

## ABSTRACT

*Abstract— Preliminary sale and purchase agreement is made after fulfilling the requirements for certainty on the status of land ownership; the thing that was agreed upon; ownership of the permit to construct the main building; availability of infrastructure, facilities, and public utilities as well as housing construction of at least 20% (twenty percent). Developers can buy and sell houses that are still under construction with a preliminary sale and purchase agreement. PPJB as mentioned above is usually made before a Notary, because it is not possible to make a sale and purchase (hereinafter referred to as AJB) before the PPAT considering that it is still in the unpaid installment stage. However, as the provisions of number 7 SEMA No. 4 of 2016 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court, recognizing PPJB as the basis for the sale and purchase agreement of land rights, on the other hand, states that the transfer of land rights through PPJB occurs if the purchase price of the land parcel that is used as the object of sale and purchase has been paid in full and the buyer has mastered the object of land rights carried out in good faith. The problem discussed is whether the object of the preliminary housing sale and purchase agreement has not been handed over to the buyer, which can be interpreted as a seller with bad intentions and what legal remedies can be taken by buyers who have paid in full but have not mastered the object of sale and purchase based on the ownership of the plot of land and the building of the house that is standing above because the deed of sale and purchase has not been made before the Land Deed Maker Officer. It was concluded that the legal action of the buyer who has paid in full but has not yet mastered the ownership of the plot of land because a deed of transfer of rights has not been made before the Land Deed Maker Officer, can demand the developer's obligation to fulfill the promised achievement, namely immediately submit a certificate of title to the land along with the building of the house, which stands on it as proof of rights accompanied by compensation as referred to in Article 1267 of the Civil Code, with a claim for compensation on the basis of default*

**Keywords: Agreement, Sale and Purchase, SEMA Number 4 Year 2016**

## ABSTRAK

Abstrak— Perjanjian pendahuluan jual beli dilakukan setelah memenuhi persyaratan kepastian atas status pemilikan tanah; hal yang diperjanjikan; kepemilikan izin mendirikan bangunan induk; ketersediaan prasarana, sarana, dan utilitas umum serta keterbangunan perumahan paling sedikit 20% (dua puluh persen). Pengembang dapat memperjual belikan rumah yang masih dalam taraf pembangunan dengan perjanjian pendahuluan jual beli. PPJB sebagaimana tersebut biasanya dibuat di hadapan Notaris, karena belum dapat dilaksanakan pembuatan jual beli (selanjutnya disebut AJB) di hadapan PPAT mengingat masih dalam taraf angsuran belum lunas. Namun sebagaimana Ketentuan angka 7 SEMA No. 4 Tahun 2016 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung, mengakui PPJB sebagai dasar perjanjian jual beli hak atas tanah, di sisi yang lain menyebut peralihan hak atas tanah melalui PPJB terjadi jika harga pembelian bidang tanah yang dijadikan obyek jual beli telah dibayar lunas dan pembeli telah menguasai obyek hak atas tanah yang dilakukan dengan iktikad baik. Permasalahan yang dibahas adalah Apakah objek perjanjian pendahuluan jual beli perumahan belum diserahkan kepada Pembeli dapat diartikan sebagai penjual beriktikad tidak baik dan Upaya hukum apakah yang dapat ditempuh oleh pembeli yang telah membayar lunas namun belum menguasai objek jual beli berdasarkan pemilikan bidang tanah berikut bangunan rumah yang berdiri di atasnya karena belum dibuat akta jual beli di hadapan Pejabat Pembuat Akta Tanah. Diperoleh hasil kesimpulan bahwa Upaya hukum pembeli yang telah membayar lunas namun belum menguasai berdasarkan pemilikan bidang tanah karena belum dibuat akta peralihan hak di hadapan Pejabat Pembuat Akta Tanah, dapat menuntut kewajiban pengembang untuk memenuhi prestasi yang dijanjikan yakni segera menyerahkan sertifikat hak atas tanah berikut bangunan rumah yang berdiri di atasnya sebagai bukti hak disertai ganti kerugian sebagaimana Pasal 1267 KUH Perdata, dengan gugatan ganti kerugian atas dasar wanprestasi

**Kata Kunci: Perjanjian, Jual Beli, SEMA Nomor 4 Tahun 2016**