

Legal Analysis of Consumer Protection and the Legal Consequences of Default in House Sale-Purchase Agreements by Business Actors

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ARTICLE INFO

Article history:

Received 10 April 2023

Revised 15 May 2023

Accepted 23 June 2023

Key words:

Consumer protection,

Breach of contract,

Business actors,

House sale,

Agreement,

compensation,

Civil law.

ABSTRACT

The sale and purchase agreement of a house between consumers and business operators is a form of legal relationship that demands certainty and adherence to the agreements made. In practice, there often occurs a breach of contract by the business actors, such as delays in construction, delivery of houses that do not meet specifications, or even total failure in fulfilling the obligations. This research aims to examine the forms of legal protection for consumers who are harmed and the legal consequences for business actors who commit default in house sale agreements. With a normative juridical approach, this research analyzes the provisions in the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, as well as various technical regulations governing the housing sector. The findings in this study indicate that the Indonesian legal system has provided normative instruments to protect consumer rights through civil lawsuits, compensation, and administrative sanctions. The legal consequences for business actors include direct legal liability and the potential for criminal sanctions if the breach of contract is accompanied by elements of fraud or gross negligence. Strict law enforcement and increased legal awareness among consumers are two important aspects to create a fair and sustainable home buying and selling transaction ecosystem. This research contributes to encouraging business compliance and strengthening the position of consumers in the realm of civil law.

INTRODUCTION

A house sale agreement is one form of a legal relationship between consumers and business operators that involves a high level of trust, as it pertains to a primary need such as housing. In practice, this type of agreement is often documented in a private deed, standard agreement, or authentic notarial deed, depending on the stage and complexity of the transaction (Djidar & Amrullah, 2022). However, there are quite a few cases where business actors, such as developers, fail to fulfill their promised obligations, such as delays in house handovers, non-compliant building specifications, or even the non-delivery of house possession. This condition then raises serious questions about consumer protection in the face of default by business operators (Santoso, 2021).

In the perspective of civil law, default or breach of contract means the failure to fulfill obligations as stipulated in the agreement. Breach of contract by business actors in the context of buying and selling houses has the potential to cause material and immaterial losses to consumers (Widjaja et al., 2019).

Therefore, it is important to explore the extent to which the available legal instruments can protect consumers' rights when they are in a disadvantaged position. This protection is not only normative as stated in Law Number 8 of 1999 concerning Consumer Protection, but also through dispute resolution mechanisms, both litigation and non-litigation (Hapsari, 2018).

In practice, consumers often find themselves in a weaker position in legal relationships with businesses. This is due to the imbalance of information, low bargaining power, and the use of standard agreements that disadvantage consumers. (Aisha, 2021). In many cases, consumers do not have room for negotiation regarding the content of the agreement and only become the receiving party without being able to change the terms. As a result, when the business operator defaults, consumers often find themselves confused in seeking a resolution or asserting their rights legally (Mahendra et al., 2023).

This phenomenon also implies an imbalance in the realization of the principle of contractual justice. Although under the principle of freedom of contract each party is considered to have an equal position, in

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reality, business actors have structural and informational advantages that lead to dominance in determining the contract's content. In this context, legal protection for consumers becomes a necessity, not only to recover losses but also as a legal learning instrument for business actors to be responsible for any form of default (Purba & Silalahi, 2019).

Furthermore, the legal consequences of a business operator's breach of contract are not only related to claims for damages or contract cancellation but can also impact licensing aspects, company reputation, and the possibility of administrative or criminal sanctions if elements of fraud or breach of trust are found (Purba & Silalahi, 2019). The legal consequences depend heavily on the level of breach and the bad faith of the business actor. Therefore, it is important to systematically examine the forms of default, the legal impacts, and the recovery strategies that consumers can pursue (Tjuluku et al., 2023).

The legal protection provided to consumers must also consider the efficiency of dispute resolution. Institutions such as the Consumer Dispute Settlement Agency (BPSK), district courts, and alternative mechanisms like mediation or arbitration need to be utilized optimally so that consumers receive legal certainty and justice (Ista Sitepu & Muhammad, 2022). In this case, evaluating the effectiveness of existing legal instruments becomes important, including to what extent these regulations can provide a deterrent effect on business operators to prevent them from breaching contracts (Anwar & Samsul, 2023).

The urgency of this research is also based on the reality that the growth of the property sector is very rapid, and along with that, the potential for disputes between consumers and business operators is also increasing. Therefore, an in-depth legal study is needed on the forms of consumer protection and the legal consequences arising from default in house sale and purchase agreements. This study is expected to contribute to the strengthening of the civil law system and consumer protection in Indonesia.

This study is expected to address two main issues: first, how the available legal protection system can guarantee consumer rights in facing default by business actors in house sales, and second, what legal consequences can be imposed on business actors who breach their promises. By comprehensively addressing these two issues, it is hoped that a theoretical and practical foundation can be provided for the development of regulations and contractual practices in the housing property sector in Indonesia.

The purpose of this research is to thoroughly

examine and analyze the forms of legal protection that can be provided to consumers in facing business actors who commit default in house sale and purchase agreements. This research aims to uncover how the applicable regulations, specifically Law Number 8 of 1999 on Consumer Protection and the Civil Code, are applied in resolving disputes between consumers and business operators. Additionally, this research also aims to identify and explain the legal consequences that arise for business actors when proven to commit default, both from the aspects of civil liability, administrative liability, and the potential for criminal liability if elements of intent or fraud are found.

Through a juridical approach, this research is expected to provide a comprehensive understanding of the rights and obligations of the parties in a house sale and purchase agreement, while also offering a normative and practical foundation for consumer interest protection. This research also aims to contribute to the development of more equitable, transparent, and responsible contractual practices in the property sector, as well as serve as a reference for drafting more balanced agreements between business actors and consumers.

RESEARCH METHOD

This study uses a normative juridical approach that focuses on the examination of written legal norms as stipulated in legislation, court decisions, and relevant legal literature. This approach was chosen because the issues discussed are closely related to the legal structure governing consumer protection and default in house sale and purchase agreements. The primary legal data used includes Law Number 8 of 1999 on Consumer Protection, the Civil Code (BW), and other relevant implementing regulations. This research also refers to various court rulings that provide a concrete picture of the application of legal rules in breach of contract cases in the housing sector.

In obtaining secondary legal data, the researcher uses library studies by referring to legal books, scientific journals, articles, and credible legal expert opinions. Data collection techniques were carried out through literature review and legal documentation, while data analysis techniques were conducted qualitatively by interpreting the content and meaning of existing legal norms to find rational foundations for consumer protection and business responsibility in house sales. The conclusion is drawn deductively, by linking the applicable legal theories with the legal facts revealed in the practice of house sale agreements that result in default.

RESULT AND DISCUSSION

Consumer Protection Against Business Actors Who Commit Breach of Contract in House Sale and Purchase Agreements

Consumer protection is a legal effort to ensure that consumers' rights are fulfilled and protected. Law Number 8 of 1999 on Consumer Protection states that consumer protection is any form of legal certainty guarantee for consumers. This aims to prevent arbitrary actions that could harm buyers, including in the case of purchasing a house that does not match the advertisement (Sulis & Syawali, 2023). In Article 8, paragraph (1), letter f, it is emphasized that business actors are prohibited from trading goods or services that do not match the promises conveyed through labels, tags, descriptions, advertisements, or promotions. This means that business operators are obligated to fulfill what has been promised to consumers. Compliance with these provisions is crucial to maintaining consumer trust and creating a healthy economic climate, where all parties can transact fairly (Wahyuningdyah, 2007).

Law Number 8 of 1999 on Consumer Protection was enacted to protect consumers who generally have a weaker position compared to business actors (Saiin, 2022). This legal protection is a guarantee from the state through applicable regulations to safeguard the rights and interests of consumers. Legal protection for consumers in home sale agreements is an effort to ensure the fulfillment of consumers' basic rights to obtain a decent, safe, and contract-compliant residence. In practice, the relationship between consumers and business operators in the housing sector often places consumers in a weak position, especially when business operators default on their obligations, such as delays in handover, non-compliance with specifications, or even failing to build the house at all (Arifin, 2019). Law Number 8 of 1999 on Consumer Protection (Consumer Protection Law) was enacted to balance that position by clearly establishing the rights and obligations of both parties (Mulia & Wahyudi, 2022).

Article 4 of the Consumer Protection Law explicitly grants consumers the right to obtain comfort, security, and safety in consuming goods and/or services, including the right to receive accurate, clear, and honest information. In the buying and selling of houses, this information includes building specifications, handover time, land legality, and supporting facilities (Anis & Anwar, 2017). If the business operator fails to fulfill any of these elements, it constitutes a breach of contract, which legally allows the consumer to seek protection or compensation (Megawati, 2016).

Consumer protection in the sale and purchase of houses is provided if the business operator does not fulfill the obligations according to the agreement agreed upon by both parties. In the Consumer Protection Law (UUPK), Article 7 regulates the obligations of business actors or developers, including: acting in good faith in their business; providing clear, accurate, and honest information about the condition and warranty of goods or services; serving consumers honestly without discrimination; ensuring product quality according to standards; giving consumers the opportunity to try the product and providing a warranty; providing compensation or reimbursement if there is a loss due to the use of goods or services; and providing replacement if the product or service does not meet the agreement. In civil law, a legal relationship occurs when there is an agreement between parties that binds both to fulfill their respective rights and obligations (Sinaga, 2019). If one party fails to fulfill its obligations, the rights of the other party are violated, and the aggrieved party is entitled to legal protection (Sulis & Syawali, 2023).

Housing business operators, based on Article 7 of the Consumer Protection Law, are obliged to provide accurate, clear, and honest information, as well as guarantee the quality of goods and/or services traded. In the event that the business operator violates this obligation, such actions can be categorized as a private law violation that harms consumers materially or immaterially. For example, when a developer promises a certain type of house in a brochure, but the realization does not match, this can be treated as a breach of contract that affects consumer protection rights (Syarif et al., 2022).

Breach of contract in a house sale agreement constitutes a violation of the principle of trust and the principle of good faith, which are the main foundations of contract law as stipulated in Article 1338 of the Civil Code. Such violations provide a legal basis for consumers to file civil lawsuits, whether for the fulfillment of the agreement, cancellation of the agreement, or claims for damages (Prayogo, 2016). Consumers can also report the violation to the Consumer Dispute Settlement Agency (BPSK) or file a lawsuit in the district court (Saparwadi et al., 2020).

In derivative regulations, consumer protection in home buying and selling is also strengthened by Government Regulation (PP) Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas. This regulation governs the standard content of preliminary agreements between consumers and developers, including the developers' obligation to specify the handover time, building specifications, and penalties for delays or violations. This regulation strengthens the bargaining position of consumers so they are not harmed by irresponsible business operators (Hetarie, 2022).

Consumers can also obtain protection through administrative mechanisms provided by the Ministry of Public Works and Public Housing (PUPR) and the Consumer Protection Agency (LPKSM). These institutions can provide education, advocacy, and even legal assistance to consumers who have been harmed (Rani & Wirasila, 2015). This is important considering that not all consumers understand the legal aspects of home sale agreements, often leaving them unaware of the avenues they can pursue to claim their rights (Subagyono et al., 2022).

In addition to repressive legal protection through litigation mechanisms, preventive protection must also be strengthened. The government needs to encourage stricter oversight of developer business licenses, as well as require developers to deposit consumer funds into an escrow account, as is common practice in international property transactions (Serfiyani et al., 2017). This step aims to prevent developers from using consumer funds before the construction obligations are completed (Umar et al., 2023).

The legal strength of the sale and purchase agreement deed made in the presence of a notary also serves as a bastion of consumer protection. Notaries are obligated to ensure that the clauses of the agreement do not harm consumers and comply with the applicable laws and regulations. Therefore, business operators cannot arbitrarily insert unilateral clauses that could harm consumers, and if this is done, the clause can be declared null and void by law (Azhar, 2019). Authentic deeds made by a notary have perfect evidentiary power as regulated in Article 1870 of the Civil Code, thus serving as valid and strong evidence in litigation processes. Notaries also act as neutral public officials, ensuring the validity of agreements between parties without coercion, fraud, or error. In practice, notaries are required to explain the contents of the agreement in detail to consumers to prevent misunderstandings that could lead to disputes in the future. Notaries also have administrative and ethical obligations to refuse the creation of a deed if there are indications of legal violations or bad faith from one of the parties (Migfar & Purnawan, 2018; Auta, 2022). Thus, the role of a notary is not merely administrative formality, but also substantial in maintaining balance and justice in the legal relationship between businesses and consumers.

With a sufficiently strong legal foundation and available protection mechanisms, both litigative and administrative, the position of consumers in home sale agreements can be better protected from default actions by business actors (Haqqi Al Irsyad & Irawan, 2022). Nevertheless, the effectiveness of such protection still depends on the level of legal understanding among

consumers, the courage to assert their rights, and the firmness of law enforcement officers and regulators in overseeing the practices of business operators in the housing sector (Samosir et al., 2022).

Legal Consequences for Business Actors Who Commit Breach of Contract in House Sale-Purchase Agreements

The breach of contract committed by business actors in house sale transactions results in very serious legal consequences, both within the framework of civil law and consumer protection regulations in Indonesia. In a house sale and purchase agreement, a business operator who fails to fulfill obligations as stipulated in the contract, such as delays in house delivery, non-compliance with building specifications, or failure to process ownership certificates, can be classified as a form of default according to Article 1243 of the Civil Code (KUHPerdata) (Shabrina & Aminah, 2022). Such default becomes the basis for consumers to demand compensation, cancellation of the agreement, or even enforcement of obligations as per the agreement (Anngraeni, 2015).

Article 1243 of the Indonesian Civil Code states that compensation for costs, losses, and interest is mandatory if the debtor has been declared negligent in fulfilling their obligations and still fails to perform those obligations, or if the time for fulfilling the obligations has passed. This means that if the obligation is not fulfilled, the debtor must provide compensation (Iwanti, 2022). This provision emphasizes that default must be proven through a formal notice (*somasi*) first, as an official warning from the creditor to the debtor. If after the warning the debtor still fails to fulfill their obligations, the creditor's legal right to claim compensation becomes valid and can be processed through the court (Kaparang, 2021). Compensation can include actual losses (physical or material damage) and immaterial losses such as loss of opportunity or discomfort. Additionally, the amount of compensation must be proven concretely and rationally to be accepted by the judge. This principle provides balanced legal protection between the interests of the aggrieved party and the debtor's right to be given the opportunity to rectify their violation.

The elements of breach of contract are explained in three aspects: first, the existence of an official agreement made on stamped paper by the parties. This written agreement with a stamp provides strong legal power. If one party breaches the agreement, it constitutes a default. Second, one party violates the agreement, causing harm to the other party. Third, the party that violated the agreement has been declared guilty of the violation, but continues to violate and does not rectify the mistake (Hadiati et al., 2022).

Legal protection for consumers in home sale agreements is provided when the business operator, such as a developer, fails to fulfill their promises. For example, the developer does not build the house, is late in building, or builds it not according to what was promised in the brochure. This condition is called default or breach of contract. Consumers as buyers have the right to demand the fulfillment of the agreement, which includes the following rights. First, the right to demand the fulfillment of the agreement as promised or advertised. Second, the right to demand the cancellation of the agreement if one party fails to fulfill their obligations, in accordance with Article 1266 of the Civil Code. However, this cancellation must go through the court process and be proven as a breach of contract. Third, the right to demand monetary compensation as compensation for the losses incurred. Fourth, the right to demand the fulfillment of the agreement along with compensation, which is the reimbursement for damages due to the destruction or loss of consumer goods caused by the negligence of the developer (Halim, 2015). Before claiming compensation, a warning (written notice) usually must be given, except in certain cases that do not require prior admonition. Thus, this legal protection provides rights and measures for consumers to uphold justice in cases of business default (Umar et al., 2023).

Legally, Article 1246 of the Civil Code stipulates that compensation for default can take the form of costs, losses, and interest (Paendong, 2022). This means that consumers who are harmed have a legal basis to demand compensation for both financial and non-financial losses suffered due to the negligence of the business operator. For example, if the business operator fails to deliver the house on time, the consumer can claim reimbursement for temporary housing rental costs, interest on the down payment that has been made, and other losses that can be legally proven (Hanafi et al., 2022).

Furthermore, Law Number 8 of 1999 on Consumer Protection strengthens the legal position of consumers in property transactions. Article 4 grants consumers the right to obtain comfort, security, and safety in consuming goods and/or services. When business actors violate these provisions, their actions are considered to have caused real harm to consumers and can be subject to administrative, civil, or even criminal sanctions as regulated in Article 62 of the Consumer Protection Law (Faisal, 2023). Violations committed by business actors in the context of buying and selling houses can include discrepancies between promotional promises and actual construction, such as building specifications, handover times, or locations. In practice, consumers often face difficulties in asserting

their rights due to the lack of transparency or openness of information from the developers (Wahyuni, 2018). Therefore, consumer protection agencies and the role of the government become crucial to ensure justice in the relationship between consumers and businesses. Consumers also have the right to receive compensation if it is proven that they have been materially or immaterially harmed due to the developer's breach of contract. Business operators are required to fulfill ethical and legal obligations to provide accurate, non-misleading information, and to serve consumers honestly and responsibly as stipulated in Article 7 of the Consumer Protection Law (Kramas et al., 2023).

Another legal consequence that can be imposed on business operators is the unilateral cancellation of the agreement by consumers. This is possible if the breach of contract is deemed sufficiently substantial and materially detrimental. Based on Article 1267 of the Civil Code, consumers have the right to request the cancellation of an agreement violated by the business actor, with or without compensation. This means that the position of the business actor as the party at fault can lead to the loss of the right to demand consumer obligations, such as payment settlement (Hulzannah et al., 2021).

Breach of contract in house sales also impacts the legal and commercial reputation of the business actor. When this dispute comes to public attention or enters the litigation process, business operators risk losing consumer trust and facing obstacles in obtaining subsequent development permits (Ulya, 2023). In some cases, business operators can be blacklisted by licensing authorities such as the Ministry of Public Works and Public Housing (PUPR) if they are proven to repeatedly harm consumers (Sukardi & Darwati, 2023).

Breach of contract has legal consequences for the violating party and results in the aggrieved party's right to demand compensation from the party committing the breach, so that the law ensures that no party is harmed by the breach (Saleh, 2022).

Another relevant regulation is Government Regulation (PP) Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 on the Implementation of Housing and Settlement Areas. This regulation details the requirements and procedures that business actors must fulfill in house buying and selling transactions, including clarity on construction schedules, land legality, and completion guarantees. If business operators violate the provisions of this regulation, administrative actions such as license suspension, cessation of activities, and revocation of business licenses may be taken (Herlina, 2017). This regulation also emphasizes the importance of

developer accountability in providing accurate information to consumers from the beginning of the marketing process. Business operators are required to provide supporting documents that include land certificates, Building Construction Permits (IMB), and other licensing evidence as a form of legal accountability. Failure to meet these requirements not only harms consumers but also undermines public trust in the property industry. Local governments are also given the authority to supervise and guide housing business operators to prevent defaults. Even in some cases, serious violations can be reported to law enforcement for criminal prosecution. This shows that the regulation is not only administrative in nature but also has legal enforcement power for the protection of consumer rights (Hamid, 2017).

Breach of contract can also open the door for entrepreneurs to be sued collectively (class action) by consumers. In practice, this has occurred in several major property cases in the Jabodetabek area, where collectively aggrieved homebuyers have filed lawsuits in court. This class action lawsuit has become a very powerful means of demanding legal accountability from business operators, as it brings a broad social dimension to consumer protection (Barkatullah, 2017).

Another aspect is that business actors can be subjected to administrative and criminal sanctions if the breach of contract is carried out systematically and intentionally (Paendong, 2021). Article 62 paragraph (1) of the Consumer Protection Law emphasizes that any business actor who violates the provisions regarding consumer rights and obligations can be sentenced to imprisonment for a maximum of five years or fined up to two billion rupiah (Purba & Silalahi, 2019). This shows that defaulting not only has implications for civil losses but can also drag the business actor into the criminal realm if the losses are massive.

Finally, the legal consequences of the entrepreneur's default in house sale agreements prove that the Indonesian legal system has provided sufficiently strong protective measures for consumers. With a clear legal foundation, ranging from the Civil Code, the Consumer Protection Law, to sectoral regulations from the Ministry of Public Works and Public Housing, consumers can legitimately claim their rights if harmed. Business actors who neglect the principle of contractual justice will face various legal consequences that are not only repressive but also corrective and preventive.

CONCLUSION

The conclusion of the discussion on consumer protection against business actors who commit default in house sale and purchase agreements shows that the Indonesian legal system has provided a sufficiently

strong normative foundation in guaranteeing consumer rights. Provisions in the Civil Code, Law Number 8 of 1999 on Consumer Protection, and several technical regulations such as the Minister of Public Works and Public Housing Regulation, have explicitly regulated the rights, obligations, and forms of legal responsibility of business actors when a breach of contract occurs. Business actors who commit a breach of contract can not only be sued civilly but also face administrative and criminal sanctions, especially if the breach is systemic and harms many parties. The legal consequences of such actions include compensation, contract cancellation, business license revocation, and the possibility of large-scale class action lawsuits.

For that reason, efforts are needed to enhance business compliance with agreements made with consumers, especially those related to the construction and delivery of houses as the main transaction object. The government, through relevant authorities such as the Ministry of Public Works and Public Housing (PUPR) and the National Consumer Protection Agency (BPKN), needs to continue strengthening oversight mechanisms and expanding legal education to the public. Consumers are also expected to increase their legal awareness before making transactions, for example by ensuring the legality of the developer, carefully reading the contents of the agreement, and understanding their rights as buyers. Consistent law enforcement, along with easy access to the judiciary for the public, will create a healthier, fairer, and more sustainable property buying and selling ecosystem.

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