



Legal Protection for Villa Owners from Manipulation of the Villa Brokers

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Abstract. A real estate broker is a term that can be used for one who assists villa owners to find tenants. Before offering a villa room, brokers first make an agreement, both verbally and in writing, regarding the rental fee for the villa with the villa owner. However, in practice, there are brokers who single-handedly determine the rental rates for villas according to their own wishes without heeding the agreements that have been made, so they take advantage of cheating on the rates for the villas. Consequently, in addition to causing the villa owner to suffer losses due to the agreement not being executed as agreed, this also has a negative impact on the villa owners. The negative impact is the intention of prospective tenants to stay in the villas is decreasing due to high room rental rates. This study examines two issues related to fraudulent acts on villa room rental rates: (1) What is the Legal Protection for villa owners if brokers are suspected of manipulating booking fees? (2) Are there any Penalty for brokers who commit fraudulent acts on villa room rental fees, which have a negative impact on villa owners? This study reveals the protection that can be given to villa owners or legal remedies that can be taken by villa owners are in the form of (1) legal dispute resolution efforts outside the court, such as mediation (2) legal remedies through courts, such as filing a lawsuit regarding defaults. Reviewed from a civil law perspective, penalties that can be imposed on brokers are the possibility to claim compensation, cancel the agreement, and transfer risk.

Keywords: Legal Protection · Villa Owner · Broker

1 Introduction

Tourism sector in Bali continues to experience a highly significant increase, which is indicated by an increase in accommodation available for both local and international tourists. This has an impact on the increasing demand for villas by tourists. In the past, villas tended to function as resting places for tourists, but in recent years, the function has begun to shift to residences for foreign nationals who are working or doing business in Bali. The trend has further encouraged the establishment of villas in various remote areas in Bali.

The increasing number of villas in Bali leads to business competition between villa owners. Villa owners strive to provide complete facilities and market their villas at very affordable prices.

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In an effort to promote villas to reach tourists to stay at their villas, villa owners make use of the services of brokers to overcome difficulties in finding tourists and in promoting the villas directly. Broker is a term used to address people who serve as intermediaries and provide their services to arrange things for other people based on wages.

In fact, before marketing a villa, the brokers first make an agreement both verbally and in writing with the villa owner regarding the villa rental rate. Unfortunately, in practice, many brokers do not heed the agreements made and single-handedly determine the rental rates according to their wishes, not according to the agreement. As a result, villa owners suffer losses in the form of losing tourists as tenants due to an unreasonable price increase.

By observing the phenomena and issues described above, there is a need for legal protection for villa owners and appropriate sanctions for brokers in the event of fraudulent acts committed by the brokers on villa room rental rates offered to prospective tenants.

2 Method

This research was conducted using a normative legal research method. It was done so because normative research is a type of research conducted by studying the norms or laws and regulations that are related to the problems under the study.

3 Results and Discussion

3.1 Legal Protection for Villa Owners if Fraudulent Actions on Room Rental Rates are Committed by Brokers

Article 1313 of the Civil Code states that an agreement is an act by which one or more people bind themselves to one or more other people. The agreements cannot be withdrawn other than by agreement of both parties, or for reasons which are stated to be sufficient by law. Such agreements shall be implemented in good faith.

Default is a word which is derived from Dutch which means not fulfilling the obligations that have been agreed and stipulated in an agreement or engagement that arises through law or arises in the form of the engagement itself.

Wirjono Prodjodikoro stated that “The word default means the absence of an achievement, and achievement in a contract law means something that must be carried out as part of an agreement”.

An agreement to determine when a Broker does not fulfil the contents of an agreement or engagement is: “if a person commits the prohibited act, then he does not fulfil the engagement”. In general, a broker is declared in default when he/she due to his/her own fault does not carry out the performance, or commits something that according to the agreement is not permitted to be done. Performing an achievement but not accordingly is also called a default.

Fraudulent actions committed by brokers make the villa owner feel aggrieved due to a default by the broker, therefore the villa owner can demand the fulfillment of the agreement and the revocation of the agreement or ask for compensation to the broker who has defaulted. Therefore, villa owners seek legal protection. Legal protection is

protection given to legal subjects in the form of legal instruments, both preventive and repressive and both written and unwritten. Legal protection encompasses all efforts that guarantee legal certainty to provide protection to the public in general.

Philippus M. Hardjon argues that, “The principle of legal protection for the people against government actions rests and originates from the concept of recognition and protection of human rights. Because according to history in the West, the birth of concepts of the recognition and protection of human rights is directed at the limitations and placing obligations on society and the government.

Forms of protection or legal remedies that can be taken by parties who are harmed due to default by other parties are:

- a. Legal remedies outside the court, that is legal remedies outside the court as a result of the above-mentioned default is to make peace, for example brokers in good faith make peace with the villa owner to resolve the dispute amicably by involving a third party that by the parties is judged fair and able to resolve the dispute.
- b. Legal remedies in court are taken when peacemaking efforts made by the aggrieved party, the villa owner, as a result of default by the brokers do not succeed in bringing about peace, then there is no other way but to resolve the dispute through the District Court which is authorized for that.

The owner of the villa feeling aggrieved as a result of a default by one of the other parties that has caused a loss to him/her, can redeem or restore his/her rights by filing a claim with the court so the court:

1. sues the party who has defaulted.
2. imposes a penalty on the party referred to in 1 in order to fulfill the performance.
3. declares as a law that the party who is in default has actually defaulted (breach of promise).
4. imposes a penalty on the party who is in default in the form of paying compensation for the consequences arising from the event of default, which consist of:
 - a. Cost of principal, which directly arises as a result of the default and other debt arrears.
 - b. Fines (interest) and arrears of fines (interest).
 - c. Other costs, including court fees and attorney fees.
5. imposes a penalty on the party in default with dwangsom if they fail to carry out the judge’s decision which has permanent legal force.
6. diverts all risks arising from the default.
7. revokes the agreement and confiscate the revindicatoir beslag and take back the goods that are the object of the commission agreement which are under the control of the party who is in default.

By involving judges when making legal efforts through the Court to resolve default cases, judges as law enforcers are expected to be able to make a fair settlement, so the interests of each party can be protected.

3.2 Sanctions for Brokers Committing Fraudulent Actions on Villa Room Rental Prices

Technically speaking, fraudulent actions committed by brokers on villa room rental rates which then result in default or offenses are in fact acts that have a criminal threat and have legal consequences for anyone whosoever committing the prohibited act. A valid agreement or engagement according to applicable law shall fulfill the elements of Article 1320 BW, which include:

1. Consent, the first paragraph is based on the word “consent” which contains the aim that the parties express their respective wills to make a will or statement of one party that has been approved by the other party.
2. Legal competence, a person who is said to be legally competent is the act of a person to carry out legal actions independently who binds him/herself without being contested, and generally legal competence is judged by a person’s age.
3. Specific subject matter/specific object, in the provisions of Article 1320, paragraph 3, of BW it is determined that an achievement that is the subject of making a contract concerning the terms of the agreement is a specific object.

Brokers have bad intentions that can be the basis or intention to default, so from a legal perspective, sanctions are expressly given to brokers who default in the contents of the agreement. Sanctions can be in the form of:

- a. payment for losses,
- b. revocation of agreement,
- c. risk transfer, and payment of court fees.

Defaults can have crucial consequences, so it must first be determined whether the broker is in default or negligent, and that must be proven in the presence of the judge (court). As for the explanation regarding the sanctions for brokers who commit fraudulent acts on the rental rates for villa rooms, for the defaults they commit, the sanctions to be imposed include:

1. Compensation

Regarding compensation for losses by brokers who default on the contents of the agreement, there are three elements to be considered, each of which is:

a. Expenses

Expenses refer to materials that have been incurred by the aggrieved party as a result of default. For example, if a broker makes an agreement regarding the cost of renting a villa room with the owner and asks for compensation of 5 percent from the owner, but in fact the broker offers a price above the one that has been agreed with the villa owner. Therefore, the owner of the villa has the right to ask for a refund of the costs that have been issued to the broker who has received it because the broker in question has violated the agreement that has been made.

b. Losses

Losses refers to losses incurred as a result of actions taken by other parties. For example, one broker increased the price for renting a villa room despite the fact that the villa owner and the broker in question had entered into an agreement not to increase the price which resulted in losses experienced by the villa owner due to the loss of prospective tenants.

c. Interests

Interests refer to losses in the form of loss of profits that have been imagined or calculated by the broker. A villa owner and a broker enter into an agreement regarding the rental of the villa, and in the clause of the agreement there is a clause regarding default and interest in the amount of 2% of the rental value of the villa. Because the broker pays the villa rental compensation late, the broker is penalized by the villa owner and is subject to a fine of 2% every month.

2. The villa owner can request the revocation of the agreement that has been made. Nevertheless, the revocation of the agreement must concern the Article 1266 of the Criminal Code which requires the revocation of the agreement to be carried out through the court. In addition, Article 1338 paragraph (2) can also be implemented in revoking the agreement through an agreement from negotiations between the parties.
3. Risk transfer refers to a risk transfer that occurs as a result of an act of god or force majeure resulting in default. In this case, the risk that did not initially transfer from the villa owner can be fully transferred to the party who is in default as a sanction for default.
4. Payment of court fees. This sanction can only be requested when it has been proven before a judge with a determination from the judge that a default has occurred which was committed by the broker concerned so the broker in question can be required to pay compensation in the form of money arising from a conflict in resolving the dispute.

4 Conclusions and Recommendations

1. Legal protection is a legal effort in protecting human rights as well as rights and obligations arising from legal relations between human beings as legal subjects. Theories and concepts regarding legal protection are especially relevant to answer problems that discuss legal protection in the event that an unlawful act committed by one party occurs to other party. Forms of legal protection or remedies that can be taken by a party when harmed as a result of a default committed by other party are as follows:
 - a. Legal proceedings outside the court
 - b. Legal remedies by proceeding in court.

A villa owner who is harmed as a result of a default by other party that has caused a loss to them can give a warning to the broker in the form of a reprimand (somaitie/ingebrek estelling) so the broker in question fulfills his/her obligations and pays the losses incurred as a result of the default, as well as the interests.

Regarding the sanctions for brokers committing fraudulent acts on the rental price of a villa room, if the deadline for fulfilling the performance is determined, then according to the provisions of Article 1238 of the Civil Code, a broker shall be considered negligent when the specified time has elapsed and when the summons is not fulfilled. In this condition, the villa owner can demand the fulfillment of the agreement, revocation of the agreement or compensation to the broker who has defaulted. In the event that the broker in question has bad intentions that can be the basis or intention to default, from a legal perspective, sanctions are strictly imposed on the broker on the basis of default who has defaulted on the contents of the agreement. The sanctions referred to may take the following forms:

- a. Compensation, the villa owner can sue the broker to compensate for the loss due to default on the contents of the agreement made by the said broker. The compensation consists of three elements: expenses, losses, and interests.
 - b. Agreement revocation, the villa owner can request a revocation of the agreement that has been made with the broker who is in default.
 - c. Risk transfer, this refers to the risk transfer that occurs as a result of an act of god or force majeure resulting in default.
 - d. Payment of court fees. This type of sanction can only be claimed when it has been proven in front of a judge with a determination from the judge that the broker concerned has defaulted, so the broker in question can be required to pay compensation in the form of money arising from conflicts in dispute resolution.
2. Before entering an agreement, each of the parties concerned should ensure the ownership of a good feeling with each other. The agreement should be made in writing to make it easier to prove if one of the parties violates the contents of the agreement or is in default. Additionally, the villa owner as a business actor should have good faith in entering into an agreement so no party will be harmed. In other words, service business actors who have deliberately planned a default must be responsible for the actions they have undertaken to consumers who are villa rental service users. This can be realized by compensating for the losses that were submitted to him.

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