

LEGAL PROTECTION MODEL FOR OWNERS AND OCCUPANTS OF COMMERCIAL FLAT UNITS WITHOUT PROOF OF OWNERSHIP DURING THE TRANSITION PERIOD

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Abstract

The phenomenon of handing over commercial apartment units without proof of legal ownership often occurs in urban areas in Indonesia. Many residents occupy units based only on the Minutes of Handover (BAST) and the Sales and Purchase Agreement (PPJB), without a Sale and Purchase Deed (AJB) or a Certificate of Ownership of the Apartment Unit (SHM Sarusun). This condition creates legal uncertainty and weak protection of the rights of owners and residents, especially during the transition period before the formation of the PPPSRs. The absence of proof of ownership also complicates dispute resolution and apartment management. This study discusses: (1) the validity of unit handovers without proof of legal ownership; (2) the developer's responsibility for management fees (IPL) during the transition period; and (3) a legal protection model that provides legal certainty for owners and residents without certificates. This study uses an empirical legal approach to explore the factual dynamics, practices, and perceptions of the parties, and analyzes them within the applicable positive legal framework. The purpose of this study is to formulate an effective and adaptive legal protection model to guarantee the rights of apartment owners and residents during the transition period. The research results show that the handover of units without AJB or SHM Sarusun does not fulfill the principles of legality and publicity in land law, and cannot be used as a basis for a legal transfer of rights. The responsibility for IPL payments during the transition period remains legally with the developer. As a solution, this dissertation proposes a dual-layer legal protection model based on contractual and regulatory principles, by proposing a scheme. Protection through certification, escrow accounts, and strengthening supervisory institutions. This model aims to build a more progressive property legal system, address the justice needs of urban communities, and enhance protection for property consumers during the transition period.

Keywords: Legal Protection, Owners, Tenants, Commercial Apartments, Proof of Ownership, Transition Period

INTRODUCTION

Indonesia as a country with the largest population occupies ranking 4th (fourth) in the world with a population of 277,534,122 people and is projected to continue to increase in the following years (Worldometer, 2024). With this increasing population growth, the challenges of affordable housing, which is a core issue in the housing development sector in Indonesia, are also increasing demand. However, the limited land available requires the government to find solutions to meet its responsibility to meet the community's housing needs. One solution offered is innovative use of space through the transition from housing to flats. This is expected to improve the quality of life and equitable distribution of public welfare (Hamzah, 2011).

The main focus of the development of flats, especially in urban areas, is not only based on considerations of the imbalance in the need for land space that previously existed, but is also supported by the consideration that the majority of people with middle and lower incomes conventionally cannot afford to buy land and houses because of the soaring land prices every year (Sutedi, 2010). If we look at Article 1 number 1 of Law Number 20 of 2011 concerning Flats (Rusun Law), flats refer to multi-storey buildings constructed in an area divided into functional parts that are structured, both horizontally and vertically, and are various units, each of which can be owned and used separately, especially for residential areas equipped with shared parts, objects and land.

Developer In carrying out development, the government must fulfill the requirements set by the government, both technical and administrative requirements (Febriani, 2019). Technical requirements include the appropriateness of the space, structure, components, building materials, apartment facilities, density, building layout, and other related aspects. Meanwhile, administrative requirements include location permits, planning advice, building permits,

habitability permits, and land certificates on which the apartment will be built. The process of managing these administrative requirements is carried out concurrently with apartment construction, but often encounters obstacles in the field. As a result, even though construction is complete, the administrative requirements have not been fully met developer.

On the one hand, if a person or consumer is going to make a transaction to purchase an apartment, it is necessary to carry out a series of preliminary stages, one of which is in the case of an apartment unit whose construction has been completed, it will be done through a Deed of Sale and Purchase (AJB) between developer with consumers. It's different if the construction of the apartment has not yet taken place, then the stages of purchasing the apartment will begin with what is usually called pre-project selling or marketing of the apartment units carried out before the apartment is built. After marketing, the ordering stage is continued, where consumers who are interested in purchasing can order an apartment unit and sign an order letter (booking form) as an initial document that will be received by consumers (Rahmawati, 2018).

In the next stage, consumers will generally make payments down payment as a down payment, followed by the signing stage by the parties together in a sales and purchase agreement (PPJB) which is a standard contract prepared by the parties' developer and signed either privately or through a notary (Yani & Badriyah, 2022). So that this PPJB can be carried out, the parties developer obliged to fulfill several things such as obtaining land ownership status developer, IMB permit, minimum 20% (twenty percent) construction of the apartment building, availability of facilities, infrastructure, and public utilities, as well as certainty regarding the agreed matters. In addition, the contents of the PPJB usually contain the rights and obligations of the parties who agree to carry out the sale and purchase transaction of the apartment, the transfer date, installments, sanctions for default, negligence and other matters that follow, which are all stated in the deed of sale and purchase agreement (Maria et al., 2001).

After the PPJB has been issued and the apartment building has received a habitable permit from the relevant regional government and meets other requirements, such as having a deed of separation of the apartment units and a certificate of ownership of the apartment units issued by the relevant district or municipal land office. In carrying out the contract, a deed of sale and purchase (AJB) for the apartment unit must be prepared and signed together with the buyer or consumer of the apartment in front of a notary or authorized PPAT in accordance with the regulations of the Decree of the Minister of State for Public Housing Number 11/KPTS/1994 (Shofie, 2000).). However, there are often problems with administrative documents that have not been fulfilled previously by the party developer, This has become a new problem, causing buyers who should have become apartment owners to only have proof of handover of the unit, but not proof of ownership.

Meanwhile, Article 84 paragraph (1) and (2) of Government Regulation Number 13 of 2021 concerning the Implementation of Flats ("PP 13/2021") stipulates that developer will hand over the keys at the first handover of the apartment to the consumer after the certificate of functional suitability is issued, which is also accompanied by a key handover report, sale and purchase deed and apartment unit ownership certificate (SHM Sarusun) or apartment building ownership certificate (SKBG Sarusun).

The Apartment Law itself contains a similar regulation: a consumer who buys a new apartment can be considered an owner, defined as any person who owns a condominium unit if they have proof of ownership, consisting of a deed of sale and purchase, a condominium unit ownership certificate (SHM) or a condominium unit ownership certificate (SKBG). Without such proof of ownership, the apartment buyer has the status of "owner." Quo who is uncertain about whether he can be called the owner and have all his rights and obligations enforced and recognized as stipulated in laws and regulations or agreements in the realm of the apartment itself or not (Paramadani et al., 2020).

Status quo This also applies to those who fall into the category of residents as stated in the Apartment Law as parties who occupy the apartment units, either as owners, or those who are not owners because they do not have clarity regarding ownership rights or use rights to the apartment units they occupy, which in general in fact they are the ones who have the right to live in the apartment, which is different from the *de jure* whose legal documents are not legally owned by the residents, especially those who have the status of owners. This can also be seen from several real cases that occurred in several regions in Indonesia, for example in Jakarta itself in 2023 there was a group of consumers from various apartments whose status was a private commercial apartment, namely from the Residence Ancol North Jakarta apartment, Marina Mansion Pluit Sea View, Bassura East Jakarta, Aspen, Thamrin City Central Jakarta, Puri Imperium, Belleza, Kalibata City South Jakarta, Pancoran Residence, to Menara Latumenten filed a complaint to the DKI Jakarta Provincial Government at City Hall, to demand justice for their rights that have not received AJB, SHMSRS, to units that have not been received and units that do not match what was offered by developer at the start of marketing and other problems where developer does not comply with the Regulation of the Governor of the Special Capital Region of Jakarta Province Number 70 of 2021 concerning the Second Amendment to the Regulation of the Governor Number 132 of 2018 concerning the Development of Management of Owned Apartments (Pergub No. 132) (Kumpanan, 2023).

In accordance with the real case, it is clear that many consumers, both owners and residents of the apartment, do not have proof of ownership because it was never issued or given by the developer to violations of other rights which are the rights of the owners and residents of the apartment units and have been regulated in statutory regulations. Looking

further at the branch of the unclear proof of ownership, returning to the concept of ownership of an object, the owner or those who are bound by an agreement with the owner to temporarily own the object, then the rights and obligations of the parties will always apply, including the consequences of ownership, legal relationships, and legal events arising from it. We can connect the ownership of the object with the status of the previous owner and occupant of the apartment unit as the subject of the apartment unit, namely when they become the subject of the apartment unit, the rights and obligations in their relationship as the owner and occupant of the apartment unit will apply.

Reviewing the various provisions of the Condominium Law, there is a primary obligation that must be carried out by condominium owners, namely condominium management. Ideally, this management for condominiums should be carried out through a management body to ensure a professional manner. Carrying out these professional duties certainly requires costs. The management body is tasked with running the building's operations and maintaining public order within the condominium environment, including maintaining shared facilities, such as vital elevator equipment, complex roads, green spaces, electrical panels, and clean water pipes and/or other common areas. This management is carried out through management fees obtained from Environmental Management Fees ("IPL"). IPL, according to Article 57 of the Condominium Law, is a contribution from environmental management that, if legally allocated to management costs, the receipt of which is the right of the condominium manager. The management body mentioned is mandatory to be established once the condominium unit is occupied, and is carried out by the residents and developer by forming an Association of Residents and Owners of Apartment Units ("P3SRS") with legal entity status (Roestamy & Sulistiyono, 2021).

Some dissertation studies that have been conducted by previous researchers related to this problem are (Tosim, 2020) found that the establishment of the PPPSRS was not effective, and disputes often arose regarding the validity of its establishment and the amendment process. A legal relationship between developers and owners is essential for apartment management. Developers have all the information and legal resources necessary for relationships with third parties. Another study by (Tambuno, 2023)) shows that regulations related to the registration of transfer of land rights in Indonesia have not been implemented effectively and have not fulfilled the justice of the community members who control and own land rights have not guaranteed full legal certainty in accordance with the mandate of Law No. 5 of 1960 and Government Regulation No. 18 of 2021 concerning Land Registration. That the regulations for the registration of transfer of land rights are multi-interpretable and bogged down in bureaucracy, difficult, and complicated; in terms of reconstruction of the registration of transfer of land rights based on the values of dignified justice can be realized by strengthening the socialization and information of the existing legal system in Indonesia related to the registration of land rights synchronously from the government, regions for the sake of creating the rights of the general public.

Before writing this dissertation, the researcher had conducted pre-research related to several dissertation studies with similar topics. Because there have been several similar topics, but not the same as the focus of the dissertation research whose legal issues are raised by the researcher in this study, where the main focus is legal protection for Apartment Owners and Apartment Residents whose status does not have proof of ownership in the sense of AJB and also SHM or SKBG Sarusun which are their rights, including the validity of their ownership status and the validity of the burden of obligations from developer to owners and residents, such as the burden of IPL costs during the transition period, which should still be their responsibility developer. However, it has been applied to owners and occupants who do not yet have proof of ownership. As these legal issues are rarely highlighted, this topic is worthy of further exploration in this dissertation. Based on what has been outlined previously, the legal issue to be examined in this dissertation is entitled **"Legal Protection Model for Owners and Occupants of Commercial Apartment Units Without Proof of Ownership During the Transition Period"**.

RESEARCH METHODS

The method used by the author is the normative legal research method. In normative legal research, answers to existing problems are obtained from the literature. In its implementation, normative legal research uses several methods, including the statutory approach method (statute approach), conceptual approach (conceptual approach), case approach, historical approach (historical approach), and comparative approach (comparative approach). In this legal research, the data sources used to assist in resolving the legal issues examined in this research are secondary and primary data. The data collection technique used in this research is a literature study (library research). Implementation procedures library research carried out systematically and in a planned manner. The data in this legal research were analyzed using qualitative analysis techniques by collecting, selecting and reviewing the existing data so that a prescription would be obtained, as this prescription was obtained through a deductive thinking method that sequenced the major premise to the minor premise and obtained a specific prescription from the research being studied.

DISCUSSION

Validity of Handover of Commercial Apartment Units Without Proof of Ownership

The handover of commercial apartment units without legal proof of ownership is a common practice in the Indonesian property industry, particularly in urban areas with high demand for vertical housing. In practice, many buyers or residents have occupied apartment units only with the Handover Report (BAST) and the Sales and Purchase Agreement (PPJB), without having a Sale and Purchase Deed (AJB) or a Certificate of Ownership of the Apartment Unit (SHM Sarusun). This situation gives rise to complex legal issues because the handover of the unit does not legally fulfill the principles of legality and publicity in land law, which are the basis for the legal transfer of ownership of an immovable object.

Based on Article 84 paragraphs (1) and (2) of Government Regulation Number 13 of 2021 concerning the Implementation of Apartments (PP 13/2021), the first handover of an apartment to a consumer can only be carried out after the issuance of a certificate of functional feasibility and must be accompanied by a BAST, AJB, and SHM Sarusun or SKBG Sarusun. Meanwhile, Article 1 number 1 and Article 46 of Law Number 20 of 2011 concerning Apartments (Rusun Law) emphasize that a person can only be called an "owner" if they have legal proof of ownership (certificate) for the apartment unit. Thus, the handover of a unit without a certificate and deed of sale and purchase cannot legally be considered a transfer of legal ownership rights, but is only administrative in nature and in the form of pseudo-physical control.

From the perspective of the theory of agreement, PPJB only creates an obligatory legal relationship, namely giving rise to rights and obligations between the parties, but does not yet transfer ownership rights to the object of the agreement. The transfer of rights only occurs when the AJB is made before the Land Deed Making Officer (PPAT) and registered at the land office for the issuance of the SHM Sarusun. Therefore, the transfer of units based on PPJB or BAST without AJB cannot be considered valid as a transfer of ownership rights according to law. This kind of transfer is contrary to Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which states that the transfer of land rights or ownership rights to apartment units can only be registered if proven by a deed made by the PPAT.

Based on empirical findings, many developers hand over units before completing administrative obligations such as issuing a SHM Sarusun or SKBG Sarusun. This practice is generally driven by commercial motives to accelerate capital returns, while the process of land legalization, unit separation, and certification is often delayed due to bureaucratic issues or land disputes. As a result, buyers who have occupied the unit do not have legal power over the apartment unit they occupy. In such a situation, consumers only become physical owners, not legal owners. This is in line with the opinion (Subekti, 2015) who states that in property law, ownership rights do not arise simply from control (bezit), but rather from valid legal acts accompanied by written evidence in accordance with statutory provisions.

From the perspective of the principle of legal certainty, as stated by Radbruch (2006), the law must provide clarity and guarantees so that individuals know their rights and obligations with certainty. However, in cases of unit transfers without proof of ownership, legal certainty becomes unclear because the buyer does not have strong evidence of ownership rights, while the developer has carried out a physical handover action that gives the impression that rights have been transferred. This uncertainty creates legal vulnerabilities, especially when disputes arise between the developer and the buyer or when the unit is pledged to a financial institution without the occupant's knowledge.

From the perspective of the principle of freedom of contract, the parties are indeed free to determine the content and form of the agreement, including in the PPJB. However, this freedom is not absolute and is limited by the principles of good faith, propriety, and protection of the weaker party as regulated in Article 1338 paragraph (3) of the Civil Code and Law Number 8 of 1999 concerning Consumer Protection (UUPK). Developers who hand over units without fulfilling administrative obligations are acting in bad faith because they violate the obligation to provide correct, clear, and honest information regarding the legal status of the object being bought and sold. Thus, this action not only violates administrative provisions but also violates the principle of consumer protection.

In addition, the absence of proof of ownership has a direct impact on the legal rights of owners and occupants, including: (1) not being able to register ownership rights at the land office; (2) not having valid voting rights in the formation of the Association of Apartment Owners and Occupants (PPPSRS); (3) not being able to use the unit as collateral for financing; and (4) difficulty in obtaining legal protection in the event of default by the developer. This condition shows that handing over a unit without a certificate not only violates administrative provisions, but also has significant legal implications for the validity of the rights and obligations of the parties.

From the results of empirical research and interviews, it was also found that many developers include a clause stating that all rights and obligations over the apartment unit have been transferred to the buyer since the signing of the PPJB or handover of the unit. This clause is legally contrary to the provisions of Article 1320 of the Civil Code, because the object of the agreement does not meet the requirements of a certain thing that is clear and can be transferred. In this context, the AJB and certificate are essential elements that must be present for the transfer of rights to be considered valid. Therefore, although the factual handover of the unit has been carried out, legally the ownership rights have not been transferred so that the handover can be categorized as an imperfect legal act (*onvolledige rechtshandeling*).

The legitimacy of unit transfers without proof of ownership must also be reviewed in light of the principle of publicity in land law. Publicity means that any transfer of land or building rights must be announced to the public through registration with an official institution (BPN), so that third parties can be aware of the existence of those rights. Without registration, ownership rights have no binding force on third parties and have the potential to give rise to multiple disputes. In the case of commercial condominiums, the non-issuance of the Unit Ownership Certificate (SHM Sarusun) means that the buyer's rights have not been officially registered with the BPN, so legally they remain under the developer's name. This means that the developer remains the rights holder to the parent land, while the buyer only obtains rights in personam based on an agreement, not in rem, which is absolute.

Based on the theory of legal protection (Hadjon, 1987), preventive measures should be implemented by strengthening oversight mechanisms and restricting developers from handing over units before all legal ownership requirements are met. Repressive protection can be implemented through law enforcement and imposing sanctions on developers who hand over units without a valid legal basis. In this context, the government, through the Ministry of Public Works and Public Housing (PUPR), and regional governments are responsible for ensuring that every apartment handover process complies with Government Regulation 13/2021 and the Apartment Law.

Thus, it can be concluded that legally, the transfer of a commercial apartment unit without proof of ownership does not meet the requirements for a valid transfer of land or building rights, as it violates the principles of legality, publicity, and legal certainty. The purchaser only has the position of physical owner, not the legal owner, so a more stringent legal protection mechanism is needed to ensure certainty and fairness for all parties.

Developer's Responsibility for Management Fee Obligations During the Transition Period

The transition period in apartment management is a crucial period that occurs between the first handover of apartment units to buyers and the formation of the Apartment Owners and Tenants Association (PPPSRS). During this period, the operational management of the building and maintenance of shared facilities has not been fully transferred to the owners or residents, but remains the responsibility of the developer as the developer. Based on Article 59 of Law Number 20 of 2011 concerning Apartments (Rusun Law) in conjunction with Article 82 of Government Regulation Number 13 of 2021 concerning the Implementation of Apartments (PP 13/2021), it is emphasized that during the transition period, which lasts a maximum of one year from the first handover, apartment management is the responsibility of the developer, including the obligation to pay the Environmental Management Fee (IPL).

Despite the clear legal provisions, practice often shows irregularities. Many developers charge apartment owners or residents IPL fees, even before they have obtained legal proof of ownership, such as a Certificate of Ownership of an Apartment Unit (SHM Sarusun) or a Certificate of Ownership of a Building (SKBG Sarusun). This imposition is often based on a unilateral clause in the Sales and Purchase Agreement (PPJB) stating that all management costs are the responsibility of the buyer upon unit handover. Such a clause clearly violates laws and consumer protection principles, as it unilaterally shifts the developer's responsibility to the consumer, who is in a weaker position.

Legally, developers have both contractual and normative legal responsibilities for the continued management of condominiums during the transition period. Contractual responsibilities arise from the sales and purchase agreement between the developer and the purchaser, while normative responsibilities stem from the provisions of the Condominium Law and Government Regulation 13/2021. When a developer fails to fulfill these obligations, it constitutes a violation of the imperative regulations, not dispositive, and therefore cannot be circumvented by the contractual agreement. In this context, the principle of *pacta sunt servanda* in Article 1338 of the Civil Code must be read in conjunction with the principles of propriety and protection of the weaker party, which emphasize that agreements cannot be used to justify violations of the law.

From the perspective of legal responsibility theory, as stated by Halim (2020), responsibility is the legal consequence of any action that causes harm or injustice to another party. By charging consumers IPL fees before they have proof of ownership, the developer has violated the principle of responsibility in authority, namely the obligation of the party holding power (in this case, building management) to bear the legal consequences of their actions. This means that until ownership has been legally transferred and the PPPSRS has not been established, full responsibility for the operational costs and maintenance of the condominium remains with the developer.

This problem indicates a structural imbalance between developers and consumers. Developers have a dominant position in determining the contents of the contract, while consumers generally have no room for negotiation. Standard clauses that include IPL obligations from the time of unit handover are a form of abuse of circumstances (*misbruik van omstandigheden*), which is prohibited in modern civil law doctrine. Based on Article 18 paragraph (1) letters a and b of Law Number 8 of 1999 concerning Consumer Protection (UUPK), every business actor is prohibited from making standard clauses that state the transfer of responsibility or release of the business actor from its legal obligations. Therefore, agreements containing clauses transferring IPL responsibility to consumers can be declared null and void.

Empirical practice has revealed numerous cases where apartment residents are forced to pay IPL without a clear legal basis. For example, in several apartment complexes in Jakarta, such as Bassura City and Kalibata City, residents who have not yet received the AJB (Deed of Sale) or SHM (Serving Certificate) for the condominium unit are still charged management fees by the developer or the appointed management body. This phenomenon creates social tension and

often results in complaints to the local government. However, legally, the purchaser does not yet have this responsibility because ownership has not yet been transferred. This situation demonstrates weak government oversight of the implementation of legal norms stipulated in the Condominium Law and Government Regulation 13/2021.

Based on the theory of legal certainty (Radbruch, 2006), the law must ensure the stability of social relations through the enforcement of clear and predictable rules. However, in the context of managing the transition period, there is a gap between *das sollen* (what should be) and *das sein* (what happens on the ground). When developers continue to charge IPL to buyers who do not yet have proof of ownership, legal certainty is compromised because the rights and obligations of the parties are no longer in accordance with the applicable legal framework. Therefore, there is a need for an administrative oversight mechanism and stricter legal sanctions against developers who violate the provisions of the transition period.

To ensure balance and fairness between developers and residents, a preventive and repressive legal protection approach, as proposed by Philipus M. Hadjon, must be implemented. Preventively, the government needs to ensure that every apartment project has a measurable and transparent schedule for handover, issuance of certificates, and establishment of PPPSRS. Repressively, administrative sanctions in the form of fines, revocation of business permits, or termination of construction activities can be imposed on developers proven to have made handovers without fulfilling legal obligations, including charging unauthorized IPL fees. In addition, residents need to be given easier access to resolve disputes through consumer dispute resolution institutions or general courts.

Strengthening the escrow account mechanism is also an important solution. Through this system, IPL payments and maintenance funds during the transition period can be deposited in a joint account, which can only be disbursed once proof of ownership has been issued and the PPPSRS has been established. This scheme creates distributive justice between developers and buyers and prevents misuse of funds by unauthorized parties. The concept of protection through certification proposed in the legal protection model resulting from the research is also relevant to implement, as it ensures that consumer protection is not only contractual but also regulatory and legally enforceable.

Thus, normatively and empirically, responsibility for management fees (IPL) during the transition period rests entirely with the developer, not the owner or occupant without proof of ownership. Imposing these fees on consumers violates the principles of fairness, legal certainty, and consumer protection. Therefore, more progressive legal policies are needed to strengthen the position of consumers, clarify developer responsibilities, and enhance the government's role in overseeing and enforcing the law on commercial apartment development and handover practices.

Legal Protection Development Model that Provides Legal Certainty for Owners and Occupants of Commercial Apartments without Proof of Ownership

The phenomenon of unmet proof of ownership of commercial apartment units, even though residents have occupied and paid their obligations, illustrates the weak legal protection system in vertical property development practices in Indonesia. The failure to fulfill ownership rights in the form of a Deed of Sale and Purchase (AJB) and a Certificate of Ownership of Apartment Units (SHM Sarusun) or a Certificate of Ownership of the Apartment Building (SKBG Sarusun) has created legal uncertainty that directly impacts the status of owners and residents. In the context of positive law, this condition indicates a gap between normative regulations as stipulated in Law Number 20 of 2011 concerning Apartments (Rusun Law) and Government Regulation Number 13 of 2021 concerning the Implementation of Apartments (PP 13/2021) and empirical practice in the field.

The absence of proof of ownership prevents consumers from enjoying the legal rights that should be inherent in the status of owner, such as the right to transfer, pledge, or use the apartment unit as an object of fiduciary security, as well as the right to vote in the formation of the Association of Apartment Owners and Residents (PPPSRS). In this situation, consumers only have temporary ownership rights (possession) without legal title, so their position is weak both legally and economically. This fact shows that the legal protection provided during the transition period has not been effective, because there is no legal model that systematically regulates the rights of residents in the condition of not having an ownership certificate.

Based on empirical research and normative analysis, a dual-layer legal protection development model is needed: contractual and regulatory protection. This dual-layer approach bridges the gap between legislation and the practicalities of apartment unit handovers and ensures legal certainty for owners and occupants during the transition period.

First, contract-based legal protection emphasizes the need to reformulate the sales and purchase agreement (PPJB) to include explicit consumer protection clauses. The PPJB used by developers to date is unilateral and does not reflect the principle of balance as mandated by Article 1338 paragraph (3) of the Civil Code (KUHPer) and Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection (UUPK). Therefore, the PPJB must be drafted with due regard to the principles of good faith and equitable justice, in which the rights and obligations of the parties are regulated in a balanced manner. Clauses that transfer responsibility for issuing certificates to the buyer or postpone ownership rights indefinitely must be declared null and void because they contradict the imperative provisions of the law.

As a form of implementation, the agreement should include an escrow account mechanism as a financial guarantee for consumers. Under this scheme, unit payment funds are held in a joint account (escrow) and can only be disbursed

to the developer after administrative requirements such as the issuance of the Deed of Sale and Purchase Order (AJB) and the Unit Ownership Certificate (SHM). This scheme not only provides legal protection but also creates a preventative oversight mechanism to prevent irregularities or delays in certificate delivery.

Second, regulatory-based legal protection is implemented through strengthening the positive legal system to provide clearer enforcement powers for developers and land institutions. This includes refining the provisions in Government Regulation 13/2021 by adding a protection through certification mechanism, which provides temporary legal protection for residents who have not yet received ownership certificates, through the issuance of a Temporary Ownership Status Certificate (SKKS) recognized by the local government and the National Land Agency (BPN). This SKKS serves as administrative evidence that can be used to prove legal ownership status during the certificate issuance process. With this document, residents gain temporary legal legitimacy, which also serves as the basis for establishing the PPPSRS during the transition period.

In addition, the regulatory aspect also includes strengthening the role of local governments and property supervisory agencies in verifying and auditing the implementation of developer obligations. The government needs to establish a special supervisory agency (Supervisory Housing Unit) under the Ministry of Public Works and Housing (PUPR) tasked with overseeing the implementation of unit handovers and the issuance of certificates. This agency can be given the authority to impose administrative sanctions, such as revoking business licenses or progressive fines, on developers who fail to fulfill their obligations. Strengthening this supervisory function is in line with the theory of preventive and repressive legal protection as put forward by Philipus M. Hadjon, which emphasizes the importance of anticipatory and curative legal action against violations of citizens' rights.

Theoretically, the concept of dual-layer protection can also be explained using Satjipto Rahardjo's legal protection theory, which states that law must be present not only in normative form but also provide tangible benefits to society, especially those in vulnerable positions. Ideal legal protection is not sufficient through the mere creation of legal norms, but must also be accompanied by partisanship in institutional structures, implementation of oversight, and opening access to justice mechanisms for those who lack sufficient economic or social power.

The results of the study show that the application of this dual-layer legal protection model is able to provide adaptive legal certainty, namely a form of legal certainty that is not rigid, but adapts to the social and economic realities of urban society. In this case, the government and judicial institutions must view the issue of apartment ownership not only from a formal perspective, but also substantively—namely as an effort to guarantee the basic rights of citizens to a place to live as guaranteed by Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. By affirming the right to housing as a constitutional right, legal protection for owners and residents without proof of ownership is not just an administrative obligation, but also a constitutional mandate that must be fulfilled by the state. The uniqueness of this model lies in its success in combining two legal protection instruments that have been partially implemented in practice: contractual-based protection and regulatory-based protection. Through this dual-layer protection approach, all rights and obligations arising from the initial agreement (PPJB, BAST, and IPL) are reinforced by public law norms in the form of government intervention, administrative oversight, and notarial governance. This combination not only guarantees the validity of the agreement but also ensures its implementation falls within a formal, monitored and measurable legal framework.

Thus, this legal protection model not only addresses the need for legal certainty but also serves as an instrument for achieving social justice and increasing public trust in the national land law system. Through a dual-layered approach that is preventive, repressive, and adaptive, it is hoped that the practice of handing over commercial apartments in Indonesia will be transparent, accountable, and in line with the principles of good governance in the land and public housing sectors.

CONCLUSION

The transfer of a commercial apartment unit without valid proof of ownership, such as a Deed of Sale and Purchase (AJB) or a Certificate of Ownership of an Apartment Unit (SHM Sarusun), cannot be considered a valid transfer of ownership rights under the national land law system. Based on the principles of publicity and legality in land law, the existence of proof of ownership is an essential requirement in proving land and building rights. The validity of the transfer of an apartment unit can only be considered valid if it meets the formal and material elements as stipulated in Law Number 20 of 2011 concerning Apartments and Government Regulation Number 13 of 2021. The transfer of a unit evidenced only by a Minutes of Handover (BAST) and a Sales and Purchase Agreement (PPJB) is not strong enough to create full ownership rights over the apartment unit, so in practice it creates a legal vacuum that weakens the legal position of the occupant or owner during the transition period.

The developer's responsibility for the management fee (IPL) during the transition period is an imperative legal obligation and cannot be fully transferred to residents or owners who do not yet have proof of ownership. Based on the provisions of Article 59 of Law Number 20 of 2011 in conjunction with Article 82 of Government Regulation Number 13 of 2021, the transition period that lasts from the physical handover of the unit until the formation of the PPPSRS is the developer's responsibility, including in terms of managing shared facilities and operational costs

sourced from the IPL. The unilateral practice of developers charging IPL to residents or owners who have not yet obtained a SHM Sarusun or AJB violates the principles of consumer protection and the principle of propriety in contract law. This action not only indicates a breach of contractual relations but also reflects a failure to carry out administrative and ethical obligations as a property business actor.

The legal protection development model proposed in this dissertation establishes a preventive and curative protection framework through a dual-layered, contractual and regulatory approach, targeting the most crucial phase in the apartment ownership cycle, namely the transition period. This model proposes a system of protection through certification provides temporary legal recognition to residents or owners who have not yet obtained an official certificate, accompanied by state supervision through strengthening permit monitoring institutions, escrow accounts, and special property dispute courts.

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