

[https://doi.org/10.52326/jss.utm.2022.5\(2\).18](https://doi.org/10.52326/jss.utm.2022.5(2).18)  
UDC 347.451



## WEAKNESSES OF THE PRE PROJECT SELLING SYSTEM IN THE SALE AND PURCHASE OF FLATS

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Received: 02. 22. 2022

Accepted: 04. 21. 2022

**Abstract.** The purpose of this research is to find out the causes and solutions in overcoming the lack of consumer legal protection in selling and purchasing flats in the pre project selling system. This is a normative legal research with a statutory approach and a conceptual approach, Case Approach, Comparative Approach. Analysis of legal materials is carried out using qualitative descriptive analysis techniques. This research find that the legal position of PPJB in pre project selling so far is still considered to provide less protection to consumers who buy flats. One of the factors causing the lack of protection of consumers in purchasing flats through PPJB in pre project selling is due to the lack of consumer understanding of the contents of the agreement in pre project selling. The government has tried to improve the process of selling and purchasing flats through pre-project selling. Development actors must meet the requirements, at least they must have certainty of space allocation, certainty of land rights, certainty of ownership status of flats, permits for flat construction and guarantees for the construction of flats from a guarantor institution.

**Keywords:** *Legal Protection, Consumers, sale and purchase, Flats, Pre Project Selling.*

**Rezumat.** Scopul acestei cercetări este de a afla cauzele și soluțiile pentru depășirea lipsei de protecție juridică a consumatorilor la vânzarea și achiziționarea de apartamente în sistemul de vânzare anteproiect. Aceasta este o cercetare juridică normativă cu abordare statutară și abordare conceptuală, abordare de caz, abordare comparativă. Materialele juridice sunt analizate, folosind tehnici de analiză descriptivă calitativă. În urma cercetării s-a constatat că poziția juridică a PPJB la vânzarea anteproiectului de până acum este încă considerată a oferi mai puțină protecție consumatorilor care cumpără apartamente. Unul dintre factorii ce cauzează lipsa de protecție a consumatorilor în achiziționarea de locuințe prin PPJB la vânzarea înainte de proiect se datorează lipsei de înțelegere de către consumatori a conținutului acordului la vânzarea înainte de proiect. Guvernul a încercat să îmbunătățească procesul de vânzare și cumpărare de apartamente prin vânzarea înainte de

proiect. Actorii de dezvoltare trebuie să îndeplinească unele cerințe, cel puțin trebuie să aibă certitudinea alocării spațiului, certitudinea drepturilor de teren, certitudinea statutului de proprietate a locuințelor, autorizații de construire a locuințelor și garanții pentru construcția de locuințe de la o instituție garant.

**Cuvinte-cheie:** *protecție juridică, consumatori, vânzare și cumpărare, apartamente, vânzare pre-proiect.*

### **Introduction**

Agreements are important in terms of legal relations to maintain the security of transactions between two parties. Article 1457 of the Criminal Code defines a sale and purchase agreement as an agreement, where one party binds himself to hand over ownership rights to the goods to a second party while the second party is obliged to pay the price agreed in the agreement. The sale and purchase agreement is regulated in Article 1457 of the Civil Code in conjunction with Article 1458 of the Civil Code.

The Sale and Purchase Binding Agreement (PPJB) has the meaning of a preliminary agreement which contains promises from the parties containing provisions if the terms of sale and purchase have been fulfilled. This agreement is carried out because the conditions in the main agreement have not been fulfilled in this case is a sale and purchase agreement with the object of the agreement in the form of an apartment. These promises must be fulfilled by one of the parties or the parties before the main agreement is made. PPJB is an agreement from two parties to carry out their respective achievements in the future, namely the implementation of selling and purchasing before the Land Deed Making Officer (PPAT). PPJB can be made by the parties themselves or PPJB made before a Notary. The notary only acts to accommodate the wishes of the parties (buyers and sellers) and shows it in the deed and the subsequent process, namely the process of making a deed of sale and purchase that must be done before the PPAT. When two people make an agreement, they both intend to make a legal alliance between them. PPJB is a form of alliance with a timeline. PPJB is an agreement appointed and made from the concept of the Criminal Code which is an agreement of the parties on the rights and obligations made based on Article 1320 of the Civil Code and Article 1338 of the Civil Code so that it can provide legal certainty and legal protection for the parties who make it. Article 1338 paragraph (1) of the Civil Code states that all agreements made legally apply as law to those who make them.

Treaty law adheres to the principles of freedom of contract, the system is open and is a complementary law. The principle of freedom of contract gives each person the right to enter into an agreement with the terms and conditions agreed upon by both parties (developer and consumer of the apartment unit) with subjective and objective conditions as long as the legality of an agreement remains met. This means that everyone can enter into any agreement and the law of the agreement is a complementary law. Everyone can thus enter into any agreement and the law of the agreement is a complementary law, so anyone can make an agreement in other forms than those provided by the Civil Code.

The authorized employee in question is a Notary. PPJB made before a Notary, the PPJB deed automatically becomes an authentic deed. While PPJB made not before a public official (Notary), then the PPJB becomes a private deed. PPJB which is not made before a public official or a deed under new hands has power against third parties, among others, when affixed with a statement dated from a Notary or another official appointed by law as regulated

in Article 1874 of the Civil Code. Thus, the legal force of the PPJB deed of land rights made by or before a Notary is very strong, because the PPJB made before a Notary, then the deed has become a notarial deed so it is an authentic deed. As for PPJB made not in the presence of a Notary, it becomes a deed under hand whose proof is under an authentic deed, although in article 1875 of the Civil Code it has been mentioned that the deed under hand can have perfect proof as an authentic deed if the signature in the deed is recognized by the parties who signed it.

### **Research Methods**

Normative juridical is the research method that used in this research, which means that the research method that describes the law is a written concept of statutory regulations (law in books) or considers the law as a rule that is made by humans as a good benchmark in carrying out life [1]. The approach used in answering the problem is to use a statutory approach and a conceptual approach, Case Approach, Comparative Approach. The statue approach is carried out by reviewing all laws and regulations related to the legal issues under study. The conceptual approach is an approach that studies the views and doctrines of doctrine in legal science to build legal arguments so that they can solve the problems they face. The case approach is to examine and analyze cases of default and unlawful acts committed by developers as a result of selling and purchasing agreements made between developers and consumers, causing losses, especially on the part of consumers. Comparative approach, namely by comparing the sale and purchase agreement of flats in Indonesia with the sale and purchase agreement of flats in other countries.

The legal materials used are primary, secondary, and tertiary legal materials. In this resarch, the literature study is a procedure for collecting legal materials. Analysis of legal materials is carried out using qualitative descriptive analysis techniques [2]. Based on the results of the analysis, then an interpretation or interpretation of the law is carried out through the help of methods or teachings on interpretation including Grammatical Interpretation, Systemic Interpretation, and Futuristic Interpretation. Furthermore, the research results are recorded systematically and consistently so that the materials obtained in this study can be written with critical, logical, and systematic management, so that later they can reveal a new norm from the results of a problem.

### **Results and Discussion**

#### **Consumers' Perspective on the Definition of PPJB in Pre Project Selling**

Selling and purchasing activities for humans have become a part of daily activities to fulfill their daily needs. The business world recognizes that selling and purchasing is mainly carried out to sell production or buy raw materials and other materials that will be used in the planned production process, including selling and purchasing in the property sector. The need for housing that continues to grow is not proportional to the availability of land that is permanent, so the demand for land as a place for humans to build houses is decreasing. The limited availability of land is what gives rise to a thought to build a residence vertically. The results of production in the property sector can be in the form of housing, buildings or dwellings in the form of flats known as apartments, condominiums or flats both before the building is built and after the building has been built [3]. The strategy of selling flats (apartments) is one of the property marketing models in Indonesia. The wide variety of offers for flats and the increasing need for decent housing have received a positive and quite high

response from the community, along with the narrowness of land for housing, especially in big cities. Currently, flats or apartments have become a part of the lifestyle in addition to being a basic need. It is legally possible for a person to own a flat unit privately.

PPJB in pre project selling involves development actors (developers) and prospective buyers, where in PPJB it can secure the process of legal relations between the parties if it is made in real terms and fulfills the provisions regarding the legal terms of the agreement as regulated in Article 1320 of the Civil Code. The preparation of PPJB is the process of selling and purchasing in the sale of flats (apartments) on a pre project selling basis solely to ease the agreement desired by the parties. The terms set forth in the agreement must not burden both parties. Transactions held in the sale and purchase of flats (apartments), previously referred to the UURS of 2011. The form of the sale and purchase agreement for flats is with a pre project selling system, namely sales promotion carried out by the developer before the construction of the apartment is carried out so that the offered by the developer in the form of illustrations and designs.

Subekti states that an agreement is made when an event occurs where someone wants to promise to another person or where another person promises to do something, then with the willingness of a consumer who wants to buy an apartment through a PPJB pre project selling agreement before a notary with the intention that the amount of money that will later be issued in accordance with the agreement and will get an apartment in accordance with the rights [4]. The assumption that develops in the community regarding the making of an agreement is that an agreement must be made and or made in the form of a notarial deed so that the agreement is legally valid, even though the assumption is not entirely true [5].

The following are the legal terms of the agreement in accordance with Article 1320 of the Civil Code:

- There is an agreement
- Having skills
- The existence of the object of the agreement
- There is a lawful cause

Conditions number 3 and 4 are objective conditions that must be met, otherwise the agreement will automatically be void. If the agreement is executed based on Article 1320 of the Civil Code, where there is the ability of the consumer to make payments and the ability to procure complete flats along with the permits and documents of ownership, all things that are agreed by both the consumer and the developer become a commitment that is set forth as a sale and purchase binding agreement or referred to as PPJB.

The object of the agreement as stated in Article 1320 of the Civil Code is an object of economic value and the object must be clearly explained in the clause of the agreement, and the object of the agreement is an object that is traded according to the law. Related to the principle of consensus or agreement of the parties, things that can cause the agreement of the parties to be invalid are due to a defect of will. Based on Article 1321 of the Criminal Code, an agreement made by the parties becomes invalid if it can be proven that the agreement occurred due to a defect of will which could be in the form of oversight, coercion, or fraud.

A situation is said to have an element of error or misguidance (*dwaling*) while a person when making the agreement is influenced by views or effects that are not true. The errors regulated in Article 1322 of the Criminal Code include errors about the person (error in persona) and errors about the nature of the thing promised (error in substantia). Related to

coercion (dwang) regulated in Article 1324-1327 of the Criminal Code, it is said to arise when a person is moved to close an agreement (give an agreement) under a threat that violates the law, in this case consists of 2 (two) things, namely:

- a. Something that is threatened is indeed against the law (such as murder, persecution, false reports);
- b. Something that is threatened does not violate the law, but the threat is intended to achieve something that cannot be the right of the perpetrator.

Meanwhile, what is meant by fraud (bedrog) as regulated in Article 1328 of the Criminal Code is a trick used by one party to cause the other party in the agreement to have signed the agreement, even though without the ruse, the other party would not have signed the agreement. concerned. The ruse in question must be substantial, for example, when the seller says that the flat/apartment offered is of premium quality, when in fact the materials used are even far below quality standards, then the ruse is considered substantial and can be categorized as fraud so that the agreement can be canceled.

An agreement must have an object and clearly the object of the agreement, where the object of sale and purchase can be a building and/or land that will be used as a residence in the form of a house/apartment. Sales and purchases made before the construction of the apartment were made or through the pre project selling system carried out with PPJB which contained the authorities and obligations of the parties. Based on existing laws and regulations, the application of marketing and transactions for flats (apartments) is basically allowed to be carried out before the construction is completed which is carried out by the PPJB process and then after the building is completed, it is continued with the Sale and Purchase Deed (AJB) process [6]. Mostly in practice in the field, the process of selling and purchasing flats (apartments) is carried out with a pre project selling system, namely selling and purchasing before the building is built. Sales in this way are actually intended as a market test of the products being marketed, namely apartment units. It is hoped that in sales through pre-project selling, not a few will order or make purchases before the apartment unit is completed.

People who are interested in buying flats with an alternating pre-project system, must place an order in advance and for consumers who have ordered, they will be given a "letter of order" (booking form) as an initial document that will be received by consumers who intend to buy housing units flat (apartment). The consumer must not ignore the things that are the consumer's obligations after signing the Order Letter, that is, they must always remember that the "Letter of Order" is an initial transaction, because after signing the order, the next step is the consumer must pay a booking fee (order fee), along with a down payment.

Developers of flats must provide important information clearly and accurately to buyers regarding the products offered, such as information on types of land rights, physical condition of buildings and selling prices [7]. Apart from selling and purchasing, ownership or transfer of rights can occur due to exchange and grants, or rent [8]. In an increasingly open era, prospective buyers of flats must receive correct, clear and honest information regarding the conditions and guarantees for flat products (apartments) as described in Article 4 letter (c) of the UUPK [9]. Even the PPJB signed before a notary, is usually made by the developer by including a clause in the standard agreement which is only determined unilaterally by the developer is often misused by business actors, where the contents of the agreement determine the obligations of consumers more than the obligations of the business actor himself. Not infrequently the agreement contains an exoneration clause, namely a clause

with the exception of obligations in the agreement or it can be said to transfer the responsibility of the developer.

### ***The Use of PPJB in Pre Project Selling as a Consumer Reference in Executing Obligations***

The process of selling condominium units including commercial condominium units can be carried out in 3 (three) different time periods. The three time periods for selling commercial flats refer to Article 42 to Article 44 of the UURS, namely: Pre project selling, Ongoing project selling and Post project selling. Pre-project selling is the sale of flats in the period of condominium construction that has not yet started through the marketing process. Ongoing project selling is a sales process when the construction of the flats is in progress and has not been completed. Post project selling is a sales process after the construction of the flats has been completed and is ready to be used or occupied. In this study, it focuses more on pre-project selling.

The condominium sale process as stated in Article 42 paragraph (2) letter e of the UURS determines that one of the conditions for the sale of commercial condominium units is that the developer has built a house as much as 20% of the total condominium plan to be built. If the development has been running at least 20%, the developer is allowed to market and sell both the flats that have been built and those that have not been built. One of the stages that becomes a *marwah* in selling and purchasing flats (apartments) with a pre project selling system is located in PPJB. PPJB which is used in UURS as *Lex Specialis* for the process of selling and purchasing flats. PPJB in pre project selling to get an agreement on achievements and contra-achievements or rights and obligations which will be the basis for binding the parties to always carry out the sale and purchase agreement.

The sale and purchase agreement does not recognize the term consumer, because in the sale and purchase agreement only parties are known, namely the seller and the buyer. If there is negligence by the seller in fulfilling the contents of the sale and purchase agreement, the demands of the community as buyers in general are the return of the down payment or the realization of the house, not the punishment of the construction actors. The need for strict regulation in the form of statutory arrangements because Indonesia adheres to a positive legal system. Legal sanctions against sellers or development actors who make PPJB not in accordance with what is being marketed, or before fulfilling the certainty requirements as stipulated in Article 43 paragraph (2) and Article 98 of the 2011 UURS, development actors may be sentenced to a maximum imprisonment of 4 (four) year a maximum fine of Rp. 4,000,000,000,- (four billion rupiah) as regulated in Article 110 UURS Year 2011, while UUPK only regulates criminal sanctions for sales promotions that are not true.

The issuance of the Minister of Public Works and Public Housing Regulation Number 11/PRT/M/2019 concerning the Preliminary Sale and Purchase Agreement, which includes the developer's obligations at the time of signing the PPJB as follows:

- a) Show certificates of land rights;
- b) Submit a copy according to the original IMB;
- c) Show/submit a statement regarding the availability of ready-to-build land outside the joint land which will be submitted to the Regional Government;
- d) Show / submit a report from the construction supervisory consultant or construction management consultant that the construction volume of the marketed flats construction has reached 20%.

According to the Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019 on the Pre -Sale and Purchase Agreement, at least PPJB contains:

- a) Identity of the parties;
- b) PPJB object description : physical data, location and location;
- c) The house price and payment procedures for the developer must not withdraw more than 80% of the funds before fulfilling the PPJB requirements;
- d) Guarantee for the perpetrators of the development of the legality of ownership;
- e) Rights and obligations of the parties;
- f) Time of handover of buildings: handover is carried out with (i) minutes of handover (BAST) of keys and (ii) deed of sale and purchase or certificate of ownership of the condominium unit/certificate of ownership of the condominium building;
- g) Building maintenance: maintenance is the responsibility of the developer for a minimum of 3 months since the signing of BAST;
- h) Building use;
- i) Transfer of rights;
- j) Cancellation and expiration of PPJB;
- k) Dispute resolution.

PPJB made by the parties in the sales pattern by pre project selling if it has not met the element of balance, while the balance of the parties will only be realized when they are in the same strong position. Often the buyer when making a transaction is in a weak position, while an agreement becomes invalid if given due to mistake, coercion or fraud. PPJB is included in the obligatory agreement, that is, when an agreement is valid then the agreement is binding, but only limited to the rights and obligations and at that level there has been no transfer of ownership. Another agreement called a material agreement (*Zakelijke Overeenkomst*) is required for the transfer (*Levering*) to occur in order for the transfer of property rights. Similarly with PPJB, which must only make the rights and obligations of the parties only, while for the transfer of rights after the issuance of another agreement called AJB before PPAT.

An agreement made before a Notary, if submitted as a tool of evidence in court then the agreement becomes a tool of evidence that cannot be denied by the parties. Judges are even required to believe the evidence is valid. An agreement has more perfect force when made before a notary or made in the form of a notarized deed. Only unfortunately consumers do not understand that the signature in the Notary's office is different from the signature in the presence of a Notary. PPJB in pre project selling is used as an initial commitment or as a "temporary binder", in the hope that the apartment sale transaction can run smoothly. Although PPJB is regulated in the Civil Code as a preliminary agreement and does not violate the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code, but the politics of land law that gave birth to Government Regulation No. 24 of 1997 and Government Regulation No. 37 of 1998 Jo Government Regulation No. 24 of 2016 has affirmed that national development requires the guarantee of legal certainty on the registration and transfer of rights to land, not excluding land on which flats are built. The manifestation of the guarantee of legal certainty in this case is the maximum effort to prevent the occurrence of land disputes. There are still many people who are confused about the position of PPJB which is considered as a sale and purchase of land in general starting from the existence of PPJB which is legally defective.

If an agreement is classified as a formal agreement, then the non-fulfillment of legal provisions regarding, for example, the form or format of the agreement, the method of making the agreement, or the method of ratification of the agreement as required by laws and regulations will result in the formal agreement being null and void. The definition of a formal agreement is an agreement that is not only based on the agreement of the parties, but by laws and regulations which also require certain formalities that must be fulfilled so that the agreement is valid by law. The purpose of certain formalities, for example regarding the form or format of the agreement that must be made in a certain form, namely with an authentic deed or a letter under the hand. An underhand agreement can be used as evidence in court as regulated in Article 1875 of the Civil Code which reads: "An underhanded writing that is recognized by the person against whom the writing is intended to be used, or in a manner according to the law is considered recognized, gives it to other persons. the person who signs it becomes a perfect proof like an authentic deed. Arrangements by laws and regulations regarding certain formalities for formal agreements are an exception to the principle of consensuality in agreement law that is generally applicable, because according to the principle of consensuality, an agreement has occurred with the agreement of the parties who made it.

#### ***PPJB Legal Protection Principles in Pre Project Selling for Consumers in Buying Flats (Apartments)***

Flats are buildings that are built in storied in an environment, divided into several functionally structured parts in horizontal and vertical directions and are housing units, each of which can be owned and used separately, especially for residential areas equipped with parts. common property, common object and common land. The apartment unit whose main purpose is to use it separately as a residence, which is built connected to a public road. A term that provides a legal meaning for high-rise buildings that always provide a system of individual ownership and joint rights, which are used for residential independently or in an integrated manner as an integral part of a development.

The relationship between apartment units and shared objects, shared parts and shared land can be seen from the Proportional Comparison Value (hereinafter referred to as NPP). The NPP figure shows how much the rights and obligations of an HMSRS holder to their joint rights are. NPP is calculated based on the building area or the value of the flat as a whole at the first time calculating the overall development cost to determine the price [9]. Some ordinary consumers, before buying a flat or apartment, must know the tips for buying a house or apartment so that they do not feel disadvantaged in the future, namely:

- Location;
- Price or form of invoice;
- Source of funds;
- Document.

It is necessary to pay attention to the four things mentioned above because of the increase in property prices to the national economy so that both developers and consumers alike can minimize speculative elements. As previously stated, the pre-project selling system that is very profitable for developers does not mean that consumers are not benefited at all. However, consumers must really know what their rights and obligations are so that later the thought does not arise that the consumer feels aggrieved.



Consumers in pre-project selling, may sign an order letter for an apartment after being declared a potential buyer of an apartment even though the order is not followed up with PPJB. Consumers who have signed the Order are deemed to have agreed and will be subject to all the rules set forth because by signing the Order Letter, the customer is obliged to carry out all obligations and if he is negligent, he is deemed to have defaulted. Moreover, in the order letter, a statement has been written that if you do not pay the installments for 3 (three) consecutive months, it is considered to have canceled the order letter, and if it is canceled by the customer, all money that has entered the seller's account cannot be requested back.

After the issuance of the Regulation of the Minister of Public Works and Public Housing (PUPR) Number 11/PRT/M/2019 concerning the Preliminary Agreement System for the Sale and Purchase of Houses for the manufacture of PPJB after the Minister of PUPR Regulation in 2019, prospective buyers are entitled to study PPJB at least 7 (seven) working days before signing PPJB before a Notary. If for some reason the PPJB is forced to be canceled due to the negligence of the developer, then all payments that have been received must be returned to the buyer. While PPJB is canceled due to buyer negligence, if the payment has reached a maximum of 10% of the transaction price, the entire payment becomes the rights of the developer or if the payment exceeds 10% of the transaction price, the developer has the right to deduct 10% of the transaction price.

The contractual relationship that is used as the legal basis for consumer protection, in addition to reducing the opportunity for consumers to file a lawsuit, also limits the liability of business actors which results in reduced liability of business actors. Meanwhile, the statements put forward by business actors during the pre-transaction period or before the implementation of the contractual relationship are binding promises and it is also the responsibility of the business actors themselves to fulfill them, such as promises made in brochures and exhibitions on when offering flats / apartments. Thus, it can be said that the responsibilities of business actors are not only limited based on contractual relationships but also include when business actors carry out product promotion activities in pre-transactions. Statements during the promotion period are very important to be accounted for because in fact these statements are intended to attract consumers to buy a product. On the other hand, for consumers, these statements become information that consumers consider when deciding to buy a product.

The provision of housing needs full attention because housing is one of the basic human needs as mandated in the 1945 Constitution Article 28 H paragraph (1). The same thing is also stated in Article 40 of Law no. 39 of 1999 concerning Human Rights concerning every person who has the right to live and have a decent life, and is emphasized in Agenda 21 which emphasizes the importance of the board (house) as a human right [10]. The obligation to fulfill these basic needs obliges the state to proactively strengthen public access to resources and at the same time demands state intervention in ensuring the right of every citizen to obtain a decent living. Based on positive law, the state participates in realizing the welfare of its people through the provision of basic needs, flats as a place to live for every Indonesian citizen in accordance with their dignity as human beings. The government as the highest authority, through Article 28 H paragraph (1) of the 1945 Constitution has provided protection by guaranteeing the basic rights of every citizen to get a decent place to live. The government can then participate in determining the laws and regulations related to the implementation of flats/apartments that are sold through the pre project selling system, especially in the context of the supervisory function of the sale and purchase of flats. The

agreement with the PPJB system in pre project selling is one of the positive laws set by business actors in this case the developer to other parties in order to enforce the rights of each party.

The construction of flats must meet various requirements as stipulated in Article 6 UURS in conjunction with Government Regulation Number 4 of 1988 concerning Flats, namely administrative requirements and technical requirements which are more severe because flats have different forms and special conditions from landed houses. Flats are multi-storey buildings that will be inhabited by many people so it is necessary to guarantee security, safety and enjoyment in the occupants. Article 6 of the UURS explains that the technical requirements include, among others, regulating space, structure, building components and materials, flat units, shared parts and objects, building density and layout, and environmental infrastructure and facilities.

Flats and their environment must be built and implemented based on a permit issued by the local government, according to its designation. After completing the construction of flats, the flat construction company is required to obtain a livable permit (based on UURS No. 20 of 2011 known as the Certificate of Eligibility for Functioning). The rise of non-compliance with flat buildings in accordance with function-worthy certificates, then the Minister of Public Works and Public Housing Regulation Number 19 of 2018 concerning the Implementation of Other Building Constructions (IMB) and the Functional Eligibility Certificate (SLF) of Buildings were issued through the Electronically Integrated Business Permit (PUPR Ministerial Regulation No. 19 of 2018) by the Government of Indonesia. IMB from business actors obtained through Online Single Submission (OSS). The IMB must fulfill the IMB commitment through the Building Management Information System (SIMBG), where this SIMBG is operated by the Regency / City Government or the DKI Jakarta Government [11]. Business actors must fulfill the commitments in the IMB within the timeframe required by the business actors in fulfilling the IMB commitments, which is 30 (thirty) days from the date of issuance of the IMB.

The use of contractual relationships as the legal basis for consumer protection, in addition to reducing the opportunity for consumers to file lawsuits, also limits the responsibilities of business actors which results in reduced liability of business actors. Statements put forward by business actors during the pre-transaction period or prior to the execution of the contractual relationship are binding promises and it is also the responsibility of the business actor himself to fulfill them. Thus, it can be said that the responsibilities of business actors are not only limited based on contractual relationships but also include when business actors carry out product promotion activities in the pre-transaction period [12]. Thus, the government has made various efforts so that apartment business actors, especially apartments, are more responsible to be able to provide certainty for the continuation of the development of flats that are being marketed, especially for flats / apartments that have been paid in full by consumers.

### **Lack of Consumer Legal Protection in PPJB Pre Project Selling**

Pre project selling is a term for sales before the project is built, in this case the property being sold is still in the form of a concept [13]. Sometimes there are developers who carry out the concept of pre project selling before the infrastructure and facilities are built, but there are also developers who market them after the facilities and infrastructure have been built. Temporary, the marketing concept with its own pre-project selling system, in practice, benefits the developer because it is relatively helpful for the developer's money turnover.

The amount of investment burden that must be borne for the construction of a flat (apartment) construction project is assisted by funds from consumer orders, the amount of which ranges from up to 20% (twenty percent). The existence of an order from a prospective buyer, followed by a down payment of up to 20% (twenty percent) will make it easier for developers because developers do not need to provide development capital up front for large development costs.

Some of the factors that cause the lack of consumer protection in PPJB pre-project selling include many consumers who buy flats (apartments) without wanting to learn more about what pre-project selling is. Consumers assume that filling out the order form and paying a certain amount of payment will automatically get an apartment credit facility, even though after filling out the order form and paying the payment receipt, it will be followed by the signing of the PPJB followed by a down payment of up to 20%. As a result, consumers objected when they had to provide a down payment of 20% of the set selling price and were forced to forfeit the payment sign that had been paid [14]. If the consumer wants the money not to be lost, then the consumer must find another buyer who is willing to continue the order, of course with the knowledge of the developer.

PPJB content material contained in the attachment of the Minister of Public Works and Public Housing No. 11/PRT/M/2019 are as follows:

a. Head of deed

Contains the title of the deed, deed number, hour, day, date, month, year, full name and domicile of the notary.

b. Identity of the parties

Contains the full name, place and date of birth, nationality, occupation, position, position and residence of the parties to the agreement.

c. PPJB object description

Contains the object to be agreed in the form of an apartment, by explaining the physical data (area of the condominium unit), the location (village or sub-district, sub-district, city or district, province), and the location of the apartment building, floor and unit number for the condominium unit in the apartment.

d. The price of the flat and the method of payment

Contains the selling price, explanation of the procedure and time of payment, as well as costs arising from the agreement, and development actors may not withdraw funds of more than 80% (eighty percent) to the buyer before fulfilling the PPJB requirements.

e. Guarantee of development actors

Making guarantees for development actors on the validity of ownership not in dispute and guarantees for proof of ownership of condominium units.

f. Rights and obligations of the parties

1. the rights of development actors at least include receiving payments for flats and other rights regulated in the provisions of the legislation and/or in accordance with the agreement;

2. The obligations of development actors shall at least include:

- carry out the construction of houses according to the site plan and permits complete the construction of houses in a timely manner;
- inform the buyer of development progress;
- provide infrastructure, facilities and utilities in accordance with permits and submit them to the Regional Government;

- provide opportunities for buyers to study PPJB;
  - provide clear explanations and information to buyers regarding the contents of PPJB, and
  - specifically for condominiums, facilitate and socialize the formation of the association of apartment owners and occupants in accordance with the provisions of the legislation, managing during the transition period prior to the formation of the association of apartment owners and residents in the construction of flats; and explain the common part, common object and common land
3. Buyer's rights shall at least contain
- a) Obtain true, honest and accurate information about the flats;
  - b) knowing the terms and conditions in the sale and purchase of the flats before making payment for the price of the flats;
  - c) receive the handover of the flats within the agreed time period;
  - d) submit a claim for improvement of the physical condition of the flat that is not in accordance with the agreed specifications;
  - e) obtain legal protection from the actions of development actors with bad intentions;
  - f) carry out proper self-defense in legal settlements;
  - g) the right to form associations of residents and apartment owners in the construction of flats in accordance with the provisions of laws and regulations; and
  - h) other rights that are regulated in accordance with the provisions of the legislation and/or according to the agreement.
4. Buyer's obligations are at least:
- a) make payment of the price of the flat in accordance with the amount and payment schedule that has been agreed in PPJB;
  - b) fulfill the obligation to pay fees, including the Fee for the Acquisition of Rights to Land and Buildings (BPHTB) arising from the sale and purchase of houses;
  - c) pay the house price in accordance with the amount and payment schedule that has been agreed in the PPJB;
  - d) use the house according to its designation;
  - e) comply with environmental regulations issued by development actors as temporary managers prior to the issuance of rules and regulations set by the association of condominium owners and residents;
  - f) have good intentions to implement the provisions in PPJB; and
  - g) other obligations that are regulated in accordance with the provisions of the legislation and/or according to the agreement.
- g. During the handover of the building, the handover is carried out by the developer of the condominium unit that has been built, accompanied by the document of the key handover document and the deed of sale and purchase or certificate of ownership rights / certificate of condominium ownership rights / certificate of ownership of the condominium building.
- h. Building maintenance
- a) The developer is responsible for the maintenance of the house for a minimum of 3 (three) months from the signing of the handover of the house;
  - b) during the maintenance period as referred to in letter (a), the buyer has the right to submit a complaint for the non-conformance and/or imperfection of the house in accordance with the agreement; and

- c) the repair of the complaint as referred to in letter (b), including reimbursement and costs incurred, is the responsibility of the development actor.
- i. Building use
  - a) the use of the house as a residence in accordance with its purpose and designation; and
  - b) the cost of using paid facilities and/or paid utilities used by the buyer is the responsibility of the buyer.
- j. Transfer of rights
  - a) the buyer is prohibited from transferring the condominium rights before the signing of the deed of sale and purchase is carried out;
  - b) the transfer of rights prior to the signing of the deed of sale and purchase can be carried out if prior written approval is obtained from the development actors; and
  - c) the transfer of rights is carried out before a notary.
- k. Cancellation and expiration of PPJB
  - a) cancellation of PPJB can only be carried out in accordance with the provisions governing the terms of cancellation in PPJB agreed upon by the buyer and development actor; and
  - b) the termination of PPJB is the fulfillment of the agreed achievement or engagement and certain conditions in the agreement.
- l. Dispute resolution
  - a) disputes related to PPJB, must be resolved by deliberation to reach consensus;
  - b) the dispute is resolved by deliberation within a maximum period of 30 (thirty) days; and
  - c) disputes can be resolved through dispute resolution efforts as referred to in the provisions of the legislation in the housing and settlement sector.
- m. Closing  
Contains about the signing and the place of signing.
- n. attachment

For flats with one flat building, attach a shared land plan, a vertical cut and show the contents or the inside of the building and a floor plan showing where the condominium is located. For flats with more than one flat building, attach pictures of the location of one flat building or block, pictures or boundaries of shared land, pictures of buildings that are cut vertically and show the contents or the inside of the building and a floor plan showing the floors of the flats are located.

Many consumers buy apartments because they are stuck with marketing offers and hedonic desires, so consumers force themselves to fill out apartment booking forms. On the other hand, many developers themselves are innovating, offering a down payment (DP) for apartments that can be paid in installments or a 0% down payment program to help consumers who don't have a down payment for a down payment, but want to own an apartment soon.

Consumers must understand and understand all forms of agreements given when buying flats, especially with the pre project selling system. When signing the order letter or PPJB, clauses regarding obligations and sanctions that will be imposed on consumers will definitely be included [15]. The consumer is considered to be ready with all the risks faced, so that if the consumer does not pay the installments as stated above, then they are declared to have defaulted. Consumers who find the building does not meet specifications, or other

things that are not regulated in the agreement can communicate with the developer, but do not stop their obligation to pay on time. Legal protection to consumers is still not going well and it is actually used by developers by providing incomplete information when selling with a pre project selling system. As a result, many apartment consumers are found who feel disadvantaged due to the inability of the developer to fulfill their achievements or obligations to the customer.

### **Conclusions**

Legal protection has been improved from time to time, but has not been able to provide protection to every consumer who makes selling and purchasing flats (apartments). In addition, supervision has not been carried out on business actors, in this case developers, so that there is often an imbalance in selling and purchasing flats (apartments), especially those using the pre project selling system. In general, business actors in compiling PPJB of flats/apartments for the sale of their projects often argue and argue that the PPJB which has been signed by both parties is valid, both in terms of substance and clauses because it has been agreed and signed by both parties as stated in Article 1338 of the related Civil Code freedom of contract and agreement applies as law for the parties. However, business actors forget the conditions for the validity of an agreement as regulated in Article 1320 of the Criminal Code, one of which is a lawful cause. This means that the agreement must not violate the law or in other words it must not conflict with the laws and regulations.

Analysis of the application of laws and regulations, especially regarding legal protection for consumers who buy and sell flats (apartments) through pre project selling, regulations on flats and the preparation of binding agreements for sale and purchase of flats which are generally in the form of standard agreements, and related regulations other things must be strictly supervised so that the developer in carrying out his obligations is guided by all existing regulations. Legal protection for consumers who buy flats (apartments) is the protection of the basic rights of consumers on the flats they buy from the developer of the apartment. Consumers who feel aggrieved by the developer, then if the condition of the apartment that has been purchased is not in accordance with what has been previously agreed, the consumer should be able to sue directly to the developer to fulfill his obligation to provide compensation for the flat (apartment). ) that have been traded. Consumers should get more attention when making transactions, especially in the midst of the current free trade era, where consumers who buy flats (apartments) are not only Indonesian citizens, but also foreign nationals.

The increasingly complex economic system also has an impact on legal developments in the relationship between producers and consumers. The spearhead of the target aimed at by the developer is the consumer, therefore consumers need to be protected from all kinds of situations as stated above. The use of contractual relationships as a legal basis for consumer protection, in addition to reducing the opportunity for consumers to file lawsuits, also limits the responsibilities of business actors in this case developers which results in reduced responsibilities of these business actors, while statements made by business actors in the pre-war period. transactions or prior to the execution of a contractual relationship are binding promises and it is also the responsibility of the business actor himself to fulfill them. The responsibilities of business actors can thus be said to be not only limited based on the contractual relationship written in the agreement, but also include all promotional activities carried out during the pre-transaction period, such as brochures, promotions, advertisements

because after all for consumers pre-transaction statements is information that is taken into consideration by consumers to decide in buying an apartment.

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