

---

# Legal Protection Against The Consumer For Unlawful Actions Conducted By Business Personnel

**Asa Prayoga Jiwangga, Tutiek Retnowati**

Faculty of Law, Narotama Universty Surabaya

E-mail: asaprayogaj28@gmail.com

## ABSTRACT

This study aims to determine and analyze the form of legal protection and the consequences of an illegal act committed by a business actor in violating an agreement and done intentionally. The research method in this study uses a normative research method and uses the statute approach method (statutory approach) and the conceptual approach (concept approach). The result of this study is that legal protection is one of the legal certainties that is in the spotlight of the Indonesian government so that Indonesian citizens can carry out normal activities in the community without fear of an act that is detrimental to them. Legal protection for consumers is a reference for the government in reducing arbitrary attitudes by businesses and consumers. As evidence of the government's efforts to protect consumer rights, Law Number 8 of 1999 concerning Consumer Protection or commonly abbreviated as the Consumer Protection Act was born. One of the actions that often occur as a result of arbitrary attitudes committed by business actors is an act against the law as stipulated in article 1365 of the Civil Code. As a form of legal protection, sanctions or compensation for the consequences of unlawful acts is applied. The application of sanctions or compensation is not formulated in Article 1365 of the Civil Code, but the application of sanctions or compensation is applied through a district court decision.

**Keywords:** Consumers, Consumer Protection, Actions Against Law..

## 1. INTRODUCTION

Currently the house is one of the most important residential objects in human life. Today's human dream is to own a house in a residential area. Therefore, currently many companies / business actors sell housing. Business actors in the residential property sector are called developers.

In marketing, many developers give promises to consumers to provide complete public facilities. This happened in Sukoharjo Regency. Housing named Waru Surya Indah Housing which was developed by PT Markis Surya Indah. The plaintiffs are consumers of the defendant as the developer of the Waru Surya Indah Housing located in Waru Village, Baki District, Sukoharjo Regency, and have fulfilled their payment obligations through the State Savings Bank Home Ownership Credit (KPR-BTN) facility.

The Waru Surya Indah Housing was offered by the defendant to the plaintiffs since 1995, given several facilities including public facilities in the form of places of worship as referred to in the Site Plan in the Decree of the Regent of the Head of the Sukoharjo Region Number: 503/1158 / X / 1995 concerning a Building Permit in the Sukoharjo District of Dati II which was stipulated on October 30, 1995 and the proposal made by the defendant.

Then, in 1999 the plaintiffs wanted to take advantage of the public facilities provided by the defendant to build a place of worship in the form of a mosque, then the plaintiffs asked for the

Waru Surya Indah Housing site plan from the Public Works Office of Sukoharjo Regency Housing Sector to be attached to the development proposal.

According to the site plan in the Decree of the Regent of the Head of Region II Sukoharjo Number: 503/1158 / X / 1995 regarding the Bangungan Permit in Sukoharjo Regency which was stipulated on October 30, 1995 and the site plan of the Housing Sector Public Works Office of Sukoharjo Regency, the location of public facilities in the form of a place of worship for the Waru Surya Indah Housing provided by the defendant are:

The object of the dispute is the Housing of Waru Surya Indah which is located at or is located in Waru Village, Baki District, Sukoharjo Regency, Central Java Province, with an area of  $\pm$  210 square meters, with the following boundaries:

North side: Road

South side: Road

West side: Empty Land

East side: Housing Street

After checking in 1996, it turned out that the object of the dispute promised by the defendant in the brochure and site plan for the permit from the Sukoharjo Regency Government, which was originally used for public facilities, was also issued by the defendant 2 (two) Building Use Rights certificates in the name of PT Markis Surya Indah. the defendants, namely:

- Building Rights Certificate Number B. 114,

- Building Rights Certificate Number B. 115.

Each of which becomes  $\pm$  105 square meters of land.

As a result of the defendant's act of transferring the object of the dispute and the act of the defendant in issuing a certificate of the object of the dispute into Building Use Rights on behalf of the defendant's PT Markis Surya Indah, it is detrimental to the plaintiffs as consumers of the Waru Surya Indah Housing address or located in Waru Village, Baki District, Sukoharjo Regency, Java Province. Middle.

Because of this loss, the consumers of the housing eventually filed a class action. From this case, the writer wants to prove that there is an element of illegal action (*onrechtmatige daad*) and a form of legal protection for consumers.

## **2. METHOD RESEARCH**

This research uses normative legal research methods. Normative legal research or commonly known as library law research is a research conducted by examining library materials such as laws, government publications, books, dissertations, theses, journals, and others (NOVRIANTO et al., 2016).

Mukti Fajar ND and Yulianto Ahmad stated that the definition of normative legal research is legal research that puts law as the norm. The meaning is regarding the principles, norms, rules of law, court decisions, agreements and doctrine (teachings) (Fajar, 2010).

### 3. RESULTS AND DISCUSSION

#### Sale and Purchase Agreement

Buying and selling is an activity that is often carried out by every human being. In life in this world, humans get clothing, shelter and food needs by buying and selling. Without realizing it, when through the sale and purchase, humans are doing legal actions, namely agreements.

Basically, an agreement is not bound to any particular form, the agreement can be made verbally and if the agreement is made in writing, the agreement has the character of evidence in the event of a dispute or dispute (Nurhidayati, n.d.).

For some agreements, the law specifies certain forms and when the form is not complied with, then the agreement is declared invalid (Bormann & Likens, 1967).

According to Article 1320 of the Civil Code, in order for an agreement to be valid, the legal conditions in the agreement must be fulfilled, namely:

- 1) There is an agreement;
- 2) The competence of the parties in making an alliance;
- 3) A certain thing; and
- 4) A cause (*causa*) which is lawful.

The agreement in the transaction of sale and purchase agreement is considered valid according to law if the "sale and purchase" of the object and its price, even though the goods have not been delivered and the price has not been fixed or in other words there has been no transfer of rights and obligations. (Elucidation of Article 1458 of the Civil Code) (Anggraeni & Rizal, 2019).

Everyone is required to speak to form an alliance, unless otherwise provided by law. The people who do not speak in making an agreement are the minors and / or those who are under the jurisdiction. (Articles 1329 - 1331 Civil Code). The law stipulates that there are some things that can not be the object of an agreement. These objects are objects used for public interest. Whereas according to article 1320 of the Civil Code, an agreement must have a specific object or at least can be determined. These objects can be in the form of objects that exist now and will later tone in the future (Article 1332 - 1335 Civil Code).

In order for the agreement to be declared valid, then the law requires a cause. The law itself does not provide an understanding of the cause or purpose of the cause. Through this condition, in practice, the judge can oversee the agreement. The judge can determine whether the content of the agreement is not contrary to law, public order, and decency (Articles 1335 - 1337 Civil Code).

Every agreement has legal consequences. Article 1338 of the Civil Code states some of the consequences of an agreement, namely:

(1) All agreements duly made take effect as a law for those who make them.

(2) This Agreement may not be revoked, except by agreement of both parties or for reasons reasoned by law to be sufficient for that purpose.

(3) The agreement must be executed in good faith.

As a result of the agreement described in paragraph (1) gives birth to what is mentioned in paragraph (2), that is, an agreement can not be withdrawn unilaterally, unless there is an agreement between the parties (both). Whereas in sentences (1) and (3) there is a basis for a balanced position between the two parties.

It cannot be denied that a covenant occurs must be based on the principles of a covenant. The principle is the head or foundation of the creation of a law. A legal principle is not a rule, Scholten said that law would not be well understood if it did not contain principles (*doch geen rechts is te begrijpen zonder die beginselen*) (Badriyah, 2012).

In the law, the sale and purchase agreement, especially the sale and purchase of housing between the developer and the consumer of housing, must be based on the principle of good faith in the agreement (Article 1338 paragraph (3) of the Civil Code). An agreement in the process of buying and selling housing occurs as a result of promises from the developer to give something when consumers want to buy housing. The promises that the developer says must be kept when the agreement becomes valid. The developer offers promises usually in a brochure. Any form of offer or promotion in a brochure is called the pre-agreement stage. If an agreement is based on the principle of good faith, the developer will keep the promises made during the pre-agreement stage. Therefore, it cannot be denied that disputes often occur in the sale and purchase of housing. Consumer disputes that occur in housing sale and purchase agreements are usually illegal acts.

### **Act Against The Law**

Actions against the law are contained in Article 1365 of the Civil Code, however the article does not write about the meaning and formulation or amount of compensation that must be given by business actors who commit an act against the law. Initially, the definition of violating the law was only interpreted in a narrow manner, namely an act that violated the law. However, then Hoge Raad in the quite famous case Lindenbaum against Cohen expanded the notion of breaking the law not only acts that violate the law, but also every act that violates propriety, prudence, and decency in human relations and against property. other people (Prayogo, 2016).

To state whether that person can be categorized as committing an act against the law, it can be seen from whether the person has fulfilled the elements of an act against the law. Actions against the law (*onrechmatige daad*) in question are Actions against the law in the civil sector. Because an act against the law or commonly called a criminal offense has very different meanings,

connotations and arrangements. Likewise for acts against the law committed by the authorities (*onrechtmatige overheidsdaad*) (Fuady, 2014). Munir Fuady in his book entitled "Actions against the Law" states the elements of Actions against the Law, namely as follows:

**There is an act**

An act against the law begins with an act of the perpetrator. In general, the acceptance of the assumption that in action is meant here, either doing something (in the active sense) or not doing something (in the passive sense), the intention of not doing something is that someone has a legal obligation to do it (Fuady, 2014). however the person does not fulfill the obligation.

**The act is against the law**

Actions carried out by the perpetrator must be an act against the law. Since 1919, the element against the law has been interpreted in a very broad sense, which includes:

- 1) Acts that violate the applicable law.
- 2) Actions that violate the rights of others.
- 3) Actions that are contrary to the legal obligations of the perpetrator, or
- 4) Acts that are contrary to morality (*goede zeden*), or
- 5) Actions that are contrary to good attitudes in society which are useful for paying attention to the public interest. (*indruist tegen de zorgvuldigheid, welke in het maatschappelijk verkeer betaamt ten aanzien van anders person of goed*).

**There is an error from the perpetrator**

In order to be subject to Article 1365 of the Civil Code on Acts against the Law, law and jurisprudence provide a condition that the perpetrator must contain an element of error (*schuldelement*) in committing the act. With the condition that there is an error (*schuld*) in Article 1365 of the Civil Code, it means that the lawmaker emphasizes that the perpetrator of the illegal act is only responsible for the losses he has caused if the act of the loss deserves to be blamed on him. Mistakes include an unlawful nature (*wederrechtelijk heid*).

In the case of the conditions of guilt it must be interpreted in a subjective sense, then regarding a perpetrator in general it can be examined whether all of his actions can be blamed on him (Fuady, 2014).

An action can be considered to contain an element of error so that it can be held legally responsible if it meets the following elements:

- 1) There is an element of intent, or
- 2) There are elements of negligence (*negligence, culpa*), and
- 3) 3) There is no justifying reason or excuse (*rechtvaardigingsgrond*), such as overmacht, self-defense, insane, and so on.

**There are losses for victims**

The existence of a loss (*schade*) experienced by the victim is also one of the conditions so that a lawsuit based on Article 1365 of the Civil Code can be imposed. The determination of compensation based on Article 1365 of the Civil Code shows similar aspects to the determination of compensation for default, but in several ways it is different. The law does not regulate compensation that must be paid due to acts of unlawfulness, while what is contained in Article 1243 of the Civil Code contains provisions on compensation that must be paid as a result of default (Djojodirdjo, 1979)

**There is a Causal Relationship between Actions and Losses**

The causal relationship between the actions that have been done and the losses that have occurred is also one of the conditions for an illegal act. For a cause and effect relationship, there are 2 (two) kinds of theories, namely the theory of factual relationships and the theory of approximate causes. Factual causation (causation in fact) is only a matter of "facts" or what happens factually. In the law regarding Acts against the Law, this type of cause and effect is often referred to as the law regarding "but for" or "sine qua non" (Fuady, 2014).

Furthermore, the latter, in order to be even more practical and in order to achieve the element of legal certainty and fairer law, was created the concept of "proximate cause". This type of cause and effect is a part that contains many conflicting opinions in the law regarding Acts against the Law. Sometimes this type of cause is called a legal cause.

A person cannot be prosecuted for having committed an illegal act if the act was committed during an emergency / noodweer situation; overmacht, the realization of personal rights, because of an employee order or an unforgivable misunderstanding. If the element of error can be proven in an act against the law, then the perpetrator is obliged to be responsible for the losses caused by his actions, but a person is not only responsible for the losses that have been caused by his own mistakes, but also because of the actions that contained errors that have been committed by people. which are the dependents, items under his control as well as his pets, as stipulated in Article 1366 of the Civil Code up to 1369 of the Civil Code (Hassanah, 2016).

In the case of Waru Surya Indah housing, where the developer is PT Markis Surya Indah, the developer is considered to have committed an illegal act because the developer's actions are very detrimental to housing consumers. The developer is deemed to have violated Article 4 of Law Number 8 of 1999 concerning Consumer Protection and violated Article 1365 of the Civil Code. Therefore, it is necessary to have legal protection for consumers in the face of a dispute.

## Legal Protection for Consumers

All people, either individually or in groups, under any circumstances will definitely become consumers of certain goods and / or services produced, offered and sold by business actors. Legal protection is a protection for the rights of consumers both business actors, government or legal institutions in relation to the use and use of a product, goods and / or services, either based on an agreement or according to applicable laws and regulations and is useful for providing guarantees and legal certainty to consumers in accordance with the principles of consumer protection.

Consumer law is the whole of the legal principles governing the relationship and problems between various parties that are related to consumer goods and / or services in social life. Consumer Protection Law is a part of consumer law which contains principles or rules which have regulatory nature and contain characteristics to protect the interests of consumers.

In Law Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as UUPK), does not contain the meaning of consumer protection but contains the formulation of consumer protection in Article 1 point 1 of the UUPK, namely as "*all efforts that guarantee legal certainty to provide protection. to consumers.*" Therefore, when talking about consumer protection, it means questioning the guarantee or certainty of the fulfillment of consumer rights.

Consumer protection has a fairly broad scope covering consumer protection in obtaining goods and / or services, starting from the initial stage of activities to obtain these goods and / or services to the consequences of using these goods and / or services.

There are 2 (two) aspects in the coverage of consumer protection, namely:

- 1) Protection against the possibility of being handed over to consumers of goods and / or services that do not match what was agreed upon or can be said to violate the provisions of the law. In this connection, it includes issues in the use of raw materials, production processes, distribution processes, product design, and so on.
- 2) Protection against the imposition of unfair terms imposed on consumers. This includes matters of promotion and advertising, contract standards, prices, after-sales service, and so on. This is related to the behavior of producers in terms of producing and distributing their products.

In an effort to develop consumer protection, the government formed an agency called the National Consumer Protection Agency (hereinafter written as BPKN). This is stated in Article 31 UUPK which reads "In order to develop consumer protection efforts, a National Consumer Protection Agency is established." The term "developing" as contained in the article's article indicates that BPKN was formed as an effort to develop consumer protection as regulated in another article. , in particular regulating the rights and obligations of consumers and business actors, regulating prohibitions for business actors in running their business, regulating the

responsibilities of business actors, as well as regulating the settlement of consumer protection disputes.

This regulation on BPKN shows the seriousness of lawmakers in providing protection to consumers, which so far have only been used as objects for the production of goods and / or services by business actors. The point is that the various products that are made are more in favor of the interests of business actors and ignore the interests of consumers. For example, products that should not be fit for consumption, do not contain the composition in the label or label of the goods issued, do not meet quality standards and so on. So with the UUPK, such goods and / or services are prohibited from being offered, promoted, advertised, let alone traded.

This National Consumer Protection Agency is domiciled in the capital city of Indonesia and is responsible to the President (Article 32 UUPK). Meanwhile, the function of the National Consumer Protection Agency is stated in Article 33 of the UUPK which reads "The National Consumer Protection Agency has the function of providing advice and considerations to the government in an effort to develop consumer protection in Indonesia." If we look at the sound of the article, it can be concluded that the provisions of Article 33 are general rules, which are further elaborated in Article 34 which reads:

- (1) To carry out the functions referred to in Article 33, the National Consumer Protection Agency has the following tasks:
  - a. Provide rules and recommendations to the government in the framework of formulating policies in the field of consumer protection;
  - b. To conduct research and study of the prevailing laws and regulations in the field of consumer protection;
  - c. Conduct research on goods and / or services related to consumer safety;
  - d. Encouraging the development of non-governmental consumer protection organizations;
  - e. Disseminating information through the media regarding consumer protection and promoting pro-consumer attitudes;
  - f. Receive complaints about consumer protection from the public, non-governmental consumer protection organizations or business actors;
  - g. Conducting surveys concerning consumer needs.
- (2) In carrying out the tasks referred to in paragraph (1), the National Consumer Protection Agency may cooperate with international consumer organizations.

The regulation on the functions of the National Consumer Protection Agency is quite encouraging, given its strong position, namely as an agency directly responsible to the President.

Consumer protection as described above by the author is very important and has a big contribution considering the many consumer disputes in Indonesia such as what happened in the

case of the consumers of Perumahan Waru Surya Indah against PT Markis Surya Indah. Therefore, it requires the application of sanctions as a form of consumer protection for harmful actions, especially illegal acts committed by PT Markis Surya Indah.

### **Application of Sanctions as a Form of Legal Protection for Consumers for Actions against the Laws of Business Actors**

The case that has been described in the Introduction, even though the case is about the Consumer Protection Law, the case cannot be resolved through the Consumer Dispute Resolution Agency (hereinafter abbreviated as BPSK) considering that BPSK is a small and simple case settlement institution or small claim court institution. Therefore, for cases where a class action lawsuit has to be resolved through the Commercial Court.

As a form of consumer protection, the government not only establishes the BPKN, but also regulates the sanctions that can be obtained if business actors violate the provisions of the applicable laws. Here the author will not write about the criminal sanctions that will be obtained, but about the administrative sanctions that can be obtained in the event of a consumer dispute, especially as an example of the case that the author describes in the introduction.

The result of an illegal act is marked by the incurring of losses for the victim. The loss must be reimbursed by the party charged by law to compensate the loss. The forms of compensation that occur as a result of acts against the law known by law are:

1. Nominal compensation;
2. Compensatory Damages;
3. Punitive Damages.

Nominal compensation is charged if there is a serious unlawful act such as an act that contains an intentional element, but does not cause real harm to the victim, then the victim is given a certain amount of money according to the sense of justice without calculating the actual amount of loss that befell the loss. Compensatory damages is compensation which is a payment to the victim for damages that have actually been experienced by the victim as a result of an illegal act committed by the business actor. This compensation is usually called the actual compensation. Punitive damages are compensation in large amounts that exceed the actual amount of losses. This punitive compensation is appropriate to apply to types of cases of deliberate action that are very heavy and sadistic.

Compensation for the consequences of this illegal act is contained in Article 1365 of the Civil Code, which reads "Every act that violates the law and brings harm to others, obliges the person who caused the loss due to his mistake to compensate for the loss." However, because the clause does not specify the amount of compensation or administrative sanctions that must be given by the business actor, the amount of compensation or administrative sanctions is applied based on a court decision.

The administrative sanction contained in the case example in the introduction is to hand over and / or transfer the mosque facilities (public facilities) to the Regional Government of Sukoharjo Regency. So in order to fulfill the objectives of housing and residential areas, it is held to provide legal certainty based on the provisions of Article 11 paragraph (1) and (2) Regulation of the Minister of Home Affairs Number 9 of 2009 concerning Guidelines for the Submission of Infrastructure, Facilities and Utilities for Housing and Settlements in the Regions. It is obligatory for the developer to submit suggestions which are public facilities for the housing which he has sold for submission (Naipospos et al., n.d.).

#### 4. CONCLUSION

Actions carried out by the developer can be categorized as illegal because they have fulfilled the elements. An action can be categorized as an act against the law if it fulfills the elements, namely as follows:

- a. There is an act.
- b. The act is against the law.
- c. There is an error on the part of the perpetrator.
- d. There is a loss for the victim.
- e. There is a causal relationship between actions and losses.

So the conclusion is that if an action does not fulfill the elements as described above, then the action or deed cannot be considered as an illegal act. In terms of protecting consumers from an illegal act committed by business actors, Law Number 8 of 1999 concerning Consumer Protection (UUPK) was made. From the Consumer Protection Law, the National Consumer Protection Agency (BPKN) was born. According to Article 31 UUPK, this National Consumer Protection Agency was formed in order to develop consumer protection. This is in accordance with the article 31 UUPK, namely "In order to develop consumer protection efforts a National Consumer Protection Agency was established." There are three types of compensation that occur as a result of acts against the law, namely nominal compensation, compensatory damages, and punitive damages.

#### REFERENCES

- Anggraeni, R. R. D., & Rizal, A. H. (2019). Pelaksanaan Perjanjian Jual Beli Melalui Internet (E-Commerce) Ditinjau Dari Aspek Hukum Perdataan. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 6(3), 223–238.
- Badriyah, S. M. (2012). Pemuliaan (Breeding) Asas-asas Hukum Perjanjian dalam Perjanjian Leasing di Indonesia. *Yustisia Jurnal Hukum*, 1(2).
- Bormann, F. H., & Likens, G. E. (1967). Nutrient cycling. *Science*, 155(3761), 424–429.

- Djojodirdjo, M. A. M. (1979). *Perbuatan melawan hukum: tanggung gugat (aansprakelijkheid) untuk kerugian yang disebabkan karena perbuatan melawan hukum*. Pradnya Paramita.
- Fajar, N. D. (2010). Mukti dan Yulianto Achmad. *Dualisme Penelitian Hukum Normatif Dan Empiris*.
- Fuady, M. (2014). *Konsep Hukum Perdata*. Jakarta: Raja Grafindo Persada.
- Hassanah, H. (2016). Analisis Hukum Tentang Perbuatan Melawan Hukum Dalam Transaksi Bisnis Secara Online (E-Commerce) Berdasarkan Burgerlijkke Wetboek Dan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik. *Jurnal Wawasan Yuridika*, 32(1), 38–51.
- Naipospos, B. T., Hafisah, T. J., Radjab, S. A., Syarif, A., Lestari, D. G., Anggraini, D., Octora, F., Muamalsyah, K., Salu, M., & Syahputra, M. (n.d.). *FROM STAGNATION TO PICK THE NEW HOPES*.
- NOVRIANTO, M., Syaifuddin, M., & Novera, A. (2016). *PERLINDUNGAN HUKUM TERHADAP CALON PENUMPANG ANGKUTAN UDARA YANG MENGALAMI KETERLAMBATAN PENERBANGAN*. Sriwijaya University.
- Nurhidayati, T. (n.d.). *Tanggung Jawab Hukum PT Prioritas Land Indonesia Atas Kerugian Konsumen Akibat Wanprestasi Dalam Perjanjian Jual Beli Apartemen*.
- Prayogo, S. (2016). Penerapan Batas-Batas Wanprestasi dan Perbuatan Melawan Hukum dalam Perjanjian. *Jurnal Pembaharuan Hukum*, 3(2), 280–287.