



Issues of legal certainty of site plan in the sale and purchase of housing in Sukoharjo district

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Abstract

This study aims to examine the legal certainty of site plans that arise in buying and purchasing housing. Housing development by the private sector (developer) must comply with applicable regulations. The site plan is an administrative requirement that must be present in any housing development. The site plan is used by local governments to supervise housing development in residential areas so that it follows statutory provisions.

Based on the results of research and discussion, the administrative requirements in the form of a site plan resulted in several problems. These problems result in defects in the legality of the housing sale and purchase agreement, which can even be canceled.

Keywords: developer, site plan, housing sale and purchase agreement

Introduction

The house is one of basic need that must be met by every family. The house is important because it functions as a place for shelter. The house is a building that is used as a place to live for humans for a certain period, which serves to protect us from the heat of the sun, rain, and wind. The house is also one of the places where we carry out all activities such as eating, sleeping, studying, gathering with family and others (Harjono, 2016:120) ^[1]. In the social concept, housing is defined as collection of houses that is more than one in number. Housing is a construction of buildings or houses where humans live and carry out their lives. In addition, the house is also a place where the socialization process takes place in an individual where the norms and customs that apply in a society are introduced. It does not only act as a place for human life involving technical and physical aspects but also social, economic, and cultural aspects of its inhabitants. Housing is a collection of houses as part of housing in an area both urban and rural, which is equipped with infrastructure, facilities, and public utilities as a result of efforts to fulfill livable houses. In addition, housing is also defined as one side of a house that is put together in an intersection where there are several sub-elements of houses with all physical facilities such as shops, schools, and others. In residential areas, people live in groups and socialize with the others (Suparno, 2006) ^[3]. According to the perspective of Law No.1 of 2011 on Housing, there are several conditions that must be met during the housing development process. These include technical, administrative, spatial, and ecological requirements. In addition, the implementation of housing must also fulfill several stages. These stages include housing planning, housing development, housing utilization, and housing control. As an element of economic activity, a house is a very strategic asset to be used as an object of sale and purchase. Because the house is a basic need, everyone will attempt to have it. Consequently, the demand for the availability of houses will increase. Apart from being in the form of housing, problems regarding buying and selling of

housing are also in the form of land sale and purchase. In practice, there are still many land transactions between sellers and buyers without land deed official (PPAT) interference. The act of "privately made sale and purchase" is sometimes only proven by a deed made by the seller himself and known by at least two witnesses (Putri Wijayanti: 2016). In addition, in line with the increasing rate of population development, the need for housing will increase and will always increase as well. The rapid development of housing also has a negative side because many houses were built before the permit issued - building permit (IMB) and Land Utilization Permit (IPPT). For example, in 2009 there were quite a lot of housing cases without building permits in Sleman, 150 out of 400 existing housing locations (Irna:2009) ^[5]. According to Djumialdji, housing can be interpreted as a reflection and embodiment of the human person, both individually and in unity and togetherness with its natural environment and can also reflect the standard of living, welfare, personality, and human civilization of its inhabitants, society, or a nation. The housing specifications greatly affect the cost to build and have an impact on the expensive selling price of housing. This will be an opportunity for some people who have expertise in housing development. Seeing this opportunity, some people will compete to build the housing that the community wants. This causes the property business in Sukoharjo regency to increase. Each developer will try to make innovations about the shape, design, and arrangement of modern housing. In addition, the culture of the community is that they enter into housing sale and purchase agreements without wanting to be burdened with material costs for sales and purchase agreement (PPJB) (Hani, 2016) ^[1, 6]. Makes housing development even more rapid. Because the buyer undertakes to comply with the rules set forth in the articles made by the developer and it only remains to be signed. Various facilities and utilities infrastructure are also part of the innovative development of the property business in Sukoharjo district. Developers also make design and infrastructure facilities a superior product for the property

they sell. However, developers often ignore the provisions on housing development that are already contained in the statutory regulations. Violations committed by developers often occur in administrative violations or violations in the development process. Administrative violations or violations in the development process can cause losses for both buyers and the government, in this case the local government is the most disadvantaged.

Problem Statements

This study focuses on discussing the issues that arise in the site plan as a requirement for housing development in sales and purchase of housing in Sukoharjo Regency.

Object of the Study

The final objective of this research is to find out the legal consequences of violating the provisions of the site plan as a requirement for housing development in sales and purchase of housing in Sukoharjo Regency.

Research Method

The type of research in writing uses empirical legal research to determine conditions that occur in practice. The research approach used in this research is a qualitative approach. Descriptive qualitative approach is an approach that uses data expressed verbally which is intended to understand the phenomenon of what is experienced by the subject (Soerjono:1986) ^[7]. To obtain and complete the required data in this study, the author took a study at the Housing and Settlement Service of Sukoharjo Regency. In this paper, the primary data source was obtained directly from the results of an interview with Mr. Roso, Head of the Housing Division of the Housing and Settlement Area, Sukoharjo Regency. Meanwhile, the secondary data used in this research include primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include Act Number 1 of 2011 concerning Housing and Settlement Areas and Regional Regulation of Sukoharjo Regency Number 13 of 2019 concerning the Handover of Housing Utilities Facilities. Secondary legal materials consist of books, journals, and other scientific works. While tertiary legal materials consist of a legal dictionary. Data collection techniques that will be used in writing this law are document studies or library materials in the form of scientific papers, journals and printed books, and interviews with Mr. Roso, the Head of Housing, Housing and Settlement Services, Sukoharjo Regency.

Finding and Discussion

A residency to live is a very basic need for the life of every person or household. In meeting these needs, not everyone can meet them easily. Economic conditions will govern, where those with higher incomes will have the opportunity to easily own a house in a good and permanent condition. This, of course, will be the opposite of those with low incomes, or even poor households. Home ownership is one of the indicators used to assess the success of housing and settlement development. The government has been trying to develop a policy of providing simple housing at a price that is affordable to the community, especially for people with low-income groups whose purchasing power is also very low. Companies are part of social life (Tuti: 2015) ^[8]. The activities carried out by the company must also be clear, for example a limited liability company. A is engaged in

Pharmacy, Limited Liability Company. B is engaged in textiles. There are also companies engaged in housing development which are commonly referred to as developers. In housing development activities by developers in Sukoharjo Regency, there are stages regarding the licensing process at the Housing and Settlement Office of Sukoharjo Regency. The licensing process can be started with a Site Plan by the developer which is addressed to the Head of the Housing and Settlement Service Office of Sukoharjo Regency. Furthermore, the housing office will form a team with a Decree from the Regent to monitor and evaluate all stages during housing construction. In the Sukoharjo Regency Regional Regulation Number 13 of 2019 concerning the Submission of Housing Infrastructure, Facilities and Utilities Article 1 point 16 states that the Site Plan, hereinafter referred to as the Site Plan, is a map of the plan for laying out a building / lot with all its supporting elements in scale and certain land area boundaries.

Thus, every developer in building housing must make a building plan ahead of time which is also contained into the site plan. For local governments, in this case the housing office and housing area of the Sukoharjo district, the site plan is not only an administrative requirement, but also a form of accountability for the developer to the local government and guidelines in carrying out monitoring and evaluation activities after the housing has been built. In the framework of submitting ratification of a housing development site plan in Sukoharjo, at least it must contain:

1. Application letter;
2. Photocopy of the applicant's identity;
3. Stamped power of attorney;
4. Photocopy of the Proxy's identity;
5. Photocopy of land / land ownership certificate;
6. Cooperation contract document (if the land is not yet the property of the developer);
7. Photocopy of company establishment deed (for companies);
8. Fotokopi izin pemanfaatan ruang (DPMPSTP);
 - Location Permit (> 1 Ha)
 - Recommended land use (200m² - 1 Ha)
9. PSU management statement letter;
10. PSU transfer statement letter;
11. Mutual Agreement on Laystall Management in housing environment;
12. Letter of cooperation between waste management and UPT garbage;
13. Statement of provision of eatery land (known to the cemetery and gardening unit);
14. A statement letter for merging existing roads and channels;
15. Measurement letter from BPN if not HGB (must have a signature and legalized stamp);
16. Site plan drawings along with details of infrastructure, facilities, and public utilities with a minimum size of A3.

These requirements must exist and be met by every developer who wants to build housing in the Sukoharjo Regency area. However, in practice, developers often pay less attention to these requirements so that the administrative process at the Housing and Settlement Services Office is considered long and complicated. It is not uncommon for developers to start housing construction without complete administrative requirements. This can be a

problem when the developer cannot fulfill the administrative requirements, but housing construction has already been carried out. The impact of the lack of administrative requirements may result in imperfect sales and purchase agreements from developer to buyer. Therefore, requirements are materials for monitoring and evaluation from the government to the developer so as not to cost the buyer as well. So that the administrative requirements of the government can be used as one of the perfect sources of the housing sale and purchase agreement between the developer and the buyer. A contract or agreement must fulfill the validity of the agreement, namely agreement, proficiency, certain matters, and a lawful cause, as stipulated in Article 1320 of the Civil Code. By fulfilling the four valid conditions of the agreement, an agreement becomes valid and legally binding for the parties who make it (Suharnoko: 2004) ^[9]. In accordance with Article 1313 of the Civil Code, what is meant by an agreement is an act in which one or more people bind himself to one or more other people. Examining the meaning of the agreement according to the Civil Code, many legal experts stated that the understanding of the agreement described in Article 1313 of the Civil Code was weak. As a comparison, Prof. Subekti then gave the definition of the agreement. An agreement is an event where a person promises to another person or where two people promise each other to do something (Ricardo:2011) ^[10]. If the problem regarding the site plan in the sale and purchase of housing in Sukoharjo Regency is related to Article 1320 of the Civil Code, then for the validity of the agreement the parties must also include a reason or a lawful reason why the agreement was made. Regarding this lawful cause, it is regulated in Articles 1335 to 1337 of the Civil Code. Article 1335 of the Civil Code states that: "A covenant without cause, or which has been made for a false or forbidden cause, has no power." Furthermore, the

understanding of the cause is not explained in more detail in the Civil Code. However, Article 1335 of the Civil Code states that the causes which are lawful are:

1. not without cause;
2. not a false cause; and
3. not a forbidden cause.

Basically, the law only considers what is written in an agreement, regarding everything that must be fulfilled by the parties in the agreement (Rony: 2010) ^[11]. In other words, the law does not pay attention to the reasons for legal subjects to bind themselves in an agreement. Article 1336 of the Civil Code further states that an agreement made by the parties is valid if it does not conflict with the prohibited causes. Furthermore, Article 1337 of the Civil Code states that the cause which is lawful means that the contents of the agreement must not conflict with law, public order, and morality. The definition of not being in conflict with the law here is a law which protects the public interest, so that if it is violated it can endanger the public interest (Hardijan: 1996) ^[12]. In addition, if it is seen from the number of requirements that must be met, it can be seen that the local government of Sukoharjo district is quite committed to achieving the ideal housing development. This is in line with the vision - mission of the Housing and Settlement Area Office of Sukoharjo Regency which refers to the Vision of Sukoharjo Regency, the vision of the Regional Apparatus of the Housing and Settlement Area Office of Sukoharjo Regency is: "Continue to Build a More Prosperous, Advanced and Dignified Sukoharjo Supported by a Professional Government". While the mission in accordance with the main tasks and functions of the Regional Apparatus of the Housing and Settlement Areas of Sukoharjo Regency is the 2nd and 3rd mission, namely "Improving the Quality of Human and Community Life"

Table 1

No.	Mission	Purposes	Indicators of Purposes	Targets	Indicators of Targets
1	Increasing the quality of human life and society	The realization of housing and residential areas that are suitable for habitation and sustainable	Fulfilling the needs of a livable house and PSU for the community	Increased provision of houses unfit for habitation	Uninhabitable house handled
2		The realization of housing and residential areas that are suitable for habitation and sustainable	Fulfilling the needs of a livable house and PSU for the community	Improving the quality of settlements	Slum area handled
3		The realization of housing and residential areas that are suitable for habitation and sustainable	Fulfilling the needs of a livable house and PSU for the community	Increased adequate infrastructure, facilities, and utilities	Management of infrastructure, facilities and residential utilities that have already been built

Source: Tabel Tujuan dan Sasaran Rencana Strategis Tahun 2017 – 2021

Based on the number of housing based on the approved Site plan in Sukoharjo Regency, there are 297 locations and until the end of February 2017 the number of PSUs submitted was only 17 housing locations (5.72%). Meanwhile, to comply with the Regulation of the Minister of Home Affairs Number 9 of 2009 concerning the Submission of Infrastructure, Facilities and Public Utilities for Housing and Settlements, socialization is carried out to the public and housing developers to hand over the infrastructure and public utilities for their housing. From the results of research at the Housing and Settlement Areas Service in 2019, there were 60 locations for submitting new site plans. Of these, there are 15 site plans whose developers make

changes proposals. Most of the proposed changes are the result of recommendations from the technical team that conducts monitoring and evaluation, but there are also initiatives from the developer itself. Submission of changes to this site plan can cause problems when the change is not confirmed to the buyer. This can be a problem point which results in a mismatch between the layout of the buildings using the original site plan (known by the buyer) and the layout of the buildings using the site plan changes (not yet known by the buyer). In addition, problems with the site plan also arise when the housing construction is completed. This occurs when the developer will hand over the infrastructure, public facilities and utilities for housing

which will be handed over to the local government through the housing and residential area office. The shape, specifications and layout of Public Housing Infrastructure, Facilities and Utilities are different from the site plan which was previously submitted without submitting changes. On the other hand, buyers who do not know about changes in the specifications of Public Housing Infrastructure, Facilities and Utilities will feel disadvantaged if the changes are of a lower quality than previously agreed.

Conclusion

The conclusion of this study is that the problem with the site plan that arises in Housing Development in Sukoharjo Regency is that the administrative requirements are incomplete when it comes to the second phase of construction, so that the second phase of construction will be disrupted. Furthermore, in violations, there were several cases of violations on the site plan relating to violations of commensurate lines, violations of the construction of religious services, and inadequacy of green open spaces (RTH). By looking at the legal terms of the contract, article 1320 of the Civil Code, violations on the administrative and commensurate lines, violations of the construction of religious facilities and inadequate Green Open Space (RTH) which results in housing construction not being completed, the contract between developer and buyer is null and void by law.

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