

Juridical Study of Agreements Between Developers and Home Buyers in Failed to Build Issues

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Abstract. *The purpose of this study is to analyze: 1). Implementation of the agreement between the developer and the buyer of the house in the problem of failing to build in Pemalang City at this time. 2). Implementation of the agreement between the developer and the buyer of the house in the case of failing to build in Pemalang City, which should be. The approach method in this research is a normative juridical approach using a statutory approach and a conceptual approach. The secondary data used were obtained through literature study, data analysis was carried out using descriptive analytic. The results of the study concluded: 1). The problem of failure to build usually only arises when the object in the house sale and purchase agreement has been handed over, but it turns out that the quality is not as expected by the consumer or the environment where the house that is the object of the agreement is built is not in accordance with the agreement. This is actually something that needs to be looked at together both by the developer himself as a seller and by the consumer as a buyer. In addition, failure to wake up late is known when the handover of the house is carried out during the dry season and consumers only find out that there will be defects in the building during the rainy season. Even though the warranty period from the developer has expired. This problem is experienced by consumers from CV. Bima Abadi then filed a complaint to the developer about the problem. In the end, the matter was resolved amicably. The parties agree that the developer will bear the cost of destroying the building in half and the rest will be borne by the consumer. 2). The implementation of the agreement should be based on contractual liability (responsibility based on the agreement) as regulated in article 134 of Act No. 1 of 2011 concerning Housing and Settlement Areas which states that "Everyone is prohibited from carrying out housing construction, which does not build housing in accordance with the criteria as specifications, requirements, infrastructure, facilities, and public utilities that*

have been agreed. It is clear in Act No. 1 of 2011 concerning Housing and Settlement Areas in article 134, to provide protection for housing consumers for an agreement made with business actors, in this case housing developers.

Keywords: Agreement; Building; Developer; Failed.

1. Introduction

Every individual in society basically has the right to have a proper settlement. Based on Act No. 1 of 2011 concerning Housing and Settlement Areas (UU-PKP) states that the state is responsible for protecting the entire Indonesian nation through the implementation of housing and settlement areas so that people are able to live and live in decent and affordable houses in healthy, safe, harmonious and sustainable housing throughout Indonesia. Construction services are a sector that plays an important role in development Indonesia. Through this sector, physical progress of development can be seen directly, for example the construction of high-rise and non-rise buildings, apartment buildings/rusunawa, malls spread across cities, residential housing and bridges, roads, factories, dams and irrigation dams, including the construction of power electricity and its transmission and distribution and many more building constructions that are all around us.

Based on the 2017 Construction Services Law, building failure is a state of building collapse and/or non-functioning of the building after the final submission of the Construction Services results. Thus, the condition for building failure which is included in the scope of building failure in the Construction Services Law is the failure of the building that has been submitted to the Service User, so that it is not included in the collapse of the building before the final delivery of the results. In the construction work contract as the legal basis for the implementation of construction services, there are 2 (two) parties who are bound, namely the Service Provider and the Service User. In the 2017 Construction Services Law, Service Providers are considered to be responsible in the event of a building failure caused by the implementation of construction services that do not meet the Security, Safety, Health and Sustainability Standards regulated in the 2017 Construction Services Law which occurs after the expiration of the coverage period of the Service Provider for the failure of the building. The coverage period for building failure which is the responsibility of the Service Provider is stated in the construction work contract which is adjusted to the construction age plan. In the event that the planned construction age is more than 10 (ten) years.

Both the 1999 Construction Services Law and the 2017 Construction Services Law realize that the implementation of construction services is a complex matter and involves many interests. As stated in the 1999 Construction Services Law, the types of construction businesses consist of construction planning businesses,

construction implementation businesses and construction supervision businesses which are carried out by the respective construction planners, construction implementers and construction supervisors. Meanwhile, in the 2017 Construction Services Law, the types of construction businesses include Construction Consulting services, Construction Works and Integrated Construction Works. Therefore, in order to determine the cause of a building failure and the party responsible for the failure, the two laws appoint an expert appraiser to perform this function.¹

The truth of Law enforcement in cases of building failure are often resolved through reporting complaints to the police. This is because most development failures are often linked to fraud, embezzlement, and money laundering. An example is the case with Case Number 1551 K/PID/2014. In that case, the construction service provider was sued in a general criminal manner by the plaintiff and was found guilty by imposing a sanction in the form of imprisonment for one month.² Then in the case of embezzlement of house renovation funds involving the Head of the Pemasang Perkim Service, in the end it also dragged the providers of goods and services. This is not true, considering that the providers of goods and services are only in charge of building and working on projects ordered by the local government.

This shows that there is an interest in a law enforcement group to make law a tool for economic interests or certain powers, considering that the basis of the prosecutor's lawsuit is not in accordance with the civil decision that has been carried out by Rusman. With regard to this legal disintegration, Sri Endah Wahyuningsih stated that there needs to be good coordination between existing law enforcement agencies regarding a problem of violating existing laws or crimes.³ At the same time, Gunarto stated that the substance of law enforcement is an elaboration of the orders of judicial decisions which state for the sake of justice and based on divinity.⁴

Based on the various issues above, it can be seen that there is no clear legal certainty regarding protection for entrepreneurs providing construction services or housing developers. This clearly contradicts the fifth precept of Pancasila and Article 28D of the 1945 Constitution of the Republic of Indonesia. Such a situation cannot be separated from the fact that there is law enforcement in favor of the authority holder, in this case the authorized official. In line with the

¹ <https://www.jogloabang.com/library/uu-2-2017-jasa-construction>, Retrieved September 3, 2021.

² <https://jateng.inews.id/berita/diduga-gelapan-dana-bedah-rumah-head-dinas-perkim-pemasang-diamankan-polisi>. April 10, 2021.

³ Sri Endah Wahyuningsih dan Agus Sunaryo. *The Role of Prosecutor Office In The Eradication Of Corruption Criminal Acts In Indonesia*. Jurnal Pembaharuan Hukum. Volume IV No. 2 May - August 2017, p. 248.

⁴ Gunarto. Ansharullah Ida. Jelly Leviza. *The 2nd Proceeding. Indonesia Clean of Corruption in 2020. Comparative Law System of Procurement of Goods Services around Countries in Asia. Australia and Europe*. Unissula Pess. Semarang, 2016, p.1

professionalism of law enforcement that The destruction of the legal system is increasingly mushrooming with corruption, collusion, and nepotism intertwined with the temporary interests of law enforcement officers (even bureaucratic officials) at all levels of the judiciary, from the police, prosecutors, to judges.⁵ So it is clear that the problem of failed construction so far is often only blamed on the construction service provider and the developer. Meanwhile, the failure of the construction of a construction is not only related to the technical development but also permits and insufficient budget.

2. Research Methods

This research uses a normative juridical research method, with use statutory approach and conceptual approach.⁶ The specifications of the research conducted by the author are classified as analytical descriptive research. The data collection method uses library research techniques in collecting and compiling the necessary data. The method of data analysis is descriptive qualitative analytical.

3. Results and Discussion

3.1 Implementation of Agreements between Developers and Home Buyers in Failed to Build Problems in Pemalang City Currently

Based on the results of research that has been carried out on the implementation of the house sale and purchase agreement between the developer and the consumer, it can be seen that the legal relationship between the two is contained in the obligations and rights of each party. From a legal act made by each party as a legal subject, based on a mutual agreement, a legal relationship can be realized. The legal relationship has two aspects, namely bevoeg herd or authority called rights and plicht or obligations.⁷

Based on the results of research on the implementation of the house sale and purchase agreement between the developer and the consumer, it can be seen that there are obligations and rights of each party as legal subjects, namely the developer as the seller and the consumer as the buyer. The obligations and rights of each party are divided into two stages, namely the preliminary stage and the implementation stage. To provide a clearer picture of the obligations and rights of each of these parties, it can be described as follows:

1. Preliminary Stage

⁵Anis Mashdurohatun. Penegakan Hukum Pidana Di Bidang Illegal Logging Bagi Kelestarian Lingkungan Hidup dan Upaya Penanggulangannya. *Jurnal Hukum*.Vol XXVI. No. 2. August 2011, p.1

⁶Agus Salim. (2001). *Teori dan Paradigma Penelitian Sosial. Dari Denzin Guba dan Penerapannya*. Yogyakarta: Tiara wacana Yogya, p. 33-34.

⁷R. Soeroso. (1993). *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika, p. 270

a. Consumer obligations

The consumer's obligations in the preliminary stage of the house sale and purchase agreement begin when they will apply for a home mortgage. In general, the initial requirements that must be met by prospective customers are as follows:

- 1) Fill out the home loan application form provided by the developer.
- 2) Complete with a photocopy of the identity card (KTP) of the husband and wife.
- 3) Complete a photocopy of the Family Card (KK)
- 4) Complete a photocopy of Marriage Certificate (for those who are married)
- 5) Complete the latest salary slip/income statement.
- 6) Complete work certificate
- 7) Complete a photocopy of Batara savings (especially KPR BTN)
- 8) Complete the photo of husband and wife
- 9) Complete a copy of Karpeg (for civil servants)
- 10) Complete a photocopy of the initial and final SK (for civil servants)
- 11) Complete a certificate of not owning a house
- 12) Complete NPWP.

b. Rights of potential consumers

The rights for potential consumers in the home sale and purchase agreement are as follows:

- 1) The right to obtain clear and open information relating to the submission of an application to buy a house on credit that will be carried out by prospective consumers.
- 2) The right to receive the same treatment as other potential customers.

c. The developer as the party who will sell the house to the consumer has the following obligations:

- 1) Provide the same service or treatment to potential customers.
- 2) Provide clear and open information related to the application for home purchases by potential consumers.
- 3) Provide a list containing the requirements for submitting a home purchase on credit complete with an installment table that presents:
 - a) Requirements and procedures for buying a house
 - b) Maximum amount of down payment
 - c) Term of payment
 - d) Terms that must be obeyed for consumers

- 4) Provide a home purchase application form on credit to prospective customers.

d. Developer rights Developers have the right to:

- 1) Ask potential customers to meet all the requirements that have been set.
- 2) Checking the administrative requirements that have been proposed by potential customers.
- 3) Provide an explanation of the administrative requirements that must be met by potential consumers.

2. Implementation stage

After going through the initial stage, namely the stage of submitting administrative requirements carried out by prospective debtors, the next stage is the stage of examining the administrative requirements. The developer will conduct research on administrative requirements and field inspections. This is done to find out the truth of the information provided by potential consumers. If in the field inspection the data provided is in accordance with reality, then the developer will continue the application for the purchase of a house on credit submitted by the prospective consumer. However, if in the field inspection the data provided does not match reality, then the developer can refuse the application for a home purchase on credit from a potential consumer with or without giving reasons for the refusal. When the application for a home purchase application is received by the developer, it begins to enter the stage of implementing the agreement. In this case, both parties have reached an agreement to enter into a house sale and purchase agreement and signed the deed of agreement. In practice in the field, the house sale and purchase agreement between the developer and the consumer is preceded by a sale and purchase binding agreement (PPJB), which is an initial agreement for a house sale and purchase agreement. In general, the format and content of this sale and purchase agreement between one developer and another is the same, however, there are also some agreements that have little content and editorial content, although the substance remains the same.

The problem of failure to build usually only arises when the object in the binding agreement for the sale and purchase of the house has been handed over, but it turns out that the quality is not as expected by the consumer or the environment in which the house that is the object of the agreement is erected does not match what was promoted. This is actually something that needs to be looked at together both by the developer himself as a seller and by the consumer as a buyer.

An example of a case experienced by a consumer from CV Bima Abadi where he could not occupy the house he bought from the developer was because the walls of the house were cracked and were about to collapse. And the conditions in the house are even more pathetic because the ceiling of the house has fallen off so it is not suitable for habitation and from a security point of view it is very dangerous for the occupants because it is feared that it will collapse and hit consumers. Whereas long before there was an agreement between the developer and the consumer, generally the developers in offering their housing products made brochures or advertisements accompanied by promises that the quality of the building was guaranteed for its quality and quality. Whereas in Article 16 of Act No. 8 of 1999 concerning Consumer Protection also regulates the provisions.

The problem of failure to build begins to arise when the handover of the house is carried out during the dry season and consumers only find out that there will be defects in the building during the rainy season, such as it turns out that the walls of the building are seeping water and the rainwater storage on the roof is not perfect so that the rainwater that falls on the roof cannot flow down. As a result, the full water presses over the building and flows into the gap above the building seeping into the ceiling of the house. If this is left it is likely that the ceiling will be damaged. Even though the warranty period from the developer has expired. This problem is experienced by consumers from CV. Bima Abadi then filed a complaint to the developer about the problem. In the end, the matter was resolved amicably.. If there has been a dispute between business actors and consumers, the consumer can resolve the dispute through litigation or dispute resolution out of court.

Normatively, Act No. 8 of 1999 concerning Consumer Protection prohibits business actors from selling goods and/or services that are not in accordance with promises or advertisements. This can be seen in the provisions of Article 8 paragraph (1) letter f of Act No. 8 of 1999 concerning Consumer Protection which states that business actors are prohibited from producing or trading goods and or services that are not in accordance with the promises stated in labels, etiquette, information, advertisement or promotion of the sale of said goods and or services.

Based on the above provisions, housing consumers who feel aggrieved due to the lack of compatibility between advertisements and reality can file a claim for compensation through the authorized official. In the Civil Code (hereinafter referred to as "KUHP"), Developers can actually be suspected of committing an unlawful act as regulated in Article 1365 of the Criminal Code which reads: "Any act that violates the law and causes harm to others, requires the person who causes the loss is due to his mistake to compensate for the loss⁸.

⁸ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

This can be prejudiced against the Developer in the event that there is an element of harm to others by the developer by providing incorrect information through mass media, brochures, billboards or other media. This information can make consumers wrong in choosing the desired item. In addition, developers can also be charged with Article 9 paragraph (1) point K of Act No. 8 of 1999 concerning Consumer Protection (hereinafter referred to as "UUK") which reads, "Business actors are prohibited from offering, promoting, advertising an item and / or services incorrectly, and / or as if offering something that contains an uncertain promise". For business actors who still violate the provisions of article 9 can be punished with article 62 paragraph 1 of Act No. 8 of 1999 concerning consumer protection which states "Business actors who violate the provisions referred to in article 8, article 9, article 10, article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of IDR 2,000 ,000,000.00 (two billion rupiah)". In the offenses included in article 62 can be subject to imprisonment or material and immaterial fines as well as additional penalties.

3.2 Implementation of the Agreement between Developers and Home Buyers in the Problem of Failure to Build in Pematang City

Article 24 Letter (a) of Act No. 1 of 2011 concerning Housing and Settlement Areas states that "Planning and designing houses are carried out to create livable houses." inhabited. The responsibility for housing administration can be seen from the above articles which clearly regulate how and what are the processes that must be carried out by the implementation of housing development. Arrangements so that housing development is in accordance with the quality standards of goods, it is hoped that the houses built have public infrastructure, facilities and utilities, improving the quality of housing, design and most importantly consider safety and security factors with regional spatial plans. These things are the responsibility of housing developers under construction that must be fulfilled as producers to consumers.

Article 8 paragraph 1 letter (f) and article 62 paragraph (1) of Act No. 8 of 1999 concerning Consumer Protection affirms the principle of consumer protection for housing with the application of Article 151 of Act No. 1 of 2011 concerning Housing and Settlement Areas which then introduces the principle of absolute liability (strict product liability). This principle is an answer to the concept of responsibility of business actors, in this case the housing developer, which is based on the existence of a contractual relationship between producers and consumers. The main idea that underlies the principle of absolute responsibility is that business actors or producers have a stronger position than consumers in knowing and supervising goods and/or services.

Normatively, the responsibilities of business actors are regulated in Article 18 of Act No. 8 of 1999 concerning Consumer Protection. It is stated in the provisions of Article 18 of Act No. 8 of 1999 concerning Consumer Protection:

- 1) Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.
- 2) The compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value or health care and/or the provision of compensation in accordance with the provisions of the applicable laws and regulations.
- 3) The compensation is given within a grace period of 7 (seven) days after the date of the transaction.
- 4) The provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the presence of an intentional element.
- 5) The provisions as referred to in paragraph (1) and paragraph (2) shall not apply if the business actor can prove that the error is the fault of the consumer.

However, Article 27 point e of Act No. 8 of 1999 concerning Consumer Protection explains that business actors who produce goods are released from responsibility for losses suffered by consumers, if the four-year prosecution period has passed since the goods were purchased or the agreed period has passed.

Actually, the article gives an opportunity for a developer who does not have good faith to escape his responsibilities by including the warranty period in the clause of the standard agreement, even though he knows that the item he is selling is physically defective and will only see the defect when the warranty period expires.

The responsibility of business actors in addition to absolute responsibility (strict product liability) is also to contractual liability (responsibility based on an agreement). Contractual liability (responsibility based on an agreement), namely as a civil liability on the basis of an agreement or contract from a business actor for losses suffered by consumers due to the act of using goods and/or services produced or utilizing services provided by business actors, in this case the developer of housing area.

Contractual Liability (responsibility based on the agreement) is regulated in article 134 of Act No. 1 of 2011 concerning Housing and Settlement Areas which states that "Everyone is prohibited from carrying out housing development, which does not build housing in accordance with the criteria, specifications, requirements, infrastructure, facilities, and the agreed public utility. Because there are so many disputes that arise between consumers and business actors from not fulfilling the provisions or not building housing in accordance with the

agreed criteria, specifications, requirements, infrastructure, facilities, and public utilities. It is clear in Act No. 1 of 2011 concerning Housing and Settlement Areas in article 134, to provide protection for housing consumers for an agreement made with business actors, in this case the housing developer. As well as providing legal certainty for housing consumers that what is in the agreement made must be in accordance with the goods and/or services agreed upon. Consumers as users of goods and/or services, in this case houses or residences, are entitled to the responsibility of the housing developer if the housing they buy has defects, damage that results in losses.

Both the 1999 Construction Services Law and the 2017 Construction Services Law realize that the implementation of construction services is a complex matter and involves many interests, therefore in the event of a building failure it is necessary to have a party capable of providing an objective and professional view regarding the responsibility for the failure of the building. Especially if the building failure is caused by the Service Provider, considering that the Service Provider in construction services involves more than one function. As stated in the 1999 Construction Services Law, the types of construction businesses consist of construction planning businesses, construction implementation businesses and construction supervision businesses which are carried out by the respective construction planners, construction implementers and construction supervisors. Meanwhile, in the 2017 Construction Services Law, types of construction business include Construction Consulting services business, Construction Works business and Integrated Construction Works business. Therefore, in order to determine the cause of a building failure and the party responsible for the failure, the two laws appoint an expert appraiser to perform this function.⁹

4. Conclusion

The problem of failure to build usually only arises when the object in the house sale and purchase agreement has been handed over, but it turns out that the quality is not as expected by the consumer or the environment where the house that is the object of the agreement is built is not in accordance with the agreement. In addition, failure to wake up late is known when the handover of the house is carried out during the dry season and consumers only find out that there will be defects in the building during the rainy season. The implementation of the agreement should be based on contractual liability (responsibility based on the agreement) as regulated in article 134 of Act No. 1 of 2011 concerning Housing and Settlement Areas which states that "Everyone is prohibited from carrying out housing construction, which does not build housing in accordance with the criteria, specifications, requirements, infrastructure, facilities, and public utilities. Because there are so many disputes that arise between consumers and business actors from not fulfilling the provisions or not building housing in

⁹Loc. cit.

accordance with the agreed criteria, specifications, requirements, infrastructure, facilities, and public utilities. It is clear in Act No. 1 of 2011 concerning Housing and Settlement Areas in article 134, to provide protection for housing consumers for an agreement made with business actors, in this case housing developers agreed public facilities and utilities. It is clear in Act No. 1 of 2011 concerning Housing and Settlement Areas in article 134, to provide protection for housing consumers for an agreement made with business actors, in this case housing developers.

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