



DOI: <https://doi.org/10.38035/gijlss.v3i1>
<https://creativecommons.org/licenses/by/4.0/>

Legal Liability of Developers in Breach of Contract Against Consumers in House Sale and Purchase Agreements Through Mortgage Facilities (KPR)

Nuha Rifda Juliansyah P¹, Albertus Sentot Sudarwanto², Arief Suryono³

¹ Universitas Sebelas Maret, Jawa Tengah, Indonesia, nuharifdajp@gmail.com

² Universitas Sebelas Maret, Jawa Tengah, Indonesia

³ Universitas Sebelas Maret, Jawa Tengah, Indonesia

Corresponding Author: nuharifdajp@gmail.com¹

Abstract: The sale and purchase of houses using Mortgage Credit Facilities (KPR) is economically beneficial for the public, especially for those with limited financial capacity. However, the issue of developers breaching contract in such transactions has become a recurring problem and needs to be addressed in the context of consumer protection in Indonesia. This research discusses the forms of breach of contract committed by developers that result in losses for consumers. The main focus is the protection for consumers who suffer losses due to breach of contract in house sale and purchase agreements through mortgage facilities. The research method used is normative juridical legal research with a descriptive-analytical approach. Data collection techniques include literature review and legal document analysis. The results of the research indicate that the legal relationship established between the consumer, developer, and bank creates rights and obligations for each party. When a developer breaches the contract, consumers are entitled to legal protection as regulated in Law Number 8 of 1999 on Consumer Protection and the Indonesian Civil Code (KUHPerdata). Based on the developer's legal liability for the losses suffered by consumers, legal remedies may include claims for material and immaterial damages. The Consumer Protection Law and Civil Code provide a relevant legal framework for handling such cases.

Keyword: Breach of Contract, Legal Protection, Mortgage Credit Facility.

INTRODUCTION

Housing is a fundamental human need that is crucial for survival. The quality of a person's home can significantly influence their overall quality of life. Despite its vital role, many individuals still do not have access to proper housing due to financial constraints, as acquiring a home requires substantial funds. To meet the need for adequate and affordable housing, the development of residential areas and settlements continues to be encouraged. To accelerate the provision of housing, the government facilitates this through programs such as the purchase of houses using Mortgage Credit Facilities (KPR).

Purchasing a house through a mortgage facility involves an agreement known as a binding sale and purchase agreement (*perjanjian pengikatan jual beli*). The regulation on sales is stipulated in Article 1457 of the Indonesian Civil Code (KUHPerdata), which states that a sale is an agreement whereby one party commits to delivering a good, and the other commits to paying the agreed price. Article 1458 of the Civil Code further states that a sale is deemed to have occurred when both parties agree on the object and the price, even if the object has not yet been delivered and the price not yet paid. According to R. Subekti, an agreement is an event where one person makes a promise to another, or both parties promise to perform a particular act (Subekti, 2008:1).

Agreements are regulated in Book III of the Civil Code concerning obligations, specifically in Chapter II regarding obligations arising from contracts or agreements. The definition of an agreement in Article 1313 of the Civil Code is a legal act whereby one or more persons bind themselves to one or more other persons, while the validity of an agreement is defined in Article 1320, which lists four essential elements: consent, capacity, a specific object, and a lawful cause.

According to Salim, an agreement is a legal relationship between one legal subject and another in the realm of wealth, where one subject is entitled to performance and the other is obligated to fulfill the performance according to their agreement (Salim H.S, 2009). In other words, parties entering into an agreement are bound by their legal actions, whether based on contract or law (V. Harlen Sinaga, 2015:19).

When viewed in form, a credit agreement is essentially a loan agreement, which is regulated in Book III of the Civil Code, Articles 1754 through 1769. Article 1754 defines a loan as: "A loan is an agreement whereby one party delivers a certain quantity of consumable goods to another party, with the latter obligated to return the same quantity of the same kind and quality." Essentially, Article 1754 of the Civil Code provides that a loan agreement involves one party delivering replaceable goods, and the other is obliged to return them in equivalent form.

R. Subekti asserts that regardless of the form in which credit is granted, it is essentially a loan agreement as regulated by Articles 1754 through 1769 of the Civil Code. In practice, different titles are used for credit agreements in the banking sector, such as "credit agreement," "loan agreement," "loan approval," or "credit facility agreement." Despite the differences in titles, the juridical content is essentially the same: the provision of money as a loan (Sutarno, 2003:97).

Credit agreements executed before a notary constitute authentic deeds, thereby offering legal certainty as conclusive evidence (Hardjono, 2008:51), as referred to in Article 1868 of the Civil Code: "An authentic deed is a deed drawn up in a legally prescribed form by or before a public official authorized to do so at the place where the deed is made."

The provision of mortgage credit facilities is a vulnerable matter for banks. Therefore, in extending credit facilities to the public, banks must follow a series of procedures that adhere to key banking principles and creditworthiness criteria. This financing process is commonly used to purchase homes through KPR, where the bank initially pays the house price to the developer on behalf of the borrower.

Many issues in housing transactions arise from breaches of contract between developers and consumers. Developers frequently fail to fulfill the promises stated in the agreement, resulting in losses for consumers. This situation is compounded by the practice of cooperation between banks and developers, where developers often fail to complete the subdivision of the parent land title certificate (*Sertifikat Hak Milik* or SHM) according to each housing unit, or have not fully settled the land payment, both of which present significant risks. In cases where the SHM has not been subdivided per housing unit, problems will likely occur in the future (Debby Oktavia Sitompul, 2020:5).

In such situations, banks also find themselves in a disadvantaged position, as they often rely solely on the parent certificate as collateral. However, this certificate has not been subdivided in accordance with each unit, as the collateral provided by the developer to the bank only consists of the parent certificate, which is covered by a notary partner's cover note. In some instances, the parent certificate is not even submitted to a single bank, because the developer collaborates with multiple banks. Similarly, consumers who take out home loans are not legally protected with regard to the final transfer of ownership rights, as the SHM is not directly transferred to them at the end of the mortgage period due to the developer's failure to complete the subdivision process.

Given the weak legal protection for consumers in sale and purchase agreements through mortgage credit facilities, especially when developers default on their obligations concerning the SHM ownership status, the purpose of this research is to obtain a clearer understanding of the forms of legal protection and legal liability that should be enforced when a developer commits a breach of contract in house sale agreements via KPR facilities, causing consumer losses, based on applicable laws and the principles of contract law in Indonesia.

METHOD

This study uses a normative juridical method, which is a scientific procedural approach aimed at discovering legal truths from a normative perspective by examining literature or secondary data (Soerjono Soekanto, 2001:13). The approach employed is descriptive-analytical, aiming to describe the applicable legal provisions and analyze their application in breach of contract cases related to house sale agreements through Mortgage Credit Facilities (KPR).

The type of data used in this legal research includes both primary and secondary data. Primary data is collected directly from the field using various data collection techniques designed to gather more in-depth and specific information. Secondary data is obtained from pre-existing sources and is used to provide a theoretical foundation and broader context, such as legal literature and official documents.

The secondary data sources used in this study consist of primary legal materials, secondary legal materials, and non-legal materials. This type of legal research falls under doctrinal/normative legal research, conducted through the examination of secondary data by means of document study. The data is obtained through an in-depth review of legal literature relevant to the research problem. The literature sources may include statutory regulations, books, journals, and legal materials accessed online.

The secondary data used in this study is categorized into three types: primary legal materials, secondary legal materials, and non-legal materials. Primary legal materials hold higher legal authority as they originate directly from authorized state institutions, such as statutes and court decisions. Secondary legal materials are interpretations and analyses of primary legal materials, such as law books, journal articles, and legal scholars' commentaries on court decisions. All legal materials were collected using library research techniques by tracing legal documents, academic references, and other relevant sources to address the research questions in this study.

RESULTS AND DISCUSSION

Legal Relationship Among the Parties Regarding Rights and Obligations in Mortgage Credit Facilities (KPR)

The practice of buying and selling houses through Mortgage Credit Facilities (KPR) creates a legal relationship involving several parties: the bank as the financing institution (creditor), the developer as the business actor, and the buyer as both the debtor and consumer.

These parties are legally interrelated and cannot stand independently. All three are bound by legal relationships established through separate contracts, which are governed by the principle of *pacta sunt servanda*—the binding force of contracts—as regulated in Article 1338 Paragraph (1) of the Indonesian Civil Code, which states, "All legally executed agreements shall serve as law for those who have made them". This means that every right and obligation stipulated in the agreement holds legal force, as long as it does not violate the law, public order, or morality. As the buyer and debtor, the consumer has the right to receive the object of the sale as agreed upon with the developer and the obligation to repay the mortgage in installments according to the agreed price to the bank.

The legal relationship between the creditor (bank) and the debtor (consumer) arises once a mortgage agreement (KPR) is signed for the purpose of purchasing a house. Once the credit agreement is established, the creditor fulfills its obligation by paying the purchase price to the developer on behalf of the debtor. Thus, the bank's duty is considered fulfilled, having provided the financing, while the debtor's obligation is to make installment payments to the bank. As a legal institution, the bank plays a crucial role in ensuring that the property to be financed meets all formal legal requirements and is free from any disputes or legal problems. Because the bank also holds a legal interest in the property used as credit collateral through a security right (*hak tanggungan*), it must apply the prudential principle—an operational guideline for financial institutions in Indonesia. Under this principle, the bank will analyze documents such as the Pre-Sale and Purchase Agreement (PPJB), Building Permit (IMB), land ownership certificates, and proof of construction progress before disbursing funds.

Once the financing or disbursement is fulfilled by the bank, it gives rise to the consumer's (debtor's) right toward the developer, and in turn, the developer's obligation to the consumer. The developer's obligation here is to deliver the object of sale as previously agreed upon in the Pre-Sale and Purchase Agreement between the consumer (debtor) and the developer.

Generally, this legal relationship begins with the Pre-Sale and Purchase Agreement (PPJB), which serves as a preliminary binding agreement and forms the basis for the formal transfer of ownership, to be later executed through a Deed of Sale and Purchase (*Akta Jual Beli*, AJB) made before the Land Deed Official (*Pejabat Pembuat Akta Tanah*, PPAT). The PPJB is a vital document that legally binds the parties before the object of the agreement is officially transferred.

The legal relationship formed is of a tripartite nature, as the developer acts as the business actor providing the object of sale, namely houses or property units offered to prospective consumers. As a business actor, the developer is obligated to fulfill various administrative and substantive aspects prior to conducting sales, including clarity of land ownership status, Building Permit (IMB), and readiness of basic infrastructure such as road access, water drainage, and sanitation systems. These requirements are explicitly regulated under the Regulation of the Minister of Public Works and Housing (*Permen PUPR*) Number 11 of 2019, which stipulates that the signing of a Pre-Sale and Purchase Agreement (PPJB) may only take place if the project has reached at least 20% completion and has fulfilled other legal requirements (Adrian Sutedi, 2010:120-125).

A developer's failure to fulfill these obligations may be classified as a breach of contract (*wanprestasi*), which according to Articles 1238 and 1243 of the Indonesian Civil Code (*KUHPerdata*), grants the aggrieved party the right to claim compensation for delays, non-compliance with specifications, or for material and immaterial losses suffered by the consumer (Mariam Darus Badruzaman, 2001:180-185). Therefore, the legal position of consumers in a PPJB must be proportionally protected, especially considering that consumers often occupy a weaker position in terms of access to information, legal resources, and bargaining power in relation to the developer.

Several legal regulations govern the rights and obligations of the parties involved in such transactions, scattered across various normative provisions. These include Law Number 1 of 2011 concerning Housing and Settlement Areas, which regulates the governance of residential development; Law Number 8 of 1999 concerning Consumer Protection, which outlines the responsibilities of business actors to provide accurate, clear, and honest information regarding goods and/or services offered to consumers; and Law Number 4 of 1996 concerning Mortgage Rights (Hak Tanggungan), which serves as the legal basis for banks as financing institutions to obtain security rights over the financed property. This aims to provide legal certainty in the event of default by the debtor.

Legal Protection for Consumers in Sale and Purchase Agreements through Mortgage Credit Facilities (KPR) Who Suffer Losses Due to Breach of Contract

To meet the growing demand for adequate and affordable housing, the development of residential areas and settlements continues to be promoted. To accelerate housing provision, the government opens opportunities for the private sector to participate in housing development through various supportive policies. The private entities involved in this are commonly referred to as housing developers. The steadily increasing price of housing each year, combined with consistently high demand, presents business opportunities for banks. Banks can provide loans to the public to purchase homes by offering Mortgage Credit Facilities, hereinafter referred to as KPR (Zefriyenni Ira, 2014:1).

In property sale transactions facilitated through KPR, numerous issues have emerged due to breaches of agreement between developers and consumers. Developers often fail to fulfill promises outlined in the contract, resulting in losses for consumers. In such circumstances, consumers tend to be in a weaker position compared to banks or developers. Legal protection for consumers becomes highly important when disputes arise and losses occur due to the developer's breach, such as construction delays, delivery of units not in accordance with specifications, or a total failure to fulfill the agreement (Annisa & Santoso, 2020:346).

Consumers who suffer losses have legal certainty in claiming their rights as regulated under Law Number 8 of 1999 concerning Consumer Protection. Article 4 of the Consumer Protection Law stipulates that consumers are entitled to comfort, security, and safety in the use of goods and/or services. They also have the right to receive correct, clear, and honest information regarding the condition and guarantees of goods and/or services, and to have their opinions and complaints heard regarding the goods and/or services used. Should the developer fail to fulfill their obligations as agreed in the sale and purchase agreement, consumers—based on the resulting damages—may claim compensation or request a refund, as stipulated in Article 19 of the Consumer Protection Law (Wijaya, 2014:25).

There is a principle of balance in consumer protection, which aims to ensure equilibrium between the interests of consumers, business actors, and the government (Abdul Halim Barkatullah, 2016:16). This principle ensures a balanced realization of rights and obligations among all parties involved in a civil society (Yapiter Marpi, 2020:119). Consumers have a strong legal basis to file lawsuits in court or opt for alternative dispute resolution such as mediation or arbitration, especially when the contents of the Sale and Purchase Agreement—along with the accompanying mortgage agreement—are breached by the developer, despite being legally binding under the principle of *pacta sunt servanda*.

Consumers harmed by the developer's breach of contract may also seek protection from the Financial Services Authority (OJK), particularly regarding procedures and transparency in the KPR facility, especially when there are indications that the bank failed to properly assess the property's feasibility (Yapiter Marpi, 2020:119). Although banks, as the

parties providing mortgage financing, are supervised by OJK and Bank Indonesia, it is generally the developer who bears the primary responsibility in the event of a breach.

Consumers, in this context, may assert their rights through the available legal mechanisms (Swastiningrum & Irianto, 2022:55). Losses suffered by consumers due to the developer's breach of contract (*wanprestasi*) can be resolved either through litigation or non-litigation means. Legal remedies that may be pursued include filing a complaint with the Consumer Dispute Settlement Agency (Badan Penyelesaian Sengketa Konsumen or BPSK); filing a civil lawsuit at the District Court to claim compensation; reporting the developer to law enforcement authorities if there are elements of a criminal offense, such as fraud; and contacting consumer protection institutions or relevant NGOs for legal assistance (Wijaya, 2014:30).

Government Regulation Number 21 of 2021 concerning the Implementation of Housing and Settlements outlines the responsibilities, licensing requirements, and technical development plans that must be adhered to by developers as business actors. Based on this regulation, developers who neglect or fail to fulfill their obligations as stipulated by governmental or ministerial provisions may be reported by consumers, enabling the imposition of administrative sanctions or even revocation of business permits (Annisa & Santoso, 2020:353).

Forms of Legal Liability of Developers in Breach of Sale and Purchase Agreements through Mortgage Credit Facilities (KPR)

The KPR facility is one of the programs launched by financial institutions in Indonesia to assist customers in owning a house through a credit system, enabling them to obtain the desired property within a shorter timeframe (Mohammad Ridho Zahrohy, 2018). The significant potential for KPR distribution by banks can be seen in the increasing performance of mortgage lending, as reported by Bank Indonesia (BI), which rose from 9.7% in December 2021 to 10.1% in January 2022 (Ridwan Miftah Kosasih, 2023:366). The KPR payment system has become a solution for people seeking property, whether for residential or business purposes. The involvement of consumers (buyers), developers, and banks—which facilitate the buyer's payment obligations—illustrates that this legal relationship is mutually binding and complex (Swadana, I G I., Salim HS., & Muhaimin, 2023:203).

Numerous problems in housing transactions arise from breaches of contract between developers and consumers. Developers often fail to fulfill promises outlined in the agreement, causing losses to consumers. According to Article 3 of the Regulation of the Minister of Public Works and Public Housing (PUPR) No. 11/PRT/M/2019, property developers may begin marketing single or row houses during construction or even before the signing of the Pre-Sale and Purchase Agreement (PPJB). This situation is further emphasized by Shofie, who noted, "The marketing practices of developers tend to be very tendentious, and often the information provided is misleading or inaccurate, even though the consumer may have already signed the PPJB or even entered into a KPR credit agreement with the lending bank" (Shofie, 2000:74).

For example, in the BDS I housing case in Balikpapan, the developer PT. Pupuk Indah was alleged to have committed a breach of contract. The developer caused losses to consumers who had fully paid off their mortgage installments but had not received the Sertifikat Hak Milik (Certificate of Ownership) as legal proof of their property rights. This situation demonstrates the weakness of legal protection for consumers when developers commit breach of contract. Consumers who have fulfilled their obligations fail to obtain their rightful ownership certificates, which should have been provided by the developer.

Therefore, legal protection and liability from the developer must be enforced. Article 1320 of the Indonesian Civil Code (KUHPerdata) outlines the validity requirements for agreements

and serves as one of the foundational legal norms supporting consumer rights protection. Based on the losses resulting from the developer's breach of contract, the developer must compensate the consumer.

Forms of legal liability that can be imposed on developers for breaching agreements and causing consumer losses may include cancellation of the agreement if no progress is made within the agreed timeframe, or compensation in various forms, such as reimbursement (costs, damages, interest), fulfillment of the agreement without compensation, fulfillment of the agreement with compensation, mutual cancellation of the agreement without compensation, or mutual cancellation with compensation. The developer is also expected to promptly fulfill their obligations in accordance with the terms of the agreement.

Regarding the developer's liability, consumers may exercise their rights after issuing a formal warning (somasi) three times. If the developer still fails to respond, the consumer may proceed with a lawsuit at the District Court. If the judge declares the developer to be at fault, then the developer must fulfill their legal responsibilities.

Thus, legal protection for consumers in sale and purchase agreements through KPR facilities, in cases of breach of contract, can ensure justice and legal certainty for harmed consumers in the form of enforceable legal accountability.

CONCLUSION

Regarding the rights and obligations within the Mortgage Credit Facility (KPR), the legal relationship between the developer, buyer (consumer), and the bank is one of mutual binding, based on separate agreements made by each party. These agreements are governed by the principle of *pacta sunt servanda*, as stipulated in Article 1338 Paragraph (1) of the Indonesian Civil Code (KUHPerdata). Each party holds their respective rights and obligations in accordance with the agreements that have been mutually agreed upon. Consumers have the right to receive the object of sale and the obligation to pay installments to the bank. The bank is obliged to provide financing and conduct oversight of the financed property, and has the right to receive installment payments from consumers. Meanwhile, the developer is obliged to deliver the object of sale to the consumer and is entitled to receive financing settlement from the bank.

Legal protection for consumers becomes critically important when problems arise, particularly when developers commit acts of breach of contract (*wanprestasi*) that cause losses to consumers. Consumer protection is based on Law Number 8 of 1999 concerning Consumer Protection. In cases where a developer fails to fulfill obligations as stipulated in the sale and purchase agreement, consumers are entitled to receive legal liability from the developer.

Forms of legal liability may include the cancellation of the agreement if no progress is made within the agreed time frame, or compensation in the form of material or immaterial damages. The fulfillment of consumer rights can be pursued after the consumer issues formal warnings (somasi) and subsequently files a lawsuit with the District Court. If the developer is declared at fault by the court, they are obligated to fulfill their legal responsibilities accordingly.

REFERENCES

- Abdul Halim Barkatullah. (2016). *Framework Sistem Perlindungan Hukum bagi Konsumen di Indonesia*. Bandung: Nusa Media. 16.
- Adrian Sutedi. (2010). *Hukum Perumahan*. Jakarta: Sinar Grafika. 120-125.
- Aninda, Rahman, & Khalid. (2024). *Analisis Hukum Tentang Wanprestasi Dalam Perjanjian Jual Beli Rumah*. Journal of Lex Philosophy. 1891.

- Annisa & Santoso. (2020). *Perlindungan Hukum Konsumen dalam Perjanjian Jual Beli Rumah dengan Sistem KPR yang Mengalami Wanprestasi*. *Jurnal Hukum dan Pembangunan*. 346 & 353.
- Debby Oktavia Sitompul. (2020). Tesis : *Perlindungan Hukum Terhadap Konsumen dalam Perjanjian Jual Beli Rumah Melalui Fasilitas Kredit Kepemilikan Rumah (Studi di PT. Bank Rakyat Indonesia Kantor Cabang Medan Putri Hijau)*. Medan : UMSU. 5.
- Hardjono. (2008). *Mudah Memiliki Rumah Idaman Lewat KPR*. Jakarta: Pt. Pusaka Grahatama. 51.
- Mariam Darus Badruzaman. (2001). *Kompilasi Hukum Perikatan*. Bandung: Citra Aditya Bakti. 180-185.
- Mohammad Ridho Zahrohy. (2018). *Analisa Penerapan Akad Istisna Pada KPR Syariah Al Madani Village Karanganyar*. Surakarta : Fakultas Agama Islam Universitas Muhammadiyah.
- R. Subekti. (1986). *Jaminan-jaminan untuk Pemberian Kredit Menurut Hukum Indonesia. Alumni*. Bandung. 13.
- Ridwan Miftah Kosasih, Aad Rusyad Nurdin. (2023). *Peran Notaris Dalam Perjanjian?/ Kerjasama Antara Developer Dan Bank Untuk Penyaluran KPR*. *Jurnal Ilmu Sosial Dan Pendidikan (Jisip)*, Vol. 7 No. 1. 366.
- Salim H.S. (2011). *Hukum Kontrak, Teori & Teknik Penyusunan Kontrak*. Jakarta : Sinar Grafika. 27.
- Shofie. (2000). *Perlindungan konsumen dan Instrumen-instrumen Hukumnya*. Bandung : Citra aditya Bakti. 74.
- Soerjono Soekanto. (2001). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta : PT. Raja Grafindo Persada. 13.
- Subekti. (2008). *Hukum Perjanjian*. Jakarta : PT Intermasa. 1.
- Sutarno. (2003). *Aspek-aspek Hukum Perkreditan Bank*. Bandung : Alfabeta. 97.
- Swadana, I G I., Salim HS., & Muhaimin. (2023). *Implementasi Perjanjian Jual Beli Kredit Pemilikan Rumah (KPR) Antara Konsumen Dengan Developer (Studi Pada PT. Abu Bakar Lombok)*. *Jurnal Risalah Kenotariatan*, 4 (1), 203.
- Swastiningrum & Irianto. (2022). *Perlindungan Hukum Bagi Pembeli Akibat Wanprestasi Penjual dalam Jual Beli Rumah KPR di Bawah Tangan*. *Notary Law Research*. 55.
- V. Harlen Sinaga. (2015). *Hukum Acara Perdata dengan Pemahaman Hukum Materiil*. Jakarta : Erlangga. 19.
- Wijaya. (2014). *Perlindungan Hukum Bagi Konsumen Atas Wanprestasi Dari Pengembang*. CALYPTRA: Jurnal Ilmiah Mahasiswa Universitas Surabaya. halaman 25 & 30.
- Yapiter Marpi. (2020). *Perlindungan Hukum Terhadap Konsumen atas Keabsahan Kontrak Elektronik dalam Transaksi E-Commerce*. Tasikmalaya: PT. Zona Media Mandiri. 119.
- Zefriyenni Ira. (2014). *Kebijakan Pemberian Kredit Terhadap Penetapan Jumlah Kredit (Studi Khusus Pada Ued-Sp Amanah Sejahtera Sungai Buluh Kecamatan Singingi Hilir Kabupaten Kuantan Singingi Propinsi Ria)*. *Jurnal Edik Informatika*. 1.
- Kitab Undang-Undang Hukum Perdata
- Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan
- Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen
- Undang-Undang Nomor 1 Tahun 2011 Tentang Perumahan dan Kawasan Permukiman