

Developer's Legal Responsibility Toconsumers in House Sale and Purchase Transactions (Study of Decision Number 161/Pdt.G/2021/PN Pdg)

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Abstract. *This research is motivated by the developer's failure to fulfill its obligation to construct and deliver a house despite the consumer having made the required payment, as reflected in Decision Number 161/Pdt.G/2021/PN Pdg. This research aims to analyze the developer's legal liability, the judge's legal considerations in qualifying the developer's actions as an unlawful act, and the appropriate form of notarial deed to prevent disputes in house sale and purchase transactions. This study employs normative legal research using statutory, case, conceptual, and analytical approaches. Legal materials were analyzed qualitatively using a prescriptive method. The results show that the developer is legally liable for consumer losses under Article 1365 of the Indonesian Civil Code, the Consumer Protection Law, and the Housing and Residential Areas Law. The judge qualified the developer's actions as an unlawful act because the developer had received payment but failed to construct and deliver the house and did not return the consumer's funds. Similar disputes can be prevented through a Sale and Purchase Binding Agreement (PPJB) executed as a notarial deed containing provisions on the rights and obligations of the parties, construction schedule, refund mechanism, sanctions, and dispute resolution.*

Keywords: *Consumer; Developer; Legal; Liability; Protection.*

1. Introduction

A house is one of the basic human needs that has an important position in life because it functions as a place to live as well as a means to realize a decent, safe and prosperous life. This is guaranteed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which gives everyone the right to live and have a good and healthy living environment.^[1] Therefore, the implementation of housing development must pay attention to legal certainty, justice, benefits and protection for the community as consumers.

As an implementation of the constitutional mandate, the government enacted Law Number 1 of 2011 concerning Housing and Residential Areas. This provision

emphasizes that housing development aims to achieve legal certainty, improve the quality of life for the community, and ensure the availability of livable and affordable housing. In this regard, developers, as business actors, have a legal responsibility to build and deliver homes in accordance with statutory provisions and agreements reached with consumers.

The legal relationship between developers and consumers is generally established through a sales and purchase agreement or Sales and Purchase Binding Agreement (PPJB), which creates rights and obligations for both parties. The developer is obligated to build and deliver the house according to the agreed specifications, price, and timeframe, while the consumer is obligated to make payment. Under Article 1338 of the Civil Code, a legally executed agreement is binding on the parties and must be implemented in good faith.

In addition to being based on contract law, the relationship between developers and consumers is also protected by Law Number 8 of 1999 concerning Consumer Protection. Article 4 provides consumers with the right to obtain comfort, security, correct information, and compensation if they experience losses. Meanwhile, Article 7 requires business actors to act in good faith, provide correct and honest information, guarantee the quality of goods, and provide compensation if the goods received do not comply with the agreement. Thus, developers are not only bound by the contents of the agreement, but also by the legal obligation to protect the interests of consumers.

However, in practice, developers are still found to fail to fulfill their obligations after receiving payment from consumers. One example is found in Padang District Court Decision Number 161/Pdt.G/2021/PN Pdg. The case began when the plaintiffs purchased a house from the defendant, the developer, through a PPJB (Contract of Sale and Purchase Agreement) and made payment. However, the developer failed to build or deliver the house as agreed, resulting in losses for the consumers. The panel of judges then ordered the defendant to pay IDR 90,000,000.00 in compensation for material losses to the plaintiffs.

The case is interesting because the lawsuit filed is not solely based on breach of contract, but uses the basis of unlawful acts as stipulated in Article 1365 of the Civil Code. The plaintiff argued that the developer's actions in receiving payment but not building and handing over the house not only violated the agreement, but also violated legal obligations stemming from the Consumer Protection Law and the Housing and Residential Areas Law.[6] The Panel of Judges in its consideration stated that the defendant was proven to have committed unlawful acts and sentenced the defendant to pay material losses to the plaintiff.

Conceptually, breach of contract and unlawful acts represent different grounds for liability. A breach of contract stems from the failure to fulfill contractual obligations, while an unlawful act involves a violation of legal obligations, the rights of others, or decency. In practice, an act can raise questions about the

boundary between a breach of contract and an unlawful act. Therefore, it is important to examine the judge's considerations in determining the basis for a developer's liability to consumers.

Much research has been conducted on consumer protection in home buying and selling transactions, but there is limited research specifically analyzing judges' considerations in determining developer liability based on unlawful acts. Furthermore, there is limited research that comprehensively examines the application of the Civil Code, Law No. 8 of 1999 concerning Consumer Protection, and Law No. 1 of 2011 concerning Housing and Residential Areas in Decision No. 161/Pdt.G/2021/PN Pdg.

Based on this description, this research is important to analyze the developer's legal responsibility to consumers in home purchase transactions, as well as the judge's considerations in Padang District Court Decision Number 161/Pdt.G/2021/PN Pdg. This research is expected to contribute to the development of civil law and consumer protection, as well as provide an understanding of the forms of legal protection available to consumers when developers fail to fulfill their obligations.

Based on the background discussion above, the author is interested in conducting research entitled "Legal Responsibility of Developers to Consumers in Home Purchase and Sale Transactions (Study of Decision Number 161/Pdt.G/2021/PN Pdg)" with the following problem formulation:

- a. What is the developer's legal responsibility towards consumers who have made payments but have not received a house in a house sale and purchase transaction based on Decision Number 161/Pdt.G/2021/PN Pdg?
- b. What are the judge's legal considerations in qualifying the developer's failure to fulfill its obligations as an unlawful act based on Decision Number 161/Pdt.G/2021/PN Pdg?
- c. What is an example of an ideal Notarial Deed to prevent disputes in the sale and purchase of a house?

2. Research Methods

This research is a normative legal study (normative juridical) that examines legal norms in legislation, doctrine, legal principles, and court decisions related to developer accountability to consumers in home purchase transactions. The approaches used include the statute approach, the case approach, the conceptual approach, and the analytical approach. These approaches are used to analyze applicable legal provisions, Padang District Court Decision Number 161/Pdt.G/2021/PN Pdg, the concept of legal accountability, consumer protection, default, unlawful acts, and notarial deeds.

The research specification is descriptive-analytical, namely describing the legal provisions relating to developer accountability towards consumers and then analyzing their application in Decision Number 161/Pdt.G/2021/PN Pdg, specifically regarding the basis of developer accountability, judge's considerations, and the form of notarial deed that can provide legal certainty for the parties. The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution, the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 1 of 2011 concerning Housing and Residential Areas and its implementing regulations, Law Number 2 of 2014 concerning the Position of Notary, and Padang District Court Decision Number 161/Pdt.G/2021/PN Pdg. Secondary legal materials include books, journals, research results, and expert opinions, while tertiary legal materials include legal dictionaries and encyclopedias and official government sources.

The collection of legal materials was conducted through library research by inventorying and reviewing legal materials relevant to the research problem. Furthermore, the legal materials were analyzed qualitatively using normative methods through grammatical, systematic, and teleological interpretation. The analysis was conducted by identifying legal facts, legal issues, ratio decidendi, and verdicts, then linking them with statutory provisions and legal doctrine to obtain arguments regarding the developer's liability, the basis for the judge's considerations, and the concept of an ideal notarial deed in preventing house sale and purchase disputes.

3. Results and Discussion

3.1. Developers' Legal Responsibility to Consumers Who Have Made Payments but Did Not Receive a House in a House Purchase Transaction Based on Decision Number 161/Pdt.G/2021/PN Pdg

The developer's legal liability to consumers in the Padang District Court Decision Number 161/Pdt.G/2021/PN Pdg is basically related to the developer's failure to fulfill its obligations after receiving payment from consumers in a house sale and purchase transaction. The legal relationship between the Plaintiff as a consumer and PT Sumatera BP Developer & Real Estate as a developer began with an agreement to acquire a type 45/104–135 m² house located in Permata Residence Housing Block C Number 2, Pauh District, Padang City. In this relationship, the Plaintiff is in the position of a consumer who has the obligation to make payments, while the developer has the obligation to build and hand over the house in accordance with the agreement. The Plaintiff has fulfilled its obligations in stages, namely by paying a booking fee of IDR 5,000,000.00, a second payment of IDR 5,000,000.00, a payment of IDR 50,000,000.00, a payment of IDR 5,000,000.00, and a down payment of IDR 20,000,000.00, so that the total payment amounted to IDR 90,000,000.00. The payment was proven by five receipts issued and signed by the developer. Despite receiving the payment, the developer did not fulfill its obligation to build and hand over the house to the Plaintiff. The developer also did

not provide certainty regarding the implementation of the construction, did not provide information regarding the progress of the project, and did not return the money paid by consumers.

The plaintiff has even attempted to obtain a settlement by contacting the developer and sending a letter of clarification, but these efforts have not received an adequate response. This situation indicates that the consumer has fulfilled his obligations, while the developer has not carried out the performance that is his obligation. When reviewed based on Article 1338 paragraph (1) of the Civil Code, every agreement made legally applies as a law for the parties, so that the agreement that has been made must be respected and implemented. Article 1338 paragraph (3) of the Civil Code also emphasizes that the agreement must be implemented in good faith. Therefore, the receipt of payment by the developer basically creates an obligation to carry out the performance as agreed. When the developer does not build and hand over the house and does not return the consumer's funds, these actions indicate a failure to carry out the obligations that have become the basis of the legal relationship between the parties. The developer's responsibility can also be seen from the perspective of Law Number 8 of 1999 concerning Consumer Protection.

As a business actor, a developer is obliged to act in good faith in carrying out its business activities, providing correct, clear, and honest information regarding the condition of the goods traded, and providing compensation or restitution if the goods received by the consumer do not comply with the agreement. Conversely, consumers have the right to obtain correct information, security, comfort, and compensation if they suffer losses due to the actions of the business actor. In this case, these consumer rights were not fulfilled because the house that had been paid for was never built or delivered. In addition, the developer's responsibility is also related to Law Number 1 of 2011 concerning Housing and Residential Areas which places the implementation of housing as an activity that must provide legal certainty and protection to the community. Developers as organizers of housing development cannot only be oriented towards receiving payments, but must also carry out construction in accordance with legal provisions and agreements with consumers. Thus, the developer's actions in receiving payments but not carrying out the construction of the house indicate a violation of both contractual obligations and legal obligations as a business actor in the housing sector. The Plaintiff's losses in this case primarily consist of material losses of IDR 90,000,000.00, which is the amount of money that has been paid to the developer but has not resulted in the achievement of a house. The panel of judges then ordered the developer to pay material damages of IDR 90,000,000.00, as the amount was proven through payment receipts submitted at trial. Meanwhile, the claim for immaterial damages was denied due to insufficient evidence regarding the nature and extent of the losses.

From a legal liability perspective, the provision of compensation represents a form

of redress for consumer losses resulting from the developer's failure to fulfill its obligations. The decision also demonstrates that legal protection for consumers is not limited to providing compensation after a dispute occurs, but also requires preventive measures from the outset of the transaction. One such instrument is a clearly and comprehensively drafted Sales and Purchase Agreement (PPJB), specifically addressing the identities and authorities of the parties, the property, the price, payment procedures and stages, the construction schedule, the handover time, the developer's obligations, the refund mechanism if the construction is not completed, sanctions for delays or failures, and the dispute resolution mechanism. Drafting the PPJB in the form of a notarial deed can also provide greater certainty and evidentiary strength for the parties. Therefore, the developer's liability in this case is not only a consequence of the developer's failure to fulfill its obligations, but also a form of legal protection for consumers, ensuring that losses arising from the failure of the housing development can be recovered. This case also demonstrates the importance of implementing the principles of good faith, legal certainty, and business actor responsibility in every home purchase transaction so that consumers are not left in a weaker position after submitting payments to the developer.

3.2. The Judge's Legal Considerations in Qualifying the Developer's Failure to Fulfill Obligations as an Unlawful Act Based on Decision Number 161/Pdt.G/2021/PN Pdg

The legal considerations of the Panel of Judges in the Padang District Court Decision Number 161/Pdt.G/2021/PN Pdg in qualifying the developer's actions as unlawful acts are basically based on the fact that the developer has received payment from consumers, but has not fulfilled its obligations to build and hand over the house and has not returned the funds received. This issue is important because conceptually, failure to fulfill obligations in an agreement relationship can generally be associated with default, while unlawful acts have a different basis for accountability as regulated in Article 1365 of the Civil Code.

In this case, the Panel of Judges considered the developer's actions not only as a failure to fulfill its obligations to consumers, but also as actions that are contrary to legal obligations and cause harm to consumers. Based on the facts of the case, the Plaintiff has made payments in installments totaling IDR 90,000,000.00 and these payments can be proven by five receipts. After receiving the payments, the developer did not build the house that was the object of the transaction, did not hand over the house to the Plaintiff, did not provide certainty regarding the continuation of construction, and did not return the money that had been received. The Plaintiff has also attempted to contact the developer and asked for clarification regarding the existence and completion of the house construction, but did not receive a resolution. This situation is an important basis for the judge in assessing whether the developer's actions have harmed consumers.

When linked to the elements of Article 1365 of the Civil Code, first, there is an act

committed by the developer in the form of receiving payment and then not carrying out the construction and handover of the house as expected by the consumer. Second, there is an unlawful nature because the action is contrary to the developer's obligation to fulfill consumer rights and is contrary to the principle of good faith in the implementation of legal relations. Third, there is an error in the form of not carrying out obligations after the developer received payment from the consumer. Fourth, there is a real loss experienced by the Plaintiff in the form of the loss of money amounting to IDR 90,000,000.00 that has been paid to acquire the house. Fifth, there is a causal relationship between the developer's actions and the losses experienced by the Plaintiff, because the loss arises from the failure to carry out the construction and handover of the house after payment is received. These considerations can also be linked to Law Number 8 of 1999 concerning Consumer Protection which provides protection for consumers from the actions of business actors that are detrimental.

Developers, as business actors, have an obligation to act in good faith in carrying out their business activities, providing accurate and honest information, and providing compensation if the promised goods are not provided according to the agreement. In this case, the developer not only failed to fulfill its obligation to provide housing, but also failed to provide certainty and did not return the consumer's funds. Thus, this action can be considered to have violated consumer rights and the developer's obligations as a business actor. The judge's considerations also indicate that the existence of a legal relationship between consumers and developers does not eliminate the possibility of an act being classified as an unlawful act if the action fulfills the elements of Article 1365 of the Civil Code and also violates legal obligations beyond mere contractual obligations.

In this context, the developer's actions have legal consequences because they not only cause losses to consumers but also violate the developer's obligations as a business actor and organizer of housing development. Therefore, the Panel of Judges awarded the Plaintiff IDR 90,000,000.00 in material compensation. This amount was based on losses that could be proven through payment receipts, while the claim for immaterial losses was not granted because there was insufficient evidence regarding the amount of the loss. According to the author, the judge's considerations demonstrate the application of repressive legal protection because consumers are given redress after experiencing losses due to the developer's actions. However, when viewed from a preventative perspective, this case demonstrates the continued importance of preventive legal protection before consumers make large payments. This protection can be achieved through a PPJB (Contract of Sale and Purchase) that is clearly and completely prepared and ideally set out in a notarial deed. The PPJB needs to regulate in detail the house specifications, price, payment stages, construction targets and schedules, the time of handover of the house, the developer's obligation to provide information on construction progress, the consequences if the developer does not carry out construction, the refund mechanism, the amount or form of sanctions, and the

dispute resolution mechanism. With these regulations, the rights and obligations of the parties become clearer and can be used as an instrument of evidence if a dispute arises.

Therefore, Decision Number 161/Pdt.G/2021/PN Pdg illustrates that developer liability can arise not only from failure to fulfill obligations in legal relations with consumers, but also because such actions cause losses and violate applicable legal obligations. This decision also demonstrates the importance of balancing repressive legal protection through compensation and preventive legal protection through the preparation of strong agreements and notarial deeds that provide legal certainty for the parties.

4. Conclusion

Based on the research results, it can be concluded that the developer is legally responsible to the consumer because he has received payment of IDR 90,000,000.00 but did not build and hand over the house and did not return the funds received. This action fulfills the elements of an unlawful act as stipulated in Article 1365 of the Civil Code and is contrary to the developer's obligations under the Consumer Protection Law and the Housing and Residential Areas Law. The Panel of Judges provided legal protection by sentencing the developer to pay material compensation of IDR 90,000,000.00. To prevent similar disputes, a PPJB is needed that is made clearly and comprehensively, especially in the form of a notarial deed, containing the rights and obligations of the parties, the construction schedule, the refund mechanism, sanctions, and dispute resolution to provide legal certainty and protection for consumers.

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