



Consumer Protection Analysis of the Use of Underhand PPJB in Pre Project Selling of Apartments

Analisis Perlindungan Konsumen atas Penggunaan PPJB Bawah Tangan dalam Pre Project Selling Rumah Susun

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Abstract: This study examines the form of legal protection for apartment buyers through the pre-project selling (PPS) system that uses an underhand sale and purchase agreement (PPJB), a practice that is commonly carried out before the administrative and technical requirements as stipulated in the Apartment Law are fulfilled. The objectives of this study are to analyze the position and evidentiary strength of private PPJBs, the scope of developer liability in the event of default, and to assess whether the waarmeding mechanism is capable of providing adequate protection for consumers. Using a normative juridical research method through a legislative and analytical approach, this study assesses the gap between normative provisions and PPS practices in the field. The results of the study show that private PPJBs, although valid according to Article 1320 of the Civil Code, do not provide legal certainty because they are not verified by a notary and are often used before the fulfillment of permits and construction guarantees, thereby weakening the bargaining position of consumers in the event of project stalling or delays. This study concludes that the normative vacuum in Article 43 of the Apartment Law and the absence of sanctions against non-notarial PPJB create structural vulnerabilities, thus requiring regulatory strengthening, notarial PPJB obligations, and more effective preventive protection mechanisms.

Keywords: Consumer Protection; Pre-Project Selling; PPJB; Notarization; Housing Law.

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INTRODUCTION

The legal construction of agreements in Indonesia places the principle of freedom of contract as the foundation that allows parties to draft agreements according to their needs, including in apartment purchase transactions through the pre-project selling (PPS) system. This mechanism was initially intended as an instrument of development efficiency, but in

practice, PPJBs made informally often shift the balance of power between the parties, mainly because consumers do not receive the same protection as that provided by authentic deeds (Gomulja, 2020, p. 52). In the context of apartment buildings, the social consequences are even more significant because the object of the transaction has not yet been built, so the risk of failure to build or delays is borne entirely by consumers. This imbalance is contrary to the spirit of consumer protection and the principle of contractual justice, which have long been a concern in private law studies.

Research on legal protection in apartment transactions using the pre-project selling (PPS) scheme has been conducted by a number of researchers, but each has a different focus of study. Feroza Dystarindra Isbullah's (2020) research examines consumer losses in PPS based on power of attorney and finds that the main weakness lies in the use of a stand-alone power of attorney, which does not guarantee the certainty of the legal relationship between the principal, the agent, and the consumer (Isbullah, 2020, p. 1). This study highlights the issue of defect of consent in PPJB when consumers do not understand the legal construction of selling power. Meanwhile, Kevin Hongdoyo's (2021) research shows that PPJBs used in PPS often do not meet the requirements of a valid agreement due to defects of consent, unfulfilled legal requirements for the object, and the unclear status of buildings that do not meet the requirements for apartment registration and licensing as required by law (Hongdoyo, 2021).

From all of the above studies, it appears that the main problems with PPS revolve around developers' non-compliance with administrative and contractual construction requirements, as well as weak consumer protection in the pre-construction stage. However, there is an important gap that has not been comprehensively addressed, namely: how the absence of norms related to private PPJBs is used by developers in the PPS system, and how the *waarmerking* mechanism is positioned as a "middle ground" that actually obscures the safe limits of legal protection for consumers. No previous research has explicitly examined the relationship between the weaknesses of informal PPJBs, PPS marketing practices, and the imbalance in the bargaining position of consumers vis-à-vis developers. Thus, the novelty of this research lies in its analytical construction, which combines three issues simultaneously: PPJB, the PPS system, and the power relations between developers and consumers, to show that the loophole in Article 43 of Law No. 20/2011 on Flats and the absence of sanctions related to non-notarial PPJB have created a space for practices that threaten legal certainty and contractual justice.

The urgency of this research arises from the increasing number of cases of default by developers who use PPS without meeting the licensing and construction requirements as

stipulated in the Apartment Law. Consumer losses are massive because purchases are made in a "no building yet" condition, so that any project failure has a direct impact on the loss of funds, uncertainty of residence, and the potential for prolonged legal conflicts. On the other hand, the absence of explicit sanctions against the creation of PPJBs under the table by developers creates a gray area that contradicts the purpose of *ius constituendum* in consumer protection. This condition creates an urgent need to reformulate the boundaries, obligations, and models of effective legal protection for the community.

In the context of apartment marketing practices through the pre-project selling system, this study departs from three intertwined legal issues that determine the level of legal certainty for consumers. First, it is important to examine the position and evidentiary strength of PPJBs made informally, given that this type of agreement does not have the formal force of an authentic deed and is often a source of dispute when the project does not go according to plan. This study also questions the form of developer liability in the event of default, especially when construction does not reach the required stage of completion or when the contents of the agreement do not reflect the actual conditions of the project; a condition that places consumers in a situation prone to loss. Furthermore, this study examines the adequacy of the *waarmerking* mechanism as an alternative legal protection, because the certification of signatures before a notary is often perceived as a guarantee of security even though it does not substantively change the status of the PPJB as a private deed. These three issues form an important basis for examining whether the practice of private PPJBs in the PPS system is in line with the principles of consumer protection and legal certainty that should be inherent in every property transaction, especially when the object of the transaction is still in the form of a design or an unbuilt building.

This study aims to analyze the responsibility of developers in marketing apartments using the PPS system with private PPJBs, assess the adequacy of existing legal protection mechanisms, and formulate a more adequate consumer protection model of " " based on legal certainty, contractual justice, and the principle of prudence in property transactions.

LITERATURE REVIEW

The theoretical basis of this study is designed to provide a conceptual framework for analyzing legal issues arising from the practice of pre-project selling (PPS) conducted through a private sale and purchase agreement (PPJB). Two theories were selected because they are directly relevant to the substance of the issue: the contractual relationship between developers

and consumers, and legal protection for consumers who tend to be in a weak position when the object of the transaction has not yet been built.

Theory of Responsibility

The theory of liability is used to explain how the legal relationship between developers and consumers gives rise to reciprocal rights and obligations that must be fulfilled in good faith. According to R. Subekti, "legal liability arises from the existence of a legal relationship (*rechtverhouding*) between two parties that gives rise to rights and obligations" (Wahidin, 2021). In the context of PPS, the legal relationship begins when both parties sign the PPJB, either before a notary or in the form of a private PPJB. If the developer fails to fulfill their obligations, such as delays in construction, non-compliance with specifications, or failure to build the project, then legal liability arises in the form of default as regulated in Article 1243 of the Civil Code (Renata Christha Auli, 2024).

Subekti emphasized that the elements of liability include fault, loss, causal relationship, and breach of obligation. According to him, in the context of civil law, liability will arise when one party fails to fulfill the obligations agreed upon in the agreement, which in this case means that the subject may have committed a breach of contract or an unlawful act. This liability has the function of restoring the legal balance that has been disrupted as a result of the breach of contract (Nuzan et al., 2024, p. 861). This basis helps the study analyze whether developers can be held liable for negligence in fulfilling the requirements of the PPS as stipulated in Articles 42-43 of the Apartment Law, especially in cases of PPJBs made informally without fulfilling the requirements for licensing and minimum construction. This theory is also relevant for assessing how *waarmerking* does not automatically elevate the status of a PPJB to an authentic deed, thereby not eliminating the developer's substantive liability in the event of default.

Legal Protection Theory

The theory of legal protection is used to assess the position of consumers in PPS transactions, especially when the agreement is made before the building is realized and is made without notarial supervision. Hadjon states that legal protection is "protection of human dignity and recognition of the fundamental rights of legal subjects based on applicable law" (Putra et al., 2025, p. 267). This theory emphasizes two forms of protection: preventive and repressive (Lestari & Abas, 2023, p. 397). Preventive protection is provided through the administrative requirements in Articles 42-43 of the Apartment Law regarding certainty of land rights, building permits, cadastral surveys, and 20% building coverage, which aim to prevent consumer losses before transactions occur (Pemerintah Pusat Indonesia, 2011).

Repressive protection, on the other hand, arises when consumers have suffered losses, for example through breach of contract lawsuits or dispute resolution at the BPSK.

The application of Hadjon's theory is highly relevant to the research background, as the practice of informal PPJBs creates legal uncertainty: consumers do not obtain authentic guarantees from notaries, developers often ignore legal requirements prior to marketing, and *waarmerking* only certifies signatures without examining the substance of the agreement. Thus, this theory provides a normative basis for assessing whether the legal protection provided by PPS regulations is adequate in maintaining a balance between developers and consumers.

These two theories together form the research framework for addressing legal issues concerning the validity of private PPJBs, developer liability, and the adequacy of the *waarmerking* mechanism as legal protection in PPS transactions.

METHODOLOGY

This research method is designed to provide an appropriate scientific framework for analyzing legal issues related to the use of private sale and purchase agreements (PPJB) in the pre-project selling (PPS) system for apartment buildings, especially when there is an imbalance between developers and consumers and a loophole in Article 43 of the Apartment Building Law. The entire methodological approach is based on the principles of normative legal research with a focus on finding legal prescriptions that can comprehensively address consumer protection issues.

This research method uses a normative legal research approach, which examines law as a norm through the study of legislation, doctrine, and relevant scientific literature (Rizkia & Fardiansyah, 2023, p. 120). The approaches used include the statute approach and analytical approach (Djulaeka & Devi Rahayu, 2020, p. 33). The statute approach was carried out by examining the Civil Code, Law Number 20 of 2011 concerning Flats, the Consumer Protection Law, and PUPR Regulation No. 11/PRT/M/2019 as the main legal instruments in regulating PPJB and pre-project selling practices. This approach helps researchers identify consistency and gaps in norms, particularly regarding informal PPJBs and their legal implications. Meanwhile, an analytical approach is used to examine the gap between normative provisions and PPS practices in the field, including the use of *waarmerking* as formal legitimacy. The analysis is then linked to the theory of accountability according to R. Subekti and the theory of legal protection according to Philipus M. Hadjon to produce logical and measurable arguments.

The legal materials used consisted of primary legal materials in the form of legislation and jurisprudence, as well as secondary legal materials in the form of expert opinions, textbooks, scientific journals, and previous studies. The technique for collecting legal materials was conducted through library research, namely reviewing relevant literature and academic documents. All legal materials obtained were then analyzed using qualitative descriptive methods, namely describing norms and doctrines systematically to answer the research questions. This analysis enabled the researcher to assess the position of informal PPJBs in the PPS system, the form of developer liability, and the effectiveness of legal protection for consumers based on the principles of justice, legal certainty, and balance between the parties.

RESULTS AND DISCUSSION

The Accountability Provided by Developers in Relation to the Pre-Project Selling Marketing System for Apartment Buildings Using PPJBs Made Privately.

The Pre-Project Selling (PPS) system is a marketing method that allows developers to offer and sell apartment units before the construction process is complete (Rosalind & Sari, 2022, p. 26). This mechanism emerged as a strategy for providing housing in urban areas facing land constraints, as emphasized in Law Number 20 of 2011 concerning Apartment Buildings and its derivative regulations. This policy provides a legal basis for developers and consumers to obtain certainty of rights, especially when the object of the transaction is still in the form of a development plan. However, as stated in the research background, this practice carries risks for consumers because the transaction is carried out when the building does not yet physically exist, so that consumers' dependence on trust in developers and agreements becomes very high.

In the context of the normative juridical method used in this study, the assessment of PPS is carried out by examining Articles 42 and 43 of the Apartment Law, which require four important elements before an apartment can be marketed: certainty of land rights, construction permits, availability of basic infrastructure, and construction guarantees (Pemerintah Pusat Indonesia, 2011). These provisions were actually designed as preventive legal protection for consumers, as stated in Philipus M. Hadjon's theory of legal protection. However, in practice, many developers have not met all of these requirements when they begin marketing units, resulting in a gap between norms and practice. This gap then becomes a source of legal problems, especially when the marketing process is carried out through private PPJBs that are not supervised by a notary.

From a technical marketing perspective, PPS consists of project planning, building concept development, feasibility studies, and promotional activities (Y. W. Hidayah, 2019, p. 49). At this stage, developers usually offer early bird prices, flexible payment schemes, and the use of booking fees or down payments as a sign of seriousness (P. M. N. Hidayah & Nugraheni, 2025, p. 198). The funds obtained from consumers at this stage serve as initial capital for construction, thereby reducing dependence on bank financing. Although this system is economically beneficial to developers, research shows that this scheme creates an imbalance between developers and consumers, especially when consumers do not have transparency regarding the status of permits or development progress.

Thus, PPS is essentially a legally valid marketing mechanism, but its effectiveness is highly dependent on developers' compliance with administrative requirements and contractual obligations. When marketing is conducted through informal PPJBs, the legal risk increases because there is no formal verification or guarantee of the substance of the agreement by a notary. As explained in Subekti's theory of liability, the legal relationship established through PPJBs results in consequences of default if developers fail to fulfill their obligations (Silado & Syailendra, 2023, p. 5650). Therefore, the discussion of PPS cannot be separated from the analysis of the validity of informal PPJBs and the developer's responsibility in ensuring legal certainty for consumers.

Legal Relationship Between Developers and Buyers

The legal relationship between developers and buyers in the pre-project selling (PPS) system cannot be separated from the marketing structure. If, in the PPS system, developers are allowed to offer apartment units before the project is completed, then the legal relationship between the parties begins to form from the initial marketing stage when prospective buyers show their agreement through a letter of order or down payment. At this stage, even though the building has not yet been physically realized, an initial binding understanding has been established if the essential elements of the agreement are fulfilled, namely the existence of an object and price as required by Article 1320 of the Civil Code. This shows that even though PPS has a strong economic character, the legal relationship that is created is still subject to the basic principles of binding agreements between the two parties.

The next stage of the legal relationship is strengthened through a Sale and Purchase Agreement (PPJB), which in the context of this study is often made informally before being notarized. The position of the PPJB as a preliminary agreement gives rise to reciprocal rights and obligations: the developer is obliged to build and deliver the unit according to the

schedule and specifications, while the buyer is obliged to make payments according to the agreed scheme (Azka & Hermono, 2022, p. 157). However, as explained in the research background, the use of informal PPJBs in PPS practices often weakens the position of consumers due to the absence of formal verification by a notary of the substance of the agreement (Bianty & Gunadi, 2025, p. 1565). Although *waarmerking* provides certainty regarding the date and signature, it does not change the nature of the PPJB as an underhand deed, so it does not have the same evidentiary power as an authentic deed.

From the perspective of R. Subekti's theory of liability and the normative legal method used, this legal relationship is reciprocal and has the potential to give rise to liability if one party fails to fulfill its obligations (Firdaus, 2023, p. 35). Developers who do not deliver units on time, fail to meet specifications, or stop construction without a valid reason have essentially committed a breach of contract as referred to in Article 1243 of the Civil Code (Lukum & Thalib, 2022, p. 79). This breach of contract is not merely a technical failure, but a violation of contractual obligations that gives rise to the buyer's right to claim damages or fulfillment of the agreement (Yahman, 2021, p. 19). Thus, the legal relationship in PPS is not only measured by the formal fulfillment of the PPJB, but also by compliance with the principles of good faith and consumer protection as regulated in the Consumer Protection Law and the Apartment Law.

Therefore, the legal relationship between developers and buyers in the pre-project selling system is not merely a commercial relationship, but a civil relationship that arises from an agreement between the parties and is protected by law. From the issuance of the order letter to the signing of the PPJB, the parties are bound by an agreement that gives rise to rights and obligations. In the event of a violation, the accountability mechanism must be viewed through contractual provisions and consumer protection principles to maintain the balance between the parties. This explanation shows that the PPS system can only function properly if the legal relationship between developers and buyers is placed within a legal framework that is clear, transparent, and based on legal certainty.

Pre-Project Selling System for Apartment Buildings Using Handwritten PPJB

The pre-project selling (PPS) system used in apartment marketing essentially allows developers to offer units before the building is constructed, as explained earlier. At this point, prospective buyers are given access to choose units, obtain lower initial prices, and enjoy flexible payment schemes. However, when linked to the practice of PPJB made under the table, this mechanism becomes not only a marketing strategy but also forms a legal relationship that carries high risks. This is because the agreement is made when the project

does not yet meet the administrative requirements as stipulated in Articles 42 and 43 of the Apartment Law, so that the agreement is built on an object that is not yet fully certain. The PPS policy, which is supposed to provide alternative financing for developers, ultimately opens the door to irregularities if implemented without the proper legal structure.

In practice, developers tend to use informal PPJBs as an initial binding tool because the notarial process requires costs and complete licensing documents. The legal relationship begins with the letter of reservation and is then reinforced by the PPJB, even though it is not made before a notary. Informal PPJBs usually only contain standard clauses such as the identities of the parties, a description of the object, the price, construction guarantees, and the handover time as stipulated in Article 22J of Government Regulation Number 12 of 2021 (Indonesia, Pemerintahan Pusat, 2021). Legally, this agreement remains valid as long as it meets the requirements of Article 1320 of the Civil Code. However, the absence of substantive examination by a notary makes the position of consumers much weaker because there is no verification mechanism for the validity of the object, land status, construction permits, or financial guarantees from developers.

The existence of non-notarized PPJBs in PPS shows a gap between normative regulations and practices in the field. From the perspective of R. Subekti's theory of liability, developers remain legally responsible for any breach of contract, such as stalled projects, non-compliance with specifications, or delays in handover (Adriarga et al., 2025, p. 23). However, in court proceedings, private PPJBs have weaker evidentiary value than authentic deeds, thereby weakening the bargaining position of consumers. This finding is consistent with Philipus Hadjon's perspective on legal protection, which emphasizes the importance of preventive protection through the fulfillment of permits and development guarantees prior to marketing (Triyanto, 2019, p. 24).

Thus, the marketing of PPS using private PPJBs is a practice that is still legally possible, but it places consumers in a vulnerable position. This system creates a legal relationship, but does not provide adequate certainty because the promised object has not yet been built and does not obtain formal legitimacy from a notary. In this position, legal protection for consumers is highly dependent on the good faith of developers and compliance with applicable housing regulations. Therefore, the practice of PPJB under the table in PPS requires stricter supervision so that property marketing mechanisms do not turn into practices that have the potential to harm the community.

The use of PPJBs made under the table in the pre-project selling (PPS) system essentially shows that property marketing practices are taking place before the administrative and legal requirements stipulated by law have been fulfilled. As explained earlier, PPJBs made under the table are still valid according to Article 1320 of the Civil Code, but in terms of evidence, they are only considered under-the-table deeds, which are not as strong as authentic deeds (Febriani et al., 2025, p. 3464). This puts buyers in a more vulnerable position in the event of a dispute, as the court must first assess the authenticity of the content and signatures on the document before discussing the substance of the breach of contract. This uncertainty is even more pronounced in situations where the project has not yet been built or the permits are not yet complete, so that the object of the agreement does not yet have sufficient legal certainty.

From a consumer protection perspective, non-notarized PPJBs weaken legal guarantees because they are not validated by a notary as required by Article 43 of the Housing Law and PUPR Regulation No. 11/PRT/M/2019, which requires PPJBs to include the identities of the parties, a description of the object, the price, the handover schedule, and the dispute resolution mechanism (Santoso, 2021, p. 197). The absence of substantive examination has resulted in many clauses being drafted unilaterally by developers, which is contrary to the principle of contractual balance. When there is a project delay or the specifications are not met, the buyer can only sue based on the basic principles of contract law, namely Articles 1243 and 1267 of the Civil Code concerning default (Suleman, 2024, p. 12). Thus, although a private PPJB is valid, it cannot provide the same level of legal protection as an authentic deed.

Meanwhile, from a marketing perspective, PPS continues to benefit developers because income from down payments, booking fees, and installment payments can be used as operational capital for construction. The PPS stages, ranging from design planning, feasibility studies, permits, to promotion, aim to attract buyers early on. Developers offer lower initial prices and flexible payment schemes, including KPA, making this strategy economically effective (Jeleński, 2019, p. 168). However, as described in the normative juridical research method used in this study, this effectiveness cannot be used as justification for ignoring the legal requirements that must be met, especially those related to permits and construction guarantees.

Thus, PPS practices that use PPJB under the table essentially operate in a legal space that is legitimate but risky. Regulations made by the government through the Apartment Law, PP 12/2021, and Perpu 2/2022 actually open up marketing opportunities before construction begins, but still require the fulfillment of land rights, permits, basic infrastructure, and development guarantees (Rahmat et al., 2022, p. 381). Non-compliance with these

requirements creates an imbalance in the legal relationship between developers and buyers and is prone to disputes. Therefore, the use of non-notarial PPJB in the PPS system should be viewed as a practice that is legal to a limited extent, but requires strict supervision to ensure legal certainty, consumer protection, and the fulfillment of the principle of good faith in contractual relationships.

Developer Responsibility in the Pre-Project Selling System with Handwritten PPJBs that are Waargemarked

In the pre-project selling (PPS) system, the use of PPJBs made privately and then notarized is often chosen by developers to accelerate marketing and avoid the costs of making authentic deeds (Berliana et al., 2022, p. 14). This type of agreement has important legal consequences, especially regarding the developer's liability in the event of default. A private PPJB is still valid according to Article 1320 of the Civil Code, but its status is only as ordinary evidence, so it does not provide strong protection for consumers (Muliani, 2020, p. 21). Waarmerking does provide certainty regarding the date and identity of the signatories, but it does not change the status of the PPJB to an authentic deed and does not guarantee that the substance of the agreement is in accordance with the law.

The developer's liability in the PPS is essentially based on the principle of default as stipulated in Articles 1236, 1243, and 1267 of the Civil Code, which requires the debtor to reimburse costs, losses, and interest if they fail to fulfill their obligations (Dalimunthe, 2017, p. 18). In this context, developers are obliged to disclose accurate information regarding permit status, technical specifications, construction schedules, and construction guarantees as required by Articles 42 and 43 of the Apartment Law and Minister of Public Works and Public Housing Regulation No. 11/PRT/M/2019. Developers are also required to prepare a PPJB (Preliminary Sale and Purchase Agreement) that includes the identities of the parties, a description of the object, the price, the handover period, and the dispute resolution mechanism (Widhasari, 2021, p. 22). When a PPJB is made without following these requirements and the project is not carried out in accordance with the agreement, the developer can be held liable on the basis of negligence or contractual violation.

In practice, many developers use PPJB templates that contain standard clauses and are determined unilaterally. This puts consumers in a weak position, especially since the PPJB is drawn up without the supervision of a notary, even though notaries have an obligation to provide legal advice and have the right to refuse to draw up deeds that are contrary to regulations (Article 15 paragraph (2) letter e of the Notary Position Law) (adminnotarynews,

2022). This condition causes PPJBs to often lack transparency, contain unclear specifications, and even have the potential to lead to fraud or misrepresentation regarding the status of the project. This is where the relevance of Subekti's theory of liability becomes apparent, namely that any party that violates an agreement must bear the legal consequences, as well as Hadjon's theory of legal protection, which emphasizes the importance of preventive protection through compliance with administrative and technical requirements for development.

Thus, the developer's responsibility in the PPS system with a private PPJB that is marked with a stamp duty must be understood as both a contractual and administrative responsibility (Abida & Irham, 2021, p. 154). Although non-notarized PPJBs are legally valid, they cannot provide legal certainty as authentic deeds do. Because of this, any breach of construction obligations, delays in handover, or non-compliance with specifications remain the full responsibility of the developer based on the principle of default and housing regulations. This situation confirms that the use of private PPJBs in PPS is a legal but high-risk practice, requiring compliance with regulations and improved oversight mechanisms to create a balance between developers and consumers.

CONCLUSION

The use of PPJBs made under the hand in the pre-project selling (PPS) system creates legal uncertainty for consumers because these agreements only have the probative force of a deed under the hand, are not substantively tested by a notary, and are often used before the administrative requirements are fulfilled as stipulated in Articles 42 and 43 of the Apartment Law. This condition causes an imbalance between developers and buyers, especially when there is a breach of contract in the form of construction delays, specification discrepancies, or stalled projects. These findings are in line with previous studies, but this study presents novelty through an integrated analysis of three elements that have not been examined simultaneously before, namely private PPJBs, PPS practices, and the power relations between developers and consumers, which show that the normative gap related to the absence of sanctions for non-notarial PPJBs plays a significant role in weakening consumer protection. Therefore, the urgency of this study emphasizes the need to strengthen regulations and law enforcement, including the notarial obligation of PPJB, the fulfillment of permits prior to marketing, and substantive oversight mechanisms to ensure legal certainty and consumer protection in pre-construction apartment transactions.

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