



# Legal Protection for Consumer's Rights in the Ordering House to Developer

Ariyani Ariyani, Abd Thalib<sup>(✉)</sup>, Surizki Febrianto, and Nur Aisyah Thalib

Faculty of Law, Universitas Islam Riau, Pekanbaru, Indonesia  
thalib@law.uir.ac.id

**Abstract.** This study aimed to analyse the responsibility of the developer to the buyer due to default/breach of contract matter, and legal protection of consumer's rights for no promise in ordering house to developer in full fill it. This research uses the type of literature study, or doctrinal, while the survey is only used as an addition. The data used is secondary data, viz., journals, articles, books, reviews, conference and seminar papers constituted the main source of information for this study. Besides, as possible as field research also employed as a complement viz., interviews, which is supported by primary data. The results of this study, indicated that developer have failed to full fill on ordering house for consumer. This is due to no goodwill, and nor good faith by the developer itself. Further, weak of consumer protection rights belonging to ordering house, caused of consumer does not has good bargaining positions.

**Keywords:** Legal Protection · Consumer · Real Estate Developer

## 1 Introduction

The high demand for housing, especially for the small and medium class, a shortage of 15 million units in 2018, is not proportional to its availability, this encourages the property business to grow, but the condition of its existence is very bad [1].

The policy to provide affordable housing ownership in the form of a subsidized mortgage scheme with support by the World Bank, especially for the small and middle class has been significantly carried out by the government in recent years, namely in the form of down payment assistance and house repairs [1].

Further, as far as in ordering house by the developer is concern, in the promotion and supply of housing sales, developers often provide redundant information and explanations to consumers who do not fit the facts. As stated in the brochure master plan / site plan that describes the whole long-term development plan such as the construction of public facilities, social facilities and other supporting facilities. Description of the technical specifications that ensure the quality and reliability of home building, as well as the provision of price discounts or certain gifts. Words or sentences are strung together in a brochure and was very impressed ideal. Moreover, explanation sales marketing (direct selling) is very beautiful by giving exaggerated picture of the development plan, and often gives promises uncertain, revealed weaknesses and degrading product developer

competitors. This was done to attract the attention and interest of consumers to decide to buy homes in the developer. Meanwhile, the current management strategy and marketing as well as media promotion of such a sophisticated but sometimes it is not ethical, all kind of ways to reap profits and gain market share.

Reform Provisions for future housing development are to prioritize the availability of housing for small and medium-sized groups by emphasizing people's purchasing power. This followed up by the local government in the form of an invitation the developers to build housing in their area. The developer then collaborates with banks that provide investment credit facilities in the housing sector or Kredit Perumahan Rakyat (KPR), with the aim that a house will be easier to sell. When the community then agrees to bind themselves in the KPR agreement, this is where the legal relationship between the developer and the consumer is born in the form of a housing sale and purchase agreement which has the potential to create new legal issues in the field of consumer protection.

In this context, as far as the consumer's rights is concern, Since 2017 the National Consumer Protection Agency has received no less than 3269 complaints from the public [2]. Nearly seventy-four percent of legal uncertainty, settlement, submission and the increase in costs of something [2].

Furthermore, based on aforesaid above, this article aimed to analyses, whether the developer take responsibility to the buyer due to default/breach of contract matter, and the perspective of Law No.1 of 2011 on Housing and Settlement Areas on the protection of consumer's rights in buying and selling housing.

## **2 Research Methods**

This research uses the type of literature study, or doctrinal, while the survey is only used as an addition. Relevant regulations, doctrines, official documents, or minutes in the making of laws and regulations, which use secondary data such as: Various International Documents, The 1945 Constitution of the Republic of Indonesia, The Law Number 8 of 1999 concerning Consumer Protection, The Law Number 1 of 2011 concerning Housing and Settlement Areas, Government Regulation No. 14 of 2016 concerning Housing and Housing Areas, Code of Civil Law, and the relevant others. Primary legal materials will later be assisted by secondary legal materials such as journals, books, reports, and other sources in conducting further analysis and deeper understanding. The tertiary legal materials can help in discussing matters in primary and secondary legal materials, such as dictionaries and encyclopedias.

## **3 Result and Discussion**

### **3.1 Developer's Responsibility to the Buyer Due to Default of Contract**

Home ownership in Indonesia, especially in Pekanbaru today, both as a place to live and as an investment shows a balance from before. There is no doubt that Pekanbaru City as the capital city of Riau Province, has a very strategic location not only as a gateway to various other regions, but also to other neighboring countries (Singapore, Malaysia, and others).

In this context, this study beside employed library research but also usage interviews to both of parties, viz. the developer, and the house's customer itself. Firstly, with regard to the buying intention in ordering house to the developer. That the intention to buy a house is for an investment in the future. The point of buying is to think ahead." (Interviewed, July 29, 2022).

Further in this regard, the intention to buy is "what we think we will buy" [3]. It can also be defined as an active decision that shows the behavior of the individual depends on the product [3]. Salah [4] The study here included 450 respondents in the city of Jeddah. From these answers, they obtained four reasons for having a place to live, namely: first attitude, second usual desire, third financial, and fourth cognitive behavior. While the attitude factor is the most prominent among others.

Then, Julius. et. Al. (2016) the same thing is also done by asking the reasons for buying a house to the respondents, totaling 235 working adults, and the answers are the reasons: first, the features of the house, the second is financial, the third is the distance, the fourth is the environment, and the five magic numbers are considered good to have the house [5].

In connection with that, Apaporn also examined the reasons for buying a residence in the form of an apartment by educated people who are not married as many as 400 respondents, the result is that it is known that the main factors are price and location that determine [6].

On the other hand, it turns out that prospective buyers also have other concerns and reasons, such as: complicated procedures, legal issues. Uncertainty of something, unaffordable prices. This is one of the main factors, that the developers do not understand the psychological feelings of potential customers, and as a result they find it difficult to get their customers [7].

Furthermore in this connection, according to both parties (interviewed, July 29, 2022) the procedure in ordering house between the customer and the developer stipulated that agreement formed in a written contract and binding. Here, according to the Code of Civil Law under Article 1320 provide four conditions for validation of a contract, viz., (i) All parties have mutually agreed; (ii) All parties must be feasible by law to create a bind/engagement; (iii) There is a certain matter agreed; and (iv) It does not break the law, moral, or public order.

Beside it, some of basics of contract should be applied. Among of those for instance, one of the principles that should be considered by the parties is the principle of freedom of contract. However, that does not mean unlimited free [8]. That is, freedom is meant by continuing to follow existing provisions, nor does it conflict with public order, as well as other values (Indonesian Civil Law Article 1338).

In connection with this, the results of interviews with the parties, that they confirmed the provisions of the above principles have been implemented and have been followed. Because if this is violated, it means that their actions are meaningless, or have no value (Interviewed, July 29 2022).

In this connection, need to be a concern for the parties who have entered into a contract, among others:

- (i) Obligations to be fulfilled;
- (ii) The performance of each party, or their respective work procedures;

- (iii) What about the matter of payment;
- (iv) What obligations each has;
- (v) Consequences if a violation occurs.

Meanwhile, as far as liabilities in ordering house is concern, the customer emphasized here that the developer not only has already default/breach of contract matter, and to infringe on consumer's rights for no promise in full fill it, but also without paid back. (interviewed, July 29, 2022). In this context the Consumer Protection Law Number 8 of 1999 under Article 4 states as follows:

Consumer rights include: The right to comfort, security, and safety; the right to be able to determine for themselves what they want; the right to obtain good and correct information; the right to be heard on the complaint; the right to be given legal protection; the right to acquire knowledge or guidance; the right to be treated well and fairly; and the right to compensation [9].

No doubt, in this connection as indicated above that the developer clearly approved has infringed the Consumer Protection Law Number 8 of 1999 under Article 4(h). Broadly speaking, that in fact each party must understand that in principle every contract must be carried out properly, must not do anything that can harm or take the rights of others.

As it has been already aforesaid above, about the principles of in a contract, one of them viz, "good faith and fair dealing". In Article 1339 of the Civil Code, it is stated that the parties are not only bound by agreements that are expressly agreed upon, but also include those that are not stated but by their nature are required by propriety and custom. This means that the parties are required to always do good.

Research like this has been researched by previous researchers regarding Legal Protection Against Consumers in House Sale and Purchase Agreements Through Home Ownership Credit Facilities (Study At Pt. Bank Rakyat Indonesia Medan Putri Hijau Branch Office) by Debby Oktavia Sitompul which was published in the UMSU repository in 2020 [9]. From the results of this study, there is no legal protection or guarantee to home buyers that they immediately have ownership rights after making the final payment for their property.

Finally, Lack of consumer knowledge as well as no experience are often abused by housing developers to provide housing and the environment are eligible. This loss is experienced by many consumers who buy houses in commercial housing.

### **3.2 Legal Protection of Consumer's Rights**

One of the main rights for everyone is the need for a house as a place to live, in addition to food, clothing and water [10].

There is no doubt that housing is a very basic right for everyone to get security, peace, tranquility, and live with dignity. According to Eide [11]. Ownership of a house is a form of human rights or social rights of every person, in addition to being part of economic and cultural rights [12]. Gewirth [13] is pointed out that ownership of a house is a basic right that cannot be separated from the basic rights of every person, as is expressly stated in various international conventions, such as the Universal Declaration

of Human Rights, the Elimination of All Forms of Racial Discrimination, and other socio-cultural economic rights.

Meanwhile, in principle as far as consumer's rights is concern, The 1945 Constitution of the Republic Indonesia under Article 28H (i) stipulates as follows: It is clearly stated here that each person has the right to live a quiet, peaceful, happy life, live in a healthy environment, get good health services.

A decent, calm, peaceful, prosperous life as mandated in Article 28 H (i) of the 1945 Constitution, the same thing is also stated in the Rio De Janeiro Declaration Agreement which is supported by the League of Nations Center for humanity. Then the Habitat II Declaration emphasized that everyone has the basic right to have a decent, affordable and adequate house. Similar things to Law no. 1 of 2011 concerning Housing and Settlements re-enters the Agenda 21 program by emphasizing the importance of a home for everyone.

Accordingly, based on the Regulation of the Minister of Public Housing No. 3 of 2014 concerning the Liquidity Facility for Housing Payments through KPR Sejahtera which regulates the implementation of subsidized mortgages, it is determined the arrangement for the ownership of decent and affordable housing for low and medium income groups, without differences to achieve prosperity for everyone.

Further, Article 25(1) of the Universal Declaration of Human Rights of 1948 (UDHR) states that:

Everyone has the same rights, namely an adequate standard of living, in terms of health, personal and family welfare, food, clothing, care, social services and the right to the necessary security, especially when they are no longer working.

It was re-entered and emphasized that home ownership was seen as a standard of living a decent life. Various rules also take a lot of the appropriate standard of living as referred to in Article 25 (1) of the UDHR [14].

Moreover, as far as the right to housing is concern, The International Covenant to Economic, Social and Cultural Rights of 1966 (ICESCR), Article 11(1) provides that:

The Convention stipulates that each State Party agrees to follow and implement a standard of living that is appropriate and adequate for each and every one of their families in terms of clothing, food and housing, while continuing to promote sustainable living conditions. Therefore, each member country should pay attention to programs in order to realize the basic rights referred to, and by continuing to cooperate with each other among participating countries" [15].

Article 11(1) clearly reflects the structure and content of article 25(1) of the UDHR. Both provisions include housing along with food and clothing as aspects of the right to an adequate standard of living [14].

Furthermore, in this context, The Human Rights Resolution Commission through the Office of the High Commissioner further issued provisions on standard rules for proper and decent housing categories [16]. This 2004/21 resolution has officially stipulated and stipulates that adequate and affordable housing is a benchmark and the main element in economic, social, cultural and environmental development. This is seen as a strong relationship within the framework of encouraging each family to play a role in realizing

security, order, togetherness. In the end, this Resolution asks that all participating countries can carry out as well as possible, namely by focusing on remote places and areas that are left behind.

On the other hand, The Law Number 1 of 2011 Concerning Housing and Settlement Areas, unfortunately, no procedural policy instrument has been identified. The coordination among resource users and public infrastructure providers in dealing with resources is a major challenge in the process of the vocalization of implementation goals and means [17]. For example, the competing interest of national food security program and one thousand house program by government. In this example, government need to support self-subsistent housing by providing facilities and infrastructure while there is need to prevent the artificialization of agricultural and natural land for national food security program [18]. It calls into question land use prioritization. According to The Act no 1 year 2011, housing and residential plan, its implementation and evaluation for housing development was the authority of one agencies which does not involve other agencies for other resource governance both in national to local level. It found that plan has become the only tool not only in directing resource user behavior in dealing with resources, but also the main tool to prevent the occurrence of overlapped, contra productive and gaps in government interventions. A key issue related to the top-down planning as has been directed in the Act is the devolution of responsibility among actors as well as their coordination in the implementation and monitoring stages.

Provisions of Law No. 1 of 2011 Article 3 letter (e) concerning Housing and Settlements, confirms that the purpose and intent of the creation of the housing and settlement area is to ensure the implementation of an appropriate and affordable house in a healthy, safe, integrated and sustainable environment. This is very much in line with what is mandated in the provisions of Article 19 which emphasizes on housing development:

The construction of residential houses is intended to fulfill what is one of the main rights for everyone, namely to have a place to live in achieving a better life. This housing construction work is carried out by the government or by handing it over to individuals in order to fulfill the right to own a house in a place that is healthy, good and livable, safe, comfortable.

The purpose of this regulation is that the construction of good, decent and affordable housing is prioritized for lower and middle class groups of people by providing various facilities. (Article 1 number 10).

Empirical facts show that the government, especially in the regions, is in fact unable to carry out the construction of good, decent and affordable housing, but what can be fulfilled is only the form of Uninhabitable Houses. This means that the government, especially in the regions, is considered to have failed in providing decent and affordable housing as proclaimed by the United Nations.

The impact of the failure and inability of the government to carry out the construction of housing houses, especially for low- and middle-income groups that are good and affordable, has resulted in this work being taken over by the private sector. The government's program to provide good and decent housing for small and medium-sized communities is now far from what was expected. This is because private developers do not necessarily want to follow government policies in preparing the proposed form of the house. So do not be surprised if there are many complaints from consumers as a result

of the condition of housing built by the private sector that is not suitable for habitation [19].

As long as the Central and Regional Governments still adhere to the dominant constitutional principles in carrying out their duties and functions for the welfare of the people, government policies tend to be elitist, while the public is only seen as mere objects. It is time to change the perspective from the basic state of the Constitution to the Constitution of human rights on the availability of good, decent and affordable housing [19].

Based on the discussion above, as long as it concerns the construction of good, decent and affordable housing for small and medium groups, the provisions of the regulations governing the protection of consumer rights, the result is that the Central and Regional Governments are unable to provide legal protection.

## 4 Conclusion

Finally, after long discussion and appropriate analyzing as aforesaid above, it showed that no evident the developer have responsible in full fill on ordering house for consumer. On the other hand, Indonesia has made laws and regulations that can be used as a guide for consumers, namely by Law Number 8 of 1999 concerning Consumer Protection, which regulates the rights and obligations of business actors and consumers as well as the birth of Law No. 1 of 2011 concerning Housing and Settlement Areas as well as supplemented by Government Regulation number 14 of 2016 concerning Housing and Housing Areas. However, it has not been well integrated and has not been implemented firmly in its implementation with other institutions and in the regions, so that it is considered not providing protection and legal certainty for consumers. UU no. 1 of 2011 concerning Housing and Settlement Areas has not actually been able to protect the rights of consumers in the housing business, resulting in developing housing business practices detrimental to the community as consumers. Furthermore the regulations are not mutually integrated with each other with regard to the allotment of residential land both at national and at regional level.

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