



Consumer Legal Remedies Against Developer Default in Binding Agreement for the Sale and Purchase of Flats

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ABSTRACT

This study analyzes consumer legal remedies against developer defaults in the Sale and Purchase Agreement (PPJB) of flats. Using normative methods with a legal approach, this study identifies the legal obligations of developers and consumer rights in the context of default. Data is collected from relevant regulations and legal literature to provide in-depth analysis. The findings show that many PPJBs tend to benefit developers, thus putting consumers in a weak position. Consumers can take legal steps through non-litigation dispute resolution or litigation. This research recommends the need for transparency and fairness in agreements to protect consumer rights, as well as the importance of strict law enforcement against violations committed by developers.

INTRODUCTION

The ever-increasing population density in Indonesia's major cities has led to less space for housing and settlement needs. This condition is exacerbated by the limited available land, so that land prices become more expensive. As a solution to face challenges in the provision of housing and settlements, the construction of flats is one of the effective alternatives (Iskandar, 2019).

In recent years, the increase in housing development, especially apartments, has created very stiff competition in the market to attract buyers. This encourages developers to adopt more practical and efficient sales methods, such as marketing apartments, offices, and housing through the system *pre-project selling*. This system allows developers to sell properties based on concepts or design drawings before the construction process is completed. With this strategy, developers can capture the attention of potential buyers through concept visualization while speeding up the sales process without having to wait for the completion of the project (Triyanto and Adjie, 2018).

For consumers, the *pre-project selling system* offers advantages and disadvantages. One of the advantages is that consumers can buy property at a more affordable starting price than the market price after the property is completed. In addition, developers usually provide ease of payment in the form of a down payment or a completion mark that can be paid in installments according to the initial agreement between the developer and the consumer. However, this system also has weaknesses, especially related to the Sale and Purchase Binding Agreement (PPJB). PPJB made by developers tends to be one-sided, so it is more beneficial to the developer and weakens the position of consumers.

In many cases, PPJB is used to sell flats that do not yet have clear rights. When PPJB is made, prospective buyers and prospective sellers discuss their respective needs and desires before finally the purchase and sale transaction is officially carried out. This condition can cause potential legal problems if there is an imbalance in the agreement or if the developer does not fulfill the obligations as promised (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 stipulated in Articles 42 and 43. Article 42 states that PPJB can be carried out during the marketing stage, before the construction of flats begins, as a form of binding between the parties involved. On the other hand, Article 43 explains that the process of buying and selling flats through PPJB can only be carried out after meeting several requirements. These requirements include certainty of land ownership status, ownership of Building Permits (IMB), provision of infrastructure, facilities, and public utilities, a minimum buildability rate of 20%, and other agreed provisions. In addition, PPJB must be made in front of a notary to ensure its validity (Aulia, 2021).

The latest regulation regarding the Binding Agreement for the Sale and Purchase of Flats (PPJB Sarusun) has been 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 regulated as the implementation of the provisions of Article 42 and Article 43 of the Flat Law. Therefore, it is necessary to establish this regulation to regulate the PPJB system in more detail.

The author also conducted a review of previous research on the same topic. That is the research conducted by Putri Mardiah Harahap in her 2023 journal with the title "Developer's Responsibility in Obtaining Certificates of Ownership of Flats Based on PPJB (Study of City Deli Medan Apartments)." This research discusses the responsibility of developers in obtaining the Certificate of Ownership of Flats in the City Deli Medan Apartment is very important to ensure that consumer rights are fulfilled. Even though there is a binding sale and purchase agreement (PPJB), developers often experience defaults in handing over certificates to buyers. This research underscores the need for legal protection for consumers through relevant laws, as well as the importance of enforcing the rights and obligations of both parties. Thus, to protect consumers and increase trust in apartment buying and selling transactions, transparency and accountability from developers are needed (Harahap et al., 2022). Based on several previous research studies, the author is interested in researching the same topic so that the author's contribution in this study is as a science in the field of business law. The purpose of this study is to analyze the developer's default against consumers in the binding agreement for the purchase and sale of flats.

LITERATURE REVIEW

The Concept of Default

Default is a condition in which one of the parties to an agreement fails to fulfill its obligations as agreed. In civil law, default can cause losses to other parties involved in the agreement. The Civil Code (KUHPerdata) regulates the legal consequences for such violations, including liability for compensation for the aggrieved party.

Sale and Purchase Binding Agreement (PPJB)

PPJB is a binding legal instrument between developers and consumers, as regulated in Law Number 11 of 2011 concerning Flats. This agreement contains rights, obligations, and requirements that must be met before an official sale and purchase transaction can be carried out. However, in practice, PPJB is often considered biased and more beneficial to developers, so consumers are in a weak position.

Legal Protection for Consumers

Consumer legal protection is guaranteed by various regulations, including the Consumer Protection Act. Consumers have the right to receive clear and accurate information about the goods or services purchased as well as the right to compensation in the event of a default. To protect their rights, consumers can file dispute resolution either through litigation in court or non-litigation.

Dispute Resolution System

Disputes between consumers and developers can be resolved through litigation or non-litigation channels. Non-litigation methods, such as mediation and arbitration, are increasingly used because they are considered faster and more efficient than lengthy court proceedings. Alternative dispute resolution (ADR) provides a practical solution for the parties to the dispute.

Developer Accountability

Developers have the responsibility to fulfill the obligations stipulated in the PPJB and related laws and regulations. These obligations include guarantees for legal ownership and completion of construction according to the agreed schedule. This provision aims to protect consumer rights and ensure transparency and fairness in buying and selling transactions.

METHODOLOGY

This study uses a normative method with a focus on the study of laws and regulations related to the Preliminary Sale and Purchase Agreement (PPJB) and developer defaults. The approach applied includes a legal and regulatory approach to analyze the Flat Law, the Civil Code, and the Regulation of the Minister of PUPR, as well as a conceptual approach to understand legal concepts related to consumer protection. The data collected consists of primary data, such as laws and regulations, as well as secondary data from legal literature and articles. Data collection is carried out through document studies, and analysis is carried out qualitatively with a descriptive and comparative approach. It is hoped that this research can provide in-depth insight into developer defaults towards consumers in the binding agreement for the purchase and sale of flats.

RESEARCH RESULT

1. Terms and Conditions for Sale of Apartments/Flats with PPJB

As a provision that regulates the procedures for marketing or selling flats that have not been completed, Article 42 and Article 43 of the Flat Law are imperative and have a strong binding force. Article 42 paragraph (2) of the Flat Law stipulates that every developer who wants to market or sell flats that have not been completed must meet a number of minimum requirements, namely:

- a. certainty of space allocation;
- b. certainty of land rights;
- c. certainty of the status of ownership of flats;
- d. permits for the construction of flats; and
- e. Guarantee for the construction of flats from the guarantee institution.

Other requirements in marketing or sales must be listed in the Binding Sale and Purchase Agreement (PPJB) prepared by a notary. In addition, Article 43 paragraph (2) of the Law on Flats stipulates that sales through PPJB must meet certainties related to:

- a. land ownership status;
- b. ownership of Building Permits (IMB);
- c. availability of public infrastructure, facilities, and utilities;
- d. the level of construction is at least 20% (twenty percent); and

e. matters agreed upon in PPJB.

In making a Binding Sale and Purchase Agreement (PPJB), the developer is required to follow the provisions stipulated in the Regulation of the Minister of PUPR No. 11/2019 concerning the Binding System for Buying and Selling Houses. Regarding the object of sale, the PPJB System is further regulated in the Regulation of the Minister of PUPR No. 11/PRT/M/2019 concerning the System of Preliminary Agreement for the Sale and Purchase of Houses which replaces the Minister of PUPR Regulation No. 11/2019. The regulation stipulates that the PPJB must include the objects to be sold, such as the Property Rights of Flats (HMSRS) which include common parts, common objects, and common land, along with facilities that are in accordance with the Property Registration Number (NPP) of the flats concerned. Regarding the marketing of flats, Article 3 paragraph (2) of the Minister of PUPR No. 11/2019 expressly states that "house builders can market their flats before the construction is carried out." However, to be able to market flats, every development actor must meet several minimum requirements as stipulated in Article 4 of the Minister of PUPR Regulation No. 11/2019, namely:

- 1) The certainty of space allocation must be proven by a certificate of district/city plan approved by the Regional Government.
- 2) The certainty of land rights is evidenced by a certificate of land rights registered in the name of development actors or land owners who cooperate with development actors.
- 3) Certainty of the status of house ownership, proof of ownership that will be issued in the name of the owner, which includes a SHMSRS or SKBG certificate based on a map that has been approved by the Regional Government.
- 4) The permit for the construction of flats is evidenced by the Building Permit (IMB).
- 5) Guarantee for the construction of flats from a guarantee institution, which is provided by financial institutions, both banks and non-banks.

In the Attachment to the Regulation of the Minister of PUPR No. 11/PRT/M/2019 which contains instructions for the content of the Binding Sale and Purchase Agreement (PPJB), it is regulated that PPJB is a sale and purchase agreement between the developer and the prospective buyer at the stage of the house construction process. The content material that must be in the PPJB includes the following:

1. Head of Deed
Contains the title of the deed, deed number, time, date, month, year, full name, and place of the notary.
2. Identity of the Parties
Contains the full names, place and date of birth, nationality, occupation, position, position, and residence of the parties to the agreement.
3. Description of PPJB Object
Explain the object to be agreed in the form of an apartment, with details of physical data (area of the flat), location (village/sub-district, city/district,

province), and location of the apartment building, including floors and unit numbers for the flats.

4. Flat Prices and Payment Procedures

Contains the selling price, payment procedures and time, as well as costs arising from the agreement. Development actors must not withdraw funds more than 80% of the selling price to buyers before meeting the PPJB requirements.

5. Guarantee of Development Actors

Contains guarantees regarding the validity of ownership that is not in dispute and proof of ownership of flats.

6. Rights and Obligations of the Parties:

a. The rights of Development Actors, including the right to receive payment for flats and other rights in accordance with regulations or agreements.

b. The obligation of the Development Actor is to build the house according to the plan and permits, complete it on time, provide facilities and infrastructure, and inform the buyer of the progress of the development.

c. Buyer's rights, obtaining accurate information, knowing the conditions for buying and selling flats, accepting handover on time, and filing claims for non-conformities.

d. Buyer's obligation, making payments as agreed, fulfilling cost obligations, using the house according to its designation, and forming an association of owners and residents of flats.

7. Handover Time

The construction actor handed over the completed apartment unit with the minutes of the handover of keys and the sale and purchase deed or certificate of ownership of the flat.

8. Building Maintenance

The builder is responsible for the maintenance of the house for 3 months after the handover, and the buyer can file a complaint for the non-conformity of the house received.

9. Building Uses

The home is used for what it was intended for, and the buyer is responsible for the cost of paid amenities or paid utilities.

10. Assignment of Rights

The buyer is not allowed to transfer the rights to the flats before the signing of the sale and purchase deed, except with the written consent of the development actor.

11. Cancellation and Termination of PPJB

The cancellation of PPJB can only be done according to the agreed provisions, and the termination of PPJB occurs when the achievements or commitments in the agreement have been fulfilled.

12. Dispute Resolution

Disputes related to PPJB are resolved through deliberation for consensus within a maximum of 30 days, or can be resolved through dispute

resolution efforts in accordance with laws and regulations in the housing sector.

13. Cover

Contains information about the signing and place of signing PPJB.

14. Attachment

For flats with one building, attach a picture of the common land plan, a picture of a vertically cut building, and a plan showing the location of the flat. For flats with more than one building, attach a drawing of the location of the building, the boundaries of the common land, and a picture of the vertically cut building.

2. Consumer Legal Remedies Against Developer Default in Binding Agreement for the Sale and Purchase of Flats

An agreement is an agreement between two or more parties that bind themselves to fulfill a certain promise. In Article 1313 of the Civil Code, it is stated that the agreement that has been agreed upon by the parties has binding legal force, so each party is obliged to comply with and implement the content of the agreement. This obligation is born from a mutually made agreement, which in turn has the power of a law for the parties involved. If one party defaults or fails to fulfill its obligations according to the agreement, this can cause losses to the other party (Prodjodikoro, 2015).

If one party does not carry out its obligations, this can harm the other party whose interests are violated. For this reason, the law provides protection for parties who are harmed by the violation. Liability arises as a result of a breach committed by one of the parties to the content of the agreement. In every agreement there is an obligation or achievement that must be fulfilled. The provisions regarding this achievement are regulated in Article 1234 of the Civil Code, which includes:

- a. Giving something,
- b. Doing something,
- c. Not doing something (Pradnyaswari, 2013).

The act of default has legal consequences for the party who does it and has consequences for the rights of the aggrieved party. In the event of a default, one of the parties is required to fulfill its principal obligations, accompanied by additional sanctions in the form of fines, interest, or compensation demanded by the party who suffers losses. Various legal remedies can be taken depending on the type of default experienced by the aggrieved party. Some legal remedies that can be taken include:

- a. Requesting the delivery of goods.
- b. Ask for a replacement.
- c. Asking for compensation.
- d. Seeking compensation.
- e. Request cancellation of the agreement (Wayan Widianegara, I., 2021).

Consumer legal remedies against developer defaults in the binding sale and purchase agreement can be pursued through non-litigation dispute resolution

or out-of-court and litigation settlement or through general judicial processes, including:

a. Non-Litigation or Out-of-Court Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) is a method of resolving civil disputes that prioritizes mutual agreement based on the good faith of the parties, without going through a litigation process. According to Suyud Margono, ADR includes various methods such as consultation, negotiation, mediation, conciliation, arbitration, *good offices*, *mini trial*, *summary jury trial*, *rent a judge*, and *Med-ARB* (Angesti Anas Kapindha, Ros, 2014).

Dispute resolution through Alternative Dispute Resolution (ADR) is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The ADR mechanism is also in line with the provisions in the Minister of PUPR Regulation No. 11 of 2019 concerning the Binding System for Buying and Selling, which regulates the settlement of PPJB disputes through arbitration (Setiawati, 2019).

Based on Article 1 paragraph (10) of Law Number 30 of 1999, alternative dispute resolution is defined as "an institution for resolving disputes or differences of opinion that are resolved through means outside the court, such as consultation, negotiation, mediation, conciliation, or through the opinions of experts."

Various alternative dispute resolution methods that can be used include:

1) Arbitration

Arbitration, as stipulated in Article 1 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, is a means of resolving civil disputes outside the general court based on a written arbitration agreement between the parties to the dispute. Arbitration aims to resolve disputes in a concrete and binding manner in order to achieve peace. This method is used to avoid lengthy court proceedings as well as to resolve complex disputes involving third parties.

2) Negotiation

Negotiation is a two-way communication that aims to reach an agreement between parties who have the same or different interests. Susanti Adi Nugroho defines negotiation as a negotiation process to find solutions to common problems. This method is considered economical and simple in resolving disputes. However, negotiations often fail due to a lack of understanding and skills in negotiation techniques by the disputing parties.

3) Mediation

Mediation is the process of intervention by a third party that is neutral, impartial, and acceptable to all parties to help resolve disputes. In mediation, a

third party serves as a facilitator that helps create open communication between the parties to the dispute, without making decisions or conclusions. Mediation aims to achieve a peaceful settlement through the guidance of experienced and neutral mediators.

4) Conciliation

Conciliation is a process in which a conciliator acts as a mediator to help the dissenting parties reach a peaceful settlement. In their role, the conciliator not only facilitates meetings, but also actively provides suggestions or solutions to solve problems that are at the heart of the dispute.

b. Litigation Settlement

In addition to the non-litigation mechanism, flats consumers also have the option to take the litigation route to obtain their rights as stipulated in the Sale and Purchase Agreement (PPJB). This litigation process can be carried out with two main approaches:

1) Civil Settlement

a) Lawsuit for Default

Generally, developers cancel the agreement if the prospective buyer fails to fulfill its obligations. Based on the sanctions provisions in the PPJB, the cancellation of the agreement by the developer is often not accompanied by a refund of the money that has been paid by the prospective buyer. However, a different situation applies if the violation is committed by the developer. In this case, developers often include standard clauses in PPJB to avoid civil liability, especially if they fail to fulfill the promises in the agreement.

Referring to Article 1338 paragraph (1) of the Civil Code regarding the principle of freedom of contract and the principle of binding force of agreements, developers seek to avoid liability, including the obligation to pay compensation. They often argue that no default has been committed so that they cannot be subject to civil sanctions.

In some cases, developers have compiled PPJB with a format similar to the Deed of Sale and Purchase (AJB) to give the impression that the sale and purchase transaction has been legally valid. In fact, the process of buying and selling can only be considered valid after the building is completed, the Certificate of Property Rights for Flats Units (HMSRS) is issued, the deed of protection is ratified, and the Certificate of Functional Fitness is issued by the relevant agencies. In addition, the legal act must be stated in the AJB made by PPAT, not in the PPJB made by a notary. Because the nature of PPJB is only a sale and purchase agreement, the ownership rights of the flats have not been transferred to the buyer until the process is completed.

To protect consumer rights from irresponsible developer practices, prospective buyers can file a lawsuit for default if the

developer fails to fulfill its obligations under the PPJB, such as not completing the construction, not handing over the building, not making an AJB, or not issuing an HMSRS certificate.

Developers usually already account for the risk of this lawsuit assuming that only a small percentage of consumers understand the legal steps to take in the face of default. Meanwhile, the majority of consumers tend not to know or understand their legal rights, so irresponsible practices often continue to be carried out by developers in other locations.

Prospective buyers have several legal options to demand their rights, such as forcing the fulfillment of the agreement (nakoming), demanding the cancellation of the agreement with compensation, or a combination of both. Based on Article 1267 of the Civil Code, the claim can include the fulfillment of achievements, compensation, cancellation of agreements, or a combination of fulfillment of achievements and compensation. With these measures, flats consumers can fight for their rights more effectively.

b) Lawsuit for Unlawful Acts

Prospective buyers can file a lawsuit for unlawful acts (PMH) to claim compensation if there are articles in the PPJB that are contrary to laws and regulations. An example is the inclusion of a standard clause or a clause that ignores the provisions in Article 43 paragraph (2) of the Flat Law.

Although the PPJB has been signed by both parties and has binding legal force, the developer's actions deliberately avoid the imperative articles of the Flat Law. or the Consumer Protection Law (PK Law) can be considered as PMH. According to the Arrest Cohen-Lindenbaum (January 31, 1919), an act is considered unlawful if it violates rights, is contrary to legal obligations regulated by law, or violates unwritten legal norms that apply in society.

In many cases, developers include articles that ignore the provisions of Article 43 paragraph (2) of the Law on Flats to minimize losses due to properties that do not meet the requirements of legality, such as the absence of a Building Permit (IMB), the status of land that is not yet valid, or land that is used as collateral for debts with dependent rights. Although intended to reduce the risk of loss, such reasons are not legally justified.

A lawsuit on the basis of PMH can also be filed if there is a standard clause in the PPJB. The developer's deliberate inclusion of the clause to avoid his responsibility is an act that not only violates the law but also the principles of justice and legal norms of society.

According to Munir Fuady, unlawful acts must be understood broadly, including violations of other people's rights, legal obligations, moral norms, and prudence in social relations. Therefore, prospective buyers can use Article 1365 of the Civil Code

as a basis to demand compensation, protect themselves from arbitrary actions or bad faith of developers (Fuady, 2005) . On this basis, the prospective buyer has a strong foundation to fight for his rights in court.

2) Imposition of Criminal Sanctions

To provide a deterrent effect and prevent the recurrence of violations, prospective buyers can use criminal law mechanisms to obtain justice and legal certainty. In addition to civil and administrative sanctions, developers can also be subject to criminal sanctions.

According to the Flat Law, the inclusion of articles that ignore the provisions of Article 43 paragraph (2) of the Flat Law is a violation of Article 98 of the Flat Law. This article prohibits developers from selling flats that are not in accordance with what is marketed or that do not meet the requirements as stipulated in Article 43 paragraph (2) of the Flat Law. These violations can be sanctioned based on Article 110 of the UURS in the form of a maximum prison sentence of 4 years or a fine of up to IDR 4,000,000,000.00 (four billion rupiah).

The same thing also applies if the developer violates the provisions of Article 18 letters c, d, and g of the PK Law. Based on Article 62 paragraph (1) of the Criminal Justice Law, violations of Article 18 can be sentenced to a maximum of 5 years in prison or a fine of up to IDR 2,000,000,000.00 (two billion rupiah).

The imposition of criminal sanctions based on Article 110 of the Law on Flats and Article 62 paragraph (1) of the Law on Criminal Justice is in line with the principle of *ultimum remedium*, namely the use of criminal law as a last resort if civil and administrative law instruments do not provide a deterrent effect. Yusuf Shofie stated that criminalization in the context of administrative criminal law (*administrative penal law*) is carried out to protect the interests of the community, not solely based on the level of subjective error of the perpetrator (Shofie, 2002).

As administrative criminal law, criminal sanctions in the Flats Law and the PK Law are special and applied in certain situations. Andi Hamzah explained that although there is no fundamental difference between administrative sanctions and criminal sanctions, criminal law is applied if the act committed is clearly unlawful (*Illegal*). Andi Hamzah emphasized that the application of criminal law as *ultimum remedium* must consider the advantages and disadvantages of the various law enforcement instruments available. With this mechanism,

criminal law serves as the last step to uphold justice and ensure compliance with applicable regulations (Hamzah, 2016).

CONCLUSIONS AND RECOMMENDATIONS

The conclusion of this journal highlights the importance of legal protection for consumers in dealing with defaults committed by developers in binding sales and purchase agreements (PPJB). The often weaker position of consumers requires guarantees of the fulfillment of their rights. Developers have the responsibility to carry out all their obligations as stated in the PPJB, including handing over the housing units according to specifications and on time.

Consumers have the option to resolve disputes through legal channels, both litigation and non-litigation dispute resolution alternatives, such as mediation and arbitration, which are considered faster and more efficient. Transparency and accountability from developers are key elements to prevent defaults. This study also recommends a regulatory update that is more in favor of consumers and increased education for them about rights in property transactions. This step is expected to increase trust and provide better protection in the housing market.

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