

# 1228

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## Legal Remedies for Pre-Project Selling Based Buyers Whose Apartment Specification Have Changed Without Prior Approval



### Abstract:

The study entitled Dispute Resolution for Apartment Buyers Who Have Changed Apartment Location Without Prior Approval aims to know and analyze how the dispute settlement for the apartment buyers experiencing changes in the apartment's location. This is normative legal research that will explore the legislation's contents. Based on the study results, one of the alternatives that can be used as a residence in an apartment. Sale and purchase of apartments by way of ordering, which then made a Sale and Purchase Agreement (PPJB) that ensures that the apartment will not be sold to others by business actors and delivered according to the time specified. In addition to the provisions outlined in the Sale and Purchase Agreement (PPJB) is also stipulated in Law Number 8 the Year 1999 concerning Consumer Protection in case of misuse in the sale and purchase of an apartment. And also regulated in Law Number 20 the Year 2011 on Flats.

**Keywords:** buy-sell, apartment, consumer protection

### INTRODUCTION

Housing is included as one of the necessities in married life, and one of the goals of development, namely to create general welfare and increase the standard of living for the people. To evenly fulfill the basic needs of housing, it is necessary to increase efforts to provide adequate housing, at a price that can be reached by the purchasing power of the people, especially those who have low income.

At this time, apartments are an alternative as a place to live and can be obtained by transferring rights, including buying and selling,

exchanging leasing, and grants. The sale and purchase of apartments are carried out by ordering or indenting in advance which is then outlined in the form of a preliminary agreement or a <sup>1</sup> sale and purchase agreement which <sup>24</sup> is better known as the Sale and Purchase Agreement (PPJB) as a guideline to secure the interests of the parties. In other words, this agreement is used to obtain down payments from consumers to facilitate apartment construction.

This step is a profitable step for business actors in carrying out housing development because the apartment is not physically available. For consumers, the existence of a <sup>1</sup> Sale and Purchase Agreement provides a guarantee that the apartment will not be sold to other parties by business actors and will be delivered according to the specified time.

In the law related to apartments, the principle of separation is adhered to, namely:

1. The principle of vertical separation is the principle of dividing separately, with the aim that each unit of the apartment unit can be owned or occupied separately, separate from other apartment units;
- <sup>25</sup> The principle of horizontal separation is the principle that divides, separates, and distinguishes between the status of apartment units which are the private property rights of each "mede-eigenaars" with the land on which their apartment building stands which is a property with the "made-eigenaars".

In its application, it is proven that it has been able to arrange a combination of objects of individual property rights and objects of the common property of the "made-eigenaars" in one functional unit.

Development actors may carry out marketing before the construction of an apartment is carried out, but apartments that have been built can only be sold for occupation after obtaining a feasibility permit for habitation from the local government concerned. If marketing<sup>2</sup> is carried out before the construction of an apartment is carried out, the construction actor must at least have certainty of space allocation, the certainty of land rights, certainty of tenure status of apartments, permits, apartment construction, and guarantees of apartment construction from the guarantee institution.

Apartments that have not been seen physically in practice can be sold. Usually, the marketing of these apartment units before the piles are built, developers offer them through exhibitions or booths in malls. This is commonplace for developers, wanting to make sure the unit is sold before the apartment is built. But of course, the developer who offers the unit that has not yet begun construction must already have the complete construction documents.

Developers usually have an example of a unit to be built so that potential buyers can see or have an idea of the unit they are going to buy. Investors will decide to buy or not to buy the unit. Investors are willing to buy a unit that has not been built because investors will get a large discount or promo price from the developer. This is one of the main factors investors want to invest in unfinished units. The discount given is very large, much cheaper than buying it in a finished state. Getting a large enough profit with a little capital, simply by paying a down payment of the apartment unit has become a right. When the unit begins to be built, the unit can go on sale.

However, there is a problem in society when the objects in the sale and purchase of apartments that have been submitted turn out to be

different, either the specifications or the location, which are not following what consumers expect based on the agreement promoted in the brochure. The agreement given by the business actor should have provided certainty and availability of facilities. Therefore, it is necessary to have a description of the legal protection of the buyer for an apartment as outlined in the sale and purchase agreement.

### PROBLEM FORMULATION

Legal Remedies for Pre-Project Selling Based Buyers Whose Apartment Specification Have Changed Without Prior Approval

### RESEARCH METHOD

<sup>37</sup> This research is normative legal research with a statutory approach.

### DISCUSSION

In <sup>22</sup>the Big Indonesian Dictionary, the meaning of flats and apartments is only distinguished by the facilities offered. In the apartment, the facilities provided seem luxurious for the upper-middle class, but it is different from the apartment that offers simple facilities that impress the lower class. However, the two terms in their legal language are referred to as flat. As for the flats which are usually not many floors, often only 2 (two) floors are used for middle-class residents. As for the flats with many floors intended for residents of the upper strata of society with luxurious and modern facilities, which are often referred to as apartments.<sup>1</sup> The double-decker

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<sup>22</sup> Adrian Sutedi, 2010, *Hukum Rumah Susun dan Apartemen*, Sinar Grafika, Jakarta, p. 156

dwellings seem to have different terms for upper, middle, and lower-class people. This symptom occurs because the lifestyle gap between the layers of society is quite high. The second reason is that the government introduces different terms. Apartments for the middle class of society while for the lower class people are introduced to the term flats, which are the rules regarding apartments are also regulated under the supervision of the applicable law.<sup>2</sup>

There is no legal basis regulating apartments because it has been summarized using only Law Number 20 of 2011 concerning Flats (hereinafter referred to as the SARUSUN Law). Article 1 point 1 of the SARUSUN Law, affirms that a flat is a multi-story building <sup>28</sup> built in an environment that is divided into functionally structured parts, both horizontally and vertically, and constituting separate units, especially for places. a dwelling equipped with a common share, common object, and common land.

According to Ridwan Halim, the construction of a flat on a plot of land can be used optimally to become a multi-story residence that accommodates so many people. So that through the flat can accommodate people in a large capacity, then optimizing land use vertically to several levels will be more effective than optimizing horizontal land use.<sup>3</sup> Apart from that, flats in big cities are an unavoidable future trend, which in society needs an adjustment to the existing cultures of Indonesian society.<sup>4</sup> there are several elements in the apartment as follows:

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<sup>2</sup> Halim, 12.

<sup>3</sup> Ridwan Halim, 1990, *Hak Milik, Kondominium dan Rumah Susun*, Puncak Karma, Jakarta, 12-299

<sup>4</sup> Siswono Judohusodo, 1991, *Rumah Untuk Seluruh Rakyat*, INKOPPOL Unit Percetakan Bharakerta, Jakarta, p. 27

- a) From a physical perspective, a flat is a building with more than one floor;
- b) In its function, the apartment can be used vertically or horizontally;
- c) The flat has a part that can be used and owned separately by the owner which is called *sarusun*;
- d) Flat has joint rights of all owners of the apartment consisting of common parts, common objects, and common land;
- e) The main purpose of a flat is prioritized for a place to live or live in.

In the United States, a flat is called an apartment, but in the Netherlands, it is called a flat. They generally use the same terms. Flats are inhabited by the upper, middle, and lower classes of society. However, in Indonesia, the term flats are used for the lower classes of society with simple facilities and simple equipment.<sup>5</sup>

The term apartment comes from the United States which refers to a residential unit that occupies a certain part of a building. By definition, an apartment is a type of residence that only takes up a small part of a building. One apartment building can have tens or hundreds of apartment units. In Commonwealth countries, apartments are better known as flats. The term apartment is used to denote vertical housing for rent. However, in its development, now many apartments have ownership status.<sup>6</sup>

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<sup>5</sup> Adrian Sutedi, *op.cit.*, p. 156

<sup>6</sup> Ridwan Halim, 1990, *Hak Milik, Kondominium dan Rumah Susun*, Puncak Karma, Jakarta, p. 244

Various kinds of mention if in our national language it means to be part of the residence or residence in the form of a room, room or booth.<sup>7</sup> The word flat or flatgehouw in Dutch which we sometimes call flats or houses or multi-story buildings, is a multi-story house with a basic roof or an attic, namely the part of the house or building that people usually live in as their residence or residence.<sup>8</sup>

The agreement is the most important source that gives birth to the engagement.<sup>9</sup> In the form of the agreement, it is in the form of a series of words containing spoken or written promises or abilities.<sup>10</sup> For an Agreement to become valid and binding on the parties, the agreement must meet the conditions as stipulated by Burgerlijk Wetboek (hereinafter abbreviated as BW) Article 1320 BW, namely:<sup>11</sup>

1. Agree with those who bind themselves. By agreeing or also called licensing, it means that the two subjects who agree must agree on the main points of the agreement being made. What one party wants, the other also wants.
2. Competent to agree, the person agreeing must be legally competent. In principle, every person who is mature or akilbaliq and healthy in mind is competent according to the law of Article 1330 BW to determine who is not capable of making an engagement:
  - a. Immature people;
  - b. Those who are put under interdiction.

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<sup>7</sup> Adrian Sutedi, *op.cit.*, p. 275

<sup>8</sup> *Ibid*, p. 276

<sup>9</sup> R. Subekti, 2005, *Hukum Perjanjian*, Intermasa, Jakarta, p. 1

<sup>10</sup> Suharnoko, 2004, *Hukum Perjanjian*, Prenada Media, Jakarta, p. 117

<sup>11</sup> *Ibid*, p. 17-21



3. Regarding a certain matter, the Agreement must determine the type of object being agreed upon. If not, then the agreement is null and void.
4. A cause that is allowed. For this reason, it is meant that there is nothing other than the contents of the agreement

A sale and purchase agreement is an agreement whereby one party binds himself to deliver an item, and the other party to pay the price promised.<sup>12</sup> According to Wirjono Prodjodikoro, buying and selling is an agreement in which a party binds itself to be obliged to deliver an item, and the other party is obliged to pay the price agreed upon by both of them.<sup>13</sup> Furthermore, Suryodiningrat said that buying and selling is a party where one seller (verkopen) binds himself to another party the buyer (delivery) to transfer an object in eigendom by obtaining payment from the latter, a certain amount in the form of money.<sup>14</sup>

The sale and purchase agreement is regulated in Articles 1457-1540 BW. The main elements in the sale and purchase agreement are goods and prices, where between the seller and the buyer there must be an agreement about the price and the object of the sale and purchase. A legal sale and purchase agreement are born when both parties have agreed on the price and goods. The consensual nature of the sale and purchase agreement is emphasized in Article 1458 BW which confirms that the sale and purchase are deemed to have occurred between the two parties immediately after the

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<sup>12</sup> Abdulkadir Muhamad, 2014, *Hukum Perdata Indonesia*, Citra Aditiya Bakti, Bandung, p. 317

<sup>13</sup> Wirjono Prodjodikoro, 1991, *Hukum Perdata tentang Persetujuan-persetujuan Tertentu*, Sumur, Bandung, p. 17

<sup>14</sup> R.M Suryodiningrat, 1996, *Perikatan-perikatan Bersumber Perjanjian*, Tarsito, Bandung, p. 14

people have reached an agreement on the item and the price, even though the item has not been submitted, nor has the price <sup>1</sup> been paid.

The birth of the sale and purchase agreement has an important meaning, namely the seller and the buyer are bound to each other because of an agreement to exchange obligations between the parties, which later if the obligation is fulfilled, it will give birth to the rights desired by one of the parties which has indeed been used as a source of action from the beginning. legal relationship.<sup>15</sup> The <sup>1</sup> sale and purchase agreement is also the result of a meeting of an offer and acceptance which results in the parties, namely the seller and the buyer. One another is bound to each other so that it is not allowed to deny what has been previously agreed.<sup>16</sup>

Some of the main things that must be considered so as not to cause losses when there are a sale and purchase of an apartment, things that need be considered include, namely:<sup>17</sup>

1. 1. The buyer must identify the developer or company that builds the apartment. Is the developer or company bona fide or a company that has a black history.
2. 2. Buyers must know the land ownership status. Don't let an apartment be built on someone else's land.
3. 3. In the construction of an apartment the buyer must pay attention to whether the apartment construction has fulfilled all permits such as a building permit (IMB), location permit, and master certificate. And one of the most important requirements,

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<sup>15</sup> Moch. Isnaeni, 2015, *Perjanjian Jual Beli*, Revka Petra Media, Surabaya, p. 71

<sup>16</sup> *Ibid.*, p. 75

<sup>17</sup> Dani Pratama Huzaini, 2016, *Tips Bagi Konsumen Jika Ingin Beli Apartemen*, <http://www.hukumonline.com/berita/baca/lt5733ef7a3cbde/tips-bagi-konsumen-jika-ingin-beli-apartemen>, (Accessed 18 Mei 2020).

namely in conducting a sale and purchase agreement is a Building Construction Permit (IMB).

4. 4. Collateral for apartment or apartment loans must also be ensured. What is worrying is if it turns out that the flats or apartments to be purchased are still collateral for the debts of the developer, if so, the items that have been purchased will be confiscated by the bank if the developer is unable to pay the debt.
5. 5. It is necessary to double-check all documents, and it can be ascertained that there is already an apartment construction of at least 20% (twenty percent) or not. And must look directly at the location of the extent of construction and when the construction is completed.

Apart from the things mentioned above, the most important thing that can be done to mitigate the risk of a legal relationship in the form of buying and selling apartments is to complete the agreement instrument. However, the sale and purchase of an apartment is a form of agreement, therefore making important clauses and protecting the seller and buyer in the apartment <sup>10</sup> sale and purchase agreement is very important, to minimize and overcome the risks that can occur in the process of completing the sale agreement. buy the apartment.

The enactment of the SARUSUN Law is of course based on the legal objective of providing legal certainty for the community to obtain a decent house to live in and the price of the house can be reached by the community, especially those with low income This shows the government's efforts to provide a sense of justice for all citizens. Everything related to the legal aspects of the sale and purchase of an Apartment or Apartment is always

related to several things that preceded the sale and purchase transaction of the Flats or Apartments, including concerning the permits of the parties involved according to the SARUSUN Regulation.

According to Adrian Sutedi, the perpetrators in the Flats are simply divided into four agents, namely as follows:<sup>18</sup>

- a. Developer (developer), namely a person or company that expects profits from the development of Flats;
- b. User (user), a person or company that benefits from utilizing or owning a Flat;
- c. Investor, a person or company that expects to benefit from the invested capital to invest in Flats;
- d. Speculator, namely a person or company that benefits from speculation on the placement of capital <sup>26</sup> in the investment of Flats.

Article 39 paragraph (1) of the SARUSUN Law states that development actors are required to apply for a certificate of eligibility to function to the Regent / Mayor after completing all or part of the construction of an apartment as long as it does not conflict with the building construction permit (IMB) so that the authority provides all and all permits regarding the matter in question is the authority of the City or Regency Government.

In terms of the arrangement for the sale of Flats or Apartments, <sup>21</sup> it is also regulated in Article 42 paragraph (1) of the SARUSUN Law which states that Development Players can carry out marketing before the apartment is carried out. The purchase of Apartment units or Apartments that have recently become prevalent in several areas

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<sup>18</sup> *Ibid* p. 9-10.

is certainly inseparable from the massive promotion carried out by developers through both print and electronic media as well as exhibition media at malls scattered in several areas.

Many people are interested in good design drawings that resemble the original even though the Flats or Apartments have not been built so a transaction occurs. Marketing that has been carried out by the owner to the community before the construction takes place must also have provisions that are fulfilled by the owner, as confirmed in Article 42 paragraph (2) of the SARUSUN Law. In terms of development, the requirements must also be considered as explained in Article 24 of the SARUSUN Law, namely <sup>25</sup> administrative requirements; technical requirements; and ecological requirements.

Referring <sup>to</sup> Article 43 paragraph (1) of the SARUSUN Law, it is emphasized that the <sup>15</sup> buying and selling process of apartment units before the construction of the apartment is completed can be carried out through a Sale and Purchase Agreement (hereinafter referred to as PPJB) made before a Notary, and Article 43 paragraph (2) The SARUSUN Law states that the PPJB <sup>4</sup> referred to in paragraph (1) is carried out after fulfilling the certain requirements for land ownership status, IMB ownership, <sup>4</sup> availability of infrastructure, facilities and public utilities, and construction of at least 20% (twenty percent), according to the things agreed. . Apart from that, the SARUSUN Law also regulates the prohibitions that need to be considered by the owner of the apartment unit, as stated in Articles 97-104 of the SARUSUN Law.

In general, the Sale and Purchase Agreement <sup>2</sup> (PPJB) is an agreement for the seller to bind himself to sell to the buyer, accompanied by a sign or

advance based <sup>1</sup> on the agreement. In general, the sale and purchase agreement (PPJB) is made underhand for certain reasons, such as the payment of the price <sup>1</sup> has not been paid off. The Sale and Purchase Agreement (PPJB) contains agreements, such as the amount of the price, when is the settlement time, and the Sale and Purchase Deed (AJB) is made. PPJB is made to make a temporary binding before making AJB in front of the Official for Making Land Deeds (PPAT).

The legal relationship <sup>2</sup> between the developer and the consumer in the implementation of the sale and purchase agreement for the apartment unit is a manifestation of the existence of legal action between the two, namely the <sup>2</sup> sale and purchase agreement of the apartment unit. As long as the apartment agreement made by the developer and the prospective buyer has not ended, the legal relationship between the two has not ended. The legal relationship <sup>40</sup> between the developer and the consumer ends if it is following the agreement, namely things that happen because the consumer has paid the payment or because the consumer has passed away.<sup>19</sup>

Developers as owners and actors of apartment development have several obligations that must be carried out as agreed. These obligations are dominated by obligations <sup>24</sup> related to the implementation of apartment construction. In implementing the sale and purchase agreement (PPJB) between the developer and the buyer, there is a possibility of default by the developer. The <sup>10</sup> sale and purchase agreement (PPJB) between the two

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<sup>19</sup> <sup>19</sup> Gunawan Widjaja dan Ahmad Yani, 2008, *Hukum tentang perlindungan konsumen*, Gramedia Pustaka, Jakarta, p. 30

parties, namely the developer and the buyer, will be related to a risk that arises. Some of the risks that arise include the following:<sup>20</sup>

- a. Developers are too optimistic about their projects, even though they have not controlled the land, they have not even obtained a location permit so that potential buyers will suffer losses;
- b. Possible abuse of pre-marketing by paying money orders by malicious developers
- c. The standard agreement format for sale and purchase agreements is usually determined unilaterally by the developer. This causes injustice, especially for prospective buyers.

Therefore it is necessary to make a sale and purchase binding agreement which is useful to reduce disputes that may arise in the future. The <sup>1</sup>sale and purchase agreement (PPJB) <sup>10</sup>is carried out before <sup>1</sup>the sale and purchase.

Besides, in <sup>10</sup>the case of the existence of a sale and purchase agreement, even though it is only a preliminary, in theory, the <sup>1</sup>sale and purchase agreement cannot be separated from <sup>1</sup>the theory of <sup>1</sup>the agreement in general, as follows:<sup>21</sup>

1. Theories based on the achievements of both parties;
2. Theories based on contract formation;
3. Classical basic theories;
4. Holmes' theory, namely about legal liability (legal liability) in connection with the contract;
5. The liberal theory of contracts.

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<sup>5</sup>  
<sup>20</sup> Imam Kuswahyono, 2004, *Hukum Rumah Susun*, Bayumedia Publish, Malang, p. 58

<sup>18</sup>  
<sup>21</sup> Munir Fuady, 1999, *Hukum Kontrak (dari sudut pandang hukum bisnis)*, Cetakan I, PT Citra Aditya, p. 4-5



The theory based on the achievements of the two parties is as follows:<sup>22</sup>

1. The theory of desire, emphasizes the importance of parties who make promises. The measure of the existence, the force of action, and the substance of a contract are measured by that desire. So according to this theory what is important in a contract is not what the parties do but what they want.
2. Bargaining theory, explaining that a contract is only binding to what extent is negotiated and then agreed by both parties.
3. Equal value theory asserts that a new contract is binding if both parties to the contract perform a balanced performance.
4. Loss-loss belief theory, explains that the contract is considered to exist if the contract in question has created trust in the party to whom the promise was made so that the fraud that receives the trust promise will cause losses if the promise is not fulfilled.

Based on the theory above and its explanation, the existence<sup>1</sup> of the sale and purchase agreement is closely related to the theory of desire and the theory of loss-making belief, if one party is faced with conditions of fulfilling performance while the other party does not fulfill it or defaults, then the party that does not provide performance will suffer losses. if it does not meet the applicable provisions following the agreement.

So it can be concluded from the understanding put forward by the experts, the<sup>39</sup> sale and purchase agreement is the beginning of the birth of the principal agreement. Thus, the sale and purchase agreement function as an initial agreement or preliminary agreement that confirms to carry out the

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<sup>22</sup> *Ibid*, p. 5-7



main agreement, as well as for settling a legal relationship if the things that <sup>42</sup> have been agreed in the sale and purchase agreement have been carried out.

Before arriving at the stage of making PPJB in buying and selling apartments or flats, there is a marketing stage. Based on Article 42 of the SARUSUN Law on Marketing confirms that:

- 1) Developers can carry out marketing before the construction of flat is carried out;
- 2) If the marketing is carried out before the construction of the flat is carried out as referred to in paragraph 1, the construction actor must have at least:
  - a. The certainty of space allocation;
  - b. The certainty of land rights;
  - c. Confirmation of the tenure status of the apartment;
  - d. Flat construction permit;
  - e. Guarantee for the construction of a flat from a guarantor institution.
- 3) In the marketing carried out before the construction of the apartment as referred to in paragraph 2 (two), everything promised by the development actor and/or the marketing agent is binding <sup>2</sup> as a Sale and Purchase Agreement (PPJB) for the parties.

After marketing, then <sup>1</sup> the Sale and Purchase Agreement (PPJB) is made.

In practice PPJB is carried out by Property Developers, precisely when the physical building has not been completed, developers usually offer their products through brochures containing plans and production facilities to be

sold. Several things that must be considered in making PPJB so that the seller and the buyer do not suffer from mutual losses are:<sup>23</sup>

1. PPJB must clearly explain land and building objects. Starting from the size of the land area, the size of the building area, the map of the land, building architecture, certificates, and ownership rights holders, PBB, Tax Object Selling Value, related licenses, and so on;
2. Land price per meter, building price, total price, payment method, payment period;
3. Terms and conditions agreed upon by the seller and the buyer;
4. Confirmation evidence related to the obligation to pay taxes, notary fees / PPAT, and other costs related to buying and selling apartments;
5. Explanation of the level and guarantee from the seller regarding the status of the house or land. Make sure there is no dispute. The buyer has the right to request an exemption from all lawsuits if the seller experiences an error in giving a statement.

<sup>10</sup> In the Sale and Purchase Agreement (PPJB), there are stages of making a Sale and Purchase Agreement (PPJB). The stages of making a Sale and Purchase Agreement (PPJB) that must be considered include:<sup>24</sup>

1. <sup>1</sup> In making a Sale and Purchase Agreement <sup>11</sup> based on the Decree of the State Minister for Public Housing Number 9 of 1995, the PPJB, in general, contains the parties who agree, the obligations for the seller, the description of the sale and purchase binding object, the

<sup>23</sup> Rasyid Rizani, 2014, "<sup>8</sup>Prosedur dan Syarat Penandatanganan Akta Jual beli (AJB)", <http://konsultasi-hukum-online.com/2014/01/prosedur-dan-syarat-penandatanganan-akta-jual-beli-ajb/>, (Accessed 12 Mei 2020)

<sup>24</sup> *Ibid.*

seller's guarantee, the time for handing over the building, the maintenance of the building, use of buildings, transfer of rights, cancellation of agreements, settlement of disputes;

2. Bring documents such as Tax Deposit Form (SSP), building permit (IMB), blueprint, letter of approval to sell from husband or wife, photocopy of Family Card (KK), photocopy of KTP, and original certificate to the Official for Making Land Deeds (PPAT);
3. Checking Original Certificate at the National Land Agency (BPN);
4. If it has not been registered, BPN will issue a Land Registration Certificate.

After the PPJB process, the next is the process of making a sale and purchase deed, in PPAT several conditions must be prepared in advance:<sup>25</sup>

- a) Documents that need to be prepared by the seller are photocopies of husband and wife ID cards, photocopies of family cards, photocopies of marriage certificates, original land certificates, original United Nations deposit receipts, approval letters from the spouse, death certificate if the spouse dies, approval from the heirs which is legal;
- b) Documents that need to be prepared by the buyer include photocopies of husband and wife ID cards, photocopies of family cards, photocopies of marriage certificates, photocopies of NPWP;
- c) Certificate and PBB inspection conducted by PPAT;
- d) Approval of spouses and or legal heirs;
- e) AJB fees;
- f) Signature of AJB;

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<sup>25</sup> *Ibid.*

g) Change the name.

The provisions of AJB in the <sup>11</sup>Decree of the State Minister for Public Housing Number 09 / KPTS / M / 1995 concerning Guidelines for House Sale and Purchase Bonds confirm that AJB <sup>11</sup>must be signed by both the seller and the buyer before PPAT, and the process of making AJB in PPAT is as follows:<sup>26</sup>

- a) The parties and at least 2 (two) witnesses attended the signing of the deed at the PPAT;
  - b) Notary / PPAT will <sup>30</sup>read and explain the contents of the AJB;
  - c) The parties, witnesses, and PPAT sign the AJB;
  - d) The local PPAT and BPN shall obtain 1 (one) original AJB sheet.
- Meanwhile, the seller and buyer each receive a photocopy of the AJB.

When the making of the AJB has been completed, the PPAT then submits the AJB files to BPN to turn the name of the certificate into the <sup>26</sup>name of the buyer as the new owner of the land. That the submission of the documents must be carried out <sup>19</sup>no later than 7 (seven) working days from the signing of the deed. <sup>13</sup>Based on the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010 concerning Land Service Standards and <sup>13</sup>Regulation of the Head of the National Land Agency of the Republic of Indonesia, the process of changing land rights or the process of transferring the name of the land title certificate will be carried out accordingly following the rules stipulated in the Regulation. <sup>44</sup>Head of the National Land Agency.<sup>27</sup>

<sup>26</sup> Ibid.

<sup>29</sup>

<sup>27</sup> Eman Ramelan, dkk, 2015, *Perlindungan Hukum Bagi Konsumen Pembeli Satuan Rumah Susun/Strata title/Apartemen*, Aswaja Pressindo, Yogyakarta, p. 49

In the sale and purchase of apartments, there is also consumer protection which is confirmed in <sup>21</sup> Law Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as UUPK) Article 16. Consumers are legally not only limited to buyers, as <sup>38</sup> regulated in Article 1 <sup>16</sup> paragraph (2) of the Company Law, affirming that consumers are every person using goods and or services available in society, whether for the benefit of themselves, their family, other people or living creatures and not for sale.

For consumers in Article 4 of the UUPK, there are 9 (nine) basic consumer rights. Developers or business actors have also divided the rights of developers or business actors in Article 6 of the UUPK. The obligations of a developer or business actor are contained in Article 7 of the Company Law. Apart from that, it is also subject to the prohibitions stipulated in Article 8 to Article 17 of the UUPK. Broadly speaking and in general, the prohibition for developers (business actors) can be divided into 2 (two), namely:<sup>28</sup>

- a. Prohibition regarding the product itself, which does not meet the requirements and standards suitable for use or use or exploitation by consumers;
- b. Prohibition regarding the availability of information that is untrue, inaccurate, and misleading to consumers.

In addition to the UUPK, regarding the rights and obligations of consumers as apartment buyers and business actors or developers, it is also regulated through PPJB when PPJB is made, where one of the clauses is that

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<sup>9</sup>  
<sup>28</sup> B. Resti Nurhayati, 2001, *Perlindungan Konsumen Berdasarkan Undang-Undang Nomor Tahun 1999*, Kisi Hukum Majalah Ilmiah FH Unika Soegijapranata, Semarang, edisi IX, p. 38

the business actor or developer is required to carry out construction following the agreed agreement, ready to <sup>3</sup> provide compensation, compensation and/or compensation for losses due to goods received if not following the agreement. Besides, Article 28 of the SARUSUN Law emphasizes that for apartment construction, business actors or developers <sup>6</sup> must meet administrative requirements including the status of land rights and building construction permits (IMB) that must be clear.

Disputes or disputes often originate from fundamental mistakes in the process of forming an agreement or contract.<sup>29</sup> The dispute settlement mechanism that occurs can be carried out or selected by the parties in 2 (two) options including:<sup>30</sup>

- a. Settlement through litigation;
- b. Settlement through non-litigation channels.

<sup>3</sup> In Article 46 paragraph 1 of the Company Law, it is stated that the parties that can file a lawsuit or violation by the business actor through the court include:

- a. A consumer who is injured or the heir concerned;
- <sup>17</sup> A group of consumers who have the same interest;
- c. <sup>6</sup> Non-governmental organizations that meet the requirements, namely in the form of a legal entity or a foundation, which in its articles of association clearly states that the purpose of establishing the organization is for the benefit <sup>6</sup> of consumer protection and has carried out activities following its articles of association;

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<sup>7</sup> Eman Ramelan, dkk, 2015, *Perlindungan Hukum Bagi Konsumen Pembeli Satuan Rumah Susun/Strata Title/Apartemen*, Aswaja Presindo, Yogyakarta, p. 33

<sup>30</sup> *Ibid.*

<sup>17</sup> d. The government and/or related agencies if the goods and or services that are consumed or used result in large material losses and/or not a small number of victims.

A consumer who has suffered losses can file a compensation claim directly to the court or outside the court through the Non-Governmental Consumer Protection agency, while <sup>6</sup> a lawsuit filed by a group of consumers from non-governmental consumer organizations or the government or related institutions can only be submitted to the court.

Consumers who have suffered losses from an apartment <sup>1</sup> sale and purchase agreement whose location is not following the previous agreement between a developer or business actor and consumer can sue the business actor or developer through an institution that is tasked with resolving the deal <sup>32</sup> between consumers and business actors, namely through courts located in the general court environment.

With due observance of the applicable rules in the SARUSUN and UUPK Laws, consumer dispute resolution through the judiciary refers to the applicable general court provisions. So thus the dispute settlement process through the district court is carried out just like filing a lawsuit for ordinary civil disputes, by filing a claim for compensation based on an unlawful act, a lawsuit against promises or defaults, or negligence of the business actor or developer which causes injury, death or loss to the consumer.<sup>31</sup>

Also, <sup>10</sup> in the sale and purchase of an apartment, before an agreement is made <sup>10</sup> in the sale and purchase agreement, consumers must pay attention

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<sup>14</sup> <sup>31</sup> Susanti Adi Nugroho, 2008, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Kendala Implementasinya*, Kencana, Jakarta, p. 126-127



to the slightest thing that can harm the consumer at the end of the agreement. As with consumers, they must ensure the handover schedule that is stated in the sale and purchase deed (AJB) and the sale and purchase agreement (PPJB). Because from there, sometimes developers create clauses that put consumers in a weak position.<sup>32</sup>

So consumers must be more careful in looking at this clause. If there is no conformity, the consumer must have the courage to ask for changes to the clauses made earlier. Sometimes the developer will say that the clause is the same as the clause for other consumers with the format from the relevant legal party according to the predetermined standard.

Therefore, beforehand, consumers, especially prospective apartment buyers, must know that the agreement clause is an agreement between the two parties, namely the seller and the buyer, which is free and is not influenced by anybody, person, or institution. So there is no standardization from the government or other legal entities for the legalization of sale and purchase clauses or ratification in the form of the signature of the authorized official or authority and stated on the agreement document.<sup>33</sup>

Also, it has been confirmed in <sup>3</sup>Article 4 letter h of the UUPK which confirms that the consumer's right, namely <sup>3</sup>to get compensation, compensation, and or replacement, if the goods and or services received are not following the agreement or not as it should be and also confirmed in <sup>20</sup>Article 8 paragraph 1 letter f UUPK that business actors are prohibited from producing and or trading goods and or services that are not following the

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<sup>32</sup> Henri Yookom, 2016, *jurus menghadapi developer nakal*, <http://mediajateng.net/2016/06/29/ini-jurus-menghadapi-developer-nakal/3363/>, (Accessed 21 Mei 2020)

<sup>33</sup> *Ibid.*



<sup>3</sup> promises stated in labels, tags, information, advertisements or sales promotions of the said goods or services. From the two articles, the buyer as a consumer can get compensation following the losses that the consumer has suffered. That is why the <sup>34</sup> sale and purchase agreement in the sale and purchase deed and the sale and purchase agreement must include the date of handover so that the consumer is entitled to compensation as much as the loss he has received.

At the stage of implementing the apartment sale and purchase agreement, both parties are required to carry out what has been agreed upon or carry out what has become their obligation in fulfilling the agreement. In the obligation to fulfill the agreement that is called achievement, whereas if both parties or one of the parties do not fulfill the obligations according to the agreement that has been made, it is called default.

## CLOSING

### Conclusion

For the <sup>15</sup> process of buying and selling flats before the construction of the flats is completed, PPJB can be carried out in front of a notary after fulfilling the certain requirements of land ownership status, IMB ownership, <sup>4</sup> availability of infrastructure, public facilities and utilities, and construction of at least 20% (twenty percent) according to the things promised. PPJB contains agreements such as the amount of price, the time for repayment, and the making of the AJB. PPJB is made to make a temporary binding before the making of the AJB is carried out in front of <sup>30</sup> the Official for Making the Land Deed (PPAT) after the making of the AJB is completed, the PPAT submits

the AJB file to BPN no later than 7 (seven) days after the deed is drawn up and signed. The rights and obligations of both parties stipulated in the UUPK, apart from those which have been stated in the PPJB, must be considered by both parties so that defaults do not occur. Settlement of buying and selling disputes that cause losses to consumers as buyers of the flat can be done by settlement through litigation and non-litigation channels. Settlement of disputes through competent institutions such as the Consumer Dispute Resolution Agency (BPSK), arbitration, conciliation, and courts through claims of default or illegal acts. As a precautionary measure, before an agreement occurs in the sale and purchase agreement, the buyer must pay attention to the slightest thing that can harm the consumer at the end of the agreement, so the consumer must be more careful in paying attention to this clause.

### **Recommendation**

The position of consumers in the sale and purchase agreement is very weak even though it has been regulated in the SARUSUN and UUPK Laws, therefore there is a need for efforts and assistance from the government to make new regulations to provide legal protection to consumers. The legal efforts that have been carried out by consumers to reclaim their rights have not been fully understood by consumers, therefore government assistance is needed to provide awareness for consumers.

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