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Legal Protection for Apartment Buyers in Relation to the Non-Fulfillment of Development Obligations

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Abstract. In social life, buying and selling are fundamental mechanisms for transferring rights, beginning with an agreement. According to Articles 1313 and 1338 of the Indonesian Civil Code, agreements are legally binding acts with the force of law for the parties involved. One high-value transaction is the sale and purchase of apartment units, which involves developers as sellers. In practice, developers often fail to deliver units within the agreed timeframe. This study examines (1) the developer's responsibility toward buyers when units are not delivered and (2) the legal protection available for buyers under such circumstances. The research applies Hans Kelsen's Theory of Responsibility and Satjipto Rahardjo's Theory of Legal Protection, using a normative juridical method based on library research. Primary, secondary, and tertiary legal materials were analyzed through statutory, conceptual, analytical, and case approaches, employing grammatical and systematic interpretation, legal analogy, and legal refinement. Findings reveal that developers are primarily responsible for delivering fully paid units. Failure to fulfill this obligation, due to breach of contract or negligence, triggers legal liability in the form of performance or compensation. Legal protection for buyers ensures their rights are safeguarded, and even in cases of developer negligence or bankruptcy, consumers are legally entitled to receive the apartment units they have purchased.

Keywords: Agreement; Apartment; Developer; Legal protection; Sale and Purchase.

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1. Introduction

In social life, buying and selling serve as one of the primary mechanisms for transferring rights over property. The transfer of rights through a sale and purchase transaction is fundamentally grounded in an agreement, as an agreement constitutes the juridical instrument that creates a legal bond between the parties. This principle is consistent with Article 1313 of the Indonesian Civil Code, which defines an agreement as a legal act whereby one or more persons bind themselves to one or more other persons. This provision is further reinforced by Article 42 of Law Number 20 of 2011 concerning Condominium Ownership.

Within such contractual relationships, the seller is obligated to deliver the object of sale in a lawful and tangible manner to the buyer and is entitled to receive payment in accordance with the agreed price. Conversely, the buyer is obliged to pay the purchase price as stipulated and is entitled to obtain lawful possession and ownership of the purchased object. This principle is expressly stated in Article 1457 of the Civil Code, which provides that a sale and purchase agreement is one in which one party binds itself to deliver an object, while the other binds itself to pay the agreed price, as further emphasized by Article 1338 of the Civil Code.

One form of agreement involving high economic value and legal complexity is the sale and purchase of apartment units. In practice, developers occupy a central position as they are responsible for development, marketing, and the delivery of apartment units to consumers. This role is regulated under Law Number 20 of 2011 on Condominium Ownership, particularly Article 42, which obligates developers to hand over purchased apartment units along with ownership documentation. Nevertheless, disputes frequently arise due to developers' breaches of contract, including delays in construction, delivery of units that do not conform to contractual specifications, or obstacles in the issuance of Certificates of Ownership for Condominium Units (SHMSRS).

It is a fundamental principle that all legally executed agreements bind the parties as law. Failure by the developer to deliver the apartment unit in accordance with the agreement constitutes a form of contractual breach. This research examines several court decisions with similar factual and legal circumstances, including Supreme Court Decisions Number 323 K/Pdt/2021, 331 K/Pdt.Sus/2012, and 1347 K/Pdt.Sus-Pailit/2020, all of which have obtained final and binding legal force. These cases reflect recurring legal issues concerning the non-delivery of apartment units, including situations involving bankruptcy.

This study differs from previous research in that it specifically focuses on legal protection for apartment buyers whose units have not been delivered due to unfulfilled development obligations. Based on the foregoing background, this research is entitled "Legal Protection for Apartment Buyers in Relation to the Non-Fulfillment of Development Obligations."

2. Research Method

This study employs a normative juridical research method, which emphasizes the examination of secondary data through library research as the primary source of analysis. This method is appropriate for analyzing applicable legal norms, constructing systematic legal arguments, and formulating prescriptive conclusions and recommendations based on established legal doctrines and scientific principles.

The research approaches utilized include the statutory approach, case approach, analytical approach, and conceptual approach. The statutory approach involves examining legislation relevant to the legal issues under study, while the case approach is applied to analyze concrete legal events and judicial decisions. The analytical approach is used to interpret legal terminology and its application in legal practice and court rulings, whereas the conceptual approach examines legal issues based on underlying legal concepts, principles, and values.

The legal materials used in this study consist of primary, secondary, and tertiary legal sources. Primary legal materials include binding laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, the Basic Agrarian Law, the Condominium Law, and related governmental regulations. Secondary legal materials comprise legal literature, scholarly works, and relevant academic publications, while tertiary legal materials include legal dictionaries and encyclopedias. Legal materials were collected through systematic inventory and literature review, followed by classification and selection to ensure coherence as the foundation for legal analysis and construction.

3. Results and Discussion

Analysis of the Developer's Liability Toward Apartment Buyers for the Non-Delivery of Apartment Units

Hans Kelsen's theory of legal responsibility is employed as the analytical framework to assess the liability of developers toward apartment buyers whose units have not been delivered despite full payment. According to Kelsen, legal responsibility arises when a legal subject commits an act that contradicts a legal norm and consequently gives rise to sanctions. Such responsibility does not solely stem from intentional misconduct but may also arise from negligence, which, under Kelsen's doctrine, constitutes a form of fault (*culpa*) that nonetheless produces legal consequences.

Within the contractual relationship between the developer and the buyer, the obligation to deliver the apartment unit constitutes a normative duty derived from the agreement, particularly the Sale and Purchase Agreement or the Preliminary Sale and Purchase Binding Agreement (PPJB). When this obligation is not fulfilled in a timely manner or is not fulfilled at all, while the buyer has already satisfied the payment obligation, a breach of contract (*wanprestasi*) occurs. Under Kelsen's theory of responsibility, such failure amounts to legal negligence that is sufficient to establish liability, without the necessity of proving malicious intent on the part of the developer.

The application of this theory is clearly reflected in the Decision of the South Jakarta District Court, which was upheld by the Jakarta High Court and the Supreme Court in Case Number 323 K/Pdt/2021. The court held that the developer was proven to have committed a breach of contract due to its failure to deliver the apartment unit in accordance with the agreement, while the force majeure defense was declared unsubstantiated. The sanctions imposed namely contract termination, refund of payments, and late delivery penalties represent concrete manifestations of legal responsibility as conceptualized by Hans Kelsen, demonstrating a direct correlation between norm violation, fault, and sanction.

The application of the theory of legal responsibility is also evident in cases involving developer bankruptcy, as reflected in Supreme Court Decisions Number 331 K/Pdt.Sus/2012 and Number 1347 K/Pdt.Sus-Pailit/2020. In these cases, the developer's failure to deliver fully paid apartment units was deemed legal negligence that gave rise to liability, notwithstanding the developer's bankrupt status. The Supreme Court emphasized that the rights of good-faith buyers must be protected, and therefore, apartment units that have been fully paid for cannot be treated merely as part of the bankruptcy estate (*boedel pailit*).

In addition to the theory of responsibility, Satjipto Rahardjo's theory of legal protection strengthens the analysis by positioning consumer protection as a fundamental objective of the law. Preventive legal protection has been provided through statutory regulations and contractual instruments; however, it failed to operate effectively due to the developer's negligence. Consequently, repressive legal protection through judicial decisions becomes the primary mechanism for restoring buyers' rights. Collectively, these judicial rulings demonstrate that the developer's responsibility is not merely contractual in nature but also constitutes an integral component of the legal mechanism designed to uphold legal certainty, justice, and consumer protection in property transactions.

An Analysis of Legal Protection for Apartment Buyers Concerning the Failure to Fulfill Construction Obligations

This study analyzes legal protection for apartment buyers in cases where developers fail to fulfill their construction and delivery obligations. The Theory of Legal Protection proposed by Satjipto Rahardjo is employed as the analytical framework to examine the legal phenomena surrounding the protection of apartment buyers whose rights have been violated due to the non-fulfillment of construction obligations.

According to Satjipto Rahardjo, legal protection is defined as the provision of safeguards for human rights that have been violated by others, and such protection is granted to society to ensure that individuals can fully enjoy the rights conferred by law. Legal protection constitutes a broad concept within a state governed by the rule of law. Fundamentally, legal protection consists of two forms: preventive legal protection and repressive legal protection. Preventive legal protection is intended to prevent violations before they occur, whereas repressive legal protection functions after a violation has taken place (Rahardjo, 2000).

The application of Satjipto Rahardjo's legal protection theory in relation to the failure to fulfill apartment construction obligations is examined through Supreme Court Decision Number 323 K/Pdt/2021 in conjunction with Jakarta High Court Decision Number 656/PDT/2019/PT.DKI and South Jakarta District Court Decision Number 45/Pdt.G/2019/PN.Jkt.Sel.

Case Background: Debora Ammy Novida B. v. PT Prospek Duta Sukses

The dispute between Debora Ammy Novida B., as the buyer, and PT Prospek Duta Sukses, as the developer, in Case Number 323 K/Pdt/2021 presents a significant legal issue concerning

legal protection in the property sector, particularly apartment transactions. In this case, the buyer had fulfilled her contractual obligations by paying the down payment and installments in accordance with the agreement. However, the developer failed to deliver the apartment unit within the stipulated timeframe. Furthermore, the construction of the apartment unit itself was not completed as promised, allegedly due to the construction of the Depok–Antasari toll road.

The fundamental legal issue concerns how legal protection should be afforded to apartment buyers who suffer losses as a result of a developer's negligence or default (*wanprestasi*), and how such protection can be analyzed through the perspective of Satjipto Rahardjo's legal protection theory. This theory places consumers or apartment buyers as parties entitled to state protection so that they are not harmed, both before and after the occurrence of legal violations.

Preventive Legal Protection for Apartment Buyers

Preventive legal protection for apartment buyers is, in principle, available within Indonesia's legal framework. First, the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) regulates fundamental principles of contract law, particularly Article 1320 concerning the validity requirements of agreements and Article 1338 which affirms the principle of freedom of contract. In this case, the contractual relationship was embodied in a Unit Order Letter (*Surat Pesanan Unit* or SPU). Although the SPU is not equivalent to a notarial deed of sale and purchase, it remains legally binding. The SPU should function as a preventive legal instrument that ensures legal certainty regarding the rights and obligations of both parties.

Second, within the context of housing and apartment development, Law Number 20 of 2011 on Flats (*Rumah Susun*) provides a stronger legal foundation concerning developers' obligations, including the obligation to complete construction and deliver apartment units to buyers in a timely manner. Under this law, consumers should be guaranteed legal certainty that apartment construction will be completed as promised.

However, in the case of PT Prospek Duta Sukses, such preventive legal protection failed to function effectively. The developer continued marketing apartment units despite being unable to ensure the continuity and completion of construction. The SPU was not complied with, consumer protection regulations were not effectively enforced, and construction obligations were not fulfilled according to schedule. This failure of preventive mechanisms ultimately compelled the buyer to pursue legal remedies through litigation.

Repressive Legal Protection Through Court Decisions

When preventive legal protection fails, repressive legal protection must operate. This form of protection is clearly reflected in the decisions rendered by the District Court, High Court, and Supreme Court.

The South Jakarta District Court held that the developer had committed default (*wanprestasi*) by failing to deliver the apartment unit within the agreed timeframe. The force majeure argument advanced by the developer was rejected due to the absence of official evidence and the lack of any force majeure clause in the SPU. As a form of repressive legal protection, the court declared the SPU null and void, ordered the developer to refund IDR 774,000,000, imposed a delay penalty of IDR 23,000,000, and ordered a conservatory attachment to ensure the enforcement of the judgment. This decision constitutes a restoration of the consumer's rights after suffering losses.

The Jakarta High Court upheld the District Court's ruling, affirming that the lower court's legal reasoning was correct. The appellate judges emphasized that the force majeure argument was unproven and that the developer had indeed acted negligently. Consequently, repressive legal protection was consistently upheld at the appellate level.

The Supreme Court subsequently rejected the developer's cassation appeal, stating that the *judex facti* had not erred in applying the law. As a result, the repressive legal protection afforded by the lower courts was reinforced. This final and binding decision provides legal certainty for consumers.

Across all three judicial levels, repressive legal protection was consistently applied to restore the consumer's rights. When viewed through Satjipto Rahardjo's legal protection theory, the buyer's right to receive an apartment unit that is constructed and delivered on time constitutes a

legal right that must be protected. When developers fail to fulfill their obligations, the state is obliged to intervene through legal mechanisms to safeguard such rights. The decisions of the District Court, High Court, and Supreme Court represent concrete manifestations of state protection for consumers.

Nevertheless, Satjipto Rahardjo's theory also emphasizes that legal protection should not be limited to repressive measures but must also include preventive protection. In this case, preventive protection proved ineffective due to the lack of effective supervision over developers marketing units without sufficient construction readiness. Although the consumer ultimately obtained her rights through judicial decisions, the lengthy litigation process highlights the weaknesses of preventive legal protection mechanisms.

The Importance of Strengthening Preventive Legal Protection in Apartment Development

One important lesson derived from this case is the necessity of strengthening preventive legal protection. Consumers should not be required to suffer losses before seeking justice through litigation. The state must establish more effective oversight mechanisms for developers, including ensuring that apartment units may only be marketed once construction has reached a certain stage, requiring escrow accounts to safeguard consumer payments until construction milestones are achieved, and imposing firm administrative sanctions on negligent developers before disputes escalate into civil litigation. If preventive legal protection is strengthened, repressive judicial protection can function as a last resort rather than the primary avenue for redress.

Legal Protection in Bankruptcy Cases: Graha Permata Properindo

The application of Satjipto Rahardjo's legal protection theory is also evident in Supreme Court Decision Number 331 K/Pdt.Sus/2012 in conjunction with Commercial Court Decision Number 10/Pailit/2012/PN.Niaga.Jkt.Pst. In this case, apartment buyers were placed in a disadvantaged position due to the developer's failure to deliver apartment units that had been paid for under a Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli* or PPJB).

The buyers had fulfilled their payment obligations, yet the developer failed to hand over the promised apartment units. This constituted a violation of the buyers' contractual and economic rights. From the perspective of Satjipto Rahardjo's theory, the buyers were entitled to legal protection, both preventively and repressively.

Preventive legal protection through PPJB regulations existed in theory, as the PPJB imposes clear obligations on developers to deliver apartment units within a specified timeframe. However, weak state supervision rendered such protection ineffective in practice. Consequently, repressive legal protection became necessary through bankruptcy proceedings.

By declaring the developer bankrupt, the Commercial Court enabled the appointment of a curator to manage and distribute the developer's assets among creditors, including apartment buyers. The Supreme Court's decision to uphold the bankruptcy ruling represents a concrete form of repressive legal protection, ensuring that violations of consumer rights do not occur without legal consequences. This approach aligns with Rahardjo's view that law must provide protection after rights have been violated.

Judicial Protection and the Role of Judges

Judges play a crucial role as protectors of consumer rights. By rejecting the developer's objections and broadly interpreting the concept of debt in bankruptcy law to include obligations arising from apartment sales, the judges demonstrated a commitment to protecting buyers' rights. This judicial stance reflects the essence of Satjipto Rahardjo's thought, namely that legal protection is a concrete effort by the state to safeguard the rights of citizens who have been harmed.

Although repressive protection was granted, these cases also expose the weaknesses of preventive protection due to insufficient oversight of apartment development projects. Ideally, the government should ensure that developers possess adequate financial and technical capacity before marketing apartment units.

Legal Responsibility in Hans Kelsen's Perspective

In addition to Satjipto Rahardjo's theory, this study also applies Hans Kelsen's theory of legal responsibility to analyze the phenomenon of legal protection for apartment buyers. According to Kelsen, a person bears legal responsibility for an unlawful act when that act gives rise to a legal sanction. Negligence (*culpa*), defined as the failure to exercise legally required care, constitutes a form of legal fault (Kelsen, 1961).

In the case of Debora Ammy Novida B. v. PT Prospek Duta Sukses, three elements of legal responsibility as articulated by Kelsen are clearly present: (1) an unlawful act in the form of default due to failure to deliver the apartment unit on time; (2) a legal subject, namely the developer as a legal entity; and (3) the imposition of legal sanctions, including contract cancellation, refund of payments, penalties, and conservatory attachment.

The consistent application of sanctions by the District Court, High Court, and Supreme Court demonstrates the enforcement of legal responsibility in accordance with Hans Kelsen's theory. Even in the absence of malicious intent, negligence alone is sufficient to establish legal responsibility.

4. Conclusion

The developer's legal responsibility primarily lies in delivering the apartment unit that has been fully paid for by the consumer. When this obligation is not fulfilled, whether due to breach of contract (wanprestasi) or negligence, legal liability arises in the form of performance fulfillment or compensation. Buyers who have complied with their payment obligations possess a legitimate right to the apartment unit, and such rights give rise to an inherent legal responsibility on the part of the developer. The law therefore functions as a mechanism to safeguard the rights of good-faith consumers, ensuring that they are not disadvantaged by the developer's failure to perform contractual obligations. Legal protection for apartment buyers who have fulfilled their obligations constitutes a form of legal safeguarding provided by the law. Even when the developer is negligent or declared bankrupt, such circumstances do not extinguish consumers' rights to obtain the apartment units they have paid for. These rights are guaranteed by law as a response to harmful conduct by other parties, thereby affirming the role of law in providing justice, legal certainty, and protection for consumers acting in good faith.

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