

SUBPOENA AS A FORM OF DEVELOPER'S LEGAL EFFORT TO CONSUMERS IN CANCELING PROPERTY RESERVATIONS

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Abstract

This study aims to investigate whether subpoenas can serve as a legal recourse for developers in the cancellation of property reservations and to comprehend the process of issuing subpoenas to consumers for canceling property reservations in Badung Regency. The research methodology employed is empirical legal research without statutory approaches, relying on factual analysis. Primary information was gathered through interviews with respondents and informants, while secondary data sources included literature, journals, and internet legislation. Data collection techniques involved documentation studies, and analysis was conducted through descriptive analysis. The research findings indicate that subpoenas can be utilized as a legal remedy by developers for consumers canceling property orders. Subpoenas are issued by delivering appeals and warnings through familial and economic approaches regularly. This legal effort aims to prevent financial losses for developers in the Badung district resulting from consumer order cancellations.

Keywords: Subpoena, Cancellation, Consumer, Property

1. INTRODUCTION

Property sales conditions in the post-pandemic period began to increase, the increase was marked by the recovery of post-pandemic conditions. Based on the results of the government's residential property survey, the market price increased by a limited 1.72%, in the first three months of 2022. The increase is very limited if you reflect on the previous condition, namely 1.77%, then the third is still experiencing an increase of 1.53% and it is estimated that the increase will continue in the fourth month of 2022 (Haryono, 2022).

The primary market showed a limited increase in property sales in the second quarter of 2022. The increase was 15.23% in the second quarter of 2022. The increase indicates that the property experienced growth. The growth had also contracted in the previous quarter by 10.11% in 2022. This growth is considered a positive growth in the property world. This positive growth is also supported by banks as the main source of financing to develop development in the next quarter of 2022. Financing in the second quarter from banks amounted to 64.82% of the total capital requirements for housing project development originating from internal funds. On the consumer side, financing from banks by providing public housing credit facilities is still the main choice in purchasing residential property with a share of 74.97% of total financing (Departemen Komunikasi, Bank Indonesia, 2022).

The impact of this positive growth is experienced by property companies in Badung Regency. Consumer demand for property is perceived to be increasing. The increase can be seen from the existence of property orders from consumers. As experienced by PT Mitra Kencana Properti, PT Siligita Properti, PT Bali Mitra Investa and PT Griya Properti. Property orders at property companies began to be felt to increase after the

pandemic. Such conditions have led to increased economic growth and development in Badung.

Booking property is inseparable from the existence of the consumer economy. Consumers who initially have the capital to buy a property unit, then place an order for the desired property. Furthermore, the property order from the consumer is processed by making the binding by the property company and the consumer. Consumers enter into an agreement with the property company.

The binding is regulated "Article 1313 of the Civil Code is an act in which one or more people bind themselves to one or more other people" (Hanaya & Sarjana, 2019). This definition determines that there is an act of binding. Furthermore, "Article 1338 of the Civil Code determines that all agreements made legally apply as laws that make it" (Hanaya & Sarjana, 2019). In connection with the property booking agreement, the agreement made by the property company to the consumer is binding and constitutes the law for the company and the consumer. Thus, everything stipulated in the binding agreement becomes law for the company and consumers. If the agreement regulates the cancellation of the reservation, then all the consequences of the reservation that arise become legal consequences of the action. Cancellation of a property booking has legal consequences for the agreement made and the legal consequences have been determined in the agreement.

Cancellation of bookings from consumers has a loss impact on property companies. The loss arises because the booking has been kept in advance by the company (Vatriska & Purwanto, 2018). The units for sale are not offered by the company to the public because the property units have been reserved. If the public wants to buy a property unit, then the choice is another unit, not a unit that has been booked. Booking the unit, where the property company is given an advance payment in advance. The down payment is a binder between the consumer and the company and also a binder to the ordered property unit. With the down payment, the unit ordered by the consumer is not allowed to be sold or transferred to other consumers. In other words, if the property unit has been ordered, it means that the consumer has paid an advance payment to the property company.

In fact, the consumer suddenly canceled the property booking that had been agreed upon with the company. Even though the consumer has paid a down payment, it is still canceled. The cancellation, by the company, is considered detrimental because the ordered unit is considered to have been sold, but suddenly the consumer canceled the order. Therefore, units that were previously considered sold, become canceled or unsold. Such conditions are very detrimental to property companies. Faced with this situation, the company made a subpoena as an effort not to cancel the property purchase. The down payment given by the consumer provides certainty that the consumer has agreed to buy the property and the down payment is considered to be the initial payment for the property, therefore the ordered property is considered sold (Jayadinata, 2020). On that basis, the cancellation resulted in losses for the property company.

State of the art of this research is done by comparing this research with previous research. As for previous research, first Yulia Dewitasari, and Putu Tuni Cakabawa Landra with the title Legal Effects on the Parties in the Agreement in the Event of Cancellation in the Agreement. The problem is how are the terms of cancellation in the agreement regulated in the Civil Code? and how are the consequences of canceling the agreement? (Dewitasari & Landra, 2015). Second, LP. Suci Arini, and Made Gde Subha

Karma Resen entitled *Legal Consequences of Unilateral Agreement Cancellation Against Food Delivery Service Providers in Indonesia*. The formulation of the problem is how the regulation of unilateral agreement cancellation by consumers against food delivery service providers in Indonesia and what are the legal consequences of unilateral agreement cancellation by consumers against food delivery service provider agreements in Indonesia (Arini & Resen, 2021). The third study, by Ida Ayu Putu Krisna Yanti, and I Wayan Novy Purwanto with the title *Legal Analysis of Cancellation of Kebaya Lease Agreement in Denpasar City*. The formulation of the problem is how the implementation of the kebaya lease agreement in Denpasar City and how to solve the problem of unilateral cancellation by the tenant in the lease agreement in Denpasar City (Yanthi & Purwanto, 2019). These three studies, of course, have differences with this research. The difference lies in the research location. The previous studies used as research locations were Indonesia and Denpasar City, while this study chose a location in Badung Regency. Another difference is in the object of study, where the subpoena, while the previous research was on the object of canceling the agreement, food delivery service providers and kebaya rental. In addition to differences, there are also similarities, namely in the agreement and cancellation of the agreement. Although there are similarities, this research is still far different from previous research and is also different from the formulation of the problem and its discussion.

This study aims to gain knowledge about the use of subpoenas as a legal solution for developers when canceling property reservations. It focuses on two main questions: the feasibility of using subpoenas as a remedy and the procedural aspects of issuing subpoenas to consumers in the Badung Regency for property reservation cancellations. The journal seeks to understand how developers can utilize subpoenas in the cancellation process and gain insight into the procedures involved in issuing subpoenas to consumers in relation to property reservation cancellations in the Badung Regency.

2. RESEARCH METHODS

The research method of this journal chooses empirical legal research. This research is based on the gap between *das sollen* and *das sein*. Empirical research is field research because it obtains data directly in the field (Sumantri, 2013). The intended field is the location of this research in Badung Regency, by taking samples at PT Mitra Kencana Properti, PT Siligita Properti, PT Bali Mitra Investa and PT Griya Properti. Furthermore, the types of approaches used are statutory approaches and factual approaches. Primary data sources are obtained from interviews with respondents and informants, while secondary data sources use legislation, literature, journals and the internet. Data collection techniques use document studies and data processing is done by descriptive analysis.

3. RESULTS AND DISCUSSION

3.1. Subpoena as a Form of Legal Remedy for Developers in the Cancellation of Property Reservations

Subpoena is defined as a warning from a person based on his position either as a creditor or as a first party (Sriartini & Purwanti, 2013). A reprimand is the same as a warning addressed by the first party in the agreement. The first party is allowed to issue a summons to the second party or debtor, while the second party is not allowed to issue a summons to the first party. So, in the subpoena, only the first party is allowed to issue a subpoena.

Based on Article 1243 of the Civil Code, reimbursement of costs and losses due to non-fulfillment of "obligations to the obligation, when there is negligence from the debtor in the fulfillment of its obligations, but if something that is obliged to be given is not given at the expiration of the agreed time (Sriartini & Purwanti, 2013). This article provides an understanding of losses and reimbursement of costs incurred and required. The reimbursement of costs and losses occurs if the debtor fails to carry out his obligations or fails to comply with his agreement. This provision is the legal basis for giving a warning or summons based on the agreement between them.

In connection with the negligence committed, the negligence gives rise to an obligation to the debtor. The legal consequences of negligence to fulfill the property reservation agreement are carried out by requesting compensation to the customer or the second party on the basis of canceling the reservation of the property unit. With the negligence made, the benefits of the developer are lost. The previously agreed engagement is denied by the prospective buyer. Thus, there is an unlawful act from the prospective property buyer to the developer.

The property booking agreement made, has been agreed between the developer and the customer. However, during the payment of installments, it turned out that the customer had not paid several installments, so the buyer was given a warning first. Based on its provisions, it determines "The debtor is negligent, if he is declared negligent by warrant or by a deed of the same kind or by his own obligation if this stipulates that the debtor must be deemed negligent by the lapse of the specified time." The definition that gives the meaning that gives the meaning that the debtor has been negligent in fulfilling his obligations or has been negligent due to the passage of time specified in the agreement. In connection with the property order agreement, the ordering party has been declared negligent or default, if it does not fulfill its obligations as stated in the agreement. With this negligence, it is obliged to give a warrant or warning letter to repay the debt. This warning letter is called a summons.

Article 1238 of the Civil Code provides an understanding that the property owner or the debtor has been declared negligent. However, before being declared negligent, the customer must be given a warning first. Warnings or warnings to pay are made by the debtor (developer) to the buyer by being sued in court by the developer. Thus, the subpoena is given before the court process is taken by the developer because of the non-performance of the performance or mistakes that have been made by the buyer.

J.Satrio's opinion, that "the debtor can be blamed if the debtor cannot carry out or fulfill his promises and everything he should do" (Satrio, 2012). All the blame lies with the debtor for renegeing on the promises that have been made. "Default as the performance of obligations that are not on time or are not carried out according to the appropriate,

giving rise to the obligation for the debtor to provide or pay compensation (*schadevergoeding*), or in the event of default by one party, the other party can demand the cancellation of the agreement" (Satrio, 2012). In essence, the agreement that has been made by the developer with the buyer only.

Default has several forms as a development of various kinds of defaults. The forms of default, in general, are:

1. Not performing the performance at all; 2. Performing but not on time (late); 3. Performing but not as promised; and 4. The debtor performs what according to the agreement should not be done (Satrio, 2012).

The developer, as the party harmed by the buyer's default, can demand fulfillment of the agreement, cancellation of the agreement or request compensation from the buyer. The compensation can include costs that have obviously been incurred, losses incurred as a result of the default, and interest. If there has been a default, the step that can be taken is to make a subpoena for the act of breaking the promise. This subpoena is useful to remind the party who has defaulted on the obligations that must be fulfilled according to the agreement.

Cancellation of an agreement from the buyer, then the buyer must be negligent first (Endrayani & Putra, 2016). According to Mr. Nyoman Sutami, Operations Manager of PT Mitra Kencana Property, said that the negligence occurred because of the buyer's fault, not the developer's fault. By not carrying out the obligations of the agreement. In order to make the buyer in a state of negligence, the developer must first give a warning or subpoena to the customer with the aim that the customer wishes to continue his installments. Usually the warning given by PT Mitra Kencana Property is in the form of a written warning or an official warning from the company in the form of a warning letter addressed to the customer. (Interview on June 7, 2022).

The official letter given by PT Mitra Kencana Property, in doctrine and jurisprudence, is called a summons. Summons that is not fulfilled by the customer without valid reasons will bring the customer into a state of default and from that moment all the legal consequences of default begin to apply to the prospective buyer. With the occurrence of a state of default experienced by the buyer, the developer has the right to demand the cancellation of the agreement and ask for compensation to the prospective buyer. However, PT Mitra Kencana Property does not directly submit the cancellation of the unit reservation agreement because the cancellation must go through the court. PT Mitra Kencana Property is more likely to prevent the cancellation of the engagement by giving a summons to the customer coupled with negotiations. (Interview on October 4, 2022).

Based on an interview with Mr. I Wayan Yudhana, as Marketing Supervisor at PT Mitra Siligita Property, said that in practice, the summons is generally submitted three times, namely the first summons, second summons and third summons. The first subpoena is generally in the form of a warning or warning containing that the customer has been in arrears or the customer has not paid the down payment installments twice. The first summons is carried out, because PT Mitra Siligita Property usually still believes that with this warning the debtor will voluntarily carry out the contents of the summons. If the first summons is ignored or ignored by the customer, or responded to but still does not pay, then PT. Mitra Siligita Property sends a second summons, this second summons is given firmly by giving assertiveness to the customer to immediately pay and if he does

not pay the installments, then within the period specified in the agreement has arrived, the customer will be prosecuted in court in accordance with the agreement. This second summons is stricter than the first one. The first one can still be considered soft or reminder in nature. (Interview on October 4, 2022).

Furthermore, if the second summons is ignored, then PT Mitra Siligita Property issues a third summons. This third summons was given because the customer did not provide a satisfactory solution, PT Mitra Siligita Property's threat became very firm. This third summons, PT Mitra Siligita Property only gives two options, namely paying the debt during arrears or paying part of the debt or being sued. So the choice is, pay the debt or get sued. If the third summons does not provide a solution, PT Mitra Siligita Property contacts a lawyer to sue the customer in court. The lawsuit aims to cancel the agreement that has been made by PT. Mitra Siligita Property with the customer. In addition, it also sues for losses suffered by PT. Mitra Siligita Property during the course of the property engagement and also at the same time demands the costs that have been incurred along with the interest that PT. Mitra Siligita Property should get from the customer.

Cancellation of house reservations, related to Article 13 paragraph (1) Permen PPJB which determines that in the event of cancellation of the agreement, all payments, by PT. Mitra Siligita Property are returned to prospective buyers. Thus, if PT Mitra Siligita Property, PT Mitra Kencana Property and PT Bali Mitra Investa file for cancellation through the local court, then they are obliged to return all costs received during the binding of the sale and purchase. Thus, the subpoena can be a tool to prevent the cancellation of the sale and purchase agreement (Sulistiawati et al., 2019). If the subpoena does not prevent the annulment, then the court is the one to invoke the annulment.

In relation to that, Article 13 paragraph (2) of Permen PPJB states that in the event of cancellation of the house reservation after the signing of the PPJB due to the negligence of the buyer, then:

- a. if the payment has been made by the buyer at a maximum of 10% (ten percent) of the transaction price, the entire payment becomes the right of the development actor;
 - or b. if the payment has been made by the buyer more than 10% (ten percent) of the transaction price, the entire payment becomes the right of the development actor; or
- if the payment has been made by the buyer more than 10% (ten percent) of the transaction price, the development actor is entitled to deduct 10% (ten percent) of the transaction price.

Refunds are made by the developer to the buyer. In accordance with the above provisions, the payment of 10% of the house price must be returned in full by the developer to the buyer. If the payment exceeds this amount, the first party has the right to give a deduction.

Based on this article, the developer has the right to deduct costs that have been incurred by consumers or bookers. The deduction, of course, must go through a subpoena first. Thus, a summons can be used as a legal remedy for developers in canceling property orders made by consumers. The new developer can deduct if it has given a summons first to the consumer. The consumer can carry out his obligations by giving a partially paid down payment to the developer. Even though the down payment is paid in installments, while the installment of the property down payment has only been paid for 10% of the agreed down payment, the developer still has the right to take 10% of the down payment paid by the consumer.

3.2. Developer's Legal Efforts to Resolve Cancellation of Property Reservation in Badung Regency

Giving a summons to consumers is a legal effort made by the developer. Legal efforts made by the developer in overcoming negligence or default in ordering property, namely by providing an official letter containing a warning or summons. Subpoena is given if the customer has committed an act of not paying the installments. If the customer does not pay installments in just one month, an official warning is given by PT Bali Mitra Investa. Unlike PT Mitra Kencana Property, where in giving a summons if the customer has made arrears the second time. After two installments have not been paid, then the summons is just started or officially issued. This action has become a habit at PT Mitra Kencana Property. Whereas at PT Mitra Siligita Property, if the customer does not pay once, then the customer will be called and then asked the reason for not being able to pay. Then, an opportunity is given to pay in the next month with the consequence of double payment. After the customer does not pay twice, then the customer is not only telephoned but visited to his house. If the customer is still unable to pay, then the buyer is required to sign a letter of willingness to pay next month. Furthermore, if the customer is unable to pay next month, then an official summons is issued from PT Mitra Siligita Property. (Interview on October 4, 2022).

An official summons given by PT Mitra Kencana Property to the customer as a form of legal action taken by PT Mitra Siligita Property to the customer. Summons that is not fulfilled by the customer without valid reasons will bring the customer into a state of default. Default is the non-performance of performance either due to intent or negligence (Wiraputra et al., 2018). From the moment the default occurs, all legal consequences of the default begin to apply to the customer.

Each of the property companies mentioned above, has a variety of legal actions taken in dealing with customers who default or neglect to pay their debts. Based on an interview with Mr. I Wayan Yudhana, as Marketing Supervisor at PT Mitra Siligita Property, said that in practice, the summons is generally submitted three times, namely the first summons, second summons and third summons. The first summons is generally in the form of a warning containing that the customer has been in arrears for two installments or the customer has not paid the installments twice. The first summons was carried out, because PT Mitra Siligita Property was ignored by the customer or responded but still did not pay, then PT Mitra Siligita Property sent a second summons, this second summons was given firmly by giving assertiveness to the customer to pay immediately and if he did not pay the installments, the prospective buyer would be prosecuted in court in accordance with the agreement. This second summons is stricter than the first one. The first one can still be considered soft or just a reminder. (Interview on June 3, 2022).

Furthermore, if the second summons is ignored, then PT Mitra Siligita Property issues a third summons. This third summons was given because the customer did not provide a satisfactory solution, PT Mitra Siligita Property's threat became very firm. This third summons, PT Mitra Siligita Property only gives two options, namely paying the debt during arrears or paying part of the debt or being sued. So, the choice is, pay the debt or get sued. If the third summons does not provide a solution, PT Mitra Siligita Property contacts a lawyer to sue the customer in court. The lawsuit aims to cancel the agreement that PT Mitra Siligita Property has made with the customer. In addition, it also sues for losses suffered by PT. Mitra Siligita Property during the sale and purchase agreement of

the property was carried out and also at the same time demands the costs that have been incurred along with the interest that PT. Mitra Siligita Property should get from the customer.

In contrast to PT Mitra Kencana Property, if the buyer defaults on the agreement, an appeal is given first. According to Nyoman Sutami, as the Operations Manager at PT Mitra Kencana Property said that the appeal was conveyed verbally via telephone. Appeal to try to pay the debt. Despite the pandemic conditions, you still have to try to pay your debts. The appeal was conveyed politely and in good faith to the customer. If the first appeal is ignored, then PT Mitra Kencana Property contacts again via telephone, by providing an overview of the amount owed for two months and encouraging the customer to pay his debt. If the customer does not heed the second appeal, then PT Mitra Kencana Property gives another appeal verbally. This third appeal has only started to be held since after the pandemic. Previously, this third appeal did not exist or never carried out the third appeal. The third appeal exists because of the pandemic, where PT Mitra Kencana Property provides a policy in the form of tolerance to house bookers in order to get leeway to pay their debts. After the third appeal was issued, a summons was issued. This issued subpoena is the first subpoena.

The first subpoena was delivered not verbally, but in writing through an official letter signed by the Director of PT Mitra Kencana Property complete with a company seal. If the first summons is ignored, then the next legal action is to give a second summons. This second summons is also delivered officially by affixing the signature of the Director of the company and the company seal. This second summons contained the buyer's ability to pay his debts by summoning the buyer to the office. This summons was made to invite the buyer to try to find the best solution according to his financial capacity. If these efforts are deadlocked, then PT Mitra Kencana Property issues a third summons, which provides a time limit for the latest debt to be paid. Payment of the buyer's debt can be made by paying part or half and can also pay in full. The third summons provides time limits that must be met by the buyer. The legal efforts of PT Mitra Kencana Property can be described as follows:

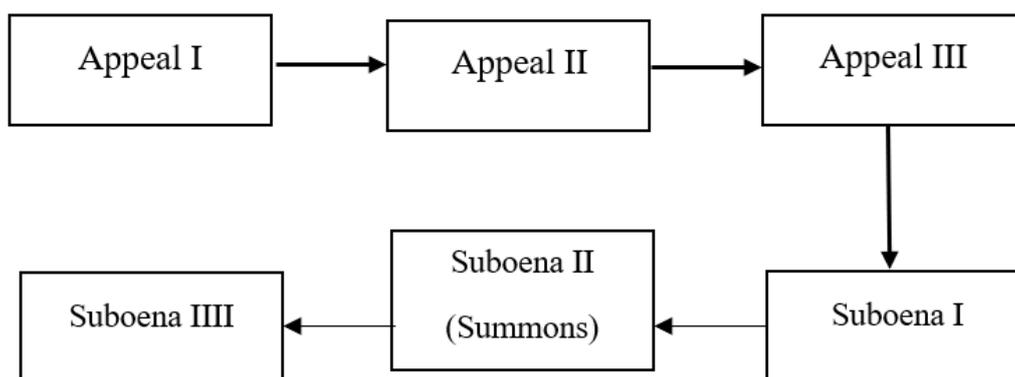


Figure 1. The legal efforts of PT Mitra Kencana Property

Based on the picture above, PT Mitra Kencana Property took action to give three appeals and three subpoenas. These appeals were conveyed verbally by telephone only, not through an official letter such as a summons. However, in the second summons, a summons was made to the buyer who made a default. The summons aims to invite the

customer to dialogue so that the customer can still pay his debt. By calling the customer, PT Mitra Kencana Property hopes that there will be a solution that can make the customer have the ability to pay the debt and interest, either partially or completely.

The legal efforts taken by PT Bali Mitra Investa have differences with PT Mitra Kencana Property and PT Mitra Siligita Property. The difference lies in the summons given, namely if the customer does not pay the installment once, then PT. Bali Mitra Investa directly gives an official summons to the prospective buyer. The first summons contained a warning to immediately pay last month's arrears. If the summons is ignored, then PT Bali Mitra Property sends a second summons. This second summons is also made officially directly from the company. In this second summons, PT. Bali Mitra Investa did not send the summons by post or courier but brought it directly to the buyer's house. The purpose of delivering the summons to the customer's home is to meet with the buyer and invite the prospective buyer to discuss the debt. If the discussion does not find a solution, then PT Bali Mitra Investa sends a third summons the following month. The third summons is also delivered by PT. Bali Mitra Investa to the prospective buyer's house with the aim of discussing again. If it has not found a solution, then PT. Bali Mitra Investa provides a solution to the prospective buyer as a way out. The solution offered by PT Bali Mitra Investa is a win win solution and the prospective buyer must consider it. If the offered solution is rejected by the customer, then the customer is obliged to issue a solution with all his efforts in order to continue paying the mortgage. The desired solution is a solution for the benefit of PT Bali Mitra Investa and the interests of the buyer. In connection with the legal action taken by PT. Bali Mitra Investa can be described as follows.

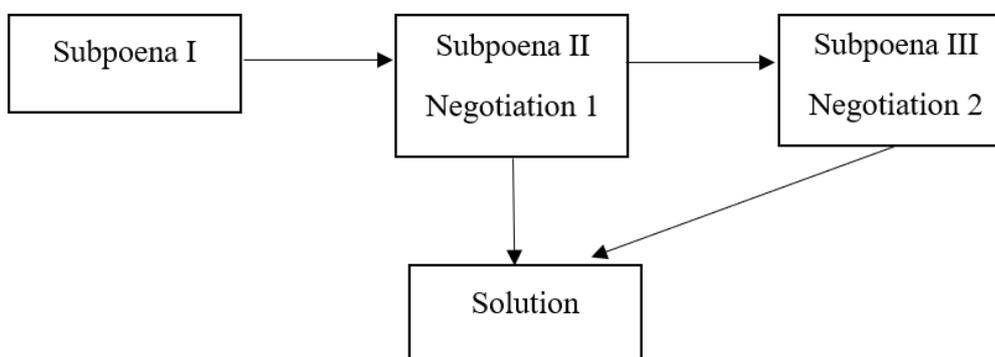


Figure 2. Developer's legal efforts

The legal efforts of PT Bali Mitra Investa are very different from the legal efforts taken by PT Mitra Kencana Property and PT Mitra Siligita Property. the efforts taken by PT Bali Mitra Investa are simpler and firmer and are familial in nature, namely by going directly to the buyer's house by inviting discussions until they find a solution.

Looking at the legal efforts taken by PT Bali Mitra Investa, PT Mitra Kencana Property and PT Mitra Siligita Property, none of them took the court route. In overcoming defaults from prospective buyers, developers are more likely to make negotiation efforts. The negotiation effort is taken if the prospective buyer has made arrears on his debt. As soon as it is in arrears, the developer quickly takes legal action, namely giving appeals and giving warnings. All these efforts are made so that there is no cancellation of the sale and purchase agreement. Every company, does not want a cancellation or avoid

cancellation because if there is a cancellation, then based on Article 13 paragraph (2) Permen PPJB requires the developer to return the down payment that has been received previously. The return of the down payment is what the developer does not want. The developer does not want the return because the partial down payment received previously has been used up for construction costs and others. So, it is very difficult to return the down payment. Therefore, it is very risky for the developer to return the down payment received earlier. The developer has spent money to build, then once the money used to build it has been used up, suddenly requested back by prospective buyers due to default, then the company cannot return the down payment that has been used. Thus, the legal effort taken by the developer to overcome the property order in the reservation agreement is to make negotiation efforts through a summons.

4. CONCLUSION

Subpoena can be a legal effort for developers in canceling property bookings in Badung Regency. Legal efforts that can be taken by the developer or property seller to resolve defaults from the customer are by giving a warning in the form of an official summons from the company and in giving the second summons, negotiation actions are taken between the developer and the customer to prevent the cancellation of the booking agreement. In addition, the actions taken by the developer are to offer the best solution for the interests of the developer and the interests of prospective buyers.

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