

ABSTRAK

ANALISIS KEPASTIAN HUKUM DAN PERLINDUNGAN BAGI PENANAM MODAL ATAS PENGEMBALIAN DANA INVESTASI DALAM PERJANJIAN JUAL BELI PROPERTI KOMERSIAL

Penelitian ini bertujuan untuk menganalisis kepastian hukum dan perlindungan bagi penanam modal atas pengembalian dana investasi dalam perjanjian jual beli properti komersial, serta mengkaji pertimbangan hukum hakim dalam Putusan Mahkamah Agung Nomor 5648 K/Pdt/2025. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan pendekatan kasus. Sumber bahan hukum terdiri atas bahan hukum primer, sekunder, dan tersier yang dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa kepastian hukum terhadap pengembalian dana investasi telah memiliki dasar yuridis dalam Kitab Undang-Undang Hukum Perdata melalui asas *pacta sunt servanda*, wanprestasi, ganti rugi, dan pembatalan perjanjian. Perlindungan hukum bagi penanam modal dapat diberikan secara preventif melalui perjanjian yang jelas, pemeriksaan legalitas objek, serta pengamanan dana, dan secara represif melalui gugatan wanprestasi, tuntutan pengembalian dana, ganti rugi, serta pelaksanaan putusan pengadilan. Putusan Mahkamah Agung Nomor 5648 K/Pdt/2025 menerapkan asas *ne bis in idem* karena adanya persamaan subjek, objek, dan pokok perkara dengan sengketa sebelumnya yang telah berkekuatan hukum tetap. Penerapan asas tersebut memberikan kepastian hukum dan mencegah pengulangan perkara, namun berimplikasi pada tertutupnya kesempatan penanam modal untuk mengajukan kembali tuntutan pengembalian dana investasi. Oleh karena itu, diperlukan kehati-hatian investor serta penguatan regulasi sektor properti komersial guna menjamin perlindungan hukum yang lebih efektif.

Kata Kunci: kepastian hukum, perlindungan hukum, penanam modal, pengembalian dana investasi, properti komersial.

ABSTRACT

ANALYSIS OF LEGAL CERTAINTY AND PROTECTION FOR INVESTORS REGARDING THE RETURN OF INVESTMENT FUNDS IN COMMERCIAL PROPERTY SALE AND PURCHASE AGREEMENTS

This study aims to analyze legal certainty and protection for investors regarding the refund of investment funds in commercial property sale and purchase agreements, as well as to examine the judges' legal considerations in Supreme Court Decision Number 5648 K/Pdt/2025. This research employs a normative legal method with statutory, conceptual, and case approaches. The legal materials consist of primary, secondary, and tertiary sources analyzed qualitatively. The results show that legal certainty concerning the refund of investment funds has a juridical basis in the Indonesian Civil Code through the principles of pacta sunt servanda, breach of contract, compensation, and contract cancellation. Legal protection for investors can be provided preventively through clear agreements, verification of the legality of the object, and safeguarding of investment funds, and repressively through breach of contract claims, demands for refund of funds, compensation, and enforcement of court decisions. Supreme Court Decision Number 5648 K/Pdt/2025 applied the principle of ne bis in idem due to the similarity of parties, object, and subject matter with a previous dispute that had obtained permanent legal force. The application of this principle provides legal certainty and prevents repetitive litigation, but it also results in closing the opportunity for investors to refile claims for the refund of investment funds. Therefore, investor prudence and stronger regulation in the commercial property sector are necessary to ensure more effective legal protection.

Keywords: *legal certainty, legal protection, investors, refund of investment funds, commercial property.*