

Implementing The Good Faith In The Buying Selling Agreement Between The Developer And Buyer

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Abstract— This study aims to find out and analyse the application of good faith principles in the sale and purchase agreement between the developer and the buyer so that the legal efforts can be analysed by the buyer if there are disadvantaged parties. This study is empirical legal research that is descriptive analysis. The type of data used is primary and secondary data. Methods of collecting data using field studies, literature, and documentation. Qualitative data analysis was concluded based on the results of interviews with residents in "Dramaga Cantik Residence". The results showed that the application of the principle of good faith in the Sale and Purchase Agreement between the Developer and the Buyer was not achieved because there were many injustices carried out by the developer to the buyer, such as without socialization with the developer, eliminating green open spaces and housing icons to build the condominium that is managed like hotel management and restaurants. Furthermore, the legal efforts made by the buyer, if the loss is done is resolved by consensus. If it cannot be resolved by deliberation and consensus, then this problem is resolved by a lawsuit in court.

Index Terms: Good Faith, Buying Selling Agreement, Developer, Buyer.

1 INTRODUCTION

Economic empowerment is characterized by the number of emerging business people [1]. It causes intense competition among business people [2]. Thus, this indicates the occurrence of economic development towards the direction of people's welfare.

As a result of the level of the economy that is good in the community, making people's purchasing power on housing needs more numerous [3-4]. The solution, housing development is one way to meet these needs [5]. In addition, housing development is able to improve the environment, provide direction to regional growth, create a lot of employment, and even distribution of people's welfare [6]. Thus, housing needs for the people in Indonesia are a very basic necessity and cannot bargain anymore.

Current housing has become an alternative place to live. In addition, housing development for apartment or apartment systems also aims to fulfill housing needs by increasing land use and yield in densely populated areas with limited land area. At present the housing function has undergone a change, not as an indispensable need, or as a place to take refuge, but housing has turned into a lifestyle, providing comfort and showing characteristics or identity, which is one of the patterns of self-development as needed in global society.

However, housing consumers are very weak compared to developers, both in terms of socio-economic, technical knowledge and in taking legal action if there are differences [7]. As a result, consumers often do not realize their rights have been violated by the developer. If consumers know this though, consumers are reluctant to take legal action [8]. For this reason, before making a home purchase, the buyer often makes the advert as a guideline for buying a house from the housing he will buy [9]. The buyers have great expectations of

the quality and facilities at home that are purchased as informed by the developer through advertisements. All of the expectation should be written in the contract namely good faith as a legal formal document for the seller and buyer to make all participants have a great deal of commitment [7-9].

The good faith in Covenant Law has a proposition or principle of an ideology of bona fides in Roman law [10]. Actually, the principle of good faith is a thought that is used to prevent from actions that have bad intentions and dishonesty that may be carried out by one party, both in the process and implementation of an agreement [11]. On the other hands, Aryan and Mirabbasi [12] stated that good faith is divided into two words faith, and good is associated with fair treatment. The standard of good faith yields principles that can make stakeholder engagement more substantive and credible [13]. That nations of good faith and fair dealing are frequently expressed in the American contract law affecting preliminary negotiations, firm offers, mistake, and miss-presentation [14]. Therefore, good faith is very important for buyer in selling activities.

The increase in housing buying and selling activities carried out by developers must be followed by implementing good faith as part of the sale and purchase activities [15]. This is important to do, because at this time developers are competing to spread the housing advertisements they have set up and sell. One example of housing located not far from the Dramaga IPB Campus promises a number of complete facilities. In addition, easy access to the housing area is through BORR (Exit Sentul City Toll) and a low down payment (DP) becomes more value than the housing. However, in reality the facilities promised in the advert are not in accordance with the conditions in the field. Even when asked about the certificate to the developer the developer advises the buyer to take care of it themselves. The reasoned developer is waiting in line at the Bogor notary. Therefore, this paper discusses the application of the principle of good faith in solving problems such as this in terms of existing law.

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2 METHODOLOGY

This research is empirical research or also called field research or sociological research [16]. This research is also referred to as law in action in society. It is based on the doctrines of American realists such as Holmes, "law is not just a logic but experience" or in the opinion of Roscou Pound about "law as a tool of social engineering" [16]. One reason for using this type of research is to find out how the law is implemented, including law enforcement. In addition, empirical research can also reveal the problems behind the enforcement and implementation of the law.

This study aims to develop science itself or theory. Furthermore, this research connects pure research with applied research that is useful for solving practical social problems. This approach explains about land law other than in the form of rules. In addition, this study describes the contribution of real social institutions and their functions in community life, especially in the process of direction and the formation of behavioral patterns that lead to the implementation of the Good Faith Principle in the Sales and Purchase Agreement between developers and buyers.

The research data collected is divided into 2 types of data, namely data obtained directly and from library materials. Primary data is data obtained from residents in "Dramaga Cantik Residence" and its developer in this case in the legal and marketing fields, through interviews, while secondary data is obtained through literature studies, including books, official documents, scientific articles, and previous studies.

The approach that I use is a qualitative approach that is actually a method of research that produces descriptive analytics that is stated by respondents both in writing and verbally. This is used to understand the symptoms in such a way as to interpret everything that is quantitative.

Sources of written data or photo in the form of official documents, magazines, archives, personal documents, and photographs related to the problem of this research [17]. This research technique was carried out to obtain and understand concepts and theories as well as provisions regarding the Application of Good Faith Principles in the Agreement on Binding of Sale and Purchase between Developer Parties and Buyers in "Dramaga Cantik Residence" housing. Analysis of the data used in this study is descriptive qualitative data analysis by explaining about the situation or phenomenon with words or sentences, then separated by category to obtain a conclusion [18].

3 RESULTS AND DISCUSSION

In 2010, the buyers chose to buy housing in Dramaga Cantik Residence (DCR) because of the greenest, safest, coolest housing that makes residents in DCR every time they come home from work immediately relax from congestion, and work in the office. However, after many buyers chose to inhabit the DCR, in 2014, PT. Sinar Mandala Bangun Lestari as the DCR developer sued the management of the old Rukun Tetangga (RT) and Rukun Warga (RW), as well as the new RT and RW administrators in the Cibinong District Court, West Java. The lawsuit filed was to return payments for

Environmental Maintenance Contributions (EMC) from DCR Residents to PT. Sinar Mandala Bangun Lestari as the developer of DCR. However, the lawsuit was rejected by the Cibinong District Court, West Java. After that, on July 11, 2019, PT. Sinar Mandala Bangun Lestari, again sued residents in the Bogor City District Court, West Java, with a lawsuit to reclaim the Environmental Maintenance Fee and sued residents for IDR 3,200,000,000,- (Three point two billion rupiah).

Legal efforts made by buyers if they experience losses are through deliberation and consensus, and dialogue with developers. Consumer dispute resolution does not rule out the possibility of being carried out peacefully by the parties to the dispute. The purpose of a peaceful settlement is a settlement made by both parties to the dispute (business actors and consumers) without going through a court or consumer dispute resolution body. Reconciled dispute resolution processes usually require certain objects as compensation in achieving a peace, for example in the case of compensation in accordance with the forms and amount of losses experienced [19].

The legal efforts made by buyers if they experience losses are through consensus meeting and dialogue with developers. If through deliberation and agreement, and the dialogue does not meet with an agreement, it will be resolved with a lawsuit in court. The dispute resolution process through a district court is carried out as well as filing an ordinary civil dispute claim by filing a claim for compensation either based on an illegal act, a breach of promise or negligence of the business producer that causes injury, death or loss to consumers [20]. Thus, the adoption of good faith principles in buying and selling binding agreements is important to implement.

4 CONCLUSION

The implementation of the principle of Good Faith in the Agreement on Binding of Sale and Purchase between Developers and Buyers is not achieved because there are many injustices by developers to buyers. A number of these injustices, including eliminating green open spaces and housing icons without any socialization with residents first. This is done by developers with reasons to build the condominium that is managed like hotel management and restaurants. Finally, the court line was taken to resolve the problem, because this problem could not be resolved by consensus building between the developer and the residents.

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