



## Analysis of Legal Certainty and Protection for Investors for Investment Refunds in Commercial Property Sale and Purchase Agreements

Ribel Sri Pipit Putri Zega <sup>1</sup>, Muhammad Arif Prasetyo <sup>1\*</sup>, Rodiatun Adawiyah <sup>1</sup>

<sup>1</sup> PUI PT Business Law, Universitas Prima Indonesia, Medan, Indonesia

\*Corresponding author: [muhammadarifprasetyo@unprimdn.ac.id](mailto:muhammadarifprasetyo@unprimdn.ac.id)

### Article History

Revised: 2026-05-08

Accepted: 2026-06-11

Published: 2026-06-15

**Abstract:** This study aims to analyze legal certainty and protection for investors for the return of investment funds in commercial property sale and purchase agreements, as well as examine the judges' legal considerations in Supreme Court Decision Number 5648 K/Pdt/2025. The research uses normative legal methods with legislative, conceptual, and case approaches. The source of legal materials consists of primary, secondary, and tertiary legal materials that are analyzed qualitatively. The results of the study show that legal certainty for the return of investment funds has a juridical basis in the Civil Code through the principles of *pacta sunt servanda*, default, compensation, and cancellation of agreements. Legal protection for investors can be provided preventively through clear agreements, examination of the legality of objects, and security of funds, and repressively through default lawsuits, refund demands, compensation, and the implementation of court decisions. Supreme Court Decision Number 5648 K/Pdt/2025 applies the principle *ne bis in idem* because of the similarity of subjects, objects, and subject matter with previous disputes that have permanent legal force. The application of this principle provides legal certainty and prevents repetition of cases, but has implications for the closure of investors' opportunities to refile investment refund claims. Therefore, investor prudence and strengthening regulations in the commercial property sector are needed to ensure more effective legal protection.

**Keywords:** Legal Certainty; Legal Protection; Investor; Return on Investment Funds; Commercial Property

### Introduction

National economic development requires the support of a healthy, safe, and predictable investment ecosystem.<sup>1</sup> Based on the Supreme Court Decision Number 5648 K/Pdt/2025 involving PT Inti Hosmed as the Cassation Petitioner against PT Sapphire Assets International and other parties. The dispute originated from a legal relationship related to the "*Malioboro City Shop Office Binding Agreement*" dated March 26, 2013. The plaintiff demanded that the defendants be declared in default and sentenced to pay losses of Rp27,000,000,000.00 along with 2% interest per month, as well as requesting the return of the building use rights certificate related to the object of dispute.

The sheer value of the lawsuit shows that this case is not just an ordinary contractual dispute, but is directly related to the return of investment funds on high-value commercial properties.<sup>2</sup> The plaintiff considers that the funds that have been spent do not get benefits as originally intended for investment. The defendant filed various exceptions, including objections regarding *ne bis in idem*, *error in persona*, *obscur libel*, and other formal issues. This shows that property investment disputes often develop not

<sup>1</sup> Sabowo, H. K., and S. Saryana. "Tinjauan Yuridis Pembangunan Iklim Investasi yang Kondusif di Indonesia." *UNES Law Review* 6, no. 2 (2023): 4258.

<sup>2</sup> Mukhlisin, R. M., and S. A. P. Rahayu. "Perkembangan Hukum Investasi Di Indonesia: Pilar Pertumbuhan Ekonomi Nasional." *YUSTISI* 12, no. 3 (2025): 159.

only on the substance of the default, but also on the procedural aspects that can determine the fate of the case.

The Supreme Court's consideration stated that the object of the dispute had been determined in its status in a previous case that had permanent legal force, namely the Sleman District Court Decision Number 101/Pdt.G/2023/PN Smn *juncto* the Yogyakarta High Court Decision Number 20/PDT/2024/PT YYK *juncto* Cassation Decision Number 4304 K/Pdt/2025. In the decision, the subject, object, and subject matter of the case are considered the same so that the new lawsuit is considered to contain the principle *ne bis in idem*. Based on this description, the author is interested in reviewing the Supreme Court Decision Number 5648 K/Pdt/2025 because it contains a wedge between treaty law, investor protection, legal certainty, and the application of the principle *ne bis in idem* in commercial property disputes.

## Research Methods

This research method is a normative research through a legislative approach and a descriptive-analytical approach. The source of legal material is obtained through document studies and literature studies which include laws and regulations, including the Civil Code, Law No. 25 of 2007 concerning Investment, Law No. 48 of 2009 concerning Judicial Power, and Supreme Court Decision Number 5648 K/Pdt/2025, law books, scientific journals, and court decisions. The data collection technique was carried out through library studies and analyzed qualitatively.

## Results and Discussion

### Legal Certainty on Investment Refunds for Investors in Commercial Property Sale and Purchase Agreement Based on Civil Law

Legal certainty is one of the basic elements in every civil law relationship, especially in investment activities that involve the submission of large amounts of funds<sup>3</sup>. Investors essentially place their funds in the hope of obtaining economic benefits through a legitimate, clear, and enforceable contractual relationship. Legal certainty has a more important meaning because investment objects in the form of high-value land and buildings require complex administrative processes, and involve many parties, such as developers, notaries, financing institutions, and land agencies.<sup>4</sup> Therefore, legal guarantees for the return of investment funds are the main need when the agreement is not implemented as it should.

The legal relationship between investors and property business actors is generally born through a sale and purchase agreement or a Binding Sale and Purchase Agreement (PPJB).<sup>5</sup> Based on Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. This provision shows that the agreement gives birth to a legal bond that must be complied with by the parties. Article 1320 of the Civil Code regulates the conditions for the validity of an agreement, namely the existence of an agreement, competence, certain objects, and halal causes. If these conditions are met, then the agreement acquires binding force.<sup>6</sup>

Article 1338 paragraph (1) of the Civil Code emphasizes that all agreements made legally apply as laws to those who make them. This provision is known as the principle of *pacta sunt servanda* which means that the content of the agreement must be implemented in good faith and the parties cannot unilaterally ignore the obligations that have been agreed. If the investor has submitted funds according to the payment schedule, then the seller is obliged to hand over the object or fulfill other achievements

---

<sup>3</sup> Palsari, C. "Kajian Pengantar Ilmu Hukum: Tujuan Dan Fungsi Ilmu Hukum Sebagai Dasar Fundamental Dalam Penjatuhan Putusan Pengadilan." *Jurnal Komunitas Yustisia* 4, no. 3 (2021): 940.

<sup>4</sup> Neltje, J., and I. Panjiyoga. "Nilai-Nilai Yang Tercakup Di Dalam Asas Kepastian Hukum." *Innovative: Journal of Social Science Research* 3, no. 5 (2023): 2034.

<sup>5</sup> Astasari, V. A. "Perikatan Antara Pelaku Pembangunan Dan Konsumen Dalam Perjanjian Pengikatan Jual Beli Dengan Akta Otentik." *Jurnal Education and Development* 8, no. 3 (2020): 325.

<sup>6</sup> Keliat, Veni Utami. "Peran Regulasi Terkini Dalam Mengatasi Tantangan Hukum Perbankan di Era Digital." *Jurnal Darma Agung* 32, no. 1 (2024): 323.

as agreed. However, if these obligations are not met, investors have legal grounds to demand the fulfillment of achievements or refunds.<sup>7</sup>

Legal certainty for the return of investment funds is also related to the concept of default that occurs when one of the parties does not carry out the achievements, is late in carrying out the achievements, carries out the achievements as they should, or does something prohibited in the agreement. If the developer fails to hand over the property unit, does not complete the construction, does not submit the certificate, or transfers the object to another party, then the situation can qualify as a default. The consequences received by the aggrieved party are the right to claim compensation, cancellation of the agreement, and refund of the funds that have been paid.

This problem can be seen in the Supreme Court Decision Number 5648 K/Pdt/2025, namely PT Inti Hosmed as the plaintiff demanding that the defendants be declared to have committed a default that is detrimental to the plaintiff. The plaintiff also seeks damages of Rp27,000,000,000.00 and interest of 2% every month from the time the lawsuit is registered until it is paid in full. The plaintiff also requested that the Malioboro City Shop Office Binding Agreement dated March 26, 2013 be declared null and void or have no legal force, and the defendants were required to hand over the building use rights certificate related to the object of dispute. The lawsuit shows that the core of the plaintiff's interest is the restoration of economic rights to the investment funds that have been issued. The Supreme Court in its consideration stated that the object of the dispute had been determined in its status in a previous case that had permanent legal force, namely the Sleman District Court Decision Number 101/Pdt.G/2023/PN Smn *in conjunction with* the Yogyakarta High Court Decision Number 20/PDT/2024/PT YYK *in conjunction with* the Cassation Decision Number 4304 K/Pdt/2025. According to the Supreme Court, the subject, object, and subject matter of the new dispute are considered the same as the previous case, so that the basis *ne bis in idem* applies.

### **Forms of legal protection that can be provided to investors for losses due to non-implementation of commercial property sale and purchase agreements**

Legal protection for investors is an important element in maintaining confidence in the investment climate, especially in the commercial property sector that involves large funds, long term, and high legal risks.<sup>8</sup> Investors generally place funds with the aim of obtaining profits through ownership or control of commercial assets such as shophouses, offices, business apartments, trade centers, or other business areas. When the sale and purchase agreement is not carried out as agreed, investors not only suffer material losses in the form of loss of funds, but also lose business opportunities, time, and economic development potential.<sup>9</sup> Therefore, the law must be present to provide effective protection through preventive and repressive mechanisms.

According to Legal Protection Theory, law aims to protect the interests of legal subjects from adverse actions, either through the prevention of disputes and the restoration of rights after a dispute has occurred. Preventive protection is provided before losses occur, namely through the regulation of norms, supervision, transparency obligations, and fair agreements. Repressive protection is provided after a violation occurs, namely through dispute resolution, compensation, cancellation of agreements, recovery of funds, and sanctions against negligent parties. Both forms of protection are the basis for assessing the extent to which investors can obtain certainty and fairness when commercial property sale and purchase agreements fail to be implemented.<sup>10</sup>

The basis for investor protection can be seen from the provisions regarding agreements in Article 1338 of the Civil Code which affirms that agreements made legally apply as laws to the parties. The

---

<sup>7</sup> Yusuf, M. *Perlindungan Konsumen Terhadap Developer Dalam Jual Beli Rumah*. GUEPEDIA, 2024.

<sup>8</sup> Butarbutar, E. N. "Asas Ne Bis In Idem dalam Gugatan Perbuatan Melawan Hukum." *Jurnal Yudisial* 11, no. 1 (2018) : 32

<sup>9</sup> S. N. Rachman, H. M. Polontoh, J. E. Harefa, A. Harefa, and T. Yuliana, "Analisis Hukum terhadap Aturan Hukum Penanaman Modal Asing dalam Mendorong Investasi di Indonesia," *Jurnal Hukum Lex Generalis* 6, no. 4 (2025).

<sup>10</sup> N. I. Kusmiati and Elly Ruslina, *Hukum Investasi dalam Konsentrasi Ekonomi* (Greenbook Publisher, 2025).

content of the agreement must be complied with and cannot be ignored unilaterally. If the investor has fulfilled the payment obligation, then the seller or developer is obliged to hand over the property object according to the agreed time, conditions, and legal status. However, if these obligations are not fulfilled, then the aggrieved party is entitled to legal protection.<sup>11</sup>

This repressive protection is seen in the Supreme Court Decision Number 5648 K/Pdt/2025. PT Inti Hosmed as the plaintiff demanded that the defendants be declared in default and sentenced to pay losses of Rp27,000,000,000.00 plus 2% interest every month. The plaintiff also requested that the Malioboro City Shop Office Binding Agreement be declared null and void and that the defendants be required to submit a building use rights certificate related to the object of dispute. This lawsuit shows that investors are using litigation as a form of repressive protection to recover the losses incurred.

If examined from the substance of the claim, there are several forms of protection requested by investors, namely restitution of investment funds through payment demands of IDR 27 billion, compensation for additional losses through interest of 2% per month, restoration of legal status through cancellation of PPJB, recovery of assets through resubmission of certificates, and temporary protection through confiscation of collateral on objects of dispute. This shows that investors are not only demanding money, but also demanding the return of legal positions as they were before the problematic transaction.

However, in this case, the court did not enter the examination of the principal default because it accepted the exception *ne bis in idem*, namely the Supreme Court considered that the previous case had decided the same object, subject, and subject matter of dispute so that the new lawsuit could not be continued, which resulted in repressive protection through the new lawsuit not being successfully used by investors. The state can provide protection to investors through strict regulations on the marketing of commercial properties, supervision of the use of investor funds, sanctions for defaulting developers, an easily accessible land status and permit information system, and fast and affordable dispute resolution.

Based on a justice perspective, legal protection must also consider the balance between investors and business actors.<sup>12</sup> Developers cannot be burdened with unfounded liability, but investors also must not bear all the risks due to the negligence of others. Therefore, the judge needs to objectively assess who is in default, how the content of the contract is, and the extent of real losses have arisen.

### **Judges' legal considerations in applying the principle *ne bis in idem* and its implications for investors' rights to obtain a return on investment funds**

The principle *ne bis in idem* is a legal principle that prohibits the same case from being examined and decided again if there has previously been a decision with permanent legal force.<sup>13</sup> Although this principle is better known in criminal law, in civil practice it is also applied to prevent repeated lawsuits against identical subjects, objects, and subject matter. The main purpose of applying this principle is to maintain legal certainty, avoid conflicts between decisions, and realize a simple, fast, and low-cost judiciary. The principle *ne bis in idem* is necessary because there is often a repetition of lawsuits when the party who feels aggrieved has not obtained the expected results in the previous case.

The application of the principle of *ne bis in idem* in the Supreme Court Decision Number 5648 K/Pdt/2025 is the main basis for the rejection of the lawsuit filed by PT Inti Hosmed as the Cassation Applicant. The plaintiff previously demanded that the defendants be declared in default, required to pay losses of Rp27,000,000,000.00, return the certificate of building use rights, and cancel the Binding Agreement for the Sale and Purchase of the Malioboro City Shop Office. The lawsuit basically aims to obtain recovery of investment funds that have been placed in commercial property projects. However,

<sup>11</sup> L. Hanim et al., *Hukum Manajemen Investasi* (CV. Edu Akademi, 2026).

<sup>12</sup> W. Ramadhana, "Pengaturan Hukum Usaha Mikro Kecil dan Menengah (UMKM) Berdasarkan Keadilan Ekonomi," *Maliyah: Jurnal Hukum Bisnis Islam* 13, no. 2 (2023): 252.

<sup>13</sup> A. Andrew and R. Rahaditya, "Implementasi Asas Ne Bis In Idem dalam Putusan Hakim yang Berkekuatan Hukum Tetap pada Perkara Pidana," *UNES Law Review* 6, no. 1 (2023): 2102.

the court considered that the case submitted had similarities with the previous case which had been decided on a permanent basis.

The Supreme Court in its consideration stated that the object of the dispute had been determined in its status in the previous case, namely the Sleman District Court Decision Number 101/Pdt.G/2023/PN Smn in conjunction with the Yogyakarta High Court Decision Number 20/PDT/2024/PT YYK in conjunction with the Cassation Decision Number 4304 K/Pdt/2025. The Supreme Court also considered that the subject matter of the parties, the object of the dispute, and the subject matter of the case had similarities with the previous case. Based on this, the new lawsuit is considered to contain the principle *ne bis in idem*, so it should not be re-examined.

Based on the Theory of Legal Certainty, the Supreme Court's consideration can be considered appropriate because the law must provide finality to disputes that have been decided.<sup>14</sup> A court decision that has the force of law must still be respected as the end of the dispute resolution process. If the same case can be filed repeatedly, then there will never be certainty about the status of the parties' rights. The business world, including the property sector, needs a stable legal situation so that economic activities can run properly.<sup>15</sup>

The quality of the litigation strategy is very decisive, namely the investor must ensure that the first lawsuit has contained all legal basis, refund demands, additional losses, proof of payment, and related parties. If the first lawsuit is partially or incompletely, then the chances of obtaining recovery at a later stage become narrower.<sup>16</sup> The Supreme Court Decision Number 5648 K/Pdt/2025 provides a lesson that wrong legal strategies can have a direct impact on the loss of opportunities to obtain investment restitution. The Supreme Court's consideration of changing the verdict from "unacceptable lawsuit" to "dismissing the lawsuit in its entirety" is also of important significance. An inadmissible judgment usually relates to a formal defect and still leaves open the possibility of resubmission once the deficiencies are corrected.<sup>17</sup> The ruling rejecting the lawsuit shows that the dispute is seen as resolved more decisively. This shows the judge's willingness to close the repetition room for the sake of legal certainty and judicial efficiency.

The judge's legal considerations in applying the principle *ne bis in idem* in the Supreme Court Decision Number 5648 K/Pdt/2025 are based on the similarity of subjects, objects, and subject matter with previous disputes that have permanent legal force. Based on the perspective of legal certainty, the application is appropriate because it guarantees the finality of the decision and prevents the repetition of the case. However, the implications for investors' rights are quite significant because they close the opportunity to file new claims to obtain a refund of investment funds. Therefore, a balance between the finality of the award and the protection of investors' rights must be realized through good contract quality, a mature litigation strategy, and an effective dispute resolution system from the beginning.

## Conclusion

Based on the description of the results of the discussion above, the author draws the conclusion that the Supreme Court Decision Number 5648 K/Pdt/2025 shows that legal certainty is not only interpreted as the protection of investors' rights to reclaim funds that have been deposited, but also includes preventive protection carried out through the preparation of clear agreements, examination of the legality of objects, disclosure of information, and security of investment funds. Where the application of this principle ultimately provides legal certainty while preventing the recurrence of cases.

---

<sup>14</sup> A. Bidasari, D. Pujiningsih, and C. Bagenda, "Perlindungan Hukum Terhadap Pihak Lemah Dalam Perjanjian Leasing Perspektif Asas Keadilan Kontraktual," *Jurnal Kolaboratif Sains* 8, no. 11 (2025): 7165

<sup>15</sup> L. Indriawati and R. N. Arifah, "Konsistensi Mahkamah Agung Dalam Memastikan Kepastian Hukum Pada Kasus Wanprestasi Tanah Dan Onvoldoende Gemotiveerd," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 5, no. 2 (2023): 130.

<sup>16</sup> F. Satria, C. W. Haruni, and F. Esfandiari, "Kepastian Hukum terhadap Iuran Peserta BPJS Pasca Putusan Mahkamah Agung Nomor 7P/HUM/2020," *Indonesia Law Reform Journal* 1, no. 2 (2021): 153.

<sup>17</sup> Ferdinand Fassa, S. Asmiyanti, and M.K., *Penyelesaian Sengketa Konstruksi Das Sollen & Das Sein* (Jakarta: Podomoro University Press, 2024).

## Reference

- Andrew, A., and Rahaditya, R. "Implementasi Asas Ne Bis In Idem dalam Putusan Hakim yang Berkekuatan Hukum Tetap pada Perkara Pidana." *UNES Law Review* 6, no. 1 (2023): 2102–2107.
- Astasari, V. A. "Perikatan Antara Pelaku Pembangunan Dan Konsumen Dalam Perjanjian Pengikatan Jual Beli Dengan Akta Otentik." *Jurnal Education and Development* 8, no. 3 (2020): 325–329.
- Bidasari, A., Pujiningsih, D., and Bagenda, C. "Perlindungan Hukum Terhadap Pihak Lemah Dalam Perjanjian Leasing Perspektif Asas Keadilan Kontraktual." *Jurnal Kolaboratif Sains* 8, no. 11 (2025): 7165–7172.
- Butarbutar, E. N. "Asas Ne Bis In Idem dalam Gugatan Perbuatan Melawan Hukum." *Jurnal Yudisial* 11, no. 1 (2018).
- Fassa, Ferdinand, Asmiyanti, S., and M.K. *Penyelesaian Sengketa Konstruksi Das Sollen & Das Sein*. Jakarta: Podomoro University Press, 2024.
- Hanim, L., Riskayanti, R., Cahyaningsih, D. T., Wahyudi, W., Firdausi, K., Herniati, H., and Nazar, J. *Hukum Manajemen Investasi*. CV. Edu Akademi, 2026.
- Indriawati, L., and Arifah, R. N. "Konsistensi Mahkamah Agung Dalam Memastikan Kepastian Hukum Pada Kasus Wanprestasi Tanah Dan Onvoldoende Gemotiveerd." *Al-Huquq: Journal of Indonesian Islamic Economic Law* 5, no. 2 (2023): 130–149.
- Keliat, Veni Utami. "Peran Regulasi Terkini Dalam Mengatasi Tantangan Hukum Perbankan Di Era Digital." *Jurnal Darma Agung* 32, no. 1 (2024): 323–331.
- Kusmiati, N. I., and Ruslina, Elly. *Hukum Investasi dalam Konsentrasi Ekonomi*. Greenbook Publisher, 2025.
- Mukhlisin, R. M., and Rahayu, S. A. P. "Perkembangan Hukum Investasi Di Indonesia: Pilar Pertumbuhan Ekonomi Nasional." *YUSTISI* 12, no. 3 (2025): 159–174.
- Neltje, J., and Panjiyoga, I. "Nilai-Nilai Yang Tercakup Di Dalam Asas Kepastian Hukum." *Innovative: Journal of Social Science Research* 3, no. 5 (2023): 2034–2039.
- Palsari, C. "Kajian Pengantar Ilmu Hukum: Tujuan Dan Fungsi Ilmu Hukum Sebagai Dasar Fundamental Dalam Penjatuhan Putusan Pengadilan." *Jurnal Komunitas Yustisia* 4, no. 3 (2021): 940–950.
- Rachman, S. N., Polontoh, H. M., Harefa, J. E., Harefa, A., and Yuliana, T. "Analisis Hukum terhadap Aturan Hukum Penanaman Modal Asing dalam Mendorong Investasi di Indonesia." *Jurnal Hukum Lex Generalis* 6, no. 4 (2025).
- Ramadhana, W. "Pengaturan Hukum Usaha Mikro Kecil dan Menengah (UMKM) Berdasarkan Keadilan Ekonomi." *Maliyah: Jurnal Hukum Bisnis Islam* 13, no. 2 (2023): 252–265.
- Sabowo, H. K., and Saryana, S. "Tinjauan Yuridis Pembangunan Iklim Investasi yang Kondusif di Indonesia." *UNES Law Review* 6, no. 2 (2023): 4258–4268.
- Satria, D. F., Haruni, C. W., and Esfandiari, F. "Kepastian Hukum terhadap Iuran Peserta BPJS Pasca Putusan Mahkamah Agung Nomor 7P/HUM/2020." *Indonesia Law Reform Journal* 1, no. 2 (2021): 153–164.
- Yusuf, M. *Perlindungan Konsumen Terhadap Developer Dalam Jual Beli Rumah*. GUEPEDIA, 2024.
- Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek).
- Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal.
- Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.
- Putusan Pengadilan Negeri Sleman Nomor 101/Pdt.G/2023/PN Smn.
- Putusan Pengadilan Tinggi Yogyakarta Nomor 20/PDT/2024/PT YYK.
- Putusan Mahkamah Agung Nomor 4304 K/Pdt/2025.
- Putusan Mahkamah Agung Nomor 5648 K/Pdt/2025