

Protection of Consumer Rights In KPR Agreements With Buy Back Guarantee Clauses (Case Study of Decision Number 9/Pdt.G/2021/PT.BTN)

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Abstract : *Home Ownership Credit (KPR) agreements with buy-back guarantee clauses are increasingly used by developers to provide additional assurance for consumers. However, the implementation of these clauses often leads to ambiguity in consumer rights and legal protection. This research aims to analyze the legal protection of consumer rights in KPR agreements with buy-back guarantee clauses, focusing on the analysis of Decision Number 9/Pdt.G/2021/PT. BTN. Using a normative juridical method with a case study approach, the research highlights the inefficiency of buy-back guarantee clauses in providing effective protection, especially concerning refund rights in cases of developer default. The study emphasizes the importance of strengthening regulations and legal protections in KPR agreements to ensure consumer legal certainty. The findings indicate that consumers frequently lack clarity on their rights, leading to potential exploitation. Furthermore, the study emphasizes the necessity of strengthening regulations and legal protections within KPR agreements to ensure consumer legal certainty. The clauses can be increased transparency and comprehensive information disclosure to empower consumers and uphold their rights effectively. Enhanced a legal safeguards are essential for enabling consumers to confidently navigate KPR agreements, thereby fostering trust in the housing finance sector and ensuring their rights are effectively protected.*

Keywords : *Legal Protection, Buy Back Guarantee, Home Ownership Credit (KPR)*

Abstrak : *Perjanjian Kredit Pemilikan Rumah (KPR) dengan klausul buy-back guarantee semakin banyak digunakan oleh developer untuk memberikan jaminan tambahan bagi konsumen. Namun, penerapan klausul tersebut seringkali menimbulkan ketidakjelasan hak-hak konsumen dan perlindungan hukumnya. Penelitian ini bertujuan untuk menganalisis perlindungan hukum terhadap hak-hak konsumen dalam perjanjian KPR dengan klausula buy-back guarantee, dengan fokus pada analisis Putusan Nomor 9/Pdt.G/2021/PT. BTN. Menggunakan metode yuridis normatif dengan pendekatan studi kasus, penelitian ini menyoroti ketidakefisienan klausul buy-back guarantee dalam memberikan perlindungan yang efektif, terutama terkait hak pengembalian dana jika terjadi wanprestasi dari pihak developer. Penelitian ini menekankan pentingnya penguatan regulasi dan perlindungan hukum dalam perjanjian KPR untuk menjamin kepastian hukum bagi konsumen. Temuan penelitian menunjukkan bahwa konsumen sering kali tidak memiliki kejelasan tentang hak-hak mereka, yang mengarah pada potensi eksploitasi. Lebih lanjut, penelitian ini menekankan pentingnya penguatan regulasi dan perlindungan hukum dalam perjanjian KPR untuk menjamin kepastian hukum konsumen. Klausul-klausul yang ada dapat meningkatkan transparansi dan keterbukaan informasi yang komprehensif untuk memberdayakan konsumen dan menegakkan*



bak-bak mereka secara efektif. Peningkatan perlindungan hukum sangat penting untuk melindungi konsumen dalam perjanjian KPR, sehingga meningkatkan kepercayaan pada sektor pembiayaan perumahan dan memastikan bak-bak mereka dilindungi secara efektif.

Kata kunci : *Perlindungan Hukum, Buy Back Guarantee, Kredit Pemilikan Rumah (KPR)*

I. INTRODUCTION

Banking institutions are financial entities that play a crucial role in the national economy, providing various services such as savings facilities, loans, deposits, investment services, and other financial services. In general, banks function as financial intermediaries, collecting funds from the public (savings deposits) and redistributing them as loans to those in need of credit¹. The role of banks is also essential in economic development through the provision of credit, enabling individuals and businesses to invest and thereby support economic growth. Investment development also helps stabilize the economy by controlling inflation and maintaining exchange rate stability². Banks, in all their activities, must adhere to regulations as outlined in Law Number 10 of 1998, which amends Law Number 7 of 1992 concerning Banking, including provisions on authority, rules, obligations, and other banking matters³.

Banks provide facilities aimed at assisting the public in their daily lives, such as credit or loan facilities. Under Article 1 Paragraph (11) of the Banking Law, credit can be summarized as the provision of money based on agreements between the bank and the borrower, who is obliged to repay the debt within a specified period with interest.⁴ There are many types of credit, but based on their purpose, they can be classified into two categories: consumer credit and productive credit. Consumer credit refers to loans used for personal purposes or for purchasing items that provide direct satisfaction. In contrast, productive credit is intended for investment or working capital purposes⁵. An example of consumer credit commonly used by the public is Home Ownership Credit (KPR), which is widely adopted because not everyone can afford to purchase property in cash.

In KPR transactions, there are typically three parties involved: the bank, the developer, and the buyer/consumer. The bank acts as a third party providing funds to the developer for the consumer's purchase of the developer's property, which the consumer

¹ Muchtar Anshary Hamid Labetubun et al., *Banking Management (A Theoretical and Practical Review)*. Bandung: Widina Bhakti Persada Bandung, 2021, p. 1. <https://repository.penerbitwidina.com/media/publications/332499-manajemen-perbankan-sebuah-tinjauan-teor-0b7b16f2.pdf>

² Ismamudi, Nani Hartati, Sakum. "The Role of Banks and Financial Institutions in Economic Development: A Literature Review". *Jurnal Akuntansi Neraca*, no. 2 (2023). 2987-1352. <https://ejournal.amirulbangunbangsapublishing.com/index.php/JAN/article/view/10>

³ Randy Tengku Okvan. "Juridical Review Of Buy Back Guarantee As An Alternative To The Settlement Of Problematic Debtors On Subsidized Home Ownership Loans At BankS". *Prima Legal Science Journal* 5, no. 1 (April 1, 2022). 89-107. <https://jurnal.unprimdn.ac.id/index.php/IHP/article/download/2532/1990>.

⁴ Milentina Dinar Intan and Abadi Suwarno. "Penerapan Buy Back Guarantee Bagi Pembeli dan Developer Berdasarkan Undang-Undang Perlindungan Konsumen". *Journal of Master of Law and Humanity* 1 no. 3 (December 24, 2023). 215-232. <https://doi.org/10.37504/llh.v1i3.578>.

⁵ Tarmizi. "Analysis of Business Credit on Islamic and Conventional Economic Growth". *Jurnal E-KOMBIS* 3, no. 1 (2017). <http://jurnal.utu.ac.id/ekombis/article/view/392>

then repays in installments, including interest.⁶ Today, housing is not limited to standalone houses but also includes apartments and commercial spaces (shophouses). Shophouses are a practical choice as they can be used for both commercial activities and as a residence, maximizing the utility of the property and providing cost efficiency.⁷ The purpose of KPR aligns with these advantages, as it helps the public acquire housing more easily amid increasing urban density, fulfilling the community's need for housing and contributing to societal prosperity and well-being⁸.

Any credit agreement must comply with applicable regulations to be deemed valid and binding under Article 1320 of the Indonesian Civil Code. The function of an agreement lies in its ability to provide legal certainty to the parties involved. All parties must agree on the terms of the agreement and ensure that they are legally competent to create binding obligations. This ensures the agreement cannot be annulled due to the incompetence of any party⁹. The creation of credit agreements aims to minimize ambiguities in the terms, which could lead to future disputes. A common issue in such agreements is default, which occurs when one party fails to fulfill their obligations as stipulated. In such cases, the party in breach is considered to have committed default¹⁰.

Furthermore, every agreement must be structured to ensure fairness and avoid disadvantaging any party. Justice should be the primary principle in every agreement, particularly in credit agreements, where consumers are entitled to legal protection¹¹. This is in line with Law Number 8 of 1999 on Consumer Protection, which states that consumers have the right to accurate, clear, and honest information about the goods and/or services provided. Consumers should be fully informed about all aspects of the agreement, and their consent must be obtained without coercion or undue pressure to achieve a fair balance of rights and obligations.

Consumer rights that must be upheld include the right to protection, the freedom to choose, access to accurate information, and assurance of safety when using, utilizing, or consuming goods and/or services that have been purchased or obtained. Additionally, consumers have the right to express complaints if there are discrepancies with the

⁶ Syafiqah Nadiyah and Sigit Antarin Prasanthi. "Existence of Buy Back Guarantee Agreement in House Purchase through Home Ownership Credit (KPR)". *Unes Law Review* 6 no. 2 (December 7, 2023). 4469-4483. <https://doi.org/10.31933/unesrev.v6i2>.

⁷ Rakhmawati Ayu Mega. "The Validity Of Buy Back Guarantee In The Purchase Of A House Through A Home Ownership Credit Facility". *Kertha Semaya Journal* 11, no. 8 (November 1, 2023). 1780-1792. <https://doi.org/10.24843/KS.2023.v11.i08.p04>

⁸ Elfrida Putri Ananda, Ajat Sudrajat. "Analysis of the Implementation of Systems and Procedures for Home Ownership Credit (KPR) Provision at Bank Tabungan Negara (Case Study of BTN Karawang Branch)". *Innovative: Journal Of Social Science Research* 3 no. 3 (2023). 2807-4238. <https://j-innovative.org/index.php/Innovative/article/view/2845>

⁹ Danang Wirahutama, Widodo Tresno Novianto, Noor Saptanti. "Legal Capacity and the Authenticity of Signatures by Convicts in Signing Authentic Deeds". *Masalah-Masalah Hukum* 47, no. 2 (April, 2018). <https://ejournal.undip.ac.id/index.php/mmh/article/view/17540>

¹⁰ Iqbal Fadhliyan, Sri Walny Rahayu. "Implementation of Building Agreement and Profit Sharing of Housing and Shophouses in Banda Aceh". *Jurnal Ilmiah Bidang Hukum Keperdataan Fakultas Hukum Universitas Sijah Kuala* 2, no. 3 (Agustus 2018). <https://jim.usk.ac.id/perdata/article/view/13406>

¹¹ Qatrunnada Alicia, Badriyah Siti Malikhatun and Prananda Rahandy Rizki. "Analysis Of Buy Back Guarantees In Agreements Between Banks And Developers On Home Ownership Loans". *Diponegoro Law of Journal* 13, no.2 (2024). 1-15. <https://ejournal3.undip.ac.id/index.php/dlr/>.

agreement and to receive compensation for damages and after-sales services.¹² Issues of default and lack of consumer protection constitute violations of statutory regulations. For instance, in Decision No. 9/Pdt.G/2021/PT.BTN, a consumer (Ollan) purchased a shophouse to operate a pet shop from a developer (PT. Modernland Realty) using KPR financing from Bank Danamon. The establishment of the pet shop required legal permits, such as a Building Permit, Sale and Purchase Deed, and Subdivision Certificate. However, the developer failed to obtain the Subdivision Certificate, preventing the Preliminary Sale and Purchase Agreement (PPJB) from being elevated to a Sale and Purchase Deed (AJB). Due to the legal uncertainty, the consumer sought to transfer the loan to another bank, only to be informed that the loan had been bought back by the developer under a Buy-Back Guarantee arrangement. As a result, the obligation to repay the KPR shifted to the developer.¹³

The consumer, unaware of the Accessory Buy-Back Guarantee Agreement a supplementary contract to the primary credit agreement ensuring the developer purchases defaulted consumer debts was asked to vacate the purchased shophouse. This scenario highlights both default and the lack of consumer protection. The initial agreement between the consumer and the developer stated that the property purchase would not result in disputes or claims from third parties. However, the absence of information about the Accessory Buy-Back Guarantee Agreement between the bank and the developer violated consumer protection laws as stipulated in the Consumer Protection Act.

Based on these issues, this study aims to address the fulfillment of consumer protection principles by judges in Decision No. 9/Pdt.G/2021/PT.BTN concerning KPR agreements with Buy-Back Guarantee clauses and the assurance of consumer rights fulfillment and protection in such agreements.

This research purposes to analyse the legal certainty resulting from the application of the Buy Back Guarantee clause in the Home Ownership Credit (KPR) agreement by examining the case in Decision No. 9/Pdt.G/2021/PT.BTN. In addition, this research also purposes to evaluate if the implementation of the clause in the decision has provided legal certainty in accordance with the principles of law and is able to create justice for the parties involved. In theoretically, this research is expected to be a reference for similar problems and can support the development of a more in-depth study of the Buy Back Guarantee agreement. This research also aims to broaden insights, develop knowledge, and create new concepts related to this topic. Practically, this research is expected to provide understanding to people who will make home loans so they can better understand the contents of credit agreements, especially with the Buy Back Guarantee clause. Therefore, it is expected that all related parties, which are debtors, creditors, and developers, can better understand and communicate their respective obligations and

¹² Eleanora Fransiska Novita, Fitriana Diana. "Layanan Purna Jual dan Perlindungan Hukum Bagi Konsumen". *KRTHA BHAYANGKARA* 17, no. 2 (2023). 247-254. <https://ejournal.ubharajaya.ac.id/index.php/KRTHA/article/view/800/588>.

¹³ Tjahjana Dominicus Josephus Swanto , Iriansyah H, and Yeni Triana. "Settlement Of House Ownership Credit Agreements Against Debtors At Banking Institution". *Management Studies and Entrepreneurship Journal* 3, no. 1 (2022). 134-142. <http://journal.yrpiipku.com/index.php/msej>.

rights. This aims to minimise the occurrence of misunderstandings that can lead to default.

II. RESEARCH METHODS

The research method employed is a normative juridical legal study. This method involves analyzing legal facts and applicable legal regulations and can also include the analysis of cases related to the issues being addressed¹⁴. For data collection techniques, the author utilized library research with data analysed using descriptive analysis. Two approaches were adopted to examine legal materials: the Case Approach and the Statute Approach. The sources of data for this research include various laws and regulations as primary data, journals and articles as secondary data, and internet-based media as tertiary data.

III. DISCUSSION

Fulfillment of Consumer Protection Principles by Judges in Decision No. 9/Pdt.G/2021/PT.BTN Regarding Home Ownership Credit (KPR) Agreements with Buy Back Guarantee Clauses

Judicial decisions must be based on judicial considerations, which are vital for achieving justice (*ex aequo et bono*). Judges must ensure that their considerations provide legal certainty and benefits to all parties involved. Therefore, such considerations must be thorough, accurate, and precise¹⁵. This principle is explicitly stated in Chapter IX Article 24 of the 1945 Constitution and Law No. 48 of 2009 on Judicial Power.

In their deliberations, the judges in Decision No. 9/Pdt.G/2021/PT.BTN acknowledged several documents as valid and binding, including the Preliminary Sale and Purchase Agreement (PPJB) No. KM/SP/13/05/0043 and the Credit Agreement between the parties. Additionally, the judges deemed the buy-back action valid. However, in this case, Defendant I failed to fulfill their commitment to deliver documents within one year. This failure disrupted the consumer's right to legal certainty over the shophouse ownership, which also affected the credit arrangement undertaken by the plaintiff. Without complete legal documentation, the plaintiff was unable to claim mortgage rights from Defendant II, resulting in an unsecured loan. The judges' ruling required the defendants to hand over the land and building in a vacant condition and imposed penalties (*dwangsom*) for delays in the delivery of the shophouse.

¹⁴ Kristiawanto. *Understanding Normative Legal Research*. (Jakarta: Prenadamedia, 2022). https://books.google.co.id/books?id=dVW6EAAAQBAJ&printsec=frontcover&hl=id&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

¹⁵ Yohana Victory Waruwu. "Juridical Analysis of the Basis for Judges Considerations in Passing Sentences Against Sellers Who Cause Losses to Buyers Due to Default in Product Sale and Purchase Agreements". *Repository Universitas HKBP Nommensen* (Oktober 2022).. <https://repository.uhn.ac.id/handle/123456789/7274>

Judicial Considerations and Inconsistencies with Legal Facts¹⁶:

1. Recognition of Documents : The panel of judges recognized the PPJB and the Credit Agreement as valid and binding. However, these considerations were inconsistent with Law No. 8 of 1999 on Consumer Protection. The defendants' failure to deliver essential legal documents, such as the Building Permit (IMB), Subdivision Certificate, and Sale and Purchase Deed (AJB), prevented the plaintiff from using the shophouse for a pet shop and veterinary clinic. This constituted a violation of the consumer's rights to certainty, comfort, and security in transactions, as stipulated in Article 4 of the Consumer Protection Act.
2. Legitimacy of the Buy-Back Action: The judges deemed the buy-back action valid despite Defendant I's failure to provide the required legal assurances. According to Article 1239 of the Indonesian Civil Code, a party failing to fulfill a contractual obligation is considered in breach of contract. In this case, Defendant I's failure to deliver documents within the agreed timeframe disrupted the consumer's ownership rights and affected the credit arrangement. Without complete legal documentation, the plaintiff was unable to establish mortgage rights with Defendant II, rendering the credit unsecured.
3. Banking Compliance: Bank Indonesia Regulation No. 23/2/PBI/2021 mandates that banks ensure valid guarantees are in place before disbursing property loans. In this case, Defendant II failed to comply with this requirement, as the KPR loan was issued without proper collateral documentation. This failure increased the risk to the plaintiff, who should have been protected under banking regulations by adequate legal safeguards.
4. Penalties for Delay (Dwangsom): The court's ruling to impose penalties for delayed delivery is consistent with breach-of-contract principles. However, under Article 6 of the Consumer Protection Act, the damages suffered by the plaintiff due to the inability to use the shophouse for commercial purposes were not fully remedied by these penalties. This indicates that consumer protection principles were not fully upheld, necessitating stricter enforcement of consumer rights.
5. Obligations Under the Banking Act: Article 8 Paragraph (1) of the Banking Act emphasizes the importance of collateral as a key prudential principle in credit issuance. If the bank fails to verify the collateral documentation for the pledged property, as in this case, the bank is in violation of this provision. This failure disadvantages the consumer, leaving the credit unprotected by valid collateral.

Guaranteeing the Fulfillment and Protection of Consumer Rights in KPR Agreements with Buy Back Guarantee Clauses

In life, individuals cannot avoid basic needs such as clothing, food, and housing, and naturally, everyone strives to fulfill these needs. One of the primary necessities is

¹⁶ Arifin Raja Achmad and Mahmud Hamidullah. "Analysis Of KPR Sejahtera Ib Financing With Murabahah Akad At Bank BRI Syariah KCP Serpong". *Journal of Da'nab Management* 9, no. 1 (December, 2021). 186-212. <http://journal.uinjkt.ac.id/index.php/jmd>.

housing.¹⁷ Housing can be understood as essential protection from the weather and a place where individuals can gather to feel safe and secure. Over time, housing has also come to serve as a space for storing belongings and resting. Nowadays, housing is not limited to standalone houses but can also include apartments or shophouses. Shophouses are a practical choice because they can function both as commercial spaces and as places of residence, maximizing the utility of the building and making the costs more efficient. This aligns with the purpose of Home Ownership Credit (KPR), as KPR facilitates immediate access to housing for individuals. Given the increasing population density in Indonesian cities, KPR services help meet the public's housing needs and contribute to achieving societal welfare and prosperity¹⁸.

To fulfill the requirements for KPR, a binding process or agreement must be undertaken. This agreement is referred to as the Home Ownership Credit (KPR) Agreement, which is designed to provide legal certainty for all parties involved. The agreement involves three parties: the bank, referred to as the creditor or provider of KPR facilities; the consumer, referred to as the debtor or buyer of the house/shophouse; and the developer, acting as the guarantor. The relationships among these three parties can be described as follows:

1. The relationship between the debtor and the developer involves a sales transaction.
2. The relationship between the debtor and the creditor involves borrowing and lending.
3. The relationship between the developer and the debtor is that of a guarantor/surety¹⁹.

The relationship between the developer and the debtor as a guarantor is formalized through an accessory agreement known as the Buy Back Guarantee. This additional agreement is used when the developer's properties are still under construction (indent properties), making it impossible to secure collateral with a mortgage right because the land certificate is still under the developer's master certificate. This agreement is created by the developer and submitted to the bank. The developer guarantees that if the consumer/debtor defaults on their credit agreement, or if the property cannot be secured with a mortgage due to the absence of a certificate and the Sale and Purchase Deed (AJB) cannot be completed, or if the construction of the house/shophouse is not completed on time²⁰, the developer will repurchase the property financed by the bank and settle all of

¹⁷ Wulandari Nina. "Legal Protection for Bank Debtors in Home Ownership Loan Agreements (KPR)". *Journal of Legal Globalization* 1, no. 1 (April, 2024). 114-127. <https://e-journal.trisakti.ac.id/index.php/globalisasihukum/issue/view/1187>.

¹⁸ Elfrida Putri Ananda, Ajat Sudrajat. *Loc. Cit.*

¹⁹ Kosasih, R. M, Nurdin, A. R. "The Role of Notary in Cooperation Agreement Between Developer and Bank for Mortgage Distribution". *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7 no. 1 (2023). <https://doi.org/10.58258/jisip.v7i1.4190>
<https://ejournal.mandalanursa.org/index.php/JISIP/article/view/4190>

²⁰ Kharisma, D. "Buy Back Guarantee and the Development of Contemporary Collateral Law in Indonesia". *Privat Law* 3, no. 2 (2015). <https://media.neliti.com/media/publications/164388-ID-buy-back-guarantee-dan-perkembangan-huku.pdf>

the debtor's obligations. The relationship between the bank and the developer is a cooperative partnership that binds both parties with mutual obligations. The process begins with the bank disbursing funds to realize the KPR for financing the property purchase, while the developer is responsible for processing and delivering the property's legal documents. These documents are then held by the bank as collateral and are handed over to the debtor once the KPR is fully paid off.²¹

The Buy Back Guarantee clause in Home Ownership Credit (KPR) agreements aims to provide additional protection for consumers in specific situations, such as payment defaults, as regulated by Article 1820 of the Indonesian Civil Code. This clause transfers the responsibility for debt repayment from the consumer to the developer. However, its implementation in protecting consumer rights remains unclear, often due to a lack of transparency and potential risks that disproportionately burden consumers²². While the clause is intended to protect the bank as the lender, the developer as the seller, and the consumer as the buyer, it often fails to meet consumer expectations. One major issue is the lack of transparency, as consumers are frequently not fully informed about the clause, which is often embedded in accessory agreements without detailed explanation²³. This lack of clarity can cause issues, particularly when the transfer of credit responsibility to the developer directly affects the consumer's property ownership. Consumers may not receive adequate information about the process, leaving their ownership rights unclear²⁴. If developers fail to fulfill their obligations, such as delivering legal documents like the Sale and Purchase Deed (AJB), consumers risk losing their rights to the property they have purchased, resulting in violations of consumer rights that should be safeguarded by law.

The Buy Back Guarantee clause is also designed as a standard clause, meaning consumers have little choice but to accept it. Consumers are not given the opportunity to negotiate the clause and are forced to accept conditions that may disadvantage them²⁵. This situation disproportionately benefits developers and banks, while consumers become more vulnerable to risks. If the developer fails to fulfill their responsibilities after assuming the debt, consumers are placed at an even greater disadvantage. Additionally, there are instances where, after taking over the debt from the bank through the Buy Back Guarantee clause, the developer fails to meet their obligations. For example, in this case, the developer did not complete the processing of key legal documents, such as the Sale

²¹ Husin Farid. "Cooperation Agreement Between The Perpetrators Of The Construction Of Flats With Banks On The Sale Of Flats Through The Pre-Project Selling System". *E-journal: Spirit Pro Patria* 4, no. 1 (2023). 30-45. <https://jurnal.narotama.ac.id/index.php/patria/article/download/624/368>.

²² Prasetyo, B. "Legal Implication of Buy Back Guarantee Clause in Mortgage Agreement in Indonesia". *Jurnal Hukum dan Kebijakan* 14, no. 1 (2021).

²³ Wardani Sudibyo Prasetyo. "Consumer Protection in Home Ownership Credit Transactions: Analysis of Buy Back Guarantee Clauses". *Jurnal Ilmu Hukum* 9, no. 2 (2018). 180-193. <https://ejournal.unri.ac.id/jurnal-ilmu-hukum/article/view/1024>

²⁴ Hakim Fauzan. "Standard Clauses in KPR Agreements: A Case Study of Buy Back Guarantee Implementation". *Jurnal Ekonomi dan Hukum* 11, no. 3 (2018). 215-230. <https://ejournal.staidu.ac.id/index.php/economic/article/download/1144>

²⁵ Amelia Dahlia. "Weaknesses and Implications of the Buy Back Guarantee Clause in Property Credit Agreements". *Jurnal Hukum Ekonomi* 5, no. 2 (2018). 137-150. <https://jurnal.bisnislombok.ac.id/index.php/lawEkom/article/download/1867/987>

and Purchase Deed (AJB) and the Subdivision Certificate, leaving consumers without legitimate ownership rights to the property they purchased²⁶. This situation significantly harms consumers, who should be protected under the agreements binding all three parties. However, when the developer fails to fulfill their responsibilities, consumers lose the protection promised by the Buy Back Guarantee clause. Law No. 1 of 2011 on Housing and Settlement Areas, Article 47, stipulates that developers are required to ensure the construction of houses/shophouses aligns with the sale and purchase agreement made with consumers. However, in this case, the developer did not fulfill their promise under the Preliminary Sale and Purchase Agreement (PPJB) to provide legal documents within one year.

The inability of developers to complete the processing of legal documents, such as subdivision certificates, can result in consumers being denied legal assurance over the property they have purchased. Mortgage rights or legal guarantees are essential to ensure that consumers have legitimate ownership of the property²⁷. However, in the case examined in this study, the developer failed to complete the necessary processes, leaving consumer ownership rights unclear and legally weak. As a result, consumers lack strong protection in the event of future disputes. Although the Buy Back Guarantee clause was originally designed to protect all parties in KPR agreements, it often fails to ensure the fulfillment and protection of consumer rights.²⁸ The lack of transparency, violations of consumer rights to complete information, and the developer's inability to meet its obligations place consumers in a vulnerable position. Therefore, for the clause to effectively protect consumers, full transparency must be ensured from the beginning, and the parties involved, especially the developer, must fulfill their obligations as agreed in the contract. Otherwise, consumers will continue to face the risk of losing their rights without strong legal protection.

According to the Indonesian Civil Code (KUHPer), every agreement must meet the legal requirements of validity as stipulated in Article 1320, including clear mutual consent and fairness to all parties involved²⁹. KPR agreements with Buy Back Guarantee clauses do not adhere to these principles due to insufficient transparency between the bank and the developer toward the consumer regarding the details of the agreement. Therefore, in the case analyzed in this study, it is crucial to address the violations within the agreement and

²⁶ Surya, N. Legal Certainty for Consumers in Property Credit Transactions. *Jurnal Hukum Properti* 7, no. 4 (2020). <https://journal.yrpiaku.com/index.php/msej/article/download/389/277>

²⁷ Kaharap Gromiko. "Developer's Responsibility in Payment Guarantee Deed related to the Provision of Home Ownership Credit Facilities". *NOLAJ* 2, no. 3 (July, 2023). 244-251. <https://notarylaw.journal.ulm.ac.id/index.php/nolaj/article/download/48/42>.

²⁸ Maghfira Suwintha Rizkika. Analysis Of Legal Protection Against Debtors Of Paid-Off Mortgages That Have Not Yet Received Certificates. *Scientific Journal of Legal Sciences* 1, no. 1 (2023). 302-317. 10.28946/lexl.v5i3.2389.

²⁹ Indah Mayasari. "Standard Clauses and Consumer Protection in Banking Transactions". *Jurnal Ekonomi dan Hukum* 8, no. 3. 2021. 321-337.

<https://journal.umy.ac.id/index.php/mlsj/article/download/1322/7023>

protect the rights of consumers who have fulfilled their obligations but have not obtained legal ownership of the purchased property.³⁰

Ministerial Regulation of Public Works and Housing (PUPR) No. 16 of 2021 on the Implementation of Preliminary Sale and Purchase Agreements stipulates the obligation of developers to deliver key documents, such as subdivision certificates, to buyers within the specified timeframe³¹. The failure of developers to fulfill this obligation can be considered a breach of contract (*wanprestasi*), and judges, in their rulings, must ensure that consumers are not disadvantaged by the developer's actions. Judicial decisions can uphold consumer protection principles if the judges' considerations emphasize that consumers, as the weaker party in this legal relationship, are protected from harmful practices, including hidden clauses such as the Buy Back Guarantee, which are not clearly explained to consumers.

The existence of an accessory agreement within a contract must be disclosed to all relevant parties. In this study, the KPR agreement involves an additional accessory agreement between the bank and the developer, incorporating the Buy Back Guarantee clause. According to the validity requirements for agreements outlined in Article 1320 of the Indonesian Civil Code, a valid agreement requires mutual consent from all parties. However, in this case, the consumer as the debtor was not informed about the existence of this additional agreement. Article 7 of the Consumer Protection Act mandates that businesses (banks/developers) provide accurate, clear, and honest information about the goods and services they offer and ensure legal certainty for consumers. Furthermore, Article 4 of the Financial Services Authority Regulation (POJK) No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector states that banks are obligated to disclose all information related to consumers, ensuring the information is accurate, clear, and honest. This information must be provided at the time the agreement is formed.

IV. CONCLUSION

With Decision No. 9/Pdt.G/2021/PT.BTN, the importance of legal protection for consumers in Home Ownership Credit (KPR) agreements involving Buy Back Guarantee clauses becomes evident. Although the judges in this decision acknowledged certain documents and the Buy Back Guarantee mechanism as valid, their considerations did not adequately address the legal protection of consumer rights. The Buy Back Guarantee clause should function as an automatic protection mechanism to shield consumers from potential default risks. However, the decision failed to consider provisions outlined in various laws, resulting in the principles of consumer protection not being fulfilled in this case. Additionally, banks should play an active role in enforcing consumer rights and

³⁰ Siregar Hendrik Fasco, Nurwulan Siti, and Fania Frieda. "Payment Guarantee Legal Certainty Mitigates Bank and Developer Contract Risk". *Pamator Journal* 14, no. 1 (April 29, 2021). 15-21. doi.org/10.21107/pamator.v14i1.8585.

³¹ Endah, S. "Legal Analysis of Credit Agreements that Use Mortgage Rights: A Review from the Consumer's Perspective". *Jurnal Kajian Hukum Properti*, 6(4). 2018. p. 410-425. <https://repository.unida.ac.id/index.php/jurnal-hukum-properti/2123/1/>

ensuring that developers meet their obligations, including implementing the buy-back mechanism when necessary. KPR agreements with Buy Back Guarantee clauses cannot be said to fully guarantee the fulfillment and protection of consumer rights. The lack of information and transparency surrounding this clause instead disadvantages consumers. While the clause was initially designed to protect all three interconnected parties, in this case, it ultimately harmed the consumer. Clear agreements among parties are crucial to avoid misunderstandings that could lead to default. Transparency and certainty in agreements are essential to prevent consumers from incurring losses due to legal uncertainty in KPR transactions involving Buy Back Guarantee clauses.

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