

Protection of the Rights of Consumers in Trading Agreement of Shop-building Based on Consument Protection Act

Della Febrina¹, Sri Walni Rahayu², Darmawan³

¹ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

² Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

³ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

Abstract: This Abstract: This study will discuss whether a consumer in a house-buying and selling shop binding agreement has been covered by the Consumer Protection Act. The purpose of this study is to find out and analyze consumers in their home shop sales and purchase binding agreements have been protected by the Consumer Protection Act. The usefulness of research provides theoretical benefits, at least it can be useful as a donation of thought to the world of education. This type of research is normative research. The data analysis used in this study is the literature data or document study. The results of the research are known that consumer protection in the store-buying and selling of shop binding agreements is still not covered by Law No. 8 of 1999 on consumer protection, remembering many things that cause In the binding agreement of this home buying and selling shop, it should be avoided if the parties actually apply the principles and arrangements contained in the Law on consumer Protection.

Keywords: Consumer, Agreement

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I. INTRODUCTION

Indonesia is one of the developing countries that are actively implementing development. One of them is the business of buying and selling shop (hereinafter called Ruko) which is done by development based on buy and sell agreements. Generally, buying and selling between developers and buyers with very large value of goods can be done by an agreement. In fact the substance of the Covenant is the will and desire of the parties (HS, 2007)

As for buying and selling of land following the building by the developer is not directly carried the transfer of land rights following the building legally as stipulated in the legislation because the shop was not completed. Therefore, the parties are developers and buyers must make the buy and sell binding agreement (hereinafter called PPJB).

The shop buying and selling agreement is an agreement governed by article 1313 of the Civil Code that is, "a covenant is an act by which one or more persons bind themselves to one or more persons." (Subekti, 1987) The agreement/approval is one of the sources of the Alliance governed by article 1233 of the Civil Code. Furthermore, at article 1234 of the Civil Code of the alliance is aimed at giving something, to do something, or to not do something. Shop buy and sell agreements refer to the legal terms of the agreement pursuant to article 1320-1337 Civil Code and the consequences of an agreement stipulated in article 1338-1341 of the Civil Code. The buy and sell binding agreement was made initially because the shop was not completed yet and the certificate was in the process of management. Where at the beginning of the agreement was made by the developer and the buyer has agreed that the PPJB will be continued with the AJB (Buy and Sell act) in the present day. Furthermore, if the payment is settled and if the previously agreed things are fulfilled then the certificate can be issued.

In the case of the related PPJB has contained the rights and obligations of the parties but one party is the developer does not implement in accordance with the Agreement and submit at the specified time, so that the developer can say Conduct default. According to M. Yahya Harahap, the default is the execution of the obligations that are not timely or carried out according to proper. (Harahap, 1986) The result of such a default will cause harm to the other party. (Goddess, 2017)

The form of legal action performed by the developer is that the time period expires the developer does not immediately conduct the certificate management and does not directly execute the certificate. However, the developers are looking for the advantage to keep selling/transferring and marketing the agreed object that is a shop with the maximum profit without regard to the interests of buyers who have been harmed.

Based on the case found in the city of Banda Aceh, it was decided by the Banda Aceh District Court in PPJB between Herman Ali as the developer and Azhari H. Yahya as the buyer and Indra Surya as the developer and Jufriadi as the buyer in the The agreement.

In the first case between Herman Ali as the developer and Azhari H. Yahya as the buyer, based on the PPJB, has been agreed that if the shop construction is ready then the buyer must pay the remaining shop price will be handed over the key and certificates. Azhari H. Yahya as the buyer uses the principle of prudence because it will give money on the condition disclosed the certificate. However, Herman Ali is unable to show him, but Herman Ali considers Azhari H. Yahya to be unable to afford to pay the rest of the shop that has been in the promise. In fact, after running time Herman Ali as a developer without the knowledge of Azhari H. Yahya has sold the shop to Ellys as the second buyer and has been proven by the exit of the proprietary certificate on behalf of Ellys. (ACEH, 2013). Based on the background of the above, it can be formulated in this research that is consumer in a binding agreement to buy and sell shop houses has been protected by the Consumer Protection Act.

II. LITERATURE REVIEW

The type of research in the preparation of this writing is a type of normative research, normative legal research is also called doctrinal law research, often in the research of this law in the conceptualized as what is written in the Regulation Legal in books or law in the concept of a rule or norm which is a human-behaved benchmark that is deemed appropriate. The legal materials and data collection methods are by literature study or document study. The approach used in this research is a statutory approach as well as a concept analysis approach.

III. PROTECTION OF THE RIGHTS OF CONSUMERS IN TRADING AGREEMENT OF SHOP-BUILDING BASED ON CONSUMER PROTECTION ACT

A. Understanding of the Agreement

The definition of the agreement is essentially based on article 1313 of civil law, a treaty is a deed where one or more people bind themselves to one other person/more. The agreement is a legal relationship regarding the property of the property between two parties, in which one party promises or is deemed to have promised to do something or not to do anything, while the other party has the right to demand the promise. (Prodjodikoro, 1991)

The meaning of buying and selling is an agreement in which the other party is to bind itself to submit an object and the other party to pay the price of the object that was promised by both. (Muhammad, 2014) Pursuant to article 1457 of civil law, a sale is an agreement which the other Party shall bind itself to submit to the goods or objects, and the other party to pay that has been promised by both. (Tjitrosudibio, 2015)

Further in article 1458, the civil service stated that the sale was deemed to have occurred if between the parties, immediately thereafter the parties reached an agreement on the material and the price though the material was not or unpaid price. This means that in article 1458, the civil law is found to understand that buying and selling is a consensual agreement.

B. Terms of sale and purchase binding agreement

Book III The Civil Law governs the alliance. The alliance is sourced from approvals and laws. Thus, the PPJB is one type of alliance that is sourced from the agreement or agreements. In connection with this, PPJB's home shop has only occurred after the agreement of the parties in determining the agreement. There is no requirement in the agreement that the agreement must be made in a notarial deed. However, in making a covenant must meet the conditions of the Covenant. Based on this, the terms and conditions of the Agreement shall be governed by article 1320 of the Civil law, among others: (Widjaja, 2003)

1. Their agreement that cleave to him;
2. Skill to make an alliance;
3. A certain subject matter;
4. A cause that is not forbidden.

C. Legal principles for buying and selling binding agreements

The legal principle serves as a system builder as outlined by the Niewenhuis, a legal principle functioning as a system builder because that principle not only affects the positive laws, but also in many circumstances creating a system. Thus, a system will not exist without any principles. Further those principles also form a "check and balance" system, which means that the principles will pull mutually interesting into the balance process. " In the Treaty there are five principles governed by the Civil Law, as follows:

1. The principle of contract freedom

The principle of freedom of contract is mentioned from the provisions of article 1338 paragraph (1) of the Civil Code which is all agreements made legally valid as law for those who make it. In article 1320, the Civil Code governs the terms of the agreement and the article 1337 of the Civil Code is stated that a cause is forbidden, if it is prohibited by law or if it is contrary to morality or by Public order. According to Mariam Darus Badruzaman, the principle of contractual freedom is limited by the following legal signs: (Badruzaman, Miscellaneous Business Law, 2005)

1. Must qualify as a covenant;
2. Not prohibited by law;
3. Not contrary to applicable habits;
4. Must be executed in good faith.

The principle of this contractual freedom is the most important principle in the Covenant because in this principle there is a expression of human rights in making a covenant and giving opportunities for the development of the law of the Covenant.

According to the researcher, the principle of freedom of contract is to provide a guarantee of freedom to a person to make or make no agreement, to enter into an agreement with anyone, to determine the content of the agreement or its implementation and requirements, Determine the form of the agreement is written or oral.

The principle of contractual freedom is the characteristic or characteristic of book III of Civil Law, which governs the parties only, so that the parties may be able to override it, except for certain articles that are pushy.

2. Principle of Consensualism

The principle of consensualism comes from the Latin word "consensus" which means to agree. The principle of consensualism can be seen in article 1320 paragraph (1) of civil law. In that article it is determined that one of the conditions of the agreement is a word of agreement between the two parties. Thus, that a treaty is generally not held formally but simply by agreement between the two parties only. It can be said a verbal agreement that has been reached between the parties making or holding the agreement has made the agreement valid and binding for the Parties (Widjaja: 2003).

With the agreement by the parties, obviously giving birth to the rights and obligations to them or also commonly called that the contract has been an obligator, giving birth to the parties obligations to fulfill the contract. It can be said that the Treaty is legitimate when the underlying matters are agreed upon and not required as a formality.

The principle of consensualism according to R. Subekti is essentially a treaty that arises therefor or has been born since the second of the agreement. The agreement is valid when the agreement has been reached on the subject matter of the agreement.

3. Principle of law binding force (Pacta Sunt Servanda)

The principle of binding power or the principle of your pacta sunt is a principle related to the consequences of the agreement and the principle concluded from article 1338 paragraph (1) of civil law. Sunt a servanda means that a legally made agreement applies as a law for the parties making it. Each contract/agreement has been made, binding a person to fulfill the contract containing the promises to be fulfilled and then the pledge binding on the parties as follows the law. This means that the judges or third parties shall respect the substance of the contract made by the parties, as is the case, they must not intervene in the contract substance made by the parties.

The term "pacta sunt servanda" is a treaty that has been lawfully made by the parties, binding the parties in full compliance with the contents of the agreement. Binding in full means the same strength as the law, so that if one party does not fulfill the obligation agreed and set forth in the agreement, then by law is provided the means of indemnification or can be forced into force.

D. Consumer protection in binding agreements selling house shop under consumer Protection Act

Consumer protection law seeks to balance the position between business actors and consumers, if viewed in article 27 of the Consumer Protection Act, it is said that the business actors are exempt from liability for losses suffered Consumers, if:

1. Such goods are proven to be uncirculated or not intended to be circulated;
2. Defects of goods arising at a later date;
3. Defects arising from the use of provisions concerning the qualification of goods;
4. Negligence caused by the consumer; Dan
5. The duration of the prosecution period of 4 (four) years since the goods were purchased or the passage of the agreed time period.

Business actors in this right developer also has a responsibility (product liability). Generally, the principles of responsibility in the law consist of: (Shidarta,2006)

1. The principle of a fault-based responsibility, which is the principle that states that a new person can be held accountable legally if there is an element of error that does;
2. The principle of presumption to always be responsible, i.e. the principle that states the defendant is always held accountable until he can prove that he is innocent, where the burden of proof is on the defendant;
3. The principle of presumption to be not necessarily responsible, i.e. the inverse of the principle of presumption to always be responsible, where the defendant is always considered irresponsible until the fact that he is guilty;
4. The principle of absolute responsibility, i.e. the principle that establishes the error is not as a decisive factor, but there are possible exceptions to be exempt from liability;

The principle of responsibility with restrictions, i.e. businesses should not unilaterally determine a clause that harms consumers, including limiting their maximum responsibilities. If there is any restriction then it should be based on applicable legislation.

The obligations of business actors can be seen in article 7 consumer protection Law, namely:

1. Good faith in conducting its business activities;
2. Provide true, clear and honest information about the conditions and warranties of goods and/or services and provide explanation of use, repair and maintenance;
3. Treat or serve the consumer properly and honestly and not discriminatory;
4. Ensure the quality of goods and/or services produced and/or traded under the provisions of the quality standards of goods and/or services applicable;
5. Provide the customer with the opportunity to test, and/or try certain goods and/or services and to provide assurance and/or warranty on goods made and/or traded;
6. To compensate, indemnify and/or replace any damages resulting from use, use and utilization of goods and/or services traded;
7. To compensate, indemnify and/or replace the goods and/or services received or utilized in accordance with the agreement.
8. The obligation of the business actors to the goodwill in conducting business activities is one of the principles in the Law of Agreement. The provisions of this goodwill are governed by article 1338 paragraph (3) of the civil Agreement.

Somasi and the plan to mediate between the developers and the building owners, as a form of manifestation of curative effort or handling efforts in the contract disputes that occurred in Kajhu housing. If the non-litigation effort through an alternative mediation with the judge as a mediator does not meet the final settlement, then the next step may be held in the District Court, to obtain a restoration of rights and obligations or return to the status Quo (return to the circumstances where the agreement has not been held by the parties), in order to carry out rehabilitative efforts.

If these efforts have not been able to resolve the disputes experienced by the parties, the dispute settlement (dispute settlement) in the court shall be the next step to be taken by the parties to reinstate the rights and obligations The parties (Ultimum Premedium). (Rahayu, 2019)

Legal protection measures that the parties may apply in the event of tort causing the dispute are as follows:

Preventive efforts in this default dispute, should be avoided, if both parties are more cautious and meticulous in reading and studying the agreed contract contents, taking into account the legitimate conditions of the agreement which include proficient, Agreed, a certain thing, and a lawful causality as contained in article 1320 of the Civil Law (Rahayu, 2019).

In the event of disputes, disagreements or disputes arising in connection with/As a result of this binding, the Parties shall settle in deliberation. It can be done by the parties before proceeding in court.

As an alternative solution for the parties who dispute if the settlement deliberations do not bring results, the parties agree to resolve the dispute that occurred through the Indonesian National Arbitration Agency (BANI). Costs incurred in connection with the examination by the Indonesian National Arbitration Agency (BANI) shall be a burden and payable by the parties to the same amount of seller 50% (fifty percent) and buyer 50% (fifty percent). In the event of any change, deduction, addition to the content of this buy and sell binding, the parties will negotiate deliberations and consensus and the results will be poured out in an addendum which is an inseparable part From this buying and selling binding.

The responsibility of business actors to consumer losses is regulated specifically in chapter IV, ranging from article 19 to article 28 of the Consumer Protection Act. See article 19 paragraph (1) then can be known responsibility of business actors include:

1. Liability for damages for damage;
2. Responsibility for indemnification of pollution; Dan

3. Responsibility for indemnification of consumer losses.

IV. CONCLUSION

Consumer protection in the shop house selling binding agreements is still not covered by Law No. 8 of 1999 on consumer protection, remembering many things that cause tort in binding agreements Shop home buying and selling, Should be avoided if the parties actually apply the principles and arrangements contained in the Consumer Protection Act. Application of preventive, curative, rehabilitative, and legal protection efforts repressive in conducting effective and efficient law enforcement efforts against the implementation of the binding of sale and purchase of house of people containing Dispute for the parties to the agreements.

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