

Strengthening Consumer Legal Protection Related to Real Estate Marketing in Pre-Project Selling

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Abstract

In recent years, housing and property development in Indonesia has seen a rapid increase, accompanied by the growing population. Pre-project selling is a strategy where developers sell real estate before construction is completed or even before it begins. This system involves offering consumers concepts, images, and information related to size, location, and promised facilities. Although this method helps developers reduce construction costs, it poses legal risks for consumers, such as design discrepancies, material quality issues, changes in specifications, and delays in obtaining building permits. To protect consumers, the Sales and Purchase Binding Agreement (PPJB) is used as a legal instrument that binds the rights and obligations of both parties, providing legal certainty in real estate transactions. The main focus of the research is to ensure consumer rights protection through the proper application of PPJB in accordance with applicable legal regulations.

I. Introduction

One of the purposes of the establishment of the State of Indonesia is to advance the general welfare. This has been stipulated in paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia or the 1945 Constitution. Advancing the general welfare can be carried out by carrying out national development. In essence, national development is the development of Indonesia as a whole based on Pancasila as a guide in carrying out national development. National development is created from, by and for the people, and implemented in all aspects of national development as an effort to improve the welfare and prosperity of the Indonesian people. One of the efforts to achieve general welfare is the construction of houses.¹

Home is the main thing of the three essential human needs, the three types of needs include primary, secondary and tertiary needs. Primary needs are the most fundamental basic needs for humans, which include clothing (clothing), food (food / drink), and shelter (housing).² The explanation means that shelter is important and primary for the protection of individuals and their families. The increasing population coupled with limited land has led to increased competition to obtain the desired residence, whereas Article 28 letter h paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states that: "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment, and to receive health services."³

The high demand for housing causes houses to often become attractive investment objects for *developers*. This phenomenon triggers tighter competition among developers in attracting buyers. In an effort to attract consumers, *developers* are currently aggressively building *real estate*, which includes residential *real estate*, apartments, villas, residential, and other commercial buildings. One of the methods used to sell *real estate* is the *pre-project selling* system, which sells units before construction is completed or even before construction begins.⁴ This system is implemented through the creation of

¹ Utari, F., & Hasna, H. (2020). Perlindungan Hukum Bagi Pihak Pembeli Dalam Perjanjian Pengikatan Jual Beli yang Tidak Terlaksana Akibat Penolakan dari Sebagian Ahli Waris Pihak Penjual Berdasarkan Kitab Undang-Undang Hukum Perdata. *Jurnal Poros Hukum Padjadjaran*, 1(2), 191-209.

² Anabelle, M., & Tanawijaya, H. (2019). Sistem Pre Project Selling Dalam Penjualan Satuan Unit Apartemen Menurut Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun (Contoh Kasus Putusan Pengadilan Negeri Jakarta Pusat Nomor: 616/Pdt. G/2017/Pn. Jkt. Pst Jo. Putusan Pengadilan Tinggi Jakarta Nomor: 20/Pdt. G/2019/Pt. DKI). *Jurnal Hukum Adigama*, 2(2), 508-532.

³ Andalusia, A., Elmis, L., & Oktarina, N. (2023). Perlindungan Hukum Terhadap Konsumen Dalam Perjanjian Jual Beli Perumahan Dengan Sistem Pre Project Selling Di Sumatera Barat. *Unes Journal of Swara Justisia*, 6(4), 356-367.

⁴ Therik, D. F., & Gultom, E. R. (2023). Perlindungan Pembeli Apartemen Pre Project Selling: Studi Kasus Keterlambatan Serah Terima Proyek Meikarta. *Binamulia Hukum*, 12(2), 403-416.

advertisements by *developers* by offering pictures, displaying important details such as residential concepts, area size, infrastructure, building design, location, as well as the advantages of the facilities offered.

Real estate marketing using the *pre-project selling* system is a strategy that *developers* are interested in because it is an alternative solution to reduce development costs. However, in practice, the *pre-project selling* system is often carried out before an official permit is issued.⁵ Such actions not only violate regulations but also potentially put consumers in a high-risk situation. This method of selling raises legal issues and tends to harm consumers. This is because the buildings, facilities, and goods being sold have not yet materialized, but the transaction has already been made. There are several concerns that often arise when buying residential *real estate* on a *pre-project selling* basis:

a. Design Appropriateness

Consumers are often concerned about the final design of the building, which could potentially not be as promised in the brochure. Such as room sizes that are smaller than the floor plan or changes made unilaterally by the *developer* significantly without notice.

b. Quality of Materials and Construction

Because consumers cannot see the physical building, there is a concern that the *developer* may have used cheaper or lower quality materials than promised. This certainly affects the building's durability and long-term safety.

c. Changes in Building Specifications

The developer may make changes to the layout or reduce the facilities that have been promised without the consent of the consumer. Such as changes to swimming pools, gardens, or communal areas that are not built or significantly altered from the original plan.

d. Structure Issues

Another problem that may arise is the quality of building structures such as foundations, ceilings, or walls that may not be sturdy and that are at risk of damage. This risk is certainly very difficult to ascertain before the building is actually standing.

e. Certification and Building Permit

In some cases, the building design may violate local zoning or building regulations, which may lead to delays in obtaining building permits or even demolition in the future.

According to data obtained from the Indonesian Consumers Foundation (YLKI), in 2022 there were a number of complaints that showed an increase in problems in the

⁵ Hilmy, R. (2022). Perlindungan Konsumen Dalam Penjualan Rumah Susun Dengan Sistem Pemasaran Pre-Project Selling Ditinjau Dari Hukum Positif Indonesia. *JISIP (Jurnal Ilmu Sosial dan Pendidikan)*, 6(3).

housing sector. The data covers various aspects that affect consumer satisfaction in property transactions. The following is a summary of data regarding property problems reported in 2022 in Indonesia:

Property Consumer Complaints Reported to the Indonesian Consumer Foundation in 2022



Source: Kompas.com

From the data presented on property issues reported to the Indonesian Consumers Foundation (YLKI) in 2022, it appears that there are a number of significant challenges faced by consumers. Refund issues dominated the complaints with a percentage reaching 27%, followed by stalled construction (21%) and document issues (15%). In addition, issues such as non-conforming buildings and delays in building handover also show a high percentage, at 11% and 5% respectively. This shows the importance of attention from *developers* and related institutions to improve service quality and provide better protection to consumers.

In the context of justice theory, sanctions must be considered proportional to the wrongdoing committed and based on the principle that everyone is responsible for their actions.⁶ According to the Chairman of the Daily Management of the Indonesian Consumers Foundation (hereinafter referred to as YLKI) said that the *pre-project selling* method needs extra supervision. The form of legal protection for consumers in this *pre-project selling* system is through a Sale and Purchase Binding Agreement (hereinafter referred to as PPJB). The contents of this agreement include the rights and obligations of both parties, besides that the PPJB also has a function as evidence in the event of a dispute in the future. PPJB is made on the basis of an agreement between the two parties with the main purpose of conducting a sale and purchase transaction that will lead to the transfer of property rights. PPJB contains the rights and obligations of the parties which will then be regulated in the Sale and Purchase Deed (hereinafter referred to as AJB) made before a Notary. The making of PPJB has certain reasons, one of which is because the certificate is still in process

⁶ Sadnyini, I. A., Christianto, D., Kurniawan, I. G. A., & Jayantara, M. (2024). Legal Approaches for Clinical Audits and Sanctions in Indonesian Health Service Facilities. *Jurnal Hukum Prasada*, 11(1), 16-24.

or the price of the *real estate* has not been paid in full by the consumer. Later this PPJB can serve as a guide to conduct transactions until the ownership process is complete.⁷

Legal protection is an effort to provide guarantees to legal subjects through various means, both through prevention and overcoming, or both orally and in writing. Legal protection is a representation of the function of law itself to ensure the realization of justice, peace, order, certainty, benefits, and peace. In relation to *real estate*, legal protection for *real estate* consumers is very important because some of them often feel harmed by *developers*. Often, consumers who suffer losses do not know how to report their losses or complain about their problems to the authorities. This is because the uncertainty of consumer reporting and the fear of high costs for legal proceedings are often the reasons why they do not take legal action.⁸

Similar research on strengthening consumer legal protection related to *real estate* marketing in *pre-project selling* has been conducted by Rafi Erdian Wibowo and Gunawan Djajaputra with the title "Consumer Legal Protection for Property Sales Using the *Pre-Project Selling* System. The research focused on analyzing the legal responsibilities that *developers* must comply with in the *pre-project selling* system, including liability based on fault, absolute liability, and limitation of liability. This research examines how *developers* can be held liable if the products or services provided are not in accordance with the agreement and identifies shortcomings in the *pre-project selling* system, particularly the legal uncertainty experienced by consumers due to a lack of understanding of their rights under the Consumer Protection Law (UUPK).

The difference with this research is its main focus on legal protection for consumers in the context of *real estate* marketing using the *pre-project selling* method. This research aims to evaluate how legal protection can be applied to protect the rights of consumers who are often vulnerable due to the uncertainty of the implementation of agreements and the risks of transactions carried out before the physical project is completed. It also assesses the legal elements required in a pre-project sale and purchase agreement (PPJB) to ensure legal certainty, consumer rights protection, and risk prevention, with the aim of ensuring the agreement complies with applicable consumer protection standards.

Property is seen by society as a symbol of wealth and prosperity in today's modern era. Additionally, many people view property as a reflection of an individual's success, which boosts their confidence, earns them respect, and makes them more admired by others. Given the importance of property to individuals, legal protection and guarantees for property are crucial, considering the substantial value of the property.⁹ Based on the

⁷ Elysia, D., Pradana, Z. L., Affani, R. P. J., & Rahman, A. (2020). Tinjauan Yuridis Transaksi Jual Beli Properti Melalui Pre-Project Selling. *Jurnal Education And Development*, 8(3), 14-14.

⁸ Hertiani, E., & Ilyanawati, Y. A. (2023). Perlindungan Hukum Konsumen Terhadap Pemasaran Properti Dengan Sistem Pre Project Selling. *Karimah Tauhid*, 2(3), 638-644.

⁹ Utami, N. P. M. (2023). Perlindungan Hukum bagi Korban Tindak Pidana Penipuan di Bidang Properti. *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat*, 2(11), 2610-2619.

background presented above, the author argues that the *pre-project selling* system used by *developers* in *real estate* marketing faces a number of problems. This method often puts consumers in a vulnerable position due to uncertainty regarding the implementation of the agreement. Legal protection for consumers in this context is essential to ensure that their rights are protected and that a fair legal process can be accessed without constraints. So that the author is interested in raising the title of " **Strengthening Consumer Legal Protection related to *Real Estate* Marketing in *Pre-Project Selling***"

2. Research Method

This research uses normative juridical legal research methods, which focus on the study of law as norms or rules that apply in society and become a reference for individual behavior.¹⁰ This normative research will analyze and interpret relevant legal rules and norms. The types of approaches used include statutory approaches and conceptual approaches. The statutory approach emphasizes the study of the suitability and relationship between laws and regulations in the legal hierarchy. This approach involves a thorough review of all regulations relating to the legal issues discussed, including regulations governing the Preliminary Sales and Purchase Agreement (PPJB) and pre-project selling marketing practices. With this approach, the author can ensure that the agreements made comply with all applicable legal provisions, thereby reducing the risk of legal violations and providing sufficient legal protection for the parties involved. Meanwhile, the conceptual approach aims to find solutions and solve problems through analyzing the legal values or concepts contained in existing norms.¹¹ This approach is used to understand the concepts associated with the legislation and assess their compatibility with the basic principles of law. In this research, the conceptual approach helps in developing educational strategies and raising consumer awareness about their rights and the risks they may face in pre-project selling transactions. Thus, consumers can become more vigilant and have sufficient knowledge to protect themselves. The data collection technique was conducted through a literature study of legal materials, both primary, secondary, and tertiary, as well as non-legal materials. The processing of legal materials is done systematically by classifying and analyzing them logically to support the research findings.

¹⁰ Muhaimin. (2020). *Metode penelitian hukum* (Edisi pertama). Mataram University Press.

¹¹ Yuliantari, I. G. A. E., Kurniawan, I. G. A., & Dewi, N. P. D. P. (2023). Perlindungan Hukum Pemegang Hak Cipta Terhadap Pembajakan Potongan Film Pada Aplikasi Tiktok. *Jurnal Hukum Sasana*, 9(1), 81-90.

3. Results and Discussion

Consumer Legal Protection Related to *Real Estate* Marketing with *PreProject Selling System*

The pre project selling marketing system is a marketing system used by developers to sell real estate before construction is complete, in this case the real estate is still in the form of drawings or concepts. Marketing with this *pre project selling* system can provide benefits for *developers* because it can help flow funds into the project through payments from buyers before construction is completed. Initially, this method was used as a closed market trial, but later it was applied openly and utilized by developers until now. Marketing in this way is expected to sell real estate quickly and in large numbers.

First, marketing will be done through visualization of images that display the design of the residence, the size of the building, the promised facilities and the strategic location of the real estate. This marketing method arises due to the competition among *developers* where they need quick and practical ways to sell *real estate* to meet the demands of an increasingly complex era. Especially in urban areas, the *pre-project selling* system has great profit potential because it is often considered very profitable and promising.¹²

Real estate purchases are generally made through a pre-order system or reservation before construction begins. In the sales agreement between the developer and the consumer, the start and completion dates for the construction are usually specified. Therefore, if the real estate is not built according to the schedule or is built but not finished beyond the agreed deadline, default (*wanprestasi*) often occurs, especially from the consumers who have paid 50% of the house price.¹³

However, in practice, this *pre-project selling* system is often carried out before an official license is issued. Such actions not only violate regulations but also have the potential to place consumers in a high-risk situation. In addition, this situation can also lead to defaults such as the promised project not being carried out, being carried out but not on time, being carried out but not in accordance with what was promised, being carried out even though it is not allowed according to the agreement and even the construction of *real estate* is not carried out and *the developer* runs away with the consumer's money. Sales using this method cause legal problems and tend to harm consumers. This is because the buildings, facilities and goods sold have not yet materialized, but the transaction has already been carried out.

¹² Rahmad, N., & Setiyawan, D. (2022). Pertanggungjawaban dalam Penipuan Bisnis Property Melalui Pemasaran Pre Project Selling kepada Konsumen. *Justisi*, 8(3), 198-208.

¹³ Palar, V. C. E., & Mekka, M. F. (2023). Wanprestasi Terhadap Akta Perjanjian Pengikatan Jual Beli (PPJB) Rumah Susun yang Dibuat oleh Notaris. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(1), 35-48.

Consumer protection is particularly important in the *pre-project selling* system because under this scheme, consumers are buying properties that have not yet been built or even started construction. This creates a number of risks for consumers, including the risk of construction delays, inappropriate building quality, and the possibility of the project not being completed due to various reasons such as financial or legal issues faced by the *developer*. Therefore, consumer protection is crucial to ensure that consumers' rights are safeguarded and provide assurance that they will receive the property as promised.

In an effort to ensure the safety and comfort of consumers in the real estate and property sector, Paulus Totok Lusida, Chairman of the DPP of the Indonesian Real Estate Company Association (REI), suggested that there are five important things that need to be considered by consumers, namely:

1. First, consumers need to check the legality of the company and ensure that the real estate company has formal legal requirements, such as deeds, SK Menkumham, and Business Identification Number (NIB). In addition, the company should also have a good track record and be a member of a housing developer association.
2. Second, regarding land legality, consumers must verify the validity of the project land object, including the legality of the location and land boundaries. Consumers also need to ensure the clarity of the land subject, that is, the project stands on land with clear ownership, supported by legal ownership certificates, and is not on disputed land or potentially disputed land.
3. Third, in the licensing aspect, consumers must ensure the project has all the required formal permits, such as the Land Use Designation Permit (SIPPT), Building Construction Permit (IMB), environmental permit, and others.
4. Fourth, on the aspect of building quality, consumers need to ensure that buildings are not located in disaster-prone areas such as landslides, floods, earthquakes, or tsunamis. Consumers should also check the quality of sample houses and buildings that have been built at the project site, and understand the physical development process, including construction work, infrastructure, infrastructure, and public and social facilities.
5. Fifth, regarding financing, consumers need to ensure that property companies have cooperated with trusted banking financing institutions, make payments in stages in accordance with development progress, and avoid projects that offer unusual or bombastic financing schemes, such as loans from non-bank institutions without interest and so on.

In addition, the form of legal protection for consumers in this *pre-project selling* system is through a Sale and Purchase Binding Agreement (hereinafter referred to as PPJB). The contents of this agreement include the rights and obligations of both parties, besides that the PPJB also has a function as evidence in the event of a dispute in the future.

The pre-project selling system in Indonesia is regulated in Law Number 12 of 2021 concerning the Implementation of Housing and Settlement Areas, specifically in Article 22 Paragraph (5). This regulation stipulates that the Sales and Purchase Agreement (PPJB) can be carried out after there is certainty regarding several things, namely the status of land ownership, the things promised in the agreement, Building and Construction Approval (PBG), availability of Infrastructure, Facilities, and Public Utilities, and development that has reached at least 20% (twenty percent) of the entire project.

PPJB is an agreement made by a developer with a consumer that contains the developer's commitment to sell a house to a consumer, while the consumer agrees to buy it from the developer where the house will be completed according to the consumer's property request. PPJB is made on the basis of an agreement between the two parties with the main purpose of conducting a sale and purchase transaction that will lead to the transfer of property rights. PPJB contains the rights and obligations of the parties which will then be regulated in the Sale and Purchase Deed (hereinafter AJB) made before a Notary. The making of PPJB has certain reasons, one of which is because the certificate is still in process or the price of the real estate has not been paid in full by the consumer.¹⁴ Later this PPJB can serve as a guide to conduct transactions until the ownership process is completed.

The clauses in the Sales and Purchase Binding Agreement (PPJB) have been regulated in the Regulation of the Minister of Public Works and Public Housing of Indonesia No. 11/PRT/M/2019 concerning Preliminary Agreement for Sale and Purchase of Houses. In Article 11 of the regulation, the PPJB must include at least the identity of the parties, details of the PPJB object, house price and payment procedures, guarantees from the development actor, rights and obligations of the parties, building delivery time, building maintenance, building use, transfer of rights, cancellation and expiration of the PPJB, and dispute resolution mechanisms.¹⁵ If the developer fails to deliver the building according to the contents of the agreement, then the developer can be declared to have defaulted in the PPJB.

The substance and content of the PPJB are required to refer to the Decree of the Minister of State for Public Housing (SK Menpera) No. 11/KPTS/1994 concerning Guidelines for Sale and Purchase Agreements for Flats. The SK Menpera was issued by the government to ensure fairness for both parties, so it is advisable to compare the clauses in the PPJB made by the developer with the version in the SK Menpera before signing it. Consumers are also expected to understand the concept of pre-project selling before signing a PPJB. The PPJB aims to provide preventive protection for buyers since

¹⁴ Apriandini, D., & Sudiro, A. (2023). Kekuatan Hukum Perjanjian Pengikatan Jual Beli (PPJB) Lunas yang Belum Mendapatkan Pemecahan Sertipikat dari Developer yang Dipailitkan. *Binamulia Hukum*, 12(1), 57-64.

¹⁵ Kallo, E. (2009). *Panduan hukum untuk pemilik/penghuni rumah susun (kondominium, apartemen, dan rusunami)*. Minerva Athena Pressindo, 46-47.

its signing, and regulates clauses that must be fulfilled by the parties, and includes provisions regarding fines and sanctions.¹⁶

The Ministry of Public Works and Public Housing (PUPR) has an important role in addressing issues related to the pre-project selling system in Indonesia. PUPR is responsible for issuing regulations and overseeing the implementation of property sales with this system to remain in accordance with applicable regulations and to protect consumers. According to existing rules, such as the Law on Housing and Residential Areas, as well as other rules issued by PUPR, developers must have complete licenses and comply with certain standards before marketing property projects that have not yet been built. PUPR is also responsible for overseeing the implementation of the Preliminary Sales and Purchase Agreement (PPJB) and ensuring that the contract does not harm consumers.

According to Law No. 37/2004 on Bankruptcy and Postponement of Debt Payment Obligations (UUKPKPU), consumers have the right to apply for PKPU and bankruptcy against developers in the event of delays in construction. Bankruptcy is defined as a public seizure of all assets of the debtor to reach an agreement between the debtor and creditors, so that the assets can be divided fairly among the creditors. The developer's obligation to complete the construction is considered a debt to the buyer. According to the KPKPU Law, debt is defined as an obligation that can be expressed in the form of money, either in rupiah or foreign currency, either directly or in the future or is contingent, which arises from agreements or laws. If this obligation is not fulfilled, the creditor has the right to demand its fulfillment from the debtor's assets.

However, in providing good service to consumers in buying and selling residential or property activities, *developers* have an obligation stipulated in Article 7 of Law Number 8 of 1999 concerning Consumer Protection (UUPK) regarding the Obligations of *Developers* as business actors have a must in carrying out every housing development carried out, as follows.

1. Must act in good faith in carrying out its business activities.
2. Information is provided to consumers clearly and honestly on the information of the house to be built.
3. Do not discriminate against any consumer.
4. Consumers are given the opportunity to try the goods and provide guarantees for the goods.

¹⁶ Saraswita, D. A. (2019). Perjanjian Pengikatan Jual Beli Dalam Praktik Pre Project Selling. *Jurnal Media Hukum Dan Peradilan*, 5(2), 223-229.

5. If the goods do not conform, then the authority or the person conducting the business is obliged to compensate or indemnify the consumer.

In order not to abuse and harm one of the other parties, it is necessary to form rules regarding the rights and obligations between the two parties in order to create a balanced and clear relationship pattern between the *developer* and the consumer as well as to provide consumer protection in conducting transactions. Related to this, it is necessary to include the rights of business actors in the PPJB so that the binding agreement is clear and there is no abuse. The rights of business actors have been regulated in UUPK Article 6 regarding matters from *developers* including:

1. The right to receive payment for goods or services offered.
2. The right to obtain legal protection for consumers who have bad faith in the agreement.
3. If the loss suffered by the consumer is not on the goods of the business actor, then the business actor is entitled to the right of rehabilitation.

Based on what has been explained above, legal protection for consumers in the real estate sector, especially in the pre-project selling system, includes two main forms of protection, namely preventive and repressive. Preventive legal protection aims to prevent disputes before they occur and should be regulated in the form of laws or regulations by the government. At this stage, there are three important phases: pre-transaction, transaction and post-transaction. In the pre-transaction phase, the developer is responsible for arranging licenses and marketing the project. The transaction phase involves the signing of a Sales and Purchase Agreement (PPJB), which binds the rights and obligations between the developer and the consumer. The PPJB serves as a contract that both parties must abide by based on Articles 1320 and 1338 of the Civil Code, which entitles the consumer to receive the property at the agreed time, as well as the right to compensation if the goods received are not in accordance with the agreement (Article 4(8) of the Consumer Protection Law).

Meanwhile, repressive legal protection is applied after a dispute occurs, with options for litigation through the district court or non-litigation through the Consumer Dispute Settlement Body (BPSK), which includes negotiation, mediation and arbitration. In this case, a strict liability system is applied, which shifts the burden of proof to the business actor to balance the consumer's perceived weaker position. Consumers also have the right to file a lawsuit through the courts, either individually, as a group, or through relevant institutions. Although the litigation route is available, this process often requires a lot of time and costs, so that settlement through BPSK becomes a faster and more cost-effective alternative, especially for disputes with a relatively small loss value.

The conclusion from the discussion above is that the importance of consumer

protection in this system cannot be underestimated. Consumers have the right to obtain clear and honest information regarding company legality, land legality, licensing, building quality, and financing. Legal protection efforts are also applied through the Sale and Purchase Binding Agreement (PPJB), which regulates the rights and obligations of both parties. In addition, regulations issued by the Ministry of Public Works and Housing (PUPR) play a role in ensuring developers adhere to certain standards before marketing projects.

Necessary Legal Elements in a Sale and Purchase Agreement to Protect Consumers

An agreement is basically something that regulates and binds the relationship between the parties involved and involved in an agreement. The definition of an agreement contained in Article 1313 of the Civil Code, namely: "an act or action that binds one or more people with one or more other people". In making an agreement, of course there are principles that must be considered and carried out by the parties involved in the agreement. The principles in the agreement have an important role to be carried out by both parties involved as guidelines or guidelines in carrying out the agreement of the parties concerned. In treaty law, 5 important principles are known, namely 1) The principle of personality, 2) The principle of good faith, 3) The principle of *pacta sunt servanda*, 4) The principle of consensualism, and 5) The principle of freedom of contract.¹⁷

Based on Article 1338 paragraph (1) of the Civil Code which states that all forms of agreements can become law for the parties making the agreement related to the principle of freedom of contract. The meaning of freedom of contract here is that everyone can make an agreement whose contents can be anything (form, content, name and to whom the agreement is addressed) that has obtained mutual agreement. In line with Sinaga's opinion, which states that the article of the law explains that the principle of freedom of contract is that everyone can make agreements whose contents have been agreed upon jointly by the parties concerned and do not conflict with applicable laws, decency and public order.¹⁸

Based on the principle above, it can be concluded that it is permissible to make an agreement that contains anything and the agreement binds the parties involved like a law. If someone purchases a property or residence to the party that provides or sells the property or residence, then between the two there is a binding relationship. The bond is

¹⁷ Shalilah, G. K. (2022). Tinjauan Terhadap Peranan Asas Hukum Perjanjian Dalam Mewujudkan Hakekat Perjanjian. *Lex Privatum*, 10(2).

¹⁸ Sinaga, N. A. (2018). Implementasi Asas Kebebasan Berkontrak Pada Perjanjian Baku Dalam Mewujudkan Keadilan Para Pihak. *Jurnal Ilmiah Hukum Dirgantara*, 9(1).

called an agreement. In the *pre-project selling* system, a binding agreement is made between the *developer* and the consumer before there is a physical *project* of the promised residence or property. This PPJB or Sale and Purchase Binding Agreement is made before a notary before the sale and purchase agreement between the business actor and the consumer.

Legal elements that need to be included in the PPJB include: a complete description of the object of sale and purchase, such as location, area, building specifications, and facilities to be provided, in order to provide legal certainty for consumers regarding the property purchased. The *developer* is also required to show proof of legal land ownership and a valid building permit, to ensure that there are no legal defects related to the land used in the project (Article 15 paragraph (1) of Law No. 20/2011 on Flat Houses). Payment terms must be regulated in detail, including the amount, stages, payment schedule, as well as legal consequences if one party does not fulfill its obligations, to prevent disputes related to finance (Article 1320 of the Civil Code). The rights and obligations of the parties should be clearly stipulated, including the *developer's* obligation to complete the construction in accordance with the agreed schedule and specifications, as well as the consumer's right to receive a suitable property; in case of violation, the consumer has the right to claim compensation (Article 4 letter c of Law No. 8 Year 1999 on Consumer Protection). Clauses regarding sanctions for project delays and failures should also be in place, such as a refund of the down payment to the consumer if the project is canceled, as well as a guarantee of building quality and insurance against loss or damage, ensuring the construction complies with applicable legal standards and is free from hidden defects (Article 19 of Law No. 8 Year 1999).

In addition, to anticipate disputes, the PPJB must include a clear dispute resolution mechanism, either through arbitration, mediation, or court (Article 45 of Law No. 8 Year 1999), providing legal certainty for consumers regarding the steps that can be taken in the event of a dispute. Cancellation and compensation provisions must also be regulated, including the terms of cancellation and the form of compensation that must be given if the cancellation occurs due to the *developer's* fault or negligence (Article 1321 of the Civil Code). Finally, transparency and clarity of relevant information, such as additional costs, construction schedules, and potential risks, should be included in the PPJB to ensure consumers can make informed decisions and not suffer losses due to fraud or incomplete information.

If there are discrepancies and abuses committed by the *developer* in the PPJB and harm consumers, it can be said that the *developer* has violated the "Sapta Brata" code of ethics, especially numbers 5 and 7 in carrying out his business, not upholding discipline and not providing services to the community as well as possible. The "Sapta Brata" code of ethics is a code of ethics that has been regulated by the Indonesian *Real Estate* Company Association or REI. *Developers* who do not comply with the "Sapta Brata" code

of ethics can be dismissed from membership of REI in accordance with article 4 paragraph (3) of the AD REI which contains dismissal of membership caused by negligence of members in fulfilling their obligations. In connection with the responsibility of business actors when conducting PPJB, it has been stated in the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/PRT/M/2019 concerning the System of Preliminary Agreements for Buying and Selling Houses.

Based on the Settlement Law Article 42 paragraph (2), it is stated that the PPJB is carried out after the Development (in this case the *developer*) must fulfill:

1. Show the title certificate for the land as proof of land ownership status to prospective buyers.
2. The terms of the agreement contain at least:
 - a. State of the building;
 - b. Marketing information in the form of housing facilities and utilities;
 - c. The contents of the PPJB that must be explained to consumers;
 - d. Explain to customers if the land or building is mortgaged.
 - e. Show the customer the original copy of the building construction permit.
3. The state of infrastructure, facilities and public utilities as indicated by:
 - a. Housing infrastructure has been built, at least roads and storm water drains;
 - b. Designation of facilities according to location; and
 - c. Public utility declaration letter can be in the form of electricity source and water source by the business actor.

So it can be seen from the contents of the PPJB that it is proof of achievement that must be carried out by the business actor according to the agreement that has been determined by both parties. If the *developer* violates the rights of housing consumers, namely the consumer's right to information that is misused by the business party, it is contained in Article 4 letter (c) of the UUPK which states that "the right to correct, clear and honest information regarding the conditions and guarantees of goods and / or services" which in the agreement there are actions in bad faith, thus making the position of the consumer's will weak for insight into the sale and purchase process. Then, if there is an abuse of circumstances in an agreement, the party who feels aggrieved can request the cancellation of the agreement in accordance with Article 1321 of the Civil Code which states that if there is a defect in the agreement (mistake, coercion or fraud), then the agreement can be canceled.

Article 19 of UUPK states that consumers can file a lawsuit against the business to obtain protection based on the factor of misuse of circumstances and causing losses. That way, the business party must be responsible for providing compensation on the basis submitted. The legal efforts to protect housing consumers due to losses caused by abuse of circumstances by the business party in the PPJB are contained in Article 45 paragraph

(1) of the UUPK which reads: "every consumer who is harmed can sue the business actor through an institution in charge of resolving disputes between consumers and business actors or through a court that is in the general judicial environment". It can be interpreted that consumers have the opportunity to sue business actors to resolve disputes that arise through the Consumer Dispute Resolution Body or can submit to the general court. In the trial, the party making a claim of default by the developer must provide sufficient evidence to support the claim. This evidence may include correspondence, agreement documents, witnesses, or financial reports.¹⁹ If it is true that there has been misuse that has caused losses by the business, then the business is obliged to provide compensation to consumers as regulated in Article 19 paragraph (1) of UUPK and the value of compensation in UUPK Article 60 paragraph (1) and (2) states that BPSK has the authority to impose administrative sanctions on business actors who have violated Article 19 paragraph (2) and paragraph (3) in the form of a maximum compensation of two hundred million rupiahs.²⁰

4. Conclusion

The form of legal protection in this system consists of preventive and repressive protection. Preventive protection involves regulations and laws set up by the government to prevent disputes, such as through a Sale and Purchase Agreement (PPJB) that binds the rights and obligations between developers and consumers. Repressive protection is applied after a dispute occurs, including litigation options through the courts or non-litigation through the Consumer Dispute Settlement Body (BPSK). Regulations issued by the government, such as the Minister of Public Works and Housing Regulation and the Consumer Protection Law, aim to ensure that consumers' rights are fulfilled and developers carry out their obligations in good faith. With clear rules and strict implementation, it is hoped that consumers will be guaranteed the promised property, as well as a mechanism to claim compensation if there is a breach in the agreement.

If the business actor is deemed to have violated and abused, then the consumer has the right to cancel the agreement and has the opportunity to sue the business actor as regulated in Article 19 of the UUPK, Article 45 paragraph (1) of the UUPK and the consumer is entitled to compensation by the developer if the abuse is true as a form of legal protection for consumers in conducting property sale and purchase transactions of Rp. 200,000,000.00 which has been regulated in Article 19

¹⁹ Alaysia, A. N., & Muttaqin, L. (2023). Analisis Penerapan Asas Itikad Baik dan Pertanggungjawaban Para Pihak Terkait Wanprestasi Dalam Perjanjian Kerja Sama Pemborongan Rumah. *Jurnal Interpretasi Hukum*, 4(3), 478-486.

²⁰ Hetarie, M. I. (2022). Penyalahgunaan Keadaan di Perjanjian Pengikatan Jual Beli oleh Developer. *Jurnal Ilmiah Universitas Batanghari Jambi*, 22(1), 468-476.

paragraph (1). Article 60 paragraphs (1) and (2), article 19 paragraphs (2) and (3) of the UUPK.

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