

# THE RESPONSIBILITY OF DEVELOPERS FROM THE PERSPECTIVE OF THE IMPLEMENTATION OF THE CONDITIONAL SALE AND PURCHASE AGREEMENT (PPJB) (CASE STUDY: THE CENTRAL JAKARTA COMMERCIAL COURT RULING NUMBER: 28/PDT.SUS-PKPU/2020/PN.NIAGA.JKT.PST)

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## ABSTRACT

*The Conditional Sale and Purchase Agreement (PPJB) is an initial agreement before the sale and purchase transaction of landed houses and flats is carried out between developers and consumers. The PPJB of flats is stipulated in a notarial deed. The Minister of Public Works and Public Housing Regulation Number 11/PRT/M/2019 requires developers to describe in detail the area of the flat unit, including the position of the unit, and its location in the PPJB. The location of the flat, especially, should also inform the building, the floor and the unit number of the flat. The journal is written from a research result that highlights the accountability of a developer who does not fulfill its promise stated in the PPJB. How is the legal protection for consumers who are harmed? The conclusion in this study is that as long as the agreement is made correctly in accordance with the laws and regulations, the agreement has binding legal force and is able to be used as a basis for holding accountability and fighting for consumer rights when there is a violation of law or default.*

**Keywords:** Accountability, Flats Law, Consumer Protection Law, Conditional Sale and Purchase Agreement

## 1. PREFACE

The increasing population in Indonesia, especially in big cities, has raised the housing demands in the country. The demand, however, is not fulfilled and creates a housing backlog due to the limited land. In order to address the backlog, the government should optimize the vertical space. Apartment development policy to be one attractive option to do both by government and private sector employers as the property as part of a housing development, especially in urban areas increasingly expensive considering the limited availability of land. However, the optimization of the vertical spaces requires fair regulations, a fair space distribution, and supervision of vertical space utilization .

The rule that regulates flats is stipulated in the Law No 20-year 2011 on Flats. The regime of the Flats Law classifies flats into four types. The first one is general flats for low-income people. The second one is special flats for special designation or use. The third type is state flats owned by the state and functioned as residentials and the support of public officials or civil servants' duty. The last one is commercial flats or known as apartments which are built commercially. The purpose of commercial flat development is in order to fulfill the housing backlog for residents who have financial ability and in order to get profit.

Referring to the article No 42 of the Flats Law, actors in the development of flats, hereinafter used are developers have promoted, marketed or sold flats/apartments units, although the building construction has not been completed yet. However, they have to fulfill several requirements to market the flats. The requirements include the certainty of the land zone, the certainty of right of the land, the certainty of the flat ownership, the certainty of the building permit and the guarantee of the flats from a guarantee agency. After the marketing process, when

the units are sold, the next step is the developer, and the buyer will sign an agreement. The agreement is stated in the Conditional Sale and Purchase Agreement (PPJB). PPJB is required to be in the form of a notarial deed made in front of the Land Deed Official Certifier (PPAT). The requirement is stipulated in the Public Works and Public Housing Minister Regulation Number 11/PRT/M/2019 on the PPJB of housing (hereinafter abbreviated as Permen PUPR No. 11/2019). PPJB stated in the grosse notary deed is the authentic written proof as set in the Article 1868 of the Civil Code. It signifies PPJB is (1) an authentic deed as the form and substance is determined by the law, (2) made by the authorized public officials, (3) the free consent of the parties should be made in front of the authorized officials/PPAT, and (4) PPJB is binding and applying to both parties. Rights and Obligations of both parties determined in the PPJB should be fulfilled and implemented with good faith. PPJB is generally a consensual agreement where the sale and purchase agreement binds both parties since the agreement of both parties regarding the essentialia and accidental elements of the agreement.

The consumers and developers have gaps in terms of social and economic status, technical knowledge, and access to justice through the court institutions. The gap makes it difficult for consumers to defend their rights so that consumers have a greater risk than business actors and sometimes do not realize that their rights have been violated by developers. The disadvantageous position of the customer is often abused to get big benefits of a business activity through promotion and sales tricks that actually harms the consumers.

Many property cases in Indonesia are caused by the violation of rights and obligations stated in PPJB. The property cases basically firstly occur with the violation of promises and information listed in the posters or other promotion media during the sale process. Citing from Renti Maharaini, other property cases that frequently occur comprise (1) the discrepancy between what has been promised by the developers with the product received by the consumer; (2) the consumers do not get clear and transparent information on the condition of the flat unit they buy from the developers; (3) the developers do not handover the apartment unit Certificate of Right of Ownership to the consumers; (4) the presale flat system.

The results of the previous writer's research were carried out to examine the problems faced by consumers and developers before the enactment of government regulations regarding flats. The Housing Agency of the Special Capital Region of Jakarta (DPRKP Jakarta) recorded the number of apartments and flats as 195 apartments. Of that number, 94.87% or 185 apartments and flats are suspected of violating the Flats Law, especially during the marketing (sales) process, flat ownership rights, managing residents' associations (P3SRS), transferring building management. DPRKP Jakarta has mapped the problem of flats in the West Jakarta area, there are 26 flats, but 24 flats violate the Flats Law. In the Central Jakarta area, there are 48 flats and 46 flats that violate the Flats Law. In the North Jakarta area, there are 24 flats and 22 flats that violate the Flats Law. In the South Jakarta area, there are 85 flats and 81 flats violated. In the East Jakarta area, there are 12 flats and 12 flats violated. The author notes that the forms of violation of the Flats Law include: (1) the handover of the flat unit is not accompanied by complete documents such as occupancy regulations, a copy of the building permit, Function-worthy Certificate (SLF), description, certificate of ownership of the apartment unit (SHMSRS), or certificate of building ownership and deed of sale and purchase; (2) the status of the land is not conveyed to the owners/occupants, there is no clarity on the status of the joint land; (3) determination of environmental management fees (IPL), fund management, and managers who are arbitrary in giving sanctions to owners, not being transparent in the management of flats; (4) intervention of development actors in the formation of P3SRS, appointment of P3SRS management and supervisors, and appointment of managers; (5) the sale and purchase agreement (PPJB) of the condominium unit is not made before a notary and the PPJB has been paid in full by the owner but the development actors do not want to make the Sale and Purchase Deed before the PPAT;

(6) not transparent in determining the amount of sinking fund and its use; and (7) financial administration is not transparent and has never been audited by an independent auditor. The problems experienced by the owners and residents of apartments/flats are real problems experienced. This fact was directly proven by the Governor of DKI Jakarta through his visit to an apartment in Tebet on February 18, 2019. Through this visit, as the Head of the Special Capital Region of Jakarta, Mr. Anies Baswedan, he proved that the problem was real, and it is not an illusion and neither fiction. His promise as regional head is to solve every problem that occurs in 185 flats in his area.

The article will discuss the case between PT Palem Propertindo as the developer of the Green palm Residence apartment with its consumers. The subject matter of the case is the area deviation of the units in the Green Palm Residences. The unit size promised by the developer is deviation from the one obtained by the consumers. The PPJB states that if there is a size difference between the unit obtained and the promise, the case will be addressed by referring to Article 2 in the agreement. The article states, "The maximum tolerance of size difference is 3 percent of which deficiency or excess of more than 3% will be re-measured and accounted for accordingly," It continues "If the difference of the unit size received is more than 3%, the parties involved will re-measure and compensate the injured party." However, in reality, the Article 2 of PPJB was not implemented because the developer did not have a good faith to resolve the issue. Therefore, several consumers who realized that their right had been violated filed an application for suspension of the Debt Payment Obligation (PKPU) against the developer on the basis of size deviation as the debt to the Central Jakarta Court. In the PKPU process, the consumers were divided into two categories based on the different proposals of the case resolvment. The first category, filed by the consumers who did not concern over the size deviation, suggested a reconciliation with the signing of the Sale and Purchase Deed (AJB). The consumers were required to pay all the necessary costs to transfer the ownership certificate from the developer to the consumers after the reconciliation proposal was homologated. The second category, filed by the consumers who concerned over the unit size deviation, proposed a reconciliation by recalculating the size deviation and asked for the National Land Agency (BPN)/the Jakarta Human Settlement, Spatial Planning and Land Agency (DCKTRP) to recalculate. Each party would pay for the obligations in accordance with the new calculation. The AJB signing would be conducted after the recalculation result and the payment of the size deviation was completed by each party.

At the end of the PKPU process, the debtor (PT Palem Propertindo) and the creditor (consumers of Green Palm Residences) held a voting for both categories. The first category got the most votes, and the reconciliation agreement was decided that the debtor and the creditor would sign AJB and the creditor pay all the obligations affected by the changing name of the flat ownership. The action obviously harms the consumers and violates Article 89 no 2 point b of the Flats Law, citing, "each person has the right to receive an adequate compensation over the loss suffered from any flat business process. Referring to the article, the consumers who disagreed with the homologation agreement do not get their legal protection. The purpose of consumer regulation, development and protection is in order to raise the consumer's dignity and awareness as well as encourage developers to conduct their businesses fully responsibly. In the article, the writers will discuss "How is the accountability of the developer toward the implementation of PPJB over the size deviation which is not in accordance with the Civil Law and Law No 20/2011 on Flats"? And how is the legal protection of the consumers in resolving the area deviation as promised in PPJB from the perspective of Law No 8/1999 on Consumer Protection?

## **2. FINDINGS AND DISCUSSIONS**

***The Civil Accountability of the Developers from the Perspective of Civil Law and Law No 20/2011 on Flats***

Based on legal theories, the writers consider that the theory of negligence tort liability, based on the concept of fault, has a strong relevance with the case the writers discuss in the research. The reason why the writers use the theory of negligence tort liability and the concept of fault is the action taken by the developer of Green Palm Residence apartment does not oblige the legal obligation in the Article 2 of the PPJB. The unfulfilled obligation of Green Palm Residences apartment developer is giving the consumer their right as stated in the PPJB, which is recalculating the area of the flat unit and paying for the compensation to the injured party.

The violation of the developer against the Article 2 of the PPJB can be categorized as an act of breach of promise or known as default. Muljadi defines default as “the absence of performance implementation by debtor.” Meanwhile, the writers define default in this case as the legal obligation disavowal. Muljadi divides the absence of performance implementation into 4 forms. Firstly, the debtor does not carry his performance at all. Second, the debtor does not perform its performance as it should or perform its obligations but not as it should. Third, the debtor does not perform its performance at the promised time. Fourth, the debtor commits an action that is not permitted to be performed. In this case, the developer of the Green Palm Residences can be classified as the second form of default, which is the action of neglecting the performance or not performing the obligation as stated in the PPJB.

Generally, civil accountability will occur when the contractual obligation or non-contractual obligation is not fulfilled. The contractual obligation is the obligation arising from the contractual relationship, which is a legal relation desired by the parties who make the agreement. Meanwhile, the non-contractual obligation is the obligation born because of the law that determines a legal relationship exists but is not based on an agreement but is based on an act determined by law as a legal relationship.

Default, according to Soebekti, is a condition in which a person who is in debt does not perform as promised. It happens because of two possibilities – the debtor’s intentional fault or negligence due to a compelling situation. In this case, if the writers see it as a civil obligation, the developer is obliged to compensate the consumers. The obligation of the developer to compensate the consumers is regulated in Article 1234 of Civil Law jo. 1267 of Civil Law. The articles emphasize the consumer’s right to get compensation of the cost, loss, and interest due to the unfulfilled engagement or agreement. The calculation of the loss and interest can be conducted starting from the developer is considered negligent in fulfilling its obligation. The laws and regulations provide consumers with the options to obtain compensation in the form of (1) paying (getting paid) of the amount of the loss they have suffered; (2) fulfillment of the agreement; (3) fulfillment of the engagement accompanied by a demand to pay the number of losses suffered; (4) termination of the agreement; (5) termination of the agreement accompanied by a demand to pay the number of losses suffered.

In addition to the articles above, the obligation to pay for the compensation is also mandated in Article 2 of the PPJB of the Green Palm Residence apartment binding the parties. The stipulation of Article 2 of this PPJB protects the injured party in the difference of the unit area of more than 3%, who are entitled to get compensation from the detrimental party. The obligation stated in the Article 2 of PPJB is in line with Article 89 letter (g) of Law on Flats, stipulating, “Each person has the right to receive adequate compensation over the losses suffered directly as a result of any flat business process.”

The prohibition on creating PPJB unequally with the physical condition and not in accordance with the promises in the mass media or posters during marketing process is confirmed in Article 98 letter a of the Law on Flats.

### ***The Civil Accountability of the Developer in Terms of the Consumer Protection Law***

The legal protection is a protection given by a legal subject in accordance with the applicable legal rules, both written and unwritten in order to enforce a regulation.

In this case, the legal process ends with the reconciliation in PKPU. In the process, the majority of the creditors chose the first category. The resolvment proposal agreed in this category is that the consumers did not discuss further on the main problem in PKPU. The main problem is the size deviation billed as debt. The solution is perceived by consumers who chose the second category as losses. They did not get the compensation over losses they suffered due to the smaller size of flat unit they got after paying for the promised size.

In the property business, developers often violate regulations. The study case in this research is one of the real examples where a developer has violated PPJB and several other applicable regulations so the consumers suffer from losses. The consumer rights are protected and regulated in Article 4 of Law Number 8/1999 on Consumer Rights (Consumer Rights Law) that states, (1) "the right to comfort, security, and safety in consuming goods and/or services"; (2) "the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and conditions, as well as the agreed guarantees"; (3) "the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services"; (4) "the right to have their opinions and complaints heard on goods and/or services that are heard"; (5) "the right to receive proper protection, advocacy, and efforts to resolve consumer protection"; (6) "the right to obtain consumer guidance and education"; (7) "the right to be treated or served in a right, honest and non-discriminatory manner"; (8) "the right to receive compensation, and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as they should be"; and (9) "other rights regulated in other statutory provisions".

Viewed from the developer's actions above and the developer's disavowal of the legal obligation stated in Article 2 of the PPJB, the writers assume that the developer does not comply with Article 4 point 8 of the Consumer Protection Law, which is the consumer has the right to obtain compensation for the loss he has suffered because the consumer does not get the right size of the flat as promised.

Before buying goods or services, consumers have the right to obtain all honest information about the products and services. Hence, the consumers know with certainty the products and services to be purchased. When the developer marketed the flat, it did not provide honest information about the condition of the flat it sold. At the beginning of the sale and purchase transaction until they occupied the Green Palm Residence apartment, the consumers did not know that there had been a deviation of the flat unit size. Therefore, it is important for developers to open access to honest information on the product to the consumers. The honesty of the developers in giving the right information is one of the indications of good faith from them to give legal certainty to their consumers.

From the perspective of the Consumer Protection Law, if the consumers receive the flat units whose size is different than promised, the developer is required to replace the flat unit to the consumers. The developer should also be responsible to give compensation over the shortage of the size received by the consumers. The responsibility of the developer is firmly regulated in Article 19 of the Consumer Protection Law. The article regulates firmly the developer's responsibility to give compensation over the losses suffered by the consumers due to the smaller size of the unit they received from the promised one. The article also regulates the forms of compensations, which are (1) the return of certain amount of money that have been paid from consumers to developer; or (2) the replacement of the similar good or equivalent to the transaction value; or (3) the physical maintenance of the building; or (4) the provision of compensation in accordance with the applicable laws and regulations.

In addition to the articles above, the Consumer Protection Law also regulates the obligation that the developer must do. The obligations are regulated in Article 7 jo. 8 of the Consumer Protection Law. Article 7 regulates that a business entity has responsibility to give a right, clear and honest information on the condition and guaranty of the goods as well as the explanation on how to use, fix and maintain. Furthermore, Article 8 letter (c) of the law also said, "Business entities are prohibited from trading goods and/or services that are not in accordance with the actual size, measure, scale, and amount calculated according to the actual size."

Due to the violations conducted by the developer in the case study, according to the Consumer Protection Law, hence, the developer should be responsible for the losses suffered by its consumers. Based on Article 19 of the Consumer Protection Law, the developer can provide compensation for a number of real losses suffered by the consumers as a result of receiving a smaller size of the flat unit.

Furthermore, if the developer is reluctant to give the compensation to the consumers and it is negligent to fulfill its obligation, the developer may be subject to administration sanctions. The administrative sanctions are regulated in Article 60 and Article 62 of the Consumer Protection Law. Article 60 of the law stipulates: (1) the Consumer Dispute Settlement Body has the authority to impose administrative sanctions on business entities who violate Article 19 paragraphs (2) and (3), Article 20, Article 25, and Article 26; (2) the administrative sanctions in the form of stipulating compensation for a maximum of Rp200,000,000.00 (two hundred million rupiah); (3) the procedure for determining the administrative sanctions as referred to in paragraph (1) shall be further regulated in laws and regulations.

### 3. CONCLUSIONS

In cases between creditors and debtors, such as accounts payable cases, settlement through the Suspension of Debt Payment Obligation (PKPU) mechanism at the Commercial Court is the right solution for both parties. PKPU is a debt settlement method to avoid bankruptcy for debtors. However, in the case of the Green Palm Residence apartment developer with its consumers, the effort to resolve the flat unit size deviation issue received by the consumers through PKPU is inappropriate. The PKPU settlement process does not give justice to the harmed consumers. The PPKPU process does not oblige the developer to give the unit the same size as promised. The consumers who did not agree with the first category are forced to accept their losses. It happens because they cannot sue the developer over negligence to give them the size that they have paid. The developer has taken advantage of the result of the voting system in the PKPU process. The voting on homologation in PKPU has freed the developer from its responsibility to carry out its promises stated in the PPJB and carry out its legal obligations as stipulated in the Civil Code, the Flats Law and the Consumer Protection Law.

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