

PROTECTION OF PROPERTY CONSUMERS ON THE CIVIL LIABILITY OF DEVELOPERS FOR MISLEADING PROPERTY ADVERTISEMENTS THAT CAUSE DEFAULTS AND TORT ACTIONS



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ABSTRACT (10 PT)

Intense competition in the property industry encourages developers to rely heavily on advertising, which often leads to misleading information that harms consumers. This study aims to analyze the civil liability of developers for losses caused by misleading property advertisements and to examine the legal remedies available to consumers. The research employs a normative legal method using statutory and conceptual approaches. The findings show that developers' civil liability may take the form of compensation, contract cancellation, or other remedies as regulated under the Civil Code and the Consumer Protection Law. Consumers may seek dispute resolution through the Consumer Dispute Resolution Agency (BPSK) or by filing civil lawsuits in court. Effective consumer protection depends on consumers' awareness of their legal rights and the appropriate use of available dispute resolution mechanisms.

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1. INTRODUCTION

The establishment of the State of Indonesia as mandated in the Preamble of the 1945 Constitution of the Republic of Indonesia in Paragraph IV has a fundamental objective to promote general welfare. This general welfare is realized through national development which prioritizes the

principle of full human development and the development of all Indonesian people by emphasizing the balance between outward and inward prosperity.¹ The development of the housing sector is one indicator of the achievement of general welfare mandated by the constitution. This is in line with the constitutional recognition of the right of every citizen to have a place to live as stipulated in Article 28H paragraph (1) of the 1945 Constitution which affirms the right of every person to live in physical and mental prosperity, to have a place to live, and to have a good and healthy environment. Housing as a basic human need has a strategic role in improving human dignity, so its fulfillment requires special attention to various aspects such as housing development policies, institutions, land, financing, and other supporting elements.²

The property industry is actually one of the economic sectors that has a strategic role in national development and Indonesia's economic growth. This sector not only contributes to the Gross Domestic Product (GDP), but also creates extensive employment opportunities and has an impact on other economic sectors. The rapid development of the property industry has encouraged increasingly intense competition among developers in marketing their property products. In the context of this competition, marketing and advertising strategies are important instruments for developers to attract consumer interest. However, improper advertising practices can lead to various legal problems that harm consumers.

Consumers as parties who have a relatively weak bargaining position in property transactions require adequate legal protection. The characteristics of property products that have high economic value, are long-term, and complex in technical and legal aspects make consumers vulnerable to *unfair* business practices. Consumer protection in the context of property does not only cover aspects of product quality, but also includes transparency of information, honesty in promotion, and fulfillment of promises that have been

¹ Nendissa, R. H. (2020). Interpreting Article 33 of the 1945 Constitution of the Republic of Indonesia in the Context of Maluku Development. In *Pattimura Proceeding: Conference of Science and Technology* (pp. 9-18).

² Isnaini, A. M., & Adnan, L. (2018). Citizens' rights in the fulfillment of a decent living environment from the perspective of human rights law. *Jatiswara*, 33(1).

communicated to consumers.³ The imbalance of information between developers and consumers demands a protection mechanism that can ensure consumer rights are optimally protected. This protection is all the more important given the significant financial impact of property purchase decisions for consumers.

In this legal relationship, the developer's civil liability to consumers is a fundamental aspect of the property business relationship that is regulated in various laws and regulations. These responsibilities include the obligation to provide accurate information, fulfill communicated promises, and provide products in accordance with the agreed standards.⁴ In the context of civil law, developer liability can be categorized into two main forms: contractual liability arising from the contractual relationship and non-contractual liability relating to tort.⁵ The distinction between these two forms of liability is important to determine the appropriate legal basis for resolving disputes between developers and consumers. The complexity of the legal relationship between developers and consumers demands an in-depth understanding of the aspects of civil liability in the property industry.

Misleading property advertisements can give rise to two different but interrelated forms of civil law violations, namely default and tort. Default occurs when the developer does not fulfill the obligations that have been agreed in the sale and purchase contract, including obligations arising from representations in advertisements that are part of the agreement.⁶ Meanwhile, unlawful acts can occur when the developer takes actions that contravene legal obligations, violate the rights of others, or contravene the prevailing decency in society.⁷ These two forms of violations have different legal consequences in terms of proof, basis of claim, and the form of compensation that can be requested by consumers. A proper understanding of the

³ Wulandari, Y. S. (2018). Legal Protection for Consumers on E-Commerce Sale and Purchase Transactions. *AJUDIKASI: Journal of Legal Science*, 2(2), 199-210.

⁴ Tatawinarta, Et.al. *Op.cit*.

⁵ Alfianto, D., Rido, A., & Wijaya, G. V. (2024). Civil Liability and Plaintiff's Liability in Cases of Default and Unlawful Acts. *Journal of Community Service: Empowerment, Innovation and Change*, 4(6).

⁶ Tobing, R. Y. L., Suradi, S., & Hendrawati, D. (2019). Lawsuit against the sale and purchase of a house that is not in accordance with the brochure. *Diponegoro Law Journal*, 8(2), 1459-1476.

⁷ *Ibid*

differences between these two concepts is important to determine an effective legal strategy in protecting consumer rights.

Consumer protection mechanisms in property disputes involve various legal instruments and available dispute resolution institutions. The Consumer Protection Law provides a strong legal foundation for consumers to obtain protection against harmful business practices, including in the context of misleading advertising. Dispute resolution can be carried out through various channels, ranging from out-of-court settlements such as mediation and arbitration to settlement through formal institutions such as the Consumer Dispute Resolution Agency (BPSK) and district courts.⁸ Each resolution channel has different characteristics, procedures, and advantages in providing protection to consumers.

The effectiveness of consumer protection mechanisms is highly dependent on consumers' understanding of their rights and ability to access the appropriate resolution channel according to the characteristics of the problem at hand. Analysis of various aspects of civil law, ranging from the concepts of default and tort to dispute resolution procedures and channels, is important to provide a comprehensive understanding of consumer protection in the property industry. This study is expected to contribute to efforts to improve consumer protection and create a healthier and more equitable property business climate. Through an in-depth understanding of the aspects of civil law in the context of property advertising, it is hoped that an appropriate balance can be created between the business interests of developers and the protection of consumer rights.

1.1 Problem Formulation

Based on the background of the problem above, the author formulates the problem, among others:

- a. How is the developer's civil liability to consumers harmed by misleading property advertisements?
- b. What legal efforts can consumers make to get protection for losses due to misleading property advertisements?

⁸ Dinata, A. P., Khalimi, K., & Mustafa, M. E. (2025). Legal Certainty of Consumer Dispute Resolution Agency (BPSK) by Arbitration. *Blantika: Multidisciplinary Journal*, 3(4).

1.2 Research Objective

Based on the formulation of the problem above, the authors formulate research objectives, among others:

- a. To analyze and explain the developer's civil liability to consumers harmed by misleading property advertisements, including forms of liability (indemnification, contract cancellation, compensation), the legal basis for civil liability, and the developer's liability mechanism.
- b. To identify and analyze legal efforts that consumers can take to obtain protection for losses due to misleading property advertisements, including analysis according to the Consumer Protection Law, civil lawsuit procedures, dispute resolution channels (BPSK, mediation, courts), lawsuit requirements, and types of claims that can be filed by consumers.

1.3 Research Methods

The research method used is a normative legal research method that focuses on the interpretation and analysis of *laws* and regulations (*law in books*) that function as guidelines for socially acceptable human behavior.⁹ This research is often known as legal theoretical research, where the law is often interpreted as what is listed in the written legal framework (*law in books*) or as normative guidelines that serve as a reference in human behavior that is considered appropriate.¹⁰ In this research, the author uses several approaches, namely the *Statute Approach* and *Conceptual Approach*. The statutory approach is carried out in research to find and provide a legal basis for the case of misleading property advertisements and the position of consumer protection from developer civil liability is needed to help fulfill justice for consumers. By studying the views and doctrines in law, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles relevant to the issue at hand.¹¹

2. RESEARCH RESULTS AND DISCUSSION

⁹ Amiruddin & Zainal A. (2006). *Introduction to Legal Research Methods*. Jakarta: Raja Grafindo Persada, pp. 118.

¹⁰ Ibid

¹¹ Peter Mahmud Marzuki, *Legal Research*, Kencana, Jakarta, 2005, Page 9.

2.1 Developer's Civil Liability for Consumers Harmed by Misleading Property Advertisements

The reality in the field shows that not a few developers use problematic advertising practices by making unrealistic promises in their advertisements. For example, in housing advertisements, developers often offer various advantages such as strategic locations with easy access to various public facilities, affordable prices with various discount schemes for early buyers, and property designs tailored to the preferences of the general public that not only target the elite but also the lower middle segment to expand market reach. This kind of promotional strategy is specifically designed to attract potential buyers, but the reality encountered by consumers is often far different from what is promised in advertisements, where the property offered turns out to be still a concept or design printed in brochures without concrete physical realization.¹²

Inosentius Samsul, in his book states that in its implementation, promotional activities in an advertisement involve 4 (four) parties, namely as follows:¹³

- a. Business actors, as owners of goods and / or services, submit requests or messages that both concern the form and content of advertisements, so that advertising agencies design or polish the form or content of advertisements in accordance with the wishes or tastes of producers;
- b. Advertising bureau, this bureau is in charge of designing advertisements both regarding the form and content;
- c. Advertising media, this media is only tasked with airing goods and / or services, which have been polished by an advertising agency; and
- d. Consumers, as the party that is the target of the delivery of the advertisement.

¹² Purwita, I. M., & Sudantra, I. K. (2018). Responsibility of Business Actors related to Advertising Property Products before they are Built based on the Consumer Protection Law. *Udayana University, Bali*.

¹³ Inosentius Samsul, Compilation of Consumer Protection, Ministry of Law and Human Rights of the Republic of Indonesia, Legal Development Agency. <https://bphn.go.id/data/documents/17kompilasiPERLINDUNGAN%20KONSUMEN.pdf>. Accessed on July 18, 2025.

The sales system applied in property advertising practices generally uses a pre-project selling scheme or indent system, where consumers are required to make reservations and payments in advance even though the property purchased has not been physically built. In this scheme, consumers do not have the opportunity to directly see the real condition of the property they are going to buy, but are only shown visual presentations, mockups, and *show units* which are representations of development plans. This practice creates a significant information imbalance between developers and consumers, where consumers must make purchasing decisions based on limited information and representations that may not be entirely accurate.¹⁴ This imbalance has the potential to cause legal problems when the realization of the property does not match what was promised in the advertisements and presentations that have been given to consumers.

The developer's obligation as a business actor in a property sale and purchase transaction is to deliver and provide guarantees for the goods or services traded to consumers.¹⁵ The concept of guarantee in this context refers to the developer's obligation to ensure that consumers obtain a sense of security, comfort, and peace of mind in using the property products that have been purchased.¹⁶ As stated by R. Subekti, the obligation to provide a peaceful guarantee means that the developer must ensure that consumers will not experience disturbance or loss from other parties in terms of utilization or use of the property they have purchased.¹⁷ This obligation covers not only the physical aspects of the property, but also legal aspects such as ownership status, necessary permits, and compliance with applicable regulations.

The developer's civil liability to consumers in the context of misleading property advertisements is a fundamental aspect that regulates the legal relationship between business actors and consumers in property transactions. The concept of civil liability arises as a consequence of the legal relationship created between developers as providers of goods/services and consumers as

¹⁴ Purwita, I. et. al. *Op.cit.*

¹⁵ Salim, N., & Pandamdari, E. (2019). Developer's Responsibility Toward Consumers Due to Default in the Delivery of Pluit Sea View Apartment Units Based on the Sales and Purchase Binding Agreement. *Adigama Law Journal*, 2(2), 1310-1334.

¹⁶ *Ibid*

¹⁷ Raden Subekti, *Various Laws of Agreement*, Pradnya Paramitha, Jakarta, 1984, pp. 19.

recipients of goods/services, where in this relationship there are obligations that must be fulfilled by each party.¹⁸ When developers do not fulfill their obligations or take actions that harm consumers, then there is a civil responsibility that must be borne by the developer. This responsibility has a broad dimension, covering both contractual and non-contractual aspects, each of which has different characteristics and legal consequences.¹⁹ An in-depth understanding of the concept of civil liability is important to provide optimal protection to consumers while creating legal certainty for developers in carrying out their business activities.

The forms of civil liability of developers to consumers harmed by misleading property advertisements can be categorized into several types according to the nature and characteristics of the losses suffered by consumers, among others:²⁰

- a. Responsibility in the form of compensation, which is the developer's obligation to compensate for the losses suffered by consumers due to advertisements that are not in accordance with reality.
- b. Contract cancellation, where consumers have the right to cancel the property sale and purchase agreement if it is proven that the purchase decision was based on misleading information in the advertisement.
- c. Compensation in other forms, such as repair or replacement of facilities that are not as promised in the advertisement.

The implementation of these forms of responsibility in property business practices, especially in the *pre-project selling* system, must still pay attention to the basic principles of applicable agreement law.²¹ In practice, this property advertisement must also pay attention to the legal requirements

¹⁸ Bhakti, R. T. A. (2019). Legal Protection of Property Consumers on Pre Project Selling System in Batam City. *Journal of Light of Justice*, 7(1), 228-247.

¹⁹ *Ibid*

²⁰ Makakaombo, V. (2015). Legal Responsibility of Developer Toward Homeowners in Citraland Manado Housing. *Lex Privatum*, 3(3).

²¹ Andalusia, A., Elmis, L., & Oktarina, N. (2023). Legal Protection of Consumers in Housing Sale and Purchase Agreements with Pre Project Selling Systems in West Sumatra. *Unes Journal of Swara Justisia*, 6(4), 356-367.

of an agreement as stated in Article 1320 of the Civil Code which determines that for the validity of an agreement four conditions are required, namely;

- a. Agreement of those who bind themselves;
- b. Capacity to make an agreement;
- c. A certain thing;
- d. A permissible cause.

The parties are indeed given the freedom to determine the contents of the agreement in accordance with their agreement as an embodiment of the principle of freedom of contract (*partij autonomie*). However, this freedom is not absolute and is limited by the provisions in Article 1337 of the Civil Code which requires that an agreement must not conflict with the principles of decency and public order. In the context of misleading property advertisements, this restriction becomes relevant because dishonest advertising practices can be categorized as a violation of the principle of decency in doing business. This shows that although developers have the freedom to determine marketing strategies, including in compiling advertising content, this freedom must still be limited by the ethical and moral norms prevailing in society.

An analysis of the relationship between forms of civil liability and the validity of agreements shows that misleading property advertisements can fundamentally affect the validity of property sale and purchase agreements. When advertisements contain inaccurate or misleading information, this can result in a defect of will (*wilsgebreken*) on the part of consumers who base their purchasing decisions on such information. This defect of will can be in the form of a mistake (*dwaling*) regarding the object of the agreement or the important properties of the object, which according to Article 1321 of the Civil Code can be the basis for canceling the agreement.²² In addition, deliberately misleading advertising practices can also be categorized as fraud (*bedrog*), which based on Article 1328 of the Civil Code is a reason for cancellation of the agreement.²³ In this context, the developer's civil liability is not only limited to providing compensation for losses that have occurred, but can also include the obligation to accept the cancellation of the agreement

²² Arrodli, A. J., Ramadhan, A., Pamungkas, D. D., Muhammad, D. Z., & Anugrah, D. (2024). Legal Consequences of Defect of Will in the Formation of Agreement in accordance with Article 1320 of the Civil Code. *Letterlijk*, 1(2), 204-216.

²³ *Ibid*

and return all achievements that have been received from consumers, including down payments and installments that have been paid along with interest and other losses that can be proven by consumers.

Thus, the legal basis for the developer's civil liability in the context of misleading property advertisements can be found in various laws and regulations governing the relationship between business actors and consumers. The Civil Code (KUHPerdata) as *lex generalis* provides a fundamental basis for civil liability, especially in Article 1365 which regulates tort. Article 1365 of the Civil Code states that "Every unlawful act, which causes loss to another, obliges the person who through his fault causes the loss, to compensate the loss." In addition, Article 1234 of the Civil Code regulates default which states that "Every obligation is created either by consent or by law," which provides the basis for the developer's contractual liability. Article 1243 of the Civil Code is also relevant which states that "Reimbursement of costs, losses and interest for non-fulfillment of an obligation shall only begin to be required, if the debtor, after being declared negligent to fulfill his obligation, continues to neglect it, or if something that must be given or made, can only be given or made within the time limit that has been exceeded."

Law Number 8 Year 1999 on Consumer Protection (UUPK) provides a more specific regulation on the responsibility of business actors towards consumers. Article 7 of the GCPL regulates the obligations of business actors, one of which is "to provide correct, clear and honest information regarding the condition and guarantee of goods and/or services and to provide explanations for use, repair and maintenance." Furthermore, Article 8 of the GCPL regulates prohibited acts for business actors, including "not fulfilling or not in accordance with the required standards and provisions of laws and regulations" and "not in accordance with the net weight, net or net contents, and the number in the count as stated in the label or etiquette of the goods." Then Article 19 of the GCPL expressly regulates the responsibility of business actors which states that "Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded."

The liability of developers in the context of misleading property advertising depends largely on the level of involvement and control they have in the process of creating and disseminating such advertisements. The greater

the developer's involvement in the preparation of the advertising content, the greater the responsibility they should bear for the consequences of the advertisement. This is in line with the principle of proportional responsibility, where the party who has greater control and benefits from an activity must also bear greater risks and responsibilities. In the practice of property advertising, developers generally have full control over the content of the advertisement, from the concept, design, to the distribution media, so they cannot avoid responsibility for the accuracy of the information conveyed in the advertisement.

Thus, the liability that can be imposed on property developers in cases of misleading advertising can be categorized into *product liability* and *professional liability*, depending on the nature and characteristics of the violation committed.²⁴ Product liability refers to the developer's legal responsibility to compensate for losses suffered by consumers due to defects or non-conformity of property products with the required standards or those promised in the advertisement.²⁵ Meanwhile, professional liability relates to the developer's responsibility for negligence or errors in carrying out their professional obligations, including the obligation to provide accurate and honest information to consumers²⁶. These two forms of liability have different legal bases and consequences, but both aim to provide protection to consumers and ensure that developers meet the required standards in carrying out their business activities.

2.2 Consumer Legal Efforts for Protection of Losses Due to Misleading Property Advertisements

Legal protection for consumers who suffer losses due to misleading property advertisements is a fundamental right guaranteed by the Indonesian legal system through various instruments and dispute resolution mechanisms. Aggrieved consumers have access to various dispute resolution channels, ranging from out-of-court mechanisms to formal procedures through judicial institutions. This diversity of legal remedy options provides consumers with the flexibility to choose the path that best suits the characteristics of the

²⁴ Andalusia, A. et.al. *Op,cit*

²⁵ *Ibid*

²⁶ *Ibid*

problem at hand, the level of loss experienced, and their capacity and preferences in resolving disputes. A comprehensive understanding of the various legal remedies available is essential for consumers to be able to optimize the legal protection provided by the national legal system. The effectiveness of consumer protection is highly dependent on the ability of consumers to identify and use the appropriate resolution channels according to the situation at hand.

Harjono in his statement said that the term *legal protection* is used in English, while the term *rechtsbecherming* is used in Dutch.²⁷ The concept put forward by Harjono is that legal protection is the protection of certain interests, both through the use of legal means and by subsequently transforming the protected interests into legitimate rights, namely the protection provided by law to prove it.²⁸ According to Muchsin, the concept of legal protection plays a role in protecting legal subjects through applicable regulations, where its implementation can be enforced through the application of sanctions.²⁹ This legal protection is divided into two main forms, namely:³⁰

- a. Preventive Legal Protection is a form of government protection aimed at preventing violations before they occur. This protection is embodied in laws and regulations that provide direction and restrictions to developers in carrying out property advertising activities, which are primarily intended to avoid disputes between developers and consumers. Preventive protection is particularly important in a property industry that relies on a *pre-project selling* system because this precautionary principle requires developers to be careful in conveying information and promises in their advertisements. This form of preventive protection includes the developer's obligation to provide clear, correct, and honest information as stipulated in Article 7 of the GCPL, the prohibition of including standard clauses that harm consumers, as well as the

²⁷ Harjono, *The Constitution as the House of the Nation* Jakarta, Secretariat General and Registrar of the Constitutional Court, 2008, p.357.

²⁸ *Ibid*

²⁹ Dermawan, Ari, Akmal. Urgency of Legal Protection for Victims of Information Technology Crimes. *Journal of science and social research*, 2020, 2.2: 39-46.

³⁰ Muchsin, *Protection and Legal Certainty for Investors in Indonesia*, Surakarta, Sebelas Maret University, 2003, p. 14. 14.

obligation to have a business license and certification required in running a property business.

- b. Repressive Legal Protection is consumer protection implemented after the occurrence of misleading property advertising practices that harm consumers, accompanied by consequences in the form of administrative, civil, and criminal sanctions against offending developers. This repressive protection emphasizes law enforcement against violations of unethical advertising practices and is closely related to the protection of property consumer rights. This protection is an attempt to set limits and responsibilities to developers as business actors, a concept rooted in the principles of consumer protection and the balanced relationship between business actors and consumers. Repressive forms of protection include the imposition of administrative sanctions by relevant agencies, compensation claims through BPSK or the courts, as well as the application of criminal sanctions for developers who are proven to commit fraud or intentionally misleading advertising practices.

Thus, overall, these two forms of legal protection create a balance between preventive measures and law enforcement, ensuring that people's rights are guaranteed, both before and after a violation occurs.

Consumers who suffer losses due to misleading property advertisements can pursue dispute resolution through the Consumer Dispute Settlement Body (BPSK) as an alternative out-of-court settlement that is fast, cheap, and easily accessible. BPSK is a special institution established under Law No. 8/1999 on Consumer Protection to settle consumer disputes out of court. Article 52 of the GCPL states that "The consumer dispute resolution body has the duty and authority:

- a. carry out handling and settlement of consumer disputes, by way of mediation or arbitration or conciliation;
- b. provide consumer protection consultation;
- c. supervise the inclusion of standard clauses;
- d. report to the public investigator if there is a violation of the provisions in this law;
- e. receive complaints, both written and unwritten, from consumers about violations of consumer protection."

The settlement procedure through BPSK is regulated in Article 54 of the GCPL which states that "Complaints as referred to in Article 53 paragraph (3) may be filed by:

- a. an aggrieved consumer or his/her heirs;
- b. a group of consumers who have the same interests;
- c. a qualified non-governmental consumer protection organization, which is in the form of a legal entity or foundation, which in its articles of association explicitly states that the purpose of establishing the organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association.
- d. the government and/or relevant agencies if the goods and/or services consumed or utilized result in large material losses and/or a large number of victims."

Dispute resolution through mediation is one alternative that consumers can choose to resolve problems with developers in a win-win solution without having to go through a protracted process. Mediation in the context of consumer protection can be conducted through BPSK or through other independent mediation institutions. The mediation process is regulated in Article 1 point 10 of Supreme Court Regulation No. 1/2016 on Mediation Procedures in Courts, which defines mediation as "a way of resolving disputes through a negotiation process to obtain agreement between the Parties with the assistance of a Mediator."

The advantages of mediation lie in its confidentiality, flexibility, and giving full control to the parties to determine the agreed settlement.³¹ In the context of misleading property advertising disputes, mediation can result in creative solutions such as replacement of units, repair of facilities, or compensation in other forms that can satisfy both parties. Article 52 paragraph (1) letter a of GCPL authorizes BPSK to carry out the settlement of consumer disputes through mediation, whose procedures are further regulated in the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 on the Implementation of Duties and Authority of the Consumer Dispute Settlement Body.

³¹ Mantili, R., & Sutanto, S. (2019). Cumulation of Wrongful Acts Lawsuits and Default Lawsuits in the Study of Civil Procedure Law in Indonesia. *Dialogia Iuridica*, 10(2), 1-18.

In practice, BPSK often proposes that the parties make peace outside of the hearing. If this proposal is accepted, the case can be resolved without a trial. For example, the business may be obliged to compensate the consumer for the loss suffered, in accordance with the peace agreement reached. The compensation could be in the form of renovating the consumer's house to match the initial agreement between the developer and the consumer.³² This shows that BPSK does not only play a role in deciding disputes, but also in encouraging peaceful settlements that benefit both parties.

Consumers can also file a civil lawsuit through the district court if the settlement through the out-of-court mechanism is unsuccessful or does not meet the consumer's expectations. Civil lawsuits can be based on two main legal grounds, namely default and tort. Civil lawsuit procedures are regulated in the *Herziene Indonesisch Reglement (HIR)* and *Reglement Buitengewesten (RBg)* which regulate court procedures.³³ Consumers or people who want to buy a house to a developer must be observant in choosing a house built by a developer. Along with developers who do not carry out their obligations that have been poured into the agreement that has been signed jointly by both parties. However, to be able to know the Developer is said to be in default against its consumers because it is intentional or unintentional. Default is in the form of:

- a. Absolutely do not fulfill the achievement
- b. The achievement made is not perfect
- c. Late in fulfilling the performance
- d. Violating what is violated in the agreement.

Not only that, Article 8 of Law Number 8 of 1999 concerning Consumer Protection, which regulates prohibitions for business actors which are general in nature and can be broadly divided into 2 (two), namely:

- a. Prohibition regarding the product itself, which does not meet the requirements and standards that are suitable for use or use or utilization by consumers.
- b. Prohibition regarding the availability of information that is untrue, inaccurate, and misleading to consumers.

³² Apituley, J. A. A. (2024). Legal Protection of Consumers Against Developer Defaults in the Agreement for Sale and Purchase of Home Ownership Loans in the Property Business. *Lex Privatum*, 13(3).

³³ Mantili, R., & Sutanto, S. Op.cit

In the context of misleading property advertisements, the fundamentum petendi must contain a description of how the advertisement misleads consumers and how it causes harm and what is clearly demanded from the developer. Article 1865 of the Civil Code regulates the burden of proof which states that "Every person who argues that he has a right, or, in order to assert his own rights or dispute the rights of others, points to an event, is required to prove the existence of the right or event." Consumers who file a lawsuit must be able to prove the existence of misleading advertisements, the losses suffered, and the causal relationship between the advertisement and the losses suffered as one of the elements of wanprestasi and the prohibition of business advertising according to the GCPL Law is fulfilled.

The types of claims that consumers can file in a civil lawsuit for losses due to misleading property advertisements can vary depending on the characteristics of the loss and the objectives that consumers want to achieve are as follows:³⁴

- a. A claim for material damages which may be in the form of a refund of money paid, the difference in price between what was promised and what was actually paid, or the additional costs incurred by the consumer to obtain the facilities as promised. Article 1246 of the Civil Code stipulates that compensation consists of "losses actually suffered and profits that could have been obtained."
- b. A lawsuit for cancellation of the contract with the consequence of returning both parties to their original state (*restitutio in integrum*), as stipulated in Article 1449 of the Civil Code regarding the cancellation of a sale and purchase due to a hidden defect.
- c. A suit for fulfillment of performance (*nakoming*) where the consumer demands that the developer fulfill its promises as advertised.
- d. Immaterial damages lawsuit for losses that cannot be valued in money such as psychological or reputational losses. Article 19 paragraph (2) of the GCPL stipulates that "Compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent

³⁴ Walelang, M. (2015). Lawsuit on Violation by Business Actors in Consumer Dispute Resolution. *LEX ET SOCIETATIS*, 3(10).

value, or health care and/or compensation in accordance with the provisions of applicable laws and regulations."

Consumers can also file a class action lawsuit if there are many consumers who have suffered similar losses due to the same advertisement, as stipulated in Article 46 paragraph (1) letter b of the GCPL which allows "a group of consumers who have the same interests" to file a lawsuit.

The effectiveness of the legal remedy chosen by consumers is highly dependent on the quality of the legal preparation and strategy applied, as well as a deep understanding of the characteristics of each dispute resolution channel. The selection of the BPSK route is more appropriate for disputes with a small amount of loss and where the parties still have the goodwill to resolve the problem amicably. Meanwhile, a civil lawsuit through the court is more appropriate for cases with significant losses, high legal complexity, or when the developer does not show good faith in the settlement. Mediation can be an effective option when both parties have an interest in maintaining a long-term business relationship and avoiding negative publicity. The success of legal remedies also depends heavily on the quality of the consumer's evidence, including advertising documentation, sale and purchase contracts, proof of payment, and other evidence that can support the claim. Consumers also need to consider the cost-benefit analysis aspect in choosing a settlement path, considering that each path has different cost and time consequences.

3. CLOSING

The developer's civil liability to consumers harmed by misleading property advertisements can be categorized into several forms according to the characteristics of the losses experienced by consumers. These forms of responsibility include material and immaterial compensation for losses actually suffered by consumers, cancellation of the property sale and purchase contract with the consequence of returning both parties to their original state, as well as compensation in other forms such as repair or replacement of facilities that are not in accordance with those promised in the advertisement. The legal basis for the developer's civil liability is regulated in various laws and regulations, in particular Article 1365 of the Civil Code on unlawful acts, Article 1243 of the Civil Code on default, as well as Articles 7, 8, and 19 of Law Number 8 Year 1999 on Consumer Protection which regulates the

obligation of business actors to provide correct information and responsibility for consumer losses.

Legal efforts that consumers can take to obtain protection for losses due to misleading property advertisements include out-of-court settlement channels and through formal judicial institutions. Consumers can file a complaint through the Consumer Dispute Resolution Agency (BPSK) as stipulated in Articles 52 and 54 of the GCPL, which offers dispute resolution through mediation, conciliation, or arbitration that is faster, cheaper, and more accessible. Another alternative is to file a civil lawsuit through the district court on the basis of default or tort, which requires the fulfillment of lawsuit requirements as stipulated in Article 118 HIR and the burden of proof under Article 1865 of the Civil Code. The effectiveness of the chosen legal remedy is highly dependent on the characteristics of the problem, the level of loss, the quality of evidence, and cost-benefit analysis considerations in determining the most appropriate dispute resolution path.

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