meanwhile, able-bodied communities or wealthy flat communities are named apartments or condominiums.

Flats can be obtained by the method of buying in criticism or by the method of buying in cash. Usually, the method of purchasing cash rarely has problems with developers and banks, but if we explore in detail such problems can occur at any time both cash and credit purchases. For example, a cash purchase with the consequence of having to wait for a title/right/use/building certificate from the owner of the initial land purchased/cooperated with the developer to split ownership. Often when the settlement of letters about ownership rights becomes long due to dispute/ownership disputes, namely the rogue of the developer pawning the land certificate in the bank, or the developer fleeing with money from the bank, as a capital owner (lave large lease), namely leasing as a financing activity in the form of capital goods both for business purposes with option rights (finance leasing) and in a business without lease operations so that consumers must be careful in investing in support, and must be able to assess and credibility of developers per bank because we have to look at the Capital Adequacy Ratio (CAR), i.e. Capital Adequacy Ratio above 8%, banks with the formula:

$$\text{CAR} = \frac{\text{Capital}}{\text{Risk-Weighted Assets}} \times 100 \%$$

CAR analysis can show the extent to which banks enjoy risks (Kredit, Statements, Bills) that are also financed by the Community.

The purchase of flats/apartments through the Kredit process is a very high level of risk (high risk) where there are always several variables of problems that will be faced in the future, for example:

- a) Late payment over a long period,
- b) Default
- c) The debtor leaves the world without or using insurance,
- d) Force majeure or emergency caused by a natural disaster (force majeure)

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<sup>1</sup> (Central Statistics Agency 2020)

Housing/flats/apartments (KPR/KPRS/KPA) is a long-term credit process that must be passed by debtors with various instruments of agreements or agreements carried out by Marketing, developers, interviews by banks, and selection of types of crickets and types of insurance. After that, the debtor must also be more careful in determining the method of credit offered by the marketing party, choosing the developer whether the developer has a problem as the author explained above.

In an agreement, there are usually several binding clauses to be agreed between the parties, namely, the Kriditur and the Debtor, the clauses in this agreement are the most important things that must be understood by both parties so that the quality of the agreement has an alignment of obligations and rights of the parties to the agreement, Usually, consumers/debtors are always caught off guard or hasty in agreeing on the clauses contained in the agreement. In this case, creditors/developers always prepare pre-existing clauses, namely standard agreement guidelines that are used continuously regardless of the consumer protection side. Such is the problem that often arises in that the rights of consumers or debtors are always streamlined for the benefit of entrepreneurs/creditors/developers.

Many things have to do with the failure to pay credit or what we know as credit jam/default, one of which is an initial agreement that does not match that offered by the housing/apartment marketing where the marketing persuades it to attract consumers by providing incomplete information about the construction of credit with interest or methods that consumers consider low and light. Business people and marketing always liken the purchase of a house/apartment to an investment where the investment is a profit in the future and if there is a failure in investment, the creditor/entrepreneur can buy back the investment that has been owned by the debtor/consumer with the slogan buyback guarantee. A buyback guarantee is a guarantee to buy back, which is contained in the existing agreement on the Apartment ownership credit agreement (KPA). The regulation regarding the right to repurchase is contained in the Civil Code (KuhPerdata), Article 1519 which stipulates that the seller is entitled to the request for goods that have been sold to consumers. In this case, the role of the developer as a guarantor (borough) for the repayment of the Debtor's previously sold house and is responsible and pays off the debtor's debt to the bank provided that at that time the developer has not completed the construction of the Debtor's house, or the developer has not submitted the original documents such as certificates of land rights, and other important papers relating to the ownership of the house to the bank or creditor.

The definition of investment in owning an apartment is the profit or profit of the apartment owner in the future, such as the resale value in the Tax Object Value which continues to grow every year, or the apartment can be rented out to increase the income of the apartment owner and to reduce the burden of credit. Apartment ownership investment has mushroomed in major cities throughout Indonesia because apartment ownership investment is very profitable from year to year.

In March 2019, which was the beginning of the global crisis due to the Covid-19 pandemic, all sectors of the economy the hotel and apartment sector became slumped due to physical distancing and the danger of a very active spread of the virus, which caused the apartment rental business to slump which of course resulted in the credit ownership process being hampered or dragged down. In recent years COVID-19 has had a major impact on the nation's economy, so the government must think quickly and appropriately must be implemented a situation like this is an expansive monetary policy that must be carried out to increase the amount of money in circulation to increase the purchasing power of consumers/people at a time when the economy is in a state of recession. For this reason, the government implements various monetary policy instruments, namely: open market operations, minimum reserve requirement ratio, discount rate, credit rationing, and moral persuasion under these conditions, a loose credit policy is needed. As we know that loose credit is a policy of Bank Indonesia to increase the

money supply. Loose credit conditions will affect transaction activities or entrepreneurs who get credit easily<sup>2</sup>

Drag credit is a condition in which a debtor, both an individual and a business entity, is no longer able to pay his debt to the lender on time. This can be caused by the debtor losing his main income, failing to make planned payments, and others. If the condition of bad debts is not resolved immediately, it will worsen the debtor's credit history or assessment. A bad credit history, it will have an impact on the Credit Smoothness Classification by itself.

Standard agreements are often a dilemma for consumers, where they comply with the likes or dislikes of "Take or Leave", in which case consumers and consumer protection agencies are often never involved in forming agreements in the realization of contracts between Codes, Banks and Debtors. This reflects the weak balance and principle of justice in the expediency of the law in Indonesia. Various efforts that must be put forward in overcoming consumer/debtor conflicts with producers/infrastructure/companies are to put forward the principle of fairness as a benchmark for the balance between consumer satisfaction and varying prices.

In writing this manuscript, the author chose the title "Settlement of Apartment Arrears Between Mrs. Mut Pen and PT ELITE a subsidiary of PT Pakuwon Related to the Consumer Protection Law", as a legal remedy in resolving conflicts or disputes caused by drag credit, as a result of the Covid-19 disaster, as we know Covid-19 has destroyed the world economy, especially Indonesia. Covid is a relative Majeure force set by the Government, as announced in the presidential decree of the Republic of Indonesia Number 12 of 2020 where the power of Majeure is relative to a non-natural disaster but a national disaster. Relative Force Majeure is a waiver of fees, losses, and interest but not up to the cancellation of the agreement. So that in dispute resolution or settlement of arrears in a non-litigation way is the best and shortest way to settle negotiations with the parties elegantly, because the Covid 19 pandemic is a new legal event, which allows many legal vacuums to occur in emergencies in this world, both human rights and binding and coercive laws.<sup>3</sup>

### **1. Problem Formulation**

In the formulation problem the author classifies the problem as follows:

- a. What are the provisions governing the settlement of apartment arrears?
- b. How to apply the settlement of apartment arrears and the legal certainty governing Credit Hours in non-litigation.

### **2. Purpose and usefulness of the study**

In the context and use of this paper, the author divides into 3 things as follows:

- a. Checking Disputes and Settlement of Apartment Arrears,
- b. Explaining and Finding Legal Protection to Apartment Owners Affected by Apartment Arrears Problems
- c. Reviewing and Scientifically Criticizing the Handling of Non-Litigation Dispute Cases between PT Elitee and Mrs. Mut Pen

### **3. Theoretical Framework and Conceptual Framework**

- a. Theoretical Framework

Certificate of Property Rights in Flats Units (SHMSRS), always issued as proof of legal ownership of the apartment. Based on Article 43 to Article 48 of Law Number 20 of 2011

<sup>2</sup> Rahayu Puspasari, Head of Communication and Informatics Services Bureau of the Ministry of Finance, publication of the State Budget (Performance and Facts), edition (<http://kemenkeu.go.id/apbnkita> April 2020).

<sup>3</sup> POJK Number 58/POJK.05/2020 concerning Amendments to the Financial Services Authority Number 14/POJK.05/2020. About the Countercyclical Policy on the Impact of the Spread of Coronavirus 19.

concerning Flats, the sale of unfinished apartments is carried out by making a Sales and Purchase Binding Agreement (PPJB). Consumers in this case who buy or credit apartments by using the apartment ownership credit form (KPA), apartments that are under construction or have been completed which are then occupied by the owner with KPA do not have to provide their PPJB as collateral in this Buy Back Guarantee agreement in violation of past provisions such as misuse of ownership of documents that have not been authorized ownership.

In this case, the author explains the solution to the problem of Solving Apartment Arrears by non-litigants and evaluating the problem of the case between Mrs. Mut Pen and PT. A subsidiary of Elite PT. Pakuwon on ppjb a partner for the benefit of KPA in the legal system of state treasury guarantees in the country, as well as to check the rights of banks or creditors in the event of drug credit in the provision of KPA with PPJB guarantees with the principle of subrogation. The research conducted is descriptive and normative approach analysis research.

The author of the facts in this field study analyzes that apartment PPJB is not carried out legally so it is used as collateral for apartment ownership credit because this is very high risk per bank and in the event of bad credit, the bank does not have juridical rights or powers in exercising the right to execution. Thus, banks and/or developers carry out an agreement strategy, namely, buy Back Guarantee and Subrogation between the bank and the developer. The bank's strategy in guaranteeing buybacks and subrogations is the transfer of ownership by a third person, that is, banking with a noose if the consumer cannot pay the installments, then the transfer of ownership will automatically be on the side of the bank or developer as agreed so that the bank can easily execute under the gross deed of debt recognition. If it is insufficient, then the bank gets repayment of the entire cash of the debtor, regulated in Articles 1131 and 1132 of the Criminal Code.

On Presidential Decree No. 12 Of 2020 for the Determination of Non-Natural Disasters the Spread of Corona Virus Disease 2019 (Covid-19), is a National Disaster, and Covid-19 can be declared as force majeure. However, with the existence of Presidential Decree No. 12 Of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) As a National Disaster, it is not necessarily that debtors can postpone or cancel the agreement. This also needs to be addressed to consumers or the public, namely consumer protection to create a sense of security and comfort for consumers to complete their living needs. Consumer protection needs must also expect justice. As stated in Article 2 of UUPK 8/1999 to make efforts to empower consumers through equal consumer coaching and coaching. The Consumer Protection Law is also applied in the process of buying and selling property. In property business transactions, Consumer Protection Law Number 8 of 1999 must provide legal certainty to both parties. Potential consumers will be more careful in choosing the desired product and property developer

#### **b. Developer's Obligations**

Regulated in Consumer Protection Number 8 of 1999 Article 7 and Article 62 paragraph (1) of the Consumer Protection Law. In its position as an entrepreneur, the developer has obligations, among others, to have good faith in carrying out its business and provide appropriate and useful information about the condition of products and services as well as provide explanations of use, repair, and maintenance. If the debtor/consumer is harmed, the developer is obliged to provide compensation, compensation for losses due to the

use, use, and utilization of the goods or services sold as well as information that misleads consumers.

**c. Property Buyer's Rights**

The consumer element is regulated in the Consumer Protection Law. As stipulated in article 62 paragraph (1) of the Consumer Protection Law Number 8 of 1999. Where in the article there is a meaning that business actors are prohibited from providing promotions or advertisements that mislead consumers or provide not as promised, such as:

- 1) In this case, study there was an error in marketing that promised the construction of credit with the balloon payment method but marketing did not explain in full about the balloon payment credit method. And Marketing sells the same product but at different prices
- 2) Risk Switching

As a result of credit in the form of risk transfer, it applies to an agreement whose object is goods or treasury, as in the leasing financing agreement contained in article 1237 of the Civil Code paragraph 2 which states, 'If the debtor neglects to hand it over, then from the moment of his negligence the treasury is at his responsibility.

**d. Conceptual framework**

- 1) A debtor is a person who has a debt due to an agreement or agreement whose payment can be collected in court per the content of the agreement.<sup>4</sup>
- 2) A creditor is a person who has Receivables due to an agreement or an Act that can be levied in Court following the content of the agreement.
- 3) Non-Litigation is dispute resolution that is carried out outside the court or what is commonly referred to as an alternative dispute resolution institution. Dispute resolution on the non-litigation path there is various ways, one of the ways is arbitration.<sup>5</sup>
- 4) Negotiations, deliberations, or negotiations with settlements are carried out by both parties themselves, in the absence of assistance from other parties, by deliberation or deliberation to seek a settlement agreement that is considered fair by all parties. This is achieved using negotiations, that is, efforts to resolve the problem in a compromising manner.<sup>6</sup>

Conciliation is the resolution of disputes that use or more other parties, and third parties or other parties always participate in dispute resolution. Conciliation is a formal procedural law when compared to mediation. Because conciliation has several stages, namely: submission of disputes to the field of conciliation commissions, and the commission has the right to listen to information both orally and documents owned by the parties to the dispute to find the right solution.

## II. RESEARCH METHODS

The methodology is the framework and systematics of this research or the defoliation of the principles that lead to scientific research, thus the research methodology is a basic principle and not a way to conduct research. correct knowledge.<sup>7</sup>

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<sup>4</sup> Presidential Instruction (Inpres) Number 4 of 2020 concerning Refocusing Activities, *Budget Reallocation and Procurement of Goods and Services in the context of Accelerating the Handling of Corona Virus* Article 7 of Law Number 3 of 2004, concerning Bank Indonesia.

<sup>5</sup> Human Rights Act number (1999), 38.

<sup>6</sup> H.S. Salim., *Contract Law Theory & Contract Drafting Techniques*, Jakarta Sinar Grafika, 2019.

<sup>7</sup> Taufani Galang "et al.", *(Research Methodology of Philosophical Law, Theory and Practice*, Raja Grafindo Persada, 2018.

a) Types of Research

Normative Law Research is a Brief Review, which examines the norms and rules of inappropriate behavior or behavior. This is the focus of the author in conducting research, to analyze a problem using legal provisions related to the position of Mrs. Mut Pen after conducting a Buy Back Guarantee and subrogation from the Bank to PT. Mut Pen. Elitee

b) Object of Study

There what is used in this object is more important than the principle of Consumer Protection called Ibu Mut Pen and PT. Elitee in handling the problem of bad debts. Focus on three things, namely:

- 1) For a deeper study of the apartment sale and purchase agreement in accordance with the law
- 2) Assessing legal protection for Mrs. MP as a consumer of Apartment Credit in accordance with Law Number 8 of 1999 and Regulation of Ownership of Flats/Apartments Number 20 of 2011

c) Legal Materials

In writing this thesis, the author classifies into 3 groups of material, namely:

- 1) Primary, such as materials that have juridically binding legal force, namely Law number 20 of 2011 and Consumer Protection Law number 8 of 1999.
- 2) Secondary, such as the material that the author examines whether it lacks juridically binding regulations, such as draft laws, literature, journals, interview results, and materials from previous research.
- 3) Tertiary as a legal material has an explanation of primary and secondary legal materials, such as dictionaries, and encyclopedias.

d) Material Collection Methods

In this paper, the author collects material, such as:

- 1) Literature Study is to analyze journals, legal research results, and literature related to the research written.
- 2) Document Study is to analyze various letters and official institutional documents, namely regulations, laws, court decisions, minutes or court decisions, and so on relating to this research.

e) Material Analysis Methods

The method of analysis of legal materials is used by the author with descriptive and evaluative analysis methods, namely drawing pictures, and analyzing legal materials as they are by existing legal facts. These materials are described, grouped according to the Permamisrepresentasi group, and continued with evaluations such as assessments of the legal materials obtained. In obtaining the answer to the problem, the author seeks to analyze it based on relevant theories and is associated with the factual handling of the problem

### III. DISCUSSION AND RESULTS

In this discussion, the author puts forward the law of settling apartment arrears in a non-litigation manner with the argument that it is in the Consumer Protection Law No. 8 T 1999 on standard agreements, where one variable with another variable is closely interrelated and interrelated at various stages in the settlement of arrears that need to be discussed in the actual flow. The writing is explained a lot because the research journey is carried out by the author on existing theories and facts so that the author conveys them in detail, about how to deal with the settlement of arrears based on the ability and strength of the theory, as well as the power of facts as the principle of justice and the principle of legal expediency in Indonesia.

### 7.1. Stages of Management and Settlement in Non-Litigation

Dispute problems often occur in people's lives in business activities, both in litigation and non-litigation, on this occasion the author tries to write with research cases handled by the author and have been resolved by negotiations, namely the stage of non-litigation settlement.

### 7.2. Actions to Settle Arrears Carried Out by PT Elitee Against Its Consumers

#### a. Disclosure of Information in Apartment Sale and Purchase Agreement

Information Disclosure is very important between producers/ debtors/goods or services and consumers, which must contain legal certainty and information disclosure. Activities on the road of free interlude project (free project selling) can be an important issue, in the position of consumers to determine smart attitudes because consumers/debtors have to bear many risks that can result in default/credit. As a buyer/consumer, of course, you are entitled to data or offers of goods/services about the conditions/situations and guarantees of goods or services in the agreement. Many consumers/debtors are trapped in the exoneration clause which is a clause except for obligations that can harm the debtor/consumer<sup>8</sup>

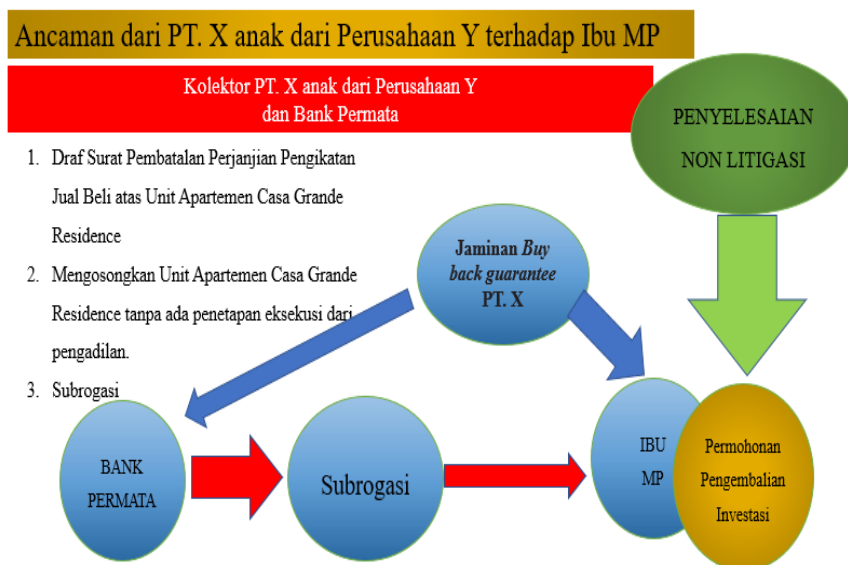
In the agreement or it can be said to transfer responsibility from the developer to the consumer. This happens because the developer (developer) is not transparent / does not have good faith in providing detailed information such as methods of criticism and interests or transfer of rights (subrogation) related to the ownership status of apartments, such as *Mettode Ballon Paymen* which is very detrimental to consumers. Here developers often violate consumer rights regulated in Article 62 and Article 63 Paragraph (1) of the Protection Law where entrepreneurs/developers are required to explain products/goods with catalogs/books/draft agreements/brochures and so on about accurately, clearly, and honest information read about the guarantee of goods both unlawful and detrimental to the parties. Because information about goods/or services is very important and this is where responsibility and obligation are created by both parties. Consumer regulation on how to: create a protection system that contains elements of open access to information, as well as on legal certainty such as the understanding that consumer protection is identical, namely: The right to acquire a sense of am, the right to obtain information and provide information, as well as the right to choose. Business actors must also ensure legal certainty for their consumers, such as:<sup>9</sup>

- b. Providing protection in the form of after-sales guarantees, providing the availability of reserves for goods/services, guaranteeing consumer comfort in the form of insurance, and repurchasing guarantees. Providing quality goods/services with good and correct usage information, benefits, and other guarantees so as not to mislead. Guiding the use, useful life and partnership consultation in the settlement of drag credit services / and financial consultation on apartment ownership as well as in a series of regularities in healthy conditions for business actors or consumers, a sense of trust and shared responsibility is needed in fulfilling the rights and obligations of business owners/producers/developers and consumers, as regulated in Consumer Protection Law Number 8 of 1999, Articles 7 and P62 paragraph 1 on consumer rights and their obligations. In this thesis research, several findings arise in Mrs. Mut Pen's problems with PT. Elite.

<sup>8</sup> Liauw Regina Mulia Wijaya, Susilowati S. Dajaan "et al.", (Consumer Protection in Apartment Pre-Sale Projects Through Advertising in a Comparative Perspective in Indonesia with China, *Notary Law Journal and PPAT-ness*. Volume 1, June 2018) 2.

<sup>9</sup> Yandri Radhi Anadi, The Legal Force of the Guarantor's Resale Deed with the Power of Sale and Purchase for Developers. *Journal of Notarial Affairs*, Volume 3, 2019,1.

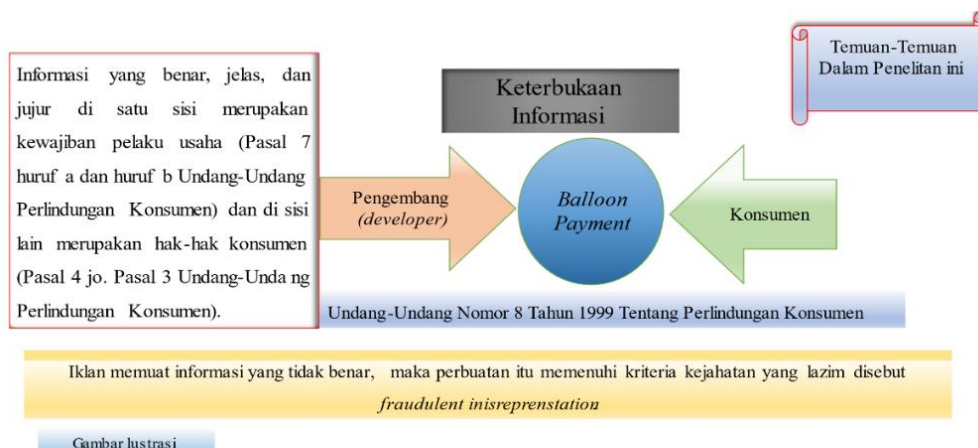
- 1) There is intolerance to the delay in the implementation of payments due to Covid 19.



The above table list was written by the author as a description of the facts on the ground in July 2018

- 2) Information disclosure and guidance/consultation on the implementation of apartment ownership credit when applying for credit using the Balloon Payment system which was felt by Mrs. Mut Pen as a consumer was very burdensome and trapped by PT Mut Pen's marketing persuasion. Elite
- 3) There was a transfer of ownership in a direct transfer (subrogation) without notice and summons to Mrs. Mut Pen.
- 4) The implementation of the Buy Back Guarantee is not proportional to the investment made by Mrs. Mut Pen
- 5) There are violations in the Consumer Protection Law Article 62 Paragraph 1 which include: P origin 9, P origin 10 letters (a, b, c, and d), Porigin 16 letter (a), and Article 17

The table below was written by the author as a description of the facts in the field in July 2020

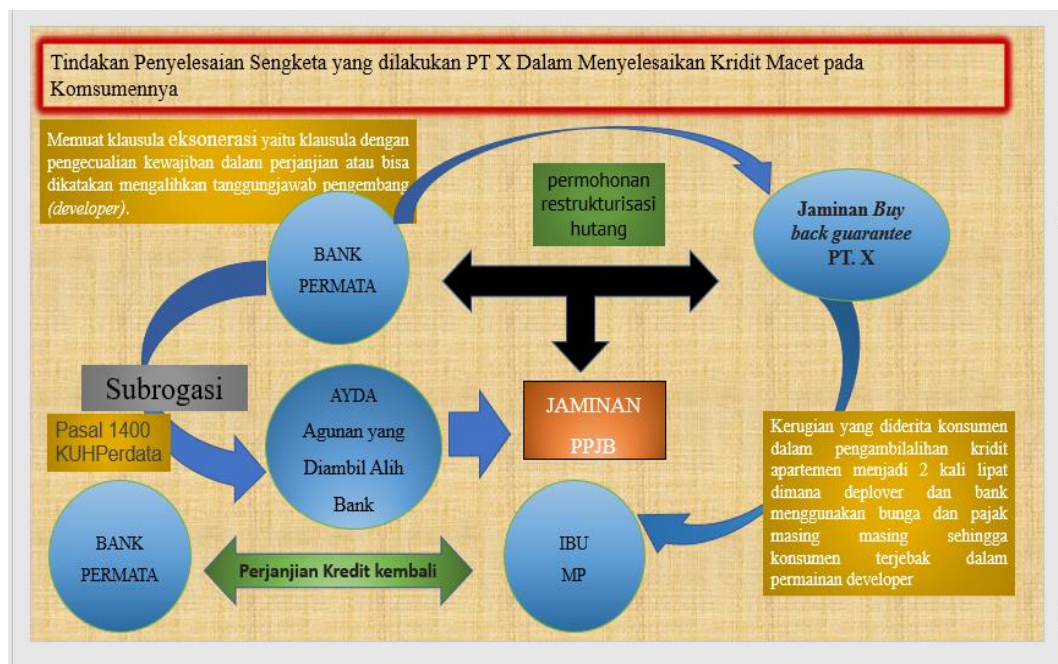


The above table was written by the author as a description of the facts in the field in July 2020



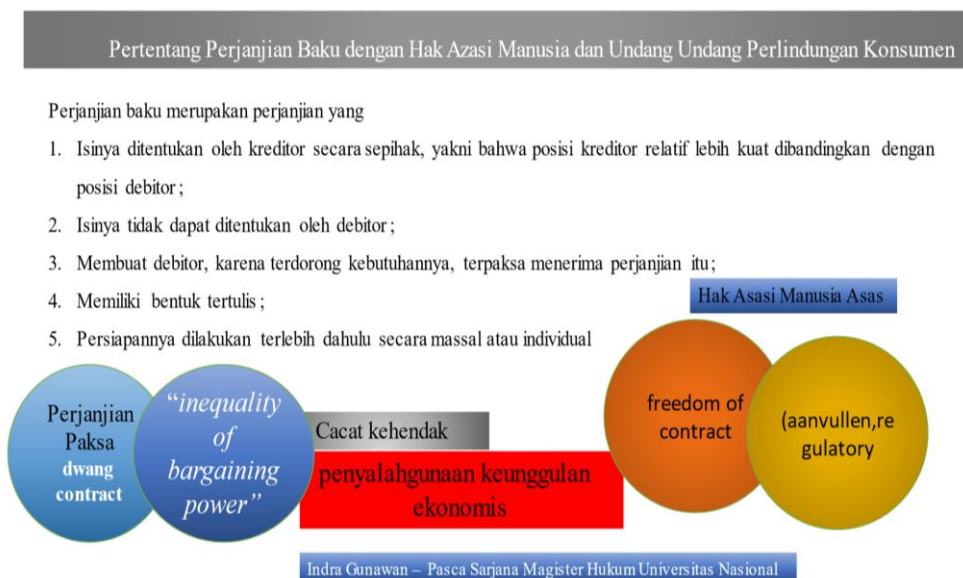
The existence of malpractice in the implementation of the transfer of ownership (subrogation), namely the deed of sale and purchase and PPJB is an apartment guarantee against the transfer of ownership between the developer and the Bank, while according to the law that the Certificate of Ownership of the Apartment, namely SHM or HGB, is valid evidence, and is regulated in the Basic Agrarian Law number 5 of 1960.

a) Application of binding Peace Clauses in the settlement of Arrears



The above table list was written by the author as a description of facts on the ground in July 2020

b) Defying Standard Agreements with Human Rights and Consumer Protection Laws



*Example of a standard agreement issued by PT Bank Permata on January 31, 2018*

**PermataBank**

Tanda Terima Penerimaan Dokumen Asli

Sudah diterima dari:

Nama : PENNY HANDAYANI  
JL. LEGAL PARANG SELATAN III, RT 007 RW 004, KELURAHAN TEGAL PARANG,  
Alamat : KECAMATAN MAMPANG PRAPATAN, KOTA JAKARTA SELATAN, PROPINSI DKI  
JAKARTA

Dokumen sebagai berikut:

| Jenis Dokumen | Detail  | Asli/ Legalisir**   | Keterangan |
|---------------|---|---|------------|
| PPYB          | Nomor : 4.814 / X / 2018 / W<br>Tanggal : 25 / 1 / 18 | <input checked="" type="checkbox"/> Asli <input type="checkbox"/> Legalisir |            |

*Andak dokumen yang tidak diterima PermataBank, mohon untuk dapat dicoret.*

Untuk agunan atas nama Debitur : PENNY HANDAYANI pada PermataBank.  
Jakarta 31 / 1 / 18

| Yang Menyerahkan,                                   | Yang Menerima,                                 | Document Preparation | Collateral & Document Mgmt/<br>Network Operations |
|---|--|----------------------|---|
| <br>Nama : PENNY HANDAYANI<br>Tanggal : 31 / 1 / 18 | <br>Nama : Chandakden<br>Tanggal : 31 / 1 / 18 | Nama :<br>Tanggal :  | Nama :<br>Tanggal :                               |

Catatan:

1. Jika sampai dengan batas waktu yang telah ditentukan oleh Bank, dokumen agunan tidak diambil maka Debitur dikenalkan biaya penyimpanan Safe Deposit Boxes (SDB).
2. Dengan diterimanya tanda terima asli penerimaan dokumen ini maka tanda terima terdahulu yang pernah dikeluarkan oleh PermataBank dinyatakan tidak berlaku.

Jika sampai dengan batas waktu yang telah di tentukan oleh Bank, dokumen agungan tidak diambil maka debitur dikenakan biaya penyimpanan Safe Deposit Boxes (SDB).

Beberapa perjanjian baku lainnya yang sangat merugikan konsumen yaitu penulis lampirkan pada Lembaran pemesanan apartemen

*An example of a standard agreement issued by a PT. Elitee  
on 29 May 2020*

1. Apabila pembayaran Harga Jual Beli yang telah diterima oleh PENGEMBANG kurang dari atau sama dengan 30 % (tiga puluh persen) dari Harga Jual Beli, maka pembayaran tersebut sepenuhnya menjadi milik PENGEMBANG dan PEMESAN tidak berhak menuntut pengembalian berupa apapun kepada PENGEMBANG.
2. Apabila pembayaran Harga Jual Beli yang telah diterima oleh PENGEMBANG lebih dari 30 % (tiga puluh persen) dari Harga Jual Beli, maka sebesar 30 % (tiga puluh persen) dari Harga Jual Beli akan menjadi milik PENGEMBANG dan sisanya akan dikembalikan kepada PEMESAN tanpa bunga setelah dipotong pajak-pajak yang telah disetor, denda-denda, biaya penagihan, biaya pengosongan, biaya yang telah dikeluarkan oleh PENGEMBANG dan kewajiban-kewajiban PEMESAN lainnya yang masih belum (jika ada), 2 (dua) minggu setelah PENGEMBANG menerima pembayaran dari pembeli baru dengan jumlah minimal-sama dengan jumlah uang yang akan dikembalikan kepada PEMESAN .
3. Apabila Unit Apartemen telah dipinjam pakai oleh PEMESAN maka seluruh uang yang telah diterima oleh PENGEMBANG dari PEMESAN menjadi hangus dan tidak dapat di tuntutan pengembaliannya oleh PEMESAN serta berlakulah ketentuan Butir 9.5.

**9.3 Sanksi atas tidak dilaksanakannya kewajiban PEMESAN selaku penerima fasilitas kredit bank.**

Apabila pembayaran sebagian Harga Jual Beli dilaksanakan dengan kredit bank sedangkan jual beli di hadapan PPAT belum dilaksanakan dan oleh sebab apapun PEMESAN tidak dapat melaksanakan kewajibannya dan/atau dinyatakan lalai untuk membayar angsuran yang wajib dibayarkan kepada PENGEMBANG dan/atau kepada bank sehingga dilaksanakan subrogatie piutang maka apabila PEMESAN masih berminat untuk membeli Unit Apartemen, PEMESAN wajib membayar kepada PENGEMBANG pada waktu yang ditentukan oleh PENGEMBANG, secara sekaligus lunas sesuai perbitungan PENGEMBANG. Apabila pada waktu yang ditentukan tidak terjadi pelunasan pembayaran maka PEMESAN dengan ini memberi Kuasa kepada PENGEMBANG, yang tidak akan berakhir oleh sebab apapun untuk dan atas nama PEMESAN mengakhiri/membatalkan Konfirmasi Pemesanan ini dan apabila Unit Apartemen telah diserahkan oleh PENGEMBANG kepada PEMESAN maka PEMESAN dalam waktu 7 (tujuh) hari kalender sejak tanggal batas waktu pelunasan pembayaran dimaksud pada butir ini wajib mengembalikan Unit Apartemen beserta perabot dan perlengkapan/peralatan lainnya (jika penjualan termasuk perabot dan/atau bonus) kepada PENGEMBANG dalam keadaan baik dan berlakulah ketentuan Butir 9.5 Konfirmasi Pemesanan ini.

**9.4 Sanksi atas keterlambatan pembayaran Biaya Pengelolaan dan/atau Biaya Utilitas.**

Apabila PEMESAN dan/atau pihak lain yang mendapat kuasa dari PEMESAN lalai melakukan kewajiban pembayaran Biaya Pengelolaan dan/atau Biaya Utilitas dan/atau biaya lainnya sebagaimana diatur dalam Butir 7.2 Konfirmasi Pemesanan ini sampai batas waktu yang telah ditentukan maka akan diberlakukan juga ketentuan-ketentuan tersebut di bawah ini dan/atau sebagaimana ditentukan oleh P3SRS:

- a. Setiap keterlambatan pembayaran tersebut dikenakan denda sebesar 1% (satu permil) per hari dari jumlah yang terlambat dibayar sampai dengan tanggal dilunasinya kewajiban pembayaran beserta dendanya.
- b. PENGEMBANG atau pihak lain yang ditunjuk oleh PENGEMBANG dan/atau Badan Pengelola akan memberikan surat peringatan kepada PEMESAN dan apabila PEMESAN tetap belum/tidak melunasi seluruh kewajiban pembayaran termasuk dendanya maka PENGEMBANG atau pihak lain yang ditunjuk oleh PENGEMBANG dan/atau P3SRS dan/atau Badan Pengelola berhak memberlakukan sanksi-sanksi antara lain tetapi tidak terbatas pada pemutusan aliran listrik dan air, melarang PEMESAN untuk memanfaatkan fasilitas di CASA GRANDE RESIDENCE, Bagian Bersama, Benda Bersama, Tanah Bersama, mematikan Kartu Akses dan lain-lain sampai dengan

4. JAMINAN

4.1. Untuk menjamin pembayaran kembali Fasilitas berdasarkan Perjanjian dengan lunas dan penuh, dengan ini Nasabah memberikan jaminan kepada Bank berupa:

4.1.1 Sebagian dari sebidang tanah seluas kurang lebih 64 m<sup>2</sup> dan bangunan yang diperoleh MUTIDJAH berdasarkan Perjanjian Pengikatan Jual Beli (PPJB) Nomor 7.814/I/2018/W tanggal 25 Januari 2018 yang akan dibebankan dengan 11ak Tanggungan.

4.1.2 Jaminan lain dalam bentuk dan jumlah yang dapat diterima oleh Bank, yang akan diikat tersendiri dalam perjanjian jaminan yang dibuat antara pemilik barang jaminan (jika ada) dan Bank, dimana perjanjian jaminan tersebut merupakan satu kesatuan dan tidak terpisahkan dengan Ketentuan Khusus.

4.2. Proses Pengurusan Dokumen Jaminan

Nasabah mengetahui dan setuju bahwa proses pengurusan dokumen jaminan, termasuk pengurusan sertifikat hak atas tanah, Akta Jual Beli (AJB), Izin Mendirikan Bangunan (IMB) dan dokumen-dokumen lainnya yang terkait dengan dokumen kepemilikan jaminan sepenuhnya dilakukan dan merupakan tanggung jawab dari developer dan atau Notaris atau pihak lain yang disetujui oleh Bank. Bank dengan ini tidak akan memberikan ganti rugi dan/atau pertanggungjawaban dalam bentuk apapun kepada Nasabah atau pihak manapun atas segala gugatan, tuntutan hukum, dan risiko sehubungan dengan proses pengurusan dokumen pemilikan jaminan oleh developer dan atau Notaris atau pihak lain yang disetujui oleh Bank. Apabila dokumen jaminan telah diserahkan oleh developer dan atau Notaris atau pihak lain kepada Bank, maka Bank akan menatausahakan dokumen jaminan tersebut dengan baik.

5. KETENTUAN TAMBAHAN

5.1. Menambah (satu) ketentuan Pasal 7 SKU yaitu ayat 14 sebagai berikut:

14. Dalam hal Nasabah menyampaikan pernyataan yang tidak benar maka Nasabah bersedia melaksanakan langkah-langkah yang ditetapkan oleh Bank dalam rangka pemenuhan ketentuan Bank Indonesia mengenai LTV.

6. LAIN-LAIN KETENTUAN

6.1. Alamat surat menyurat:

Bank : PT BANK PERMATA Tbk.  
Alamat : Jalan Jendral Sudirman Kav. 29-31, Jakarta 12920  
Telepon : (021) 5237788 ext 8009707  
Faksimile : (021) 5237742

Nasabah : PENNY HANDAYANI

Alamat : ~~JE-TEGAL PARANG SELATAN-III, RT/RW: 007/004, KELURAHAN TEGAL PARANG, KECAMATAN MAMPANG PRAPATAN, KOTA JAKARTA SELATAN, PROPINSI DKI JAKARTA~~

Telepon : 0812 9587 7209

Faksimile :

Surat elektronik (e-mail) :

phunov7@gmail.com

21. Tembakau Rayn Usmi no2 ETBRUI, Rajan Timur R. Minggu, Jakarta 12510

6.2. Bank berhak menyampaikan informasi tagihan dan/atau melakukan penagihan atas setiap kewajiban Nasabah yang tertunggak berdasarkan Perjanjian, ke alamat Nasabah yang disebutkan dalam ayat 6.1 diatas, termasuk ke alamat dan nomor tujuan lain atau alamat surat elektronik (e-mail) dari Nasabah yang tercatat pada Bank.

6.3. Perubahan Pertama Ketentuan Khusus ini merupakan satu kesatuan dan merupakan bagian yang tidak terpisahkan dari Perjanjian, sepanjang tidak ditentukan lain dalam Perubahan Pertama Ketentuan Khusus ini, penggunaan fasilitas manapun sebagaimana tersebut dalam adalah juga tunduk pada Perjanjian.

6.4. Sepanjang tidak ditentukan lain dalam Perubahan Pertama Ketentuan Khusus ini, setiap pengertian istilah dalam SKU dipergunakan pula dalam Ketentuan Khusus dan mempunyai arti yang sama.

Dibuat oleh : -A1-  
Direview oleh : -A2-

Hal : - 3 -

- 6.5. Setiap perselisihan, pertentangan atau tuntutan yang lahir dari Perjanjian, kecuali bila dapat diselesaikan secara musyawarah, akan diselesaikan melalui Pengadilan Negeri Jakarta Selatan di DKI Jakarta
- 6.6. Perjanjian ini telah disesuaikan dengan ketentuan peraturan perundang - undangan termasuk ketentuan peraturan Otoritas Jasa Keuangan

Demikian Perubahan Pertama Ketentuan Khusus ini telah dibaca dan dimengerti oleh Nasabah, dibuat dan ditandatangani di Jakarta pada hari Jumat tanggal 29/05/20.

Bank,  
PT Bank Permata, Tbk

  
Anesya Halim  
Kuasa PT Bank Permata, Tbk

Nasabah,

  
PT BANK PERMATA Tbk  
ID: 77AFF888781886  
6000  
Pembeli Handayani

#### IV. CONCLUSIONS

Information Disclosure is very important between producers/debtors/ goods or services and consumers where information is the most important tool in a transaction to create a balance between consumers and developers as evidence of an ideal sense of responsibility in the norms and principles of justice law, namely the rights and responsibilities of both parties so that consumer protection in good rules becomes norms and ethics that must be implemented as a principle of balance in law and human rights. The importance of consumer protection is seen both materially and formally as the demands of the times and very rapid technological changes to achieve the target of economic improvement and business development, especially in the subsidized and non-subsidized housing development sector. The changing times demand the sincerity and honesty of entrepreneurs and consumers to be smarter in choosing and choosing to implement agreements and use housing/apartment developments. In line with the developments mentioned above, standard agreements do not always have to be for business actors to include and impose in a clause, namely developer egos such as the ego "Like it or dislike/take it or grab", for that developers must include standard agreements that are more transparent and have a time lag for consumers to learn about it so that it does not seem that the agreement must be completed immediately that day. (approval), There is an interaction between the synergy of developers and consumers to achieve a pattern of agreement that is transparent and not legally flawed juridically or factually. In United Nations (UN) resolution R note No: 39 and 248 of 1985, namely:

- a. Health and safety protection
- b. Complete information to the public to provide their ability to determine the wants and needs of consumers

- c. Ducting KOnsumen / Inten Consulting
- d. The right facilities in handling disputes
- e. Free to form a consumer organization

The complementary sociological rescue step is through subrogation, that is, the transfer of principled receivables that helps third parties voluntarily assist the debtor in paying his debts and taking over the position of creditors. Subrogation is provided for in articles 1400 to 1403 of the Civil Code, which are practiced by conventional banking. In the loan agreement clause, there are goods as collateral or other securities that can be (liquid) or assessed as taxable goods such as the object contained in the subrogation clause is an accessory agreement, that is, from the right of guarantee can have legal consequences, such as mortgages, liens (fiduciary). In principle, third parties can demand the cancellation of the agreement, since the request for cancellation of the agreement is not an "additional right" (neven Gretchen), but only remains the "main request" inherent in the agreement, as well as circumstances that "cancel the agreement" for reasons of incompetence (on be warm), misunderstanding (dwelling), coercion (dwang) and fraud (bedrock). It remains the main demand that it switches to a third party as a result of the subrogation agreement.

A claim for "indemnity" (schadevergoeding), is the principal claim binding on the agreement and is not an additional right written in the clause, but is the main part. Therefore, the claims of parties to the subrogation agreement must be fulfilled by the debtor. In this case, indemnity is a unified claim between the creditor to the debtor in committing his negligence, and the debtor's loss must also be taken into account due to the creditor's negligence and bad intentions in applying for a standard agreement that misleads the consumer/debtor. The debtor must exercise his rights in resisting accusations from third parties in subrogation, that is, appeals in the process of "settlement of assets" in which appeals are made by consumers in an attempt to reject non-compliance of calculations in which the agreement has limped pockets of ownership and transfer of rights by third parties. The appeal is a written filing of damages received as a consumer for tax losses, and interest losses as a result of this covid pandemic outbreak. The submission of the appeal calculation in settlement assets is the right of the customer/consumer/debtor in Porigin 7 and Article 62 paragraph (1) of the Consumer Protection Law.

### **Suggestion**

In writing this manuscript, the author as much as possible explains some irregularities in the standard agreement on the issue of resolving arrears between Mrs. Mut Pun and PT. Elite Jakarta is a subsidiary of PT Pakuwon Surabaya, the imposition of a will on the treasury regulated in the Civil Code concerning PPJB Guarantees is very contrary to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking Law Number 10 of 1998, namely the calculation of rentability, solvency, liquidity, namely financial ability and the main grace, namely agreements in credit contracts. And Consumer Protection Law No. 8 of 1999, in which consumer rights are neutered/or set aside.

- 1) In an advertisement it is always mentioned that buying a house/apartment in cash or buying in criticism is an investment, there is a lot of confusion in the understanding of investment if we listen to the amount of credit that is problematic then the debtor cannot afford to pay it so that the investment penalty is if the debtor is unable to pay it will be returned after deducting taxes.
- 2) Knowing investment means a certain amount of capital invested to be developed so that the investment does not necessarily lead to confiscation or auction of the debtor's property so that the debtor should not be harmed considering that the House / Apartment building has an increased resale value (net present value)

- 3) In the actual rules, the bank only accepts objects such as land and buildings that can be burdened with dependent rights or the term of Benefits that are considered current or current assets. The goods/services pledged must have a status such as property rights, HGU, and HGB/Certificates/deposits. So that PPJB is not the basis for dependent rights because PPJB is only a binding buying and selling process, not a letter belonging to a land user or building
- 4) During the Covid-19 pandemic, there was a decline in the business world which was so concerning throughout the world that in this case, the government tried to stabilize the economy with the National Economic Recovery, one of which was that global and domestic investors could use custodian banks in increasing investment in Indonesia so that in this case banks and other financing were protected by the government, banks should not force Mrs. Mut Pen to subrogate because violates existing provisions such as<sup>10</sup>
- 5) In the Best Practice provisions, it is also determined that PPJB if you want to be elegant in the needs of KPR/KPA, the bank allows this, namely with the provision that KPR/KPA must guarantee and facilitate the purchase of a new house (KPR Pratama) to developers appointed as bank partners, usually the bank has verified business actors/ developers as partners.
- 6) Based on the standard agreement, PT Elite Jakarta is a subsidiary of PT. Pakuwon Surabaya, many elements of coercion to Mrs. Mut Pen, which the author has explained in several information tables and attachments to the coping above, namely d the nature of the standard agreement
- 7) The role of consumer protection institutions as non-governmental organizations must be more dominant to monitor consumers by having their outlets in ma-ll-malls or exhibitions that offer products/services so that consumers feel more assured as a complete and comprehensive protection
- 8) Education about consumer protection including standardization of quality standards, services, trade, and so on must be in the play store application software about good goods that will be obtained with free contracts
- 9) The offices of consumer dispute resolution agencies are still not widely known about their existence in each district and province by many people because the offices of the Consumer Dispute Resolution Agency must be Pro-Active in resolving disputes and must work with other agencies to create moral access and access to the principles of justice.
- 10) Non-litigation dispute resolution is an elegant and intelligent way, but many people do not yet know the role of arbitrage bodies and out-of-court dispute resolution.
- 11) In the standard clause of PT, Bank Permata in the last part of the sheet 6.5 points on page 21. does not include dispute resolution as two alternative option, that is, only in the resolution of disputes or disputes conducted only in the District Court where the dispute occurred. Consumers/customers are not given an alternative option, i.e. district courts or extrajudicial institutions such as National Arbitration and so on that deal with consumer disputes.<sup>11</sup>
- 12) Pre Project-Selling, does not mean freedom of action and doing to benefit oneself but must go through the ethical process of doing business and recognize the principle of togetherness and the principle of fairness by consumer protection laws

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<sup>10</sup> Coordinating Ministry for Pre-Economic Affairs of the Republic of Indonesia. *Optimization of the Budget Utilization PEN Program for the Acceleration of National Economic Recovery (Press Release HM.4.6/358/ Set. M.EKON.3/10/2021)*

<sup>11</sup> Ibnu Elmi A.S. Pelu "et al", *Arbitration (Sharia Theoretical Paradigm and Development Arbitration in Indonesia, 2019)*

- 13) Subrogation is an act that is supposed to be a compromise between the Bank, the Creditor, and the Debtor so excessive ownership is a fair action.
- 14) The role of the Indonesian Housing and Real Estate Association must be dominant in evaluating the performance of good relations between Creditors, Debtors, and other Third Parties, to prevent the existence of land mafia, prevent environmental damage, prevent bad debts and stem credit disputes through joint ventures between debtors and creditors or facilitate consumer complaints or complaints against rogue developers and careless marketing of housing/apartments to offer Products. Thus, causing a miss in communication between consumers and banks, and developers.
- 15) The role of housing associations should also be more dominant to implement good and measurable agreement schemes to implement credit between debtors and creditors and developers. As well as informing quickly and accurately about developers who are included in the blacklist category.

Many banks are careless in acting to serve rogue developers and work with developers to ratify credit agreements because banks get regulations from the government to get credit policies and interest rates to improve the performance of the Capital Adequacy Ratio, for example when banks apply down payments with zero rupiahs. Banks should look at and assess the level of resistance caused by regulation from developers such as the prevention of non-performing loans.

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