



## Legal Protection to the Buyer in Good Faith on Purchase of a Shophouse Based on a Sale Purchase Binding Agreement (PPJB) in Full if the Seller is in Default

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### Abstract

*The purpose of this research is to analyze "LEGAL PROTECTION FOR GOOD-FAITH BUYERS IN THE PURCHASE OF SHOPHOUSES BASED ON FULLY PAID SALE AND PURCHASE BINDING AGREEMENT (PPJB) IN THE EVENT OF SELLER'S DEFAULT." This paper is motivated by the questions of how good-faith buyers are regulated in the sale and purchase of shophouses based on the Sale and Purchase Binding Agreement (PPJB) in Indonesian civil law, and how legal protection is afforded to good-faith buyers in the purchase of shophouses under a fully paid PPJB in the event of the seller's default, according to Indonesian judicial practice.*

*The writing method is descriptive-analytical, and the research method uses a Normative Legal Research method, or literature research, which is oriented towards data sourced from literature and similar references related to the preparation of this academic paper. This academic work aims to explore the legal strength and protection offered by the PPJB as a preliminary agreement leading to the Deed of Sale and Purchase (AJB).*

**Keywords:** *good faith buyers, fully paid sale and purchase agreement, seller default*

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## INTRODUCTION

Indonesia is known as an agricultural country. Land plays an important role in human life because it performs two main functions: as a social asset and as a capital asset. Land and buildings serve as important means to strengthen social ties in Indonesian society, and they have developed into very valuable economic commodities. On the one hand, land and building resources must be maximized to increase the prosperity and welfare of society, and on the other hand, the sustainability of these resources must be maintained.

The principle of the law of supply and demand causes land availability to become increasingly limited and demand continues to increase. As a result, the price or value of land has increased significantly. Conditions like this have the potential to cause conflicts or disputes related to land. Therefore, a regular and orderly land law and administration system is needed to reduce or at least reduce the chances of land conflicts or disputes. The goal is to guarantee and protect land owners and regulate land use and ownership fairly.

Due to the increasing population, the need for land is increasing both in cities and in rural areas. The increasing need for land sometimes causes disputes, which makes land issues a common problem for the community. To ensure that every individual who has land rights has strong evidence that they actually own the land, land rights also require clear legal certainty about the ownership of the land. Every person or organization that owns land must have an authentic deed of land sale and purchase made by the Land Deed Making Officer (PPAT). This deed is legal evidence that cannot be contested by other parties.

In Indonesia's supreme constitution, Article 33 paragraph 3 of the 1945 Constitution, the founders of the country emphasized the importance of land as the highest social organization for both individuals and the state. "The land, water, and natural resources

contained therein are controlled by the state and used as much as possible for the prosperity of the people," the article said. This goal was achieved through the implementation of Law Number 5 of 1960 concerning Basic Agrarian Principles, also known as the UUPA. The purpose of the UUPA, together with its implementing regulations, is to provide legal certainty for land rights throughout Indonesia (Effendie, 1983).

To improve human welfare, land control is attempted. Various efforts are made by individuals to obtain and maintain it, especially from claims by other parties. As a result, land control must be based on legitimate rights and have a clear legal status. According to Harsono (2007), paragraph 1 of Article 19 of the UUPA states that "To ensure legal certainty, the government carries out land registration throughout Indonesia in accordance with the provisions stipulated by Government Regulations." This indicates legal certainty about land ownership and ownership.

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Sometimes, an agreement does not go according to what both parties expect. In the process of buying and selling land, disputes can occur due to different perceptions, values, and interests between individuals or legal entities regarding the status of control, ownership, or use of certain land (Wibawati, 2013). Land rights are transferred with the intention of being given to another party.

This type of transfer of rights can be in the form of sale-purchase, exchange-bargain, gift, customary gift, participation in a company or "inbreng", and gift-will or "legaas". Government Regulation Number 24 of 1997 concerning Land Registration (PP No. 24 of 1997) stipulates that land rights and apartment ownership rights transferred through transactions such as sale-purchase, exchange-bargain, gift, capital participation, or other legal actions can only be registered if accompanied by a deed made by an authorized PPAT in accordance with applicable laws and regulations.

An authentic deed is a document whose form is regulated by law and is made at the location of the deed by or before an authorized public official. In accordance with Article 1870 of the Civil Code (KUHPdata), "an authentic deed provides perfect evidence between the parties concerned, including their heirs or recipients of their rights, regarding the contents stated therein."

The process of making a deed of sale and purchase depends on the provisions of the agreement stipulated in the Civil Code. Article 1320 of the Civil Code stipulates that a sale and purchase agreement must meet four requirements, and if these requirements are met, the agreement is considered valid. They must meet the following requirements:

- a. agree with those who bind themselves;
- b. able to make agreements; and
- c. for legitimate reasons.

The first two conditions are referred to as subjective conditions, and the last two conditions are referred to as objective conditions in the article. If the subjective conditions are not met, the agreement can be canceled, according to Articles 1446 and 1450 of the Civil Code. However, if the subjective conditions are not met, the agreement is considered legally void. "Cancellation" is a term used to describe the right of one party to cancel an agreement. Until a judge makes a decision that cancels the agreement, the agreement remains binding on both parties. In contrast, "null and void" indicates that the agreement does not exist and has no legal consequences.

The existence of an agreement between the parties involved is the basis of every action or agreement. However, in reality, not all parties act with good intentions; there is a possibility that one party acts with bad intentions, which can disrupt the agreement process.

Article 1321 of the Civil Code states that an agreement is considered invalid if it is made due to error, coercion, or fraud. According to J. Satrio, if there is a defect in the will in an agreement, then the expressed will is not based on a completely pure agreement. The agreement arises due to an error, pressure, fraud, or influence from another party who takes advantage of certain conditions. Based on the study of the Civil Code and related legal literature, 'good faith' in this context means that the buyer is not aware of any defects in the transfer of land rights, and this ignorance is not caused by negligence or lack of caution on the part of the buyer.

This study has two objectives: objective and subjective. Objectively, the purpose of this study is to find, understand, and analyze the existing regulations in Indonesian civil law related to buyers in good faith when purchasing a shophouse based on a Sales and Purchase Agreement (PPJB). In addition, based on judicial practices in Indonesia, this study also examines the legal protection provided to buyers in good faith who have paid off the purchase of a shophouse through a PPJB if the seller is in default. This study subjectively aims to apply the theories that the author has learned during college and compare them with the situation in the field. In addition, this study aims to improve the author's understanding, especially in terms of land law.

## METHOD

This study uses a normative legal research method (normative juridical), which considers law as an empirical phenomenon that can be observed in everyday life. Normative legal research examines normative legal behavior through case studies, for example by analyzing laws (Suwarjono et al., 2023). As stated by Wijaya et al. (2023), this study uses three legal approaches: the statute approach, the conceptual approach, and the case approach. The focus of this study is how law functions in society (Ali, 2021). According to Soerjono Soekanto and Sri Mamudji (2019), normative legal research uses library materials (secondary data). Library materials include legal history, comparative law, vertical and horizontal synchronization, legal principles, and legal systematics. This study focuses on the difference between theory (*das sein*) and reality (*das sollen*) in terms of legal effectiveness, finding that law depends not only on legal literature but also on the state of society or how the law is applied.

This study uses a normative legal approach, focusing on the study of laws, regulations, and legal norms relevant to the problems studied. The information collected is secondary information sourced from primary, secondary, and tertiary legal sources. Research tools include papers related to legal protection for buyers who buy shophouses in good faith based on a Sales and Purchase Agreement (PPJB) that has been paid in full in the event of a default by the seller. Data collection was carried out through literature studies.

Secondary data sources used in this study include primary legal materials such as the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Commercial Code, and HIR; additional primary legal materials include Law Number 5 of 1960 concerning Agrarian Principles and Law Number 30 of 2004 concerning the Position of Notary. Furthermore, related government regulations include Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration and Government Regulation Number 37 of 1998 concerning the Position of Land Deed Making Officials. Tertiary legal materials include dictionaries, journals, and online sources; while secondary legal materials include books, previous research, and laws and regulations.

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## RESULTS AND DISCUSSION

### Buyers in Good Faith in the Sale and Purchase of Shophouses Based on the Sale and Purchase Agreement (PPJB) in Indonesian Civil Law

Land rights can be transferred in various ways, such as sale, exchange, gift, or inheritance. Government Regulations regulate the process of transferring ownership rights, including gifts, sale and purchase, exchange, and bequests, according to Article 26 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

If two parties agree to hand over an item to another party, it is called a sales and purchase agreement (PPJB). However, PPJB does not automatically change the ownership rights of the seller to the buyer. The handover process begins with the signing of the Sale and Purchase Deed (AJB) before the Land Deed Making Officer (PPAT) after this agreement is only an initial agreement.

Subekti (1985) explains the sale and purchase agreement as an agreement between the seller and the buyer made before the transaction is carried out. This usually occurs because there are conditions that have not been met, such as an unpaid price or an unprocessed certificate. This preliminary agreement is an initial agreement made by both parties, similar to the concept of a sale and purchase agreement. Meanwhile, the sale and purchase agreement itself—for both movable and immovable objects—is the main agreement that will be made in the end.

In cases where the Deed of Sale and Purchase (AJB) is not made in accordance with applicable laws and regulations, the Sale and Purchase Binding Agreement (PPJB) is made with the presence of the seller and buyer, or representatives who are given written power of attorney (Santoso, 2019). PPJB is also often used in sales and purchases where the certificate is still in the process of being divided, the buyer cannot pay taxes, or other legal conditions.

A Sales and Purchase Agreement (PPJB) is an agreement between a seller and a buyer relating to property, such as a house or land. Important points of a PPJB include the object of the sales and purchase agreement, the seller's obligations and guarantees, the buyer's obligations, and the terms of the agreement in accordance with government regulations. The property certificate remains in the name of the seller until the clauses in the agreement are fulfilled because it is temporary. In general, a PPJB is made to avoid selling property to another party. The main purpose of a PPJB is to create an official Deed of Sale and Purchase (AJB) before the Land Deed Making Officer (PPAT).

The PPJB deed is a preliminary agreement intended to bind a sale and purchase agreement with the aim of preparing or strengthening the main agreement to be implemented. Its function is to prepare, confirm, strengthen, regulate, change, or resolve the legal relationship between the parties involved. The PPJB functions as an initial step towards the main agreement. Article 1868 of the Civil Code regulates this deed, which is made by a notary. The article states that an authentic deed is an official document whose form has been determined by law and is made by or before an authorized public official at the location where the deed is made.

Based on Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), a notary is a public official who has the authority to make authentic deeds and other authorities regulated by this Law or other Laws. Article 15 paragraph (2) letter f UUJN also gives notaries the authority to make deeds related to the transfer of land rights; this means that notaries also have the authority to handle property matters.

Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 11/Prt/M/2019 concerning the Preliminary Home Sale and Purchase Agreement System stipulates the definition and function of the PPJB prepared before a notary. Article 1 Paragraph (1) and (2) of the Regulation explains that the PPJB is an agreement between three parties made before the official Deed of Sale and Purchase (AJB) is made before the Land Deed Making Officer (PPAT).

A good faith buyer refers to a buyer who is unaware that the person they are meeting is not the rightful owner of the goods they are buying. Muhammad Faisal said that three



main principles determine good faith in an agreement: carrying out the agreement honestly, not seeking fraudulent gain, and fulfilling obligations fairly.

Based on SEMA No. 4/2016, good faith buyers who receive protection in accordance with Article 1338 paragraph (3) of the Civil Code must meet several criteria, namely: the purchase is carried out through a legal procedure (such as a public auction, before a PPAT, or in accordance with customary law); carefully check the land status to ensure there are no disputes, guarantees, or mortgages.

Property developers often use the Sale and Purchase Agreement (PPJB) to bind the initial agreement between the seller and the buyer to facilitate the property sale and purchase process, but the PPJB does not result in the transfer of land rights; the transfer of new rights can occur through the Sale and Purchase Deed (AJB).

### **Legal protection for buyers in good faith for the purchase of shophouses based on the PPJB Paid-in-Purchase Agreement if the seller is in default in Indonesian judicial practice**

In this case, PT Sapphire Asset International (Plaintiff) and PT Inti Hosmed (Defendant I) were involved in a dispute over the sale and purchase of four shophouse units located in the Malioboro City Complex, Sleman. Defendant I and the Plaintiff signed a Sale and Purchase Agreement (PPJB) worth 9.68 billion rupiah which was paid in three installments on March 26, 2013. However, although the Plaintiff had paid all the debt, Defendant I had not completed the signing of the Sale and Purchase Deed (AJB) and the process of changing the name of the Building Use Rights (SHGB) certificate in the name of the Plaintiff. As the notary involved, Defendant II was sued for failing to complete the name change process even though it had been paid by the Plaintiff.

The Panel of Judges decided that Defendant I and Defendant II were proven to have committed a breach of contract because they did not fulfill the obligations stipulated in the Sale and Purchase Agreement (PPJB). The judge requested that the Sale and Purchase Deed (AJB) and Building Use Rights Certificate (SHGB) be immediately signed and changed to the Plaintiff's name. However, the judge granted part of the Plaintiff's lawsuit and ordered Defendant I, Defendant II, and Co-Defendants to pay the court costs jointly and severally. The judge rejected the petition requesting that the verdict be executed first (*uitvoerbaar bij voorraad*) because it did not fulfill the requirements of Article 180 paragraph (1) HIR/191 paragraph (1) RBG.

With binding legal force, PPJB functions as an initial agreement before making a Deed of Sale and Purchase (AJB). Although PPJB has not resulted in a direct transfer of rights, this agreement provides buyers with a legal basis to claim rights to the property they purchase. The Plaintiff and Defendant I made a valid PPJB in this case because it met the requirements stipulated in Articles 1320 and 1338 of the Civil Code. While Defendant I has not fulfilled the agreed obligations, the Plaintiff, acting in good faith, has paid off all of his obligations.

Defendant I failed to provide a certificate of ownership even though the Plaintiff had paid for it, which caused a breach of contract in this agreement. The Panel of Judges decided that the Plaintiff was a good buyer because he had fulfilled all his obligations in accordance with the PPJB. Defendant I was declared in breach of contract because he did not fulfill his promise to complete the certificate name change process, and Defendant II failed to perform his notary duties.

The PPJB's attitude in the sale and purchase of land rights is valid and can be implemented if it has fulfilled the requirements for a valid agreement as stated in Article 1320 of the Civil Code. In this case, the PPJB between the Plaintiff and the Defendant has fulfilled the legal requirements and requires both parties to carry out the obligations stipulated in the agreement, as proven by the Panel of Judges at the first level and the appeal level.

In essence, the relationship between the legal subject and the legally protected legal object gives rise to rights and obligations. This shows that legal protection is a guarantee or certainty that a person will get what is his/her right and obligation, so that the individual feels safe. The rights and obligations resulting from this legal relationship must be

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protected by law, so that society feels safe in carrying out its interests. Legal protection is theoretically divided into two categories.

1. Preventive Legal Protection
2. Preventive protection is known as preventive legal protection. The government provides this protection to prevent violations. This protection is provided through laws that set the outline or limits for carrying out a responsibility.
3. Repressive Legal Protection
4. Repressive legal protection is intended to resolve disputes after a violation has occurred. This protection can be in the form of punishment, such as fines, imprisonment, or additional penalties. This repressive legal protection aims to protect third parties who feel their rights have been violated, especially in cases of execution of seizure of goods that are legally owned by the party.

Every agreement must be carried out in good faith. In the Civil Code, good faith is regulated in Article 1338 paragraph 3, which emphasizes that all agreements must be carried out in good faith. This includes a sale and purchase agreement, where good faith is an important factor that provides legal protection to buyers in accordance with applicable regulations. To guarantee the implementation of the sale and purchase of land between the seller and the buyer, a Sale and Purchase Agreement (PPJB) is made as a preliminary agreement. Although PPJB has not been specifically regulated in law, this practice is commonly carried out to guarantee the rights and obligations of both parties, as long as the agreement meets the requirements for a valid agreement. The requirements for a valid agreement according to Salim (2006) are:

1. There is an agreement between the parties;
2. Competence in performing legal acts;
3. The existence of objects; and
4. There is a lawful cause.

Even though the legal decision in the case described has permanent legal force, the signing of the Deed of Sale and Purchase (AJB) has not yet occurred, even though the PPJB provides legal protection. This is because the seller, PT Intihosmed, is taking new legal action, which makes the buyer, PT Sapphire Asset International, have to wait for a complicated and expensive court process. The buyer has acted in good faith.

Legal protection is an effort to defend human rights that are violated by third parties, so that people can enjoy their rights as guaranteed by law. Apart from protecting legal subjects from arbitrary actions, this protection also protects their human rights and dignity. By upholding justice impartially, responsibly and abiding by the law, legal protection aims to create a safe and peaceful society.

The law functions as a protection of human interests, law enforcement must pay attention to 4 elements, namely:

1. Legal Certainty (Rechtssicherheit)
2. Legal Benefit (Zweckmassigkeit)
3. Legal Justice (Gerechtigkeit)
4. Legal Guarantee (Doelmatigkeit)

## CONCLUSION

The Sale and Purchase Agreement (PPJB) between PT. Sapphire Aset International as the buyer and PT. Inti Hosmed as the seller, according to the author, has met the requirements that form the legal basis for a legally binding agreement, in accordance with Article 1320 of the Civil Code. It contains objective and subjective requirements. The first subjective requirement is the existence of a written agreement between the parties stated in the PPJB in accordance with their respective identities. The second subjective requirement is the competence of the parties which is determined based on age and good mental health.

In addition, the clear object requirement of the agreement, namely the first objective requirement, has been met.

The legal force of PPJB is basically stated in Article 1338 of the Civil Code. This PPJB is also supported by applicable regulations, such as Law No. 1 of 2011, SEMA No. 4 of 2016, and PUPR Ministerial Regulation No. 11/PRT/M/2019. Therefore, the implementation of PPJB before the Deed of Sale and Purchase (AJB) is permitted as long as the requirements stipulated in the regulation are met. The benefit of PPJB for the parties is to provide a clear initial commitment regarding the object of the transaction, so that the process of transferring rights to AJB can run more smoothly.

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