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## Analysing the Requirements of a Binding Sale and Purchase Agreement and its Implementation in Property Companies in Indonesia

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**Abstract:** This article is entitled analysis of the requirements of the sale and purchase binding agreement and its implementation in property companies in Indonesia, using the research method of empirical normative legal approach. The results of this study indicate that the implementation of Government Regulation number 12 of 2021 concerning the requirements of the Sales and Purchase Agreement system requirements is not very effective when applied to Indonesian Property Companies, especially if Property Companies or Development Actors use the Pre Project Selling concept, where in this concept, development actors can sell or market before the property product is built or the licensing requirements have not been fulfilled which results in Article 22 paragraph (5) regarding the requirements of the PPJB system cannot be in accordance with the practices that occur in the property business world in Indonesia.

**Keyword:** Agreement, Sale and Purchase Binder, Property Company.

### INTRODUCTION

Individual ideas about the rule of law originate and grow in prosperous conditions. For this reason, although the idea of the rule of law is considered to be a general idea, the actual implementation has various categories. This is because there are impacts of prosperous conditions, in addition to the impact of state philosophy, national thinking, etc. Balanced settlement is a legal principle stipulated and emphasized in Law No.1 of 2011 concerning Housing and Settlement Areas, Law No.20 of 2011 concerning Flats and Government Regulation No.14 of 2016 in conjunction with Government Regulation No.12 of 2021 concerning the Implementation of Housing and Settlement Areas. This principle is applied to residents with lower incomes in order to have a house through the path of legal institutions that carry out the establishment of settlement buildings, which in Article 21 is also explained if "legal institutions that carry out the establishment of settlement buildings have the obligation to create balanced residential joint settlements". (Harefa et al., 2023). In essence, this legal thinking is an attraction if applied properly and correctly to the State because it can

provide assistance to residents who have a lower income to obtain dream housing through affordable payments.

In its implementation, there are obstacles such as the lack of land to be used for development or land with prices that are not affordable by development actors. This causes development actors to be unable to realize the concept of balanced housing. (Rahmawati, 2015). Not enough with the obstacles that have been mentioned, if these obstacles find a bright spot or the best solution, there will also be obstacles that will occur when carrying out development, such as licenses that must be issued of course before development is carried out, which include: (1) Principle License or what has now been changed to Investment Registration as explained in the rules of the Investment Coordinating Board N.13 of 2017 concerning Guidelines and Procedures for Licensing and Investment Facilities (hereinafter referred to as "BKPM"); (2) Land use license or what is usually termed as IPPT, which is a land use license submitted for use activities on land owned or having power over it. The license is the basis for issuing IMB or what is currently an agreement for building construction and business licenses. (3) Site Plan Permit is a principle or planning model of development that also includes supporting infrastructure such as landscaping, roads, shops, religious locations, places of teaching and learning activities etc., which then further has a plan on the size of the land. (4) Flood Peil Permit is a provision regarding the minimum height of the floor in a building that is determined based on the place of development, which has the aim of avoiding water overflowing and flowing into the building when the bottom is so low. In an area with a large number of buildings, such as Jakarta, Flood Peil permits are necessary because of the intensity of flooding concerns that have a high risk. The issuing agency is the Water Management Agency (in DKI Jakarta), or the Bina Marga and Water Resources Agency. (5) Building Height Permit, the permit is an extra recommendation if the building to be erected is close to the airport, because when building a building there is a limit to the building height scale at a predetermined distance. (6) IMB or what has currently been changed as PBG, which is a license submitted to the party who owns the building in order to build a new building, change, increase the area, make reductions or carry out building maintenance as in the basic provisions of development techniques. (Martini AR, 2019).

After the permit is issued, only then can the developer build a building or residence and market it to the public. Article 22 paragraph 3, Government Regulation Number 12 of 2021 also explains that single houses, row houses and/or flats that are still under construction can be marketed by development actors through the PPJB system consisting of Marketing and PPJB. The PPJB as intended can be carried out after obtaining certainty of land ownership status, agreed matters, PBG, availability of Infrastructure, Facilities, and Public Utilities, and construction of at least 20% (twenty percent). (Yudhantaka, 2017). In relation to the above, it can be said that marketing cannot be carried out if these conditions have not been met. This is different from the practices that occur in the property world in Indonesia, which in general in the property business world often cannot fulfill these conditions as a whole, especially regarding the conditions relating to PBG, where PBG must be obtained at the time of PPJB.

Based on the description above, the author wants to discuss issues that focus on "Analysis of Government Regulation Number 12 of 2021 concerning PPJB Requirements Against Implementation in Indonesian Property Companies".

## **METHOD**

The research method used by the author in this research uses a normative-empirical legal research model that uses normative case studies in the form of legal results such as conducting a study of the provisions of the laws used. The core thing in related research is the law that is implemented as rules or concepts used in an environment that is a benchmark for

the actions of all individuals, which makes normative legal research focus on extracting information related to positive law, legal foundations and flows, legal creations in cases in concreto, legal systems, relationship levels, legal comparisons and legal history. Legal research is also a procedure for determining legal rules, legal foundations, or legal schools to reveal the reality of related legal issues.

The empirical normative legal research method in related conditions is legal research carried out through library material research procedures or supporting information and basic information. The research carried out is based on materials, principles, legal norms and laws and regulations that have a bearing on related research. The research is also known as literature review, which is through the process of understanding and using references, laws and regulations and other files related to the research. (Soekanto, 2019).

This normative research has positive legal principles in national legal systematics, where legal research is used through a reality approach scheme that is found through the implementation of the process of observing and researching at locations with data derived from public information in order to subsequently conduct an assessment and analysis based on the rules and regulations used as guidelines when solving a problem.

## **RESULTS AND DISCUSSION**

Our country is undergoing a development that will see continuous progress. The prevailing development also includes the establishment of buildings that cannot be realized if there are no adequate facilities. The development of a building, housing or residence can be done after the planning of the construction method gets approval from the local government in the form of IMB or what is currently changing as PBG. PBG is a permit obtained by the party who owns a building to carry out new construction, change, increase the area, reduce the area, or carry out building maintenance as in the standardization of building construction methods. (Ardiansyah, 2021). Having a PBG is a must for those who own a building, where each individual who will establish a building is required to have a building IMB which will be issued from the Regional Government with a licensing application procedure. PP No.12 Th 2021 explains that independent housing, row housing or flats that are at the stage of building construction can be traded by the builder with the PPJB systematic. However, the PPJB systematic can only be done after fulfilling the predetermined conditions, for example: (a) Statute of the landowner; (b) something approved; (c) PBG; (d) the existence of facilities and public benefits; and (e) has been built at least twenty percent. (Aries Syafrizal, 2021).

The requirements mentioned above are the requirements stipulated in PP 12/2021, where one of the points that the author will discuss is the PBG requirements that must be obtained at the time of the Sales and Purchase Binding Agreement or Preliminary Sales and Purchase Agreement (hereinafter referred to as "PPJB"). PPJB is an agreement between a developer and any person to sell and buy a house or apartment unit that can be made by the builder before construction for apartment houses or in the process of construction for single houses and row houses made before a notary. (Amalia, 2021). In the increasingly competitive world of the property business, licensing can be an "obstacle" in the marketing process, because if the license in this case, especially the PBG, is not or has not been fulfilled, the PPJB signing process cannot be carried out or implemented because the original copy of the PBG must be given to prospective buyers at the time of signing the PPJB. In practice, there are also business actors who cannot sign the PPJB because one of the requirements in the PPJB system has not been fulfilled (non-complied), such as the PBG has not been issued. (Harjono, 2016). This can hinder business actors in marketing their property products, so that business actors' activities can be hampered and do not rule out the possibility of losses.

Based on the foregoing, development actors or developers use the concept of pre-project selling, where by using the concept of pre-project selling, development actors can

conduct sales or marketing before their property products are built and there are even development actors who apply the concept of pre-project selling before these requirements are met. requirements such as PBG, building permits and other related permits. The concept of Pre Project Selling cannot be separated from several regulations including the Civil Code, Law Number 1 of 2011 concerning Housing and Settlement Areas (hereinafter referred to as "Law 1/2011"), Law Number 20 of 2011 concerning Flats (hereinafter referred to as "Law 20/2011") and Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as "Law 8/1999"). Of these laws that are often used as references for the Pre Project Selling process are Law 1/2011 and Law 20/2011 which generally regulate the construction of houses both vertically and horizontally. Article 42 paragraph (1) of Law 1/2011 uses a Preliminary Agreement for the Pre Project Selling Process while Article 42 paragraph (3) of Law 20/2011 uses a conditional agreement. The use of the Pre Project Selling concept in the property business world can provide benefits for development actors because by applying this concept, development actors do not need to provide considerable initial capital to carry out development. From the consumer side, this concept has weaknesses that can pose a risk to consumers, because the basic licensing process for development that has not been submitted can potentially cause problems in the future, and vice versa when viewed from the side of the development actor, if this concept cannot be implemented, the development actor cannot carry out PPJB or Marketing as stated in Article 22 paragraph 5 of PP 12/2021 because the requirements cannot be met (non-compliance) so that the development actor will also suffer losses, both material and immaterial.

Articles 4 and 5 of Law No.8 of 1999 regulate consumer rights and obligations, in fact consumer rights are: (a) the right to a sense of comfort, security, and safety when using objects or services; (b) the right to make choices about objects or services and obtain objects or services related to the exchange price and the conditions and collateral promised; (c) the right to real, clear, and what is related to the conditions and collateral of objects or services (d) the right to express his opinion and complaints about the objects or services used; (e) the right to obtain teaching, protection, and efforts to solve problems to protect consumers correctly (f) the right to obtain consumer guidance and education; (g) the right to be given treatment or given services appropriately and as they are and without discrimination; (h) the right to obtain restitution, compensation or get compensation, if the object or service obtained is not as expected or not as it should be; (i) all rights stipulated in the provisions of other laws and regulations.

Consumer obligations are: (a) understand or comply with the notification guidelines as well as the stages of use or designation of objects or services, to be safe and secure (b) behave correctly when carrying out the process of buying and selling objects or services; (c) make payments as agreed prices (d) comply with efforts to resolve legal problems to protect consumers properly. Meanwhile, Articles 6-7 of Law No.8 of 1999 stipulate the rights and obligations of people doing business, actually the rights of business actors are: (a) the right to get paid as agreed regarding the condition and price of the object or service being traded; (b) the right to obtain legal guarantees for the actions of consumers who behave properly; (c) the right to carry out the process of defending himself when resolving consumer legal problems (d) the right to recover his name when it has been proven through the law if the loss experienced by consumers is not due to the object or service being traded; (e) all the rights stipulated in the provisions of other laws and regulations. (Pawana, 2019).

The obligations of business actors are: (a) behave correctly when carrying out their business activities; (b) provide actual, certain and what is the notice related to the condition and warranty of objects or services and provide information on how to use, repair and perform maintenance; (c) provide proper and what is the treatment or service of consumers and without discrimination (d) guarantee the quality of objects or services produced or traded based on the provisions of the standardization of the quality of objects or services

determined; (e) provide opportunities for consumers to conduct tests or trials of specific objects or services and provide guarantees for objects produced or traded; (f) provide restitution, compensation or compensation for losses caused by the utilization, allocation and use of objects or services traded; (g) provide restitution, compensation or compensation if the objects or services obtained or used are not the same as in the agreement. (Pradinisiwi, 2021). With the existence of the Civil Code, Law 1/2011, Law 20/2011 and Law 8/1999, it can provide a solution for Development Actors and Consumers in implementing the PPJB system, which in property business practice uses the Pre Project Selling concept, so that Development Actors can sign PPJB with Consumers or Buyers even though the requirements in the PPJB system stipulated in PP 12/2021 have not all been fulfilled. After the PPJB is signed, the PPJB can become a "Law" for Development Actors and Consumers.

## CONCLUSION

Single houses, row houses or flats that are in the process of building construction can be traded by someone who is doing construction with the PPJB systematic. However, the PPJB systematic can only be carried out after fulfilling the predetermined conditions related to the position of the landowner; something agreed; PBG; the existence of facilities for public interests; and integration of at least 20% (twenty percent). The application of PP 12/2021 regarding the requirements of the PPJB system is very ineffective if applied to Indonesian Property Companies, especially if Property Companies or Development Actors use the Pre Project Selling concept, where in this concept, development actors can sell or market before the property product is built and the licensing requirements have not been fulfilled, which results in Article 22 paragraph (5) regarding the requirements of the PPJB system cannot be in accordance with the practices that occur in the property business world in Indonesia.

Legal protection for consumers as buyers and development actors or business actors is sufficiently regulated in the Civil Code, Law 1/2011, Law 20/2011 and Law 8/1999, where consumers and development actors can bind themselves to each other in an agreement known as PPJB as a legal basis or law that regulates both parties with all the legal consequences contained therein, so that both consumers can feel protected as buyers and development actors can run their businesses and get rights for what they do. Regarding the requirements of the PPJB system, which can only be implemented after the fulfillment of the condition of certainty of the existence of the PBG before the signing of the PPJB, in my opinion, it should be regulated more flexibly considering that the property business concept adopted in Indonesia uses the concept of Pre Project Selling. The author also believes that PP 12/2021, especially regarding the certainty of the existence of PBG before the signing of the PPJB, can be considered to be changed to "PBG must already exist at the time of signing the AJB".

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