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Editorial Office: postgraduate at Riau Islamic University, Universitas Islam Riau, Pekanbaru, Indonesia.

Phone: +62 85234073707, +62 85329106484

E-mail: law_s3@uir.ac.id

Website : <https://pps.uir.ac.id/icls2024/>

Breach of Contract in Implementing Housing Development Cooperation Agreement between Landowner and Developer

Zulfikri Toguan^a, Fajri Alfin^b

^aUniversitas Islam Riau

zulfikripohan@law.uir.ac.id

^bUniversitas Islam Riau

Alfin22fajri@gmail.com

Abstract:

The agreement for the development of Griya Puri Husada housing involves the landowner and the developer, who have agreed to a written agreement authenticated by a Notary beforehand. Both parties have established their rights and obligations and are committed to executing them as agreed upon. Moreover, the first party, as the landowner, and the second party, as the developer, are jointly responsible for the construction and management of the housing, with profit generated from each house sale transaction. Furthermore, the developer is required to complete all construction-related tasks within a maximum period of two years, even though the landowner's rights may not be fully fulfilled afterward. The objective of this research is to describe the breach of contract in the implementation of housing development cooperation agreement of Griya Puri Husada between landowner and developer. The method of this research is empirical law method. The data sources are obtained from the landowner, developer, and library materials such as legislation, books, journals, and related articles. Results show that the implementation of the cooperation agreement has not proceeded as expected. Specifically, the developer has failed to fulfill its obligations to build and manage the housing within two years as agreed upon and has not fully settled payments to the landowner (Breach of Contract). Additionally, the developer has faced initial challenges such as permits and correspondence, as well as difficulties in attracting consumers quickly.

Keywords: *Breach of Contract, Cooperation Agreement, Implementation*

I. Introduction

The growth in the national economy has spurred a higher demand for housing, leading to the development of numerous new housing projects in both developing and rapidly advancing areas. Housing is defined as a collection of houses in a settlement, whether

urban or rural, equipped with infrastructure, facilities, and public utilities to ensure the availability of habitable housing¹. Housing is a place where people live and lead their lives, as well as a location where they are introduced to the norms, customs, and practices of a community².

¹ Housing and Settlements Law, Number 1 of 2011

² Budiharjo, Eko. 1998. *Sejumlah masalah pemukiman kota*, Alumni: Bandung. p.148

In the context of housing development, contracts between landowners and developers are frequently established to facilitate the development of new housing projects. These agreements typically encompass detailed provisions, including the delineation of work scope, financial arrangements, and project timelines. Disputes commonly emerge due to "*Breach of Contract*" or "*Wanprestasi*" in the Indonesian context, which refers to negligence or default that can occur in four forms: failure to meet stipulated obligations, deviation from agreed-upon terms, tardiness in fulfilling obligations, or undertaking actions prohibited by the contractual agreement³.

Essentially, contracts originate from the varying interests or differences between the involved parties. The development of these contractual relationships usually starts with negotiations among the parties. During these negotiations, the parties aim to establish agreements that align with their desires (interests) through a process of give-and-take. This negotiation process requires meticulous attention to detail to prevent potential disputes in the future.

The concept of contract law is an adaptation of the English term "*Contract Law*", and in Dutch, it is known as "*Overeenkomstrecht*". According to Lawrence M. Friedman, Contract Law is a legal mechanism that focuses on certain market aspects and regulates specific agreement types⁴. This highlights the necessity of a profound understanding of contract law principles to ensure agreement clarity and legality.

Article 1338, paragraph (1) of the Indonesian Civil Code (KUHPer) grants the parties the freedom to decide whether or not to create an agreement, to form an agreement with anyone, to specify the terms, execution, and conditions, and to choose the agreement format, be it written or verbal⁵. Contractual risks often stem from two main causes of disputes: insufficient attention to contract details and the lack of good faith from one party. Breach of Contract can occur if one party fails to comply with their obligations as agreed upon in the contract.

Therefore, in drafting the contract, it is essential to consider the principles outlined in Article 1338 of the Indonesian Civil Code. These principles are as follows: freedom to contract, which recognizes individual autonomy in making contracts; consensuality, which requires adherence to agreed terms by all parties; binding force, meaning legally made agreements must be upheld (*pacta sunt servanda*); and good faith, which requires acting with integrity for mutual benefit and avoiding harm to others.

Meanwhile, the basic principles of contract law in Indonesia, as outlined in Article 1320 of the Indonesian Civil Code, consist of four main elements. The first element is the agreement between both parties. The second element is the capacity to enter into an agreement. The third element is a specific contract object. Then, the final element is a lawful cause in making the contract⁶.

On July 1, 2020, a cooperation agreement was made between the first party (as the landowner) and the second party (developer). Specifically, this agreement was stipulated in

³ R.Subekti, 1970, *Hukum Perjanjian*, Cetakan Kedua, Pembimbing Masa, Jakarta, p. 50

⁴ Friedman, Lawrence M. 2001. *American Law An Introduction*. Translator: Whisnu Basuki. Jakarta: Tata Nusa, p.196

⁵ Indonesian Civil Code, Article 1338 paragraph (1)

⁶ Indonesian Civil Code, Article 1320

Document Number 2, which outlines the terms and conditions as follows:

In Article 1, the First Party and the Second Party agreed to collaborate on the construction of Griya Puri Husada Housing, located in Kumantan Village, Bangkinang Kota District, Kampar Regency.

In Article 2, the Second Party agreed to provide funds in the amount of Rp. 6,000,000 (Six million Indonesian Rupiah) from each house sale transaction to the bank appointed by the Second Party. The agreement specified a total of 170 (one hundred and seventy) transactions. The Second Party would handle each disbursement process, which would be received by the First Party, with the following provisions: a) The Second Party would provide money amounting to Rp. 6,000,000 (Six Million Rupiah) each time a housing credit agreement occurred at the appointed bank. This agreement was to be drawn up by the Second Party, debited to the BRI Agro bank account in which the credit agreement was conducted, and the account would be in the name of the First Party. b) The Second Party agreed to provide the remaining amount of the agreed sum of Rp. 1,000,000,000 (One Billion Rupiah) to the First Party over a period of 2 (two) years. If the agreed amount had not been paid after the 2 (two) year period, the Second Party promised to pay the remaining amount in cash.

Finally, in Article 3, the Second Party was obligated to complete the construction work within 2 (two) years, starting from July 1, 2020, and ending on July 1, 2022.

The cooperation agreement stipulated that its contents applied to both parties, giving rise to rights and obligations that each party had to adhere to as per the agreement. In this context, when the Second Party carried out the work

assigned by the First Party, the Second Party was responsible for the implementation of the work, and all work costs were to be borne by the Second Party in the development of Griya Puri Husada Housing, where the First Party acted as the Certificate of Ownership holder for a piece of land.

The First Party and the Second Party had agreed to cooperate in the construction of the Griya Puri Husada Housing project. The Second Party agreed to provide funds amounting to Rp. 6,000,000 (Six million Indonesian Rupiah) for each house sale agreement at the bank appointed by the Second Party, with a total of 170 agreements. Additionally, the Second Party agreed to provide the remaining amount of Rp. 1,000,000,000 (one billion Indonesian Rupiah) to be handed over to the First Party over a period of 2 years. However, if not paid after two years, the Second Party promised to pay the remaining amount in cash. The Second Party was required to complete the work within 2 (two) years.

The First Party stated that it had issued a Land Ownership Certificate to the Second Party to carry out the construction work on a piece of land owned by the First Party related to the housing development cooperation. However, the First Party had not yet received the funds, which should have been Rp. 6,000,000 (six million Indonesian Rupiah) for each agreement at the bank appointed by the Second Party. Up to that point, not all of these funds had been received by the First Party, even though the total number of agreements in the cooperation agreement was 170 (one hundred and seventy).

During the implementation of the agreement, the Second Party informed the First Party that they could not proceed with the house credit agreements because there were no consumers or house buyers applying for credit at the

bank, and the construction process was still ongoing. However, according to the cooperation agreement, the Second Party was obligated to complete the work within 2 (two) years. Despite more than 2 years passing, the work was not yet completed, and the First Party had not received all the funds as per the initial agreement. The Second Party continued the construction of houses on the land. Additionally, in the cooperation agreement, the Second Party was responsible for all risks that occurred during the execution of the work. Currently, the construction process of the Griya Puri Husada housing was still ongoing, and several housing units were in the construction process. Both parties still had rights and obligations that had not been fully fulfilled as they should have been.

Hence, from the phenomenon above, the researchers are interested to conduct research entitled “Breach of Contract in Implementing Housing Development Cooperation Agreement Between Landowner and Developer”.

Thus, the research questions can be formulated as follows: 1) How is the implementation of the housing development cooperation agreement of Griya Puri Husada between landowners and developers? and 2) What are the obstacles encountered in the implementation of the housing development cooperation agreement of Griya Puri Husada between landowners and developers?

II. Legal Materials and Methods

This research is Empirical Legal Research using survey method which is conducted directly in the field aiming to obtain information and data through respondents using interview method, and analysed descriptively. The main objective of this

research is to describe and explain comprehensively the breach of contract in the implementation of housing development cooperation agreement of Griya Puri Husada between landowner and developer.

Furthermore, this research was administered in Kumantan Subdistrict, Bangkinang Kota District, Kampar Regency. To collect the data, the researchers used interviews and questionnaires. In interview, a question-and-answer method were applied. The data of research were organized and presented systematically, then were analysed by using qualitative method.

Besides, this research offers a deep understanding of the dynamics of the implementation of the housing development cooperation agreement and the obstacles that may arise in that context.

III. Result and Discussion

The Implementation of Housing Development Cooperation Agreement of Griya Puri Husada between Landowner and Developer

Agreement or covenant involves legal connection of assets between two or more parties, where one party is empowered to achieve specific goals while the other party is obligated to contribute. Collaboration initially arises due to differences or disagreements between the parties involved for common interest.

The agreement relationship always begins with a negotiation process between both parties. Both parties strive to form an agreement through negotiation to reconcile their desires (interests) through the negotiation process. The principle of

consensualism can be concluded in Article 1320 paragraph 1 of the Civil Code⁷.

In fulfilling their respective business interests, both parties want to gain maximum profit. For example, a property developer collaborates with a landowner to build houses on the land owned by the landowner. If the landowner only sells their land, the profit may not be significant, but by collaborating with the property developer, the landowner can obtain greater profit. Therefore, these interests must be regulated in an agreement so that the agreement between both parties can be recorded in writing and proven to exist, and can resolve issues if they occur in the future.

The following are the questions given by the researchers to the respondents accompanied with their answers:

The 1st interview was with the Notary who drafted the agreement between the two parties:

Question: *"Is it true that both parties have the intention to make a cooperation agreement for housing development?"*

Answer: *"Yes, indeed the parties agree to make a cooperation agreement, one party is referred to as the landowner and the other party as the developer or property developer."*

A Notary is a public official who has the sole authority to create authentic deeds regarding all agreements and determinations required by regulations. It means that between the agreement (*overeenkomst*) and obligation (*verbintenis*) there is a relationship where the agreement produces an obligation. Thus, the agreement is a part of the obligation.

Next, the 2nd Interview with the landowner (first party) as follows:

Question: *"Have you made an agreement with the developer (second party)?"*

Answer: *"As the landowner, I cooperated with the developer to build and manage housing on the land registered in my name, and I am included in the cooperation agreement as the landowner." From the above answer, it is clear that the first party has entered into a housing development cooperation agreement with another party or developer and has agreed to cooperate in building housing on the land owned by the landowner.*

Moreover, researchers' 3rd interview with the landowner:

Question: *"What is the form of cooperation in the construction of the housing?"*

Answer: *"I own a plot of land (Certificate of Land Ownership) with an area of 15,000 square meters, agreed to cooperate by handing over the land certificate to the developer to build housing on the land. From this construction, for each house agreement, the second party hands over funds amounting to Rp. 6,000,000,-, with a total of 170 units of agreement. The developer provides the remaining money from the agreed amount of Rp. 1,000,000,000,000 (one trillion), which is handed over to the landowner over a period of 2 (two) years starting from the signing of the agreement in 2020, but until now not all have been fully implemented."*

From the statement above, it can be explained that the landowner has handed over the land certificate to the developer to build housing for sale. The proceeds from the sale will be divided to the landowner with a certain amount of money each time a house unit is

⁷ Indonesian Civil Code, Article 1320

sold. The developer is required to complete their work in accordance with the provisions of the cooperation agreement.

Researchers' next interview was with the developer (second party) in the following:

Question: *"Have you executed a cooperation agreement with the landowner?"*

Answer: *"Yes, we have cooperated in developing the Griya Puri Husada housing. We carry out the construction and management of the housing on the land owned by the landowner with payment to the landowner upon the sale of each house unit. We also handle and manage every process of housing development so that houses are built and ready to be sold to consumers."*

From the statement above, it is clear that the developer is engaged in the construction and management of housing from all initial processes to the sale of each housing unit, ensuring that houses are built and ready for sale to consumers.

The implementation of an agreement is the actual action or fulfilment of rights and obligations agreed upon by the parties to the agreement, so that the agreement can achieve its objectives.

Furthermore, an interview between researchers and the landowner as follows:

Question: *"What is the role of the landowner in the housing development cooperation?"*

Answer: *"As the landowner, my role is to provide and hand over the certificate in my name to the developer to build housing which is then sold to consumers. From the sale, I, as the landowner, will receive the rights as agreed upon."*

The last interview was with the developer can be seen as follows:

Question: *"What is the role of the developer in the housing development cooperation?"*

Answer: *"The developer plays a significant role in this cooperation."*

From the discussion above, it can be concluded that an agreement or cooperation arrangement is formed between the landowner (first party) and the developer (second party) to build and manage housing on the land owned by the landowner. This agreement process begins through negotiations between both parties, which are then documented in a written agreement by a notary public. The landowner hands over the land certificate to the developer for housing construction, while the developer is responsible for the construction, management, and sale of housing units. Payments to the landowner are made each time a house unit is sold. This indicates that the agreement is carried out with the hope of meeting mutual interests and generating profits for both parties, but there are still issues related to delayed payments that need to be resolved. Thus, the implementation of this agreement is key to achieving the goals of the cooperation agreement.

The Obstacles Encountered in the Implementation of the Housing Development Cooperation Agreement of Griya Puri Husada between Landowner and Developer

In the context of the provisions regarding breach of contract in the cooperation for the development of Griya Puri Husada housing between the landowner and the developer, it is important to understand the rights and obligations of each party as stated in the agreement.

The landowner has the obligation to hand over the Certificate of Land Ownership

(SHM) to the developer so that they can manage and develop housing on the land. However, the rights of the landowner from the signing of the agreement until now have not been fully fulfilled. According to the agreement, payments to the landowner must be made within a maximum of 2 (two) years, and if it exceeds two years, the developer must pay the remaining payment in cash.

Meanwhile, the developer has the right to receive the land ownership certificate and power of attorney to build housing on the land owned by the landowner. They also have the right to profit from the construction of houses and are responsible for all procedures to build the housing.

However, in the implementation of the housing development cooperation agreement, there are obstacles or constraints in the technical implementation of construction that take quite a long time in the initial stages for document processing, permits, and other matters.

If a breach of contract occurs, the legal consequences may include: 1) The aggrieved party may claim compensation, which includes all losses suffered, both directly and indirectly, closely related to what has been agreed upon by the parties, 2) The aggrieved party may propose the termination of the agreement, with claims for damages, interest, other costs, and expected benefits, 3) The aggrieved party may request to continue the agreement without claims for compensation, accompanied by interest, other costs, and expected benefits, and 4) The aggrieved party may request to continue the agreement with claims for damages, interest, other costs, and expected benefits.

Therefore, it can be concluded that in the cooperation for housing development between the landowner and the developer,

both parties have rights and obligations that must be fulfilled in accordance with the provisions stated in the agreement. However, there is a potential for breach of contract if one party fails to fulfil its obligations in good faith. If a breach of contract occurs, the consequences may include claims for compensation, termination of the agreement, or continuation of the agreement with appropriate compensation. Additionally, technical obstacles in the implementation of housing development can also affect the smoothness of the project. In the legal context, there needs to be a clear understanding of rights, obligations, and consequences of the cooperation agreement to ensure fairness and smooth implementation of the project.

IV. Conclusion and Suggestion

Based on the discussion above, it clear that the implementation of the housing development cooperation agreement of Griya Puri Husada between the landowner and the developer did not proceed as expected. This happened due to several reasons.

Firstly, the second party or developer has not fulfilled its obligations properly, such as providing a sum of money for each house contract amounting to Rp. 6,000,000,- for a total of 170 units, and making the remaining payment of Rp. 1,000,000,000,- with a delay of two years. Although the construction is still ongoing, the first party or landowner has not received their rights as stated in the agreement deed.

Furthermore, the implementation of the cooperation agreement has faced obstacles, including the second party encountering delays in obtaining permits and dealing with administrative issues, which consumed significant time. Finding consumers to buy

the houses also took time, despite the agreement setting a two-year working period since its signing in 2020. The housing development and sales are still in progress, and the landowner's rights have not been fully met. The second party has not met its obligations due to technical issues in the construction of the housing project.

Therefore, based on the conclusions outlined, it is recommended that: 1) Before signing housing development cooperation agreements, it's essential to carefully review the agreement's contents, including rights, obligations, and potential technical risks. In managing housing development, factors such as permit processing time, land maturation, and house unit sales duration should be considered to enhance effectiveness and efficiency, and 2) Each party in the agreement must follow its principles and abide by relevant laws. Agreements should be made in good faith by all involved parties.

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