

**HOMEOWNERSHIP CREDIT LAW REVIEW:****Study of Decision Number 352 /Pdt.Sus-BPSK/2018/PN Mdn**Khalimah Nuraini Ridho Putri<sup>1</sup>, Kelik Wardiono<sup>2</sup><sup>1</sup> Muhammadiyah University of Surakarta ([khalimahputri9@gmail.com](mailto:khalimahputri9@gmail.com))<sup>2</sup> Muhammadiyah University of Surakarta ([kelik.wardiono@ums.ac.id](mailto:kelik.wardiono@ums.ac.id))**ABSTRACT**

This study aims to find out how legal considerations are by judges in Consumer Protection Disputes Against Home Ownership Credit (KPR) Ruling Number 352 /Pdt.Sus-BPSK/2018/PN Mdn. The author uses a research strategy known as normative juridical. The results in this study are legal considerations by judges in Decision Number 352 /Pdt.Sus-BPSK/2018/PN Mdn in accordance with the legal arrangements regarding Home Ownership Credit, namely PBI No. 20 of 2018. The judge's decision is to grant the objection request to the decision of the Consumer Dispute Settlement Agency (BPSK) Number 033/Arbitration/2018/BPSK. Mdn. Petitioner for the whole; Cancel the Decision of the Consumer Dispute Settlement Agency (BPSK) Number 033/Arbitration/2018/BPSK. Mdn 03 May 2018 ; Sentence the Respondent to pay court fees which to date have been set at Rp. 586,000.00 (five hundred eighty six thousand rupiah)

Keywords: Home Ownership Loans, Consumer Protection

**INTRODUCTION**

One of the needs of life that has not changed despite the extraordinary advances in science and technology in the current era of globalization is the need for housing. A house as a basic need is also reflected in Article 28 H paragraph 1 of the 1945 Constitution which guarantees the fulfillment of a place to live for the people as a fulfillment of their basic human rights. The 1945 Constitution mandates that the right to settle is one of the state's obligations to fulfill its people. Article 28H paragraph 1 of the 1945 Constitution emphasizes that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good living environment and the right to receive health services.

Throughout January-March 2021, the National Consumer Protection Agency (BPKN) recorded 154 complaints received. Of the total 154 complaints, 129 of them came from housing consumer complaints. Home Ownership Credit (KPR) is a favorite product because it makes it easy for consumers to own their own home with an installment payment system to the bank. KPR financing at conventional banks uses interest principles, which is different from sharia banks which use sharia contracts that are not based on interest rates.<sup>19</sup>

The cause of many housing cases basically begins with a mismatch between what is stated in the brochure and the reality that consumers receive when occupying the house. Such as the low quality of the technical specifications of the house, differences in land area, delays in handing over the building, problems with social and public facilities, and so on. Yusuf Shofie said that the marketing carried out by developers is very tendentious, so it is not uncommon for the information conveyed to turn out to be misleading (misleading information) or incorrect, even though consumers have already signed a Sales and Purchase Agreement (PPJB) with the developer, or even have a credit agreement with the bank. home

<sup>19</sup>Kusumaningrum., Trihantana., and Dahlia. 2022. Consumer Protection on Home Ownership Credit. Sahid Banking Journal Volume I Number 2 E-ISSN: 2808-7402 P-ISSN: 2808-4381. <https://jurnal.feb-inais.ac.id/index.php/SahidBankingJ>

ownership credit provider<sup>20</sup>

Several housing cases that have occurred generally position consumers as a weaker group compared to developers. Both from a socio-economic perspective, technical knowledge and the ability to take legal action through court institutions. Legal protection is not guaranteed as expected and desired by consumers. As for Law Number 8 of 1999 in article 4, it is explained that consumers have the right to obtain their rights.

In this case PT. Grha Kirana Development is a company operating in the housing credit sector in Medan City. One example of the case is related to the construction of the Kirana Garden housing project which was not completed according to the targets given, this case is subject to a decision Number 352/Pdt.Sus-BPSK/2018/PN Mdn dated 6 June 2018. . The role of judges as law enforcers can be used through their decisions as benchmarks in efforts to achieve legal clarity. An objective court decision that is fair (*ex aequo et bono*) and legally binding is worth more than the sum of its parts because of the weight the judge gives it. Apart from that, it provides benefits for the parties involved, so the judge's thoughts must be given due diligence. The High Court or Supreme Court may overturn a lower court's decision if it determines that the lower court lacked sufficient rigor, quality, and care in reaching its conclusion.<sup>21</sup>

The aim of this research is to find out how the judge considers legal considerations in Consumer Protection Disputes regarding Home Ownership Credit (KPR) disputes Decision Number 352 /Pdt.Sus-BPSK/2018/PN Mdn.

## RESEARCH METHODS

The research method used is a legal research method with a non-doctrinal approach, which is normative in nature, to search for the correct answer by proving the truth sought in or from social facts that have legal meaning as they have been interpreted and become part of the world of meaning that lives in the environment of a society<sup>22</sup> which is based on primary and secondary data in the form of an explanation of the legal considerations by the judge in the decision 352 /Pdt.Sus-BPSK/2018/PN Mdn and literature study. The data that has been obtained and processed will then be analyzed qualitatively using deductive logic.

## RESULTS AND DISCUSSION

### Legal Norms for Home Ownership Credit (KPR)

The legal regulation regarding Home Ownership Credit is PBI No. 20 of 2018. According to Article 15 paragraph (1) PBI No. 20 of 2018 states:

- a. Banks that provide KP or PP for ownership of property that is not yet fully available are required to fulfill the following provisions:
  - 1) Problematic Credit Ratio or net problematic financing ratio as intended in Article 8 paragraph (1) letter a and problematic KP ratio or gross problematic PP ratio as intended in Article 8 paragraph (1) letter b;
  - 2) Have a cooperation agreement between the Bank and the developer which at least contains the developer's ability to complete the Property in accordance with what was agreed with the debtor or customer;
  - 3) Having a guarantee provided by the developer or other party to the Bank:

<sup>20</sup>Yusuf Sophie. 2018. Consumer Protection and Legal Instruments, Citra Aditya Bakti, Bandung, p. 86

<sup>21</sup>Fence M. Wantu. *Idee Des Recht*, (2011). Legal Certainty, Justice, and the Benefits of Implementation in the Civil Justice Process. Student Library, Yogyakarta.

<sup>22</sup>Dimiyati, Khudzaifah. 2016, *Legal Research Methods*, Surakarta: Faculty of Law, Muhammadiyah University of Surakarta. Pg 6

- a) Which can be used to settle the developer's obligations if the Property cannot be completed and/or cannot be handed over in accordance with the agreement; And
  - b) The guarantee value is at least the difference between the KP or PP commitment and the KP or PP disbursement that has been made by the Bank;
- b. Does not violate the specified number of KP or PP facilities for Property ownership that are not yet fully available.

Based on the description of Article 15 paragraph (1), it can be seen that a home ownership credit must have a cooperation agreement between the bank and the developer (developer) which contains the developer's ability and ability to complete the home ownership credit project which will later become the property of the consumer in accordance with what is stated. has been agreed. Agreement or also commonly called a contract. Furthermore, Article 1338 paragraph (1) of the Civil Code states that all agreements made legally apply as law for those who make them.

If there are customers who want to take out Home Ownership Credit, there are still many who don't understand the legal arrangements, but both developers and banks are usually able to easily provide information to customers who don't really understand what the legal regulations regarding Home Ownership Credit are.

### **Legal Considerations by Judges in Examining and Deciding Home Ownership Credit (KPR) Disputes**

#### **a. Petitioner's Objection**

The Petitioner objects to the BPSK decision and for that reason the Petitioner requests that the Chairman of the Medan District Court or the Panel of Judges examine, decide and annul the BPSK Decision.

#### **b. Answers & Exceptions**

- 1) That the Defendant emphatically rejects the arguments of the Pelawan Resistance in their entirety except insofar as those admitted to be true in the a quo answer.
- 2) Whereas Pelawan in his arguments for resistance basically argued that he had denied and argued that there was no legal relationship between
- 3) Pelawan with Defendant, so that Defendant is mistaken and has made a mistake in demanding legal responsibility against Pelawan regarding the construction of the Grha Kirana housing complex, namely Kirana Garde, which was carried out by Pelawan. For this reason, it is very reasonable for the law against the a quo Resistance to be granted.
- 4) That the arguments of Pelawan's resistance a quo have no legal grounds and are in fact so wrong that they must be rejected because the Defendant has been correct and correct in asking for legal responsibility against Pelawan as a business actor regarding the construction of the Kirana Garden housing project built by Pelawan using an objection mechanism through the Agency Medan City Consumer Dispute Resolution (BPSK).

#### **c. Judge's considerations**

- 1) After paying attention to evidence PK-1, namely BPSK Decision Number. 033/Arbitrase/2018/BPSK-Mdn dated 03 May 2018 in its legal consideration states that regarding the ordering of housing units between consumers and PT. Grha Kirana Development in purchasing Kirana Garden Housing, where the consumer has made a total payment of Rp. 82,694,625,-,
- 2) PT. Grha Kirana Development in the housing business unit sector has lied about not being able to hand over building units as per the promotions that have been carried out by Pelawan as the developer so that the time set is 18 (eighteen) months for handing over housing units that are ready to be built / The humi by Pelawan turned out to be never ready and never carried out, in fact, up to now, it has been more than a year since the construction of the Pelawan housing unit has not been completed / it is not clear
- 3) According to the information that Defendant obtained, there are still many other consumers from Pelawan who filed similar lawsuits as Defendant did a quo because Pelawan as a Business Actor has

deceived consumers (ic. Including Defendant) regarding the construction of the Kirana Garden housing complex.

- 4) Whereas in the case of Dilawan as a consumer, he has repeatedly reminded and asked for legal responsibility and the fulfillment of Pelawan's promises as a business actor. However, to date Pelawan has never realized the construction of the building unit in question, so that Pelawan has finally resorted to/made a complaint through the Medan City Consumer Dispute Settlement Institution/Agency (BPSK). Namely so that the opponent can return / hand over the money / fees that have been deposited

#### d. Judge's Decision

- 1) Granted the Request for Objection to the Decision of the Consumer Dispute Resolution Agency (BPSK) Number 033/Arbitrase/2018/BPSK. Mdn applicant for all
- 2) Cancel the Decision of the Consumer Dispute Resolution Agency (BPSK) Number 033/Arbitrase/2018/BPSK. Mdn 03 May 2018;
- 3) Sentencing the Respondent to pay the court costs which as of today have been set at Rp. 586,000.00 (five hundred and eighty-six thousand rupiah);

#### **Legal Considerations by Judges in Examining and Deciding Home Ownership Credit (KPR) Disputes Decision Number 352 /Pdt.Sus-BPSK/2018/PN Mdn (Category: Judges' Philosophical, Sociological and Juridical Considerations)**

Indonesian judges must be able to reflect in each article text relating to facts that their decisions have high philosophical considerations, especially those characterized by the character of decisions that are godly, humane, maintain unity, full of benevolence, and have an aura of Pancasila values. what happens in court is the verdict. These principles are enshrined in the Constitution of the Republic of Indonesia which was written in 1945.<sup>23</sup>The judge's considerations consist of philosophical, sociological, juridical considerations and the facts in the trial. According to the author, the judge's considerations in the a quo decision must fulfill the three elements above.<sup>24</sup>Philosophy in this context refers to the spiritual principles of the Indonesian state, as stated in documents such as Pancasila and the Preamble to the 1945 Constitution. Juridical considerations or reasons, which illustrate that regulations are formed to overcome legal problems or fill legal gaps by considering existing regulations. , will be changed, or will be revoked to guarantee a particular result; sociological considerations, which explain that regulations are formed to meet community needs in various aspects; and empirical facts regarding the development of problems and needs of society and the country.

Regarding the fact whether the judge has properly considered fulfilling these three elements, it is proven in the copy of the aquo decision, namely

"Considering, that due to the objection submitted to the Decision of the Medan City Consumer Dispute Settlement Agency (BPSK) Number 033/Arbitrase/2018/BPSK Mdn dated 03 May 2018 on grounds other than the provisions referred to above, the Panel of Judges will provide legal considerations Alone;"

This means that the district court judge is aware and obedient that the problem of the respondent's objection is the responsibility and authority to try and decide the a quo case so that in accordance with our Pancasila philosophy, each of us has the same views in the eyes of the law, meaning that regardless of who is involved in the law, we have rights. and the same obligation to comply with it. Fulfillment of the right to a sense of justice as a result of a legal incident can be obtained from legal considerations by the judge in court. So, based on this, the author assumes that the panel of judges has provided legal considerations based on philosophy.

Second, the sociological element, the researcher attaches the judge a quo's considerations below:

<sup>23</sup>Ahmad Kamil, *Philosophy of Judge's Freedom* (Jakarta: Kencana Prenada Pratama, 2012), p. 305.

<sup>24</sup>Meaning of Philosophical, Sociological and Juridical Foundations <https://www.hukumonline.com/klinik/a/arti-landasan-filosofis--sociologis--dan-yuridis-lt59394de7562ff> accessed March 8, 2023

"Considering, that to prove the arguments of the objection, the Objecting Petitioner submits proof of letters marked P-1 to P-2, while the Respondent Objects submits proof of letters marked T-1 to T-8;"

"Considering, that after carefully reading and studying the Objection Petition and the Response from the Objection Respondent as well as examining the evidence in letter P-2, it was found that a legal relationship existed between the Objection Petitioner and the Objection Respondent based on the Sale and Purchase Agreement for Land and Building of Kirana Garden No. 026-PPJB/GKDKG/CLR 3/R3B 05/II/2016, dated 15 February 2016"

Based on the copy of the judge's considerations above, the conflict between the objections of the applicant and the respondent has been explained by attaching some of the available evidence. The researcher analyzes that the panel of judges has fulfilled the sociological elements seen from its considerations in explaining the empirical problems of the aquo decision, the case of which has previously been decided by an arbitration dispute resolution institution or called BPSK.

Then, regarding the juridical element, the researcher agrees that the panel of judges has included this element in its legal considerations as evidenced by the fragment of a copy of the decision below:

"Considering, that based on the Petitioner's objections and the Respondent's answers and in connection with the above facts, the Respondent objects to ordering 1 (one) housing unit as stated in Order Letter No. 15080030248 (proof P-1 = T-1); Considering, that in the clauses of the deed of agreement, the parties, namely the Objection Petitioner and the Objection Respondent, have agreed to choose the domicile of the Lubuk Pakam District Court; Considering, that the Petitioner and the Respondent object to the Sale and Purchase Agreement of Kirana Garden Land and Building No. 026-PPJB/GKD-KG/CLR 3/R3B 05/II/2016 article 22;"

#### **Comparison Legal Norms for Home Ownership Credit (KPR) with Legal Considerations by the Judge**

The legal regulation regarding Home Ownership Credit is PBI No. 20 of 2018. According to Article 15 paragraph (1) PBI No. 20 of 2018 states:

a. Banks that provide KP or PP for ownership of property that is not yet fully available are required to fulfill the following provisions:

**1) Problematic Credit Ratio or net problematic financing ratio as intended in Article 8 paragraph (1) letter a and problematic KP ratio or gross problematic PP ratio as intended in Article 8 paragraph (1) letter b;**

On Home Ownership Credit disputes Number 352 /Pdt.Sus-BPSK/2018/PN Mdn does not reveal any problems with the non-performing credit ratio or non-performing financing ratio for either KP or PP but with the completion of development Kirana Garden Housing, the completion of which is not in accordance with the agreement between the Petitioner and the Respondent.

**2) Have a cooperation agreement between the Bank and the developer which at least contains the developer's ability to complete the Property in accordance with what was agreed with the debtor or customer;**

The applicant is PT. Grha Kirana Development and Lambok Budiman Hutagalung have agreed that the handover of the house will take 18 months from the signing of the SPPR as contained in the agreement on the sale and purchase of the land and building of Kirana Garden No. 026-PPJB/GKD-KG/CLR3/R3B05/III/2016 dated 15 February 2016. PT. Grha Kirana Development in the housing business unit sector has lied about not being able to deliver building units as per the promotions that have been carried out by Pelawan as the developer. This means that the time set for 18 (eighteen) months for the handover of the housing units which were ready to be built/humi by the Pelawan turned out to have never been ready and were never carried out, in fact, up to now, the construction of the opposing housing units has not been completed for more than a year. unclear

**3) Having a guarantee provided by the developer or other party to the Bank:**

**a) Which can be used to settle the developer's obligations if the Property cannot be completed and/or cannot be handed over in accordance with the agreement; And**

PT. Graha Kirana Development made a complaint through the Medan City Consumer Dispute Resolution Agency (BPSK) so that it could return the money according to the customer's deposit, namely a total of Rp. 82,694,625,-. That as a follow-up to PT. Grha Kirana Development, BPSK Medan City has issued the decision as intended in Decision No. 033/Arbitrase/2018/BPSK-Mdn dated 3 May 2018 between PT. Grha Kirana Development is fighting consumers

**b) The guarantee value is at least the difference between the KP or PP commitment and the KP or PP disbursement that has been made by the Bank;**

PT. Graha Kirana Development returns the money according to the customer's deposit, namely a total of Rp. 82,694,625.

**b. Does not violate the specified number of KP or PP facilities for Property ownership that are not yet fully available**

According to information from Lambok Budiman Hutagalung, there are still many other consumers from PT. Grha Kirana Development, which filed a similar lawsuit as Defendant, took a quo because Pelawan as the Business Actor had deceived consumers (ic. Including Defendant) regarding the Kirana Garden housing development.

## CONCLUSION

### Conclusion

The legal considerations by the judge in Decision Number 352 /Pdt.Sus-BPSK/2018/PN Mdn are in accordanceThe legal regulation regarding Home Ownership Credit is PBI No. 20 of 2018. The judge's decision is to grant the request for objection to the decision of the Consumer Dispute Resolution Agency (BPSK) Number 033/Arbitrase/2018/BPSK. Mdn Applicant in its entirety; Cancel the Decision of the Consumer Dispute Resolution Agency (BPSK) Number 033/Arbitrase/2018/BPSK. Mdn 03 May 2018; Sentencing the Respondent to pay the court costs which as of today have been set at IDR 586,000.00 (five hundred and eighty six thousand rupiah)

### Suggestion

1. The author's suggestion is for the government to be more assertive in supervising parties who violate applicable regulations, especially those related to Home Ownership Credit. The government can make a law regarding sanctions that must be accepted by parties implementing Home Ownership Credit without involving the banking sector
2. For the government to provide strict sanctions in laws and regulations, so that the implementation of legal protection for housing consumers runs well and smoothly, developers should have good faith and have a sense of responsibility in carrying out their business in the housing sector, and they should make a contract that balance between consumers and developers, so that each party between consumers and developers does not feel disadvantaged.

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