

## PROTECTION OF RIGHTS TO THE AGREEMENT FOR THE SUPPLY OF AN APARTMENT CONSUMER FLAT FROM A PROPERTY AGENT

Yenny Febrianty<sup>1</sup>, Mahipal<sup>2</sup>

<sup>1</sup> (Faculty of Law, Pakuan University Bogor, Indonesia)

<sup>2</sup> (Faculty of Law, Bogor Pakuan University, Indonesia)

**ABSTRACT:** Many people believe that apartments are a solution to address the problem of housing shortages. Purchasing apartments is usually done through online transactions involving real estate agents. However, in the process of buying an apartment, real estate agents only provide market information, pictures, and floor plans to consumers. After consumers make reservations and move into the apartments, there are often various negligence issues that result in losses for the consumers. This research aims to determine the legal protection for consumers in apartment supply agreements from real estate agents. The method used is normative juridical research with a legal approach based on legislation and qualitative data collection. The research findings show that legal protection for consumers in apartment supply agreements through real estate agents is regulated in Article 16 and Article 62 paragraph (2) of Law No. 8 of 1999 concerning Consumer Protection. Consumers have the right to claim compensation if they do not receive the rights promised in the marketing conducted by real estate agents. Therefore, it is essential for consumers in apartment purchases to ensure that the building or apartment they are purchasing is safe, intact, and free from any hidden defects to avoid causing losses to the consumers.

**KEYWORDS:** Apartment, Agent, Property, Consumer, Violation.

### I. INTRODUCTION

The needs of each individual for shelter or shelter are the main aspects that must be met. Building houses for residents is a step that is in line with national goals, namely creating balance and justice in an effort to improve community welfare. Housing infrastructure plays a critical role in ensuring authenticity, freedom, and benefits for the whole society. Article 28H paragraph (1) of the 1945 Law states, "The right of every individual to live in physical and mental prosperity, as well as the right to have a decent place to live, a good environment, and access to health services ". Currently, housing development efforts focus on efforts to obtain apartments at affordable prices, in collaboration between the government and the private sector, to make housing a commodity that is widely accessible and meets people's housing needs.(Narendra, 2021)

Apartments are a type of flat built by State-Owned Enterprises (BUMN) or private companies, and sold at affordable prices for middle and general society. Meanwhile, a Condominium Hotel (Condotel) is a type of luxury apartment owned by the upper class. Even though they have different social classes and luxuries, whether flats, apartments, condominiums, or condominium hotels, they all have the same legal basis, namely a certificate of ownership of the condominium unit. This letter is also often called Ownership Rights for the Flat Unit(Sutedi, 2011)

According to Law No. 20 of 2011 regarding Flats, flats are multi-story buildings that have a system of individual ownership and joint ownership and are used as residential or non-residential, either stand-alone or integrated into the developer's system. Actually, housing is divided into four types, namely public housing, special housing, public housing, and commercial housing(Paramadani, 2020) Many people believe that apartments or flats can be a solution to overcome the problem of lack of housing. Apartments are considered important as a means to meet human housing needs. Apart from being a comfortable place to live, apartments also play a role in connecting with various other services, including public sports services, commercial services, and health services.

Currently, apartments are one type of property that continues to experience rapid growth and its development is projected to accelerate in the future. This is supported by the very high demand for residential houses among the population, due to limited land and prices continuing to increase. Apart from that, it is

influenced by the density of cities in Indonesia, which causes many people to be busy with various activities (Putro, 2018)

In general, ownership of a flat or apartment is carried out through a sale and purchase or rental transaction between the seller/developer and the buyer or consumer. However, with advances in digital technology, selling or renting buildings can attract buyers' interest more quickly if marketed via the Internet or in collaboration with several property agents.

A property agent is a business entity that functions as an intermediary in sales, rental, research, study, marketing, consultation, and distribution of property-related information based on a written agreement with the assignor. In the role of intermediary, property agents often act as witnesses in property buying and selling transactions. However, sometimes the seller gives full power to the agent to sell the property, so that the agent acts on behalf of the seller in legal aspects and becomes the actual seller, not just an intermediary. The seller gives the power of sale to the property agent so that the seller does not need to deal directly with prospective buyers, so the agent takes care of all the processes. The seller's main goal is usually to receive the net selling price without having to think about other costs. Therefore, a property agent who has the power to sell property in his own name is legally considered a seller, not just an intermediary (Aziz, 2016) .

In buying and selling apartments, property agents generally only show the market, pictures and apartment plans to consumers, without providing physical evidence regarding the process of preparing and building the apartment. The sale and purchase deed (AJB) is usually only made after the apartment has been built and reached the completion stage.

However, before the AJB process, there is a Sales and Purchase Agreement (PPJB), which is a contract made by the developer unilaterally. PPJB is standard and contains standard clauses set by the developer. The aim of using standard contracts in PPJB is to provide convenience for the parties involved (Putro, 2018)

For consumers, PPJB is a guarantee that the apartment will not be sold by the developer or agent to another party, and will be given at the time agreed. However, there are problems in society when the apartments received by consumers turn out to be of poor quality, not in accordance with expectations based on the information contained in the brochure or initial agreement (Subekti, 1980) .

Agreements given by business actors should provide certainty and provide convenience for consumers. However, sometimes there are hidden defects in an apartment that are only revealed after consumers have lived there for several months. Therefore, it is important to explain the legal protection afforded to consumers when booking an apartment and entering into a binding sales contract. This aims to protect consumer rights and provide clarity and security in the apartment purchasing process.

In fact, the agreement given by the business actor should provide certainty and provide convenience for consumers. However, sometimes there is hidden negligence or deliberate intent in the apartment which is only revealed after the consumer has occupied the apartment. As happened in the case of apartment consumers in the Pancoran area, South Jakarta. Consumers feel disadvantaged because they do not obtain the rights according to marketing promises made by property agents (Hakiim, 2022) . This causes PPJB to default which can have a negative impact on consumers.

Article 16 of the LawNo. 8 of 1999 regarding Consumer Protection regarding offers of goods and/or services, consumers have the right to receive protection and business actors have the obligation not to do the following things:

- 1.1 Not fulfilling orders and not completing them according to the time promised in the agreement.
- 1.2 Not fulfilling promises related to services or achievements that have been promised.

If the business actor violates these provisions, the consumer has the right to protection and can file a claim in accordance with applicable regulations in order to receive compensation or compensation related to the loss suffered (Dewi, 2016) . So, before carrying out a sale and purchase transaction of an apartment flat, it is important to explain the legal protection provided to consumers when ordering an apartment and following a binding sales contract. This aims to protect consumer rights and provide clarity and security in the apartment purchasing process.

From this background, the author is interested in discussing it in a scientific work entitled "Protection of Rights to Agreements for the Provision of Flats for Apartment Consumers from Property Agents."

## II. PROBLEM FORMULATION AND RESEARCH OBJECTIVES

The problem formulated in the study is how to protect the rights to the agreement to provide flats for apartment consumers from property agents. Whereas for this study the aim is to analyze the protection of the rights to apartment consumer flat agreements from property agents.

## III. RESEARCH METHODS

The type of research used is normative juridical research which is in accordance with a legal approach including legal sources and applicable laws which are scientific theoretical in nature which can be used to analyze and are closely related to the problems discussed.(Sunggono, 2007) .The legal approach is used to analyze how

consumer legal protection is regulated according to statutory regulations (Hastuty, 2015) .As for technique data collection is carried out in a way qualitative with analysis regulation Related laws topic research. Data is collected through method study used bibliography various source literature example books laws, journals, articles, and relevant statutory provisions with study this.

#### IV. RESEARCH RESULTS AND DISCUSSION

##### Legal Protection for Consumers regarding Apartment Sale and Purchase Agreements from Property Agents

Legal protection is an effort to provide protection and security for human rights that have been harmed by other parties. The aim of this protection is so that people can enjoy all the rights guaranteed by law. So , legal protection includes various legal actions carried out by law enforcement officials with the aim of providing a sense of safety and security, both mentally and physically, from disturbances and threats that may come from other parties .

Setiono said, legal protection is steps or efforts to protect society from arbitrary actions from authorities who violate the law, aimed at creating order and peace so that every individual can enjoy their rights and dignity as human beings (Setiono, 2007 ) . Meanwhile, in Muchsin's opinion, legal protection is a process that aims to protect individuals by connecting values and principles that are reflected in attitudes and actions, thereby creating order in social interactions between fellow humans. Furthermore, Sutjipto's opinion that legal protection is an action to protect human rights that have been disturbed by other parties. This aims to ensure that all members of society can enjoy all the rights guaranteed by law. So basically legal protection is a series of efforts to ensure the fulfillment of rights and provide assistance to witnesses and victims, aimed at providing a sense of security. Legal protection for crime victims is an integral part of efforts to protect society as a whole. The concrete form of this protection can vary, for example through the provision of restitution, compensation, medical services and legal assistance.

Table 1: Consumer Violations in Buying and Selling

No.	Consumer violations in buying and selling apartments	Year
1.	The case that occurred at the Green Pramuka City Apartments began when the residents were promised that a certificate for the Apartment Unit would be given within 2 years after the purchase of the unit by the residents of the first phase of the tower. However, almost 3 years have passed and the certificate has still not been issued. Apart from that, there is a policy by the management of Green Pramuka City Apartments which is considered very one-sided by the residents, especially regarding parking issues. Initially, residents were charged IDR 200,000 per month for parking. However, they are only allowed to park in Basement 2, which is the lowest parking floor, and are not permitted to park on other floors. If you park in another area, residents will be charged an additional fee of IDR 3,000 per hour. Furthermore, there is no agreement between the management and residents regarding the IPL (Other Use Permit) rates which some residents of Green Pramuka City Apartments feel are expensive compared to other apartments of the same class.	2015
2.	Muhadkly alias Acho, a customer of Green Pramuka Apartments, expressed his disappointment because the property agent did not fulfill his promise to make the apartment area a green open space. Then the apartment ownership certificate that he was waiting for was not given either by the developer or the property agent. In fact, this certificate is needed if consumers want to sell or use their apartment units as collateral to the bank for business capital.	2017
3.	In the Sale and Purchase Agreement (PPJB) for the Bellini Tower Paltrow City Semarang Apartment, it is stated that the construction of the Bellini Tower Paltrow City Semarang Apartment began in 2014, and is scheduled to be given to the buyers at the end of 2016 or early 2017. But until the agreed time by consumers, the apartment has not yet been handed over to consumers.	2018
4.	When marketing the Bogor Valley Residence Apartment, we were informed that the size of the apartment units offered were the same as those listed in the PPJB. However, when the PPJB process was	2019

	underway, consumers did not receive the size of the apartment units as promised by the property agent. The property agent did not explain that the units offered by the developer actually had a semigross area. Consumers feel disadvantaged because they feel that the marketing techniques used by property agents are carried out deliberately only to attract the attention of consumers so that they are interested in buying apartment units that are being heavily marketed.	
5.	Dispute over extension of HGB on HPL land for Mangga Dua Court Apartments (MDC). Residents feel cheated because they don't know that when buying and selling apartments they need to bear the costs of extending the HGB above the HPL of IDR 4.3 billion, even though according to marketing the status of MDC land is state land (pure HGB) so residents only pay IDR 289 million. Consumers are at a great disadvantage because information on the status of the land above management rights is only known when the HGB matures after occupying their apartment unit for a long time.	2021
6.	Kalibata City apartment consumers feel disadvantaged because they did not receive the rights according to the marketing promises made by the property agent and consumers just found out that the sale and purchase of apartments at the time of making the PPJB was without an IMB.	2022

In terms of providing flats to consumers, apartments from property agents for consumers, in fact each person has legal protection in all legal actions they take.

A property agent is a business entity that functions as an intermediary in sales, rental, research, study, marketing, consultation and distribution of property-related information based on written agreements. In the role of intermediary, property agents often act as witnesses in property buying and selling transactions. Generally, property agents are authorized by property owners to act as representatives in carrying out various legal actions or legal relations with prospective buyers, as well as to market property to prospective buyers (Yunita, 2021). In carrying out their duties, property agents in their position as business actors must pay attention to the principle of absolute responsibility or what is known as the principle of absolute responsibility.

The principle of absolute responsibility in consumer protection law is generally applied to ensnare business actors, especially agents who market property but ultimately harm consumers. In this principle, property agents who are business actors have an obligation to be responsible for all losses that consumers suffer as a result of using the products they market. However, in practice in society, property agents often violate consumer rights and are not responsible for the property they market. This case is very common in society, as if in apartment buying and selling transactions, consumers are often at the lowest level and their rights are violated.

From the table above, it can be seen that to date cases of consumer violations regarding buying and selling transactions for the provision of apartments often occur. Considering the weak position of consumers, they should be protected by law.

According to Article 1 number (2) of Law no. 8 of 1999 regarding Consumer Protection, that:

"A consumer is every person who uses goods and/services available in society, either for the benefit of themselves, their family, other people or other living creatures and is not traded."

Meanwhile Nasution (1995) says consumers are classified into 2:

**4.1. Users of goods and/or services aim to obtain goods and/or services for resale.**

**4.2. Users of goods and/or services to fulfill their own, family or household needs.**

Then the opinion of Abdurrahman (1986) says:

"A consumer is generally someone who uses, consumes goods and/or services."

From the above understanding, the legal aspects of consumers have a very broad scope. One important part of consumer law is the aspect of protection. In fact, consumer protection is closely related to legal protection. Consumer protection involves various legal aspects related to various materials to ensure consumer rights are protected. The aim of this protection is to protect consumer rights as a whole, not only limited to physical aspects, but also includes abstract rights owned by consumers.

According to Article 1313 of the Civil Code, an agreement is defined as an act in which one or more people express their attachment to one or more other people. Although this understanding is not very complete, it can be understood that in an agreement there is one party that binds itself to the other party. However, this definition should include the fact that there are two parties who bind themselves to an agreement regarding

something (Pati & Miru, 2008) . Meanwhile, sale and purchase agreements are regulated by Articles 1457 to 1540 of the Civil Code. Buying and selling is an agreement in which one party promises to hand over objects, while the other party promises to pay the agreed price (Article 1457 of the Civil Code) (Salim, 2008) .

In the situation of providing flat type apartments, legal protection for consumers can be observed from the moment the agreement is made and the offer brochure is published by the business actor. This protection is related to facilities that are not in accordance with the initial promise and information in the brochure.

Normatively, this legal protection is related to Article 8 paragraph (1) letter f of Law no. 8 of 1999 regarding Consumer Protection. This article prohibits business actors from making or selling goods and services that do not comply with the promises stated in labels, labels, information, advertisements or sales promotions. In addition, Article 9 paragraph (1) letter f of the same Law regulates that business actors must not provide misleading offers, promotions or advertisements regarding goods and services, or pretend that the goods are free from hidden defects.

If there is a hidden defect, the business actor is obliged to be responsible for the defect, even if he is not aware of the defect, unless there is another agreement. Based on Article 9 paragraph (1) letter f of Law no. 8 of 1999 related to Consumer Protection, consumers have the right to sue business actors to repair damage as long as possible. If the business actor refuses or does not respond, the consumer has the right to sue through a consumer dispute resolution institution or judicial body in the area where the consumer lives. Thus, consumers are entitled to compensation in accordance with Article 62 paragraph (1) of Law no. 8 of 1999 regarding Consumer Protection.

If a property agent does not keep his promises, or violates the agreed performance, it can be considered a breach of contract or a broken promise. Although the term "default" or "broken promise" is not specifically mentioned in the Civil Code, Article 1239 of the Civil Code states that every obligation to do or not do something, if the party in debt does not fulfill his obligations, then he must pay compensation for costs, losses, and flower. In addition, Article 1243 of the Civil Code explains that payment of compensation for costs, losses and interest due to non-fulfillment of an agreement is only mandatory if the party who owes the debt is declared negligent in fulfilling the agreement, or if the goods or services that need to be provided or provided can only be provided after the deadline. that has passed. This means that non-fulfillment of the obligation has the consequence that the party in debt must provide compensation due to the default.

Furthermore, if the property agent does not fulfill his promise, according to Article 16 of Law no. 8 of 1999 regarding Consumer Protection, namely business actors offering goods and/or services are prohibited from:

- 4.1. did not fulfill the order and/or the agreed turnaround time as promised
- 4.2. does not keep a promise for a service and/or achievement

In the context of buying and selling apartments through property agents, consumers have the right to request compensation if when ordering and in the offer brochure, the completion time for the apartment does not match what has been promised in the Sale and Purchase Agreement. Therefore, consumers are given protection for the right to compensation in accordance with the provisions contained in Article 16 of Law No. 8 of 1999 regarding Consumer Protection and Article 62 paragraph (2) of Law no. 8 of 1999 regarding Consumer Protection (Dewi, 2016) .

## V. CONCLUSION

Legal protection for consumers in agreements to provide flats and apartments through property agents has been clearly regulated in Article 16 of Law No. 8 of 1999 regarding Consumer Protection and Article 62 paragraph (2) of Law no. 8 of 1999 regarding Consumer Protection. If consumers feel that they have been disadvantaged because they did not obtain rights according to the marketing promises made by the property agent, then the consumer has the right to receive compensation provided by the property agent, especially if the object in the sale and purchase of the apartment does not in fact match the consumer's expectations when making the purchase. When buying an apartment, it is important for consumers to find out about a professional and trustworthy property agent. This aims to ensure that consumers can ensure that the building or apartment they are buying is safe, intact and free from all hidden defects and will not cause harm to the consumer.

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#### **Statutory Regulations**

The Civil Law Code

UU no. 8 of 1999 regarding Consumer Protection

UU no. 20 of 2011 regarding Flats .