

Consumer Legal Protection Against Developer Defaults in Binding Agreements for the Sale and Purchase of Flats

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Abstract

This study discusses consumer legal protection against developer defaults in the binding agreement for the sale and purchase of flats (PPJB). The increase in housing development, especially through the pre-project selling system, often harms consumers due to uncertainty and default from developers. The research method used is a literature study, with a legal approach and a case approach. Analysis was carried out on Decision Number 91/PDT/2018/PT. Jakarta to assess the legal protection provided to consumers. The results of the study show that regulations, including Law Number 11 of 2011 concerning Flats, provide a strong legal basis for consumers to demand their rights. Consistent law enforcement in default cases creates a precedent that strengthens the position of consumers, increases public trust in the legal system, and creates a conducive environment for flats buying and selling transactions.

Keywords: Legal Protection; Consumers; Default; Developers; Binding Agreements.

Introduction

Due to the increasing population density in Indonesia's major cities, there is less space for housing and settlement needs. Although the area of land used for settlements is decreasing, this causes land prices to increase. One way to overcome the challenges associated with housing and settlement development is to build flats. (Iskandar, 2019). In recent years, the increasing development of housing, especially apartments, has led to very stiff competition to attract buyers. As a result, developers began to use practical and fast property sales methods, such as apartments, offices, and housing, especially through the system of *pre-project selling*.

Where the system *pre-project selling* is a sales system carried out by developers in the form of concepts or drawings before the property is completed. Developers often use the system of *pre-project selling* This is to attract buyers' interest through drawings or concepts and speed up the sale of the property without having to wait for the construction to be completed (Triyanto and Adjie, 2018).

For consumers, the *pre-project selling* system has advantages and disadvantages. One of the advantages that customers get is that they can buy a property at a lower starting price than the actual price of the property. Developers also usually allow consumers to pay with a down payment or a down payment, which can be paid in

several installments during the period originally agreed upon by the developer and the consumer. The *pre-project selling* system usually suffers losses when a binding sale and purchase agreement (PPJB) is made, which is usually made by developers who are more one-sided makes the content of PPJB more profitable for the party and makes the consumer weak.

In situations like this, the creation of PPJB is usually used to sell flats that do not have rights. When PPJB is created, both parties (potential buyers and potential sellers) talk to each other about their wishes, and after that, the actual sale and purchase is carried out (Hartanto, 2015). The Sale and Purchase Binding Agreement (PPJB) regulated in Law Number 11 of 2011 concerning Flats (hereinafter referred to as the Flat Law) has certain requirements as stated in Article 42 and Article 43. Article 42 stipulates that PPJB can be carried out when marketing is carried out before the construction of flats begins, as a form of binding between the parties.

Meanwhile, Article 43 stipulates that the process of buying and selling flats through PPJB can only be carried out after meeting several requirements, namely certainty of land ownership status, ownership of Building Permits (IMB), availability of infrastructure, facilities, and public utilities, construction of at least 20%, and other matters as agreed. In addition, PPJB must be made in front of a notary (Aulia et al., 2021).

According to the PPJB stages of the Flat Law, one of the parties is required to complete the transaction and have a residence guarantee of at least 20% (twenty percent). In practice, this provision is not implemented by the actors of the construction of flats. Articles 97 and 98 of the Flat Law affirm that flat developers are prohibited from refusing to fulfill their obligations to provide flats with a minimum amount of 20% of the total area of the flats they build.

The latest regulation related to the binding agreement on the sale and purchase of flats (PPJB Sarusun) is regulated in the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/PRT/M/2019 concerning the System of Preliminary Agreement for the Sale and Purchase of Houses (Permen PUPR RI) (Malik, 2021). This regulation aims to optimize the regulation of PPJB Sarusun as stipulated in Article 43 of the Flat Law and as an implementation of the provisions of Article 42 paragraph (3) of the Flat Law. Therefore, it is necessary to establish this regulation to regulate the PPJB system in more detail.

There are a lot of consumers who suffer losses due to defaults made by developers, such as many consumers who experience defaults committed by developers, such as handovers, inappropriate building quality, changes in specifications, not meeting permits, delays in completing public facilities, and violations of other provisions. In this case, the author will analyze the case that occurred in Decision Number 91/PDT/2018/PT. DKI. This shows that the reality on the ground often does not meet legal expectations. Therefore, here the author wants to

formulate the problem with the following problem formulation: How is the legal protection of consumers against developer default in the binding agreement for the purchase and sale of flats?

Research Methods

This research is a literature study, which includes searching for materials from books, journals, articles, and other scientific works. The material is then associated with the relevant laws and regulations. The combination of these two types of materials is used as a source and reference to analyze the problems that are the focus of the research (Nasution, 2008). A literature study aims to obtain sources and references that are in accordance with the problem being studied. By collecting primary and secondary legal materials, this research is expected to help analyze legal protection for consumers against defaults committed by developers in PPJB on flats in Indonesia.

This study uses a statute approach to analyze the provisions in the Flat Law, the Civil Code, and the Minister of PUPR regarding the relevant Home PPJB System. In addition, a conceptual approach will be used to understand and explain legal concepts related to PPJB and consumer protection. The case approach is also applied through a case study of Decision Number 91/PDT/2018/PT. DKI, which allows researchers to analyze the application of the law in real situations and consider the judge's considerations in dealing with default cases.

The types of data that will be used include primary data and secondary data, with primary data obtained from the Legal Code, Law Number 11 of 2011 concerning Housing, Regulation of the Minister of PUPR Number 11/PRT/M/2019 concerning the System of Preliminary Agreements for the Sale and Purchase of Houses, and Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the PK Law), While secondary data includes literature, books related to flats, binding agreements for sale and purchase, agreements, and defaults, as well as research results or scientific papers, magazines, legal journals, articles relevant to the legal issues raised, and various other sources related to the material.

In addition, data is also obtained through information searches using the internet. This research will utilize document studies or literature reviews as a data collection method, which is carried out by reviewing research materials or written documents such as laws and regulations and other legal sources. The collected data will be evaluated qualitatively, using descriptive and comparative analysis to explore the meaning and implications of legal provisions and judges' considerations in default cases. Through this method and approach, the research is expected to provide a deeper insight into the legal strength of PPJB and consumer protection in the transaction of

buying and selling flats, as well as provide recommendations for improving existing regulations.

Results and Discussion

The Case of the Position of the Bandung High Court Decision Number 91/PDT/2018/PT. DKI

This case began on April 4, 2017, when the Plaintiff, Kurniawansyah M., S.T., M.M., purchased 1 (one) apartment unit from the Defendant, PT. Spekta Properti Indonesia. This purchase is based on the Sale and Purchase Binding Agreement (PPJB) No. 400/PPJB/LACITY/VII/2013 signed on July 6, 2013. The object of sale and purchase is the LA City apartment Number A/16/5/2 BR with an area of 30 m² located on Jalan Raya Lenteng Agung Timur, South Jakarta.

According to the provisions in Article 15 paragraph (1) of PPJB, Defendant guarantees that the apartment will be handed over to Plaintiff no later than December 30, 2013, with a grace period of 270 days. The plaintiff has fulfilled its obligations by making a full payment of Rp 269,511,482 (two hundred and sixty-nine million five hundred and eleven thousand four hundred and eighty-two rupiah).

Right with the promised deadline, Defendant did not hand over the apartment unit to Plaintiff, and the reason Defendant did not complete it on time was not without any legal reason, but there was a very clear legal reason because at that time there was a change in regulations or regulations from the DKI Jakarta local government, such as: Change of Floor Permit which was originally 24 floors changed to 17 floors and the Defendant felt that the DEFENDANT was experiencing *force majeure*.

However, because he felt alighted, the Plaintiff finally filed a default lawsuit against the Defendant at the South Jakarta Court. In its lawsuit, the Plaintiff demanded that the Defendant fulfill its obligation to hand over the apartment unit that had been purchased, as well as compensate for the losses suffered by the Plaintiff due to the default. In this case, the Defendant felt that he had not committed a default or mistake, and finally, the Defendant appealed at the South Jakarta Court.

Before this case was brought to the High Court, the Plaintiff first filed a lawsuit at the South Jakarta District Court on April 4, 2017, with Register Number 224/Pdt.G/2017/PN. In its decision, the South Jakarta District Court granted part of the Plaintiff's lawsuit. However, the Defendant did not accept the decision and appealed to the DKI Jakarta High Court to request the cancellation of the first-instance decision.

Judge's Considerations in the Bandung High Court Decision Number 91/PDT/2018/PT. DKI

In the Bandung High Court Decision Number 91/PDT/2018/PT. DKI, the Panel of Judges analyzed the legal facts related to the dispute between the Plaintiff and

the Defendant regarding the apartment sale and purchase agreement. The Plaintiff has carried out its contractual obligations by making full payment in accordance with the provisions of the Sale and Purchase Agreement (PPJB), but the Defendant did not fulfill its promise to hand over the apartment unit on December 30, 2013. The defendant even sent a notice regarding the delay in construction, which indicates uncertainty in the implementation of its obligations.

The Panel of Judges referred to Article 1243 of the Civil Code, which regulates default, where the debtor is required to fulfill the agreed achievements. In this case, the failure of the Defendant to submit the object of sale even though the Plaintiff has made full payment is a violation of contractual obligations.

In addition, the Panel of Judges considered Article 20 paragraph (2) of the Sale and Purchase Agreement Number 400/PPJB/LACITY/VII/2013 dated July 6, 2013, concerning *force majeure* which in Article 20 has been mentioned one of the things that become *force majeure* during the validity of the agreement is the amendment of laws and regulations, government actions both written and unwritten, changes in government policies, and there are no government regulations that govern, and this has been agreed upon and binding on the parties to the agreement, where the agreement becomes legal for the parties.

The Panel of Judges also held that there were no things that could weaken or invalidate the decision of the Judge of First Instance because everything had been properly and correctly considered by the Judge of First Instance in his decision so that such objections did not need to be considered and should have been set aside;

Based on the analysis, the Panel of Judges decided that the Defendant was proven to have committed a default and sentenced the Defendant to pay compensation to the Plaintiff. By referring to the relevant legal provisions and taking into account the existing facts, this decision reflects the commitment of the Panel of Judges to uphold justice, protect the rights of the Plaintiff, and emphasize the importance of compliance with the agreement in contractual relationships.

Legal Protection for Consumers on Binding Agreements for the Sale and Purchase of Flats Units Against Developers Who Commit Default

The law was created to ensure that legal entities, both individuals and corporations, have appropriate rights and obligations. Laws must be applied and enforced because they protect human interests. A violation of the law occurs if one party does not fulfill its responsibilities, which causes the other party to feel disadvantaged. The community must be given legal protection if they feel their rights have been violated or violated. There is a relationship between the government and the people that is ordered, according to Dr. Sri Handajani, which underlies the concept of legal protection for the people (Ramelan, et.al 2015).

Something that is protected is called protection. The realization of the purpose of justice, utility, and legal certainty is an example of the function of law. Wirjono Prodjodikoro described legal protection as an effort to protect the interests and rights of legal entities in the context of implementing preventive (preventive) and repressive (coercive) measures, both in written and oral form (Sapta et al., 2022).

Fulfilling consumer needs requires a balance between developers and consumers because in business activities there is a relationship of mutual needs between business actors and consumers. This balance refers to the rights and obligations owned by each party, both developers and consumers. Consumer rights are an obligation for business actors, while consumer obligations are rights for producers. The fulfillment of these rights and obligations must be carried out reciprocally by both parties.

The balance between the rights and obligations of each party in an agreement is often not optimal, especially in terms of protecting consumer rights. Business actors or developers often make profits a top priority, but often ignore consumer rights, especially in buying a house (Nitisusastro, 2013). This situation shows that consumers are often disadvantaged, so more intensive efforts are needed to protect and enforce their rights (Saliman, 2005).

Legal protection consists of two words, namely "protection" and "law". According to the Great Dictionary of the Indonesian Language, "protection" is defined as a place of refuge or an effort to provide protection, such as protecting vulnerable individuals. Therefore, in the general sense legal protection refers to the protection provided to legal entities through legal means, regardless of whether the legal instruments are related or not.

According to Sudikno Mertokusumo, law is a collection of rules or norms that have a general and normative nature. Generality means that the rules apply to everyone, while normative nature indicates that the law dictates what should be done, what should not be done, or what should be done, as well as how compliance with those rules should be carried out (Mertokusumo, 2003). Thus, legal protection can be interpreted as an effort to protect legal subjects through applicable laws and regulations, the implementation of which can be enforced with sanctions.

According to Philipus M. Hadjon, Indonesia as a legal country based on Pancasila must provide legal protection to its citizens under the values of Pancasila. Legal protection based on Pancasila includes the recognition and protection of human dignity and dignity, which is based on the values of the One Godhead, Humanity, Unity, Deliberation, and Social Justice. These values are the basis for the recognition and protection of human rights within the framework of a unitary state that prioritizes the spirit of family for the achievement of common prosperity (Hadjon, 1987). In a country based on Pancasila, the principle of kinship-based harmony is an important

principle. Legal protection also includes efforts to provide rights to the protected party under the obligations that have been fulfilled.

To create fair and need-based legal certainty, consumers must be legally protected from sellers who often abuse their power. According to Imran Nating, as quoted by Firna Arifin, legal protection of the relationship between individuals and companies can be carried out in public or private form. While private protection uses legal protection, public protection uses public legal protection, such as laws (Arifin, 2010).

Articles 1320 and 1365 of the Civil Code generally regulate the legal protection given to buyers in the contract for the sale of a unit of residential houses. Article 1320 regulates the four conditions necessary for an agreement to be considered valid, while Article 1365 regulates the conditions for requesting compensation for wrongdoing. It is stated that every wrong act causes harm to others. Furthermore, Article 1338 of the Civil Code stipulates that all agreements that have been legally determined are considered valid by the determining party, which provides legal protection in the form of recognition of the position of PPJB that has been determined.

It is an amicable purchase contract in this case if both parties have reached an agreement regarding the type of goods and the price at which they are sold, the sales contract is considered valid and each party is responsible for the results. The buyer is protected by the appearance of the seller's obligations as a consequence of this contract. The seller has several obligations regulated according to Article 1474 of the Civil Code, receiving the title to the goods exchanged is one of them, guaranteeing that the goods will be enjoyed without hindrance, and anticipating hidden consequences.

The agreement made before the signing of the Sale and Purchase Deed (AJB) between prospective buyers and prospective sellers of land and building property is called a Sale and Purchase Binding Agreement (PPJB). PPAT sales deed, but the term PPJB does not exist in the Civil Code. In contrast, Book III of the Civil Code allows any person, including legal entities, to agree with it, without limiting its content and form, as long as it does not violate the rules of Courtesy and Public Peace (Murhaini, 2015).

In the separation, the word "sales agreement" was changed to "agreement" and "purchase contract". Herlien Budiono explained that an agreement is a legal act that creates, modifies, or deletes a right or legal relationship (Budiono, 2014). Meanwhile, according to the book Subekti, the agreement made between the seller and the buyer is previously known as the sale and purchase contract, which occurs because for the goods to be sold, certain conditions must be met and this also assumes that the certificate does not yet exist (Subeki, 2005). Based on the views of the two legal experts, PPJB can be understood as a legal document that regulates the relationship between the seller and the buyer before the transaction is considered complete.

Both personally and indirectly, PPJB functions as a preliminary contract before a Notary with the aim of binding both parties by stipulating terms based on the terms

agreed in the main contract, namely the purchase contract. The practical reason for using PPJB is that the amount stated in the sale and purchase deed is incomplete, the payment has not been fully paid, and it is usually not made as a complete payment (Murhaini, 2015).

According to Article 43 paragraph 1 of the Housing Law and Article 12 paragraph 2 of the Decree of the Minister of PUPR regarding the regulation of the PPJB system, the PPJB form for flats must be made in the form of a notary deed. The Ministerial Regulation on the PPJB system at least regulates the content of PPJB as follows: subject identity; description of PPJB objects; and this provision shows that the State seeks to protect the interests of all parties in an agreement that has legal force (Indonesia, Regulation of the Minister of Public Housing and Public Housing concerning the System of Preliminary Agreements for the Sale and Purchase of Houses, Number 11/Prt/M/2019, Ps. 11 paragraph (2).; Also read the Attachment to the PPJB Content Instructions, Regulation of the Minister of Public Housing and Public Housing concerning the System of Preliminary Agreements for the Sale and Purchase of Houses, Number 11/Prt/M/2019).

Based on a case study in the Bandung High Court Decision Number 91/PDT/2018/PT. DKI referred to by the author, then analyzed based on relevant legal regulations, such as the Civil Code, the PK Law, and the Flat Law, it can be concluded that when viewed from the provisions in the Civil Code, the Defendant's actions in the case have violated the rules in Article 1234 of the Civil Code, which regulates the obligation to hand over something. In addition, Article 1238 of the Civil Code also emphasizes that a debtor is considered negligent if he has been given a warrant or similar document with a predetermined time limit.

Regarding the Defendant's negligence in fulfilling his obligation to submit something by the PPJB that has been agreed with the Plaintiff, then under Article 1239 of the Civil Code, the Defendant as a debtor is obliged to provide compensation, costs, and interest as a form of settlement for his obligations. After considering the Plaintiff's application, and the Defendant's rebuttal, the Panel of Judges provides legal protection to the Plaintiff who suffers losses due to the Defendant's negligence or negligence based on the evidence presented during the trial.

According to Article 45 paragraph 1 of the PK Law, if a consumer suffers a loss, the consumer has the right to advocate for business actors through institutions that handle disputes between consumers and business actors, or through the general court (Indonesia, Consumer Protection Law, Ps. 45 paragraph (1)). In the case used by the author, the actions taken by the Plaintiff regarding the losses incurred by the Defendant are appropriate. Based on Article 7 of the PK Law, the Defendant in the decision was proven to have not fulfilled its obligation to carry out business activities that were not carried out in good faith and failed to convey accurate, clear, and honest information regarding the condition of the goods being traded.

Thus, no obligation is imposed on the Defendant in this case, as stipulated in Article 7 of the PK Law, also resulting in a violation of the rules listed in Article 16 of the PK Law. This article regulates inaccuracies in fulfilling agreements related to the time of completion of promised goods or services. Because Defendant failed to fulfill its obligations under Article 7 of the PK Law and violated Article 16 of the PK Law, Article 19 of the PK Law became the basis for the Plaintiff to obtain compensation in the case described by the author.

When viewed from the provisions in the Flat Law, the author argues that the legal protection provided in the law lacks affirmation of sanctions against the creation of PPJB in the sale and purchase of flats. The existence of the Regulation of the Minister of PUPR related to the PPJB Home System, which seems to require the implementation of PPJB in the form of an authentic deed before a Notary, does not stipulate strict sanctions if the PPJB is made without meeting the provisions of the authentic deed.

Therefore, based on a review of the Bandung High Court Decision Number 91/PDT/2018/PT. DKI used by the author, it can be concluded that the decision taken by the Panel of Judges has provided appropriate legal protection, which is reflected in the provisions of the Civil Code and the Criminal Code Law.

Legal protection for consumers in the Sale and Purchase Binding Agreement (PPJB) is also very important to ensure fairness and legal certainty. In this context, existing regulations provide a strong foundation for consumers to demand their rights when developers default. Legal certainty is created through the provisions in Law Number 20 of 2011 and the Regulation of the Minister of PUPR Number 11/PRT/M/2019, which requires PPJB to be made before a notary. This provision not only improves formalities but also provides firmer protection for consumers. With the notary process, consumers can have legal and strong evidence to claim their rights.

Affirmation of justice arises when aggrieved consumers can access the courts to seek compensation. Case Decision Number 91/PDT/2018/PT. DKI is a clear example where the judge gave a decision in favor of the consumer, showing that breach of contract by developers cannot be allowed without consequences. This creates a strong legal precedent and strengthens the position of consumers in property transactions. With consistent law enforcement, public trust in the legal system has also increased. Consumers feel protected and more confident to invest in property, as they are confident that their rights will be respected and protected. Therefore, the existence of clear regulations and fair law enforcement is very important in creating a conducive environment for flat buying and selling transactions.

Conclusion

The conclusion of this study shows that consumer legal protection in the binding agreement for the sale and purchase of flats (PPJB) is very important to ensure fairness and legal certainty. This research reveals that consumers are often the

disadvantaged parties due to developer defaults. In this context, regulations, including Law Number 11 of 2011 concerning Flats and Regulation of the Minister of PUPR Number 11/PRT/M/2019, provide a strong legal basis for consumers to demand their rights.

Through a case study of Decision Number 91/PDT/2018/PT. DKI, it was found that the court protects aggrieved consumers by enforcing the developer's contractual obligations. This shows that breach of contract cannot be left without consequences, creating a legal precedent that strengthens the consumer's position in property transactions. With consistent law enforcement, public trust in the legal system increases, allowing consumers to make investments with the confidence that their rights will be respected and protected. Therefore, clear regulations and fair law enforcement are needed to create a conducive environment for flat buying and selling transactions.

References

- Arifin, F. (2010). "Penerapan Asas Keseimbangan Dalam Hukum Perjanjian Mengenai Perjanjian Jual Beli Apartemen." *Tesis Magister Universitas Indonesia*, 50.
- Aulia, A. et al. (2021). Perlindungan Hukum Konsumen Terhadap Wanprestasi Developer Dalam Perjanjian Pengikatan Jual Beli Satuan Rumah Susun. *Lex Privatum*, IX(3), 162.
- Budiono, H. (2014). *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan* (Cetakan Ke). PT citra Aditya Bakti.
- Eman, Ramelan, et all. (2015). *Perlindungan Hukum Bagi Konsumen Pembeli Satuan Rumah Susun/Strata Title/Apartemen*. Aswaja Pressindo.
- Hadjon, Philipus, M. (1987). *Perlindungan hukum bagi rakyat di Indonesia* (Cet. 1). Bina Ilmu.
- Hartanto, J. A. (2015). *Karakteristik Hak Milik Atas Satuan Rumah Susun Dan Peralihannya Melalui Jual Beli*. Universitas Airlangga.
- Iskandar, M. (2019). *Panduan Mengurus Sertifikat dan Penyelesaian Sengketa Tanah* (cet. 1). Bhuana Ilmu Populer Kelompok Gramedia.
- Malik, R. (2021). Dampak Hukum Peraturan Menteri PUPR No. 11/PRT/M/2019 tentang Sistem Perjanjian Pendahuluan Jual Beli Rumah Susun Terhadap Hak dan Kewajiban Pelaku Pembangunan dan Konsumen. *Dharmasiswa*, 1(1), 479.
- Mertokusumo, S. (2003). *Mengenal hukum (suatu pengantar)* (Fifth Edit). Liberty.
- Murhaini, S. (2015). *Hukum Rumah Susun Eksistensi, Karakteristik, Dan Pengaturan, Palangara*. LaksBang Grafika.
- Nasution, B. J. (2008). *Metode Penelitian Hukum*. Mandar Jaya.
- Nitisusastro, M. (2013). *Perilaku Konsumen Dalam Perspektif Kewirausahaan*. Alfabeta.
- Saliman, A. R. (2005). *Hukum Bisnis Untuk Perusahaan: Teori dan Contoh*. kencana.

- Sapta, C. A., Mubarak, R., & Wahyuni, W. S. (2022). Tanggung Jawab Perusahaan Daerah Air Minum (Pdam) Terhadap Kerugian Konsumen Dan Melonjaknya Rekening Air Akibat Kebocoran Instalasi Dalam (Studi Pada Pdam Tirtanadi Provinsi Sumatera Utara). *JUNCTO: Jurnal Ilmiah Hukum*, 4(1), 37-45. <https://doi.org/10.31289/juncto.v4i1.1082>
- Subekti. (2005). *Hukum Perjanjian* (ed. 1). Intermasa.
- Triyanto dan Adjie, H. (2018). Perlindungan Hukum Terhadap Konsumen Atas Perjanjian Pendahuluan Dalam Jual Beli Atas Satuan Rumah Susun Yang Dipasarkan Dengan Cara Pre Project Selling. *Res Judicata*, 1(1), 57. <https://doi.org/10.29406/rj.v1i1.1039>