



Consumer law responsibility against incompatibility of housing development in consumer protection law

Muhammad Fajrin¹, Burhanudin Harahap²

¹ Master of Law, Faculty of Law, Universitas Sebelas Maret Surakarta, Indonesia

² Lecturer, Faculty of Law, Universitas Sebelas Maret Surakarta, Indonesia

Abstract

This paper aims to describe what consumers can use in the event of a non-conformity in housing construction based on a contract from the perspective of consumer protection. This research is a normative legal research. The results of the study show that legal remedies can be carried out by resolving disputes outside the court, if the mediator and conciliator are not successful in bringing the parties to an agreement in mediation and conciliation or have not succeeded in giving a decision in arbitration, then there is still an opportunity to file a lawsuit in court. As a form of legal protection for consumers, in order to resolve disputes more quickly, apart from the Consumer Dispute Settlement Agency, also known as class action, which is a legal procedure that allows many people to join to demand compensation or other compensation in a lawsuit.

Keywords: consumer protection, legal effort

Introduction

The property business in Indonesia is experiencing very rapid development at this time. There are many triggers for the development of business in this field and can be seen in the community, for example with the rampant development of the housing business sector and including apartments at competitive and more affordable prices. On the other hand, there are many things that encourage home ownership to be easier and anyone can have with a variety of prices on offer, and many ways to make a payment for home ownership, for example with many alternative loans. All major banks in Indonesia have home ownership loan products with various types of financing and offers.

In today's world, houses have experienced a change in perception, not only as a primary need, but now it has become a necessity that provides comfort and protection for the owner. In Indonesia, the need for a house has experienced a high increase, especially for people in big cities because of the number of residents in the city. very large. And the need for houses can also be seen from the Indonesian constitution, especially in Article 28 letter H of the 1945 Constitution.

The property business in the housing sector has recently experienced an increase. With the growing economic growth, declining interest rates, and increasing purchasing power of the Indonesian people, it is believed by many to be the main factor for the increase and development of the property business in the world, including in Indonesia. This is now the Indonesian people are no longer bothered in terms of making or buying houses where in the current era there are very many housing development developers who provide home sales and now housing developers even provide subsidized houses where the house is intended for the lower middle class, and The purchase can also use monthly installments, this is in line with the government's program which provides subsidized housing for people with lower middle income, in subsidized housing purchase loans,

will involve several parties, the Bank as a provider of financial services and capital and developers as housing business actors. In carrying out this process, it is also inseparable from a binding legal relationship between the two parties regarding the form of an agreed agreement to carry out a right and obligation stated in the agreed agreement. The agreement creates a binding legal responsibility.

Conditions also affect the property business, now there are government regulations in the property sector, including regulations in the field of taxation. In 1997, a regulation from Bank Indonesia emerged which at that time had a significant effect on the property business, namely prohibiting banks from providing credit facilities for the procurement and processing of land. At that time, property developers were divided into large and small entrepreneurs. Many of the major developers rely on land acquisition and cultivation from bank credit facilities. With the rapid need for houses and the development of the community's economy, not only people who need a lot of houses for decent housing but also many people who make developer companies for house construction, this is because the need for houses is increasing, therefore many also housing development companies are mushrooming, with large profits, many people are also tempted to create developer companies, in this case it is clear that competition is increasing, various houses and types are marketed and various other offers and bonuses are marketed by developer companies whether it's bonuses. in the form of cashback, a small down payment or a bonus in housing facilities, as a result the house is only seen from quantity not quality, even though, in a house of course prioritizes a quality, function and use.

Hayward PG in his book entitled Home As An Environmental and Psychological Concept reveals that we can see the house in various concepts, namely the house as a symbol of the characteristics of its owner, the house as a

place for laughter, the house as a place to be alone and think, the house as a connected root, the house as a place for daily activities, the house as a place to socialize with others, and the house as a physical structure. In carrying out a housing development, Law no. 4 of 1992 concerning Housing and Settlements, article 7 paragraph 1 states that every person and entity that will build a house or housing is obliged to:

- a. Follow technical, ecological, and administrative requirements.
- b. Carry out environmental monitoring that may be affected by the environmental monitoring plan.
- c. Must carry out environmental management based on applicable regulations so as not to pollute the environment.

Here we can understand that in the construction of houses it does not seem careless that everything must be based on its function and use, but as we can see in reality, many developers now in building housing override the function and strength of the house, the use of the house and make offers that are tempting to consumers and at the same time. finally not in accordance with the reality in housing construction, this is done for price cuts and big profits, this method is very detrimental to consumers in terms of atmosphere, comfort, security, and safety of consumers who live in the house.

As in the city of Bengkulu, there are still many problems regarding housing development which continue to be a problem that often arises, namely from the problem of building quality which is considered to be not good and the timing of house construction is not right at the agreed time. In the process of ordering a house, it is often the consumer who is harmed, starting from the quality of the building which is deemed not to meet the requirements, such as cracked ceramics, cracks that appear on the door walls, corrugated frames and road facilities that are easily flooded which when it rains it becomes waterlogged. muddy and others. In completing the house construction not on time as promised and agreed upon by the developer, for example, the construction of a house which should be completed within 8 months, turns out to be delayed by 1 year or even longer, most developers set conditions unilaterally without thinking about the interests of consumers, and which is shown entirely at the discretion of the manufacturer. There are several development cases in Bengkulu Province, one of which, the Consumer Dispute Settlement Agency (BPSK) of Mukomuko Regency, Bengkulu Province, during this year received at least 11 reports regarding housing developers or developers for civil servants (PNS). These eleven reports were from civil servants. "Report the developer who has received a down payment but has not yet built his house," said the Head of BPSK for Mukomuko Regency, Nurdiana, in Mukomuko, Friday, August 25. He said of the eleven reports, eight of which have been followed up and will be completed by the housing developer.

Furthermore, he said, housing developers in the area will return the down payment belonging to consumers who have not received a house building from the company. The total down payment that will be returned by the developer of the house is 76 million, and 54 million is paid in cash, the rest by transfer. Meanwhile, three more reports regarding home developers in the area are still being processed. He said the housing developer would return a down payment of 75

million to six of his consumers. Another obligation that must be carried out by the housing development is to update the houses owned by two of its consumers. The developer has stated the ability of consumer requests to update their residential buildings. Then, in Muko-muko Regency, Bengkulu Province, currently receiving one report related to Housing Developers, received one report from Endang Suparto. He reported the developer for having deposited a down payment of 26 million but the house had not yet been built. Endang Suparto reported PT Karisma Maju Sejahtera (KMS) to BPSK. In his report, this consumer asked the company to return the down payment. This PT KMS consumer asked the company to return the down payment for the construction of his house because he had completed the construction of his house.

The construction of the house itself because since the beginning of 2018 until now there has been no clarity on the construction of houses from the housing developer. He said his party has coordinated with the management of PT KSM and the company is currently unable to return the down payment because there is a change in the leadership of the State Savings Bank. In addition, he said, from the results of the coordination, the housing development party in this area offered a solution to build houses for these consumers. Furthermore, his party will call the company to resolve this problem. There are so many problems that exist regarding housing problems in Indonesia, including Bengkulu City, BPKN Commissioner Arief Syafari said, based on BPKN data, in the last three years the complaints received by BPKN increased dramatically. There were 3,500 complaints recorded. As many as 69 percent of them are from the housing sector, 11 percent are financial services, 9 percent are e-commerce and 2 percent are related to communication services. If this problem is not followed up and allowed to continue, then the consumer will suffer losses, many developers in offering their products always convey something positive without seeing the facts that exist in the reality of society, and many developer promises are not in accordance with what is said. which is very detrimental to consumers, especially those who are often disadvantaged by people whose economy is middle to lower, this is the position between producers and consumers that is not equal and unfair, with consumer losses, in the housing sector, it is important to be able to know the aspects of responsibility developers, as a way to protect consumers in the housing sector.

In providing legal protection for consumers, Article 19 of the UUPK stipulates that developers as business actors are responsible for providing compensation for damage, pollution, and losses suffered by consumers as a result of using traded goods or services. must be responsible for a problem such as improper promotion, this can open up opportunities for consumers to buy housing in order to get a housing product that is in accordance with what was promised in the brochure and to create a sense of responsibility for business actors or developers to provide appropriate compensation. If there is damage, pollution and or consumer loss due to buying house products that are traded, business actors must be very aware of the position between business actors and consumers if consumers are not objects that can be irresponsibly regulated by business actors for the sake of The benefits of business actors themselves, but must be given the same position as business actors, because the future and consistency and honesty of

business actors are largely determined from the continuous relationship between the two parties.

Due to the high number of cases related to housing problems, the authors are interested in discussing how legal protection for consumers relates to housing purchase agreements that are not in accordance with the offers from housing developer companies, then how to take legal action for consumers if there is a discrepancy in the offer agreement. between consumers and developers, so here the author will conduct observational research at one of the housing development companies in the city of Bengkulu, namely PT. ASCARYA BANGUN PERSADA, as a source of material in research to answer problems regarding legal protection and legal remedies for consumers in ordering houses. which is not in accordance with the agreement.

Research Methods.

The type of research in this research is normative juridical, namely the process of finding a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. With regard to the normative legal research method, the technique of collecting legal materials used is document study or literature study. The approach used in this research is a statutory approach and a case approach.

Discussion

The legal umbrella for implementing consumer protection in Indonesia is regulated in Law Number 8 of 1999 concerning Consumer Protection. Legal protection to consumers is a legal certainty of protection to the fulfillment of consumer rights. The purpose of legal certainty in this case is all efforts to seek consumers to obtain or determine their choice of goods or services they need and to defend or defend their rights if they are harmed by the behavior of the business actor providing the consumer's needs. The enactment of tools to protect consumer protection laws, of course not to kill business actors, but rather to encourage business actors to conduct fair competition and raise awareness of business actors about the need and importance of consumer protection so that they can produce strong, resilient companies in to face competition, as well as the certainty of consumer protection.

Legal protection for consumers is based on the number of consumer rights that need to be protected from actions that can cause harm to consumers. These rights are rights that are fundamental and universal in nature so that they need protection from the state for their fulfillment. However, in social reality, between consumers and business actors or producers, there is often a correlation and causal relationship involving the rights and obligations of each party. Between business actors or producers with consumers or customers there can be mutual need. Producers or business actors will try to find a lot of profit, this is in accordance with the economic principle adopted, namely the principle of seeking the highest profit through the smallest sacrifice. In achieving as much profit as possible, producers or business actors must compete with each other with their own business principles, this could be detrimental to consumers. The tight competition can change the principle towards unfair competition to satisfy each other's conflicting interests.

According to Article 1313 of the Civil Code, it is stated that an agreement is an act in which one or more persons bind themselves to one or more persons. Furthermore, according

to R. Wirjono Prodjodikoro, an agreement is a relationship based on law regarding property between two parties, in which one party promises or is deemed to have promised to do something or not to do something, while the other party has the right to demand the implementation of the agreement. Furthermore, the agreement is a legal relationship between one legal subject and another legal subject which is preceded by an agreement between the two parties, where one legal subject is entitled to an achievement and another legal subject is obliged to fulfill an agreed achievement. The principle of freedom in question is that all parties are free and have the right to enter into an engagement relationship with any party they wish, including being free to determine the terms, implementation and form of a contract. This is emphasized in Article 1338 of the Civil Code that all contracts that are legally made are valid as law for those who make them and must be implemented.

Consumers are expected to be vigilant in buying products and are also required to be vigilant in marketing their products in the midst of rampant contract standards imposed by business actors in addition to clauses that are very detrimental to consumers. standard clauses in every document or transaction of goods and services trade agreement, as long as the standard contract or standard agreement does not include a provision prohibited in Article 18 Paragraph (1) and Paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection. Agreements can be made orally and can be made in writing. Oral agreements are generally made in indigenous peoples for simple legal ties, such as livestock breeding agreements. Meanwhile, the agreement, which is generally carried out in a relatively modern society, relates to business with more detailed legal relationships. A written agreement for a business relationship is called a contract.

The term contract comes from English, namely contracts. Whereas in Dutch, it is called *overeenkomst* or what we usually call an agreement. The definition of an agreement or contract is regulated in Article 1313 of the Civil Code. Article 1313 of the Civil Code reads: An agreement is an act by which one or more parties bind themselves to one or more persons. A contract is an agreement between two or more people, which creates an obligation to do or not do something in part. The essence of the definition contained in the Black's Law Dictionary is that a contract is seen as an agreement by the parties to carry out an obligation, either to do or not to do it in part. There are 3 elements that must be fulfilled in a contract, namely:

1. There is an agreement on the facts between the two parties.
2. Consent is made in writing.
3. There are people who are obliged to make written agreements and agreements.

In carrying out a contract, there must be a pre-contract, in which the pre-contract is carried out before the implementation of a contract between the two parties, there are four things that must be considered by the parties. These four things include: identification of the parties, preliminary research on related aspects, making a Memorandum of Understanding, and negotiation.

1. Identification of the Parties

The identification stage of the parties is the stage to determine and establish the identity of the parties who will

enter into the contract. The identity of the parties must be clear and the parties must have the legal authority to conclude a contract. The person authorized to make a contract is an adult and/or married. The size of maturity is 21 years old. People who are not authorized to carry out legal actions are: a. Minors, b. The person who was put under custody

2. Preliminary Research Related Aspects

Basically, the parties hope that the signed contract can accommodate all their wishes so that what is the essence of the contract is clearly detailed. The design of the contract must explain the things contained in the contract in question, the juridical consequences, as well as other alternatives that may be carried out. In the end, the drafting of the contract concludes the rights and obligations of each party, taking into account matters related to the contents of the contract, such as elements of payment, compensation, and taxation.

3. Making a Memorandum of Understanding

Munir Fuady, interprets the Memorandum of Understanding as follows: A preliminary agreement, in the sense that it will be followed and explained in another agreement that regulates it in detail, therefore, the memorandum of understanding contains only the main things. As for other aspects of the memorandum of understanding, it is relatively the same as other agreements. It can be understood that a memorandum of understanding is the basis of an agreement before the implementation of the agreement, which at this stage describes in detail an agreement between the two parties..

4. Negotiation

Negotiation has a very important position and role in designing and compiling contracts, because the negotiation stage is the stage to determine the object and substance of the contract made by the parties. According to Priyatna Abdurrasyid, negotiation is: The way in which individuals communicate with each other to manage their relationship in business and daily life. There are several objectives of a negotiation in business, which include:

- a. To get or reach an agreement that contains a common perception, mutual understanding and agreement.
- b. To get or reach a settlement condition or a way out of a common problem.
- c. To obtain or achieve mutually beneficial conditions in which each party feels victorious.

In a contract must also meet the important principles in the contract, namely: a. The principle of consensualism is an agreement made by two or more people that is already binding so that it creates obligations for one of the parties to the agreement after reaching an agreement between the two parties. b. The principle of freedom of contract, a person can basically make an agreement with free content but not against the law, public order, decency. Then what is meant by the law is statutory regulations that have a coercive nature. c. *Acta pacta sun servanda*, this principle is a binder in an agreement, which means that the parties who make the agreement are bound by an agreement on the agreement they have made. Thus, the agreement that has been made will be valid for the maker by the parties who made the contract. d. The principle of good faith, this principle means

that the implementation of the agreement must be based on good faith. Good faith is contained in Article 1338 paragraph (3) of the Civil Code. Good faith can be distinguished in terms of subjective and objective understanding. Good faith in subjective terms means the need for honesty, because honesty is very closely related to one's inner attitude when making an agreement. On the objective side, it must be based on propriety, which relates to the implementation of the agreement or the fulfillment of achievements.

Furthermore, the provisions of Law Number 8 of 1999 concerning Consumer Protection, which states that dispute resolution is divided into two, namely dispute resolution out of court and dispute resolution in court. The institution that handles dispute resolution outside the court in the Consumer Protection Law is the Consumer Dispute Settlement Agency as regulated in Article 49 paragraph 1. BPSK which is a special institution established and regulated in the Consumer Protection Law, its main task is to carry out handling and settlement consumer disputes by means of Mediation, Conciliation or Arbitration. According to Law Number 1 of 2011 concerning Housing and Settlement Areas, in article 147, the settlement of disputes in the housing sector is first attempted based on deliberation to reach consensus.

The choice of settlement by consensus and out of court settlement, because the dispute resolution process through the courts, will end in the defeat of one party and the other party's victory, a judicial process that lasts a long time and requires no small amount of money. The reason that is often put forward is the choice of dispute resolution outside the court, because it wants to reduce case bureaucracy, cost and time, so that it is relatively faster with low costs, more able to maintain social harmony by developing a culture of deliberation and a non-confrontational culture. Through this settlement, it is hoped that there will be no loss-win principle but win-win, the parties feel they have won so as to avoid the occurrence of hard feelings and losing faces.

In Article 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration is distinguished from alternative dispute resolution, because what is included in alternative dispute resolution is only consultation, negotiation, mediation, and expert judgment. Article 45 paragraphs 1 to 4 of the Consumer Protection Law, states:

1. Every consumer who is harmed can sue the business actor through the institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment.
2. Settlement of consumer disputes can be reached through court or out of court based on the voluntary choice of the disputing parties.
3. The settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal responsibility as stipulated in the Law.
4. If an out-of-court consumer dispute resolution effort has been chosen, a lawsuit through the court can only be taken if the effort is declared unsuccessful by one of the parties or by the disputing party.

From the statement of article 45 paragraph 4, even though an out-of-court dispute resolution effort has been chosen, if the mediator and conciliator are not successful in bringing the parties to an agreement in mediation and conciliation or have not succeeded in giving a decision in arbitration, then

there is still an opportunity to file a lawsuit in court. As a form of legal protection for consumers, in order to resolve disputes more quickly, apart from the Consumer Dispute Settlement Agency, also known as class action, which is a legal procedure that allows many people to join to demand compensation or other compensation in a lawsuit. The legal provisions that form the basis for a class action lawsuit (group lawsuit) are contained in Article 46 of the Consumer Protection Law. Those who can file a lawsuit in court are:

1. An aggrieved consumer or heir concerned.
2. groups of consumers who have the same interests
3. a non-governmental consumer protection institution that meets the requirements, namely in the form of a legal entity or foundation, which in its articles of association clearly states that the purpose of establishing the organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association.
4. the government or related agencies if the goods or services consumed or utilized result in large material losses or no small number of victims.

Conclusion

In the context of consumer protection law, if a consumer dispute has chosen an out-of-court dispute resolution effort, if the mediator and conciliator fail to bring the parties to an agreement in mediation and conciliation or have not succeeded in giving a decision in arbitration, then there is still an opportunity to file a lawsuit to the court. court. As a form of legal protection for consumers, in order to resolve disputes more quickly, apart from going through the Consumer Dispute Settlement Agency, also known as class action, which is a legal procedure that allows many people to join to demand compensation or other compensation in a lawsuit.

References

1. Yanuar Arifin, *Panduan Lengkap Mengurus Dokumen Properti* (tanah dan rumah), Yogyakarta, Diva Press, 2013.
2. Janus Sidabalok, *Hukum Pelindungan Konsumen di Indonesia*, Bandung, PT. Citra Aditya Bakti, 2014.
3. Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2016.
4. I Gusti Agung Wisudawan, *Bentuk Kepastian Perlindungan Hukum dalam Perjanjian Pembiayaan Konsumen*. *GaneÇ Swara*, 2013, 7(1),
5. Dewi Hendrawati. *Penerapan Asas Kebebasan Berkontrak Dalam Pembuatan Perjanjian Baku Studi Normatif pada Perjanjian Pembiayaan Konsumen*, *Masalah-Masalah Hukum*, 2011, 40(4).
6. I Ketut Artadi dan I Dewa Nyoman Rai Asmara Putra, *Implementasi Ketentuan Ketentuan Hukum Perjanjian Ke Dalam Perancangan Kontrak*, Udayana University Press, Denpasar, 2010.
7. Salim HS. *Hukum Kontrak: Teori & Teknik Penyusunan Kontrak*, Cetakan Ke-10, Sinar Grafika, Jakarta, 2014.
8. Munir Fuady. *Hukum Bisnis dalam Teori Dan Praktik*, Buku Ke-4, Citra Aditya Bhakti, Bandung, 1997.
9. Priyatna Abdurrasyid, *Arbitrase & Alternatif Penyelesaian Sengketa Suatu Pengantar*, Fikahati Aneska, Jakarta, 2002.

10. Muhammad Noor. *Penerapan prinsip-prinsip Hukum Perikatan Dalam Pembuatan Kontrak*, 2015, 14.
11. Miru A dan Sutarman Y. *Hukum Perlindungan Konsumen*, Raja Grafindo Persada, Jakarta, 2004.
12. Rachagan SS. *Consumer Access to Justice, an Overview*, in *Developing Consumers Law in Asia*, IOCU Regional Office for Asia and the Pasific, Malaysia, tt, 2004.