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Notarial Liability in Apartment Pre-Sale and Purchase Agreements: Consumer Protection and Legal Certainty

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Abstract. *Apartment Sale and Purchase Binding Agreements (PPJB) drafted by notaries are frequently executed without satisfying the prerequisites stipulated under Article 43 of Law No. 20 of 2011 on Flats (Apartment Law), which requires certainty of land status, Building Construction Permit (IMB), infrastructure availability, and a minimum construction completion of 20% prior to marketing. This normative juridical research analyses legal certainty and consumer protection in the execution of apartment PPJBs drafted by notaries, employing statutory, conceptual, and case approaches. The study finds that notaries bear an implicit obligation to verify the fulfilment of legal prerequisites as a consequence of the due diligence principle enshrined in Article 16 paragraph (1) letter (a) of the Notary Profession Law (UUJN). Notarial negligence gives rise to civil, administrative, criminal, and moral-ethical liability. Furthermore, the existing consumer protection legal framework does not provide adequate substantive protection owing to weak supervision, deficient sanction enforcement, and inadequate recovery mechanisms. The study recommends a comprehensive legal reconstruction encompassing: the establishment of a marketability certification system, explicit affirmation of notarial verification obligations within the UUJN, strengthened sanctions for developers, the creation of a consumer protection guarantee fund for the property sector, and enhanced institutional capacity of the Consumer Dispute Settlement Agency (BPSK) and courts in handling property consumer disputes.*

Keywords: *Apartment; Consumer; Property; Protection.*

1. Introduction

interrelated objectives: legal certainty, justice, and utility. Gustav Radbruch affirmed that legal certainty is an essential pillar that must be realised to guarantee the predictability and stability of the legal system (Gustav Radbruch, 1950). Satjipto Rahardjo, through his theory of legal protection, explains that law functions to provide protection to weaker legal subjects against stronger ones, both preventively and repressively (Rahardjo, 2014). Roscoe Pound further emphasised that law must be capable of balancing competing interests within society, particularly individual, public, and social interests, so as to achieve social order with minimal conflict (Pound, 1922). In the context of property transactions, a structural imbalance exists between business actors who possess greater economic resources and information, and consumers who occupy an inferior position, thereby necessitating legal intervention to restore equilibrium.

The development of Indonesia's property sector, particularly commercial apartments or flats (*rumah susun*), has experienced significant growth in line with urbanisation and the increasing demand for vertical housing (Sutedi, 2010). In property business practice, the Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli*/PPJB) has become the standard legal instrument used as a preliminary step prior to the execution of a definitive Deed of Sale and Purchase (*Akta Jual Beli*/AJB). The PPJB functions as a preliminary agreement binding the developer and consumer to consummate the sale and purchase once certain conditions are fulfilled, as implicitly governed by Article 1338 of the Civil Code (*Kitab Undang-Undang Hukum Perdata*/KUHPerdata), which grounds every obligation in the freedom of contract principle within an open system (Subekti, 2005). A fundamental problem arises, however, when the PPJB — as an open system — is executed by setting aside or without fulfilling the prerequisites of Article 43 of Law No. 20 of 2011 on Flats (Apartment Law), which requires certainty of land status, Building Construction Permit (IMB), infrastructure availability, and a minimum construction progress of 20% prior to marketing. In practice, parties govern their own interests, and developers in particular often market properties and execute PPJBs long before the statutory requirements are met, even where construction has not yet commenced or permits are incomplete, driven by the need for early consumer financing (pre-financing) (Cahyaningrum, Perlindungan Konsumen Perumahan, 2023). Yet Government Regulation No. 12 of 2021 on the Implementation of Housing and Settlement Areas has provided guidance that certainty of land status and construction permits for flats or apartments is a condition that developers must possess before commencing marketing activities (Indonesia, Peraturan Pemerintah Nomor 12 Tahun 2021 tentang Penyelenggaraan Perumahan dan Kawasan Permukiman, 2021).

The involvement of a notary in the execution of a PPJB ought to confer legitimacy and guarantee legal certainty. Notaries, as public officials under Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Notary Profession (UUJN), bear a professional responsibility to ensure the legality of documents, with an obligation to act honestly, diligently, and in safeguarding the interests of the parties involved (Indonesia, 2014). An authentic notarial deed carries the force of conclusive evidence (volledig bewijs) and binding proof (bindende bewijskracht) pursuant to Article 1870 of the KUHPerdata (R. Subekti, 1996). In practice, however, not all notaries conduct a thorough verification of the fulfilment of legal prerequisites prior to drafting a PPJB for an apartment. This reality was identified by Putra, who found that many PPJBs for flats are executed in non-compliance with the statutory requirements governing flats (Stenley Pranata Kurnia Putra, 2025). This state of affairs places consumers in a highly vulnerable position when developers experience default. Consumers who have paid substantial down payments or instalments face serious legal uncertainty, fail to receive the promised apartment unit, and suffer significant financial loss (Dewi Iryani, 2025). Data from consumer protection agencies reflects a rise in property dispute cases, ranging from delayed unit handovers to developer scams (Rizky, 2023).

The root of the problem lies in regulatory disharmony and a lack of clarity in practice. The KUHPerdata grants broad freedom of contract, which paradoxically becomes a tool for eroding the rights and provisions that should protect consumers in pre-project selling transactions. Under the KUHPerdata framework, restrictions are limited to statutory prohibitions, public order, and public morality. Meanwhile, the Apartment Law establishes substantive marketing prerequisites but does not specifically regulate the technical dimensions of the PPJB, particularly the notary's specific competence to apply the due diligence principle in document verification. The UUJN sets out various notarial obligations but does not explicitly regulate the verification of specific prerequisites regarding the substantive content of legal instruments, including PPJBs within the notary's purview. This disharmony results in a legal vacuum concerning the concrete liability of notaries, effective civil sanctions for developers, preventive protection mechanisms, and swift redress instruments for aggrieved consumers.

In view of the foregoing, there is an urgent need for an in-depth examination of legal certainty and consumer protection in the execution of apartment PPJBs drafted by notaries. This research is of importance to protect the interests of consumers who occupy a weaker position, to provide an academic foundation for comprehensive and harmonious regulatory reconstruction, to clarify the professional liability of notaries, and to offer recommendations to policymakers for strengthening the property consumer protection system. The proposed legal reconstruction requires a holistic approach that harmonises the various relevant statutes, strengthens preventive supervisory mechanisms, affirms the role of the notary as a gatekeeper in property transactions, and provides effective civil sanctions with a deterrent effect for developers who violate the applicable provisions. Through normative juridical research employing statutory and conceptual approaches grounded in theories of legal certainty, legal protection, and social interest, this study aims to identify comprehensive legal solutions to realise optimal legal certainty and consumer protection in apartment transactions in Indonesia

2. Research Methods

This study employs the normative legal research method (*normative legal research*) utilising three approaches: the statutory approach. the conceptual approach, and the case approach (Marzuki, 2005). The primary legal materials employed include: (1) the Civil Code (KUHPerdata); (2) Law No. 8 of 1999 on Consumer Protection; (3) Law No. 20 of 2011 on Flats (Apartment Law); and (4) Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Notary Profession (UUJN).

3. Results and Discussion

3.1. Legal Framework of the Apartment Sale and Purchase Binding Agreement and Marketing Prerequisites

The Apartment Sale and Purchase Binding Agreement (PPJB) is a legal instrument employed in property business practice as a preliminary agreement prior to the execution of a definitive Deed of Sale and Purchase (AJB). Theoretically, the PPJB falls within the category of *pactum de contrahendo,* that is, an agreement to enter into a future agreement upon the fulfilment of certain conditions (Subekti, 2005). The legal basis of the PPJB is not explicitly regulated under Indonesian law; rather, its validity rests upon the freedom of contract principle as provided in Article 1338 paragraph (1) of the KUHPerdata, which states that all agreements lawfully made shall have the force of law between the parties thereto. However, freedom of contract is not absolute and is circumscribed by the conditions for the validity of agreements under Article 1320 of the KUHPerdata, namely: (1) consent; (2) legal capacity; (3) a definite subject matter; and (4) a lawful cause.

In the context of flat law, Article 43 paragraph (1) of the Apartment Law imposes substantive restrictions on the execution of apartment PPJBs by prescribing four prerequisites that must be satisfied prior to marketing: (1) certainty of land title rights; (2) Building Construction Permit (IMB); (3) availability of public infrastructure, facilities, and utilities; and (4) construction progress of at least 20%. This provision is designed to protect consumers from premature marketing practices that cause harm. Article 43 paragraph (2) further provides that the developer is liable for losses suffered by consumers as a result of the non-fulfilment of these prerequisites. A similar requirement is found in Article 24 of Law No. 6 of 2023 on Job Creation, which amends Article 36A of Law No. 28 of 2002 on Buildings, and mandates possession of a Building Approval (*Persetujuan Bangunan Gedung*) prior to the commencement of construction (Indonesia, 2023).

Government Regulation No. 12 of 2021 on the Amendment to Government Regulation No. 14 of 2016 on the Implementation of Housing and Settlement Areas (PP 12/2021) has introduced operational definitions and implementation mechanisms for the PPJB. This regulation has superseded Ministerial Regulation of the Ministry of Public Works and Public Housing No. 11/PRT/M/2019 of 2019 on the Preliminary Sale and Purchase Agreement System for Houses, which had previously served as the principal technical guidance for PPJB arrangements. Article 22D of PP 12/2021 specifies that the PPJB must contain complete information regarding: (1) the identity of the parties; (2) the specification of the subject matter; (3) the price and payment terms; (4) the handover timeline; (5) the rights and obligations of the parties; (6) dispute resolution; and (7) force majeure (Indonesia, 2021). In practice, however, many PPJBs are drafted on the basis of standard contracts (*standard contract*) that favour the developer, as they fail to discharge the obligations required by law, including exoneration clauses that transfer risk or liability to the consumer, and disproportionate delay clauses (Kristiyanti, 2008).

An analysis of the legal framework reveals a gap between the normative ideal (das sollen) and empirical reality (das sein). Despite the clear requirements of Article 43 of the Apartment Law, implementation remains weak due to: (1) the absence of a mandatory verification mechanism by an independent authority or by notaries; (2) inadequate oversight by local governments; (3) ineffective administrative sanctions; and (4) a property business culture that tends to use consumer funds for construction financing (Dennia Gracia Angelica, 2025) Empirical data from the Indonesian Consumer Foundation (Yayasan Lembaga Konsumen Indonesia/YLKI) recorded from 2025 indicates that it received 1,977 consumer complaints from various sectors, comprising 1,011 individual reports and 966 group reports. Group complaints included 919 housing consumer groups. This means approximately 46% of consumer property disputes constitute a critical issue. Complaints arose from the pre-construction phase through to the post-construction phase. Delays in handover, unclear ownership documents, and stalled projects all reflect the state's weak oversight of the housing sector. Consumers frequently bear the greatest risk without adequate protection (Emiliana, 2026).

3.2. Notarial Liability in the Drafting of Apartment PPJB

Notaries, as public officials, occupy a central position and function within the Indonesian legal system. Article 1 point 1 of Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Notary Profession (UUJN) defines a notary as a public official authorised to draft authentic deeds and to exercise other authorities as provided in this law or pursuant to other laws. A notarial deed carries conclusive evidentiary force (*volledig bewijs*) and binding proof (*bindende bewijskracht*) under Article 1870 of the KUHPerdata, meaning the contents of the deed are presumed true unless proven otherwise.

The professional obligations of notaries are regulated under Article 16 paragraph (1) of the UUJN, encompassing: (1) acting in a trustworthy, honest, diligent, independent, impartial manner, and safeguarding the interests of the parties in legal acts; (2) preparing deeds in the form of Minuta Akta and retaining them as part of the Notarial Protocol; (3) attaching letters, documents, and fingerprints of appearing parties to the Minuta Akta; (4) issuing Grosse Deeds, Copies, or Excerpts based on the Minuta Akta; and (5) providing services in accordance with the provisions of this law. As stated by Habib Adjie, Article 16 paragraph (1) letter (a) specifically emphasises the due diligence principle (*prudential principle*) and the obligation to act with diligence (*saksama*), which implies an obligation to verify the validity and legality of the documents underlying the preparation of the deed (Paskadwi, 2022). Although, literally speaking, the term *saksama* — meaning careful or meticulous — constitutes an implicit manifestation of the obligation to verify, this obligation is frequently overlooked by notaries who hold the authority to legitimise PPJBs with equitable content.

In the context of drafting apartment PPJB deeds, notaries bear an implicit obligation to verify the fulfilment of the legal prerequisites stipulated under Article 43 of the Apartment Law. This obligation is a logical consequence of the due diligence principle and professional notarial standards. Notarial negligence in carrying out verification gives rise to several forms of liability. First, civil liability under Article 1365 of the KUHPerdata on unlawful acts (*onrechtmatige daad*). A notary who, intentionally or negligently, causes loss to a consumer is obliged to compensate for such loss. The UUJN similarly provides that a notary whose conduct is not meticulous and causes harm to the parties may be held civilly liable.

Second, administrative liability under Article 85 of the UUJN, which grants the Supervisory Council (*Majelis Pengawas*) the authority to impose sanctions, including: (1) verbal reprimand; (2) written reprimand; (3) temporary suspension; or (4) honourable or dishonourable dismissal. Third, criminal liability, where the notary's negligence satisfies the elements of a specific criminal offence, such as document forgery (Article 263 of the Criminal Code/KUHP) or complicity in fraud (Article 55 in conjunction with Article 378 of the KUHP). Fourth, and most significantly, moral and ethical liability under the Notarial Code of Ethics, which requires notaries to uphold the dignity and honour of the profession.

3.3. Mechanisms of Consumer Legal Protection in Apartment Transactions

Consumer legal protection constitutes a manifestation of the principles of justice and balance in the relationship between business actors and consumers. Hadjon (1987) distinguishes two types of legal protection: preventive legal protection, which aims to prevent disputes from arising, and repressive legal protection, which aims to resolve disputes that have already occurred. In the context of apartment transactions, both types of legal protection must be applied in a complementary manner to afford comprehensive protection to consumers (Daffa Arya Prayoga, 2023).

The preventive protection mechanism in apartment transactions is regulated through various legal instruments. First, Article 43 of the Apartment Law, which requires the fulfilment of prerequisites prior to marketing, functions as a preventive instrument against premature marketing practices that harm consumers. Second, Article 7 of Law No. 8 of 1999 on Consumer Protection (Consumer Protection Law) regulates the obligation of business actors to provide true, clear, and honest information regarding the conditions and guarantees of goods and/or services. Third, Article 18 of the Consumer

Protection Law prohibits the inclusion of standard clauses that prejudice consumers, such as exoneration clauses that transfer all risks to the consumer.

Research conducted by Rafi Erdian Wibowo and Gunawan Djajaputra found that agreements drafted by developers constitute standard form contracts characterised by content determined unilaterally by the developer, which consumers are compelled to accept in their entirety, and which are prepared in a fixed format, either en masse or individually (Rafi Erdian Wibowo, 2024). Such standard form contracts are grounded in the freedom of contract principle as formulated in the KUHPerdata. Consequently, consumers have no choice but to accept all facilities and obligations set by the developer. Moreover, various cases have shown, both qualitatively and empirically, that notarial verification in practice is merely formal in nature — for example, confined to verifying power of attorney documents, the identity of the authorised party, and similar matters — which underscores the necessity for comprehensive and substantive verification. This situation arises because, in the drafting of PPJB documents, the substantive content is based solely on the submissions and wishes of the parties, even though, in truth, notaries bear an implicit obligation under the term *saksama*, which literally mandates the inclusion of due diligence in the exercise of their authority.

As regards the repressive protection mechanism, the existing statutory framework provides dispute resolution avenues for aggrieved consumers. Article 45 paragraph (2) of the Consumer Protection Law offers the option of dispute resolution through the courts or out of court, based on the voluntary choice of the parties. Out-of-court dispute resolution may be pursued through the Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen*/BPSK), established pursuant to Article 49 of the Consumer Protection Law. The Consumer Protection Law also vests the BPSK with the authority to handle and resolve consumer disputes through mediation, conciliation, or arbitration. BPSK decisions are final and binding, and may be enforced through the district court if one party fails to voluntarily comply with the ruling. However, the BPSK, as an out-of-court consumer dispute resolution institution, has not yet been fully effective in providing legal protection to consumers. Although BPSK decisions are declared final and binding, they are in fact not entirely so, as they may still be challenged before the district court on various grounds. This evidently fails to provide legal certainty to consumers, particularly those in a weak economic and legal literacy position (Sri Agustini, 2026).

In addition to the BPSK, consumers may file civil claims before the district court on grounds of breach of contract (wanprestasi) pursuant to Article 1243 of the KUHPerdata, or unlawful act (perbuatan melawan hukum) pursuant to Article 1365 of the KUHPerdata. In a breach of contract case, the consumer must prove that the developer has failed to fulfil the obligations agreed upon in the PPJB, such as delayed handover of the unit or non-compliance with promised specifications. In an unlawful act case, the aggrieved consumer must establish four elements: (1) the commission of an act; (2) that such act constitutes an unlawful act; (3) the existence of a loss; and (4) a causal nexus between the act and the loss, as required under Article 1365 of the KUHPerdata.

From the foregoing, it is apparent that the existing consumer legal protection mechanisms still face numerous obstacles. First, the preventive mechanism under Article 43 of the Apartment Law is ineffective due to weak oversight by local governments over apartment sale and purchase transactions as provided in the Apartment Law, and the absence of firm administrative sanctions for non-compliant developers (Suwardi, 2026). Furthermore, the lack of a clear legal framework requiring notaries, as parties involved in drafting PPJBs, to perform mandatory verification creates the potential for harm to consumers who are frequently in a weaker position. Finally, the lack of firm sanctions against developers — who invoke the freedom of contract doctrine and the consequences of construction failure — further disadvantages consumers in vulnerable positions. It is therefore necessary to undertake an integrative regulatory reconstruction that is mutually reinforcing and complementary with respect to *pre-project selling* transactions.

A comparison with other jurisdictions illustrates the importance of stronger protection mechanisms. In Singapore, the Housing Developers (Control and Licensing) Act requires developers to pay insurance premiums or furnish bank guarantees prior to marketing, so that in the event of a developer's failure to complete the project, consumers may obtain compensation from the guarantee fund (Singapura, 2020). This regulatory framework strengthens the position and confidence of consumers, and provides legal certainty regarding consumer protection in *pre-project selling* transactions. Indonesia should adopt a similar mechanism to strengthen property consumer protection, including the trust account system applied in several countries for financial management in the property business, whereby consumer payments are held in a dedicated account that may only be disbursed upon the attainment of specific construction milestones.

3.4. Legal Reconstruction for the Strengthening of Consumer Protection

Based on the analysis of the existing legal framework and practice, a comprehensive legal reconstruction is required to realise optimal legal certainty and consumer protection in apartment transactions. This reconstruction must be grounded in the following principles: (1) a balance of interests between business actors and consumers; (2) legal certainty that provides predictability; (3) effective law enforcement; and (4) accessibility of justice for consumers, as well as the explicit affirmation of the due diligence principle within the UUJN.

First, the establishment of a mandatory marketability certification system (marketability certification) that developers must obtain from the government prior to marketing activities, as a form of oversight over apartment development. This certification is to be issued by the Government or an independent body established under or subordinate to the Ministry of Public Works and Public Housing (PUPR) following a thorough verification of: (1) the lawful land title status and the absence of dispute; (2) the completeness of the IMB and related permits; (3) the availability of public infrastructure, facilities, and utilities; and (4) a minimum physical construction progress of 20%, as required under Article 42 of the Apartment Law. Firm sanctions for marketing conducted without certification shall include administrative sanctions in the form of licence revocation and criminal sanctions for developers.

Second, the explicit affirmation of notarial verification obligations in the UUJN. Amendments to the UUJN must incorporate a specific provision stipulating that in drafting apartment PPJB deeds, notaries are obliged to verify: (1) the marketability certificate; (2) land ownership documents; (3) the IMB and related permits; and (4) evidence of construction progress. Notaries who fail to perform the required verification may be subject to administrative sanctions in the form of temporary or permanent dismissal, and may be held civilly liable for any resulting harm.

Third, the harmonisation, synchronisation, and strengthening of sanctions for developers who engage in premature marketing. Revisions to the Apartment Law must introduce stricter sanction provisions, comprising: (1) administrative sanctions and revocation of business licences; (2) civil sanctions in the form of an obligation to refund all consumer payments in full; and (3) criminal sanctions against developers who wilfully engage in marketing without satisfying the statutory prerequisites. All of the foregoing concepts and legal constructions must be harmonised clearly and firmly with the principles of balance, justice, and due diligence.

Fourth, emphasis must be placed on the regulatory concept of developer obligations regarding insurance mechanisms, namely the requirement for developers to pay insurance premiums or provide bank guarantees prior to commencing marketing activities, so that in the event of a developer's failure to complete the project, consumers may obtain compensation from the guarantee fund.

4. Conclusion

This research yields several significant conclusions regarding legal certainty and consumer protection in the execution of apartment PPJBs drafted by notaries. *First,* the legal framework governing apartment PPJBs is regulated in a fragmented manner across various statutes, creating disharmony that renders legal practice ineffective in critical aspects such as the concrete liability of notaries, and fails to provide legal certainty or justice in consumer protection. In particular, with respect to the implementation of Article 43 of the Apartment Law, which has established substantive prerequisites for apartment marketing, these prerequisites are not fulfilled in practice, given the absence of a mandatory verification mechanism by notaries or by the government. Weak local government oversight and the failure of notaries to discharge their verification function in PPJB drafting give rise to legal uncertainty in the protection of apartment consumers. As a result, developers consistently occupy the advantaged position. Furthermore, sanctions against developers and mechanisms for both preventive and repressive consumer protection remain inadequate. *Second*, notaries in truth bear an implicit obligation to verify the fulfilment of the legal prerequisites under Article 43 of the Apartment Law prior to drafting apartment PPJB deeds. This obligation is a logical consequence of the due diligence principle enshrined in Article 16 paragraph (1) letter (a) of the UUJN. Notarial negligence in carrying out verification gives rise to civil liability on the basis of unlawful acts, administrative liability that may culminate in dismissal, criminal liability where the elements of a criminal offence are established, and moral and ethical liability under the Notarial Code of Ethics. *Third,* the existing consumer protection legal framework does not yet provide adequate substantive protection for apartment consumers. The preventive protection mechanism under Article 43 of the Apartment Law is ineffective due to weak supervision and law enforcement by local governments and by notaries. The repressive protection mechanism through the BPSK and the courts faces limitations in terms of capacity, accessibility, and effectiveness in exercising their authority, and has thus far failed to provide legal certainty, particularly with regard to the enforcement of BPSK decisions. *Fourth,* a comprehensive and holistic legal reconstruction is an imperative for creating a balance of interests between business actors and consumers. Such reconstruction must encompass: first, the strengthening of the marketability certification system through the establishment of a mandatory registration and verification system; second, the explicit affirmation of notarial verification obligations within the UUJN; third, the strengthening of civil, administrative, and criminal sanctions for developers who engage in premature marketing; fourth, the establishment of a property consumer protection guarantee fund managed by an independent institution; and fifth, the strengthening of the institutional capacity and restructuring of the BPSK and courts in handling property consumer disputes.

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