

## **Legal Protection for the Consumer Purchaser Condotel Due to Tort**

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**Abstract:** Condominium-Hotel (condotel) is a type of property that is thriving today, and will grow more rapidly in the future. Condotel is a relatively new property compared to the property business in general and by the orientation of the private property entrepreneur profit or profit. Units condotel is increasingly attractive to the community along with the more expensive and limited land and the level of congestion in big cities where many communities that have high activity, poured in a document and/or a binding agreement and must be filled by the consumer. The purpose of establishing the standard agreement is to provide convenience and practicality for the parties concerned, but considering that make the developer PPJB, surely there is a tendency of subjektifitas the interests of developers. The standard agreement, usually as PPJB did not provide sufficient legal protection for the consumer unit Condotel because made unilaterally by the developer. The position of the consumer and the developer is not in a condition that is balanced. The dominant developer position opens opportunities to tend to misuse his position. One evidence of the imbalance between the position of the consumer developer can look at the time that there were many PPJB process information not given openly.

**Keywords:** law, consumer protection, condotel, hotels, tort, developer

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### **I. INTRODUCTION**

Flats or bunk house is multilevel building that was built in an environment that is divided into parts that are functionally distrukturkan, in both directions horizontally as well as vertically and are the units are each owned and used separately, mainly for dwellings equipped with parts together, objects together, and shared ground. People's interest to have residence occupancy as flats or condominium hotel (hereinafter Condotel) increasing especially in populous urban but it isn't followed by a true understanding of the legal process associated with the purchase and ownership of the units of the condotel unit.

Businessmen in the real estate industry is a trade or in this case referred to as company housing development, according to Article 5 grains (1) the regulation of the Minister of Interior Number 5 Years 1974, mentioned the notion the company housing development that may also be entered in terms of the developer, namely housing development company is a company that strives in the field of housing developments of various types in large numbers over a land area would constitute a unified residential environment equipped with infrastructure environmental and social facilities needed by the community to its inhabitants.

The State-owned company that develops State-owned companies is identical with the National Public Housing Company (hereinafter Perum Perumnas), in addition to aiming to attract the advantages, but also runs the social mission for the middle-income group down based on Government Regulation Number 29 Years 1974 and then arranged with the Government Regulation Number 12 Year 1988. In terms of the private developers of the company then the company aims to benefit housing for middle-and upper society. Real estate business is basically a business that its activities related to the problems of land, including that done on it so that the from field of the real estate profession specialization occurred such as the development of land and buildings, real estate appraisal, property management, business mediation, venture financing, and real estate research in the field of industrial agriculture. From the efforts of real estate that is thriving in Indonesia is the development efforts of the land and the building, known as the residential developer profession and settlements or often abbreviated developer by profession.

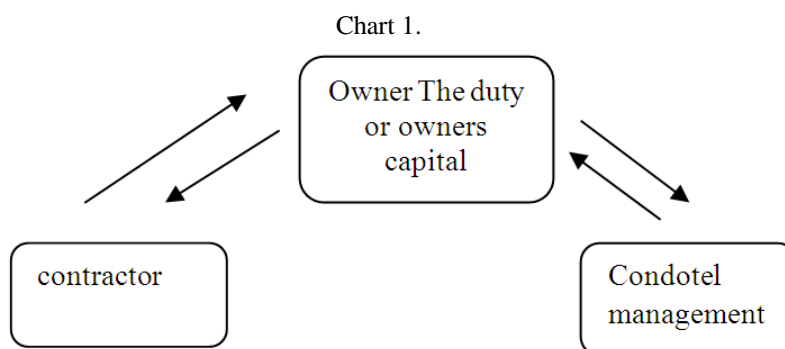
Condominium Hotel (Condotel) is a type of property that is thriving today, and will grow more rapidly again in the future. Condotel is a relatively new property compared to the property business in general and by the orientation of the private property entrepreneur profit or profit. The units of the condotel the more attractive to the community along with the more expensive and limited land and the level of congestion in big cities in Indonesia where many communities that have a high poured in a document and/or a binding agreement and must be filled by the consumer.

As it known the purpose of establishing the standard agreement is to provide a convenience for the (practicality) of the parties concerned, but considering that makes Binding Sale And Purchase Agreements (hereinafter PPJB) is the developer, surely there is a tendency of factors subjektifitas the interests of developers, developers are more dominant and profitable developer, sometimes it cannot be avoided, for example in the agreement the raw there are certain obligations on behalf of developers who have deliberately not listed or not specified clearly and firmly, with the purpose to protect developers from certain obligations or to waive certain rules over who can bind and eliminate consumer rights so that it can be a detriment to the consumer party. The standard agreement, usually as PPJB did not provide sufficient legal protection for the consumer unit Condotel unit because it is made unilaterally by the developer. The position of the consumer and the developer is not in a condition that is balanced. The dominant developer position opens opportunities to tend to misuse his position.

One evidence of the imbalance between the position of the developer with the consumer can look upon the process, much of the information PPJB not given openly, for example the status of joint land ownership, building specifications, how in case of delay in delivery of, violation of consumer rights by developers and violations of the collective rights of the consumer condotel conducted by the developers, for example land and parks as well as promised. From the example above is most important and of concern for authors is the status of co-ownership of land an apartment, because it could have been the condotel units units certified ownership of units of flats stand above ground but a certified property rights possessed by the other party and not from State land.

According to Article 47 paragraph (1) of Act Number. 20 of Year 2011, as a proof of ownership of the flats over the land use rights property, buildings or usage rights over State land use rights, buildings or usage rights above the rights of land management issued a Certificate of Title Units of Flats (hereinafter SHMSRS). Problem that arises is the status of rights ownership in the rights that formed the basis of the SHMSRS in the form of land use rights of the building cannot be extended or if the parties have the right management of refusing to extend or provide conditions for them to be able to extend the use of these rights. Overcoming these problems above, the construction of flats should be built above ground with the status of a pure SHMSRS derived from state land or have giving rights to consumers so that the status of the land with her apartment into a pure, so there is no constraint in the future and the process does not require the consent of the other parties in the process of continued.

The Act Number 8 of Year 1999 on the Protection of Consumers (UUPK) that began effective force on April 20, 2000, when it was noted the charge material UUPK is pretty much set the behaviour of the perpetrators of the attempt. This is understandable given the losses inflicted on consumers is often a result of the behaviour of the perpetrators of the attempt, so reasonable when there is a requirement in order for the behaviour of the perpetrators of such business is regulated, and the breach of the regulation imposed sanctions accordingly. The behaviour of the perpetrator's efforts in conducting its business strategy to develop this often result in losses for consumers. Related to the business strategy used by businessmen. When business strategy oriented nly on the ability of generating profit (profit oriented), then consumers should be cautious in buying Condotel offer businessmen



Forms of tort (R. Setiawan: 1999):

- 1) Doesn't meet achievement at all, with respect to the debtor does not comply with his then said the debtor did not meet the achievements at all.
- 2) Meet the accomplishment but not right time i.e. when the achievements of the debtor can still be expected, then the debtor deemed to meet achievement but it is not the right time.
- 3) Meet the achievements but inappropriate or incorrect.

According to Subekti, a form of tort there are four kinds of IE (Subekti: 1985):

- a) Didn't do what was able to be done
- b) Implement what he promised but not as he promised
- c) Doing what he promised but too late
- d) Do something according to the Treaty should not be done.

Legal basis of Tort, namely Article 1238 The Book of Civil Law Act (hereinafter KUH Perdata), who explains that the owe is negligent, if he is with a warrant or with a similar deed that has been declared negligent, or for the sake of its own, is an Alliance if it is set, that should be considered negligent with the passage of time. In Article 1243 KUH Perdata, explaining that, replacement costs, loss and interest because there is not the fulfillment of an Alliance that started as required, when the heavily indebted, having declared an Alliance meets inattentive, remain neglected, or if something has to be given or made, can only be given or made in a time lag that has been past

Frame in order to provide legal protection for the consumer purchaser of units condotel tort because the developer is an act of renewing the law against vacuum norm because of the absence of the rule of law that specifically regulate it. For that with this research is indispensable in order to immediately get a solution in contributing to the development of new thinking in the theory and concepts of law construction to generate legal protection for consumers.

First skepticism, is fundamentally an issue of questioning to understand core content or anything related to legal protection for consumers. Legal protection appeared through the rule of law, as any rule of law buttressed by the provisions of the law means any legal protection i.e. function maintain and embody legal certainty. In the interest of the rule of law required involves moral and decency requirement so that the legal protection of the consumer as the Foundation and tools for achieving the objectives of positive law.

By not meeting the submission of documents or letters of condotel units of ownership because tort Developers against the purchaser (consumer) the buyer or consumer is harmed so weak in its legal protection then consumer rights have been deprived because of weak law enforcement so consumers become victims against perpetrators of such wanton developer effort. It is the responsibility of the state to enforce the law in the above for all, the law-enforcement process in principle legal protection for the consumer purchaser of a unit condotel through a binding purchase agreement (PPJB) can be realized if the rights and obligations of each party to run with consequent and full responsibility. Thus it is very important for the consumer obtain the legal shield cover associated with the large number of cases against the interests of consumers as buyers of units condotel through PPJB (Binding Sale and Purchase Agreements) which are vulnerable to tort action developers. The process is one of law enforcement's effort to make the law as the guideline in any behavior or community authorities or law enforcement agencies. Law enforcement is an effort to implement the provisions of the law in a variety of areas of life. Law enforcement is a requirement the realization of legal protection. Legal protection in the community should be more noticed by law enforcers for towards an equitable legal, orderly, for sure, and peace. In principle, the law was intended for human happiness and the environment.

Aspects of the Epistimologi question why and how do find the fact of not fulfilling the document or ownership papers units condotel because tort Developer. To answer the "why" then required an analysis of the function of the principle of ownership in order to safeguard and realize the value of the standard as well as a test of the crisis, the principle also serves in the formation, implementation or development of the law of property rights arrangements in particular documents and letters of property units Condotel

Nature of rights ownership of units condotel is obtained by the use of a fixed object and economical value to the process of buying and selling are legitimate in accordance with related laws and regulations of the parties in the transaction of purchase of the unit condotel based on strong legal serya Government Regulations as an umbrella law. Obtained by aligning the values on the purpose of the law and legal regulation related to the perpetrators of the sale and purchase of units condotel. The principle of Justice in accordance with the mandate of the Constitution, namely the general well-being and social justice through the migration on rights ownership for buyers of units Condotel. Setting sales against the legal action undertaken by the developer in which the consumer purchaser of units unit condotel with PPJB less guarantee legal certainty and security for buyers (consumers) developers have committed tort even developers tend to do law or Tort did not match the initial deal as PPJB clause content created together. In Act Number.

8 Year 1999 about Perlindungan Konsumen (hereinafter UUPK = ) is set firmly against the interests of consumers that acquire concrete judicial protection particularly buyers of units condotel. (Kartini Mulyadi: 2003).

Both its normative, Vacuum Norm (avoid law) because of the absence of Regulation Governing the existence of Act Number. 20 Year 2011 about the Flats so that the Developer in his efforts by enforcing system PPJB. The Act only as the deed of agreement of the parties as well as with no government regulation of Act Number. 20 Year 2011 on the Flats of a vacancy the law because there is no footing rules of practice then became associated with vacuum PPJB related the flats so that it becomes no reference and a clear barometer in the running as well as policy decisions related to the construction of flats or residential development as a condotel-shaped vertical as well as the condotel. The trade and developers condotel they still use legal provisions in the form of government regulations that have long been Regulation Governing Number. 4 Year 1988 on Flats which that provision is no longer relevant with the current conditions, as such things happen is when it imposed by using the legal basis the Government Regulation Number. 4 Year 1988 on Flats will then cause of the absence of legal certainty for buyers (consumers) against the status of property rights acquired for very clear rules of law that widened the umbrella law no gives an assertion that condotel is building a vertical shaped so that a substance specific legislation to protect buyers of units of condotel because of the actions of tort giving rise to lack of developer inequity in ensuring consumer rights for that required the existence of a method of construction in the form of law to provide legal certainty and protection against consumers or buyers of units condotel which is subject law intact.

The third theoretical problems related to the law of tort actions because the developer was not able to submit the documents and ownership papers condotel to consumers. In fact theory must contain the legal concept as a concrete legal consequences. A theory is a set of concepts following the series. The main concept in purchasing the units of the unit condotel is showing the glaring discrepancy between theory and reality, where the theory of legal protection that have legal certainty as a fundamental right which must be owned by consumers as buyers of units units shall acquire condotel legal protection intact and there must be a real protection. So becoming an absolute necessity to provide legal protection for the consumer purchaser of units condotel as subjects of law. Formulation of the problem are why in PPJB for purchase of units condotel does not provide legal protection for consumers when developers tort and forms developer setting legal protection to consumer purchasers of units condotel who had been paying off the payoff?

## **II. RESEARCH METHODS**

This research is the legal research (legal research), a research to find the rule of law, the principles of law and legal doctrine based on arguments and new concepts as preskripsi in resolving the problems faced. As the legal research, then the methods used to analyze consumer protection, the view of the law and laws invitation Act Number. 8 Year 1999 about UUPK. This is in accordance with the character of prescriptive legal science, that get results containing the value, not the scientific answer is descriptive, but tight or wrong answers truth untruth, appropriate, or in-appropriate. Thus as the prescriptive nature of research in legal science, research was conducted to review and explore, and discover the truth about what it should be from the legal issues raised, with point factoring studied law through an understanding of the condition of the rule of law.

The research approach used are Philosophical Approach, through reflection against the rules of law that will be analyzed and reflection about the cornerstone of reality as the function of the philosophy of law, i.e. studying and reviewing the law with good and right, through the approximation of legislation (the statute approach) (Soerjono Soekanto: 1988), deeply related with basic Constitution and legislation, Comparative Approach, and Analytical Approach. With the quantitative approach using pattern analysis of tabular and the second using quantitative methods. Analysis of the approach is to analyse the basic notions of law, law and others (Johnny Ibrahim: 2004). Thus instead of focusing on something that has not been regulated yet at all. The conceptual approach for the last. Conceptual Approach is to find the ideas that gave birth to the notion of law, legal concepts, and principles of law relevant to the issue at hand, where an understanding of the views and the doctrine is the basis of researchers to build legal arguments to solve problems (Peter Mahmud Marzuki: 2008). Legal research as research libraries are analyzing various laws that include primary legal materials (the authoritative legal, binding materials), and secondary legal materials (materials that provide legal explanations against the primary law).

## **III. RESULT AND DISCUSSION**

At this time the consumer property especially the apartments do not have many opportunities to get information about the status of ownership of land, construction of buildings, and other facilities attached to buildings of units unit Kondotel, the imposition of taxes on the purchase transaction, and other

important information from the developer, so that developers can play the interests of consumers with ease. It is therefore necessary the protection the law can protect the interests of consumers. The interests of consumer protection, especially for the terms of the deal need to get attention, because many transactions between businessmen with consumers who tend to be unbalanced. The concerns that arise with regard to the Covenant in raw selling property is due to be listed *eksonerasi* clause (exception clause).

*Eksonerasi* clause is a clause containing the condition limiting or even remove completely the responsibilities that should be charged to businessmen. On Article 18 paragraph (1) letter a UUPK arranged about a ban on the inclusion of clause baku on any document or treaty indeclaring a transfer of responsibility of the perpetrators of the attempt. The issue of the responsibility of the civil law (*civiel rech telijkeansprakelijkheid*) can be seen from the formulation of Article 1365 KUHPerdata existence that governs the personal liability of the perpetrator over tort is doing (*persoonlijke aansprakelijkheid*). Responsibility to know the laws by not the perpetrator of the tort as set forth in Article 1367 KUH Perdata. This article asserts that everyone is not only liable for losses caused by the acts themselves, but also for the losses caused by the deeds of the people who become his charge, caused by the goods under control. From this article it appears the existence of liability a person in a certain quality. In effect the obligation to indemnify only arises when there are errors on the perpetrators, in tort and the deed may be accountable to him. So there has to be an element of fault on the perpetrator and the Act it should be accountable to him (*schuldaan sprakelijkheid*).

In terms of civil law, legal liability may be incurred because of the tort, unlawful deeds (*onrechtmatige daad*), and may also be due to lack of caution resulting in impairment (*het lichamelijke letsel veroorzaken van*). UUPK also has been set regarding the responsibility of businessmen as listed in Article 19. According to Article 19 UUPK stated the businessmen responsible for providing compensation for damage, contamination or loss due to consumer and consuming goods and or services produced or traded. Normative basis there has been provision governing the responsibility of businessmen, in an effort to protect the consumer party. Theoretically, in the UUPK, subject to some sort of responsibility (liability) which among other things included in Contractual Liability. In the event there is a covenant relationship (privity of contract) between trade (*goods or services*) with consumers, then it is the responsibility of the perpetrators of the attempt are based on contractual liability, namely civil liability on the basis of the agreement/contract from businessmen, over the losses experienced by consumers due to consume the goods it produces or utilizes the services they provide.

In the UUPK, Act Number. 8 Year 1999 and the Act of the Republic of Indonesia Number. 20 Year 2011 about Flats and public housing Minister of Interior Number. 9 Year 1995 about Binding Guidelines buy sell homes, through a variety of regulations contained in it try to overcome issues namely through raw clause, setting prohibitions to trade, rights and responsibilities of businessmen and consumers, and so on that could potentially cause harm to consumer purchasers of units condotel. The Act Number. 20 Year 2011 about flats in lieu of the previous Act, namely Act Number. 16 Year 1985 then housing developments undertaken by the Government or developers is an attempt to meet the basic human needs (Urip Santoso: 2010).

However, there is an issue within the community whereas object in buy sell condotel quality is not turned out to have been submitted in accordance with the expected consumer based on agreements that promoted in brochures. The agreement should be given trade has provided certainty and availability of facilities, in addition, the existence of a hidden defect in condotel known to inhabit after some time condotel. Therefore, the need for an exposure of about legal protection of consumers in booking the condotel poured in the binding sale and purchase agreement. In general these arrangements in accordance with the terms of the purchase agreement is regulated in the book of the law of civil law. In the provisions of Article 1338 of KUH Perdata which declared all agreements made legally valid as laws – laws for those who make it.

Article 1457 of the KUH Perdata which declared the sale is an agreement with which the one tying him to submit a material and the other party to pay the price. Buy sell agreement is consensual, meaning he was born as a binding, legal agreement, or have the force of law in the seconds prior to agree between the seller and the buyer regarding the elements – the staple items, namely regarding the pricing of goods and even selling it about stuff that does not move. (Subekti: 1996).

In the event of the occurrence of condotel booking, have inherent rights and obligations of the parties in it because of the existence of an agreement in accordance with Article 1320 points from the book of the law of civil law so that the parties to the treaty are obliged to carry out the feat in accordance with what was agreed upon, as contained in the formulation of Article 1234 The KUH Perdata that each of the alliance is to provide something, do something, and not doing something.

Legal protection of the consumer in PPJB then condotel through the reservation in relation to booking apartments, the legal protection of consumers can be seen since the existence of the agreement was followed by the promulgation of the apartment offer brochures by businessmen. Legal protection is linked will be facilities that do not comply with what is exchanged and not in accordance with the description in the brochure. Normative basis this can be seen in the provisions of Article 8 paragraph (1) letter f, Act Number 8 Year 1999 on UUPK stating businessmen are prohibited to manufacture or trade in goods and/or services that do not comply with the promise stated in the label, etiquette, information, advertising, promotion or sale of goods and/or services. Furthermore, in Article 9 paragraph (1) letter f Act Number 8 Year 1999 on The UUPK state that prohibited trade offers, promotes, advertises a goods and/or services incorrectly, and/or as if the item contains no hidden defects. Businessmen are required to bear against hidden defects, although himself was not aware of any defects that have been exchanged except to endure anything. Refer to these provisions, the consumer has the right to sue for the repair party businessmen as far as these damages can still be repaired, if the businessmen refused, did not give a response, do not meet the aforesaid indemnity, then consumers can sue a consumer dispute resolution body or submit to a judicial body in place of the position of the consumer. Consumers have the right to obtain redress in accordance with Article 62 paragraph (1) of Act Number 8 Year 1999 on the UUPK. In Article 16 of Act Number. 8 Year 1999 on the UUPK, also set up legal protection of consumer related consumer rights, which in article for the businessmen in offering goods and/or services through the order is forbidden to:

- a. not fulfilled an order and/or agreement resolution time as promised;
- b. does not keep a promise over a Ministry and/or achievements in relation to the booking of the apartment, that consumers gained the right to ask for compensation if at the time the reservation is made and/or brochure offer, time of completion of the apartments are not in accordance with what the binding Agreement poured in sale and purchase, so that the consumer protections will redress obtained pursuant to Article 16 of Act Number. 8 Year 1999 on the UUPK and of Article 62 paragraph (2) of Act Number. 8 Year 1999 on the UUPK.

Legal protection of the consumer or purchaser unit condotel unit rises a new developments in society, are more the increased attention to consumer about protection. If in the past the party developers very meritorious for the point of view which is a provider of residential communities and the economic development of a country and get attention, then this consumer protection now more appropriate attention was further increased protection for the rights of human rights. The practice of alignments to entrepreneurs developers and the absence of consumer protection has put the consumer in the position of the lowest levels in the face of the developers because the consumer was seen weaker law then needs to be larger than the patronage in the past (Resti Nurhayati, 2001).

Legal basis for consumer protection activity in Indonesia is specifically regulated in Act Number 8 Year 1999 on the protection of consumer products who consists of 15 chapters and 65 article. The essence of the promulgation of this law is to regulate the behaviour of businessmen with the goal of keeping the consumers can be protected legally. This means that efforts to protect consumer interests through legal devices are expected to create consumer protection legal norms. On the other hand with the aim can develop responsible attitudes of entrepreneurs as well as the enhancement of the dignity and the dignity of consumers. UUPK in an attempt to provide protection to the consumer sets the six principal material that becomes law i.e. undnag charge regarding the prohibitions, the responsibility of the manufacturer, the product is final responsibility, agreement or clause baku, dispute resolution and about the criminal provisions.

One evidence of the imbalance between the position of the developer with the consumer can look upon the process, much of the information PPJB not given openly, for example the status of joint land ownership, building specifications, how in case of delay in delivery of, violations of the rights of consumers by the developer and the violation of collective rights of consumers conducted by the apartment developer, for example land and parks as well as promised. From the example above is most important and of concern for authors is the status of co-ownership of land an apartment, because they could well have the certificate of ownership of units of flats stand above ground but a certified property rights possessed by the other party and not from State land. According to Article 47 paragraph (1) of Act Number 20 Year 2011, as a proof of ownership of units of flats on land use rights property, buildings or usage rights over state land use rights, buildings or usage rights above the rights of land management issued a certificate of title units of flats.

It is therefore necessary the protection the law can protect the interests of consumers. The interests of consumer protection, especially for the terms "agreements" need to get attention, because many transactions between businessmen with consumers who tend to be unbalanced. The concerns that arise with regard to the Covenant in raw selling property is due to be taken *eksonerasi* clause (*exception clause*). *Eksonerasi* clause is a clause containing the condition limiting or even remove completely the responsibilities that should be charged to businessmen. On Article 18 paragraph (1) letter a UUPK arranged about a ban on the inclusion

of clause baku on any document or treaty in declaring a transfer of responsibility of the perpetrators of the attempt. The issue of the responsibility of the civil law (*civielrech telijke aansprakelijkheid*) can be seen from the formulation of Article 1365 KUH Perdata existence that governs the personal liability of the perpetrator over tort is doing (*persoonlijke aansprakelijkheid*).

The legislation also knows accountability by not the perpetrator of the tort as set forth in Article 1367 KUH Perdata. This article asserts that everyone is not only liable for losses caused by the acts themselves, but also for the losses caused by the deeds of the people who become his charge, caused by the goods under pengawasannya. From this article it appears the existence of liability a person in a certain quality. In effect the obligation to indemnify only arises when there are errors on the perpetrators, in tort and the deed may be accountable to him. So there has to be an element of fault on the perpetrator and the act it should be subject to responsibility (*schuldaan sprakelijkheid*).

In terms of civil law, legal liability may be incurred because of the tort, unlawful deeds (*onrechtmatige daad*), and may also be due to lack of caution resulting in impairment (*het lichamelijke letsel veroorzaken van*). UUPK also has been set regarding the responsibility of businessmen as listed in article 19. According to article 19 UUPK that businessmen responsible for providing compensation for damage, contamination or loss due to consumer and consuming goods and or services produced or traded. Normative basis there has been provision governing the responsibility of businessmen, in an effort to protect the consumer party. Theoretically, in the UUPK set some sort of responsibility (*Liability*) which among other things included in the responsibility agreement (*Contractual Liability*). In the event there is a covenant relationship between trade (goods or services) with consumers, then it is the responsibility of the perpetrators of the attempt are based on Contractual Liability, namely civil liability on the basis of the agreement/contract from businessmen, over the losses experienced by consumers due to consume the goods it produces or utilizes the services they provide.

For businessmen in addition incur rights and responsibilities as mentioned above, it was subject to the prohibitions of Article 8 and Article 17 of the Act No. 8 Year 1999 on the UUPK. Article 8 of Act Number. 8 Year 1999 about consumer protection, regulates the prohibition of trade common and generally can be distinguished into 2 (two) are:

- a. the prohibition regarding the product itself, are not eligible for standard and used or worn or used by the consumer.
  - b. the prohibition regarding the availability of the untruth information, inaccurate, and misleading consumers.
- In general principles of liability in the law can be distinguished, namely (Sidharta: 2006):
- a. the principle of liability based on fault (liability based on fault), one of the fundamental principles that States that someone new may be required legally to liability if there is a fault element that he did;
  - b. the principle of the presumption of responsibility to always (presumption of liability), i.e. the principle that States defendants always considered responsible until he can prove that he is not guilty, so the burden of proof is on the defendants.
  - c. the principle of the presumption of not always responsible (presumption of non liability), this principle is the opposite of the principle of the presumption of responsibility for always, that the defendants always considered not responsible until proven, that he was guilty.
  - d. the principle of absolute liability (strict liability), in principle it sets the error not as a determining factor, but there are exemptions that allow it to be exempt from responsibility, such circumstances force majeure situations.
  - e. the principle of liability with restrictions (limitation of liability), with the presence of this responsibility, the principle of businessmen cannot unilaterally determine the consumer harm clause, including the maximum limit of liability. If there are any restrictions, then it should be based on the legislation in force.

#### **IV. CONCLUSION**

Condotel or apartment ownership generally occur as a result of buying and selling between the seller/developer with buyer/consumer. Currently has developed an awe in the world of buying and selling property is a system with indent to market condotel or apartments are being built, even that has not been built. Developers sold just by showing a mockup/pictures/floor plan of the apartment, there is no physical signs of land preparation and construction activities on site, not even uncommon at the time still planned and soil maturation is also still unclear exactly where the location, with the condition should certainly buy and sell transaction is not possible. The deed of sale and purchase are generally done if the apartment has been completed or at least stay entered the final settlement.

To resolve it, then made a preliminary sale and purchase agreement or also called with top selling preproject apartment. The preliminary sale and purchase agreement, hereinafter referred to as PPJB, are

agreements containing rights and obligations between the consumer and the developer. Generally a deed of Covenant PPJB drawn up unilaterally by the developers, are raw and its contents contain a standard clause according to party developer. The raw clause that any rules or terms and conditions that exist have been prepared in advance and set unilaterally by developers who poured in a document and/or a binding agreement and must be filled by the consumer.

The purpose of establishing the standard agreement is to provide a convenience for the (practicality) of the parties concerned, but considering that make the developer PPJB, surely there is a trend factor subjektifitas developers. The interests of developers who are more dominant and profitable developer, sometimes it cannot be avoided, for example in the agreement the raw there are certain obligations on behalf of developers who have deliberately not listed or not listed clearly and firmly, with the purpose to protect developers from certain obligations or to waive certain rules over who can bind and eliminate consumer rights so that it can be a detriment to the consumer party. The standard agreement, usually as PPJB did not provide sufficient legal protection for the consumer because the apartment was made unilaterally by the developer. The position of the consumer and the developer is not in a condition that is balanced.

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