

**RE-EVALUATING DEVELOPER LIABILITY IN DOUBLE-SALE HOUSING
DISPUTES: A DOGMATIC AND CRITICAL ANALYSIS OF PALEMBANG
DISTRICT COURT DECISION NO. 225/PDT.G/2024/PN PLG**

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ABSTRACT

Housing sale and purchase disputes arising from property developers' tortious acts—specifically the systemic practice of double sales—pose severe threats to legal certainty and consumer protection in Indonesia. This research critically analyzes Palembang District Court Decision Number 225/Pdt.G/2024/PN Plg, moving beyond trivial element-matching under Article 1365 of the Indonesian Civil Code to examine deep legal dogmatics surrounding competing property rights, protection of good-faith purchasers, and the legal dichotomy between binding sale and purchase agreements (PPJB) and official land deeds (AJB). Employing a doctrinal legal research methodology with statute, case, and conceptual approaches, this study utilizes grammatical, systematic, and teleological interpretation tools to evaluate judicial reasoning. The findings reveal that the developer's act of selling a single townhouse unit to multiple buyers constitutes an unlawful act (onrechtmatige daad) that directly infringes upon the first buyer's subjective possessory rights, rather than a mere contractual default (wanprestasi). The court correctly applied the principle of protecting good-faith buyers (SEMA No. 1/2017) and the doctrine of nemo plus juris. However, judicial reasoning exhibits critical shortcomings in quantifying immaterial damages and defining evidentiary thresholds for systemic developer fraud. To address these systemic gaps, this paper proposes actionable legal reforms, including mandatory digital PPJB registration within the land registry system, statutory implementation of escrow account mechanisms under Law No. 1/2011, and Supreme Court guidelines for standardizing moral damage awards in property torts.

Keywords: *Developer Liability, Double Sale Dispute, Unlawful Act, Good-Faith Purchaser, Judicial Reasoning..*

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ABSTRAK

Sengketa jual beli perumahan yang timbul akibat perbuatan melawan hukum oleh pengembang properti—khususnya praktik sistemik penjualan ganda—menimbulkan ancaman serius terhadap kepastian hukum dan perlindungan konsumen di Indonesia. Penelitian ini menganalisis secara kritis Putusan Pengadilan Negeri Palembang Nomor 225/Pdt.G/2024/PN Plg, dengan melampaui sekadar pencocokan unsur-unsur Pasal 1365 KUH Perdata untuk mengkaji dogmatika hukum mendalam terkait konflik hak atas properti, perlindungan pembeli beritikad baik, serta dikotomi hukum antara Perjanjian Pengikatan Jual Beli (PPJB) dan Akta Jual Beli (AJB). Menggunakan metodologi penelitian hukum doktrinal dengan pendekatan perundang-undangan, kasus, dan konseptual, studi ini memanfaatkan metode penafsiran gramatikal, sistematis, dan teleologis untuk mengevaluasi pertimbangan hukum hakim. Temuan penelitian menunjukkan bahwa tindakan pengembang menjual satu unit **townhouse** kepada beberapa pembeli merupakan perbuatan melawan hukum (**onrechtmatige daad**) yang secara langsung melanggar hak penguasaan subjektif pembeli pertama, dan bukan sekadar wanprestasi kontrak. Pengadilan telah menerapkan prinsip perlindungan pembeli beritikad baik (SEMA No. 1/2017) dan doktrin **nemo plus juris** secara tepat. Namun, pertimbangan hukum hakim menunjukkan kekurangan kritis dalam hal penentuan besaran ganti rugi immateriil dan penetapan ambang batas pembuktian untuk praktik penipuan sistemik oleh pengembang. Untuk mengatasi celah sistemik ini, makalah ini mengusulkan reformasi hukum yang dapat diterapkan, termasuk kewajiban pendaftaran PPJB secara digital dalam sistem pendaftaran tanah, implementasi mekanisme rekening **escrow** berdasarkan UU No. 1/2011, serta pedoman Mahkamah Agung untuk standarisasi pemberian ganti rugi atas kerugian moral dalam kasus perbuatan melawan hukum di bidang properti.

Kata Kunci: Tanggung Jawab Pengembang, Sengketa Penjualan Ganda, Perbuatan Melawan Hukum, Pembeli Beritikad Baik, Pertimbangan Hukum Hakim.

I. Introduction

In contemporary Indonesian real estate transactions, housing sales disputes between commercial residential developers and individual buyers have evolved from routine contractual disagreements into structural legal challenges. A particularly predatory commercial practice is the "double sale" (*penjualan berganda*) of residential units. In a double sale, a property developer executes a preliminary binding sale and purchase agreement (*Perjanjian Pengikatan Jual Beli* or PPJB) or private purchase agreement with an initial consumer, collects partial or full payment, places the buyer in physical occupancy, and subsequently transfers or encumbers the exact same property to a secondary buyer or third-party creditor.

The core legal crisis stems from the legal friction between private contract autonomy, statutory consumer safeguards, and formal land titling procedures under Indonesian civil and agrarian law. When developers double-sell property, judicial tribunals face fundamental dogmatic questions: Does the developer's fraudulent conveyance constitute a mere contractual default (*wanprestasi* under Article 1243 of the Indonesian Civil Code) or a civil tort (*perbuatan melawan hukum* under Article 1365 of the Civil Code)? Furthermore, how do courts adjudicate competing property claims when an initial buyer in physical possession holding a PPJB collides with a secondary buyer attempting to register an official land deed (*Akta Jual Beli* or AJB) executed before a Land Deed Official (*Pejabat Pembuat Akta Tanah* or PPAT)?

Recent legal scholarship underscores the structural vulnerability of property consumers in Indonesia. Research by Syaifuddin (2020) and Budiono (2021) highlights that PPJB agreements serve as the primary legal mechanism in pre-project sales. However, as Disemadi and Roisah (2019) observe, PPJB contracts are frequently standard-form contracts (**kontrak baku**) containing standard exculpatory clauses that favor developers while placing all financial and legal risks onto buyers before formal land title transfer occurs.

Regarding developer tort liability, Simanjuntak (2021) notes that Indonesian judicial practice often conflates contractual breach with civil tort, leading to legal uncertainty in remedy allocation. While Law No. 8 of 1999 on Consumer Protection and Law No. 1 of 2011 on Housing and Residential Areas establish statutory duties for developers to act in good faith and provide accurate disclosures, enforcement through civil litigation remains reactive and fragmented (Harahap & Rahmah, 2023). Existing literature routinely treats consumer protection in abstract normative terms, failing to critically evaluate judicial dogmatics in court judgments involving double sales over identical land parcels (Sihombing et al., 2022).

This article fills this critical research gap by conducting a rigorous dogmatic analysis of **Palembang District Court Decision Number 225/Pdt.G/2024/PN Plg.** In this case, the Plaintiff purchased a Town House (located at Jalan Seduduk Putih I No. 110, Palembang) under a private sale agreement dated May 30, 2016, paid the total purchase price of Rp780,000,000, and entered into

physical possession. Subsequently, the Defendant developer engaged in double sales of the same property to third parties. Moving beyond descriptive summaries, this study articulates its legal novelty by:

- Deconstructing the theoretical tension between initial possessory rights (*bezitsrecht*) under PPJB and subsequent attempted conveyances via official land deeds;
- Analyzing the operationalization of Supreme Court Circular (SEMA) No. 1 of 2017 in protecting good-faith buyers (*pembeli beritikad baik*);
- Critiquing judicial evidentiary standards and court failures in quantifying immaterial or moral damages (*kerugian immateriil*) under Article 1365 Civil Code; and
- Identifying systemic legislative gaps in Indonesian housing regulations to propose concrete policy and statutory reforms.

II. Metode Penelitian Research Method

This research adopts a **doctrinal legal research methodology** (normative legal research) to critically evaluate judicial logic, statutory harmony, and legal dogmatics in property double sales (Marzuki, 2017; Soekanto & Mamudji, 2015).

Three complementary methodological legal approaches were operationalized:

1. **Statute Approach (Pendekatan Perundang-undangan):** Analyzing statutory provisions across Book III of the Indonesian Civil Code (KUHPerdata, esp. Articles 1243, 1320, 1338, 1365, 1457), Law No. 1 of 2011 on Housing and Residential Areas, Law No. 8 of 1999 on Consumer Protection, Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), and Supreme Court Circular Letter (SEMA) No. 1 of 2017.
2. **Case Approach (Pendekatan Kasus):** Examining the *ratio decidendi* of Palembang District Court Decision No. 225/Pdt.G/2024/PN Plg, analyzing judicial reasoning, evidentiary evaluations, and civil remedy structures.
3. **Conceptual Approach (Pendekatan Konseptual):** Engaging with foundational legal concepts, including the doctrine of *onrechtmatige daad* (tort), good-faith acquisition (*itikad baik*), subjective rights protection, and the doctrine of *nemo plus juris*.

Data collection was performed through structured legal document analysis, utilizing two tiers of legal materials:

- a. Primary Legal Materials: Authoritative legal instruments, including Palembang District Court Decision No. 225/Pdt.G/2024/PN Plg, statutory enactments, and relevant Supreme Court Circulars (SEMA).
- b. Secondary Legal Materials: Peer-reviewed national and international legal journals, authoritative monographs on contract and agrarian law (Ibrahim, 2012; Subekti, 2010), and legal commentaries.

Legal qualitative analysis was conducted using three primary hermeneutic tools:

- a. Grammatical Interpretation: Parsing the precise literal meaning of "unlawful act" under Article 1365 Civil Code and contract terms in sale agreements.
- b. Systematic Interpretation: Harmonizing private civil obligations with public regulatory duties under consumer protection and land administration laws.
- c. Teleological (Purposive) Interpretation: Analyzing legal rules according to their social objectives—specifically, protecting vulnerable consumers from economic exploitation and property disenfranchisement by developers.

III. Discussion and Results

3.1. Dogmatic Distinction: Default (*Wanprestasi*) vs. Unlawful Act (*Perbuatan Melawan Hukum*)

A fundamental dogmatic question in civil litigation is whether developer double-selling constitutes a breach of contract or an unlawful act. In Decision No. 225/Pdt.G/2024/PN Plg, the panel of judges anchored their judgment on **Article 1365 of the Civil Code (Unlawful Act)**. To understand the legal dogmatics behind this qualification, a comparative analytical framework is essential:

Comparative Criterion	Breach of Contract (<i>Wanprestasi</i> - Art. 1243)	Unlawful Act (<i>PMH</i> - Art. 1365)
Source of Obligation	Pre-existing valid agreement between specific parties (Art. 1338 Civil Code).	General statutory duty, subjective rights of another, or unwritten propriety rules.
Factual Nature of Misconduct	Delaying construction or late delivery of physical unit beyond contract deadline.	Re-selling a fully paid property to third parties, violating buyer's ownership rights.
Elements to Prove	Existence of contract and non-performance after formal default notice (*somasi*).	Four elements: unlawful act, fault (*schuld*), material/immaterial damage, and direct causality.
Remedial Objective	Contractual enforcement, contract dissolution, and direct material damages.	Full restoration (*restitutio in integrum*), material losses, and moral/immaterial damages.

Dogmatically, when a developer sells a Town House unit to Buyer A, receives full payment (Rp780,000,000), and transfers physical possession, the agreement creates binding contractual rights. When the developer subsequently sells the same property to Buyer B, the act transcends simple non-performance (*wanprestasi*). It constitutes a direct violation of Buyer A's **subjective possessory right** (*bezitsrecht*) and breaches the unwritten duty of proper care (*zorgvuldigheidsnorm*). Therefore, classifying developer double sales as an unlawful act under Article 1365 Civil Code is dogmatically sound, as double selling inherently involves bad-faith deceit (*bedrog*).

3.2. Competing Land Rights and Protection of Good-Faith Buyers

The central substantive conflict in Decision No. 225/Pdt.G/2024/PN Plg concerns competing claims over the Town House property. To resolve double-sale conflicts, civil dogmatics relies on two fundamental doctrines:

1. **The Doctrine of *Nemo Plus Juris*:** Derived from the Latin maxim *nemo plus juris transferre potest quam ipse habet* (no one can transfer greater rights than they possess). Once the developer transferred physical possession and contractual rights to the Plaintiff, the developer lacked legitimate legal authority (**beschikkingsonbevoegd**) to alienate the property a second time. Any subsequent disposition by the developer is void **ab initio**.
2. **Protection of Good-Faith Buyers (**Pembeli Beritikad Baik**):** Pursuant to Supreme Court Circular (SEMA) No. 1 of 2017, a purchaser who acts in good faith, pays full market consideration, and takes reasonable precaution is legally protected under Article 1338(3) of the Civil Code. In this case, the Plaintiff satisfied all criteria of good faith:
 - Executing a sale agreement dated May 30, 2016;
 - Settling the full purchase price of Rp780,000,000 as evidenced by receipts; and
 - Taking continuous, open physical occupancy of the Town House.

Consequently, secondary sales executed by the developer to third parties—whether under private contracts or notary deeds—are tainted by bad faith (**itikad buruk**) and must be declared null and void (**batal demi hukum**).

3.3. Legal Dichotomy: Private Agreement (PPJB) vs. Official Land Deed (AJB)

A major systemic issue in Indonesian real estate law is the temporal lag between PPJB (preliminary sale contract) and AJB (official land deed executed before PPAT). Under Law No. 5 of 1960 (UUPA) and Government Regulation No. 24 of 1997 on Land Registration, formal land ownership (**hak milik**) transfers only upon AJB execution and registration at the National Land Agency (BPN).

Unscrupulous developers exploit this temporal gap. In the Palembang case, the Plaintiff possessed a valid private agreement and payment receipts but lacked a registered AJB due to developer inaction. The developer exploited this unrecorded status to execute secondary transactions. However, established jurisprudence in SEMA No. 1/2017 confirms that a good-faith buyer who has paid in full under PPJB and occupies the property holds equitable ownership protection that invalidates subsequent fraudulent titles.

3.4. Critical Appraisal of Judicial Reasoning and Evidentiary Standards

While the Palembang District Court achieved a substantively just outcome by finding for the Plaintiff, critical examination of the court's *ratio decidendi* reveals notable analytical limitations:

1. **Superficial Evaluation of Fault (*Schuld*):** The court concluded fault existed merely because double sales occurred. A rigorous dogmatic approach requires distinguishing between intentional fraud (*dolus*) and gross negligence (*culpa lata*), explicitly identifying double sales as intentional deceit (*bedrog* under Article 1328 Civil Code).
2. **Omission of Notary/PPAT Complicity Analysis:** The court evaluated only developer liability, failing to examine whether PPAT officials or notary offices breached professional duties under Law No. 2 of 2014 on Notary Positions when drafting secondary documents for already-occupied properties.

3.5. Quantification of Damages and Immaterial Loss Standards

A major weakness in Decision No. 225/Pdt.G/2024/PN Plg is the court's handling of **immaterial damages** (*kerugian immateriil*). The Plaintiff claimed compensation for mental anxiety, loss of legal security, and reputational strain resulting from the developer's tortious actions.

The panel of judges dismissed immaterial loss claims in a brief paragraph, citing the Plaintiff's failure to provide concrete monetary proof. In Indonesian jurisprudence, courts routinely dismiss immaterial damages in property torts due to the lack of explicit statutory quantification formulas. However, from a critical dogmatic standpoint, property disenfranchisement causes severe moral and psychological distress. Judicial reasoning must

move toward objective frameworks—such as applying legal interest rates, opportunity cost calculations of invested capital, or equitable moral indemnification metrics (*billijkheid*).

3.6. Systemic Gaps in Property and Consumer Laws

This case underscores major regulatory loopholes in the Indonesian housing sector:

1. **Absence of Integrated Digital PPJB Registries:** PPJB agreements are executed privately or before individual notaries without mandatory real-time entry into BPN land databases, allowing developers to sell unregistered property repeatedly.
2. **Lack of Mandatory Escrow Accounts:** Indonesian law does not require developers to hold consumer pre-sale funds in neutral escrow accounts, enabling developers to misappropriate capital and enter fraudulent secondary deals.
3. **Underenforcement of Administrative Sanctions:** Statutory sanctions under Law No. 1 of 2011 are rarely enforced against defaulting property developers.

IV. Conclusion and Recommendations

4.1. Conclusion

This research concludes that developer double-selling in residential housing transactions constitutes an unlawful act (*perbuatan melawan hukum* under Article 1365 Civil Code) rather than a mere contractual breach (*wanprestasi*). The dogmatic analysis of Palembang District Court Decision No. 225/Pdt.G/2024/PN Plg confirms that the court correctly applied the doctrine of *nemo plus juris* and SEMA No. 1 of 2017 to protect good-faith buyers (*pembeli beritikad baik*). However, judicial reasoning exhibited significant dogmatic shortcomings, including a superficial evaluation of intent (*dolus*), failure to inspect notary administrative oversight, and an arbitrary rejection of immaterial damages (*kerugian immateriil*). Resolving property double-sales requires moving beyond reactive civil lawsuits toward structural institutional reforms in Indonesian property law.

4.2. Recommendations

To eradicate developer double-sales and strengthen consumer property protection, this study offers concrete, multi-tiered recommendations:

1. Legislative Reform (Reformasi Legislatif)

- a. Amend Law No. 1 of 2011 on Housing and Residential Areas to mandate **Escrow Account Systems** for all pre-project property sales, ensuring developer access to funds is tied strictly to verified construction milestones and title clearance.
- b. Enact statutory requirements for mandatory real-time registration of all PPJB contracts within a centralized digital portal managed by the Ministry of Land Affairs and Spatial Planning (ATR/BPN).

2. Judicial Policy (Kebijakan Yudisial):

- a. The Supreme Court of the Republic of Indonesia (MA-RI) should issue a Supreme Court Circular (SEMA) establishing objective guidelines for quantifying **immaterial damages** in consumer property torts.
- b. Formalize judicial precedents ruling that physical occupancy coupled with full payment under a PPJB grants primary equitable protection against secondary conveyances.

3. Institutional and Regulatory Oversight (Pengawasan Kelembagaan):

- a. The Ministry of ATR/BPN, IPPAT, and the Indonesian Notary Association (INI) must establish real-time cross-referencing between PPAT notary databases and local land offices prior to executing any AJB deed.
- b. Local Governments (*Dinas Perumahan*) must implement administrative blacklists and business license (*NIB*) revocations for property developers engaging in double sales or fraudulent property transactions.

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