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### Legal Protection for Public Housing Loan Customers Under Law No. 8 of 1999 on Consumer Protection in Housing Transactions

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**Abstract:** Public housing credit is a program aimed at addressing the housing backlog in Indonesia, yet its implementation faces various challenges. This research focuses on two main issues: (1) What happens to public housing loans when banks go bankrupt? (2) How can consumer issues be resolved when housing loans default? The study uses a normative judicial method. The findings reveal that while the People's Housing Credit (KPR) helps people acquire homes, significant risks arise if credit institutions go bankrupt or debtors default. In cases of default or bank bankruptcy, debtors must still fulfill their credit obligations. Consumer protection is outlined in the 1999 Consumer Law, which includes exit clauses in credit agreements. The government, through the Deposit Insurance Corporation (LPS), can rescue or liquidate banks according to Law No. 24 of 2004. Moreover, drafting fair contracts, offering credit restructuring, and providing insurance options can better protect debtors than asset auctions. Additionally, applying the principle of prudence in credit assessments, as per the Banking Law, is crucial to minimizing default risks. Stricter regulations and robust legal protections are essential for mortgages to effectively help people own homes while ensuring financial and legal stability.

Keywords: 1945 Constitution, Customers, Credit, Public Housing,

#### INTRODUCTION

In the 1945 Constitution in Article 27 paragraph 2, it is stated that everyone has the right to get a job and a decent livelihood for humanity. This article means that in addition to getting a job, Indonesia citizens can and have the right to a decent life. Based on the theory of basic needs, at least humans can be said to have a decent livelihood if they have clothing, food and clothing. Papan itself is interpreted as a safe place to live and can guarantee the life of every Indonesia citizen. The problem is, the issue of this board is still a problem that is quite complicated and invites debate. One of the causes of the debate is due to the problem of unclear land issues both in terms of watersheds and watersheds.

Indonesia has the Agrarian Law of 1960. However, this law is considered to be too old and does not answer current problems. Historically, the Agrarian Law of 1960 has the spirit of preventing legal uncertainty for landowners in Indonesia, stopping the seizure of land belonging to small people based on social injustice and preventing the development of predatory capitalism that harms the small and weak people.<sup>2</sup> However, the issues faced at that time were different from today. The same law has not been able to answer today's agrarian problems.

Land problems in Indonesia are quite complex. The first and known today is the case of the land mafia. The land mafia case proves that the land registration system in Indonesia is not able to prevent white-

<sup>&</sup>lt;sup>2</sup>Retno Sulistyaningsih, "Reforma Agraria Di Indonesia," Perspektif 26, no. 1 (2021): 57–64.



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<sup>&</sup>lt;sup>1</sup>Endang Yuliani, Kebutuhan Dasar Manusia: Buku Ajar (Rena Cipta Mandiri, 2022); Andriansyah Bari and Randy Hidayat, "Teori Hirarki Kebutuhan Maslow Terhadap Keputusan Pembelian Merek Gadget," Motivasi 7, no. 1 (2022): 8–14.



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collar crime. Data contained in the National Land Agency (BPN) can be falsified and illegal transfer of land rights ownership can be carried out. This happened in the case experienced by the families of Nirina Zubir and Dino Patti Djalal. When victims target the level of someone who already has influence, then small communities will experience the worry of becoming victims of the same crime.<sup>3</sup>

Next, the case of conflict between developers and buyers of flats such as the one that occurred in Meikarta also shows that there is a lack of protection for consumers when they do not get their rights. In fact, this case even involved ministerial-level officials as mediators. The incident in Meikarta where people can lose their rights even though they have bought flats from trusted and reputable developers seems to confirm that protection for people to get certainty of home ownership is not guaranteed and is still very high risk.<sup>4</sup>

Next, another case that is the economic impact of the unclear agrarian law is the extraordinary inflation of land prices. When the annual increase in the minimum wage does not reach above 10 percent, land prices actually soar and, in some areas, even reach the level where a person must have 30-50 years of savings with an UMR salary to be able to buy the land. The government in this case actually caused an uproar in the community with a solution in the form of Tapera which was rejected by many parties due to the unclear payment system and the amount of deductions that burdened the community. This makes the housing problem even more complicated.

In the end, currently a solution has emerged in the form of People's Housing Loans. Public Housing Loans with long tenors and affordable interest are expected to protect the community and help people get housing products that suit their needs. However, it must be admitted that this does not necessarily help calm the hearts of the people. The community is still worried about protection when they run this public housing loan. The first problem is what if in the middle of the road the institution that distributes credit goes bankrupt and what is the fate of the house that has been credited. Second, when the community experiences a default, what are the rules for protecting the rights of consumers.

Based on these two important questions, this research was prepared to answer public concerns on the basis of the Consumer Protection Law and related legal products. It is hoped that through this research, the community will get a sense of security.

#### **METHOD**

The research was prepared with a normative juridical approach method by focusing on researching primary data, namely in the form of laws and regulations with a balance of secondary data in the form of literature studies or documen studies, legal journals related to land ownership in Indonesia, especially on People's Housing Loans. The research was prepared by discussing the concept of mortgages and then discussing and analyzing cases such as cases where credit lending institutions experienced bankruptcy and in conditions where default occurred.

#### **RESULTS AND DISCUSSION**

#### A. Understanding of People's Housing Loans (KPR)

Public Housing Credit or KPR is a program issued by banking institutions to help people own homes. Mortgages in general are not a government policy but are supported by the government. Legal

<sup>&</sup>lt;sup>3</sup>Damianus Krismantoro, "Kebijakan Pencegahan Dan Pemberantasan Mafia Tanah: Reforma Agraria Di Indonesia," Jurnal Kewarganegaraan 6, no. 3 (2022): 6031–42.

<sup>&</sup>lt;sup>4</sup>Patrick Winson Salim, Clayment Claudio Jap, and Margareth Trisya Adefinola Naru, "Pemenuhan Hak Konsumen Dalam Sengketa Perdata Lahan Meikarta," Jurnal Cahaya Mandalika ISSN 2721-4796 (Online) 3, no. 1 (2023): 137–47

<sup>&</sup>lt;sup>5</sup>Yulies Tiena Masriani, "Strategi Regulasi Perpajakan Upaya Mengatasi Inflasi Harga Tanah," Owner: Riset Dan Jurnal Akuntansi 6, no. 4 (2022): 3959–66.



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regulations are contained in Law no. 1 of 2011 concerning housing and residential areas. Some of the things regulated in the law are the location of housing to its planning which is prepared in Articles 21 to 26. This is to ensure that the house has a clear type and specifications that can be held accountable. This is to prevent the existence of housing from having problems in the future such as dangerous locations or inappropriate building specifications.<sup>6</sup>

In addition, there are also provisions regarding subsidized houses where the regulation is contained in the Decree of the Minister of PUPR number 20/PRT/M/2019. This convenience includes convenience in the context of subsidized assistance from the government for down payments and assistance from the government such as affirmation of house specifications intended for residents in need.

Assistance is also provided by the government in the form of the construction of 0 Rupiah credit houses, one of which is built in Bogor and other densely populated areas and is planned to be continued with the construction program of one million houses. This type of house has an affordable price so that credit is expected not to run too long so that in the end everyone will immediately get the expected home ownership.<sup>7</sup>

Although the People's Housing Credit (KPR) is recognized as a flagship program to help people own a house, in practice this program has several weaknesses. First, a credit term that is too long can pose a risk to the community. During such a long payment period, there is a possibility that people face situations that make them fail to pay installments on time. For example, if they get sick or face other financial problems, this could hinder their ability to complete credit payments.

Second, the value of mortgage loans that are quite expensive is often unaffordable by various levels of society. For many people, the size of monthly installments requires them to reduce their lifestyle in order to meet mortgage payments. This condition of course adds to the psychological and financial burden for families who struggle to meet other basic needs.

In addition, the length of the mortgage loan period also raises concerns about the stability of credit distribution institutions. If the bank or financial institution experiences problems in the future, there is a risk that the status of assets owned by the public may become unclear. The question that arises is how to provide legal protection for people who have applied for a mortgage in such a situation. Is there a guarantee that they won't lose the house they've been paying off for years?

To address these issues, there needs to be stricter regulation and clear legal protections for borrowers. The government and financial institutions must work together to ensure that mortgage programs not only help people own homes, but also protect them from financial and legal risks that may arise in the future. Thus, the mortgage program can be a safer and more effective solution in helping people achieve their dream of owning their own house.

#### **B. Settlement Process When Financing Institutions Go Bankrupt**

Banking institutions like other business fields can go bankrupt and when they go bankrupt, the fate of their clients is often not protected. When talking about banking institutions and their relationship with

<sup>6</sup>Eti Mul Erowati et al., "Prinsip Kehati-Hatian (Prudent Banking Principle) Dalam Pemberian Kredit Kpr Di Bank Bri Cabang Purwokerto," Jurnal Pacta Sunt Servanda 4, no. 2 (2023): 1–10.

<sup>&</sup>lt;sup>7</sup>Rini Muthi'ah and Nurul Jannah, "Analisis Kepatuhan Syariah (Shariah Compliance) Produk Kredit Perumahan Rakyat (KPR) Dengan Akad Murabahah Pada Bank Sumut Kantor Cabang Syariah Medan," Regress: Journal of Economics & Management 2, no. 1 (2022): 12–20; Mansur Azis and Gista Neli Mariskha, "Pembiayaan Kredit Pemilikan Rumah (KPR) Subsidi Untuk Meningkatkan Kesejahteraan Masyarakat Berpenghasilan Rendah," Niqosiya: Journal of Economics and Business Research 3, no. 1 (2023): 1–16; Devina Aulia Muslimah and Ade Restamia Putri, "Program Akad Kredit Perumahan Rakyat (Kpr) Bank Konvensional Bersubsidi Pada PT. Unggul Perkasa Propertindo," Jurnal Ekonomi Bisnis, Manajemen Dan Akuntansi 3, no. 1 (2024): 61–70.



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housing loans, it should be understood that when a bank experiences bankruptcy, it does not necessarily negate the responsibility of the debtor. The debtor still has to carry out his obligation to pay the credit.<sup>8</sup>

But on the other hand, banks must also follow the rules in the 1999 Consumer Law, namely Article 17. In Article 17, it is explained that the bank must affirm the existence of an exit clause in the housing loan agreement made. What is meant by exit clause is an explanation when an unexpected event occurs, such as when a banking institution is declared bankrupt. This is in accordance with the fulfillment of Article 28D of the 1945 Constitution which guarantees legal certainty for every Indonesia citizen. In this contract clause, it must be explained where the debtor carries out its responsibilities in the event that the banking institution experiences bankruptcy.<sup>9</sup>

In the rules, the deposit insurance institution and the government itself can take steps to save the banking institution in question in accordance with Law no. 24 of 2004 where LPS has an obligation to take any steps that are deemed necessary in accordance with Article 4. Banking institutions can also liquidate with other banks where credit obligations are transferred to the institution that liquidates the bank. The rules for bank liquidation are listed in Government Regulation number 2005 of 1999. <sup>10</sup>

But of course, before the liquidation process is completed, the debtor must get certainty from the government. In this case, the government must take over the management of banking institutions that are experiencing these problems and give the public the opportunity to get an explanation as clearly as possible. Without adequate explanation, it is prone to disputes.

Disputes related to mortgages can arise in various forms, one of which is a debate about when credit payments are due by debtors. This often happens due to differences in information provided by banks that have been liquidated and consumer understanding. Inconsistent information between banks and consumers can lead to confusion and uncertainty in the payment process.<sup>11</sup>

In addition, consumers may need credit restructuring due to uncertain financial conditions. Therefore, it is important to have clarity in credit contracts. The establishment of a contract in accordance with Article 17 of the Consumer Protection Law is essential to facilitate the coordination and settlement of obligations. This article stipulates that the contract must be drafted in a clear, transparent, and fair manner for both parties, thus minimizing the potential for disputes in the future.<sup>12</sup>

Furthermore, when the bank is liquidated and taken over by a new manager, the responsibility for the rights of dependents must also be managed properly. This lien is often attached to the land that is the object of credit, which means that the house that is credited is also part of the land that is subject to liens. The new bank manager who takes over the troubled banking institution must be responsible for managing this right of dependency.

The process of transferring the right of dependency must be explained in detail in the credit agreement to minimize the risks that may arise if the banking institution experiences bankruptcy. This

<sup>8</sup>Muhammad Edwin Syahputra Lubis, Henry Aspan, and Tamaulina Br Sembiring, "A Review Model of Pailit Decision by The Niaga Court," Jurnal Info Sains: Informatika Dan Sains 13, no. 02 (2023): 640–45; Rachmat Ihya, "Kewenangan Kurator Dalam Dalam Pengurusan Dan Pemberesan Harta Pailit," SYARIAH: Jurnal Ilmu Hukum 1, no. 1 (2023): 71–83.

<sup>9</sup>Rohmah Maulidia, "Perlindungan Konsumen Oleh Badan Perlindungan Konsumen Nasional (BPKN) Di Masa Pandemi," in Proceeding of International Conference on Islamic Law, vol. 1, 2022, 1–12.

<sup>10</sup>Daram Heriansyah, "Pengaruh Corporate Governance, Profitabilitas, Likuiditas Dan Solvabilitas Terhadap Corporate Social Responsibility (CSR) Disclosure: Literatur Review," Management Studies and Entrepreneurship Journal (MSEJ) 5, no. 2 (2024): 5062–80; Faradillah Ayu Aprilianah, "How to Manage Dissolution and Liquidation Processes in Indonesian Corporate Law," UMSIDA, 2023.

<sup>11</sup>Eka Jaya Subadi, Restrukturisasi Kredit Macet Perbankan (Nusamedia, 2019).

<sup>12</sup>Ir Anita Dewi Anggraeni Kolopaking and M H SH, Asas Itikad Baik Dalam Penyelesaian Sengketa Kontrak Melalui Arbitase (Penerbit Alumni, 2021).



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explanation is important for consumers to understand their rights and obligations as well as the procedures to be followed in a bank liquidation situation. Thus, they remain protected and do not lose the house that they have paid off so far.

Clear regulations and strong legal protection are needed to protect consumer rights in the mortgage program. The government and financial institutions must ensure that every mortgage contract is drafted with these aspects in mind, so that the mortgage program can run more safely and provide legal certainty for all parties involved. Regarding this condition, the government is obliged to compile and also understand the conditions of customers because the management of banking institutions that are not done properly can cause distrust in the public. This makes people tend to avoid mortgages and prolong the backlog problem of housing in Indonesia.

Thus, both parties actually benefit because banks have no difficulty in obtaining liquidation, as well as the clarity of customer credit can be secured.

#### C. Settlement in the event of a default

When the community experiences a default, banking institutions can enforce the dependent rights they have and auction off existing assets. But actually, this raises a problem, namely that the government's vision for someone to own a house is not achieved and in fact the bank also gets a burden because it has to auction assets that are not necessarily easy to find a buyer.<sup>13</sup>

Therefore, this default condition can actually be prevented from the formation of the contract. Banking institutions are given the freedom to make regulations that are fair and minimize the risk of default. The government has also taken part by collaborating with developers who can provide land at below-average prices so that land prices can be paid with minimal risk. But at the same time, it must be recognized that the community also has its own interests. Some layers of society see the first house as a future investment, maybe they don't see the house as a permanent place to live. Therefore, people tend to choose houses in premium locations even though they have a considerable credit risk. 15

In accordance with the Banking Law of 1992 (Law 7/1992) and its amendment to Law 10/1998, it is necessary to implement the principle of prudence in running a banking business in accordance with Article 29 that banks are not only commercial institutions but also institutions that affect the economic resilience of a country. Given the crucial role of banks, banks must carry out the principle of prudence or prudence. What is meant by the prudential principle is the principle of conducting a credit assessment carefully.

People's Housing Loans (KPR) not only function as a mechanism for distributing loans from banks to the community, but also have other important roles. First, KPR assists the government in carrying out its obligations to ensure that every Indonesian citizen has access to a decent place to live. By owning a house, citizens gain the certainty of a place to live that not only provides security and stability, but can also be an inherited asset. These assets contribute to strengthening the family's economic resilience, as well as easing the financial burden for future generations.

In addition, mortgages make it easier for people to get affordable housing, especially in the midst of the instability of the salary structure in the job market. This is due to the development of Indonesia's

<sup>13</sup>Azis and Mariskha, "Pembiayaan Kredit Pemilikan Rumah (KPR) Subsidi Untuk Meningkatkan Kesejahteraan Masyarakat Berpenghasilan Rendah."

<sup>&</sup>lt;sup>14</sup>Tasya Pitria Azmalina et al., "Peran Satuan Kerja Penyediaan Perumahan Dalam Mensosialisasikan Program Bantuan Stimulan Perumahan Swadaya," JOPPAS: Journal of Public Policy and Administration Silampari 4, no. 2 (2023): 67–73.

<sup>&</sup>lt;sup>15</sup>Nadiyah Syafiqah and Antarin Prasanthi Sigit, "Eksistensi Perjanjian Buy Back Guarantee Dalam Pembelian Rumah Melalui Kredit Pemilikan Rumah (KPR)," UNES Law Review 6, no. 2 (2023): 4469–83.



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economy which is still in the growth stage and often has difficulty competing in the international market. Thus, mortgages are a vital tool in helping people overcome financial challenges in owning a house in the midst of economic conditions that are not yet fully stable.

When these social and economic goals have been achieved, banks can then use mortgages as a medium for distributing credit. This not only assists banks in solving their liquidity and profitability problems, but also drives overall economic growth by increasing activity in the housing sector.

To support all this, there needs to be clear policies and strong regulations. The government and financial institutions must work together to ensure that mortgages not only function as a means of credit, but also as an important instrument in improving people's welfare. Thus, mortgages can provide sustainable benefits, both for individuals, families, and the national economy.

The function of the house subject to the lien should be considered as a last resort when the credit cannot be completed. In the execution, there must also be considerations that should be put forward. The first is when auctioned, the value of the house auctioned is able to provide a more economical choice for people who have defaulted so that the opportunity for people who have defaulted is still fulfilled. Second, the execution of the house must really be the last resort for the bank because there is no other option. When the condition is so. Actually, there are several solutions that can be put forward.

When forming a contract, insurance can be applied for on the credit. The function of insurance is to provide a sense of security. Although insurance is not able to guarantee people who have lost their jobs due to layoffs, at least insurance can cover the risk when people get sick and fail to pay their housing loans. At least this can ease the burden on the community.

Second, in the contract, at least housing loan restructuring options are given. This can be seen, for example, during the corona pandemic crisis. Banking institutions are experiencing difficulties in conducting auctions and credit payments are expected to experience congestion. Therefore, credit restructuring is prioritized as long as it does not violate the Banking Law and is the best choice for all parties.

However, it must be admitted that the current law has not answered various crucial issues, including the affirmation of insurance obligations and a realistic credit restructuring system. In the formation of this law, it should also be in line with the rules in the Omnibus Law to ensure the work safety of workers so as to prevent bad loans. The government can solve the backlog that occurs where in some countries the strengthening of public housing is carried out by introducing a system of flats where this does not violate human rights. The idea that landed houses are better is actually a cultural construction that can be changed considering the urgency of the state's need to provide land for industrial needs and housing certainty for the community.

#### **CONCLUSION**

Public Housing Loans (KPR) face significant risks related to the bankruptcy of credit distribution institutions and defaults by debtors. When the banking institution that distributes the mortgage goes bankrupt, the debtor still has to fulfill their credit payment obligations. To protect consumer rights, the 1999 Consumer Law requires an exit clause in credit agreements, which describes procedures when banking institutions go bankrupt. In addition, the government through the Deposit Insurance Corporation (LPS) can take steps to rescue or liquidate banks in accordance with Law No. 24 of 2004. The process of transferring credit obligations to new institutions must be carried out with transparency so that debtors get legal certainty.

In the event of a default, banks have the right to auction off the debtor's assets, but this goes against the government's goal of ensuring every citizen owns a home. Better solutions include drafting fair contracts with credit restructuring and insurance offers to protect debtors in certain situations such as illness or

<sup>16</sup>Tamim Ashar, "Inovasi Produk Asuransi Umum Syariah," AL-SYIRKAH 2, no. 1 (2021): 26–42.

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economic crisis. The principle of prudence in credit assessment, in accordance with the Banking Law, is also important to reduce the risk of default. With stricter regulation and strong legal protections, mortgages can be an effective tool to help people own homes without compromising their financial and legal stability.

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