

ANALYSIS OF GOVERNMENT REGULATION NUMBER 12 OF 2021 REGARDING PPJB REQUIREMENTS FOR IMPLEMENTATION IN INDONESIAN PROPERTY COMPANIES

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Abstract. This research aims to analyze government regulation number 12 of 2021 regarding PPJB requirements for implementation in property companies in Indonesia. This research method uses an empirical normative legal approach. The results of this research show that the implementation of Government Regulation number 12 of 2021 concerning PPJB system requirements is not very effective when applied to Indonesian Property Companies, especially if Property Companies or Development Actors use the Pre Project Selling concept, where in this concept, development actors can carry out sales or marketing before the property product is built or the licensing requirements have not been met, which results in Article 22 paragraph (5) regarding the PPJB system requirements not being able to comply with practices that occur in the property business world in Indonesia.

Keywords: analysis; government regulations; PPJB.

I. INTRODUCTION

Human thinking about the rule of law was born and developed in a welfare situation. Therefore, although the concept of the rule of law is considered a universal concept, at the implementation level it turns out to have various characteristics. This is because of the influences of the welfare situation, in addition to the influence of national philosophy, state ideology and so on [1]. Balanced housing is a legal concept regulated and confirmed in Law Number 1 of 2011 concerning Housing and Settlement Areas, Law Number 20 of 2011 concerning Flats and Government Regulation Number 14 of 2016 in conjunction with Government Regulation Number 12 of 2021 concerning Housing Administration and Residential Areas. This concept is intended for people with low incomes to own a house through a legal entity that carries out housing construction, where Article 21 also explains that "a legal entity that carries out housing construction is obliged to create housing with balanced housing". In essence, this legal concept is interesting if implemented properly and correctly in Indonesia because it can help people with low incomes to get their dream home at a fairly affordable price. In practice, there are obstacles such as a lack of land that will be used for development or there is land at a price that is not affordable for development actors. This causes development actors to be unable to realize the concept of balanced housing.

It is not enough for the obstacles that have been mentioned, if these obstacles find a bright spot or the best solution, then obstacles will also arise that will occur when carrying out development, such as permits that must be issued

of course before construction is carried out, which include: 1) Principle Permit or what has now been changed to Investment Registration as explained in Investment Coordinating Board Regulation Number 13 of 2017 concerning Guidelines and Procedures for Investment Permits and Facilities (hereinafter referred to as "BKPM") [2]. 2) Land Use Permit or what is often referred to as IPPT, which is a land use permit granted for activities to utilize upper space that is owned or controlled. This permit is the basis for issuing a building construction permit or what has now become a building approval and business permit. This permit is valid as long as the location is used according to its intended purpose and does not conflict with the public interest [3]. 3) Site Plan Permit is a concept or building drawing plan which also includes supporting facilities such as parks, roads, shops, places of worship, schools and so on, in order to have planning on a scale within certain land area boundaries. 4) Flood Peil Permit is a regulation of the minimum height of a building floor which is determined based on the location of the building, which aims to prevent flood water from overflowing and entering the building if the floor is too low. In areas that have high development intensity such as Jakarta, the Flood Peil recommendation is very needed because the level of flood proneness is more risky. The issuing service is the Water Management Service (in DKI Jakarta), or the Highways and Water Resources Service. 5) Building Height Permit, this permit is an additional permit if the building to be built is close to the airport, because when building there is a height limit for a certain radius. 6) Building Construction Permit or what has now been changed to PBG, which is a permit given

to building owners to build new, change, expand, reduce and/or maintain buildings in accordance with building technical standards. After these permits are issued, then the developer can build the building or residence and market it to the public. In Article 22 paragraph 3, Government Regulation Number 12 of 2021 also explains that single houses, row houses and/or flats which are still under construction can be marketed by development actors through the PPJB system which consists of Marketing and PPJB. The PPJB as referred to can be carried out after obtaining confirmation of land ownership status, the agreed matters, PBG, availability of Public Infrastructure, Facilities and Utilities, and development of at least 20% (twenty percent).

In connection with the above, it can be said that marketing cannot be carried out if the conditions have not been met [4]. This is in contrast to the practice that occurs in the world of property in Indonesia, which is because generally in the world of property business it is often not possible to fulfill these requirements in their entirety, especially regarding the requirements relating to PBG, where PBG must be obtained at the time of the PPJB. Based on the description above, the author wishes to discuss issues that focus on "Analysis of Government Regulation Number 12 of 2021 Regarding PPJB Requirements for Implementation in Indonesian Property Companies".

II. RESEARCH METHODS

The research method used by this author uses a normative-empirical legal research method which uses normative case studies in the form of legal behavioral products such as reviewing applicable laws and regulations. The essence of the study is law which is conceptualized as norms or rules that apply in society which serve as a reference for everyone's behavior, so that normative legal research focuses on collecting data on positive law, legal principles and doctrine, legal discovery in cases in concreto, legal systematics, levels of synchronization, comparative law and legal history [5]. Legal research is also a process for determining legal rules, legal principles, and legal doctrines in order to reveal the truth about the legal issues faced [6]. The empirical normative legal research method in this case is legal research carried out by examining library materials or secondary and primary data [7]. The research carried out is based on theories, concepts, legal principles and statutory regulations related to this research. This research is also known as a library approach, namely by studying and using books, statutory regulations and other documents related to research.

This normative research has the concept of positive law in the national legal system, where legal research is used by approaching existing facts by conducting observations and research in the field through information from the media and then reviewing and analyzing them based on the relevant statutory regulations as a reference for solve the problem.

III. RESULT AND DISCUSSION

Indonesia is a developing country that will experience continuous growth. The growth that occurs also includes development, which cannot be realized if there are no supporting facilities and infrastructure. The construction of a building, house or residence can be carried out after the technical building plan has been approved by the Regional Government in the form of a building permit or now what has changed to Building Approval (hereinafter referred to as "PBG"). PBG is a permit given to building owners to build new, change, expand, reduce, and/or maintain buildings in accordance with building technical standards [8]. Having a PBG is one of the obligations of building owners, where every person who wants to build a building must have a building permit which will be issued by the local government through the permit application process. Government Regulation Number 12 of 2021 (hereinafter referred to as "PP 12/2021") explains that single houses, row houses and/or flats which are still under construction can be marketed by development actors through the PPJB system. However, the PPJB system can only be implemented after meeting the certainty requirements for:

- a. Land ownership status;
- b. What is agreed upon;
- c. PBG;
- d. Availability of public infrastructure, facilities and utilities; as well as
- e. Developability of at least 20% [9].

The requirements mentioned above are requirements regulated in PP 12/2021, where one of the points that the author will discuss is the PBG requirements which must be obtained at the time of the Sale and Purchase Agreement or Preliminary Sale and Purchase Agreement (hereinafter referred to as "PPJB"). PPJB is an agreement between the developer and each person to buy and sell houses or units of flats which can be carried out by the builder before construction for flats or in the construction process for single houses and row houses made before a notary [10]. In the increasingly competitive world of the property business, licensing can become an "obstacle" in the marketing process, because if permits in this case, especially PBG, are not or have not been fulfilled, then the PPJB signing process cannot take place or be carried out because an original copy of the PBG must be given to prospective buyers at the time of signing the PPJB. In practice, there are also business actors who cannot sign the PPJB because one of the requirements in the PPJB system has not been fulfilled (not complied), such as the PBG has not been issued. This can hinder business actors from marketing their property products, so that business actors' activities can be hampered and it is possible for losses to arise. Based on the above, development actors or developers use the pre-project selling concept, where by using the pre-project selling concept, development actors can carry out sales or marketing before the property product is built and there are even development actors who apply the pre-project selling concept before the requirements are met. -requirements such as PBG, construction permits and other related permits.

The concept of Pre Project Selling cannot be separated from several regulations including the Civil Code, Law Number 1 of 2011 concerning housing and residential areas (hereinafter referred to as "UU 1/2011"), Law Number 20 of 2011 concerning Flats (hereinafter referred to as " Law 20/2011") and Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as "UU 8/1999"). Of the several laws that are often used as references for the Pre Project Selling process, they are Law 1/2011 and Law 20/2011 which generally regulate the construction of houses either vertically or horizontally. In article 42 paragraph (1) Law 1/2011 uses a Preliminary Agreement for the Pre Project Selling Process while in article 42 paragraph (3) Law 20/2011 uses a conditional agreement. Using the Pre Project Selling concept in the world of property business can provide benefits for development actors because by implementing this concept, development actors do not need to provide large enough initial capital for development [11]. From the consumer's side, this concept has weaknesses that can pose a risk to consumers, because the basic development permit process that has not been submitted can potentially cause problems in the future, and vice versa, if seen from the perspective of development actors, if this concept cannot be implemented then development actors cannot carry out PPJB or Marketing as stated in Article 22 paragraph 5 PP 12/2021 because the requirements cannot be fulfilled (not comply) so that development actors will also experience losses, both material and immaterial. In Article 4 and Article 5 of Law 8/1999 it is regulated regarding Consumer Rights and Obligations, that Consumer Rights are:

- a. the right to comfort, security and safety in consuming goods and/or services;
- b. the right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and conditions and guarantees promised;
- c. the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;
- d. the right to have opinions and complaints heard regarding the goods and/or services used;
- e. the right to obtain advocacy, protection and appropriate efforts to resolve consumer protection disputes;
- f. the right to receive consumer guidance and education;
- g. the right to be treated or served correctly and honestly and not in a discriminatory manner;
- h. the right to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be;
- i. rights regulated in other statutory provisions.

Consumer obligations are:

- a. read or follow information instructions and procedures for the use or utilization of goods and/or services, for the sake of security and safety;
- b. have good intentions in carrying out transactions to purchase goods and/or services;
- c. pay according to the agreed exchange rate;
- d. follow appropriate legal resolution efforts for consumer protection disputes.

Meanwhile, Articles 6 and 7 of Law 8/1999 regulate the Rights and Obligations of Business Actors, that the Rights of Business Actors are:

- a. the right to receive payment in accordance with the agreement regarding the conditions and exchange value of traded goods and/or services;
- b. the right to obtain legal protection from consumer actions with bad intentions;
- c. the right to carry out appropriate self-defense in the legal resolution of consumer disputes;
- d. the right to rehabilitate a good name if it is legally proven that consumer losses are not caused by the goods and/or services being traded;
- e. rights regulated in other statutory provisions.

The obligations of business actors are:

- a. have good intentions in carrying out his business activities;
- b. provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as providing explanations of use, repair and maintenance;
- c. treat or serve consumers correctly and honestly and non-discriminatory;
- d. guarantee the quality of goods and/or services produced and/or traded based on the applicable quality standards for goods and/or services;
- e. provide consumers with the opportunity to test, and/or try certain goods and/or services as well as provide guarantees and/or warranties for goods made and/or traded;
- f. provide compensation, compensation and/or reimbursement for losses resulting from the use, use and utilization of traded goods and/or services;
- g. provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

With the existence of the Civil Code, Law 1/2011, Law 20/2011 and Law 8/1999, it can provide solutions for Development Actors and Consumers in implementing the PPJB system which in property business practice uses the Pre Project Selling concept, so that Development Actors can sign the PPJB with Consumers or Buyer even though the requirements in the PPJB system regulated in PP 12/2021 have not all been met. After the PPJB is signed, the PPJB can become a "Law" for Development Actors and Consumers.

IV. CONCLUSIONS

Single houses, row houses and/or flats that are still under construction can be marketed by development actors through the PPJB system. However, the PPJB system can only be implemented after fulfilling the requirements for certainty regarding: land ownership status; the thing agreed upon; PBG; availability of Public Infrastructure, Facilities and Utilities; and developability of at least 20% (twenty percent). The implementation of PP 12/2021 regarding the PPJB system requirements is not very effective if applied to Indonesian Property Companies, especially if the Property Company or Development Actor uses the Pre Project Selling concept, where in this concept, development actors can carry out sales or marketing before the property product is built and the

conditions permits have not been fulfilled which results in Article 22 paragraph (5) regarding the PPJB system requirements not being able to comply with practices that occur in the property business world in Indonesia. Legal protection for consumers as buyers and development actors or business actors is sufficiently regulated in the Civil Code, Law 1/2011, Law 20/2011 and Law 8/1999, where consumers and development actors can bind themselves to each other in an agreement known as PPJB as a legal basis or law that regulates both parties with all the legal consequences contained therein, so that both consumers can feel protected as buyers and development actors who can carry out their business and obtain the rights to what they carry out. Regarding the requirements for the PPJB system which can only be implemented after fulfilling the requirements for ensuring the existence of a PGB before signing the PPJB, in the author's opinion it should be regulated more flexibly considering that the Property business concept adopted in Indonesia uses the Pre Project Selling concept. The author also believes that PP 12/2021 specifically concerns the certainty of the existence of PBG before the PPJB is signed can be considered to be changed to "PBG must be in place at the time of signing the AJB".

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