

(Widiarty, Wiwik Sri) Legal Protection Of Consumers Due To Breach In The Buying Of Housing

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Submission date: 07-Feb-2024 04:33PM (UTC+0700)

Submission ID: 2288644454

File name: LegalProtectionofConsumersDuetoBreach.pdf (467.79K)

Word count: 3212

Character count: 17830



Legal Protection Of Consumers Due To Breach In The Buying Of Housing

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ARTICLE INFO

22

Article history:

Received Jul 30, 2023

Revised Sep 23, 2023

Accepted Oct 26, 2023

Keywords:

Consumer,
Default,
Housing,
law,
Sale and Purchase.

ABSTRACT

Housing sale-purchase transactions are complex activities and are prone to default. The purpose of this research is to analyze the legal protection consumers who experience defaults in housing sales and purchase transactions. This research uses normative legal research methods. The data collection technique in this research is done through literature study. The data is collected through a search of legal literature, laws and regulations related to housing sales and consumer protection, as well as court decisions relevant to cases of default in housing sales. The data sources used include books, scientific journals, articles, legal documents, and court decisions. The data collected is analyzed qualitatively using the content analysis method. The results show that the legal protection of consumers due to default in the sale purchase of housing is in the form of contract law and consumer protection law. Legal efforts that can be made by the consumer if the perpetrator or seller of housing does not fulfill its obligations are by filing a lawsuit for compensation, mediation and arbitration based on default.

ABSTRAK

Transaksi jual-beli perumahan merupakan aktivitas yang kompleks dan rentan terhadap wanprestasi. Tujuan penelitian ini adalah untuk menganalisis perlindungan hukum terhadap konsumen yang mengalami wanprestasi dalam transaksi jual-beli perumahan. Penelitian ini menggunakan metode penelitian hukum normatif. Teknik pengumpulan data dalam penelitian ini dilakukan melalui studi kepustakaan. Data dikumpulkan melalui penelusuran literatur hukum, peraturan perundang-undangan terkait jual-beli perumahan dan perlindungan konsumen, serta putusan pengadilan yang relevan dengan kasus wanprestasi dalam jual-beli perumahan. Sumber data yang digunakan meliputi buku, jurnal ilmiah, artikel, dokumen hukum, dan keputusan pengadilan. Data yang terkumpul dianalisis secara kualitatif dengan menggunakan metode analisis isi. Hasil penelitian menunjukkan bahwa perlindungan hukum konsumen akibat wanprestasi dalam jual beli perumahan yakni dalam bentuk hukum kontrak dan hukum perlindungan konsumen. Upaya hukum yang dapat dilakukan oleh pihak konsumen jika pelaku atau penjual perumahan tidak memenuhi kewajibannya adalah dengan mengajukan gugatan ganti rugi, mediasi dan arbitrase berdasarkan wanprestasi.

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I. INTRODUCTION

The property business, including buying and selling houses, has a significant role in meeting human needs for a place to live. Home is one of the basic human needs after food and clothing. The presence of a house as a place to live has an important role in shaping the character and personality of individuals and the nation as a whole. The house is not just a place to live, but also a strategic place in creating prosperity and comfort for the people of Indonesia. Decent and quality housing can have a positive influence on living conditions and the development of individuals, families and the surrounding community (Monica, 2022).

Article 1457 of the Civil Code states that buying and selling is an agreement in which one party undertakes to deliver an item, and the other party undertakes to pay the agreed price. In buying and selling, the seller has the obligation to deliver the goods to the buyer, while the buyer has the obligation to pay the purchase price. These payments are generally made in cash. The seller has the right to receive the material or money as payment from the buyer after he delivers the goods he owns to the buyer. On the other hand, the buyer has the right to obtain the goods, including the right to ownership of the goods, which must be fully guaranteed by the seller that the goods are legally owned by the seller (Suarti, 2019).

In buying and selling housing, there is an agreement used between the developer (developer), the bank and the buyer. Agreements are made to provide legal certainty regarding the rights and obligations of each party which are expected to be fulfilled (Verawati, 2017). Housing buying and selling transactions are complex activities and prone to default. Marhainis Abdulhay stated that a default is when the parties who are supposed to excel do not fulfill their achievements (Dalimunthe, 2017).

In previous research conducted by (Lestari & Darmadha, 2018) a case study of default on purchase agreements in flats. Similar research was conducted by (Salsabila, 2020) with a case study of default in selling and buying apartments. The novelty of this research is from the case study, namely default on housing which has not been studied much. This research makes a valuable contribution to the development of legal theories relating to contracts, default, consumer protection, and property law in the context of housing purchases. Its theoretical implications can help broaden the understanding of how the law can function to protect the rights and interests of consumers in property transactions. The purpose of this research is to analyze the legal protection for consumers who experience default in housing buying and selling transactions.

II. RESEARCH METHODS

This study uses normative legal research methods. According to Johy Ibrahim, normative legal research is a research method that uses a scientific approach to seek truth based on scientific logic from a normative perspective. The normative perspective is not limited to laws and regulations alone, but involves other aspects related to the norms and values that apply in society (Tutuarima et al., 2022). Data collection techniques in this study were carried out through library research. Data was collected through a search of legal literature, laws and regulations related to housing buying and selling and consumer protection, as well as court decisions relevant to cases of default in housing buying and selling. Sources of data used include books, scientific journals, articles, legal documents, and court decisions. The collected data were analyzed qualitatively using content analysis method.

III. RESULTS AND DISCUSSION

Default in the sale and purchase of housing refers to violations or non-compliance with the obligations agreed between the seller and the buyer of housing. Examples of default in the sale and purchase of housing can include sellers who do not deliver housing within the allotted time, sellers who do not submit the required documents, or buyers who do not pay the purchase price according to the agreement. Defaults can also occur if housing conditions do not match what has been agreed upon, for example there are significant defects or damage.

Default has been regulated in law as one of the violations in the sale and purchase agreement. The legal basis for default is regulated in Article 1338 of the Criminal Code (the Criminal Code) (Akhmaddhian & Agustiwi, 2016). The article states that every agreement made in accordance with the law has legal force that binds the parties who make it. The agreement cannot be withdrawn except with the agreement of both parties or in matters regulated by law. In addition, the agreement must also be implemented in good faith. Article 1338 of the Criminal Code provides the foundation that the agreements or agreements made must be respected and obeyed by the parties involved. If one of the parties does not fulfill the obligations agreed in the agreement without reasons regulated by law, it can be categorized as a default (Christina & Surajiman, 2022). Default cases raise several juridical consequences that must be borne by the party committing the default. This consequence is in the form of compensation which includes (Sinaga & Darwis, 2020): (a) Cost: Costs are expenses or costs that have actually been incurred by one of the parties, for example the creditor; (b) Loss is a loss arising from damage to the goods belonging to the debtor caused by the negligence of the debtor; (c) Interest is a loss in the form of loss of profits expected by one of the parties, in this case the creditor.

This event of default is detrimental to the party experiencing the default, therefore it is necessary to have legal protection in buying and selling housing transactions (Andrianto & Sisbiantoro, 2022). Legal protection is a form of protection given to individuals or communities to ensure that their human rights are not harmed by other parties. This is done to ensure that everyone can enjoy the rights guaranteed by law. Legal protection aims to create a sense of security and protect individuals physically and mentally from disturbances and threats that may come from various parties (Arianti & Dipa, 2021).

Law Number 8 of 1999 concerning Consumer Protection provides a broad definition of consumer protection as an effort to provide legal certainty and protection to consumers. However, in practice, legal protection for consumers in agreements to buy and sell housing with developers tends to be inadequate. In a situation where the consumer rejects the agreement, the sale and purchase transaction cannot be carried out because there is no agreement between the two parties (Brahmanta, 2016). Legal protection for consumers in cases of default involves several aspects, including:

Contract Law, Contract law is the basis for legal protection in cases of default. A housing sale-purchase contract is an agreement between a seller and a buyer that must be obeyed by both parties. If one of the parties does not fulfill its obligations, the injured party can file a lawsuit based on the agreed terms of the contract. At the buying and selling transaction stage, the consumer is often faced with an agreement that must be signed. This agreement can be in the form of a binding sale and purchase agreement (PPJB) between the developer and the consumer, as well as a mortgage agreement if it involves the bank as the mortgage provider. However, often these agreements are made in the form of standard contracts that have been prepared in advance by the housing developer or the bank. As a result, consumers do not have a bargaining position to

determine the contents of the agreement as they wish. They can only choose to accept or reject an existing agreement (Pane, 2021).

Consumer Protection Law, ¹⁴ The consumer protection law provides legal protection to consumers in buying and selling transactions, including buying and selling housing (Sinilele, 2019). This law provides consumer rights, such as the right to receive goods/services in accordance with the agreement, the right to obtain accurate information, and the right to receive compensation in the event of default (Barkatullah, 2019). ²⁰ The consumer protection law that regulates default in buying and selling housing in Indonesia is Law Number 8 of 1999 concerning Consumer Protection. This law provides a legal basis and protection for consumers in various aspects of consumption transactions, including the buying and selling of housing. In Law Number 8 of 1999, there are provisions governing consumer rights and obligations, including provisions regarding default (Arifin, 2019). Default in housing buying and selling can refer to the seller's inability to fulfill his obligations, such as not delivering housing according to agreed specifications or not providing promised facilities (Irwandi, 2021). The law provides legal protection to consumers who experience default, including by granting consumers the right to seek compensation, dispute resolution through mediation or arbitration mechanisms, as well as through other legal remedies.

¹⁷ Legal remedies that can be taken by the consumer if the perpetrator or seller of housing does not fulfill their obligations is to file a lawsuit for compensation based on default. This lawsuit can be filed based on the provisions stipulated in Law Number 8 of 1999 concerning Consumer Protection. In this lawsuit, the consumer can request reimbursement for losses incurred as a result of default, such as costs incurred, costs for repairing damage, or other financial losses. In addition, the consumer can also demand payment of interest as compensation for losses that have been experienced. In the process of filing a lawsuit, it is important for the consumer to involve legal experts or lawyers who are experienced in the fields of consumer protection and housing law (Mantili, 2019).

¹⁰ Other efforts that can be done are mediation and arbitration. Mediation is a dispute resolution process involving disputing parties and a neutral mediator (Sugianto et al, 2020). In mediation, parties try to reach a peace agreement through negotiations guided by a mediator. The mediator helps the parties to find mutually beneficial solutions and relieve tensions between them (Talli, 2015). Meanwhile, arbitration is an out-of-court dispute resolution process involving disputing parties and one or several independent and neutral arbitrators. The arbitrators will hear arguments and evidence from both parties, and then render a binding decision. Arbitration decisions have the same legal force as court decisions (Adolf, 2020).

IV. CONCLUSION

Consumer law protection due to default in buying and selling housing can be done through several forms of legal action, including contract law and consumer protection law. Consumers who experience default by perpetrators or sellers of housing have several legal remedies that can be taken. First, consumers can file a lawsuit for damages as an effort to get compensation for the losses they experience as a result of the default. This lawsuit can be filed through applicable legal channels, such as through the courts. In addition, consumers can also choose to mediate or arbitrate as an alternative to dispute resolution. Mediation is a dispute resolution process involving a neutral third party, which aims to reach an amicable agreement between the consumer and the offender. Meanwhile, arbitration is a dispute resolution process involving an independent arbitrator or panel of arbitrators, which provides a binding decision for both parties. The choice of legal action may depend on the legal provisions in force in a particular country or jurisdiction, as well as depending on the agreement reached between the consumer and the offender. Through this legal

effort, it is hoped that consumers will be able to obtain appropriate legal protection and receive fair compensation for the losses they experience as a result of default in buying and selling housing. which provides a binding decision for both parties. The choice of legal action may depend on the legal provisions in force in a particular country or jurisdiction, as well as depending on the agreement reached between the consumer and the offender. Through this legal effort, it is hoped that consumers will be able to obtain appropriate legal protection and receive fair compensation for the losses they experience as a result of default in buying and selling housing. which provides a binding decision for both parties. The choice of legal action may depend on the legal provisions in force in a particular country or jurisdiction, as well as depending on the agreement reached between the consumer and the offender. Through this legal effort, it is hoped that consumers will be able to obtain appropriate legal protection and receive fair compensation for the losses they experience as a result of default in buying and selling housing.

This research provides an academic contribution by exploring relevant legal issues in the context of consumer protection in housing purchases. The research results can be used as a reference source for students, researchers, and academics interested in the study of contract law, property law, and consumer protection. The limitation of this research is time which hinders more in-depth research and generally requires a longer time to gain deeper insights. Future research can attempt to overcome data limitations by conducting more in-depth data collection, including interviews with consumers, housing developers, and parties involved in housing purchase transactions.

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