

LEGAL PROTECTION FOR CONSUMER BUYERS OF FLATS WITH A SALE AND PURCHASE AGREEMENT MADE UNDER HAND THROUGH THE PRE PROJECT SELLING SYSTEM

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Abstract

This research examines the legal protection for consumers who buy apartment units through pre-project selling schemes using underhand Sales and Purchase Agreement (PPJB). Although considered efficient by the developer, this practice puts consumers in a vulnerable position due to the absence of formal legal protection and without the involvement of a notary. This research uses a normative juridical approach to examine the lack of explicit sanctions in Article 43 of Law No. 20/2011 on Flats, which is often used by developers to avoid obligations. The findings show an imbalance in the legal power structure between consumers and developers, exacerbated by weak supervision and legal loopholes. PPJB, which should be made before a notary, is often used as an informal contract that does not provide effective protection for consumers. This research concludes that urgent regulatory reform is needed to require notarization of PPJBs and clarify administrative and civil sanctions for violations. The novelty of this research lies in the focus on the imbalance of legal power in PPS transactions and the proposal of prescriptive norms that ensure contractual justice for consumers.

Keywords: legal protection; PPJB; pre project selling; consumer rights; housing law.

1. Introduction

The property marketing system with the pre project selling (PPS) model creates both opportunities and legal vulnerabilities in transactions between developers and consumers (Hasibuan et al., 2025, p. 742). On the one hand, this mechanism is an economic solution for business actors to raise initial funds for the construction of flats; on the other hand, consumers are often trapped in uncertainty because they are buying units that are not yet physically tangible. When developers offer units through a sale and purchase binding agreement (PPJB) made under the hand, not through a notary, consumers lose formal protection instruments (Agustining et al., 2022, p. 23). In fact, the

binding of sale and purchase on apartment units should be subject to the provisions in Article 43 of Law Number 20 Year 2011 concerning Flat Houses, including minimum buildability requirements and land legality (Pongantung, 2018, p. 183) . The practice of making PPJB without a notary opens a gap for latent losses, especially due to the imbalance of bargaining position between developers and consumers, as well as the weakness of legal evidence from underhand deeds.

Previous research has raised the dimensions of legal protection in property sale and purchase transactions through PPJB. Research by Rahmat et al. (2022) highlights the losses arising from the practice of buying and selling apartments based on PPS which is not stated in a notarial deed, but the focus is still limited to the aspect of default without dissecting in depth the normative implications of the weak regulation of legal sanctions (Rahmat et al., 2022, p. 405) . Nola's research (2017) has also noted the problem of PPS in the context of apartment construction, but has not answered the void of sanction norms against developers who bind the sale and purchase under the hand (Nola, 2017, p. 2) . Therefore, this research is present to close the gap in the absence of a comprehensive analysis of the incompleteness of sanction norms and how this condition creates a legal vacuum that weakens legal protection for consumers. This is the novelty position of this research, namely the analysis of legal power relations (asymmetry of legal bargaining power) and the need for the formation of new norms that are responsive to the reality of PPS practices.

The urgency of this research is strengthened by the massive practice of property marketing with PPS in the last decade which is not always accompanied by compliance with the prudential principle. The lack of clarity of sanctions for property business actors who carry out the binding of sale and purchase under the hand creates a legal precedent that can jeopardize the legal certainty of consumers. In many cases, consumers suffer losses both financially and legally due to the promised flats not being built, or not meeting the agreed specifications. This condition is contrary to the constitutional right to guarantee fair, equal, and proportional legal protection, as stipulated in Article 28D of the 1945 Constitution, as well as the principle of consumer protection in Law Number 8 Year 1999 on Consumer Protection (UUPK). This shows the importance of rearranging norms to overcome the normative vacuum in the context of flat construction.

This research will focus on two interrelated legal issues. First, what is the form of developer liability in the pre-project selling marketing scheme for consumers who buy flats using PPJB under the hand? Second, what form of legal protection should be given to consumers in these conditions, given the unequal bargaining position and potential losses due to the absence of notarial legalization? These issues become the operational definition of the practice of buying and selling flats through PPS with inauthentic PPJB and form the framework for analyzing the substance of consumer protection in civil law and consumer protection law. The purpose of this research is to identify and analyze the legal liability of developers in the context of pre-project selling conducted with an unauthentic PPJB, as well as to evaluate and formulate an adequate form of legal protection for consumers in such transactions.

This research uses a normative juridical approach, which is a legal research method that focuses on positive legal norms, legal principles, and legal doctrines that are relevant to answering legal issues that are the object of study (Rizkia & Fardiansyah, 2023, p. 120) . Normative juridical research is used to analyze the imbalance of legal protection against consumers in the pre-project selling system as outlined in the PPJB under the hand, especially in the context of the vacuum of regulatory sanctions against developers who ignore the provisions of Article 43 paragraph (2) of Law Number 20 of 2011 concerning Flat Houses. This approach is appropriate because the main issues in this research lie in the validity of the agreement, legal certainty, and protection of consumer rights that have not been explicitly covered in the applicable positive norms.

In its implementation, this research uses two types of approaches: statute approach

and analytical approach (Djulaeka & Devi Rahayu, 2020, p. 33) . The statutory approach is used to examine the provisions in laws and regulations such as the Civil Code, the Flat Law, and the Consumer Protection Law, in order to examine the consistency and completeness of norms in regulating PPJB made outside the notary. Meanwhile, an analytical approach is needed to deeply interpret how these provisions are applied in practice and their impact on the position of consumers in concept-based property transactions. Through this analysis, the researcher not only describes the norms, but also offers a normative construction of the need for legal reform.

The type of data in this research consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant legislation and court decisions. Secondary legal materials include legal literature, scientific journals, and expert opinions that provide explanations of norms. Tertiary legal materials in the form of legal dictionaries and encyclopedias are used to clarify basic concepts and technical terms (Marzuki, 2017, p. 181) .

Sources of legal materials were obtained through library research and documentation studies. Library studies were conducted to collect primary and secondary legal materials through libraries, academic digital repositories, and international law journal databases. The documentation study includes the collection of agreements, notarial minutes, and contractual documents that support the comparative analysis between authentic and non-authentic PPJB.

The analysis of legal materials in this research was conducted in a descriptive-qualitative manner, with an emphasis on the interrelationship between legal norms and principles. Researchers describe and interpret existing norms, then evaluate the extent to which these norms are able to answer the needs of legal protection for consumers. This technique is suitable for formulating legal prescriptions that are not only descriptive, but also normative in answering the inequality of consumers' bargaining position in the practice of pre-project selling.

2. Result and Discussion

Consumers in the pre project selling (PPS) system are in a very vulnerable position legally because they have to make payments for residential units that are not physically established (Maria et al., 2022, p. 202) . In practice, many developers offer apartment projects with the lure of promotional prices through the PPS scheme, but the sale and purchase binding agreement (PPJB) presented is not made authentically before a notary, but only in the form of an underhand document. When the PPJB is made without adequate procedural protection, consumers lose the legal guarantees that should be attached to property transactions, especially regarding the certainty of development, land legality, and clarity of unit handover time (Wilson Pompana, 2025) . This situation creates unequal power relations between business actors and consumers, where developers are in a dominant position, while consumers are positioned as passive recipients of risk.

In fact, one of the basic principles in contract law is the equality between the parties (Rutgers & Sauter, 2021, p. 334) . However, this principle is difficult to realize if there is no strict regulatory intervention to protect the weak party. In the context of an underhand PPJB, the developer has the discretion to design unilateral clauses that are often favorable to him, such as the absence of penalties for construction delays or risk delegation clauses to consumers (Soemarwi & Darmawan, 2023, p. 1912) . This shows that one-sided contract structures in property transactions are a form of legal inequality that leads to consumer exploitation.

Information asymmetry and consumer ignorance of technical regulations are among the factors reinforcing this inequality. Many consumers do not understand that a valid PPJB should only be made after the fulfillment of minimum development requirements, land legality, and development permits as stipulated in Article 43 of Law

No.20 of 2011 concerning Flat Houses (Marbun et al., 2023, p. 67) . In practice, this ignorance is utilized by developers to shift responsibilities through non-authentic agreements.

The absence of a preventive monitoring mechanism for the form and content of underhand PPJBs makes matters worse. This kind of agreement does not go through a formal legal verification process by a notary, who should function as an independent third party to bridge the gap in legal understanding between the parties. Therefore, strengthening the position of consumers in PPS is not only a matter of contractual protection, but also part of revamping the legal structure to be more in favor of substantive justice. By prioritizing the precautionary principle and equal participation in the agreement, the legal system can prevent consumers from abusing their dominant position by developers.

In the practice of marketing property with a pre-project selling system, many developers choose to use a Sale and Purchase Agreement (PPJB) made under the hand as an initial transaction instrument (Suryanto et al., 2022, p. 39) . The arguments often put forward are cost efficiency and administrative flexibility. Notarial deed making is considered an irrelevant additional burden when physical development has not yet begun (Apituley, 2024, p. 2) . In fact, the existence of an authentic deed should be positioned as a preventive protection that is able to guarantee consumer rights in the future, especially if disputes or defaults arise from the developer. When the PPJB is made informally, the aspects of legal certainty and protection become very weak (Anggara, 2024).

The main weakness of an underhand PPJB lies in its evidentiary power in the Indonesian civil law system. According to Article 1874 of the Civil Code, a deed under the hand only has full evidentiary power if it is not denied by the party who signed it. This means that if one of the parties denies the contents or validity of the document, then the consumer must prove the validity of the agreement through an additional evidentiary process in court. This condition is certainly detrimental to consumers who are in a weak legal position from the start. PPJBs made under the hand tend not to be able to provide legal protection guarantees equivalent to authentic deeds in property transactions (Sartono, 2010, p. 30) .

In fact, Article 43 paragraphs (1) and (2) of Law Number 20 of 2011 concerning Flat Houses explicitly requires that the PPJB can be carried out before the construction is completed, but only if it has met several basic requirements such as a minimum of 20% buildability, certainty of land rights, and complete licensing (Therik & Gultom, 2023, p. 409) . This provision is intended as a safety net so that consumers are not deceived by fictitious projects. However, the phrase "can be done" is often loosely interpreted by developers to avoid the formal obligation to make a notarial deed (Rahmat et al., 2022, p. 381) . This creates a legal loophole that obscures the obligations of business actors, while structurally reducing the bargaining position of consumers.

Ironically, the efficiency claimed by developers is actually a source of legal uncertainty for consumers. In this context, contractual efficiency cannot be placed higher than the principles of prudence and consumer protection. Legal protection in property transactions must prioritize the substance of justice and legal certainty rather than just flexible procedural forms (Rumadanu & Djajaputra, 2025, p. 727). Therefore, regulatory intervention is needed to limit the use of underhand PPJB in pre-project selling schemes, as well as to require the involvement of notaries to ensure the legal security of consumers in transactions that are promises of the future.

Lack of Sanction Norms and the Need for Regulatory Reform: One of the fundamental problems in the practice of pre project selling (PPS) that uses an underhand PPJB is the absence of strict legal sanctions against violations of Article 43 of Law Number 20 Year 2011 on Flat Houses. The article uses the phrase "can be done before a notary", which in practice is often loosely interpreted as an option, not an obligation (Central Government of Indonesia, 2011) . This indecisiveness is exploited by some developers to

avoid the notarial process, so that transactions are carried out without the involvement of a third party that guarantees legal protection. As a result, violations of the provisions of the conditions for the construction of flats before making PPJB do not have clear legal consequences (Dewi, 2024).

When a legal norm does not explicitly stipulate sanctions, the effectiveness of the norm becomes weak. This gives rise to a condition referred to as normative vacuum, namely when regulations exist but are not accompanied by an enforcement mechanism. The absence of sanction norms in the legal system will cause business actors to have no incentive to comply, and consumers have no tools to effectively claim compensation in the administrative or civil realms. Without strict legal supervision and enforcement mechanisms, contractual justice is difficult to realize in developer-consumer relations.

This vacuum also impacts on the increasingly marginalized role of notaries. Notaries are supposed to be the guardians of legal validity in PPJB transactions by ensuring the fulfillment of all administrative requirements and project legality before the deed is made (Azka & Hermono, 2022, p. 158) . However, in a legal system that allows loopholes for violations without sanctions, developers tend to ignore this formal procedure. In most cases of flat disputes, the disputed PPJB is an underhand PPJB that does not meet the substantive requirements of development according to Article 43 paragraph (2) of the Flat Law (Central Government of Indonesia, 2011) .

Therefore, regulatory reform is an urgent need. There needs to be changes to the wording of Article 43 by clarifying that the making of the PPJB must be done before a notary after the fulfillment of all formal requirements. In addition, the addition of administrative sanctions such as revocation of development permits, administrative fines, or cancellation of projects through civil mechanisms needs to be part of the legal protection system for consumers. Supervisory authority can be extended not only to local governments or the Ministry of PUPR, but also involve the Financial Services Authority (OJK) and the National Consumer Protection Agency (BPKN), so that there is synergy between supervision of physical development and financial aspects of transactions .

Legal protection for consumers in the pre-project selling (PPS) system does not rely solely on the principle of freedom of contract. In reality, the relationship between developers and consumers does not run in an equal position, both in terms of legal knowledge, access to information, and bargaining power. When the PPJB is made under the hand without the intervention of a notary or formal verification mechanism, consumers tend to passively accept the contents of the contract without understanding its legal implications. Therefore, a laissez-faire approach to property transactions increases the potential for injustice. The state cannot allow business-only contracts to develop without a fair normative framework.

In the logic of modern rule of law, the regulation of contracts must be juxtaposed with the principles of substantive justice, not just formal validity. Contract law in apartment transactions requires a consumer protection dimension in anticipation of exploitative practices by business actors (Illona & Anggraini, 2018, p. 1229) . Therefore, the legal prescription of PPJB in the PPS system should not only be administrative, but also reflect the social responsibility of property business actors, as well as state intervention in ensuring true contractual justice.

This research emphasizes the importance of the PPJB's position as a legal instrument that is not only formally valid, but also substantively fair. Such fairness can only be achieved if the PPJB is made before a notary whose role is not only as a recorder, but also as a party who provides legal education to the parties. The presence of a notary can minimize disputes because the contracts made have clarity of objects, subjects, and fair obligations. In this context, contractual justice is not only determined by the agreement, but also by the legitimacy of the process that oversees it.

Thus, a reformulation of the norms in the Flat Law is needed that requires the making of PPJB to be done authentically, and removes the gap of multiple interpretations

of the phrase "may" in Article 43. In addition, the preparation of consumer protection policies must integrate cross-institutional supervision, including OJK, BPN, and the Ministry of PUPR. This effort is not only to strengthen the legal position of consumers, but also to ensure that people's need for housing is no longer overshadowed by legal uncertainty. Social justice in the housing sector can only be achieved if legal protection is proactive, not merely reactive.

Conclusions

This research shows that the pre-project selling (PPS) system implemented through an underhand Sales and Purchase Agreement (PPJB) creates an imbalance in the legal position between developers and consumers. When the PPJB is not made before a notary and does not fulfill the requirements as stipulated in Article 43 of Law Number 20 Year 2011 on Flats, then consumers lose the legal protection that should be inherent in property transactions. This imbalance is further exacerbated by the weak bargaining position of consumers who do not have the same legal capacity and information as business actors. The main finding of this research reveals a normative gap in the form of the absence of strict sanctions against violations of non-authentic PPJB provisions. The phrase "can be done before a notary" opens up room for multiple interpretations that are utilized by developers to avoid formal legal mechanisms. As a result, not only is there legal uncertainty for consumers, but it also has the potential to weaken the role of notaries as guardians of the validity of civil contracts in apartment transactions. This shows the urgent need to reformulate non-compelling legal norms into imperative norms. The novelty of this research lies in the analysis of the asymmetry of legal bargaining power in PPS transactions and the importance of legal prescriptions that are not only formalistic, but also substantive justice. This research expands the scope of the discussion by highlighting how the absence of sanctions in Article 43 of the Flat Law creates a legal vacuum that has a systemic impact on consumer protection. This novelty fills a void in the previous legal literature that tends to be limited to the issue of default or unilateral clauses in the PPJB. Normatively and practically, the urgency of legal reform is very real. The state must be present not only as a regulator, but also as a protector of citizens' interests in accessing decent, safe, and legally protected housing. Reforming the provisions of the PPJB, especially in affirming the obligation to notarize and providing administrative and civil sanctions for violations, is the first step towards substantive contractual justice. This research recommends the development of new norms that are prescriptive and multi-sectoral, involving supervisory institutions such as OJK, BPN, and the Ministry of PUPR within the framework of a comprehensive legal protection system for property consumers in Indonesia.

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