

# CHAPTER I

## INTRODUCTION

### 1.1 Background

Housing and livelihood are basic human needs that have a significant impact on the development of the country that is clearly articulated by the Indonesian Constitution 1945.<sup>1</sup> Housing and neighborhoods can be seen not only as a means of life's necessity, but also as a method for human beings in order to create a living environment for society and to establish an identity for themselves.<sup>2</sup>

One of the reasons why the need for housing is increasing has a strong connection with the rapid increased population and urbanization, such as the amount of the population, growth rate and changes in the average number of people per household. These are the issues that need to be addressed, especially in the large cities of Indonesia.<sup>3</sup>

The increasing development of the residential housing sector can be seen as a guideline for continuing to improve or restore economic growth. It is important to carefully examine the growth of the residential housing market as it can have an effect on two sides and can be a driving force for economic activity and rise in various other related sector activities.<sup>4</sup>

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<sup>1</sup> Article 28 H (1) of The 1945 Constitution of the Republic of Indonesia

<sup>2</sup> Arie S Hutagalung, *Konominium dan Permasalahan*, (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia), 2002, hlm. 1

<sup>3</sup> *Ibid*

<sup>4</sup> Adrian Sutedi, *Hukum Rumah Susun & Apartmen*, Jakarta: Sinar Grafik, 2010, hlm 3.

But despite various incentives and programs being offered to improve the development of low-income mass housing, the Indonesian housing sector remains unable to stay pace with the growing population and demand. In addition to the huge backlog of 13.5 million units, Indonesia also needs 400,000 new homes per year.<sup>5</sup>

The people of Jakarta are not only deprived of affordable housing but also of green spaces. The latter make up less than 10 percent of the capital city's land area, which is way short of the 30 percent required by the 2007 Spatial Planning Law, and this is due to land shortages.<sup>6</sup> Therefore, in order to increase the usability and yield of land for the construction of housing and neighborhoods, and to make effective use of land, especially in densely populated areas, it is important to arrange the land in such a way so that the community can really feel its utilization. Thus, in big cities, it is important to guide the development of housing and neighborhood towards the development of condominiums.<sup>7</sup> It is a multi-storey building constructed in an environment which is divided into functionally structured sections, both horizontally and vertically and which can be owned and used separately, especially for residential areas that are equipped with shared parts, shared objects, and shared land.<sup>8</sup>

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<sup>5</sup> "Indonesia's Mass Housing Sector: The Rise of Vertical Housing", [http://www.gbgingonesia.com/en/property/article/2017/indonesia\\_s\\_mass\\_housing\\_sector\\_the\\_rise\\_of\\_vertical\\_housing\\_11739.php](http://www.gbgingonesia.com/en/property/article/2017/indonesia_s_mass_housing_sector_the_rise_of_vertical_housing_11739.php), accessed on: 18 April 2020

<sup>6</sup> "Wendy Haryanto. Jakarta must build upwards for more space". <https://www.thejakartapost.com/academia/2018/11/24/jakarta-must-build-upwards-for-more-space.html>, accessed on: 6 May 2020

<sup>7</sup> Arie S Hutagalung, *Op.Cit*, hlm. 2

<sup>8</sup> Article 1 (1) of Law No. 20 of 2011

Construction of condominiums is an alternative solution to the problem of housing and neighborhood needs, particularly in urban areas where the population continues to grow, since building condominiums can reduce land use, make city more spacious and can be used as a means of urban rehabilitation for slums.<sup>9</sup> In addition, traffic congestion in big cities is another reason for realizing the construction of condominiums in big cities. Moreover, residential comfort, ease of access and efficient use of time have become life concepts that are now part of the needs of professionals.<sup>10</sup>

There needs to be clear rules to govern the condominium as a result of demand for the Condominiums. The Government therefore promulgated Law No. 16 of 1985 concerning Condominiums or Strata title (Law No. 16/1985). Condominiums built by the government to provide shelter are mostly targeted at low-income community. This can be seen in the provisions of Article 5 Paragraph 1 of Law No 16/1985, which states that “Condominiums are built on the basis of the need of income earners.” However, this law does not put a limitation to be applied to the development of condominiums for the mid and upper income earners.<sup>11</sup>

During the development of the law, it is no longer consistent with the existing business practices in particular concerning the ownership issues and the utilization of condominiums. Moreover, due to the influence of globalization, shifting culture and the way people lives their life, the law was amended by Law

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<sup>9</sup> Arie S Hutagalung, *Op.Cit*, hal. 3

<sup>10</sup> Erwin Kallo, *Panduan Hukum untuk Pemilik/Penghuni Rumah Susun*, (Jakarta: Minerva Athena Pressindo ), hal. 9.

<sup>11</sup> Arie S Hutagalung, *Ibid.*, hal. 8-9

Number 20 Year 2011 about condominiums. This law creates a broader, equitable and just legal basis for the implementation of condominiums.

Based on Article 2 of Law No. 20 of 2011, the implementation of condominiums is based on: a. well-being; b. justice and equity; c. nationalism; d. affordability and convenience; e. efficiency and usefulness; f. independence and togetherness; g. partnership; h. harmony and balance; and i. cohesiveness.

In the implementation of this law, a number of business practices are still present to finance the construction of condominiums. The role of developer is one of the parties that are involved to carry out the construction of condominiums.<sup>12</sup> However the developer has developed a habit of selling condominium units even though the building has not been build. To overcome this matter, the State Minister for Public Housing issued the Decree Number 11 / KTPS / 1994 dated November 17, 1994 concerning Guidelines for Sale and Purchase for Condominiums, that is intended to safeguard the interests of the housing and neighborhood developers and prospective buyers of condominium from the risk of violating the obligations of the parties concerned. It is therefore necessary to have guidelines for the sale and purchase of the condominium.<sup>13</sup> By the issuance of the Decree of the State Minister of Public Housing, it is possible to make a public offer or sell the condominiums before the buildings have been completed.<sup>14</sup> This can be done by the sale and purchase agreement made by the developer of the condominiums and the

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<sup>12</sup> Dr. Dhaniswara K. Harjono, *Hukum Properti*, hlm. 190

<sup>13</sup> Arie S Hutagalung, *Op.cit.*, hal 63

<sup>14</sup> *Ibid.*

prospective buyers under the Conditional Sale and Purchase Agreement (*PPJB*) contract.<sup>15</sup>

Conditional Sale and Purchase Agreement hereinafter named as *PPJB* is an agreement between the seller and the prospective buyer where there are rights and duties commissioned to complete the unit of condominium or premise. It is not however serving as transfer of premise yet. The transfer of premise will need to take place once the required conditions of the condominium have been fulfilled. In this case, there has not yet been a transfer of rights over the condominium unit because the Sale and Purchase Deed (*Akta Jual Beli* or “*AJB*”) has not been made and signed by both parties.<sup>16</sup>

The sale and purchase of the condominium before the construction is completed can be done through the Conditional Sale and Purchase Agreement that is made before a public notary.<sup>17</sup> But before the Conditional Sale and Purchase Agreement can be done, the Developer must meet certain requirements as stated in Article 43 (2) of Law Number 20/2011, such as:

- a. Status of Land Right
- b. The Building Permit (IMB);
- c. Availability of infrastructure, facilities and public utilities;
- d. The construction progress of the minimum of 20% of the development; and
- e. The provision that was agreed upon

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<sup>15</sup> *Ibid.*

<sup>16</sup> Muhammad Zaki Mubarrak; Adi Sulistiyono; I Gusti Ayu Ketut Rachmi Handayani, “Implementation of Compliance Obligations for Public Flats Provision by The Commercial Flats Construction Actors”, Pg. 140

<sup>17</sup> Article 43 (1) of Law No. 20 of 2011

However, in practice, the root of condominium issues often starts with the making of the Conditional Sale and Purchase Agreement that is not transparent and balanced.<sup>18</sup> Conditional Sale and Purchase Agreement is an agreement made unilaterally by the developer which is made in the form of a standard agreement that contains a standard clause by the developer. The interests of the developer will be far more dominant and profitable. Sometimes there are even rules that are not written or expressly disclosed by the developer in order to prevent from certain obligations that might be considered to be detrimental to the developer.<sup>19</sup> This implies the position of the consumers who are placed on the choice of take it or leave it because of the low bargain position of consumers in determining the clause in the PPJB.

Recently, The Minister of Public Works and Public Housing (*PUPR*) of the Republic of Indonesia, issued a Ministry Regulation of PUPR Number 11 / PRT / M / 2019 concerning the Preliminary Agreement on the Sale and Purchase of Houses and revoked the Decree 11 / KPTS / 1994 concerning Guidelines for Sale and Purchase Agreement of Condominiums and Decree 09 / KPTS / M / 1995 concerning Guidelines for Sale and Purchase Agreement for Houses. The aforementioned reasons for the consideration that became the background for the

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<sup>18</sup> “Tahu kenapa UU Rusun Belum Lindungi Konsumen”, <<https://nasional.kompas.com/read/2011/11/23/20585436/Tahu.Kenapa.UU.Rusun.Belum.Lindungi.Konsumen.>>, accessed on: 24 May 2020

<sup>19</sup> Conan Budi Wijaya, *Kedudukan Hukum Pembeli Satuan Rumah Susun yang Berbentuk Perjanjian Pengikatan Jual Beli (Studi Kasus Apartemen Puncak Permai)*, pg. 234

stipulation of the PUPR Number 11 / PRT / M / 2019 concerning the Preliminary Agreement on the Sale and Purchase of Houses was to optimize the arrangement regarding the Conditional Sale and Purchase Agreement of condominiums under Article 43 of Law Number 20 Year 2011 concerning Condominiums, and to implement the provisions of Article 42 paragraph (3) of Law Number 1 of 2011 concerning Housing and Neighborhood Areas, it is necessary to stipulate a Minister of Public Works and Public Housing Regulation concerning the Preliminary Agreement on the Sale and Purchase of Houses.<sup>20</sup>

Several principles of protection for purchasing a house or condominium are governed by this law. It is to provide legal protection for the buyers of houses or condominiums. Among these are the existence of obligations of the Conditional Sale and Purchase Agreement (*PPJB*) that have to be made in the form of a notarial deed.<sup>21</sup> A sale and purchase agreement made in the form of a deed is deemed as valid and strong evidence. Thus, if a party violates the contract, will no longer be able to refuse the agreed obligations. This regulation is also to prevent Conditional Sale and Purchase Agreement which only includes standard clauses that typically favor the seller as the buyer does not have much freedom to decide.

Upon completing the Conditional Sale and Purchase Agreement, the developer must have constructed a minimum of 20% of the total planned public housing construction and facilities.<sup>22</sup> The developer must also obtain all forms of licenses before selling it to the consumers. This is a solution for people who wants

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<sup>20</sup> Consideration of Government Regulation No.11/PRT/M/2019 of 2019

<sup>21</sup> Article 1(2), Government Regulation No. 11/PRT/M/2019 of 2019

<sup>22</sup> Article 10(1), Government Regulation No. 11/PRT/M/2019 of 2019

to purchase a home, but are afraid that the developer cannot be trusted and the quality of construction is not in line with the planned model because all this time public facilities are usually constructed after all the houses had buyers or owners.<sup>23</sup>

This should be of particular concern to the notary making the Conditional Sale and Purchase Agreement (*PPJB*) Deed. In the appendix to the Government Regulation are details of the agreement that must be specified in the Conditional Sale and Purchase Agreement deed. This must be considered by a notary public, because if the contents of the Conditional Sale and Purchase Agreement deed differs from the provisions of the new Government Regulation, the deed is deemed null and void. The parties must clearly explain the provisions contained in the deed before they are signed, so that no more buyers will feel compelled to sign the Conditional Sale and Purchase Agreement deed.

Since the issuance of the new regulation, a number of developers have complained about the new regulation for the Preliminary Agreement on the Sale and Purchase of Houses.<sup>24</sup> The new regulation is said to include articles which only benefits the consumers and are considered unfair for the developers. Some of the articles are also considered burdensome for the future of the property business such as the matter of cancelation and refund.<sup>25</sup> One of the issues that the developers argued is that the company could only carry out the marketing and the Conditional

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<sup>23</sup> Irma Devita, “Notaris harus mengacu Permen PUPR Terbaru dalam Pembuatan Akta Pengikatan Jual Beli (*PPJB*) Rumah atau Rumah Susun, serta Regulasi Baru bagi Para Pembeli”, <<https://irmadevita.com/2019/permen-pupr-terbaru-dalam-pembuatan-akta-pengikatan-jual-beli-ppjb-rumah-atau-rumah-susun-serta-regulasi-baru-bagi-para-pembeli-rumah/>>, accessed on: 8 May 2020

<sup>24</sup> “Aturan Baru *PPJB* Disebut Bisa Merugikan Pengembang”, <<https://www.cnnindonesia.com/ekonomi/20190825145605-92-424466/aturan-baru-ppjb-disebut-bisa-merugikan-pengembang>>, accessed on 16 April 2020

<sup>25</sup> *Ibid*



sale and purchase agreement process only after obtaining a Building Permit (IMB). Until the building permit is issued, the developer is prohibited from marketing and conducting the Conditional Sale and Purchase Agreement process. While in fact, taking care of the IMB itself has to go through several stages and can take a long time.<sup>26</sup>

Based on the background above, the author would like to write a thesis with the title **“The Legality of the Conditional of Sale and Purchase Agreement (PPJB) and Its Implication to Protect the Interest of the Parties.”**

## **1.2 Research Question**

With regard to the topic of this thesis, the main issues to be discussed in this study are as follows:

1. How is the legal protection of the PPJB to secure the interest of the parties?
2. To what extent has the Regulation of the Minister of PUPR Number 11 / PRT / M / 2019 concerning the Preliminary Agreement on the Sale and Purchase of Houses covered relevant issues related to the PPJB?

## **1.3 Research Purpose**

In accordance with the formulation of the issues outlined above, the objectives to be achieved by the author in this study are:

1. To examine the relevant laws and regulations related to the legality of PPJB.
2. To examine the extent of the Government Regulation No. 11 of 2019 to

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<sup>26</sup>*Ibid*

ensure the protection of both parties on the PPJB.

## **1.4 Research Benefits**

### **1.4.1 Theoretical Benefits**

From an academic point of view, this research is expected to be able to contribute to the development of legal knowledge relating to the Sale and Purchase Agreement for a condominium unit, so that consumers can know how to purchase a condominium unit in such a way that there are no obstacles and avoid disputes or problems which may arise in the future.

### **1.4.2 Practical Benefits**

From a practical point of view, this research is expected to broaden the public's perspective to provide an understanding of the process in the Sale and Purchase Agreement, and also regarding the form of protection for the consumer in the Sale and Purchase Agreement between the consumer and the developer and to avoid legal uncertainty relating to the Sale and Purchase Agreement.

## **1.5 Framework of Writing**

To simplify the reading of this paper, the author will put the discussion into brief chapters, which is as follows:

CHAPTER I : INTRODUCTION

The introduction chapter will be a discussion on background of the problems, research questions,

research purposes, research benefits, literature review, research method and framework of writing.

## CHAPTER II : LITERATURE REVIEW

This chapter outlines some of the concepts or theories that have been advocated by previous jurists.

The concept and theory will be the basis for the author in outlining the discussion of the material so that the information provided in this scientific work can be justified.

## CHAPTER III : RESEARCH METHODS

The third chapter will discuss how the author approaches the research, the methods, types of research, procedures for obtaining materials research, legal materials, and research techniques for this study by using a normative research to gather facts but also to target on pointing out which aspects of the object of study can be improved.

## CHAPTER IV : DISCUSSION AND ANALYSIS

In this chapter, it explained about the research problem and its solution in accordance with the formulation of the issues that are raised. This discussion will be based on legal theories, legal

principles and applicable laws and regulations. The answers to legal issues that are the focus of research in this thesis are described in this chapter.

CHAPTER V : CONCLUSION AND SUGGESTION

This chapter contains conclusions on the research conducted and legal recommendations on the problems in this study. Conclusions are given based on the results of research on legal issues, and suggestions in the form of recommendations are aimed at the benefits of normative legal research, namely providing a prescription of what should be.

