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## The Urgency of Reforming the Law on Pre-Order Property Purchases Without Banks: Towards a More Transparent and Accountable System

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**Abstract:** This paper examines in depth the practice of off-plan property sales without banks in Indonesia, which is growing in popularity alongside the growth of the property industry. This study aims to analyze the relevant legal regulations, identify the legal risks faced by consumers, and formulate recommendations to strengthen consumer protection. The research method uses a normative juridical approach, examining legislation, court decisions, and legal literature. The results show that the existing legal framework is inadequate to protect consumers in off-plan transactions without banks, giving rise to significant risks such as developer default, poor building quality, and information asymmetry. Existing consumer protection mechanisms, such as the UUPK and BPSK, are also considered ineffective. This paper recommends revising the UUPK, implementing escrow accounts, requiring project completion insurance, strengthening government supervision, and improving consumer literacy. With the implementation of these recommendations, it is hoped that a more fair, transparent, and sustainable property industry can be created, which protects consumer rights and encourages inclusive economic growth.

**Keyword:** Legal Reform of Off-Plan Property Sales Without Banks: UUPK, Escrow, Insurance, Supervision, Literacy

### INTRODUCTION

The Indonesian property sector in 2024 showed positive and stable growth, reflected in the increase in the Housing Property Price Index (IHPP) by 1.46% compared to the previous year, which reflects price stability in the primary market, (Bank Indonesia, 2024) as well as the position of the property sector as one of the main contributors to national investment with total investment realization reaching IDR 1,714.2 trillion or an increase of 20.8% from the previous year. (Asmaasyi, 2024) The trend in residential property sales also increased significantly. For example, in the first quarter of 2024, there was a 31.16% increase in sales compared to the same period the previous year, which was partly driven by consumer interest in pre-order or off-plan properties. (Bank Indonesia, 2024) In terms of financing, the majority

of residential property development still relies on developers' internal funds, accounting for 74.31% of total financing. Meanwhile, the majority of consumers continue to utilize the Home Ownership Credit (KPR) scheme, which accounts for 75.80% of total financing. This demonstrates that despite significant bank involvement, internal funds play a significant role in driving the growth of this sector. (Bank Indonesia, 2024)

Pre-order or off-plan properties are property purchase schemes that occur before construction is completed, often even before construction begins (Katwa, 2023). In practice, consumers purchase property units based on design drawings, floor plans, or house models provided by the developer, with an agreed price and handover schedule at a future date. (Do, 2025) This scheme is increasingly popular because it allows consumers to obtain more competitive prices than purchasing completed properties and provides developers with the opportunity to obtain initial funds to finance construction. (Hendri, 2024) Despite offering various advantages, pre-order transactions also carry high risks, such as construction delays, substandard building quality, or even the possibility of the developer failing to complete the project. (Nikmah, 2020) These risks require special attention to legal protection mechanisms and information transparency so consumers can make more informed decisions.

In pre-order transactions without bank involvement, consumers typically make payments directly to the developer through several stages, as agreed in the agreement. This system differs from bank financing, where the majority of the funds come from the consumer's mortgage application and are supervised by the banking institution, thus providing relatively more controlled risks for consumers. (Bhakti, 2019) Without bank involvement, consumers bear greater risks because there is no third-party guaranteeing funds or construction progress. Furthermore, these direct transactions require transparency from the developer regarding the use of funds, construction schedules, and project completion guarantees. (Rimbawa, 2021) The main differences between bank-free and bank-based pre-order schemes lie in oversight, fund security, and legal protection mechanisms: bank-free schemes are more flexible and faster, but more vulnerable to the risk of developer default, while bank-based schemes offer stronger protection despite more complex procedures.

Property sales in Indonesia are regulated by several laws and regulations, both general and specific. Law Number 8 of 1999 concerning Consumer Protection (UUPK) serves as the primary legal basis governing the rights and obligations of consumers and business actors, including property developers. Article 7 of the UUPK states that business actors are required to provide true, clear, and honest information regarding the condition and guarantees of the goods or services offered. Furthermore, Article 19 of the UUPK regulates the business actor's obligation to provide compensation, restitution, or a refund if the goods or services received by the consumer do not meet the agreement. (Setyawati, 2017) On the other hand, the Civil Code regulates the principles of obligations and contracts that form the basis of the legal relationship between consumers and developers, particularly regarding sales and purchase agreements and defaults. (MR, 2024) Several Government Regulations, such as Government Regulation No. 64 of 2016 concerning the Implementing Regulations of the UUPK, also regulate standards for information delivery and consumer protection in property transactions, although specific provisions for pre-order transactions are still limited. (Endarti, 2024)

For consumer protection, the Consumer Dispute Resolution Agency (BPSK) is the official institution that handles disputes between consumers and business actors, as stipulated in Article 47 of the Consumer Protection Law (UUPK). (Dinata, 2025) Consumers who experience developer default or fraud in pre-order transactions can file a complaint with the BPSK for mediation or a binding decision. Furthermore, the UUPK also grants consumers the right to seek compensation through the courts. (Suryani, 2025) However, practice shows that this mechanism is often slow, the procedures are complex, and the results are not always

satisfactory to consumers, especially in the case of pre-order properties involving large capital and lengthy construction risks.

Despite the legal framework and dispute resolution institutions, pre-order transactions without bank involvement still face several weaknesses and legal loopholes. First, the UUPK and BPSK do not specifically regulate the use of consumer funds in pre-order projects, so the risk of embezzlement or non-transparent use of funds remains high. Second, there is no legal obligation to provide escrow accounts or project completion insurance to ensure the security of consumer funds. Third, government oversight of private developers offering pre-orders remains limited, making it difficult for consumers to obtain complete information regarding the developer's track record and capabilities. As a result, despite the existence of a legal framework, consumer protection in pre-order transactions without banks is considered suboptimal and requires reform to increase transparency and accountability. (Gomulja, 2020)

Pre-ordering property transactions without bank involvement poses various risks for consumers, one of which is developer default. Default can occur when a developer fails to complete a project on time or even at all. This is a serious problem because consumers have paid the down payment or installments as agreed, but do not receive the promised property unit. In addition to financial losses, default also creates legal and psychological uncertainty for consumers who hope to own a home as planned. Cases of default are common in various regions; for example, several apartment and housing projects have stalled due to developers experiencing financial difficulties or poor project management. (Suryanto, 2022)

The second problem that frequently arises is building quality that does not meet promises. In pre-order transactions, consumers purchase property based on designs and specifications provided by the developer, making it difficult to verify the physical quality of the building before construction is complete. As a result, many consumers experience discrepancies between initial promises and the final product, such as inferior materials, different unit sizes, or incomplete amenities. This situation creates conflict between consumers and developers, while existing legal protections do not provide robust mechanisms to ensure that promised quality standards are met.

Furthermore, there is a problem of information asymmetry between developers and consumers. Developers have full access to project information, costs, and construction schedules, while consumers often receive only limited and often non-transparent information. This information asymmetry makes it difficult for consumers to accurately assess risks, such as understanding the developer's track record, construction progress, or the use of funds already paid. Case studies show that this lack of information often leads to disputes, such as consumers demanding refunds or compensation after projects are delayed or stalled. For example, in several court decisions related to housing pre-orders in Jakarta, consumers had to go through lengthy processes to sue developers who failed to complete projects or reduced the building quality compared to the initial agreement, highlighting the need for stronger protections and greater transparency.

Current legal protections are considered insufficient to address the complexities and risks of pre-order property transactions without bank involvement, as existing regulations, such as the Consumer Protection Law (UUPK) and the Financial Services Authority (BPSK) mechanism, do not specifically address the use of consumer funds, project completion guarantees, or building quality standards. (Saraswati, 2025) These shortcomings have far-reaching economic and social implications: consumers risk significant financial losses, irresponsible developers can damage the industry's reputation, and public trust in the property sector declines. Furthermore, unclear regulations and minimal government oversight increase the potential for conflict, lengthy legal disputes, and fraudulent practices. Therefore, legal reform is crucial to strengthen transparency by requiring clear and accurate disclosure of information; increase accountability through the use of escrow accounts, project completion

insurance, and stricter oversight; and promote consumer literacy, so that the public better understands their rights, the risks they may face, and the protection mechanisms available, thus creating a safer, fairer, and more sustainable property industry.

## **METHOD**

This research uses a normative juridical method, emphasizing the analysis of laws and regulations, legal doctrine, and legal literature to understand the legal framework and issues that arise in pre-order property transactions without bank involvement in Indonesia. The research approach is carried out through a legislative approach, namely examining the Consumer Protection Law (UUPK), the Civil Code, the Housing and Settlement Areas Law, as well as government and ministerial regulations related to property transactions, and a conceptual approach, by discussing legal concepts, consumer protection theories, and the principles of transparency and accountability in property transactions. The research data sources consist of primary data in the form of court decisions, PPJB documents, and related regulations, as well as secondary data in the form of books, journals, articles, news, and relevant legal literature. Data collection techniques are carried out through library research and documentation of court decisions and applicable regulations. Furthermore, the data analysis technique used is a qualitative analysis with a descriptive method, comparing existing regulations, identifying legal loopholes, and formulating recommendations for legal reform to improve consumer protection, transparency, and accountability in pre-order property transactions.

## **RESULT AND DISCUSSION**

### **Legal Protection for Pre-Order Property Transactions Without Banks in Indonesia**

Pre-order property transactions in Indonesia have a strong legal basis, both in terms of civil agreements and consumer protection. The Civil Code (KUHPerdata) is the primary basis for every property sale and purchase agreement, including the Sales and Purchase Agreement (PPJB). Article 1320 of the Civil Code stipulates the requirements for a valid agreement, namely the agreement of the parties, the capacity to enter into a contract, a clear object, and a lawful cause. In addition, Article 1338 paragraph (1) emphasizes the principle of freedom of contract and grants legal force to all valid agreements, while Article 1457 defines a sale and purchase as an agreement between a seller and a buyer to deliver an object and pay the agreed price. The Civil Code also regulates the seller's obligations in Articles 1474 and 1491 to 1503, including guarantees for secure possession of the object and freedom from third-party claims and guarantees against hidden defects in the property. (Alfarisi, 2023)

In addition to the Civil Code, Law Number 8 of 1999 concerning Consumer Protection (UUPK) is an important regulation in pre-order transactions, particularly when consumers purchase property from developers as business actors. Article 4 of the UUPK guarantees consumer rights, including the right to comfort, security, safety, and the right to receive correct, clear, and honest information. Article 7 requires business actors to act in good faith, provide transparent information, and provide compensation if goods or services do not meet the agreement. The prohibition on business actors breaching their promises is stipulated in Article 8, paragraph (1), letter f, and Article 16, which are relevant to pre-orders or delays in property handover. Furthermore, Article 19 regulates developers' liability for consumer losses, while Article 62 stipulates criminal sanctions for business actors who violate the UUPK provisions. (Setiawan, 2025)

At the property-specific regulatory level, Law Number 1 of 2011 concerning Housing and Residential Areas (UU PKP) regulates the sale of houses still under construction through the PPJB system. Article 42, paragraph (1) states that single-family homes, terraced houses, and flats can be marketed on a pre-order basis in accordance with statutory provisions.

Article 134 prohibits the construction of housing that does not meet agreed specifications and facilities, while Article 151 stipulates criminal sanctions in the form of fines or imprisonment for violators. Furthermore, Government Regulation No. 12 of 2021 and Minister of Public Works and Public Housing Regulation No. 16 of 2021 provide technical guidelines for implementing PPJB, specifically for public housing and flats, and regulate the rights and obligations of developers and consumers in pre-order transactions. (Gunadi, 2024)

In addition to laws and government regulations, regulations regarding third parties in property transactions are also regulated. Minister of Trade Regulation No. 51 of 2017 concerning Property Trading Intermediary Companies regulates the obligations of property brokers or intermediaries, including the requirement to possess a Property Trading Intermediary Company Business License (SIU-P4). This regulation is important because property intermediaries play a role in bridging consumers and developers, as well as helping to ensure information transparency and transaction legality. With a combination of the Civil Code, the Consumer Protection Law (UUPK), the Taxable Goods and Services Law (UUPK), the Government Regulation (PP), the Minister of Trade Regulation (Permendag), and related technical regulations, the legal framework for pre-order property transactions in Indonesia is relatively comprehensive, although in practice, various challenges remain related to implementation, oversight, and consumer protection.

Consumer protection mechanisms for pre-order property transactions in Indonesia are facilitated by various existing regulations, one of which is the Consumer Dispute Resolution Agency (BPSK). The BPSK is an official institution established under Law Number 8 of 1999 concerning Consumer Protection to handle disputes between consumers and business actors. Consumers who experience losses due to developer default or property non-conformity can file a complaint with the BPSK for mediation or a binding decision. This mechanism is expected to provide an alternative dispute resolution outside the courts, resulting in a faster and relatively lower cost compared to litigation. (Hilmy, 2022)

In addition to the BPSK (Procurement and Purchase Supervisory Agency), consumers' rights to claim damages or compensation are also guaranteed in the Consumer Protection Law (UUPK). Article 7 of the UUPK requires business actors to provide compensation if the goods or services provided do not meet the agreement, while Article 19 affirms the business actor's responsibility for consumer losses. Consumers can seek compensation through civil law if the BPSK mediation mechanism is unsuccessful. This right provides a legal basis for consumers to protect their interests, although in practice, the law enforcement process sometimes faces administrative obstacles, and evidence is difficult to obtain. (Susandi, 2025)

In addition to institution-based protection, consumers also have protection through contractual mechanisms. The Sales and Purchase Agreement (PPJB), or pre-order agreement, serves as a formal instrument binding on developers and consumers. The PPJB regulates the rights and obligations of each party, including payment schedules, property specifications, and handover schedules. These protection clauses provide a legal basis in the event of default, delays, or non-conformity in property quality. Therefore, this formal contract serves as a crucial pillar of consumer protection before property construction is completed. (Wibisana, 2024)

In practice, consumer protection regulations often face challenges when implemented by developers and related institutions. Some developers apply varying contract standards, and the information provided to consumers is sometimes incomplete or lacking transparency, particularly regarding construction progress and the use of pre-order funds. This creates a significant information asymmetry between developers and consumers, resulting in legal protections that do not fully guarantee consumer interests.

The performance of the BPSK (Regional Property Security Agency) in handling pre-order property disputes also shows varying results. Some reports note that the BPSK has

succeeded in resolving disputes through mediation quickly, but there are also cases where the process takes a long time due to contract complexity, the number of parties involved, or a lack of evidence. This demonstrates that although the BPSK has legal authority, its effectiveness in protecting consumers depends heavily on the actual conditions on the ground and consumers' own legal awareness.

The Meikarta Project case is a classic example of the risks of pre-order or pre-project selling property transactions, where consumers purchase units that are still in concept form or have not yet been built. The project experienced significant delays in handover, with apartment units originally promised to be delivered between 2019 and 2022 being pushed back to 2027, according to the PKPU Decision. This resulted in a default that harmed hundreds to thousands of buyers who had made installments or paid in full under the Sales and Purchase Agreement (PPJB). Furthermore, the project was entangled in licensing issues and corruption cases, indicating that sales were carried out before all legal requirements and permits were fully met. In terms of legal protection, this case highlighted the weaknesses of the existing system. The PKPU Decision of the Central Jakarta Commercial Court No. 328/Pdt.Sus-PKPU/2020 validated the developer's settlement proposal, binding all consumers to the new handover schedule, even though this schedule was highly disadvantageous and limited individual rights to demand refunds or cancellations. Meanwhile, the Cikarang District Court Decision No. Case No. 162/Pdt.G/2020 demonstrates that while some consumers have successfully won individual default lawsuits, enforcing the judgment becomes difficult or irrelevant after the PKPU (Contract of Purchase Order) binds all creditors. The Meikarta case highlights that despite the existence of a legal framework and consumer protection mechanisms, implementation in the field remains highly vulnerable to the risk of developer problems and is unable to fully protect consumer interests.

Although the legal framework for pre-order property transactions in Indonesia is relatively comprehensive, a number of significant legal loopholes remain. One example is the lack of an obligation for developers to place consumer funds in escrow or guarantee project completion through insurance. This leaves consumers highly vulnerable to the risk of developer default, as the money paid can be used for other purposes or other projects without any guarantee of repayment. Furthermore, existing regulations do not specifically address the protection mechanisms for funds or building quality in pre-order transactions, leaving consumers to bear the risk directly.

Beyond legal loopholes, consumers still face real risks despite existing regulations, such as delayed handovers, substandard building quality, and information asymmetry between developers and buyers. Cases like Meikarta demonstrate that developers can experience financial or licensing issues, while consumers who have paid have no concrete guarantee of receiving the units as agreed. Even when consumers take legal action through the BPSK (Regional Property Regulatory Agency) or the courts, decisions are sometimes difficult to enforce or delayed due to complex legal processes and the existence of PKPU (Deferred Housing Loan) regulations that bind all creditors.

In addition to legal risks and loopholes, there are obstacles to legal implementation on the ground that weaken consumer protection. Government oversight of private developers remains limited, while consumers' understanding of their legal rights also varies. The BPSK, despite its authority to resolve disputes, sometimes faces limited resources and complex cases, particularly for large projects involving thousands of buyers. As a result, available legal protection mechanisms are often ineffective in preventing consumer losses and insufficient to deter developers who violate agreements.

## **Legal Reform Efforts to Increase Transparency and Consumer Protection in Such Transactions**

As pre-order property transactions in Indonesia increase, the need to strengthen consumer protection and transparency in the property buying and selling system becomes increasingly urgent. Pre-order practices, which are still vulnerable to the risks of developer default, delayed handovers, substandard building quality, and information asymmetry, demonstrate that the current legal framework is insufficiently effective. Therefore, legal reform efforts are needed that not only improve formal regulations but also introduce concrete action mechanisms that can protect consumers, increase developer accountability, and encourage a fairer and more sustainable property industry. This reform encompasses various aspects, including revising laws, implementing financial guarantees through escrow and project insurance, government oversight, consumer education, and digitizing information to make the entire transaction process more transparent and secure.

A crucial first step in legal reform is revising and strengthening regulations governing pre-order property transactions. Revisions to the Consumer Protection Law (UUPK) are needed to include specific provisions requiring developers to use escrow accounts to hold consumer payments, guarantee project completion through insurance, and establish transparency standards for information regarding property specifications, construction schedules, and potential risks. These provisions must be clearly stipulated so that every business actor is not only bound by the obligation to provide information but also financially and legally responsible for failing to fulfill the agreement. With this revision, consumers will have stronger legal certainty, and developers will be encouraged to carry out projects professionally and accountably.

Furthermore, revisions to Law Number 1 of 2011 concerning Housing and Settlement Areas (PKP Law) and its derivative regulations must also be made to clarify licensing requirements before developers conduct pre-order sales. These regulations should stipulate that projects can only be marketed if all development permits have been completed and verified, including building permits, environmental permits, and spatial planning approvals. It will minimize the risk of selling properties that do not yet have full legal standing and protect consumers from losses due to developer non-compliance with regulations.

The second step is the implementation of mandatory escrow accounts and project insurance. Every consumer payment in a pre-order transaction must be placed in an escrow account managed by an independent third party, so that the funds can only be used for the construction of the purchased unit and are not misused for other projects. This escrow account must be supervised by a government agency or official financial institution authorized to monitor the use of funds, ensure transparency, and protect consumers from the risk of loss due to developer default.

In addition to escrow, developers are also required to have project completion insurance that protects consumers if construction is not completed as agreed. This insurance must cover building completion costs, compensation for delayed handover, and protection against building quality issues. With this mechanism, consumers have concrete assurances, and developers are encouraged to complete projects according to promised standards.

The third step is to strengthen oversight by the government and related institutions, particularly the Housing and Settlement Agency, of pre-order projects. The government must conduct regular monitoring of permits, construction progress, and the use of consumer funds. Each pre-order project is required to periodically report construction progress and the realization of fund use through an official digital platform accessible to consumers and regulators. The government must also take firm action against developers who violate permits or project specifications through administrative sanctions, fines, and even business license revocation if found guilty of serious violations.

Furthermore, oversight must be complemented by an independent control mechanism involving auditors or third-party supervisory bodies to assess developers' compliance with legal regulations and project quality standards. These supervisory bodies can also provide periodic recommendations for improvement and report findings to the government and the public. By strengthening regulations, implementing escrow accounts and insurance, and stricter oversight, it is hoped that pre-order property transactions will become more transparent, accountable, and secure for consumers, while simultaneously promoting a professional and sustainable property industry.

The next legal reform effort is improving consumer literacy and education, which is a crucial step in protecting buyers' interests in pre-order property transactions. The government and property professional associations can regularly organize educational programs through seminars, workshops, and digital media to provide an understanding of consumer rights, potential risks, and complaint mechanisms in the event of developer default. This education aims to increase consumer awareness of the potential risks of pre-orders and enable them to make more informed decisions before entering into a transaction.

Furthermore, providing a standard PPJB contract guide and a project legality checklist are concrete steps that can facilitate consumer risk assessment. This guide can cover mandatory contractual requirements, building quality standards, construction schedules, permit status, and the use of payment funds. The project legality checklist also helps consumers verify whether developers have met legal and technical requirements, thereby minimizing the risk of information asymmetry. With this tool, consumers can be more proactive in protecting their rights before making a purchase.

Another important step is the implementation of stricter legal sanctions against developers who violate pre-order regulations. The government needs to clearly define administrative, criminal, or financial sanctions for developers who delay handovers, default on contracts, or provide misleading information to consumers. These sanctions should be implemented not only as a form of punishment but also as a deterrent, encouraging developers to be more disciplined in completing projects according to agreements.

In addition to conventional sanctions, strengthening law enforcement through cross-agency coordination is a crucial strategy. For example, supervision by the Housing Agency, the Police, and the Prosecutor's Office can be carried out in an integrated manner to prosecute developers who violate the law, thereby speeding up and making legal proceedings. This integration of law enforcement is expected to reduce the practice of contract neglect and the risk of loss to consumers, especially in large-scale projects involving multiple buyers.

Digitization and transparency of information are also strategic steps in legal reform. The government can develop an official online platform that allows consumers to monitor project development progress, permit status, and the use of pre-order funds in real time. This platform must be publicly accessible and provide accurate information, allowing consumers to assess project progress and take action if there are any discrepancies.

Furthermore, data integration between developers, the government, and consumers is crucial for minimizing information asymmetry. With an integrated system, developers are required to regularly report project progress and fund usage, while the government can monitor and issue warnings or sanctions for violations. Consumers can also utilize this data to ensure their rights are met and pre-order risks are better managed. With a combination of education, strict sanctions, and information digitization, this legal reform is expected to create a safer, more transparent, and more accountable pre-order property transaction system.



## CONCLUSION

Based on an analysis of the practices and regulations surrounding pre-order property transactions without bank involvement in Indonesia, it can be concluded that the current legal framework, while relatively comprehensive, still has many limitations in protecting consumers. Regulations such as the Civil Code, the Consumer Protection Law (UUPK), the VAT Law (UU PKP), and their derivative regulations provide the legal basis for sales and purchase agreements and consumer rights. However, legal loopholes regarding the use of funds, project completion guarantees, and practical protection mechanisms remain wide open. The risk of developer default, delayed handover, substandard building quality, and information asymmetry remain major issues, as seen in the Meikarta Project case study. Dispute resolution mechanisms through the BPSK (Regional Development Supervisory Agency) or the courts often face implementation challenges and lengthy processes, resulting in suboptimal consumer protection.

Suggestions include comprehensive and concrete legal reforms to create safer and more transparent pre-order property transactions. These reforms include revising the UUPK and the VAT Law to emphasize the mandatory use of escrow, project insurance guarantees, and information standards for consumers; strengthening oversight by government and relevant institutions; improving consumer literacy through education and contract guidance; and implementing stricter legal sanctions for developers who violate regulations, and digitizing and integrating project data to minimize information asymmetry. Implementing these measures is expected to not only protect consumer rights but also encourage developers to operate professionally and accountably, thus creating a sustainable, transparent property industry capable of supporting inclusive national economic growth.

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