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## Legal Analysis Land Parcel Sale and Purchase Agreement Entered Into by Dewe Land Parcel Developer in Kudus Regency

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**Abstract.** This study aims to analyze the validity and legal certainty of the sale and purchase agreement of land plots conducted by developer Kavling Dewe in Kudus Regency, and to identify clauses that have the potential to harm consumers (adverse clauses). The type of research used is normative juridical with statutory and conceptual approaches. The data used is secondary data sourced from primary, secondary, and tertiary legal materials. The results show that substantively, the sale and purchase agreement made by developer Kavling Dewe has fulfilled the requirements for a valid agreement as regulated in Article 1320 of the Indonesian Civil Code (KUHPperdata). However, in practice, several clauses were found to be entirely dominated by the developer, such as clauses regarding late payment, force majeure, and dispute resolution which tend to burden the consumer and are unbalanced. These clauses have the potential to contradict the principle of good faith and the principle of balance in contract law, and violate the provisions of Law Number 8 of 1999 concerning Consumer Protection. Stricter supervision from the Financial Services Authority (OJK) and the Consumer Dispute Settlement Agency (BPSK) is needed to ensure balanced legal protection for the parties.

**Keywords:** *Sale and Purchase Agreement; Land Plots; Developer; Consumer Protection.*

### INTRODUCTION

Development in the property sector, particularly housing and residential areas, has experienced significant growth in recent years in Indonesia, including in Kudus Regency. According to data from the Ministry of Public Works and Public Housing (PUPR) (2023), the residential property sector continues to be a major contributor to regional economic growth, driven by the high demand for housing. Within this property business landscape, the developer Kavling Dewe has emerged as one of the business players actively developing ready-to-build land plots in the area. The sale and purchase of land plots offered almost always involves a written agreement, generally in the form of a standard contract prepared unilaterally by the developer.

In practice, consumers often find themselves in a weak position due to an imbalance of bargaining power. As explained by Mulyati (2021:78), in property transactions based on standard agreements, consumers typically have only two options: accept all the clauses stipulated by the developer or refuse to proceed with the transaction (take it or leave it). This situation has the potential to give rise to unfair clauses (onerous clauses) that can harm consumer rights. Salim (2018:145) emphasized that unilateral dominance in contract design often ignores the principle of balance in contract law.

Several initial reports from consumers of the Kavling Dewe developer indicate recurring legal issues related to the delayed delivery of land title certificates beyond the agreed deadline, the unclear status of basic permits for the land being sold, and the imposition of penalty clauses deemed excessively burdensome and disproportionate for late installments. This phenomenon of unreasonable penalty clauses aligns with Sutedi's (2020:112) findings that many developer agreements contain administrative sanctions whose value is disproportionate to the actual losses suffered, potentially becoming a disguised tool of extortion.

Based on this phenomenon, an in-depth analysis of the land sale and purchase agreements issued by the Kavling Dewe developer is urgent. This analysis not only examines the validity of the agreement under Article 1320 of the Civil Code (KUHPerdata), but also examines consumer protection as mandated by Law Number 8 of 1999 concerning Consumer Protection and the elaboration of general principles in Indonesian contract law, such as the principle of good faith and the principle of propriety. Yahya (2022:89) emphasizes that the Consumer Protection Law exists precisely to protect consumers from exploitative standard contract practices. Therefore, this research is necessary to unravel the legal complexities in these agreements and provide recommendations for realizing contractual justice between developers and consumers.

## **LITERATURE REVIEW**

### **Definition and Legal Basis of an Agreement**

An agreement is an event in which one or more people bind themselves to one or more other people. This definition is outlined in Article 1313 of the Civil Code, which states, "An agreement is an act by which one or more people bind themselves to one or more other people." The legal basis for an agreement adheres to the principle of freedom of contract, as outlined in Article 1338 paragraph (1) of the Civil Code, which states that all legally made agreements apply as law for those who make them. However, this freedom is not absolute and is limited by three factors: (1) public order, (2) morality, and (3) law. For an agreement to be legally valid, it must meet the four requirements listed in Article 1320 of the Civil Code:

1. Consent of those who bind themselves.
2. Capacity to enter into an agreement.
3. A specific matter.
4. A lawful cause.

If the first and second conditions (subjective conditions) are not met, the agreement can be canceled. If the third and fourth conditions (objective conditions) are not met, the agreement is void by law.

### **Sale and purchase agreement**

Based on the provisions of Article 1457 of the Civil Code (KUHPerdata), a sale and purchase agreement can be defined as a legal relationship in which one party is obligated to deliver an object, while the other party is obligated to pay the agreed-upon price. Mulyati (2021:89) emphasizes that the essence of a sale and purchase agreement lies in two reciprocal obligations: the delivery of the object and the payment of the price. The sale and purchase of a land plot is a land purchase agreement where the object is a land right, in this case usually a Right of Ownership or Right to Build. The validity of a land sale and purchase must also comply with the provisions of the Basic Agrarian Law (UUPA), particularly regarding land registration to obtain a certificate as strong evidence.

## **Standard Contracts and Consumer Protection**

A standard contract is an agreement whose contents have been predetermined in writing by a specific party (usually a business actor) and is intended for a wide range of individuals without allowing for negotiation by consumers. According to Salim HS (2018), standard contracts often contain exoneration clauses, which are clauses that exempt or limit the liability of the parties drafting the agreement.

Law No. 8 of 1999 concerning Consumer Protection (UUPK) provides legal protection for consumers against the application of standard clauses that contain elements of injustice. Article 18 paragraph (1) of the UUPK explicitly prohibits businesses from including or using standard clauses in any document or agreement if the clause has the potential to cause harm to consumers.

Some clauses declared null and void by law according to Article 18 paragraph (3) of the UUPK include clauses that authorize businesses to reduce consumer rights, transfer responsibilities, or grant exemptions from their legal obligations. The principle of good faith in making and implementing agreements is also key to preventing arbitrariness (Mertokusumo, 2017).

## **METHODS**

The data analysis in this study used qualitative analysis with descriptive methods. Meleong (2022:123) explains that descriptive qualitative analysis aims to describe, explain, and analyze legal phenomena systematically and comprehensively. The collected data was analyzed through three stages: data reduction, data presentation, and conclusion drawing. The analysis was conducted by interpreting applicable legal provisions and applying them to the land plot sale and purchase agreements under study.

## **RESULTS**

Analysis of the Validity of the Land Purchase Agreement for the Kavling Dewe Developer Based on Article 1320 of the Civil Code.

Based on an analysis of the Kavling Dewe developer's land purchase agreement, the following requirements for a valid agreement can be outlined:

1. **Consensus:** Formally, an agreement is reached when the prospective buyer signs the agreement and pays the down payment. However, in the context of standard contracts, this agreement is often a pseudo-consensus. Consumers have no room to negotiate the terms of the agreement. However, as long as there is no proven coercion (dwanging) or fraud (bedrog), an agreement is legally considered to have existed. Fulfillment of this requirement is merely a formality.
2. **Competence:** The agreement requires that the parties be adults (at least 21 years old) or married, and not under guardianship. Developers typically request photocopies of the prospective buyer's ID card and family card to verify this competence. Therefore, the general competence requirement is met.
3. **Object of the Agreement (A Certain Thing):** The object of the agreement in this case is a plot of land with a specific number and title clearly stated in the agreement appendix. The legal status of the land is also explained, for example, regarding the division of ownership rights (certificate splitting). The requirements for a certain thing have been met.
4. **Lawful Cause:** The cause of this agreement is the sale and purchase of land for residential ownership or investment, which is a lawful purpose and does not conflict with law, public order, or morality. Therefore, formally and substantively, the land sale and purchase agreement for the Kavling Dewe developer meets the requirements for a valid agreement

under Article 1320 of the Civil Code. However, this formal validity does not necessarily guarantee the substantive fairness of the agreement's contents.

Identification and Analysis of Potentially Detrimental Clauses in the Dewe Plot Developer Agreement After being declared valid, the next step is to analyze the content of the agreement clauses to identify potential imbalances. Some critical clauses commonly found in developer agreements (including the Dewe Plot) that require criticism are:

### **Clause Regarding Late Payments and Fines**

The clause states: "If payment is not made within 1 (one) month, the buyer will be subject to a fine of IDR 2,000,000 (two million rupiah) per month." And "If within 3 (three) consecutive months after the certificate is issued, the buyer still fails to make payment, the plot purchase will be automatically cancelled without the buyer's consent, and any money already paid will be forfeited and will not be returned.". Analysis: This clause contains several provisions that are highly detrimental to consumers. According to Mulyati (2021), under the principle of proportionality in contract law, sanctions must be commensurate with the actual losses suffered. A fine of IDR 2,000,000 (two million rupiah) per month is required. 2,000,000 per month is considered disproportionate and potentially a disguised extortion tool. Furthermore, the provision in the clause stating that all payments already paid are forfeited is prohibited under Article 18 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection because it is clearly detrimental to consumers.

### **Unilateral Cancellation Clause by Consumer**

The clause reads: "The buyer or consumer may not unilaterally cancel the agreement, and the buyer or consumer may not sell the agreement to another party until full payment has been made." And "If the buyer or consumer unilaterally cancels the agreement, the payment already paid will be forfeited and will not be returned." Analysis: This clause is an adverse clause that is highly detrimental to consumers. This clause unilaterally grants the developer the right to confiscate all funds paid by the consumer, both in the event that the consumer cancels the agreement and in the event of a delay in payment beyond the tolerable limit. This practice can be categorized as a deliberate breach of contract by the contract designer (contractual default) because it imposes sanctions that do not reflect the extent of the actual losses suffered by the developer.

According to Yahya (2022), a clause that authorizes a business actor to unilaterally cancel a contract with the confiscation of the down payment is a prohibited standard clause because it significantly reduces the consumer's right to a proportional refund. This clause explicitly contradicts Article 18 paragraph (3) letter c of the Consumer Protection Law, which states that clauses governing the transfer of responsibility by a business actor are void. In this case, the developer of Kavling Dewe transfers the entire risk of transaction failure to the consumer, regardless of the amount deposited.

### **Unrealistic Grace Period Clause**

The clause states: "Pay a down payment of 70% of the selling price no later than one month after the down payment. If the 70% payment is not made within three months, the down payment will be forfeited, and the purchase will be considered cancelled." Analysis: Providing only one month to pay the 70% down payment is considered unrealistic and burdensome for consumers. Yahya (2022) states that business actors are required to provide consumers with a reasonable opportunity to fulfill their obligations. This clause can be categorized as an unfair trade practice prohibited by the Consumer Protection Law.

### **Certificate and Settlement Clause**

The clause states: "If the certificate has been finalized (issued by the National Land Agency), the buyer is required to make full payment within a maximum of 1 (one) month at the marketing office." Analysis: Allowing only 1 month to make full payment after the certificate is finalized is deemed to disregard the consumer's financial capabilities. Sutedi (2020) emphasized that a balanced agreement must consider the interests of both parties proportionally.

### **Down Payment Disbursement Clause**

The clause states: "A down payment of Rp. 5,000,000 (five million rupiah) is included in the calculation of the plot price." And "If 70% of the down payment is not made within 3 (three) months, the down payment will be deemed forfeited..." Analysis: This provision has the potential to create injustice because the down payment paid can be forfeited without taking into account the utility value received by the consumer. Widhiartana (2019) stated that in equitable contract law, the principle of restitution for value received must be considered.

### **Clause Prohibiting Transfer of Rights**

The clause states: "The buyer or consumer may not sell to another party until full payment has been made." Analysis: An absolute prohibition on transferring rights to another party constitutes an unreasonable restriction on consumer rights. Nugroho (2024) explains that excessive restrictions on rights in standard contracts can be categorized as prohibited monopolitical practices. Based on the analysis above, it can be concluded that this agreement is dominated by clauses that are detrimental to consumers and contradict the principle of fairness in contract law and the provisions of the Consumer Protection Law.

## **CONCLUSION**

1. The land purchase agreement drawn up by the Kavling Dewe developer formally meets the requirements for a valid agreement under Article 1320 of the Civil Code. However, the fulfillment of the "agreement" requirement in the context of this standard agreement is formal and does not reflect a balanced substantive agreement between the parties.
2. Several clauses in the Kavling Dewe developer agreement have the potential to harm consumers and are suspected of violating Law No. 8 of 1999 concerning Consumer Protection. These critical clauses include: (a) a disproportionate late payment penalty clause; (b) a unilateral cancellation clause by the consumer, which should be regulated by a cancellation mechanism with a fair value calculation; (c) an unrealistic grace period clause; (d) a certificate and settlement clause; (e) a down payment disbursement clause; and (f) a clause prohibiting the transfer of rights.

## **SUGGESTION**

1. For Consumers: Prospective land plot buyers are advised to carefully read and understand each clause in the agreement before signing. Consumers can request a written explanation of any clauses they find burdensome and have the right to know about the Consumer Dispute Resolution Agency (BPSK) forum as an alternative dispute resolution platform.
2. For Land Plot Developers: It would be advisable to revise the existing standard agreement by creating more balanced, fair, and transparent clauses. For example, by setting proportional fines (based on outstanding amounts), regulating the cancellation mechanism with a reasonable calculation of value, extending the down payment and settlement deadlines more realistically, ensuring transparency in the certification process with a clear

timeline for certificate completion, and explicitly stating the option of resolving disputes through the Consumer Dispute Resolution Agency (BPSK) in addition to the general courts.

3. For the Government and Related Authorities: The Financial Services Authority (OJK), as the licensed regulator in the financial services and property sectors, and the Kudus Regency Housing and Settlement Agency need to increase oversight of standard agreements used by developers. Public awareness campaigns regarding the rights and obligations of property consumers also need to be intensified.

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