

Analysis of Legal Protection for Buyers in the Transfer of Apartment Unit Rights Prior to the Signing of the Deed of Sale and Purchase

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Abstract

The increasing demand for housing in urban areas has encouraged the development of apartment buildings as an alternative solution to meet residential needs. In practice, transactions for the sale and purchase of apartment units are often conducted before the completion of construction through a Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli/PPJB*), which raises legal issues related to ownership certainty and legal protection for buyers. This study aims to analyze the legal regulations governing ownership and the transfer of rights to apartment units, as well as to assess the binding force of the PPJB as an instrument of legal protection for buyers prior to the execution of the Deed of Sale and Purchase (*Akta Jual Beli/AJB*). This research employs a normative legal research method using a statutory approach and a conceptual approach. The analysis is conducted qualitatively on primary, secondary, and tertiary legal materials. The results indicate that legal ownership of apartment units arises juridically only after the fulfillment of legal requirements, including the completion of construction, the separation of apartment units, the execution of the Deed of Sale and Purchase before a Land Deed Official, and the issuance of a certificate in the buyer's name. The PPJB merely creates a personal legal relationship and therefore does not transfer proprietary rights to the buyer. Consequently, in cases where the developer defaults or becomes bankrupt, buyers who only hold a PPJB are positioned as concurrent creditors and do not possess preferential rights over the bankruptcy estate. These findings demonstrate the limitations of legal protection for apartment buyers at the pre-AJB stage, highlighting the need for stronger regulatory measures to ensure legal certainty and consumer protection in apartment transactions.

INTRODUCTION

The right to housing is not merely related to the fulfillment of physical needs but is also closely connected to human dignity, a sense of security, and overall well-being.¹ In the context of a modern state, the fulfillment of the right to housing constitutes part of the state's obligation to guarantee the protection of human rights for every citizen.²

Furthermore, Indonesia firmly adopts the principle of the rule of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This principle implies that all aspects of social, national, and governmental life must be governed by law. As a consequence of this principle, the state is obliged to establish a legal system capable of providing legal certainty, legal protection, and justice for society in all aspects of life, including in the fields of land and housing. Land and buildings, as vital objects of human life, must therefore be regulated clearly and firmly in order to prevent conflicts, disputes, and legal uncertainty that could harm the public.³

In the course of modern social and economic development, rapid population growth and increasing urbanization have placed significant pressure on land availability, particularly in urban areas. This limitation has encouraged a shift in the housing development paradigm from horizontal patterns toward vertical development.⁴ Within this context, the construction of apartment buildings has become one of the state's strategic policies to meet the housing needs of society while optimizing the use of urban space.

As part of the state's responsibility to regulate the implementation of apartment housing, Law Number 20 of 2011 concerning Apartments was enacted, which was later amended by Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law. These provisions not only regulate the technical aspects of apartment construction but also govern the legal aspects of ownership, management, and the transfer of rights to apartment units. Therefore, apartment buildings are not merely viewed as physical structures but also as legal objects that carry complex juridical consequences.

¹ Ridha Wahyuni, "Perlindungan Hak Atas Tempat Tinggal Warga Terdampak Penggusuran Di Kawasan Perkotaan Berdasarkan Perspektif HAM," *Jurnal Yuridis* 9, no. 1 (2022): p. 37-55.

² Sri Ayuninsi, "Warga Negara, Hak Dan Kewajiban Warga Negara," *CARONG: Jurnal Pendidikan, Sosial Dan Humaniora* 2, no. 1 (2025): p. 210-219.

³ Febryana Maharani and Asmarani Ramli, *Analisis Sosiolegal Terhadap Pelaksanaan Kebijakan Dan Penyelesaian Sengketa Untuk Upaya Perlindungan Hukum Hak Atas Tanah Dan Resolusi Konflik Agraria Di Rawa Pening*, Bookchapte, vol. 1, 2025. p. 572

⁴ Vina Carolin and Erlin Kurniati, "Tantangan Pembangunan Perkotaan Terhadap Urbanisasi, Kemacetan Di Jakarta: Analis Permasalahan Dan Solusi," *Jurnal Ilmu Ekonomi* 4, no. 1 (2025): p. 252-273.

This characteristic causes legal relationships among the owners of apartment units to become more complex and requires strict legal regulation, particularly regarding the transfer of rights.⁵ This principle aims to ensure legal certainty, transparency, and legal protection for parties conducting legal acts concerning land, as fundamentally regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). The law emphasizes that the transfer of land rights must be conducted openly and in cash and must be evidenced by an authentic deed executed by an authorized official.⁶

In the context of apartment units, this principle is implemented through the requirement to execute a Deed of Sale and Purchase (Akta Jual Beli/AJB) before a Land Deed Official (Pejabat Pembuat Akta Tanah/PPAT) as a condition for the validity of the transfer of rights to apartment units.⁷ This provision is further reinforced by Government Regulation Number 18 of 2021, which emphasizes that land registration and apartment unit registration serve as the primary instruments for ensuring legal certainty over land and building rights.

However, in legal practice within society, these normative provisions are often not consistently implemented. One common practice found in apartment transactions is the transfer of rights to apartment units from the first party to a second party before the Deed of Sale and Purchase is executed.⁸ Such transfers are generally conducted based on a Sale and Purchase Binding Agreement (Perjanjian Pengikatan Jual Beli/PPJB), a power of attorney to sell, or private agreements. This practice is often considered common and acceptable in apartment transactions, particularly at the pre-certificate or pre-Deed of Sale and Purchase stage.

From a juridical perspective, a Sale and Purchase Binding Agreement (PPJB) constitutes a preliminary agreement that is obligatoir in nature, meaning that it only creates a contractual relationship between the parties and does not result in the transfer of ownership rights.⁹ The actual and lawful transfer of rights only occurs after the execution of the Deed of Sale and Purchase (AJB) before a Land Deed Official (PPAT) and

⁵ Yulia Mirwati, *Komersialisasi Wakaf Tanah Ulayat Untuk Rumah Susun* (Hawa dan AHWa, 2025), p. 52.

⁶ Fibri Amilio, "Penerapan Asas Kepastian Hukum Dalam Hukum Agraria Terhadap Pembatalan Sertifikat Cacat Administratif (Studi Putusan No 81/G/2023/PTUN. SBY)," *Judge: Jurnal Hukum* 6, no. 3 (2025): p. 684-698.

⁷ Solahudin Pugung, *Perihal Tanah Dan Hukum Jual Belinya Serta Tanggung Jawab PPAT Terhadap Akta Yang Mengandung Cacat Perspektif Negara Hukum* (Deepublish, 2021), p. 14.

⁸ J Andy Hartanto, *Aspek Hukum Peralihan Hak Milik Atas Satuan Rumah Susun* (Jakad Media Publishing, 2018), p. 87.

⁹ Ary Karelina et al., "Analisis Kedudukan Hukum Perjanjian Perikatan Jual Beli (PPJB) Dalam Proses Pendaftaran Peralihan Hak Atas Tanah," *Jurnal Pendidikan Sosial Dan Humaniora* 4, no. 2 (2025): hlm. 3349-3362.

the registration of such transfer at the land office.¹⁰ Therefore, the transfer of rights to apartment units prior to the execution of the AJB does not essentially provide legal certainty for the second party receiving such transfer. The practice of transferring rights before the AJB is signed gives rise to various complex legal issues. The first party, who has not yet legally become the owner, may transfer the same object again to another party, thereby creating potential ownership disputes. The second party acting in good faith also risks losing their rights if a breach of contract or cancellation of the agreement occurs. Such conditions create legal uncertainty that contradicts the fundamental objectives of law.

Several previous studies have examined various legal aspects of apartment transactions, particularly those related to the use of Sale and Purchase Binding Agreements (PPJB). Previous research indicates that the PPJB essentially functions as a preliminary agreement that only creates obligational legal relationships and does not transfer proprietary rights to the buyer. Other studies highlight that the use of PPJB in apartment marketing practices often creates legal vulnerabilities for consumers, especially when construction has not been completed or when developers face financial difficulties. In addition, some studies emphasize the importance of consumer protection in property transactions conducted prior to the issuance of ownership certificates. However, most of these studies primarily focus on general consumer protection aspects or the legal position of the PPJB as a preliminary agreement, without specifically examining the mechanism for transferring rights to apartment units before the Deed of Sale and Purchase is executed and its implications for legal certainty of ownership.

Accordingly, there remains a research gap that requires further analysis, particularly regarding how the practice of transferring rights to apartment units prior to the execution of the Deed of Sale and Purchase (AJB) is positioned within the Indonesian land law system and the law of obligations. Moreover, only limited research has comprehensively examined the relationship between the normative regulation of apartment ownership, the use of PPJB in transactional practices, and its implications for legal protection for buyers. This gap forms the fundamental basis for this study to provide a deeper analysis of the mechanism for transferring rights and the binding force of PPJB in apartment transactions.

In analyzing this issue, the study employs several legal concepts as analytical foundations. First is the concept of legal protection, which emphasizes that the law must

¹⁰ Mohammad Ryar Mirzad Aroffa and Sri Wahyu Handayani, "Legalitas Akta Jual Beli (AJB) Sebagai Bukti Peralihan Hak Atas Tanah Dalam Perspektif Kepastian Dan Perlindungan Hukum," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): p. 6940-6949.

guarantee certainty, justice, and protection of the rights of parties acting in good faith within a legal relationship. Second is the concept of the law of obligations, particularly concerning the position of preliminary agreements in contractual relationships and the limits of their binding force in generating rights and obligations for the parties. Third is the concept of property law, which emphasizes that the transfer of rights over an object, including land and apartment units, must fulfill certain formal requirements in order to produce legal consequences for third parties. These three concepts serve as the analytical framework for understanding the relationship between normative regulations, transactional practices in society, and the level of legal protection provided to apartment buyers.

Unlike previous studies that have mainly focused on consumer protection or the general legal status of PPJB, this research specifically analyzes the practice of transferring rights to apartment units before the execution of the Deed of Sale and Purchase (AJB) from the perspective of the Indonesian land law system and the law of obligations. This study not only examines the applicable normative regulations but also analyzes the interrelation between legal substance, institutional structures, and legal culture that influence the practice of transferring such rights. Accordingly, this research is expected to contribute academically by clarifying the legal position of pre-AJB transfers of rights and providing recommendations for strengthening legal protection for apartment buyers.

Based on the above explanation, the transfer of rights to apartment units before the execution of the Deed of Sale and Purchase (AJB) constitutes a complex legal issue, as it involves not only legal norms but also institutional effectiveness and legal practices within society. This condition has implications for legal certainty and legal protection for buyers and therefore requires a comprehensive and systematic juridical analysis.

METHODS

This research constitutes normative legal research aimed at examining the transfer of rights to apartment units prior to the execution of the Deed of Sale and Purchase (Akta Jual Beli/AJB), particularly those carried out through a Sale and Purchase Binding Agreement (Perjanjian Pengikatan Jual Beli/PPJB). This study employs a statutory approach to examine legal provisions governing apartment housing, the transfer of land rights, and contractual agreements, as well as a conceptual approach to analyze the

concepts of legal protection, the law of obligations, and property law related to the legal position of the PPJB within the legal system.¹¹

The sources of research data consist of primary legal materials in the form of legislation and regulations, secondary legal materials including legal textbooks, scholarly journal articles, and expert opinions, and tertiary legal materials such as legal dictionaries and legal indexes. The collection of legal materials was conducted through library research.¹²

The analysis of legal materials was carried out qualitatively using a descriptive-analytical method by identifying and interpreting legal provisions related to the transfer of rights to apartment units and subsequently linking them to the practice of using PPJB prior to the execution of the AJB in order to assess their implications for legal certainty and legal protection for buyers.¹³

RESULT AND DISCUSSION

1. Legal Regulations on Ownership and the Transfer of Rights to Apartment Units in Providing Legal Protection for Buyers in Indonesia

The legal regulations governing ownership and the transfer of rights to apartment units in Indonesia are essentially intended to provide legal certainty and protection for buyers. Such legal protection is structured in stages through the national agrarian legal system, which is based on Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), specific regulations contained in Law Number 20 of 2011 concerning Apartments, and subsequent regulatory reforms through Law Number 6 of 2023 concerning Job Creation. However, although a relatively comprehensive normative legal framework has been established, legal protection for apartment buyers in practice still faces various weaknesses, particularly at the stage before proprietary rights to apartment units legally arise.

The UUPA provides the fundamental foundation for legal protection of ownership through the regulation of land rights and the obligation of land registration. Article 4 paragraphs (1) and (2) of the UUPA affirm that the state determines various types of land rights that grant their holders the authority to use the land and derive benefits from it.¹⁴ This provision serves as the juridical basis for the existence of apartment buildings, as

¹¹ Peter Mahmud Marzuki, "Penelitian Hukum," *Jakarta: Kencana Prenada Media* 55 (2005): p. 55-63.

¹² Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta : Raja Grafindo Persada, 2010), p. 15-18.

¹³ Muhaimin Muhaimin, "Metode Penelitian Hukum," *Dalam S. Dr. Muhaimin, Metode Penelitian Hukum, Mataram-NTB: Mataram*, 2020, p. 57-58.

¹⁴ Boedi Harsono, *Hukum Agraria Indonesia, Edisi Revisi, Cet. Ke-13* (Djambatan: Jakarta, 2021), p. 327-330.

apartment units cannot be separated from the common land beneath them. Furthermore, Article 16 paragraph (1) of the UUPA stipulates the types of land rights, such as Ownership Rights (Hak Milik), Building Use Rights (Hak Guna Bangunan), and Rights of Use (Hak Pakai), which in practice serve as the legal basis for apartment construction. Legal protection of ownership is further reinforced through Article 19 of the UUPA, which requires land registration to ensure legal certainty, as well as Article 26 paragraph (1), which emphasizes that legal acts intended to transfer ownership rights over land must be carried out in accordance with legal provisions and through formal mechanisms. Thus, conceptually, the UUPA establishes legal protection based on the certainty of rights status and the formalities of rights transfer.

The specific regulation of apartment buildings in Law Number 20 of 2011 further clarifies the form and scope of such legal protection. This law recognizes apartment units as objects of proprietary rights that may be owned individually and separately, as stipulated in Article 46 paragraph (1), while remaining attached to shared rights over common parts, common objects, and common land as regulated in Article 46 paragraph (2).¹⁵ This recognition provides a strong legal basis for the protection of buyers once such rights are legally established. Such proprietary legal protection is concretely realized through the issuance of a Certificate of Ownership of Apartment Units (Sertipikat Hak Milik atas Satuan Rumah Susun/SHMSRS), as regulated in Article 47 paragraph (1), which serves as strong evidence of ownership and grants the owner direct authority to defend their rights against any party.

However, the Apartment Law also provides room for the practice of marketing apartment units before the completion of construction through the mechanism of a Sale and Purchase Binding Agreement (Perjanjian Pengikatan Jual Beli/PPJB). Article 42 paragraph (1) allows marketing prior to the completion of construction, while Article 43 paragraph (1) and Article 44 paragraph (1) attempt to provide preventive legal protection by requiring certainty regarding land status, permits, and construction guarantees before the PPJB is executed. Nevertheless, the legal protection provided at this stage remains administrative and contractual in nature. Legally, the PPJB only creates an obligational relationship between the buyer and the developer and therefore does not give rise to proprietary rights over the apartment unit. Consequently, buyers do not yet possess

¹⁵ Ahmad Fauzi, *Hukum Rumah Susun: Kepemilikan, Pengelolaan, Dan Perlindungan Konsumen* (Pustaka Ilmu: Yogyakarta, 2021), p. 142-148.

rights that are directly attached to the apartment unit and have not obtained absolute legal protection.¹⁶

The weakness of legal protection for buyers becomes even more apparent because the transfer of rights to apartment units can only be formally carried out after the completion of construction and must be executed through a Deed of Sale and Purchase before a Land Deed Official, as stipulated in Article 45 paragraph (1) of the Apartment Law. Until this stage is fulfilled, buyers cannot legally be recognized as owners, even if they have paid part or all of the purchase price for the unit. This condition places buyers in a vulnerable position, as the risks of development remain entirely with the developer, while buyers have already committed themselves financially without any guarantee of proprietary rights.

Legal protection for buyers also becomes highly limited when the developer commits a breach of contract or is declared bankrupt. In the event of breach of contract, buyers may in principle demand the fulfillment of the agreement, cancellation, or compensation under civil law. However, such legal remedies are often ineffective, particularly when the developer faces financial difficulties.¹⁷ Furthermore, if the developer is declared bankrupt, buyers who only hold a PPJB cannot claim the apartment unit as their property because proprietary rights have not yet arisen. In such circumstances, buyers are positioned as concurrent creditors who do not possess security rights and are not prioritized in the distribution of bankruptcy assets, thereby exposing them to significant potential losses.

Law Number 6 of 2023 concerning Job Creation attempts to provide protection through the simplification of licensing procedures and the strengthening of supervision. Article 144 regulates risk-based business licensing in the housing sector, while Article 185 letter b and Article 186 grant authority to the central government to conduct guidance, supervision, and the imposition of administrative sanctions on business actors who violate regulations concerning apartment management. Although these provisions strengthen administrative and repressive legal protection, they do not directly address the need for proprietary legal protection for buyers at the pre-transfer stage. Consequently, the protection provided remains indirect and has not been able to optimally guarantee the interests of buyers.

¹⁶ Christiana Derita Risquany, "Akibat Hukum Kepailitan Bagi Pengembang Terhadap Pembeli (Konsumen) Satuan Rumah Susun (Apartemen)," *Jurnal Education and Development* 10, no. 3 (2022): p. 34-38.

¹⁷ Syaiful Badri, Pristika Handayani, and Tri Anugrah Rizki, "Ganti Rugi Terhadap Perbuatan Melawan Hukum Dan Wanprestasi Dalam Sistem Hukum Perdata," *Jurnal USM Law Review* 7, no. 2 (2024): p.974-985.

Based on the overall regulatory framework, it can be concluded that legal protection for apartment buyers within the Indonesian legal system remains partial and gradual. Proprietary legal protection is only obtained after all formal requirements for the transfer of rights have been fulfilled, whereas at the initial stage of transactions buyers are only protected by relatively weak administrative instruments and civil contractual obligations. Therefore, stronger legal regulations are required to provide more substantial legal protection for buyers from the early stages of transactions, in order to create a balance between the interests of developers and buyers and to ensure legal certainty and justice in the administration of apartment housing in Indonesia.

2. Mechanism for the Transfer of Rights and the Binding Force of the Sale and Purchase Binding Agreement (PPJB) as an Instrument of Buyer Protection before the Signing of the Deed of Sale and Purchase (AJB)

The mechanism for transferring rights to apartment units constitutes an important part of the land and housing legal system in Indonesia because it relates directly to legal certainty and protection for buyers. In practice, the transfer of such rights cannot always be carried out directly through a Deed of Sale and Purchase (AJB), considering that the construction of apartment buildings is often not yet completed when the transaction takes place. This situation creates the need for a legal instrument capable of binding the parties from the outset while also providing temporary legal protection for buyers before the formal requirements for the transfer of rights are fulfilled. This instrument takes the form of a Sale and Purchase Binding Agreement (Perjanjian Pengikatan Jual Beli/PPJB), which functions as a preliminary agreement prior to the execution of the Deed of Sale and Purchase.¹⁸

From a juridical perspective, the Sale and Purchase Binding Agreement is rooted in the general provisions of contract law contained in the Indonesian Civil Code. Article 1313 of the Civil Code defines an agreement as an act by which one or more persons bind themselves to one or more other persons. The Sale and Purchase Binding Agreement fulfills these elements because it contains an agreement between the buyer and the developer regarding the apartment unit as the object of the contract, the price, the payment method, and the time of delivery of the unit. The validity of the Sale and Purchase Binding Agreement is determined by the fulfillment of the legal requirements of a valid contract as stipulated in Article 1320 of the Civil Code, namely the consent of the parties, legal capacity to conclude an agreement, a specific object, and a lawful cause.

¹⁸ Urip Santoso, *Hukum Perumahan Dan Kawasan Permukiman* (Kencana: Jakarta, 2022), p. 201–210.

As long as these conditions are fulfilled, the Sale and Purchase Binding Agreement constitutes a valid and legally binding agreement.¹⁹

The binding force of the Sale and Purchase Binding Agreement is further reinforced by the principle of *pacta sunt servanda* as stipulated in Article 1338 paragraph (1) of the Civil Code, which states that all legally concluded agreements shall apply as law to those who make them.²⁰ This provision implies that both the developer and the buyer are obliged to perform all obligations stipulated in the Sale and Purchase Binding Agreement as mutually agreed. Furthermore, Article 1338 paragraph (3) of the Civil Code emphasizes that agreements must be executed in good faith. The principle of good faith becomes particularly important in apartment sale agreements, considering that buyers are factually in a weaker position compared to developers, both in terms of access to information, control over the object of the agreement, and economic power.

In the context of apartment units, the Sale and Purchase Binding Agreement is not only subject to general civil law but is also specifically regulated by Law Number 20 of 2011 concerning Apartments. Article 42 paragraph (1) of this law provides the legal basis for developers to market apartment units before construction is completed. However, such freedom is strictly limited by Article 43 paragraph (1), which requires certainty regarding spatial designation, certainty of land rights, certainty of the control status of the apartment building, construction permits, and guarantees for the construction of the apartment building. Furthermore, Article 44 paragraph (1) emphasizes that the Sale and Purchase Binding Agreement may only be executed after all these requirements have been fulfilled. These provisions demonstrate that the Sale and Purchase Binding Agreement in apartment transactions is not merely a private contract but also an instrument subject to public law supervision to protect the interests of buyers.²¹

Nevertheless, from a juridical standpoint, the Sale and Purchase Binding Agreement is still classified as an obligational agreement. This means that the agreement only creates rights and obligations between the parties and does not automatically result in the transfer of ownership rights over the apartment unit. This is affirmed in Article 45 paragraph (1) of the Apartment Law, which states that the transfer of rights to apartment units is carried out through a Deed of Sale and Purchase after the apartment building has

¹⁹ Meivina Jayanti and Lee Yong Hwa, "Keabsahan Dan Kekuatan Mengikat Dalam Perjanjian Pengikatan Jual Beli (Ppjb) Atas Tanah Yang Belum Bersertifikat," *Jurnal SOMASI (Sosial Humaniora Komunikasi)* 6, no. 2 (2025): hlm. 331-341.

²⁰ Mesya Nurfitriah, "Janji Menikahi Yang Mengikat Dalam Kaitannya Dengan Asas Pacta Sunt Servanda," *Jurnal USM Law Review* 6, no. 1 (2023): hlm. 79-93.

²¹ Fauzi, *Op.,cit.*, p. 164-176.

been completed.²² Therefore, as long as the Deed of Sale and Purchase has not been signed and the certificate has not yet been issued in the name of the buyer, proprietary rights to the apartment unit have not been transferred. A buyer who holds a Sale and Purchase Binding Agreement does not yet possess direct control over the apartment unit and cannot enforce such rights against third parties.

The full transfer of rights, which provides maximum legal protection for the buyer, only occurs at the stage of the Deed of Sale and Purchase. The legal basis for the Deed of Sale and Purchase can be found in Article 26 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles, which mandates that legal acts intended to transfer land rights must be further regulated by government regulations. This provision is implemented through Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which states that the transfer of land rights through sale and purchase can only be registered if evidenced by a deed drawn up by a Land Deed Official. The Deed of Sale and Purchase thus serves as the constitutive instrument marking the establishment of the buyer's proprietary rights over the apartment unit, which is subsequently evidenced by a Certificate of Ownership of Apartment Units (SHMSRS).²³

At the stage before the Deed of Sale and Purchase is signed, legal protection for buyers is also reinforced through the consumer protection legal regime. Law Number 8 of 1999 concerning Consumer Protection places apartment buyers in the position of consumers and developers as business actors.²⁴ Article 4 letters a, c, and d grant consumers the rights to comfort, security, safety, and accurate, clear, and honest information regarding the condition of goods. Article 7 letters b and g require business actors to provide correct information and to be responsible for consumer losses. In the context of the Sale and Purchase Binding Agreement, these provisions provide a legal basis for buyers to bring claims against developers in cases of misrepresentation, construction delays, or discrepancies in building specifications.

However, such legal protection still faces serious limitations, particularly when developers commit a breach of contract or experience bankruptcy. In cases of breach of contract, buyers may claim the fulfillment of the agreement, termination of the contract, and/or compensation pursuant to Article 1243 of the Civil Code. Nevertheless, the

²² Fauzi, p. 180–185.

²³ Muhammad Exel Bagus Nugroho, Arsin Lukman, and Rury Octaviani, "Perlindungan Hukum Peralihan Kepemilikan Hak Atas Satuan Rumah Susun Terkait Perbuatan Melawan Hukum Dalam Proses Jual Beli Tanpa Akta Jual Beli: (Studi Kasus Putusan Nomor: 182/Pdt. G/2023/PN. Jkt. Tim)," *Jurnal Hukum Lex Generalis* 6, no. 9 (2025): p. 1-26.

²⁴ Ridwan Khairandy, *Hukum Perlindungan Konsumen* (FH UII Press: Yogyakarta, 2021), p. 233–245.

effectiveness of this protection largely depends on the financial capacity of the developer. When developers face financial difficulties, court decisions in favor of buyers are often difficult to enforce.

The position of buyers becomes significantly weaker when the developer is declared bankrupt under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). Article 1 point 1 of this law defines bankruptcy as a general seizure of all assets of the bankrupt debtor. Because the Sale and Purchase Binding Agreement does not create proprietary rights, buyers cannot claim the apartment unit as their property and cannot request the separation of the unit from the bankruptcy estate.²⁵ Based on Articles 1131 and 1132 of the Civil Code, buyers holding a Sale and Purchase Binding Agreement are classified as concurrent creditors, meaning creditors without proprietary security rights, whose position ranks below secured creditors and preferred creditors.

As concurrent creditors, buyers do not have priority rights in the distribution of the bankruptcy estate and will only receive proportional repayment if any assets remain after the settlement of higher-ranking claims.²⁶ In practice, this situation often results in buyers receiving no refund or only a small portion of the amount they have paid. This fact indicates that although the Sale and Purchase Binding Agreement has legally binding force, the instrument is still unable to provide adequate legal protection for buyers in extreme situations such as developer bankruptcy.

Based on the foregoing discussion, it can be concluded that the Sale and Purchase Binding Agreement plays an important role as a binding instrument and as an initial form of legal protection for apartment buyers before the Deed of Sale and Purchase is executed. However, because it only creates personal rights, the legal protection it provides remains limited and is not yet capable of optimally safeguarding the interests of buyers. Therefore, stronger regulations and legal mechanisms are required to enhance the position of buyers who hold Sale and Purchase Binding Agreements, whether through the establishment of specific guarantee arrangements, the strengthening of developer responsibilities, or reforms in bankruptcy law policies, so that legal protection for apartment buyers can be realized in a more equitable and balanced manner.

²⁵ Sutan Remy Sjahdeini, *Hukum Kepailitan: Memahami Undang-Undang Nomor 37 Tahun 2004* (Grafiti: Jakarta, 2022), p. 119–132.

²⁶ Nazhif Ali Murtadho, "Perlindungan Hukum Terhadap Kreditor Preferen Dalam Pemberesan Proses Kepailitan," *Journal of Contemporary Law Studies* 1, no. 4 (2024): hlm. 207–226, <https://doi.org/https://doi.org/10.47134/lawstudies.v2i3.2499>.

CONCLUSION

Based on the findings of this research, it can be concluded that the legal system governing ownership and the transfer of rights to apartment units in Indonesia fundamentally has a clear normative foundation through the Basic Agrarian Law, the Apartment Law, and other related regulations. Juridically, ownership rights over apartment units only arise after the fulfillment of several legal requirements, namely the completion of construction, the separation of apartment units, the signing of the Deed of Sale and Purchase before a Land Deed Official, and the issuance of a certificate in the name of the buyer. The Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli / PPJB*), which is widely used in the marketing practice of apartment units, merely creates an obligational legal relationship and does not transfer proprietary rights to the buyer. Consequently, the legal position of buyers who only hold a PPJB remains relatively weak, particularly in cases of breach of contract or developer bankruptcy, because buyers are positioned as concurrent creditors who do not possess proprietary security rights.

These findings indicate that legal protection for apartment buyers prior to the signing of the Deed of Sale and Purchase is still not optimal. This research contributes by highlighting the gap between the normative regulations governing the transfer of rights to apartment units and the practical use of PPJB in property transactions. Therefore, stronger regulatory measures are required regarding the legal status of PPJB and the mechanisms for protecting buyers. Such measures may include the establishment of legal guarantees for buyers at the pre-AJB stage, the strengthening of supervision over apartment marketing practices conducted by developers, and the refinement of legal policies capable of providing greater legal certainty and more effective protection for consumers in apartment transactions.

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