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*by Elza Syarief*

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## LEGAL PROTECTION FOR APARTMENT CONSUMERS RELATING TO THE FACILITIES PROMISED BY DEVELOPERS (CASE STUDY IN BATAM CITY)

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### Abstract

People tend to stay closely to the centers of their activities and work activities. Various facilities that are desired by people are also the main objectives in choosing representable housing, including apartments that have various amenities. The high demand for apartments in Batam City has caused developers to compete in building apartments. Unfortunately, they only focus on business, as the results the promised facilities are sometimes not suitable with the information, they offer to consumers. The issue of the lack of clarity regarding the promised facilities <sup>18</sup> use legal issues pertaining to the protection of consumers. The research aims to find out and analyze the legal protection for apartment consumers. It uses an empirical method and the data is analyzed by adopting a qualitative approach. It found that legal protection for consumers pursuant to the promised facilities creates new problems in the future. Construction agreements relating to the facilities have been violated by the developers, although they state that they will continue to provide compensation in the form of other amenities. Coordinations according to the mandate of the law and the revision of legal protection against consumers is an alternative offered in this research.

**Keywords:** Apartment Facilities, Consumer Protection, Batam City

### A. Background

Housing occupancy in big cities that started as a landed housing is now starting to develop into vertical housing.<sup>1</sup> As the years go by, the more land is limited and this causes the price of the land to rise. Land is used of course to build in a city in order to improve the city's economy. So that the community is required to be able to use every land with an effective and efficient system.<sup>2</sup>

Residence or commonly known as housing is a need that is clas<sup>35</sup>ed as a primary need that must be met by all humans. It can be seen from one's economic level that the higher one's economic level, the higher one's

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<sup>1</sup> Erisa Weri Nydia et al., "Tipologi Apartemen Di Sekitar Fasilitas Pendidikan Kota Bandung Dan Jatinangor," *Jurnal Reka Karsa* 4, no. 2 (2016): 1–10, <https://doi.org/https://doi.org/10.26760/rekakarsa.v4i2.1388>.

<sup>2</sup> Nurina Ramadhiny, Hendro Trilisty, and Eddy Hermanto, "Apartemen Di Semarang," *Imaji* 3, no. 3 (2014): 351–60.

economic needs will be.<sup>3</sup> Flats were built for a strategy in terms of development in the area due to the high price of land, especially in urban areas. Therefore, the government needs wise steps so that the construction of flats which are certainly jointly owned can be divided into various parts in a horizontal or vertical direction. Of course it can be inhabited and owned by various communities together.<sup>4</sup>

Batam is one of the islands in the Riau Archipelago, in the 1970s, Pertamina began to develop Batam as a logistics and operating base for the oil and gas industry. Then, in accordance with the Presidential Decree dated 41 of 1973, the development of Batam was entrusted to a government agency called the Batam Industrial Development Authority or now known as the Batam Commercial Board (BP Batam). In order to realize its vision and mission to develop Batam, various modern infrastructures with international standards and various other facilities have been built, so that they are expected to compete with similar regions in the Asia-Pacific region.

One of the developments in Batam City is in the housing sector in the form of housing and apartments. Apartments are residential for the people of Batam City, who are now starting to build apartments in Batam City. In line with that, the developers and apartment managers who ignore the issue of the agreement with the buyer provide a special gap for the emergence of legality issues from the existence of the agreement.

Having given the high demand or interest in housing, the development of existing apartments is a separate business opportunity for developers. However, considering the impact of two aspects, namely driving economic activity and increasing activities in other related sectors, the development of the apartment or apartment industry must be studied carefully. Another thing that occurs is legal issues in the field of agreements which often turn into legal issues where the agreement that was originally offered by the developer through its marketing agent changes in line with the agreed contract, such as an agreement clause regarding the facility to be built but in fact the facility is not fulfilled by the developer. or a marketing agent for the apartment.

One of the things that drives the phenomenon of the rapid development of flats or apartments in Batam City is due to the increasing rate of population growth. In Batam City, the population growth rate is increasing from year to year. Based on data obtained from the Central Statistics Agency in Batam City, the total population in Batam City in 2016 reached 1,236,399 inhabitants.<sup>5</sup> This phenomenon can also cause a new problem in every provision of facilities for the residents of Batam City which is increasing day by day. The demand for housing for people who

<sup>3</sup> Gabriela Harianto, "Keleluasaan Ruang Pada Unit Apartemen," *E-Journal Graduate Unpar* 1, no. 2 (2014): 125–43.

<sup>4</sup> Cosmas Batubara, "Keterangan Pemerintah Tentang RUU Rumah Susun," *Varia Peradilan*, Desember 1985.

<sup>5</sup> Badan Perencanaan Pembangunan Nasional, Badan Pusat Statistik, and United Nations Population Fund, *Proyeksi Penduduk Indonesia 2010-2035* (Jakarta: Badan Pusat Statistik, 2013).

have a consumptive nature to their needs, especially housing, can be said to be unbalanced with the amount of available vacant land. In order to realize an alternative or solution for all community housing that is more modern by using residential facilities vertically o<sup>12</sup>t can also be known as flats or apartments. This is considered to better meet the needs of the community.<sup>6</sup>

In the current era, very rapid developments have resulted in the progress of the modern era, flats that are ordinary or standard are replaced with more modern flats or better known as apartments. A flat is the same as an apartment which consists of a bedroom, bathroom, kitchen, and also a living room or family room. Based on the floor of a multi-storey building which is usually large and luxurious. The facilities offered in the apartment are also quite complete. Apartments usually provide swimming pools, sports venues and others. Not infrequently apartments are also above a shopping location.

If we look at the flat building itself, it is not much different from an apartment building because of its high shape. The difference is only visible on the design side, both exterior and interior. Of course the apartment is more luxurious. On the other hand, it can be seen that even though an apartment is classified as a luxury building, it turns out that there are quite a lot of enthusiasts from various circles. But because apartments are usually luxury buildings, of course those who are interested are in the middle to upper class. They tend to choose an apartment as a second home or it could be an investment opportunity to make a profit.<sup>7</sup>

Buying and selling is also often done in an apartment. Buying and selling of an unfinished flat or apartment can also happen. Even now we can buy apartments or flats at a new time in the planning process. There is an agreement in terms of<sup>34</sup>le and purchase of apartments that have not been built, known as the Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli* /PPJB). PPJB requires someone to buy by pre-ordering the apartment to be pur<sup>16</sup>ased. Furthermore, the basis on which the agreement can be based is in Article 1457 of the Civil Code which reads "A sale and purchase is an agreement whereby one party binds himself to submit<sup>46</sup>n object and the other party pays a predetermined price."

The sale and purchase is a consensual agreement which has the understanding that a valid and binding agreement has occurred or has been concluded and of course it has legal force. All of this happened when the parties<sup>47</sup>ve agreed on all the elements in the agreement. The<sup>6</sup>nsensual nature of buying and selling is emphasized in Article 1458 of the Civil Code which reads "A sale and purchase is considered to have taken place by both parties when they have reached an agreement on the goods and the price

<sup>6</sup> Muhammad Ridwan, "Analisis Yuridis Kekutan Hukum Atas Sertifikat Satuan Rumah Susun Hunian Atau Campuran Pasca Terbitnya Undang-Undang Nomor 20 Tahun 2011 (Studi di Kota M<sup>14</sup>an)." (Universitas Sumatera Utara, 2017).

<sup>7</sup> Effendi Perangin, *Hukum Agraria Di Indonesia: Suatu Telaah Dari Sudut Pandang Praktisi Hukum* (Jakarta: Rajawali Press, 1991).



<sup>5</sup> even though the goods have not been delivered or the price has not been paid."

In general, the marketing of an apartment usually uses advertisements or brochures in order to achieve communication on the products offered by the developer to the potential buyers. Therefore, the tendency towards marketing is not infrequently the information listed is in fact not in accordance with reality. However, even though the buyer has agreed to sign a sale and purchase agreement for the apartment, the buyer is committed to paying the selling price to the developer.

Contractual relationship between the developer and the buyer in which the developer commits to sell the apartment to the buyer and the buyer commits to pay the selling price to the developer, or even has a loan agreement with the bank lending the apartment ownership and not infrequently the developer/developer or marketing generally attracts buyers since before development through brochures, fliers, promotion and so on, which in fact after the handover is not appropriate, even though in Article 42 paragraph (3) of Law Number 20 of 2011 namely: "In terms of marketing is carried out before the construction of flats as intended in paragraph (2) everything promised by development actors and/or marketing agents is binding as a binding sale and purchase agreement (PPJB) for the parties."

The implementation of the construction of flats in Indonesia is certainly based on law<sup>40</sup> namely Law Number 16 of 1985 concerning Flats<sup>8</sup> and was changed to Law Number 20 of 2011 (hereinafter referred to as *Undang-Undang Rumah Susun/UURS*).<sup>9</sup> This law is motivated by thinking in building housing. This is especially the case in flats. Flats in this case are certainly not only physical buildings<sup>5</sup> but must also be equipped with infrastructure that supports the flats. In Article 1 paragraph (1) of Law Number 20 of 2011 (UURS) it is stated that "Flats are high-rise building structures that are built in an environment which is divided into functionally structured horizontal and vertical parts and consists of units that can be owned individually and can be used separately, especially for dwellings, which are equipped with common parts, sharing properties, and land sharing." With the UURS, it provides solutions to complex problems regarding land limitations, especially in urban areas, such as the Batam City area.

## B. Identified Problems

By looking at the number of apartment buyers/consumers who are disadvantaged by the developers in Batam City, which are very far from the expectations of the buyers which in fact do not match what has been advertised or contained in the brochures, the research raises some questions, namely: 1) What is the legal protection for apartment consumers for the provision of facilities that are not in accordance with the agreement by the developer?; 2) What are the factors that hinder the non-fulfillment of

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<sup>8</sup> Undang-Undang Nomor 16 Tahun 1985 tentang Rumah Susun.

<sup>9</sup> Undang-undang Nomor 20 Tahun 2011 tentang Rumah Susun.

apartment facilities as agreed?; 3) What are the legal remedies for apartment consumers for the provision of facilities that are not in accordance with the agreement by the developer?

### C. Research Methods

This research aims to analyze the problems raised, thus it uses an empirical method. Empirical research is legal research that uses additional data as initial data and then uses primary or field data by checking the validity of the law and then by looking for relationships or correlations between various symptoms or variables. The research document consists of data collection tools, observations (observations) and interviews.<sup>10</sup>

Empirical approach<sup>11</sup> is aimed at looking at the application of law (*Das Sein*), in this regard, Law Number 16 of 1985 concerning Consumer Protection as amended by Law Number 11 of 2011 concerning Flats. This approach is by reviewing the implementation of procedures related to the implementation of the utilization. The researchers chose this type of legal research because the researchers found a gap between the desired legal rules (*Das Sollen*) and the reality that occurred (*Das Sein*) around consumer protection for apartment facilities promised by marketing agents in buying and selling transactions carried out before the construction of apartments in Batam City.

### D. Research Findings and Discussions

#### 1. Legal protection for apartment consumers for the provision of facilities that are not in accordance with the agreement by the developer

Legal protection for consumers as mentioned by Ahmad Zuhairi<sup>11</sup> provides a way out of the dilemma of actions that encourage the creation of honest and responsible business practices. There must be a rule that provides immunity for consumers against crime or lies by the developer in providing an agreement in the form of a facility by providing a clear legal construction of protection to consumers.<sup>12</sup> By conveying three juridical implications for the legal protection mechanism for consumers to take legal action.

By referring to the means of legal protection according to Philipus M. Hadjon, namely:

##### a. Preventive legal protection

Preventive legal protection means a large number of government actions based on freedom of movement, because

<sup>10</sup> Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2012).

<sup>11</sup> Ahmad Zuhairi, "Konstruksi Perlindungan Hukum Bagi Pengadu/Pelaku or Kerugian Konsumen Dari Tuntutan Pencemaran Nama Baik Oleh Pelaku Usaha/Produsen," *Jurnal IUS Kajian Hukum Dan Keadilan* 3, no. 1 (2015): 54–73, <https://doi.org/http://dx.doi.org/10.12345/ius.v3i1.199>.

<sup>12</sup> Zeehan Fuad Attamimi, Hari Sutra Disemadi, and Budi Santoso, "Prinsip Syariah Dalam Penyelenggaraan Bank Wakaf Mikro Sebagai Perlindungan Hak Spiritual Nasabah," *Jurnal Jurisprudence* 9, no. 2 (2019): 117–32, <https://doi.org/10.23917/jurisprudence.v9i2.8897>.

under<sup>23</sup> preventive legal protection, governments are forced to make decisions based on discretion.<sup>13</sup> In Indonesia, there are no special arrangements for preventive legal protection. This legal protection does nothing more than protect Indonesian consumers from impacts that can harm them.<sup>4</sup> On April 20, 1999, the government issued Decree No. 8 of 1999, the Consumer Protection Act (Referred to as *Undang-Undang Perlindungan Konsumen/UUPK*). The UUPK is designed to provide a strong legal basis for government and non-government consumer protection agencies to work to empower consumers through consumer assistance and education.<sup>3</sup>

Prior to the emergence of the UUPK, the rights and obligations of consumers and business actors were regulated and disseminated in various regulations, which can be divided into four main components: industry, trade, health and the environment. For example, the Civil Code, Commercial Law and Criminal Law. However, legally blind consumers cannot seek out various rights and obligations in a large number of regulations. The weaknesses of the regulations that emerged before the UUPK include: 1) The definition used is not specifically for consumer protection; 2) The position of consumers is weaker; 3) The procedure is complicated and difficult for consumers to understand; and 4) Dispute resolution takes a long time and high costs.

Even though there is the UUPK that is designed for the interests of consumers. The initial purpose of the UUPK was not to curb business actors but to provide protection for consumers. The existence of UUPK is expected to increase competitiveness between companies which of course prioritize the interests of consumers. Article 1 paragraph 1 of the UUPK<sup>28</sup> explains that the UUPK ensures legal protection for all consumers. The expression of the definition of consumer protection contained in Article 1 (1) of the UUPK<sup>42</sup> means that legal certainty can be achieved through the UUPK, which is based on interests, justice, balance, consumer safety and security, and legal determination.

Various definitions of consumers are also often found. Opinions of one person and others who are different continue to be found. For example, in a foreign term, namely English, it is referred to as a consumer, which clearly means "a person or company that buys certain goods or uses certain services"; or "something or someone who uses a stock or number of goods". There is also a meaning "everyone who uses goods or

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<sup>13</sup> Hari Sutra Disemadi and Paramita Prananingtyas, "Perlindungan Hukum Terhadap Pengguna Perbankan Pengguna CRM (Cash Recycling Machine)," *Jurnal Magister Hukum Udayana* 8, no. 3 (2019): 386–402. <https://doi.org/10.24843/jmhu.2019.v08.i03.p07>.



services".<sup>14</sup> From these various meanings, it can be seen between differences between consumers who are natural or personal persons and consumers who are companies or legal entities. This difference is considered important because it can be seen from its commercial purpose. Will it be used for itself or for profit again. In his book, Az Nasution sets limits on consumers, usually: "Everyone who gets goods or services for a particular purpose". Consumers still further differentiate between consumers and end consumers. According to him, intermediary consumer means: "Any person who has access to goods and services for the manufacture of other goods and services or for trade (commercial purposes)."<sup>15</sup>

In Indonesian laws and regulations, the term "consumer" the formal legal definition that appears in the UUPK, which states that consumers are all parties who use goods and/or services from the community, individuals, families, other people, and biological interests. User. In Indonesian law the term "consumer" is the formal legal definition. (See Law Number 8 of 1999 concerning Consumer Protection). The Consumer Protection Act stipulates that the consumer is the user of everyone. Goods and / or services used in society are for the benefit of themselves, their families, other people and other creatures, and not for trade.

#### b. Repressive legal protection

One of the legal protections is repressive which is designed or created to resolve a dispute.<sup>16</sup> Repressive legal protection is carried out by the court. Both ordinary and administrative courts in Indonesia. Basically the principle of legal protection comes from the recognition and protection of human rights. Regarding human rights, Indonesia must recognize and of course must be able to protect human rights for all Indonesian people.

In repressive legal protection, the occurrence of inconsistencies in legal protection carried out by development agents must be resolved through legal channels.<sup>17</sup> Weak protection for consumers at the normative level can be found in articles that are considered to provide immunity against losses felt by consumers. Both from civil and criminal prosecutions.

<sup>14</sup> Erman Rajagukguk et al., *Hukum Perlindungan Konsumen* (Bandung: Mandar Maju, 2000).

<sup>15</sup> Az Nasution, *Hukum Perlindungan Konsumen: Suatu Pengantar* (Jakarta: Daya Widya, 2000).

<sup>16</sup> Mochammad Abizar Yusro, Ali Ismail Shaleh, and Hari Sutra Disemadi, "Perlindungan Hukum Keputusan Bisnis Direksi BUMN Melalui Business Judgement Rule Doctrine," *Jurnal Jurisprudence* 10, no. 1 (2020): 127–45, <https://doi.org/10.23917/jurisprudence.v10i1.11006>.

<sup>17</sup> Hari Sutra Disemadi, Mochammad Abizar Yusro, and Wizna Gania Balqis, "The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia," *Sociological Jurisprudence Journal* 3, no. 2 (2020): 91–97, <https://doi.org/10.22225/scj.3.2.1798.91-97>.

Where the regulation is at an applicative level with a regulation that basically rejects all consumer demands before a decision by a judge with permanent legal force is made, this is what makes the consideration that the Consumer Protection Act and other related laws need to be revised, because it is no longer relevant to the times. The position of consumers is very weak compared to the developer, where consumers have very little information and knowledge about their rights, and the lack of socialization from the government regarding consumer rights that can be maintained.

Therefore, in order to realize the construction of legal protection of the facilities promised by the developer, there must be an authority. Authority that is final and binding. This authority will not be able to be implemented if the developer is not threatened with criminal threats. Therefore, it is necessary to have thoroughness before the parties make or sign a sale and purchase agreement. Ensuring whether there is a construction of legal protection, ensuring clarity whether the promises contained in the advertisement, for example, are attached to the part listed in the sale and purchase agreement.

## 2. Factors that hinder the non-fulfillment of apartment facilities as agreed

In law, if an agreement is not fulfilled or the conditions for the validity of an agreement are not fulfilled, then there are legal consequences that apply. Based on Article 1320 of the Civil Code, it is declared null and void. This means that the objective conditions are not fulfilled regarding certain matters, namely where an agreement must have an object. Objects that must be owned must at least be in accordance with Article 1332 to Article 1335 of the Civil Code. The article states that every object is an object that is now or can be an object that will exist in the future.

A lawful cause in an agreement is not a causal relationship from the agreement. But the content and purpose of the agreement. Based on Article 1335 to Article 1337. The article states that an agreement is declared valid if the law requires that there is a lawful cause. The cancellation of an agreement can be made if the agreement does not fulfill the subjective conditions based on Article 1320 of the Civil Code. Article 1320 of the Civil Code states the principle of consensualism. The principle of consensualism states that one of the conditions for a valid agreement is an agreement between the parties.

The agreement between the parties must be seen again on the principle that is essential in a contract law, namely competence. Is the party making the agreement legally competent to be able to carry out a legal act. Legally competent to carry out a legal action in this case an engagement, except where according to the law it is stated that a

person is incompetent. Incompetent people can be categorized as immature people or people who are under guardianship.

A contract may not be executed if it has no certain legal status, yet the contract cannot be simply canceled. For example, the contract must be in writing and it is not uncommon to find that the contract is made only verbally by the parties. Thus, the obstacle to the non-fulfillment of facilities lies in the issue of contracts which are not made in writing but they are verbally submitted by the developer agent to consumers. Consequently, when there is negligence, the developer agent always evades his/her responsibility.

### 3. Legal remedies for apartment consumers for the provision of facilities that are not in accordance with the agreement by the developer

Basically, the function and purpose of law is to provide protection for human or community interests. The protection is of course carried out with rules and norms. We realize that every human being has different interests, either individually or collectively or collectively. Human actions and behavior can certainly be considered as unwanted behavior or can be behavior that is prohibited by law and is detrimental to society. A person who conducts behavior that violates the law can be subject to criminal and civil sanctions and demands for compensation.

Losses in civil law usually result from a breach of an agreement. Binding power is based on an agreement that creates an engagement between the parties, so the element of agreement between the parties creates a legal relationship between the parties. Because the binding principle in an agreement has binding power as a law for the parties to the agreement and this means that the parties are not necessarily able to unilaterally disengage from the agreement that has been agreed upon without the agreement of the other party. When this binding element is not carried out in accordance with its legal construction, the law becomes a tool to suppress the completion of the agreement.

Related to legal remedies for consumers with binding power based on an agreement that creates an engagement between the parties, the element of agreement between the parties creates a legal relationship between the parties. Because the binding principle in an agreement has binding power as a law for the parties to the agreement and this means that the parties are not necessarily able to unilaterally disengage from the agreement that has been agreed without the consent of the other party. When this binding element is not carried out according to the rules, the law becomes a tool to suppress the resolution of the problem.

The legal force arising from the advertisement has the power in the form of a binding offer, if we look at Law Number 8 of 1999 concerning Consumer Protection and the application of the principle of good faith at the pre-contractual stage. Therefore, the researchers

submit that that the binding force on the facilities agreed upon by the developer agent is the same as the offer advertisement, so that the binding of the advertisement can have an effect on compensation claims that may be filed by consumers who feel that they have been harmed.<sup>8</sup>

In an effort to protect the law for consumers in the sale and purchase agreement, the law of this engagement must be subject to civil law, while the sale and purchase deed is subject to agrarian law. That is why the legal basis of this agreement is the basis for a valid agreement, so that the time of the agreement is important to determine when the implementation agreement is carried out. Legal efforts that have arisen from<sup>6</sup> the agreement and the agreement of the parties marked by the sale and purchase agreement, there has been a legal relationship between the two which can lead to legal consequences where there are obligations of the parties such as consumers who have the right to demand achievement (something) from the developer and the other party. the developer is obliged to fulfill the achievement, namely the obligation to carry out the agreement in accordance with the promises that have been conveyed in the deed of sale and purchase.

Article 45 paragraphs (1) and (2) of the Consumer Protection Law provide opportunities for consumers to sue business actors through out-of-court channels and through courts within the general courts. The full text is as follows: "(1) every consumer who is harmed can sue business actors through the institution tasked with resolving disputes between consumers and business actors or through courts within the general court scope." "(2) consumer dispute resolution can be reached through the courts or out of court based on the voluntary choice of the disputing parties." This is where the real legal effort is carried out. Because the developer's good faith<sup>16</sup> is really important. According to Subekti as quoted by Ridwan, that good faith is the most important joint in contract law.<sup>18</sup>

## E. Conclusions

Legal protection for apartment consumers for facilities that are not in<sup>20</sup> accordance with what was agreed upon by the developer is divided into preventive legal protection and repressive legal protection. Preventive legal protection<sup>3</sup> contained in the enactment of Law Number 8 of 1999 concerning Consumer Protection which is intended to be a strong legal basis for the government and non-governmental consumer protection institutions to make efforts to empower consumers through consumer guidance and education. Meanwhile, repressive legal protection is carried out by providing space for consumers to take legal action if the developer is deemed to have broken his promise to the provision of apartment facilities.





The factor that becomes an obstacle to the non-fulfillment of facilities is the issue of contracts that are not made in writing but are verbally submitted by the developer agent so that when there is negligence the developer agent always evades his responsibility. Legal remedies that can be taken by consumers are as stated in Article 45 paragraph (1) and paragraph (2) of the Consumer Protection Law which provides opportunities for consumers to sue business actors through out-of-court channels and through courts.



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