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LEGAL PROTECTION FOR CONSUMERS DUE TO THE DELAYS IN
APARTMENT UNIT OWNERSHIP HANDOVER

Karina Rahmawardani¹, Gianto Al Imron²

^{1,2}Department of Civil Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

*Correspondence author: gianto@fh.unair.ac.id

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ABSTRACT

This research revolves around the default of developers by not handing over the unit of apartment bought by a consumer, or performing a delay in the handover; actions that are considered to be detrimental to consumers. Efforts to protect the rights of consumers as a prevention from the harmful behaviors of the developers are required. The purpose of this study is to explain and analyze the developer's liability on late handover of apartment units. The researcher also aims to explain the settlement of disputes for consumers who are disadvantaged in the late handover of apartment units. The author uses normative legal research methods. This research shows that the cases often occur in several Indonesian property projects, with settlement of delays done in various ways based on the Consumer Protection Law, etc. Regulations have guaranteed a legal certainty to provide protection to consumers in rights, despite of the low awareness of consumers in terms of it.

INTRODUCTION

Housing is a basic human need, both for residence, business, offices and so forth. However, not all members of the community can afford to have a decent, healthy, safe, and harmonious home. Therefore, efforts to develop housing are continue to be increased as a means to provide more affordable settlements (Andi, Suandra and Manalu, 2000).

Indonesian law only accommodates the land tenure system together by calling it a flat. So what we know with the words Apartment, Condominium, and Flat is from the term foreign language, which is used as a technique in the property business.

Apartment in Dutch is called an apartment or apartment, while the English call it an apartment, which can be interpreted as part of the residence / residence in the form of a room, room / cubicle, which is called a camera or vertek by the Dutch people (Sutedi, 2010).

In Surabaya, there are several new apartment projects that are being built or have been built, among others are Waterplace Apartment, Aston Place, Citraland City, Superblock The City of Tomorrow, The Adiwangsa, Menara Metropolis, Pangeran Residences. The existence of flats or apartments is not a new phenomenon in Indonesia, especially in big cities, this is due to the increasingly narrow land or places to be made as houses or settlements. Apartments have now become an alternative place to live. In addition to these efforts, apartment unit also aims to meet housing needs by increasing land use and usability in densely populated and limited land area.

Home property, land, flats are one of the most common conventional instruments chosen by consumers because property is considered to always be rising in price with significant returns. Flats or apartments can be obtained by transferring rights such as buying and selling, exchanging and grants or by renting. To have a flat, not a few people order or indent or order (preliminary binding) or can be referred to as pre-project selling to get it by paying a fixed amount of money while the building in the form of an apartment or flats does not yet exist physically. In the case of an indent, the possibility of the risk borne by the buyer is too great if the developer breaks the promise. In conducting a sale and purchase transaction after the indent has been carried out, both parties will enter into a sale and purchase agreement which contains the rights and obligations of both of them as set forth in the binding purchase agreement (Sumardjono, 2001).

Some developers use their marketing expertise to attract consumers' interest in purchasing. However, after making deposit, and signing the Binding Agreement of Purchase, the developer commits default by not handing over, or making late handover of the unit. This is because the business actors want to get a large profit while suppressing their responsibility. This is influenced by the principle in which business actors are instructed to make as little loss as possible to achieve the greatest profit. This principle encourages business actors to gain profit in various ways, even by violating the rights of others. Thus the problems faced by consumers are basically caused by lack of entrepreneurial responsibility and also weak government surveillance. According to the Law of the Republic of Indonesia no. 39/1999 concerning the human rights of Indonesian, protection is a defense towards human rights. Because every human being has the same rights and obligations, every each of them also has the same right to protection (Prakoso and Setyaningati, 2018) Normatively, business actor is responsible for providing compensation for damage, pollution, and or loss of consumers due to consuming goods and or service they produce. The compensation can be in the form of refunds or replacement of goods and or services of similar value or equivalent value, or health care and/or

compensation that is in accordance with Article 19 paragraph (1) and (2) of the Consumer Protection Law (CPL).

This provision is an effort to provide protection to consumers. Therefore, if a consumer suffers a loss following the consumption of goods and/or services produced by a business actor, he has the right to demand civil liability from the business actor for the losses incurred. Likewise in an apartment unit transaction, if the consumer suffers a loss, then he has the right to sue for the compensation to the housing developer concerned. What is desperately needed is a holistic perspective that unites not only consumer law and sustainability but that also analyses the role and function of the digital economy and society (Mathios et al, 2020). The most difficult problem is introducing an effective system of applied legislation and jurisdiction (Elena et al, 2016).

This research will discuss the problems of the liability of the developers as business actors in terms of the delayed handover of apartment unit and the dispute resolution for consumers who are disadvantaged in the late handover. The purpose of this study is to analyze the developer's liability for the delayed handover of apartment units, and explain the dispute resolution for consumers who are disadvantaged in the case.

It is hoped that this research can increase insight and knowledge in the field of Consumer Protection, especially in the Protection of Apartment Unit Purchase. This research is also expected to be beneficial for the community in which the majority consists of disadvantaged consumers, as a contribution to the development of scientific knowledge, especially in the field of Consumer Protection, as well as the readers.

RESEARCH METHODS

This research uses normative legal methods. Normative legal research is a process to find the rule of law, legal principles, and legal doctrines in order to address the legal issues facing the law (Marzuki, 2005). This research applies statute approach by examining all the laws relating to the legal issues being handled. While the conceptual approach in this research studies the views and doctrines that relates to law with the aim of finding legal understandings, legal concepts, and legal principles that are relevant to the issues at hand (Marzuki, 2010).

Definition of Liability

According to Subketi, an agreement is "a legal relationship (regarding property wealth) between two people who give the right to one to claim something from another, while the other is required to fulfill that demand" (Subekti, 1987).

Direct relationship is the relationship between producers and consumers who are bound directly to the agreement. The transfer of goods from the producer to the consumer is generally carried out with a sale and purchase agreement, both verbally

and in writing.¹⁸ Whereas the indirect relationship is the relationship between the producer and the consumer which is not directly in the form of an agreement between the producer and the consumer. For example, there are intermediaries between producers and consumers, such as distributors (Miru, 2011).

Many people do not know the difference between responsibility or liability. Responsibility is the state of being obliged to bear everything (if anything happens, the party may be prosecuted, blamed, sued, etc.). The Indonesia dictionary only listed the term responsibility, while the definition of liability can not be found. Hence, the difference between responsibility and liability is only known among the legal terms in which the term is the result of the adoption done by legal workers.

The distinction between the terms responsibility and liability is greatly influenced by the difference in meaning between responsibility and liability. Broadly speaking, responsibility is applied for criminal law, while liability is for civil law. Thus, in criminal law there is no lawsuit, but a claim by the public prosecutor. Whereas in civil law there is a lawsuit by the plaintiff against the defendant, causing liability to be applied in civil law (Shofie, 2000).

Relationship and Agreement between Developer and Consumer

One of the important things in implementing a sale and purchase agreement between a consumer and a developer is the legal basis that binds it. The legal basis relating to the sale and purchase agreement is Article 1457 which states that "sale and purchase is an agreement with which one party is bound to submit a material and the other party to pay the price specified". Based on the aforementioned provisions, it can be understood that the buying and selling of apartment unit between developers and consumers is an agreement that binds one of the parties to submit flats and binds the other party to pay the unit price of the flats according to the agreement. As with any agreement in general, the developer and the consumer must fulfill the terms of the agreement in order for it to be considered valid. The legal conditions have been stipulated in the agreement apartment units purchase based on the provisions of Article 1320 BW.

The relationship between consumers and businesses is a legal relationship. The legal relationship between the developer and the consumer in implementing the purchase agreement of apartment unit is basically a direct relationship because the agreement between the developer and the consumer is made in a standardized format that has been. The binding agreement of sale and purchase of apartment units is standardized with other apartment sales and purchase agreements.

Which require consumers to pay a sum of money to the developer as a down payment. Binding Agreement of Sale and Purchase (BASP) is one of the legal forces as well as legal guarantees on the purchase of land or settlement that is regulated based on the Decree of the State Minister of Public Housing No. 9 of 1995.

Losses Due to the Delayed Handover of

Consumer's Rights, in which when a consumer suffers losses due to a product mentioned in Article 4 letter (H) of Consumer Protection Law (CLP), the person has the right to obtain compensation and/or replacement if the goods and/or services received are not as they are supposed to be.

Article 19 Paragraph (2) of the CPL states that the compensation is not only in the form of refunds or replacement of goods in the same or equivalent value, but can also be in the form of health care and other compensations.

If it returns to the general principle in civil law, it can be said that whoever harms the other party is obliged to provide compensation to the party suffering the loss. This adverse action gives the injured party the right to request cancellation of the agreement that has been made, along with reimbursement for all costs, interest, and losses that he has suffered.

The legal basis for the obligation of business actors to be responsible is Article 19 paragraph (1) of the CPL which states that business actors are required to provide compensation for losses, pollution, and/or consumer losses resulting from the products or service. This article is the legal basis for the responsibility of business actors/producers who delayed the handover of apartment units.

Dispute Resolution

Settlement of disputes in apartment units handover has been regulated in Articles 105 and 106 of the Law. These provisions can be used as guidelines in every dispute resolution regarding apartment units. Settlement regarding the units must first be sought by deliberation to reach consensus. But if consensus is not reached, then the consumer as the injured party can sue through the court. According to Article 106 of the Law, anyone who feels disadvantaged in relation to the units can file a lawsuit in court. Dispute resolution can also be done out of court based on choices that are agreed by the developer and the consumer through arbitration, conciliation, and mediation.

The holding of consumer dispute resolution outside the court is aimed to reach agreement of the parties regarding compensation, and/or certain actions to ensure consumers do not experience further losses (Nugroho, 2008). According to Article 47 of the CPL, settlement of consumer disputes outside the court is held to reach an agreement on the form and amount of compensation and/or regarding certain actions to guarantee that it will not happen again. Then, the form of guarantee according to Article 47 of the CPL is a written requirement that explains that the acts or products that harmed the consumer is guaranteed to happen no more. Out of court settlement is divided into two, namely peaceful settlement and settlement through the Consumer Dispute Settlement Agency.

Based on the the provisions of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, relating to the resolution of consumer disputes, there are several ways of resolving disputes outside the court namely through Consultation, Negotiation, Mediation, Conciliation, or Expert Assessment. If there is a loss to the apartment consumers due to the late handover of the units, then the solution that must be done first is through peaceful efforts, where consumers contacts the apartment developer directly and ask for compensation.

Following the provisions of Article 23 of the CPL, settlement of consumer disputes through the Consumer Dispute Settlement Agency, hereinafter referred to CDSA, can be undertaken if peaceful settlement outside the court process is not successful, either because the business actor refuses or does not respond or if there is no agreement reached. CDSA resolves disputes using three methods of resolution, namely mediation, conciliation, and arbitration. In every of the dispute resolution system adopted by the disputing party, the CDSA assembly requires the resolution of consumer disputes surrendered to him within 21 (twenty one) working days from the date the lawsuit was received. The actualization is the responsibility of the business actor. Settlement of disputes outside the court is civil, so the law stipulates it does not become a reason to eliminate criminal liability allegedly committed by business actors. This effort is carried out to avoid it being used as a means to prevent business actors from criminal liability.

Pursuant to Article 48 of the CPL which states that the resolution of consumer disputes through the courts refers to the applicable general court provisions taking into account the provisions of Article 45. Then by referring to Article 45 JO. Article 46 Paragraph (2) which states that dispute resolution through the court can still be sought even if an out-of-court consumer dispute resolution effort has been chosen, based solely on the grounds that the settlement attempt was unsuccessful by one of the parties. However, there are weaknesses in dispute resolution through court which is the long duration of the dispute resolution. Because, in general, the parties to the dispute can prefer the resolution of the dispute through a path outside the court.

The CPL also recognizes group lawsuits or better known as class action lawsuits. The CPL clearly states that class action is one of the media for consumers who feel disadvantaged. The government has issued regulations regarding class action, namely the Supreme Court Regulation No. 1 of 2002 concerning the Group Representative Claims event. In the Supreme Court Regulations, hereinafter referred to as SCR, the procedural law of the class action lawsuits are described in detail. To be able to file a class action lawsuit, both the class representative or class members must actually be the concrete injured parties.

Class action is mentioned in Article 46 paragraph (1) letter b of the CPL which states that: "A claim for a violation of a business actor may be made by a group of consumers who have the same interests". A claim filed by a group of consumers, non-governmental consumer protection organizations, or the government as

referred to in Article 46 paragraph (2) letter b, c, or letter d, shall be submitted to the general court.

CONCLUSION

Liability for the late or delayed handover of apartment units to consumers is mentioned in Article 19 paragraph (1) which requires business operators to be responsible for losses. The basis for liability other than Article 19 paragraph (1) includes but is not limited to Article 4 letters c, f, g, h, and i (consumer rights), Article 7 letters a, b, and c (obligations of business actors), Article 9 paragraph (1) letter e (offering as if the goods were available), Article 12 (offering goods at a specific price or rate within a certain time and amount, but do not intend to implement them in accordance with the specified time), Article 16 of the CPL (not keeping orders and/or agreement).

Settlement of disputes over losses suffered by consumers of the delayed handover of apartment units is to demand compensation from the developers. These disputes can be resolved through court proceedings or out of court settlements. Resolve taken outside the court can be processed by the Consumer Dispute Resolution Agency. Consumers can also file class action. Laws and regulations have guaranteed the legal certainty to provide protection to consumers' rights; however, the consumers' awareness in regards to their rights is still low, and thus causes them to be in a weak position on the matter.

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