

Legal Analysis of in-house home credit schemes reviewed from the Perspective of Contract Law

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Abstract

Home is a very crucial thing in human life. The growth and development of each individual and how they are formed at home determines their future lifestyle. As we know, the payment methods that have been applied to most developers are cash, in-house, and mortgage payments. The research method used by the author is the doctrinal legal research method or normative law, namely research that uses legislation, legal rules, and norms as sources of law related to the problems to be studied. The purchase agreement in the Civil Code is regulated in Book III on obligations (Van Verbintenissen) Chapter 5, so that buying and selling is an agreement. The legal analysis of in-house home credit schemes from the perspective of contract law reveals several key insights regarding their structure, risks, and the protection of parties involved. Continued legal oversight and potential reforms may further enhance the efficacy and integrity of these credit schemes in the real estate market.

Keyword: Legal Analysis, Perspective of Contract Law

INTRODUCTION

Home is a very crucial thing in human life. The growth and development of each individual and how they are formed at home determines their future lifestyle. Settling in an environment that truly revolutionizes the quality of humans over time. Home becomes a place to express everything. All emotions, all compromises, all forms of human nature that make them walk forward intact. Therefore, the better the quality of the house, the higher the level of comfort, the



better the human output produced. Primary housing is indent housing released by developers starting 6-36 months before the environment is formed. In this modern era, there are many primary housings that are solutions for the people of Surabaya and Indonesia. Primary housing has many advantages that can answer financial and budgeting solutions for the lower middle class. In terms of technical, environmental, financial, legality, it has become a guarantee and weapon for developers in developing primary housing.

As we know, the payment methods that have been applied to most developers are cash, in-house, and mortgage payments. Cash payment is a cash payment method that is paid directly in advance, even before the housing unit is built. This payment can be made directly 100% or in installments. The advantage for developers is the minimal risk of cancellation from third parties that may occur. The third party that allows the opportunity to intervene in the payment of housing units is the bank (financial institution). In the cash payment method, the existence of a third party is ignored so that the possibility of cancellation is also relatively low.

The in-house payment method is a payment method that has a relatively long credit term to the developer, up to 24 months. Similar to the cash payment method, the in-house payment method does not consider the existence of a third party or bank. This also affects the failure rate which is relatively lower compared to the mortgage payment method, because the first party is directly connected to the second party without any assistance from a third party. For developers, this payment method can also be considered good because the installments that enter the developer's account per month are relatively large because there is no down payment and for a maximum of 24 months the entire nominal price of the house unit has entered the developer's account in its entirety. However, even though it has a relatively low cancellation rate, in the available unit selection system (NUP), this payment method does not have more advantages/privileges from developers compared to other payment methods.

In simple terms, a contract or agreement occurs when two people who have the will or ability are combined in a provision and stated in words, or something that can be understood as such, then a legal event occurs which is called an agreement. In general, Article 1313 of the Civil Code defines an agreement as an act in which one or more people bind themselves to one or more people. Subekti said that an agreement is an event in which someone promises to another person to carry out something.³ An agreement is the most important source that gives birth to an agreement. Indeed, the agreement is mostly issued by an agreement, but as stated earlier, there are also other sources that give birth to an agreement. These other sources are covered by the name of the law. So, there is an agreement that arises from an agreement and there is an agreement that arises from the law. Thus, it can be understood that an agreement contains





promises that have previously been agreed upon in the form of rights and obligations that are inherent in the parties who make it in written or oral form. If made in writing, the contract functions more to guarantee legal certainty.

METHOD

The research method used by the author is the doctrinal legal research method or normative law, namely research that uses legislation, legal rules, and norms as sources of law related to the problems to be studied. The type of approach used is the statute approach by analyzing laws and regulations related to the problems analyzed. The author uses secondary data in the form of primary and secondary legal materials. The primary legal materials are laws and regulations while secondary legal materials are in the form of legal journals and legal books that have views, legal research results, and basic principles. The author collects data by searching for legal materials by searching through the internet media. Then the author examines the data obtained descriptively qualitatively, namely analyzing data that is in the form of descriptions or cannot be counted. The secondary data obtained is then discussed, examined, and grouped to be processed into informative data (Muhaimin, 2020).

RESULTS AND DISCUSSION

The purchase agreement in the Civil Code is regulated in Book III on obligations (Van Verbintenissen) Chapter 5, so that buying and selling is an agreement. A buying and selling agreement is a reciprocal agreement, where one party (the seller) promises to deliver an item, and the other party (the buyer) will pay the promised price (Article 1457 of the Civil Code). The main elements of a buying and selling agreement are "goods and price". The buying and selling agreement is consensual, which is emphasized in Article 1458 of the Civil Code which reads: "buying and selling is considered to have occurred after they have reached an agreement on the goods and price, even though the item has not been delivered and the price has not been paid.⁵ Buying and selling is a common agreement used by the community, because in fulfilling their needs, the community cannot turn away from this buying and selling agreement. To get food and drink, for example, he is unable to fulfill those needs by himself, but will need and relate to other people, so it is likely that it will take the form of a buying and selling agreement.

Housing, in addition to functioning as a container for developing human resources, is also a contribution to economic growth through housing as a provider of employment and a driver of large capital formation. Through increasing and fulfilling the need for housing, it is hoped that the community can increase productivity, play an active role in development, and be able to increase





capital accumulation for further development. In line with the rapidly increasing population, the demand for the availability of various facilities that support community life has also increased. This encourages the government and the private sector to carry out development, such as in the housing sector. Housing and settlement problems are a major issue that always gets more attention from the government, housing and settlement problems are a problem that continues and will even continue to increase, in line with population growth, population dynamics, and socio-economic demands that are increasingly developing.⁶ Given the increasing need for livable houses, especially for those who want a house at a low price, one of the parties involved in the fulfillment effort is the housing developer. On the other hand, with the emergence of many housing developers, it is not surprising that in the future there is a risk of problems that can harm consumers. The relationship between business actors and consumers should run in harmony, considering that the relationship between the two is a mutualistic symbiosis. However, what happens is that consumers seem to sit as business commodities that are in a weak position. Meanwhile, business actors seem to take advantage of the weaknesses of housing consumers to reap the greatest possible profit. The many cases in the property or housing industry basically begin with a discrepancy between what is stated in the product information advertisement, and what is contained in the sales and purchase agreement that has been agreed upon and signed by the consumer.

The definition of an agreement has been regulated in the Civil Code (KUH Perdata) Article 1313, namely that an agreement or agreement is an act by which one or more people bind themselves to one or more other people.¹⁰ The word agreement is a translation of the word *overeenkomst* in Dutch.

The word *overeenkomst* is also commonly translated as the word agreement. So the agreement in Article 1313 of the Civil Code has the same meaning as an agreement.

There are also those who argue that an agreement is not the same as an agreement.¹¹ An agreement is a translation of *overeenkomst* while an agreement is a translation of *toestemming* which is interpreted as *wilsovereenstemming* (conformity of will/agreement).

From the opinion above, an agreement is basically a process of interaction or legal relationship and two legal acts, namely an offer by one party and acceptance by the other party so that an agreement is reached to determine the contents of the agreement that will bind both parties. Furthermore, the definition of an agreement discussed in Article 1313 of the Civil Code has received criticism from legal scholars because it still contains weaknesses. So that in practice it raises various objections because on the one hand the limitations are very incomplete, but on the other hand it is too broad. The formulation of the definition of an agreement according to the





Civil Code has the legal consequence that in an agreement there will always be two parties, where one party is the party that is obliged to perform (debtor) and the other party is the party that is entitled to the performance (creditor).

Cash is a purchase made in one transaction by receiving the purchased goods and giving money as a measuring tool according to the agreed amount. Cash sales are sales carried out by the company by requiring the buyer to pay the price of the goods in advance before the goods are handed over by the company to the buyer, after the money is received by the company, the goods are then handed over by the buyer and the cash sales transaction is recorded by the company.

1. Advantages of buying a house in cash: a. Cheaper price b. The process is easier c. No administration fees d. Free from rules e. Safer f. Developers like cash purchases g. Safe and prospective for short-term investment h. Completeness of the house can be owned immediately
2. Disadvantages of buying a house in cash: a. Need a lot of funds b. The risk of buying a problematic house.

The term credit comes from the Greek "credere" which means trust and the Latin "creditum" which means trust in truth. Therefore, the basis of credit is trust. The definition of credit in the Bank Management Series No. 5 (1997: 31) is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the Bank and another party that requires the borrower to pay off his debt after a certain period of time with an amount of interest, compensation or profit sharing. In addition, credit can also mean the ability to make a purchase or make a loan with a promise that the payment will be made or deferred at an agreed period of time.

Buying a house with an in-house credit scheme is a fairly popular option, especially for those who may have difficulty getting credit from banks. Here are some legal aspects of the agreement that need to be considered in this scheme:

1. Credit Agreement

Legal Certainty: The agreement must be made in writing and meet the requirements for a valid agreement, namely the existence of an agreement, legal capacity, clear object, and lawful cause. Payment Terms: There must be clear provisions regarding the amount of installments, the term, and the interest charged.

2. Deed of Sale and Purchase

Formality: The deed of sale and purchase must be made by a notary and registered to provide legal certainty. This is important so that land rights can be transferred legally. Land Status Check: Make sure the land being purchased is not having any legal problems, such as disputes or unclear rights status.

3. Risks and Responsibilities





Collateral: Usually, the property purchased becomes collateral for credit. If the buyer fails to pay, the seller has the right to seize the property. Maintenance Obligations: The buyer is responsible for maintaining the property during the credit period.

4. Dispute Resolution

Mediation or Arbitration: The agreement should include a dispute resolution mechanism, such as mediation or arbitration, to avoid lengthy and expensive litigation.

5. Legislation

Ensure that all provisions contained in the agreement do not conflict with applicable laws and regulations, such as the Basic Agrarian Law and regulations on housing.

6. Consumer Protection Aspects

Buyers must be given attention to their rights as consumers, including clear information about the products offered, the right to obtain information, and the right to protection from detrimental business practices.

In-house credit is a type of financing provided by developers or property sellers directly to buyers, without involving financial institutions such as banks. In this scheme, developers provide credit to help buyers make payments for the house or property they buy. Characteristics of In-house Credit: Faster Process: Because it does not go through a bank, the credit application and disbursement process is usually faster and simpler. More Flexible Requirements: Developers are often more flexible in assessing the creditworthiness of buyers than banks, allowing more people to get financing. The term and interest rate are determined by the developer. This can vary depending on the policies of each developer. Usually, the property purchased is collateral for the credit, so if the buyer fails to pay, the developer has the right to seize the property. It is important to have a clear written agreement between the buyer and the developer, covering the payment terms, rights and obligations of both parties.

In home loans with an in-house scheme, there are several things to watch out for to avoid problems later on. Here are some important points to note: 1. Terms of Agreement, Read Carefully: Make sure to read and understand the entire contents of the agreement, including payment terms and conditions, interest, and fines. Transparency: The agreement must be clear and transparent. If there are terms you don't understand, don't hesitate to ask for an explanation. 2. Interest Rates and Additional Fees: Unclear Interest: Make sure the interest rate charged is reasonable and there are no hidden fees that could burden you later. Administration Fees: Ask





about additional fees such as administration fees, insurance, or other fees that may be charged.

3. Legal Status of Property. Legislation of Ownership Rights: Make sure the property to be purchased has a clear legal status and is not in dispute. Land Certificate: Check the authenticity of the land certificate and make sure that the developer is the legal owner of the property.

4. Obligations and Risks. Maintenance Obligations: Understand your responsibilities in maintaining the property during the credit period. Foreclosure Risk: Know that if you fail to pay, the developer has the right to foreclose on the property.

5. Dispute Resolution Mechanism. Resolution Provisions: Make sure there is a clear mechanism for dispute resolution, such as mediation or arbitration, to avoid lengthy legal proceedings.

6. Consumer Protection. Consumer Rights: Know your rights as a consumer. Make sure you are adequately informed and protected from harmful practices.

7. Market Conditions. Property Price Fluctuations: Understand that property values can fluctuate. This is important for long-term investment decisions.

8. Limited Facilities. Promised Facilities: Make sure the facilities promised by the developer exist and are as described, such as road access, security, and the surrounding environment.

CONCLUSION

The legal analysis of in-house home credit schemes from the perspective of contract law reveals several key insights regarding their structure, risks, and the protection of parties involved.

Validity and Enforceability: In-house credit agreements must meet the essential elements of contract law, including mutual consent, capacity, a lawful object, and a valid cause. Properly drafted agreements can enhance enforceability and provide clarity to both parties.

Transparency and Fairness: It is crucial for these agreements to be transparent, ensuring that all terms—especially regarding interest rates, payment schedules, and potential penalties—are clearly communicated. This transparency fosters trust and mitigates disputes.

Consumer Protection: Given the potential for exploitation in asymmetric power dynamics between developers and consumers, legal frameworks must ensure that consumer rights are upheld. Regulations should mandate the disclosure of all relevant information and establish safeguards against unfair practices.

Dispute Resolution Mechanisms: Effective dispute resolution clauses should be included in contracts, outlining clear procedures for mediation or arbitration. This helps to avoid lengthy litigation and provides a more accessible avenue for resolving conflicts.

Legal Compliance: It is essential for both developers and consumers to understand and comply with relevant housing and financial regulations to avoid legal repercussions. This compliance ensures that the agreements are not only enforceable but also align with broader legal standards.

In conclusion, while in-house home credit schemes present a viable alternative for property financing, careful





attention must be given to contract formulation, transparency, and consumer rights to ensure a fair and equitable process. Continued legal oversight and potential reforms may further enhance the efficacy and integrity of these credit schemes in the real estate market.

REFERENCE

- Ak, Syahmin. 2011. Hukum Kontrak Internasional. Jakarta: Rajawali Pers.
- Asyhadi, Zaeni. 2018. Hukum Keperdataan. Depok: Rajawali Pers.
- Ganthari, S., & Syafri. 2018. FaktorFaktor Yang Mempengaruhi Kredit Perumahan Di Indonesia. Media Ekonomi.
- Gautama, Sudargo. 1995. Indonesia Business Law. Bandung: Citra Aditya Bakti.
- Hendrik. 2011. "Analisis Pendapatan Dan Tingkat Kesejahteraan Masyarakat Nelayan Danau Pulau Besar Dan Danau Bawah Di Kecamatan Dayun Kabupaten Siak Propinsi Riau," 21–32.
- Kurniawati, R. 2016. Analisis Faktor Yang Memengaruhi Kredit Yang Dikeluarkan Bank Umum Tahun 2011-2015. Yogyakarta: Fakultas Ekonomi UNY.
- Mertokusumo, Sudikno. 1985. Hukum Acara Perdata Indonesia. Yogyakarta: Liberty.
- Rodjodikoro, Wirjono. 2000. Asas-Asas Hukum Perjanjian. Bandung: Mazdar Madju.
- Shidarta. 2000. Hukum Perlindungan Konsumen Indonesia. Jakarta: Grasindo.
- Subekti. 1979. Hukum Perjanjian. 6th ed. Jakarta: PT. Intermasa.
- Sugiyono. 2014. Metode Penelitian Kombinasi (Mixed Methods). Bandung: Alfabeta.
- Suharnoko. 2009. Hukum Perjanjian. Jakarta: Kencana.
- Tjitrosudibio, Subekti dan R. 2008. Kitab Undang-Undang Hukum Perdata. Vol. 39. Jakarta: PT. Driya Paramita.

