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Legal Certainty and Consumer Protection in Property Transactions in Indonesia

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Abstract

Property transactions in Indonesia play a crucial role in economic development but are often marked by legal uncertainties and various consumer protection issues. Property consumers face risks of fraud, delayed handovers, and certificate issues, requiring better legal certainty and protection. Method: This study employs a normative juridical method by examining regulations and policies governing property transactions in Indonesia. Data were collected through literature review and legal analysis of applicable legislation. Results: The study indicates that despite the existence of various regulations governing property transactions, their implementation and supervision remain ineffective. Issues such as fraud, delayed handovers, and certificate problems are still commonly experienced by consumers. Therefore, there is a need for improved supervision, transparency of information, and more effective dispute resolution mechanisms.

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1. Introduction

Property transactions in Indonesia have become an important part of the country's economic development and development. The ever-growing property market drives an increase in transactions for buying and selling, renting, and other property developments. However, along with the increase in property transactions, various problems arise related to legal certainty and consumer protection. Property consumers are often faced with the risk of legal uncertainty, fraud, and abuse of authority by developers or property agents.

Legal certainty in property transactions is very important to ensure that consumer rights are protected and to create a healthy investment climate. Consumer protection in property transactions does not only cover legal aspects, but also other aspects such as information transparency, consumer rights, and dispute resolution mechanisms. This study aims to analyze legal certainty and consumer protection in property transactions in Indonesia and provide recommendations to improve consumer protection in this sector.

2. Research Methods

This research is a normative legal research that focuses on applicable legal norms and the study of applicable legal norms.

3. Results and Discussion

3.1 Legal Certainty in Property Transactions

Legal certainty is a principle that ensures that the law is clear, known, and applied consistently, so that individuals can predict the legal consequences of their actions. This legal certainty is a principle and must be based on applicable laws and regulations^[1]. In the context of property transactions, legal certainty is very important to ensure that the rights and obligations of the parties involved in the transaction are recognized and protected by law. This is also to guarantee consumer rights and prevent disputes. There are several theories related to legal certainty, including the theory of legal positivism, the theory of legal realism and the theory of justice. According to legal positivism, law should be seen as a set of rules that apply without considering morality or

¹ Cekli Setya Pratiwi, Shinta AP., Fauzi, Christina YP., 2018, General Principles of Good Governance, Institute for Research and Advocacy for Judicial Independence (LeIP), Jakarta, p. 125

justice. Legal certainty in this theory emphasizes the importance of written and institutionalized law.

In the theory of legal realism, it will emphasize the application of law in practice and how the law is applied by courts and legal institutions. Legal certainty in this theory is related to the interpretation and implementation of law by legal authorities. Meanwhile, according to the theory of justice, it views law as a tool to achieve justice. Legal certainty here means that the law must be clear, fair, and can be applied consistently to achieve substantive justice.

If seen from the theory, the Positivists emphasize more on legal certainty, while the Functionalists prioritize the benefits of law, and it can be stated that "summum ius, summa injuria, summa lex, summa crux" which means that harsh laws can hurt, except justice that can help it, thus even though justice is not the only goal of law, the most substantive goal of law is justice ^[2]. Therefore, legal certainty must remain in accordance with the objectives of the law.

Due to this theory of legal certainty, the transaction and business process in Indonesia is regulated based on applicable regulations. This is to ensure that there is a set of applicable rules in accordance with justice and morality for the parties involved in the transaction. Therefore, the existence of applicable regulations will provide guidance and certainty for courts and legal institutions to interpret the implementation of law in the field of transactions. And the application must provide clarity, justice and can be applied consistently in every transaction process that occurs so as not to harm consumers in particular.

In the field of property transactions, legal certainty can be achieved through various legal instruments such as Laws, Government Regulations, and Ministerial Regulations. Some regulations governing property transactions in Indonesia include:

- Law Number 1 of 2011 concerning Housing and Residential Areas. This law regulates the planning, development, and management of housing and residential areas, and provides guarantees of legal certainty for consumers in property transactions ^[3].
- Law Number 8 of 1999 concerning Consumer Protection. This law provides legal protection to consumers, including property consumers, from detrimental practices and ensures that their rights are recognized and protected ^[4].
- Government Regulation Number 14 of 2016 Concerning the Implementation of Housing and Residential Areas. This regulation regulates occupational safety and health standards in property development, which is part of the guarantee of legal certainty in property transactions ^[5].
- Government Regulation of the Republic of Indonesia Number 18 of 2021 Concerning Management Rights, Land Rights, Apartment Units, and Land Registration. This Government Regulation regulates land registration to provide legal certainty regarding the status of land

rights ^[6].

- Bank Indonesia Regulation Number 20/8/PBI/2018 of 2018 concerning the Loan To Value Ratio for Property Credit, Financing To Value Ratio for Property Financing, and Down Payment for Motor Vehicle Credit or Financing

This regulation governs property financing through financial institutions to ensure property transactions are carried out transparently and in accordance with the law ^[7].

3.2. Forms of Consumer Protection in Property Transactions

Consumer protection in property transactions is very important, because it ensures that consumer rights are protected from various crimes such as fraud, injustice and abuse of authority. This protection involves various aspects of protection forms, including:

- **Information Transparency**

Developers and property agents are required to provide clear and accurate information regarding property specifications, prices, legal status, etc. This transparency is very important, because the imbalance of information between sellers and buyers can result in losses for the less informed party (consumers). Therefore, information transparency is very important to ensure that consumers can make the right decisions based on complete and accurate information.

As in Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law) Article 7 point (b) states that business actors are obliged to provide correct, clear and honest information regarding the condition and guarantees of the goods/services traded.⁸

- **Consumer Rights Protection**

Consumers have the right to obtain property according to the promised specifications, obtain property certificates, and file complaints if problems occur. This is in accordance with the theory of contracts that emphasize the importance of justice and equality in contractual agreements between the parties involved. In property transactions, consumers have the right to obtain property according to the promised specifications and the right to receive compensation in the event of a breach of contract.

This form of protection is stated in Law Number 1 of 2011 concerning Housing and Residential Areas, Article 42 paragraph 2, which guarantees the consumer's right to obtain certainty regarding the legal status of the property purchased ^[9]. And in Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas in Article 14 paragraph 3, it states that property design in housing and residential areas must meet aspects of building safety,

² Oksidelfa Yanto, 2020, State of Law: Certainty, Justice and Legal Benefits in the Indonesian Criminal Justice System, Pustaka Reka Cipta, Bandung, p. 25

³ Law Number 1 of 2011 concerning Housing and Residential Areas

⁴ Law Number 8 of 1999 concerning Consumer Protection

⁵ Government Regulation Number 14 of 2016 Concerning the Provision of Housing and Residential Areas

⁶ Government Regulation of the Republic of Indonesia Number 18 of 2021 Concerning Management Rights, Land Rights, Apartment Units, and Land Registration

⁷ Regulation Bank Indonesia Number 20/8/PBI/2018 of 2018 concerning the Loan To Value Ratio for Property Credit, Financing To Value Ratio for Property Financing, and Down Payment for Motor Vehicle Credit or Financing

⁸ Law Number 8 of 1999 concerning Consumer Protection Article 7 point (b)

⁹ Law Number 1 of 2011 concerning Housing and Residential Areas Article 42 paragraph 2

minimum space requirements and building health aspects ^[10].

- **Dispute Resolution Mechanism**

In the protection of property transactions, there are also regulations for settlement if there is a dispute. In accordance with the restorative theory which emphasizes the importance of restoring the state that is detrimental to the injured party through an effective and fair dispute resolution mechanism.

This dispute resolution is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides a dispute resolution mechanism outside the court, including mediation and arbitration, to resolve disputes in property transactions ^[11]. In addition, there is also a consumer dispute resolution body (BPSK), which is regulated in the Consumer Protection Law Articles 49-57 which functions as an institution for resolving disputes between consumers and business actors ^[12].

3.3. Problems Faced by Consumers in Property Transactions

Property transactions are one of the crucial yet complex economic activities, where consumers often face various problems that can harm their rights and interests. Some of the main problems that consumers often face in property transactions include:

- **Fraud and Abuse of Authority**

In a transaction, consumers often become victims of fraud by irresponsible developers or property agents. This usually occurs due to an imbalance of information between the seller and the buyer, which has the potential to cause fraud or misinformation that is detrimental to consumers. Consumers often do not have complete or accurate information about the property they are going to buy.

However, based on Law No. 8/1999 concerning Consumer Protection Article 7 paragraph (b) states that business actors are required to provide correct, clear, and honest information regarding the condition and guarantee of goods/services traded. So that fraud can be minimized, but of course consumers also still need to know the rules in transactions and actively cross-check each property to be purchased.

Knowledge of information about the goods to be purchased and supervision of each transaction property is a form of obligation for consumers. This aims to provide protection to consumers from fraud by producers (property sellers). The form of this protection includes supervision of quality standards, standard clauses to advertising ^[13].

- **Delay in Property Handover**

Many consumers experience delays in the process of handing over the promised property. In fact, each party in the agreement must fulfill its obligations as agreed. This delay in the handover of the property can violate the terms of the contract and harm consumers. However, based on Government Regulation of the Republic of Indonesia

Number 12 of 2021 in Article 22F, the Development actor must include a clear construction schedule including the handover schedule ^[14]. And if it is not fulfilled, the buyer can cancel the transaction and get a full refund ^[15].

- **Property Certificates and Legality**

Property legality is important, and it is not uncommon for disputes to occur in property transactions. So based on the principle of legal certainty in the status of ownership and legality of property and so that consumers avoid legal problems in the future. In accordance with Government Regulation Number 24 of 1997 concerning Land Registration, land registration is an obligation and to provide legal certainty regarding the status of land rights ^[16].

- **Inadequate Building Quality**

For the sake of to gain greater profits, developers often provide substandard building quality that has the potential to harm consumers. So that the products offered to consumers do not meet certain quality standards that have been promised. This mismatch in property quality with what was promised violates consumer rights.

In accordance existing regulations, based on the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/PRT/M/2019 concerning the Preliminary House Sale and Purchase Agreement System in Article 11 paragraph 2 letter g, that the developer is responsible for the maintenance of the House ^[17]. This responsibility is at least 3 (three) months from the signing of the minutes of handover of the House, so that during the maintenance period the buyer has the right to submit complaints regarding non-conformity and/or imperfection of the House according to what was agreed and repairs to these complaints including replacement and costs incurred, are the responsibility of the developer.

3.4. Efforts of the Government and Related Agencies

Government and related agencies in Indonesia have made various efforts to improve consumer protection in property transactions. These efforts include improving regulations, education and outreach to consumers, supervision and law enforcement, and providing effective dispute resolution mechanisms.

- **Law enforcement**

Supervision and law enforcement against developers and property agents who violate the rules continue to increase, including strengthening regulations. In addition, the implementation of existing regulations also continues to be carried out properly, with effective supervision mechanisms and strict law enforcement against violations. In accordance with article 29 of Law No. 8/1999 concerning Consumer Protection, the government is responsible for fostering the implementation, consumer protection that guarantees the rights of consumers and business actors and the

¹⁰ Government Regulation of the Republic of Indonesia Number 12 of 2021 Article 14 paragraph 3

¹¹ Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

¹² Law Number 8 of 1999 concerning Consumer Protection Article 30

¹³ Siti Maryam, Supervision Policy on MSME Products as an Effort to Protect Consumers, Journal of Law and Social Dynamics, Volume 15 Number 1, October

2017, <http://jurnal.untagsmg.ac.id/index.php/hdm/article/download/667/637>

¹⁴ Government Regulation of the Republic of Indonesia Number 12 of 2021 in Article 22F

¹⁵ Government Regulation of the Republic of Indonesia Number 12 of 2021 in Article 22H

¹⁶ Government Regulation Number 24 of 1997 concerning Land Registration

¹⁷ Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/PRT/M/2019 Concerning the Preliminary Agreement System for the Sale and Purchase of Houses in Article 11 paragraph 2 letter g

implementation of consumer and business actor obligations. This legal enforcement is also manifested in the establishment of the National Consumer Protection Agency (BPKN), in accordance with the Consumer Protection Law article 49^[18].

One form of law enforcement is also through the affirmation in PP No. 12/2021 Article 22I that the Sale and Purchase Agreement (PPJB) must be carried out in accordance with existing laws and regulations, namely it must meet the requirements for certainty regarding^[19].

1. land ownership status;
2. thing promised;
3. PBG;
4. availability of Infrastructure, Facilities, and Public Utilities; and
5. development of at least 20% (twenty percent)

The Sale and Purchase Agreement (PPJB) is an important thing and is made by prospective sellers and prospective buyers on the basis of an agreement before the sale and purchase is carried out. In other words, PPJB is a preliminary agreement for the birth of the main/principal agreement^[20].

• Socialization and Education

Empowering consumers through education and socialization so that they are more aware of their rights and are able to make better decisions in property transactions. Therefore, Law Number 8 of 1999 concerning Consumer Protection, regulates in Article 4 paragraphs (a) and (c) that consumers have the right to obtain correct, clear, and honest information regarding the condition and guarantee of goods and/or services^[21].

• Strengthening Regulation

Regulations issued by the government aim to protect the public interest, including consumers, from detrimental business practices. These regulations must be designed in such a way that they can address the problems faced by consumers in property transactions. With the dynamics, revision and strengthening of regulations governing property transactions and consumer protection are always carried out by the government. Because the world of transactions and business, especially in property, can change drastically.

3.5. Analysis and recommendations to improve legal certainty and consumer protection in property transactions in Indonesia

Based on the previous discussion, we can analyze several important aspects regarding legal certainty and consumer protection in property transactions in Indonesia, because with legal certainty and consumer protection, it will be an attraction for investors to conduct property transactions in Indonesia. This legal certainty is implemented by improving the implementation of existing regulations, because until now it still faces many challenges, especially in terms of law

enforcement and supervision.

Education and socialization regarding consumer rights and business actors' obligations are still less than optimal. Many consumers do not fully understand their rights, making them vulnerable to fraud and detrimental business practices. Government supervision and law enforcement are also still weak. This is evidenced by the many cases of consumer rights violations that are not followed up firmly, resulting in business actors feeling that there are no serious consequences for their actions.

Dispute resolution mechanisms through arbitration and mediation are available, but their use is still limited. Many consumers do not know or are reluctant to use these mechanisms due to lack of information or high costs, so many disputes are still resolved through the courts. In fact, the implementation of arbitration and mediation can speed up dispute resolution and is not too complicated.

The government needs to revise and strengthen existing regulations to clarify the responsibilities of business actors in property transactions. Regulations must include stricter sanctions for violators, as well as tighter monitoring mechanisms. Relevant agencies, such as the Ministry of Housing and the Ministry of Trade, need to improve education and outreach programs for consumers. Campaign through mass media, seminars and workshops can help increase consumer awareness of their rights.

Cooperation between government agencies, such as the National Land Agency (BPN) and the Ministry of Trade, must be improved to ensure more effective law enforcement. The government can also develop a transparent and easily accessible digital platform to provide complete information on the legal status of property, developer track records, and property transaction processes. This will help consumers make wiser and more informed decisions.

4. Closing

Conclusion

Legal certainty and consumer protection in property transactions in Indonesia still face various challenges. Although there are various regulations governing property transactions, the implementation and supervision of these regulations still need to be improved. Property consumers are often faced with problems such as fraud, late handovers, and property certificate problems. Therefore, more intensive efforts are needed from the government and related agencies to improve consumer protection through stricter supervision, increased transparency of information, and the development of effective dispute resolution mechanisms.

The government needs to increase supervision of developers and property agents to ensure compliance with existing regulations. Developers and property agents are required to provide transparent and accurate information to consumers. A more effective and easily accessible dispute resolution mechanism is needed for consumers. Increased education for consumers regarding their rights in property transactions and ways to protect themselves from fraud.

¹⁸ Law Number 8 of 1999 concerning Consumer Protection Article 49

¹⁹ Government Regulation of the Republic of Indonesia Number 12 of 2021 in Article 22I

²⁰ Eri Setiawan, Siti Maryam, Dissenting Opinion of Judge in Cancellation of Deed of Sale and Purchase Agreement (Case Study of Decision Number

24/PDT.G/2021/PN BJT), Notary Law Research Journal, Volume 04 Number 1, December 2022,

<http://jurnal.untagsmg.ac.id/index.php/NLR/article/view/3422>

²¹ Law Number 8 of 1999 concerning Consumer Protection, regulates in Article 4 paragraphs (a) and (c)

5. References

1. Yanto O. State of law: Certainty, justice and legal benefits in the Indonesian criminal justice system. Bandung: Pustaka Reka Cipta; c2020.
2. Pratiwi CS, AP S, Fauzi C, YP C. General principles of good governance. Jakarta: Institute for Research and Advocacy for Judicial Independence (LeIP); c2018.
3. Law Number 8 of 1999 concerning consumer protection.
4. Law Number 30 of 1999 concerning arbitration and alternative dispute resolution.
5. Law Number 1 of 2011 concerning housing and residential areas.
6. Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning land registration.
7. Government Regulation Number 14 of 2016 concerning the provision of housing and residential areas.
8. Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning amendments to Government Regulation Number 14 of 2016 concerning the implementation of housing and residential areas.
9. Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning management rights, land rights, apartment units, and land registration.
10. Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/PRT/M/2019 concerning the preliminary agreement system for the sale and purchase of houses.
11. Bank Indonesia Regulation Number 20/8/PBI/2018 of 2018 concerning the loan-to-value ratio for property credit, financing-to-value ratio for property financing, and down payment for motor vehicle credit or financing.
12. Setiawan E, Maryam S. Dissenting opinion of judge in cancellation of deed of sale and purchase agreement (case study of decision number 24/PDT.G/2021/PN BJN). *Notary Law Research Journal*. 2022;4(1). Available from: <http://jurnal.untagsmg.ac.id/index.php/NLR/article/view/3422>
13. Maryam S. Supervision policy on MSME products as an effort to protect consumers. *Journal of Law and Social Dynamics*. 2017;15(1). Available from: <http://jurnal.untagsmg.ac.id/index.php/hdm/article/download/667/637>