



Review of the Legal Protection of Apartment Buyers Through Sale and Purchase Reminder Agreements (PPJB) for Property Developers

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ABSTRACT

As the property business grows, the practice of selling apartments through a Sales and Purchase Agreement (PPJB) is a mechanism commonly used by property developers, especially in the pre-selling system. The PPJB functions as a preliminary agreement before the Sale and Purchase Deed is executed, but in practice it often gives rise to legal problems due to an imbalance in the bargaining position between the developer and the buyer. Apartment buyers are often in a weak position because the object of the agreement has not been developed, while payment obligations have been imposed from the start. This condition has the potential to cause losses for buyers if the developer defaults, such as delays in construction, changes to specifications, or project failure. This research aims to examine the form of legal protection for apartment buyers through PPJB and analyze the legal responsibilities of property developers based on applicable laws and regulations. The research method used is normative legal research with a statutory approach and a conceptual approach. The results of the study show that legal protection for apartment buyers is normatively regulated in Law Number 20 of 2011 concerning Flats, Law Number 8 of 1999 concerning Consumer Protection, as well as PUPR Ministerial Regulation Number 11/PRT/M/2019 concerning the Preliminary Agreement System for Buying and Selling Houses. However, the implementation of these provisions has not fully provided effective legal protection for buyers. Therefore, it is necessary to strengthen the substance of the PPJB, increase supervision of developers, as well as consistent law enforcement to create certainty and justice for apartment buyers

INTRODUCTION

The need for shelter is a basic human need that is constitutionally recognized as part of human rights. Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia confirms that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment. In the context of national development, fulfilling the right to adequate housing is the responsibility of the state which is implemented through housing and settlement development policies. The rapid development of urban areas, population growth and limited land availability have caused the need for vertical housing to increase. Apartments as a form of flat are a solution that is considered effective in addressing the problem of limited land in urban areas. Apart from functioning as a place to live, apartments are also developing as property investment instruments that promise economic benefits for the community. Along with increasing public interest in apartments, the practice of buying and selling apartments in Indonesia shows different characteristics from buying and selling land or landed houses. Most apartment buying and selling transactions are carried out before the building is completed or even before construction begins, which is known as the pre-selling system. In this system, developers market and sell apartment units based on construction plans, design drawings and promised technical specifications. The pre-selling system provides advantages for developers because it can collect funds from buyers as a source of financing for project development. For buyers, this system offers relatively cheaper prices as well as the opportunity to choose a unit according to their needs and preferences. However, despite these advantages, the pre-selling system contains large legal risks, especially for apartment buyers as consumers. The main risk in buying and selling apartments using the pre-selling system is the developer's non-fulfillment of obligations as agreed, whether in the form of construction delays, changes in building specifications, mismatches in unit size, and the most serious risk of failure to build. In these conditions, buyers are in a vulnerable position because they have made payments, either part or all of the price of the apartment unit, without obtaining certainty of delivery of the promised unit. The legal relationship between apartment buyers and property developers in the pre-selling system is generally outlined in a Sales and Purchase Agreement (PPJB). PPJB is a preliminary agreement that is obligatory in nature, which binds the parties to carry out the actual sale and purchase at a later date through a Deed of Sale and Purchase (AJB) after certain conditions are fulfilled, such as the completion of construction and the issuance of a Certificate of Ownership Rights for the Flat Unit (SHMSRS). The PPJB contains the rights and obligations of the parties, provisions regarding price, payment method, building specifications, unit delivery time, as well as sanctions in the event of default. Therefore, the existence of PPJB is the main instrument in providing legal certainty for parties, especially for apartment buyers. However, in practice PPJB is often prepared unilaterally by developers in the form of a standard contract. Buyers as consumers are in a weak position because they do not have the opportunity to negotiate the contents of the agreement.

This condition creates an imbalance in the bargaining position between buyers and developers, which has the potential to give rise to clauses that are detrimental to buyers. Clauses that are often found in PPJB include clauses limiting the developer's responsibility, clauses transferring risk to the buyer, as well as clauses that give unilateral authority to the developer to change building specifications or unit delivery schedules. In some cases, the PPJB also contains a clause that frees the developer from the obligation to return funds if there is a delay or failure in development for certain reasons. This condition clearly contradicts the principles of justice and balance in contract law. The principle of freedom of contract recognized in Article 1338 of the Civil Code cannot be interpreted in absolute terms, but must be limited by the principles of good faith, the principle of balance and protection of weak parties. In the context of buying and selling apartments, buyers as consumers need adequate legal protection so that they are not harmed by irresponsible business practices. The state has basically provided a legal framework to provide protection to apartment buyers. This protection can be found in the Civil Code (KUHPerdota), Law Number 8 of 1999 concerning Consumer Protection, and Law Number 20 of 2011 concerning Flats. The Consumer Protection Law emphasizes that apartment buyers are consumers who have the right to comfort, security, safety, correct information, as well as the right to obtain compensation if they suffer losses due to business actors. The Condominium Law specifically regulates the marketing mechanism for apartments before construction is completed. Article 42 of Law Number 20 of 2011 concerning Flats confirms that developers can only market flats before construction is completed after fulfilling certain requirements, including certainty of space allocation, certainty of land rights status, certainty of construction permits, and guarantees for the construction of flats. This provision is intended as a form of preventive protection for consumers so that they do not get caught up in problematic property projects.

However, in practice these provisions are often not implemented consistently. Weak government supervision, low law enforcement, and minimal consumer legal awareness mean that these legal protection provisions do not operate effectively. Many buyers sign the PPJB without fully understanding the rights and obligations contained in it, so they are in a disadvantageous position when a dispute arises with the development. From an evidentiary law perspective, the PPJB has a strategic role as initial evidence in resolving disputes between buyers and developers. PPJB can be used to prove the existence of legal relationships, agreements between the parties, as well as developer obligations that have not been fulfilled. However, the evidentiary power of the PPJB is very dependent on the form of the agreement, whether it was made notarially or privately, as well as the clarity and completeness of the clauses governing the rights and obligations of the parties. If the PPJB is made in the form of a notarial deed, then the PPJB has perfect evidentiary power as intended in Article 1868 of the Civil Code. On the other hand, if the PPJB is made privately, the strength of the evidence depends on the confessions of the parties and other supporting evidence. In practice, many PPJBs are made in the form of private agreements prepared unilaterally by the developer, thus weakening the buyer's position in

the evidentiary process. Various cases of apartment sale and purchase disputes that have arisen in Indonesia show that buyers often experience difficulties in claiming their rights when the developer defaults or fails to build. The process of resolving disputes through litigation requires a lot of time and costs, while non-litigation resolution such as mediation or arbitration often does not provide optimal results for buyers. This condition shows that legal protection for apartment buyers is still not working effectively. Therefore, an in-depth and comprehensive juridical study is needed regarding legal protection for apartment buyers based on PPJB with property developers. This study is important to examine the legal position of PPJB, the extent of legal protection provided to buyers, and how PPJB can function as an effective legal instrument in protecting the interests of apartment buyers. This juridical study is also expected to identify normative weaknesses in PPJB regulations and provide recommendations for strengthening legal protection for apartment buyers. Thus, this research has high relevance from both academic and practical aspects, and can contribute to the development of civil law and consumer protection in the property sector. The clauses contained in the PPJB often contain provisions that are more favorable to developers, such as limiting liability, risk transfer clauses, and clauses that make it difficult for buyers to claim their rights in the event of default. The problem becomes increasingly complex when the developer fails to carry out the construction of the apartment as agreed. The risk of default not only causes financial losses for buyers, but also creates legal uncertainty regarding the status of funds that have been paid, certainty of refunds, and mechanisms for enforcing consumer rights. In such conditions, PPJB is often used as the basis for initial evidence by buyers to hold developers accountable, either through litigation or non-litigation.

This provision is intended to provide initial protection to consumers so that they are not harmed by irresponsible developers. However, in practice, these provisions are often ignored or violated, giving rise to disputes between buyers and developers. Apart from that, weak government supervision and low consumer legal awareness also increase the risk of violations in apartment buying and selling transactions. Many buyers sign the PPJB without fully understanding the legal consequences of the clauses contained therein. As a result, when a dispute occurs, the buyer is at a disadvantage in proving and enforcing his rights. In the context of legal evidence, PPJB has a strategic role as initial evidence that shows the existence of a legal relationship between the buyer and developer. PPJB can be used as a basis to prove the existence of an agreement, payment, and the developer's obligation to build and hand over apartment units according to the agreement. However, the evidentiary strength of the PPJB is very dependent on the form and substance of the agreement, whether it was made notarially or privately, as well as the extent to which the contents of the PPJB meet the principles of justice and balance between the parties. With a comprehensive juridical study, it is hoped that it can contribute ideas to policy makers, law enforcement officials and the public in creating a stronger legal protection system for apartment buyers in the future. Based on the description above, the problem formulation in this research is as follows: What is the form and scope of legal

protection given to apartment buyers based on PPJB in apartment sale and purchase transactions with property developers.

LITERATURE RIVIEW

Normatively, legal protection for apartment buyers in the pre-selling system has been regulated in various statutory regulations, including the Civil Code (KUHPerdata), Law Number 8 of 1999 concerning Consumer Protection, and Law Number 20 of 2011 concerning Flats. In principle, this law emphasizes that apartment buyers are consumers who have the right to obtain correct information, legal certainty and protection from detrimental business practices. The Condominium Law specifically stipulates that marketing of an apartment before construction is completed can only be carried out after the developer fulfills certain requirements, such as certainty of space allocation, certainty of land rights status, and certainty of development permits.

METHODOLOGY

This research uses normative legal research methods, namely research that focuses on applicable positive legal norms, using a statutory approach and a conceptual approach. Primary legal materials used include the Civil Code, Law no. 8 of 1999 concerning Consumer Protection, Law no. 20 of 2011 concerning Flats, and PUPR Ministerial Regulation no. 11/PRT/M/2019. Secondary legal materials are obtained from textbooks, scientific journals, expert opinions and relevant legal documents, while tertiary legal materials are in the form of legal dictionaries and encyclopedias to support the interpretation of the legal concepts used.

RESULT AND DISCUSSION

Legal Position of Sale and Purchase Agreement (PPJB) in Property Transactions. In the practice of buying and selling apartments, the Sale and Purchase Agreement (PPJB) functions as a preliminary agreement that binds the parties to carry out the sale and purchase after certain conditions are met, such as completion of construction and payment of the price. Based on Article 1338 of the Civil Code (Civil Code), every agreement that is legally made is valid as law for the parties who make it. Therefore, the PPJB has binding legal force as long as it meets the requirements for the validity of the agreement as intended in Article 1320 of the Civil Code. Therefore, PPJB has binding legal force as long as it meets the requirements for the validity of the agreement as intended in Article 1320 of the Civil Code. However, in the context of apartment transactions, the legal position between buyers and developers is often unequal. Developers, as parties who have economic power and legal expertise, tend to draw up standard clauses (standard contracts) that are detrimental to buyers. This is contrary to the principle of freedom of contract which must always pay attention to the principles of justice and good faith. PUPR Ministerial Regulation Number 11/PRT/M/2019 has regulated that PPJB may only be carried out after apartment construction has reached at least 20% of the physical progress and a building construction permit (IMB) has been obtained. However, in practice,

many developers violate these provisions by offering PPJB to the community from the early stages of development, giving rise to the potential for default if the project fails to be completed.

Form of Legal Protection for Apartment Buyers Based on PPJB. Legal protection for apartment buyers can be divided into preventive and repressive legal protection. Preventive legal protection is provided in the form of legal regulations which aim to prevent violations of consumer rights. In this case, Law Number 8 of 1999 concerning Consumer Protection (UUPK) emphasizes the right of consumers to obtain correct, clear and honest information about the condition of goods and services, including property projects. In addition, Law Number 20 of 2011 concerning Flats also regulates that developers are obliged to carry out construction in accordance with the specifications stated in the agreement. Thus, if the developer does not fulfill this obligation, the buyer has a legal basis to demand fulfillment of performance or compensation in accordance with Article 1243 Civil Code. Meanwhile, repressive legal protection is provided through dispute resolution mechanisms, both through courts (litigation) and alternative dispute resolution institutions, such as the Consumer Dispute Resolution Agency (BPSK). Through BPSK, consumers can obtain a faster resolution and lower costs compared to lawsuits in court. In several court decisions, for example Supreme Court Decision Number 1796 K/Pdt/2017, the judge emphasized that developers are obliged to return all purchase funds to consumers if the project is not completed according to PPJB. This decision strengthens the principle of contractual fairness in property transactions between developers and buyers.

Unbalanced Legal Position and the Need for Regulatory Reconstruction. Even though PPJB has been recognized as legally valid, the legal relationship between buyers and developers still shows an inequality of bargaining power. Developers usually prepare PPJB with clauses that benefit themselves, such as unilateral cancellation clauses or limitations of liability in the event of construction delays. This condition creates an urgency to reconstruct regulations to provide more proportional legal protection for apartment buyers. The government needs to strengthen the monitoring mechanism for the implementation of PPJB and require developers to place consumer funds in an escrow account (holding account) to prevent misuse of buyers' funds before the project is completed. In addition, there is a need for an active role from notaries/PPATs in ensuring that each PPJB clause complies with statutory provisions, as well as explaining the contents of the agreement transparently to prospective buyers. In this way, legal balance between the parties can be realized through synergy between private and public legal protection.

Normative Analysis of Legal Strength and Consequences of Default. Normatively, PPJB has the same binding power as agreements in general as regulated in Article 1338 of the Civil Code, however its executorial power only arises after the Deed of Sale and Purchase (AJB) is made. If the developer defaults, the buyer can demand fulfillment of performance, compensation or cancellation of the agreement. In the context of consumer law protection, default by a developer can be categorized as an unlawful act (PMH) if it causes losses due to violations of the buyer's rights as guaranteed by the UUPK. Therefore, dispute resolution can be carried out either based on general

civil principles or consumer protection law, depending on the substance of the violation that occurred. Thus, legal protection for apartment buyers based on PPJB must be viewed comprehensively, covering aspects of legal substance, legal structure and legal culture in order to achieve legal certainty, justice and benefits for society.

Normative Aspects of PPJB Legal Strength and Its Implementation in the Field. The Sale and Purchase Agreement (PPJB) is a form of preliminary agreement which is juridically recognized in the Indonesian legal system as part of the principle of freedom of contract as regulated in Article 1338 of the Civil Code (KUHPerdata). This principle gives parties the freedom to make and determine the contents of the agreement as long as it does not conflict with law, public order and morality. However, the practice of buying and selling apartments through PPJB shows that there is an imbalance of contractual power (inequality of bargaining power) between the developer and the buyer. Developers often place standard clauses that are detrimental to consumers, such as limiting the buyer's right to cancel the agreement or transferring unilateral risk to the buyer before construction is completed. This has the potential to conflict with Article 18 of Law Number 8 of 1999 concerning Consumer Protection, which prohibits the inclusion of standard clauses that eliminate the responsibility of business actors. In addition, PUPR Ministerial Decree Number 11/PRT/M/ 2019 regulates that PPJB may only be carried out after construction has reached 20% and the developer has fulfilled the building construction permit (IMB). This provision is a preventive measure to protect buyers from the risk of losing funds if the project fails or stalls. However, facts on the ground show that many developers offer PPJB from the initial planning stage without fulfilling these provisions, which creates legal uncertainty and opens up opportunities for default. Therefore, from a normative perspective, even though PPJB is valid and legally binding, its executorial power is still limited. The PPJB cannot yet be used as the basis for the name of the apartment unit certificate (strata title) because it does not fulfill the elements of transfer of ownership rights as regulated in Article 1457 of the Civil Code. This means that the buyer's legal position in the PPJB is still temporary until the Deed of Sale and Purchase (AJB) is executed before the PPAT.

Legal Protection Efforts and the Urgency of Policy Reconstruction. From a legal protection perspective, there are two forms of protection for apartment buyers, namely preventive and repressive. Preventive legal protection is carried out through legal regulations that protect consumer rights before a dispute occurs. For example, by requiring developers to have a construction permit and a certificate of functional worthiness, as well as regulating the obligation to place buyers' funds in an escrow account so that these funds are not misused. Meanwhile, repressive legal protection is provided when there has been a breach of agreement or default. Buyers can file civil lawsuits based on breach of contract or unlawful acts (PMH) in accordance with Article 1243 of the Civil Code. In certain cases, buyers can also file complaints through the Consumer Dispute Resolution Agency (BPSK) or use litigation through district courts. In practice, the Supreme Court Decision Number 1796 K/Pdt/2017 is an important

precedent that strengthens consumer protection in property transactions. In this decision, the Supreme Court emphasized that developers who fail to build according to the agreement are obliged to return all consumer funds along with compensation for delays.

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of a juridical study of the legal protection of apartment buyers based on the Sales and Purchase Agreement (PPJB) with property developers, it can be concluded that PPJB has a very important legal position in apartment buying and selling transactions, especially in the pre-selling system. PPJB is a preliminary agreement which is obligatory in nature and is the basis of the legal relationship between the buyer and developer before the implementation of the Sale and Purchase Deed and the transfer of rights to the apartment unit. Through PPJB, the rights and obligations of the parties are stated in writing, so that PPJB functions as the main legal instrument that provides legal certainty as well as as initial evidence if a dispute occurs. Normatively, laws and regulations in Indonesia have provided the basis for legal protection for apartment buyers, including through the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, and Law Number 20 of 2011 concerning Flats. In principle, this regulation places apartment buyers as consumers who have the right to correct information, legal certainty and compensation if they suffer losses due to the developer's actions. Apart from that, the Flats Law also regulates the marketing requirements for flats before construction is completed as a form of preventive protection for consumers. Even though the legal framework is available, its implementation in the field still faces various obstacles, such as weak government supervision, low law enforcement, and a lack of legal awareness among buyers. As a result, the legal protection that should be provided through PPJB is often ineffective, especially when developers do not carry out their obligations according to the agreement. In these conditions, buyers are often in a weak position, both in the proof process and in efforts to demand restoration of their rights. Therefore, it can be concluded that PPJB is in principle able to provide legal protection for apartment buyers, however the effectiveness of this protection is very dependent on the substance of the agreement, the balance of rights and obligations of the parties, and the consistency of law enforcement. It is necessary to strengthen regulations, increase supervision of developers, as well as firm and fair law enforcement so that PPJB truly functions as an effective legal protection instrument for apartment buyers. In this way, legal certainty, justice and balanced protection are created between buyers as consumers and developers as property business actors.

FURTHER STUDY

This research still has limitations so that further research is needed on the topic of Review of the Legal Protection of Apartment Buyers Through Sale and Purchase Reminder Agreements to perfect this research and increase insight for readers and writers.

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