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Pre Project Selling System In Trading Flats (Apartment) Based On The Principle Of Justice

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ABSTRACT

The increase in number of people from year to year increases compared to the amount of land for shelter. The promulgation of Law No. 20 of 2011 on the flats, is the obligation of the polity in meeting human necessity, as well as the government's way to overcome the backlog. So, in the construction of flats, especially commercial or apartments managed by development actors with a pre-project selling system. The objective of this study is to perceive the operation of the application of the law on the regulation of the sale and purchase of commercial flats. By using normative research methods or better known as doctrinal. Includes library materials or secondary data. Describe description Governing setting system pre-project selling in trading units of flats (apartments) using a knife analysis of the theory of Justice. In the implementation of the pre-project selling system, consumers or buyers of flat units experience losses. The implementation of sales by pre-project selling only provides justice for one party, namely the development actors (developers). Each individual has equal rights to the other, in this case, the pre-project selling system has not provided justice for consumers. Therefore, there is a need for supervision from the government and the developer. In addition, normative changes to Article 42 of the flat's law are also needed to regulate the buying and selling process of the pre-project selling system. So the hope can provide a juridical basis and provide justice for consumers of apartments.

Keywords: Trade, Apartement, Pre-Project Selling

INTRODUCTION

The density of the population affects the construction of flats to reduce the shortage of available land in Indonesia, which is based on the flat's law. The 5th precept mentioned that social justice for every Indonesian citizen. And Article 28 H paragraph (1) states that "*everyone has the liberty to subsist a decent life, live and get a good and healthy sentient environment.*"

The explanation in Article 28 H paragraph (1) of the 1945 Constitution is that the state is responsible for meeting human needs by providing housing and settlements for its people which are carried out directly by the government or the private sector. The development from year to year causes more human growth than the willingness of land for shelter.

The purpose of the government of Indonesia with the establishment of the flat's law is to flourish the neighborhood and provide efficiency to provide homes for residents and provide benefits for the community or Indonesian citizens to occupy the flats. This then led to the availability of land in Indonesia and the occurrence of backlogs or scarcity of home ownership, the number of backlog of homes has now increased to 12.75 million. Whereas previously it was often conveyed by the government that the backlog of houses reached 11.4 million. Director General of Housing of the Ministry of PUPR Iwan Suprijanto said, based on data from the National Socio-Economic Survey (Susenas) in 2020, the backlog of housing ownership reached 12.75 million. "This number also does not include the growth of new families, which is estimated at around 700.000-800.000 per year," he said in a press release from the PUPR Ministry, Sunday (06/02/2022).

The density of the population affects the development of the construction of flats both in the city and settlements in the suburbs. The erection of flats is a surrogate to reduce the population who does not have or lack of land as a place to live. Flats have a foundation as the basis of Law Number 20 of 2011 on flats changes from Law Number 16 of 1985 on the flats.

The construction of flats is mostly carried out by private developers or the government on the grounds of preventing dense settlements with the flats to reduce the number of settlements. Not a few construction flats are built per development in Indonesia. Indonesia is classified as a densely populated country to date Indonesia's population reached 274.85 million inhabitants. Dense population not only in big cities but also covering the countryside to the suburbs.

The purpose with the promulgation of flats arrangement in Indonesia, there are several types of Public, special, state and commercial flats. Construction of flats, especially commercial ones, is much favored by the population of Indonesia to make a place to live even besides that it can be used as a long-term investment for prospective owners of flats. The Indonesian population is increasing, the availability of commercial flats or apartments is increasing, and the tap of a clear market share is also the cause of the flat development business experiencing growth. So, this can make the perpetrators of development or developers to provide housing.

The different construction of commercial flats or apartments located in the business actors are usually developers, government and prospective buyers of flats units both established on the right to use, use rights, property rights and management rights. Many flat developments can be done

by the government with the developer to assemble flats on the area control rights, and not a few problems associated with the sale of flats either through electronic media or print media.

Marketing is done by the developer to build flats with pre-project selling, namely sales made before the property development project begins. Usually, advertising residential and a flat unit through social media and print media as well as exhibitions to consumers or prospective buyers. The physical building is not yet known for its clarity only through marketing images and examples of images of the stacking house units.

Marketing with pre-project selling reaps problems in sale strategies and transactions before the flats become a building. Thus, the existence of flats as a form of a pattern that needs to be considered regarding the legality of the agreement in the transaction of trading units of flats and legal insurance for prospective patron of flats with the pre-project selling system.

In fact, the concept of pre-project selling in Indonesia has an attractive appeal and great opportunities for private development actors. Due to the concept of pre-project selling, there is an attraction that includes the benefits obtained by both parties, namely developers and consumers.

The benefits obtained by the developer with the pre project selling system can predict the sales period and can determine the market response to the property product to be built. With this system can secure their cash flow in the framework of the erection of particularly marketable flats or apartments. Meanwhile, the advantage of the buyer or consumer, usually the purchase price is cheaper than if the property sold has been built.

Juristically, the pre-project selling system is governed in Article 42 paragraph of Law Number 20 of 2011 in regard to the flats that development actors can carry out marketing before the erection of flats is executed. The requirements that must be met in the construction of flats, namely, the certainty of the allocation of turf, credence of territory rights, land tenure flats, and flat construction licence from the insurance agency.

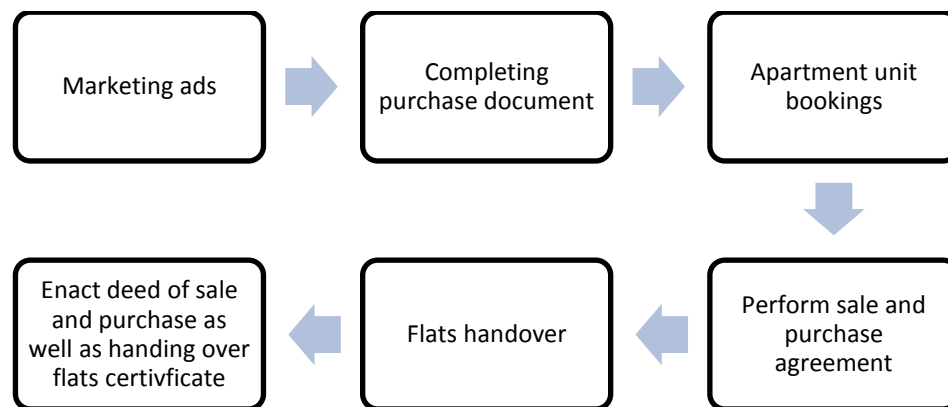


Figure 1. The process of purchasing units of flats through (developer)

Explanation in Figure 1 scheme of marketing process or buying and selling of commercial flats or apartments conducted by the developer. First, marketing through offline and online advertising

attracts consumers to buy, which is done by distributing apartment brochures. Secondly, complete the documents for the purchase of an apartment by a consumer or potential buyer of an apartment. Third, done by ordering the desired unit by the consumer, fourth, the seller (developer) with the buyer (consumer) make an agreement called the binding agreement of sale and purchase (PPJB) before a notary. Fifth, the delivery of units of flats, and the last seller and buyer doing the agreement is the deed of sale.

The picture above describes the system of trading units of flats or apartments through developers. In the utilization of trading flats, there are obstacles that cause consumers or prospective owners of flats to feel disadvantaged by development actors. In fact, the trading of apartment units with the pre-project selling system are not open to consumers related to information from developers about the ownership rights of apartment units, and construction designation, and if there is a procrastination in the dispatch of the owner's rights for the apartment unit. As a result of dishonest developers or development actors that occur, about 40% of housing complaints occur as a result of the pre-project selling system.

Therefore, there is friction between the rules and implementation that can result in injustice for buyers of flat units to have ownership rights over flat units. Then there needs to be an analysis that can pull the red thread based on the principle of fairness in contracting. Based on that case, it can be drawn into the problem of how the legality of the pre-project selling system in trading units of flats (apartments) in terms of the principle of justice for buyers or owners of flats.

RESEARCH METHODS

Research is essentially "a search" and not just a careful look at an object held in the hand. Research is a translation from English that is research, which comes from the word re (back) and to search (search). It means "looking back." This study uses the type of legitimate research normative (doctrinal) including the library materials or secondary data. This study attempts to distinguish and indulge an examination of how the legality of the system of pre-project selling in trade units of flats (apartments) using a knife analysis of the theory of Justice.

This study is normative legal research that refers to library materials or secondary data. Soetandyo gives the term "normative legal research "with the term" doctrinal legal research", which is research on the law that is conceptualized and developed based on the doctrine adopted by the conceptualist and/or developer.

This research is descriptive and analytical that uses secondary legal material as the beginning of the spectrum of research, after observing and sorting the field data associated with legal problems caused by legal uncertainty. In this study the researchers used a statutory approach (statute approach) and the third approach used in this study is a conceptual approach. In this activity, the research identified the implementation of marketing and buying and selling commercial flats or apartment units through pre-project selling, the analysis was carried out with a qualitative approach, namely primary legal materials and secondary legal materials collected through empirical-based literature studies that were analyzed qualitatively and then sorted and selected to be used as scientific studies.

RESULT & DISCUSSION

Legality Of The Agreement In The Transaction Of Trading Flats With Pre-Project Selling System.

The development of information technology is something that absolutely must be done, this is related to the characteristics of the land itself that is every area that develops. Land in terms of law will continue to grow so that people also adjust to the development of land law, both in administration regarding the registration of land rights.

The enactment of Law No. 11 of 2008 on knowledge and computerized transactions affects the innovation used in technology-based land rights registration systems in managing information data to improve the effectiveness and efficiency of public services and improve national budgetary growth to apprehend the prosperity of the nation.

Flats are multi-storey construction assembled in a domain that is split into practically precise parts, either in the horizontal or vertical direction and are units that each can be purchased and utilized separately, especially for populous premises implemented with shared sector, the shared entity and shared land, as declared in Article 1 Paragraph (1) of Law No. 20 of 2011.

The application of flat development is accompanied by the activities of devising, augmentation, supervision and operation, administration, repairs and precaution, regulation, institutions, resources, and expenditure systems, as well as the role of the residents, which is done methodically, unified, continual and responsible. The implementation of apartment builders is also accompanied by marketing or buying and selling.

Marketing carried out by the developers was by electronic means either through advertising or by social media. The concept of marketing is standardized in Article 42 of Law Number 20 of 2011 on the flats, mentioned in Paragraph (1) development actors can do marketing before the construction of flats is done, but paragraph (2) requires that marketing is allowed before development by having the certainty of people's designation, credence of territory rights, ownership status, development licensing, and testament for the erection of flats from the insurance agency. This condition is followed by everything promised by the development actors as a binding purchase agreement (PPJB) for the parties.

Marketing is carried out by developers by offering residential units to consumers or prospective buyers. Various marketing methods are carried out either through property agents, and as a consequence, the property market will increasingly compete with other developers. Everything is done to sell quickly and investment invested immediately returns and immediately gains profit.

Currently, it is rife with sales made by marketing or property agents by offering by way of pre-project selling, i.e a transaction made before the property development venture begins. Usually offers residential units flats through various media both social media and print media or property exhibitions, while the real building shown by the developer is still in the figure of an image in the brochure.

When prospective buyers are interested in such offers by agreeing with the developer, they agree to make a transaction at the beginning by paying a free booking or a down payment. This payment indicates the buyer's intention to get a flat unit even though the physical form is still in the form of land and has not been in the form of a flat building as offered by the developer.

Pre-project selling marketing strategies are often implemented in Indonesia, but some are forgotten by the juridical consequences in the implementation of transactions. Some prospective buyers do not know the causes that might occur, because the prospective buyers that do not understand are a loophole for developers that can harm their consumers.

Thoroughness in buying flats units implemented by the developer by paying attention to credibility in marketing. Before buying residential flats, first we must check the certificate of the parent land to provide legal certainty as stipulated in the flats Act. Much happens in the implementation of the acquisition of land rights is not clear which land it acquires.

Currently, people are required to develop with the social changes that occur, namely technological changes. Administrative requirements in the construction of flats are carried out using an online system, such as registration of land rights and other permits. Social changes to technology inevitably adjust society or business actors.

The era of information technology with its development in terms of market or market sales of apartment units in pre-project selling can attract consumers or potential buyers with offers from developers or developers. Prospective buyers or consumers agreed to buy it then the next step to ensure whether or not the construction of the flats, needs to check the stature of territory rights used for the project.

Developers who are usually limited companies have provisions in obtaining land rights as mentioned in Article 17 of the flat's law, namely ownership rights, construction rights or practice rights on the land and management rights. In checking the ownership of land rights on the flats asked the local National Land Agency. Checks are carried out to ensure the ownership status of land rights obtained by the developer in building flats.

After checking the status of ownership of land rights, then check the appointment and use of land permit or SIPPT issued by The Local Government. SIPPT is one of the requirements that must be done by the developer because the permit is the first step for the developer in offering and selling property products that are built.

Procedure of the Minister of Public Works and public housing of the Republic of Indonesia number 11/PRT/M/2019 in regard to the preceding agreement system for trading houses, before the developer or development Actor in establishing a flat unit with the permission of the municipality attaches a document of the flat construction plan, the main building permit or building permit. The existence of reporting to the authorities and then the administration of the developer has convinced them to make efforts to build flats.

It also requires a building permit (IMB) from the construction of flats issued by the local government as a function of controlling the operation of flats. The allocation of flats must be

following the designation derived from the building boundary line, building base coefficient (KDB), building floor coefficient (KLB) and building height. Each apartment building that will be built must be in a planned location on the site following the site plan that has been approved by the relevant agencies.

Sales or marketing by pre-project selling, building flats in the physical form was not yet standing when consumers are interested will be given a note of order (booking form) as one of the antecedent documents that will be received by the end user who has been interested in buying a flat unit or unit flats. This should not be ignored before signing the initial transaction because after signing the letter, the consumer must pay a free booking or a down payment.

The explanation of the procedure of the Minister of Public Works and public housing of the Republic of Indonesia number 11 / PRT/M/2019, as a prospective buyer or consumer, contains:

1. District/city plan certificate number
2. The certificate number of land rights in the name of the perpetrator of development or land owner in cooperation with the perpetrator of development
3. Support letter from bank/non-bank
4. The number and date of endorsement for legal entities or identity number for individual development actors and the identity of the landowner who cooperates with the development
5. The number and date of issuance of the parent building permit or building permit
6. Site plan housing or flats
7. Building specifications and House Plans or pictures of buildings that are cut vertically and pay attention to the contents or inside of buildings and flats plans
8. The selling price of a house or flats
9. Clear information about infrastructure, facilities, and Public Utilities promised by the perpetrators of development
10. Clear information regarding shared sections, shared objects and common land for the construction of flats.

The clauses in the letter and the booking conditions will bind each of the parties both the consumer and the developer. Ministerial regulation which contains guidelines for buying and selling a house can serve to assist the parties who will make the transaction, then the authority of the parties to agree on the terms outlined in the order letter or mandatory deal of trade. The clauses agreed upon in the deal of trade must be examined article by article.

A binding agreement of trade is a preceding agreement of sale and purchase with a deal among the perpetrators of the reinforcement for each person to do the trade of houses or flat implementation that occurs a purchase of flats with the system pre-project selling many cases of consumers or prospective buyers are harmed by ignorance of the law in the purchase of flats.

Not paying attention to things that need to be considered before carrying out an imperative deal on the trade of apartment units. Advances paid to the developer can not be withdrawn by the consumer, it happens the consumer is not careful about the clauses agreed upon by both parties.

Among the inaccuracy of buyers or consumers in buying flats. Some things that occurred in the case of the acquisition of land rights of flat units obtained by the developer are still in the process which ultimately led to the vagueness of the stature of territory rights. The consequence for the buyer or consumer is to feel disadvantaged because the down payment cannot be withdrawn as agreed.

A partnership is born with a covenant, just as a covenant gives rise to a partnership. An agreement can be said to concur to do something that is stated in writing. An agreement born of an agreement is desired by two or more parties who agree, while an agreement is concocted of the law outside the decree of the participant concerned which is usually referred to as the foundation of unrestricted contract. The foundation of unrestricted contract is determined by the parties by not deviating from morality and public order.

The system with the outside will in the sense of the parties are free to determine the clause to be agreed and agreed, better known as the foundation of an unrestricted contract system as in Article 1338 paragraph (4) of the KUHPerdata that all deals made by the law implement as law for those who make it.

Article 1338 of the KUHPerdata, in addition to the foundation of unrestricted contract, also contains the foundation of consensual, that is, an agreement is born at the moment when a deal is dispatched between the two participants on the subject matter of what is the object of the agreement. The agreement applies the principle of consensual is the existence of an agreement without the existence of formal evidence with any oral agreement that can be categorized.

Related to the agreement refers to and meets article 1320 of the KUHPerdata as a standing of the legitimacy of the agreement, namely the agreement, skills, an object of the agreement and a lawful cause. Related to the regulation of the law, the designation of the legitimacy of a deal is in notary deed made by the competent authority.

The binding trade deal (PPJB) is a deal among the parties regarding the plans of the parties that will make the sale and regulate the rights and obligations so that they can accommodate legal credence and legal insurance for the participants that proceed as the legal principle of " Pacta Sunt Servanda" means that the agreement is a binding law for those who. The existence of binding, the will of the seller and the prospective buyer of the apartment unit can be carried out by agreement.

The trade deal (PPJB) is completed after the development actors meet the desideratum, among others, the stature of territory ownership, the terms of the agreement, the ownership of the main building permit or building permit, the vacancy of the groundwork, apparatus and Public Utilities and the assembly of at least twenty percent.

Prospective buyers or consumers have the right to see the draft PPJB before paying the down payment and signing the agreement. The provisions of the PPJB contents are also explained in the Ministerial regulation containing the identity of the parties, PPJB object description, house prices and discharge mechanism, insurance for developers, rights and obligations of the parties, building handover time, building maintenance, building use, transfer of rights, cancellation and expiration of PPJB and resolving disputes. Ministerial regulation of Public Works and Public Housing number 11 / PRT/M / 2019 concerning the system of preliminary agreements for the sale and purchase of flats as a basis for consumers or prospective buyers.

The existence of these regulations issued by the government aims at a prospective buyer or consumer in applying caution and protecting consumers from things that happen at the time of implementation. Agreements made based on the guidelines drawn up by the government with developers will be different. Agreements made by two or more parties can change with the principle of freedom of contract, so prospective buyers are required to apply the principle of prudence.

The trade process is carried out after the flats are completed as described in Article 42 of the flat's law, carried out through a deed of sale (AJB) made by a sanctioned official, the land deed officer (PPAT). The deed of trade is proof that the sale and purchase of the apartment unit have been carried out, so it will move to the shared part, communal objects and land which is a fundamental part of the apartment unit in question. Construction is declared complete if it has been issued a certificate of fitness function and property rights certificate unit of flats.

Legal Protection for Buyers or Consumers in Trade Using Pre-Project Selling System Based on Justice

Legal protection is a guarantee provided by the authorities to all parties, capable to exercise the legal rights and obligations they have, in their capacity as subjects of law. According to Philipus M. Hadjon, "the conservation of the law is the conservation of prestige and propriety, and the law based on legal provisions. The existence of legal conservation is meant to preserve the disadvantaged human rights and conservation is provided to the neighbourhood so that they can experience all the rights granted by law."

Based on Article 1 Paragraph (1) of Law Number 8 of 1999 on consumer conservation (consumer conservation law), the definition of consumer conservation is all efforts that establish legal validity to conserve consumers. So it can be said that consumer law is broader in scale than consumer protection law.

Law is described as the order of nation and state that serves to protect every citizen. The protection afforded to every citizen by law made or codified contains rules related to those set forth therein.

The concept of legal conservation for the community in Indonesia is the regulation of conservation and recognition of human decency derived from Pancasila, while the West uses the concept of *Rechtstaat* and the Rule of the Law. Historically, in the West, the regulation of legal

conservation, against government action is based on and derived from the concept of recognition and conservation of human rights.

Theoretically, legal conservation is divided into two types, namely: (1) means of Preventive legal conservation that is for government actions based on freedom of action because of preventive legal conservation, the government is encouraged to be careful in deciding a verdict based on discretion, while (2) means of responsive legal conservation aims to end a feud.

The subject of consumer conservation is regulated in the Consumer Conservation Law, which must meet the criteria under Article 1 point 2 of the consumer conservation law that everyone uses goods/services available in the community, both for the benefit of themselves, their families, others, and other living beings and not for sale.

Furthermore, Article 1 point 3 of the Consumer Conservation Law, explains the criteria for business actors, namely every individual business entity, whether in the form of a legal entity or not a legal entity established and domiciled or carrying out activities in the jurisdiction of the Republic of Indonesia, either alone or jointly organizing business activities in various economic fields.

In the field of marketing or sales, the relationship between seller and buyer depends on an alliance made by both parties. The clauses in the agreement are made and will be agreed upon by the parties to protect themselves from possible losses that arise if one of the parties' default on the agreement.

Article 1314 of the KUHPerdata, a reciprocity agreement is an agreement that obliges each of the parties to give something, do something or not do something. Principally, in an agreement made using the principle of freedom of contract, the parties are given the freedom to make their agreements that are strung together in clauses based on an agreement, in addition to being given the freedom of the parties also to protect themselves or each party.

Marketing strategy using pre-project selling needs to apply the precaution principle. Draft agreements made by businesses or developers need vigilance because it could be a draft made by developers only to protect themselves developers and ignore consumers. In agreements that are usually made by developers, prospective buyers are only to agree or not because, with the freedom of contract, prospective buyers have the right to agree or not.

Offering flats made with pre-project selling, namely the sales mechanism before the building stands, of course for developers is easy because the requirements for obtaining are made simple by the developer. Only by paying a down payment of 10%, buyers can choose the desired apartment unit.

According to the principles of European Contract Law 2002, "an offer to provide goods or services at a stated price made by a proportional provider/supplier of goods or services, in a public service advertisement or catalog, shall be deemed to be an offer to sell or supply goods or services at the then current price, until the stock of goods or services is the supplier's capacity to provide services has been exhausted."

An offer made by the developer through print media and electronic media is very helpful for developers to market flat units. With the offer by the method of pre-project selling also helps developers to attract buyers with pictures or examples of units of flats even though the building has not been built. Advertising is a form of offering that aims to bring together one party who offers something with another party who needs it.

The KUHPerdata does not expressly refer to advertising as an offer, but if the nature of the offer is observed as a statement of will and therefore must be expressed both in writing and orally, then advertising is one of the offers made in writing. In the KUHPerdata, the provision applies that one of the conditions for the formation of an agreement legally is that there must be an agreement from both parties.

The agreement in the KUHPerdata is a form of protection given to consumers or the parties, with the agreement in written form then arises the existence of an engagement contained in the agreement. The sale and purchase binding agreement agreed upon by both parties, if one party denies the party declared default and can be sued or held accountable.

The Indonesian government made regulations regarding the construction of flats and supervision carried out through a building permit letter which must be approved by the central government. In the existing implementation, the developer by agreeing with consumers or prospective buyers of apartment units does not explain in detail, there are even cases of not having a certificate of land rights to apartment buildings.

The case that occurred was not only related to not having a certificate of land rights but also not having a building permit. The existence of these cases consumers feel aggrieved by the lies committed by the developers that the offer is done by way of pre-project selling.

When analyzed using the theory of justice according to John Rawls has a principal field of composition in a society of all levels of social, political, legal and economic, because all layers have a fundamental influence on the prospects of individual life. Indeed, there are various problems in all categories fair or unfair can be applied. There are not only legal and socio-political spheres, but also the behavior of individual decisions and judgments. John Rawls believes that “justice is the foundation of society.”

So in interpreting justice is not biased in establishing law, but sees the impact on society, namely as consumers. Because society (consumers) is the object of an existing rule of law. Therefore, the law should be created for humans to provide a sense of justice for society.

In the aspect of Business Law, development actors or developers are looking for big profits in taking chances on the construction of flats, especially commercial, to protect consumers that must be owned by contemporary justice as proposed by Margot A Hurlbert and James P Malvale who put forward the value of justice, in the end, must be sourced from the value the principle of justice itself.

CONCLUSION & SUGGESTION

Legality in a transaction of sale and purchase of flats with pre-project selling the requirements for developers in marketing as described in Regulation of the Minister of Public Works and public housing of the Republic of Indonesia number 11/PRT/M/2019 concerning preliminary guidelines for buying and selling flats. Ministerial regulation explained the provisions of the developer in marketing pre-project selling.

Conducted with pre-project selling before the flats are built, it is necessary to note the requirements of the certificate of land ownership rights, rights of use on state land, and rights of use on land management. The certificate is proof of ownership of the right to land that is valid and recognized by the state in the construction of flats.

In addition, it is evidenced by a building permit approved by the central government. Consumers need to apply the principle of prudence in conducting a binding sale and purchase agreement, the agreement binds both parties of course intending to protect the parties. The principle of freedom of a contract is applied, therefore, it is necessary with the precautionary principle. The impact that occurs will harm one party, namely consumers or prospective buyers of flat units. Therefore required legal protection for the parties to the transaction flats that have no building.

The principle of legality in the construction of flats carried out by the developer needs supervision from the government and the housing association. The importance of supervision is carried out by the government to protect the parties to the sale and purchase agreement.

Thus, it can protect consumers or buyers of flats to create justice for those who feel disadvantaged. There needs to be a rearrangement on regulations regarding guidelines for buying and selling flats from the aspect of agreements and payments.

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