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Credit of Apartment Ownership and Legal Protection for Debtors Against Construction Failure Risk

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Abstract: One problem that requires attention is imbalance between debtor's financial obligations and buildings physical certainty (house/apartment), especially in indent scheme, which involve buying before physical house is completed. This KPRS scheme places of debtor in a vulnerable position, especially in a failed apartment construction project event. This problem is caused by the obligation to repay loan that has been ongoing since the agreement was signed, while the financed residential object has not been realized or functionally utilized. This study analyze the legal regulations for KPRS in national legal system and examine legal protection for debtors in failed apartment construction cases, by highlighting regulations fragmentation between banking law, housing law, and consumer protection law. This study uses a normative legal research method with a statutory and conceptual approach. Primary legal materials include laws and regulations in banking fields, apartment, consumer protection, and financial services sector regulation, while secondary legal material consist of legal literature and relevant court decisions. The analysis is conducted qualitatively through legal interpretation and systematic analysis to assess interrelationships between norms in apartment financing. The research finding indicate that KPRS regulation remain sectoral and not normatively integrated, resulting in suboptimal debtor protection. Housing law normalizes pre-construction marketing practices without guaranteeing substantial protection for debtor, while banking law emphasizes prudential principles oriented toward bank interests. Furthermore, consumer protection regime and financial service regulation have not specifically addressed apartment construction failure risk. This fragmentation results in KPRS debtors bearing a disproportionate risk of construction failure.

Keywords: Credit Agreement, Debtor Protection, Housing Finance, Flats Home, KPRS.

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INTRODUCTION

The flat provision as a solution to urban housing needs makes the Flat Ownership Credit (KPRS) scheme the main financing instrument for the community (Bright, S., Blandy, S., & Bettini, F., 2026). In its development, the Apartment Ownership Credit (KPRS) has become a financing instrument that arose from the need for access to vertical housing ownership amidst limited urban land (Darmalaksana, W., 2020). This instrument is often considered as an alternative and plays an important role in fulfilling the community's need to have a habitable place to live.

Law (Undang-Undang) Number 20 of 2011 concerning apartments provides space for the marketing and sale of apartment units before construction is completed. This is regulated in detail in articles 42 and 43, which were further reaffirmed in Government Regulation (Undang-Undang) Number 13 of 2021 concerning the Management of Apartments. The application of this legal structure creates a complex relationship between banks, developers, and debtors. This is because the obligation to repay the loan begins when the KPRS agreement is signed, while the residential function of the apartment may not actually be realized. (Arianto Wijaya, B., 2024).

Problems then arise when the apartment project experiences serious delays or fails to be built, one of which is as reported in the TVonesnews report in 2025 (Tvonenews.com, T., 2025). This frequent occurrence leaves debtors bound by their loan repayment obligations to bank under KPRS agreement, even though they do not receive any residential benefits from financed property. This situation demonstrates an imbalance in legal protection for KPRS debtors, particularly when linked to the banking prudence principle stipulated in article 8 of the banking law and consumer protection obligations of financial services sector under Financial Services Authority Regulation No. 1/POJK.07/2013. However, these regulations do not explicitly stipulate protection mechanisms for KPRS debtors in the context of failed apartment construction.

Meanwhile, in 2025, the Financial Services Authority or OJK held a press conference and expressed its support for government's housing program for Low-Income Communities (MBR) (Ismail Riyadi, 2025). OJK's commitment is to offer housing loans or Home Ownership Loans (KPR) with process which is efficient for community. This support is expected to be a solution for people who want to own a decent home with a payment system that is easy. In April 2026, Housing and Settlement Areas Ministry issued a statement regarding OJK new policy Financial Information Service System (SLIK), which makes it easier to apply for subsidized housing loans under IDR 1,000,000. The target is low-income communities. Housing and Settlement Areas Ministry together with the OJK gave a positive signal whether the subsidized housing program of 3 million houses can be realized quickly and enjoyed by the community (Kementerian Perumahan dan Kawasan Permukiman, 2026). The Financial Services Authority (OJK) has found a small number of potential borrowers experiencing difficulties accessing home ownership loans under the Housing Financing Liquidity Facility (FLPP), due to issues with the OJK's Financial Information Services System (SLIK). This government support and commitment also need to be addressed to other potential future issues.

Several studies have examined KPRS (Housing Loan) from banking law perspective, housing law, and consumer protection. However, these studies generally address these aspects separately, thus failing to comprehensively explain the relationship between KPRS financing mechanisms, the risk of apartment construction failure, and legal protection effectiveness for debtor. Similarly, standard agreement discussion in KPRS and Sales and Purchase Agreements (PPJB) are limited to identifying parties imbalanced position, without offering a regulatory framework capable of preventing debtor losses due to default or construction failure by developers. This situation persist even though Article 18 of the Consumer Protection Law expressly prohibits standard clauses that shift business actors' responsibilities to consumers (Prayoga, T., 2023). Furthermore, there is an imbalance in the customer's position, which is detrimental because their rights are not included in the agreement. This situation demonstrates the law weakness in favor of consumers (Algazali, M. D., 2022). Based on this gap, this study not only analyzes the weaknesses in legal protection regulation for KPRS debtor but also reconstruct legal protection regulation which integrate banking law aspect, housing law, and consumer protection to provide legal certainty, balance the rights and parties obligation, and mitigate risk for debtor in apartment financing which fail to be built.

In 2013, Kompas show the news 'Pemerintah Gagal, Program Rumah Susun Terbengkalai.' This problem stemmed from weak regulations and a lack of incentives, leading developers to halt project construction in 2010 (Kompas.com, 2013). Many responded that projects should not be handed over to private sector due to the potential for sales problem. Learning from past incident, the government need to improve and revise regulation. The government issued a regulation, Ministerial Regulation of Public Works and Housing No. 11/PRT/M/2019, which provides legal certainty and serves as a foundation for developers and anyone wishing to buy or sell a house or apartment unit. This law regulates the marketing and houses and apartment unit sale before completion. Therefore, the previously unregulated preliminary sales and purchase agreement method can create uncertainty. A preliminary sales and purchase agreement can be a solution to assess the consumer's initial commitment until the main agreement is reached. This regulation is an effort to protect each party's interests (Jeremia Junior Santoso, 2021). The apartment building construction is increasing, as it offer affordable housing for middle class. To protect against disputes, a strong legal framework is needed to prevent losses for all parties involved, including developers and consumers. This study analyzes the legal regulations for KPRS (Housing Loan) and its protection for debtors, as a way to mitigate apartment construction failure risk.

The sectoral approach is reflected in judicial practice. Court decisions generally still examine consumer-developer disputes separately from the credit relationship between banks and debtors. This remains commonplace despite Supreme Court decisions affirming developer liability in cases of construction failure and invalidating standard clauses detrimental to consumers. This judicial situation is also accompanied by the KPRS legal construction (Regional Mortgage Loan) as an integrated protection regime, which remains a primary focus in judges' deliberations. This situation demonstrates the gap between applicable legal norms and the reality of KPRS debtor protection in practice (Putri, G. V. E. K., & Setiawati, A., 2024). Based on these gaps, this article intend to analyze the legal regulations for apartment mortgages and debtors legal protection in cases of apartment construction failure, utilizing banking law integration, apartment law, and consumer protection law as the primary analytical framework.

The analysis intend to answer several questions: How the legal structure of apartment mortgages fits into the vertical housing finance system, and how the legal integration of the banking system and housing law can be reconstructed to protect KPRS debtors. A more comprehensive discussion of normative issues, contractual practices, and the relevance of court decisions will be outlined in depth in the discussion section.

METHOD

This research is a normative legal research that aims to analyze the legal regulations for Apartment Ownership Credit (KPRS) and legal protection for debtors in cases of failure to build apartments (Ariawan, I. G. K., 2013). The approach used is a statutory approach by examining legal provisions governing housing financing, apartment management, and consumer protection. The statutory regulatory approach is one approach that can be used to examine regulation or legislation related to the issues at hand. This approach indicates to study consistency or suitability between constitution and other regulation (Marzuki, Mahmud Peter, 2014).

The legal protection concept for debtors, the balance between the parties in a credit agreement, and the principle of banking prudence in apartment financing context are examined using a conceptual approach (Ali, Zainuddin, 2009). This conceptual approach is based on ideas developed in legal science. Various figure view are then analyzed and examined in relation to the theory and value of passing off doctrine (Peter Mahmud Marzuki, 2007). The analysis result can then become a basis for finding legal ideas and concept that are relevant to the issues faced, including credit issue for ownership of apartment building and legal protection for debtor in facing various possible risk that may occur.

Another relevant approach to analyzing data in this study is the case study approach, which is applied by practitioner to identify court decision which qualify as jurisprudential in each concrete case (I Made Pasek Diantha, 2016). Central government regulations related to this topic can be analyzed using interpretation, to discover legal context meaning. Issues that arise and are faced by community can be interpreted or explored in more depth through various appropriate method, such as grammatical, historical, theological, or sociological, and others relevant to the problem at hand.

A normative legal approach was applied to analyze the data in this study, identifying regulation, identifying weaknesses or gaps in regulation, analyzing the compatibility between regulation such as the Apartment Law, the Consumer Protection Law, banking regulations, the Civil Code, and others, which then became supporting material for compiling regulatory reconstruction. Through legal principles analysis, regulatory synchronization, and normative gap, this study identified regulatory weaknesses that led to less than optimal legal protection for KPRS debtor, particularly in cases of failed apartment construction.

The legal materials used in this research include primary and secondary legal materials. Primary legal materials include laws and regulations related to condominiums, banking, consumer protection, and financial services sector regulations governing consumer protection and bank risk management. Secondary legal materials include legal literature, scientific journal articles, previous research results, and legal doctrines relevant to housing finance and debtor protection. Furthermore, this research utilizes court decisions related to condominium disputes, consumer protection, and standard clauses to support the analysis.

The legal materials were collected through a literature review, which involved exploring laws and regulations, legal literature, and court decisions relevant to the research issue (Darmalaksana, W., 2020). All legal material were then analyzed qualitatively using legal interpretation and systematic analysis method to examine the interrelationships between norms within banking legal regime, housing, and consumer protection. This data analysis was conducted by placing the risk of apartment construction failure as the primary context in assessing the adequacy and legal protection effectiveness for KPRS debtor. This analysis result were used to draw conclusions regarding the weaknesses of existing legal regulations and the need for regulatory integration to strengthen legal protection for Apartment Ownership Credit (KPRS) debtors within the national legal system.

RESULTS AND DISCUSSION

Legal Construction of Apartment Ownership Credit in the Vertical Housing Financing System

Legally, the apartment ownership credit (KPRS) does not stand as a separate legal regime, but rather represents a cross-section of banking law, housing law, apartment law, and contract law. This construction positions the KPRS as a credit agreement that is accessory to the principal agreement, which is the sale and purchase agreement for an apartment unit. An accessory agreement is a supplementary agreement dependent on the principal agreement (Nasution, K., Fauzi, A., & Ramlan, 2022). Apartment Ownership Credit (KPRS) is a financing instrument born out of the need for access to vertical residential ownership amidst limited urban land (Akristiniy, V. A., & Boriskina, Y. I., 2018).

Current practice demonstrates that this legal relationship forms a triangular relationship between the bank as a creditor, the developer as the property business actor, and the debtor as the consumer requiring financing to acquire housing. Within the banking legal framework, KPRS is positioned as a regular credit agreement subject to the prudence principles and freedom of contract. From the moment the credit agreement is signed, the debtor is legally bound to fulfill the obligation to pay installments, interest, and other agreed obligations, the condition regardless of the financing object. This agreement often causes banks to view apartments more as administrative and economic collateral than as objects that must be truly realized and function as residences. This orientation indicates that the logic of banking law tends to separate the financing aspect from the physical aspects of apartment construction.

On the other hand, the apartment law places apartment units as objects that have social and residential functions that cannot be separated from housing management objectives (Agustriana, Diah, 2018). The Apartment Law emphasizes that apartments are organized to ensure the fulfillment of adequate housing needs, especially for urban communities. Based on Law Number 20 of 2011 Article 46 concerning Apartments, ownership rights to apartment units are individual ownership rights to apartment units and are separate from joint rights to common parts, common objects and common land. In this case, Boedi Harsono explains that the ownership rights to apartment units are hereditary, can be owned by individuals and have the authority to use them as needed without time limits (Harsono, B., 1991). In practice, the KPRS scheme often reduces the residential function of apartments to merely being an object of transaction and collateral (Purbandari, 2013). This reduction creates normative tension between the social objectives of apartment management and financing practices that place contractual certainty as the main priority.

Suc as, developers face challenges in supplying subsidized housing to low-income families. This development challenge has raised concerns which government will be hampered in meeting housing need due to a housing shortage. Problem include administrative permitting hurdles and limited adjustments to the benchmark selling price for subsidized housing Another problem occurred in Padang City residents in 2024. The subsidized housing credit had been paid at the bank along with the excess land fee, but resident had not received official ownership document. The certificate is an important document as strong proof of ownership and physical data. This is stated in Article 19 paragraph (2) of Law Number 5 of 1960 concerning agrarian law principles. The road closure access to subsidized housing became a problem because the land fee had not been paid by the developer. If referring to Article 1491 of the Civil Code, the guarantee that is seller's obligation to the buyer, to guarantee two thing, namely: First, the possession of the goods sold is safe and secure. Second, there are no hidden defect in good that could give rise to reason for purchase cancellation. The developer's role should be to ensure that the goods are not legally defective. The closed road access is a problem for subsidized homeowners and causes inconvenience for the owners (Andi Saputra, 2024). The developer's role in this case should be to provide comfort by ensuring consumer don't experience any obstacles because the credit fee has been paid.

The KPRS (Housing Loan) legal construction have to demonstrates practice of separating ownership and housing. In many cases, debtors formally possess a legal ownership relationship through a sales and purchase agreement and a credit agreement, even though they are not be able to enjoy the residential function because the building is unfinished or uninhabitable. This separation creates a contradictory situation, as debtors are legally deemed to have gained access to ownership, but in reality do not receive the primary benefits from the financed object. This situation demonstrates that vertical housing finance law remains oriented towards the formalities of the agreement, rather than the realization of the social purpose of housing.

Triangular relationship within the KPRS also raises issues regarding risk sharing. In practice, the risk of apartment construction is indirectly transferred to the debtor through ongoing loan repayment obligations. Banks, through credit agreements, protect their position as creditors with collateral and risk protection clauses, while developers often limit their responsibilities through standard agreements. This situation leaves debtors in a highly vulnerable position, having to bear the risk of construction failure without having control over the construction process or any bargaining power within the agreement. This situation demonstrates that the KPRS has not been constructed as a financing instrument that fully guarantees the fulfillment of the right to housing.

In contrast, KPRS functions more as a credit distribution mechanism that prioritizes payment certainty for banks and smooth marketing for developers (Nasution, K., Fauzi, A., & Ramlan, 2022). This imbalance underpins various legal issues when apartment projects fail to proceed as planned, particularly in cases of construction failures that result in significant losses for debtors who should be prioritized for housing, as mandated by the constitution.

Pre-Project Selling Legalization and Normalization of the Apartment Building Failure Risk

One of the key characteristics of apartment financing in Indonesia is the law permitting marketing and sale of apartment units before construction completely, known as pre-project selling (Purbandari, 2013). This practice is legitimated through the Apartment Law, while implementing regulations allow developers to market apartment units as long as administrative requirements are met. In financing context, pre-project selling serves as the primary gateway for mortgage (KPRS) disbursement, as banks can begin disbursing loans even before the building is physically constructed (Meliana, Emirzon, J., & Muntaqo, F., 2022).

The policy permitting pre-project selling is seen as a mechanism to accelerate housing development and ensure the sustainability of developers' cash flow (Hasibuan, S.R.M., Kuswahyono, I., Djumikasih, D., 2025). However, from a legal protection perspective, this practice carries significant inherent risks for both KPRS consumers and borrowers. These risks include construction delays, changes in building specifications, and even total construction failure. Although these risks have long been recognized in housing practice, existing regulations tend to normalize them as part of the dynamics of the property market (Yudhantaka, Lintang, 2017).

While apartment regulation require certainty of land status, permits, and building guarantees, they don't provide effective oversight instrument to ensure that these requirements are substantially met. The apartment ownership regulation in Indonesia actually regulated through Law No. 20 of 2011 concerning Apartments, which stipulates that ownership of the residence is individual and through an Apartment Unit Ownership Certificate (SHMSRS) or by rent for general category apartment (Suharto, R., Badriyah, S.M., & Kashadi, 2019).

The fulfilling administrative practice often requirements treated as an initial formality, rather than as a sustainable risk management mechanism. The construction failure issues, one of the apartment construction risk , is often treated as a mere developer default, rather than a failure of the housing finance system (Ricardo, J., Manurung, E.H., & Hutagaol, K., 2022). This approach ignores the fact that the distribution of KPRS (Housing Loan) from the early stages of development contributes to the formation of this risk. When bank disburse credit without ensuring adequate security mechanism, construction failure risk is not solely the developer's responsibility but also a consequence of a financing design that is not oriented towards debtor protection (Krisharyanto, E., & Setyowati, P. J., 2019).

Empirical data on stalled apartment projects and property consumer dispute demonstrate that construction failures are not isolated incident. These cases are recurrent and involve significant losses for consumers who have entered into long-term credit agreements.

However, the KPRS (Housing Loan) regulation does not explicitly recognize construction failures as a systemic risk requiring a specific normative response. This regulation results in KPRS debtors having to pursue individual legal action to defend their rights, while their credit repayment obligations remain outstanding.

The pre-project selling legalization without a corresponding strengthening of debtor protection mechanisms demonstrates a policy orientation that favors development and financing interests over consumer protection (Martin, A. Y., Nuraeny, H., & Brawijaya, A., 2025). Within this framework, law functions more as a tool to facilitate the property market than as a corrective instrument to protect the most vulnerable. Apartment construction failures, therefore, cannot be understood solely as a failure of developers, but rather as a failure of regulatory design that normalizes risk and shifts the burden of protection to consumers.

Bank Prudential Principles and Limits of Liability in KPRS Financing

The prudence principle in the banking legal regime occupies a central position as the basis for credit distribution, including Apartment Ownership Credit (KPRS) (Suharto, A.S., & Anwar, M.K., 2018). This principle normatively intend to ensure that bank distribute credit responsibly by considering the debtor's capabilities and financing object feasibility. However, in KPRS practice, prudence principle is often interpreted narrowly, considered as a safeguard against the risk of bad debt, rather than as a comprehensive protection instrument for debtors who are consumers of financial services. This narrowing of meaning directly impacts the weak position of debtors in the event of apartment construction failure (Purbandari, 2013).

Generally, banks assess creditworthiness by focusing on the debtor's financial capacity and collateral adequacy, while apartment projects feasibility assessment is often administrative (Iman Supriadi, et al., 2025). KPRS (Housing Loan) disbursement can occur despite substantial risks to the success of the development. This is possible as long as the permitting documents and cooperation with the developer are complete. This pattern indicates that bank prudence does not fully encompass the obligation to thoroughly assess development risks, even though these risks directly impact the existence of the credit object, which forms the basis of the legal relationship between the bank and the debtor.

Consumer protection for construction loan in Indonesia is regulated through UUPK No. 8 of 1999 and POJK No. 22 of 2023. These regulations guarantee the right to information, transparency, and construction quality that meet agreement. In default event, customer seek compensation through internal complaint to the OJK or LAPS SJK. Problem arise when both parties, creditor and debtor, violate balance principle. Both parties must adhere to the balance principles, fairness, and proportion when signing agreements with consumer (Montayana Meher, Tan Kamello, Ningrum Natasya Sirait, OK Saidin, 2021).

Regulation in the financial services sector have normatively provided the foundation for expanding banks' responsibilities to protect consumers. The Financial Services Authority (OJK) regulation on consumer protection in the financial services sector emphasizes that banks must act fairly, transparently, and responsibly in providing products and services. This obligation also applies in the context of KPRS, which should be interpreted as a responsibility to ensure that the financing products offered do not place debtors at disproportionate risk. However, regulation lack explicitly linking consumer protection to the risk of construction failure makes this obligation difficult to implement in practice.

The bank limit liability in KPRS are also often determined unilaterally through credit agreements. Banks position themselves as neutral parties in the relationship between debtors and developers, so that any development issues are considered beyond bank's responsibility (Arafah , W., & Budianto, M., 2016). This construction creates problems because it ignores bank active role in facilitating housing transactions through financing. When banks profit from KPRS distribution but refuse to accept responsibility for the risks inherent in the financing object, prudence principle loses its ethical and social dimensions.

From a legal protection perspective, bank neutrality in KPRS cannot be understood absolutely (Suharto, A.S., & Anwar, M.K., 2018). Banks are not merely disinterested third parties, but rather financial service providers with strategic positions in determining the feasibility and apartment project sustainability (Faiqoh, Rida, 2013). Therefore, apartment construction failure cannot be completely absolved from bank responsibility, especially when credit disbursement is carried out without adequate security mechanisms. The absence of regulations that emphasize this responsibility indicates a normative gap in the KPRS debtor protection system.

Standard Clauses in KPRS and Freedom Illusion of Contract

One aspect that can weaken mortgage protection (KPRS) borrower is standard dominance clauses in credit agreements and apartment purchase agreements. Standard clauses are a mass transaction consequence in the housing and banking sectors, but their use in KPRS often places borrowers in a highly unbalanced position. Debtors generally have no room to negotiate the terms of the agreement, leaving them with the only options available: accepting or rejecting the entire contract (Christiantoro, T. S., & Saleh, M., 2023).

standard KPRS clauses implementation includes provisions that transfer the risk of construction failure to the debtor, limit the developer's liability, and emphasize that credit repayment obligations are not affected by the condominium condition. Such clauses substantially contradict contractual fairness principles and consumer protection. To reduce the risks in bank credit agreements, the active role of the government is essential for customers. The government can play a role by tightening oversight of standard agreement use, with the aim of protecting customer rights (Pelupessy, B.E., Pelupessy, S.P., & Hamonangan, S., 2025). Although consumer protection law expressly prohibit standard clauses that eliminate business actors' responsibilities or grant unilateral authority that is detrimental to consumers, this prohibition has not been fully internalized in KPRS financing practices.

The freedom illusion of contract in KPRS (Housing Loan) is reflected in the assumption that the debtor consciously and voluntarily agrees to all the terms of the agreement (Wulandari, R., 2022). In reality, the need for housing and limited financing options force the debtor to accept the existing clauses. This situation demonstrates that the contract freedom in KPRS is formalistic and doesn't reflect the equality of the parties. This contract freedom actually serves to legitimize the structural inequality between banks, developers, and debtors.

The relationship between standard KPRS clause and failed apartment construction becomes increasingly problematic when dispute are brought to the legal realm (Prayoga, Teddy, 2023). Debtors are often confronted with the argument that they have agreed to the construction risks through the agreement, thus deeming their claims against the bank or developer baseless. This approach ignore consumer protection principle, which aims to protect the structurally weaker party in the transaction. Standard clauses serve not only as a contractual tool but also as a risk transfer mechanism that can be detrimental to the debtor.

In mortgage loan context (KPRS), standard clause testing should be conducted not only textually but also contextually, taking into account the purpose of housing financing and the parties' positions. A formally valid clause may not be substantively fair, especially if it places the entire risk of failure on the debtor. The legal system's inability to serve as a benchmark for correcting inequalities demonstrates the weak and reactive nature of KPRS debtor protection.

Failure to Build Apartments of Court Decisions Perspective

Judicial practice in Indonesia show about the failed apartment construction issues has not been comprehensively addressed within protecting apartment loan debtors framework (Putri, G. V. E. K., & Setiawati, A., 2024). Court decisions generally examine disputes in a fragmented manner, either as default dispute between consumer and developer or as purely civil dispute within the credit relationship between banks and debtors. This pattern indicates that the judiciary is unable to comprehensively grasp legal relations complexity in apartment mortgages (KPRS), which involve more than one legal regime simultaneously (Putri, G. V. E. K., & Setiawati, A., 2024).

In practice, agreement between developer and consumer begin with a down payment or a sales signing and purchase agreement as a preliminary agreement. However, many developer fail to complete apartment construction, resulting in losses for consumer. Other consumers are starting to reconsider their decision to pay for their residential building loan because of these consideration (Suwardi, & Mohammad Agus S., 2026). If the government does not address this situation through appropriate regulation, it will result in losses due to public trust loss as consumer in housing developer. Developer is required to be responsible as stipulated in agreed agreement. If not, developer can be subject to administrative and criminal sanction if proven to have committed a violation. Developer who do not comply with Article 43 paragraph (2) provision of the apartment law can be sued for damages through a lawsuit. This regulation protect consumer and require developer to pay losses due to agreement cancellation to consumer (Putra, S. A., Nasseri, J., & Ismed, M., 2024).

The Supreme Court, in several decisions, has affirmed that developer's responsibility for failed apartment construction and rejected the use of clauses that unilaterally absolve business actors from responsibility to consumers. Judges generally consider the residential function as an essential element of apartment sale and purchase agreements, thus viewing construction failure as a violation of basic consumer rights (Lilawati, 2025). However, this approach often stop at the relationship between consumers and developers, without explicitly linking it to the debtor's credit obligation sustainability to the bank.

Judges still strictly separate legal relationship between credit and construction when apartment loan disputes are brought to court. The credit agreement is treated as a stand-alone contract, so the debtor's payment obligation remains valid even if apartment building is never built or becomes uninhabitable. This approach demonstrates formalistic principle dominance of pacta sunt servanda, ignoring the failure to consider apartment financing primary purpose, which is to provide adequate housing (Mujisantoso, Stefanus Agung, 2023).

This fragmented assessment creates substantive injustice for apartment loan debtors. On the one hand, debtor is recognized as a consumer harmed by the failed construction, but on the other hand, he remains burdened with long-term loan repayment obligations. This synchronization demonstrates lack that legal protection through judicial mechanisms remains partial and incapable of providing a comprehensive solution for apartment loan debtors in cases of failed apartment construction.

The legal construction absence of the apartment loan as a unified legal relationship in court decisions also demonstrates a conceptual vacuum in housing and financing law. Judges do not consider the relationship between financing and construction as a primary consideration in deciding cases. This resulted in the failure of apartment construction and was not understood as a failure of the housing finance system, but rather simply as an individual contractual violation (Pradikta, Febrian Dharma, 2016). This situation strengthens the argument that the protection of KPRS debtors cannot be fully handed over to litigation mechanisms without fundamental regulatory design improvements.

Regulatory Integration Urgency and KPRS Debtor Protection Reconstruction

Legal protection for KPRS debtors in failure cases to build flats is still fragmented and not oriented towards substantive justice based on normative analysis and judicial practice (Nugroho, M. E. B., Lukman, A., & Octaviani, R., 2025). Banking law, apartment law, and consumer protection law operate in separate corridors without effective integration mechanism. This fragmentation leaves debtor in a particularly vulnerable position, bearing construction failure risk without adequate protection instruments. Regulatory integration is an urgent need to reduce this imbalance.

Integration intend not only to harmonize formal norms but also to reconstruct the apartment financing paradigm, placing the residential function as the primary parameter for credit obligations sustainability. Within this framework, obligation to repay mortgage loan (KPRS) should be directly linked to progress and success of apartment construction, so that the risk of construction failure is not entirely borne by the debtor.

The bank role in KPRS also needs to be reconstructed from being merely passive creditors to financial service providers with active responsibility for the success of the projects they finance. Prudence principle should not be understood simply as protection against credit risk, but have to be expanded and include an obligation to ensure that financing products offered don't place consumers at disproportionate risk. In this context, mechanisms such as progress-based credit distribution, escrow accounts, or corporate guarantees from developers can be viewed as relevant normative instruments to strengthen debtor protection. (Nugroho, M. E. B., Lukman, A., & Octaviani, R., 2025).

Furthermore, standard clause use in KPRS (Housing Loan) requires stricter scrutiny. Clauses that shift construction failure risk to the debtor or absolve bank and developer from substantive responsibility have to be viewed as contrary to consumer protection objectives and contractual justice principle. Strengthening regulators role and judiciary in correcting contractual inequalities is a crucial element in establishing an effective KPRS debtor protection regime (Atiana, S., 2023).

Legal protection for KPRS debtor can't be based on a partial, sectoral approach. This requires regulatory integration that position condominium financing and construction as a unified legal system. This integration intend to understand construction failure as a shared failure that requires shared responsibility. Reconstruction of regulatory policies is a prerequisite for achieving legal certainty, substantive justice, and protection of housing rights for condominium debtors.

Legal Integration Reconstruction of the Banking System and Housing Law in KPRS Debtor Protection

Reconstructing legal protection of apartment mortgage debtor requires a paradigm shift in viewing relationship between banking system and housing legal system (Prayoga, Teddy, 2023). To date, these two legal regime have operated in parallel and separately, with banking law emphasizing loan certainty repayment. Meanwhile, housing law focuses on development implementation and housing ownership. This separation has resulted in apartment financing being treated as a purely financial transaction, without a strong normative link to successful development as the primary objective of financing. Therefore, legal integration reconstruction need to be directed at unifying financing objective and housing provision within a single systemic framework.

Banking system legal integration and housing law must begin with the affirmation that the KPRS (Housing Loan) is not simply a credit agreement. It needs to be understood as a housing policy instrument with a social dimension (Kusumastuti, D., 2024). Prudential banking principles also need to be reconstructed within this framework so that they are not solely oriented towards credit risk mitigation but also encompass bank's obligation to ensure continued financed residential function object (Gumay, J.M., & Isfandayani, 2024). Creditworthiness assessments should not stop at the debtor's repayment capacity and the adequacy of collateral, but should be expanded to assess the substantive feasibility of the apartment project, including the certainty of construction completion and developer readiness.

Furthermore, legal integration requires a normative link between apartment construction progress and KPRS validity (Housing Loan) payment obligation. An integrated system create payment obligation for debtor which are conditional on objectively verified construction stages. This situation means that banking law is no longer neutral regarding construction failures, but rather actively links credit continuity relationship with residential properties realization. This reconstruction able shift construction failure risk from debtor to a shared responsibility scheme between bank and developer.

This integrated reconstruction requires a repositioning of the bank role from passive creditors to risk-managing actors in vertical housing financing. Bank function not only as fund distributors but also as quality monitors for the projects they finance through financing monitoring instruments (Velantika, G.J., et al., 2025). In this context, mechanisms such as escrow accounts, progress-based credit distribution, and corporate guarantee obligation from developer are not merely policy choices but logical consequences of integration banking and housing legal system (Artemenkov, A., & Saccal, A., 2025). These instruments function as a normative bridge which connect financing interest with development success.

Integration with banking system requires strengthening developer accountability norm, which are inseparable for financing scheme, from a housing law perspective. Failure to build a condominium can no longer be understood as an individual developer's default on consumer rights, but rather as a failure within the housing delivery system involving bank financing. Housing law, through this approach, not only regulates technical and administrative aspects of development but also plays a role in ensuring that housing financing does not result in structural losses for consumers (Salsabila, F. A., 2020).

Conceptually, legal integration reconstruction of banking system and housing law places residential function as primary parameter for validity and sustainability of the KPRS legal relationship. Residential function will be positioned as the primary objective determining risk burden validity on debtor. The residential function is no longer positioned as a secondary consequence of the credit agreement. KPRS is reconstructed as a financing instrument oriented towards substantive justice, not merely contractual certainty. Through this integrative reconstruction, legal protection for KPRS debtors no longer relies on reactive litigation efforts, but is built preventively into regulatory design and financing practices. This integration also emphasizes the state's role in ensuring that the housing finance system operates in line with constitutional mandate to guarantee the right to adequate housing. Thus, KPRS doesn't become a mechanism for unilaterally transferring risk to consumers, but rather becomes a fair, balanced, and sustainable public policy instrument.

Reconstruction of Banking Law Integration and Housing Law Based on KPRS Debtor Protection

Integration reconstruction between banking and housing law have to be firmly placed within protecting Apartment Ownership Credit (KPRS) framework debtor as the most vulnerable parties in vertical housing financing schemes (Prayoga, Teddy, 2023). The current regulatory design for KPRS tends to prioritize loan repayment certainty and smooth construction, while treating debtor interest as secondary consequences dependent on developer's good faith and bank internal policies. This approach result in structural inequality because debtor bear the greatest risk despite having no control over apartment construction process being loan object.

In practice, Prudential Bank has principle for disbursing loan specifically to meet subsidized home ownership needs. In it implementation, the bank adheres to Law legal basis No. 7 of 1992. Although there are obstacles to implement these principle, such as uncooperative borrowers and inadequate housing facilities, this has led to a lack of public interest (Dora Kusumastuti, 2022).

Banking and housing law integration, focused on debtor protection, require fundamental change in KPRS legal interpretation (Siregar, R. N., et al., 2024). This Sharia home ownership credit system can't be understood as a stand-alone credit agreement, but rather as a housing financing instrument whose primary purpose is to ensure the fulfillment of debtors' housing rights. Therefore, credit repayment obligation validity must be directly linked to the realization of apartment as suitable housing (Maharani, S., 2017).

Within debtor protection framework, banking prudence principle need to be reconstructed so that it functions as an instrument for preventing consumer losses, not simply a risk mitigation mechanism for bank. For example, developer is starting to implement buy-back guarantee clauses in mortgage agreements (KPR) to provide additional security for consumers. However, these clauses implementation create uncertainty regarding consumer right and legal protection. Therefore, decision number 9/Pdt.G/2021/PT. BTN is an appropriate policy because it protects consumer rights in mortgage agreements (Assyfa P.S., & Suherma, 2024). This regulation requires developers to return funds to consumer in default event.

Bank have to be positioned as financial service providers with an active obligation to ensure that the KPRS products they offer do not place debtors at disproportionate risk of failure (Siregar, R. N., et al., 2024). This obligation include a substantive assessment of the apartment project feasibility and security mechanism implementation which ensure, development risk is not borne unilaterally by the debtor (Santoso, J. J., 2021).

Protection for KPRS debtor also require a normative link between apartment construction progress and credit obligation burden. In an integrated and equitable legal system, debtor should not be burdened with full payment obligation for housing which has not been realized or has failed to be built (Siregar, R. N., et al., 2024). Therefore, legal reconstruction need to lead and to limitation or adjustment for debtors' credit obligation in construction delay or failure event, so the risk is not entirely borne by consumer.

Furthermore, legal integration that favor debtor must strictly limit standard clauses use that transfer construction failure risk to debtor. Such clauses not only contradict consumer protection principle but also reinforce unequal bargaining position in KPRS contractual relationship. Within debtor protection framework, contract freedom can't be used to justify risk transfer that substantially harm consumer and undermine housing finance social objectives (Prayoga, Teddy, 2023). This integrative reconstruction also requires strengthening state and regulator role in ensuring KPRS debtor protection.

The state can't allow housing consumer protection to rely on reactive and individualized litigation mechanism. Instead, debtor protection must be built preventively through housing finance design regulation which bind bank and developer together in a shared responsibility system. This approach will create a situation where debtor are no longer solely responsible for failures in the apartment financing and development system.

By prioritizing debtor protection, banking and housing law integration serve as a corrective instrument to address structural inequalities in KPRS (Housing Loan) system. This reconstruction emphasizes that apartment financing is not simply a financial transaction, but rather fulfilling part the right to adequate housing. Therefore, any KPRS legal design must ensure that debtors are not positioned as parties who bear unfair risk for development failure beyond their control (Anita, J., 2021).

Furthermore, integration reconstruction of banking and housing law, oriented toward debtor protection, requires a shift in perspective on risk in apartment financing. Previously, construction failure risk was treated as a commercial risk implicitly transferred to debtor through long-term financing scheme. From a debtor protection perspective, this approach is unjustifiable, as debtor lack risk factual or legal capacity to control construction risk. Therefore, the risk of construction failure must be reconstructed as a systemic risk have to be borne proportionally by bank and developer, as business actors who directly benefit from the KPRS scheme (Prayoga, 2023). This reconstruction also require restructuring responsibility relationship between legal entities within the KPRS.

Bank and developer can no longer be positioned as entities with rigidly separate responsibilities, while debtors are the ones who bear system failures consequences (Kementerian Keuangan, 2026). Within legal integration framework that favor debtor, relationship between bank and developer have to be understood as a functional relationship that jointly intend to provide housing through financing. Consequently, apartment construction failure should not be viewed solely as a developer's default, but also as an indicator of bank's failure to manage financing risk.

From administrative law and public policy perspective, this integration reconstruction also require more active state presence in overseeing and controlling the KPRS (Housing Mortgage Loan) scheme. The state is not sufficient to simply establish general norms regarding banking and housing. The state is obliged to ensure that apartment financing implementation doesn't result in structural losses for debtor. In this context, regulatory oversight of KPRS products must be directed at preventative consumer protection, not merely at financial sector stability or bank administrative compliance (Suharto, R., Badriyah, S.M., & Kashadi, 2019).

Inconsistency in banking law is due to the many weaknesses in banking regulation which still focus on banking laws. Law Number 10 of 1998 was formed with regulating aim conventional banking transaction. Banking regulation that isn't relevant need to be reconstructed into laws that regulatable digital banking transaction. This legal protection realize justice principle for all Indonesian people. This is also relevant as a regulatory effort to protect subsidized home credit debtors in preventing consumer losses (Wardah Yuspin, et al., 2023).

Debtor-oriented law integration also has implication for KPRS contract design as legal instrument. Credit agreement and sale and purchase agreement can no longer be treated as private contract entirely subject to the will of the parties, but must instead be understood as contracts with a public interest dimension (Prayoga, Teddy, 2023). Therefore, state has legitimacy to intervene normatively in the substance of KPRS contract to ensure which they don't place in a structurally disadvantaged position. This intervention is legal protection part, not a freedom violation of contract.

From a judicial perspective, integration reconstruction of banking and housing law also require a shift in judges approach in examining KPRS disputes. Judges need to assess whether housing financing objectives have been substantively achieved, rather than simply relying on a validity formal assessment of credit agreement. By making the residential function the primary parameter, judge reassess debtor sustainability credit obligation when apartment construction fail or become unusable. This approach will encourage of judiciary to act as an instrument of correction for structural inequalities in housing financing. Furthermore, this reconstruction also contains a constitutional dimension that cannot be ignored.

The right to adequate housing is part of the socio-economic citizen guaranteed right by the constitution (Nasution, A., et al., 2025). Therefore, every housing financing scheme, including KPRS (Housing Loan Program), designed and implemented in accordance with this constitutional mandate. Apartment financing that actually places debtors under a debt burden without a real home represents a state failure to fulfill its constitutional obligation. Integrating banking and housing laws that favor debtor, thus part of the effort to fulfill citizens' constitutional rights.

This reconstruction demands effort to align financial sector objective development and housing provision at the national legal policy level. Banking system development can't be separated from its social responsibility in supporting the fulfillment of basic community needs. Therefore, the KPRS must be positioned as a public policy instrument subject to debtor protection principle, not merely as a commercial financial product (Purbandari, 2013). With this approach, the integration of banking and housing laws is not only normative but also operational and oriented towards social justice.

With all these expansions, legal integration reconstruction of banking system and housing law based on debtor protection emphasizes which KPRS have to be reformulated as a fair and humane financing mechanism. Debtors are no longer positioned as the ultimate risk bearers of system failure, but rather as legal subjects whose rights must be actively protected by the state, regulators, banks, and developers. Only through systemic integration that places debtors at the center of orientation can apartment financing truly function as a means of fulfilling the right to adequate housing, rather than as a source of new structural injustice. The following table presents the disharmony and proposed reconstruction.

Tabel 1. Disharmony and Proposed Legal Reconstruction

Legal Regime	Regulation	Key Articles	Regulation Substance	Implication for KPRS Debtor
Housing Law	Law No. 20 of 2011 concerning Apartments	Article 1, Number 1	Apartment is provided to ensure adequate housing	Emphasizes that residential function is primary purpose, not merely a transactional object
Housing Law	Law of No. 20 of 2011	Article 42	Marketing of flats can be done before construction is completed.	Opening up pre-project selling space which is risky for debtors.
Housing Law	Law No. 20 of 2011	Article 43	Sales before construction require certainty of land status and permits	In practice, these requirements are often met administratively without substantial guarantees.
Housing Law	PP No. 13 of 2021 concerning the Implementation of Apartment Buildings	Article 45	Affirmation of marketing requirements and preliminary agreements.	Does not link construction progress to the debtor's credit obligations.
Housing Law	PP No. 13 of 2021	Article 51	The developer's obligation to complete construction.	The developer's responsibility is not directly connected to the protection of KPRS debtors.
Banking Law	UU No. 7 Tahun 1992 jo. UU No. 10 Tahun 1998 on Banking	Acticle 8	The principle of prudence in granting credit.	The principle of prudence in granting credit.
Banking Law	UU Perbankan	Acticle 29 ayat (3)	Banks are required to conduct their business in a healthy manner.	This is not outlined as an obligation to protect housing finance consumers.
Consumer Protection Law	UU No. 8 Tahun 1999 on Consumer Protection	Article 4	Consumer rights to comfort, security and safety	KPRS debtors meet the qualifications as consumers of financial

				services
Consumer Protection	UU No. 8 Tahun 1999	Article 7	Business obligation actor to act in good faith	Relevant for assessing bank responsibilities and developer
Consumer Protection	UU No. 8 Tahun 1999	Article 18	Standard rohibition clauses that shift responsibility	Many mortgage loan agreements contradict this article
Financial Services Regulation	POJK No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector	Article 2	Consumer protection principles (fairness, transparency, accountability)	Emphasize mortgage loan debtors as consumers of financial services
Financial Services Regulation	POJK No. 1/POJK.07/2013	Article 4	Obligation of financial service providers to protect consumer	Doesn't specifically regulate default risk
Financial Services Regulation	POJK No. 13/POJK.03/2017 on General Bank Risk Management	Article 2	Obligation to implement risk management	Default risk has not been positioned as a primary risk to debtor
Financial Services Regulation	POJK No. 13/POJK.03/2017	Article 6	Identification and control of credit risk	Focus on bank, not debtor protection

Table above show regulation for condominium ownership loans (KPR) are scattered across various sectoral legal regime and have not been normatively integrated into a coherent debtor protection framework. Housing law tend to normalize construction risk without providing safeguard which substantially protect mortgage (KPRS) borrower. This is reflected in marketing legitimacy and condominium sale unit before construction completely. At the same time, banking law interpret the prudential principle primarily as a credit risk mitigation instrument for bank, so the resulting protection is oriented more toward stability and interest of financial institutions than toward debtor's position as a consumer of housing finance.

Furthermore, consumer protection legal regime and financial services sector regulation have provided a normative basis for consumer protection and financial obligations service provider. However, these regulations remain general in nature and don't specifically address condominium financing risk characteristic, particularly construction failure risk, which directly impact residential function loss. This results in consumer protection norm not being effectively operationalized in the KPRS context, thus failing to address structural inequalities arising from contractual relationship between banks, developers, and borrower.

Tabel 2. The Weaknesses Identification and Home Building Law Reconstruction

Analytical Finding	Regulatory Weakness	Proposed Legal Reconstruction
Article 42 of the Apartment Law permits marketing before construction is completed	There is no protection if the project fails to be built	Added a provision which KPRS disbursement only be made after construction guarantee and certain minimum construction progress verified by an independent party
Article 43 only requires certainty	This requirement doesn't guarantee development sustainability	Adding financial guarantee requirement (such as escrow accounts or performance bond) as a marketing and financing requirement
The Government Regulation Article 45 No. 13 of 2021 concerning 'Apartments Management' emphasizes marketing requirement and preliminary agreement	There is no special mechanism for debtor	Provision addition regarding construction progress to debtor credit obligation

Article 51 of Government Regulation No. 13 of 2021 concerning housing law doesn't yet include detailed provision regarding developer and debtor obligation	There are no detailed point discussing developer obligation to complete construction	Added provision regarding the obligation, developer responsibility, and KPRS debtor protection
The Banking Law states Article 29 paragraph (3), which the prudential principle in the Banking Law is oriented toward bank security	Debtor protection isn't yet part of the prudential principle	Expanding prudential meaning principle until that banks are required to conduct due diligence on project feasibility and calculate construction risk before disbursing credit
Article 4 of Law No. 8 of 1999 concerning Consumer Protection	Debtor protection need to be improved, particularly regarding consumer right to comfort, security, and safety	Adding provision regarding consumer protection for KPRS debtor who meet the qualifications as financial service consumer
Article 2 of OJK Regulation No. 1/POJK.07/2013 concerning Consumer Protection in Financial Service Sector. The OJK Consumer Protection Regulation doesn't yet regulate construction failure	There is no specific protection mechanism for KPRS debtor	Added provisions regarding automatic restructuring, payment deferral obligation, and settlement mechanisms in stalled project event
Article 6 of POJK No. 13/POJK.03/2017. Financial service regulation is not yet oriented toward bank security	Need to identify and control credit risk	Add provision to further focus on prudence principle in the security-oriented Banking Law

This analysis show the legal protection stem weakness from regulations absence regarding construction guarantees prior to the disbursement of KPRS (Housing Loan) loans. This regulation lack shift the entire risk of construction failure to the debtor. Therefore, regulatory reconstruction need to be directed at regulating the construction guarantee mechanism as a prerequisite for credit disbursement, thereby more equitable risk between developer, banks, and debtor. This research contribution offer a regulation reconstruction for the KPRS debtor protection by strengthening the escrow account mechanism, the obligation to provide construction guarantees, and a more proportional division of responsibilities between developers, banks, and debtors. This reconstruction is expected to strengthen legal certainty, fairness, and consumer protection in apartment financing.

Regulation fragmentation across legal regime creates a protective vacuum at the most crucial point, namely link between apartment construction success and debtors' credit obligation sustainability. Under these unintegrated norm, KPRS debtor are positioned as the ones bearing a disproportionate risk of construction failure, despite having no control over the construction process or financing design. This situation demonstrates that the problem of apartment construction failure is not solely a developer's failure or an individual business risk, but rather a manifestation of the legal system's failure to establish a just housing financing regime. Therefore, finding in this table not only demonstrate regulatory disharmony but also underscore reconstructing urgency legal integration of banking system and housing law, oriented toward debtor protection. Such reconstruction is necessary to end the sectoral approach that has dominated KPRS regulation and to establish a unified legal framework that places the residential function as the primary parameter for financing validity. Without such normative integration, KPRS has potential to continue function as a mechanism for transferring construction failure risk to consumer, rather than as an instrument for fulfilling right to adequate housing as mandated by national legal system. (Suharto, R., et al., 2019).

CONCLUSION

The findings of this study indicate that legal protection for apartment mortgage debtors in construction cases failure remain inadequate due to fragmented regulation spread across various legal regime without coherent normative integration. Housing law normalizes marketing practice and selling apartment before construction is completed without explicitly linking them to debtor protection guarantees, while banking law position apartment mortgages or KPRS as a stand-alone credit relationship primarily focused on repayment certainty and bank stability. Furthermore, consumer protection law and financial services sector regulations haven't specifically addressed apartment construction risk failure as a primary risk threatening debtors' housing right. This situation places apartment mortgage debtor in a highly vulnerable position. The state principle control, as stipulated in Law No. 8 of 1999 concerning consumer protection, in practice has not specifically addressed strong protection guarantees against apartment mortgage risk debtors' construction failure. This fragmented regulation has created a protection vacuum at the most crucial point, namely the link between apartment construction success and debtor's credit obligation sustainability.

Outdated regulations need to be reconstructed, as they leave apartment mortgage debtors vulnerable to losses due to weak government policy regulation. The banking and housing reconstruction legal system have to be strongly oriented toward debtor protection and demand a paradigm shift in KPRS (Housing Credit) loan interpretation, from mere credit agreement to be housing finance instrument with a social purpose to ensure the right to adequate housing. The debtor credit obligation sustainability have to be directly related to apartment's realization residential function, supported by safeguard mechanisms to prevent transfer unilateral of construction failure risk to debtor. By placing debtor at orientation center, banking and housing law integration is expected to build a protection regime that is fairer, more balanced, and more responsive to the real risks in apartment financing. This reconstruction is not only important to provide certainty and justice for KPRS debtors, but also to ensure that housing finance system operates in accordance with the state's constitutional mandate to guarantee everyone's right to adequate housing.

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