



## LEGAL PROTECTION FOR CONSUMERS STRENGTHENED BY NOTARIAL DEEDS AGAINST DEVELOPER DEFAULT

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### Abstract :

The increasingly urgent need for housing presents legal problems, especially related to ownership and the legality of property transactions. However, in practice, various legal problems arise. One of the main issues is the role of notarial deeds which should provide legal protection for consumers, but in some cases actually legitimize the default committed by property developers. This is what makes it urgent to reveal because things like this have often happened repeatedly. By using normative legal research methods and the ratio decidendi theory approach and legal protection theory, this study aims to analyze the pattern of jurisprudence in cases of property developer default and the role of notaries in providing legal certainty. The results of the study show that in some cases, notarial deeds are used as an instrument that strengthens the position of developers, so that consumers who have fulfilled their obligations still suffer losses. Therefore, it is necessary to strengthen regulations and supervisory mechanisms for the role of notaries in property transactions to ensure more effective legal protection for consumers.

**Keywords:** Housing, Default, Notarial Deed, Consumer Protection, Ratio Decidendi.

### INTRODUCTION

Legal protection for consumers is an essential element in the civil law system that aims to create a balance between the interests of consumers and business actors (Shidarta, 2006). In business transactions, especially in the property sector, notarial deeds are often used as a legal instrument to ensure certainty and protection for the parties (Hidayat, 2020). As stated in Article 1870 of the Civil Code, authentic deeds have perfect evidentiary force, which should provide protection for consumers in every transaction. In practice, the effectiveness of notarial deeds in providing legal protection for consumers is still a matter of debate. One real example is seen in Decision No. 28/Pdt.G/2023/PN.Kds Jo Decision No. 87/Pdt/PT.Smg, which revealed a dispute between consumers and developers regarding default in a house sale and purchase agreement. Even though consumers have fulfilled their obligations, they do not get their rights as guaranteed in Article 4 letters a and c of Law No. 8 of 1999 concerning Consumer Protection (UUPK), which affirms consumer rights to comfort, security, and clear and honest information regarding the products or services consumed.

In some cases, notarial deeds are actually used by developers to strengthen their position, thus creating legal uncertainty for consumers. In fact, based on Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notary, an authentic deed must be a binding legal basis and reflect justice for all parties. However, in the practice of property business contracts, agreements are often made in general without considering specific protection for consumers, opening up opportunities for developers to interpret contract provisions unilaterally (Subekti, Agreement Law, 2001). This imbalance is contrary to the principle of contractual justice as regulated in Article 1320 of the Civil Code, especially regarding the element of "lawful cause" (Subekti, 2008). If an agreement is made in such a way that it harms one



party, then it can be categorized as an unlawful act (PMH) based on Article 1365 of the Civil Code, which states that every act that causes harm to another person requires the perpetrator to provide compensation (Mertokusumo, Indonesian Civil Code, 2007).

This study aims to examine in depth the effectiveness of notarial deeds in providing legal protection for consumers against developer defaults. This study not only highlights the evidentiary power of notarial deeds, but also explores the relevance of their application in consumer disputes, in order to provide more equitable legal recommendations. Therefore, this study is entitled: **"Legal Protection for Consumers Strengthened by Notarial Deeds against Developer Defaults (Study of Decision No. 28/Pdt.G/2023/PN.Kds Jo Decision No. 87/Pdt/PT.Smg)."**

## DISCUSSION

### Legal Consequences If the Developer Defaults in the Sale and Purchase Agreement

Default in a house sale and purchase agreement by a developer is a legal issue that can have serious legal consequences for the injured party. The Sale and Purchase Agreement (PPJB) is a preliminary agreement that binds the parties before the Sale and Purchase Deed (AJB) is made before the Land Deed Making Officer (PPAT). Based on Article 1313 of the Civil Code, an agreement is an act in which one or more parties bind themselves to one or more other parties. PPJB is usually used when the house or land being sold is not yet physically available or is still under construction.

This aims to provide legal certainty for the parties regarding their respective rights and obligations in the transaction. An agreement, including PPJB, has binding legal force, the agreement must meet the requirements for the validity of the agreement as regulated in Article 1320 of the Civil Code, there are requirements for the validity of an agreement which include:

#### 1. Agreement of the parties

The agreement must be made on the basis of free agreement without any coercion, error, or fraud.

#### 2. Legal capacity

The parties must be competent to act according to law.

#### 3. Specific object, and

The object in the agreement must be clear and can be determined.

#### 4. Lawful cause

The agreement must not be contrary to law, morality, or public order.

Thus, PPJB has binding legal force, so that violations of it can be categorized as a breach of contract which has legal implications for the party that violates it. A breach of contract occurs when one party to the agreement does not fulfill its obligations as agreed (HS, 2013).

Based on Article 1243 of the Civil Code, reimbursement of costs, losses and interest due to failure to fulfill an obligation is only required if the debtor, after being declared negligent in fulfilling his obligation, continues to neglect it or if something that must be given or made can only be given or made within the time limit that has passed, which means that the reason for the failure to fulfill the obligation results in the debtor being required to provide compensation. This is in accordance with Subekti's opinion, a person is said to have fulfilled the elements of a breach of contract.

In property developers, the forms of default that often occur in PPJB include delays or failures in handing over houses to consumers as agreed; failure to fulfill building specifications as agreed in PPJB; transfer of ownership of land or houses sold to other parties without the buyer's consent; and the use of land or houses that have been bought and sold as collateral at the bank, in the agreement it is stated that the object is not in dispute or guaranteed (Mertokusumo, 2014). In Decision No. 28 / Pdt.G / 2023 / PN.Kds jo Decision No. 87 / Pdt / PT.Smg, the developer PT



Nagaraja Nusantara Energi was declared to have committed default because it failed to hand over the house to the consumer even though payment had been made in full. It is known that the property that has been sold to consumers turned out to be used as collateral for debt to the bank without notification to the buyer. This clearly contradicts the principle of good faith in agreements as regulated in Article 1338 paragraph (3) of the Civil Code, which states that an agreement must be carried out in good faith by the parties.

In its consideration, the Panel of Judges emphasized that the developer must be responsible for the breach of contract that has been committed. The judge decided that the defendant is obliged to return the money that has been paid by the consumer and pay compensation as a legal consequence of the breach of contract. The legal consequences for developers who commit breach of contract in the PPJB can be:

1. Cancellation of the agreement and compensation as stipulated in Article 1267 of the Civil Code, which gives the injured party the right to choose between:
  - a. Forcing the fulfillment of the agreement.
  - b. Canceling the agreement with a claim for compensation.
  - c. Demanding compensation for default.
2. Refund of consumer money, in some cases, a refund of twice the amount paid as stipulated in the provisions of the PPJB.
3. Civil law sanctions, civil lawsuits to the District Court or dispute resolution through the Consumer Dispute Resolution Agency (BPSK) based on Law No. 8 of 1999 concerning Consumer Protection (UUPK).
4. Criminal law sanctions, if the default is accompanied by elements of fraud, the developer can be charged with Article 378 of the Criminal Code concerning fraud. If the developer sells a house that has been pledged to the bank without notifying the consumer, he can be subject to Article 372 of the Criminal Code concerning embezzlement.

In Decision No. 28/Pdt.G/2023/PN.Kds, the Panel of Judges granted the plaintiff's claim for compensation due to the defendant's default. In

addition, if the developer fails to deliver the promised house, he is obliged to return all payments received from consumers. In some cases, consumers can request a refund of twice the amount paid as stated in the PPJB. Furthermore, developers who commit default can be subject to civil or criminal sanctions, depending on the actions taken (Subekti, 2005). If the default is accompanied by an element of fraud, then Article 378 of the Criminal Code concerning fraud can be imposed. In fact, in some cases, developers who sell houses that have been pledged to the bank without notifying consumers can be subject to criminal sanctions under Article 372 of the Criminal Code concerning embezzlement. To deal with developer default, consumers can seek legal protection through litigation or non-litigation. Consumers can file a civil lawsuit with the District Court based on the Civil Code or resolve disputes through the Consumer Dispute Resolution Agency (BPSK) in accordance with Law No. 8 of 1999 concerning Consumer Protection.

If the transaction involves a financial institution or bank, consumers can report the case to the Financial Services Authority (OJK) or Bank Indonesia. In Decision No. 28/Pdt.G/2023/PN.Kds, the Panel of Judges emphasized that the notarial deed used in the transaction cannot immediately prevent consumers from obtaining their rights. This shows that although the notarial deed has legal force, the deed cannot be used to justify the developer's default.

**Legal Protection for Consumers Strengthened by Notarial Deeds Against Developer Default in Decision Study No. 28/ Pdt.G/ 2023/ PN.Kds Jo Decision No. 87/ PDT/ PT. Smg.**

Legal protection for consumers in the property sector is a major concern in the civil law system in Indonesia. Consumers are often vulnerable to default practices by developers, especially when home purchase transactions have been strengthened by a notarial deed. Notarial deeds should provide legal certainty and protection for consumers. In some cases, they actually become a tool for developers to avoid their responsibilities. A study of Decision No.



28/Pdt.G/2023/PN.Kds Jo Decision No. 87/Pdt/PT.Smg is crucial to understanding the extent to which legal protection for consumers can be enforced and the role of notarial deeds in default cases.

Legal protection for consumers has been regulated in various laws and regulations. Law No. 8 of 1999 concerning Consumer Protection (UUPK), especially Article 4, provides consumers with the right to obtain comfort, security, and safety in consuming goods and services. The Civil Code (KUHPerdata), specifically Article 1365 of the Civil Code, states that any act that causes harm to another person requires the perpetrator to provide compensation. In addition, Law No. 1 of 2011 concerning Housing and Residential Areas stipulates that every housing must have clear legality and not harm consumers.

In this case, the plaintiffs who are consumers suffered losses due to default by the developer, PT Nagaraja Nusantara Energi. Although they had made payments or settlements, they did not receive the right to own the house as promised. In fact, the house that had been purchased turned out to be used as collateral for debt by the developer to the bank. Based on the legal facts found, consumers should receive legal protection because they have fulfilled their payment obligations according to the Sale and Purchase Agreement (PPJB) and Sale and Purchase Deed (AJB).

In this case, a notarial deed should be strong evidence to demand consumer rights. However, in practice, the developer still defaults by not handing over the property that has been paid for. The notary has a legal obligation to guarantee that every transaction made in the form of an authentic deed is in accordance with applicable legal provisions. Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notary states that a notary is authorized to make an authentic deed that binds the parties. However, in this case, even though the transaction has been notarized, a default still occurs that is detrimental to the consumer. This raises questions about the

effectiveness of a notarial deed in providing legal protection for consumers. In addition, Article 1868 of the Civil Code states that an authentic deed has perfect evidentiary power, but in practice, the existence of this deed does not guarantee that the agreement will be carried out in good faith by the developer. The court in this decision decided that the developer was responsible for the default and was required to provide compensation to the consumer.

This decision has several legal implications. First, this decision confirms that notarial deeds still have binding legal force and can be used as a basis for suing the rights of consumers who are harmed. Second, property developers who commit default can be subject to legal sanctions and are required to return consumer rights in accordance with the agreement. Third, notaries must be more careful in ensuring that the agreement made does not harm either party, especially consumers.

Based on Article 1267 of the Civil Code, a party who is harmed due to default can demand fulfillment of the agreement, cancellation of the agreement with compensation, or claim compensation due to default. In property law, the common view is that a notarial deed is an authentic evidence that cannot be refuted. However, in this case, it is apparent that even though there has been a binding notarial deed, consumers still suffer losses due to the developer's default.

A more dynamic legal approach is needed, emphasizing the principle of fairness in contracts, as stipulated in Article 1338 of the Civil Code, which states that a legally made agreement applies as a law for the parties, but must not be contrary to propriety and justice. In addition, Article 1339 of the Civil Code stipulates that an agreement is not only binding for matters that are explicitly agreed upon, but also for obligations that according to propriety, custom, or law must be fulfilled by the parties.





Thus, developers who commit default cannot hide behind the existence of a notarial deed to avoid their obligations to consumers.

## **CONCLUSION**

Based on the analysis of this case, a developer's default in a house sale and purchase agreement can have serious legal consequences, including cancellation of the agreement, refund of the consumer's money, and compensation. In some cases, developers who commit fraud can be subject to criminal sanctions. The court decision in case No. 28/Pdt.G/2023/PN.Kds jo No. 87/Pdt/PT.Smg confirms that consumers still have the right to legal protection even though the transaction is strengthened by a notarial deed. Therefore, it is important for consumers to understand their rights so that they can take the right steps when faced with a property developer's default. Based on the discussion above, it can be concluded that legal protection for consumers in property transactions strengthened by a notarial deed still has challenges. Although a notarial deed provides legal certainty, a stricter monitoring mechanism is still needed for developers who have the potential to default. This decision provides an important precedent in protecting consumers from irresponsible business practices and emphasizes the important role of notaries in ensuring compliance with the law in property transactions.

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