



Consumer legal protection on right to information in the property development company transaction agreement

Stephanus Febrian Susilo¹, Adi Sulistiyono²

¹⁻² Faculty of Law, Universitas Sebelas Maret, Indonesia

Abstract

This study aimed at finding out whether or not the consumer legal protection for rights to information in property transaction agreement has been provided as it should be. In addition, the present study also aimed to analyze the inhibiting factors faced by the residential property development company in providing the right to information in a property transaction agreement.

This study was categorized as an empirical legal study. The methods of data collection in the study were literature study and field study. The data analysis was done by using qualitative descriptive data analysis. The finding of the study revealed that the consumer's protection over the right to information is regulated in article 4 of Consumer Protection Law. Consumers hold a right to obtain correct, clear, and honest information regarding the condition and the security of goods and/or services. The entrepreneur shall satisfy the right to information that has been regulated in article 7 of Consumer Protection Law by providing correct, clear, and honest information concerning the condition and the security of the goods. Right to information is the consumers' right. PT. Mitra Artista Inter Buana as the property developer had provided information to the consumers through brochures they distributed to the prospective consumers. The consumers' right had been expressed in Property Transaction Agreement. The inhibiting factors faced by the company in providing the right to information in property transaction agreement was the lack of communication between the company and the consumers. The consumers did not really understand on the agreement that had been signed; the consumers felt continuous dissatisfaction towards the company. To overcome such obstacles, the property developer invited the consumers for a discussion and explanation to make the consumers fully understand.

Keywords: consumers protection, rights to information, transaction agreement

Introduction

House is one of the human primary needs. Accordingly, the growth of the number of citizens increases the society needs for a house. This condition is in line with the growth of residential property development companies that appear as an alternative for the society in purchasing a house.

Based on article 1 number 2 of Law no. 1/2011 regarding Housing and Resettlement Area, what is meant by housing is a group of houses as a part of residential, either in an urban or rural area which is equipped with public infrastructure as an attempt to provide proper housing. While, it is undeniable that the location the property development company selects is concentrated in the location that possesses an excellent economic growth potential. One of the locations is in the area of Sleman Regency.

In Yogyakarta Province, particularly Sleman Regency, there are 1500 houses on the average built annually, and most of them (24.4%) is medium-class houses. The primary factor of the rapid growth of property industries in Sleman regency is its easy and accessible location, the easiness of credit provided by the financial institutions, and the land price that affects the house price. Such condition encourages the growth of

residential property development companies in Sleman Regency^[1].

One of the residential property development companies in Sleman Regency is PT. Mitra Artista Inter Buana. This company had developed several real estates namely Mitra Land Estate in Manukan area of Condongcatur of Depok Sleman. There have also been Fortuna Permata Asri II that is built in Plosokuning area of Minomartani of Ngaglik Sleman^[2].

The process of the property transaction between consumers and the company usually is followed by a transaction agreement arranging the two parties' rights and obligations. The issue that often emerges is the transaction agreement is made without noticing the consumers right to information on the property to buy. Some violations on the right to information committed by a property development company are related to the specification of the building and interior the consumers receive or clear information concerning public facilities provided by the company. The information obscurity in transaction agreement will increase the consumers loss potential. For instance the loss may happen when the specification of the building is different from the stipulation,

¹ Zaenal Arifin, 2007, Studi Identifikasi Faktor-Faktor yang Terkait dengan Pertumbuhan Bisnis Perumahan di Sleman, *Jurnal Logika*, Vol. 4, No. 1, January 2007, pp. 46.

² "Profil", retrieved from <http://mitraartista.com/profil/>, on 17 March 2017.

for instance the difference between the types and sizes of the tiles or the brand of bathroom accessories. That differences, of course, will result in consumers loss.

Right to information is the consumers right. Consumer holds a right to obtain correct, clear, and honest information regarding the condition and the security of goods and/or services. The right to information is one of the consumers rights regulated in article 4 of law no. 8/1999 concerning consumer protection. Furthermore, article 9 of Consumers Protection Law states that entrepreneurs are prohibited from misleadingly offering, promoting, advertising certain goods and/or services, and/or using exaggerated words, such as safe, not harmful, not risky, no side effect without complete information, and offering something containing an unsecured promise. The stipulation protects the consumer so that the property development company does not offer promises which are not compatible with the real condition of the product.

From the perspective of legal correlation between the company and the consumer, the company's standing is stronger than the consumers. The consumers' inability in facing such company will undoubtedly damage their interests. Usually, the entrepreneur hides behind the signed standard contract, or behind fake information provided before the transaction agreement is agreed.^[3] Accordingly, the fulfillment of consumer's right to information in a property transaction agreement with the developer company is essential. The fulfillment of the right to information will make the consumers truly understand about the property they are going to buy so that the transaction agreement will not result in a dispute in the future.

Many consumers experience loss because the information provided by the developer company in the initial phase of the transaction process do not accord with the condition when the consumers occupy the house. In addition, not satisfying the consumers' rights to information is one of the violations committed by the entrepreneurs.

In this case, consumers' protection is essential since it has been regulated in Consumers Protection Law which states that "Consumers protection is any attempt of warranting consumer's legal certainty." In addition, Consumers Protection Law also regulates that the consumers hold rights to obtain correct, clear and honest information on the condition and warranty of the goods and/or services. If the consumers do not receive their rights after they perform their obligations, the consumers own rights to file a legal claim towards the entrepreneur.

The description above shows that the fulfillment of the consumers' right to information by the residential property development company is pivotal. Based on the description, the researcher was interested in conducting a study on "Consumers' Protection on Right to Information in the Transaction Agreement on PT Mitra Artista Inter Buana".

Research Method

The present study was an empirical legal study. An empirical legal study is conducted by reviewing law or regulation regarding a legal issue. The result of the review can be used to

solve a legal issue being studied^[4]. In the present study, the researcher analyzed the consumers' protection on the right to information in a property transaction agreement with the developer company.

The data collection techniques of the study were document analysis and field study. Through document analysis, the legal material for the present study was collected, the materials were as follow:

- a) Primary Legal Material that consisted of binding legal material namely:
 - 1) Indonesian Civil Code;
 - 2) Law no. 8/1999 on Consumers Protection.
- b) Secondary Legal Material is a legal material that explains the primary Legal Material, including:
 - 1) Works of literature that relevant with the topic of the study; and
 - 2) Articles, journals, magazines, and paper on the topic of the study.

In the field study, interviews with the participants were conducted. The interview is a process of obtaining information for the sake of the purpose of the study through face-to-face questions and answers activity between the interviewer and the interviewee^[5]

Discussion

The Conformity between the Consumers protection on the right to information in Property transaction Agreement and the Supposed Regulation

Providing the consumers clear and right information is the obligation of the producers who produce or sell a product. Rights to information is the consumers' rights. The consumer's rights in a property transaction are:

- a) to obtain comfort, security and safety in using or consuming the goods and/or service;
- b) to choose the goods and/or services and obtain the said goods and/or services in accordance with the promised conversion value and condition and warranty;
- c) to obtain correct, clear and honest information on the condition and warranty of the goods and/or services;
- d) to be heard in expressing opinion and complaints on the goods and/or services they use or consume;
- e) to obtain proper advocacy, protection and settlement in the consumer's protection dispute;
- f) to obtain consumer's training and education;
- g) to receive proper and honest and nondiscriminatory treatment or service,
- h) to obtain compensation, redress and/or substitution, if the goods and/or services received are not in accord with the agreement or not received as requested,
- i) to obtain rights as regulated in the other provisions of the law.

The abovementioned consumer's rights are regulated in article 4 of the Consumers Protection Law. One of the rights is to

³ Gunawan Widjaja dan Ahmad Yani, 2000, *Hukum tentang Perlindungan Konsumen*, PT. Jakarta, Gramedia Pustaka Utama, pp. 1.

⁴ Zainuddin Ali, 2009, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, pp. 105.

⁵ Agus Salim, 2006, *Teori dan Paradigma Penelitian Sosial*, Yogyakarta, Tiara Wacana, pp. 89.

obtain correct, clear, and honest information regarding the condition and the security of goods and/or services. The right shall be satisfied by an entrepreneur by providing correct, clear, and honest information related to the condition and the security of goods and/or services as well as explanation on how to use, repair, and maintain the goods.

In addition to the obligations above, the entrepreneur, in this case, a property developer, also possesses other obligations regulated in Consumers Protection Law namely:

- a) to act in good faith in conducting the business;
- b) to treat and serve the consumers properly and honestly and non-discriminatively;
- c) to guarantee the goods and/or services produced and/or traded based on the prevailing quality standard provisions of the goods and/or services;
- d) to provide the consumers opportunity to test and or/try on certain goods and/or services and provide warranty and/or guarantee on the produced and/or traded goods;
- e) to provide compensation, redress and/or substitution for the damages caused by the use, consumption, and application of the goods and/ or services;
- f) to provide compensation, redress and/or substitution if the goods and/or services received or used do not accord with the agreement.^[6]

In practice, consumers right to information fulfillment is done by providing correct information during the promotion. The promotion can be in the form of residence expo, brochures, advertisement in printed or electronic media.

During the promotion, the property developer creates a material for the promotion that contains information regarding the house specification, price, and the facility. The information in the brochures shall be correct since it is used to draw attention of the prospective consumers^[7].

The developer often performs promotional activities to spread the information or the product. The property developer promotional activities often become excessive for it aims merely to draw the prospective consumers' attention. The developer shows an attractive promotional content so that the public is interested in buying their product.

In fact, nowadays, the initial information the company provides to the consumers are different with the latter information. When the consumers had made a request for their house, there are some points that do not accord with the initial information such as the house specification and the public facility that had not been unavailable when the house is handed over.

Regarding the incompatible information the company provides to the consumers, the company shall be responsible for it. The responsibility shall be performed for the company does not provide correct, clear, and honest information related to the condition and the security of goods and/or services as well as explanation on how to use, repair, and maintain the goods. The company should provide compensation redress and/or substitution if the goods and/or services received or used do not accord with the agreement. Whereas, an

entrepreneur is forbidden to sell goods that are not in accordance with the promises expressed in labels, ticket, information, advertisement, or promotion of such goods and/or service. It is in line with the regulation in article 8 paragraph (1) of Consumer Protection Law.

As a legal consequence of the violation on Consumers Protection Law, and the civil nature of the legal relationship between the entrepreneur and the consumer, the entrepreneur shall provide compensations for every violation committed that harms the consumers. In accordance with article 19 of Consumers Protection Law, the entrepreneur obligations are as follow:

- a) Entrepreneurs are obligated to give compensation for the damage, taint and/or losses the consumers suffer as a result of using or consuming the goods and/or services produced or traded by the entrepreneurs.
- b) Compensation can be in the form of refund or goods and/or services of the same type or has equal value or in the form of health care and/or insurance coverage in accord with the prevailing law.
- c) Compensation shall be given within the period of 7 (seven) days after the date of the transaction.
- d) Compensation shall not exclude the possibility of a criminal charge based on further evidence of the existence of a fault.
- e) The provisions as intended by Section 1 and Section 2 above shall not be valid if the entrepreneurs can prove that the consumer is at fault^[8].

In providing information to the consumers, PT. Mitra Artista Inter Buana had performed it in line with the Consumers Protection Law. Right to Information is a consumers' right in which the developer shall provide; although there is still a shortage, it could be overcome through amicable discussion.

About the transaction agreement signed by the two parties, the initial information concerning a property transaction had been explained well to the prospective consumers. If the consumers were interested in buying a house offered by the developer after the explanation had been given, the entire obligation and rights of the seller and the purchaser would be expressed in an agreement in which the content was as follow:^[9]

a) Seller Obligation

1. The seller handover the house on time as it is promised to the consumers unless there is force majeure condition beyond the seller's authority;
2. The seller warrants the purchaser's interest that the land and the house in the transaction is not in dispute,
3. The seller warrants and releases the purchaser from all claims emerge in the future on the land and house;
4. The seller is obligated to pay the value-added tax of the land and house in accordance with the law in force.
5. The seller is obligated to manage the transfer of land and building rights title immediately after the house has been completely built by conducting a land and building transaction before a land deed official.

⁶ Article 17 of the Indonesian Law on Consumers Protection.

⁷ Interview with Mr. Antok, a staff of PT. Mitra Artista Inter Buana on 3 May 2017.

⁸ Article 19 of Indonesian Law on Consumers Protection.

⁹ Interview with Mr. Antok, a staff of PT. Mitra Artista Inter Buana on 3 May 2017

6. The seller provides a guarantee on the house for three months since the house is handed over. Such damages are only caused by construction and installation fault and are not caused by the consumers fault.

b) Consumers Obligation

1. The consumer has agreed and paid the total amount of the house price in accordance with the blueprint and location in cash or by installment.
2. The consumer is obligated to pay all taxes as fees emerged because of the property transaction with payment procedures based on the prevailing regulation;
3. The consumer is obligated to adhere to the stipulated rules of the environment of the residence.

c) The Consumer' Right

1. The consumer holds a right to obtain a warranty that the property in the transaction is free from other parties' claim.
2. The consumer holds a right to obtain a warranty of full responsibility for the house construction.
3. The consumer holds a right to obtain a house that is in accordance with the agreed blueprint and location.
4. The consumer holds a right to obtain facilities such as phone and electricity network.
5. The consumer holds a right to obtain a three months warranty since the house is handed over.

d) The Seller' Rights

The seller holds a right to receive a down-payment from the consumer.

Based on the description above, it was found that PT. Mitra Artista Inter Buana had provided correct, clear, and correct information to the consumer regarding the condition of the property in transaction following the prevailing regulation. It could be seen from the information provided before the consumers made a purchase and during the house handover by signing the transaction agreement first. The rights to information are the consumers' rights that have been regulated in article 4 of Consumer Protection Law and it is the seller' obligation to satisfy it.

Conclusion

Based on the findings and the discussion of the study, it could be concluded that rights to information which becomes the consumer' right had been in line with the existing regulation and PT. Mitra Artista Inter Buana had performed it by providing information to the consumers through brochures that were printed and distributed to the prospective consumers. Moreover, The consumers right had been expressed in Property transaction Agreement.

Suggestion

Based on the conclusion, the suggestions are as follows:

1. For the property development companies, it is expected that they provide more detailed information about the property they offer to the consumers so that the consumers may have options on a house they are going to buy. It is expected that the consumers may not be harmed by incorrect information provided by the property development company.

2. For the consumers, it is expected that they are more careful in selecting a property development company when purchasing a property. It is necessary for the consumers to check the company' legality.

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6. Law no. 8/1999 on Consumer Protection