



AJUDIKASI

Jurnal Ilmu Hukum

ajudikasi.unsera@gmail.com

e-jurnal.lppmunsera.org/index.php/ajudikasi

REFORMULATING A DUE DILIGENCE-BASED MODEL FOR LAND SALE AND PURCHASE AGREEMENTS TO PREVENT DISPUTES AND ENSURE LEGAL CERTAINTY

Yuli Hasanah^a, Abdul Rokhim^b, Mutiara Balqis Nabelah Rahmi^c

^aMaster of Notary Postgraduate Program, Islamic University of Malang, Malang, Indonesia.

^bFaculty of Law, Islamic University of Malang, Malang, Indonesia.

^cFaculty of Shariah, Maulana Malik Ibrahim State Islamic University, Malang, Indonesia.

Article Info

*Corresponding Author:

✉ yulihasanah552@gmail.com

History:

Submitted: February 20, 2026

Last Revised: June 26, 2026

Accepted: June 27, 2026

Keyword:

Reformulating; Land Sale; Purchase Agreements; Legal Certainty; Due Diligence.

Ajudikasi: Jurnal Ilmu Hukum

Volume 10 Issue 1, June 2026

<https://doi.org/10.30656/ajudikasi.v10i1.12393>



Copyright © 2026

Ajudikasi: Jurnal Ilmu Hukum

Abstract

Land Sale and Purchase Binding Agreements (*Perjanjian Pengikatan Jual Beli (PPJB)*) have become a prevalent legal instrument in Indonesian land transactions. However, the frequent occurrence of disputes following the execution of PPJBs suggests that the current binding mechanism does not fully guarantee legal certainty or protection for the parties. These disputes often arise from ambiguous land title status, deficiencies in the legal authority of the parties, discrepancies between physical and juridical land data, and insufficient verification processes prior to transactions. This study analyzes the regulation and practice of land sale and purchase binding agreements under Indonesian positive law, assesses the relevance of the due diligence principle as a preventive legal protection mechanism, and develops a due diligence-based model to enhance legal certainty in land transactions. The research utilizes a normative legal research method, incorporating statutory, conceptual, and case approaches. Primary legal materials, including legislation and judicial decisions, are examined alongside secondary sources such as legal doctrines, scholarly books, and reputable academic journals. The findings indicate that PPJB practices predominantly emphasize formal contractual elements and lack comprehensive legal examination mechanisms. The due diligence principle is shown to be highly relevant as a preventive legal protection tool through legal, administrative, physical, and social assessments conducted prior to transactions. Accordingly, this study introduces the *Land Transaction Due Diligence Model (LTDDM)*, which integrates due diligence into the pre-contractual phase to achieve substantive legal certainty and mitigate the risk of land disputes.

A. INTRODUCTION

Land occupies a very important position in Indonesia's national legal system because, in addition to serving as a means of meeting basic human needs, land also holds significant social, economic, political, and legal value. From an agrarian law perspective, land is an object of rights that receives constitutional protection under Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that the earth, water, and natural resources contained therein are controlled by the state and utilized to the greatest extent possible for the prosperity of the people. Therefore, every legal act concerning land must be guided by the principles of legal certainty, justice, and legal protection to guarantee the rights of all interested parties.

According to Boedi Harsono, legal certainty in the field of land affairs is the primary objective of the national land law system, which is achieved through a land registration system and orderly mechanisms for the transfer of rights, thereby providing legal protection to land rights holders.¹ In practice, public demand for land transactions is growing much faster than the administrative procedures required by law. This situation has given rise to various legal instruments used as means of temporarily binding the transfer of rights until such transfer gains full legal force through the signing of a Deed of Sale and Purchase (AJB); one such instrument is the Preliminary Sale and Purchase Agreement (PPJB). Conceptually, the Sales and Purchase Binding Agreement (PPJB) is a preliminary agreement (*voorovereenkomst*) entered into as an initial step before the definitive execution of a land sale and purchase before a Land Deed Officer (PPAT). The existence of a PPJB is generally due to certain requirements not yet being met, whether related to the legal object or subject, such as a certificate that is still in the process of being finalized while payment has not yet been fully completed, unpaid taxes, or other administrative requirements.²

Thus, the PPJB essentially serves as an instrument to safeguard the interests of the parties during the process leading up to the execution of the AJB. Although it plays an important role, the use of the PPJB in practice is often accompanied by various legal issues. Numerous land disputes that have arisen in court indicate that the PPJB is frequently used without prior adequate examination of the legal status of the land, the validity of documents, the capacity of the parties, or the potential for disputes inherent in the subject matter of the transaction. As a result, many land transactions subsequently lead to the cancellation of agreements, lawsuits for breach of contract, unlawful acts, and even protracted ownership disputes. This phenomenon indicates that the PPJB, as a transaction safeguard, has not yet

¹ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya* (Jakarta: Djambatan, 2017), hlm. 69.

² Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2016), hlm. 268

been fully effective in ensuring legal certainty.³ Various previous studies have shown that the main weakness of the PPJB lies in the fact that it merely establishes a binding relationship and does not yet result in the legal transfer of land rights. In other words, even though the parties have signed the PPJB and have even made payments, ownership of the land remains with the seller until the Deed of Sale (AJB) is executed and the transfer of rights is registered with the land office.⁴

In judicial practice, various land disputes arising from Preliminary Sales and Purchase Agreements (PPJB) demonstrate that legal issues are not solely related to the parties' breach of contract, but also concern the validity of the subject matter of the transaction, the seller's authority to transfer rights, the legal status of the land, and the existence of overlapping land rights. These judicial considerations are reflected in Case No. 6/Pdt.G/2025/PN Krs, between Abd Rahim as Plaintiff against H. Hasan Aminuddin and the Head of the Probolinggo Regency Land Office as Defendants. This case centers on a dispute over Freehold Title Certificate No. 1040/Sidomukti Village, Probolinggo Regency, issued on July 21, 2021, based on Survey Certificate No. 00532/Sidomukti/2021 dated July 1, 2021, covering an area of 1,473 m² in the name of Hasan Aminuddin. The dispute arose because the Plaintiff alleged that he had a legal claim to the land in question stemming from a sale and purchase transaction. Yet, the land rights had instead been registered and the certificate issued in the name of Defendant I. Thus, the crux of the matter concerns not only the execution of the sale and purchase agreement but also the validity of the transfer of rights and the issuance of the certificate by the Land Office. This case illustrates that land sale and purchase disputes often escalate into disputes regarding the validity of land title certificates when there is a suspicion that the land registration process was conducted without taking into account the actual legal status of the property or without ensuring the existence of a valid basis for the transfer of rights. The involvement of the Head of the Probolinggo Regency Land Office as the Defendant indicates that the issuance of the Certificate of Ownership is at issue both from an administrative and a legal perspective—so the court must assess not only the civil legal relationship between the parties, but also the legality of the land administration actions.

Case No. 6/Pdt.G/2025/PN Krs demonstrates that the root of a land sale and purchase dispute does not always lie in the fulfillment of contractual obligations, but also in the inadequate verification of the legal status of the land in question before the transaction. Legal due diligence that is not conducted thoroughly has the potential to result in the transfer of land rights that are subsequently contested in court, including the emergence of conflicting

³ Mugiati, "Analisis Yuridis Kepastian Hukum Perjanjian Pengikatan Jual Beli (PPJB) atas Tanah," *Jurnal Hukum Mimbar Justitia* 8, no. 1 (2022): hlm. 36

⁴ Ibid., hlm. 40

ownership claims and lawsuits challenging the validity of certificates that have already been issued. Therefore, this case serves as an example that exercising due diligence in examining the status of land rights, the history of rights acquisition, the seller's authority, and the consistency between physical and legal data before signing the Preliminary Sales and Purchase Agreement (PPJB) or the Deed of Sale and Purchase is a crucial step in preventing future disputes. Such circumstances create legal vulnerabilities if it turns out that the land subject to the transaction is in dispute, has been pledged to a third party, is encumbered by a lien, or has administrative defects previously unknown to the buyer. These issues demonstrate that weak legal frameworks do not always cause land disputes but are often rooted in suboptimal verification processes before the transaction. Due diligence as a principle stems from the concept of the duty of care, which requires every party to act carefully, diligently, and in good faith before making a legal decision that may have consequences for themselves or others. Theoretically, this principle serves as a preventive tool to minimize legal risks through an adequate process of verification and assessment of facts, documents, and conditions related to a legal relationship. Over time, the principle of due diligence has found widespread application in various fields such as corporate transactions, investments, mergers and acquisitions, and capital markets as a mechanism to ensure that every legal action is based on accurate information and has undergone a thorough review.⁵

In the context of Indonesian land law, the concept of due diligence is actually highly relevant. Before a Preliminary Land Purchase Agreement (PPJB) is signed, a thorough examination should be conducted regarding the status of land rights, the history of title transfers, the existence of encumbrances, the consistency between physical and legal data, potential disputes, the authority of the parties, and other aspects that may affect the validity of the transaction. However, to date, Indonesian positive law has not comprehensively regulated the standards for land due diligence that must be carried out before the execution of a PPJB. In fact, various studies on PPJBs have thus far focused primarily on the probative value of deeds, legal protection for buyers, the responsibilities of notaries and PPATs, and the legal consequences if the validity requirements of the agreement are not met.⁶ There has not yet been much research specifically examining how the principle of due diligence can be adapted into a normative model in the process of concluding land sales agreements as a preventive measure to avert disputes before they arise.

⁵ Munir Fuady, *Hukum Bisnis dalam Teori dan Praktik* (Bandung: Citra Aditya Bakti, 2018), hlm. 189.

⁶ Widya Wahyu Savitri, "Kepastian Hukum terhadap Akta Perjanjian Pengikatan Jual Beli (PPJB) yang Tidak Memenuhi Syarat Materiil," *Begawan Abioso* 14, no. 2 (2024): 100–104; Arsiendy Aulia, "Prinsip Kehati-hatian PPAT dalam Proses Pengikatan Jual Beli Tanah sebagai Perwujudan Kepastian Hukum," *Recital Review* 4, no. 1 (2022): 23–27; I Made Arjaya, Ni Komang Mahyuni Gita Paramita, dan I Made Suwitra, "Perlindungan Hukum bagi Pembeli Berdasarkan Akta Perjanjian Pengikatan Jual Beli," *Tuturan* 1, no. 2 (2022): 56–61.

From the perspective of legal certainty theory, this situation creates a paradox. On the one hand, Indonesian land law has provided formal mechanisms for the transfer of rights through the Deed of Sale (AJB) and land registration. On the other hand, however, most disputes actually originate at the pre-transfer stage that is, when the parties enter into a Preliminary Sales and Purchase Agreement (PPJB) without adequate legal due diligence. Therefore, strengthening preventive measures has become an urgent necessity to achieve substantive legal certainty, rather than merely formal legal certainty. Furthermore, developments in modern real estate transaction practices demonstrate the increasing complexity of the legal objects and subjects involved in land sales. The involvement of investors, developers, financing institutions, heirs, legal entities, and various other legal interests demands more systematic risk mitigation mechanisms. In this context, due diligence is no longer viewed merely as a business practice but as a preventive legal instrument designed to protect the interests of the parties and prevent future disputes.

This study has both academic and practical value. Academically, it seeks to establish a normative framework for due diligence in land transactions, an area lacking clear regulation and conceptualization in Indonesian land law. Practically, it aims to provide a legal due diligence model to guide notaries, PPATs, Land Offices, real estate businesses, and the public in land sale and purchase agreements. This model is designed to minimize disputes from the pre-transaction stage and promote preventive legal protection, not just dispute resolution. The research addresses the following questions: 1. What is the status and legal framework of the Preliminary Land Sale and Purchase Agreement (PPJB) in Indonesian land law, and what legal issues arise in practice? 2. How can due diligence serve as a theoretical foundation for preventive legal protection in land transactions? 3. What is the ideal model for land sale and purchase agreements based on due diligence to prevent disputes and ensure legal certainty? These questions guide the analysis in the results and discussion section.

B. RESEARCH METHODS

This research uses a normative legal method to analyze legal norms, principles, doctrines, concepts, and court decisions related to Preliminary Sale and Purchase Agreements (PPJB) and the due diligence principle in land rights transfers. The study employs statutory, conceptual, and case-based approaches. The statutory approach reviews the Civil Code, Law No. 5 of 1960 on Basic Agrarian Principles, Government Regulation No. 24 of 1997 on Land Registration, and other relevant regulations. The case-based approach examines Court Decision No. 6/Pdt.G/2025/PN Krs to evaluate the application of legal norms in dispute resolution. The conceptual approach focuses on legal doctrines and principles, particularly due diligence and legal protection, as well as theories related to legal certainty, contract law, and

land law. Court decisions involving disputes over PPJB and land rights transfers are also reviewed.

This research covers legal regulations on land sale and purchase agreements, land rights transfers, and the use of due diligence to prevent disputes and strengthen legal certainty. Sources include primary materials (laws, regulations, court decisions), secondary materials (books, journal articles, research, expert opinions), and tertiary materials (legal dictionaries, encyclopedias). All materials were gathered through systematic library research focused on relevant sources.

The research focuses on how due diligence is applied in land sale and purchase agreements to ensure legal certainty. Due diligence involves examining and verifying the legal status of land before a transaction to reduce dispute risks. Legal materials were analyzed qualitatively and prescriptively, starting with an inventory of relevant norms, followed by interpretation, systematization, and construction, to develop a due diligence-based model for these agreements.

C. RESULT AND DISCUSSION

1. Regulatory Framework and Practices for Land Sales and Purchases under Indonesian Law and Related Legal Issues

One of the characteristics of Indonesian land law is the distinction between obligatory agreements and legal acts of a property nature (*zakelijke overeenkomst*). In land sale and purchase transactions, this distinction is reflected in the existence of a Preliminary Sale and Purchase Agreement (PPJB), which serves as a preliminary agreement, while the Deed of Sale and Purchase (AJB) is the legal instrument that results in the transfer of land rights. According to Herlien Budiono, a PPJB is a form of *voorovereenkomst*, or preliminary agreement, entered into when the parties have reached an agreement regarding the subject matter and price of the transaction but are not yet able to fully execute the sale and purchase because certain conditions have not yet been met.⁷ Thus, the PPJB serves as an instrument to safeguard the interests of the parties prior to the execution of the AJB before a Land Deed Officer (PPAT).

Legally speaking, a Preliminary Sales and Purchase Agreement (PPJB) is a preliminary agreement subject to the general provisions of contract law in the Civil Code (KUH Perdata). Therefore, for a PPJB to be valid, it must meet the four requirements for a valid contract as stipulated in Article 1320 of the Civil Code, namely: mutual consent of the parties, legal capacity of the parties to enter into a contract, a specific subject matter, and a lawful cause. In the context of the PPJB, mutual consent is reflected in the alignment of the seller's and buyer's intentions to commit to a sale and purchase transaction to be carried out at a later date. Legal capacity indicates that the parties possess the legal authority to enter into legal acts. The

⁷ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2016), hlm. 268.

specific subject matter in the PPJB—such as the land or building covered by the agreement—must be clearly defined, including its identity, area, and legal status. As for the requirement of a lawful cause, the purpose and content of the agreement must not conflict with laws and regulations, public morality, or public order. Upon fulfillment of these four requirements, the PPJB is legally binding on the parties based on the principle of *pacta sunt servanda*, even though it does not yet result in the transfer of land rights, as the legal transfer of rights only occurs after the Deed of Sale and Purchase (AJB) is executed before a Land Deed Officer (PPAT) in accordance with the provisions of land-related laws and regulations. Failure to meet the subjective requirements results in the contract being voidable (*vernietigbaar*), whereas failure to meet the objective requirements renders the contract void *ab initio* (*nietig van rechtswege*).⁸ In practice, the PPJB has become a widely used instrument in land transactions. The use of the PPJB is generally motivated by the fact that certain requirements necessary for the execution of the AJB have not yet been met, whether those requirements relate to the land itself or to the parties to the transaction.

Based on an analysis of the legal materials used in this study including statutory provisions, Preliminary Sales and Purchase Agreements (PPJB), and court decisions related to land sale and purchase disputes the PPJB is generally used when the requirements for executing a Deed of Sale and Purchase (AJB) have not yet been fully met. These conditions include, among others:

- (1) the land title certificate is still in the process of being issued or subdivided;
- (2) the land is still encumbered by a lien;
- (3) the purchase price has not yet been paid in full;
- (4) tax obligations related to the transaction have not yet been settled;
- (5) land administration documents still require finalization.

These circumstances indicate that the PPJB serves as a preliminary legal instrument to bind the parties until all legal and administrative requirements for the execution of the AJB are met, including the existence of an unresolved inheritance process.⁹ In notarial practice, a PPJB is generally drawn up as an authentic deed before a notary. The deed typically includes the identities of the parties, a description of the land, the transaction price, the payment mechanism, the timeframe for executing the AJB, the rights and obligations of the parties, breach-of-contract clauses, and the granting of power of attorney to perform certain legal acts if one of the parties is unable to be present at the time of the AJB's execution. Developments in practice also show that a PPJB is often accompanied by an irrevocable power of attorney intended to protect the buyer if the seller fails to fulfill their obligations. However, the use of such a power of attorney often gives rise to legal debates because it has the potential to be used

⁸ Munir Fuady, *Hukum Kontrak: Dari Sudut Pandang Hukum Bisnis* (Bandung: Citra Aditya Bakti, 2015), hlm. 33.

⁹ Arief Rahman et al., "Analisis Hukum Kekuatan Mengikat Perjanjian Pengikatan Jual Beli (PPJB) Tanah," *Fundamental Justice* 6, no. 1 (2024): h. 54-58.

as a means of covert transfer of rights that circumvents the land registration procedures required by law.¹⁰

Another emerging trend is the use of PPJBs in real estate transactions conducted by developers. Under this practice, consumers often make payments in installments over a period of several years before the AJB can be executed. As a result, a legal relationship that was originally intended to be temporary often turns into a long-term legal relationship, which gives rise to various legal risks should the developer experience financial difficulties, bankruptcy, or delays in completing land administration procedures.¹¹

Although the PPJB is intended to provide temporary legal protection, practice shows that many land disputes actually originate at the preliminary sales and purchase agreement stage. Based on an analysis of Supreme Court Decision No. 130 K/Pdt/2017, the Preliminary Sales and Purchase Agreement (PPJB) documents that were the subject of this study, as well as relevant literature including books, academic journals, and laws and regulations several key issues were identified as the causes of disputes arising from the implementation of the PPJB.

a. Unclear Legal Status of Land

The first issue is the failure to conduct a thorough examination of the land's legal status before the Preliminary Land Purchase Agreement (PPJB) is signed. In many cases, the land that is the subject of the transaction turns out to still be in dispute, subject to seizure, encumbered by a lien, or has even been transferred to another party. This situation indicates that the parties often focus solely on agreeing on a price without conducting a legal verification of the subject of the transaction. As a result, the PPJB that has been drawn up cannot be converted into an AJB because of legal obstacles that only come to light after the transaction has taken place.¹²

b. Defects in the Legal Capacity of a Legal Entity

The potential for disputes also arises when the party acting as the seller does not have full authority over the land in question. This situation often occurs with inherited land that has not yet been divided, jointly owned marital property sold without the spouse's consent, or land owned by a legal entity sold without the approval of the authorized governing body. According to Urip Santoso, the validity of a land transaction is determined not only by the status of the property but also by the authority of the party performing the legal act.¹³ If such authority does not exist, the transaction may be voided by a court ruling.

c. Discrepancies Between Physical Data and Legal Data

¹⁰ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, op.cit., hlm. 28

¹¹ Virdy Varlucy Watdi dan Gunawan Djajaputra, "Kepastian Hukum Akta Perjanjian Pengikatan Jual Beli dan Akta Jual Beli Akibat Adanya Gugatan Wanprestasi dan Perbuatan Melawan Hukum," *Lex Journal* 9, no. 4 (2025): hlm. 610–618.

¹² Widya Wahyu Savitri, "Kepastian Hukum terhadap Akta Perjanjian Pengikatan Jual Beli (PPJB) yang Tidak Memenuhi Syarat Materiil," *Begawan Abioso* 14, no. 2 (2024): hlm. 101–106.

¹³ Urip Santoso, *Hukum Agraria: Kajian Komprehensif* (Jakarta: Kencana, 2017), hlm. 214.

Another common issue is the discrepancy between the physical condition of the land and the data listed in the certificate. Discrepancies in land area, property boundaries, or physical occupation by third parties often lead to disputes after the PPJB is signed. In practice, these issues are often only discovered during a re-survey or on-site inspection prior to the preparation of the Deed of Sale (AJB). As a result, the transaction cannot proceed or may even result in a civil lawsuit.

d. Breach of Contract and Unlawful Acts

The most common disputes arise from a breach of contract by one of the parties. The seller may refuse to execute the Deed of Sale after receiving payment, while the buyer may fail to meet payment obligations according to the agreed-upon schedule. In addition to breach of contract, it is not uncommon for disputes to escalate into lawsuits for unlawful acts if one party is found to have concealed material facts regarding the subject matter of the transaction or acted in violation of the principle of good faith.¹⁴

e. Weaknesses in the Pre-Transaction Verification Mechanism

From these various issues, it is evident that the root of the problem lies not in the lack of legal provisions regarding PPJBs, but rather in the weakness of the due diligence mechanisms prior to the transaction. The current legal system does not yet require a comprehensive legal due diligence process before a PPJB is executed. In fact, most disputes that arise could actually be prevented if the following were examined from the outset:

1. Land title status;
2. History of title acquisition;
3. Encumbrances on the title;
4. Potential for disputes and seizures;
5. Authority of the parties;
6. Consistency between physical and legal data;
7. Compliance with land-use planning and land administration regulations.

These conditions indicate that the current model for land sale and purchase agreements remains focused on legal protection after a dispute has arisen (a curative approach), rather than on dispute prevention (a preventive approach). Therefore, a reformulation of the land sale and purchase agreement model is needed, one that makes the legal due diligence process an integral part of the pre-contractual stages. This reformulation is becoming increasingly important, given that most land disputes stem from information that is incomplete or has not been adequately verified before the PPJB is signed.¹⁵

¹⁴ Watdi dan Djajaputra, "Kepastian Hukum Akta PPJB dan AJB Akibat Gugatan Wanprestasi dan Perbuatan Melawan Hukum," hlm. 619.

¹⁵ Mugiati, "Analisis Yuridis Kepastian Hukum PPJB atas Tanah," op. cit., h. 45; Savitri, "Kepastian Hukum terhadap Akta PPJB yang Tidak Memenuhi Syarat Materiil," op. cit., hlm. 106.

2. Evaluating the Role of Due Diligence in Land Sale and Purchase Agreements under Relevant Laws and Regulations

The application of the principle of due diligence in land transactions is important because it serves as a preventive mechanism to identify and verify the legal, administrative, and factual aspects related to the object and subject of the transaction before the parties commit to a Preliminary Sale and Purchase Agreement (PPJB). Through this review, potential disputes arising from unclear land title status, incomplete documentation, or legal encumbrances on the subject of the transaction can be identified early on, thereby minimizing the risk of loss for the parties involved.

The analysis in the previous section shows that most disputes arising from land sale and purchase agreements are not solely caused by weaknesses in the legal provisions governing such agreements (PPJB), but rather stem primarily from the parties' failure to identify legal risks before the transaction takes place. Various disputes regarding duplicate certificates, land that is still the subject of a dispute, discrepancies between physical and legal data, sales by unauthorized parties, and the existence of encumbrances unknown to the buyer are essentially issues that can be detected as early as the pre-transaction stage if a thorough legal review is conducted. From a modern legal perspective, the mechanism used to identify and manage these risks is known as due diligence. Etymologically, due diligence refers to the reasonable care that a person must exercise before making a legal or business decision that may have certain consequences. In international business practice, due diligence is part of risk management aimed at ensuring that a transaction is carried out based on complete, accurate, and verifiable information.¹⁶

According to Peter Howson, due diligence is a systematic investigative process conducted to obtain a comprehensive picture of the legal, financial, operational, and administrative conditions of a transaction target so that potential risks can be identified and managed before the transaction is executed.¹⁷ This concept has grown rapidly in the areas of corporate mergers and acquisitions, capital market transactions, project financing, foreign investment, and high-value real estate transactions.

In the context of land sale and purchase agreements, the need for due diligence becomes increasingly important because land, as the subject of the transaction, has characteristics that differ from those of typical contractual subjects. Land not only has high economic value but is also linked to the state's administrative system, public interests, land-use planning, the environment, third-party rights, and various other aspects of public law. Therefore, errors in verifying the land in question have the potential to cause losses far greater than those associated with ordinary transactions involving movable property.¹⁸

¹⁶ Alan S. Gutterman, *Mergers and Acquisitions: Understanding Due Diligence* (New York: Business Expert Press, 2018), hlm. 5.

¹⁷ Peter Howson, *Due Diligence: The Critical Stage in Mergers and Acquisitions*, 3rd ed. (London: Routledge, 2017), hlm. 11.

¹⁸ Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya* (Jakarta: Kompas, 2009), hlm. 112.

According to Maria S.W. Sumardjono, the complexity of Indonesia's land law stems from the interplay between civil law, administrative law, customary law, and national land policy, which often influence one another in practice.¹⁹ Consequently, an examination of a parcel of land cannot be limited to reviewing the certificate; it must encompass all legal aspects related to the existence of rights to that land. From this perspective, due diligence serves as a preventive tool that allows the parties to obtain comprehensive information before committing to a transaction. In other words, due diligence is a mechanism for reducing information asymmetry, which has long been one of the main causes of land disputes.

3. Theoretical Basis for Due Diligence in Land Sale and Purchase Agreements

Theoretically, the relevance of due diligence in land sale and purchase transactions can be explained through the theories of legal certainty and legal protection discussed in the previous chapter. According to Gustav Radbruch, legal certainty requires clarity regarding the rights, obligations, and legal consequences that will arise from a legal act.²⁰ In the context of a Preliminary Sales and Purchase Agreement (PPJB), legal certainty does not merely mean the existence of a valid agreement, but also certainty regarding the legal status of the subject matter and the parties involved in the transaction. Therefore, legal certainty can only be achieved if information regarding the land that is the subject of the transaction has been adequately verified before the agreement is executed.

Meanwhile, Philipus M. Hadjon's theory of legal protection regards preventive protection as the most ideal form of protection because it aims to prevent disputes from arising before people's rights are violated.²¹ In this context, due diligence can be understood as a form of preventive legal protection, as it enables the parties to identify and avoid legal risks before a transaction is carried out. Satjipto Rahardjo also emphasized that the law should not only serve to resolve disputes that have already arisen, but must also be able to prevent conflicts from arising in the first place through mechanisms that provide protection from the outset.²² This view is consistent with the primary objective of due diligence, which is to shift the focus of legal protection from a repressive paradigm to a preventive one.

In this study, the concept of due diligence is not understood in a narrow sense as merely a review of land titles, but rather as a comprehensive legal investigation into all aspects that may affect the validity and sustainability of a transaction.

¹⁹ Maria S.W. Sumardjono, *Kebijakan Pertanahan antara Regulasi dan Implementasi* (Jakarta: Kompas, 2001), hlm. 65

²⁰ Gustav Radbruch, *Legal Philosophy* (Cambridge: Harvard University Press, 1950), hlm. 107.

²¹ Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia* (Surabaya: Bina Ilmu, 1987), hlm. 2.

²² Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2014), hlm. 53

a. Legal Due Diligence

The first aspect is legal due diligence, which involves an examination of the legal status of the land that is the subject of the transaction. This examination includes:²³

1. The validity of the land title certificate;
2. The history of title acquisition;
3. The existence of encumbrances;
4. Seizure or freeze status;
5. Ongoing disputes;
6. Potential third-party claims;
7. Compliance with zoning regulations.

According to Adrian Sutedi, many land disputes arise because the parties focus solely on the existence of a certificate without conducting a thorough review of the land's legal history.²⁴ In fact, a certificate that appears administratively valid is not necessarily free from legal defects that could undermine the certainty of rights in the future.

b. Administrative *Due Diligence*

The second aspect is administrative due diligence, which involves verifying the completeness and validity of administrative documents related to the transaction. This verification includes:²⁵

- (1) The identities of the parties;
- (2) National Identification Number (NIK);
- (3) Family Card;
- (4) Marital status;
- (5) Consent of the husband and wife;
- (6) Certificate of inheritance;
- (7) Proof of payment of Land and Building Tax (PBB);
- (8) Proof of payment of other tax obligations.

Administrative reviews are crucial because many land transactions are annulled by the courts due to defects in authority or incomplete documentation—issues that could have been identified from the outset.

c. Physical *Due Diligence*

In addition to legal and administrative aspects, an inspection must also be conducted to assess the physical condition of the land. The physical inspection includes:²⁶

- (1) The actual area of the land;

²³ Richard Stamford, "Legal Due Diligence and Risk Allocation in Property Transactions," *Journal of Property Law* 15, no. 2 (2019): 118–123.

²⁴ Adrian Sutedi, *Peralihan Hak atas Tanah dan Pendaftarannya* (Jakarta: Sinar Grafika, 2018), hlm. 96.

²⁵ Urip Santoso, *Pendaftaran dan Peralihan Hak atas Tanah* (Jakarta: Kencana, 2019), hlm. 155.

²⁶ Boedi Harsono, *Hukum Agraria Indonesia* (Jakarta: Djambatan, 2017), hlm. 485

- (2) The boundaries of the land parcel;
- (3) Physical possession of the property;
- (4) The presence of specific buildings or facilities;
- (5) Road access;
- (6) The condition of the surrounding environment.

In many cases, disputes arise because the land area listed on the certificate does not match the physical conditions on the ground, or because part of the property is found to be under the control of another party.

d. Social Due Diligence

One aspect that is often overlooked in practice but is extremely important is social due diligence. This assessment aims to identify:²⁷

- (1) Potential social conflicts;
- (2) Claims by indigenous communities;
- (3) Objections from nearby residents;
- (4) Boundary disputes with adjacent landowners;
- (5) Potential land-use conflicts.

In the Indonesian context, where various forms of customary land rights and traditional land tenure still exist, social factors often determine the success or failure of a land transaction. Based on an analysis of various court decisions and land transaction practices, most disputes can actually be prevented if the parties conduct adequate due diligence before the Preliminary Land Purchase Agreement (PPJB) is signed. There are at least four main functions of due diligence in dispute prevention. First, the risk identification function. Through due diligence, the parties can identify early on the various legal risks associated with the subject matter of the transaction, thereby enabling them to determine whether the transaction is worth proceeding with or not.²⁸ Second, the risk mitigation function. If certain risks are identified, the parties can draft appropriate contractual clauses to anticipate potential future losses. Third, the function of good faith protection.

A thorough due diligence review can serve as evidence that the buyer has acted as a good faith purchaser. This is of significant importance, given that legal protection for good faith purchasers is a principle that has been established in various decisions of the Supreme Court of the Republic of Indonesia.²⁹ Fourth, the function of enhancing legal certainty. The more complete the information obtained by the parties before a transaction

²⁷ Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya*, hlm. 154.

²⁸ Stanley Foster Reed, Alexandra Reed Lajoux, dan H. Peter Nesvold, *The Art of M&A Due Diligence* (New York: McGraw-Hill, 2007), hlm. 3

²⁹ Putusan Mahkamah Agung Republik Indonesia Nomor 251 K/Sip/1958; Putusan Mahkamah Agung Republik Indonesia Nomor 1230 K/Sip/1980; lihat juga Rahmat Ramadhani, "Kepastian Hukum yang Terkandung dalam Sertipikat Hak Atas Tanah," *De Lega Lata* 2, no. 1 (2017): hlm. 149-153.

is carried out, the less likely it is that disputes will arise due to misinformation or hidden legal defects.

The application of due diligence not only provides protection to the buyer but also to all parties involved in the transaction. For the buyer, due diligence provides assurance that the land being purchased has a clear legal status and is free from hidden risks. For the seller, due diligence can reduce the potential for lawsuits arising from allegations of providing inaccurate information regarding the subject of the transaction. For notaries and PPATs, the application of due diligence serves as a form of professional prudence that can minimize the risk of legal liability in the future.³⁰ Meanwhile, for the government—through the National Land Agency—the implementation of due diligence can help reduce the number of land disputes that have long burdened the land administration system and the judicial system.

Thus, the principle of due diligence is highly relevant in land sale and purchase transactions, as it serves as both a tool for dispute prevention and a means of preventive legal protection for all interested parties. However, the effectiveness of due diligence depends heavily on the existence of a clear normative model regarding the stages, inspection standards, and the parties responsible for carrying out the process. Therefore, the following discussion will focus on formulating a due diligence-based model for land sale and purchase agreements as an instrument to ensure legal certainty and reduce the risk of land disputes.

4. Formulation a Due Diligence Model for Land Sale and Purchase Agreements to Improve Legal Certainty and Reduce Land Dispute Risks

Land disputes often result from both regulatory weaknesses and insufficient due diligence and verification of legal objects and subjects before land sale and purchase transactions. This highlights that legal certainty in land transactions relies not only on legal norms but also on effective preventive procedures to identify potential legal risks before transactions occur. Therefore, the analysis of land sale and purchase practices by notaries and PPATs should be enhanced. This includes reviewing ownership documents, verifying legal status, identifying encumbrances or disputes, ensuring consistency between physical and legal data, and applying prudential principles when drafting the Preliminary Land Sale and Purchase Agreement (PPJB) and preparing the Deed of Sale and Purchase (AJB). This research provides both a normative framework for a due diligence-based model and practical insights into how notaries and PPATs can ensure legal certainty and reduce future land disputes.

³⁰ Arsiendy Aulia, “Prinsip Kehati-hatian PPAT dalam Proses Pengikatan Jual Beli Tanah sebagai Perwujudan Kepastian Hukum,” *Recital Review* 4, no. 1 (2022): hlm. 26–31.

Most land transaction disputes stem from inadequate legal verification before signing the Preliminary Sales and Purchase Agreement (PPJB). Currently, the PPJB serves mainly to bind parties until the Deed of Sale and Purchase (AJB) can be executed, but it does not require mandatory legal verification beforehand. As a result, PPJBs are often based on unverified information about the land's legal status, the parties' authority, third-party rights, or potential disputes. This leads to legal issues arising after the transaction, which could have been prevented earlier.

Legal certainty theory holds that the law must offer both formal procedures and ensure predictability and security for the public. Therefore, a land sale and purchase agreement model that focuses only on formalities, without verifying underlying information, does not achieve substantive legal certainty. Preventive legal protection requires mechanisms that operate before any rights violations or disputes occur. Reforming the PPJB model should therefore strengthen its preventive function by applying due diligence to identify and mitigate legal risks before establishing the contractual relationship. The proposed Land Transaction Due Diligence Model (LTDDM) integrates a comprehensive legal review into all stages of the land sale and purchase agreement before the Deed of Sale (AJB) is executed.

To improve Preliminary Sales and Purchase Agreements (PPJB), which have traditionally focused on formal aspects, the Land Transaction Due Diligence Model (LTDDM) is proposed. This framework incorporates legal due diligence into all pre-transaction stages, ensuring the PPJB both binds the parties and helps mitigate legal risks and prevent disputes. Legal certainty requires more than an authentic deed; it must be supported by verifying the legality of the subject, the parties' authority, and any potential risks related to the land.

Accordingly, a series of legal reviews should be conducted before the PPJB is signed to ensure a measurable level of legal certainty.

Stage	Key Activities	Objektives
1. Preliminary Legal Screening	Verification of the parties' identities, legal capacity, marital status, authority to act, and basic land documents	Ensuring that the legal entities and initial documents meet legal requirements
2. Land Due Diligence Investigation	Review of the legal, administrative, physical, and social aspects of a parcel of land	Identify all legal risks associated with the subject matter of the transaction
3. Due Diligence Report	Preparation of audit reports and risk identification	To provide an objective basis for decision-making by the parties
4. Risk Classification	Risk classification as low, moderate, or high	Determining the feasibility of a transaction and the necessary mitigation measures

5. Due Diligence-Based PPJB	Drafting of the Preliminary Sales and Purchase Agreement (PPJB) based on the results of a legal review and risk disclosure	Strengthening legal protection and preventing future disputes
6. AJB dan Peralihan Hak	Execution of the AJB after all risks have been resolved	Ensuring a lawful and legally certain transfer of rights

The core advancement in this model is situated within the Land Due Diligence Investigation stage, which encompasses four principal areas: (a) legal due diligence, which examines the validity of certificates, the history of rights acquisition, and the status of encumbrances, freezes, seizures, and disputes; (b) administrative due diligence, which verifies the completeness of administrative and tax documents; (c) physical due diligence, which ensures that the physical condition of the land corresponds with land registry data; and (d) social due diligence, which identifies potential social conflicts, community objections, or third-party claims.³¹ This model repositions the PPJB from a purely contractual instrument to a preventive mechanism intended to detect and manage risks prior to the emergence of disputes. Consequently, notaries and PPATs assume the role of gatekeepers, ensuring that transactions are based on comprehensive and verified legal information, rather than serving solely as deed drafters.³²

In this model, legal certainty is conceptualized not as a post-transactional outcome, but as the product of a systematic legal verification process conducted before the execution of the transaction. Accordingly, the Land Transaction Due Diligence Model (LTDDM) represents a new framework in land law that prioritizes an ex ante dispute prevention approach, aiming to prevent disputes from the pre-contractual stage and thereby provide more effective legal protection for all parties.³³ The proposed model redefines the roles of notaries and PPATs, positioning them not only as officials responsible for drafting deeds but also as gatekeepers of legal certainty. Within this framework, notaries and PPATs are assigned the following functions:

- (1) conducting preliminary verification of documents;
- (2) identifying legal risks;
- (3) ensuring compliance with land regulations;
- (4) providing legal explanations to the parties;
- (5) preparing a due diligence report before the drafting of the PPJB.

³¹ Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya* (Jakarta: Kompas, 2009), h. 154

³² Arsiendy Aulia, "Prinsip Kehati-hatian PPAT dalam Proses Pengikatan Jual Beli Tanah sebagai Perwujudan Kepastian Hukum," *Recital Review* 4, no. 1 (2022): 26–32.

³³ Peter Howson, *Due Diligence: The Critical Stage in Mergers and Acquisitions*, 3rd ed. (London: Routledge, 2017), hlm.

This concept aligns with the evolving role of the modern notary, who is no longer merely a recorder of the parties' intentions (legal recorder) but also a guardian of the quality and security of legal transactions (legal risk manager).

D. CONCLUSION

The regulation of the Preliminary Sale and Purchase Agreement (PPJB) within the Indonesian land law system is fundamentally grounded in the general provisions of contract law in the Civil Code and the principle of freedom of contract. However, the transfer of land rights must still be executed through a Deed of Sale (AJB) and land registration in accordance with prevailing laws and regulations. In practice, the PPJB has become a widely utilized legal instrument to bind parties prior to fulfilling all requirements for executing the AJB. Despite its widespread use, this practice continues to generate various legal issues, such as uncertainty regarding the status of land rights, defects in the authority of parties, discrepancies between physical and legal data, unidentified encumbrances or disputes, and inadequate verification processes before transactions. These challenges demonstrate that the current PPJB model remains centered on formal contractual aspects and has yet to provide substantive legal certainty.

The findings indicate that the principle of due diligence is highly relevant as a preventive legal protection mechanism in land sale and purchase agreements. By conducting a comprehensive review of legal, administrative, physical, and social aspects prior to signing the PPJB, various legal risks that may lead to disputes can be identified at the pre-contractual stage. The implementation of due diligence not only enhances legal protection for buyers, sellers, notaries, and Land Transaction Authorized Officers (PPATs), but also promotes the realization of legal certainty, prudence, and good faith in all land transactions. Consequently, due diligence should be regarded not merely as a business practice, but as a preventive legal mechanism designed to avoid disputes.

The principle of due diligence serves as a critical preventive legal safeguard in the execution of land sale and purchase agreements. Most land disputes arising after the execution of a Preliminary Land Sale and Purchase Agreement (PPJB) can be identified and prevented at the pre-transaction stage through a comprehensive legal review of the transaction's subject matter and parties. By conducting legal, administrative, physical, and social due diligence, parties can obtain complete information regarding the legal status of the land, the seller's authority, the physical condition of the property, and potential conflicts that may impede the transfer of rights. Therefore, the application of due diligence not only strengthens legal protection for buyers and sellers but also advances the principles of legal certainty, prudence, and good faith in land transactions.

This study introduces the Land Transaction Due Diligence Model (LTDDM), an innovative framework that integrates due diligence into all pre-transaction stages of land sale and purchase agreements. The LTDDM comprises six stages: preliminary legal screening, land due diligence investigation, due diligence report, risk classification, a due diligence-based Preliminary Land Sale and Purchase Agreement (PPJB), and the execution of the Land Sale and Purchase Deed (AJB) once all legal risks have been addressed. Under this model, the PPJB functions not only as an instrument to bind parties but also as a tool for risk mitigation and dispute prevention, positioning notaries and Land Transaction Authorized Officers (PPATs) as key facilitators of legal certainty. The LTDDM is anticipated to serve as a normative model for the development of land transaction practices in Indonesia, providing greater legal certainty, enhancing preventive legal protection, and reducing the potential for land disputes from the pre-contractual stage onward.

REFERENCES:

Book

- Adrian Sutedi, *Peralihan Hak atas Tanah dan Pendaftarannya* (Jakarta: Sinar Grafika, 2018)
- Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya* (Jakarta: Djambatan, 2017)
- Brian A. Blum and Amy C. Bushaw, *Contracts: Cases, Discussion, and Problems*, 5th ed. (New York: Aspen Publishers, 2021)
- Fajar, Mukti, dan Yulianto Achmad. *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar, 2017.
- Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2016)
- Gunawan Widjaja dan Kartini Muljadi, *Jual Beli* (Jakarta: RajaGrafindo Persada, 2017)
- Guterman, Alan S. *Mergers and Acquisitions: Understanding Due Diligence* (New York: Business Expert Press, 2018)
- Maria S.W. Sumardjono, *Kebijakan Pertanahan antara Regulasi dan Implementasi* (Jakarta: Kompas, 2001)
- , *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya* (Jakarta: Kompas, 2009)
- Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* (Yogyakarta: Pustaka Pelajar, 2017)
- Munir Fuady, *Hukum Kontrak: Dari Sudut Pandang Hukum Bisnis* (Bandung: Citra Aditya Bakti, 2015) *Hukum Bisnis dalam Teori dan Praktik* (Bandung: Citra Aditya Bakti, 2018)
- Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2013)
- Kelsen, Hans. *Pure Theory of Law*, Max Knight (Berkeley: University of California Press, 1967)

Howson, Peter. *Due Diligence: The Critical Stage in Mergers and Acquisitions*, 3rd ed. (London: Routledge, 2017)

Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Kencana, 2021)

Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia* (Surabaya: Bina Ilmu, 1987)

Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2014)

Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2018)

Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2014)

Radbruch, Gustav. *Legal Philosophy* (Cambridge: Harvard University Press, 1950)

Reed, Stanley Foster, et al., *The Art of M&A Due Diligence* (New York: McGraw-Hill, 2007)

Urip Santoso, *Pendaftaran dan Peralihan Hak atas Tanah* (Jakarta: Kencana, 2019).

Journal Article

Arjaya, I Made, Ni Komang Mahyuni Gita Paramita, dan I Made Suwitra. "Perlindungan Hukum bagi Pembeli Berdasarkan Akta Perjanjian Pengikatan Jual Beli." *Jurnal Tuturan* 1, no. 2 (2022): 55-67.

Aulia, Arsiendy. "Prinsip Kehati-hatian PPAT dalam Proses Pengikatan Jual Beli Tanah sebagai Perwujudan Kepastian Hukum." *Recital Review* 4, no. 1 (2022): 21-34.

Hutchinson, Terry dan Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): h. 101-112

Mugiati. "Analisis Yuridis Kepastian Hukum Perjanjian Pengikatan Jual Beli (PPJB) atas Tanah." *Jurnal Hukum Mimbar Justitia* 8, no. 1 (2022): 35-49.

Rahmat Ramadhani, "Kepastian Hukum yang Terkandung dalam Sertipikat Hak Atas Tanah," *De Lega Lata* 2, no. 1 (2017): 149-153.

Savitri, Widya Wahyu. "Kepastian Hukum terhadap Akta Perjanjian Pengikatan Jual Beli (PPJB) yang Tidak Memenuhi Syarat Materiil." *Begawan Abioso* 14, no. 2 (2024): 99-112.

Sutedi, Adrian. "Perlindungan Hukum bagi Pembeli Beritikad Baik dalam Transaksi Hak Atas Tanah." *Jurnal RechtsVinding* 10, no. 3 (2021): 365-382.

Stamford, Richard. "Legal Due Diligence and Risk Allocation in Property Transactions," *Journal of Property Law* 15, no. 2 (2019): 118-123.

Yuliandari, Eka. "Kedudukan Perjanjian Pengikatan Jual Beli dalam Sistem Hukum Pertanahan Indonesia." *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 1 (2023): 101-118.

Laws and Regulations

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek).

Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.

Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris, sebagaimana telah diubah dengan Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.

Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.

Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, sebagaimana telah diubah dengan Peraturan Pemerintah Nomor 24 Tahun 2016.

Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 16 Tahun 2021 tentang Perubahan Ketiga atas Peraturan Menteri Negara Agraria/Kepala BPN Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan PP Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.

Court Ruling

Putusan Mahkamah Agung Republik Indonesia Nomor 251 K/Sip/1958

Putusan Mahkamah Agung Republik Indonesia Nomor 1230 K/Sip/1980