

Legal Certainty for Consumers of *Tapak* House Based on Purchase Binding Agreements with Pre Project-Selling System

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Abstract. *The Purchase Binding Agreement (PBA) was born as a result of the existence of several requirements stipulated by law in the sale of houses Tapak, have not yet been fulfilled which ultimately inhibits the completion of the sale transaction. To still be able to buying and selling houses Tapak then the parties agreed to buy and sell will be done after the certificate is taken care of or after the price is paid in full and to keep the agreement, it is still implemented well while the requirements requested can still be taken care of then the parties poured the initial agreement in the PBA. However, not yet sale and purchase of houses Tapak through the Deed of Sale in front of Land Deed Making Official required by law can be detrimental the consumer, if the consumer has paid the sale price, ownership the right to housing has not yet been transferred from the agents of development because it has not been fulfilled-conditions requested by law. This research purpose was to explain the legal certainty for consumers in buying and selling houses Tapak based on the Purchase Binding Agreement with the pre project selling system after it occurs real surrender by development actors. Sale and purchase of houses Tapak based on the Purchase Binding Agreement with the pre system project selling is a solution when the provisions in the Civil Code differ from the provisions contained in the Basic Regulations Agrarian Principles, but this can cause uncertainty the law for consumers when the home buyer consumers have paid the price in full the house but the development agent did not submit proof of ownership rights to consumers of Tapak house buyers. Tapak house buyers have a Letter of Engagement Agreement for Sale and Purchase so that when the site is submitted to consumers are buyers of Tapak houses by development actors, so the position of consumers is not clear. Consumers who buy houses Tapak are not the recipients of power of attorney development not as a landlord tenant. This is what gives rise legal uncertainty.*

Keywords: Agreement; Consumers; House; Purchase; Tapak.

1. INTRODUCTION

The state is responsible for protecting the entire nation of Indonesia and advancing general welfare through the administration of housing and settlement areas people are able to live and inhabit decent and affordable houses in healthy, safe, harmonious and

sustainable housing throughout the region Indonesia. Every citizen of Indonesia has the right to obtain proper settlement rights and has a healthy and comfortable shelter, as mandated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "Every person has the right to live in prosperity physically and mentally, residing and getting a good and healthy living environment as well entitled to get health services. "Article 40 of Law Number 39 Year 1999 Concerning Human Rights, which states that everyone has the right to live and have a decent life. Article 5 paragraph (1) of Law Number 1 The year 2011 concerning Housing and Settlement Areas affirmed, "The State responsible for the administration of housing and the settlement area the training is carried out by the government. "In accordance with statutory regulations mentioned above, clearly confirms that the role of the state is needed in guaranteeing meeting the housing needs of all Indonesians.

The shape of the house based on Article 22 of Law Number 1 of 2011 concerning Housing and Settlement Areas include single houses, row houses and flats. Single houses and row houses including *Tapak* houses. *Tapak* house is a house whose building is directly on the ground. There are *Tapak* houses in the form one-story house and level house, a house that has more than one floor. There are *Tapak* houses in the form of a "single house" (the building is separate from other houses) or in the form of a "trailer house or row house" (a house with walls that go hand in hand with other houses). The main characteristic of the *Tapak* house in addition to the building which *Tapak* directly with land, ownership rights are also single.

The rapid development of the business field of home construction has resulted sale and purchase of *Tapak* houses based on the Binding Agreement of Sale Buy. *Tapak* houses that have not been seen physically have been sold, even marketing this house unit before the stake was built. This system is known as the Pre project selling. This marketing occurs because the documents are the basis of the transfer of rights not yet completed by development actors. Marketing is done by offering brochure containing promotion of completeness facilities. Offer also through advertising media as a means of communicating products that are made and / or marketed by development actors. However, information is conveyed through brochures and media advertisements are often misleading (misleading information) or incorrect. *Tapak* house which have been or will be built by development actors and then sold to community where the agreement format has been made unilaterally by the perpetrator's development. Provisions of Law No. 5 of 1960 concerning Basic Regulations Agrarian Principles, emphasizes that one way for the transfer of land rights is through a buying and selling mechanism that must be carried out by making authentic deeds, namely Deed of Sale and Purchase made before the Official Makers of Land Deed. According to the National Land Law objects are still built or items that will still exist cannot be traded or marketed or cannot be the object of the agreement, whereas according to Article 1334 of the Civil Code "Things what remains will be the subject or object of the agreement". In connection with the requirements that have not been fulfilled for carry out the Sale and Purchase Deed between development actors and consumers, then to anticipate this so that buying and selling *Tapak* houses can still be done first,

the parties to the development and consumers agree to make an agreement known as the Tying House Purchase Agreement.

The Binding Agreement of Sale and Purchase was born from the conception of the Law Book Civil Code which is an agreement between the parties regarding the rights and obligations made by basing on Article 1320 jo. Article 1338 of the Civil Code, so it is expected to provide legal certainty and legal protection for the parties the party who made it. However, the sale and purchase of *Tapak* houses has not been done making Deed of Sale and Purchase in front of the Land Deed Makers Officer who required by law can be detrimental to the consumer, if the consumer has paid off the sale price, ownership of the rights to the house has not yet been transferred development actors because they have not fulfilled the conditions requested by the law invite. Based on this background the problem of "How." legal certainty for consumers in buying and selling house-based transactions Binding Agreement of Sale and Purchase with the pre-project selling system after submission real by development actors.

2. RESEARCH METHODS

This research is normative legal research. Problem approach which is used in this study is the philosophical approach (philosophy approach), statutory approach, conceptual approach (conceptual approach). Sources of legal materials use primary legal materials, i.e., statutory regulations and secondary legal materials, namely legal books, journals published related to the problem under study. Material analysis the law is done by first identifying the legal material that is collected, then described, systematized by basing on legal scientific theories and legal science concepts, principles or principles of law. Next, analysis the legal material used is descriptive analysis, which is based or rests on legal reasoning, legal interpretation and legal argumentation (legal argumentation) coherently. Furthermore, conclusions are drawn by using the deductive thinking method, which concludes the results of research from things that are general to things that are special.

3. RESULTS AND DISCUSSION

3.1. The Birth of a Binding Sale and Purchase Agreement in *Tapak* House Transactions

Binding Agreement of Sale and Purchase was born because of the principle of freedom of contract other than from the needs of the people who want. Article 1319 of the Civil Code states "All agreement, both those that have special names and those that do not have names certain, subject to the general provisions contained in this chapter and chapters ago. Based on this article means that even though the Binding Agreement of Sale and Purchase born because of the principle of freedom of contract but still must

meet its legal requirements the agreement specified in Article 1320 of the Civil Code, namely:

- a. There is an agreement;
- b. Ability to make agreements;
- c. The existence of a certain thing;
- d. The existence of halal causa.

Binding Agreement of Sale and Purchase of *Tapak* houses is an agreement that is consensual, meaning that the agreement was born when both parties reached an agreement regarding objects (in this case the *Tapak* house) and the price even though at that time the goods were not yet submitted and the price has not been fully paid (Article 1320 paragraph (1) jo Article 1458 Civil Code). Binding agreements of sale and purchase are also classified as obligatory agreements.

Obligatory agreement is an agreement where the parties agree to bind themselves to hand over an object to another party. Binding Agreement of Sale and Purchase has not resulted in the transfer of ownership of a *Tapak* property from the seller to buyer. This stage is only an agreement (consensual) and must be followed by levering agreement, i.e. at the signing of the deed of sale and purchase before the Official Land Deed Maker. After the contract of binding purchase agreement is signed then birth rights and obligations for each party as stated in the contract Signed Binding Agreement of Sale and Purchase. Agreement on the Sale and Purchase of *Tapak* houses is included in the conditional engagement with tough conditions.

This can be seen from the requirements for the documents which is the basis for the transfer of rights has not been completed by the development actors. According to the provisions stipulated in Act Number 5 of 1960 concerning Basic Regulations Agrarian Principles, it is regulated that one way to transfer rights to land is through the mechanism of buying and selling. Buying and selling must be done with making authentic deeds that are made in front of the Land Deed Making Official who known as the Sale and Purchase Deed. In connection with the conditions that have not been met the conditions required to enter into a Sale and Purchase Act between the perpetrator's development and consumers, then to anticipate this in order to buy and sell *Tapak* houses can still be done first, the development actors and buyers agree to make an agreement to Buy and Sell site.

Rules for site marketing with the pre project selling model are contained in Law Number 1 of 2011 concerning Housing and Settlement Areas. Binding agreements of sale and purchase must be made more careful so that the interests of consumers and development actors are proportionally properly accommodated, therefore the principle

of scrutiny when making an agreement to buy and sell house is very important for the parties and for a notary who makes the deed.

Tapak Sale and Purchase Agreement of *Tapak* houses is an agreement made by the seller and prospective buyer on the basis of an agreement before the sale and purchase is made. This agreement is needed to secure the interests of sellers and prospective buyers as well minimize disputes that might arise in the future. Binding Agreement of Sale Land purchase is carried out before the law of buying and selling.

The binding purchase agreement is not regulated in the Civil Code, however its existence is in accordance with the provisions of Law Number 1 of 2011 regarding Housing and Settlement Areas (as *lex specialis*) which requires the Binding Agreement of Sale and Purchase if the sale and purchase object is still in process development, furthermore concerning the Binding Agreement of Sale and Purchase is regulated more continued with the Ministerial Regulation No. 11 / PRT / M / 2019 concerning the Agreement System Preliminary Buy and Sell Houses, meaning the substance in the Binding Agreement of Sale and Purchase it must be in accordance with what is mandated by Minister of Regulations Number 11 / PRT / M / 2019 concerning the Preliminary House Purchase Agreement System Preliminary Purchase Agreement System according to Article 1 number 1 Ministerial Regulations Number 11 / PRT / M / 2019 is a series of process agreements between everyone with development actors in marketing activities as outlined in the agreement preliminary sale or purchase agreement binding sale before signing the sale deed buy.

Ministerial Decree Number 11 / PRT / M / 2019 is intended to secure the interests of the organizers of housing and settlement development and the candidates the buyer of the possibility of default from the parties. Application of Deed of Sale and Purchase home need supervision and control. The Public Work and Public Housing Minister Regulation allows for this marketing or selling land and buildings in the form of *Tapak* houses (especially at housing) before the house is completed. This can be done by making a binding sale and purchase agreement between the development party with prospective buyer. Pre project selling is a way to market and sell property that is still in project form, is still under construction. The marketing team is familiar with two products properties, first, property units that are available, ready to sell (ready stock), second, units property that must be booked in advance (indent / pre-order), or it can also be still under construction (uncompleted building / uncompleted private residential property).

National Land Law is sourced from Customary Law, this is due to Law Agraria that applies to earth, water and space is the Customary Law as regulated in Article 5 of the BAL. Buying and selling property will be constrained when the object of buying and selling has not available and payment has not been paid in full, due to the sale and purchase of land rights according to the Law Adat adheres to a system known as *contante handling* or actions done in cash. The element of the act is a simultaneous

transition and payment cash, so that legal actions are called cash actions (contante handling) [1]. So, if the site is ready, land title certificates have been issued and property consumers has paid off, then the sale and purchase that resulted in the transfer of the rights of the perpetrators development to property consumers can be carried out. According to Article 37 paragraph (1) Government Regulation Number 24 of 1997: Transition of land rights and ownership rights to apartment units through buying and selling, exchange, grants, income in companies and legal acts of transfer of rights others, except the transfer of rights through an auction, can only be registered, if proven with a deed drawn up by an authorized notary according to regulatory provisions current regulation.

Provisions contained in the regulations regarding registration land, more containing Administrative Law classified as Public Law compared to civil law relating to individual interests. Kusumadi Pudjosewojo said, Administrative Law with Administrative Law, that is the whole the rule of law governing how the state as ruler runs businesses to fulfill their duties [2]. Starting from the opinion, the articles in it are more leads as legal provisions that are coercive (dwingend recht) so they are not may be distorted by the parties, even if it is based on an agreement [3]. As a result, the provisions concerning the transfer of land rights are very rigid and cannot deviated, if the elements in the implementation of buying and selling have not been fulfilled, then the right to land as one type of object cannot be used as an object of the transfer of rights directly.

Rules in the Land Law do not justify notary carrying out buying and selling land rights if the subject and object do not meet the requirements, for example land to be purchased is not certified or only partially purchased or if the building on it is still a project, certificate of authenticity has not been checked or has not been done mapping / plotting, or also the purchase price money has not been paid off. Community and perpetrators business if faced with conditions as mentioned above, there will be stagnation business. This is a consideration people start looking for a way out with take advantage of other existing legal facilities, namely those stipulated in the Civil Code. According to the articles contained in Book III of the Civil Code are a reference for the community in making profit-oriented interactions. That is, the existence of the Book III Civil Code is indeed intended to support business [4].

3.2. Rights and Obligations of the Parties in *Tapak* House Transactions according to Minister Regulation Number 11 / PRT / M / 2019

Ministerial Regulation No. 11 / PRT / M / 2019 concerning the Preliminary Agreement System Selling and Buying Houses, which was promulgated on July 18, 2019, revoked two regulations previously the Decree of the State Minister of Public Housing Number 11 / KPTS/ 1994 concerning Guidelines for Engagement in Buy and Sell Flats and Decrees of the State Minister Public Housing Number 09 / KPTS / M / 1995 concerning Guidelines for Binding of Buying and Selling. Section 2 Paragraph (1) Ministerial

Regulation Number 11 / PRT / M / 2019 confirms that the scope This Ministerial Regulation covers the Sale and Purchase Binding Agreement system consisting of marketing and Sale and Purchase Binding Agreement.

Permission to marketing the site while still under construction it is affirmed in Article 3 paragraph (1) that the Construction Actor may conduct the Home Marketing single or series houses when in the stages of the development and marketing process must be contain marketing information that is true, clear and guarantees certainty of information regarding existing plans and physical conditions (paragraph 3). The marketing must have the least certainty of spatial allocation, certainty of land rights, certainty of tenure status Houses, housing construction permits or Flats, collateral for development housing or Flats from the guarantor institution. Sale and Purchase Binding Agreement is done as an agreement buying and selling between development actors and prospective buyers at the stage of the development process Home.

One of the important things in Public Housing Minister Regulation No.11 2019 is regarding the supervision of marketing requirements as referred to in Article 4 paragraph (1) shall be carried out by regional authorities in charge of housing and areas settlement of regency / city Regional Government or special provincial Regional Government for the Province of the Special Capital Region of Jakarta which is not regulated in Minister of Housing Regulation No. 09 / KPTS / M / 1995.

Rights and obligations of the parties contained in the attachment to Minister of Housing Regulation No. 11 / PRT / M / 2019 is for development actors including receiving housing payments and the obligation of development actors is to build houses according to plan site plan and licensing, completing housing construction on time, inform the buyer of the development progress [14]. Buyer rights include obtain true, honest and accurate information about the Home, know the terms and conditions of buying and selling Houses before committing payment of the price of the House, accepting the handover of the House on a term time as agreed, submit claim for improvement physical condition of the house which is not in accordance with the agreed specifications.

Obligations of the buyer include making payments according to the price of the House with the amount and payment schedule agreed in the Sale and Purchase Binding Agreement. Public Housing Ministerial Regulation also regulates the handover of buildings. Handover carried out by the perpetrators of the construction of the *Tapak* Houses that have been woke up equipped with documents, minutes of handover key and deed of sale or purchase certificate of ownership. In terms of building houses that are become an object of the Binding of Buying and Selling Houses have been completed in accordance with the term the agreed time, and as long as the Buyer has completed fulfilling the obligations for pay the price of Land and Building Houses along with other costs, the Seller and Buyer agrees to sign the Minutes of Handover of Land and Buildings Home.

Handover of land and house building carried out by the development actors resulting in all responsibilities for maintaining and protecting the land and building of the house these are the full responsibility of the buyer. After the land handover and house construction is carried out, the perpetrators of the construction must provide a period maintenance / repair within 3 (three) months from the date of signing handle the minutes of handover. Repairs on damaged parts are done by the seller based on building floor drawings and technical specifications, which is an attachment of the binding sale and purchase of the house. When the development actors have completed the construction of the *Tapak* house as determined in the contract, the obligation for development actors to surrender the house which is the object of the agreement to the buyer, as which is emphasized in the attachment to the Decree of Public Housing Ministerial Regulation number 8. However, this is an obstacle is a certificate which becomes evidence of ownership of rights cannot be submitted to buyer, this is because there are some requirements that have not yet been fulfilled by development actors in the issuance of certificates.

Development actors who have not been able to submit land certificates where in. There is a site building above it because there are some conditions that have not been able to fulfilled by development actors, it remains a duty of development actors to hand over the site to the buyer. Consequently, when the surrender is done, which is usually symbolized by the surrender of the key and is made minutes of handover and as long as the Buyer has completed the obligation to pay the price of Land and Building Houses along with other costs, the seller and The buyer agrees to sign the minutes of the handover of the land and house.

According to the Agrarian Law, namely Law No. 5 of 1960, what was done by the development actors there has not yet been a sale and purchase transaction, because according to the Law Agrarian Basic, buying and selling land and buildings contained on it are still using Customary law [12]. Buyers only have the right to occupy it and pay all fees used for these house facilities, such as paying electricity subscription fees, taxes, water subscription fees and costs incurred for house maintenance. Based on Customary Law, sale and purchase agreements are agreements that are of a nature real, it means the delivery of the goods agreed upon is an absolute condition that is must be fulfilled for an agreement. It also adheres to the principle of light and cash, that is, buying and selling in the form of the transfer of rights for ever and at the same time payment is made by the buyer received by the seller.

Based on this, according to the author when the certificate has not yet been made *Tapak* house consumers have paid off the price of the house so there is no legal certainty for landlady consumers (buyers) in buying and selling *Tapak* houses with the Binding Agreement Buy and sell because consumers *Tapak* houses do not hold proof of ownership rights but only holds the Letter of Purchase Agreement. Binding Agreement of Sale and Purchase is not proof of ownership rights. Are the consumers of the *Tapak* house as Recipient or Power of Attorney of the development agent?

3.3. Analysis of the Agreement granting power of attorney in the Sale and Purchase of *Tapak* Houses

Article 1792 of the Civil Code confirms that the Agreement grants power (lastgeving) is an agreement in which someone gives power to another person, the recipient of the power of attorney agrees on behalf of the authorizing party acting in a certain case affair. The definition according to the Civil Code, where there are words "organizing affairs" and the words "for his behalf" are reviewed in terms of the juridical words "Organizing an affair" means that there is a legal action there will cause certain legal consequences whereas the words "to his name" mean there is someone who represents to others to do an action certain, so it can be interpreted that people who receive power in doing the matter is representative and in this case the recipient of the power acted for and on behalf of the authorizer, and will give rise to the rights and obligations of the person authorizer or recipient of said attorney.

The contents of the granting of power of attorney, in accordance with the legislation can be distinguished to be:

1) Article 1795 of the Civil Code states that the content of the power of attorney is as follows:

Granting Power of Attorney Specifically regarding only one particular interest or more and granting power of attorney in general, covering all interests the authorizer.

2) Article 1797 of the Civil Code states that the Power of Attorney is not permitted do anything that goes beyond his power, the power given to settle things by way of peace, absolutely not contains the power to submit his case to the decision of the referee. So if someone who is authorized to do something more than what is stated in the power of attorney, then the consequences of actions it is entirely the responsibility of the power of attorney. The power of attorney can ask for compensation from the recipient of the power of attorney or it can also the authorizer approves what the recipient has done though beyond its power.

What needs to be considered in the power of attorney agreement is:

1. Nature of Power of Attorney.

In principle, someone (lastgever) tells someone else (lasthebber) to take legal actions for their own benefit. In this case, authorization excluded in very personal matters, such as making a will or testament inheritance and in the case of family law, such as duty as husband and wife. Gift agreement power of attorney according to Article 1793 of the Civil Code can occur by verbal or in writing, in the form of letters, underhand deeds, and authentic deeds (notarial deeds). According to Article 1794 Civil Code, in principle the agreement granting power (lastgeving) occurred with free of charge or

wages in return. The reward can be stipulated in the agreement agreed by the grantor (lastgever) with the recipient power of attorney (lasthebber) or based on statutory provisions.

2. The Occurrence of Power of Attorney

A power of attorney agreement can occur in two possibilities, namely a Representative directly, meaning the recipient of the power of attorney to notify the party third, that he acts on other people's orders and indirect representatives, i.e. the recipient of the power of attorney does not notify the third party that he is ordered by the authorizer, but he acts out to third parties, as if for his own sake. The form of a power of attorney agreement can be in the form of a power of attorney in the strict sense, that is, the power of attorney agreement as referred to in article 1792 of the Civil Code and agreement granting power of attorney in the broadest sense, that includes including actions which its nature represents the interests of others, such as the actions of parents or guardians towards children, teacher's actions towards students, husband's actions towards his wife and others. The birth the power of attorney agreement may occur because of the agreement, i.e. what happens because the agreement between the party granting the power of attorney and the recipient of the power of attorney because of the law, i.e. because there are factors understanding the power of attorney in the broad sense as referred to above.

3. Obligations of Power of Attorney

The recipient of the power of attorney is a person who has been given authority by a power of attorney, so that the power of attorney has obligations that must be carried out. Obligations of power of attorney (lasthebber) are regulated in Articles 1800 - 1806 of the Civil Code and Article 1812 of the Civil Code, namely:

- 1) Bear all costs, losses and interest as long as he has not been released in exercise power.
- 2) Completing all matters that have begun to be done, while the authorizer die.
- 3) Accountable for everything that is negligent.
- 4) Take responsibility for the actions of the person appointed as a substitute for in exercising that power.
- 5) Paying interest on the principal used for personal needs, money which must be submitted at the close of calculation and from negligence.
- 6) Withholding the goods belonging to the power giver in his hand, until paid in full to him everything he could demand as a result the granting of such power of attorney or commonly referred to as the recipient's retention rights. Right retention is the right of the recipient of the power to hold his belongings the giver until paid in full everything that can be demanded.

7) Give a report on what he did and provide calculations to the Power of Attorney about everything that he receives in carrying out the task he gave.

4. Obligation of Authority

The obligations of the grantor are regulated in articles 1807-1811 of the Civil Code, namely:

1) Obligated to fulfill the agreement made by the proxy, except for outside assignments he gave.

2) Returns the down payment and costs incurred by the recipient power of attorney and pay the wages of the power of attorney, despite the duties of the power of attorney not successful. This remains the responsibility of the Authorizer though the business is not carried out as long as the Power of Attorney has worked on it his duties properly and to act within the authority stated in the power of attorney.

3) Provide compensation for losses suffered by the power of attorney at any time exercise power, except for things which are negligence or imprudence-careful

4) Paying interest on the advance issued by the authorized recipient starting from the day the issuance of the advance payment.

5. Ending of the Proxy

According to article 1813 of the Civil Code, an agreement to grant a power of attorney ends if the power of attorney is withdrawn by the power of attorney, the person receiving the power of attorney or the power of attorney deceased, the power of attorney or the recipient of the power is under authority (curatele), the authorizer or recipient of bankruptcy.

Article 1803 of the Civil Code confirms that "The Power of Attorney is responsible for people which has been appointed by him as his successor in carrying out his power of attorney:

a. If he is not given the power to appoint someone else as his successor

b. If that power has been given to him without mentioning a particular person, while the person he chose turned out to be someone who was incompetent or not able to. So, it is clear that the article requires that the appointment of power of substitution not permitted or not approved by the Authorizer (authorizer the first time before the power of substitution is issued) and if the appointment of power of substitution has been issued got the authority from the Authorizer without determining who it was, it turned out to be the person these are not capable or unable then it is the responsibility of Giver of substitution.

The power of attorney is included in the agreement that will cause the engagement namely the rights and obligations between two parties, namely the party granting the

authority on one side and the party the recipient of the power of attorney on the other hand. The Power of Attorney is an agreement, because it is agreement, then the legal requirements are regulated in Article 1320 of the Civil Code the legal requirement for an agreement, namely: an agreement, the ability of the parties, a certain matter and *halal causa*.

The problem that then arises is when the transaction of buying and selling of *Tapak* houses based on the Purchase Binding Agreement is whether there is legal certainty for consumers after the surrender of a house key by a development agent, while a certificate not yet completed because there are several conditions that have not yet been fulfilled by development actors in making certificates. This is important because it is related to protection legal for consumers or buyers. Legal protection will be given when standing the consumer is clear and certain. Are these consumers as owners because as the buyer or as the recipient of the power of attorney from the development agent because the ownership rights are not yet switch.

When the Purchase Binding Agreement was signed by the parties then at that time was born the Binding Agreement of Sale and Purchase and here are sellers and prospective buyers. As described above that the Purchase Binding Agreement was made because there are still several conditions which cannot yet be fulfilled by development actors when they sell their houses footprint. While the construction process runs until the house is finished later House keys are handed over to prospective buyers. Here a problem arises, no certificate can be issued because there are some conditions in making certificates that have not been able to fulfilled by development actors so that potential buyers only hold the Agreement Binding Buy and sell only. After handing over the key, what are the consumers of the *Tapak* house as a buyer and owner or just as a power of attorney.

Sale and purchase transactions of land and buildings are not subject to the provisions in Book III of the Civil Code but subject to the Basic Agrarian Law. Based on Basic Agrarian Law, buying and selling land and buildings on it still uses Customary Law, where in Customary Law, buying and selling must be light and cash, there must be submission or levering.

Based on Customary Law, a sale and purchase agreement is a real agreement, the intention is the delivery of the goods promised as an absolute condition that must be fulfilled for an agreement. In other words, if it has been agreed something, but in practice the object of the agreement has not been submitted, the agreement it is considered to be non-existent or there is no agreement yet, in addition it also adheres to the principle of light and cash, that is, buying and selling in the form of the transfer of rights forever and immediately payment is made by the buyer received by the seller [10].

The situation is different from the provisions regarding regulated sale and purchase agreements in the Civil Code, because it is in accordance with Article 1458 of the Civil Code that "buying and selling considered to have occurred between the two parties when they had reached an agreement about goods and prices, even though the goods haven't been delivered and the price hasn't paid". On the basis of this article, it appears that the agreement is considered to have existed since an agreement was

reached, even though the goods promised had not been delivered yet the price hasn't been paid yet.

Connected with the power given by the development actors to the candidate the buyer then the authority of the authorized recipient (in this case the prospective buyer) is occupy *Tapak* houses and conducts affairs related to *Tapak* houses the Article 1808, which states that the grantor is obliged to return the money advance and costs incurred by the proxy and pay wages recipient of the power of attorney, even though the assignment of the power of attorney is not successful. This remains the responsibility of the Power of Attorney even if his business is not successfully carried out provided that The Power of Attorney has done a good job and is acting within limits the authority stated in the power of attorney. Based on this Article it is the duty of the Authorizer to recover the costs that have been incurred issued by the power of attorney, such as payment of electricity subscription fees, payments dues, the cost of repairs if something is broken and others. However, in organizing this matter, the costs incurred by the recipient are not replaced by a Power of Attorney, so that the sale and purchase transaction of *Tapak* houses is based on the Agreement Binding of Buying and selling is not a power of attorney agreement when home consumers site has paid off the price of the site and the development actors submit the house symbolically handed over the keys to the house to be occupied but the development agent has not yet submitted the certificate of proof of rights and costs issued by consumers of *Tapak* houses are not replaced by development actors, in this case this is the responsibility or burden on the *Tapak* consumer.

3.4. Analysis of the Lease Agreement in the Sale and Purchase of *Tapak* Houses

Lease agreements are regulated in Chapter VII Book III of the Civil Code "About Leasing" from Article 1548 to Article 1600 of the Civil Code. Article 1548 The Civil Code stressed "A lease agreement is an agreement with which party one ties himself to give the other party pleasure from an item, during a certain time and with payment of a price, which is by a party the payment has been promised later. According to Yahya Harahap, Renting is an agreement between the renting party and the renter. Party the lessee hands over the items to be rented to the lessee for fully enjoyed [15]. The tenancy agreement is a consensual agreement, which is means the agreement is valid and binding when agreement has been reached between the parties regarding the principal elements of a lease agreement namely goods and prices.

If the definition of leasing is associated with a land purchase transaction where consumers who buy *Tapak* property have paid off the price of the house, it has already happened real surrender by development actors but consumers of *Tapak* house buyers have not receive a letter of proof of rights because it is not ready yet, whether it can be said by consumers *Tapak* house buyers are tenants?

The elements of rent are goods and prices. Are these elements in sale and purchase transactions of *Tapak* houses so that said transaction is said to be a lease rented? Here goods or objects are *Tapak* houses. The price in question is the price rent. In the transaction, the money is paid by consumers who buy *Tapak* houses not as a rental price but as a purchase price for a site. When consumers who buy a *Tapak* house pay in full and then inhabit the house here.

There is uncertainty about the position of the consumers of the buyers of the site because they do not hold it yet certificate of proof of rights. The consumer of the buyer of the site only holds the Agreement letter Binding of Buying and Selling. the Letter of Agreement on Purchasing and Purchasing is not a proof ownership.

Based on the analysis, the transaction of buying and selling of *Tapak* houses is not an agreement rent because the consumer home buyer does not pay the rental price but pay *Tapak* house prices. Consumers of buyers of *Tapak* houses already fulfill its obligations but the development actors have not fulfilled their obligations where the actors development does not submit or provide proof of rights to consumers *Tapak* house buyers. Consumers who buy *Tapak* houses also do not know how long the perpetrators are development will provide proof of rights.

The sale and purchase agreement and the lease agreement are a lead-in agreement, that is agreement where each party has rights and obligations that must be fulfilled. The obligations of the renting party can be found in article 1550 of the Civil Code. These obligations, namely handing over items that are rented out to tenants, maintaining leased goods so that they can be used for the intended purpose and to provide the tenant with the most enjoyment than the goods leased during the lease.

Obligations in *Tapak* house transactions have been carried out by development actors, i.e. give up goods or objects. The problem is, this submission is not included the submission of the certificate of ownership so that the ownership of the *Tapak* property has not been transferred to the consumer *Tapak* house buyers. So, consumers who buy *Tapak* houses are only entitled to occupy or just inhabit. Even though the purpose of the *Tapak* house transaction is to become an owner *Tapak* house. So that the elements of goods and prices contained in the rental agreement renting does not meet in the sale and purchase transaction of the site because of the price paid not as a rental price but as a purchase price from a *Tapak* house. So the transaction *Tapak* houses with a Binding Sale and Purchase Agreement are not included as a rental agreement rented.

4. CONCLUSION

Sale and purchase of *Tapak* houses based on the Purchase Binding Agreement with the pre system project selling is a solution when the provisions in the Civil Code differ from the provisions contained in the Basic Regulations Agrarian Principles, but this can cause uncertainty the law for consumers when the buyer of the site has paid off the price of the house but the development agent did not submit proof of rights ownership to consumers, buyers of *Tapak* houses. Consumers of *Tapak* house buyers only has a Binding Agreement of Sale and Purchase so that when the house is *Tapak* submitted to the consumer of the buyer of the site by the development agent the position of the consumer is unclear. Consumers not as *Tapak* home buyers the recipient of the power of attorney from the development neither as a tenant of the site house. This is causing legal uncertainty.

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