

Developer's Responsibility Towards Consumers For The Delay In The Submission Of Apartment Unit Ownership Certificates

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Abstract.

This research aims to explain the developer's default in terms of delays in providing the Flat Ownership Certificate (SHMSRS) and the developer's responsibility to consumers regarding delays in receiving the SHMSRS. The method used in this research is normative juridical, with a statutory approach and a conceptual approach. According to the findings of this study, if the developer is late in providing SHMSRS to consumers, the developer has committed a default. The developer is not timely in carrying out its obligations towards consumers because SHMSRS needs to be obtained as proof of ownership of the apartment unit. The developer's responsibility in the event of delays in providing SHMSRS is to be able to process SHMSRS as quickly as possible and immediately hand it over to consumers. However, consumers can also cancel the purchase of an apartment and the payment received must be returned in full by the developer to the prospective buyer. If the developer cannot comply, consumers can take legal action, namely by mediating and resolving disputes outside the court (Mediation and Arbitration), filing a lawsuit with the General Court (Civil), administrative legal action, submitting a report to the police investigator (criminal action).

Keywords: Responsibility, Certificate of Ownership of Flats, Apartments and Default.

I. INTRODUCTION

Residence is a primary need as well as a human right that must be fulfilled as a place of refuge and carry out family relations as stated in Article 28 letter h of the 1945 Republic of Indonesia Constitution. The comparison between the number of people in Indonesia and the availability of land available to living places is far different. One of the solutions to limited land for residence is to build houses vertically, or often called flats. With the existence of flats, it will be possible to reduce land use due to the horizontal construction of residential houses, and bring the residents of the flats closer to the area where they work, shortening the network of facilities and the utilization of cities by making the open spaces of the city more relaxed and comfortable (Kuswahyono, 2004). Article 1 number 1 of Act Number 20 of 2011 about Flats (Flats Act) provides that an apartment is a multi-storey building built in an environment which is divided into functionally structured parts, both in horizontal and vertical directions and is units that can each be owned and used separately, especially for residential premises which are equipped with shared parts, shared objects and shared land. The construction of apartments can meet the needs of the community of decent living quarters, strategic as well as able to support all aspects of daily life.

The concept of house arrangement was created by adopting the concepts of condominium, strata title, apartment, and flat that had been pre-known in other countries. Meanwhile, the term of flats is a legal terminology that applies in Indonesia to express multi-storey buildings that contain the notion of individual ownership and collective rights. In this sense, flats can be considered as a translation of flats or apartments (Utama, 2018). The public's stigma that apartments are residences that can only be owned by upper middle class people, while flats are for lower middle class people are being ruined by the many amenities offered by the apartment developers for their units. In order to seek profits, developer will carry out marketing and sales of apartment units with an initial marketing strategy (Pre-Project Selling). In Pre Project Selling, developers can offer apartment units with a minimum development requirement of 20% of the total units and facilities planned to be built. Legal protection given for consumers who carry out transactions with Pre Project Selling is by having a Sales and Purchase Binding Agreement (PPJB) (Saputri, 2019). Payment of advances or payment in full under the PPJB, It hasn't caused transfer of Ownership Rights to the Flat Unit (apartment) from the seller to the buyer because there is no Sale and Purchase Deed (AJB) made by the parties. Even

with AJB's presence, it hasn't caused a transfer of ownership rights. The new ownership rights are transferred by handing over (levering).

Thus, levering is a legal act to transfer property rights, the method of which depends on the object being sold (Dalimunthe, 2020). In contrast to ownership rights in landed houses, ownership of an apartment unit uses the concept of strata title. The difference between the concept of ownership rights in a landed house and a strata title is that if someone buys a landed house in a residential complex ownership usually takes the form of a Certificate of Ownership Rights. People who have a Certificate of Ownership Rights based on the Indonesian legal system of the Act No. 5 of 1960 on the Basic Agrarian Principles (UUPA) is very strong and permanent, whose ownership includes buildings on the land, land in the yard of his home, land underneath it, as well as what is on the building. When someone buys a flat, the certificate of ownership is not a Certificate of Ownership with an ownership concept like an ordinary house, but the ownership concept is strata title (Wafi, 2021). The property evidence of the condominium unit (SRS) is proven by a Certificate of Ownership of the Condominium Unit (SHMSRS). Based on the background above, the author is interested in researching the responsibility of apartment developers regarding delays in receiving certificates of ownership of apartment units.

II. RESEARCH PROBLEMS

1. Has the developer committed a breach of contract for being late to give SHMSRS an apartment?
2. What is the responsibility of the apartment developer for the delayed reception of the SHMSRS?

III. METHODS

The type of research used in this study is a normative juridical approach. The approach used is a statutory and conceptual approach. The legal materials used are secondary legal materials. The data analysis method used is qualitative, and the results of the analysis are presented descriptively, which will then obtain answers to the problems and draw conclusions on the answers to these problems.

IV. RESULT AND DISCUSSION

Developer Delays in Providing SHMSRS to Consumers

Article 1 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 13 of 2021 concerning the Implementation of Flats states that Flats are multi-storey buildings built in an environment which is divided into functionally structured parts, both in horizontal and vertical directions and is units that can each be owned and used separately, especially for residential premises that are equipped with shared parts, shared objects and shared land. An apartment can be defined as a multi-storey building that has residential units where each unit has space that can accommodate daily activities, and the residents share the facilities provided jointly. Although an apartment is a building that is allocated as a residence as a house as we know it, ownership status in an apartment is different from the ownership status of a landed house. Landed houses can be owned using the Certificate of Ownership which has the strongest and most complete power of ownership that a person can possess on the land (Mayasari, 2019). Ownership of an apartment unit is proven by a Certificate of Ownership of the Apartment Unit (SHMSRS). The SHMSRS concept which consists of individual rights over apartment units and collective rights over land objects and common parts, all of which form an inseparable unit with the units concerned, is a new ownership institution as property rights in the Indonesian legal system which was born and introduced with and in the Act No. 16 Year 1985. Apartment buildings that stand above land with the right to such particular land on the basis of horizontal separation regulated in Article 44 (1) of Act No. 5 of 1960. The basis of horizontal separation means that between the landlord and the building owner can be separated and separated, so that the owner of the building does not necessarily have to own the land on which the building stands (Gaol, 2018).

There are two kinds of proof of ownership of the HMSRS apartment. First, the issuance of SHMSRS, the second is the Proof of Ownership with the Building Property Certificate. (SKBG). The difference is, SHMSRS is proof of ownership of an apartment that stands on the property land, the right of use of the building or the right to use on the land of management rights. While SKBG is proof of ownership

of an apartment that stands on the property belonging to the state or territory in the form of land or wakaf land by means of rent. In addition, SHMSRS is issued by the Head of the District/City Agriculture Office. Whereas SKBG is issued by the technical agency of the district/city that is in charge and responsible in the field of building construction (Chaerani, 2021). There are two ways in the system of sale in the marketing of apartments, namely by the sale of the apartment with the presence of the agreement of binding sale (PPJB) and the sales of the apartments by making a Deed of Sale and Purchase (AJB). When selling apartments, PPJB is carried out because marketing was done before the construction began. According to article 42 of the Flat Act, the developers can carry out the marketing before the construction of the arrangement house is carried out, but must have the assurance of the allocation of space, the assurances of the right to the land, the certainty of the status of possession of a arrangement home, the building permission for the planning house, and the guarantee on construction of arrangements house from the guarantor agency. PPJB is a preliminary agreement before the existence of AJB made in the presence of a notary with the requirement to have certainty:

- a) land ownership status;
- b) ownership of IMB;
- c) availability of public infrastructure, facilities and utilities;
- d) construction of at least 20% (twenty percent); And
- e) and the things agreed upon.

Since there has been a preliminary sale agreement due to the development of the apartment already has the habit of being marketed by the developer through sales to order (sales based on order) and this is a consequence of the existence of Pre Project Selling marketing strategy. The PPJB is made as a temporary bond, before the AJB is officially made in front of the Land Deed Making Official (PPAT). In the PPJB besides there are the rights and obligations of the parties, usually there is also the conclusion, that AJB will be signed before the PPAT at a later date, after all the conditions in the sale are fulfilled. The signing of the PPJB by the parties, has not caused the object to be transferred to the buyer even though it has been issued by the purchaser. Under the provisions of article 1459 of the Civil Code, that the right of ownership of the goods sold shall not be transferred to the buyer as long as they have not been handed over under articles 612, 613 and 616. The legal relations of the parties in the PPJB Apartment have not ended, as long as the apartment is not completed (the achievements in the agreement have not been implemented). The sale of the apartment with the manufacture of AJB is carried out when the construction of the apartment has been completed an AJB is made by the authorized Land Deed Making Officer (PPAT) between the developer and the buyer. Once the AJB has been created and signed by the parties then can be used for the publication of SHMSRS and SKBG apartments which will be used as proof of the transfer of rights. This transfer of rights includes the right to a common property, a common part and a common land which is an essential component of the relevant flats unit.

Whereas the SKBG as proof of the transfer of rights by means of lease on land belonging to the State or the region and the land of the Wakaf applies to the public flats and/or special flats (Marbun, 2023). AJB apartments are used to transfer HMSRS when the seller's name is changed to the buyer's name registered by PPAT at BPN, this is as stated in Article 2 paragraph 1 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning PPAT Position Regulations, which states that the PPAT has the main task of carrying out some of the land registration activities by making deeds as proof that certain legal acts have been carried out regarding land rights or ownership rights to apartment units, which will be used as the basis for registering changes to land registration data resulting from these legal acts. The transfer of apartment ownership rights is carried out by selling and purchasing like a normal land buying and selling event, namely in the presence of an authorized Land Deed Official, which is then followed by registration at the local Agrarian Sub-Directorate office. After being recorded on the certificate and land book in question, the certificate is given to the new owner. In order to guarantee certainty of ownership rights to apartments, owners are provided with strong evidence in the form of SHMSRS. The certificate is a new creation, because in contrast to the previous ownership. SHMSRS consists of: a copy of the land book and a measure of common land rights.

A picture of the level of the flats plan showing the flats units that are owned. A dispute concerning the size of the share in the joint, joint property and land concerned, all of which form an inseparable unity and are drawn into a single envelope. As proof that the transfer of rights has been carried out, a deed from the Land Deed Official is required. The transfer must be registered at the local Agrarian Office to be recorded in the land book and the SHMSRS to which the right has been transferred (Utama, 2018). When a certificate of ownership of an apartment unit is issued, the owner of the apartment unit can immediately take the certificate at the Land Office as the new owner who legally holds ownership rights to the apartment unit. Usually, the process of registering a certificate of ownership for an apartment unit is carried out for many units and by one PPAT in collaboration with the apartment manager, so the person who picks up the finished SHMSRS is the PPAT (Wafi, 2021). SHMSRS needs to be obtained as proof of ownership, this certificate can be acquired by requesting prior confirmation to the local government by indicating the limits on each apartment. Referring to the provisions contained in Articles 616 and 620 of the Civil Code, PPJB has not transferred HMSRS because there has been no transfer (surrender) of ownership rights which must be carried out with an authentic deed made before PPAT, namely AJB. Even AJB cannot be said to have transferred the HMSRS if the name transfer has not been registered from the seller to the buyer at the local City/District BPN. SHMSRS is the most important proof for consumers to obtain legal certainty that they have fulfilled the obligations that have been agreed in both PPJB and AJB.

Once the consumer has completed his obligations then the developer as the seller must also comply with his obligation by handing over the SHMSRS to the customer. In the PPJB or AJB it is usually written the time period after the PJB has been leased, the building has been built, the AJB was made and signed as well as when the SHMSRS is handed over to the consumer of the apartment. However, there are many case where after all consumer obligations have been fulfilled and the agreement period for submitting the SHMSRS has passed, the developer still has not submitted the SHMSRS. These circumstances happens for some reason, for example, financial difficulties, difficulty licensing, or even the lack of good faith of the developer to meet its performance. The other factor is the length of a certificate that can't take a day or two. Article 1457 of the Civil Code states that a sale is an agreement when one party commits itself to surrender an authority, and the other party to pay the price promised. The seller is required to hand over an object and the buyer is required to pay the purchase price for the object, which is in the form of payment. The seller is entitled to receive a certain amount of material or money from the buyer against the seller who has granted the right of his possession to the purchaser, while the buyer has the right to obtain the property including the rights to the object from the seller with a full guarantee from the seller, that the property and rights the goods handed over are the full property of the seller, then the developer can be said to have committed a default of contract to consumers. The forms of default are (Satrio, 1999):

- 1) The debtor does not perform at all, which means that the debtor has not fulfilled his obligation in respect of what he has been obliged to fulfil in the contract, or has failed to fulfill the obligation prescribed by law in an alliance arising from the law.
- 2) The debtor is wrongly performing, meaning that the debtor has carried out the achievements agreed upon or prescribed by law, but has not performed as it should in accordance with the provisions of the contract or the law.
- 3) The debtor is late in fulfilling his promise, meaning the debtor can still fulfill his promise but not on time. So that the time period specified in the agreement is not fulfilled. People who are late in achieving can be said to be in a state of neglect or mora. Mora can mean the expiration of the agreed period of time because the debtor is already in a state of negligence.

Based on the form of default above, it can be concluded that a developer who is late in carrying out his obligations to hand over the SHMSRS of an apartment unit is said to be negligent in performing. The failure to perform an agreement has consequences for the parties who do so. If consumers feel disadvantaged due to actions taken by the developer as a business actor following the previously agreed PPJB, then the legal consequences will be that the consumer can demand responsibility from the developer. Claims for default of contract can be in the form of cancellation of the agreement, fulfillment of the agreement, payment of damages, cancelation of the agreement with compensation for losses, fulfillment of a treaty with

reparation of losses (Ramelan, 2014). Based on the provisions of Article 1238 of the Civil Code, the debtor is declared negligent by means of a warrant, or by means of a similar deed, or based on the strength of the agreement itself, that is, if this agreement results in the debtor being deemed to be in default after the specified time has passed. M. Yahya Harahap stated that default can also be interpreted as the implementation of obligations that are not timely implemented inappropriately. The period of time in an agreement is very important, as in a general agreement both parties want the provisions of the agreement to be implemented as quickly as possible, which is the determination of the timing of the implementation of that agreement very important to know when the time is due to the obligation to keep its promise or implement a agreement that has been agreed (Furi, 2022).

Responsibility of Apartment Developers for Delays in Receiving Certificates of Ownership for Apartment Units

The developer has an obligation to hand over the SHMSRS of the apartment to the consumer after consumer has fulfilled the obligations under the PPJB and AJB made and signed by both parties, the developer who delays in giving the SHMRS of apartment to consumer means has committed a default. In case the developer failed to comply with the timetable, according to Article 22H of Government Regulations of the Republic of Indonesia No. 12 Of 2021 On Amendments to Government Regulation No. 14 Of 2016 On Maintenance of Housing and Residential Areas, consumers can cancel the purchase of housing arrangements and the payment received must be refunded in full by the developers to the consumers. However, in the case of negligence not caused by the developer, then the dealer may reduce the refund to the consumers of at least 20% (twenty percent) plus the tax charges that have been taken into account (Lesmana, 2021). The legal consequences of default in an agreement are:

- 1) debtors/developers are required to compensate for losses suffered by creditors/consumers as stated in Article 1243 of the Civil Code
- 2) If there is a default in the mutual agreement, one of the parties shall have the right to cancel or terminate the agreement through the court as stated in Article 1266 of the Civil Code
- 3) The risk transfers to the debtor/developer since the default occurs as stated in Article 1237 paragraph (2) of the Civil Code
- 4) Execute an agreement when it is still possible to perform or cancel the agreement accompanied by the payment of damages as stated in Article 1267 of the Civil Code. This provision applies to all alliances.

If the developer defaults on the consumers in terms of submission of SHMSRS, then developers can be responsible for their actions. In general, the principle of responsibility in law consists of (Kristiyanti, 2009):

- 1) Responsibility based on fault; Based on this principle of responsibility, factor of the mistake committed by a person is something that requires a person to be held legally responsible. This is closely related to Article 1365 of the Civil Code which regulates the acts against the law, wherein according to Article 1365 of the Civil Code requires the following elements to be fulfilled:

- a. There are acts that are against the law;
- b. There is an element of guilt;
- c. There is a loss suffered; and
- d. There is a causal relationship between action and loss.

- 2) Presumption of responsibility; According to this principle, the burden of proof lies with the defendant in which the accused will always be held responsible until he can prove that the fault was not caused by him or indeed he was innocent.

- 3) Presumption of non responsibility; According to this principle the claimant is always considered irresponsible until it can be proved that he did wrong or the loss that occurred was caused by him, which is the opposite of the principle of presumption to always be responsible.

- 4) Strict liability; According to this principle, the perpetrator is solely liable for the things that have caused damage to the other party and there is no need to prove the existence of elements of the culpability of such perpetrators.

5) Limitation of liability; Usually this principle is listed as an exoneration clause made by the entrepreneur in the standard agreement he has made.

Consumers suffer losses due to the delay in receiving SHMSRS apartments that should be received based on the time period that has been agreed by the parties and set out in the PPJB and AJB. Accordingly, based on the above principles, the developer should have good faith to be held accountable for the mistakes he has committed by causing damage to others. The consumer may claim liability to the developer by making the following legal action:

1. Mediation and Dispute Resolution Outside of Court

a) Mediation. The aim of regulating dispute resolution outside of court is to protect the civil rights of the parties to the dispute quickly and efficiently. Which, given the settlement of disputes through litigation, tends to take a long time and cost relatively higher. This is due to slow dispute settlement processes, expensive trial costs in courts, courts considered less responsive in settling cases, so judgments are often unable to solve problems and the accumulation of unresolved cases at the level of the Supreme Court. In Perma No. 1 of 2008, The definition of mediation is stated in article 1 point 7, which is: Mediation is a method of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator.

b) Arbitration. According to the Act No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Arbitration Act) there are various options for out-of-court settlement of arbitration as well as mediation, conciliation or expert judgment. Arbitration and Alternative Dispute Resolution is a tiered resolution where in the event that the alternative dispute resolution cannot be resolved or decided, then the party's case will take arbitration either through an arbitration institution or Ad-hoc arbitration. But when the parties have promised a solution through arbitration, the possibility of choosing a solution by court is excluded, as stated in section 3 of the Act on Arbitration and Alternative Dispute Resolution, which reads: The State courts are not competent to judge disputes of parties bound by an arbitral agreement. According to article 6, paragraph (1) of the Arbitration Act, it is stated that a dispute or civil disagreement may be resolved by the parties through alternative settlement of the dispute based on good faith by excluding settlement by litigation in State courts.

2. Appeal to the General Court (Civil Court). In civil procedural law, there is a lawsuit against the law (PMH lawsuit), is a claim for damages for the existence of an act against the law that results in damage to others. Article 1356 of the Civil Code accommodates these provisions; that every person has the right to demand compensation for an act against the law that harms him. In a contractual relationship, if the contract is not implemented or does not carry out what has been agreed, then the person who feels aggrieved has the right to sue. Failure to fulfil what has been promised or default is not fulfilling or failing to carry out obligations as stipulated in the agreement in the agreement made between the parties.

3. Administrative legal action. In addition to problems arising within the scope of Civil Law, there may also be disputes arising due to administrative problems. Usually administrative problems arise due to defective administrative documents. Ownership of the apartment is proven by all the official documents and legal supporting documents. Thus, an apartment unit owner must have proof of ownership in the form of SHMSRS apartment which is a sign of proof ownership of the apartment on the land of property, the right of use of the building or the right to use on the State land, as well as the rights to use of buildings or the rights of use on land of the administrator rights. In article 108 of the Act No. 20 of 2011 concerning Flats, administrative sanctions can be in the form of written warnings, restrictions on construction and/or business activities, Temporary suspension of construction work, temporary or permanent suspension to the managers of flats/apartments, Implementation of administrative fines, revocation of building permits (IMB), Revocation of a functional certificate, revocation of SHM or SKBG for a flat, order to demolish a flat/apartment building, or revocation of a business permit. Business permission cancellation Sanctions can be imposed when proved in the maintenance of the apartment negligently or deliberately committing maladministration.

4. Submitting a report to a police investigator (Criminal Attempts). Offenses in the apartment sector are usually complaint offenses, where there is a complaint then investigators will carry out an

investigation. A person who feels aggrieved has the right to submit a report to the police or investigators, so that this matter can be examined or investigated. The first process is to conduct an investigation, and it's done by investigators and even by a civil servant. According to Act No. 8 of 1981 on the Criminal Procedure Law Article 1 paragraph (2), explain that an investigation is a series of investigative actions in the circumstances and in the manner prescribed in this law to gather evidence to clarify the criminal offence that has taken place and to find a suspect. With regard to Criminal Law, it is necessary to know and understand the position of the case whether it falls within the civil, criminal, or corporate law.

V. CONCLUSION

SHMSRS needs to be obtained as proof of ownership, this certificate can be acquired by requesting prior confirmation to the local government by indicating the limits on each flats. Referring to the provisions contained in Articles 616 and 620 of the Civil Code, PPJB has not transferred HMSRS because there has been no transfer (surrender) of ownership rights which must be carried out with an authentic deed made before PPAT, namely AJB. Even the AJB has not been said to transfer HMSRS if the name of the seller to the buyer is not re-registered in the local city/district BPN. Developer acquires the obligation to hand over SHMSRS apartment to consumer after consumer fulfils the obligations under PPJB and AJB made and signed by both sides, developer who is late to give SHMSR apartment to the consumer means has committed a default. Default can also be meant to be inadequate performance of an obligation on time or inappropriate performance. The time factor in an agreement is very important, as in a general agreement both parties want the terms of the agreement to be implemented as soon as possible, which is the determination of the timing of the implementation of that agreement it is important to know when the time is required to keep its promise or implement agreed of an agreement.

As a form of responsibility of the developer in the case of the developers failure to meet the SHMSRS submission schedule based on the agreed time period, according to Article 22H of the Government Regulation of the Republic of Indonesia Number 12 of 2021 on Amendments to Government Regulation Number 14 of 2016 On Maintenance of Housing and Residential Areas, The prospective buyer can cancel the purchase of the flat and the payment that has been received must be returned in full by the developer to the prospective buyer. If the developer is unable to comply with it, then the consumer can take legal action by means of Mediation and Dispute Resolution Outside the Court (Mediation and Arbitration), Appealing to the General Court (Meditation), Administrative Legal Action, Submitting Report to the Police Investigator (Criminal Action).

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