
Juridical Analysis Of Standard Clauses In The Binding Sale And Purchase Agreement Apartment (Apartment Unit)

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Abstract

Population density and land constraints require the provision of alternative places to live apart from the landed house. Not only for people who have excess money, but also for people from the bottom. Overcrowding often takes up land so that living space becomes limited and crowded. Moreover, the pedatang community is unstoppable in its presence. There are immigrants who live in a time that is not short. They even moved in as citizens. Big cities must be like that. Flats are one of the new alternatives to answer the above needs. As for the problem, How is the standard clause in the apartment sale and Purchase Agreement (PPJB) regulated in the legal system in Indonesia? To discuss the problems mentioned above, the research conducted descriptive analysis by describing and reporting in detail, and systematic and comprehensive about everything related to default in the implementation of the work agreement carried out by the contractor. Based on the results of the study, the standard clause is extensively used in the business world by business actors including in the sale of apartment units (SRS). PPJB widely uses standard contract / standard clauses for practical purposes but can be unbalanced in contracting and legal protection for apartment consumers based on the Menpera decision, Law No. 16 of 1985 as the basic rules governing the ownership of flats and Law No. 8 of 1999 on consumer protection, as well as KUHPerd. as the expected consumer protection of flats is compensation and not the element of removal. As stipulated in law No. 8 of 1999 provides legal protection for consumers of flats.

Keywords: *Default, Termination Of Contracts, Agreements, Achievements*

INTRODUCTION

Home or residence is a basic human need. However, having a place to live, whether in the form of houses, apartments or flats, for consumers is not an easy job. YLKI noted that one of the main problems of Housing Consumers is developers who default, which results in violation of consumer rights. Default means not performing obligations as stated in the agreement or purchase agreement.

Population density and land constraints require the provision of alternative places to live apart from the landed house. Not only for people who have excess money, but also for people from the bottom. Overcrowding often takes up land so that living space becomes limited and crowded. Moreover, the pedatang community is unstoppable in its presence. There are immigrants who live in a time that is not short. They even moved in as citizens. Big cities must be like that. Flats are one of the new alternatives to answer the above needs. With flats, the community can have or inhabit a place to live that is affordable budget, located near the center of the office that is where they work, where the location is solid and the price of land is high. The issuance of UURS and the launch of subsidized flats (Rusunami), was carried out in order to provide housing for the community, especially for low-income people. This can be seen in the provisions of Article 5 Paragraph (1) UURS, namely: "flats are built in accordance with the level of needs and capabilities of the community, especially those with low income".(Arie S. Hutagalung, 2007)

Since subsidized flats or Rusunami were launched in 2008, the demand for this new and cheap type of Housing has soared, so developers have a higher bargaining position than consumers.

After the consumer chooses the location of the apartment he wants to buy, then he must always be careful about who the developer is, the quality of the building and so on, so as not to regret it later. During this time, there are three main things that always trigger problems and are always found in the case of problematic properties or developers. First, the developer takes away the customer's money. Second, the developer does not build or deliberately delay the completion of the property, and the third is the developer does not have a complete permit from the local government but has dared to sell. Practices that occur today, not infrequently developers have sold or marketed their property products even though they have not 100 percent had a permit. Moreover, often developers do not admit there has been a purchase, down payment or down payment (DP) or credit agreement. One of the rights of Housing Consumers is to choose a quality and credible developer before starting to transact. But in the free market, the position of business actors is much stronger than that of individual consumers, because the control of information about the product is entirely on Business actors.

RESEARCH METHODS

The problem approach is needed because with this approach, the author will get information from various aspects of the issue that is being tried to find the answer (Marzuki, 2016). The approach used by the author in writing this study is the statutory approach (statute approach), and conceptual approach (conceptual approach).

The statute approach is carried out by reviewing all laws and regulations related to the legal issue being addressed. For research for practical activities, this law approach will open opportunities for researchers to study whether there is consistency and conformity between one law and another law or between the law and the basic law or between regulation and law. The results of the study is an argument to solve the issues faced. share research for activities.

RESULTS AND DISCUSSION

Binding sale and purchase agreement (PPJB) apartment in the Indonesian Legal System

So far, there are three main cases that have always been a trigger for problems between developers and consumers, namely the problem of developers who carry away consumer money, developers do not build or deliberately delay the completion time of the property and the last is about the legality of the project permit (IMB) or the status of land ownership.

Beyond these problems, consumers are still faced with the risk of other rights violations, such as building material specifications and supporting facilities that are not as promised, but it should be noted, not all developers have a bad track record, because many of them are those who strongly maintain consumer confidence.

In general, the above problems occur in consumers who buy flats by indent (booking). In terms of purchasing flats in this indent there are positive and negative sides obtained by consumers. The positive side is that consumers get cheaper prices if indent and consumer access in communicating with developers and marketing officers are more open, especially when consumers will or are conducting transactions. The downside is that consumers do not get the final product in accordance with the promises of developers in PPJB.

Buying and selling is one of the most common ways to acquire or transfer rights to land or to apartment units, both owned by legal subjects and in the form of legal entities. However, it is not uncommon for the community before the sale and purchase, first a binding agreement is made between the parties who make it or often called The Binding sale and purchase agreement (PPJB). This is done because of one thing or another that causes the sale and

purchase of apartment units cannot be done at that time. PPJB is a notarial endorsement of a transaction that has not stated the transfer of ownership rights in full from the seller to the buyer. Usually PPJB issued at the time of payment of down payment of the agreed price. PPJB usually applies to market Primary Market.

With the enactment of Law No.16 of 1985 concerning flats and its implementing regulations, even though the land and the buildings on it are one of the basic human needs, to be able to obtain or control it either by means of the acquisition of new rights or the transfer of Rights, there is no justification for coercive elements in any form and by any party, and the necessary.

As described in the previous chapter, basically an agreement is made based on a free agreement between two parties who are able to act for the law (fulfillment of subjective requirements) to carry out a feat that does not contradict the rules of applicable law, propriety, decency, public order, and Customs prevailing in the wider community (fulfillment of objective requirements). But sometimes the "position "of both parties in an agreement is not balanced, which in turn gives birth to an agreement that is" not very profitable" for one party.

In the practice of the business world also shows that the" advantage "of the position is often translated by making a standard agreement and/or a standard clause in any document or agreement made by one party that is" more dominant " than the other party. It is said to be "standard" because, neither the agreement nor the clause, can and cannot be negotiated or negotiated by the other party, take it or leave it. The absence of choice for one of the parties to this agreement, tends to harm the (less dominant) party. Moreover, with the current system of proof in Indonesia, it is clearly not easy for the aggrieved parties to prove the absence of agreement at the time of the standard agreement, or on the standard clauses contained in the existing agreement.

In PPJB made developers there are several articles that have violated applicable laws and regulations, including:

1. Example of Article 5 paragraph (5.2) which reads:

In the event that the second party has not paid the advance payment, the submission made is the submission of the Unit condition and if there is a submission of the Unit condition, the second party must meet the stipulated conditions and sign a letter / deed explaining and stating that:

- a. The second party accepts the condition of the Unit well;
- b. In connection with the delivery of the Unit conditions, since the acceptance of the Unit conditions by the second party, the second party is willing to pay the costs of electricity, water, insurance, PBB, maintenance costs and reserve funds;
- c. If the second party does not perform its obligations as in paragraph 5.2.b above, the First party has the right to manage the Unit commercially, the results of which will be used to pay off the obligations of the second party, if the results of the management of the UNIT is not sufficient to pay off the obligations, then the deficiency will remain the responsibility of the second party.

The delivery of the condition of the Unit (PKU) is not a physical and juridical delivery of the apartment unit but rather a transfer of responsibility from the developer to the consumer. Based on the provisions of Article 18 paragraph (1) of Law No. 16 of 1985 concerning flats jo government regulation of the Republic of Indonesia number 4 of 1988 concerning flats, provisions of Chapter IV concerning habitable permit, Article 35 which each article states that: Article 18 paragraph (1) UURS:

"That the units of flats that have been built can only be sold for habitation after obtaining a habitable permit from the relevant local government. In addition, all units of flats must be certified".

Article 35 Of Government Regulation Of The Republic Of Indonesia Number 4 Of 1988 Concerning Flats:

- (1) the operator of the construction of flats shall apply for a habitable permit after completing its construction in accordance with the license granted as meant in Article 30 by submitting detailed drawings and technical provisions.
- (2) The Local Government as referred to in Article 30, Article 31, and Article 34 shall grant a habitable permit after an examination of the flats that have been completed based on the terms and conditions of the permit has been issued.
- (3) construction Organizers shall submit licensing documents along with drawings and detailed technical provisions as meant in Article 30, Article 31, and Article 34 to the residents association that has been established along with:
 - a. procedures for the utilization of the use, maintenance, repair, and the possibilities for changes to the apartment and its environment.
 - b. description and brief notes that are special things that need to be known by the residents, owners, managers, and other interested parties.

The flat system requires special requirements in terms of the safety of its residents, so it is also required that after the completion of the construction of the flat, there must be a habitable permit before the certificate is issued or before it is traded. Habitable permit will be issued if the implementation of the construction of flats in terms of architecture, construction, installation and other building equipment has been strictly in accordance with the provisions and requirements specified in the relevant IMB. Obtaining a habitable permit is one of the conditions for the issuance of a certificate of ownership of the apartment unit in question. The process of applying for a habitable permit can only be carried out after the flat is completed.

In the case of the application of Sales with PPJB, the permit for habitation is clearly not issued because the building has not been completed. In the PPJB clause Article 5 paragraph (5.2) mentioned above, the developer explains about the delivery of the Unit condition (PKU) if the consumer has not paid the down payment even though the fine provisions already exist in other articles in the PPJB. Submitted in PKU are obligations to pay various fees such as service charge and sinking fund. Flats Unit itself is not handed over, but the obligations transferred.

Indeed, if associated with the provisions of Article 1478 of the Civil Code which states:

"The seller is not obliged to deliver the goods concerned, if the buyer has not paid the price while the seller does not allow delay in payment to him".

then all parties in the PPJB must have completed the obligations listed in the clauses that have been agreed to avoid default.

In conditions where the consumer is well-intentioned and capable, there are conditions where he has not paid off the down payment because the KPA approval letter has not been issued or because the developer does not show proper performance. In this situation, through Article 5.2 PPJB, developers can submit Unit conditions that transfer various obligations to these consumers.

The administrative requirements that must be carried out by the First party with related parties in order to complete the construction of the apartment unit based on the provisions of Article 18 paragraph (1) UURS must also be completed on time so that there is no delay in the delivery of the Unit as promised in the PPJB clause. Unfortunately PPJB does not specify when these administrative requirements are scheduled to be completed.

2. Article 5 paragraph (5.3) which reads:

"On the date of submission as referred to in Article 5.1 and Article 5.2 above, the parties shall sign the dossier. If the second party does not sign the BAP within 14 (fourteen) calendar days from the date of submission, then the second party is deemed to have received the Sarusun Unit in good condition".

This provision puts the consumer in the condition of receiving the unit of flats in any circumstances, which is not necessarily in good condition.

3. Article 5 paragraph (5.5) letter a (PPJB) which reads:

"From the date of delivery of all risks on the unit of flats switched to the second party, and the First party has no responsibility to the unit Sarusun, except for the maintenance period of 90 (ninety) calendar days from the date of delivery Sarusun".

4. Article 5 paragraph (5.5) letter e (PPJB) which reads:

"The second party, as soon as possible or at the latest within 7 (seven) working days after the First party has completed the repairs as in paragraph 5.5. (c) above the second party shall sign the minutes of improvement in the form to be prepared by the First party. If the second party within the time specified in this paragraph does not deal with the minutes of the rectification, then the second party shall be deemed to have accepted the rectification in full, and it shall not be entitled to raise any objection to the First party."

The provisions in the PPJB articles mentioned above clearly represent a transfer of responsibility. The transfer of responsibility may be subject to the provisions of Article 19 of the Company Law which states:

- (1) business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.
- (2) compensation as meant in Paragraph (1) may be in the form of refund or replacement of goods and/or services of similar or equivalent value, or health care and/or provision of compensation in accordance with the provisions of applicable laws and regulations.
- (3) the award of compensation shall be executed within a period of 7(seven) days after the date of the transaction.
- (4) the provision of compensation as meant in Paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence of the existence of an element of guilt.
- (5) the provisions referred to in Paragraphs (1) and (2) shall not apply if the business actor can prove that the error is the fault of the consumer

Furthermore, if juxtaposed with Consumer Rights Article 4 letters b, h, and i, then consumers have the right, namely:

Article 4:

Consumer rights are:

- a. the right to comfort, security, and safety in consuming goods and / or services;
- b. the right to choose goods and / or services and obtain such goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
- c. the right to information that is true, clear, and honest regarding the condition and guarantee of goods and / or services;
- d. the right to be heard opinions and complaints on goods and/or services used;
- e. the right to obtain advocacy, protection, and dispute resolution efforts appropriate consumer protection;
- f. the right to receive coaching and consumer education;
- g. the right to be treated or served properly and honestly and non-discriminatory;
- h. the right to compensation, compensation and / or replacement, if the goods and/or services received are not in accordance with the agreement or not as it should be;
- i. rights provided for in the provisions of other laws and regulations.

In the aforementioned PPJB it is clear that the inclusion of the standard clause is prohibited by the UUPK as mentioned in Article 18, namely:

- (1) business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in any documents and/or agreements if:

- a. States the transfer of responsibility of business actors;
 - b. states that businesses have the right to refuse the return of goods purchased by consumers;
 - c. declare that the business actor has the right to refuse the surrender of money paid for goods and/or services purchased by consumers;
 - d. declare the granting of power of attorney from consumers to businesses either directly or indirectly to perform all unilateral actions relating to goods purchased by consumers in installments;
 - e. regulate the subject of proof of the loss of usefulness of goods or utilization of services purchased by consumers;
 - f. give the right to businesses to reduce the benefits of services or reduce the property of consumers who are the object of buying and selling services;
 - g. declare consumer submission to regulations in the form of new, additional, continued and / or further changes made unilaterally by business actors in the period when consumers use the services they buy;
 - h. states that consumers authorize businesses to charge mortgage, lien, or security rights to goods purchased by consumers in installments
- (2) Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand
 - (3) Any standard clause that has been stipulated by the business actor in a document or agreement that meets the provisions referred to in paragraph and Paragraph (2) shall be declared null and void.
 - (4) Business actors shall adjust the standard clause contrary to this law.

Thus, it is clear that the provisions on liability and compensation provided for in the applicable laws and regulations, constitute a Lex specialist of the general provisions contained in the Civil Code. Based on the provisions stipulated in the UUPK, the burden of proof of "guilt" under Article 1865 of the Civil Code is charged to the injured party (in this case the consumer), but by law is transferred to the business actor.

CONCLUSION

From the results of the discussion, the standard clause is extensively used in the business world by business actors, including in the sale of apartment units (SRS). PPJB widely uses standard contract / standard clause for the sake of practicality but can be unbalanced in contracting. Including in this case PPJB developers often form PPJB is take it or leave it contract and consumers accept because there are not many choices and / or the price of the product is cheap because it is subsidized (Rusunami). To protect the interests of consumers facing the standard clause, Law Number 8 of 1999, namely the law on consumer protection, which regulates the inclusion of the standard clause in Article 18.

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