




The Government Legal Warranty for Consumers in The Purchase of Property in Indonesia

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Abstract

Introduction: The sale and purchase of houses between developers and buyers often result default, which detrimental to consumers.

Purposes of the Research: The purpose of this study is to analyze and find problems with house sale and purchase contracts based on the Sale and Purchase Agreement

Methods of the Research: The method used in this research is normative juridical. The research used is library research. The basis used in this research is the juridical basis consisting of Law Number 1 of 2011, Government Regulation Number 12 of 2021.

Results of the Research: When the state issues permits to operate housing to developers, the state has provided a legal guarantee to protect its people. Due to the guarantees that have given by the Government through statutory regulations and consumers following the instructions, they are guaranteed to receive legal protection from the state, State Administrative Officials, in terms of granting permits they have gone through applicable legal procedures, if it is proven otherwise then the government must be responsible for the decision. State Administration. However, if there is a violation of the law by the developer, it will difficult for home buyers to claim losses. Experienced, meaning that at the implementation level there is no guarantee for buyers from the state.

1. INTRODUCTION

Developers before starting their business must have a permit first. Licensing is one of the government decisions made by authorized officials, or as a written decision issued by a state administrative agency or official that is concrete, individual and final, which has legal consequences for a person or civil legal entity. This permit will later become a guarantee for the housing consumer community in buying and selling houses. The government as the holder of power is certainly one of its duties to protect the community. Through the licensing given to housing business actors/developers, it means that here the government is responsible for housing consumers or buyers. The purchase of houses or properties in housing and residential areas could be held through a sale and purchase binding agreement mechanism. Regulation of the Minister of Public Works and Public Housing Number 16 of 2021 concerning the Preliminary Sale and Purchase Agreement System, the government

provides provisions regarding requirements that consumers need to know, namely through Article 5 concerning complete documents consisting of business legality documents based on laws and regulations in the field of risk-based business licensing and registered membership in the Association of Developers. If the housing business actor/developer already has these minimum requirements, the consumer can continue the sale and purchase binding agreement.

Several studies that examine the responsibilities of developers include research entitled "Measuring the Authority and Responsibilities of Land Deed Making Officials in the Bevoegdheid Bestuurs Perspective, by Kadek Cahaya Susila Wibawa which questions the authority of Land Deed Making Officials in the *Bevoegdheid Bestuurs* Perspective who carry out three main functions based on public authority, namely carrying out normative or legitimizing functions as well as instrumental and protective functions. This research focuses on the function of Land Deed Making Officials who carry out normative functions.¹ Another research regarding "Legal Protection for General Home Buyers from Default Acts by Developers in accordance with Law Number 8 of 1999 concerning Consumer Protection" by Rani Safira. The issue raised is the responsibility of developers who default on buyers and is related to legal protection for buyers as well as obstacles and efforts that can be made by the government in implementing the Consumer Protection Law.² The next research was written by Natalia Salim regarding "Responsibility of Developers towards Consumers Due to Default in the Handover of Pluit Sea View Apartment Units Based on a Sale and Purchase Agreement. This research questions the developer's responsibility when handing over apartment units due to default in handing over apartment units."³

The three studies generally focus on the existence of defaults and the responsibilities of developers and land deed officials. Meanwhile, this research focuses on state policy in issuing permits to developers with the consequence that the state provides guarantees to consumers who experience losses due to violations by developers in house sale and purchase contracts because the state has issued permits given to developers so we are of the opinion that with the issuance of permits, the consequences are that the state follows. responsible so that if a lawsuit goes to court then the government will be a co-defendant, not just the developer. The aim of this research is to analyze and find problematic house sale and purchase contracts based on the Sale and Purchase Agreement where the house has not been built but has been marketed and a housing business permit has been issued but in the subsequent process there is a violation of the law by the developer which is detrimental to consumers but it is relatively difficult for consumers to make claims for losses. Experienced.

2. METHOD

This research is legal *research*, which focuses on legal studies on positive law. *The problem* approach used is the *philosophical approach*, the *statutory* approach and the *conceptual* approach. The legal materials used in this study are primary legal materials in

¹ Kadek Cahya Susila Wibawa, "Menakar Kewenangan Dan Tanggung Jawab Pejabat Pembuat Akte Tanah Dalam Perspektif Bestuurs Bevoegdheid," *Credito* 01, no. 01 (July 2019): 43–44.

² Rani Shafira and Jeani Neltje Saly, "Perlindungan Hukum Bagi Pembeli Rumah Umum Dari Perbuatan Wanprestasi Oleh Developer/Pengembang Sesuai Undang-Undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen," *Jurnal Hukum Adigama* 2, no. 1 (2019): 213.

³ Natalia Salim and Endang Pandamdari, "Tanggung Jawab Developer Terhadap Konsumen Akibat Wanprestasi Dalam Penyerahan Unit Apartemen Pluit Sea View Berdasarkan Perjanjian Pengikatan Jual Beli," *Jurnal Hukum Adigama* 2, no. 2 (2019).

the form of laws and regulations relating to research problems and secondary legal materials, namely legal materials that provide explanations of primary legal materials, such as legal books, journals relating to the problem. Analysis of legal materials is carried out by first identifying the collected legal materials, then describing them, systematizing them based on legal scientific theories and legal concepts, principles, or principles of law. The analysis uses descriptive analysis, which is based on legal reasoning (*legal reasoning*), legal interpretation (*legal interpretation*), and legal argumentation (*legal argumentation*) in a coherent manner. Furthermore, conclusions are drawn using the deductive method of thinking, namely concluding the results of research from things that are general to specific things.

3. RESULTS AND DISCUSSION

Business actors according to Article 1 point 3 of Law Number 8 of 1999 are: Every person or individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement to carry out business activities in various economic activities. The meaning of consumer has explained in Article 1 number 2 of Law Number 8 of 1999 that the end consumer is the end-user or benefit of a product while intermediate consumers are consumers who use a product as part of the production process of another product. Based on this, it is clear that the final consumer is the regulatory area of the Consumer Protection Act. This definition is the same as the understanding given by the Dutch consumer law expert, Hondius. who stated, "consumers are referred to as users of the last product which is referred to as *uiteindelijke gebruiker van goederen diensten*"⁴ The issuance of a housing operation permit indicates that housing development activities can be carried out. Licensing is included in the State Administrative Decree. The State Administrative Decree according to *Van der Pot* is the government's willingness to carry out special things that will lead to new legal interactions, revise or delete new conditions, *Ten Berge* stated that the State Administrative Decree is a real and private-public law (individual) that arises from the government which has the authority based on public law, then *de Graaf* provides an understanding that the State Administrative Decree is a real legal norm that provides services for the public interest in everyday life such as building permits, driving licenses and so on.⁵

Mahfud MD and SF Marbun stated that the legislators did not prohibit the action as long as it was carried out by the applicable legal provisions, he distinguished between licensing and dispensation, both of which are similar but the difference is not clear because dispensation is a limiting action that can be granted while licensing is something that limitive for rejection.⁶ Bagir Manan defines permission in a broad sense, namely an agreement from the authorities based on laws and regulations to allow certain actions or actions that are generally prohibited.⁷ Legal protection must be provided by the government to housing business actors and housing consumers. Legal protection, according to Maria Theresia Geme, means legal protection using state actions to do something by enforcing

⁴ Mariam Darus Badruzaman, *Perlindungan Konsumen Dilihat Dari Sudut Perjanjian Baku (Standar)* (Jakarta: Panta Rei, 2005).

⁵ W.Riawan Tjandra, *Hukum Administrasi Negara* (Jakarta: Sinar Grafika, 2018).

⁶ SF Marbun dan Mahfud.MD, *Pokok Pokok Hukum Administrasi Negara*, 3rd ed. (Yogyakarta: Liberty, 2018).

⁷ Andrian Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik* (Jakarta: Sinar Grafika, 2010).

certain rules to guarantee the certainty of the rights of a person or group of people.⁸ So in this case the government provides certain requirements through legislation to give rise to legal certainty so that consumers can believe that the developer is legal/official guaranteed by the government because every decision for the validity of activities that require licensing/legitimacy, the government always provide certain requirements so that if things happen that are not expected then consumers feel guaranteed so they are not harmed.

After the issuance of the Minister of Public Works and Public Housing No. 16/PRT/M/2021, the Preliminary Sale and Purchase Agreement is required to be made in the form of an Authentic Deed or Notary Deed so that by making it in the form of a deed it is hoped that the rights of the parties are more secure and minimize the losses of the parties. Because the Authentic Deed has perfect evidential power. Perfect in terms of proof, the deed must be considered true and trusted by the judge.⁹ The rule issued by the government is to provide guarantees to consumers so that if the developer defaults then the consumer has authentic evidence to be submitted to the court. This one rule is legal protection. Rimbawa, before implementing PPJB, the order signing was to be carried out at the same time as the payment for the finished features, which need to be considered, namely: 1) Certainty of Land Ownership Status or Capability; 2) Building Permit (IMB) Parent IMB is a form of supervision that is attempted by the regional government by setting a stipulation that each building that is formed must have a building permit so that the building layout to be formed is by the regional spatial plan so that the building layout is synergistically determined in such way. and orderly; 3) Availability of public facilities and infrastructure; 4) Minimum 20% housing development¹⁰ The house that is being built can already be marketed/sold to the public with a Sale and Purchase Binding Agreement. Sale and Purchase Binding Agreement is an agreement between the seller and the buyer before the sale and purchase due to the elements that must be met for the sale and purchase, including the certificate does not yet exist because it is still in the process of not being paid off. This Sale and Purchase Binding Agreement is used as a guideline in carrying out transactions until the ownership process is complete.

3.1. The legal relationship of the parties in a house sale and purchase transaction

The government's duty and authority to maintain order and security is a classic task that is still being maintained. To carry out this task, the government is given authority in the field of regulation, from which several juridical instruments emerge to deal with individual and concrete events, namely in the form of stipulations. One form of this provision is a permit. Based on the types of provisions, permits are included as provisions that give rise to new rights that were not previously owned by a person whose name is listed in the decree. Thus, a permit is a juridical instrument in the form of a constitutive stipulation that is used by the government to deal with or determine concrete events. Permits are part of the legal relationship between the administrative government and citizens to maintain a balance of interests between the community and their environment and individual interests as well as efforts to create legal certainty for interested community members. Permits issued

⁸ Athalia Saputra, "Perlindungan Hukum Bagi Pembeli Satuan Rumah Susun Terkait Hak Kepemilikan," *Arenahukum* 13 (2020): 117-34, <http://dx.doi.org/10.21776/ub.arenahukum.20>.

⁹ Jeremia Junior Santoso, "Perlindungan Hukum Pembeli Unit Rumah Susun Berdasarkan Permen Pekerjaan Umum Dan Perumahan Rakyat Nomor 11/PRT/M/2019," *Notaire* 4, no. 2 (2021): 177, <https://doi.org/10.20473/ntr.v4i2.26123>.

¹⁰ I Made Artha Rimbawa, "Perlindungan Hukum Terhadap Konsumen Properti Sistem Pre Project Selling Berdasarkan Prinsip Perlindungan Konsumen Dalam Uu Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *VYAVAHARA DUTA Volume XVI* 2 (2021).

by the government to development actors include Principle Permits, Main Building Permits, Location Permits, *Site Plan Permits*. Land Use Permit or Land Utilization Permit (IPL/IPT) which includes a Land Use Change Improvement Permit (IP3T) from National Land Agency, Building Planning, Housing Development, and Development Permit, Residential Area Development and Development Permit. Law Number 1 of 2011 Article 42 paragraph (2) requires that the preliminary sale and purchase agreement as referred to in paragraph (1) is carried out after fulfilling the certain requirements for ownership of the permit to construct the main building. So before the implementation of housing and settlement areas, business actors or developers must already have the permits required by law. Government Regulation Number 12 of 2021 Article 1 number 32 confirms that business licensing is legality granted to business actors to start and run their businesses and/or activities.

Consumers who buy houses from developers sometimes cause problems. This happens, for example, due to the low quality of the house construction or the incompleteness of the licensing documents included in the legal aspect of the house, such as the absence of a building permit (IMB). Regarding licensing, developers often market houses to consumers before the licensing process is completed. This is where the presence of the government is needed to protect its people. One of the protections provided by the Government to home consumers is the granting of business permits to housing development business actors and the issuance of Government Regulations concerning the implementation of Housing and Settlement Areas. Regulation of the Minister of Public Works and Public Housing No. 16 of 2021 concerning sale and purchase binding agreement for Public Houses and Public Flats Article 4 (1) determines the Criteria for Development Actors as referred to in Article 3 paragraph (2) including a. the completeness of document; b. financial performance; and c. human Resources. Article 5 (1) confirms that the completeness of the documents as referred to in Article 4 paragraph (1) letter a consists of: a. business legality documents based on laws and regulations in the field of risk-based business licensing; and b. registered in the membership of the Association of Development Actors.

The government as the ruler gives authority to housing development actors to carry out housing construction so that the people get guaranteed protection and legal certainty in buying and selling houses. Permits granted by the government/state to housing development actors can provide legal certainty as a government instrument in protecting its people. The legal relationship between developers or actors in housing development is a contractual relationship. In this contractual relationship, the buyer is bound by two kinds of agreements, namely a binding sale and purchase agreement and a sale and purchase agreement. The birth of the House Sale and Purchase Binding Agreement has not transferred the ownership rights because the transfer of ownership rights to the object being traded must be by *levering* or delivery. Levering has not been carried out because the conditions have not been met. The sale and purchase agreement is born when the conditions stated in the house sale and purchase binding agreement have been fulfilled by the parties for making a sale and purchase deed and *levering is carried out*. The Sale and Purchase Binding Agreement is an agreement made by housing business actors/developers and prospective buyers based on an agreement before the sale and purchase are made. This agreement is necessary to secure the interests of the seller and potential buyer and to minimize disputes that may arise in the future. According to the PUPR Ministerial Regulation Number 16 of 2021, the Preliminary Sale and Purchase Agreement or Sale and Purchase Binding Agreement, hereinafter referred to as sale and purchase binding

agreement, are: An agreement between the development actors and any person to carry out the sale and purchase of houses or flats can be carried out by the development actors before the construction of flats or in the construction process for single houses and row houses made before a notary.

Before the signing of the sale and purchase binding agreement, development actors must have carried out marketing activities, namely, activities planned by development actors to introduce, offer, determine prices and disseminate information regarding houses or housing and flats or flats units carried out by development actors before or in the process before signing sale and purchase binding agreement. The marketing must contain marketing information that is correct, clear, and guarantees certainty of information regarding the planning and existing physical conditions. Development actors who carry out Marketing must have at least: a. certainty of space allocation; b. certainty of land rights; c. certainty of the ownership status of the House; d. housing or condominium development permit; and e. guarantee for the construction of Housing or Flats from a guarantor institution. The relationship between the developer and the buyer creates an agreement between the developer and the buyer which is written in the form of a preliminary agreement. This gives rise to an agreement called a preliminary sale and purchase agreement. The birth of a preliminary sale and purchase agreement is based on the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code that "All agreements in agreements that have been made legally apply as binding law on the parties. The Sale and Purchase Agreement is a consensus between the parties to carry out their respective obligations. Then carry out the sale and purchase in front of a Notary, the Official Land Deed Maker. Most of the clauses in the preliminary sale and purchase agreement are drawn up by the developer and do not involve a Notary because they are not authentic, aka they are done under the hand, which is known as a standard agreement.¹¹ A notary is a position that has the authority to draft agreements authentically in accordance with the legal basis of the position of notary who makes land deeds. Based on this provision, it is hoped that the notary will not make mistakes in issuing the deed which will cause the deed to be invalidated in an agreement.¹² Preliminary sales and purchase agreements are drawn up in standard form, causing consumers to be in a difficult position known as "take it or leave it". The existence of this choice factor does not violate the principle of freedom of contract as regulated in Article 1338 of the Civil Code, which gives buyers the opportunity to make difficult choices.¹³

3.2. Legal Protection for Buyers in buying and selling houses

The state guarantees the rights of citizens to live in physical and spiritual prosperity, to live, and to have a good and healthy living environment. This is stated in Article 28H of the 1945 Constitution of the Republic of Indonesia and Law Number 1 of 2011 concerning Housing and Settlement Areas. In a juridical context, the provision of housing by the state and its ownership by citizens is not sufficient because there is still a need for legal certainty over the ownership of the house. Therefore, to guarantee the certainty of home-ownership, housing development must be carried out on the land it owns and confirmed with land

¹¹ Christian Luther Manopo, "Tanggung Jawab Developer Bagi Konsumen Atas Perjanjian Jual Beli Rumah Dengan Mekanisme Perjanjian Pengikatan Jual Beli," *Fakultas Hukum Universitas 17 Agustus 1945 2*, no. 1 (2019): 9-25.

¹² Yogi Kristanto, I Nyoman Putu Budiarta, and Desak Gde Dwi Arini, "Tanggung Jawab Dan Wewenang Notaris/PPAT Terhadap Kekeliruan Dan Pembatalan Akta Jual Beli Tanah," *Jurnal Interpretasi Hukum 1*, no. 2 (2020): 197-202.

¹³ Michael Imgran Hetarie, "Penyalahgunaan Keadaan Di Perjanjian Pengikatan Jual Beli Oleh Developer," *Jurnal Ilmiah Universitas Batanghari Jambi 2*, no. 1 (2022).

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rights based on the applicable laws and regulations. For this reason, land acquisition for housing needs to be handled nationally with intervention from the government in its management and control accompanied by the issuance of laws and regulations governing the procurement of housing and settlements, so that housing and settlements are suitable for residents and their families to be able to improve their quality of life.

By issuing permits/legalization by the government for goods/services to be traded, it will provide legal certainty to the community that the goods/services to be consumed are fit for consumption. In the case of legalization of the residential housing market to the public, the government not only guarantees legal certainty to housing entrepreneurs if housing will be built around its location but also provides guarantees to consumers who will inhabit the housing, that they are given a guarantee for the purchased house. is worthy of being lived in as well as his ownership rights to the house he is going to buy. The number of cases of buying and selling housing is very detrimental to consumers because it turns out that many developers who do not have legalization from the government have already sold their housing units to consumers, and consumers buy them because the price is cheap. In the sale and purchase, it has actually been tied through sale and purchase binding agreement but this sale and purchase binding agreement alone is not strong in an economic sense because, even though there is sale and purchase binding agreement as the basis for reports and initial evidence to the authorities, then by the authorities it is forwarded to the court and by the court, the developer of the fraud has been punished prison is relatively heavy but consumers are still disadvantaged economically. The existence of legalization by statutory regulations is preventive legal protection, meaning that the community in terms of buying housing units in housing must be careful and read the legal legalization documents owned by the developer. the consumer cancels the purchase / postpones the purchase until all the required documents have been owned by the developer concerned.

Permits to construct buildings are important as supervision and control for the government in terms of housing development. For the community, the importance of this building permit is to obtain legal certainty regarding the building rights carried out, so that there are no disturbances or things that harm other parties and it will be possible to obtain security and peace in the implementation of business or work. In addition, the building permit for the owner can function, among others, as follows. If it is said that the permit can function as a controlling instrument and an instrument for realizing a just and prosperous society as mandated in the fourth paragraph of the Preamble to the 1945 Constitution, the arrangement and regulation of this permit should be carried out as well as possible. At a minimum, the licensing process will finance itself and not be a burden on the regional budget, which is already limited. However, putting forward the function of budgeting solely as a function of licensing is a misinterpretation. In this function, licensing will act as a form of policy engineering that plays a role in every development cycle, from planning to monitoring and evaluation. In the planning process, licensing will be one of the policy variables that can force business actors to work by the targets to be achieved in national/regional development.¹⁴ So in this case the permit/legalization has a guarantee of legal certainty for the community so that the community in terms of carrying out legal activities does not need to worry anymore because the government as a state administrator by the paragraphs of the Preamble to the 1945 Constitution is to organize to realize welfare

¹⁴ Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik*.

for the people, not only on the economic aspect but also convenience and security in conducting transactions with other legal subjects.

According to Erwin Kallo quoted from I Made Artha stated that in property buyers there are main requirements that serve as guidelines for prospective buyers, namely *the Pre Project Selling system*, namely: a) Protect the legality of the project, by looking at the certificate or deed of sale and purchase of land, legal documents of business actors on land, including principle permits and building construction permits; b) It is ensured that the selling price Pre Project Selling projects are relatively lower than the price of a house that has been built; c) Reviewing the project location, examining all facilities and infrastructure, and supporting infrastructure supporting facilities including - required facilities; d) Ensuring eligibility in receiving credit, where a property consumer should conduct an examination or analyze creditworthiness at the Bank, regarding the ability to pay and financial condition so that purchases with credit become safe; e) Make agreements with business actors regarding the period development and processing stages of payment for purchases with gradual payments; f) Study and check all the contents of each sentence of the agreement, for the sake of certainty and guarantee of legal protection for both parties so that all parties are not harmed.¹⁵

In the event that the buyer agrees to the Preliminary Agreement System for the Sale and Purchase from the housing business actor, the government has also provided a legal guarantee through Government Regulation Number 12 of 2021 Article 22 paragraph (5) the Preliminary Agreement System for the Sale and Purchase is carried out after fulfilling the certainty requirements for: land ownership status; the thing that was promised; Building Approval; Availability of Infrastructure, Facilities and Public Utilities; and awakening of at least 20% (twenty percent). Regulation of the Minister of Public Works and Public Housing Number. 16 of 2021 concerning the Preliminary Sale and Purchase Agreement System, the government provides provisions regarding the requirements that consumers need to know, namely through Article 4 regarding the completeness of documents consisting of business legality documents based on laws and regulations in the field of implementing risk-based business licensing and being registered as a member of the Association of Actors Development.

Legalization/licensing activities are one of the government's actions that are concrete, individual, and final (*chikking*). This action is given to the community and will take certain actions determined by the legislation. To issue a legalization /licensing decision (State Administrative Decree), the government must base it on the laws and regulations and at the same time enforce the law against the party granted the legalization/license. Law enforcement in legalization/licensing carried out by the Government consists of the following sanctions: a) Coercion on the authority of the Government (*bestuursdwang*); b) Revocation of permits for related activities; c) It can also be in the form of administrative fines (threats of certain penalties, such as demolition of buildings, stopping an activity for a certain time); d) It can be in the form of forced money according to the violation of the license that has been given.¹⁶ In terms of enforcement of administrative law, the government supervises the legalization/permits that have been granted to certain parties, such supervision and action are always based on statutory regulations and general principles of

¹⁵ I Made Artha Rimbawa, "Perlindungan Hukum Terhadap Konsumen Properti Sistem Pre Project Selling Berdasarkan Prinsip Perlindungan Konsumen Dalam Uu Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen."

¹⁶ Tjandra, *Hukum Administrasi Negara*.

good governance. This administrative sanction is an important public legal instrument in legal protection for the community, especially consumers, criminal and civil sanctions are often less effective if they are not accompanied by supervision and administrative sanctions as mentioned above, administrative sanctions in consumer problems are not aimed at consumers but at business actors that have been given to producers or distributors of the results of their products in the form of goods or services, if there is a violation of the license, the government can revoke the license that has been given to business actors.¹⁷ In Law Number 8 of 1999 concerning consumer protection Article 29 it is determined that: (1) The government is responsible for fostering the implementation of protection for consumers who guarantee the rights of consumers and business actors as well as the implementation of the obligations of consumers and business actors; (2) Guidance by the government on the implementation of consumer protection as referred to in paragraph (1) shall be implemented by the Minister and/or the minister-related technical.

This law does not stand alone but is related to other laws depending on its activities. laws of the republic Indonesia Number 28 of 2002 About Buildings, Article 8 confirms: (1) Every building must meet administrative requirements which include: (a). status of land rights, and/or utilization permit from the holder land rights; (b). building ownership status; and c. permit to construct a building by the provisions of the regulations current regulation; (2) Every person or legal entity can own a building or part building; (3) Local governments are required to register buildings for the need for orderly development and utilization; (4) Provisions regarding permits to construct buildings, ownership, and building data collection as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be further regulated with Government Regulations. Based on the two laws above regarding licensing/legalization in developer activities in buying and selling housing units and consumers, it cannot be separated from the government as mandated by the legislature. So all activities regarding development efforts and the requirements for legalization documents have been fulfilled and all legal documents regarding housing activities have been owned by business actors and must be given to consumers to be known by consumers. When the legal document requirements have been fulfilled by the laws and regulations, the consequence that arises is that the government is also responsible when a dispute occurs, for example, development actors do not fulfill their achievements to home consumers/buyers. The government uses permits as a juridical means to control the behavior of citizens. Regulation of the Minister of Public Works and Public Housing Number. 16 of 2021 concerning the Preliminary Sale and Purchase Agreement System, the government provides provisions regarding the requirements that consumers need to know, namely through Article 4 regarding the completeness of documents consisting of business legality documents based on laws and regulations in the field of implementing risk-based business licensing and being registered as a member of the Association of Actors Development.

If the minimum requirements are already owned by the housing business/ developer, the consumer can continue the PPJB, but if it is still promised that there will be, it is better to postpone the purchase first, because if it turns out that the letter does not come out, the Government will not be able to provide guarantees for the housing developer. that will harm consumers. Even though the government provides repression, both civil and criminal, for the developer, even though he has been convicted, the consumer still loses because the

¹⁷ Cellina Tri Sisi Kristiyanti, *Hukum Perlindungan Konsumen*, ed. Tarmizi (Jakarta: Sinar Grafika, 2019).

house to be purchased will not materialize and the consumer will be harmed, unless there is a new developer who will cover the loss. In addition, Law Number 11 of 2020 concerning Job Creation also protects consumers through strengthening sale and purchase binding agreement arrangements which were previously regulated in a Ministerial Regulation, which are mandated to be regulated in this Government Regulation. There are 2 (two) main substances, namely Marketing and sale and purchase binding agreement, each of which has requirements. The existence of these conditions aims to protect consumers and put a balance between development actors and potential buyers. Article 5 paragraph (2) of the Minister of Public Works and Public Housing Number 16 of 2021 also confirms that the membership of the Association of Development Actors as referred to in paragraph (1) letter b is at least proven by: a. registered in the registration system for Public Housing Builders; and b. have a certificate of membership in the association of housing development actors recognized by the government.

Government Regulation Number 12 of 2021 Article 22L, confirms: (1) Development actors do not need to withdraw funds of more than 80% (eighty percent) to the buyer before fulfilling the sale and purchase binding agreement requirements; (2) In the event of the cancellation of the purchase of the house after the signing of the sale and purchase binding agreement due to the negligence of the developer, the payment that has been received must be returned to the buyer; (3) If the buyer has made a payment of a maximum of 10% (ten percent) of the transaction price, there is a cancellation of the purchase of the house after the signing of the sale and purchase binding agreement due to the buyer's negligence, the entire payment becomes the rights of the developer; (4) If the buyer has paid more than 10% (ten percent) of the transaction price, there is a cancellation of the purchase of the house after the signing of the sale and purchase binding agreement due to the buyer's negligence, the developer has the right to deduct 10% (ten percent) of the transaction price. Furthermore, Article 22M affirms: (1) Public houses or public flats that receive housing development subsidies from the Central Government can undergo sale and purchase binding agreement processes by development actors who meet the requirements. (2) The requirements for development actors as referred to in paragraph (1) are by the criteria determined by the Minister.

4. CONCLUSION

When the government/state issues permits to operate housing and residential areas to developers, the state has provided a legal guarantee as a legal instrument to protect its people. If the developer commits a violation of the law, the government is also responsible for the violation of the law which causes losses to consumers/buyers. Based on the guarantees that have been given by the government through these laws and regulations and consumers follow these instructions, they are guaranteed to receive legal protection from the government because the government, through its State Administrative Officials in terms of granting permits, it has gone through the applicable legal procedures, if it is proven otherwise then the government is obliged to be responsible for the State Administrative Decrees it has issued, whether in the form of permits or providing other legalities so that consumers will sue in court, not just sue. Developer but also includes the government as a defendant because the government is obliged to be responsible for the State Administrative Decrees it has issued,

REFERENCES

Journal Article

- Christian Luther Manopo. "Tanggung Jawab Developer Bagi Konsumen Atas Perjanjian Jual Beli Rumah Dengan Mekanisme Perjanjian Pengikatan Jaul Beli." *Fakultas Hukum Universitas 17 Agustus 1945 2*, no. 1 (2019): 9–25.
- I Made Artha Rimbawa. "Perlindungan Hukum Terhadap Konsumen Properti Sistem Pre Project Selling Berdasarkan Prinsip Perlindungan Konsumen Dalam Uu Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen." *Vyavahara Duta Volume XVI 2* (2021).
- Kadek Cahya Susila Wibawa. "Menakar Kewenangan Dan Tanggung Jawab Pejabat Pembuat Akte Tanah Dalam Perspektif Bestuurs Bevoegheid." *Credito 01*, no. 01 (July 2019): 43–44.
- Michael Imgran Hetarie. "Penyalahgunaan Keadaan Di Perjanjian Pengikatan Jual Beli Oleh Developerr." *Jurnal Ilmiah Universitas Batanghari Jambi 2*, no. 1 (2022).
- Natalia Salim, and Endang Pandamdari. "Tanggung Jawab Developer Terhadap Konsumen Akibat Wanprestasi Dalam Penyerahan Unit Apartemen Pluit Sea View Berdasarkan Perjanjian Pengikatan Jual Beli." *Jurnal Hukum Adigama 2*, no. 2 (2019).
- Rani Shafira, and Jeani Neltje Saly. "Perlindungan Hukum Bagi Pembeli Rumah Umum Dari Perbuatan Wanprestasi Oleh Developer/Pengembang Sesuai Undang-Undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen." *Jurnal Hukum Adigama 2*, no. 1 (2019): 213.
- Santoso, Jeremia Junior. "Perlindungan Hukum Pembeli Unit Rumah Susun Berdasarkan Permen Pekerjaan Umum Dan Perumahan Rakyat Nomor 11/PRT/M/2019." *Notaire 4*, no. 2 (2021): 177. <https://doi.org/10.20473/ntr.v4i2.26123>.
- Saputra, Athalia. "Perlindungan Hukum Bagi Pembeli Satuan Rumah Susun Terkait Hak Kepemilikan." *Arenahukum 13* (2020): 117–34. <http://dx.doi.org/10.21776/ub.arenahukum.20>.
- Yogi Kristanto, I Nyoman Putu Budiarta, and Desak Gde Dwi Arini. "Tanggung Jawab Dan Wewenang Notaris/PPAT Terhadap Kekeliruan Dan Pembatalan Akta Jual Beli Tanah." *Jurnal Interpretasi Hukum 1*, no. 2 (2020): 197–202.

Book

- Adrian Sutedi. *Licensing Law in the Public Service Sector*. II. Jakarta: Sinar Graphic, 2011.
- Badrulzaman, Mariam Darus. *Perlindungan Konsumen Dilihat Dari Sudut Perjanjian Baku (Standar)*. Jakarta: Panta Rei, 2005.
- Cellina Tri Sisi Kristiyanti. *Hukum Perlindungan Konsumen*. Edited by Tarmizi. Jakarta: Sinar Grafika, 2019.
- Mahfud.MD, SF Marbun dan. *Pokok Pokok Hukum Administrasi Negara*. 3rd ed. Yogjakarta: Liberty, 2018.
- Sutedi, Andrian. *Hukum Perizinan Dalam Sektor Pelayanan Publik*. Jakarta: Sinar Grafika, 2010.
- Tjandra, W.Riawan. *Hukum Administrasi Negara*. Jakarta: Sinar Grafika, 2018.
- — —. *State Administrative Law*. Edited by Dessy Marliani Listianingsih. Print 1. Ramawangun East Jakarta: Sinar Graphic, 2018.