



## **Enhancing Legal Certainty for Consumers in Apartment Unit Trade: A Comparative Analysis of Dispute Settlement Agreements in Indonesia and the Netherlands**

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### **Abstract**

The purpose of this study to analyze the dispute settlement binding Trade Agreement (PPJB) unit flats through litigation in Indonesia compared to the Netherlands and to analyze the reconstruction of the law in dispute resolution PPJB in Indonesia to provide legal certainty. The main problem is the dispute resolution of the PPJB in Indonesia has not provided legal certainty due to court decisions that are difficult

to implement due to weak supervision. This research method is normative research with a comparative approach. Urgency of this paper is that 276 PPJB dispute in Indonesia are resolved through the courts are difficult to implement. The novelty of this study lies in the researchers' efforts to reconstruct the law of flat, especially in the implementation of PPJB dispute court decisions. The results PPJB dispute settlement unit flats through litigation, experienced obstacles in the application of the judge's ruling, which won the consumer as the injured party. The obstacles to the application of the ruling do not provide legal certainty for consumers. In the Netherlands, the settlement of flat sale and purchase disputes is carried out through non-litigation channels that are more effective in providing legal certainty. Legal reconstruction in the settlement of PPJB disputes in Indonesia in order to provide legal certainty of consumers is by regulating the legal umbrella for the formation of the functions of supervisory institutions and guideline for the implementation of decisions and supervision of the implementation of decisions in the flat house law and the housing and settlement law.

### **Keywords**

*Dispute Resolution, Binding Trade Agreement (PPJB), Strata Title*

### **Introduction**

The constitutional rights mandated in Article 28h paragraph (1) of the Constitution of 1945 (UUD 1945) are that Everyone has the right to live in inner and outer prosperity, to live in a decent and healthy environment, and to access healthcare services. In this article, it is explained that residence is one of the basic needs for Indonesian citizens (WNI). The existence of constitutional rights for every citizen, in this case, the government is responsible for meeting everyone's needs for a decent and healthy place to live, including by having vertical housing or flats. Therefore, the right of residence for everyone is embodied in Law Number 20 of 2011 concerning flats (*Undang-Undang Rumah Susun*).

Based on Article 42 of the community flats law, it has been made easier to have units of flats even though the construction of flats has not

been completed. The community simply pays the down payment offered by the apartment developer which is tied through the preliminary sale and purchase agreement (PPJB) of the apartment unit. Conversely, for apartment developers, although construction has not yet begun, apartment developers can Market apartment units to the wider community. This is as contained in Article 42 paragraph (1) of the flats law which states that development actors can carry out marketing before construction is carried out. However, the marketing must meet the requirements, namely certainty of space allocation, certainty of land rights, certainty of ownership status of flats, licensing for the construction of flats, and guarantees for the construction of flats from the guarantor institution.

Furthermore, under Article 43 Paragraph (1) and Paragraph (2) of the flats law, PPJB confirms that the process of buying and selling units of flats between the community and the developer of flats carried out before the construction of flats is completed must be made with an authentic deed before a notary. Authentic PPJB deed must meet the requirements of certainty over the status of land ownership, IMB ownership, public utilities, infrastructure, and facilities are all present, and at least 20% (twenty per cent) of the land is developed, and the things agreed.<sup>1</sup>

At present, the development of flats in Indonesia is increasing, based on data from the Central Statistics Agency (BPS) regarding housing indicators seen in the last 3 (three) years, namely in 2020 as much as 59.54%, in 2021 as much as 60.90%, and in 2022 as much as 60.66%. Based on the above data indicates that the need for a habitable place to live is very high.<sup>2</sup> Along with the rapid development of flats in

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<sup>1</sup> See Landya Maria Simatupang, Imam Koeswahyono, and Bambang Sugiri. "Rasio Legis Pasal 43 Undang-undang Nomor 20 Tahun 2011 Terkait Dengan Implementasinya." *Masalah-Masalah Hukum* 46, no. 4 (2017): 291-298; Anda Setiawati, "Upaya Hukum Terkait Masalah Penjualan Rumah Susun Yang Diikat dengan PPJB." *Hukum Pidana dan Pembangunan Hukum* 1, no. 2 (2019). See also Fida Nabilah, Taufiq, Mohammad Hamidi Masykur, and Supriyadi Supriyadi. "Challenges Arising from Article 22 (2) of Ministerial Regulation ATR/BPN No. 6/2018 on Complete Systematic Land Registration (PTSL) Pertaining to Insufficient or Missing Evidence of Community Land Ownership." *Unnes Law Journal* 9, no. 2 (2023): 419-440.

<sup>2</sup> Badan Pusat Statistik, "Persentase Rumah Tangga Yang Memiliki Akses Terhadap Hunian Yang Layak dan Terjangkau Menurut Provinsi", *Online*, 2022,

Indonesia, in line with the increasing problems in the fulfilment of PPJB that has been agreed by the community and the developer of flats. In the period from 2019 to 2022, a total of 46 reports related to PPJB disputes in flats or apartments in Indonesia until 2019 were submitted to the Ombudsman.<sup>3</sup> Then from 2020 to 2022, data from the Directorate General of Housing was obtained, as many as 230 public complaints related to PPJB dispute.<sup>4</sup> A total of 276 PPJB disputes in Indonesia have been resolved through the courts. The PPJB dispute was dominated by the event of default by the developer of the flats, which until the end of the PPJB period, the construction of the flats had not been completed while the community (consumers) of the flats had made a down payment. This figure reflects that PPJB although it has been made authentically before a notary in practice is so easily violated by the developer to cause losses to the consumer.

Then the issue of PPJB units of apartment units is increasingly complicated when a number of 276 PPJB disputes have been resolved through the courts and have obtained an *incracht* decision (with permanent legal force), but in fact, the court's decision is difficult to implement or execute. For example, the decision of the Surabaya District Court No. 664/Pdt.G/2017/PN.SBY, where the judge decided the developer of the flats in the lawsuit is the defendant, has been found guilty. However, after the court decision, the plaintiff, who in this case is the consumer of the apartment unit, cannot find the existence of the developer, so the consumer has not received compensation to be paid by the developer.<sup>5</sup>

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<https://www.bps.go.id/indicator/29/1241/1/persentase-rumah-tangga-yang-memiliki-akses-terhadap-hunian-yang-layak-dan-terjangkau-menurut-provinsi.html>.

<sup>3</sup> Suhaiela Bahfein, "Ombudsman Temukan 46 Laporan Konflik Penghuni dan Pengelola Apartemen", *KOMPAS*, 2023, <https://properti.kompas.com/read/2020/08/05/142752221/ombudsman-temukan-46-laporan-konflik-penghuni-dan-pengelola-apartemen?page=all>.

<sup>4</sup> Real Estate, "Pemerintah Sosialisasikan Perlindungan Konsumen Bidang Perumahan", *Online*, 2023, <https://realestat.id/berita-properti/pemerintah-sosialisasikan-perlindungan-konsumen-bidang-perumahan/>.

<sup>5</sup> Abdul Salam, "Kekuatan Hukum Perjanjian Pengikatan Jual Beli Atas Satuan Rumah Susun Terhadap Developer Yang Melakukan Wanprestasi (Studi Putusan-Putusan Pengadilan)." *Indonesian Notary* 3, no. 1 (2021). *See also* Sonang Nimrot

Regardless of the state's efforts in ensuring every Indonesian citizen is entitled to a decent place to live. Cases of legal uncertainty in the binding agreement for the sale and purchase of apartment units are not uncommon in Indonesia, which is considered to be detrimental to others so that buyers also take the path of litigation in resolving conflicts of the binding agreement for the sale and purchase of apartment units. Based on Article 105 of the flats law, it is a legal provision that reflects the government's seriousness in ensuring the welfare of the community in getting a decent place to live. By taking into account the rapid population development, housing needs also require special attention, because population growth is not in line with the increase in housing land. It can be said that residential land is increasingly reduced when compared to the number of existing residents. Taking into account the development of the need for less and less housing land, the state to realize a livable and affordable home in a healthy, safe, harmonious, orderly, planned, integrated and sustainable environment, enacted regulations in the field of housing, namely Law Number 20 of 2011 on flats. Philosophically, the promulgation of Law No. 20 of 2011, is the embodiment of the state's efforts in meeting basic human needs, namely, everyone has the right to live a prosperous life both physically and mentally, to live, and to get a good and healthy living environment, which is a basic human need.

To realize the responsibility referred to, the state issued regulations as a legal umbrella in the implementation of which is contained in Law No. 20 of 2011 on flats (Law No. 20 of 2011), so that what is the goal of the state can be realized. In addition, as the responsibility of the state to protect and realise social justice for all Indonesian people and the realization of legal certainty in the field of agrarian law, especially housing, the state always strives to evaluate and innovate both concerning regulations that have been issued and their implementation. This is none other than so that the goal of the state for the realization of the general welfare can be realized immediately.

However, the regulation and implementation of flats is not a simple thing, because many aspects that affect the implementation and one another are intertwined. For example, related to the readiness of the

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Jewel, "Peralihan Hak Atas Rumah KPR melalui Jual Beli di Bawah Tangan." *Unnes Law Journal* 2, no. 2 (2013): 105-122.

regulation, the readiness of the land as residential land, and the application of the rights inherent in the ownership of flats. Faced with the facts above, it can raise questions, whether the fact stands alone without cause from all aspects, including legal aspects. The law also contributes greatly to the emergence of inequality in the dispute resolution of binding agreements for the sale and purchase of apartment units, the emergence of these imbalances is because there is no synchronization between one regulation and another.<sup>6</sup>

The issue at hand is comparing the litigation-based resolution of binding Trade Agreement (PPJB) conflicts concerning apartment units in Indonesia with that of the Netherlands. Additionally, it aims to explore legal reconstruction in resolving binding sale and purchase disputes (PPJB) in Indonesia to ensure legal certainty. This study employs normative research with a comparative approach, which involves examining legal rules, jurisprudence, and expert opinions to identify similarities and differences between legal systems. Specifically, it will compare the regulations governing dispute resolution of PPJB unit flats in Indonesia and their implementation with those in the Netherlands.

### **Dispute Resolution of Binding Sale and Purchase Agreement (PPJB) of Apartment Units Through Litigation in Indonesia Compared to the Netherlands**

PPJB is a preliminary agreement on the binding trade of land and building rights. It will be drawn up, legalized, or signed before a notary, and the parties to the agreement will fulfil the rights and obligations under those proposed and agreed in the agreement on the trade of land and building rights made by deed under a hand that is sufficiently

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<sup>6</sup> Ekarini Septiana and Habib Adjie, "Problematika dan Penyelesaian Sengketa Pemilikan Satuan Rumah Susun Ditinjau dari Perspektif Undang-Undang Rumah Susun," *Jurnal Hukum dan Kenotariatan* 6, no. 2, (2022): 1216-1225. See also Rita Agustina, "Penyelesaian Sengketa dalam Pelaksanaan Pengelolaan Lingkungan Rumah Susun Antara Pengelola dengan Pemilik," *Jurnal Akta Notaris* 1, no. 1, (2022): 50-61; Sausan Yodiniya, Yani Pujiwati and Betty Rubiati, "Property Rights To Apartment Units For Shops With Building Rights Status Above Management Rights Are Associated With Law Number 20 of 2011 Concerning Flats," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2, (2020): 241-256.

known to the wards.<sup>7</sup> PPJB unit flats are one form of agreement that is subject to the provisions of law 20/2011. When connected with the of Article 1320 paragraph (1) of the Civil Code (KUHPerdata), PPJB has fulfilled the elements as an agreement that can give rise to an engagement that is based on the agreement. There are 2 (two) types of PPJB, namely PPJB paid off and PPJB not paid off. PPJB has not been paid off in a new binding sale and purchase of promises because usually the price has not been paid, in which there is no legal force whatsoever, except for the conditions to fulfil an engagement. While PPJB paid off is a paid payment where the buyer has paid all the agreed prices and the seller has received payment in full from the buyer, but has not been able to make a deed of sale before the authorized PPAT. Paid-off PPJB requires a power of attorney to sell from the seller to the buyer who has paid in full but has not been able to reverse the name of the certificate because there are conditions that have not been met.<sup>8</sup>

PPJB, as a preliminary agreement in the trade of land and housing, according to Article 1253 of the Civil Code, the binding agreement of trade is a conditional agreement because there are conditions that are used as hangers or strict conditions to suspend the implementation of a perfect or flawless agreement if an achievement is not met.<sup>9</sup> An agreement is said to be valid according to Gunawan Johannes and Bernadette M. Waluyo is a contract that binds two or more parties who signed it and are subject to the provisions that have been agreed upon. Book III of *Burgerlijk Wetboek* contains laws that

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<sup>7</sup> Dewa Ayu Sinddhisar Smaratungga, R. Ismala Dewi and Enny Koeswarni, "Implementation of The Binding Agreement for The Sale and Purchase of Land Rights Based on a Notarial Deed in East Jakarta," *Legal Brief* 11, no. 3 (2022): 192-193.

<sup>8</sup> Syarifah Hijriyani, Salim HS and Muhaimin, "Preliminary Agreement Deed of Sale and Purchase Agreement (PPJB) on Houses through House Ownership Loan (KPR) Still in the Form of Pictures," *International Journal of Multicultural and Multireligious Understanding* 6, no. 4, (2019): 175-186.

<sup>9</sup> Rayhan Isha Mahendra, I Wayan Yasa and Firman Floranta Adonara, "Binding Agreement for Sale and Purchase of Land in a Notarial Manner Whose Certificate Object Bounding in the Right of Dependents," *International Journal of Social Science and Education Research Studies* 3, no. 1, (2023): 50-56.

regulate contract law that can bind both parties who want to bind themselves, or what is known as a valid agreement.<sup>10</sup>

Arrangements related to flats or apartments in the Netherlands can be viewed in detail in *Bouwbesluit*. The Dutch system of land rights is that every small piece of land in the Netherlands has a legal owner, allowed to use the land himself, but he is also allowed to give the rights to the land to others. Can transfer its ownership but it is also possible to offer only part of its powers to others.<sup>11</sup>

The right of ownership of an apartment unit, the right of ownership of an apartment (*appartementsrecht*), is also a special type of material right. As is already known from the type of its name, it is a special kind of ownership. It is the joint right ownership of the entire building, with the exclusive right to use only a certain part of the building, that is, an apartment unit. This right is generally used in flat or apartment buildings. Many people own the entire flat building together and every one of them has the exclusive right to the enjoyment of any of the flats or apartments in it. In addition, they all have a common right to the enjoyment of common parts of the building, such as entrances and stairs.<sup>12</sup>

Then, if the movable goods to be seized by the bailiff are insufficient to pay the amounts of damages that the judge has decided plus the execution costs, following the provisions of Article 197 paragraph (8) HIR or Article 211 RBG, it is determined that the seizure can be made of immovable goods. In addition, the seizure of movable and immovable property belonging to the defeated party shall not only affect the property under the control of the defeated party. Still, it may also include the seizure of both movable and immovable property belonging to the defeated party but under the control of a third party, in which case the property is in debt security.

Thus, it can be assumed that the seizure of movable and immovable goods to implement the judge's decision by force to the

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<sup>10</sup> Gunawan Johannes and Bernadette M. Waluyo, *Perjanjian Baku, Masalah dan Solusi* (Jakarta: Pelangi Grafika Rancangmedia, 2021).

<sup>11</sup> Arie S Hutagalung, Suparjo Sujadi, and Rahayu Nurwidari, *Asas-Asas Hukum Agraria Bahan Bacaan Pelengkap Perkuliahan Hukum Agraria* (Depok: Universitas Indonesia, 2001).

<sup>12</sup> Arie S. Hutagalung, *Hukum Pertanahan di Belanda dan Indonesia*. (Denpasar: Pustaka Larasan, 2012).



defeated party, should not be carried out on goods that do not belong to the defeated party even though the goods are in its control. Therefore, the court or Bailiff, who is ordered by the head of the District Court to execute the application from the party who won the case, must be able to act carefully, and thoroughly in carrying out the act of confiscation of goods whether movable or immovable belonging to the defeated party. This is done to prevent errors in foreclosure that can hinder the process of implementing the decision (execution). Errors in carrying out the seizure by the bailiff or the court may also result in the emergence of resistance from third parties to the execution because in the execution of the execution occur seizure of goods belonging to third parties. As a result of the third party's resistance to the execution carried out by the bailiff or the court, that third party may file a third party's resistance legal remedy against the goods carried out the seizure known as *Derden Vervet*.

About putting the court's decision into action on the PPJB flats dispute lawsuit, in practice, 276 cases already have a judge's decision and the parties do not make legal efforts to appeal or Cassation so that the decision should be directly implemented by the defeated party. In this case, the defeated party is the developer of the apartment, in the decision of the judge, the developer of the apartment is ordered to pay a certain amount of compensation and return the down payment on the purchase of the apartment according to the agreed PPJB. However, the decision has not been implemented, the developer has not made payments for several damages and refunds that have been paid by consumers of flats to the developer.

Moving on from this description, the results of the comparison of the legal-system in the management of flats or apartments in Indonesia and the Netherlands are basically as follows:

**TABLE 1. Comparison of Indonesian and Dutch Legal Systems**

Substance	Indonesia	Netherlands
Building site house flats/apartments.	Can be built on land a. Property Right b. Building use rights or use rights on state land; and	Can only be built on owned land

Substance	Indonesia	Netherlands
	c. Building use rights or use rights on management rights.	
Actors Building commercial flats/apartments	Developer	Developer
House Manager flats/apartments.	There are 2 (two) phases of management: 1. Transition period by Development Actors; 2. PPPSRS and manager is mandatory.	Management carried out by the association of owners and residents' association (Vereniging van Eigenaars)/VvE. VvE This is mandatory.
Management fee expense	1. During the transition period, it is borne jointly by the Development Actor and the owner/occupier based on the value of the NPP; 2. After the transition period is borne by owner/occupier based on the value of the NPP.	Costs are borne by the owner, without involving development actors.
Obligations and Rights of Actors Development	Development Actors shall: 1. facilitate the formation of PPPSRS and manage the flat/apartment during the transition period; 2. Entitled to receive management fees from the owners/occupants.	Development Actors: 1. Not forming a "Apartment Owners and Residents Association (VvE); 2. Entitled to receive management fees from the owners/residents.
Scope of management by PPPSRS/VvE	Covers the operation, maintenance, and care of shared parts, shared objects, and shared land.	Covers the operation, maintenance, and care of shared parts, shared objects, and shared land.
Dispute Resolution of Preliminary Sale and Purchase Agreement	Litigation or court	Arbitration

*Sources: Edited by the Authors*

Furthermore, if in implementing the PPJB for the construction of flats, one party does not fulfill its obligations or achievements to the other party, it can lead to disputes. An article written by Nadhifah and Budi, mentions the data released by Kompas.com that in 2010 there were 84 complaints submitted to the Indonesian Consumers Foundation (YLKI) and in 2014 there were 157 cases of apartments, which were dominated by cases of unilateral cancellation of sales and purchase by developers due to the existence of clauses that regulate the problem of payment installments whose contents are burdensome or detrimental to consumers in the PPJB.<sup>13</sup> While in 2016 there were 126 cases related to flats or vertical housing units complained by the public to the Indonesian Consumers Foundation. There are two types of complaints, namely First, complaints due to violations of the individual rights of housing consumers such as substandard building quality and the size of the area is not as promised.

Second, complaints on collective rights violations such as the absence of public facilities, fictitious certificates, and building legality.<sup>14</sup> The number jumped 12.7 percent from the previous year, which was 121 cases.<sup>15</sup> Wijaya and Ananta argued that disputes arose in the form of default in the handover of keys, delays or non-realization of the promised apartment construction. As happened in 2018 related to the K2 Park Apartment construction project built by PT Prioritas Land Indonesia (PLI) in Serpong, Banten. The promised apartment was never built. This issue shows PLI's default on the PPJB agreed with consumers, so PLI is considered to have cheated consumers. In another case, Lippo Group was involved in the construction of Meikarta New Town in Cikarang, a town in Bekasi. The project had not yet obtained the necessary permits to build the spatial and environmental areas, and

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<sup>13</sup> Nadhifah Thufailah Azka and Budi Hermono, "Tinjauan Yuridis Objek Pada Perjanjian Pendahuluan Jual Beli (PPJB) Apartemen Yang Ditawarkan Dengan Sistem Pre Project Selling". *Novum: Jurnal Hukum* 9, no. 3, (2022), 1-16.

<sup>14</sup> Muhammad Yasin, "Konsumen Banyak Dirugikan dalam Pengikatan PPJB Rumah Susun," *HukumOnline*, 2019. Retrieved from <https://www.hukumonline.com/berita/a/konsumen-banyak-dirugikan-dalam-pengikatan-ppjb-rumah-susun-lt5c411547d9c0d/>.

<sup>15</sup> Hilda B Alexander, "Kasus Pengaduan Properti Melonjak 12,7 Persen," *KOMPAS*, 2015. Retrieved online from <https://properti.kompas.com/read/2015/01/05/1410199/Kasus.Pengaduan.Properti.Melonjak.12.7.Persen>.

Lippo Group publicly sold thousands of apartments in permits that they had not yet received.<sup>16</sup> As a result, Meikarta's PPJB was deemed invalid and void and the dispute resolution that occurred between the consumer and developer parties in this PPJB was carried out through dispute resolution using the arbitration method.<sup>17</sup>

In the event of a dispute in PPJB between consumers and developers of flats, The Flats law regulates in the provisions of Article 105 states that the settlement of disputes in the field of flats is first sought based on deliberation for consensus. If the settlement of the dispute through deliberation between the consumer and the developer of the apartment does not reach a consensus, then the consumer of the apartment who feels aggrieved can choose a dispute resolution through 2 (two) paths, namely suing through litigation, namely through a court located in the General Court environment or choosing a dispute resolution through non-litigation or Alternative Dispute Resolution. Article 105 paragraph (3) of the flats law states that out-of-court resolution of conflicts is carried out by arbitration, consultation, negotiation, mediation, conciliation, and/or expert evaluation.

In the practice of dispute settlement PPJB flats between consumers who are harmed over the default developer of flats, based on data reported by Detik Finance reported that nearly 21 per cent of disputes PPJB flats are resolved through litigation and 15 per cent of cases PPJB dispute flats resolved through non-litigation channels, the majority of which are resolved in the arbitration institution.<sup>18</sup>

With dispute resolution about PPJB flats, regulation of the Minister of Public Works and Housing number 11/PRT/M/2019 the system of preliminary agreements for buying and Selling Houses, in the

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<sup>16</sup> Dani Prabowo, "Kasus Meikarta, Potret Rumitnya Perizinan di Indonesia," *KOMPAS*, 2018. Retrieved online from <https://properti.kompas.com/read/2018/10/22/170926621/kasus-meikarta-potret-rumitnya-perizinan-di-indonesia?page=all>.

<sup>17</sup> Tiara Dwi Rahayu, "Perlindungan Terhadap Konsumen Apartemen Meikarta Yang Telah Melakukan PPJB Terkait Ketiadaan Kepemilikan Izin Ditinjau Dari UU No. 20 Tahun 2011 Tentang Rusun Dan UU No. 8 Tahun 1999 Tentang Perlindungan Konsumen," *Thesis*. (Bandung: Universitas Padjadjaran, 2019).

<sup>18</sup> Shadfira Cendra Arini, "Terjebak Proyek Apartemen Mangkrak Ini Yang Harus Dilakukan Konsumen", *Detik Finance*, 2023. Retrieved from <https://finance.detik.com/properti/d-6583357/terjebak-proyek-apartemen-mangkrak-ini-yang-harus-dilakukan-konsumen>.

provisions of Article 11 paragraph (2) letter k, it is emphasized that dispute resolution is one of the requirements that must be contained in making PPJB houses, in this case flats. The consumer and the developer of the flats jointly agree on whether the settlement of PPJB flats disputes that may arise in the future will be resolved through litigation or non-litigation channels, or the parties may also determine to choose both channels as an institution to resolve disputes.

Furthermore, in the case of PPJB flats dispute settlement is done through litigation or judicial institutions, the court decision must be implemented by the parties, while the decision is not made by appeal or Cassation. This is in terms of the Civil Procedure Code is also means that the judge's decision on the dispute PPJB flats in court has had a sustained body of law, so it can be applied. Lilik Mulyadi argued that execution is an important right in a case resolution process through litigation or the judiciary and is the culmination of civil cases conducted against the decision of judges who already have permanent legal force (*inkracht van gewisde*).<sup>19</sup>

In line with the provisions of Article 195-224 HIR or Article 206-258 RBG, it stipulates that there are 2 (two) ways to putting the court's decision into action, voluntarily and forcibly. The voluntary execution of a judge's decision is carried out by the defeated party in a civil lawsuit voluntarily and without coercion by any party. Adityo Wikanto and Sarudin Yudowibowo argued that the judge's decision was carried out voluntarily, meaning that the losing party accepted and fulfilled the contents of the judge's decision without having to intervene in the court or the implementation of the decision by the court.<sup>20</sup> While putting the court's decision into action by force is the implementation of the decision based on the application of the winning party in a civil lawsuit. The application was submitted to the head of the district court, which decided the case because the party defeated in the trial was not willing to implement the judge's decision voluntarily. Forced execution of a

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<sup>19</sup> Lilik Mulyadi, *Hukum Acara Perdata Teori dan Praktek Peradilan di Indonesia* (Jakarta: Djambataan, 1999).

<sup>20</sup> Adityo Wahyu Wikanto, Safrudin Yudowibowo and Harjono, "Eksekusi Riil Dalam Perkara Perdata Tentang Pengosongan Tanah Dan Bangunan Rumah," *Jurnal Verstek* 2, no. 2, (2014), 1-10.

judge's decision requires the intervention of the District Court that decides the case.<sup>21</sup>

Based on the application of the party who won the case, then the head of the district court where the PPJB flats case was decided, calls the defeated party to be warned (*aanmaning*) to execute the judge's decision voluntarily. In the execution of the decision by force by the defeated party, the District Court will give the execution time of the decision no later than 8 (eight) days after being warned. This is in line with the provisions in Article 196 HIR or Article 208 RBG. If within 8 (eight) days, the defeated party does not carry out the decision of the judge or is not present after the summons by head of the district court, head of the district court will issue a determination letter whose contents instruct the clerk or bailiff to follow up the court's decision by confiscating movable goods that are estimated to cover the amount of payment of money to be paid by the losing party plus the cost of execution, this is as stipulated in the provisions of Article 197 HIR or Article 208 RBG.

If the movable assets available for seizure by the bailiff are insufficient to cover the determined damages and execution costs, as per Article 197 paragraph (8) of HIR or Article 211 of RBG, the seizure of immovable assets may be ordered. Furthermore, the seizure of assets belonging to the losing party may extend beyond those under their direct control to include assets held by third parties, serving as collateral for the debt.

Hence, it is imperative to ensure that the seizure of movable and immovable assets for enforcing the judge's decision against the losing party does not extend to assets not owned by them, even if these assets are under their control. Therefore, both the court and the Bailiff, acting on the order of the district court head to execute the winning party's application, must exercise caution and thoroughness during asset confiscation, whether movable or immovable, to prevent execution errors that could impede the implementation process. Mistakes in seizure by the Bailiff or the court may provoke resistance from third parties due to the wrongful seizure of their assets. Such resistance may

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<sup>21</sup> Ralang Hartati and Syafrida, "Hambatan Dalam Eksekusi Perkara Perdata," *ADIL: Jurnal Hukum* 12, no. 1, (2021): 88-106.

prompt these third parties to file a legal remedy known as *Derden Vervet* against the seized goods.

Regarding the enforcement of court decisions in PPJB flats dispute lawsuits, there are currently 276 cases where the court has issued a final decision, and the parties have not pursued legal avenues for appeal or cassation. Thus, the decisions should be promptly executed by the losing party, which, in this instance, refers to the apartment developer. The court's rulings typically entail the developer being instructed to compensate buyers and refund their down payments according to the agreed PPJB terms. However, despite these directives, the developer has failed to fulfill its obligations, neglecting to make payments for damages and refunds owed to flat buyers.

Thus, the Dutch legal system adheres to the codification system as we also know it in several books, namely The Book of Civil Law (KHUPerdata), The Book of Criminal Law (KUHP), The Book of Commercial Law and Bankruptcy Regulations. There is not much between the Indonesian legal system and the Dutch, but in the structure (legal structure) of the law enforcement system (Criminal), there are fundamental differences. For example, the position of the police is under the Minister of Justice, while in Indonesia his position by the military community is not considered an element ready for war, but has been under the Department of Defense and Security and is also clearly not under the Ministry of Law and legislation.<sup>22</sup>

It should be emphasized that because of the breadth of the scope of the Roman-German legal system or the Civil Law System and the Common Law System, in describing the legal comparison in this writing, the author limits only to the comparison of the legal system for the implementation of flats or in other terms condominiums or strata title or joint property or apartments. with the legal system in place in the Netherlands.

The concept of Civil law in Indonesia conceptualizes that the rules of law for flats are regulated in a statutory regulation, namely Law Number 20 of 2011 concerning flats, while in the Netherlands flats are regulated in the regulation on housing (*Bouwbesluit*) which contains the construction, use and demolition of buildings. The buildings here are

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<sup>22</sup> Ade Maman Suherman, *Pengantar Perbandingan Sistem Hukum* (Jakarta: Rajawali Press, 2004).

houses, apartments, offices, shops and hospitals. The regulation in detail also contains rules related to safety, health, usability, energy efficiency and the environment.<sup>23</sup>

Apart from the similarities and differences in the management of flats as described above, viewed from the perspective of the legal system in force in each country, especially in forming families who live in an environment based on land law and society, have different characteristics. The family and community system in Indonesia adheres to the Pancasila legal system, which, among other things, upholds the basic values of Pancasila which are family and mutual assistance. The Dutch, on the other hand, have individualistic, moral, political or social views that emphasize human independence as well as responsible interests and one's freedom.

One of the activities of organizing flats or apartments is The Binding of Trade (PPJB) between a developer and a client (prospective buyers) as a form of initial realization for consumers to be able to have a unit of flats or apartments. However, the arrangement of flats in Indonesia still does not reflect justice and legal certainty for consumers, as evidenced by the dispute between PPJB flats. Thus, to obtain the breadth of thought to provide input, it is necessary to conduct a study of the legal system in other countries, namely the Netherlands.

Based on the practice of dispute resolution, especially in the case of the purchase of flats in the Netherlands, researchers draw an essence that the settlement of disputes over the purchase of flats in the Netherlands, the majority of which are resolved through non-litigation channels, namely through arbitration institutions, provides more legal certainty in the implementation of the arbitration decision, especially for consumers of flats who feel harmed by the developer of flats. Compared to Indonesia in the practice of dispute resolution PPJB flats majority is done through litigation, namely, the court institution, which often causes problems in putting the court's decision into action by the defeated party, namely the developer of flats.

The Netherlands, as one of the European states, in cases of human rights violations occurring within the scope of European countries tried before the European Court of Human Rights, the implementation of these decisions, which according to Helen Keller and Cedric Marti

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<sup>23</sup> Hutagalung, *Hukum Pertanahan di Belanda dan Indonesia*.



recognizes that the implementation of court decisions is essentially political and domestic.<sup>24</sup> In any judicial system, compliance with judicial decisions is a key cornerstone of legality.<sup>25</sup> The European Convention on Human Rights (ECHR) states that the supervision of judgments of the European Court of Human Rights is mandated to the Committee of Ministers. The ECHR Convention also stipulates that to be able to implement court decisions and supervision carried out by the Committee of Ministers, guidelines for the implementation of decisions must be made.<sup>26</sup> Thus, it can be concluded that if it is related to the implementation of court decisions in the Netherlands, especially in disputes over violations of the rights of consumers of flats by developers through PPJB, there is a form of human rights violations committed by developers against consumers of flats. Some institutions oversee the implementation of court decisions as well as guidelines for the implementation of court decisions, commonly known as post-trial implementation.

In addition to the Netherlands, researchers are also interested in comparing the issue of the implementation of court decisions in China. Donald C. Clarke, argues that it is a staple of Chinese legal literature that Chinese court decisions in civil and economic cases are plagued by very low execution rates. The issue of whether court judgments can be enforced is important for several reasons, one of which is the relationship between the legal system and the economic system. China's laws, courts and court rulings are part of the institutional framework.<sup>27</sup>

### **Legal Reconstruction in PPJB Dispute Resolution in Indonesia to Provide Legal Certainty**

A legal Agreement is a contract that binds two or more parties that sign it and abide by the provisions that have been pledged. Book III of the *Burgerlijk Wetboek* contains laws governing contract law that

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<sup>24</sup> Helen Keller, and Cedric Marti. "Reconceptualizing Implementation: The Judicialization of the Execution of the European Court of Human Rights' Judgments." *European Journal of International Law* 26, no. 4 (2015): 829-850.

<sup>25</sup> Cesare Romano, Karen Alter and Yuval Shany, *Oxford Handbook of International Adjudication* (England: Oxford University Press, 2013).

<sup>26</sup> Romano, Alter and Shany

<sup>27</sup> Donald C. Clarke, "The Execution of Civil Judgments in China," *The China Quarterly* 141, no. 1 (1995): 65-81.

can bind two parties that wish to bind themselves or what is known as a legal Agreement. Agreements with one or more parties may also be said to have policy conformity. A contract is an agreement where in two parties guarantee each other's accomplishment of a goal or wherever one party makes a promise or swears to another party. The opportunity results in the formation of a relationship between two people called an engagement that bestows rights and responsibilities on the parties concerned, according to Indonesian civil law.

The legal system in Indonesia by using civil law in terms of the implementation of the rules gives priority to the policy of the rules in the legislation. In the implementation of the binding sale and purchase agreement (PPJB) one apartment has been applied by consumers to buy a unit of flats. However, there are already rules for the implementation of PPJB dispute settlement but the rules do not yet describe the rules that provide legal certainty for consumers. Therefore, there is a need for Reconstruction or renewal of a system or form.

Reconstruction in the context of PPJB dispute resolution in the field of buying and selling units of flats lies in the implementation of the decision as in the dispute resolution process the implementation of a decision on a case. In PPJB disputes, it has not accommodated instruments related to the implementation of decisions, so there is a need for an update to Article 105 of the apartment law which not only regulates dispute resolution through litigation but also needs to present dispute implementation rules as a means of Community Renewal.

Law as one of the subsystems of society is certainly expected to apply and work in society as the purpose of the law itself.<sup>28</sup> The operation of law is as important as lawmaking, and law discovery to law enforcement.<sup>29</sup> The operation of law in society has the function of presenting a just order. Thus, efforts to realize the function of the work of the law need to have aspects of law enforcement (law in action) because in these aspects can realize justice for the community. The working theory of law was initiated by Lawrence M. Friedman stated

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<sup>28</sup> Arif Hidayat and Zaenal Arifin, "Politik Hukum Legislasi Sebagai Socio-Equilibrium Di Indonesia," *Jurnal Ius Constituendum* 4, no. 2, (2019): 147–59.

<sup>29</sup> Rohmatul, "Construction of Islamic Law and Customary Law in Javanese Tondano Society," *UNTAG Law Review* 4, no. 2, (2020): 38–47.

that the legal system should fulfill three elements, namely legal substance, legal structure and legal culture.

The urgency of the work of law in society is based on the idea that a normative field such as legislation not only focuses on law in the book but law must also be viewed from the perspective of a comprehensive paradigm including law in action. Therefore, his view of a legal career based on Lawrence M. Friedman deals with law enforcement in society. If one element in the legal system is not optimal then it can affect the enforcement of law in the community.

By Talcott Parson's Theory, Parsons understood that society is a separate system of parts (sub-sub) that are related to each other and influence each other reciprocally. Parson argues that society is a system of fungi integrated in the form of equilibrium. Although social integration can never be achieved perfectly, social principles are always centered on moving towards perfect harmony. More specifically, this theory explains that in a society there are various sub-systems, where the sub-systems of one with other sub-systems are related and complement each other. Subsystems as basic systems include sub-systems, among others, cultural sub-systems, social sub-systems, political sub-systems and economic sub-systems.<sup>30</sup>

Sub-systems as mentioned in this theory will be interrelated/related to each other, the relationship between sub-systems certainly cannot apply independently in society and require other subsystems of society to make the law apply optimally. The law should include rules that can promote the progress of society. Knowing that the social changes that occur in society will affect the development of law, it is no exaggeration to say that the only way to reconstruct the law is to place the law as a social change or as an agent of change. In performing its functions, the law must take into account situations that allow social change. Law is not only made by society but also can create a society, then the law must work for the benefit of society. Therefore, the goal of legal reconstruction efforts is to produce laws that are responsive, which means that laws can be adapted to changes in society.

The responsive legal order is necessary for social justice and social change, according to Nonet-Selznick. The concept of responsive law,

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<sup>30</sup> J Tittenbrun. "Talcott Persons' Economic Sociology," *International Letters of Social and Humanistic Sciences* 13, no. 1 (2014): 20-40.

according to Nonet and Selznick, is intended to overcome the rigidity and insensitivity of law to social change by reducing the authority granted to lower levels of power to gain a better understanding of the basic problems of society. Nonet and Selznick posited law as a means of responding to social provisions and public aspirations. This type of law, due to its open nature, promotes the acceptance of social changes to achieve justice and public Emancipation.<sup>31</sup>

The condition of legal uncertainty in putting the court's decision into action on the PPJB flat dispute lawsuit, which is mostly filed by the Consumer against the developer of the apartment, thus causing injustice to the party who won in this case, namely the consumer of the apartment, it is necessary to make efforts to reconstruct the law. Reconstruction of the law is expected in particular to the provisions governing the conflict resolution in the flats law.

The provisions regarding the settlement of disputes in flats as contained in Article 105 paragraph (1) of the flats law should only mention that the conflict resolution in the field of flats should be initially sought based on discussion for consensus. Furthermore, paragraph (2) states that if a settlement through negotiation for agreement cannot be reached, the injured party may file a lawsuit either inside or outside of the general court, depending on the option chosen by the disputing parties through Alternative Dispute Resolution. Then in paragraph (3) it is mentioned that Arbitration, consultation, negotiation, mediation, conciliation, and/or expert evaluation are some of the methods used to settle disputes outside of court that are mentioned in paragraph (2), as long as the rules and regulations are followed. Then in paragraph (4) it is stated that criminal liability is not eliminated by the out-of-court resolution of disputes as described in paragraph (3).

In particular, the provisions regarding dispute resolution through the court as stipulated in Article 105 paragraph (2) of the flats law, according to the researcher, should be regulated more clearly about the execution of the judge's decision in court. As discussed above, in HIR or RBG, it is regulated that putting the court's decision into action includes 2 (two) ways, namely the implementation of the decision

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<sup>31</sup> Sabian Usman, *Menuju Penegakan Hukum Responsif* (Yogyakarta: Pustaka Pelajar, 2008).

voluntarily by the defeated party or putting the court's decision into action forcibly made through an application submitted by the winning party to the head of the District Court so that the chairman of the court orders the bailiff to confiscate the goods belonging to the defeated party.

Therefore, to reconstruct the law of the Flats Act, especially the provisions of Article 105, namely adding the provisions of the article or paragraph in the Flats Act, especially in the chapter on dispute resolution, the provisions regarding when the parties in the flats PPJB choose to resolve disputes through the court, there must be additional provisions regarding voluntary and forced execution.

Furthermore, about the provisions of Article 105 Paragraph (2) and Paragraph (3) which regulate alternative dispute resolution as another effort that can be taken by the parties to resolve disputes in the field of flats, it should be expressly stated that the settlement made through out-of-court channels is only carried out through arbitration institutions. This is because the arbitration institution has the authority to decide the case, and the nature of the arbitrator's decision is binding and has permanent legal force for the parties, so it must be implemented. Regarding this provision, it can be conveyed in the explanation of the provisions of the article. In the elucidation of this article, it will be stated that arbitration is a dispute resolution institution that can decide cases and its decisions have permanent legal force and are binding on the parties. So that the arbitral decision provides more legal certainty for the parties, especially the injured party.

It is hoped that by carrying out legal reconstruction of the provisions of Article 105 of the flats law both related to the provisions of dispute resolution through the court and arbitration, in the future of putting the court's decision into action, especially in the PPJB flats dispute, can provide legal certainty to consumers of flats who are currently disadvantaged by the developer of flats in the implementation of PPJB flats. According to Sudikno Mertokusmo, legal certainty is characterised as an instance where the law has been established due to the law's demonstrably strong application. As a form of defence against arbitrary behaviour, the existence of the legal certainty principle ensures

that someone will and can receive what is expected under specific conditions.<sup>32</sup>

Van Apeldoorn argued that legal certainty has two aspects, namely the determination of the law in concrete terms and legal security. It means that the party seeking justice wants to know what the law is in a particular matter before he starts a case and protection for the seekers of Justice, "... to claim that what was in operation in a particular territory amounted to a legal system, there appears to be a minimum requirement for regularity and certainty in law". From this perspective, it can be understood that if there is no legal certainty, people do not know what to do, which will ultimately lead to uncertainty and violence (chaos) due to the indecision of the legal system. Thus, legal certainty refers to the implementation of a clear, fixed, and consistent law, in which subjective circumstances cannot affect its implementation.

## Conclusion

Finally, this study highlighted and concluded that PPJB dispute settlement in the sale and purchase of flats through an *inkracht* from court institution, in practice it has not provided legal certainty in returning consumer losses. The weak role of the court institution in supervising the execution of the decision and the absence of guidelines for the implementation of supervision of the execution of PPJB flats dispute decisions are the main obstacles. In the Netherlands, the execution of court decisions in civil cases is carried out by special institutions outside the court so that the implementation of duties and responsibilities in supervising the execution of decisions becomes more focused. Besides, the supervision is also carried out based on special guidelines so that legal certainty for justice seekers is fulfilled. Legal reconstruction in PPJB dispute resolution in Indonesia to provide legal certainty, namely by making guidelines for supervision of the implementation of the execution of court decisions and establishing institutions for monitoring the implementation of Post-Court decisions. As a legal basis, the regulation must be accommodated in the housing and settlement law and the apartment law by adding the

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<sup>32</sup> Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 1993).

provisions of the article, so that it can be further prepared with technical regulations.

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*Cujus est dominium,  
ejus est periculum*

Whose is the ownership, his  
is the risk.

This principle implies that the person who owns  
or possesses something also bears the  
responsibility or risk associated with it.

### **Acknowledgment**

Thank you for Prof. Dr. Efik Yusdiansyah, S.H., M.Hum. and Dr. Sri Ratna Suminar, S.H., M.H., who has supported the authors in preparing this research article.

### **Funding Information**

None

### **Conflicting Interest Statement**

There is no conflict of interest in the publication of this article.

### **Publishing Ethical and Originality Statement**

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.