

Pre-Project Selling of Apartment Developments: Reconstructing Project Completion Guarantees as a Form of Consumer Legal Protection in Condominium Housing

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Abstract

The practice of marketing apartment projects through pre-project selling schemes has become the dominant model for vertical housing development in Indonesia. Although formally legitimized by positive law, this practice carries structural risks, particularly project incompleteness, which directly harms consumer interests. Existing legal protection is still contractual in nature through the Sale and Purchase Agreement (PPJB) and relies on dispute resolution mechanisms after a default. Consequently, consumer protection is reactive and has not been able to guarantee the actual completion of housing projects. This study aims to examine the weaknesses of consumer protection in the pre-project selling scheme for apartment construction in Indonesia and to formulate the concept of project completion guarantees as a form of preventive legal protection. This study uses a normative legal research method with regulatory, conceptual, and comparative approaches. The analysis focuses on Law Number 20 of 2011 concerning Flats, applicable contractual practices, and a comparative study of countries that have implemented escrow account mechanisms, financial guarantees, and public supervision in pre-construction housing transactions. The study results show that the absence of a project completion guarantee obligation leads to an unfair transfer of construction risk from developers to consumers. Therefore, this study proposes the reconstruction of the legal framework for apartment buildings in Indonesia through the institutionalization of a project completion guarantee based on a combination of guaranteed fund management and public supervision as part of *Ius Constituendum*. This approach is expected to strengthen consumer protection, increase legal certainty, and encourage the fair and sustainable governance of vertical housing developments.

Keywords: *Pre-Project Selling, Construction Guarantee, Apartment Projects, Consumer Legal Protection*

Abstrak

Praktik pemasaran proyek apartemen melalui skema pre-project selling telah menjadi model yang dominan dalam pengembangan perumahan vertikal di Indonesia. Meskipun secara formal telah dilegitimasi oleh hukum positif, praktik ini mengandung risiko struktural, khususnya ketidakselesaian proyek,

yang secara langsung merugikan konsumen. Perlindungan hukum yang ada saat ini masih bersifat kontraktual melalui Perjanjian Pengikatan Jual Beli (PPJB) dan bertumpu pada mekanisme penyelesaian sengketa setelah terjadinya wanprestasi. Akibatnya, perlindungan konsumen bersifat reaktif dan belum mampu menjamin terealisasinya penyelesaian proyek perumahan secara nyata. Penelitian ini bertujuan untuk mengkaji kelemahan perlindungan konsumen dalam skema pre-project selling pada pembangunan apartemen di Indonesia serta merumuskan konsep jaminan penyelesaian proyek sebagai bentuk perlindungan hukum preventif. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan peraturan perundang-undangan, konseptual, dan perbandingan hukum. Analisis difokuskan pada Undang-Undang Nomor 20 Tahun 2011 tentang Rumah Susun, praktik kontraktual yang berlaku, serta kajian perbandingan dari negara-negara yang telah menerapkan mekanisme rekening escrow, jaminan keuangan, dan pengawasan publik dalam transaksi perumahan pra-konstruksi. Hasil penelitian menunjukkan bahwa ketiadaan kewajiban jaminan penyelesaian proyek telah menyebabkan terjadinya pengalihan risiko pembangunan secara tidak adil dari pengembang kepada konsumen. Oleh karena itu, penelitian ini mengusulkan rekonstruksi kerangka hukum rumah susun di Indonesia melalui pelembagaan jaminan penyelesaian proyek yang berbasis pada kombinasi pengelolaan dana yang terjamin dan pengawasan publik sebagai bagian dari *ius constituendum*. Pendekatan ini diharapkan mampu memperkuat perlindungan konsumen, meningkatkan kepastian hukum, serta mendorong tata kelola pembangunan perumahan vertikal yang adil dan berkelanjutan.

Kata kunci: *Pre-Project Selling, Jaminan Keterbangunan, Proyek Rumah Susun, Perlindungan Hukum Konsumen*

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Introduction

The increasing demand for housing in urban areas in Indonesia has led to a shift in development patterns from horizontal to vertical housing in the form of apartment buildings.¹ This shift is mainly driven by the high rate of urbanization, limited availability of urban land, and increasing competition for land use between residential and economic

¹ UN-Habitat, "The State of Asian Cities 2019," *UN-Habitat*, 2019, <https://unhabitat.org/the-future-of-asian-pacific-cities-report-2019>.

activities in urban areas.² However, the high housing backlog in urban areas makes apartment buildings the main alternative for meeting the housing needs of the community.³ However, vertical housing development faces serious challenges in terms of legal and consumer protections, particularly in marketing practices using pre-project selling schemes, which are commonly used in Indonesia.⁴ Reports from consumer protection agencies show that in recent years, there have been hundreds of public complaints related to apartment projects that were marketed before construction was completed, including large projects in the Greater Jakarta area, which were generally related to construction delays, unclear project status, and failure to hand over units to buyers among others.⁵ This fact confirms that the pre-project selling scheme not only has implications for individual contractual risks, but also reflects structural problems in the design of consumer legal protection in the vertical housing sector.⁶

The absence of project completion guarantees demonstrates the weakness of legal protection for apartment consumers in Indonesia. The practice of pre-project selling places consumers in a vulnerable position because payments are made when the project is still in the planning stage, without any certainty that construction will be completed.⁷ The Sale and Purchase Agreement (PPJB) as a private legal basis does not provide a fund protection mechanism that guarantees project's completion.⁸ Law Number 20 of 2011 concerning Apartments does not require developers to provide project completion

² Fadjar Hari Mardiansjah and Paramita Rahayu, "URBANISASI DAN PERTUMBUHAN KOTA-KOTA DI INDONESIA: SUATU PERBANDINGAN ANTAR-WILAYAH MAKRO INDONESIA," *Jurnal Pengembangan Kota* 7, no. 1 (July 2019): 91–110, <https://doi.org/10.14710/jpk.7.1.91-108>.

³ Badan Pusat Statistik, *Statistik Perumahan Dan Permukiman Perkotaan Indonesia* (Jakarta: Badan Pusat Statistik, 2020), <https://www.bps.go.id/id/publication/2020/08/31/6a9e70d6154fde75499239e6/statistik-perumahan-dan-permukiman-2019.html>.

⁴ Soran University, Faculty of Law, Political Science and Management, Law Department, "Legal Protection of the Buyer in Off-Plan Real Estate Sales: A Comparative Analytical Study," *Twejer* 8, no. 4 (November 2025): 550–619, <https://doi.org/10.31918/twejer.2584.ELI.23>.

⁵ Yayasan Lembaga Konsumen Indonesia (YLKI), *Catatan Akhir Tahun: Pengaduan Konsumen Sektor Properti* (Jakarta: YLKI, 2022).

⁶ Ariawan Ariawan, "Regulatory Barriers to Consumer Protection in Digital Marketplaces," *Journal of Human Rights, Culture and Legal System* 5, no. 3 (December 2025): 806–32, <https://doi.org/10.53955/jhcls.v5i3.782>.

⁷ Nawal Zidan El Muniefiy, Budi Santoso, and Ranitya Ganindha, "Perlindungan Hukum Terhadap Konsumen Pre Project Selling Perusahaan Pengembang Properti Yang Dinyatakan Pailit," *Warkat* 3, no. 2 (December 2023): 134–54, <https://doi.org/10.21776/warkat.v3n2.4>.

⁸ Antoine Braci, "Contract Law: An Introduction to the English Law of Contract for the Civil Lawyer," *King's Law Journal* 26, no. 3 (September 2015): 463–66, <https://doi.org/10.1080/09615768.2015.1101900>.

guarantees or financial protection mechanisms for consumers . This highlights the need for the legal reconstruction of the consumer protection system through the institutionalization of escrow accounts and performance bonds as a form of preventive legal protection in the Indonesian legal system.⁹

Several previous studies have examined consumer legal protection in apartment transactions and pre-construction marketing practices; however, most are still oriented towards post-loss protection mechanisms. Studies on housing law in Indonesia show that consumer protection in pre-project selling practices still relies heavily on the Sale and Purchase Agreement (PPJB) and breach-of-contract mechanisms, which, in practice, are reactive and do not guarantee project completion.¹⁰ Other studies confirm that the legal responsibility of developers within the framework of positive Indonesian law is mostly constructed as ex post liability, meaning that the state only intervenes after consumers suffer and actual losses.¹¹

Other studies highlight the role of performance bonds and construction insurance as guarantees for project completion but still place these instruments in the context of the relationship between developers and contractors, rather than as a direct protection mechanism for consumers, as the parties most affected if a project is not completed.¹² Other studies highlight the role of performance bonds and construction insurance as guarantees for project completion, but still place these instruments in the context of the relationship between developers and contractors, rather than as a direct protection mechanism for consumers as the parties most affected if a project is not completed.¹³ Thus, the existing literature still shows a strong tendency toward liability-based protection, while studies on preventive legal instruments that explicitly guarantee the construction of apartment projects—particularly through the integration of escrow

⁹ Ortwin Renn, *Risk Governance. Coping with Uncertainty in a Complex World* (Earthscan, 2008).

¹⁰ Munir Fuady, *Hukum Perumahan Dan Perlindungan Konsumen* (Bandung: Citra Aditya Bakti, 2018).

¹¹ Nuha Rifda Juliansyah Putri, Albertus Sentot Sudarwanto, and Arief Suryono, “Legal Liability of Developers in Breach of Contract Against Consumers in House Sale and Purchase Agreements Through Mortgage Facilities (KPR),” *Greenation International Journal of Law and Social Sciences* 3, no. 1 (May 2025): 36–43, <https://doi.org/10.38035/gijlss.v3i1.371>.

¹² Kris Boudt and Xianda Liang, “The Performance of Chinese Real Estate Firms: Media Concerns and Special Treatment Status,” *Journal of the Asia Pacific Economy*, November 13, 2025, 1–33, <https://doi.org/10.1080/13547860.2025.2584029>.

¹³ Wetria Fauzi, “Legal Concept of Guarantee Insurance (Surety Bond) as Form of Transfer of Risk of Default by Contractors in Construction Services Contracts,” 2023, 030003, <https://doi.org/10.1063/5.0119749>.

accounts and performance bonds into the Indonesian legal system—have not been comprehensively and systematically discussed.¹⁴

Based on this research, significant scope for further study can be identified in the context of legal protection for consumer apartments. First, previous studies have not positioned the guarantee of apartment project construction as a mandatory preventive legal instrument prior to the marketing stage; therefore, risk prevention aspects have not been systematically accommodated. Second, discussions on escrow accounts and performance bonds are still sectoral and separate between financial and policy perspectives, without producing an integrated consumer protection model within the housing law framework. Third, existing studies are still limited in contextualizing project completion guarantee instruments with national legal norms, particularly in relation to apartment law, consumer protection regimes, and risk-based licensing systems.

This study aims to analyze and formulate a model of apartment project completion guarantees as a preventive legal protection instrument for consumers in Indonesia's legal system. The main focus of this study is to assess the effectiveness of escrow accounts and performance bonds in preventing project failure and to propose the integration of these two instruments with public oversight. Theoretically, this study is based on the theory of preventive legal protection and distributive justice, which emphasizes the importance of placing risk on the party most capable of managing it, namely, the developer. The significance of this research lies in its attempt to shift the paradigm of consumer legal protection from a repressive approach to a preventive approach oriented towards loss prevention. Thus, the results of this study are expected to provide conceptual and normative contributions to the renewal of national housing law and strengthen the governance of fair, transparent, and sustainable vertical housing development.

Method

This study adopts a normative juridical approach (doctrinal research). This study focuses on analyzing the legal norms that regulate the protection of apartment consumers in apartment transactions, particularly those related to the need to establish a mechanism to guarantee the completion of projects. This approach was used to examine the

¹⁴ Yilin Yin et al., "Impacts of Risk Allocation on Contractors' Opportunistic Behavior: The Moderating Effect of Trust and Control," *Sustainability* 12, no. 22 (November 2020): 9604, <https://doi.org/10.3390/su12229604>.

suitability, shortcomings, and gaps in the Apartment Law, implementing regulations, and licensing regulations that govern the marketing of vertical housing. The data used are secondary data with primary legal materials in the form of laws and regulations related to flats, consumer protection, licensing, and court decisions related to disputes over project delays or failures. In addition, secondary legal materials were used in the form of books, scientific journals, research results, doctrines, and academic publications discussing the mechanisms of escrow, project guarantees, and construction risk mitigation. Tertiary legal materials, such as legal dictionaries and encyclopedias, were used to reinforce conceptual understanding. Legal materials were collected through library research and analyzed.

The analysis of legal materials was carried out using a statute approach to assess the applicability and adequacy of existing norms, a conceptual approach to formulate the concept of construction guarantees, and a comparative approach to compare project protection instruments in various countries to find the best model that can be adapted to the Indonesian legal system. All collected legal materials were qualitatively analyzed using deductive and inductive reasoning. Deductive reasoning was used to assess the relationship between existing norms and construction failure, while inductive reasoning was used to draw conclusions about the need to establish instruments to guarantee construction success. This analysis produced an argumentative formulation regarding the most appropriate regulatory model to ensure the legal protection of consumer apartment buyers.

Results and Discussion

Legal Realities and Challenges in Consumer Protection in the Pre-Project Selling Scheme for Apartment Buildings in Indonesia

The construction of apartment buildings as a form of vertical housing is essentially a response to land limitations and the high demand for housing in urban areas,¹⁵ in line with the increasing rate of urbanization and economic development.¹⁶ However, behind the urgency of this development lies a fundamental problem that has repeatedly arisen

¹⁵ Azisyiah Izzattisselim, "KEPASTIAN HUKUM BAGI PENGHUNI SATUAN RUMAH SUSUN MELALUI PEMBENTUKAN PERHIMPUNAN PEMILIK DAN PENGHUNI SATUAN RUMAH SUSUN," *Law Review* 18, no. 3 (May 2019): 347, <https://doi.org/10.19166/lr.v18i3.1114>.

¹⁶ Vikri Pranata Alif Utama et al., "Pembangunan Rumah Susun Untuk Mengatasi Keterbatasan Lahan Di Kota Depok Dihubungkan Undang-Undang Nomor 20 Tahun 2011 Tentang Rumah Susun," *Karimah Tauhid* 2, no. 3 (June 2023): 679–87, <https://doi.org/10.30997/karimahtauhid.v2i3.8381>.

and has not been systematically resolved, namely the failure of apartment projects that are marketed to the public before the buildings are completed.¹⁷ This recurring problem in the systematic development of apartment buildings shows that the legal protection design has not been able to guarantee the actual completion of projects for consumers amid the urgent need for vertical housing in the country.¹⁸

The apartment marketing scheme through pre-project selling has become the dominant pattern of vertical housing development in Indonesia. The pre-project selling scheme is used in many developing countries because it allows developers to market apartment units from the planning or early construction stage by collecting funds from consumers through a Sale and Purchase Agreement. Economically, this scheme benefits developers by reducing their dependence on bank financing. However, from a consumer protection perspective, it places consumers in a vulnerable position because they have handed over large sums of money without any guarantee that the project will be built and completed properly.¹⁹

This vulnerability is linked to the fact that the Indonesian legal system does not require guarantees for apartment construction projects. Law No. 20 of 2011 on Apartment Buildings regulates the requirements for marketing prior to construction, which consist of certainty regarding land status, permits, and the availability of technical plans. However, these regulations stop at the aspect of administrative legality and do not touch on the most crucial aspects, namely, the security of consumer funds and guarantees for the continuity of project construction.²⁰ This results in the law only ensuring that the project is formally legal to market but does not provide certainty that it will be completed in the end. In this context, the guarantee of apartment project construction is a central issue that needs to be studied comprehensively. The guarantee of construction cannot be understood solely as a consequence of developer default but must be positioned as a

¹⁷ Indah Permata Sari, "Menyikapi Problematika Hukum Dalam Pemasaran Satuan Rumah Susun Yang Menggunakan Sistem Pre Project Selling," *Jurist-Diction* 2, no. 3 (July 2019): 933, <https://doi.org/10.20473/jd.v2i3.14363>.

¹⁸ M. Meliana, J. Emirzon, and F. Muntaqo, "Perlindungan Hukum Developer Dan Konsumen Rumah Susun Dalam Perjanjian Dengan Sistem Pre Project Selling Di Indonesia," *Lex LATA* 3, no. 1 (2022), <https://doi.org/10.28946/lexl.v3i1.918>.

¹⁹ Raihan Hilmy, "Perlindungan Konsumen Dalam Penjualan Rumah Susun Dengan Sistem Pemasaran Pre-Project Selling Ditinjau Dari Hukum Positif Indonesia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 3 (July 2022), <https://doi.org/10.58258/jisip.v6i3.3341>.

²⁰ J. Adiarto et al., "The Complexity of Contextuality: A Case Study on Vertical Housing Facilities in Surabaya, Indonesia," *Environment and Urbanization ASIA* 13, no. 1 (2022): 99–112, <https://doi.org/10.1177/09754253221076351>.

preventive legal instrument that works before a failure occurs. Without such an instrument, legal protection for apartment consumers will always be reactive and dependent on lengthy, costly and ineffective litigation.²¹

The absence of project completion guarantees is evident in various concrete cases of apartment construction in Indonesia. For example, in the case of apartment and flat construction at several points in the Greater Jakarta area, thousands of consumers have made payments based on construction contracts presented through marketing materials and the PPJB.²² However the project faced legal and licensing issues, which should have been instruments of legal certainty for the construction of flats before the contract between consumers and developers.²³ However, due to licensing issues and legal aspects of building or spatial planning, construction was halted for a long time.²⁴ As a result, in this situation, consumers did not have legal instruments that could ensure that the project would continue or that their funds would be used specifically for the construction of the units they had purchased.²⁵ Consumer funds were not placed in a separate, protected account, so there was no mechanism that allowed for effective intervention to save the project.²⁶

This case shows that consumer losses are not solely caused by contract violations but are the result of the absence of a legal protection design capable of managing construction risks from the outset.²⁷ Legally, consumers can indeed take legal action

²¹ Syahro Milenio, Yoyo Arifardhani, and Jum Anggraini, "A Review Of Legal Protection Efforts For Consumers Against Defaulting Property Developers," *International Journal Of Humanities Education and Social Sciences (IJHESS)* 5, no. 3 (December 2025), <https://doi.org/10.55227/ijhess.v5i3.1799>.

²² Hai Thanh Doan, Diep Thi Phuong Doan, and Sang Minh Luu, "When a Backer Is an Expropriator: Pitfalls in the Consumer Protection Mechanism for off-Plan Building Sales in Vietnamese Law," *Journal of Property, Planning and Environmental Law* 14, no. 1 (June 2022): 11–24, <https://doi.org/10.1108/JPEL-01-2022-0005>.

²³ Yongyang Cai, Harris Selod, and Jevgenijs Steinbuks, "Urbanization and Land Property Rights," *Regional Science and Urban Economics* 70 (May 2018): 246–57, <https://doi.org/10.1016/j.regsciurbeco.2018.04.007>.

²⁴ Seng Hansen, "Legal Case Study on Indent House Purchasing in Indonesia," *Journal of Property, Planning and Environmental Law*, December 17, 2025, 1–21, <https://doi.org/10.1108/JPEL-03-2025-0026>.

²⁵ Lanlan Wang and Tieshan Sun, "Capitalization of Legal Title: Evidence from Small-Property-Rights Houses in Beijing," *Habitat International* 44 (October 2014): 306–13, <https://doi.org/10.1016/j.habitatint.2014.07.013>.

²⁶ Le Minh Thanh, "Some Legal Issues about Bank Guarantee to Protect Buyer's Rights in Buying and Selling Transactions of Future Conforming Houses," *Legal Brief* 13, no. 2 (2024), <https://doi.org/10.35335/legal.v13i2.938>.

²⁷ L. Li, Helen X. H. Bao, and K. W. Chau, "On the Strategic Timing of Sales by Real Estate Developers: To Wait or To Presell?," *The Journal of Real Estate Finance and Economics* 66, no. 1 (January 2023): 169–96, <https://doi.org/10.1007/s11146-022-09894-0>.

through a breach of contract lawsuit or criminal complaint, but these mechanisms do not guarantee substantial restoration of rights.²⁸ In many cases, even if consumers win their case, executing the court's decision is difficult to execute because the developer no longer has the financial capacity. A more problematic situation occurs when the failure of development leads to the developer's bankruptcy.²⁹ In several Commercial Court decisions, apartment consumers who have paid for residential units are positioned as concurrent creditors.³⁰ This position is very weak because consumers must compete with other creditors who have no direct interest in the completion of the project.³¹ The funds paid by consumers are mixed with the developer's general assets and become part of the bankruptcy estate. As a result, the main objective of consumers in obtaining residential units is almost impossible to achieve.

From a legal perspective, this condition reflects the failure of the state to perform its preventive protection function for consumers.³² Legal protection that only works after losses occur is insufficient to address systemic risks in apartment building construction.³³ The risk of failure to build is not an incidental individual risk, but a structural risk inherent in the pre-sale scheme. Therefore, the law should regulate mandatory and binding security mechanisms, rather than leaving it to the contractual freedom of the parties, given that the need for apartment construction is also a state requirement in the form of fulfilling housing needs for citizens.

There is a need to reconstruct legal protection in the guarantee of apartment project construction because, in practice, developers often claim that consumer protection is provided through PPJB, which is essentially an illusory assumption. Although a PPJB

²⁸ Wiwik Sri Widiarty, "Legal Protection of Consumers Due to Breach in the Buying of Housing," *Legal Brief* (2023) 4 (12), <https://doi.org/10.35335/legal.v12i4.839>.

²⁹ Fadli Maulana, "RECONSTRUCTION CONSUMER PROTECTION IN PROPERTY DEVELOPER INSOLVENCY: A COMPARATIVE LEGAL CRITIQUE OF INDONESIA, SINGAPORE, AND AUSTRALIA," *NOMOI Law Review* 6, no. 2 (2025), <https://doi.org/10.30596/nomoi.v6i2.27180>.

³⁰ Muhammad Zaidan Arrasyid and Erry Praditya Utama, "Juridical Analysis of the Aspects of Equitable Consumer Protection in Default Cases against Developers," *Humaniorum* 3, no. 2 (2025), <https://doi.org/10.37010/hmr.v3i2.72>.

³¹ Muhammad Boma Adichandra and Reni Budi Setianingrum, "Bentuk Perlindungan Hukum Terhadap Pembeli Rumah Dalam Penyelesaian Sengketa Kepailitan Pengembang," *Media of Law and Sharia* 3, no. 1 (January 2022): 1–20, <https://doi.org/10.18196/mls.v3i1.13222>.

³² Hilmy, "Perlindungan Konsumen Dalam Penjualan Rumah Susun Dengan Sistem Pemasaran Pre-Project Selling Ditinjau Dari Hukum Positif Indonesia."

³³ Julia Black, "Critical Reflections on Regulation," *Australian Journal of Legal Philosophy* 27 (2002), <https://eprints.lse.ac.uk/17913/>.

creates a legal relationship that is valid and binding in civil law, its existence does not necessarily guarantee the construction of the project. In many cases, PPJBs have become a means of legitimizing the collection of consumer funds without adequate security mechanisms.³⁴ Consumers are convinced that written agreements provide legal certainty, when in fact the substance of the protection offered is very limited. This illusion of legal certainty is further reinforced by marketing practices that emphasize the formal legality of projects, such as possessing permits and cooperating with financing institutions. Consumers are led to believe that as long as a project has an administrative legal basis, the risk of construction failure can be ignored.³⁵ In fact, administrative legality is not synonymous with construction sustainability, as evidenced by the large number of formally legal apartment projects that are financially and managerially insufficient to be completed.³⁶

In these circumstances, PPJBs do not function as instruments of protection but as a means of risk transfer. The construction risk that should be borne by the developer is transferred to consumers through advance payment obligations, without any guarantee that the funds will be used specifically for the project's construction.³⁷ When the project encounters obstacles, consumers are in a weak position because they have no control over the funds or the construction process. From the perspective of modern contract law, this condition indicates a failure of the principle of balance in the agreements.³⁸ The freedom of contract that forms the basis of the PPJB does not function ideally because there is a significant imbalance of bargaining power between developers and consumers. Therefore, state intervention through the regulation of project construction guarantees is highly relevant to correct this imbalance.

³⁴ Tri Ayu Mulyaningsih and Devi Siti Hamzah Marpaung, "Penyelesaian Sengketa Rumah Susun Yang Masih Terikat PPJB Oleh Pengembang Nakal Yang Melakukan Wanprestasi," *Legal Spirit* 6, no. 2 (December 2022): 145, <https://doi.org/10.31328/ls.v6i2.3786>.

³⁵ T. Firman, "Major Issues in Indonesia's Urban Land Development," *Land Use Policy* 21, no. 4 (October 2004): 347–55, <https://doi.org/10.1016/j.landusepol.2003.04.002>.

³⁶ Yushu Zhu, Meg Holden, and Rebecca Schiff, "Housing Vulnerability Reconsidered: Applications and Implications for Housing Research, Policy and Practice," *Housing, Theory and Society* 41, no. 4 (August 2024): 417–30, <https://doi.org/10.1080/14036096.2024.2341840>.

³⁷ A. Artemenkov and A. Saccal, "Financial Modelling of Transition to Escrow Schemes in Urban Residential Construction: A Case Study of Tashkent City," *Buildings* 15, no. 16 (2025), <https://doi.org/10.3390/buildings15162843>.

³⁸ A. Ashworth and S. Perera, *Contractual Procedures in the Construction Industry*, 7th ed. (London: Routledge, 2018).

Normative Issues of Building Guarantees for Apartment Projects in Pre-Project Selling Schemes

Consumer disputes and vulnerabilities in apartment construction using pre-project selling schemes in Indonesia reveal structural weaknesses in the design of legal protection. One instrument that is conceptually relevant to addressing this issue is an escrow account. This mechanism places consumer funds in a separate account managed by an independent third party and can only be disbursed based on verified construction progress. With this arrangement, consumer funds cannot be freely used by developers for other purposes outside the project in question, thus creating a direct link between cash flow and the physical realization of the construction.³⁹ Various international studies show that escrow accounts are effective in reducing the risk of pre-construction housing project failure, while also reducing developer moral hazard through structural restrictions on the use of consumer funds, thereby protecting consumers. Therefore, this instrument is not merely technical or financial in nature but functions as a legal mechanism capable of shaping business behavior. However, in the Indonesian context, escrow accounts have not yet been established as a normative obligation. Their use is still voluntary and depends on private agreements, which, in practice, are almost never chosen by developers because they are considered to reduce financing flexibility. Consequently, consumer funds continue to be managed freely without substantive supervision from the state or independent parties.⁴⁰

A similar situation can be observed in the application of performance bonds. In the Indonesian legal system, this instrument is commonly used in construction contracts, especially government projects, to guarantee work completion.⁴¹ However, in the construction of commercial apartment buildings, performance bonds only bind the relationship between developers and contractors, without providing direct protection to consumers as the parties most affected if the project is not completed. This fragmentation

³⁹ Geoffrey Payne, Alain Durand-Lasserve, and Carole Rakodi, "The Limits of Land Titling and Home Ownership," *Environment and Urbanization* 21, no. 2 (October 2009): 443–62, <https://doi.org/10.1177/0956247809344364>.

⁴⁰ P. Situmorang, R. Ahmad, and F. Noor, "Consumer Legal Protection Against Housing Developers: An Examination of Sale and Purchase of Flats Before Commencement of Construction Process," *RJOAS: Russian Journal of Agricultural and Socio-Economic Sciences* 77, no. 5 (2018), <https://doi.org/10.18551/rjoas.2018-05.15>.

⁴¹ Nael G. Bunni, *The FIDIC Forms of Contract* (Oxford: Blackwell Publishing, 2005), <https://onlinelibrary.wiley.com/doi/book/10.1002/9780470759417>.

of protection shows that performance bonds are still positioned as an internal project risk management tool rather than as an instrument of consumer protection.⁴² From the perspective of distributive justice, this condition reflects an unequal allocation of risk. The risk of failure to build is borne by consumers, even though developers have full control over the planning, financing, and implementation of the project, while also reaping the greatest economic benefits.⁴³ Within the framework of the welfare state, neglecting excessive market risks, especially those related to basic needs such as housing, contradicts the state's constitutional obligation to protect its citizen from market risks.⁴⁴ Therefore, the absence of project completion guarantees cannot be understood solely as a contractual issue, but rather as a failure of public law policy.

This problem is exacerbated by weak public oversight. State oversight tends to stop at the administrative licensing stage, while the implementation of construction and management of presale funds is not substantively monitored.⁴⁵ Consequently, the state often intervenes only after consumers have suffered significant losses, without any early detection mechanism for projects at risk of failure. From the perspective of risk regulation theory, this failure demonstrates a mismatch between the regulatory design and the characteristics of risks that are predictable and have a broad impact on the environment.⁴⁶ Effective consumer protection in high-risk sectors such as apartment construction should be structural and preventive, rather than merely reactive through litigation mechanisms after losses have occurred.

Legal Reconstruction of Apartment Project Construction Guarantees: The Direction of *Ius Constituendum* and Comparative Learning

These issues highlight the urgent need to reformulate legal policies for apartment construction in Indonesia. The necessary reforms cannot be achieved simply by adding sanctions or strengthening litigation mechanisms but rather through the establishment of

⁴² Will Hughes, Ronan Champion, and John Murdoch, *Construction Contracts: Law and Management* (London: Routledge, 2015).

⁴³ David Madden and Peter Marcuse, *In Defense of Housing: The Politics of Crisis* (London: Verso, 2016).

⁴⁴ Bogumil Terminski, "THE RIGHT TO ADEQUATE HOUSING IN INTERNATIONAL HUMAN RIGHTS LAW: POLISH TRANSFORMATION EXPERIENCES," *Revista Latinoamericana de Derechos Humanos* 22, no. 1 (2011), <https://ssrn.com/abstract=2177686>.

⁴⁵ Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation: Text and Materials*, 1st ed. (Cambridge University Press, 2007), <https://doi.org/10.1017/CBO9780511801112>.

⁴⁶ Julia Black, "The Role of Risk in Regulatory Processes," in *The Oxford Handbook of Regulation*, by Julia Black, ed. Robert Baldwin, Martin Cave, and Martin Lodge (Oxford University Press, 2010), 301–48, <https://doi.org/10.1093/oxfordhb/9780199560219.003.0014>.

a new regulatory framework that makes project construction guarantees a legal prerequisite for marketing apartment buildings. Within the framework of *ius constituendum*, construction guarantees must be designed as instruments that have a real binding effect on developers' behavior, rather than merely administrative requirements. This reconstruction must begin with an evaluation of Law No. 20 of 2011 on Flats, particularly the provisions regarding marketing before construction is completed, as stipulated in Articles 42–44. These provisions currently allow pre-construction marketing with an emphasis on administrative legality without requiring a financial and binding project completion guarantee.⁴⁷ The addition of a norm that explicitly requires a fund security mechanism and a project completion guarantee as a prerequisite for marketing is an important step to prevent the unilateral transfer of risk to consumers.

In addition, the reconstruction must address the design of the Sale and Purchase Agreement (PPJB). To date, the PPJB has been developed as a standard agreement that reflects the interests of developers without minimum substance standards that guarantee project completion. Within the future legal framework, the PPJB must be positioned as part of the consumer protection regime, with the obligation to include essential clauses regarding guarantees of construction, the link between fund disbursement and construction progress, and clear legal consequences if these guarantees are not fulfilled. With this regulation, the PPJB will no longer be a tool for legitimizing fund collection but rather an instrument for managing construction risks.

The role of the state also needs to be reconstructed so that it does not merely function as a licensor but is given substantive supervisory authority over the use of pre-sale funds and construction progress, including the authority to freeze marketing if the construction guarantee is not fulfilled. This shift is important so that the state can prevent project failures from the early stages, rather than merely dealing with the impact. Comparative learning reinforces this reconstruction direction.⁴⁸ Singapore requires buyers' funds to be placed in a strictly supervised project account and can only be disbursed in accordance with the stages of development. The UK integrates performance guarantees and insurance protection into its off-plan consumer protection system, while China requires pre-sale funds to be placed in special government-supervised accounts in

⁴⁷ Meliana, Emirzon, and Muntaqo, "Perlindungan Hukum Developer Dan Konsumen Rumah Susun Dalam Perjanjian Dengan Sistem Pre Project Selling Di Indonesia."

⁴⁸ Widiarty, "Legal Protection of Consumers Due to Breach in the Buying of Housing."

response to systemic risks in the property sector.⁴⁹ These practices show a common pattern: the state actively intervenes in pre-construction transaction structures to ensure project completion.

In the Indonesian context, the reconstruction of completion guarantees must be designed realistically, considering institutional fragmentation and existing supervisory capacity.⁵⁰ Integrating guarantee obligations into the licensing system and involving financial institutions as indirect supervisors could be an operational solution.⁵¹ Moreover, the obligation of construction guarantees also has a symbolic and educational function in Indonesian legal culture, emphasizing that construction risks should not be borne unilaterally by consumers. Thus, this legal reconstruction not only strengthens consumer protection but also builds a more equitable, responsible, and sustainable apartment development governance system.

Escrow Account as a Preventive Protection Instrument for Consumers

An escrow account is a third-party account mechanism established to hold consumer funds until certain contractual obligations (e.g., construction progress) are fulfilled by the developer. A normative study by Saraswati empirically reveals that, to date, Indonesian law does not explicitly require the use of escrow in pre-construction transactions, meaning that consumer funds are not optimally protected if the developer defaults or fails to complete the project.⁵² Globally, the concept of escrow has been discussed in legal and property finance literature as a risk mitigation tool.⁵³ For example, the financial model of escrow in the context of housing development shows that the escrow mechanism increases the transparency of cash flow without reducing developer profitability, while reducing the risk of moral hazard.⁵⁴

⁴⁹ Kelvin F. K. Low, "Property Development and Consumer Protection in Singapore," *Singapore Journal of Legal Studies*, 2016.

⁵⁰ Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, 3rd ed. (Oxford: Oxford University Press, 2009).

⁵¹ Julia Black, "Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory' World," *Current Legal Problems* 54, no. 1 (2001).

⁵² Inaya Rakhmani and Muningar Sri Saraswati, "Authoritarian Populism in Indonesia: The Role of the Political Campaign Industry in Engineering Consent and Coercion," *Journal of Current Southeast Asian Affairs* 40, no. 3 (December 2021): 436–60, <https://doi.org/10.1177/18681034211027885>.

⁵³ Graeme Newell, "The Role of Financial Structures in Property Development Risk," *Journal of Property Investment & Finance* 25, no. 4 (2007).

⁵⁴ "Regulation and Housing Supply," in *Handbook of Regional and Urban Economics* (Elsevier, 2015), 5:1289–337, <https://doi.org/10.1016/B978-0-444-59531-7.00019-3>.

Other research in the context of pre-sale property also confirms that the absence of escrow accounts makes Indonesian consumers vulnerable to the transfer of construction risks, where funds paid go directly to developers without independent supervision. Therefore, there is no guarantee that the funds will be used for project completion, as mandated in the PPJB. A dialogue between normative findings and global escrow financial research shows that escrow instruments should not be viewed solely as financial mechanisms, but also as legal instruments that must be formulated in PPJB to protect consumer rights, both preventively and structurally. Integrating escrow into the national legal framework will increase legal certainty and reduce litigation after consumers suffer losses. Referring to the principle of risk governance in consumer protection theory, escrow accounts not only mitigate individual risks but also improve the governance of the pre-sale property transaction system and increase market confidence.⁵⁵ This makes escrow an important instrument in the legal reconstruction of apartment project guarantees in Indonesia and not merely a private option.

Performance Bonds and Project Performance Guarantees for Consumers

A performance bond is a financial guarantee in the form of a surety bond issued by a guarantor (e.g., a bank or insurance company) to ensure the completion of a contract by a contractor.⁵⁶ In general, performance bonds are seen as a risk allocation tool in construction contracts because they provide compensation to the project owner if the contractor fails to fulfill its contractual obligations.⁵⁷ In the context of general construction, performance bonds have been widely discussed in engineering and risk management literature as a tool for mitigating project failure and dispute resolution, which also has an impact on consumer protection when applied in the context of apartment building construction. Related research states that without a truly binding guarantee in the form of a performance bond, consumers still bear the main risks of construction, including project delays or cancellations.⁵⁸

⁵⁵ A. Mathios et al., "Journal of Consumer Policy's 40th Anniversary Conference: A Forward Looking Consumer Policy Research Agenda," *Journal of Consumer Policy* 43, no. 1 (March 2020): 1–9, <https://doi.org/10.1007/s10603-019-09446-9>.

⁵⁶ Paul Levin, ed., *Construction Contract Claims, Changes, and Dispute Resolution*, Third Edition (Reston, VA: American Society of Civil Engineers, 2016), <https://doi.org/10.1061/9780784414293>.

⁵⁷ Hughes, Champion, and Murdoch, *Construction Contracts: Law and Management*.

⁵⁸ Hadyan Fahad Al-Ajmi and Emmanuel Makinde, "Risk Management in Construction Projects," *Journal of Advanced Management Science*, 2018, 113–16, <https://doi.org/10.18178/joams.6.2.113-116>.

Although technical literature discusses performance bonds extensively in the context of contractors and project owners, the application of this tool in the relationship between developers and apartment consumers has not been analyzed much from a legal perspective. In fact, when combined with an escrow account, performance bonds can strengthen financial security against the risk of developer failure. In the legal discourse on consumer protection, the imposition of performance bonds as an obligation for developers in pre-sales should be viewed as part of preventive legal responsibilities. This is related to the principle of distributive justice, which places the risk on the party most capable of controlling it, namely, the developer, while protecting consumers from substantial financial losses.⁵⁹ Thus, the integration of performance bonds into the PPJB legal framework and regulations related to apartment construction will expand the scope of legal protection from merely the right to sue after a loss to fundamental risk prevention.

Direction of Regulatory Reform and Consumer Protection Paradigms in Apartment Development

Thus far, the design of consumer protection laws in apartment development in Indonesia has been predominantly reactive. The existing regulatory framework focuses more on dispute resolution after losses have occurred rather than on establishing risk prevention mechanisms from the pre-development stage.⁶⁰ Although Law No. 8 of 1999 on Consumer Protection provides a normative basis for the protection of buyers' rights, various studies show that weak contractual standards and limited public oversight have resulted in the low effectiveness of such protection in the practice of pre-project property sales. From a comparative law perspective, a different approach can be seen in Singapore, which has established a prevention-based consumer protection system through escrow or project account obligations and strict state supervision of the use of presale funds.⁶¹ This mechanism has proven effective in reducing developers' moral hazard and increasing project certainty, as consumer funds can only be disbursed based on verification of construction progress. There is an urgent need for direct state intervention in supervising

⁵⁹ James Connelly, "Amartya Sen, The Idea of Justice (London: Allen Lane, 2009), Pp. Xxviii + 468.," *Utilitas* 24, no. 1 (March 2012): 144–49, <https://doi.org/10.1017/S095382081100046X>.

⁶⁰ Bernadetta Tjandra Wulandari, Arif Awaludin, and Evy Indriasari, "The Urgency of Harmonizing Consumer Protection Law in the Era of Digital Economy and Market Globalization," *Journal of Law, Politic and Humanities* 6, no. 1 (October 2025): 180–89, <https://doi.org/10.38035/jlph.v6i1.2405>.

⁶¹ Neil Bhutta and Benjamin J Keys, "Moral Hazard during the Housing Boom: Evidence from Private Mortgage Insurance," *The Review of Financial Studies* 35, no. 2 (January 2022): 771–813, <https://doi.org/10.1093/rfs/hhab060>.

the management of presale funds to protect consumer rights before disputes arise.⁶² In addition, studies on off-plan sales practices in various jurisdictions show that without structural guarantees such as escrow accounts or performance bonds, contracts between developers and consumers tend to be uneven and open to unilateral default by developers.

Theoretically, the direction of consumer protection regulatory reform must shift from a predominantly reactive pattern to a risk governance framework that places prevention as the primary function of law. This paradigm shift is in line with the development of modern regulatory theory, which views the law as an instrument of the state to systematically manage public risk before losses occur, particularly in high-risk sectors, such as housing.⁶³ Within this framework, regulation no longer functions solely as a dispute resolution mechanism, but as a means of ex ante control to prevent structural failure. By integrating escrow account obligations, performance bonds, and substantive public oversight mechanisms into the Apartment Law, the law can be transformed into an active instrument that ensures the actual construction of projects while realizing substantive justice for consumers. This approach emphasizes that consumer protection in apartment building construction cannot be left to contractual logic alone but must be positioned as part of public legal policy oriented toward risk management and the prevention of collective losses.

Conclusion

This study asserts that consumer disputes and losses in the pre-project selling scheme for flats in Indonesia are not merely the result of individual developers' defaults but reflect structural failures in the design of legal protection. The applicable legal framework, particularly the Apartment Law, still places administrative legality as the main requirement for pre-construction marketing, without being accompanied by instruments that guarantee the construction of the project and the security of consumer funds. Consequently, consumers are in a very vulnerable position because they bear the construction risk from the outset, while legal protection mechanisms only work reactively after losses occur.

⁶² Robert Baldwin, Martin Cave, and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice*, 2nd ed. (Oxford University Press/Oxford, 2011), <https://doi.org/10.1093/acprof:osobl/9780199576081.001.0001>.

⁶³ Renn, *Risk Governance. Coping with Uncertainty in a Complex World*.

The absence of project completion guarantees shows that the Sale and Purchase Agreement (PPJB) has functioned more as a means of legitimizing fund collection than as a consumer protection instrument. The freedom of contract that forms the basis of the PPJB is imbalanced due to unequal bargaining power, so construction risks are unilaterally transferred to consumers. Under such conditions, litigation and bankruptcy mechanisms are unable to provide substantial restoration of rights and often place consumers as the most disadvantaged concurrent creditors. Therefore, the legal reconstruction of project completion guarantees for apartment buildings is urgently needed within the framework of the *ius constituendum*. This reconstruction must shift the paradigm of consumer protection from a reactive to a preventive and structural approach through the obligation of security instruments, such as escrow accounts and performance bonds. Escrow accounts tie the use of consumer funds directly to construction progress, while performance bonds strengthen project completion guarantees and ensure a more equitable distribution of risk. The integration of these two instruments, accompanied by substantive public oversight, can prevent the transfer of construction risks to consumers from the pre-marketing stage.

Comparative lessons from other countries show that active state intervention in regulating pre-construction transactions is not a market restriction but a prerequisite for legal certainty, distributive justice, and sustainability in the housing sector. By making project completion a normative requirement for apartment marketing, Indonesian law can function not only as a dispute resolution tool but also as a risk governance instrument that ensures the fulfillment of the right to decent housing and establishes a more equitable, responsible, and consumer-oriented governance of apartment development.

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