

Legal Consequences for House Ownership Credit (KPR) Debtors Related to Certificates That Have Not Been Transferred to Their Name Until The Credit Has Been Paid Off

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Abstract. *In everyday life, humans need a place to live as one of the three basic needs to support their lives. Humans need a house as a shelter to provide a sense of security. The 1945 Constitution of the Republic of Indonesia also guarantees the fulfillment of a decent and healthy place to live for everyone. However, not everyone has the financial ability to buy a house, so banks are present as an alternative that offers assistance facilities in the form of Home Ownership Credit (KPR). In practice, KPR transactions do not always run smoothly, sometimes there are obstacles or disputes faced by the parties. One of them is when the debtor has paid off his credit at the bank but the debtor has not received a certificate for the assets that have been paid off for years. The causes vary, one of which is because the name has not been changed on the certificate. This certainly has a detrimental impact on the debtor. This study discusses the legal consequences for KPR debtors who have paid off their KPR installments but the certificate is still not in the hands of the debtor. In the context of civil law, a certificate is valid evidence and provides legal certainty regarding a person's ownership of their property. The research method used is normative juridical by referring to the laws and regulations in force in Indonesia. The research was conducted by means of a literature study of secondary data sources. The results of the study indicate that certificates that have not been submitted to debtors because they have not been transferred can be detrimental to debtors legally because the debtor does not have legal certainty over the land he has purchased so that the debtor can request compensation and accountability from the developer and bank in accordance with the provisions of laws and regulations, especially Law No. 8 of 1999 concerning Consumer Protection.*

Keywords: Certificates; Credit; Debtors; Home; Ownership.

1. Introduction

Humans need basic needs to survive, including clothing, food, and shelter. These three are primary needs that must be met so that a person's life remains balanced. Without food, clothing, and shelter, a person will be vulnerable to health and safety problems. Article 28 H paragraph (1) of the Constitution of the Republic of Indonesia guarantees the right of every person to live in prosperity and live in a decent and healthy environment.

The human need for a decent place to live drives high demand for housing that meets standards of comfort and suitability. The Indonesian government, through various laws such as Law No. 1 of 2011 concerning Housing and Residential Areas and Law No. 39 of 1999 concerning Human Rights, also regulates the rights of every individual to have a decent place to live and live. This encourages developers to build various types of housing that can be accessed by the community.

Housing built by developers can be simple houses or luxury houses, subsidized or non-subsidized houses, and can be located in urban or suburban areas. Many people prefer to buy houses in areas managed by developers because it is practical, where the developer is responsible for everything from designing the building, to constructing the building until it can be occupied by the buyer. Buyers do not need to be bothered with the purchase of building materials, determining the contractor, even the construction process, they only need to make payments and wait for the house to be completed and then the house can be occupied after the handover by the developer.

However, many people do not have the ability to buy a house in cash, so banks provide solutions through Home Ownership Credit (KPR) facilities. Banks act as creditors who provide loan funds to the community. Buyers only need to pay a down payment (DP) agreed upon with the developer, and the remaining payment is paid in advance by the bank through KPR. Buyers then have an obligation to repay the credit provided by the bank by paying off the loan every month over an agreed period, usually for 10 to 20 years, adjusted to the debtor's ability to pay.

KPR facilities provide benefits for all parties. Home buyers can own a house without having to pay in full up front. Developers find it easier to sell the houses they build because there are banks that help buyers provide funds, which provides financial certainty for developers. Meanwhile, banks profit from interest payments imposed on debtors. Without KPR, someone would have to collect a very large amount of money to be able to buy a house. With KPR

facilities, buyers only need to provide a down payment that varies between 10% to 30% of the house price, depending on bank policy and the buyer's ability.

The Home Purchase Agreement through KPR is marked by the implementation of the Credit Agreement before a Notary/PPAT attended by the buyer, seller (developer), and bank. After the implementation of the credit agreement, the ownership rights to the land and building have been transferred from the developer to the debtor and the bank will transfer funds to the developer and the debtor's obligation to pay installments as agreed arises.

By making a credit agreement, the debtor becomes the new owner of the house so that the certificate must be processed from the previous one in the name of the developer to the name of the new owner, namely the debtor. The certificate is stored in the bank as collateral for the credit that has been given to the debtor with the intention of providing security for the bank if in the future the debtor is unable to fulfill his obligations to pay off the loan. If this happens, the guarantee will be executed to pay off the debtor's obligations. However, if the debtor succeeds in paying off his obligations until they are paid off, the debtor is entitled to the certificate and all legal documents for the house he has purchased and the bank is obliged to submit to the debtor what is the debtor's right.

In its implementation, KPR does not always run smoothly. There are several cases that are only discovered after the debtor has paid off his obligations to the bank. When carrying out his obligations as a debtor, the debtor knows that his obligation is to pay his debt until it is paid off and after it is paid off he is entitled to his house certificate. However, there are many cases where when the debtor has paid off his debt and wants to take his house certificate, the bank seems to be delaying and making things difficult. The debtor does not get clarity on the assets that have been paid off for so long. This uncertainty can even last for years.

Usually, banks will pass each other from one division to another, or pass each other with developers. However, it often happens that developers who build housing are no longer known. After being investigated, there are many things that cause banks to be unable to provide certificates to debtors, one of which is because the certificate has not been split and has not been processed for name change. This means that the certificate is still the parent certificate and is still in the name of the developer.

In this context, the master certificate is a certificate owned by the developer for one stretch of land owned by him that has not been divided or split into each housing unit sold. If a house has been sold, the developer must immediately take care of the division of the certificate and carry out the process of changing the name to the new owner. The division of the certificate is the process of issuing a new certificate as proof of ownership of a certain portion of land that is

separated from the main certificate. While changing the name is a legal procedure to transfer land ownership from the old owner to the new owner, in this case from the developer to the debtor. Changing the name must be done so that a person has legal certainty over the property he owns.

However, in practice, many "naughty" developers are found to be irresponsible and do not carry out their obligations. Incidents like this often occur because unprofessional developers ignore their duties and delay work, or it could even be because the funds that should be used to carry out the division and name change process are used for other purposes. On the other hand, this incident can be avoided if the bank carries out its duties properly. The role of the bank in this case is to monitor the developer in completing its obligations related to the administration of certificates for the houses it sells.

If the developer and/or bank fails to fulfill their obligation to submit and return the certificate that has been transferred to the debtor, it will certainly have a detrimental impact on the debtor. In civil law, failure to fulfill agreed performance or obligations can be considered a breach of contract that has the potential to cause losses to the debtor. The debtor as the injured party can sue the party that does not fulfill its obligations to be legally responsible, in this case the developer and the bank.

Legally, the debtor is entitled to a certificate as a valid proof of ownership of the land and buildings that have been paid for years, without a certificate a land and building owner cannot take legal action on his property. Default by the developer and bank demands responsibility to ensure that the debtor's rights can be fulfilled as agreed upon from the beginning.

This study aims to examine the legal consequences experienced by mortgage debtors as homeowners because they cannot own and control certificates for their property, namely land and buildings purchased through mortgages, which are only known by the debtor after paying off their obligations to the bank. This condition raises significant legal problems, both in terms of protecting the debtor's rights as consumers and in terms of the legal obligations that must be fulfilled by the bank and developer.

2. Research Methods

Research is a scientific activity that aims to obtain knowledge, data, and information through systematic, critical, and scientific methodology. In the Great Dictionary of the Indonesian Language (KBBI), research is explained as an investigation of a problem to obtain new facts or better interpretations. While legal research is a scientific process to find rules, theories, and legal principles that can answer existing legal issues.

The research method used in this study is a normative legal research method. Another name for normative legal research is doctrinal legal research which is also called library research or document study.¹ In normative legal research (legal research) research is conducted by examining library materials and document studies which are also called library research. In this study, researchers use secondary data as research materials. Secondary data is library data that contains legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials.

Data collection techniques are carried out through library research and field research as support. Library research is carried out to obtain primary, secondary, and tertiary legal materials.² Primary legal materials are materials originating from statutory regulations, both the Constitution and the statutory regulations in force in Indonesia.

This research carried out with descriptive-analytical research specifications, namely analyzing the relationship between applicable laws and regulations with legal theories and the practice of implementing positive law in relation to the problems discussed. This study aims to describe the legal consequences that will be experienced by debtors who cannot get their rights in the form of a certificate for a house that they have purchased through a mortgage and have been paid in full. The results of the study are expected to provide an overview of the implementation of the law and its impact on consumer rights that must be protected.

3. Result and Discussion

3.1. The Legal Consequences for Mortgage Debtors Who Have Not Received a Certificate Until the Credit is Paid Off

A person's ownership of an object, such as land and buildings, is not only based on physical control, but must also be supported by valid legal evidence. A land title certificate is a valid and strong evidence recognized by the state as proof of ownership. Based on Article 32 and Article 3 of Government Regulation No. 24 of 1997 concerning Land Registration, a certificate functions as an authentic means of proof and can be used to identify the legitimate owner in order to provide legal certainty and protection for its holder/owner. Therefore, even though the debtor has paid off his obligations to the bank, without a certificate, the debtor does not yet have legal force and strong evidence of the land and buildings he purchased through the KPR.

¹Baro, Rachmad, (2016). *Penelitian Hukum Non Doktrinal*, Yogyakarta: Deepublisher, p. 2.

²Hartono, Sunaryati. (1994). *Penelitian Hukum di Indonesia Pada Akhir Abad ke-20*. Bandung: Alumni, p. 134.

The debtor de facto has the right to the house, but de jure (in legal records), the house is still registered under the name of the developer as the seller and previous owner. This has the potential to cause problems and losses for the debtor. The legal consequences of not changing the name on the certificate can have implications for the debtor's legal rights which are not yet fully protected.

This opens up opportunities for third parties to claim the land or building, which can lead to legal disputes or if there are problems related to inheritance rights, the debtor will have difficulty improve that he is the rightful owner because the certificate has not been registered in his name. In addition, the debtor also cannot take legal action on his property, such as selling, transferring rights, or even using it as collateral at the bank.

This situation makes the debtor have no legal certainty over the land and buildings that are actually his, but the debtor does not yet have valid proof of his property. In this case, the debtor is faced with a confusing and detrimental situation, where the debtor has spent a lot of money to pay off his debt, but what should be his rights he does not get. In the event of a dispute or third party claim, the debtor who has not received a house certificate in his name does not have strong legal protection.

With legal certainty over property ownership, consumers can feel safe and protected from potential legal problems that may arise in the future. In addition, consumers can carry out legal acts in the form of buying and selling or other transfers of rights smoothly without obstacles if the certificate is already in the hands of the debtor and is written in his name.

In the context of Indonesian law, if the debtor's rights are not fulfilled, then the debtor has the right to demand compensation or other settlement based on the principle of legal responsibility stated in the Civil Code. Article 1365 of the Civil Code regulates unlawful acts, namely that every act that violates the law and causes loss to another party, requires the party causing the loss to compensate. In this case, the Bank and Developer have committed an unlawful act and caused a loss to the debtor so that the debtor can ask for accountability as an effort to protect his rights. as a consumer. Protection for debtors in this case can include claims for compensation and other legal remedies as regulated in the Consumer Protection Act so that the debtor's right to obtain a certificate in his name is fulfilled.

Every unlawful act will have legal consequences for the perpetrator. Default is an unlawful act in a broad sense which includes negligence/negligence, broken promises or breach of promise. Referring to the form of default that has been explained previously, then the default will be subject to sanctions or punishment. The term "legal consequences" refers to any action taken to deal with a consequence that has been approved by law and has been agreed upon by the

perpetrator and law enforcement. The action taken is a legal action, or an action used to address a situation that is in line with the law.

Considering that an agreement is a legal relationship for those who make it, settlement of default can also be done through legal channels. The consequences of default in an agreement can vary greatly depending on the level of violation and the nature of the agreement itself. The consequences or sanctions of default are contained in Article 1239 of the Civil Code which explains that every obligation to do something, or not to do something, must be resolved by providing compensation for costs, losses and interest, if the debtor does not fulfill his obligations. "The debtor" in this case does not refer to debtors in the banking sector but refers to the party who is in default or fails to fulfill his obligations. The legal sanctions that can be imposed on the perpetrator of default are:

1. Paying compensation suffered by the creditor (in this case the home buyer) ---
-> 1243 of the Civil Code. Compensation can be requested by the injured party based on

(a) all costs incurred since the default occurred;

(b) losses arising from damage to goods;

(c) interest in the form of loss of planned profits due to default.

2. Cancellation of an agreement based on Article 1266 of the Civil Code or using Article 1338 paragraph (2);

The injured party can request the cancellation of the agreement. However, cancellation of the agreement must pay attention to Article 1266 of the Civil Code where cancellation of the agreement must be done through the courts. It can also refer to Article 1338 paragraph (2) where the agreement cannot be withdrawn other than by agreement between the two parties.

3. Risk transfer

The risk in question is the risk that occurs due to an act of god or force majeure and results in default. In this case, the risk that was initially not transferred can be transferred completely to the defaulting party as a sanction for default.

4. Payment of court costs

This sanction can only be requested when it has been proven before a judge with a court ruling so that the party in breach of contract can pay compensation in the form of money arising from the dispute in resolving the dispute.

Based on the opinion of Professor R. Soebekti that the legal sanctions that can be requested to the party in default are the fulfillment of the agreement, the

fulfillment of the agreement plus compensation, compensation only, and the cancellation of the agreement and the cancellation of the agreement plus compensation. The five possibilities above are the measures of sanctions that can be given to the party in default.³

3.2. Responsibilities of Developers and Banks Regarding the Name Change Process on Certificates Owned by KPR Debtors

Home Ownership Credit (KPR) is a financial facility that has recently been in demand by the public to make it easier to obtain housing. In a home purchase transaction through KPR, a certificate in the name of the developer as the seller or previous owner is one of the documents that must be taken care of until the name is changed to the name of the buyer (debtor) as the new owner of the house. However, in practice, cases are often found where the certificate has not been changed even though the credit has been paid off and this is only realized after the debtor has paid off his installments.

In mortgage practice, banks as lending institutions play an important role in the process of completing administration and storing legal documents such as certificates. As long as the mortgage is still running, meaning as long as the debtor is still making installments and has not paid off the loan, the certificate is stored in the bank as collateral for the bank. When signing the credit agreement between the bank and the debtor, the status of the certificate is still in the name of the developer as the seller. The credit agreement attended by the bank, debtor, and developer indicates that ownership of the house has been transferred from the developer to the debtor. However, in terms of legality, this does not apply because the certificate as proof of legality is still in the name of the developer as the previous owner.

This requires a process to be carried out to transfer ownership of the house from the developer's name to the debtor's name as the new owner. This process is called "Change of Name". Changing the name of a land certificate is an official procedure for transferring ownership of land rights from the seller to the new land buyer. The name change process is carried out to avoid unwanted things, such as land disputes in the future. By changing the name on the certificate, the legal owner of a plot of land and building has legal power and legal certainty over the land object he owns. When someone has a land certificate, that person has strong evidence regarding the physical data and legal data of his land and can carry out the desired legal actions on the land.

Based on Law Number 8 of 1999 concerning Consumer Protection, developers as business actors are required to fulfill consumer rights, including debtors' rights to certificates that have been transferred, meaning certificates that are already

³Lembaga Bantuan Hukum Pengayoman, "Sanksi Pelaku Wanprestasi", www.lbhpengayomanunpar.ac.id, 23 July 2021

written in the name of the debtor. In addition to taking care of the certificate transfer process, developers are also responsible for ensuring that the property being sold is free from legal problems, especially related to land status, such as disputes or double claims on the land being built. Developers must check the legality of the land used for development so that there are no legal problems in the future. If a legal dispute occurs over the land, the developer must resolve it first before continuing the sale to consumers.

The process of changing the name of the certificate is the developer's duty and responsibility as the seller of the house. If the developer fails to fulfill the debtor's rights, then the act can be considered a violation of the agreement and legal obligations called default. It can be said that the developer failed to fulfill his performance.

After the credit agreement process has taken place and a Deed of Sale and Purchase (AJB) has been made before a Notary/PPAT as a sale and purchase agreement between the developer and the debtor, the developer has the responsibility to take care of the certificate name change process. This process is part of the developer's legal obligation to ensure that the consumer's ownership rights to the property purchased are administratively and legally valid.

The name change is usually done by a notary appointed by the Bank, but developers are allowed to take care of the certificate name change process themselves. Usually this is done for reasons of being more economical because they do not need to pay for notary services. If the developer wants to take care of the name change process themselves, then the developer must apply for a certificate loan to the Bank and must ensure that the taxes must be paid first. The seller, namely the developer, must have paid income tax (Pph) while the buyer pays the Land and Building Acquisition Fee (BPHTB) only then can an application for a land certificate name change be submitted to the local National Land Agency Office.

In carrying out the name change process, there are several stages that must be carried out. If all stages have been carried out and the new certificate has been issued, the certificate must be returned to the bank to be stored as credit collateral. The debtor can get the certificate after the loan that has been paid off for years has been declared paid off by the Bank. However, in reality, not all developers carry out their obligations and responsibilities, in this case the administration of the certificate name change. Not a few naughty developers are found who are not responsible for fulfilling their obligations to consumers. Especially for credits that have been going on for a long time and are currently entering the credit repayment period. Let's say, a mortgage whose credit agreement was made in 2005, if the debtor's installment period is 15 years, it means that the mortgage ends in 2020. If the installment period is 20 years, it

means it will be paid off in 2025, and cases resulting from "naughty" developers are only known now when the debtor has paid off his credit.

This incident often occurs in BTN Bank, especially for old KPR facilities. There are many reasons behind this incident, one of which is because it turns out that the certificate has not been transferred to another name, meaning it is still in the name of the developer. While in reality, often these developers are no longer known where they are, cannot be contacted, their whereabouts are no longer detected, and may even have died.

Although the transfer of certificates is the developer's task and responsibility, the Bank also has an important role, namely to carry out routine monitoring or monitoring of developer activities. Mistakes made by developers can be minimized if the Bank carries out its role and duties better. If the developer has borrowed a certificate to carry out the transfer of name process, the Bank must routinely monitor how far the process has progressed. If the developer does not apply for a certificate loan to process the transfer of name, the Bank must play an active role in reminding the developer because this concerns consumer rights that must be fulfilled.

If the credit has been declared paid off but the debtor cannot get the certificate because the certificate has not been transferred to the name, it means that the developer and the bank can be said to have failed to fulfill their performance, which is called a breach of contract. Thus, for their actions, the developer and the bank can be held responsible for the losses caused to the debtor.

Another problem that arises in the field is that developers often do not know where they are. When debtors ask for accountability from the bank, the bank will usually throw it to the developer. Because, in the credit agreement it is written: "The bank is obliged to return proof of home ownership to the debtor if the credit has been declared paid off by the bank as long as the seller/developer has submitted proof of ownership to the bank.

The clause clearly states the bank's obligation to submit certificates and other legal documents to the debtor if the credit has been paid off, but this obligation applies if the developer has completed the processing of the documents and returned them to the bank. In fact, the developer has not carried out its duties, however, the bank cannot simply run away from its responsibilities because the relationship between the developer and the debtor has indeed been established for a long time, say dozens of years ago. Due to the debtor's lack of understanding, the debtor never monitors the process of changing the name on his certificate because all they know is the obligation to pay installments until it is paid off and when it is paid off they will definitely get a certificate for the house that they have been paying off all this time. In fact, if they have sufficient

understanding, the debtor has the right to ask the developer, bank, or even a notary about the status of his certificate.

As regulated in Article 7 of the Consumer Protection Law, one of the obligations of business actors, in this case developers and banks, is to provide compensation, damages and/or replacement if the goods and/or services received or utilized do not comply with the agreement. From these provisions it is very clear that developers and banks can be sued to provide compensation and/or damages for the default they have committed.

If the developer's whereabouts are unknown, then as a form of loyalty and commitment to its customers, the Bank must strive for maximum consumer protection. In this context, the bank must process the transfer of the certificate name as soon as possible and all costs incurred are borne by the bank. In relation to the costs required, the bank can use retention funds or withheld balances which are the developer's rights that are disbursed to the developer's account after the developer has completed all of its obligations. However, because there are obligations that have not been fulfilled by the developer, in this case the transfer of the certificate name means that there is still a withheld balance stored in the debtor's account.

In addition, the bank must also be responsible if the debtor demands compensation that is more than that. Because, the consequences of this incident do not rule out the possibility of causing losses that affect the debtor's finances, so that responsibility in the form of issuing a certificate that has been transferred to another name is considered insufficient.

When talking about legal responsibility imposed on business actors, the state can also be held responsible in cases where it causes losses to other countries, for example Indonesia, which has repeatedly caused cross-border smoke pollution to neighboring countries, namely Malaysia and Singapore, which was caused by forest fires in Indonesia.⁴The form of state responsibility is stated in the Draft Articles on State Responsibility, which can be:⁵

- 1) Restitution, is an obligation to return the harmed condition to its original state.
- 2) Compensation, is an obligation to compensate for losses by providing compensation in the form of material.
- 3) Satisfaction, is a responsibility with a formal apology.

⁴Valentin Maurentina dan Mella Ismelina Farma Rahayu, "Tanggung Jawab Negara Atas Pencemaran Asap Lintas Batas Akibat Kebakaran Hutan", Jurnal Kertha Semaya, Vol. 11 No. 2, 2023. p. 362.

⁵Draft Articles on The Responsibility of States for Internationally Wrongful Acts Articles 35-37 are quoted from the Journal of Valentin Maurentina and Mella Ismelina Farma Rahayu, Ibid.

4. Conclusion

In a mortgage agreement, not only the debtor has an obligation to pay off his debt to the bank, but the developer and bank as business actors also have an obligation and responsibility to fulfill consumer rights, especially in this case is the fulfillment of the certificate as a legal document and proof of ownership of the debtor's rights to the land and buildings that have been purchased through the mortgage. Land title certificates have an important role as valid evidence and provide legal certainty and protection for the owner and holder. Without a certificate, the legal consequences that can be experienced by the debtor are that the debtor cannot fully control or carry out legal actions on the land and buildings owned by him and this has the potential to cause disputes and losses, both material and immaterial. As a result of the default that arises, developers and banks can be held accountable and sanctions can be imposed on them as an effort to fulfill consumer rights. Therefore, legal protection for debtors as consumers needs to be strengthened so that they can obtain legal certainty and justice, especially in banking transactions, in the field of mortgages. The role and supervision of the OJK as a banking performance supervisory institution needs to be tightened, especially in providing sanctions for banks that ignore and do not prioritize consumer rights to obtain certificates.

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