



Research Article

The Liability of Housing Developers for Hidden Defects that Cause Loss to Consumers

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Abstract. The growth of the housing sector in Indonesia has provided the public with a wide range of housing options; however, in practice, problems still arise in the form of hidden defects that consumers only discover after the handover of the property. These hidden defects may include structural cracks, roof leaks, faulty electrical installations, non-functioning plumbing, or discrepancies between the building's specifications and those agreed upon. This situation causes losses for consumers and raises

legal issues regarding the liability of housing developers. This study aims to analyse the legal framework regarding the liability of housing developers for hidden defects that cause harm to consumers, as well as the forms of legal protection that can be provided to consumers. The research method used is normative legal research employing a statutory approach and a contextual approach. The legal sources consist of primary, secondary, and tertiary legal materials, which were analysed qualitatively. The results of the study indicate that the liability of housing business operators for latent defects is regulated in the Civil Code, Law No. 8 of 1999 on Consumer Protection, and Law No. 1 of 2011 on Housing and Residential Areas. Developers are obliged to guarantee the quality of the buildings they market and are liable to provide compensation if hidden defects cause loss to consumers. Compensation may take the form of building repairs, the provision of a replacement property, a refund of a certain amount of money, or other compensation in accordance with applicable legal provisions. Consumers also have the right to pursue resolution through both litigation and non-litigation channels to obtain redress for the losses they have suffered. Thus, the regulation of the liability of housing business operators plays a vital role in realising legal protection and legal certainty for consumers.

Keywords: Consumer Protection, Compensation, Hidden Defect, Housing Developments, Liability of The Contractor.

Abstrak. Pertumbuhan sektor perumahan di Indonesia telah menyediakan berbagai pilihan perumahan bagi masyarakat; namun, dalam praktiknya, masalah masih muncul berupa cacat tersembunyi yang baru ditemukan konsumen setelah serah terima properti. Cacat tersembunyi ini dapat berupa retakan struktural, kebocoran atap, instalasi listrik yang rusak, pipa ledeng yang tidak berfungsi, atau ketidaksesuaian antara spesifikasi bangunan dan yang telah disepakati. Situasi ini menyebabkan kerugian bagi konsumen dan menimbulkan masalah hukum terkait tanggung jawab pengembang perumahan. Studi ini bertujuan untuk menganalisis kerangka hukum terkait tanggung jawab pengembang perumahan atas cacat tersembunyi yang menyebabkan kerugian bagi konsumen, serta bentuk-bentuk perlindungan hukum yang dapat diberikan kepada konsumen. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan menggunakan pendekatan hukum perundang-undangan dan pendekatan kontekstual. Sumber hukum terdiri dari bahan hukum primer, sekunder, dan tersier, yang dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa tanggung jawab pelaku usaha perumahan atas cacat tersembunyi diatur dalam KUHP, Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, dan Undang-Undang Nomor 1 Tahun 2011 tentang Perumahan dan Kawasan Perumahan. Pengembang wajib menjamin kualitas bangunan yang mereka pasarkan dan bertanggung jawab untuk memberikan kompensasi jika cacat tersembunyi menyebabkan kerugian bagi konsumen. Kompensasi dapat berupa perbaikan bangunan, penyediaan properti pengganti, pengembalian sejumlah uang tertentu, atau kompensasi lain sesuai dengan ketentuan hukum yang berlaku. Konsumen juga berhak untuk mencari penyelesaian melalui jalur litigasi maupun non-litigasi untuk mendapatkan ganti rugi atas kerugian yang mereka derita. Dengan demikian, pengaturan tanggung jawab pelaku usaha perumahan memainkan peran penting dalam mewujudkan perlindungan hukum dan kepastian hukum bagi konsumen.

Kata Kunci: Perlindungan Konsumen, Kompensasi, Cacat Tersembunyi, Pengembangan Perumahan, Tanggung Jawab Kontraktor.

INTRODUCTION

Housing is a basic human need that serves not only as a place to live, but also as a means of ensuring a safe, healthy and dignified life. The right to adequate housing has even been recognised as part of the human rights guaranteed by the constitution

and various national legal instruments. (U. Malahayati., R. A. Martinouva, H. Hamzah, 2024) Therefore, the implementation of housing development is not viewed merely as a business activity, but also as a form of social and legal responsibility to meet the public's need for adequate housing. (A. & Untan, 2025)

In recent years, the property and housing sector in Indonesia has experienced significant growth. The rising demand for housing has spurred the emergence of various housing development projects undertaken by developers and housing businesses. Increasingly fierce competition amongst developers has led to the use of various marketing strategies to attract consumers, ranging from price promotions and easy financing to the presentation of building specifications promising a certain standard of quality. (Puspitasari, 2025) However, not all homes marketed meet the quality standards implied in the information provided to consumers. In many cases, consumers only become aware of defects or discrepancies in the property after living in the home for a certain period of time.

A common issue in property transactions is the discovery of hidden defects. Under civil law, a hidden defect is a defect that cannot be detected through a routine inspection at the time of handover, yet whose existence diminishes the function, utility or economic value of the property. In the context of housing, hidden defects can include structural cracks in the building, roof leaks, damage to the foundations, substandard electrical installations, poor drainage systems, and the use of building materials that do not meet technical specifications. (Afni, 2025) These defects generally only become apparent after the house has been occupied and used for a certain period of time, meaning that consumers have no opportunity to discover them during the sale and purchase process.

The presence of hidden defects causes considerable financial loss to consumers. In addition to material losses in the form of building repair costs, consumers may also suffer non-material losses such as inconvenience, a loss of security, and even risks to the safety of occupants if the damage involves the building's main structure. (Setyawan & Mardjiono, 2025) On the other hand, consumers are often in a weaker position than developers in housing transactions due to a lack of technical knowledge regarding building construction and limited access to accurate information about the quality of the property being purchased.

In legal terms, consumer protection is regulated by the Civil Code, Law No. 8 of 1999 on Consumer Protection, and Law No. 1 of 2011 on Housing and Residential Areas. Article 1504 of the Civil Code stipulates that the seller is liable for hidden defects in the goods sold if such defects render the goods unusable as intended or significantly reduce their utility. (Santoso, 2021) Meanwhile, the Consumer Protection Act grants consumers the right to comfort, security, and safety in using the goods and/or services purchased, as well as the right to compensation should they suffer loss as a result of the product received.

Nevertheless, the implementation of these provisions still faces various obstacles. In practice, many developers limit their liability through standard clauses included in the Preliminary Sale and Purchase Agreement (PPJB) or building maintenance agreements. Generally, the maintenance period provided ranges from 90 to 180 days following the handover of the property. When hidden defects only

emerge after this period has expired, developers often refuse to accept liability on the grounds that the warranty period has expired. This situation creates legal uncertainty for consumers and potentially conflicts with the principle of consumer protection, which requires businesses to be liable for the products they sell.

From the perspective of consumer protection law, a property containing hidden defects can be classified as a product that fails to meet the required quality and safety standards.(Yoanes et al., 2021) Consequently, the concept of product liability is relevant to the housing sector. This concept holds businesses liable for losses caused by the products they market, including where such losses result from defects that only come to light after the product has been used by the consumer.

Furthermore, there remain differences of interpretation regarding the limits of a developer's liability for hidden defects, whether in relation to the duration of liability, the form of compensation that may be awarded, or the dispute resolution mechanisms available to consumers. This situation highlights a gap between the legal norms designed to protect consumers and the practices observed in the field. If there is no certainty regarding the form and extent of a business operator's liability, the legal objective of providing protection, justice, and legal certainty for consumers will not be optimally achieved.

Based on the above, research into the liability of housing developers for hidden defects that cause harm to consumers is essential. This study aims to analyse the legal basis for the liability of housing developers for hidden defects, the forms of legal protection available to consumers, and the dispute resolution mechanisms that can be utilised to ensure that consumers' rights in the housing sector are upheld. It is hoped that the findings of this research will contribute to the development of consumer protection law whilst also serving as a basis for the government to evaluate and strengthen regulations and oversight of housing development in Indonesia.

RESEARCH METHODS

This study is a normative legal study, that is, a study conducted by examining legal norms found in legislation, court rulings, legal doctrine, and various legal literature relating to the issue under investigation. (Muhaimin, 2020)A normative legal study was chosen because the focus of this research is to analyse the legal provisions regarding the liability of housing business operators for hidden defects that cause harm to consumers, as well as the forms of legal protection that can be provided to consumers based on applicable legal provisions.

The approaches used in this study include the statutory approach and the conceptual approach.(Deassy J.A. Hehanussa, 2023) The statutory approach involves examining various laws and regulations relating to consumer protection and housing provision, particularly provisions governing the liability of business operators for traded products. Meanwhile, the conceptual approach is used to examine various legal concepts and doctrines that have developed within legal scholarship, particularly those relating to product liability, consumer protection, latent defects, and the legal liability of business operators in the housing sector.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Civil Code, Law No. 8 of

1999 on Consumer Protection, and Law No. 1 of 2011 on Housing and Residential Areas.(Article 1242 of the French Civil Code, 2023) Secondary legal materials consist of legal books, scientific journals, research findings, academic works, and expert opinions relevant to the research problem. Furthermore, tertiary legal materials take the form of legal dictionaries, legal encyclopaedias, and various other supporting sources that provide guidance or explanations regarding primary and secondary legal materials.

The collection of legal materials was carried out through library research, namely by tracing, cataloguing, and examining various legal sources related to the research subject. All the legal materials collected are then analysed qualitatively through a process of legal interpretation and reasoning to gain a comprehensive understanding of the form of liability of housing business operators for latent defects, as well as the legal protection mechanisms available to consumers who have suffered losses. The results of this analysis are subsequently organised systematically to address the research questions and provide legal arguments that can support the realisation of legal certainty and effective protection for housing consumers.

RESULTS AND DISCUSSION

Liability of Housing Developers For Hidden Defects That Cause Loss To Consumers

1. The Concept of Hidden Defects in Housing Transactions

Hidden defects refer to defects or damages that cannot be identified through ordinary inspection at the time a property is handed over to the buyer but become apparent only after the property has been occupied and used for a certain period.(Malahayati. et al., 2024) In the housing sector, hidden defects may include structural cracks, roof leakages, foundation failures, defective electrical installations, malfunctioning plumbing systems, or the use of construction materials that do not conform to the specifications promised by the developer.

The existence of hidden defects indicates that the housing unit marketed to consumers does not fully meet the standards of quality, safety, and habitability that were represented during the transaction process.(Setiawan et al., 2025) Such defects may cause not only economic losses in the form of repair and maintenance costs but also potential risks to the safety and well-being of occupants, particularly when the defects affect the structural integrity of the building. Therefore, hidden defects constitute a form of product non-conformity that gives rise to legal consequences for housing developers.

2. Legal Basis for Developer Liability

The liability of housing developers for hidden defects is firmly grounded in the Indonesian legal system. The Indonesian Civil Code provides that sellers are responsible for guaranteeing that the goods sold are free from hidden defects that may reduce their usefulness or render them unsuitable for their intended purpose. This provision establishes a legal obligation for developers to deliver housing units that are fit for habitation and consistent with the expectations arising from the sale.(Suwardi, 2023)

Furthermore, Law Number 8 of 1999 concerning Consumer Protection recognizes consumers as parties entitled to legal protection against unfair business practices. Article 19 of the Consumer Protection Law expressly stipulates that business actors are liable to provide compensation for damages or losses suffered by consumers as a result of using goods and/or services marketed by them. In the context of housing transactions, a dwelling affected by hidden defects may be classified as a defective product that fails to satisfy the quality standards expected by consumers. (Vasanti et al., 2025)

In addition, Law Number 1 of 2011 concerning Housing and Settlement Areas requires developers to construct residential units in accordance with technical building standards and requirements relating to safety, health, comfort, and accessibility. Failure to comply with these standards may constitute a violation of the developer's legal obligations.

3. Principles of Liability in Consumer Protection Law

Consumer protection law recognizes the doctrine of product liability, under which business actors are held accountable for damages resulting from products introduced into the market. In the housing sector, residential properties are products developed and marketed by developers; consequently, defects affecting the quality and safety of those properties generally fall within the scope of the developer's responsibility.

The principle of strict liability is also relevant in addressing hidden defects. Under this principle, liability may be imposed on a developer without requiring proof of negligence or intent. The primary consideration is whether a causal relationship exists between the defective condition of the property and the loss suffered by the consumer. Therefore, where consumer losses are proven to result from hidden defects in a housing unit, the developer may be held liable regardless of fault.

In addition to ensuring the physical quality of the property, developers are also responsible for the accuracy of information provided through brochures, advertisements, and other promotional materials. If the delivered property does not conform to the specifications represented during marketing, such conduct may constitute a violation of consumers' rights to receive accurate, clear, and truthful information regarding the products they purchase.

4. Consumer Rights and Legal Remedies

Consumers who suffer losses due to hidden defects are entitled to legal protection and adequate compensation. Such compensation may take various forms, including repairs, replacement of defective components, replacement of the housing unit, or reimbursement corresponding to the losses incurred.

If developers refuse to fulfill their obligations, consumers may pursue litigation by filing a civil lawsuit before the court. (A. & Untan, 2025) Such claims may be based on breach of contract where the developer fails to comply with contractual obligations, or on tort liability where the developer's conduct causes damage to consumers. In cases involving multiple affected consumers, legal remedies may also be pursued through class action proceedings to enhance efficiency and access to justice. (Putri et al., 2025)

Apart from judicial proceedings, consumers may seek dispute resolution through non-litigation mechanisms, including the Consumer Dispute Settlement Agency (BPSK), mediation, conciliation, or arbitration. These alternative dispute resolution mechanisms are generally faster, less formal, and less costly than court proceedings.

5. Challenges in the Implementation of Developer Liability

Despite the existence of a comprehensive legal framework for consumer protection, several challenges remain in its implementation. One significant challenge is the limited legal awareness among consumers regarding their rights and available remedies. Many consumers choose to bear repair costs themselves rather than pursue legal action due to insufficient knowledge of dispute resolution mechanisms.

Another challenge concerns discrepancies between marketing representations and the actual condition of the completed housing units. In some cases, developers advertise high-quality specifications but ultimately use materials of lower quality during construction. Such practices not only cause financial losses to consumers but may also violate the principle of good faith that governs contractual and commercial relationships. (Situmorang et al., 2018)

Furthermore, weaknesses in regulatory supervision and law enforcement continue to undermine consumer protection. Insufficient sanctions and ineffective monitoring mechanisms often fail to deter developers from violating construction standards or contractual commitments. Consequently, stronger regulatory oversight, more effective law enforcement, and enhanced consumer awareness are essential to ensuring accountability within the housing sector.

Based on the foregoing analysis, the liability of housing developers for hidden defects constitutes a legal consequence arising from their obligation to provide safe, habitable, and contractually compliant housing units. The effective application of consumer protection principles, product liability doctrines, and enforcement mechanisms is therefore crucial to achieving legal certainty, fairness, and adequate protection for housing consumers.

In general, liability is a legal concept aimed at providing protection to consumers. The protection of consumer rights is a very serious issue currently facing the government. According to the *laissez-faire* paradigm, consumers and businesses are considered to be on an equal footing in the principle of freedom of contract. However, this paradigm is not always accurate, as in reality the position of consumers is generally weaker than that of businesses. This reality highlights the need for specific consumer protection through consumer protection law, as consumer protection is, in principle, known by the legal maxim 'caveat vendor'.

The principle of consumer protection, also known as 'caveat vendor', has developed rapidly in advanced industrialised nations. The principle of consumer protection regarding product liability in both the United States and the Netherlands applies the principle of strict liability for certain specific losses caused by businesses to consumers.

The principle of strict liability emphasises that every business operator has a duty to ensure that the products they supply are of the highest quality and therefore

safe for consumption by consumers. (Hakim, 2021) In accordance with this obligation, the law restricts the principle of privity of contract as the basis for product liability claims brought by consumers against businesses. Consequently, the principle of strict liability alleviates the burden of proof for consumers when they bring a claim against a business.

Consumer protection in Indonesia has improved from a legal perspective since the enactment of Law No. 8 of 1999 on Consumer Protection (UUPK). (Yoanes et al., 2021) The principles of consumer protection under the UUPK apply the reversal of the burden of proof as the basis for product liability claims. Under this principle, the consumer, as the claimant, is not burdened with the onus of proof; consequently, the business operator, as the defendant, must prove that the loss suffered by the claimant (in this case, the consumer) was not caused by any fault on the part of the business operator. In this case, the business operator may be exempt from liability if they can prove that the loss occurred not due to any fault on their part, whether committed intentionally or through negligence.

In principle, consumer protection under the Consumer Protection Act and the application of this principle to the resolution of consumer disputes or product liability claims may arise from contractual breaches (breach of contract) or from unlawful acts committed by business operators. The principle of consumer protection, or *caveat vendor*, means that sellers or, in the abstract, business operators should exercise due care, whereby business operators must conduct their business in a proper manner so as not to cause harm to consumers, whether to their person or to their property.

The rules of evidence relating to product liability are determined by the relevant liability principles, whereby these liability principles dictate the matters that must be proven by the parties to the dispute. Consumers do not bear the burden of proof because the Consumer Protection Act applies the principle of reversal of the burden of proof. This provision is a *lex specialis* to the provisions of Article 1365 of the Civil Code in conjunction with Article 1865 of the Civil Code, Article 163 of the HIR and Article 283 of the RBg, known as the principle of *actori incumbit probatio*, exercised at the court's discretion.

However, in a case-by-case assessment, there is a valid reason to believe that the application of this principle may give rise to uncertainty and injustice. In such cases, the judge may exercise their discretion to determine upon whom the burden of proof should be placed. The UUPK does not specifically regulate the types of evidence required to be admissible; consequently, matters of proof are governed by the general provisions of civil procedure law regarding the types of evidence that are admissible.

Under the Consumer Protection Act, consumers do not bear the burden of proving the claimant's fault; rather, it is the defendant who bears the burden of proving that the loss incurred was not caused by their fault. For this reason, it is recommended that the principle of strict product liability be applied in consumer law, even though this principle is already enshrined in several pieces of legislation in Indonesia. Although, strictly speaking, the consumer's burden of proof has been drastically reduced under the provisions of the UUPK, consumers still bear a burden of proof, as they must also be able to prove that they have suffered losses caused by the defendant (in this case, the business operator). (Nandika & Ramli, 2020)

Awareness of the need to place the public interest at the centre of attention continues to grow in both developing and emerging economies. In this regard, one example is that of medicines, where many are sold without providing information on instructions or warnings, even though such information is vital so that consumers can understand how to use the product and the ingredients it contains. From this, it can be concluded that information is something that businesses must provide to serve as a guide and to ensure consumer understanding when purchasing a product from a business. Therefore, protection for consumers against products traded by businesses, as well as a lack of information regarding such goods, may mean that the goods in question are defective or contain hidden defects.

Due to a lack of information regarding goods, business operators may be held liable if the products sold to consumers have an adverse effect that causes them harm. It is well known that the Consumer Protection Act (UUPK) does not yet provide adequate legal protection and therefore cannot be effectively implemented, as the regulations do not clearly specify consumer protection, particularly in cases such as consumers of medicines who do not receive clear information from pharmaceutical businesses.

On the other hand, the liability of housing business operators is not exempt from the provisions agreed upon by both parties the consumer and the housing business operator. Prior to the transaction between the two parties, the business operator typically provides details regarding the specifications of the building materials to be used at the start of construction. Once the prospective homebuyer has viewed and studied the information provided by the housing developer whether in the form of data or through sales brochures regarding the details of the building materials to be used, and if the consumer deems this to be satisfactory based on their understanding, a binding agreement is then formed between the consumer and the housing developer concerning the sale and purchase of the property being built by the developer (This is the result of an interview with Mr Egi Arjuna Ginting, a staff member at Perumahan Bumi Serdang Damai, on 18 July 2013 at 14:30 WIB).

Once an agreement has been reached between the consumer and the developer, as part of the service provided, the developer will offer a warranty on the housing units they have built in the event of any damage, whether minor or major (major damage usually never occurs because housing businesses use materials in accordance with standards and regulations) for a period of between 30 (thirty) days and 100 (one hundred) days after the transaction has been fully completed. Furthermore, the housing developer also explains that once the house has been completed and handed over to the consumer, and once the period described above has elapsed, the housing developer will not accept any liability towards consumers who submit a claim, even if the claim concerns the occurrence of hidden defects. (This is the result of an interview with Mr Egi Arjuna Ginting, a staff member at Perumahan Bumi Serdang Damai, on 18 July 2013 at 14:30 WIB).

Furthermore, in interviews conducted on the subject of provisions relating to hidden defects, business operators generally did not know how or what constituted a product containing hidden defects. When asked about a housing development containing hidden defects, business operators were not familiar with, nor did they

have a clear understanding of, housing products containing hidden defects. However, it is understood that if there are problems with the house in terms of damage that has occurred, as a form of service, the business operator is willing to take full responsibility and rectify any shortcomings in their housing product, provided this does not exceed the timeframe established and agreed upon between the consumer and the housing business operator.

Unlike many other businesses, there are numerous housing developers who fail to provide detailed specifications regarding the housing products they build, meaning that consumers purchasing a property are unaware of the quality standards of the housing they are about to buy. However, despite this, the liability borne by housing developers is still provided in accordance with the agreement determined by the developer and the consumer.

Generally, consumers may take action regarding the losses they have suffered; concerning the complaint process, there are two types of complaints that consumers may lodge. Firstly, housing consumer complaints arising from breaches of individual consumer rights, such as substandard building quality, land area measurements that do not match the specifications, and so on. Second, housing consumer complaints arising from breaches of collective housing consumer rights, such as the failure to construct social/public facilities, certification issues, fictitious properties, flooding, and the accuracy of claims or information in advertisements, brochures, and housing exhibitions. (Sudaryatmo, 1999, p. hlm. 41)

Consequently, in light of these two points, consumers who have suffered losses may take legal action against the housing business operator for the losses incurred by pursuing two legal remedies: unlawful acts committed by the housing business operator and/or breach of contract (breach of promise) committed by the housing business operator. These are steps that consumers may take to defend their rights in claiming compensation for the losses they have suffered.

In every instance of liability on the part of the housing business operator, consumers may take action to ensure the housing business operator accepts liability and provides compensation for damages resulting from housing products constructed by the housing business operator that have suffered damage beyond the consumer's control. In such cases, consumers may pursue legal action by filing a claim for breach of contract if the housing developer fails to resolve the errors and damage occurring in the housing product.

Where consumers place their trust, this should be balanced by the assumption of responsibility. This responsibility extends not only to the technical aspects of the products they produce, but must also be balanced by legal liability. Consequently, the burden of proof regarding the absence of fault on the part of the manufacturer or business operator should rest with the consumer (reversed burden of proof).

The provision on the reversal of the burden of proof is also regulated in the Civil Code, as set out in Article 1244 of the Civil Code. By applying the principle of the 'presumption of fault', the burden of proving the absence of fault is reversed. The defendant or manufacturer is obliged to prove that they are not at fault. Thus, based on this theory, the burden of proof is reversed and placed on the manufacturer as the

defendant. They must prove the absence of fault on their part; should they fail to do so, they must be held liable for the losses arising from their product.

Nevertheless, in cases of unlawful acts, the claimant or consumer remains obliged to prove the existence of such as: a. The unlawful nature of the act; b. The loss suffered; and c. Causality between the use of the consumed goods and the loss suffered. In this regard, the manufacturer's liability for the product in question may be excluded or reduced if the loss suffered was wholly or partly caused by factors that exempt the manufacturer from liability for the loss suffered by the consumer, even if such loss arose as a result of a defect in the product. The factors exempting the manufacturer include the following: a. The product was not intended for distribution. b. The defect causing the loss in question arose at a later date. c. The defect arose after the product was beyond the manufacturer's control. d. The item was produced individually and not for industrial purposes. e. The defect arose as a result of compliance with regulations set by the government.

From the above description, it is generally understood that a person is liable for all their actions, the consequences of those actions, and for not acting negligently or carelessly towards another person or party. Such liability depends on whether the event (causing loss to another person) involved fault on the part of that person, thereby requiring them to pay compensation under Article 1365 of the Civil Code. Thus, the liability of the seller or business operator concerns liability arising from the failure of the goods and/or services sold (due to the presence of hidden defects). As for the manufacturer's liability, it concerns liability only for other losses (property, physical or mental health of the user of the goods and/or services) occurring as a result of the use of the product sold. Furthermore, in accordance with the principles of consumer protection, only the consumer who has directly suffered loss from the purchased product is entitled to claim compensation.

Housing developers may be held liable to housing consumers on the grounds of tortious liability and liability for breach of contract, depending on the actions taken by the housing developer towards the housing consumer. With regard to the limitation of liability for business operators, there are specific provisions governing the limitation of liability for business operators. These limitations are set out in Article 27 of the Consumer Protection Act, thereby serving as a reference for the circumstances under which business operators are exempt from liability for losses suffered by consumers. The provisions regarding exemption from liability as referred to in Article 27 of the UUPK are as follows a. It is proven that the goods should not have been distributed or were not intended for distribution. b. Defects in the goods arise at a later date. c. Defects arise as a result of compliance with provisions regarding the classification of goods. d. Negligence caused by the consumer. e. The expiry of the limitation period of 4 (four) years from the date of purchase of the goods or the expiry of the agreed period.

The liability of housing developers for hidden defects is not unlimited and will not apply if such defects are caused by a force majeure event beyond the developer's control, as recognised by the doctrine of force majeure. In this context, force majeure refers to a situation occurring beyond the ordinary course of events, which lies beyond the power or normal ability of humans to overcome. Consequently, the

existence of such a situation constitutes a category of inability for the business operator to fulfil the obligations agreed upon in a contract.

Circumstances that prevent a business operator from fulfilling their obligations are, in principle, unforeseeable force majeure events that arise not from fault or negligence. In such cases, even if it is proven that the business operator has made every reasonable effort to fulfil their obligations, the force majeure event still prevents or denies the business operator the opportunity to fulfil all the obligations agreed upon. Therefore, a business operator who is unable to perform due to force majeure is, by law, exempted or released from the obligation to pay compensation to the consumer with whom they had previously entered into a binding agreement. (Nandika & Ramli, 2020)

Under Indonesian contract law, provisions regarding force majeure serve as a legal ground that may exempt a business operator from liability for acts for which damages may be claimed. This is as provided for in Article 1245 of the Civil Code, which reads as follows: “No compensation or interest shall be payable if, due to force majeure, the debtor is prevented from performing or doing something required of them, or if, due to such circumstances, they have committed a prohibited act”. The provisions of Article 1245 of the Civil Code illustrate that the force majeure clause is not a provision arising from a contract, but rather a provision arising from the law (by law). This means that even if the parties have not expressly included a force majeure clause in their agreement, the provisions regarding force majeure will still apply and bind the parties who have entered into the agreement, in accordance with Article 1245 of the Civil Code. (Hansen, 2025)

As previously explained, the force majeure clause is not limited to compelling events that may have extremely severe consequences, affecting a wide area or having a broad and permanent impact such as natural disasters, wars, and other compelling events which would essentially result in the termination of the contract, thereby making it no longer possible to fulfil the terms set out in the agreement. Furthermore, force majeure also encompasses other events of a temporary nature; such temporary events do not necessarily give rise to legal consequences that would constitute grounds such as the destruction of the subject matter of the agreement for a business entity to declare the termination of a contract.

As seen in the articles above, a comprehensive explanation has been provided regarding the definition of force majeure and the actions that must be taken by each party to prove the occurrence of a force majeure event that has prevented them from fulfilling the agreed legal consequences, particularly if such force majeure is only of a temporary nature. Thus, the points outlined above can serve as a reference for parties intending to enter into a contract to draft a sound force majeure clause in the contract they are preparing.

With regard to the matter referred to above concerning the obligation of a party to prove that the event preventing them from fulfilling their obligations can be classified as force majeure, such a claim must first be supported by evidence acceptable to the other party. For example, the obligation to submit a report with supporting evidence regarding the force majeure event, including by requesting a statement from the local government or from other authorised bodies or agencies to

confirm that the event in question constitutes a force majeure event. Furthermore, the requirement to report as soon as possible on the non-performance resulting from force majeure must be regulated with a reasonable timeframe for submission by the party experiencing the force majeure event.

CONCLUSION

The liability of housing developers for hidden defects that cause harm to consumers may be fulfilled by paying compensation for the losses suffered by the consumer or by rectifying the matter in accordance with the consumer's claim. The payment of such compensation is essentially subject to an agreement between the consumer and the housing developer. The liability of housing developers for hidden defects is subject to a limitation in the event of force majeure (compelling circumstances), as this occurs beyond the housing developer's control; the housing developer must be able to prove that the event was indeed beyond their control and authority. If this cannot be proven, the housing developer remains liable for the losses suffered by the consumer. Housing developers should face severe penalties for cutting corners on building materials and quality. Such penalties represent a form of accountability that they must fulfil. If the penalty takes the form of a fine, the housing developer must be held liable and pay a fine amounting to twice the losses suffered by the consumer.

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