

CONSUMER PROTECTION ON MARKETING OF HOUSING PROPERTY WITH PRE PROJECT SELLING SYSTEMS IN PT. MENARA SANTOSA SURAKARTA

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ABSTRACT

This study aims to know, analyse and conclude related legal protection efforts to consumers in the system of pre project selling housing and analyse its compliance with Law No. 8 of 1999 about Consumer Protection. This research is an empirical law research which the data is obtained based on literature research on several sources either in the form of legislation, books, and journals relating to the system of pre project selling housing, but also conducted field research with interview method to the respondents. The result of the research shows that the legal protection to the consumer in the system of pre-selling housing system in PT Menara Santosa Surakarta when viewed in conformity with Law Number 8 Year 1999 about Consumer Protection is very contradictory, which is known that in PT Menara Santosa Surakarta too much made speculation, even to ignore the ethics in business, including also matters relating to the provision of legal protection to consumers. The concept of pre project selling is actually not just a test market to know how consumers react. Consumers or markets have recorded in the developer records, especially against anyone who harms and disappoints the developer, who will then become the power base of property consumers in selecting developers.

Keywords: Legal Protection, Pre Project Selling System, Housing, Consumers.

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The development of the business world in the housing or property sector at this time is growing very rapidly. After the slowdown in the property sector some time ago due to the world crisis in 2007, the property sector is starting to grow again in line with the economic growth of the community. Increasing demand for housing with limited land, especially in urban areas, causes this business sector to face increasingly severe challenges to get strategic places. Inevitably the urban area is increasingly expanded if it still allows the expansion of the land for the needs of property that is increasingly needed by the urban community. The developers are based on the large number of consumer demand for the needs of property which is also relatively large number of competing with each other to compete with each other to find solutions efficiently, with projects being planned for development, but still obliged to comply with the legal rules designed as frames. The high level of community activity and the dense population in urban areas stimulate new forms of business in the housing and property sectors, namely Pre-project selling. For market concept developers by means of pre-project selling being the trend at the moment, especially the developer project is usually carried out by the developer by selling or marketing before the property product is realized, there are even project developers who do the pre-project selling marketing concept before being equipped with requirements such as Building Permit (IMB), Construction permit and other permits. Indonesia faces obstacles to the existence of a pre-project selling system because the National Land Law is too thick in the nuances of administrative law, making it difficult to keep up with business developments as well as pre-project selling. It is precisely what happens as if each party is running alone, even though it is separatist but has not yet been able to create a comprehensive synergy. Consumers are too eager to pursue the needs of the board, on the other hand developers are trying to find funds to build the property that is being worked on, even though the regulation of the government itself is still a piece which is considered almost unattended.

The concept of pre-project selling was originally intended as a market test to find out how consumers react to property products marketed. In its development, the market test was initially closed, then in practice it was made open and used directly by the developer, with the intention that the sale of property products could be carried out as quickly and as much as possible. The appeal of the marketing concept is that the pre project selling is very large when viewed from the number of consumers or people who visit the pre launching or pre sale of housing products. Usually potential customers are tempted by the considerable price discounts given by the developer to prospective customers. Besides the price discount, other bonuses are also given if the prospective customer is interested in the product offered.

Prospective customers must be careful before buying in accordance with the advice that seems cliché, especially for prospective home buyers, this advice must be considered so that they must know correctly about who the developer, the quality of the building and so on, so no regrets in the future. Consumers are only believed through brochures, mockups, sample houses and offering attractive marketing staff, even though it is clear that the product is still in the form of a concept. The attraction that is given not only revolves around bonuses or discounted prices but is widely used by the consumer community.

Based on the description above, the author aims to write this research to find out how legal certainty and protection in the marketing of property products in the event of fictitious house sales by project developers.

PROBLEM STATEMENT

1. What is the certainty of the Pre Project Selling housing consumer legal protection at PT Menara Santosa Surakarta?
2. How is the settlement of consumer disputes in the event of a dispute in the housing Pre Project Selling transaction at PT Menara Santosa Surakarta?

RESEARCH METHODS

This study employed empirical legal study. Soerjono Soekanto stated that empirical legal study is a study that is grounded on a particular method, systematic, and reasoning, which is aimed at studying one or several social phenomena by analyzing it. In addition, in-depth observation towards such social fact was also conducted to establish a solution for an issue emerges because of the phenomena. In empirical legal study, the data being studied is initially secondary data, then is followed by study on primary data in the field or the society.ⁱ

The data collection technique of the study was field study in the form of interviews and literature study. While the data analysis technique of the study was qualitative data analysis. Matthew B. Miles and A. Michael Huberman assert that the things within qualitative analysis are, the data emerge in the form of words and is not numerical. Those data may have been collected through various methods (observation, interviews, document abstract, tape recording), and are usually processed before they are ready to use (through recording, typing, editing, or translating). However, the qualitative analysis still uses words, which are usually arranged into broadened text. The analysis comprises three simultaneous activities namely data reduction, data display, and conclusion drawing/ verification.

DISCUSSION

Pre Project Selling is a sale before the project is built where the property sold is just a picture or concept.ⁱⁱ In its implementation in Indonesia, adjustments were made so that there were project developers who carried out pre-selling projects before the infrastructure and facilities were built, but there were also those who marketed after the facilities and infrastructure had been built.ⁱⁱⁱ

The sales system such as pre-project selling has long been known in Europe, one of them in France. Since 1967, French law has dealt with unit sales of a development plan using a special type of agreement, known as the sale of a building to be built (a building to be constructed / ventilated a`construire).^{iv} Under the agreement, the buyer will pay the initial amount of money to the developer followed by successive payments in stages during the construction process, then the buyer will gradually become the owner of the building, and the buyer is protected by law if the developer is not completed. The developer is allowed to receive money and instalments from the buyer before the building is completed is to ensure that the developer in a position can finance the construction of the building. Developers can borrow more easily from financial institutions and developers can then pay building contractors with the money they get from buyers.

In formal juridical terms, in Indonesia the pattern of housing sales with the Pre Project Selling system is not prohibited even though there are no provisions governing it. so that the main basis as the determination of the rights and obligations of the parties lies in the freedom of contract, while the mechanism for determining the rights and obligations of the parties is set forth in the form of a Buy and Sell Agreement (PPJB).^v PPJB is an agreement from two parties to carry out their respective achievements in the future, namely the implementation of the sale and purchase in the presence of the Land Deed Making Officer (PPAT), if the building has been completed, certified, and habitable.^{vi} PPJB is made as a preliminary agreement which aims to bind the parties before the Deed of Sale and Purchase is made before the PPAT. This AJB is an authentic deed made by PPAT as evidence for the transfer of land and building rights.^{vii} This AJB will later be used for the submission of registration of transfer of rights to the local land office or better known as the term return name. With the completion of the name return process, the rights attached to the land and buildings have moved from the seller to the buyer.

According to Clause 42 (1) of the Housing and Settlement Act Republic of Indonesia Number 11 of 2011, "Single houses, row houses, and / or flats that are still in the development process stage can be marketed through the preliminary sale and purchase agreement system in accordance with the provisions of laws and regulations." Then in article 42 paragraph (2) Housing and Settlement Law, "The preliminary sale and purchase agreement as referred to in paragraph (1) is carried out after meeting the certainty requirements for:

1. Land ownership status;
2. The thing promised;
3. Ownership of a building permit;
4. Availability of infrastructure, facilities and public utilities; and
5. Housing construction of at least 20% (twenty percent).

Developer and Transaction Process

From the results of interviews with the marketing staff of one of the developers who used the concept of pre-project selling, the stages of the general stages were obtained as follows:

1. Pre launching; is an initial stage where the launch of a product is carried out before launching or grand launching. The things that consumers need to know when pre-launching are:
 - a. Brochure distribution.
 - b. Price list
 - c. Site plan.
 - d. Finished sign money, where the money is forfeited if the purchase is cancelled.

At the time of the pre launching, the developer only displays a sample of the house in the form of a model with a brochure of house pictures and a price list of each unit.

2. This launching or grand launching is actually the actual sales carried out by the developers which are held after three to seven days of pre launching. Usually presents a variety of entertainment that is supported by the artists of the famous capital city held in hotels that are starred. At the time of launching the prospective customers who want to buy a house with the concept of pre-project selling of potential customers are offered by the developer a sheet of standard form called an order form that includes the conditions that must be obeyed by prospective customers.

Regarding housing construction, the developer said that a new home would be built after the realization of payments from consumers. The realization of the payment is by making an advance payment. So it can be said that this housing development has not reached 20% (twenty percent) of the volume of residential building construction being marketed because new homes will be built after the realization of financing from consumers. From this it can be concluded that one of the legal requirements of an agreement is not fulfilled from Article 1320 of the Civil Code, which is a lawful reason, because the developer markets housing before housing is built 20% which is the provision of Article 42 paragraph (2) of the Republic of Indonesia Law number 1 of 2011 concerning Housing and Settlement Areas. With the halal terms as the condition is an objective condition but not fulfilled or violated, the agreement in question is invalid because it violates the objective conditions of an agreement and automatically results in null and void. This is in accordance with Article 1335 jo. 1337 of the Civil Code, the point is that an agreement without cause or has been made for a false or forbidden reason, has no power and a reason is prohibited, if the law prohibits or contravenes morality or public order.

Furthermore, as a legal consequence of the non-fulfillment of the requirements mentioned in Article 42 paragraph (2) of the Housing and Settlement Laws, the Buy and Sell Agreement (PPJB) is null and void because these requirements are the main cause or objective for the Engagement Agreement Buy and sell (PPJB) can be made.

Consumer Rights and Obligations

In general, the rights and obligations of consumers are as follows:

1. Consumer rights

- a. The right to comfort, security and safety in consuming or using goods and / or services.
- b. The right to choose goods and / or services and get the goods and / or services in accordance with the exchange rate and the conditions and guarantees promised.
- c. The right to correct, clear and honest information regarding the condition and guarantee of goods and / or services.
- d. The right to hear opinions and complaints about the goods and / services used.
- e. The right to get proper advocacy, protection and efforts to resolve consumer protection disputes.
- f. The right to get guidance and education. Consumers.
- g. The right to be treated or served correctly and honestly and not discriminatory.
- h. The right to get compensation, compensation and / or replacement, if the goods and / or services received are not in accordance with the agreement or not as they should be.

2. Consumer obligations

- a. Read or follow information instructions and procedures for using or utilizing goods and / or services, for security and safety.
- b. Bond both in making purchases of goods from / or services.
- c. Pay according to the agreed exchange rate.
- d. Follow the legal settlement efforts of consumer protection disputes appropriately.

3. Right of business actor

- a. Receiving payments in accordance with the agreement regarding the condition and exchange rate of goods and / or services traded.
- b. Obtain legal protection and acts of consumers who are not good.
- c. Defend themselves properly in the legal settlement of consumer disputes.
- d. Right to rehabilitation of good name if legally proven that consumer loss is not caused by traded goods and / or services.
- e. Rights regulated in the statutory provisions.

4. Obligations of business actors

- a. Good ties in conducting business activities.
- b. Provide correct, clear and honest information about the condition and guarantee of goods and / or services and provide an explanation of the use, repair and.
- c. Maintenance Treating or serving consumers correctly and honestly and not discriminatory.
- d. Ensure the quality of goods and services produced and traded based on the provisions of the quality standards of goods and / or services that apply.
- e. Give consumers the opportunity to test, and / or try certain goods and / or services and provide guarantees and / or guarantees for goods made and / or traded.
- f. Give compensation, compensation and / or compensation for losses due to the use, use and use of goods and / or services traded.
- g. Give compensation, compensation and / or reimbursement if the goods and / or services received or utilized are not in accordance with the agreement.

Consumer protection

According to Article 1 point 2 of the Indonesian Republic's Consumer Protection Laws, the definition of the Consumer is "Every person who uses goods and / services available in the community, both for the benefit of his own family, other people, and other living things and not for trading". The term consumer comes from the language transfer from the word consumer (English-American or *consument* / *konsument* (Dutch). Literally the meaning of the word consumer is (the opposite of the producer) everyone uses the goods, the purpose of the use of goods or services later determines which group the user is. Similarly, the English-Indonesian Dictionary gives the word consumer as a user or consumer.^{viii}

Az.Nasution means consumers are:

"Every user of goods or services for the needs of themselves, family or household, and not for producing other goods / services or trading them again (end consumers)".^{ix}

While the understanding of Consumer Protection in clause 1 number 1 Indonesian Republic's Consumer Protection Law is "All efforts to guarantee legal certainty to protect consumers". The sentence which states "all efforts that guarantee the existence of legal certainty", is expected as a bastion to eliminate arbitrary actions that harm business actors only for the sake of consumer protection.^x

According to Az. Nasution's law on consumer protection is consumer law which contains principles or rules that are regulating, and also contain properties that protect the interests of consumers.^{xi} Definition of Business Actor according to clause 1 number 3 Indonesian Republic's Consumer Protection Law is "Any individual or business entity, whether in the form of legal entity or non-legal entity established and domiciled or carrying out activities within the legal jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement business activities in various economic fields".

Consumer protection in clause 3 of the 3 Indonesian Republic's Consumer Protection Law aims to:

1. Increase consumer awareness, ability and independence for protecting yourself.
2. Raising the dignity of consumers by avoiding negative access by users of goods and / or services.
3. Increase consumer empowerment in choosing, determining, and demanding their rights as consumers.
4. Creating a consumer protection system that contains elements of legal certainty and information disclosure and access to information.
5. Growing awareness of business people regarding the importance of consumer protection so that an honest and responsible attitude to business grows.
6. Improve the quality of goods and / or services that guarantee the continuity of the production business of goods and / or services, health, comfort, safety and consumer safety.

According to Dedi Harianto the aim of consumer protection is to protect consumers from the negative impact of market forces that tend to harm consumers and to protect consumer rights.^{xii}

The purpose of consumer protection includes the activities of creating and organizing a consumer protection system. The purpose of consumer protection is arranged in stages, ranging from awareness to empowerment. The achievement of the goal of consumer protection does not have to go through stages based on the arrangement, but by looking at the urgency. For example, the goal of increasing the quality of goods, the achievement of not having to wait for the first goal is achieved is to increase consumer awareness. Ideally, the achievement of consumer protection objectives is carried out simultaneously.^{xiii}

Types of Legal Protection reviewed by the Indonesian Republic's Consumer Protection Laws is that consumer protection can be carried out at the time before the transaction (no conflict / pre purchase) and / or after the transaction (conflict/post purchase) occurs. Legal protection for consumers carried out at the time before the transaction (no conflict / pre purchase) can be done by:

1. Legislation, which is legal protection for consumers at the time before the transaction occurs by giving protection to consumers, through these laws and regulations are expected consumers get the law before the transaction occurs, because there are limitations and provisions that regulate transactions between consumers and businesses.
2. Voluntary Self-Regulation, which is legal protection for consumers conducted at the time prior to the transaction, wherein this way consumers are expected to voluntarily make regulations for themselves to be more careful and alert before conducting transactions with businesses.

Whereas for legal protection of consumers conducted after the occurrence of a transaction (conflict / post purchase) can be done through the path of the District Court or outside the Court by the Consumer Dispute Settlement Agency (BPSK) based on the choice of the parties to the dispute.^{xiv}

Consumer Dispute and Consumer Dispute Resolution

1. Consumer disputes

Consumer Disputes by Az. Nasution is interpreted as a situation or event of a consumer reaction to an entrepreneur, thus a consumer dispute arises in the relationship between the consumer and the business actor. So far, the settlement of consumer disputes that occur is done through a peaceful settlement or through an authorized institution or agency. Consumer disputes can be seen from the types of violations committed by consumers or businesses. Although consumers also have the potential to commit violations, they do not become subject matters. The perpetrators are the ones who become the focus of interstitials. There are at least three types of potential violations committed by business actors, namely:

- a. Actions or actions of business actors violate the interests and rights of consumers.
- b. Products marketed by businesses violate the provisions of the law prohibition.
- c. Responsibilities that must be borne by business people.

Based on Article 45 paragraph (2) Indonesian Republic's Consumer Protection Law's that "Settlement of consumer disputes can be carried out through a court or outside the court based on the voluntary choice of the parties to the dispute".

2. Consumer Dispute Settlement

Law Number 8 of 1999 concerning Consumer Protection, provides consumer dispute settlement facilities through:

a. Peaceful dispute resolution

What is meant by a peaceful settlement is if the parties to a dispute with or without power / companion choose peaceful ways to resolve the dispute. The peaceful way is in the form of deliberation and consensus between the parties concerned. With this peaceful settlement of disputes, the form of settlement that is easy, cheap and (relatively) faster is sought. The legal basis for the settlement is also contained in the Indonesian Civil Code (Book III, Chapter 18, Article 1851- Article 1858 concerning peace / dading) and in Article 45 paragraph (2) jo. Article 47 Indonesian Republic's Consumer Protection Laws.

b. Settlement through an authorized institution or agency.

1) Outside the Court (through the Consumer Dispute Settlement Agency)

Settlement outside the court is held to reach agreement on the form and amount of compensation and / or regarding certain actions to ensure that no loss will occur to consumers (Article 47 Indonesian Republic's Consumer Protection Laws). Settlement of off-court disputes as referred to in Article 47 paragraph (2) of the Consumer Protection Law does not eliminate criminal responsibility as stipulated in the law. Consumers who want to resolve consumer disputes by way of outside the court can conduct problem resolution alternatives to the Consumer Dispute Settlement Agency (BPSK). This is stipulated in Article 49 paragraph (1) of the Consumer Protection Act.

2) In court

In principle, every aggrieved consumer can sue a business actor through an institution in charge of resolving disputes between consumers and business actors or through the general court, if a peaceful dispute resolution attempt is chosen and an off-court settlement (through the Consumer Dispute Settlement Agency), then a lawsuit through the court can only be taken if the effort is declared unsuccessful by one of the parties or by the parties to the dispute. Settlement of disputes outside the court does not eliminate criminal responsibility as set out in the Law.

Conclusion

From the results of research conducted on the Pre Project Selling System conducted by PT Menara Santosa Solo, there was a lot of speculation by developers, even ignoring ethics in business, including matters relating to the provision of legal protection to consumers. based on research above the Validity of the Sale and Purchase Agreement in the sale Pre Project Selling housing units poured in the form of Order Number by PT Menara Santosa Solo as the developer prospective buyer is invalid and canceled by law because the agreement violates the objective conditions of the legal terms of the agreement in Article 1320 of the Civil Code which is about a lawful thing. Then, in the case of the developer before making the Sale and Purchase Agreement in the sale of the Meikarta apartment unit unit also does not meet the provisions as stipulated in Article 42 paragraph (2) of the Housing and Settlement Laws then the agreement is null and void because these requirements are the main cause or objective so that the Sale and Purchase Agreement can be made.

One of the obstacles in doing this research is similar research which is still too rare to be used as material to enrich the writing of this research. And in the end, from the results of this study, it can be used as information and add insight into existing laws in other countries if the consumer protection law that applies to pre project selling has not been established in a country where the housing marketing pattern uses the pre project selling system.

Suggestion

The developer must pay attention to the values of business ethics, and it is necessary to establish an institution that regulates in detail about what is permissible and what should not be done by the Development Company and individual development companies. For example; a property project cannot be marketed before the ownership rights and land ownership are not legally clear; the draft agreement must be open and fair; do not make public facility or social facility that he will not make.

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