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## Government Intervention in Supervising Sale And Purchase Apartments Through Pre-Project Selling Systems in Indonesia

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### Abstract

This study aims to determine the importance of government intervention to provide oversight of the sale and purchase apartments with a pre-project selling marketing system. This study uses a doctrinal legal research method that uses a statutory approach and a conceptual approach. The legal materials used are primary legal materials and secondary legal materials which are analyzed deductively and prescriptively. The results of the study explained that even though there had been regulations regarding the sale and purchase of apartments with a pre-project selling system, it turned out that in practice there were still many consumers who suffered losses. This was allegedly due to the absence of sanctions made by the government to overcome the fraudulent developers and the lack of government role in overseeing the process of buying and selling apartments with a pre-project selling system. So that government intervention is needed in buying and selling apartments with a pre-project selling system to meet the occupancy needs of the Indonesian people and protect Indonesian consumers.

**Keywords:** Government Intervention; Supervision; Commercial Flats; Pre-Project Selling.

### Introduction

Humans as social beings have various needs in their lives. One of the basic human needs is the need for shelter. Fulfillment of housing for Indonesian citizens has been guaranteed in the 1945 Constitution of the Republic of Indonesia Article 28 H which reads, “every person has the right to live in physical and spiritual prosperity, to live and obtain a good and healthy environment and obtain services health”. The need for housing is increasing every year, directly proportional to the growth in the number of the human population which is also increasing. Our Constitution guarantees that everyone has the right to live in a healthy and healthy environment.

But the most essential problem is whether the existing land is sufficient and fulfills to create a good and healthy environment.<sup>1</sup>

Population growth in Indonesia, especially those living in urban areas that reach 52 per cent to 68 per cent in the next few years, is still not matched by adequate housing availability. The Indonesian government is aware of the shortage of supplies (backlogs) of up to 12 million homes. Until 2017, Indonesia is only able to meet 60 per cent of the needs of homes that reach 820 thousand units to 1 million units per year.<sup>2</sup> Housing needs in Indonesia according to the Central Statistics Agency (BPS) in the next 20 years coupled with a backlog<sup>3</sup> that will now reach 31 million units.<sup>4</sup> In fact, the impact of increasing housing needs that are not matched by the availability of suitable housing can cause negative effects on other aspects.<sup>5</sup> Based on this, efforts to build housing and settlements continue to be increased to provide an increasing number of housing and at affordable prices.<sup>6</sup> The growth of the housing sector in Indonesia can be seen from data released by Bank Indonesia as an illustration of the condition of property developments in Indonesia. The following are the survey data related to the annual growth of the commercial property price index and quarterly growth in home sales.

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<sup>1</sup> Situmorang Palmer, [et., al.], 'Consumer Legal Protection Against Housing Developers: Examination of Sale and Purchase of Flats Before Commencement of Construction Process' (2018) 77 RJOAS <<https://scholar.ui.ac.id/en/publications/consumer-legal-protection-against-housing-developers-an-examinati>>.[3].

<sup>2</sup> Fiki Ariyanti, 'Sri Mulyani: RI Kekurangan Pasokan 12 Juta Unit Rumah' (*Liputan6*, 2017) <<http://www.liputan6.com/bisnis/read/2900733/sri-mulyani-ri-kekurangan-pasokan-12-juta-unit-rumah>> accessed 2 April 2018.

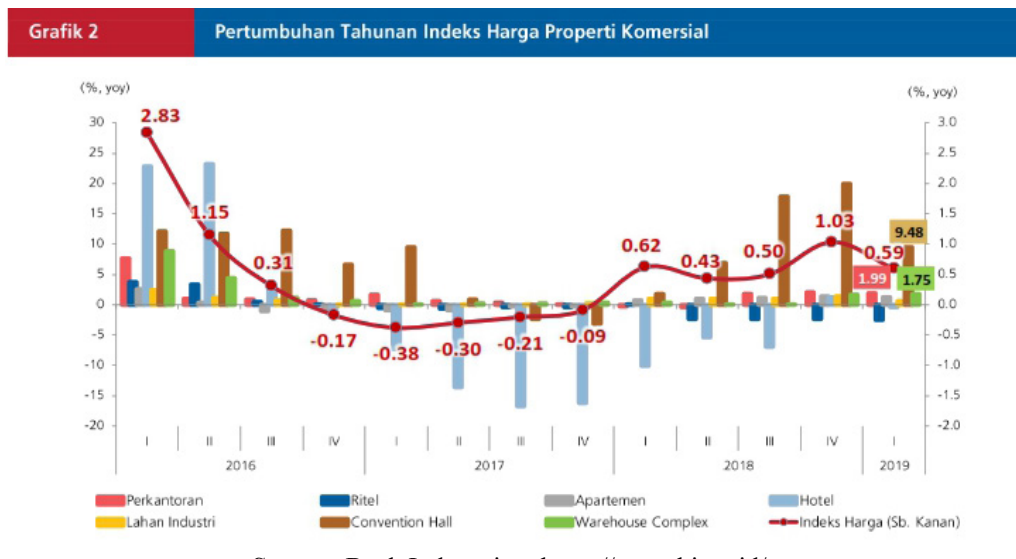
<sup>3</sup> In the world of property, the term 'backlog' can be interpreted as a gap between the number of houses built and the number of houses needed by the people, as quoted from Anto Erawan, 'Perbedaan "Backlog" Versi Kemenpera Dan BPS' (*Rumah.com*, 2012) <<http://www.rumah.com/berita-properti/2012/6/1088/perbedaan-backlog-versi-kemenpera-dan-bps>> accessed 15 July 2019.

<sup>4</sup> Meutia Febrina Anugrah, 'Kebutuhan Rumah Di Indonesia Membeludak 31 Juta Unit' (*Okezone.com*, 2014) <<https://economy.okezone.com/read/2014/09/02/471/1033216/kebutuhan-rumah-di-indonesia-membeludak-31-juta-unit>> accessed 15 July 2019.

<sup>5</sup> Soemarwoto. O, *Ekologi, Lingkungan Dan Pembangunan* (Djambatan 2001).[11].

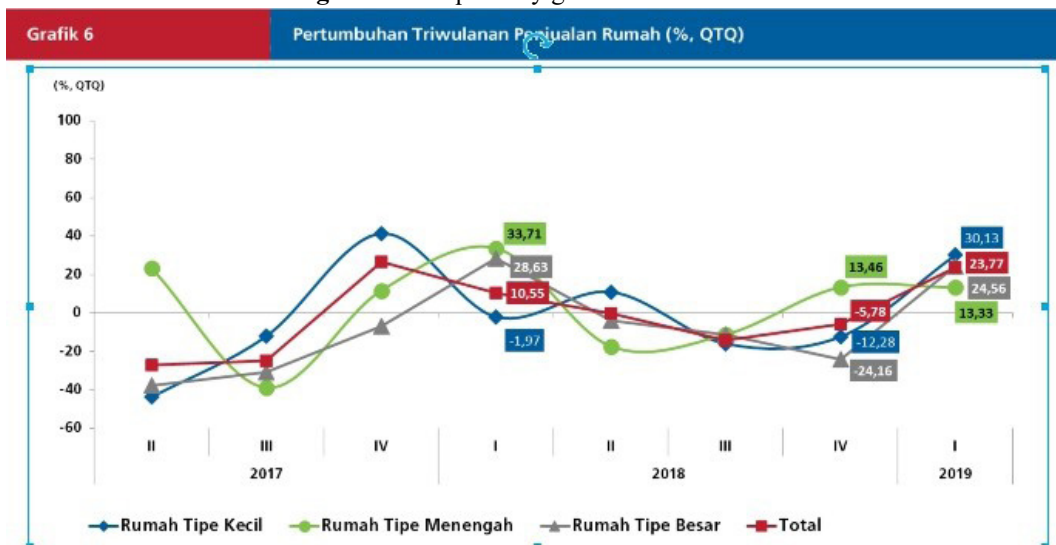
<sup>6</sup> Andi Hamzah, *Dasar-Dasar Hukum Perumahan* (Rineka Cipta 1990).[27].

Figure 1. The annual growth of the commercial property price index



The results of the commercial property price development survey released by Bank Indonesia show that on an annual basis, the commercial property price index has decreased significantly from 2016 to 2017. However, it began to rise again in 2018 and tends to stabilize in 2019. The slowdown in price increases mainly due to a decrease in commercial property prices in the rental apartment segment by -4.52 percent, especially in the Bandung and Jabodetabek areas. Besides, the decline also occurred in the leased office segment by -3.70 percent, especially in the Denpasar area, and the decline in selling retail prices by -2.50 percent, especially in the Jabodetabek region.

Figure 2. The quarterly growth in home sales



The results of the 2019 quarterly residential property sales survey conducted by Bank Indonesia showed that residential property sales in the first quarter of 2019 grew by 23.77 percent, higher by -5.78 percent compared to the previous quarter and higher by 10, 55 percent compared to the same period in 2018. The increase in sales in Q1 / 2019 was due to increased sales in small and large types of houses, as well as the steady growth in sales of large type houses. From the graph, it can be seen that the sale of small type houses increased from -12.28 percent in the previous quarter to 30.13 percent. While large types of houses increased -24.16 percent to 24.56 percent and the growth of middle-type home sales tended to be stable at around 13 percent.

Limited land and the increasing need to make housing development not only an effort to meet the primary needs of the community but also as an effort to create community welfare fairly and equitably.<sup>7</sup> As one solution to the problem of settlements, the existence of flats is expected to be able to answer the needs of the community and therefore to accommodate the interests of the community and the government issues Law Number 20 of 2011 concerning Flats (Flats Law). In recent years the development of housing development in large cities in the form of commercial flats such as apartments and condos has indeed increased rapidly and competition is very tight in attracting consumers. This is because flats have a multi-story residential concept that is considered more practical and efficient in large cities with a high population but with very limited land.<sup>8</sup> So with a very rapid increase in the community's need for boards, it has created a practical and fast way to sell property in the form of offices, housing and apartments that are carried out by developers, especially by the marketing division is known as the Pre Project Selling system.

Pre-project selling is property sales before the project is built and the ones sold are in the form of pictures or concepts. The reason the developer practices pre-project selling is to find out the market response to the property product that

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<sup>7</sup> Djumaldji, *Hukum Bangunan* (1st edn, Rineka Cipta 1996).[1].

<sup>8</sup> Lintang Yudhantaka, 'Keabsahan Kontrak Jual Beli Rumah Susun Dengan Sistem Pre Project Selling' (2017) 32 *Yuridika* <<https://e-journal.unair.ac.id/YDK/article/view/4793>>.[1]

will be built (test the water). Pre-project selling is possible as long as it meets the requirements stipulated in the Flats Law. According to Article 42 Paragraph (2) of this Law, marketing of flats is possible before construction of flats is carried out provided that the development actors have at least certainty of land use; certainty of land rights; certainty of ownership status of flats; permit for the construction of flats; and the guarantee for the construction of flats from the guarantor institution. Pre-Project Selling is a very good solution for developers but often does not have a good enough effect on consumers. This is because there are often legal problems relating to marketing in pre-project selling because in practice the implementation of pre-selling projects is often carried out before the permit is completed. This not only violates the law but also has the potential to put consumers in a risk of default (bad performance), in the form of what is not agreed upon; implemented but not on time (late); implemented but not as agreed; and carried out but according to the agreement it should not be done.

According to data from the Indonesian Consumers Foundation (YLKI), the pre-project selling system carried out by many developers is often a source of problems for consumers in the future. Since 2014-2016, YLKI has received at least 440 complaints related to housing, the majority of which have occurred due to the lack of consistency between offers and promises of developer promotions with the reality of the development that occurred. Even in 2015, around 40 per cent of housing complaints occurred due to pre-selling projects, with unclear, correct and honest information regarding development; realization of problematic public facilities/social facilities; and units change from what is offered. The rise of deviations in pre-project selling is caused by several weaknesses in the legal rules governing the construction of these flats, and also the inconsistency of consumers in paying attention to anything that is stated in the Agreement on Binding of Sale and Purchase (PPJB), among others related to the inconsistency of meaning in the implementation of pre-project selling promotions, detailed explanation regarding what permits are needed in the construction of flats, not there is sanction with regard to violations in the process of implementing promotions which then causes

the number of consumers to be harmed because of the position and position of consumers who are disadvantaged and protected if there is a breach of contract in the implementation of pre-project selling.<sup>9</sup>

Some cases that occurred due to regulatory weakness in protecting consumers occurred in the case of Meikarta's pre-project selling. Meikarta is the construction of a new city with a capacity of up to two million residents in the Cikarang Selatan area of Bekasi, West Java. The Grand Launching of this product was carried out before the construction of Meikarta received a permit from the Local Government, Meikarta also provided misleading information on its promotion process by saying that Meikarta was established on 500 hectares of land, whereas only around 84.6 hectares had permits, Meikarta also managed to sell 99,300 units that had been ordered.<sup>10</sup> Seeing this phenomenon The government gave warning letters 3 times and sealing the construction of Meikarta but the implementation of the Meikarta development was still carried out by the developer. Until finally the Ombudsman warned the developer of administrative and criminal sanctions related to marketing and buying and selling transactions that have not pocketed permission.

Cases like Meikarta are not the first before there were cases of Kalibata City Apartments. Kalibata City Apartment developers have been marketing apartments for 25 floors when permits have not been fully obtained. For reasons of flight safety, the DKI Government only issued permits for 20 floors. Finally, the developer cannot fulfill the promise to develop the 21-25 floor so that a dispute arises between the developer and the customer who has already booked. Then in 2016, the Bintaro Icon Apartment was also sealed by the Tangsel City Satpol PP because it did not have a building permit (IMB) even though the sales launch had been carried out since July 2013. As a result of sealing, consumers were restless and delayed installment payments until the licensing process was completed.

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<sup>9</sup> Lintang Yudhantaka, *[et., al.]*. 'Mediation-Arbitration: A Proposal For Private Resolution of Flats Disputes in Perspective of Indonesian Law' (2019) 11 Journal of Legal, Ethical and Regulatory Issues.[2].

<sup>10</sup> Luthvi Febryka Nola, 'Permasalahan Hukum Dalam Praktik Pre-Project Selling Apartemen' (2017) 18 Majalah Info Singkat Hukum.[1].

With regard to various cases that occur because of the legal loopholes in the construction of flats, the role of the government in supervising, controlling and protecting both developers and consumers is something that is needed to realize community welfare because in this context flats are not only seen as a necessity private but residential as one of the primary needs which are very directly affected by the level of community welfare. Based on the explanation above, the authors are interested in conducting research related to “Government Intervention in Supervising Sale and Purchase Apartments through Pre-Project Selling Systems in Indonesia”.

Based on this background, several issues are the subject of writing this article, namely:

1. What is the urgency of government intervention in selling and purchasing apartments through pre-project selling system in Indonesia?
2. What is the form of government intervention that is expected to be in the selling and purchasing apartments through pre-project selling system in Indonesia?

### **The Urgency of Government Intervention in the Sale and Purchase of Apartments through Pre-Project Selling System in Indonesia**

The land is a natural resource that is controlled by the state and utilized as much as possible for the people’s welfare, as stated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Residential built or planned to be built on land to meet the needs of citizens’ boards has also been guaranteed by the state. Residential or decent dwellings are the main needs of every citizen that must be fulfilled and guaranteed by the state as stated in the basis of the Indonesian state and the rules below. The need for decent housing is directly proportional to the rate of population growth. The explosion in population growth has made the need for decent housing soaring, while the land or land to establish housing is limited. This causes land scarcity and backlog gaps that occur in Indonesia. The right to housing inadequate housing has an important meaning because it does not only cover a roofed building but rather the fulfillment of the principles of affordability, habitability, accessibility. But it includes national human rights standards in the

form of materials, facilities, and infrastructure of the house itself. National standards have also stated the legal security of tenure which states the principle relating to the fulfillment of people's rights to the house.<sup>11</sup>

Fulfillment of the need for housing as a residence or place of residence for the people has also been regulated in Law Number 39 of 1999 concerning Human Rights in Article 40 which states that "everyone has the right to live and live a decent life". The article affirms that the government must progressively realize the availability of adequate housing or housing for the people of Indonesia, through policies and financing. Indonesia is a democratic country that guarantees the fulfillment of human rights, including human rights to get a decent place to live. Lately, housing developers have competed to profit from the housing business, regardless of consumers who suffer losses, or middle-class people who are increasingly financially eroded. The housing business seems to be a field to extract financial gain only, and ignore social benefits and fulfillment of human rights to get decent housing. So the government must intervene to fix the problems in the field of housing, as a form of embodiment of state responsibility for its people.

The Ministry of Public Housing (Kemenpera) reminds Indonesia in the future that it will still face backlog problems in housing, especially for low-income people (MBR). Therefore, Kemenpera hopes for cooperation from each local government (Pemda), housing developers and the wider community to jointly complete one of the government's homework.<sup>12</sup> The rise of housing development in recent years has created a variety of new legal phenomena. Developers who compete to get buyers to compete tightly to gain profits. Various innovations were made to attract buyers. One of them is by pre-project selling. The concept of marketing pre-project selling has developed into a current trend. The concept of pre-selling is a marketing strategy to market apartments before the apartment is built, where the apartment

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<sup>11</sup> Patra M Zein, *Hak Rakyat Atas Perumahan* (Citra Aditya Bakti 2004).[20].

<sup>12</sup> Esy, 'Intervensi Pemerintah Selesaikan Backlog Perumahan Perlu Ditingkatkan' (*Jpnn.com*, 2014) <<https://www.jpnn.com/news/intervensi-pemerintah-selesaikan-backlog-perumahan-perlu-ditingkatkan>> accessed 15 July 2019.



sold is still in the form of pictures or concepts. This concept is a market test to find out how consumers react to marketed property products.

From historical perspective, the housing problem in Indonesia has been started since 1985, when President Soeharto inaugurated the Housing Housing of Perumnas Klender on 3<sup>rd</sup> September 1985. The period 1983-1991 was a milestone for the construction of simple flat towers for what was called “urban rejuvenation” by BUMN Perumnas. Unfortunately, the continuation of the flat program by the government slackened, especially after a year after the New Order regime collapsed. The Ministry of Public Housing was eliminated. After the post-crisis period since 1999, Perumnas as a driver of public housing underwent corporate loan restructuring and a decline in capability, amid no special ministries that handled housing. Until finally the State Ministry of Public Housing was reshaped in 2004. The impact of the ministry’s removal during the two periods resulted in the structure and program of building people’s homes to be reorganized from the beginning. The government tried to improve. In 2011 two laws that were crucial for residential issues in Indonesia, including flat, were born. The law includes Law Number 1 of 2011 concerning Housing and Settlement Areas and Law Number 20 of 2011 concerning Flats. The Flats Law tries to protect lower-class consumers, for example, the provisions governing the perpetrators of apartment construction are required to provide public flats of at least 20 percent of the total floor area of the apartment built. The enthusiasm for protecting consumers is also reflected in the provisions of the Association of Housing Unit Residents. Later, the draft Government Regulation derived from the mandate of the Flats Law became the hope for owners and residents as a solution to the conflict in managing apartments. During problems with the construction of towers and flat towers that are still problematic, President Joko Widodo launched a million house program in 2015. In 2016, the program targets the construction of a million housing units. The target of housing construction for low-income communities reaches 700,000 housing units, while non-low income communities have only 300,000 housing units. The construction of houses for the poor which will be carried out by the

government through the Ministry of Public Works and Housing under the State Budget is only 113,422 units (including flat), and houses for poor people financed by the non-state budget are 586,578 units. While the rest, houses for middle to upper-income residents, as many as 300,000 units, were handed over to developers and the community through the construction of commercial and public houses. Unfortunately, the government responded with the construction of Rusunawa, which only gave instant answers to residential problems, as experienced by victims of eviction. However difficult it is to take care of the basic rights of citizens to get decent housing, which the government has pioneered 30 years ago, this case still requires the presence of the state.<sup>13</sup>

Although regulations have been issued regarding housing, namely Law Number 1 of 2011 concerning Housing and Settlement Areas, and Law Number 20 of 2011 concerning Flats, in reality, there are still many violations committed by the developer (developer). These violations include:

1. Permission is not completed to meet the requirements for apartment sales with a pre-project selling system, namely IMB and SIPPT;
2. The standard clause in the PPJB often contains an exoneration clause that is detrimental to the consumer;
3. The existence of misleading information in the marketing or advertising stage of the apartment with a pre-project selling system.

Some of these violations are suspected to occur due to the absence of strict sanctions from the government which can cause deterrent effects for developers. Besides, the orientation of developers leads to mere financial benefits and overrides the social benefits of consumers. This phenomenon is a challenge for the government informing policies that can prevent violations committed by developers and can protect the people as consumers.

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<sup>13</sup> Dieqy Hasbi Widhana, 'Persoalan Rusun Dari Masa Ke Masa' (tirto.id, 2017) <<https://tirto.id/persoalan-rusun-dari-masa-ke-masa-cfDL>> accessed 15 July 2019.

### **Forms of Government Intervention in the Sale and Purchase of Apartments with the Pre-Project Selling System**

The increasing development of flats will have an impact on the development of marketing strategies. One of them is an offer using the pre-project selling system, namely residential building offers in the form of a building market description, this strategy is an excellent solution for capital-intensive sector development like this, but behind this sales strategy developers often forget the juridical consequences of implementation the transaction, such as doing marketing before fulfilling the legal aspects in the construction.<sup>14</sup> Following what is stated in Article 42 Paragraph (2) of the Hospital Law which confirms that in conducting marketing using a pre-project selling system must at least have: a. The certainty of allotment of space, b. the certainty of land rights, c. the certainty of the ownership status of flats, d. permit for the construction of flats, and e. guarantee for the construction of flats from the guarantor institution. Furthermore, it is also stated in Article 42 Paragraph (3) that the marketing carried out is bound by the Agreement on Bonds for Sale and Purchase (PPJB) so that whatever has been promised should be contained and stated in the PPJB. Then the implementation of the PPJB should only be implemented if it has met the requirements:

- a. Land ownership status;
- b. IMB Ownership;
- c. Availability of infrastructure, facilities, and public utilities;
- d. Construction of at least 20 per cent; and
- e. As well as other things promised.

Concerning the conditions specified above, the legality aspect of the land is a matter that is very necessary to consider before entering into the PPJB agreement including the following:

- a. Building rights

Checking the Right to Use Building is the main step that can be taken to see the completeness of building permits, this HGB examination is carried out by coming to the National Land Agency (BPN).

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<sup>14</sup> Erwin Kallo, *Panduan Hukum Untuk Pemilik/Penghuni Rumah Susun (Kondominium, Apartemen Dan Rusunami)* (Minerva Athena Pressindo 2009).[23-25].

**b. SIPPT**

SIPPT is the first step for developers to be able to carry out sales of products built. Seeing the Decree of the Minister of Public Housing of the Republic of Indonesia (Menpera Decree) Number 11/KPTS/1994 concerning Guidelines for Bond Sale of Flats, it has been stipulated that before the developer carries out the initial marketing activities for consumers, he is obliged to report to the local Regents/Mayors with copies to Menpera where the report is accompanied by principle permits, decisions on granting location permits, proof of procurement and land acquisition, building permits, and pictures of layout plans that have been approved by the local government, with reports given to the authorities, then the developer administration has also made enough convincing efforts. The Menpera Decree also provides flexibility to developers if, within 30 calendar days from the date stated in the report receipt letter that they have not received an answer from the head of the local area, the initial offer is deemed to be able to be implemented.

For developers themselves, having SIPPT should be an obligation. Because even though in some cases SIPPT violations have not been accommodated about strict sanctions for violators in several Regional Regulations (Perda), the existence of SIPPT held by the developer is a manifestation of the developer's commitment in building residential plans needed by the community. By checking whether or not there is the completeness of SIPPT not only guaranteeing security but also consumers can observe how the realization of the housing project will be due to SIPPT not only regarding the obligation of the developer to provide social facilities and public facilities but also obligations that must be fulfilled to the local government.

**c. Building Construction Permit (IMB)**

IMB is issued by the local government, as long as it can see a copy of the building permit, consumers can check the suitability of the building structure and appropriateness of its designation. From the existing IMB, the developer is considered to have a bad intention because he ignores the security and comfort of the occupants of the house, moreover if there is no IMB in a pre-project selling marketing then consumers should be more careful not to place an order before the files complete required.

Indeed, the government has provided regulation on how to systematically implement pre-selling projects that pay attention to and protect consumer rights so that the law has fulfilled one of its characteristics, namely *aanvulend recht* but does not fulfill the legal nature as a *dwingen recht*. This is due to the absence of coercive conditions/sanctions given to developers who commit violations in terms of marketing or advertising when they have not fulfilled the licensing requirements on land so that there are still many who violate the regulations set by the government. So that here it appears that the government has a very large opportunity to control and protect consumer rights.

Article 33 Paragraphs (1) and (3) of the 1945 Constitution affirms that the economy in Indonesia is prepared on the principle of kinship and how the earth, water and natural resources owned by Indonesia are controlled by the State for maximum use for the welfare of the people. If we can see from another point of view, we will find that flats are not only just building projects but also an effort to fulfill primary needs because flats in this context are seen as a dwelling. Occupancy is the basic right of every citizen of Indonesia, with the influence of the apartment on the lives of many people, the government also has a very large right to make arrangements related to the problems caused by this pre-project selling. The government as a regulator can provide coercion to a change through regulatory reform, one of the concrete proposals that can be done is to impose sanctions on developers who conduct pre-project selling marketing before having the licensing conditions as specified.

Daniel S. Lev also emphasized this view by stating that the rule of law is the *sine qua non* because without an effective legal process it is not possible to expect economic, political, social life and justice improvements.<sup>15</sup> Law is an important means to maintain order and at the same time to renew society so that it must be developed in such a way as to provide space for change (*tempora mutantur, nos et mutamur in Illis*),<sup>14</sup> and not vice versa, inhibit reform efforts because they merely maintain orthodox values.<sup>16</sup>

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<sup>15</sup> Daniel S. Lev, 'Pemulihan Negara Hukum' *Tempo* (6 January 2002).

<sup>16</sup> Adrian Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik* (3rd edn, Sinar Grafika 2015).[66].

### Conclusions

Meeting the needs of housing for the people of Indonesia is the responsibility of the Indonesian government because the right to adequate housing is a human right as stipulated in the 1945 Constitution of the Republic of Indonesia. Indonesia has also regulated housing issues, but in reality, it is still there are many violations that harm consumers. The violation was allegedly due to the absence of comprehensive supervision and the absence of strict sanctions from the government.

In order to fulfill the legal nature of *dwingen recht* the government has a very important role to provide coercion for developers to comply with regulations regarding the complete requirements of the documents that must be prepared before pre-project selling marketing, namely HGB, SIPPT and IMB to provide protection for Pre-selling selling consumers because the fulfillment of housing needs is not only seen as a tertiary need, namely as property but as a primary need for occupancy, because the right to live properly is the right of every citizen and fulfillment of housing needs in an effort to fulfill people's welfare.

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