

1_Legal consequences of unilateral cancellation of the home ownership credit agreement

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Legal consequences of unilateral cancellation of the home ownership credit agreement at PT Rudensia Jaya Raya

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ABSTRACT

Home is a primary need for most families, both living in rural and urban areas, which is a primary need. The fulfillment of these primary needs cannot be fulfilled by everyone by buying in cash. Therefore, a financial institution is needed to provide financial assistance in the form of lending, particularly in the form of Home Ownership Loans (KPR). The purpose of this research is to find out the sale and purchase agreements for houses at PT. Rudensia Jaya Raya and the legal consequences of the unilateral cancellation of the house sale and purchase agreement by consumers at PT. Rudensia Jaya Raya. By using a statutory approach and a fact approach. House sale and purchase agreement at PT. Stages of Rudensia Jaya Raya include booking fees or receipts, selection of building designs, and making payments in cash or with housing loans, if the KPR stages are payment of booking fees, advances for credit agreements and PPJB. If the mortgage has been approved by the bank, then proceed with the construction of the house.

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1. INTRODUCTION

Home as one of the basic needs of course has a very important function for human life. The house has a very strategic function as a center for family education, cultural seeding, and quality improvement for future generations, including its role as the identity of the owner.

Housing is a basic need in addition to food and clothing. Every human being is faced with 3 basic needs as follows: Food (food), Clothing (clothing), Board (Housing). In housing development, laws and regulations are needed which form the legal basis, policies, directives and guidelines for the implementation of housing development and become the legal basis for solving problems, cases and disputes in the housing sector. Housing construction by anyone must follow the provisions stipulated by laws and regulations so as not to cause problems, disputes and losses.

The background to the promulgation of Law No. 1 of 2011 is stated in its preambles, namely: Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy living environment, which is a basic human need, and has a very strategic role in shaping the character and personality of the nation as one of the efforts to build a complete Indonesian human being, identity, independent, and productive.

The state is responsible for protecting the entire Indonesian nation through organizing housing and residential areas so that people are able to live and live in decent and affordable housing in healthy, safe, harmonious and sustainable housing throughout Indonesia.

The government needs to play a greater role in providing and facilitating housing and settlement assistance for the community through the implementation of area-based housing and

settlement areas as well as community self-reliance so that they form a functional unit in the form of physical spatial planning, regional economic life, and openness in the order of community life nation and state.

Regional growth and development that pays little attention to the balance for the interests of low-income people results in difficulties for the community to obtain decent and affordable housing.

And Law Number 4 of 1992 concerning Housing and Settlements is no longer in line with the development and need for decent and affordable housing and settlements in a healthy, safe, harmonious and orderly environment so it needs to be replaced.

In Law No. 1 of 2011 it is determined that a house can function as: Fulfillment of basic needs; Residence or dwelling; Assets (wealth) for the owner; Social and economic status for the owner; Place to get income or profit; Facility for fostering a family, reflecting the dignity of the owner; Supporting the implementation of office duties and/or state officials.

The prices of building materials and land are now increasing, making home ownership difficult for some people. Buying a house with a credit or Home Ownership Credit (KPR) is an option for many people to have an affordable home. KPR is a loan that is given because of income which is expected to guarantee the smooth payment of debt.

The definition of housing credit is a loan facility provided for buying a house (inside or outside real estate), renovating / building a house, buying land / shop houses, where this loan can be repaid within a certain period of time with the number of installments according to ability.

Selling houses by means of mortgages is often used by housing developers (Developers). Grand Rudensia Housing offers housing units to prospective buyers in an unbuilt condition, in the form of lots of land. New development begins after the prospective buyer orders a house by paying a down payment or DP (Down Payment).

The Pre Project Selling system is the sale of property by the Developer before the physical building is completed. In applying for credit to avoid losses, one of the conditions given is to use a guarantee from the bank. Collateral is something that is given by the debtor to the creditor which can be valued in money to give confidence that the debtor will fulfill the obligations arising from an engagement.

In banking practice, this guarantee is very important, especially loans released to customers. In the KPR agreement that is collateral for credit is land rights, not physical land, the UUPA (Basic Agrarian Law) states that property rights, usufructuary rights, and building usufructuary rights can be encumbered with mortgage rights to guarantee debt repayment. The object of the KPR is the funds/money which is then given to the house. The bank acts as a financing institution in order to help the government reduce the economic difficulties of the community related to this problem.

The presence of the Home Ownership Credit (KPR) system is urgently needed by people with small income levels. Article 1 point 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, that a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of the people.

The definition of a bank also functions as channeling public funds in the form of lending. The term credit is not a foreign thing, because people often buy and sell goods using credit. Buying and selling is not done in cash, but by way of installments.

In addition, many people receive credit from cooperatives and banks for their needs. They generally interpret credit to be the same as debt, because after a certain period of time they have to pay it off. Credit is an agreement to borrow money between a bank as a creditor and a customer as a debtor. Banks as lenders believe in their customers within the agreed timeframe.

One of the efforts made by the government, in order to improve the standard of living of the non-subsidized middle (medium) economic class, especially in the housing and settlement sector, is the provision of housing loan facilities (KPR), ranging from simple to luxury housing classifications, by the Bank. According to the Civil Code (KUHPerdata) it is a reciprocal agreement in which the party (seller) promises to hand over ownership rights to an item, while the party (buyer) promises to pay a price consisting of a sum of money in return for acquiring said property.

According to the provisions stipulated in the Decree of the State Minister for Public Housing Number 09/KTPS/1995 dated June 23, 1995 concerning Guidelines for the Binding of Sale and Purchase of Houses, it is stated that there are two parties to the agreement, namely: Housing and Settlement Development Companies or Developers or Business Actors acting as house sellers; And. Consumers as home buyers. In connection with the cancellation of the sale and purchase of a house at PT. Rudensia Jaya, the provisions of Article 1266 of the Civil Code imply that "a condition is considered null and void as always included in the agreement if one of the parties does not carry out his obligations".

In other words, the cancellation conditions are deemed to be included in a reciprocal agreement, if one party does not fulfill its obligations. This void condition is a limitation, if one party does not carry out its obligations in the agreement (default), then the other party in the agreement can cancel the agreement unilaterally without the consent of the party who made the default. This clause is considered to always exist in every agreement so that even if an agreement does not specify it in the sound of its articles, this principle still applies.

In making a letter of agreement, a clause is often included that "if one party does not carry out its obligations, the other party can cancel the agreement." Actually it does not need to be included in the agreement because civil law has applied the general principle in the agreement in the form of void conditions.

In principle, the provisions of the agreement must fulfill the legal requirements, namely agreement, skills, certain matters and a lawful cause, which have been determined in Article 1320 of the Civil Code.

Based on the provisions of Article 1320 BW, that there are 4 (four) conditions for the validity of an agreement, namely the agreement of those who bind themselves, the ability to make an agreement, a certain matter, and a lawful reason. Regarding agreement as a condition for the validity of the agreement, based on the provisions of Article 1321 BW, that if an agreement is reached due to an oversight regarding the nature of the goods that are the subject of the agreement or due to coercion or fraud, then it is considered that there is no agreement.

That way, the agreement must occur in a condition where the parties are free and honest, there is no fraud, no coercion and no oversight. The sale and purchase agreement in the Civil Code adheres to an obligatoir system, meaning that the sale and purchase agreement places reciprocal rights and obligations between the two parties, namely the seller and the buyer at the time of the agreement.

With this agreement, the seller is obliged to surrender the ownership rights to the goods he sells, as well as giving the right to demand payment of the agreed price. Obligation to the buyer to pay the price of the goods in return for his rights and to demand the transfer of ownership of the goods he has purchased.

Juridically, there are several provisions that must be fulfilled by the developer before entering into a Preliminary Sale and Purchase Agreement (PPJB) in the construction of housing with consumers/buyers as stipulated in Article 42 paragraph (1) and paragraph (2) of Law Number 1 of 2011 concerning Housing and Residential Areas states: Single houses, row houses, and/or flats which are still in the construction process stage can be marketed through a pre-sale and purchase agreement system in accordance with the provisions of laws and regulations.

The preliminary sale and purchase agreement as referred to in paragraph (1) is carried out after fulfilling the certainty requirements for: status of land ownership, the terms of the agreement, ownership of the main building construction permit, availability of infrastructure, facilities and public utilities and housing development of at least 20% (two twenty percent).

Based on the description above, this research takes the title "The Legal Consequences of Unilateral Cancellation of the Home Ownership Credit Agreement at PT. Rudensia Jaya Raya.

2. RESEARCH METHOD

In this thesis using the type of research Juridical Normative (Legal Research). In this study apply the rules or norms in positive law. This type of normative juridical research examines various kinds of formal legal rules such as laws, literature, which are theoretical concepts and related to the issues that are the subject of discussion. According to Sutrisno Hadi research or research is an

attempt to find, develop, and test the truth. In this case the writing comes from the data obtained from PT. Rudensia Jaya Raya.

The specifications used in this study are analytical descriptive, which means making a systematic, factual and accurate description or description of the facts, nature and relationships between the phenomena or symptoms being studied while analyzing them by looking for the causes and effects of a thing and describing it consistently and systematically and logical.

In this study, analytical descriptive specifications are used to find causes and effects that arise from the problems contained in the formulation and describe them in a consistent, systematic and logical manner in accordance with the formulation of the problem, namely regarding matters relating to "Legal Consequences of Unilateral Cancellation of Home Ownership Loans at PT. Rudensia Jaya Raya.

Sources obtained by researchers to obtain data regarding the object to be studied were obtained directly from PT. Rudensia Jaya Raya. To support the research results, the authors grouped the required data into two groups, namely:

Primary legal materials, primary legal material has an authoritative nature, which means it has authority. Primary legal material consists of legislation, official records or treatises in the making laws and regulations and judges' decisions.

The primary legal materials used in this thesis research consist of, (1) the 1945 Constitution; (2) Civil Code (KUHPER); (3) Law Number 4 of 1992 concerning Housing and Settlements; (4) Law Number 1 of 2011 concerning Housing and Residential Areas; (5) Decree of the State Minister for Public Housing Number 09/KTPS/1995 dated June 23, 1995 concerning Guidelines for the Binding of Sale and Purchase of Houses, stated that there were two parties to the agreement; (6) Law Number 10 of 1998 concerning Banking.

Secondary legal materials, secondary legal materials are publications about laws that are not official documents. Publications on law include: scientific literature, books and newspapers that aim to study the contents of the issues discussed. Secondary legal materials used in this thesis include literature books, journals and legal dictionaries.

Non legal Materials, in legal research, for academic purposes non-legal materials can be assisted. One of the non-legal materials is the website/internet and the interviews used in conducting this research are by conducting interviews with officials of the relevant agencies. The results of interviews with competent officials are not primary legal material because the results of these interviews are not authoritative. However, the interview can be included as non-legal material.

Data collection focused on secondary data which was carried out by means of a Literature Study which is often referred to as a Documentary Study or literature study such as: Law Number 1 of 2011 concerning Housing and Residential Areas, Law Number 10 of 1998 concerning Banking, the Book of Laws Civil and Conduct interviews by compiling a list of questions in advance. This is intended so that researchers obtain more complete and comprehensive data.

3. RESULTS AND DISCUSSIONS

Home Ownership Credit Agreement (KPR) at PT. Rudensia Jaya Raya, if the consumer resigns unilaterally

There are 4 (four) stages that are carried out before carrying out a sale and purchase transaction by an authorized official: Preliminary checking by prospective buyers. Checking is done before the consumer enters into a sale and purchase agreement. Consumers can request a copy of the certificate and PBB payment to find out the owner of the property.

If the proof of ownership is in the form of a PPJB, the consumer will check with the developer's office to find out if the seller is the current owner of the housing unit in question. If the seller is not the current owner but is a person who holds the power of attorney to sell/authorize the transfer of rights, then the consumer checks with the Notary who makes the power of attorney for sale/authorization of the transfer of rights related to the validity of the power of attorney.

The payment for the receipt is followed by the signing of the sale and purchase agreement. After the consumer checks the next step is to ask the Notary/PPAT to check the authenticity of the land certificate. The notary will ask for the original certificate to be checked at the Land Office.

Before checking with the Notary, the developer will ask for a signature. Checking by the PPAT if the proof of ownership is already in the form of a certificate. If it is still PPJB, then the developer check is carried out at the initial check. Next, the signing of the Sale Purchase Deed / Transfer of Rights at the developer.

The process of implementing the agreement that is carried out when the consumer buys a house at PT. Rudensia Jaya Raya is as follows: Booking Fee/UTJ (Acknowledgment Fee) after PT. Rudensia Jaya Raya markets housing units by distributing brochures, billboards, social media and others, so consumers can check the location, price, unit and others that have been determined. After the consumer is interested, the consumer can give a receipt by depositing the agreed amount of money.

The mark so determined by PT. Rudensia Jaya Raya is 5 Million. After paying for the receipt, the consumer and the developer make an SKJB (Sale Purchase Agreement). Building Design, consumers will choose plots and be informed about the design of the building. Method of Payment, after giving a down payment (DP), the construction of the house will begin.

Home payments can be made in cash (cash), in total cash or in cash in stages (cash in 6 months) or by using a mortgage (KPR), with a monthly installment system, usually 30% of the consumer's salary.

KPR Process (House Ownership Credit), it consists of collecting mortgage requirements, the process of evaluating collateral and calculating and analyzing the eligibility of consumers to pay mortgage installments until the mortgage approval appears from the bank.

The developer oversees the mortgage process because it is closely related to payment certainty, house construction and house handover takes approximately 2 (two) weeks. Down Payment, the down payment is usually 1 week after the receipt is received.

Down payment that must be paid by consumers to PT. Rudensia Jaya Raya is 5% of the house price. Development, after the KPR process has been approved and the down payment or DP (Down Payment) has been received, PT. Rudensia Jaya Raya.

Handover, after the construction of the unit has been completed 100%, the next step is handover to the buyer. The developer provides a retention period of 3 (three) months after handover. The retention period is the time given by the developer for complaints about the condition of the house. At this time, if there is damage to the building and the condition of the house it is still the responsibility of the developer, in this case PT. Rudensia Jaya Raya.

Sale and Purchase Act, deed of sale and purchase is the transfer of legal rights to land and buildings. Which is done at the Land Deed Official or Notary. Certificates that were previously in the name of the seller or developer will switch and be on behalf of the consumer. AJB (Deed of Sale and Purchase) contains tax obligations.

AJB can be done before handing over the house with a payment scheme via KPR with Inden KPR. Inden KPR and ordinary KPR have a difference in the disbursement of KPR which can be done in stages before construction begins.

KPR Disbursement, the making of the deed of sale and purchase and the tax will be the basis for the disbursement of the mortgage by the developer (developer). Disbursement of mortgages, consumers are under a credit bond by the bank providing the mortgage before a notary. KPR disbursement can be done before the building is 100% finished. The developer can disburse part of the KPR value with an Inden KPR.

Prior to entering into an agreement, the Civil Code regulates the provisions regarding the legal requirements in Article 1320 of the Civil Code, namely: Achievement of agreement for those who bind themselves. The agreement was not due to any oversight, coercion, or fraud. Capable of making an agreement means that the person according to the law can carry out legal actions.

Like an adult, not under guardianship, not mentally disabled. A certain thing, this means that the agreement must determine the type of object. For a lawful cause or causa, the agreement made must not conflict with laws, decency and public order.

Legal Consequences of Unilateral Cancellation of Home Ownership Loans at PT. Rudensia Jaya Raya

According to Syarifin, legal consequences are "all consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events by the relevant law which have been determined or considered as legal consequences".

In Article 1338 of the Civil Code it is stated that "All agreements made legally apply as laws for those who make them".

The meaning of this article means that the agreement was made by the parties and must be obeyed by the parties as well. Thus, the agreement was also terminated by the parties. So it is the parties who terminate the agreement (not unilaterally).

In principle, an agreement cannot be canceled by one party, because it will cause harm to the other party. Cancellation of the agreement can only be done if it is known that there was an oversight or coercion from one of the parties when making the agreement.

Oversight and coercion are reasons that can cancel the agreement. In addition, fraud committed by one party against another party in making an agreement, can be used as a reason for canceling an agreement unilaterally. In accordance with Article 1320 of the Civil Code, an agreement that is not based on the subjective terms of the agreement, the agreement can be canceled.

The cancellation of the agreement only brings the parties to their original state, namely the previous situation of the parties, both consumers and PT. Rudensia Jaya Raya which is considered to have never entered into an agreement.

That way, an agreement can only be canceled unilaterally by one of the parties if it does not meet the subjective legal requirements of the agreement. The cancellation can only be done by submitting to the court with the defense or lawsuit of the party that will cancel the agreement.

Whereas an agreement that is canceled unilaterally by the buyer without a valid reason, a claim can be filed against the party that canceled it during the agreement. On the other hand, if the unilateral cancellation occurs before the implementation of the agreement, the cancellation will only bring it back to its original state where it is considered that the agreement never occurred.

PT. Rudensia Jaya Raya as the developer has experienced a unilateral cancellation of the agreement made by the buyer (consumer). This of course causes losses for the developer (PT. Rudensia Jaya Raya). These losses greatly affect the sales of housing units. In this case, the house that has been marketed or promoted is declared to have been sold. Therefore, the house that was sold is no longer marketed by PT. Rudensia Jaya Raya as the developer.

Thus, if there are consumers who want to buy the house, they are not allowed because they are considered to have been sold. Thus, PT. Rudensia Jaya Raya suffered material losses. Supposedly, the house could have been sold to other parties or other buyers but could not because the deposit and down payment had been given beforehand.

Ethically and morally, "this cancellation is certainly an act that is highly unethical or inconsistent with ethical and moral values in society".

Thus, the cancellation of the agreement made by the buyer unilaterally is not permitted by Article 1338 of the Civil Code. So that the house sale and purchase agreement basically cannot be canceled by each party because there has been an agreement previously.

Meanwhile, the moral consequence is that the buyer as the party that cancels the sale and purchase agreement must wait for the party who is willing to buy the house or in other words, the buyer must wait for the house to sell first.

The legal consequences of canceling the unilateral agreement made by consumers to PT. Rudensia Jaya Raya is an agreement that can be canceled without obligation for the developer to return the receipt money that has been paid by the consumer. This has been written beforehand and an agreement has been made in the Purchase Agreement.

In addition to legal consequences, this cancellation has moral consequences for the parties. The moral consequence is that the buyer must be able to wait for the house to sell. So the moral consequence that arises is the obligation of the waiting period for the buyer until there is another buyer. This waiting period is enforced so that PT. Rudensia Jaya Raya can return the down payment requested by the buyer who cancels the agreement.

In this case the Consumer, Developer and Bank agree to resolve the issue of the credit agreement by means of deliberation to reach a consensus. The agreement that has been reached from the Consumer side agrees and will carry out all agreed credit agreements. akati.

In the point of cancellation of the previous agreement mentioned. That if the Consumer resigns or cancels the agreement unilaterally. Then the agreement can be canceled without the obligation for the developer to return the receipt money that has been paid by the consumer. The settlement efforts made were the developer and the consumer, namely making a new agreement, namely a letter of canceling the purchase of a house at PT. Rudensia Jaya Raya.

Regarding the return of the down payment or DP, that is, the down payment will be returned in the amount of 50% of what has been paid by the consumer. After the canceled house is bought, it gets a new consumer (resold). For Forfeited Receipt Money and Strategic Factor Money, 100% will be returned.

4. CONCLUSION

Based on the results of the research and discussion, conclusions can be drawn which are the answers to the following problems: Implementation of the house sale and purchase agreement at PT. The steps for Rudensia Jaya Raya include payment of a receipt or booking fee, selection of a building design, determining how to pay in cash or with a mortgage, down payment, if the mortgage has been in a bank account, the consumer enters into a credit agreement and PPJB (binding sale and purchase agreement).

Next is the construction of the house. After the construction of the house is completed, it is continued with the handover of the house and the sale and purchase contract (AJB), if the payment is made with a mortgage, disbursement will be made. pencairan. Cancellation of unilateral agreements made by consumers to PT. Rudensia Jaya Raya has legal consequences.

The agreement can be canceled without the obligation for the developer to return the receipt that has been paid by the consumer. The settlement efforts made are the developer and the consumer, namely making a new agreement regarding the return of the down payment or DP, namely the down payment will be returned 50% of what has been paid by the consumer. For Forfeited Receipt Money and Strategic Factor Money, 100% will be returned.

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