

Legal Education for Property Consumers: Risk Analysis of the Pre-Project Selling System in the Case of Developer Adhiland

Sahlan Roy Martua Hasibuan*, Imam Kuswahyono, D Djumikasih

Faculty of Law, Brawijaya University Malang, Indonesia

*Corresponding Author: sahlanroymh@student.ub.ac.id

Abstract. This research analyzes the legal implications and consumer protection in the purchase of boarding houses with Pre Project Selling (PPS) system by Developer Adhiland in Malang. The juridical-sociological empirical method reveals discrepancies between Adhiland's practices and the Consumer Protection Law and PUPR Regulation, which require developers to fulfill requirements such as IMB, land ownership, and a minimum development progress of 20%. The findings show that Adhiland often violates these provisions, such as the absence of IMB and the unclear schedule of the sale deed, which creates legal uncertainty and the risk of default. Consumers have the right to seek redress through BPSK (mediation/arbitration) or litigation, although the court route is rarely chosen due to its complexity and high cost. The research concluded three critical points: 1) Adhiland is operating PPS in a non-compliant manner, 2) Violations are potentially subject to administrative/criminal sanctions, and 3) Buyers can file a lawsuit despite facing procedural obstacles. Recommendations The research emphasizes two aspects: first, stricter government oversight of PPS practices, including verification of permits and development progress. Second, educating buyers about their legal rights to prevent losses. These findings are relevant as material for evaluating property consumer protection policies.

Keywords: Boarding House, Legal Implications, Pre Project Selling

1 Introduction

The rapid development of the property sector is in line with the increasing economic conditions of the community. Housing development not only fulfills basic needs, but also plays a role in improving environmental quality, controlling regional growth, creating jobs, and driving the economy. Increased purchasing power encourages people to obtain more appropriate housing. In recent years, Malang City has also felt the positive impact of the growth of this sector [1]. The 1945 Constitution of the Republic of Indonesia, specifically in Article 28H paragraph (1), emphasizes that every citizen has the fundamental right to achieve welfare, both physically and mentally. This right includes having a decent place to live and access to a healthy environment that supports a good quality of life. Furthermore, the right to housing is regulated in Law No. 39/1999 on Human Rights, precisely in Article 40, which states that every individual has the right to live in a decent place and live a

dignified life. This is reinforced in Law No. 1/2011 on Housing and Settlement Areas (PKP Law), specifically Article 129 which confirms that everyone has the right to live in, enjoy, and own or obtain a decent house in a safe, healthy, harmonious, and well-organized environment.

The increasing flow of migration to Malang City has a direct impact on the high demand for housing, especially for migrants. The demand for housing increases along with the interest of people who make Malang City the main destination for continuing education, both secondary and tertiary levels. In addition, as a tourist city, Malang also attracts businesses and investors to invest, especially in the property sector [2]. The rapid development in the property business is characterized by a variety of offers in terms of location, quality, price, and flexible payment schemes according to consumer needs. This diversity triggers intense competition among developers, which in turn encourages them to implement various marketing strategies to increase sales figures.

Based on data from the Indonesian Consumers Foundation (YLKI), pre-project selling (PPS) schemes often cause problems for consumers. In the period 2020 to 2024, there were 1,179 complaints related to the housing sector, most of which were caused by discrepancies between developers' promotional promises and the real conditions of development. In particular, in the period 2022 to 2024, more than 50% of complaints were related to non-transparent PPS practices, such as the lack of clear information, mismatches in unit specifications, and non-fulfillment of public and social facilities as promised[3].

In Malang City, there are several cases that harm consumers with the PPS marketing concept as found in Malang Posco Media, that homebuyers from developer D'Graha Artha (PT Esa Santa Agrapana Properti) did not receive their housing rights and certificates on behalf of buyers after paying in full had to wait several years to get the certificate [4]. JW bought a house in Green View, Girimoyo Village, Karangploso, Malang City, and had paid more than 50% of the transaction price. However, the developer did not build the house with the excuse that there were field constraints. The police uncovered the fact that the Green View developer sold land that the developer had not yet fully controlled after JW reported this case [5]. Another case that harmed consumers or buyers with the PPS marketing system was also experienced by Pitaloka Aulia Devi. Pitaloka Aulia Devi sued PT Paramarta Property Development because the housing project she bought in 2022 has not been completed after almost three years. The developer has not even completed the construction of the roof, walls, or floors, even though Pitaloka has paid off the payment[6]. Bagus Rachmad Saputra released in the Tugu Malang media several cases of rogue developers in the last two years in Malang, including the Grand Emerald Housing fraud case in Malang, the Wonokoyo land plot fraud case in Malang City, and the housing sale and purchase fraud case by PT Hadara Propertindo Jaya [7].

Housing developers use the PPS strategy to market properties before completing their construction. Developers apply this strategy because it has proven to be effective, by offering discounts and gradual payment options to consumers. In addition, developers

utilize PPS to gauge the market response to the property to be built. However, the practice of PPS by irresponsible developers can pose a great risk to consumers. Such developers often rely solely on brochures to raise funds from the public with the promise of building properties, but have no real commitment to realize them [8].

The regulation on PPS has been stated in the PKP Law and the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/PRT/M/2019 (Permen PUPR) in Article 42 paragraphs (1), (2), and (3). Article 42 paragraph (2) of the PKP Law, stipulates that single houses, row houses and or flats that are still under construction can be marketed through a Preliminary Sales and Purchase Agreement (PPJB), this is also often referred to as PPS marketing Article 42 paragraph (2) contains that there are several provisions or requirements that must be met before marketing with the PPS system, namely the status of land ownership, the things agreed upon, ownership of the main building construction permit, availability of infrastructure, facilities, and public utilities and housing development of at least 20% (twenty percent).

The Permen of PUPR explains in detail the provisions of the PPJB which refer to Article 42 paragraph (3) of the PKP Law. In Chapter II on Marketing, Article 7 paragraph (2) requires the developer to explain and convey three main things to the buyer: (1) construction implementation schedule, (2) schedule for signing PPJB and sale and purchase deed, and (3) handover schedule. Furthermore, Chapter III Articles 10 and 11 stipulate the requirements that must be met prior to the PPJB and regulate the mandatory content in the PPJB agreement.

Developer Adhiland is one of the property developers in Malang City. Adhiland focuses on developing clusters or boarding house areas located not far from university areas in Malang City. Adhiland builds this boarding house area for business or commercial purposes, such as houses and shops, not just residential houses. Adhiland in marketing its boarding house products uses a strategy with the PPS system. When researchers conducted a survey on December 18, 2024 early to the Adhiland project located on Jl. Siguragura, Lowokwaru, Malang City, researchers found several facts based on statements from several informants.

Adhiland built the EazyKost Siguragura project with a PPS scheme due to limited capital, so the construction, licensing, and marketing processes were carried out simultaneously, even though permits such as KKPR, siteplan, and spliting were not complete when the promotion began. For risk mitigation, Adhiland implemented progress documentation, regular communication, delay compensation, and internal monitoring. PPJB was used with risk clauses, unit transfer, and refund. The main obstacles came from the licensing bureaucracy, the new digitalization system, and technical barriers.

According to Ms. Laylatul Khomariah, the PPJB contains the construction schedule and legal process, but does not include the certainty of the time of AJB. Meanwhile, Mr. Amin explained the marketing strategy that highlights the concept of the area and public facilities before the units are built. Promotion is done digitally and through exhibitions, with cash

and inhouse payment schemes (30-50% down payment, 12 months tenor). Legal information was conveyed, and the PPJB was legalized by a notary, including compensation of Rp500,000 per day if there is a delay and a retention period for building repairs.

Mr. Yogi bought unit B-04 because of its strategic location and competitive price. Although aware of the risks of PPS, he believed in Adhiland's reputation. The handover went well and on time, the facilities were met, but the certificate has not been received. As collateral, the developer provided a photocopy of the master certificate and PPJB, which he felt was sufficient for legal protection.

Based on the results of the researcher's initial survey at the Adhiland developer, it reveals that there are legal issues related to the implementation of regulations that Adhiland does not fulfill in the construction of boarding house areas in Malang City. This means that there is a discrepancy between *das sollen* and *das sein*. Researchers focused on two problem formulations. First, what are the legal implications with the PPJB arising from the purchase of boarding house properties with the PPS system carried out by the developer Adhiland? Then, second, how is civil legal protection for consumers in purchasing boarding house properties with the PPS system carried out by Adhiland developers based on applicable laws and regulations in Indonesia?

2 Research Method

This research uses empirical juridical methods by going directly to the location to obtain the necessary data [9]. This research is a legal identification to find out the law based on what applies in society. This research deals with citizens who are the object of research so that many rules that are not or have not been written live in the community [10]. According to Bahder Johan Nasution, empirical legal research aims to determine the extent to which the law works in society[11].

This research is focused on Developer Adhiland Malang under PT Adhi Property Indonesia, which built a commercial boarding house on Jl. Soekarno Hatta A-14, Jatimulyo, Malang City. Referring to Soerjono Soekanto's classification, the data used consists of: (1) primary data, obtained through interviews with Adiweni Wirya Wiyudi (President Director), Nashruddin Al Amin (marketing staff), Laylatul Komariyah (legal staff), and Prayogi (purchaser of unit B-04); and (2) secondary data, including the PKP Law, Law No. 8 of 1999 on Consumer Protection, Civil Code, PUPR Regulation, and supporting documents such as brochures, SPR, PPJB drafts, books, journals, articles, and sale and purchase agreements related to the PPS marketing system [12].

3 Results and Discussion

3.1. Legal Implication of Preliminary Sale and Purchase Agreement Arising from the Purchase of Boarding House Property with Pre Project Selling System Conducted by Developer Adhiland

The rapid growth of the construction sector triggers intense competition between developers, so they must implement innovative strategies to attract buyers. One widely used method is PPS, where developers offer properties based on designs and floor plans before the building is built, while raising funds from consumers for project financing [13]. The PPS strategy is popular among developers because it allows sales before construction begins. However, some developers implement it without first obtaining IMB, construction permits, or other necessary licenses. Properties are offered while they are still in planning, only through brochures that include facilities and building specifications [14]. The brochure lists the development plan, facilities, unit drawings, specifications, as well as claims of profits and significant price increases in a short period of time.

PPS is a sale and purchase transaction before construction begins, where the developer only offers the building concept. In Indonesia, the application varies: some start before or after the facility is built. However, common practice shows that PPS is often conducted without official permission, violating the law and posing risks to consumers. This can lead to default, in the form of: (1) non-performance of the agreement, (2) delay, (3) non-conformity of results, or (4) performance that should not have been performed [15]. Article 42 paragraph (2) of the PKP Law stipulates that PPJB can only be carried out after the fulfillment of five conditions: certainty of land status, object of agreement, master IMB, availability of infrastructure and public utilities, and minimum 20% buildability. This provision requires developers to fulfill the conditions before the PPJB in the PPS scheme, where the property is marketed even though it does not yet physically exist and is only displayed through brochures or advertisements.

In addition to the PKP Law, more detailed arrangements are contained in the PUPR Ministerial Regulation in Article 3 stipulating that (1) development actors can market single houses or row houses during the development process stage; (2) Development actors can market flats before construction is carried out; (3) Marketing as referred to in paragraph (1) and paragraph (2) must contain marketing information that is correct, clear, and guarantees certainty of information regarding plans and existing physical conditions. Then in Article 7 also stipulates that (1) Payments made by prospective buyers to development actors during Marketing become part of payment for the price of the House; (2) Development actors who receive payments during Marketing as referred to in paragraph (1) must convey information regarding: (a) the schedule for the implementation of the construction; (b) the schedule for signing the PPJB and the sale and purchase deed; and (c) the schedule for handing over the House.

The explanation related to the PPS in Chapter III Article 11 also explains in detail related to the material of the PPJB itself, namely: (1) The PPJB is made as a sale and purchase agreement between the development actor and prospective buyers at the stage of the House construction process; (2) The PPJB as referred to in paragraph (1), at least contains: (a) identity of the parties; (b) description of the object of the PPJB; (c) price of the House and payment procedures; (d) guarantee of the development actor; (e) rights and obligations of the parties; (f) building handover time; (g) building maintenance; (h) building use; (i) transfer of rights; (j) cancellation and expiration of the PPJB; and (k) dispute resolution.

The practice of PPJB in the boarding house PPS project by Adhiland at EazyKost Siguragura raises several legal implications. First, the status of the PPJB is only in the form of a deed under the hand (*waarmerking*), not an authentic deed. This weakens its evidentiary power in court in the event of a dispute, contrary to Article 1868 of the Civil Code and the provisions in Permen PUPR No. 11/2019 which require PPJB to be made by a notary. Second, the unclear status of land ownership that is still in the name of the original owner (not the developer) creates legal uncertainty, violates the principle of *nemo plus juris* in Article 1320 of the Civil Code and has the potential to trigger ownership disputes in the future. Third, the absence of certainty in the time of making the Sale and Purchase Deed (AJB) and handing over the certificate in the PPJB content violates the principles of transparency and certainty in agreement law, and contradicts Article 11 of the 2019 Permen PUPR which regulates the obligation to hand over the certificate when handing over the building. Fourth, it violates sectoral regulations, especially Article 42 of Permen PUPR 2019, which requires developers to have land rights and development permits before making PPJB. This violation has the potential to result in administrative to criminal sanctions under Article 151 of the Housing and Settlement Area Law. Fifth, the risk of default by developers is higher due to the absence of strong legal guarantees for buyers, while legal remedies through a weak PPJB will be time-consuming and costly. Although the PPJB remains civilly binding based on Article 1320 of the Civil Code, the absence of formal legal certainty (such as AJB and certificates) makes consumer protection as stipulated in the Consumer Protection Law not optimal.

Referring to the opinion of Jan Michael Otto, who provides a definition of legal certainty that is not limited to juridical aspects. According to him, true legal certainty includes legal certainty in the juridical sense, but also has a broader scope. He defines legal certainty as the possibility that under certain conditions, namely: (a) There are clear, consistent, and easily accessible legal rules for the public, which are issued or recognized as legitimate by the state; (b) Government institutions apply these legal rules consistently and obey and respect them; (c) Most citizens basically accept the contents of these rules and adjust their behavior in accordance with the applicable rules; (d) Independent and impartial judges apply the law consistently in resolving disputes submitted to the court; (e) Court decisions are implemented in real and effective [16].

According to Jan Michiel Otto, the five conditions in regulation must be fulfilled accumulatively to create legal certainty, which is achieved when the law is in line with the

needs of society. In PPS practice, these conditions fail to be met, especially regarding regulatory consistency, developer compliance, and law enforcement. As a result, consumers become legally and economically vulnerable, and weaken the integrity of the national property law system [17].

Based on Article 42 paragraph 2 of the PKP Law, developers are required to have an IMB before selling property. However, in Adhiland's case, the permit is still being processed. This shows a violation of the applicable legal provisions. In addition, PUPR Regulation Number 11 of 2019 concerning PPJB System, the marketing chapter also stipulates that developers are obliged to provide clear and transparent information to consumers, including the period of completion of the sale and purchase deed. Adhiland violated the legal provisions by making an unclear PPJB. It was found that Adhiland did not include a detailed schedule for the execution of the sale and purchase deed in its PPJB. This creates legal uncertainty for consumers, which is contrary to the principle of legal certainty according to Jan Michiel Otto. Otto emphasizes that legal certainty includes certainty in regulations, application, and law enforcement. The ambiguity in the PPJB shows that the certainty aspect in the application of the law is not fulfilled.

In the context of Adhiland's purchase of the EazyKost Siguragura boarding house, it is important to distinguish between legal obligations and civil liability to assess the extent to which legal protection for consumers is upheld. Legal obligations refer to the requirements stipulated by laws and regulations, such as the obligation to obtain a KKPR, prepare a siteplan, arrange a split certificate, and obtain a Certificate of Functioning (SLF) in accordance with the provisions of Law No. 1 of 2011 concerning Housing and Settlement Areas and its derivative regulations. If the developer does not fulfill these obligations, it is legally liable to administrative sanctions, license suspension, and even criminal sanctions in certain cases. Meanwhile, civil liability arises from contract violations or defaults in agreements with consumers, such as delays in construction or non-compliance with building specifications as stipulated in the PPJB. In this case, consumers only get compensation in the form of fines or administrative deductions according to the agreement. If not clearly differentiated, legal protection for consumers becomes narrow because the developer's legal risk is only narrowed to the consequences of private agreements, not to violations of public norms. Therefore, state supervision and consumer awareness of their rights are crucial so that developers are not only contractually responsible, but also subject to public law that guarantees transaction certainty and security.

3.2 Legal Protection for Consumers in the Purchase of Boarding House Property with the Pre Project Selling System by Adhiland Developer Based on Applicable Legislation in Indonesia

According to Sri Soedewi Masjchoen Sofwan, an agreement is a legal action in which one or more individuals bind themselves to another or more individuals. The parties are given the freedom to determine the contents of the agreement that the parties agree upon, as a form of application of the principle of freedom of contract. However, this freedom still has

limitations as regulated in Article 1337 of the Burgerlijk Wetboek, which states that an agreement must not conflict with the norms of decency and public order. In addition, the practice of PPS must also be based on Article 1320 of the Burgerlijk Wetboek, which stipulates that for an agreement to be valid, it must fulfill the following four conditions: (a) Agreement of the parties who bind themselves; (b) Capacity to make an agreement; (c) A certain matter; (d) A permissible cause [18].

The main elements in a PPJB are the object being bought and sold and the price value. The parties involved in this transaction bind themselves to the object and price based on the agreed agreement. PPJB is based on the principle of consensualism [19]. In the application of PPS, R. Subekti revealed that PPJB is an agreement between the seller and the buyer before the official sale and purchase transaction is carried out [20]. This is because there are still several requirements that must be fulfilled before the sale and purchase is carried out, such as a land title certificate that is still in process or a price that has not been fully paid. Therefore, in PPS there are two types of agreements, namely PPJB and Sale and Purchase Agreement.

Furthermore, in the PPS system, a House Reservation Letter (SPR) is a document that contains a request to purchase a house for prospective buyers who are seriously interested. This SPR is the first step in the transaction because after the prospective buyer signs it, the buyer is obliged to pay a number of fees such as booking fees and down payments. In addition, prospective buyers must also comply with and be bound by the terms and conditions stated in the SPR. Buyers usually pay a down payment (DP) of 30% of the total house price at the beginning of the purchase and are obliged to pay it off. After that, both parties sign the PPJB in the presence of witnesses.

The PPJB is generally prepared unilaterally by the developer as a standard agreement. Its legal basis is found in Book III of the Civil Code, which regulates the law of engagement, including the principle of agreement (Article 1320), freedom of contract (Article 1338), and good faith (Article 1338 paragraph 3). Article 1233 states that an obligation is born from an agreement or law, while Article 1313 defines an agreement as an agreement of one or more parties binding each other [21]. Article 1320 of the Civil Code stipulates four conditions for the validity of an agreement: agreement, capability, clear object, and lawful purpose. Agreement and capability are subjective conditions; if they are not met, the agreement can be canceled. Object and purpose are objective conditions; if not met, the agreement is null and void. A valid agreement creates a reciprocal legal relationship that obliges the parties to fulfill their rights and obligations.

According to Moch. Isnaeni, the essence of a contract is a form of obligation of the parties involved as outlined in a mutual agreement and formulated in the form of clauses as a form of mutual will. In addition, it is explained that the law, especially related to contracts, can be enforced both by the authorities and by the parties concerned. This legal protection can be divided into 2 (two) types, namely: (a) External legal protection, which is made by the authorities through legislation in the House of Representatives (DPR) to avoid loss and

injustice, as well as to prevent (protection) the exploitation and domination of one party that has a stronger position than other parties, resulting in imbalance; (b) Internal legal protection refers to a form of protection that is built on the basis of an agreement between the parties involved. The agreement is then set out in contract clauses that are designed jointly, in accordance with the principle of freedom of contract [22].

A reciprocal agreement, as stipulated in Article 1314 paragraph (2) BW, obliges both parties to fulfill their obligations to each other [23]. According to Moch. Isnaeni, this agreement is designed through mutually agreed clauses to protect the parties from the risk of loss and achieve business profits. Legal protection in civil agreements aims to prevent losses and realize benefits, in contrast to the meaning of legal protection in other fields such as criminal or administrative.

Legal protection for business actors comes from two sources: government regulations (external) and contract clauses (internal). The clause concretizes legal protection in business practice. Reciprocal agreements, as stipulated in Article 1314 paragraph (2) BW, require each party to give, do, or refrain from an action. Moch. Isnaeni emphasizes that this agreement creates a reciprocal obligation based on the agreement of both parties [24]. An agreement that contains provisions based on an agreement is actually a concrete step from the parties in providing legal protection for themselves to avoid losses. The parties arrange legal protection in the contract to realize the expected benefits. This legal protection serves to minimize the risk of loss while securing the planned profits in business. The meaning of legal protection in civil law is different from its meaning in criminal law or administrative law.

In PPS transactions, consumer protection refers to Article 2 of the Consumer Protection Law which emphasizes the principles of benefit, justice, balance, security, and legal certainty. Legal certainty empowers consumers to choose the right goods/services and protects their rights when they are harmed by business actors. The rights and obligations of consumers and business actors are regulated in Articles 4 to 7 of the Law. Defaults are divided into three: not fulfilling obligations at all, fulfilling them late, or performing them incorrectly/imperfectly. Legal protection is important to ensure that developers and consumers carry out their obligations, as well as safeguard consumer rights in property transactions through PPJB or other sale and purchase agreements [25]. Settlement of consumer disputes is ideally done through deliberation to avoid legal proceedings. However, if it fails, consumers have the right to sue business actors to the court or the Consumer Dispute Resolution Agency to claim compensation, according to applicable regulations[26].

Buyers of boarding houses in Adhiland who feel that their rights have been harmed can report legal violations related to the inappropriate PPJB to BPSK Malang City. BPSK Malang City will then summon both parties to provide information about the problem that consumers report. Both parties will attend the first meeting called conciliation to find the

best solution through mutual agreement. In this process, BPSK must listen to the testimony of both parties in a neutral and impartial manner.

If the buyer of the boarding house and Developer Adhiland fail to reach an agreement in the first meeting, BPSK will form a panel of judges to resolve the consumer dispute. This process is called arbitration, the panel of judges in this arbitration process attempts to reconcile the two parties by facilitating a re-discussion of the issues to reach a win-win solution. If arbitration fails, BPSK will file the case in court. In court, each party is required to submit evidence to determine which party is responsible for the dispute.

4 Conclusion

The PPS system carries legal risks if the developer fails to fulfill obligations. Non-compliance with the agreement constitutes a default, which entitles the consumer to claim damages. In Adhiland's case, its PPS practices violated Article 42 paragraph (2) letters a and c of the PKP Law, particularly regarding the transfer of land rights. According to Jan Michiel Otto, the incompleteness of this requirement eliminates the legal certainty of property transactions. Developers who violate Article 42 of the PKP Law are subject to administrative and criminal sanctions. The main risks for buyers are uncertainty of ownership and failure of the developer to fulfill its performance. Aggrieved consumers have the right to report to BPSK or the court to obtain compensation. Buyers of Adhiland boarding houses who suffer losses due to PPS practices can sue the developer for damages because they have committed illegal acts. The developer is responsible for the construction and can be held liable under the provisions of the PKP Law and the Consumer Protection Law. Consumers can pursue both litigation and non-litigation channels to claim compensation. In non-litigation settlements, the Consumer Dispute Resolution Agency (BPSK) usually handles disputes through conciliation, mediation or arbitration mechanisms. If these methods do not yield satisfactory results, consumers can file a lawsuit through litigation. However, consumers and developers tend to avoid litigation because it is costly and time-consuming. Nevertheless, the Consumer Protection Law still protects the rights of consumers who are harmed by developers, so that consumers can claim their rights and obtain compensation in accordance with the losses experienced. On the other hand, the government needs to tighten the supervision of PPS to protect consumers.

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