

# Legal Protection for Consumers in the Sale and Purchase Agreement through the Home Ownership Credit Facility

(Study at PT. Bank Rakyat Indonesia Branch Office Medan Putri Hijau)

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## ABSTRACT

The most basic human needs include clothing, food and shelter. The board is a place to live or home. As one of the basic human needs, ideally every family should have a home. Apart from the important function of a home, there are still many families who do not have a home, let alone a decent house. To own a house requires a lot of funds. Banks provide credit or loans for those who want to buy a house. In order to facilitate the purchase of the house, PT Bank Rakyat Indonesia (BRI) issued a KPR product called "BRI Property Ownership Credit". Banks are allowed to work with developers who sell houses with certificates that have not been divided according to the designation of each house. This also applies to developers who have not paid off the purchase of land. The type of research used in this research is normative law, namely the approach used is the statute approach and the case approach. This research is descriptive. The data in this study are secondary data (literature study) and primary data with random sampling, namely surveys, interviews with informants and notes, while the analysis used is qualitative juridical methods. The results show that the consumer's right to receive a land certificate after the credit is paid off, to choose and get a house. Consumers based on article 19 of the housing and settlement areas act (UUPK) can make claims for compensation in the form of money from the developer. The bank's obligation to facilitate financing facilities for customers, return collateral, and supervise debtors. The developers are obliged to carry out the construction of buildings according to time and architectural drawings, hand over land and

house buildings, take care of the registration of the acquisition of rights to land.

**Keywords:** Home, Consumers, Banks, Developers

## INTRODUCTION

The most basic human needs include clothing, food and shelter. The board is a place to live or home. As one of the basic human needs, ideally every family should have a home. Apart from the important function of a home, there are still many families who do not have a home, let alone a decent house.

A building where humans live and carry out their lives, besides that the house is also a place where the socialization process takes place in an individual being introduced to the norms and customs that apply in a society. As a forum for human life, it does not only involve technical and physical aspects but also social, economic and cultural aspects of its inhabitants (Budiharjo, 1998).

Furthermore, Wesnawa (2015) uses the term settlement, he says settlements are; "Formations either man-made or natural with all the accessories used by humans as individuals or groups to live temporarily or permanently in order to carry out their lives".

Suyatno (1998) stated that the basis of credit is trust. A person or all bodies that provide credit (creditors) believe that the recipient of credit (debtor) in the future will

be able to fulfill everything that has been promised, in the form of goods, money or services. Meanwhile, Taswan (2003) states that credit provided by a bank can be defined as the provision of money or an equivalent bill, based on a loan agreement between the bank and another party which requires the borrower to repay the debt after a certain period of time with the amount of interest, reward or profit sharing.

To own a house requires a lot of funds. Therefore, there are housing developers who facilitate the community's need for housing. Next, there is a great need for an entity, namely a bank, which acts as an intermediary between the housing developer and the community to provide funds for housing purchases. Banks provide credit or loans for those who want to buy a house. In order to facilitate the purchase of the house, PT Bank Rakyat Indonesia (Bank BRI) issued a KPR product called "BRI Property Ownership Credit". This credit is extended to people who buy houses directly to home owners or buy houses built by housing developers.

Home ownership credit creates a legal relationship in the form of:

1. The legal relationship between consumers and sellers. Sellers in the context of this writing can be individuals or business entities or developers and non-developers. This legal relationship is stated in the form of a written agreement in the form of a sale and purchase agreement and or a sale and purchase agreement.
2. The legal relationship between the seller and the bank, in the form of a cooperation agreement or memorandum of understanding (MoU).
3. The legal relationship between the consumer and the bank, in the form of a credit agreement or debt acknowledgment.

Problems that often arise are basically in the form of legal agreements between developers and consumers, where many disputes occur due to developers who do not keep their promises so that

consumers are harmed by developers due to poor commitments made when offering products. This reality is further emphasized by Shofie (2000) who says that the marketing carried out by developers is also very tendentious, so it is not uncommon for the information submitted to turn out to be misleading (misleading information) or incorrect, even though they have already signed a sale and purchase agreement (PPJB) with the developer or even have a credit agreement with the bank providing home ownership credit (KPR).

The bank works closely with the developer to facilitate home ownership loans. In this case the developer is allowed to sell the house to the buyer even though the certificate of ownership right (SHM) or the right of ownership in accordance with each area of the house has not been issued. Likewise, banks are allowed to work with developers who sell houses with certificates that have not been divided according to the designation of each house. This also applies to developers who have not paid off the purchase of land.

Since the title deeds have not yet been issued (according to the house package), buyers often face problems accessing the title deeds at the end of their credit payments. This is because there is no legal protection or guarantee to homebuyers that they immediately own the title after making final payment for their property.

## **RESEARCH METHODS**

The type of research used in this research is normative law, namely the approach used is the statute approach and the case approach. Normative legal research is research on library materials (secondary data) that are relevant to the problems to be analyzed, both in the form of primary legal materials, secondary legal materials, and tertiary legal materials (Soekanto and Mamudji, 2003). Soemitro (2010) said that normative legal research is also called literature law research, because it is mostly done on data that is secondary data in the library.

This research is descriptive. Descriptive research is intended to provide data that is as accurate as possible about humans, circumstances or other symptoms (Soekanto, 1986). Descriptive means that data analysis is deductive based on general theories or concepts applied to explain a set of data or to show a comparison/relationship of a data set with other data sets (Sunggono, 2002).

The data in this study are secondary data (literature study) and primary data with random sampling, namely surveys, interviews with informants and notes.

Analysis used is qualitative juridical methods. The analysis of the data collected was carried out qualitatively, which is an analysis that refers to a systematic review or test of a matter in order to determine the parts, the relationship between the parts and the inner relationship as a whole (Farouk and Djaali, 2005). Qualitative analysis is more precisely called qualitative juridical analysis, because what is analyzed is information obtained from laws and regulations, as well as scientific works in the field of law (juridical), which in this study are focused on aspects of legal protection for consumers in the sale and purchase of a house through facilities KPR.

## **RESULT**

### **Legal Relationships between Developers, Consumers and Banks**

The legal relationship between consumers and developers occurs due to an agreement between the two parties, due to product offerings from developers which are generally offered through various media, for example advertisements in newspapers or through brochures. Consumer interest in the offer submitted by the developer then led to a mutual agreement between the consumer and the developer which was wrapped in a written agreement in the form of a house order letter or a house purchase agreement. This written agreement has usually been witnessed by the developer, namely in a form or what is known as a standard agreement or standard agreement.

The legal relationship between the developer and the consumer in this agreement is essentially a legal relationship for buying and selling houses. Thus the agreement is called a house sale and purchase agreement which is a reciprocal agreement, which of course creates mutual obligations between the parties which is also called an obligatory agreement. The developer is obliged to build and then deliver the house to the consumer within a predetermined period of time; On the other hand, the consumer is obliged to pay the agreed house price in stages, including the KPR facility from the Bank. This means that a developer's achievement is doing something and giving something, while consumer achievement is giving something.

Based on this description, it can be said that the character of the legal relationship between the developer and the consumer is a reciprocal relationship, in which both parties are obliged for an achievement and at the same time are entitled to an achievement from the other party.

The character of the legal relationship between the developer and the bank is a cooperative or partnership relationship in business. This means that both parties have mutual interest in the same consumer. Consumers as buyers of housing units from developers who will get disbursement of funds through KPR facilities from banks to pay off house price payments to developers.

This partnership relationship begins with the submission of complete credit administration data from consumers and house data from the developer to the bank.

Data on houses to be purchased by consumers from the developer are provided to the bank accompanied by a requirement from the developer in the form of a guarantee that the house is built in a way and uses materials that meet the standards, terms and conditions related to buildings that apply in Indonesia. Based on a guarantee like this, the bank will conduct an inspection or assessment of the condition of

the house either by the bank itself or by using a third party service (appraisal) in order to assess the appropriateness of the house as collateral for the mortgage provided by the consumer.

The character of the relationship between the consumer and the developer / developer and the bank is a reciprocal relationship in a house sale and purchase agreement, in which in practice there can be several variations of the agreement to pour out a house sale and purchase agreement. The character of the relationship between the consumer and the bank, in addition to a partnership relationship, can also occur at the same time a lending-borrowing relationship. This means that here the bank agreed to provide a loan of a number of funds to the developer, as additional capital for the developer to carry out housing development.

### **Rights and Obligations of Consumers, Banks and Developers in the Sale and Purchase Agreement through the Home Ownership Credit Facility**

#### **Consumers**

The results show that the consumer's right to receive a land certificate after the credit is paid off, to choose and get a house, to get comfort, security and safety in using the house, to get correct, clear information about the condition of the house, to get advocacy, protection and proper dispute resolution efforts, while the obligations of consumers (customers) to fulfill payments on time.

Consumers based on article 19 of the housing and settlement areas act (UUPK) can make claims for compensation in the form of money from the developer, as a result of the end of the KPR loan the developer does not submit the house certificate to the consumer as agreed.

#### **Banks**

The bank's obligation to facilitate financing facilities for customers, return collateral, supervise debtors, while the bank has the right to obtain clear and correct

information and data about the financial condition of consumers, and the right to pay installments plus interest or penalties.

#### **Developers**

The developers are obliged to carry out the construction of buildings according to time and architectural drawings, hand over land and house buildings, take care of the registration of the acquisition of rights to land and house buildings after the transfer of rights to land and house buildings, while the right of the developer receives payment of the agreed purchase price for the house.

## **CONCLUSION AND SUGGESTION**

### **Conclusion**

The results show that the consumer's right to receive a land certificate after the credit is paid off, to choose and get a house. Consumers based on article 19 of the housing and settlement areas act (UUPK) can make claims for compensation in the form of money from the developer.

The bank's obligation to facilitate financing facilities for customers, return collateral, and supervise debtors.

The developers are obliged to carry out the construction of buildings according to time and architectural drawings, hand over land and house buildings, take care of the registration of the acquisition of rights to land.

### **Suggestion**

The implementation of home ownership through KPR facilities still does not provide justice to consumers because they do not get a land certificate at the end of the KPR payment, therefore it is necessary to suggest:

1. Consumers before buying a house with a KPR facility must first check carefully the information submitted by the developer of the physical condition of the KPR object at the time of handover and ensure that it is in accordance with the promised specifications.
2. In the case of a debt agreement between a consumer and a bank, the sale and

purchase agreement between the consumer and the developer should be analyzed first by the bank, so that the risks contained in the agreement can be mitigated by the bank and set forth in the debt agreement between the consumer and the bank so that the consumer is truly really know his rights in the agreement.

3. PT. Bank Rakyat Indonesia Medan Putri Hijau branch should issue separate rules regarding the detailed terms of the cooperation agreement with the developer. This includes forming a special legal section to analyze all the detailed requirements for developers who are obliged to cooperate. With this analysis, it will be able to mitigate the risks posed by the developer, including the validity of the power of attorney, financial analysis of the developer, analysis of guarantees from the economic side and AMDAL and others. This should not be left to the credit proponent, because line loan workers do not master the legal details related to this.
4. For sale and purchase agreements between consumers and developers, it should be required by the bank to include information that is as clear as possible about the status of the collateral land so that there is no gap for consumers not to understand their rights at all.
5. In view of the risk of obstacles arising from legal events between developers and other parties, banks should only collaborate with developers who have

certificates that have been resolved. This will further protect consumers and the bank itself.

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