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### CONSUMER PROTECTION ON PRE – PROJECT SELLING APARTMENT IN INDONESIA TO AVOID FRAUD

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#### **ABSTRACT**

The new property which is often called an apartment, is part of facilitating the desire for housing from the community. However, problems arise when the buying and selling process of the apartment which is the object of sale and purchase is not in real form or with the Pre Project Selling system. This study aims to analyze legal protection measures for the sale of apartment units before the construction project is implemented (Pre Project Selling). The type of study used was normative or Doctrinal Legal Research. The type of problem approach used was a statute approach and a conceptual approach. The results of this study suggest that the sale of apartment units can be done using the Pre Project Selling system, however, the developer must pay attention to the provisions contained in Article 42 and Article 43 of Law Number 20 Year 2011 concerning Flats. Brochures can be used as the basis for a lawsuit for consumers who feel aggrieved for the developer's actions that are not in accordance with what was promised in the brochure, because brochures are an initial agreement in purchasing property products.

#### **INTRODUCTION**

Indonesian citizens who have a residence in the territory of Indonesia, are given protection. Protection by the government is in the form of ownership rights to residence, in contrast to foreign citizens, they are only given the status of Right to Rent. Hence, the principle of nationality is clear that Indonesian citizens have rights above everything from an economic, social, political perspective as well as from the perspective of National Defense and Security to create a protection

principle for Indonesian citizens to have property rights over land (Prihandono and Relig, 2019).

Protection of ownership rights to residence, is regulated in Article 27 paragraph 2, which regulates providing guarantees for every citizen of work and a decent living for humans (Sari, 2012). The Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights also regulates Human Rights related to residence ownership, where every Indonesian citizen has the right to reside and live a life worthy of the territory of the Republic of Indonesia as stated in Article 27 paragraph 1 and Article 40 Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (Atsar, 2019).

Developers often use the concept of Pre Project Selling in marketing property products, which is a concept where the building is not yet finished but the property has already been marketed. In this condition, it is the consumers who suffer a lot because consumers do not realize and do not understand the Pre Project Selling system and its risks. Due to that reason, consumers need to be careful with the Pre Project Selling offering system. Hereby, the State Minister for Public Housing (Menpera) issued Decree No. 9 / KPTS / 1995 concerning Guidelines for Buying and Selling Houses, that developers who already have a house construction permit are allowed to offer or sell houses (Yudhantaka et al., 2019).

Several cases that harm the community are related to pre project selling. One of them is Meikarta, which is hampered by licensing problems that have not been pocketed by PT. Lippo Cikarang Tbk, including Building Construction Permits (IMB). Meikarta project permit is still constrained, even though the Meikarta apartment unit performed a soft launch on August 17, 2017. According to the West Java Provincial Government, this project violates building permits, environmental permits and location permits. Other cases include PT Sipoa Group from East Java, Royal Mutiara Residence (RMR) and others. These projects are only promising abstractly but their physical form is not implemented (ASTUTIK et al., 2018).

Based on the background above, this study aims to analyze legal protection measures for the sale of apartment units before the construction project is implemented (Pre Project Selling). The practical implications of this study are expected to provide a reference for consumers, developers, and the government when buying and selling flats using the Pre Project Selling system, especially for consumers to be more careful when buying property products using the Pre Project Selling system.

## **RESEARCH METHODS**

The type of study method used was a statutory approach and a conceptual approach (Marzuki, 2011). The legal materials used were Law Number 8 of 1999 concerning Consumer Protection (UUPK), Law Number 1 of 2011 concerning Housing and Settlement Areas, Law Number 20 of 2011 concerning

Flats, Law Number 2 of 2014 concerning the Position of Notary Public, Government Regulation Number 37 of 1998 concerning Regulation of Position of Land Deed Maker, and Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 concerning Provisions for Implementing Government Regulation Number 37 of 1998 concerning Regulations on Land Deed Officer Positions. Legal materials were analyzed by using the deductive method (Ashadujjaman, 2019).

## **RESULTS AND DISCUSSION**

### **Form promises in flat marketing**

In the realm of property, the developer's promises are in the marketing process, in the marketing process of a property product, usually performed by a marketer through an advertising medium such as a brochure. Brochures are obtained when a property product begins to be marketed to the public, brochures are distributed free of charge. Brochures must be made with clear, attractive designs, have a message and purpose to provide information, persuade and teach people so that consumers are interested in buying. Developers dare to write words, promises in brochures means that the developer is able to be responsible for what has been promoted (Wardhana, 2020).

Brochures are considered by consumers to be an initial agreement before consumers buy. By reading the brochure, it means that the consumer has agreed with the promises offered by the developer, which then the consumer is sure and trusts to immediately order the apartment (Asnawi et al., 2018).

Thus, the brochure indirectly has persuaded potential buyers. The buyer can sue if there is a discrepancy with what the developer has promised. However, before demanding consumers have the right to ask the developer first about the promises written in the brochure. Hence, a brochure is a modern agreement considered to have legal consequences if the promises in the brochure are not kept by the developer and the brochure can be used as a basis for a lawsuit for consumers who feel aggrieved for the developer's actions that are not in accordance with what was promised in the brochure (van Dijk and Francke, 2018).

After someone reads and studies the brochure, there are two possibilities that will happen, namely, people will be interested in buying it or just reading it. According to prospective buyers who are interested in buying, they can immediately conduct the transaction flow stages as a condition of purchasing a property product, namely a flat. Purchasing a flat is not only done with the KPR system, but can also be conducted by a paid off system where the buyer of the apartment pays the house price in full to the developer (Zakariya et al., 2016).

The price paid is the price agreed by both parties. However, not all buyers have the ability to buy a flat with a full payment system because it is caused by relatively high prices and limited economic capacity. For this reason, buying with the Home Ownership Credit (KPR) system is more attractive to many

people to meet their housing needs. Purchasing using the KPR system is regulated in Article 43 and Article 44 of Law Number 1 Year 2011 concerning Housing and Settlement Areas (Leung and Hui, 2005).

One of the functions of the house is as a place to live, therefore we must fulfill a form of interaction, such as conducting buying and selling activities. The concept of selling flat as stipulated in Article 1457 BW contains two elements of the essential elements of buying and selling, namely first, the element of goods to be levered directly to the buyer, secondly regarding the element of the price of the material that must be paid by the buyer as agreed in an agreement. Thus, the sale and purchase is considered to have occurred if it has been agreed between the material and the price of the material (Perera et al., 2020).

Nowadays, in the process of buying and selling in the property world, especially flats, the sale is made while it is still planning. The sale of such flats is conducted by pre-ordering the unit to be purchased, then set forth in the initial documents, namely the Order Letter, the Sale and Purchase Agreement (PPJB), and the Sale and Purchase Deed (AJB), all of these terms relate to the transfer method. rights to land and buildings (Rachmawati et al., 2016).

#### **MEANING OF ALLIANCE IN GENERAL**

Alliances are regulated in Book III BW, which applies to all alliances that have been regulated or not yet regulated in Book III BW such as, hire purchase agreement, franchise agreement, as well as agreements regulated in the Law of Trade Law (KUHD). Although in Book III BW regulates the alliance, but there is no regulation at all about the definition of alliance in Book III BW, because according to the BW founder the definition of an alliance is entirely left to the people who made it and how to interpret it, as known as the principle of "freedom" contract", regulated in Article 1338 paragraph 1 BW. This is due to the fact that Book III BW adopts an open system, this property is very different from Book II which generally adopts a closed system which means that the parties are not allowed to create new material rights other than those already regulated in law (Perera et al., 2020).

Arguably, the provisions contained in Book III BW are complementary (annullendrecht), meaning that if the parties who make the agreement do not regulate or forget to include something then what applies is the provisions of the Law. However, there is also an article in Book III BW which is compelling (dwingend recht) as regulated in Article 1335 BW. Since most of the provisions in Book III BW are complementary but the parties can deviate from them by making their own provisions as long as they do not conflict with laws that are coercive, moral, and public order (Cahayani et al., 2019).

The most important thing in an alliance or better known by the terms of the agreement is the will of the parties embodied in an agreement that can bind such an agreement, as described in Article 1313 BW. An agreement can be formed due to a statement of goodwill and goodwill from both parties so that an

agreement is reached which is then expressed in a written or oral document. An agreement is said to be valid when it meets a legal condition of the agreement as stipulated in Article 1320 BW (Suwardi, 2019).

### **Forms - forms of alliance in the purchase of flat units**

Fulfillment of urban dwellings by humans can be conducted by buying flats in various ways, namely by making a down payment and by the House Ownership Credit (KPR) system, and also by making a Sale and Purchase Agreement (PPJB) system first. All these methods are still done in the Pre Project Selling system. Each method of purchasing an apartment has a different process and form of legal action from each other (Resosudarmo et al., 2019).

Before making PPJB, in the purchase of flats that are still in the process of development, buyers can place an order on which apartment unit they want. The order is made by signing a document commonly known as the order letter, which has been prepared by the developer. After the order letter is signed by the buyer as a form of approval for the purchase of the apartment unit, then within a maximum of thirty days the buyer and developer must sign PPJB (Setiawan et al., 2016).

In this order letter, include the date of delivery of the unit and also accompanied by a sign-up fee. The letter of order in which in the case of Sipoa also includes some clauses that almost all harm the consumer, such as the letter of order is declared valid when the first down payment has been entered into the developer's account. The order letter binds the parties, but in the case of Sipoa the consumer cannot request a change in the agreement because the developer has prepared it in advance (Djalins, 2015).

The Sale and Purchase Agreement (PPJB) is an agreement that contains a developer agreement to bind himself to sell to the buyer accompanied by a sign or advance based on a predetermined agreement. The buyer is limited to paying a down payment and several provisions in PPJB are set such as the amount of price to be paid by the buyer, the time for repayment, and when the Sale and Purchase Deed (AJB) will be made (Bakker and Moniaga, 2010).

PPJB is actually not recognized in the applicable legal provisions. PPJB is a product of customary law due to several conditions that hinder the settlement of transactions in the sale and purchase of land rights, such as the buyer has not been able to pay all the costs of land rights in full so that only half of the agreed price is paid. This situation will hamper the making of the sale and purchase deed because the official who makes the land deed will refuse to make a sale and purchase certificate if all the requirements have not been completed (Resosudarmo et al., 2019).

Practically, PPJB can be conducted under the hands or by deed of a notary. The legal strength of PPJB which is made under hand, becomes an underhand deed,

the proof of which is under an authentic deed. Article 1875 BW states that an underhanded deed can have perfect proof such as an authentic deed if the signature in the deed is recognized by the parties who signed it. The provisions in Article 1875 BW refer back to Article 1871 BW which states that a deed under hand can be like an authentic deed, but does not provide perfect evidence of what is contained therein (Bakker and Moniaga, 2010).

Meanwhile, for PPJB made by a notary in the implementation of making AJB is very strong. This is because in PPJB that is made before a notary, the deed has become a notary deed so that it is an authentic deed. In other words, the legal force on PPJB only depends on where the PPJB is made. It should also be noted in the "Premise", which explains that an agreement must be affirmed regarding the status of the developer whether he owns or controls the land and regarding the permits required for a project. It is regulated in the Decree of the Minister of Public Housing Number 09 / KPTS / M / 1995 of 1995 concerning Guidelines for House Sale and Purchase Bonds, which confirms that the contents of the PPJB which contain more or less must explain things such as objects being traded, developer obligations and buyer obligations, prices selling and other costs borne by consumers, and the date of handing over the unit and others (Rachmawati et al., 2016).

There are also several things in PPJB that are agreed upon by developers and consumers. The things that have been stated in PPJB, automatically bind the parties, and if the developer violates the consumer, the consumer can sue, and vice versa. Sale and Purchase Agreement (PJB), the same as PPJB, PJB is made because the buyer has made an advance payment but has not yet paid the selling price, taxes arising from the sale transaction made and the certificate processing has not been completed. The land sale and purchase deed or AJB is made after all taxes arising from the sale and purchase have been paid by the parties according to their obligations. Then, the next step is to change the name, thus the name on the certificate has changed from the name of the seller to the buyer and the rights attached to the land and buildings have moved too (Djalins, 2015).

Not only in the PPJB clause, there is also a separate clause regarding the handover schedule in AJB. It benefits consumers to more easily understand and becomes a legal certainty to determine when a developer can be declared in default and the amount of loss that consumers can claim to the developer. This is as regulated in Article 4 of the UUPK which states that consumers are entitled to compensation or the like, if the goods or services received are not as promised as they should (Cahayani et al., 2019).

If the PPJB or AJB does not include the unit handover schedule, the consumer has the right to ask for this matter, the handover schedule can be included and change the format of the agreement. Given that the clauses in the agreement are an agreement between the two parties, that is, in this case, the buyer and developer as long as there is no standardization from the government or from the governing legal entity, the parties have the right to change according to

mutual agreement. Therefore, if the cancellation is due to disagreement over the agreement clause, the money that has been paid should be returned. Regarding the exception, it is the buyer who makes the cancellation. As regulated on the prohibition of inclusion of standard clauses, it is regulated in Article 18 of the UUPK (Niyobuhungiro, 2019).

### **Consumer legal efforts**

Whatever the type of agreement, including the agreement for the sale and purchase of a flat, basically raises the rights and obligations of the parties, for instance, in the case of buying and selling a house, the seller or the developer has the obligation to build and deliver as agreed to the buyer, but the developer also has the right to get the agreed home payment. The same is done by the buyer who has the obligation to pay the house price that has been agreed upon with the developer and the buyer is also entitled to get and enjoy the house. Hence, the developer and the buyer must meet each other's achievements, thus the agreement runs according to the objectives of the agreement in general, namely to mutually fulfill all the things that have been agreed upon and agreed upon based on the principle of propriety (Resosudarmo et al., 2019).

Compliance means that the parties have carried out their obligations properly in accordance with the provisions agreed upon by the parties. However, if it turns out that one of the parties is unable to fulfill its obligations, it often occurs in a sale and purchase agreement where one of the parties breaks the promise or better known as default. Default in the process of buying and selling flats is defined as the failure to perform the proper performance as agreed by the parties. In practice, those who often default are usually developers because they have a higher economic and social position compared to the buyer (Rachmawati et al., 2016).

According to Cahayani et al, the form of default in the sale and purchase agreement, namely in an apartment sale and purchase agreement, in the event that the realization or handover of the apartment to the buyer is not in accordance with the time promised by the developer. Then in a sale and purchase agreement, the apartment that was built was not in accordance with the agreed specifications when viewing the model house. For instance, the shape and material are not in accordance with the flats in the sample house that are sold to the buyer. Then in a sale and purchase agreement, the apartment that has been ordered by a buyer, then by marketing is given to another buyer (Cahayani et al., 2019).

Most cases of sales of flats, the defaults that are often performed by developers are not meeting performance and not fulfilling performance at all. Developers who are in default, sometimes argue with the theory of overmacht conditions. Overmacht is the inability of one party to fulfill an achievement due to events that are beyond his control, such as natural disasters, floods, fires. The developer who argues that overmacht must be able to prove that if the developer defaults on the cause of the overmacht, this has been regulated in Article 1244 BW, it is

not easy for the developer to argue overmacht. As a concrete example, the developer NewMount Avatar apartment cannot argue that the overmacht is due to the failure of the developer not due to natural disasters, fire, or anything beyond their control. Therefore, the developer must provide compensation based on Article 1244 BW above because it is not included in the overmacht (Perera et al., 2020).

Facing a developer who has defaulted, consumers should make peaceful and amicable settlement efforts first in the hope that consumers will know the reasons that occur to developers who do not. It must also be supported by the open attitude of the developer. As regulated in Article 105 UURS. If they do not get a bright spot, it is better for consumers to send a summons or warning first, in the hope that the developer will recall his obligations. If the developer does not pay attention to the subpoena, then the consumer's next step is to take legal action by suing the developing party. Claims can be filed through a public court or based on an option agreed by the parties through alternative dispute resolution (Bakker and Moniaga, 2010).

## **CONCLUSION**

The sale of apartment units can be conducted by using the Pre Project Selling system. However, the developer must pay attention to the provisions contained in Article 42 and Article 43 of Law Number 20 Year 2011 concerning Flats. The developer must perform a Sale and Purchase Agreement (PPJB), housing development of at least twenty percent, and also the developer must pocket a building construction permit issued by the Department of Housing and Public Housing, Cipta Karya and Spatial Planning of each city, IMB can be issued if other permits have been fulfilled.

Brochures can be used as the basis of a lawsuit for consumers who feel aggrieved for the developer's actions that are not in accordance with what was promised in the brochure, because brochures are an agreement at the initial stage of purchasing property products. Pre Project Selling is allowed to do marketing before construction is carried out and at least 20% development, to measure the 20% development, there needs to be a new arrangement regarding the issuance of certificates of saleability or certificates of feasibility to build, which in this case must be managed and owned by all developers who want to open a property business. PPJB standardization is needed by making an official PPJB form containing the names of each party.

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