

# Implementation of Obligations for Developers in Fulfilling Property Purchase Binding Agreements through Pre-Project Selling During the Covid-19 Pandemic

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**ABSTRACT :** *Buying and selling is a thing that people do in daily life is no exception to buying and selling rights to land and buildings. One of the buying and selling process that many housing businesses do is pre project selling. The number of enthusiasts with Home Ownership Loans is increasing, but not followed by the understanding of the legal process of ownership, especially in Pre Project Selling Agreement (Hereinafter called PPSA), where the process of transfer of rights juridically and physically has not occurred even though there has been a payment, this transaction process is a consequence of the marketing strategy pre project selling. The World Health Organization declared Covid-19 a global pandemic in March 2020. Then in April 2020, the government issued Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster (hereinafter referred to as Presidential Decree 12/2020). Therefore, legal issues arise, namely: (1) Due to The Law of Force majeure due to Covid-19 towards the fulfillment of achievements by developers in PPSA in Pre Project Selling and, (2) Product warranty and restructuring provided by developers as a form of accountability for the fulfillment of achievements during the Covid-19 period.*

**KEYWORDS** -*Corona Virus Disease 2019 (Covid-19), force majeure, Pre project selling, Preliminary Agreement for Buying and Selling, restructuring.*

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## I. INTRODUCTION

One of the buying and selling process that many housing businesses do is *pre project selling*. During the current Covid-19 pandemic, the life of work activities changed which was once in office buildings, currently carried out at home. This is what causes many demands to provide more comfortable housing so that the demand for housing continues to increase. In other circumstances, economic conditions that are in recession due to the impact of the pandemic from Covid-19 make a decrease in the level of trust in legal certainty so that there needs to be a review of the emergence of new regulations on housing purchases, especially housing purchases using the *Pre Project Selling* system. Often the house building offered by the developer in the condition has not been built, and the new development is carried out after there are prospective buyers who order the house, meaning the house is still in the form of a picture or concept. Currently, Home Ownership Loans are increasing, but not followed by understanding about the legal process of ownership by consumers, especially in the Pre Project Selling Agreement (hereinafter referred to as PPSA) in *Pre Project Selling*. PPSA in *Pre Project Selling* is a way or system that is done by the developer to get funds / capital easily in running the business, it is because the developer will do development after obtaining capital from the proceeds of down payment by the buyer and without paying interest (Elysia d et all, 2020: 14). On the other hand, the PPSA process also provides convenience for prospective buyers to get a home at an affordable cost because they only need to pay a down payment first. PPSA as stipulated in the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/PRT/M/2019 concerning the Preliminary Agreement System for Buying and Selling Houses (hereinafter referred to as Permen PUPR 11/2019) in article 10 (1) point e states that the building of at least 20% (twenty percent). This means that developers should not be allowed to sell the concept before the

certainty of the status of land ownership has existed, and the building has reached 20 % (twenty percent) but as the market develops, the consumer continues to conduct trade transactions even though notabene sold only in the form of concepts.

Since the enactment of Permen PUPR 11/2019, the transfer of land rights as it is known that the transfer of land rights, especially buying and selling occurs directly from the seller to the buyer. Which means cash, namely the transfer of land rights and payments made simultaneously simultaneously as conception in customary law began to be ruled out and for some things considered less flexible (Elysia d et all, 2020: 14). PPSA is an agreement between the seller and the buyer before the sale and purchase process is carried out, because there are elements that must be fulfilled for the sale and purchase, among others, the certificate of rights to the land is still not there considering it is in the process or there is still no settlement of the price (Subekti, 1998: 75). Based on Article 11 (1) Pupr Candy 11/2019, PPSA is done as a buying and selling agreement between development actors and prospective buyers at the stage of the House construction process. Then in paragraph (2)) mentioned ( ppsa as referred to in paragraph(1), at least contains: a. identity of the parties; b. description of ppsa object; c. house price and payment procedure; d. guarantee of construction actors; e. rights and obligations of the parties; f. time of handover of buildings; g. maintenance of buildings; h. use of buildings; i. transfer of rights; j. cancellation and expiration of PPSA; and k. dispute resolution. PPSA is used as a guideline in carrying out transactions until the completion of the process of transfer of rights to ownership. As stipulated in Article 37 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, it is determined that: "The transfer of land rights and property rights to units of flats through buying and selling, exchanging, grants, income in the company and other legal acts of transfer of rights, unless the transfer of rights through auction can only be registered if proven by a deed made by the authorized Notary in accordance with the provisions of the prevailing laws and regulations." Against the application of the above article, PPSA can not be used as a basis for the transfer of rights, but the Deed of Sale and Purchase (AJB) made by Notary. Thus, the issue of legal certainty concerning the process of transfer of rights using PPSA, where the process of transfer of rights juridically and physically has not occurred even though there has been a payment, which is the consequence and risk of the marketing strategy *pre project selling*. On the other hand, new legal problems arise, although with the sale and purchase, there has not been any change to the right to the land in question, even though for example the buyer has made a full payment and the land has been physically handed over to him (Purbandari, 2012; 12). On the contrary, while the juridical and physical surrender of the land has occurred, while the payment of the remaining price that can follow later is not paid by the buyer, it will only arise the problem of receivables debt, which is the problem of receivables debt in the realm of pure civil law that can not be demanded on the basis of buying and selling, considering the process of buying and selling in this case the surrender of land rights has been done (Don Arfan, 2009: 29).

*The World Health Organization* declared Covid-19 a global pandemic in March 2020 (Hilda Lestari, 2020). Then in April 2020, the government issued Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters spreading Corona Virus *Disease* 2019 (Covid-19) as a National Disaster (hereinafter referred to as Presidential Decree 12/2020). Non-natural disasters caused by Covid-19 have resulted in an increasing number of casualties, property losses, widespread coverage of affected areas, and implications for the broad social and economic aspects of Indonesia. Thus the Presidential Decree 12/2020 resulted in public speculation, especially business people that the rule can be used as a legal basis *force majeure* (Annisa Dian Arini, 2020: 53). Since the promulgation of PERPU number 1 of 2020 concerning State Regulation and Financial System Stability for the Corona Virus *Disease* Pandemic 2019 (COVID-19) and/or in order to deal with threats that endanger the National Economy and/or Financial System Stability on March 31, 2020, Government Regulation number 23 of 2020 concerning the Implementation of National Economic Recovery Program in Order to Support State Financial Policy for The Handling of Corona Virus *Disease* Pandemic 2019 (Covid-19) And/Or Facing Threats that endanger the National Economy and/or Financial System Stability and National Economic Rescue, and Presidential Decree 12/2020, then various policies in the regulations in the purchase and ownership of residential homes, especially in *pre-project selling* contracts are

required to adjust, before the parties in this case the Seller and Buyer of the home tread each other demand compensation for the incident.

Covid-19 which is a global pandemic causes many businesses not to carry out their obligations. This event is used as an excuse as a force *majeure* or *force majeure* not to carry out the agreement. Nevertheless, using the reasons for the Covid-19 pandemic to claim *force majeure* in the absence of government policies is difficult to implement.. Adjustments to various agreements either that have occurred or will occur during the Covid-19 pandemic certainly need to get legal certainty. Although the parties involved in a business transaction have never promised the condition of the Covid-19 pandemic as part of *force majeure*, the exemption remains in force under Article 1245 of *Burgerlijk Wetboek* (hereinafter referred to as BW). This article, "No cost, loss and interest shall be reimbursed, if due to circumstances forcing *overmacht* or due to an accidental circumstance, the debtor is unable to give or do anything obligatory, or because the same has done a prohibited act". Although the parties involved in a business transaction have never promised the condition of the Covid-19 pandemic as part of *force majeure*, the exemption remains in force under Article 1245 BW. It becomes a question in the future if with the Presidential Decree 12/2020 makes the Covid-19 pandemic as a state of *force majeure*, who in the future will bear all losses incurred due to unfulfilled achievements of the parties (Cindy Cendhani et al, 2020: 55-76)

Based on the description above, it becomes important to be reviewed related to the national disaster corona pandemic that also causes the parties in commercial agreements are unable to fulfill achievements to be categorized as being in a state of *force majeure*. Presumably to review such conditions, it should be conducted an in-depth *case-by-case* analysis with regard to the clauses in an agreement. In general, it is important to review the essential elements to be able to declare the determination of the COVID-19 pandemic which is a national disaster as a *force majeure*, namely (Agus Yudha Hernoko, 2014: 272). Achievement fulfillment is hindered or prevented, Hindered the fulfillment of such achievements beyond the fault of the debtor, The event that causes the deterred achievement is not a risk to the debtor.

## II. RESEARCH METHODS

### 2.1 Legal Research Type

According to Peter Mahmud Marzuki, *Legal research (rechtsonderzoek)* is a scientific process to find a solution to legal issues that arise with the aim of providing a prescription (preliminary description) of what is present in a scientific point of view of the emerging legal issue. <sup>[1]</sup> It is also stated that legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced (Peter Mahmud Marzuki, 2001: 103). The method of legal research conducted is normative juridical which method or method used in legal research with a point of rejection on the research analysis of the legislation that applies to the concept of *Force Majour* and PPSA, by researching the existing library material as a concept of thought framework and by referring to the jurisprudence of some judges' decisions.

### 2.2 Problem Approach

The approach used to examine this problem is:

2.2.1 *Statute approach*, which is to review the norms contained in the legislation. This is done by researchers because the legislation is the focal point of normative research (Mukti Fajar, 2009: 184). What is meant by the statutory approach is the approach of using legislation and regulations (Peter Mahmud Marzuki, 2009: 184). That is, in this approach, the research will be studied and understood based on the laws and jurisprudence related to the binding agreement on trade based on the concept of *pre project selling*.

2.2.2 *Conceptual approach*, which is to examine the opinions of scholars who support and complement the subject matter. The characteristic of the conceptual approach is the approach that refers to the views and doctrines that exist. With this approach will be conducted research through tracing the concepts and doctrines related to the binding agreement of trade.

2.2.3 *Case approach*, which is to investigate and understand some events or problems that have occurred by collecting various kinds of information that is then processed to obtain a solution so that the problem

revealed can be solved (Rahardjo Susilo, 2011: 252). Using this approach method will be analyzed and studied various cases assembled with *Force Majeure* and PPSA, the case studied is a case that has been decided in court and therefore has a fixed legal force.

### 2.3 Legal Resources

The legal materials or resources used in this writing consist of:

2.3.1 Primary Legal Materials, which are binding materials in the laws and regulations relating to the binding agreement of trade, namely:

1. BurgerlijkWetboek;
2. Law of the Republic of Indonesia Number 4 of 1984 concerning Infectious Disease Outbreaks;
3. Law of the Republic of Indonesia Number 7 of 1992 concerning Banking;
4. Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking;
5. Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection;
6. Law of the Republic of Indonesia Number 24 of 2007 concerning Disaster Management;
7. Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Residential Areas;
8. Law of the Republic of Indonesia Number 20 of 2017 concerning Construction Services;
9. Law of the Republic of Indonesia Number 6 of 2018 concerning Health Quarantine;
10. Government Regulation Replacement Law of the Republic of Indonesia Number 1 Year 2020 Concerning Policykan State Finance And FinancialSystem Stability For The Handling of Corona Pandemic Virus Disease 2019 (Covid-19)And/Or In Order to Face Threats That Endanger the National Economy And/Or Financial System Stability;
11. Government Regulation of the Republic of Indonesia Number 23 of 2020 concerning the Implementation of National Economic Recovery Program in Order to Support State Financial Policy for The Handling of Corona Virus Disease Pandemic 2019 (Covid-19) And/Or Facing Threats That Endanger the National Economy And/Or Financial System Stability And Economic Rescue;
12. Government Regulation of the Republic of Indonesia Number 43 of 2020 concerning Amendments to Government Regulation of the Republic of Indonesia Number 23 of 2020 concerning the Implementation of National Economic Recovery Program in Order to Support State Financial Policy for The Handling of Corona Virus Disease Pandemic 2019 (Covid-19) And/Or Facing Threats That Endanger the National Economy And/Or Financial System Stability and Economic Rescue.
13. 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;
14. Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/Prt/M/2019 concerning Preliminary Agreement System for Buying and Selling Houses;
15. Bank Indonesia Regulation Number 20/8/PBI/2018 concerning Loan to Value *Ratio* for Property Loans, Financing to *Value Ratio* for Property Financing, and Down Payment for Credit or Motor Vehicle Financing.
16. Regulation of the Financial Services Authority of the Republic of Indonesia Number 4/POJK.05/2018 concerning Secondary Housing Financing Companies
17. Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Asset Quality Assessment of Commercial Banks;
18. Financial Services Authority Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of Corona Virus Disease 2019 (COVID-19);
19. Regulation of the Financial Services Authority No. 48/POJK.03/2020 concerning Amendments to The Regulation of the Financial Services Authority No. 11/POJK.03/2020 concerning National

Economic Stimulus as a Countercyclical policy on the impact of the spread of Corona Virus Disease 2019 (COVID-19).

20. Regulation of the Financial Services Authority of the Republic of Indonesia Number. 14/POJK.05/2020 concerning *Countercyclical* Policy on the Impact of Coronavirus Disease 2019 For Non-Bank Financial Services Institutions;
  21. Regulation of the Financial Services Authority of the Republic of Indonesia Number.58/POJK.05/2020 concerning amendments to the Regulation of the Financial Services Authority of the Republic of Indonesia Number.14/POJK.05/2020 concerning *Countercyclical* Policy on the Impact of Coronavirus Disease 2019 for Non-Bank Financial Services Institutions.
- b. Secondary Legal Materials, which are legal materials that provide explanations about primary legal materials in the form of literature books, papers, scientific articles, journals, theses, or *websites* related and have relevance to problems related to the subject matter in this study.

#### 2.4 Legal Material Collection and Processing Methods

The-primary, secondary and tertiary legal materials that have been obtained, are reviewed based on the topic of the problem. Then the legal materials are organized and classified.

#### 2.5 Legal Material Analysis

Analysis of legal materials begins with determining the main focus of existing legislation. Then from the legislation is reviewed aspects refer to public opinion or the opinion of experts. Further classified logically and systematically. The analysis is then illustrated based on the correct arguments.

### III. RESULTS AND DISCUSSION

#### 3.1 The National Disaster Criteria for Covid-19 can be claimed as Force *Majeure*.

Default comes from the Dutch language of *default* which means bad performance. Bad achievements have the meaning of not carrying out achievements due to debtor errors, either by accident or negligence. Subekti argues that the default is if the debtor does not do what he promised (Subekti, 2002: 45). The default (negligence or negligence) of a debtor can be four kinds (Subekti, 2002: 48-52):

1. Not doing what he is willing to do;
2. Carry out what it promises, but not as promised;
3. Do what he promises but it is too late;
4. Do something that according to the covenant should not be done.

It has been previously stated that a default may occur if one of the parties in the contract or agreement does not meet its obligations. With the default of one of the parties, resulting in the non-implementation of an agreement. Non-fulfilled obligations by the debtor may be caused by 2 (two) things, namely:

1. Because in the debtor there is an error.

The debtor is unable to fulfill the obligation to perform due to negligence or intentionality.

2. Due to *forcemajeure* or *overmacht*.

*Forcemajeure* or *overmacht* is a condition that can cause the debtor to be unable to meet the achievements of creditors. Such circumstances are circumstances that cannot be known by the debtor at the time of making the agreement or the circumstances occur outside the debtor's control. Force *majeure* can be interpreted as a situation where a debtor is prevented from carrying out his/her performance due to an unexpected event or circumstance at the time of the creation of a contract, where the event or circumstances of fulfilling the obligations of the debtor to the creditor, while the debtor at that time is not in bad faith. Matters concerning force *majeure* are contained in the provisions governing indemnification because according to the legislator, force *majeure* is a justification reason (*rechtvaardigingsgrond*) to release a person from the obligation to pay compensation. Abdulkadir Muhammad mentioned that when viewed in terms of the period of validity of the

circumstances that cause *force majeure*, then *force majeure* can be categorized as follows (Abdulkadir Muhammad, 1992: 28) :

1. *Permanent force majeure*. A *force majeure* is said to be permanent if at all until whenever an achievement derived from the contract is no longer possible. For example, if the goods that are the object of the contract are destroyed beyond the debtor's fault.
2. *Temporary force majeure*. A *force majeure* is said to be temporary when the fulfillment of the performance of the contract is not possible for a while, for example because of certain events, where after the event stops, the achievement can be fulfilled again.

Agus Yudha Hernoko, also more detailed stated that based on the nature of *force majeure* (*Overmacht*, Force) against the possibility of implementation of achievements divided into 2 (two) namely (Agus Yudha Hernoko, 2010: 273)

1. *Force majeure (overmacht, force)* which is absolute (fixed; permanent), which results in the implementation of the fulfillment of achievements by the parties is in a condition that is not possible forever,
2. *Force majeure (overmacht, force)* that is relative (not fixed, temporary), which results in the implementation of the fulfillment of achievements by the parties normally can not be done, but it is possible to be done partially or abnormally or temporarily borne until it is possible to fulfill achievements by the parties back to normal.

Basically *force majeure* can not be automatically used as an excuse for the cancellation of a PPSA, but can be used as an entry point to negotiate in canceling or changing the contents of the contract known as the addendum of the agreement. <sup>[8]</sup>PPSA must still be implemented in accordance with the content that has been promised because according to Article 1338 BW states that any agreement made legally applies as a law to those who make it. So as long as PPSA is not amended by a new contract, the previous contract is valid and the contract is binding like the law (Dian Arini, 2009: 41-55).

### 3.2 Due to Covid-19 Claim Law as *Force majeure* in The Agreement to Buy and Sell Tapak House

In the opinion of V. Brakel, the existence of *force majeure* results in the obligation on the achievement of the debtor can be removed and the further consequence is that the debtor does not need to reimburse the creditor as a result of coercive circumstances (Isradjuningias, 2015: 24). M. Yahya Harahap, stated that as a result of the circumstances of *force (overmatch)*, where based on Article 1244 BW and Article 1245 BW the state of coercion has been established as a legal reason that frees the debtor from liability for the fulfillment of *achievements (nakoming)* and compensation (*scadevergoeding*), even though the debtor has committed an unlawful act */onrechtmatig* or default (M Yahya Harahap, 1986: 82). For this reason that the state of *force (overmatch)* is referred to as the legal basis that justifies or *rechtvaardigingsgrond*. Looking at the circumstances in which the parties claim the state of *force majeure*, it can certainly make the alliance void, unless the parties in this case agree in the PPSA not to waive Article 1266 BW and Article 1267 BW. <sup>[12]</sup>Basically even though the parties claimed the state of the alliance's *force majeure* remained and all that vanished was its working power (*Ibid*). Alliances remain, especially in temporary *force majeure* (Mariam, 2005: 82). The alliance again had the power to work if the force stopped (*Ibid*). In addition to the consequences as stated above, please note that the important consequence of the claim of *force majeure* of the parties is who should bear the risk of such coercive circumstances. The consequences of a claim for *force majeure* as well as legal consequences arising in some cases are considered detrimental to either party, especially the process of resolving disputes in court that does not accommodate the parties such as expensive costs and convoluted procedures (Mariam, 2015: 183). Therefore a new doctrine was emerged that was considered as a way out of the doctrine of "*hardship*" or "difficult circumstances", because it was considered to provide a better solution in resolving the failure to fulfill the achievements of the parties in a contractual relationship (*Ibid*). *Hardship* can be determined when there are circumstances in which the performance of the contract becomes more difficult for either party in carrying out the fulfillment of performance (Agus Yudha Hernoko, 2006: 206). For example: Since the presidential decree 11/2020, it refers to the provisions of Law No. 4 of 1984 on Infectious Disease

Outbreaks and Law No. 24 of 2007 on Disaster Management. Article 1 number 3 of Law No. 24 of 2007 states that, "Non-natural disasters are disasters caused by events or series of non-natural events, among others, in the form of technological failure, failed modernization, epidemics, and disease outbreaks" and, in Article 1 letter a Law No. 4 of 1984, states that "infectious disease outbreaks hereinafter referred to as outbreaks are the occurrence of infectious diseases in communities whose number of sufferers increases significantly more than in certain times and regions and can cause havoc" So by referring to the second provision of the Law obtained a legal footing that the spread of *Corona Virus Disease 2019* (Covid-19) can be qualified as a Non-Natural Disaster. With the enactment of Keppes 11/2020, it is certainly referring to the provisions of Article 1 number 10 of Law No. 6 of 2018 concerning Health Quarantine stating that, Quarantine Area is a restriction of residents in an area including the Entrance area and its contents are suspected to be infected with disease and/or contaminated in such a way as to prevent the possible spread of disease or contamination. This became known as 'lockdown'.

The state of *hardship* is an event that has fundamentally changed the balance of the contract, caused by the increased cost of the execution of the contract very high burdening the party carrying out the contract in this case the Developer or the value of the execution of the contract becomes greatly reduced for the receiving party in this case the Buyer (Wardatul Fitri, 2020: 76-92). Some of the criteria for a *hardship* state are: a. The event occurs or is known to the aggrieved party after the closing of the contract; b. The event cannot be reasonably estimated by the aggrieved party at the time of the contract closing; c. The event occurs beyond the control of the aggrieved party; and d. The risk of the event is not foreseen by the aggrieved party (*Ibid*).

### **3.3 Restructuring by The Secondary Housing Financing Institution as a form of Developer Accountability efforts during the Covid-19 period.**

Departing from where the debtor in this case the buyer of the home site has defaulted in paying his debt, or housing installments to the secondary institution of housing financing to be hereinafter referred to (LPSP) or in this case to the Developer, then there are times when the Developer or LPSP provides an opportunity to the buyer as his debtor to be able to *rescheduling* or restructuring the debt as a form of liability developer (Suharnoko, 2004: 74-78). Here it becomes a question of why the Developer or LPSP needs to restructure for the Home Buyer site when, it is very easy for the Developer or LPSP in this case to provide information or cancel PPSA by using Article 1266 BW if the Buyer in this case the consumer has failed in the fulfillment of payment performance to the Developer. However, since the issuance of Presidential Decree 12/2020 which states that the Determination of Non-Natural Disasters The Spread of Corona Virus Diseases 2019 as a National Disaster becomes very difficult for developers to carry out *outsomasi* or cancel PPSA even more so if one of the parties has claimed and filed a lawsuit *force majeure condition (overmacht)*. Agus Yudha Hernoko stated that with an event categorized as *overmacht* brings consequences (legal consequences) in which case the creditor in this case the Developer cannot demand the fulfillment of the debtor's achievements and therefore the debtor cannot be declared negligent (Agus Yudha Hernoko, *Op. Cit*:232). Certainly in this case it would be detrimental to the parties, especially the development whodemanded the fulfillment of achievements in the form of payments, and pembeli because it could not own and enjoy the site house. Therefore, developers or LPSP certainly need to study the factors that cause the occurrence of non-performing loans in this case the purchase of *pre-project selling* sites, especially those that make payments in installments.

Suharnoko (Suharnoko, *Op.Cit*: 79) explained in his book that the cause of the occurrence of non-performing loans can be qualified in several factors, of course the parameters used are usually used by banks, but LPSP and developers can use the same measures considering the fulfillment of the achievements of the parties in PPSA Rumah Tapak with the payment promised relatively the same, namely as follows:

a. internal creditor factors; b. internal factors of the debtor and c. external factors. External factors here are limited to external factors that result in debtors in this case home buyers can not meet their performance towards creditors, especially when Covid-19 occurs such as:

1. Decreased purchasing power of the public to consume products and services produced by a company, so that the company does not have enough revenue to meet production costs and capital.
2. There is a mass termination of employment in a company, so that the community does not have income income.
3. The emergence of various government regulations related to Covid-19 as a national disaster, the impact of its implementation by implementing PSBB so as to severely disrupt the flow of distribution of goods and services.

In principle as with the agreement in general, in each PPSA certainly contains clauses that govern the details of the rights and obligations of the parties by including clauses governing the conditions of *force majeure*. In the event of something out of control that befalls the debtor, then by law the parties or one of the parties is exempt from the obligation to indemnify and interest while the parties are unable to fulfill their obligations as set forth in Article 1244 BW and Article 1245 BW, this is called a default due to *overmacht*. In practice, as jurisprudence is as follows (Yulwansyah, 2020: 3-4):

1. Verdict 2914/Pdt/2001 on *force majeure* social unrest may 14, 1998;
2. Decision 3087/Pdt/2001 on *force majeure* of monetary crisis;
3. Decision 587PK/Pdt/2010 on *force majeure* flood;
4. Decision 285PK/Pdt/2010 on *force majeure* of economic crisis and justice.

Considering that the Covid-19 disaster is a temporary and relative force majeure, (Agus Yudha Hernoko, *Op.Cit*: 198) of course this situation will not take place permanently, therefore the event that makes it difficult to fulfill the achievements by these parties, is only temporary, while the situation has returned to normal then the performance of the parties can return to its original state. *Addendum* to the initial PPSA to become the new PPSA without putting aside the initial PPSA can be used as a solution for the parties. By putting forward the principle of *Goodfaith* (Suharnoko, 2021: 24) -or good faith to be open and honest to the truth of all the problems that are being faced, the parties can come face to face to formulate and sign the PPSA Addendum. Some things that need to be discussed are as follows (Trisadini P Usanti, 2017: 59).

1. Renegotiate and *repay* debts and interest by creditors by looking at the ability to pay the debtor.
2. *Me-conditioning* and *me-reschedule* by the Developer to the process of completion of the Development Project.
- 3.

#### IV. CONCLUSION

Based on the results of research Implementation Of Obligations For Developers In Fulfilling Property Purchase Binding Agreements Through Pre-Project Selling During The Covid-19 Pandemic, several conclusions can be drawn that answer the following research questions:

1. With the enactment of Presidential Decree 12/2020, various legal issues arise in the PPSA regarding whether the Covid-19 pandemic is a *force majeure* state, as well as which party will bear the losses from the claim of *force majeure*. With the claim of the Covid-19 pandemic as a *force majeure* on the basis of Presidential Decree 12/2020 by the Developer, of course the Buyer can not file a lawsuit of default and can even make PPSA can be canceled, even though the claim of *force majeure* only makes the delayed work force of the agreement alone caused by Covid-19, and can not cancel the agreement. The claim of subjective and temporary *force majeure* in the Covid-19 pandemic is certainly relevant, where achievement fulfillment is temporarily halted, and in time achievements can reappear. Referring to the provisions of Permen PUPR 11/2019, it is necessary to draft a clause on *force majeure* in PPSA and addendum clause of PPSA so that the Buyer is not harmed in terms of fulfillment of achievements by the Developer delayed due to the Covid-19 pandemic.
2. Due to the Covid-19 pandemic where the circumstances of the parties in PPSA become unbalanced, there is anxiety from the Buyer towards the fulfillment of achievements by the Developer in PPSA, so that the Developer needs to provide certainty in this case *product warranty* to the completion of the project as agreed and set forth in the PPSA. The forms of *product warranty* provided by developers during the Covid-19

pandemic are performance *bond*, *bouw guarantee*, balance guarantee, and *buyback guarantee*. In Permen PUPR 11/2019, in general can be taken the following common threads, namely, Guarantee of Validity, Development Guarantee, Guarantee of improvement of the physical condition of the House and maintenance and Guarantee of Cancellation. And the Restructuring provided by the Developer or LPSP to buyers in the Covid-19 pandemic, referring to the Provisions of POJK 14/2020 Article 9 are as follows, namely, (a) decrease in interest or margin / profit sharing /*ujrah*; (b) extension of term; (c) partial delay in payment; (d) reduction of principal arrears; (e) reduction of interest arrears; (f) addition of Financing; (g) conversion of Sharia Financing agreement; and (h) conversion of Financing into capital investment.

## V. ACKNOWLEDGEMENTS

This research has limitations, so below are some things that can be suggested for improvement.

1. With the enactment of Presidential Decree 12/2020, it is good if the parties use the new doctrine of *hardship* "difficult circumstances" to renegotiate PPSA born before the occurrence of Covid-19, thus giving birth to a new agreement which then with the new agreement is drafted *Addendum* PPSA by stating the clause of difficult circumstances *hardship* Covid-19. Against PPSA born during the Covid-19 pandemic and after the enactment of Presidential Decree 12/2020, it is permissible for the parties in PPSA to insert a *hardship* clause and no longer a *Force Majeure clause*, while considering the circumstances and balance of the Parties.
2. PPSA cannot be canceled due to the Covid-19 pandemic, but only on the work force in the agreement that is temporarily halted, then the fulfillment of achievements from the Developer or Buyer must also be temporarily halted, and under normal circumstances the fulfillment of achievements can run again, so referring to the provisions of POJK 14/2020, Restructuring must be done by LPSP or against buyer payments, which is an *equal* consequence of development delays made by developers due to the Covid-19 pandemic. Credit restructuring agreements made by LPSP or Developer to the payment of debtors in this case the Buyer's home site should be implemented by putting forward the principle of proportionality.

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