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The rights and obligations of consumers, banks and developers in the home purchase agreement through the home ownership loan facility (STUDY PT.PILAR WAHANA SEJATI)

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Abstract
This study aims to (1) Examine and analyze the legal relationship between consumers and developers due to the Home Purchase Agreement. (2) reviewing and analyzing the legal protection of Home consumers due to the obligations of the developer due to the house sale and purchase agreement. The research method used is juridical normative by using conceptual (conceptual approach). Data analysis is done qualitatively by utilizing relevant positive theories and laws. Legal protection of consumers is regulated in law No. 8 of 1999 on consumer protection this law is expected to protect consumers in buying and selling homes through home ownership credit facilities. Based on the rules of law ,then in making the sale and purchase of houses must be made in the form of an authentic deed that is a deed that is made in the form specified by law and made before the competent public officials. Deed of sale and purchase under Article 617 of the Civil Code Kepmenpera number 09/1995 and PP24 / 1997, The Deed of sale and purchase must be signed by the seller and buyer in the presence of PPAT.

***Keywords**:* Debtors, Legal Protection, Housing Developers.

1. INTRODUCTION

In everyday life humans have basic needs or known as primary needs, also secondary needs and tertiary needs. Primary needs themselves are the most basic needs and are mandatory to be met. In everyday life these primary needs consist of clothing, food, and board. Clothing needs consist of clothing. Furthermore, the need for food is a source of food for humans, and The Last need for space, is a house or residence. Without a home means that the primary needs of humans have not been met. The three basic human needs are necessities of life that cannot be abandoned.

The house is one of the basic needs for humans. It is said to be a basic need (basic human needs) because it is an element that must be met in order to ensure human survival. Where these basic needs will determine the level of welfare as well as the quality of human life itself because it is a

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dwelling in essence can affect the quality of life of the people who live in it. The necessities of life for this house are guaranteed in the Constitution of the Republic of Indonesia, as specified in Article 28 H paragraph (1) of the 1945 Constitution which states; “Everyone has the right to live in prosperity both physically and mentally,reside, and get a good and healthy living environment and the right to obtain health services”.

Juridically, in the provisions of Article 1 Number 7 of Law No. 1 of 2011 on housing and settlement areas (UUPKP), it is asserted that; “a house is a building that serves as a habitable residence, a means of Family Development, a reflection of the dignity and dignity of its residents, and an asset for the owner”. Seeing the importance of the function of the house for human life, it turns out that there are still many members of the community who do not have a house, especially a decent house, because to get a house it takes a lot of funds. Therefore, in order to accelerate the provision of housing for the needs of the community, the government through its policy provides opportunities for the private sector to participate in development. Such private parties are called housing developers or developers.

In addition, a party is needed that can be an intermediary between housing developers and people who do not yet have a home and can help the community in alleviating the burden of paying for the purchase of the House. The intermediary in question is the bank. Through its credit products, banks can provide financing assistance to ease the burden of payment in home purchases. Thomas. S, et al., States; “the basis of credit is trust. A person or all entities that provide credit (creditors) believe that the recipient of the credit (debtor) in the future will be able to fulfill everything that has been promised it can be in the form of goods, money or services”.3 while Taswan said: credit provided by the bank can be defined as the provision of money or bills that can be equated with it, based on the agreement or loan agreement between the bank and another party that requires the borrower to pay off the debt after a certain period of time with the amount of interest, reward or profit sharing.

Juridically according to Article 1 Number 11 of Law No. 10 of 1998 on amendments to Law No. 7 of 1992 on Banking determine: Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between a bank and another party that requires the borrower to pay off his debt after a certain period of time with the provision of interest.

In practice, the credit given to ease the burden of payment in the purchase of a house is known as a home ownership loan (KPR). In the mortgage scheme, the bank will make an advance payment for the purchase of a house for the customer to the housing developer, then the customer will pay the cost of purchasing the house to the bank within a certain period of time in accordance with the mortgage agreement that has been agreed between the bank and the customer.

Problems that often arise are basically in the form of legal agreements between developers and consumers, where many disputes are caused by 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 confirmed by Shofie who said that "the marketing done by developers is also very tendentious, so it is not uncommon for the information submitted to be misleading (misleading information) or incorrect, even though it has already signed a binding sale and Purchase Agreement (PPJB) with the developer or even a credit agreement with a home ownership loan provider Bank (KPR).

This is supported by the condition where banks as agencies that help purchase repayment to developers, are allowed to cooperate with developers who sell houses with SHM conditions that have not been broken up according to persil rumah, even to developers who have not paid off land. In Persil per rumah not yet broken up in the condition of SHM, in the future there will be problems, when the Developer has problems in solving the SHM Persil rumah. From that, the banking position is in a weak position, because the collateral provided Developer to the bank only the parent certificate is covered by the cover note notary partner. Even the parent collateral is not handed over to one of the banks, since the Developer cooperates with many banks. Likewise for home consumers who make loans, there is no legal protection for guarantees to home consumers at the end of the SHM mortgage directly becomes his property, because the SHM has not been resolved by the Developer.

PT.Bank Tabungan Negara (Persero) Padang Branch HM Rasuna said issued a housing loan product named "PT.Pilar Wahana Sejati" who bought a house from a Developer who worked with PT. State Savings Bank (Persero) Padang Branch HM Rasuna Said" As the largest branch in the city of Padang, PT.Bank Tabungan Negara (Persero) Padang Branch HM Rasuna Said has 18 cooperation agreements with developers in the Padang City area. Of the 18 developers, there are 2 developers who have legal problems due to not carrying out their obligations to consumers so that at the end of the home ownership loan , the bank cannot submit a house certificate that should be the right of consumers.

2. RESEARCH METHOD

The type of legal research method used in this study is a normative research method.In normative research secondary data as a source of information can be primary legal ma-terial, secondary legal materials, and tertiary legal materials. The specification of this research is specifically to analyze the implementation of legal principles, namely researchon written positive law or research on legal methods that live in society. The method willbe applied that approach to legislation (Statute Approach) and Case Approach. Case research in normative legal research aims to study legal norms or rules carried out in legal practice.

The technique of collecting data using literature studies (normative legal research) which focuses on secondary data, the authors researched the laws and government regulations relating to this research. Then conducted interviews with informants, especially the public relations department of the Financial Transaction Reports and Analysis Center and the profession to obtain information to add to the lack of complete secondary data. Data collection tools in normative juridical research are derived from secondary data to obtain concepts, theories, and information and conceptual thinking from previous researchers in the form of legislation, scientific work, journals, and others.

Making procedures and data collection in this study conducted in two ways: by studying the literature and interviews with key informants such as lawyers, and prosecutors and service providers finance. Data analysis technique begins with an examination of the data done the collected data then conducts direct and directed interviews and then analyzes the data qualitatively, the data obtained is systematically compiled and then analyzed qualitatively in the form of rules. The process of legal analysis is linked to the theo retical framework to be able to answer the formulation of the problem under study.

3. RESULT AND ANALYSIS

A. Legal relationship between developers and 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, such as advertisements in newspapers or through brochures. Consumer interest terahadap offers proposed by the developer then led to a mutual agreement between consumers dengen developer wrapped in a written agreement in the form of a letter of home order or Home Purchase Agreement engagement. This written agreement is usually witnessed by the developer in a form or 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 to sell and buy a house. Thus the agreement is called a home purchase agreement which is a reciprocal agreement, which of course creates mutual obligations between the parties which is also called an obligatoir agreement. The Developer is obliged to build and then deliver the house to the consumer in accordance with a predetermined period of time; instead, consumers are obliged to pay the agreed house price gradually, including with mortgage facilities from the Bank. That is, the developer's achievement is to do something and give something, while the consumer's achievement is to give something.

Based on this description, it can be said that the character of the legal relationship between the developer and the consumer is a mutual relationship, where both parties are obliged to an achievement and at the same time entitled to an achievement from the other party. As a result of the character of the legal relationship, each party can demand the fulfillment of the performance either based on the content of the agreement or the provisions of the law. The character of the legal relationship between the developer and the bank is a relationship of cooperation or partnership in business. This means that both parties are parties of mutual interest to the same consumer. Consumers as buyers of housing units from developers who will receive funding through mortgage facilities from banks to pay off house price payments to developers.

This partnership relationship begins with the submission of data on the completeness of credit administration from consumers and home data from the developer to the bank. These data are very important information for banks to process mortgage applications from consumers, which, when approved, means that developers also obtain certainty regarding the repayment of the sale price of housing units to consumers.

Data on houses that will be purchased by consumers from the developer is provided to the bank accompanied by a requirement from the developer in the form of a guarantee that the house building is built in a way and uses materials that meet the standards, terms and conditions related to buildings in force in Indonesia. Based on this guarantee, the bank will conduct an examination or assessment of the condition of the house either by the bank itself or by using third party services (appraisal) in order to assess the feasibility of the house as a guarantee for mortgages provided by consumers. The character of the relationship between the consumer and the developer/developer and the bank is a reciprocal relationship in a home purchase agreement, which in practice can occur several variations of the agreement to pour a home purchase agreement. The character of the relationship between consumers and the bank in addition to the partnership relationship, can also occur at the same time lending and borrowing relationships. This means that here the bank agreed to lend some funds to the developer, as additional capital for the developer to carry out housing construction. Instead, the developer agrees to repay the loan by making a deduction from a special account called an "escrow account" for the proceeds from the sale of housing by the developer to buyers or consumers.

B. Home Purchase Agreement Through Home Ownership Loan Facility

A credit agreement that is quite a lot of demand is a home sale and purchase credit agreement. A sale and purchase agreement is an agreement made between the seller and the buyer. In the sale and purchase agreement, the seller has an obligation to deliver the object of sale and purchase to the buyer and therefore has the right to accept the price and the buyer is obliged to pay the price and is entitled to receive the object. Elements contained in the understanding of the purchase agreement is: 1. the existence of the subject of law, namely the seller and buyer; 2. the existence of an agreement between the seller and the buyer about the goods and prices; 3. the existence of rights and obligations arising between the seller and the buyer.

The sale and purchase agreement is one of the legal events. Any legal event, of course, there is a subject and object of law. In the context of the sale and purchase agreement, which can be the subject of all persons and legal entities, of course, provided that the person concerned has matured according to the law and is married and capable of performing legal acts. The object of the sale and purchase agreement is all movable and immovable objects, and those that are not allowed to be traded are: 1. other people's things or belongings; 2. goods that are not permitted by law, such as buying and selling narcotics; 3. contrary to order; 4. contrary to decency.

When connected with a house sale and purchase agreement, the subject can be all persons and legal entities that according to the law are capable of performing legal acts, while the object in the house sale and purchase agreement is the House. A binding sale and purchase agreement is a preliminary agreement or obligator agreement. Since the binding sale and purchase agreement is a preliminary agreement, the agreement contains promises from the parties that contain provisions if the conditions for the actual sale and purchase have been met. After the conditions for the sale and purchase have been met, the parties must face again to sign the deed of sale and purchase as the realization of the binding sale and purchase agreement. This means that the binding sale and purchase agreement was born because the conditions for the sale and purchase to be carried out have not been met, this is because, among other things, the purchase price has not been paid and/or the object of sale and purchase is not yet perfect.

In The Binding of buying and selling the will of the parties is willing to sell and the other party is willing to buy.

KPR is a consumer credit facility provided by the bank to customers who want to buy or repair a house and payment is made in installments based on a predetermined period of time and interest. Residence ownership is one of the means installment for people who want to own a house on an installment system with increased interest.

When the credit agreement is done and the customer has agreed to the terms of the bank or known as the Standard Terms of related to the house price, down payment, number of installments and specifications of the House. The customer then fills out the form provided by the bank. Terms and forms that have been determined by the bank are provisions that have been standardized by the bank called the standard agreement. If the customer has agreed to the terms of the bank and follow the provisions set by the bank, then approved by the bank on the application for a mortgage, then there is an agreement and a deed of mortgage agreement is made. The mortgage agreement between the customer and the bank is included in the consensual agreement, namely that the agreement is valid and binding on the second the agreement is reached and results in the emergence of a legal relationship between the bank and the customer that gives rise to rights and obligations. Between the bank and the customer which results in binding an agreement or so-called pacta sunt servanda.

When a credit agreement contract occurs, all parties must be present and participate in the credit agreement process that is made. This means that the "agreement" occurs when the mortgage agreement deed is made and signed between the customer and the bank. After the signing of the mortgage agreement deed, a debt repayment agreement is made which contains the customer's obligation to repay and pay off his debt to the bank within a predetermined period of time. After the deed of recognition of debt is made by a notary, a deed of sale and purchase is made where between the developer and the customer there is a rights transfer agreement, namely the transfer of rights to land and buildings previously in the name of the PT that houses the developer into the property of the customer, while between the bank and the customer there is a debt transfer agreement in which all these things are listed in the financing agreement. Submission of certificates on the house is done before the mortgage agreement contract is made and signed by the parties. In addition, in the debt recognition agreement to guarantee the repayment of the customer's debt by guaranteeing the deed of ownership of land and buildings in accordance with the rules and agreements between the customer and the bank.

The mortgage agreement is included in the lease agreement, because as long as the House has not been paid off and is still in installments, the customer is the tenant, but when all has been paid in full, it becomes the property of the customer as a consumer, which then occurs the transfer of property rights, then the house and certificate of ownership submitted by the bank to the customer and become the property of the customer. This means that as long as the customer has not paid off the debt in installments, it can automatically be said to be a tenant, but after paying off the debt, the customer can be said to be a buyer of the house in instalments.

C. Banking rights and obligations in the Home Purchase Agreement through the mortgage facility

One of the easiest alternatives to getting a decent and desirable home is through bank credit. Based on Article 4 of the UUP, the purpose of banking is to support the implementation of national development in order to improve equity, economic growth and national stability towards improving the welfare of the people. The function to collect and distribute funds is closely related to the public interest, so that in this case banks are obliged to maintain the funds deposited by the community. Banks should be able to channel these funds into areas that are productive, which is useful for the achievement and Development Goals.

Indonesian banking in conducting its business using the principle of economic democracy by using the principle of prudence. This is because the funds used by banks are funds obtained/derived from the community, so the bank must be able to account for the funds used to distribute to people who need to improve their living standards. Banking is also a practical financial institution for saving and distributing to the community, which is the main function of banking.

The importance of public trust in banks has created a relationship of trust (fiduciary) between banks and customers. This trust relationship can occur because banks have a unique function and role in the midst of society, namely as a trust and a safe place to store money.130 on the other hand, in carrying out its business activities, the bank is also involved in the internal problems of the company and various individuals (customers), so that the role of the bank turns out to have gone beyond the traditional relationship between debtors and creditors. Based on the characteristics of the bank as above, the bank's relationship with customers is a relationship of trust (fiduciary) which is seen as one of the foundations of banking business. Modern banking practices, which involve very complex structures, cause banks to often act as advisors (financial advisers), giving rise to trust and confidentiality (confidentiality) at the same time, which in the next stage results in fiduciary duty to the bank when dealing with its customers. Thus the bank is obliged to disclose (aduty to disclose) all material facts (bank performance) to its customers, if the bank has knowledge that is very important for its customers.

In line with existing developments, banks issue their products by providing mortgages to the public. Home is something that is very important needed by the community because it is a primary need. With the mortgage provided by the banks, people are given the convenience of owning a house in a very easy and cheap way, namely installments or installments.

The existence of payments through installments or installments to the bank makes people no longer need to buy a house by paying the full price of the house, which is a current obstacle for some people. To be able to buy a house at a cash price, of course, requires a lot of money, because the needs of the community are increasingly many. With the community mortgage facility, it is easier to be able to have a house with a lighter payment. The occurrence of a credit agreement between the consumer (customer, debtor) and the bank certainly gives rise to interrelated legal relations. The legal relationship then boils down to the rights and obligations of each.

The bank as a creditor is the bank as a funder who provides credit facility assistance in the form of money used by the debtor to pay for the house purchased by the developer (Developer). The main obligation of the bank in the mortgage is to provide credit in accordance with the portion requested by the credit applicant. In practice, credit is given a maximum of 70% of the total price of the entire object. In the case of mortgages, usually the bank has paid off and paid the price of the House object to the developer, so that later mortgage consumers are directly related to the bank. However, this also depends on the agreement that has been agreed before between the parties.

Other bank obligations in buying and selling houses through mortgage facilities is: 1. Provide convenience for customers to be able to obtain complete and accurate information about mortgages; 2. Return the collateral, when the mortgage has been paid off in accordance with the agreed length of credit for a maximum of 20 years; 3. Supervise the debtor (customer) when making mistakes that can result in default or unlawful acts that harm the bank as a creditor in the mortgage agreement.

The bank's obligation to customers in the mortgage agreement is none other than to provide financing facilities to consumers who will buy houses on credit. In addition, it provides convenience for customers to be able to have and implement the contents of the credit agreement that has been determined at the beginning before the agreement between the parties (bank and customer). The Bank as a creditor has the right to obtain clear and correct information and data about the financial condition of the consumer as a debtor. In addition, creditors are also entitled to installment payments plus interest charges or penalties. Creditors are also entitled to collateral / guarantees against funds that have been issued in order to maintain the risks that may arise.

4. CONCLUSION

In the case of a debt agreement between consumers and banks, the sale and purchase agreement between consumers and developers 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 consumers and banks so that consumers really know their rights in the agreement. PT. Bank Tabungan Negara (Persero) Branch Padang Tbk Branch Padang HM Rasuna Said should publish its own rules regarding the detailed Terms of the cooperation agreement with the Developer. This includes forming a special legal section to analyze all the details of the 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 deeloper, analysis of the guarantee of the economy and the EIA and others. This should not be left to the initiator of the credit, since the credit line worker does not master the legal details related to this.

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