

LEGAL LIABILITY OF DEVELOPERS IN DUAL HOUSING CONTRACTS

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Abstract

Land ownership issues often hinder the buying and selling of housing between developers and consumers in areas designated for residential development. Existing regulations continue to change, particularly following the enactment of Law Number 11 of 2020 on Job Creation. However, limited public understanding has given rise to various legal problems. This study addresses two main issues: 1. What are the mechanisms and legal problems that arise in sale and purchase agreements involving developers? 2. What is the liability of developers in sale and purchase agreements for land and buildings carried out on land they do not own? This research aims to analyze the legal aspects of the validity requirements for agreements from the perspective of land sale and purchase law and housing and settlement area regulations, using a normative, statutory approach. The study focuses on the application of legal rules and norms in positive law, using secondary data comprising primary, secondary, and tertiary legal materials. The results show that developers frequently market housing units even before construction is complete. Therefore, various legal remedies can be pursued in dispute resolution, but synergy among law enforcement authorities and preventive measures is necessary to ensure more effective dispute settlement.

Keywords: *Liability; Housing; Developer.*

INTRODUCTION

Along with the increasing need for housing, the property sector, particularly housing development, has experienced very significant growth. A house is no longer viewed merely as a primary necessity alongside food and clothing, but as a fundamental element essential to every individual. Beyond serving as a place to live, housing plays a central role in shaping personal character and identity, ultimately contributing to national development and improving the overall quality of life for Indonesian society (Kharisma, 2020).

Given the importance of providing habitable housing, the state has taken an active role by formulating regulations to fulfill its responsibilities in the housing sector. These regulations serve as a legal foundation as well as a reference in

designing policies and guidelines for the implementation of housing development, including the resolution of various cases or disputes that frequently arise in this field.

Article 1, paragraph (2) of Law Number 1 of 2011 concerning Housing and Settlement Areas explains that housing refers to a group of houses forming part of a residential environment, whether in urban or rural areas, and is equipped with proper infrastructure, facilities, and utilities as part of efforts to provide safe and decent housing (Widhasari, 2021).

In addition, more technical provisions regarding housing are also stipulated in Government Regulation Number 12 of 2021, which amends Government Regulation Number 12 of 2016 concerning the Implementation of Housing and Settlement Areas,



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particularly Article 22 paragraphs (3), (4), and (5), which provide the following provisions:

- (3) The sale of landed houses, row houses, or apartment units that are still under construction may be carried out by business actors (developers) through a preliminary sale and purchase agreement.
- (4) As referred to in paragraph (3), this applies to both public housing and commercial housing, including landed houses, row houses, and apartment units.
- (5) The implementation of a preliminary sale and purchase agreement may only be carried out after several requirements ensuring legal certainty have been fulfilled, including:
 - a. Certainty of land ownership;
 - b. The agreed contractual terms;
 - c. Building approval (pbg);
 - d. Availability of public facilities, infrastructure, and utilities; and
 - e. Construction progress of at least 20%.

Article 35 of Law Number 28 of 2002 on Buildings further explains the provisions on land ownership in relation to building construction. This law allows building construction to be carried out on land owned by the developer or by another party. However, if a building is constructed on land owned by another party, it may be done only under a prior written agreement between the landowner and the developer. Furthermore, paragraph (4) states that construction may be carried out only after approval from the local government is obtained through the issuance of a Building Permit (IMB).

The Building Permit (IMB), as regulated by the Building Law, is an

administrative requirement that must be in place and comply with the intended function of the building planned by the developer. The IMB is a formal legal authorization issued by the local government that authorizes a party to carry out construction activities (Fitri, 2019).

The obligation to obtain an IMB constitutes a legal responsibility of the developer before engaging in the construction, promotion, or sale of housing units to prospective consumers. The IMB not only functions as an administrative permit but also holds strategic value for both parties, namely, developers and buyers. Through the IMB, it is expected that the constructed building meets administrative and technical standards in accordance with its function and designation, thereby supporting orderly spatial planning. Moreover, the IMB provides legal certainty and protection for the parties involved and ensures the quality and reliability of the building, supporting the safety and comfort of users and developers alike (Widhasari, 2021).

Since the enactment of Government Regulation Number 16 of 2021, which serves as the implementing regulation of Law Number 28 of 2002 on Buildings, as well as further regulations concerning the implementation of housing and settlement areas, the IMB has been officially replaced by Building Approval (PBG). This change constitutes the implementation of Law Number 11 of 2020 on Job Creation, which aims to create a better investment climate and business environment in Indonesia. The issuance of this new regulation simultaneously revoked the applicability

of Government Regulation Number 36 of 2005 and the Minister of Public Works and Housing Regulation Number 11/PRT/M/2019 concerning preliminary housing sale and purchase agreements. Unlike the IMB, which must be obtained before construction begins, the PBG system provides flexibility in construction implementation as long as the activities comply with applicable technical standards and regulatory provisions.

In practice, many problematic housing development cases carried out by developers are found in the field. Developers often focus solely on profit-seeking and disregard existing regulations, resulting in many consumers becoming victims and suffering losses due to such practices.

One such case occurred at the Kepanjen District Court in East Java. Fraud cases in housing sales in the Greater Malang area are frequent, and some have been brought to the criminal justice system, resulting in court decisions. The modus operandi of offering land plots for housing sales had become widespread some time ago. The most recent case tried at the Kepanjen District Court involved the sale of land plots in Pakisjajar Village, Pakis Subdistrict. The defendant was Eko Setiono, aged 41, the main commissioner of CV Bayu Rahagi. "The victim in this case was Suroso, with losses amounting to IDR 385 million," said the public prosecutor, Garuda Chakty Vira, S.H. On September 4, 2023, Eko was sentenced to 3.5 years in prison. "The case is currently under appeal," he added. Garuda explained that Eko initially promised Suroso that he would obtain the land or house that had been paid for, but the

property was never delivered. "The core issue was that the matter with the landowner had not been resolved when the property was offered," he stated. Suroso had paid IDR 385 million for four land plots offered by Eko. Two plots were fully paid, while two were not. For the fully paid plots, Eko promised a Deed of Sale and Purchase (AJB) and a land ownership certificate (SHM), but these promises were never fulfilled (Wicaksana, 2025).

In fact, around 22 people were defrauded in this case. Specifically for the trial based on Suroso's report, three other victims appeared as witnesses. The total losses reached IDR 1 billion. "The landowner, Moch. Marjuki was also presented at trial," Garuda added. Marjuki had even filed a breach-of-contract lawsuit against Eko in 2020. The civil lawsuit file stated that Marjuki sold 5,603 square meters of land to Eko for an agreed price of IDR 2.8 billion, but only an advance payment of IDR 600 million had been paid. The land ownership certificate (SHM) was handed over together with the advance payment. It later emerged that the advance payment funds came from consumers who became victims. The IDR 1 billion collected was divided into two parts: IDR 600 million was paid to Marjuki, while the remainder was used to build a showhouse. Ultimately, the court returned the land ownership certificate to Marjuki (Wicaksana, 2025).

This situation is highly interesting to examine because it concerns transactions involving the transfer of land rights between developers and consumers. In contrast, developers' other obligations to landowners have not yet been fulfilled.

Therefore, the government should actively supervise developers, especially given the existence of adequate regulatory instruments. As stipulated in regulations concerning Housing and Settlement Areas, housing development—whether in the form of row houses, single houses, or apartment buildings—may be carried out only on land with a specific legal status. Such status includes: a) Ownership Rights; b) Building Use Rights (HGB), either on state land or land under management rights; and c) Right of Use (HP) over land directly controlled by the state.

This condition highlights several important factors that must be considered to understand the issue fully. First, existing provisions emphasize that the certainty of land ownership status and legality is crucial in housing development. If these requirements are not met, construction activities should not proceed legally. Second, the sale and purchase process between developers must be clear, meaning both parties must fulfill their respective obligations so that government permits, including Building Approval (PBG), can be issued smoothly. Third, the transaction process between developers and buyers must be based on good faith to avoid fraudulent practices, as illustrated above.

In practice, irresponsible developers are still frequently encountered who prioritize commercial interests and profit alone, without paying attention to applicable legal provisions and regulations in housing marketing and development, thereby causing losses to landowners and consumers who have entered into transactions.

Based on these conditions, this study aims to set objectives and provide recommendations on government supervision and the requirement that land and housing sale and purchase agreements be conducted in good faith to minimize criminal practices that result in consumer losses caused by developers.

Referring to the background discussion, the author is encouraged to conduct this research to examine phenomena that frequently occur in practice, particularly related to development activities in the housing sector. The increasing number of cases involving various fraudulent practices by developers makes this topic highly relevant for study. It serves as public awareness to encourage caution when purchasing assets, especially housing.

RESEARCH METHOD

The research approach used in this study is a normative juridical or doctrinal method, as explained by Nawi (2018), which involves analyzing written legal norms to establish standards relevant to the issues under study. In addition to a statutory approach, this research employs a conceptual approach (Purwati, 2020). This study falls within the category of descriptive legal research, which aims to systematically describe and explain legal conditions related to the issues examined. The research approach applied is doctrinal legal research, focusing on the analysis of positive legal norms. Research data are derived from primary legal materials, secondary legal materials, and tertiary legal materials.

RESULTS AND DISCUSSION

1. Mechanisms of Implementation and Legal Constraints in Contractual Sale and Purchase Relations with Developers

The provision of housing as an effort to fulfill citizens' rights, as stipulated in Article 33, paragraph (3) of the Housing and Settlement Areas Law, may be carried out by the government, the private sector, or independently by the community. In the context of private-sector housing development, this responsibility is generally borne by housing developers. Developers play a crucial role in designing, constructing, and managing residential areas along with their supporting facilities. The existence of developers not only drives economic growth through physical housing development but also fulfills a social role in creating livable residential environments for the community.

Consumers tend to prefer buying houses from developers because of the conveniences they offer, such as time efficiency, more competitive prices, customizable building designs, and access to public and social facilities. As legal subjects in housing development, developers also bear legal responsibilities, both in sale and purchase transactions and during the construction phase (Kurniasari et al., 2024). Legal problems in contractual relations are not uncommon, particularly in land and building sale-and-purchase transactions involving developers.

Based on Article 1313 of the Civil Code (BW), an agreement is a legal act in

which one party promises to provide a performance to another party, or both parties mutually promise to perform an act. From such an agreement arises a legal relationship known as an obligation. Although agreements are the primary source of obligations, obligations may also arise directly from law. In practice, the most common obligations in society originate from agreements voluntarily entered into by the parties themselves (Putra, 2019).

Therefore, to ensure comfort and security in conducting business and to establish a balanced and harmonious relationship between developers and their debtors, it is necessary to define the parties' rights and obligations. This is in line with the provisions of Law Number 8 of 1999 concerning Consumer Protection.

In addition to rights and obligations, developers, like consumers, bear legal responsibilities that must be fulfilled as part of their binding business obligations. Given this responsibility, business actors are expected to exercise greater care and ensure the quality of goods or services provided to avoid causing consumers to lose out (Bhakti, 2019).

The preliminary sale and purchase agreement (PPJB) for land or buildings constitutes a preliminary agreement regulated under Law Number 1 of 2011 concerning Housing and Settlement Areas. Article 42, paragraph (1) of the law states that "single houses, row houses, and apartment units that are still under construction may be marketed through a preliminary sale and purchase agreement as regulated by statutory provisions." The existence of the PPJB aims to protect the interests of both sellers and prospective buyers while minimizing the

potential for future disputes. This contractual relationship is entered into before the official transaction takes place through a Deed of Sale and Purchase (AJB). Although the Civil Code does not specifically regulate PPJB, its regulation becomes crucial under Law Number 1 of 2011, particularly when the object of sale is still under construction.

The legal relationship between consumers and developers is based on a contractual sale and purchase, with developers acting as sellers of land and housing units and consumers as buyers. On the other hand, a banking institution is often involved as a party authorized by consumers and as a partner of the developer (Andalusia et al., 2023). This study not only focuses on the legal relationship between developers and consumers but also examines the legal relationship involving original landowners and developers as business actors engaged in housing and settlement area development in designated locations.

In practice, developers often complete the land sale and purchase process with landowners before marketing housing projects. This is generally done to avoid engaging in unlawful acts under civil law or fraud under criminal law. Accordingly, such legal relationships between developers and landowners also require an agreement governing the sale and purchase of the land.

Agreement in a contract can be understood as a meeting of minds, or an alignment of intentions, between the parties involved. Consent is considered to exist when parties genuinely agree to matters that form the object of the agreement (Harahap et al., 2023).

When connected to the case example described in the background, the first step is to complete a land sale and purchase agreement between the developer and the landowner through proper and lawful mechanisms. Only after such an agreement is completed can the developer proceed with applying for Building Approval (PBG).

The implementation of Building Approval aims to strengthen good governance in construction administration. This requires improving the quality of services provided by local governments to encourage, empower, and enhance public participation in fulfilling administrative and technical building requirements. In addition, the determination of retribution fees for Building Approval services must be regulated by principles of fairness and adjusted to community needs (Rahayuningtyas et al., 2023).

As regulated in Paragraph 4 of Articles 23 and 24 of the Job Creation Law, these provisions aim to facilitate the public, particularly business actors, in obtaining Building Approval (PBG) and certificates of proper function. These regulations amend, revoke, and introduce new provisions previously contained in Law Number 28 of 2002 concerning Buildings, including provisions on PBG, technical standards, implementing parties, procedures, authority, and sanctions. Under the Job Creation Law, the term “IMB” has been replaced with “PBG” (Building Approval). Under this regulatory framework, both the initial issuance and functional changes to buildings require government approval. Further procedures for obtaining PBG are regulated under Government Regulation

Number 16 of 2021, which is the implementing regulation of Law Number 28 of 2002 concerning Buildings.

Article 7 of Law Number 28 of 2002 stipulates that every building must fulfill administrative requirements, which include:

- a) Certainty of land rights status;
- b) Status of building ownership; and
- c) Building approval.

In addition, buildings must meet technical requirements, which consist of:

- Building layout; and
- Structural reliability.

Under the Job Creation Law, Article 7 of Law Number 28 of 2002 has been revised to require that every building comply with applicable technical standards. Building technical standards serve as guidelines containing provisions on quality, criteria, procedures, and methods that must be fulfilled in building implementation in accordance with its function and classification. More detailed regulations on these technical standards are set out in Government Regulation Number 16 of 2021.

Accordingly, regarding building approvals—formerly known as IMB and now replaced by PBG—legal certainty of land rights is essential for developers to conduct their business. However, if land ownership remains under another party, reference must be made to Article 35 paragraph (3) of Law Number 28 of 2002 concerning Buildings. This provision essentially states that buildings constructed on land owned by another party must be based on a written agreement between the landowner and the building owner.

One form of written agreement between landowners and building owners, as regulated in Article 35, paragraph (3), of Law Number 28 of 2002, commonly occurs when the land sale and purchase agreement between the landowner and the developer has not yet been fully completed. In such circumstances, the PPJB is used to facilitate transactions involving the transfer of land rights, since not all requirements can be met simultaneously, such as the clarity of land ownership certificates or full payment of the agreed price.

If the price has been fully paid at the signing of the PPJB, the prospective buyer typically receives a power of attorney from the seller authorizing the buyer to sell, transfer, assign, or relinquish the seller's rights in the land on the seller's behalf. This power of attorney is absolute in nature. It cannot be terminated for any reason and only becomes effective after the buyer has fulfilled all requirements or suspensive conditions stipulated in the PPJB. Furthermore, this power of attorney cannot be terminated for reasons stipulated under Article 1813 of the Civil Code (Erwiningsih & Indonesia, 2023).

With such provisions, the PPJB mechanism, accompanied by a Power of Attorney to Sell, becomes important in preventing unlawful practices by developers. Through this mechanism, developers can obtain Building Approval (PBG), undertake construction, and market housing units to prospective buyers. This is in line with Article 35 paragraph (4) of Law Number 28 of 2002 concerning Buildings, which states that building construction may be carried out after the technical building plan has been

approved by the local government in the form of building approval, except for buildings with special functions.

2. Developer Liability in Sale and Purchase Agreements for Land and Buildings on Land Owned by Other Parties

The exercise of legal rights and obligations is fundamentally inseparable from legal liability. Every authority granted within a position carries responsibility for its implementation. Although an office holder is given discretion to act, that discretion remains limited by the will of the party granting the authority, as agreed. In other words, obligations stipulated in a contract form the basis for the emergence of legal liability, which the parties to the agreement must fulfill. This is in line with the principle of *pacta sunt servanda*, which holds that agreements lawfully entered into are binding as law upon the parties who conclude them (Bachtiar & Sumarna, 2018).

Civil legal liability may be pursued on two primary grounds: a) the existence of an unlawful act as regulated in Article 1365 of the Civil Code, which stipulates that any person who, due to fault, causes loss to another party is obliged to compensate for such loss; and b) breach of contract (*wanprestasi*), which refers to the failure to perform an obligation, whether by not performing it at all, performing it late, or performing it in a manner inconsistent with what has been agreed upon, as regulated in Article 1243 of the Civil Code.

If a developer commits such conduct and constitutes an unlawful act, it must be examined under the categories of

unlawful acts recognized in the Civil Code, which include:

1. Unlawful acts committed intentionally;
2. Unlawful acts occurring without fault, whether intentional or negligent; and
3. Unlawful acts resulting from causation (Sari, 2020).

An unlawful act, as regulated under Article 1365 of the Civil Code, emphasizes that any act that violates the law and causes loss to another party obliges the perpetrator to compensate for the loss if it arises due to fault. According to Wirjono Prodjodikoro, the essence of an unlawful act lies in conduct that disrupts social equilibrium.

Such disruption does not only arise from direct violations of formal legal norms but also from violations of moral, religious, or ethical norms prevailing in society.

The degree of disruption determines the seriousness of the violation, and breaches of social norms must be prevented just as firmly as violations of positive law (Pramesti & Meuti, 2024). Article 1365 regulates liability arising from unlawful acts, whether due to active conduct or omission.

If the developer's act constitutes a breach of contract, then failure by one party to perform the obligations stipulated in the agreement renders that party in default (*wanprestasi*). Default in the implementation of preliminary sale and purchase agreements (PPJB) is a crucial issue that frequently gives rise to disputes between consumers and developers. Default occurs when a party to the agreement, in this case, the developer as a business actor, fails to fulfill obligations

agreed upon in the sale and purchase agreement.

Forms of default may include delays in the handover of housing units, deviations from agreed specifications, or failure to complete construction (Sumartini & Rahayu, 2025).

Based on this explanation, default refers to a condition in which a person is deemed to have breached an agreement by failing to perform obligations in full, by performing them late, or by performing them inconsistently with the agreed terms. At the stage of contract performance, each party is obliged to fulfill the agreed-upon obligations, known as performance (*prestasi*). Performance of obligations must be carried out in good faith, as provided in Article 1338, paragraph (3), of the Civil Code.

Agreements must be executed in good faith, meaning that from the outset of the legal relationship, all requirements necessary for the formation of the agreement must be fulfilled. Furthermore, in exercising their rights and obligations, the parties must comply with the terms stipulated in the preliminary sale and purchase agreement (Rosadi, 2020).

Thus, these two forms of civil liability may be invoked by landowners or consumers who suffer losses due to developers' actions by filing claims before the competent court to demand that the developer fulfill its obligations.

In addition to civil liability, developers may also be subject to criminal liability if their actions constitute the criminal offense of fraud. Fraud is classified as a crime against property under Article 378 of the former Criminal Code. Under Law Number 1 of 2023 (the new Criminal Code), Article 492

stipulates that any person who, with the intent to unlawfully benefit themselves or another party by using a false name or false capacity, employing deceit or a series of lies, induces another person to hand over property, grant credit, acknowledge debt, or waive a claim, shall be punished for fraud with imprisonment of up to four years or a fine of up to Category V. Regarding this criminal sanction, reporting developers is legally permissible, as illustrated in the case described in the background of this study.

Furthermore, considering the mechanism for obtaining Building Approval (PBG), failure to comply with applicable regulations in housing sale and purchase transactions may result in administrative sanctions. If business actors are unable to carry out housing construction in accordance with prevailing regulations, Article 129 paragraph (1) of the Government Regulation on the Implementation of Housing and Settlement Areas provides for the imposition of administrative sanctions. Such sanctions may include written warnings, restrictions on business activities, suspension of business licenses, and administrative fines.

Article 129, paragraph (3) of the same regulation further governs administrative sanctions imposed on legal entities as follows:

1. A legal entity that carries out development activities and ignores two written warnings within a period of five working days shall be subject to administrative sanctions in the form of business activity restrictions;
2. If the legal entity continues to ignore the business activity restriction sanction referred to in point (1), it

shall be subject to suspension of its business license for a maximum period of six months;

3. If the suspension of the business license referred to in point (2) is still disregarded, the legal entity shall be subject to an administrative fine ranging from a minimum of IDR 100,000,000 (one hundred million rupiah) to a maximum of IDR 500,000,000 (five hundred million rupiah).

Accordingly, there is a clear need for the government to actively supervise irresponsible developers who have caused widespread losses in various regions, as reflected in recent legal issues.

Although the legal framework governing developer liability is regulated through multiple mechanisms, dispute resolution in practice often remains ineffective. In civil cases, lawsuits based on breach of contract or unlawful acts frequently encounter obstacles such as difficulties in evidence, high litigation costs, and prolonged court proceedings. On the criminal side, reports under Article 492 of Law Number 1 of 2023 are difficult to substantiate because they require proving malicious intent from the outset, while law enforcement authorities often regard property disputes as civil matters.

Moreover, administrative sanctions imposed by the government are often ineffective in disciplining developers. Reactive supervision, reluctance to impose license suspensions, and administrative fines that lack deterrent effect constitute significant obstacles. Alternative dispute resolution mechanisms, such as mediation, are often ineffective due to a lack of good faith

among developers and limited public awareness of these avenues.

Therefore, an integrated approach is required that combines civil law enforcement, proactive administrative supervision, and community empowerment. Consumers must be encouraged to document transaction evidence and pursue legal remedies systematically and comprehensively.

Local governments must play a more active role in preventive supervision, including publishing developers' track records, while civil court decisions may serve as a basis for reviewing developers' business licenses. Through such measures, dispute resolution can become more effective and equitable for all parties involved.

CONCLUSION

Based on the foregoing discussion, the following conclusions can be drawn:

1. Developers frequently market housing units before land acquisition and construction processes have been completed, while many consumers lack a full understanding of the legal complexities involved in such transactions. This condition results in consumer losses when developers act unprofessionally, even though regulations governing housing and settlement areas are already in place.
2. Consumers and landowners who suffer losses may pursue legal remedies through claims based on unlawful acts, breach of contract, or criminal reports where the elements are fulfilled. On the other hand, the government must strengthen oversight of the issuance of Building Approvals (PBG) and impose

administrative sanctions on developers who violate regulations, in accordance with the Building Law's implementing regulations. Despite the availability of various legal remedies, synergy among law enforcement authorities, administrative supervision, and community empowerment remains essential to ensure that dispute resolution is carried out in a more just and effective manner.

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