

The Responsibilities of Housing Developers Due to Default in the Sale and Purchase Agreement of Home Ownership

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Abstract. *This study aims to find out and analyze the implementation of the role of a Notary related to PPJB according to the applicable laws and regulations. to find out and analyze the responsibilities of housing developers due to defaults in the sale and purchase agreement of home ownership to consumers of Tlogomulyo residence Semarang, and to find out and analyze legal protection for consumers for the sale and purchase agreement that has been mutually agreed upon with the Housing Developer Tlogomulyo residence Semarang. Sociological juridical law research methods. The specification of this research uses descriptive analysis. The type of data used in this study is primary data which includes the 1945 Constitution; Act No. 1 of 2011; Basic Agrarian Law; the Consumer Protection Act, the Civil Code; The Criminal Code, as well as secondary data containing books and other supporting documents. Collecting research data using interview techniques and study of documents or library materials. The data analysis method used in analyzing the data is an interactive qualitative analysis model as proposed by Bodgan and Biklen. The research results show that the developer's responsibility is not only limited to what is stated in the agreement, but more than that, the developer must also be responsible for hidden defects/damage to the Tlogomulyo Residence Housing. Mutual protection for consumers for the PPJB which has been mutually agreed upon with the Tlogomulyo Residence Housing Developer, Pedurungan District, Semarang City, namely before PPJB can be carried out through deliberation to reach a consensus.*

Keywords: Agreement; Developer; Liability.

1. Introduction

Settlements and housing are "the main or primary needs that must be met by humans". Housing and settlements can not only be seen as means of necessities of life, but furthermore, namely "the process of human settlement in the context

of creating a living order for the community and himself in expressing his identity". However, not all community members can enjoy and have proper, healthy, safe and harmonious housing. Therefore, housing and settlement development efforts continue to be increased to provide an increasing number of housing at affordable prices.¹

This fact further emphasizes the high level of need for housing, especially in the city of Semarang and its surroundings, even so meeting this housing need is not without constraints, consumers whose existence is very unlimited, with very varied strata cause developers to carry out marketing and distribution activities of goods or services in ways that are as effective as possible in order to reach these diverse consumers.

Housing developers seek all approaches to consumers, so that they may have various impacts, including conditions that lead to negative and even dishonorable actions that originate from bad intentions. Adverse impacts that commonly occur include the quality or quality of goods, information that is unclear or even misleading, counterfeiting and so on.

In practice, there are several housing cases that generally position consumers as a weak group compared to developers (developers). The outbreak of housing cases basically started with a discrepancy between what was stated in the brochure/advertisement and what was stated in the sale and purchase agreement signed by the consumer. The facts are increasingly eye-opening that the consumer's position is in a weak position and the legal protection for them has not been guaranteed as expected. This reality was further emphasized by Shofie who said that "Marketing by developers is also very tendentious, so it is not uncommon for the information conveyed to turn out to be misleading information or incorrect."²

PUPR Ministerial Regulation No.11/2019 Article 10 point (1), PPJB is carried out after the development fulfills the certainty requirements for land ownership status. The thing that was promised. Ownership of a main building construction permit or building construction permit. Availability of infrastructure, facilities and

¹Andi Hamzah, 2006, Basics of Agreement Law, Rineka Cipta, Jakarta, p. 27.

²Yusuf Shofie, 2000, Consumer Protection and Legal Instruments, Citra Aditya Bakti, Bandung, p. 74.

public utilities; and Awakening of at least 20% (twenty percent).³The article above regulates the process that must be carried out by the developer in carrying out housing development, because it is the responsibility of the developer in implementing housing. In this case the developer has defaulted in the form of a delay in completing the construction of the house because it is not in accordance with the promised schedule, so that the developer can be held accountable.⁴

Article 151 of Act No. 1 of 2011 concerning Housing and Settlement Areas (Housing and Settlement Area Law) is emphasized by the principle of consumer protection contained in Article 8 paragraph (1) letter (f) and Article 62 paragraph (1) of Act No. 8 of 1999 concerning Consumer Protection (UUPK) which began to recognize and lead to the adherence to the principle of absolute responsibility (strict product liability).⁵

The legal basis for consumers to hold developers accountable is regulated in Article 134 in conjunction with Article 151 of the Law on Housing and Residential Areas, namely a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). In addition to fines, the developer can also be subject to administrative sanctions as contained in Article 150 of the Housing Law. The sanctions range from written warnings, revocation of business licenses, to closing locations.⁶

In carrying out the Sales and Purchase Agreement (PPJB), consumers should pay attention to the clauses contained in the PPJB. Regarding the amount of down payment (DP), payment time, handover time, unit specifications, and the developer's responsibility if he fails to carry out his obligations. Usually, issues that arise after signing the PPJB are the developer's negligence and the consumer's desire to ask for the DP that has been paid back.⁷

PPJB is an agreement between the two parties, namely consumers and business actors to carry out their respective agreements or achievements in the future,

³Agnes Shofianti Wihaningsih et al, 2021, "Legal Liability of Property Developers Due to Delays in Fulfilling Achievements in View of PUPR Regulation No. 11 of 2019 concerning the Preliminary Agreement System for the Sale and Purchase of Houses in Connection with Article 1243 of the Civil Code, Journal of Law, No. 1, Vol.7, p. 433.

⁴Ibid, p.80.

⁵Ibid, p.77.

⁶<https://leosiregar.com/Responsibility-Developer-Atas-Pembelian-Yang-JadiNotMenepati-Janji/> accessed June 18, 2021, 19.00 WIB.

⁷Ibid, p.68

namely the sale and purchase carried out before the Land Deed Making Officer (PPAT) if the building is livable and certified.⁸ PPJB is generally carried out so that the property is not purchased by other parties. The purpose of the PPJB is to act as a temporary binder, usually while waiting for the official deed of sale and purchase (AJB) to be drawn up before a Notary/PPAT.

The notary/PPAT is authorized by the state to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and excerpts of the deed, as long as the making of the deed is not also assigned or excluded from other officials, the deeds made by the Notary / PPAT are authentic deeds which bind the parties listed therein to protect each party from events that can harm either party.

Herlien Budiono underlined that the use of a deed by some groups of people is intended as evidence made by or before a notary. For this purpose, it is not uncommon for people to ask for help from a notary to make the deed.⁹ The role of the notary in making the deed of sale and purchase based on the PPJB is very important, this is because the deed can guarantee certainty, order and legal protection requires authentic written evidence regarding the actions, agreements, stipulations and legal events made.

The practice of making a sale and purchase agreement cannot be separated from the object of the agreement, in this case what will be discussed in depth is the binding sale and purchase agreement before the house is completed, where it is not uncommon for the selling price that has been agreed upon to be not followed by good service to potential customers. , for example the quality of the building, pre-sales and after-sales services, the developer is late in completing or handing over the building, the facilities are not in accordance with what was agreed in the agreement and so on. This situation often makes consumers disappointed and often the settlement of consumer complaints/complaints is not reasonable for consumers, it is even very disappointing due to the basis for resolving these complaints, namely PPJB is suspected of not providing legal protection for consumers.

⁸Yusuf Sofhie, 2009, *Consumer Protection and Legal Instruments*, Citra Aditya Bakti, Bandung, p. 96.

⁹Herlien Budiono, *Technical Basics for Making Notary Deeds*, Citra Aditya Bakti, Bandung, 2014, p. 1.

Legal responsibility occurs when one party makes a mistake or it can be said that the party violated the terms agreed at the beginning of the credit agreement, did not exercise their rights and obligations in civil law, it is said that person has made a mistake that can be categorized as default or unlawful act in the agreement/ credit agreement, and must compensate for the resulting losses.

Based on this description, the author is interested in conducting research in the form of a thesis relating to the case of a house sale and purchase agreement between a consumer and a developer by taking the title Housing Developer Responsibilities Due to a Default in the Sale and Purchase Agreement of Home Ownership Between the Developer and the Consumer of Tlogomulyo Residence Semarang.

2. Research Methods

The research approach method used in this thesis is a sociological juridical research method. Sociological juridical research is emphasizing research that aims to obtain legal knowledge empirically by going directly to the object. 11 The specification of this research uses descriptive analysis, namely research that in addition to providing an overview, writing and reporting an object or an event will also draw general conclusions from the problems raised. Source of data comes from primary data and secondary data. Data collection methods include interviews, document studies or library materials. The data analysis method used in analyzing the data is an interactive qualitative analysis model as proposed by Bodgan and Biklen.

3. Results and Discussion

3.1. Developer's Responsibility for the Occurrence of Default in the Sale and Purchase Agreement of Home Ownership against Consumers of Tlogomulyo Residence Semarang

Normatively, the responsibilities of business actors (developers) are regulated in Article 19 UUPK. Based on these provisions, it can be seen that the developer is responsible for providing compensation to consumers if consumers suffer or experience something unpleasant as a result of consuming goods and or services purchased from business actors. The provisions mentioned above are actually provisions that are still general in nature. Furthermore, in the provisions of Article 19 paragraph (3) it is emphasized regarding the deadline for granting

compensation to consumers, which is only within a period of 7 (seven) days from the date of the transaction.

If it is related to the issue of legal protection for consumers in the housing sector, it is impossible to implement the grace period for granting compensation mentioned above. Therefore it is necessary to understand that in fact the provisions of Article 19 UUPK only apply to consumers who buy consumption goods and/or services only. However, the responsibility for compensation for business actors (developers) can also be applied to business actors (developers) who harm their consumers.

Nuraini, the developer's responsibility to consumers is actually not only fixated on the contents of the house sale and purchase binding agreement, but in general the developer's responsibility has existed since the developer wanted to build housing.¹⁰ The developer is responsible for taking care of all the requirements and permits needed before building the Rambung Merah Residence Housing, Siantar District, Simalungun Regency. This must be done so that in the future it does not cause problems for both consumers in particular or the surrounding community in general.

Agreement between Zaenal Abidin (Land Owner) and PT. Aditama Land as the developer legally made and binding on the parties, where Zaenal Abidin as the land owner entered into an agreement with PT. Aditama Land as the developer/marketer enters into a cooperation agreement to build a number of houses which will then be sold to consumers, where the land owner will receive a certain amount of money for the sale of the house. However, for the default made by PT. Aditama Land has an impact on consumers, namely the loss of rights to land and buildings that are the object of the PPJB made by the parties, because the legality of the land obtained on the basis of the agreement has been canceled by the court.

The objective form of good faith carried out by Ngadiman is to carry out the contents of the agreement contained in the PPJB, namely Booking Fee Receive on behalf of Ngadiman on September 29, 2021 which was received by PT. Aditamaland. Ngadiman has paid IDR 558,500,000 (five hundred fifty eight million five hundred thousand rupiah) to PT. Aditama Land consisting of a

¹⁰Nuraini, Manager of the Marketing Section for Tlogomulyo Residence Housing, Pedurungan District, Semarang City, Interview in Semarang March 2022.

booking fee of IDR 3,500,000.- (three million five hundred thousand rupiah) Down Payment of IDR 50,000,000.- (fifty million rupiah) and the remaining payment of IDR 500,000,000. five hundred million rupiah) in installments for 60 months for the purchase of 150 m² of land and a residential building located in the Tlogomulyo Residence Project lot 69 D Block type Premium Plot. PPJB made by Ngadiman and PT.¹¹

Based on the principles of responsibility mentioned in the housing sale and purchase binding agreement between the developer and the consumer, the developer's responsibility is the principle of responsibility with limitations, it should not only be limited to what is stated in the agreement, but more than that the developer must also be responsible against hidden defects in housing products. This is very important considering that the responsibility for housing maintenance by a developer is very short.

Joint responsibility is defined as shared responsibility among members in one group for all obligations towards cooperatives on the basis of openness and mutual trust.¹²The values contained in the joint responsibility system are kinship and mutual cooperation. Openness and courage to express opinions. Instill discipline, responsibility and self-esteem and confidence in members. Indirectly creating a leadership cadre among members.¹³

Personal responsibility relates to maladministration in the use of authority and public service. An official who carries out the duties and authority of the position or makes policies will be burdened with personal responsibility if the person commits an act of maladministration. A person is personally responsible for a third party when he has acted in a morally disgraceful manner or in bad faith or in a very careless manner, namely committing an act of maladministration.¹⁴ Philipus M. Hadjon, in Nehru Asyikin and Adam Setiawan, argued that the use of governmental authority is of course in addition to other principles of administrative law. In the event that there is an element of maladministration

¹¹Ibid. p. 78.

¹²Gatot Supriyanto, Application of the Setia Bhakti Women's Cooperative Joint Responsibility System in East Java, Kopwan Setia Bhakti Wanita, Surabaya, 2009, p. 36.

¹³Andriani S. Soemantri, et al, Anthology of Joint Responsibility, Puskowajanti LIMPAD, Malang, 2001, p. 37.

¹⁴Nehru Asyikin and Adam Setiawan, Position Responsibility and Personal Responsibility in Discretionary Use, Journal of Law & Development Year 50 No.3 July-September 2020, p. 643.

and of course an element of an unlawful act, and the act becomes the personal responsibility of the official who committed it.¹⁵

Consumers may not be able to know the physical condition of the housing that has been built by the developer within a period of 3 (three) or 4 (four) month. Housing/residential products are not the same as other product products in which hidden defects may be detected immediately when the item is used. It is different with building products such as housing, in order to determine the strength of the construction of residential buildings, it is necessary to carry out an examination by experts, so that it is impossible for consumers to submit claims within that time period. The quality of the building is usually only known when the seasons change. Let's say the handover is done during the dry season.

The limitation of liability by the developer is set forth in the Sales and Purchase Agreement. This shows that the deed of sale and purchase of the house does not mention the Developer's obligation to have hidden defects.

The guarantee that is included is only a guarantee that the house is not involved in a dispute, is free from confiscation, is not bound as collateral for a debt that is not recorded in the certificate and is free from other burdens.

Determination of the time limit for unilateral responsibility by the seller has received the attention of the Government with the issuance of the Decree of the Minister of Public Housing NO. 09/KPTS/1995 concerning Guidelines for the Binding of Sale and Purchase of Houses. It stipulates that the seller must guarantee and be responsible for hidden defects that will only be discovered later, in accordance with the provisions of Articles 1504 and 1506 of the Civil Code. This means that the two Articles referred to in the previous description still apply to the basic sale and purchase transactions of residential houses.

The limitation of the seller's responsibility which is realized by determining the period of time in bearing the hidden defects means that the Developer accepts complaints on the discovery of hidden defects only during the time set by the Developer. Complaints are made by following the process set by the seller. Any hidden defects must be clearly an error arising from the Developer, not an error arising from the buyer himself due to restoration or change of use and any

¹⁵Ibid., p. 644

negligence on the part of the buyer. In addition, damage resulting from force majeure. Nor is it the responsibility of the Developer.

Therefore, in order to provide legal protection for consumers, one of the efforts that can be done is to file a lawsuit for hidden defects. Consumers can also use UUPK as a guideline for filing a lawsuit.

Finally, based on the results of the research, it can be seen that the majority of consumers who buy houses in Rambung Merah Residence Housing, Siantar District, Simalungun Regency, until now have felt disadvantaged over the contents of the housing sale and purchase binding agreement and the implementation of the agreement. The settlement path taken between the Developer and the consumer who feels disadvantaged is by way of deliberation and consensus. The form of responsibility that is carried out by the Developer is to compensate for losses and repairs to the physical buildings that are damaged. Consumers do not experience obstacles with housing facilities such as PDAM and PLN or other public facilities. Even though the physical condition of the housing when it was first handed over was still in good condition as promised, however, currently there is a crack in the wall, floor, asbestos and a leaky roof which is known to be in rainy conditions. But the Developer has provided repair facilities. Besides the existence of material compensation, the Developer gives immaterial responsibility, namely in the form of an apology to the consumer both orally and in writing. And according to a consumer who lives in the Rambung Merah Residence, Siantar District, Simalungun Regency, the Developer must carry out its obligations and responsibilities in accordance with namely in the form of an apology to consumers both orally and in writing. And according to a consumer who lives in the Rambung Merah Residence, Siantar District, Simalungun Regency, the Developer must carry out its obligations and responsibilities in accordance with namely in the form of an apology to consumers both orally and in writing. And according to a consumer who lives in the Rambung Merah Residence, Siantar District, Simalungun Regency, the Developer must carry out its obligations and responsibilities in accordance with the contents of the housing sale and purchase binding agreement.¹⁶

In this chapter it can be concluded that the responsibility of the developer for the object of the agreement in the PPJB Housing Tlogomulyo Residence, Pedurungan

¹⁶Rakhmad Unggul as a consumer of Tlogomulyo Residence Housing, Pedurungan District, Semarang City, Interview in Semarang, March 2022.

District, Semarang City including responsibility with restrictions in the PPJB between developers and consumers. The developer's responsibility is not only limited to what is stated in the agreement, but more than that, the developer must also be responsible for hidden defects in Tlogomulyo Residence Housing. The developer's responsibility for the object of the agreement in the PPJB Housing Tlogomulyo Residence, Pedurungan District, Semarang City including responsibility with restrictions in the PPJB between developers and consumers.

3.2. Legal Protection for Consumers against Sale and Purchase Agreements That Have Been Agreed Together With the Tlogomulyo Residence Semarang Housing Developer

Buying and selling of houses between developers and consumers is marked by the signing of a PPJB, both the PPJB and PPR models. This agreement model is a standard contract that has been designed and compiled by the developer. In compiling this standard contract, generally the clauses in the contract protect the interests of the developer, such as a clause regarding the application of fines/penalties if the consumer is late in making price payments, whereas if the developer is late in completing and handing over the house building to the consumer, he will not be fined, and may even unilaterally cancel the sale and purchase without prior notification to the consumer. Meanwhile, if the consumer wants to cancel the sale and purchase, then the receipt or down payment that has been paid by the consumer will be deducted by a few percent.¹⁷

With the signing of the PPJB by all parties before the public official, the PPJB is included in the authentic deed, so that the position of the authentic deed is perfect, unless proven otherwise. Legal protection for the parties is seen from 2 (two) perspectives or points of view, namely legal protection by:¹⁸

a. Seller

In the PPJB there are rights and obligations of the seller and the buyer. As for the examples practiced, for example in the PPJB it requires the buyer to make a payment of an amount of money with an agreed timeframe, and it is also associated with the existence of cancellation requirements if this is not carried

¹⁷Muhammad Anies, Op.Cit, p. 288

¹⁸Gusti Ayu Agung Winda Utami Dewi, I Made Dedy Priyanto, Kadek Sarna, Legal Protection for Consumers in the Sale-Buy Agreement of Apartments by Order, Ketut Ayu Lestari, I Nyoman Darmadha 1-13 2018-05-21, Default in the Sale and Purchase Agreement Flats by Booking (Pre-Project Selling).

out according to the provisions of the PPJB. The seller also has an obligation to hand over the object if the requirements in the PPJB have been implemented, so that later the buyer will sign the BAST (Minute of Handover) of the object.

b. Buyer

One form of legal protection for buyers in the PPJB is a request for an irrevocable power of attorney, that is, if the agreement in the PPJB is not fulfilled and/or not fulfilled by the seller, then because it results in losses for the buyer so he can submit a claim or request compensation for this.

The PPJB deed is a type of "partij deed", the deed contains the will of the parties, the promises of the parties and the rights and obligations of the parties, in the deed contains various kinds of contents desired by the parties before a notary. The clause regarding the period for fulfilling rights and obligations must be included in the PPJB deed, because there will be uncertainty for the parties to obtain their rights and obligations.

A deed will become a problem if one party does not fulfill its achievements or one party feels disadvantaged. This causes losses for the parties who have made and agreed on the deed that has been made, but in the course of the deed the agreement does not go according to the agreement of the parties who made it, there are conditions that result in an agreement having to end not in accordance with the initial agreement.

There are several factors that result in the cancellation of the sale and purchase deed, namely the sale and purchase price agreed in the binding sale and purchase agreement is not paid by the buyer until the agreed period; the parties do not pay off their obligations in paying taxes; and the land documents required for the process of transferring land rights (land sale and purchase before PPAT) have not been completed until the agreed timeframe.

Legal protection for parties to protect their interests and provide legal certainty in the PPJB deed. The buyer also has the main obligation to pay the price of what he bought, at the time and place as determined according to the relevant agreement/agreement with the additional rule that if the parties do not specify it, the payment must be made on the spot at the time the object is delivered.

Legal protection in the PPJB deed can be formulated by the prospective seller himself, usually in the form of requirements that are usually requested by the prospective seller himself. In contrast to protection for prospective sellers,

protection for buyers is usually carried out with conditions and also followed by a request for power of attorney that cannot be withdrawn.

The goal is that if the seller does not fulfill it, the buyer can sue and ask for compensation in accordance with the agreement stipulated in the binding sale and purchase agreement. Thus, legal protection can be given to all parties in the PPJB. In addition to the legal protection of the PPJB deed, it is also based on Article 1338 of the Civil Code which is based on freedom of contract, as well as the good intentions of the parties to fulfill the agreement that has been made.¹⁹

Legal protection for housing consumers is more specifically regulated in Act No. 20 of 2011 concerning Flats in Article 105 it states: 1) Settlement of disputes in the apartment sector must first be sought based on deliberation to reach a consensus; 2) In the event that dispute resolution through deliberation to reach a consensus is not reached, the injured party can sue through a court that is within the general court environment or outside the court based on the choices agreed upon by the parties to the dispute through alternative dispute resolution; 3) The settlement of disputes outside the court as referred to in paragraph (2) is carried out through arbitration, consultation, negotiation, mediation, conciliation, and/or expert judgment in accordance with the provisions of the laws and regulations; 4) The settlement of disputes outside the court as referred to in paragraph (3) does not eliminate criminal responsibility. Based on Article 106 of Act No. 20 of 2011 concerning Flats, the lawsuit can be filed by: 1) Individuals; 2) Legal entity; 3) Society; and/or 4) Government or related institutions.

It can be concluded from this chapter that legal protection for consumers for PPJB has been mutually agreed upon with the Tlogomulyo Residence Housing Developer, Pedurungan District, Semarang City, namely before PPJB can be carried out through deliberation to reach a consensus. If a consensus cannot be reached, then the consumer can sue through a general court or take a route outside the court, generally the path taken is through mediation. If the consumer sues through a public court, then based on the provisions of Article 1338 paragraph (1) of the Civil Code, every agreement that has been made legally applies as a law for those who make it. So even though the PPJB has not been

¹⁹Made Ara Denara Asia Amasangsa and I Made Dedy Priyanto, *Binding Sale and Purchase Agreement (PPJB) in the Transfer of Land and/or Building Rights Transactions*, Faculty of Law, Udayana University, 2016.

made, the Housing Purchase Order Confirmation made between the developer and the consumer is binding on both parties.

4. Conclusion

The role of the notary related to the PPJB according to the applicable laws and regulations, the notary contains authentic deed sourced from the provisions of Article 15 paragraph (1) UUJN, the role of the notary is that the deed must be made in accordance with applicable procedures or regulations and the responsibility of the notary in the sales binding agreement the purchase made is the responsibility of the deed alone and in the implementation of income tax on the sale and purchase binding agreement the notary has a role limited to notifying about the existence or reminding. The notary also has no right or authority to make tax payments that should be made by the taxpayer himself. The developer's responsibility for the object of the agreement in the PPJB for Tlogomulyo Residence Housing, Pedurungan District, Semarang City includes responsibility for restrictions in the PPJB between the developer and the consumer. The developer's responsibility is not only limited to what is stated in the agreement, but more than that, the developer must also be responsible for hidden defects/damage to Tlogomulyo Residence housing. Legal protection for consumers for the PPJB which has been mutually agreed upon with the Tlogomulyo Residence Housing Developer, Pedurungan District, Semarang City, namely before PPJB can be carried out through deliberation to reach a consensus. If a consensus cannot be reached, then the consumer can sue through a general court or take a route outside the court, generally the path taken is through mediation. If the consumer sues through a public court, then based on the provisions of Article 1338 paragraph (1) of the Civil Code, every agreement that has been made legally applies as a law for those who make it. So even though the PPJB has not been made, the Housing Purchase Order Confirmation made between the developer and the consumer is binding on both parties.

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