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Consumer Protection in Property Buying and Selling: Case Study of PT Developer Properti Indoland

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Abstract
Buying and selling property using pre-project selling concept is a strategy to obtain initial capital to start a property project. Pre-project selling is a strategy in which a property developer sells part of his property before the project is completed. Pre-project selling can help developers to obtain initial funding and to anticipate financial risks. The pre-project selling strategy can also help developers to increase project attractiveness and increase investor confidence. However, pre-project selling also has some disadvantages, especially for consumers, including standard clauses that force consumers to follow the provisions of the developer whose practice often contradicts both Law Number 8 of 1999 concerning Consumer Protection and Law Number 1 of 2011.

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1. Introduction

Humans have a basic need to have a residence, which requires land as a foundation for building it. Land, in addition to having a function as a social asset, has also become a very important economic asset, which is not only used as a business material but also as an object of speculation. For that, land must be utilized as much as possible for the welfare and prosperity of the people, and must be maintained so that it remains sustainable. This results in a change in human lifestyle from living on the move to having a permanent home and residential environment. Finally, people tend to buy ready-to-live-in housing built by developers through housing offered or commonly called property (Rubaie, A., 2007: 1) [3].

Property is an asset in the form of land and/or buildings that are one unit with its ownership (Rimbawa, MA, 2021: 138-139) [2]. Ownership of this property asset is one of the business fields that are widely carried out by many people, or even corporations. One type of property business is residential property. Property is always burdened with a right, in this case property is a person's right to carry out a specific interest in the property object, such as ownership rights, lease rights, or building use rights (K Harjono, D., 2016: 7) [1]. The legal source of property as land and building assets is regulated in Law No. 5 of 1960 concerning Basic Agrarian Principles.

Buying and selling residential property is one form of investment that we often encounter every day. Even when the Covid-19 pandemic had just spread and caused the economic sector to be affected, investment in residential property continued to increase. Based on the Market Behavior Survey compiled by Indonesia Property Watch (IPW) in September 2020, 68.09 percent of respondents were interested in buying property during the Covid-19 pandemic for several main reasons, namely cheaper prices, attractive offers and promotions from developers, and flexible installment plans (Petriella, Y., 2021) [19]. Purchases of residential property increase every year because they are considered to have good selling value in the future, and also as the world economy recovers due to the decreasing number of Covid-19 pandemics.

With the high profit and demand for residential property, many corporations in the form of Limited Liability Companies (PT) do not miss the opportunity. So that the creation of residential property increases rapidly. Therefore, most developers make property sales using the pre-project system *selling*. Pre-project selling is a property sales system by selling before the project is built, where the property being sold is only in the form of a picture or concept.

The concept of pre-project selling has become a trend carried out by developers lately to attract consumer interest in buying a house, because the pre-project selling system has advantages for developers, namely it is considered an alternative to additional construction costs ("Pre Project Selling Has the Potential for Unlawful Acts, Defaults to Corporate Crimes," Sembilan Bintang, nd, https://www.sembilanstar.co.id/pre-project-selling-can-potential-deed- against-the-law-of-default-to-corporate-crime). If the consumer agrees to buy the house, then the consumer is required to pay a Down Payment (DP) or deposit, or the consumer can also make the payment in full.

The benefits are not only for developers, there are also benefits for consumers who make the concept of pre-project selling popular. The reaction of consumers or people who visit exhibition events related to pre-launching or pro sale shows that the appeal of the pre-project selling marketing concept to the public is quite large. Prospective consumers are also very interested because of the discounts of 15% to 20%, which are accompanied by bonuses of electronic devices whose value can reach several million to tens of millions of rupiah.

In the implementation of this pre-project selling system, it utilizes the freedom to make agreements between parties, in which case the developer makes an agreement or agreement without negotiation, meaning that consumers can only take or leave the contract, which is often known as a standard clause (Jhon Haward Hutagaol and Anna Maria Tri Anggraini, 2022: 364-365) [11]. So that in practice, standard clauses harm consumers and benefit developers. The position of property business actors who are more advantaged often hurts the sense of justice and violates consumer rights which are detrimental to consumers because in practice it often conflicts with both Law Number 8 of 1999 concerning Consumer Protection and laws and regulations in the housing sector (Gomulja, I. and Adjie, H., 2020: 48) [10].

Before making a property purchase, prospective consumers are advised to check who the developer is, the quality of the building, and the history of the projects that have been carried out. They should also be careful of the attractions given such as gifts, discounts and attractive marketing staff appearances, even though the product is still just a concept (Edi Krisharyanto and Peni Jati Setyowati, 2019: 125) [12].

Buying and selling with a pre-project selling system, in the process you will find important documents, namely:

1. Sales Purchase Agreement (PPJB) or commonly known as the Preliminary Purchase Agreement and Sales Purchase Agreement between the Developer and the Consumer.
2. A deed of sale and purchase made and signed before a Land Deed Making Officer (PPAT) to transfer or split ownership of land and houses from the developer to each consumer.
3. Home/Apartment/Rusun Ownership Credit Agreement or commonly known as Credit Granting Agreement from the KPR/KPA providing bank (Shofie, Y., 2020) [5].

This was experienced by consumers of PT Developer Properti Indoland who committed fraud with losses reaching IDR 5.6 billion. PT Developer Properti Indoland made sales with a pre-project selling system for the Grand Emerald Malang project which after being investigated, PT Developer Properti Indoland sold the property without ownership of the land to be built. In this case, the main director of PT Developer Properti Indoland has been marketing the housing project since 2017, which is named Grand Emerald Malang. PT Developer Properti Indoland claims to be building 150 housing units priced at IDR 123 million to IDR 150 million per unit. With such a low price, it attracts several consumers. When the offer was made, consumers were not suspicious of the empty land, because the main director of PT Developer Properti Indoland assured consumers that construction would be carried out as soon as possible and completed within two years. However, when the deadline for handover of the unit came, PT Developer Properti Indoland failed to hand over the promised unit. Therefore, PT Developer Properti Indoland violated Article 42 Paragraph 2 of Law Number 1 of 2011 concerning Housing and Residential Areas.

The author can say so because the house promised by PT Developer Properti Indoland was not built because the projected land was not his, while one of the requirements for buying and selling land or property is the certainty of land ownership rights. Based on the problems above, related to PT Developer Properti Indoland which violates Article 42 of Law No. 1 of 2011, the problem can be formulated as follows: how is the relationship between the buying and selling carried out by PT Developer Properti Indoland with Law No. 8 of 1999 and Law No. 1 of 2011 and what is the responsibility of PT Developer Properti Indoland to consumers in this case?

2. Literature Review

Studies on consumer protection against the concept of pre-project selling have previously been conducted, one of which was by Jhon Haward Hutagaol and Anna Maria Tri Anggraini entitled HOUSING CONSUMER PROTECTION IN HOUSE BUYING AND SELLING WITH THE PRE-PROJECT SELLING SYSTEM.

The discussion discussed in the journal covers whether the transactions carried out by Darwin and PT Buana Cipta Propertindo (the journal's case study) are in accordance with the Consumer Protection Law and housing regulations or not. The research is descriptive and uses a qualitative approach. The case of PT Buana Cipta Propertindo and Darwin began when Darwin as a consumer bought a house for Rp. 390,000,000 from PT Buana Cipta Propertindo located in Tembesi Village, Sagulung District and/or also known as the Cipta Green Ville B Housing Complex where it was agreed that the down payment was Rp. 58,500,000, - (fifty eight million five hundred thousand rupiah) with 24 payments which were then regulated in the agreement that after the down payment was paid, a house credit agreement would be carried out. Darwin who is a consumer or buyer has paid the down payment and according to the agreement on November 17, 2016, the handover of land and buildings will be carried out, but the property business actor, namely PT Buana Cipta Propertindo, did not carry out the agreement. The results of the research found that the case study used, namely, the house sale and purchase transaction between Darwin and PT Cipta Buana Propertindo, violated Article 8 paragraph (1) UUPK, Article 7 letter a UUPK, Article 4 letter d UUPK, Article 18 paragraph (1) letter c UUPK, Article 16 UUPK and based on laws and regulations in the housing sector, the author is also of the opinion that PT Cipta Buana Propertindo in the sale and purchase transaction has violated Article 42 paragraph (2) of Law Number 1 of 2011 concerning Housing and Settlements (Hutagaol and Anggraini, tt: 30-371).

It is also written in a journal entitled Controlling the Principle of Freedom of Contract in the Pre-Project Selling System by

Irwan Gomulja and Habib Adjie that Property marketing with a pre-project selling system does not yet have a legal umbrella, which has an impact on consumers regarding the lack of legal certainty regarding the status of the building. This means that there is a chance of default by the party developers bring huge losses to consumers (Gomulja and Adjie, tt: 52).

From the previous study, the author found several similarities with the author's research. Among others: the author also took from the side of existing standardization and regulated in the legislation, and whether this related case study violates or not. However, from the previous study there are also differences, such as the case study of the previous study is a case where (PT Buana Cipta Propertindo) did not carry out land handover and the case study of the author's research where the developer does not yet have land, but has made a sale and purchase and used the victim's DP money to buy land.

3. Study Method

In conducting legal research, normative research is chosen as the method. This research aims to provide legal arguments when there is an error, ambiguity, or conflict of norms. The legal materials used in this normative research include primary legal materials and secondary legal materials. The methods used to find out and discuss the problem include the statute approach and the conceptual approach (Mahmud Marzuki, 2017) [2].

The data collection technique for this research was carried out by means of library research or studies of selected literature based on its relevance.

4. Discussion Results

1. The relationship between the sale and purchase carried out by PT Developer Properti Indoland with Law No. 8 of 1999 and Law No. 1 of 2011 The trend of buying and selling property in Indonesia has increased in recent years.

This is due to various factors, including lower interest rates, increased government decentralization, and improved infrastructure. In addition, the property market in Indonesia is also influenced by political and social changes, making it increasingly attractive to investors. Based on available data, the growth value of property sales and purchases in Indonesia in 2021 is projected to increase by 8.6% compared to last year. Demand for rental houses, apartments, and other residences has increased significantly, creating attractive investment opportunities for developers and investors.

The high interest in this property has led many developers to sell property with a pre-project selling system or concept, which is a marketing strategy used to attract potential buyers to an upcoming property project. With this strategy, property developers serve potential buyers before the property project is launched on the market. The pre-project selling process begins by creating an experience for potential buyers from the start, by providing information about the upcoming property project. The property developer will then provide complete information about the location, facilities, design, and price of the property (Krisharyanto and Setyowati, "Controlling Pre-Project Selling Through Consumer Protection Principles Based on Law Number 8 of 1999 Concerning Consumer Protection.)".

However, in practice, this pre-project selling system utilizes the freedom to make agreements between parties, in which case the developer makes an agreement or contract without negotiation, meaning that consumers can only take or leave the contract, which is often known as a standard clause. So in practice, the standard clause is detrimental to consumers and benefits the developer. The position of property business actors who are more advantaged often hurts the sense of justice and violates consumer rights which are detrimental to consumers because in practice it often conflicts with both Law Number 8 of 1999 concerning Consumer Protection and laws and regulations in the housing sector (Gomulja and Adjie, tt: 49).

One of the regulations governing the sale and purchase of property is Law No. 1 of 2011, which Based on Article 42 paragraph (1) and (3) of Law No. 1 of 2011 states that in the pre-project selling process (Sales of Projects or Buildings that will exist in the future) using Preliminary Agreements and Conditional Agreements. To market products that are being marketed that have not yet been realized at this time, developer entrepreneurs must at least have:

a. Certainty of space allocation;
b. Certainty of land rights;
c. Certainty of ownership status of the apartment;
d. Permits for the construction of flats; and
e. Guarantee for the construction of flats from a guarantee institution.

Apart from that, Article 42 also states the conditions for entering into a preliminary sale and purchase agreement, including:

a. Land ownership status;
b. The thing promised;
c. Ownership of a main building permit;
d. Availability of public infrastructure, facilities and utilities; and
e. Housing development is at least 20%.

In the case study discussed, namely PT Developer Properti Indoland which carried out property sales and purchases using a pre-project selling system, but it turned out that PT Developer Properti Indoland did not yet have land ownership status, this clearly violated the 5 points in Article 42 of Law No. 1 of 2011.

In this case, consumers or buyers of PT Developer Properti Indoland feel disadvantaged, because the promised property has not arrived. Therefore, there is Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) which has been stipulated by the Government as a strong legal basis to facilitate consumer empowerment through consumer guidance and education. According to Article 1 number 3 of Law Number 8 of 1999 concerning Consumer Protection, Business Actors are defined as every individual or business entity, both within and outside the jurisdiction of the Republic of Indonesia, either alone or together through an agreement that carries out business activities in various economic fields, including developers.

Based on Law No. 8 of 1999 concerning Consumer Protection, several principles must be considered in pre-project selling transactions to ensure consumer protection, namely benefits, justice, balance, security and safety, and legal certainty. Thus, legal certainty includes all aspects and legal efforts to enable prospective buyers to choose products and services that suit their needs and defend their rights if they are harmed by business actors.

The benefit aspect in the Consumer Protection Law aims to ensure that all efforts to protect consumers must provide maximum benefits for the interests of consumers and business actors as a whole. Therefore, every consumer protection effort against pre-project selling must always benefit the parties involved. From the consumer's perspective, the stipulation of the Consumer Protection Law which stipulates the rights and obligations of consumers has strengthened their position as consumers who are protected by law. In addition, the Consumer Protection Law has also made it easier for consumers to file for compensation if they are harmed by business actors. In addition to the benefits aspect, other aspects such as balance, security and safety, security, and legal certainty are intended so that the parties can exercise their rights and obligations but not apart from obeying the law and obtaining justice in the implementation of consumer protection.

Based on the Consumer Protection Law, 9 (nine) consumer rights have also been established, namely

a. The right to comfort, security and safety in consuming goods and/or services;
b. The right to choose goods and/or services and to obtain said goods and/or services in accordance with the exchange value and conditions and guarantees promised;
c. The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services;
d. The right to have opinions and complaints heard regarding the goods and/or services used;
e. The right to receive proper consumer protection advocacy;
f. The right to receive consumer guidance and education;
g. The right to be treated or served properly and honestly and without discrimination;
h. The right to receive compensation, damages and/or replacement, if the goods and/or services received do not comply with the agreement or are not as they should be; and
i. Rights regulated in other statutory provisions.

Then, Article 10 of the UUPK also contains prohibitions that are categorized as often carried out by developers or developers against housing consumers, which states that business actors are prohibited from offering goods intended for trading by promoting, advertising or making statements that are incorrect or misleading regarding, among other things:

a. The price or rate of goods and/or services;
b. The utility of a good and/or service;
c. Conditions, liabilities, guarantees, rights or compensation for goods and/or services;
d. Discounts or attractive prizes offered;
e. Dangers of using goods and/or services (Darwis, A., 2010: 12).

Therefore, it is only right that property sales and purchases with the pre-project selling system receive legal certainty and also legal protection from Law No. 8 of 1999 and also Law No. 1 of 2011.

2. Responsibility of PT Developer Properti Indoland towards consumers

Article 1457 of the Civil Code on sale and purchase emphasizes that sale and purchase is an agreement in which the seller is required to provide an object and the buyer must pay the agreed price. The seller has the right to receive material or money from the buyer who acquires the object, and the buyer has the right to obtain the object he owns from the seller, with full assurance that the object and its rights are fully owned by the seller (Ketut Ayu Lestari and I Nyoman Darmadha, 2018: 1-13) [13].

The legal responsibility of the parties who produce, sell, distribute, and are involved in the preparation and distribution of a product, as well as entrepreneurs, agents, and workers of related business entities is also called product liability. Another definition of product liability is a legal concept that is essentially intended to provide protection to consumers by freeing consumers from the burden of proving that consumer losses arise from errors in the production process and at the same time giving rise to the producer's responsibility to provide compensation, or in essence the producer or business actor must be responsible for all losses arising from the results of their products or services (Nommy Horas Thombang Siahaan, Aa Sudirman, and Yuniawan W Nugroho). According to Shidarta, the purpose of consumer protection is to improve the legal status and dignity of consumers and provide information about a product to ensure protection for consumers (Shidarta, 2000: 136) [4].

In this case study, PT Developer Properti Indoland has committed a breach of contract, where consumers complained because the unit promised by the developer was not delivered even though it had passed the due date (Gunawan Widjaja and Kartini Muljadi, 2003: 30) [7]. Consumers from PT Developer Properti Indoland then sent a warning letter to the developer, but it was ignored. Because the developer did not deliver the unit on the promised due date. In accordance with Article 7 of Law No. 8 of 1999 which states that, "Business actors are required to provide compensation, damages and/or replacement if the goods and/or services received or utilized do not comply with the agreement". Therefore, consumers have the right to file a lawsuit if they are harmed. PPJB provides legal guarantees for both parties when buying an unfinished house. However, the contents of this PPJB cannot be adjusted by the developer arbitrarily, because there are guidelines that have been mutually agreed upon, namely the Decree of the Minister of State for Public Housing Number 09/KPTS/M/1995 concerning Guidelines for Binding the Sale and Purchase of Houses (Arina Ratna Paramita and Dewi Hendrawati Yunanto, 2016: 1-12) [14].

Consumers from PT Developer Properti Indoland then filed a report that led to a trial in court with case number No. 222/Pdt.G/2020/PN SDA, which then Case Decision No. 222/Pdt.G/2020/PN SDA stated that the defendant (PT Developer Properti Indoland) and the plaintiff (consumer/victim from PT Developer Properti Indoland) ended the trial peacefully, on condition that PT Developer Properti Indoland promised to complete the construction of the promised property by providing ownership rights as collateral for a plot of land to be given to the defendant on a specified date. If the defendant does not carry out the promised obligations, the guarantee will be transferred to the plaintiff.

This is a form of accountability from PT Developer Properti Indoland for the default it has committed, namely promising that the unit agreed upon at the beginning would be provided with an additional time limit.

5. Conclusion

The practice of pre-project selling that takes advantage of the freedom to make agreements between parties is often considered unfair because consumers can only take or leave the contract made without negotiation. This can also violate Law Number 8 of 1999 concerning Consumer Protection and laws and regulations in the housing sector, because it can harm consumers. One of the regulations governing the sale and purchase of property is Law Number 1 of 2011, which Based on Article 42 paragraph (1) and (3) of Law Number 1 of 2011 states that in the pre-project selling process (Sales of Projects or Buildings that will exist in the future) using a Preliminary Agreement and Conditional Agreement and in practice, most developers often violate the conditional agreement. In the case example above, PT Developer Properti Indoland which committed a default because it did not hand over the promised unit has provided accountability in the form of a new agreement containing the provision of the promised unit at the beginning will be given with an additional time limit. However, outside accountability that has been carried out by PT Developer Properti Indoland, PT Developer Properti Indoland still violates Article 42 of Law No. 1 of 2011 which is a requirement for conducting property sales and purchases using the pre-project selling system.

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