



Validity of Conditions Precedent Based on Contingent Legal Due Diligence Findings under Indonesian Contract Law

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Abstract

Background: Legal Title Due Diligence (LTDD) findings in property transactions do not always reveal established title defects. Boundary disputes, indications of overlapping land certificates, potential third-party claims, and incomplete licensing processes may remain contingent but are often incorporated as conditions precedent in transaction agreements.

Objective: This study examines the validity of such clauses based on the requirements for valid agreements, conditional obligations, and the limits of freedom of contract under the Indonesian Civil Code.

Methods: This normative legal study applies statutory, conceptual, and analytical approaches to Articles 1253–1267, 1320, and 1332–1339 of the Civil Code, alongside land law and regulations governing Preliminary Sale and Purchase Agreements (*Perjanjian Pengikatan Jual Beli* or PPJB).

Results: The findings show that contingency does not automatically invalidate a contractual clause. An uncertain future event may constitute a valid conditional obligation when it is possible, lawful, objectively verifiable, and not solely dependent on one party's discretion. Uncertainty regarding the magnitude of risk also does not make the contractual subject matter indefinite when the principal subject matter, materiality thresholds, evidence of satisfaction, and legal consequences remain determinable. However, contractual freedom is exceeded when clauses postpone mandatory requirements applicable before PPJB execution, grant absolute discretion without objective standards, or permit a benefiting party to control fulfillment of the condition.

Conclusion: This study proposes a seven-layer validity test and a model clause incorporating objective indicators, designated verifiers, reasonable-efforts obligations, a long-stop date, an anti-prevention rule, and proportionate consequences.

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INTRODUCTION

Certainty as to the status and quality of land rights lies at the core of risk in property transactions (Chandra, 2022; Erwiningsih, 2023; Maki et al., 2026; Sutjiadi & Rahayu, 2025). The economic value of land is determined not only by its area, location, or commercial use, but also by whether the seller is legally authorized to transfer the right, whether the physical data correspond to the juridical data, whether the land is encumbered, seized, or disputed, and whether the intended use is permissible under spatial-planning and licensing rules (Gorgan & Hartvigsen, 2022; Moreda, 2023). Where information is asymmetrical, a land certificate alone does not necessarily resolve every risk. Article 32(1) of Government Regulation No. 24 of 1997 treats a land

certificate as strong evidence insofar as the information contained in it corresponds to the survey document and land book, while Article 34 entitles interested parties to access the physical and juridical data contained in the public land-registration records. This framework shows that transaction verification must extend to the underlying documents and factual circumstances, rather than stopping at a copy of the certificate (Tunio et al., 2026).

This function is performed through Legal Due Diligence (LDD), which, when focused specifically on land title, may be operationalized as Legal Title Due Diligence (LTDD). LTDD is conceptually distinct from the broader LDD applied to corporate acquisitions or general business transactions. LTDD is a specialized and comprehensive examination of a land asset or land-related transaction undertaken to ascertain material facts concerning title status, assess compliance with land-registration requirements, identify title-related risks, and formulate risk-mitigation measures before a transaction decision is made. The term LTDD in this study serves as an analytical framework, employed rigorously to denote the methodological focus on land-title verification and to distinguish such examination from broader due-diligence processes. The literature characterizes LDD as a preventive instrument, a basis for negotiation, and a source for drafting protective provisions, including representations and warranties, indemnities, price adjustments, and conditions precedent (David, 2024; Iman & Alvisalia, 2024; Multazam et al., 2022; Paramudhita, 2025).

Government Regulation No. 18 of 2021, which amended Government Regulation No. 24 of 1997, expressly recognizes overlapping land rights as a statutory ground for cancellation under Article 64(2), specifically providing that overlapping certificates may be canceled without the limitations otherwise applicable to administrative defects within certain temporal windows. This provision distinguishes cancellation based on overlapping rights from other administrative defects, such as fraud or error in the certificate itself, and establishes an independent legal basis for title vulnerability that is not confined to a five-year period. Understanding this distinction is material to assessing whether an overlap constitutes a defect capable of being cured before closing or represents a fundamental impediment to title transfer that warrants a termination right rather than a suspensive condition.

Parties commonly respond to such uncertainty by framing it as a condition precedent (CP), namely, a precondition to the effectiveness of specified obligations or to the completion of closing (Pereira & Lewis, 2018). The clause may require confirmation from the Land Office, resolution of a boundary dispute, approval from a competent authority, the absence of third-party claims as of a specified date, or a conclusion that is “satisfactory” to the buyer. Economically, a CP allocates risk to the party better able to control or bear it. Legally, a CP may function as a suspensive condition under Articles 1253 and 1263 of the Indonesian Civil Code because the legal effects of the obligation are postponed until the occurrence of a future event that may or may not occur.

Difficulties arise where the underlying CP is itself uncertain and the clause fails to distinguish among facts, risks, remediation obligations, and the applicable standard of satisfaction (Woods, 2024). A particularly problematic example is a clause providing that the transaction will proceed only if “the title-verification results are satisfactory to the buyer in the buyer’s sole and absolute discretion.” Such wording can transform fact-based risk mitigation into a unilateral option to withdraw from the contract. Conversely, not every condition influenced by one party’s conduct is automatically an unlawful potestative condition. The discharge of a land mortgage, completion of a certificate subdivision, or submission of a permit application requires action by the seller, but the ultimate outcome also depends on creditors, land officials, legal completeness, and objective circumstances (Kelley & Mattei, 2020; Pakpahan, 2022).

A particular issue also arises in relation to residential PPJB arrangements. Government Regulation No. 12 of 2021 operationalizes the consumer-protection regime for residential sale-and-purchase agreements. Specifically, Article 22 requires that, before a Preliminary Sale and Purchase Agreement (*Perjanjian Pengikatan Jual Beli* or PPJB) is executed, the parties must confirm: (a) certainty regarding the status and ownership of the land, evidenced by a certificate shown to the prospective purchaser; (b) a clear description of the property subject to the agreement; and (c) the availability of Building Approval (*Persetujuan Bangunan Gedung* or PBG). Article 22I further mandates that infrastructure, facilities, and public utilities must be confirmed as available before PPJB execution, and that construction progress must reach at least twenty

percent before the PPJB is signed. These are mandatory preconditions to the execution of the agreement, not conditions precedent to be satisfied after signing. Consequently, Articles 22 and 22I of Government Regulation No. 12 of 2021 require certainty regarding land-ownership status, the subject matter of the agreement, Building Approval (*Persetujuan Bangunan Gedung* or PBG), the availability of infrastructure, facilities, and public utilities, and at least twenty percent construction progress before a PPJB may be executed. Freedom of contract therefore cannot be used to convert requirements that must exist before the PPJB into CPs to be satisfied only after signing.

The novelty of this study lies in three integrated contributions. First, it develops a typology that categorizes LTDD findings not merely by uncertainty, but by the party controlling satisfaction and the appropriate contractual instrument for each category (Table 1), distinguishing conditions precedent from remediation covenants, warranties, retention mechanisms, and termination rights. This typology addresses a gap identified by Multazam et al. (2022) and Iman & Alvisalia (2024), who emphasize that LDD outputs must be matched to appropriate risk-allocation mechanisms rather than reflexively cast as conditions precedent. Second, it explicitly benchmarks the proposed seven-layer test against existing doctrine on potestative conditions Budiono (2016), certainty of subject matter (Articles 1332–1334 of the Civil Code), good faith (Article 1338(3)), and mandatory sectoral requirements (Government Regulation No. 12 of 2021), thereby filling the gap noted by Susilowardani (2025) concerning the absence of an integrated doctrinal framework for LTDD-based contractual design. Third, it operationalizes this doctrinal framework through an illustrative model clause and a test protocol, thereby moving beyond the prescriptive guidance offered by Kurnia et al. (2022) to provide both analytical rigor and practical application. This integrated doctrinal-and-practical contribution distinguishes the study from prior work addressing LDD standards, notarial prudence, or individual aspects of conditional-obligations doctrine.

Against this background, the study addresses two questions. First, what is the legal status of conditions precedent formulated from contingent LTDD findings when assessed under the requirements for a valid agreement and the Civil Code provisions governing suspensive conditions? Second, to what extent does the formulation of such CPs remain within the bounds of freedom of contract, and when does it conflict with the prohibition of *potestative* conditions and the principle of certainty of contractual subject matter? The study seeks to develop both a doctrinal framework and drafting guidance applicable to PPJBs, cooperation agreements, and other property-transaction documents.

METHOD

This study employed normative legal research, treating law as a system of norms, principles, and legal argumentation. It applied statutory, conceptual, and analytical approaches. The statutory approach focused on the Indonesian Civil Code, particularly Articles 1253–1267 on conditional obligations, Article 1320 on the validity requirements of agreements, Articles 1332–1339 on subject matter, cause, binding force, and good faith, and Articles 1342–1351 on interpretation. With respect to land and PPJBs, the study examined Law No. 5 of 1960, Government Regulation No. 24 of 1997, as partially amended by Government Regulation No. 18 of 2021, and Government Regulation No. 12 of 2021.

The conceptual approach distinguished findings, risks, conditions, obligations, warranties, and termination rights. The concept of conditions precedent was not mechanically transplanted from the common-law tradition; instead, it was tested according to its legal function within the Indonesian law of obligations. A provision labeled as a CP could therefore substantively constitute a suspensive condition, an obligation to take specified action, a warranty as to a state of affairs, or a combination of all three. The study also drew on doctrines concerning potestative conditions, mixed conditions, determinable subject matter, good faith, proportionality of consequences, and prevention of the condition's fulfillment.

Primary legal materials were analyzed alongside secondary materials consisting of articles and books on LDD, property transactions, conditional obligations, and legal research methods. The articles supplied by the user served as principal references for mapping the functions of LDD, the objects examined, and the role of due-diligence findings in negotiations and clause drafting.

These materials included works by (Iman & Alvisalia, 2024; Kurnia et al., 2022; Multazam et al., 2022; Paramudhita, 2025; Sufa et al., 2025; Susilowardani, 2025).

The analysis was qualitative and prescriptive and proceeded in three stages. First, LTDD findings were classified according to the degree of factual certainty and the party controlling satisfaction. Second, each category was tested against possibility, legality, measurability, control, timing, and legal consequences. Third, the results were converted into drafting guidance and an illustrative clause. This study did not assess a specific transaction and did not replace examination of original documents, cadastral surveys, or confirmation from the Land Office; rather, it provided a normative framework that had to be adapted to the facts and sector-specific regulations governing each transaction.

RESULTS AND DISCUSSION

Results

From LTDD Findings to Conditions Precedent

LDD is not merely a checklist of documents that are or are not available. The process includes defining the scope, requesting documents, reviewing documents and conducting searches, obtaining confirmations, preparing a report, drafting an executive summary and issues list, and recommending mitigation measures. Multazam et al. (2022) show that LDD outputs may include an issues list, recommendations, conditions precedent, conditions subsequent, and conclusions. Christiawan (2020) and Sutantoputra and Simangunsong (2018) emphasize the relationship among material facts, risk levels, and transaction recommendations. A CP should therefore represent the final stage of a reasoning process: facts are identified, their legal status is assessed, risk scenarios are mapped, and a condition is then designed to control those scenarios.

LTDD findings may be grouped into at least four categories. First are existing and verifiable defects or encumbrances, such as a registered *Hak Tanggungan*, seizure, lease, or mismatch in the name of the registered holder of the right. At the factual level, these findings are not contingent; what remains uncertain is whether and when they can be cured. Second are indications requiring further verification, such as a suspected overlap based on an unofficial map, an area discrepancy, or an unresolved boundary. Third are future events beyond the sole control of the parties, including a decision by the Land Office, creditor consent, a court judgment, or a third-party claim. Fourth are internal assessments or decisions of one party, such as buyer satisfaction or investment committee approval. The fourth category is the most susceptible to becoming a *potestative* condition unless constrained by objective standards.

Findings must also be differentiated by the appropriate risk-allocation instrument. A defect capable of being cured before closing is suitable for treatment as a CP accompanied by a remediation obligation. A minor risk that may arise after closing is better addressed through representations and warranties, a specific indemnity, price retention, or an escrow arrangement. A risk that cannot be eliminated but can be economically valued may be allocated through a price adjustment or liability cap. A fundamental risk that renders the right non-transferable or the intended use impossible may justify a termination right. Treating every finding as a CP produces an unworkable contract and creates opportunities for opportunistic conduct.

Legal characterization must turn on function, not the label of the clause. A provision stating that “Closing shall occur only after the Land Office issues a search result showing no encumbrance” is a suspensive condition governing the closing obligation. A provision stating that “The Seller shall discharge the *Hak Tanggungan* within sixty days” is a performance obligation or covenant. If closing is also suspended until the discharge is completed, the provision has two layers: an affirmative obligation and a suspensive condition. By contrast, a provision stating that “The Buyer may cancel at any time if, in its view, the title risk is unacceptable” resembles a unilateral exit option rather than an objective conditional obligation. This distinction determines whether a dispute concerns failure of a condition, breach of contract, exercise of a contractual right, or abuse of circumstances.

Budiono (2016) explains that a condition is an *accidentalia*: what is suspended is not the existence of the legal act itself, but the legal effect of the obligation. This distinction is important in property transactions. Signing may immediately create obligations during the period between signing and closing—such as confidentiality, exclusivity, preservation of the asset, document

access, and efforts to obtain approvals—even though the duties to transfer title and pay the final price remain suspended. Wording that “this agreement shall have no effect whatsoever until all CPs are satisfied” is therefore often too broad. A more precise formulation specifies which obligations take effect immediately and which are suspended.

Table 1

Typology of LTDD Findings and Appropriate Contractual Instruments

Finding Type	Example	Dominant Control	Primary Instrument	Validity Note
Curable existing defect	Land mortgage, seizure, mismatch in the titleholder's name	Seller and third party/authority	Remediation covenant + closing CP	Specify evidence of discharge, deadline, and consequences of delay.
Unverified fact	Indication of overlap; boundary or area discrepancy	Land Office, surveyor, and adjoining owners	Objective CP + verification process	Avoid unilateral conclusions; identify the documents and verifier.
Future external event	Creditor or authority approval; absence of proceedings until a specified date	Third party or authority	Positive or negative suspensive condition	Use a long-stop date and a reasonable-efforts obligation.
Measurable post-closing risk	Low-probability third-party claim	Not fully controllable	Specific indemnity, retention/escrow, or price adjustment	Need not be a CP if the transaction remains viable.
Internal party assessment	'Satisfactory to the buyer' or committee approval	One party	Limited approval right subject to standards	Potestative risk if sole, absolute, and unsupported by objective criteria.

This typology demonstrates that the term “contingent” is insufficient, by itself, to determine validity. The legal inquiry is not merely whether the risk is uncertain, but what event must occur, who can influence it, what evidence establishes satisfaction, what deadline applies, and what consequences the parties have agreed. A properly drafted CP converts factual uncertainty into an auditable decision-making mechanism.

Legal Status of Contingent CPs under Article 1320 and Articles 1253–1267 of the Indonesian Civil Code

Contingency as an Element, Not a Defect

Article 1253 of the Indonesian Civil Code defines a conditional obligation as one dependent on a possible event that has not yet occurred, whether the event suspends or terminates the obligation. Article 1263 further provides that, in the case of a suspensive condition, the obligation cannot be performed before the event occurs. These provisions show that uncertainty is a constitutive element rather than a defect. If the event is certain to occur and only its timing is outstanding, the arrangement more closely resembles a time stipulation. If the purported “condition” is in fact an obligation to perform an act without any element of

uncertainty, its breach is assessed as non-performance or breach of contract.

The doctrine also recognizes events dependent on third parties, such as governmental permits or bank financing, as valid conditions. Budiono (2016) gives the example of a parcel sale suspended until a building permit is obtained. This analogy applies to Land Office search results, creditor consent to discharge a *Hak Tanggungan*, or cadastral survey results. Although the parties' efforts may influence these events, the ultimate decision is not subject to the sole will of either party.

Accordingly, a CP derived from a contingent finding may, in principle, be structured as a suspensive condition. Its validity does not require the amount of loss to be calculable with precision when the contract is made. What must be identifiable is the triggering event and its connection to the agreed legal consequences. For example, "the absence of any written third-party claim up to the Closing Date" is a negative condition that may be evidenced by a correspondence register, the Seller's statement, and a court-case search. By contrast, "the absence of any risk whatsoever" is an unrealistic and unverifiable absolute formulation.

Requirements for a Valid Agreement and Certainty of Subject Matter

Article 1320 of the Indonesian Civil Code distinguishes subjective requirements—consent and capacity—from objective requirements—a definite subject matter and a lawful cause. CPs arising from LTDD generally do not raise issues of capacity, but they may affect the quality of consent where material facts are concealed or discretionary rights are structured without transparency. LDD, in fact, strengthens informed consent and good faith because the parties negotiate risk on the basis of identified facts (Paramudhita, 2025).

The requirement of a "definite subject matter" must be analyzed by distinguishing the principal transaction asset from the CP parameters. Articles 1332–1334 of the Indonesian Civil Code establish that the subject matter must be capable of determination. Article 1333 requires at least the type of goods to be specified; the quantity need not be fixed if it can be determined or calculated later. Article 1334 even recognizes future goods as permissible contractual subject matter, subject to certain exceptions. In a land transaction, the principal asset should be identifiable by the type of right, certificate number or basis of possession, location, area or method for determining area, and referenced boundaries or map. The price must likewise be fixed or at least determinable by a formula that does not depend on unilateral will.

Uncertainty as to the extent of an overlap risk or the value of a third-party claim does not automatically make the principal subject matter indefinite. Certainty may be preserved by specifying a method: the final area follows the official survey; the price is adjusted using an agreed price per square meter for any discrepancy above a specified threshold; and a material claim is defined as one capable of reducing the area by more than a stated percentage or causing costs above a stated amount. Under such formulas, the final figure is not yet known but remains calculable.

Conversely, the subject matter and CP parameters become problematic where the contract refers only to "the portion of land considered suitable by the Buyer," without a map, boundaries, suitability criteria, or determination mechanism. The problem is not the future fact, but the inability to determine the promised performance and the power of one party to define its own scope. In an extreme case, the objective requirements under Article 1320 are not met. Where the provision remains capable of interpretation, Articles 1342–1348 direct a court to ascertain the parties' common intention and adopt an interpretation that gives effect to the contract. Contract drafters, however, should not rely on judicial interpretation as a substitute for clear drafting.

Possibility, Lawfulness, and Mandatory Sectoral Rules

Article 1254 invalidates a condition that requires an impossible act, violates morality, or is prohibited by law. Articles 1335 and 1337 supplement this limit through the doctrine of unlawful cause. A CP requiring forged documents, unlawful removal of court records, or the transfer of land that is legally non-transferable is therefore unenforceable. Nor should a condition demand a result that is legally or factually impossible, such as a perpetual guarantee that "no person will ever assert a claim."

The most important limitation for residential PPJBs derives from Government Regulation

No. 12 of 2021. It requires certainty regarding land-ownership status, the agreed subject matter, PBG, the availability of infrastructure, facilities, and public utilities, and at least twenty percent construction progress before a PPJB is executed. Land ownership must be evidenced by a certificate shown to the prospective purchaser at signing. The PPJB must also describe the asset, price, developer guarantees, rights and obligations, handover, cancellation, and dispute resolution.

Consequently, a developer may not execute a PPJB subject to a CP that the land certificate “will be obtained later” or that twenty percent construction progress “will be achieved after the PPJB.” Such wording risks turning the contract into an instrument for postponing mandatory compliance. Freedom of contract under Article 1338 applies only to agreements lawfully made. The more appropriate structure is to defer the PPJB until the sectoral prerequisites exist, or to use a pre-PPJB document that does not legally disguise itself as a PPJB and does not collect funds beyond the permitted limits. Once the mandatory PPJB prerequisites have been met, CPs may still address other matters, such as release of encumbrances, settlement of identified claims, or handover conditions, provided that consumer rights are not diminished.

In cooperation agreements between business actors that are not consumer PPJBs, freedom of contract is broader but remains limited by the Basic Agrarian Law, land-registration rules, spatial planning, licensing, third-party rights, competition law, insolvency law, and public order. Nor can a CP transform a certificate into absolute proof. Government Regulation No. 24 of 1997 treats it as strong evidence that may be tested against the survey document and land book, while Government Regulation No. 18 of 2021 preserves the relevance of overlapping rights as a ground for cancellation. Satisfaction criteria should therefore extend beyond “the Seller produces the certificate” and may include official search results, consistency between physical and juridical data, encumbrance status, physical possession, and boundary confirmation.

The Interim Period, Satisfaction, and the Prohibition on Preventing a Condition

Article 1257 requires a condition to be satisfied in the manner intended by the parties. This principle calls for the contract to specify not only the ultimate result, but also the procedure, evidence, decision-maker, and materiality standard. Where a positive condition must occur within a specified period, Article 1258 governs the consequence of expiry without occurrence; Article 1259 addresses negative conditions. In transaction practice, these provisions should be translated into a clear long-stop date, together with rules on extension, waiver, and allocation of interim-period costs.

Article 1260 deems a condition satisfied where the obligor prevents its fulfillment. This anti-prevention rule is relevant where a Seller withholds documents, withdraws an application, refuses to attend a survey, or communicates with an authority in a manner inconsistent with satisfaction efforts. The contract should expand the rule through cooperation obligations, a prohibition on obstruction, information-access rights, and notice requirements. Deemed satisfaction must, however, be applied cautiously to conditions involving legal prohibitions. A Seller's default cannot cause a legally required permit to be treated as if it existed; the appropriate consequence may be breach, damages, or termination, rather than a fiction that the permit has been issued.

While the condition remains outstanding, Article 1262 permits the obligee to take measures to preserve its rights. In a transaction, these measures may include legally permissible contractual notation, restrictions on further transfer or encumbrance, an obligation to maintain the asset's condition, and inspection rights. Article 1261, concerning retroactive effect following satisfaction, must be read in light of modern transaction structures: the parties may expressly determine when particular obligations become effective, how risk and benefits transfer, and which interim-period obligations remain in force. Such clarity prevents the mistaken assumption that every contractual effect automatically applies retroactively regardless of the nature of the performance.

Consequences of Invalidity and Severability

Article 1256 provides that an obligation is void where its performance depends solely on the will of the person bound by it. Conceptually, the first affected component is the obligation

made subject to that condition. Whether the entire agreement is also invalid depends on the clause's essentiality and severability. If the CP is fundamental to the exchange—for example, the Buyer would not transact without title certainty—invalidity may undermine the entire transaction structure. If the clause can be severed and the agreement's subject matter and purpose can still operate reasonably, the consequence may be confined to the particular clause or right.

A severability clause is therefore useful, but it is not an automatic cure. A statement that an invalid provision “shall be deemed replaced by a valid provision that most closely reflects the parties' intention” can operate only if it does not create a new agreement never concluded by the parties and does not violate mandatory law. Drafters should specify alternative consequences: if a CP is invalid, is it deemed waived, replaced by an objective verification mechanism, or does it trigger a right to negotiate an adjustment? This approach is more predictable than merely declaring that all other provisions remain effective.

Limits of Freedom of Contract and the Prohibition of *Potestative* Conditions

Responsible Freedom of Contract

Article 1338(1) of the Indonesian Civil Code gives binding force to agreements lawfully made. This freedom includes the choice whether to contract, with whom to contract, and how to determine the content, form, and risk-allocation mechanism. A CP is a legitimate expression of that freedom because it allows the parties to decide when risk has been sufficiently controlled for the principal exchange to proceed.

Article 1338(3), however, requires performance in good faith, while Article 1339 incorporates fairness, custom, and law into the binding effect of the agreement. Good faith performs interpretive, supplementary, and limiting functions. A party entitled to determine satisfaction of a CP may not manufacture artificial reasons, withhold approval for reasons unrelated to the agreed risk, or exploit a minor finding to obtain a disproportionate concession. Conversely, a party required to cure a defect may not conceal adverse developments or merely perform formalities without genuine effort.

This balance does not require every risk to be shared equally. In commercial transactions, risk allocation may be asymmetrical if it is consciously negotiated, supported by information, and consistent with mandatory law. What is impermissible is discretion that empties the commitment of substance: one party appears bound but remains free, without any testable parameter, to decide whether it will perform.

Pure Potestative Conditions, Mixed Conditions, and Satisfaction Clauses

Article 1256 of the Indonesian Civil Code provides that an obligation is void where its performance depends solely on the will of the person bound by it. Conceptually, this provision targets pure *potestative* conditions—those whose occurrence is entirely within the discretion of one party, independent of any external circumstance or standard. However, as explained by Budiono (2016) and contemporary contract scholars, *potestative* and related contractual conditions may be distinguished into several categories. First, pure *potestative* conditions are those in which the occurrence of the event depends entirely on the discretion or will of one party, without any external constraint. Second, casual conditions are conditions whose fulfillment depends entirely on circumstances beyond the control of the contracting parties, such as a decision by a third party or the occurrence of an act of God. Third, mixed conditions require an act or decision by one of the parties but also depend on an objective standard, external approval, or circumstances that are not exclusively within that party's control. Fourth, conditions involving acts within a party's control concern obligations that may initially appear to depend solely on a party's will but are, in practice, subject to additional legal or procedural requirements. For example, a Seller's obligation to discharge a *Hak Tanggungan* may require not only the Seller's action but also creditor consent, compliance with registration procedures, and fulfillment of applicable legal requirements. The word “solely” in Article 1256 is decisive. A Buyer-satisfaction clause structured as an option to cancel “for any reason whatsoever” or “in the Buyer's sole and absolute discretion” without constraint or objective criteria resembles a pure *potestative* condition. However, the same clause modified to require satisfaction based on “official searches and an independent adviser's opinion” introduces an external verification

mechanism and objective criteria, converting it into a mixed condition with a stronger basis for legal validity. Similarly, a requirement that “the Seller discharge the *Hak Tanggungan*” is not automatically purely *potestative* merely because the Seller must act; discharge also depends on repayment, creditor consent, documents, and registration. The legal analysis therefore requires examination of the complete legal structure, not merely the label or the party whose action is invoked.

In an LTDD context, a condition that “the Seller discharges the *Hak Tanggungan*” is not automatically purely *potestative*. The Seller must act, but discharge also depends on repayment, creditor consent, documents, and registration. Similarly, a condition that “the survey does not reveal an overlap exceeding two percent of the area” depends on a surveyor and land-registration data. By contrast, a condition stating that “the Buyer may at any time declare the title status unsatisfactory” allows the Buyer to determine both the event and its consequences. If the Buyer is also the party whose performance is suspended, its commitment may become illusory.

A *satisfaction clause* may remain valid if subject to two safeguards. First, satisfaction must be confined to reasons directly connected to the disclosed risk categories, not “for any reason whatsoever.” Second, the assessment must follow the standard of a reasonable person or reasonable business operator, be supported by evidence, and not be unreasonably withheld. Wording that the result must be “reasonably satisfactory to the Buyer based on official searches and an independent adviser’s opinion” is materially different from “the Buyer’s absolute satisfaction in its sole discretion.”

Internal committee approval also requires scrutiny. If the parties know from the outset that the transaction is subject to approval by a separate corporate body, the procedure and deadline are defined, and the applicant must genuinely submit the matter for approval, the condition contains an institutional factor that can be verified. If, however, one party controls the committee and is free not to submit the application, internal approval may become a disguise for a *potestative* condition. The solution is to require submission within a specified period, provide complete materials, furnish evidence of the decision, and prohibit manipulation of the process.

Certainty of Subject Matter Does Not Require Absolute Certainty of Risk

The principle of certainty of subject matter does not require the parties to know the entire future. Contracts are made precisely because uncertainty exists and its consequences must be allocated. What must be certain is the framework of determination: the subject matter, performance, condition, verification process, and consequences. In a land transaction, the title number, map, location, type of right, and basis of acquisition provide the principal identifiers. If the final survey is not yet available, the contract may specify a tolerance for discrepancies and a price-adjustment formula.

For third-party-claim findings, “absence of claims” may be defined as the absence of registered proceedings, unresolved objection letters, blocks, seizures, or conflicting physical possession. “Material” may be measured by area, value, impact on access or use, financing implications, or registrability. The definition need not be excessively long, but it must distinguish a minor issue from a risk that justifies a failure to close.

Certainty also requires consistency between the CP and the agreement’s other provisions. Article 1348 requires promises in the same agreement to be interpreted in relation to the whole. If the Seller warrants that there is no dispute while a CP acknowledges a particular dispute, the agreement must state the exception and its mitigation. If the Buyer may waive a CP, the agreement should specify whether waiver extinguishes an indemnity claim or merely permits closing. Without coordination, one clause may neutralize another and create the very uncertainty the drafting sought to avoid.

Seven-Layer Validity Test for LTDD-Based Conditions Precedent

Based on the rules and doctrines discussed above, this study proposes a seven-layer test. The test is not intended to replace fact-specific analysis, but to provide a sequence of questions that should be answered before a CP is included in an agreement.

Table 2

Seven-Layer Test for the Validity and Enforceability of LTDD-Based CPs

Layer	Key Question	Passing Indicator	Risk if Failed
1. Characterization	Is the clause a condition, obligation, warranty, or termination option?	The function and each obligation are distinguished.	Category error: non-fulfilment is treated as breach, or vice versa.
2. Sectoral legality	Does the condition postpone an obligation that must already have been satisfied by law?	It does not circumvent the Basic Agrarian Law, PPJB rules, licensing, or third-party rights.	Unlawful cause or condition; the clause or agreement is ineffective.
3. Determinability	Are the event, materiality threshold, and subject matter determinable?	Definitions, maps, formulas, and referenced documents are clear.	The subject matter or condition is uncertain and open to conflicting interpretations.
4. Distribution of control	Does satisfaction depend solely on the will of the party bound?	There is an external factor, objective standard, or reasonable-efforts obligation.	A pure potestative condition under Article 1256.
5. Evidence and verifier	Who determines satisfaction and on what evidence?	Authority confirmation, an independent surveyor/notary/adviser, or specified documents.	A party becomes the judge of its own interest.
6. Timing and process	Are there deadlines, notice, cooperation, and an anti-prevention rule?	Long-stop date, cure period, document access, and no obstruction.	An indefinite interim period, manipulation, or delay.
7. Proportionate consequences	What follows from satisfaction or non-satisfaction, and can the clause be severed?	Waiver, extension, price adjustment, indemnity, termination, and refunds are arranged in graduated form.	Disproportionate consequences, a windfall, or unnecessary collapse of the contract.

The first layer prevents category errors. A suspensive condition postpones only the specified obligation; a reasonable-efforts obligation may still be breached before the condition is determined. The second layer subjects freedom of contract to mandatory law, particularly in a PPJB. The third and fifth layers create objectivity through definitions and evidence. The fourth addresses the core of the prohibition on *potestative* conditions. The sixth manages the interim period, while the seventh ensures that the response to risk is proportionate to its materiality.

Each CP should be tested individually rather than in the aggregate. A single transaction may contain both valid and problematic CPs. Bank approval for the discharge of a *Hak Tanggungan*, for example, may pass the test, while a Buyer's right to cancel "in its sole discretion" may not. Clause-by-clause review also facilitates severability and the selection of appropriate consequences.

Discussion

Model Clause Drafting

The following model may be adapted for cooperation agreements or property transactions between business actors. It is not a universal clause. In a residential PPJB, all requirements mandated by Government Regulation No. 12 of 2021 must be satisfied before the PPJB is executed and may not merely be designated as CPs.

Illustrative Model Clause

Article [X] — Conditions Precedent Concerning Title Status

The Parties' obligations to complete Closing, pay the Closing Price, and execute the deed of transfer shall be suspended until each of the following Conditions Precedent has been satisfied or, to the extent legally capable of waiver, waived in writing by the Party for whose benefit the relevant condition is included:

a. The Land Office has issued a certificate search result and/or written confirmation showing that no block, seizure, *Hak Tanggungan* not agreed to be discharged, or other notation prevents the transfer;

b. a survey or verification of the physical data by an authorized officer or independent surveyor agreed upon by the Parties shows no overlap and no area discrepancy exceeding [___]% of the agreed area;

c. each objection or third-party claim disclosed in Schedule [___] has been resolved by release, settlement, final and binding judgment, or another resolution that reasonably eliminates any material adverse effect on possession, use, financing, or transfer of the Property;

d. all legally required consents from any creditor, holder of a right of management, spouse, corporate body, or governmental authority have been obtained in valid and effective form.

The Seller shall use reasonable and appropriate efforts, provide accurate and complete documents, attend surveys or meetings, and refrain from any action that obstructs satisfaction of the Conditions Precedent. The Buyer shall provide all cooperation reasonably required. Each Party shall notify the other of any material development no later than [___] Business Days after becoming aware of it.

Satisfaction of each Condition Precedent shall be determined by reference to the documents specified in paragraph 1 and shall not be unreasonably withheld or disputed. If a technical disagreement arises concerning boundaries, area, or overlap, the Parties shall appoint an independent surveyor or adviser, whose determination shall be binding absent manifest error.

All Conditions Precedent must be satisfied no later than [date] (the "Long-Stop Date"). Before that date, the Parties may agree to a cure period of [___] Business Days. Waiver of a condition shall not, by itself, waive any indemnity or warranty claim unless expressly stated in the written waiver.

If a condition has not been satisfied by the Long-Stop Date, the Party that did not cause the failure may elect to: (i) extend the period; (ii) adjust the price in accordance with the formula in Schedule [___]; (iii) complete Closing subject to retention/escrow or a specific indemnity; or (iv) terminate this Agreement and receive a refund of payments as required by law. No termination right shall be available to a Party that intentionally or through material negligence prevented satisfaction of the condition.

If any condition is held invalid or unenforceable, it shall be severed to the greatest extent possible without altering the transaction's principal purpose. The Parties shall replace it with a lawful mechanism that most closely reflects the agreed allocation of risk. If the risk is fundamental and cannot reasonably be mitigated, either Party may terminate this Agreement in accordance with paragraph 5.

The model avoids five common weaknesses. First, it identifies the specific obligations that are suspended, thereby preserving the obligations that apply during the interim period. Second, it converts findings into verifiable indicators. Third, it treats each party's conduct as an efforts obligation while preserving external outcomes as conditions. Fourth, the long-stop date and graduated options prevent an indefinite interim period. Fifth, waiver is separated from release of claims so that the Buyer does not inadvertently lose protection by electing to proceed with the transaction.

For consumer transactions, the model should be simplified and made fully consistent with consumer-protection rules. A clause allowing a developer to retain all payments where title uncertainty arises from the developer's own conduct may be unfair. Refunds, interest or delay penalties, and restrictions on the collection of funds must comply with Government Regulation No. 12 of 2021 and consumer-protection law. Notaries must also exercise due care in examining identity, authority, documentary evidence, and the parties' intentions; Kurnia et al. (2022) characterize due diligence as an aspect of prudence intended to minimize disputes.

Ultimately, the quality of a CP depends on disciplined alignment between the LTDD report and the contract. Each CP should be traceable to a specific material finding or assumption. The report should state the fact, source, degree of certainty, impact, controlling party, and recommendation. The contract should then select the appropriate instrument. This audit trail allows the drafter to explain why a condition is material, why a particular verifier was selected, and why the consequences are proportionate.

Answers to the Research Questions

First, a CP derived from a contingent LTDD finding is valid as a suspensive condition if it connects the performance of a specified obligation to a possible and uncertain event and satisfies the validity requirements of an agreement. Its contingent nature is consistent with Articles 1253 and 1263. The subject matter does not become indefinite merely because the impact or value of the risk is not yet final, provided that the principal subject matter and the method for determining it are sufficiently clear. A CP is invalid or unenforceable where the event is impossible, unlawful, circumvents mandatory sectoral requirements, or is unintelligible. Failure of a condition must be distinguished from breach of an efforts obligation during the interim period.

Second, a CP remains within freedom of contract where it operates as a transparent allocation of risk, is based on objective indicators, does not make the commitment solely dependent on one party's will, and is exercised in good faith. The prohibition in Article 1256 principally concerns pure *potestative* conditions. A mixed condition requiring action by a party but also depending on an authority, a third party, or an objective standard may remain valid. Certainty of subject matter and the prohibition of *potestative* conditions converge on a single principle: a party must not have unbounded power to create the very fact that determines whether it is bound.

CONCLUSION

The validity of conditions precedent based on contingent LTDD findings is determined not by certainty as to the value of the risk at the time of contracting, but by the clause's legal structure. Uncertainty concerning a future event is consistent with the character of a suspensive condition under Articles 1253 and 1263 of the Indonesian Civil Code. A clause is valid where the event is possible, lawful, relevant to the transaction, verifiable, and its subject matter and consequences are determinable. Where a CP is accompanied by a remediation or efforts obligation, failure to achieve the result and breach of the obligation must be analyzed separately. In a residential PPJB, CPs may not be used to postpone certainty of land status, PBG, infrastructure, and construction progress that Government Regulation No. 12 of 2021 requires to exist before the PPJB is executed. Freedom of contract reaches its limit where a CP makes a commitment dependent on the sole discretion of the party bound, violates the law, lacks objective standards, or is exercised in bad faith. Article 1256 does not prohibit every condition influenced by a party's conduct; it prohibits dependence solely on will. Mixed conditions, including regulatory approval, survey results, discharge of an encumbrance by a creditor, or settlement of a claim, may therefore be valid if governed by standards and procedures. The seven-layer test—characterization, sectoral legality, determinability, distribution of control, evidence and verifier, timing and process, and proportionate consequences—provides a framework for evaluating and drafting such clauses.

Future research may test this framework against judicial decisions and transaction samples to assess how Indonesian courts characterize satisfaction clauses, internal approvals, and termination rights triggered by due-diligence findings. The analysis presented here is grounded in doctrinal interpretation of Indonesian statutory provisions and case-law principles; it should be understood as a doctrinal proposition rather than an empirically validated conclusion concerning actual judicial behavior or transaction practice. The framework's application to specific transaction documents must be adapted to the factual circumstances, sector-specific regulatory requirements, and the parties' negotiated risk allocation.

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AUTHOR CONTRIBUTION STATEMENT

Ade Putra Indrawan: conceptualization, methodology, statutory analysis, and writing the original draft. Joshua Pratama Saha: legal research, formal analysis, validation, and editing. Both authors approved the final version of the manuscript.

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