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CASE STUDY

Developer Default under a Binding Sale and Purchase Agreement for an Off-Plan House: A Case Study of Altered Design, Delay and Specific Performance in Indonesian Contract Law

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ABSTRACT

Off-plan housing is usually sold under a binding sale and purchase agreement (perjanjian pengikatan jual beli, PPJB) signed before the house exists and before the title can be transferred. This case study analyses one such dispute under the Indonesian Civil Code. A buyer bought a two-storey house from a small developer with a mortgage loan. The developer then changed the position of the building without the buyer's consent, did not finish either floor within the agreed 180 and 280 days, and did not carry out a later settlement reached with the bank's help. The article asks whether the PPJB is valid, whether the developer is in default, and what remedy the buyer should seek. It applies the conditions of Article 1320 and the rules on default in Articles 1238, 1239 and 1243 of the Civil Code, and follows the four forms of default described by Subekti. It concludes that the agreement is valid and binding, that the developer is in default by performing otherwise than agreed and by delay, and that specific performance, backed by a penalty for each day of delay (dwangsom), suits the buyer better than cancellation. It also shows two weaknesses in the buyer's position: the buyer's own unpaid sums, and gaps in the evidence of consent and of the date of completion. The article closes with practical advice for developers and buyers on how a PPJB for an unbuilt house should be drafted.

Keywords: default; wanprestasi; binding sale and purchase agreement; off-plan housing; specific performance

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1. Introduction

A contract is the legal basis for most economic life. In the Indonesian Civil Code, a contract is an act by which one or more persons bind themselves to one or more others, and the obligation that results is a legal relation in which one party may demand something from the other.[1] When a party does not do what it promised, the Civil Code calls this *wanprestasi*, which this article translates as default. Default can be intentional or not, and it covers failure to perform, late performance and performance that is not as agreed.[2]

Housing is one of the commonest places where default occurs. Many houses in Indonesia are sold before they are built, by small private developers as well as large ones. The buyer pays a down-payment and takes a mortgage loan (*kredit pemilikan rumah*, KPR) from a bank, and signs a PPJB. The PPJB is used because the land or building is not yet ready for a deed of sale before a land deed official (*Pejabat Pembuat Akta Tanah*, PPAT), so that title cannot yet pass. It is therefore a preliminary contract in which the developer promises to build and hand over the house and the buyer promises to pay.[3] Consumer complaints about housing are frequent. Complaints about housing were the fourth largest category of complaints received by the Indonesian Consumers Foundation (YLKI) in 2023, at 6.7 per cent of 943 complaints.[4]

This article studies one such dispute as a case study. It is based on a legal opinion written for a buyer by a law student as a final project, and has been rewritten here without the names of the parties, the town or the housing estate, because the dispute has not been decided by a court and the facts come from the buyer's side alone. The article has three aims: to test the validity of the PPJB under Article 1320 of the Civil Code; to decide whether the developer's conduct is default and of what kind; and to identify which remedy, and which route to it, would best protect the buyer. The contribution is to put the facts of one concrete dispute against the elements of each article, so that the reader can see how the doctrine of default works on the problem of a changed design and a late delivery, and what a PPJB must contain to avoid them.

2. Method

The study is normative legal research on one case. It treats the facts as given in the buyer's account and in the documents described in the source, a PPJB and its summary of terms, and does not test them against the developer's version. The primary legal materials are Articles 1233, 1234, 1238, 1239, 1243, 1320 and 1338 of the Civil Code and the Herzien Inlandsch Reglement (HIR) on civil procedure. The secondary materials are textbooks, chiefly Subekti, and journal articles on default in the sale of land and houses. The analysis is by elements: each article is divided into its elements and each element is compared with the facts. The result is stated as a legal opinion on validity, default and remedy.

The study has limits. It rests on one party's account, and it contains no interviews and no court record. Dates and sums are those reported in the source and several are inconsistent (see the facts below). The facts are therefore used as a worked example and not as findings about a real person.

[1]Subekti, *Hukum Perjanjian* (2022); Nengsih EY and others, 'Hukum perikatan: Macam-macam perikatan' (2025) 3(1) 193.
[2]Hertanto S and Djajaputra G, 'Tinjauan Yuridis Terhadap Penyelesaian Wanprestasi dalam Perjanjian Jual Beli' (2024) 6(4) 10368.
[3]Palar VCE and Putra MFM, 'Wanprestasi Terhadap Akta Perjanjian Pengikatan Jual Beli (PPJB) Rumah Susun yang Dibuat oleh Notaris' (2023) 5(1) 35, https://doi.org/10.37680/almanhaj.v5i1.2091.
[4]Fauzansyah T, Yahya A and Jauhari I, 'Perlindungan Hukum Terhadap Konsumen Pembelian Rumah Melalui Perjanjian Pengikatan Jual Beli' (2019) 7(2).

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3. The Case

3.1 The parties and the agreement

In early 2022 a small developer offered a buyer a two-storey type 49 house, which could be designed to the buyer's wishes, for Rp455,000,000, with a down-payment of Rp55,000,000. The rest of the price was to be paid with a KPR loan from a state-owned bank. The buyer and the developer signed a PPJB, which the source dates 18 March 2024. The PPJB was used because the house and land did not yet qualify for a transfer of title. Its main terms are summarised in Table 1.

Table 1. Main terms of the PPJB. Source: summary in the buyer's case file, as reported in the source.

Subject	Term
Object	Two-storey house, type 49, on a plot of 100 m². Ground floor: living room, family room, kitchen, bathroom, front terrace and carport. Upper floor: three bedrooms, a bathroom and a balcony.
Price and payment	Price Rp455,000,000; down-payment Rp55,000,000; balance by KPR. The buyer must pay on time and the developer must acknowledge all payments.
Time for building	180 days for the ground floor and 280 days for the upper floor from the agreement, with a tolerance of at most 30 days. Late performance is compensated at 0.05% to 2% of the sums the buyer has paid.
Prohibitions on the developer	No change of design, specification or position of the house without consent; no cheaper materials; no delay without a valid reason.
Default and cancellation	The developer is in default if it does not build to specification, delivers late or changes the house without consent. The buyer may then claim repayment, a penalty or damages under Article 1243, and may cancel for a substantial breach.
Handover and disputes	Handover after completion, with a signed handover record (BAST). Disputes first by deliberation or mediation, then in the district court.

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3.2 What happened

The buyer chose the developer's own architect and was introduced to him. Alongside the written PPJB the buyer and developer also agreed orally on additions to the design and extra work, such as casting the roof slab; the developer said that extra floor area would cost only about Rp5,000,000 more. The architect promised a 3D image and a model, which never came. When the design was finally ready, a meeting was held at the developer's house, and it was agreed that the contractor would start building.

While building, the architect told the contractor, without the buyer's knowledge, to move the position of the house from the front of the plot to the back. The buyer found out when the boundary wall was being

built. The contractor said that the ground floor was only 49 m² and very small, and that adding floor area would cost about Rp100,000,000 and casting the roof another Rp30,000,000. The buyer, who found the architect absent from the site and hard to reach, wanted to stop the project, but was persuaded by the contractor and the developer to continue. The buyer agreed to the roof slab for Rp30,000,000 and paid Rp10,000,000 of it, leaving Rp20,000,000 unpaid.

The buyer later decided not to continue, because the changed position made the house unsuitable. The bank, however, would not allow construction to stop. At a meeting at the bank the developer agreed to continue building with an architect of its own choosing. If the house met the buyer's wishes, the buyer could keep it; if not, it would be sold to someone else and the buyer's outstanding sums would be deducted from the price. The source reports that no real progress followed, while the buyer must go on paying mortgage instalments on a house that is not finished and cannot be lived in. It also reports that the buyer sent one warning letter (*somasi*), after which the bank-assisted meeting took place, and that the developer then promised to finish within 12 months.

Three points in the facts need care. First, the source dates the PPJB 18 March 2024 but counts the building periods from 18 May 2024; the deadlines it gives (13 November 2024 for the ground floor and 21 February 2025 for the upper floor) follow from the later date. Second, the source states at one point that the floors were completed on 14 November 2024 and 22 February 2025, and at another that they were not completed at all; the second reading is the one on which its argument depends. Third, the buyer was herself behind on two sums, the Rp20,000,000 for the roof slab and, in the source's account, part of the down-payment. These points return in the analysis.

4. Analysis

4.1 Is the PPJB valid?

Article 1320 of the Civil Code makes an agreement valid when four conditions are met: agreement of the parties, capacity, a certain object and a lawful cause. The first two are subjective, and failing them makes the agreement voidable; the last two are objective, and failing them makes it void.[5] Each is met here.

Agreement. Agreement is the willing acceptance of the rights and duties the contract sets, and a defect of will (mistake, coercion or fraud) allows the party affected to ask for cancellation.[6] The buyer signed freely, in front of witnesses, and then paid and the developer began work. The source finds no sign of coercion, mistake or fraud at signing. The later changes to the design happened after the contract was made and bear on performance, not on the validity of the agreement.

Capacity. Both parties were adults, as their identity cards and marriage certificate show, and neither was under guardianship. Capacity is not only a question of age; it concerns the ability to understand the legal effect of one's acts, but nothing in the facts suggests that either party lacked that understanding.

Certain object and lawful cause. The object, building and delivering one type 49 two-storey house, is described room by room. That meets the requirement that an obligation have an object whose kind can be determined (Article 1333). The purpose, the sale of a house, is not contrary to statute, morality or public order (Article

[5]Romli M, 'Konsep syarat sah akad dalam hukum Islam dan syarat sah perjanjian dalam Pasal 1320 KUHPerdata' (2021).
[6]Arrodli AJ and others, 'Konsekuensi hukum cacat kehendak dalam pembentukan perjanjian sesuai Pasal 1320 KUHPerdata' (2024) 1(2) 1.

1337). The PPJB is therefore valid and, under Article 1338(1), binds the parties as a statute would, which is the principle of *pacta sunt servanda*.

4.2 What each party owed

In a PPJB the duties of the two parties are reciprocal from the moment of agreement. The buyer must pay the price on schedule, here by paying the down-payment and then the KPR instalments to the bank, and has the right to receive the house as agreed. The developer has the right to be paid and the duty to: build the two-storey house to the design; finish it within the stated periods; hand it over in the agreed condition and quality; not change the design, specification or position without consent; give accurate information on progress; and answer for delay and for harm caused by its fault.

These duties are of two kinds under Article 1234. The duty to build is a duty to do something (*berbuat sesuatu*). The duty to hand over the unit is a duty to give something (*memberikan sesuatu*). The prohibition on unilateral change is a duty not to do something (*tidak berbuat sesuatu*). The developer's conduct touches all three.

4.3 Is the developer in default?

Subekti identifies four forms of default: the debtor does not do what it promised; does what it promised but not as it should; does it late; or does what the agreement forbids.[7] Applying these to the developer gives the results in Table 2.

Table 2. Forms of default and the developer's conduct. Source: the authors' analysis of the facts in the source.

Form of default	Conduct	Finding
Does not perform at all	The house is not finished or handed over	Partly: construction has not stopped but has not progressed
Performs, but not as agreed	The position of the building was changed and the design, space and light were affected	Yes
Performs, but late	Neither floor was finished within 180 and 280 days plus 30 days' tolerance	Yes
Does what is forbidden	Changing the position of the house without consent is forbidden by the PPJB	Yes

On the change of position, the PPJB says the developer must not change the design, specification or position of the house unilaterally. The architect was the developer's own and acted on the developer's side, so his instruction to the contractor can be attributed to the developer. The effect was that the carport and terrace moved away from the front, the ground floor was built with little open space, and the balcony and ventilation changed. That is performance not as agreed and the doing of a forbidden thing. On delay, the periods ran out on the dates given earlier, and the house was not finished; a time-limited obligation that has expired puts the debtor in default without a warning, under the second limb of Article 1243.

[7]Subekti (2022).

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The developer's defence would probably be consent. The buyer did not at first object to the move, and later agreed to continue, to the roof slab for Rp30,000,000, and to the settlement at the bank. A court could read this as a waiver or a variation of the PPJB by conduct under Article 1338(2), which allows an agreement to be changed by mutual consent. The reply is that the PPJB requires the buyer's consent to a change of design and that the buyer's later acquiescence was given when she was told that building could not stop, and that the bank's insistence is what kept her in. A fair reading is that her continuing is evidence of consent to the roof slab, which is a separate additional job, but not of consent to the move of the house, of which she was never told before it was done. The evidence of this should be preserved, and a signed variation, which the PPJB lacked, would have settled the point.

A second defence arises from the buyer's own arrears. The source says the buyer fully performed her side, but it also says that Rp20,000,000 of the roof slab was unpaid and that part of the down-payment was paid in instalments. An obligation that is reciprocal can be answered by the exception of non-performance (*exceptio non adimpleti contractus*): a party who has not performed cannot fully demand performance. The sums are modest compared to the price of Rp455,000,000 and the developer's breaches are more serious, but a careful opinion should say that the buyer's claim should be put net of what she still owes, and that she should pay or tender those sums before suing.

4.4 The warning and the settlement

Under Articles 1238 and 1243, a debtor is in default only after a warning (*somasi*), unless the time for performance has passed and the obligation was bound to that time, in which case the default is automatic. The source argues that one warning is enough, because the Civil Code does not require several; practice often uses two or three to show the creditor's good faith, but what matters is that the warning is clear, demands performance and gives time to cure. The buyer sent one warning, and the developer's reaction was the meeting at the bank and an undertaking to finish within 12 months.

That undertaking can be read in two ways. It is an acknowledgement of the duty to build, which strengthens the buyer's position. It could also be a new agreement that replaced the original timetable by a new 12-month one, so that the developer would be in default again only after the 12 months had run out. The source says the 12 months have gone without real progress, so on either reading the developer is now in default; but the buyer should be ready to show when the 12 months began, which requires the meeting record. The source mentions the minutes only as evidence to be collected.

4.5 Which remedy?

Default gives the creditor four choices: performance; performance with damages; damages only; or cancellation with or without damages.[8] The purpose of damages is to put the creditor where she would have been had the contract been performed, and they cover costs, loss and interest.[9] Material loss is a loss in money or property; immaterial loss is a loss that has no money value, such as distress.

The source recommends performance: the developer should finish the house to the agreed specification, repair what is not as agreed, and hand over a house fit to live in. This is sensible for three reasons. The

[8]Subekti (2022); Sugiastuti NY, 'Ganti rugi akibat wanprestasi (perbandingan Kitab Undang-Undang Hukum Perdata Indonesia dan Civil Code of the Netherlands)' (2021) 201.

[9]Suganda MA, 'Pengaturan bentuk dan kualifikasi wanprestasi akibat ketidaksesuaian objek tanah dalam perjanjian jual beli' (2025) 13(10) 2241; Tatawi S, 'Tuntutan ganti rugi terhadap debitur wanprestasi dalam perjanjian sewa menyewa ditinjau dari Pasal 1243 KUHPerdata (BW)' (2021) 3(2) 128.

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buyer's aim from the start was to have a home. The house is partly built and so performance is still possible. And the buyer is paying the mortgage in any case, so cancellation would leave her owing the bank without a house unless the developer first repaid the bank. Performance has a weakness too: the buyer no longer trusts the developer, a court cannot easily supervise a building, and a judgment to finish a house can go unenforced. That is why the source asks the court also to order a penalty for each day of delay (*dwangsom*), set at Rp500,000 a day, to give the judgment force.

The route is a civil claim in the district court at the place where the property lies, which for immovable property is allowed by Article 118(1) HIR. The source asks the court to declare the PPJB valid and binding, to declare the developer in default, to order completion within a period fixed by the court or at most 90 days after the judgment is final, to order the daily penalty, and to order the developer to pay the costs. Evidence would include the PPJB, proof of the down-payment and instalments, photographs of progress, the record of the meeting at the bank and witness statements. One error in the source should be corrected: it names the buyer as defendant and the developer as claimant in one passage. The buyer is the claimant, and the developer the defendant.

4.6 Alternatives the buyer should consider

The source stops at civil law, but two other routes deserve a mention. First, because the buyer is a consumer and the developer a business operator, Article 19(1) of the Consumer Protection Law makes the operator answerable for loss caused by its goods or services, and the consumer-dispute bodies are an alternative to the courts. Second, the buyer could ask the bank, which has a stake in the project and had already brokered a meeting, to withhold further payments to the developer until work resumes. Either route is faster and cheaper than a full suit.

5. Discussion

The case shows how a default can arise even where the contract is in order. The PPJB was valid and its terms were good: they fixed the object, the periods, a tolerance, a compensation rate and a prohibition on change. What failed was the way the contract was carried out. The design changes were agreed orally, the changes of position were made by a third party who was not a party to the contract, nothing was recorded in a variation, and the schedule was neither monitored nor enforced. Under Article 1338(3), contracts must be performed in good faith, which includes openness about progress. A developer that moves a house without telling the buyer, and then asks her to pay for the roof slab that the move makes necessary, does not meet that standard.

The case also shows why a PPJB for an unbuilt house needs to be drafted with care. Three points stand out from the facts. The contract should say that any change to the design, specification or position needs a written variation signed by both parties. It should fix the date from which the building periods run, so that a dispute like that over 18 March and 18 May cannot arise. And it should say what happens to the mortgage when building is delayed, since the buyer's repayment duty to the bank runs on independently of the developer's duty to build. The compensation clause, 0.05% to 2% of the sums paid, is also too vague to apply: the PPJB should say which rate applies to what length of delay.

For buyers, the practical lessons are to read and understand the PPJB before signing, to ask for written answers to anything unclear, to refuse oral side-arrangements for design and price, and to keep a file of payments, photographs and messages. These are the same steps the source recommends. For developers, the lesson is to supervise architects and contractors closely, because the developer is answerable for them.

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6. Conclusion

The PPJB in this case is valid, because it meets the four conditions of Article 1320, and it binds the parties under Article 1338(1). The developer is in default: it performed otherwise than agreed by changing the position of the building without consent, it did not finish within the agreed periods, and it did not carry out the undertaking it gave at the bank. The buyer may demand performance, which is the most suitable remedy because the house is partly built and she wants it completed, with damages for any proven loss. A penalty for each day of delay would make the order effective. A warning has been sent, and the developer's undertaking at the bank is evidence of the duty.

The buyer's position is weaker than the source suggests in two respects. She still owes sums for the roof slab and the down-payment, which she should pay or offer to pay, and the evidence on consent to the changes and on the dates is not yet complete. The article recommends that buyers insist on written variations and that developers supervise their architects and contractors. A larger study of reported court decisions on defaulting developers, with the courts' treatment of consent and delay, would be a useful next step.

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