

# The Legal Strength of Home Ownership Credit Agreements During Covid 19

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## Abstract

*At this time, during the COVID-19 pandemic, the government's role in meeting the community's needs for housing is urgently needed in providing funds and providing initiatives in housing development efforts. The presence of the Home Ownership Credit system is very much needed by people whose economic income is in the small and medium levels. During this pandemic, banking is one of the sources for obtaining funds which is considered easy and fast for some people in terms of needing funds to meet their needs, such as in utilizing funding from banks in the Home Ownership Credit facility. Each granting credit, there will be rights and obligations. Banks can only consider granting credit if the applicant is a legal subject, because the legal subject is a supporter of rights and obligations, meaning that they can receive rights and be charged with obligations. This study describes the legal arrangements in Home Ownership Loans during the covid 19 pandemic, to find out the rights and obligations of the parties in the Home Ownership Loan agreement, as well as to find out efforts to settle defaults in the Home Ownership Loan agreement. This research was obtained from secondary data, namely library research, namely by collecting references related to the object or research material. Article 1754-1769 is one of the forms of loan-borrowing agreement. By the agreement that has been stated in the credit agreement, each party will obtain its rights and obligations. What is the right of the debtor is the obligation of the bank, and what is the obligation of the debtor is the right of the bank. The implementation of the Home Ownership Credit agreement is made based on a free agreement with the meaning that the agreement can be made freely. Any form of agreement is made between two parties who capable of acting by law to carry out an achievement that does not conflict with the applicable legal rules, morality, and public order, in agreeing to the provision of credit loans, the bank needs to pay attention to the restrictions regulated by the applicable laws and regulations.*

## Keywords

agreement; home ownership; loan



## I. Introduction

House is one of the basic human needs as regulated in the 1945 Constitution Article 28 h number 1 (Second Amendment of 2000) which states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to obtain health services.

Then it is further regulated in Article 5 of Law Number 4 of 1992 concerning Housing and Settlements that every citizen has the right to occupy and/or enjoy and/or have a decent house in a healthy, safe, harmonious, and orderly. Based on these two provisions, it is undeniable that the need for housing has now become a basic need for humans. The house is one of the primary needs, namely the board in addition to the needs

of clothing and food. The need for such boards includes a house or apartment, which is generally referred to as a place to live for shelter and rest.

The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). Economic growth is still an important goal in a country's economy, especially for developing countries like Indonesia (Magdalena and Suhatman, 2020). The presence of Covid-19 as a pandemic certainly has an economic, social and psychological impact on society (Saleh and Mujahiddin, 2020). The need for housing for the community continues to increase during this pandemic. However, this is not balanced with the people's ability to buy houses that are not the same at every level. This is because house prices from year to year continue to rise all the time along with the surge in land prices and building materials. The role of the government in meeting the community's need for housing is very much needed in providing funds and providing initiatives in housing development efforts. The presence of the Home Ownership Credit system is very much needed by people whose economic income is at a small and medium level.

Credit institutions in Indonesia have a function as one of the means to support successful development. Increasing national development, which focuses on the economic sector that manages the strength of economic potential into real economic strength by utilizing existing capital as the main supporting tool for such development, requires the provision of large enough funds. The role of banks in financing will be even greater, this is because the funds needed in development come from or are collected from the community through banking, which is then channeled back to the community in the form of providing credit in a more productive direction.

Needs related to productive needs, for example, to improve and expand their business activities. Consumptive interests, for example, to buy a house so that people can take advantage of funding from banks known as Home Ownership Credit. Banks act as credit providers in financing homeownership through the Home Ownership Credit facility. Almost all conventional banks are competing to offer Home Ownership Loan facilities to the public with various advantages in financing Home Ownership Loans such as ease in the application process, reduced administrative costs, affordable interest rates, and other benefits. One of the problems that are most often complained of is the interest system in housing loans at conventional banks which goes up and down.

Bank Indonesia's interest rates in Indonesia's current economic conditions are relatively fluctuating. This causes bank lending rates to be insignificant. Conventional bank profits or losses are strongly influenced by macroeconomic conditions, namely during a recession that causes high-interest rates for Home Ownership Loans at conventional banks. Based on this system of ups and downs in interest rates, as a result, debtors will be required to pay installments with monthly payments that are adjusted to the fluctuating interest rates. If interest rates rise, the existing credit will also be adjusted accordingly.

The remaining credit will be calculated with a new higher interest rate, as a result, the installments will be large. There is no certainty about fluctuations in interest rates, causing many people to start turning their heads to find a secure solution for the desired housing loan. It is undeniable that banking is one of the sources for obtaining funds which is considered easy and fast for some people in terms of needing funds. to meet their needs, such as in the use of funding from banks in housing loan facilities. Home Ownership Credit referred to here is the Home Ownership Credit program, which is regulated in the Regulation of the Minister of Public Housing Number 14 of 2010, which was promulgated on September 3, 2010, concerning Housing Procurement through Credit/ Prosperous Home Ownership Financing with the Support of Housing Financing Liquidity Facilities.

## II. Review of Literatures

### 2.1 Default

Default comes from the original term in Dutch "wanprestie" which means the non-fulfillment of achievements or obligations that have been set for certain parties in an engagement, whether an engagement born of an agreement or an engagement arising out of the law. Prodjodikoro said that Default is "The absence of achievement in contract law, means something that must be carried out like the contents of an agreement".<sup>6</sup> Badruzaman said default is "If the debtor because of his mistake does not carry out what was agreed upon, then the debtor is in default or is in breach of contract. Said because of his fault. very important, because the debtor does not carry out the agreed performance at all because of his fault".

According to Harahap that "Default can also be intended as the implementation of obligations that are not timely or carried out improperly". This results in if one of the parties does not fulfill or does not carry out the contents of the agreement that they have agreed upon or that they have made, then those who have violated the contents of the agreement have committed an act.

The time factor in an agreement is very important because it can be said that in general, in an agreement, both parties want the provisions of the agreement to be carried out as quickly as possible. After all, the determination of the time for the implementation of the agreement is very important to know the arrival of the time that is obliged to keep its promise or carry out the agreement. an agreement that has been agreed, thus that in every agreement achievement is something that must be fulfilled by the debtor in every agreement. Achievement is the content of an agreement, if the debtor does not meet the achievements as specified in the agreement, it is said to be in default. Default provides legal consequences for the party who commits it and has consequences for the rights of the injured party to sue the party who defaulted to provide compensation so that by law it is expected that no one party will be harmed because of the default.

### 2.2 Banking

According to the Dictionary of Banking and financial service by Jerry Rosenberg, a bank is "an institution that accepts demand deposits, deposits and pays based on documents drawn from certain people or institutions, discounts securities, and invests the funds in securities". Based on PSAK No. 31 bank is an institution that acts as a financial intermediary between parties who have excess funds and parties who need funds, as well as an institution that functions to facilitate payment traffic. According to Kuncoro, the definition of a bank is "a financial institution whose main business is to collect funds and channel these funds back to the public in the form of credit and provide services in payment traffic and money circulation". Banking is as follows;

Everything related to banks, including institutions, business activities, as well as methods and processes in carrying out their business activities and a bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and/or other forms of other forms to improve the standard of living of the people at large.

### 2.3 Bad Credit

The Indonesian state recognizes two types of bank credit, namely current loans and non-performing loans. Non-performing loans are classified into three, namely substandard

loans, doubtful loans, and bad loans. Bad loans are loans that have difficulty repaying due to intentional factors or elements or due to conditions beyond the ability of the debtor.

Based on the Decree of the Board of Directors of Bank Indonesia Number 31/147/KEP/DIR dated November 12, 1998, non-performing loans are loans for which the repayment of principal and interest payments has been delayed by more than one year from maturity according to the agreed schedule. Based on the Circular Letter of Bank Indonesia Number: 09/PJ.42/1999, which classifies credit, namely; "Current", "Special Attention", "Substandard", "Doubtful", and "Loss" with the following meanings, namely:

Loans are classified as "Current" loans if they meet the following criteria:

- a. Payment of principal installments and/or timely interest;
- b. Have an active account mutation;
- c. Part of credit secured by cash collateral. Loans are classified as "Special Mention" credits if they meet the following criteria:
  1. There are arrears in principal and/or interest installments that have not exceeded 90 (ninety) days;
  2. Occasional overdraft;
  3. Account mutations are relatively active;
  4. Rarely is there a violation of the agreed contract;
  5. Supported by new loans.

## **2.4 Home Ownership Credit**

Agreement in Indonesia is a credit facility provided by banks to individual debtors who will buy a house. Home Ownership Loan is a consumption credit for housing ownership in the form of landed houses or flats or apartments with collateral in the form of residential houses provided by banks to individual debtors with a maximum loan amount determined based on the value of the collateral. Home Ownership Loan Agreement is a consensual agreement obligatory, namely the existence of consensus and submission. The delivery of money is real, where at the time the money is handed over, then the provisions contained in the Home Ownership Loan agreement come into effect. According to Suyatno, the elements contained in credit are as follows:

- a. Trust, namely the belief of the creditor that the achievements given by him in the form of money, goods, or services will be received back within a certain time in the future.
- b. Time, which is a period that separates the awarding of achievements from contra-achievements that will be received in the future. Based on this time element, there is an understanding of the premium value of money, namely that the money currently has a higher value than the money that will be received in the future.
- c. Degree of risk, which is a level of risk that will be faced as a result of the existence of a period that separates the award of achievement from the contra-achievement that will be received in the future, the longer the credit is given, the higher the level of risk, because as far as the human ability to break through the future, then there is always an element of uncertainty that cannot be taken into account. This is what causes the element of risk, with this element of risk, guarantees arise in providing credit.
- d. Achievements, or objects that are not only given in the form of cash but can also be in the form of goods or services. However, because modern life is now based on money, credit transactions involving money are often encountered in credit practices.

## **2.5 Legal Basis for Home Ownership Credit**

Credit agreements are one type of agreement, so before discussing specifically the Home Ownership Credit agreement, it is necessary to discuss in general terms the general

provisions or general teachings of the law of engagement contained in the Civil Code, because the general provisions in the Civil Code are the general basis that concrete in making all agreements.

The Civil Codebook III Chapter I to Chapter IV Article 1319 confirms "All agreements, both those that have a special name or those that are not known by a special name or which are not known by a certain name, are subject to the general regulations contained in Chapter I. and Chapter II of the Civil Code". Credit agreements according to the Civil Law as regulated in the Third Book of the Civil Code Articles 1754-1769 are one of the forms of loan agreements. borrow. Based on the granting of credit, there are several legal relationships, namely not only based on loan agreements but also legal relationships based on the power of attorney agreements, insurance (insurance) agreements, and others. So it can be concluded that credit agreements, especially banking credit agreements, in their implementation are not the same (identical) as stipulated in the lending and borrowing agreements in the Civil Code. it is standard so that there is no need to always make a credit agreement every time because if a bank is to provide credit to a debtor customer the agreement is ready so that only the debtor customer's signature is required. 15/EK/IN/10/1966 dated October 3, 1966 jo. Circular Letter of Bank Negara Indonesia unit I No. 2/539/UPK/Pemb dated October 8, 1966, and Circular Letter of Bank Negara Indonesia unit I No. 2/649/UPK/Pemb dated 20 October 1966 and the Ampera Cabinet Presidium Instruction No. 10/EK/IN/2/1967 dated 6 February 1967 which instructs the banking community that in providing credit in any form, banks are required to use credit agreements.

### **III. Research Methods**

To get maximum results, it is necessary to collect good and proper data. The method used in this study consists of: Types of Research This research is normative, namely research that refers to legal norms that can be found in-laws and regulations as well as legal norms that exist in society. This research seeks the true truth, Qualitative Research seeks to find legal symptoms that develop in a community. Types of Data This research was obtained from secondary data, namely library research, namely by collecting references related to the object or research material that include:

- a. Primary legal materials, in this study are the Civil Code, Law Number 4 of 1992 concerning Housing and Settlements, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, and P Regulation of the Minister of Public Housing Number 14 of 2010 concerning Housing Procurement through Credit/Financing for Prosperous Home Ownership with the Support of Housing Financing Liquidity Facilities.
- b. Secondary legal materials, in the form of readings that are relevant to the research material.
- c. Tertiary legal materials, in the form of legal dictionaries, and other materials that explain primary legal materials and secondary legal materials.

The tool used in collecting research data is a literature study that comes from literature or scientific writing by the object under study. The data obtained from the research will then be used as a reference in conducting analysis and problem-solving. To process the existing data, this study uses qualitative analysis methods The tool used in collecting research data is a literature study that comes from literature or scientific writing by the object under study.



The Parties to the Home Ownership Credit Agreement Based on the Home Ownership Loan agreement, there are 3 related parties, namely as follows:

1. The debtor, namely the buyer of the house built by the developer with money borrowed from the bank;
2. The creditor, namely the bank as bank funders who provide credit facility assistance in the form of money used by debtors to pay for houses purchased from developers;
3. Developers, namely developers and builders of housing projects, namely houses sold to buyers either in cash or on credit. The relationship with the Home Ownership Credit agreement was initially between the creditor and the debtor there was an agreement of will, the form of the agreement by the creditor was stated in a credit agreement signed by both parties.

Home Ownership Credit Agreement is a credit given by the bank to the debtor to be used to buy or pay for a residential building with the land to be owned or inhabited. This means that the credit agreement in question will bind the customer and the bank like the law.

Credit is given based on trust, meaning that the achievements given are believed to be returned by the credit recipient by the time and terms that have been mutually agreed upon, thus the elements contained in the credit Home Ownership

## **IV. Discussion**

### **4.1 Home Ownership Loan Agreement Form**

The form of the Home Ownership Loan agreement is a standard agreement. A standard agreement is a written concept that is prepared without discussing its contents and is usually poured into an unlimited number of agreements of a certain nature. The characteristics of the standard agreement are determined unilaterally by the creditor whose position is relatively stronger than the debtor, the debtor does not participate in determining the contents of the agreement.

Driven by his needs, the debtor is forced to accept the agreement in writing. Based on the standard form of agreement, where the content or clauses of the credit agreement have been standardized and set forth in a form (blank), but are not bound in a certain form. Prospective customers only need to put their signatures if they are willing to accept the contents of the agreement, do not provide the opportunity for prospective customers to discuss further the contents or clauses proposed by the bank. A credit agreement is a bond or written evidence between a bank and a debtor so that it must be arranged and made in such a way that it is easy for everyone to know that the agreement made is a credit agreement so that it is interpreted that credit agreements must always be made in writing.

A credit agreement is one type of deed made as evidence so that in compiling and making a credit agreement, it must meet legal requirements, which include: 1. The title of the credit agreement does not include a named agreement as regulated in the Civil Code. Based on banking practice, the titles used to make credit agreements vary. Some use the title of a credit agreement, an agreement to open credit, a loan agreement, a loan agreement. The title serves as the name of the agreement made, at least we will know that the deed or letter is a bank credit agreement. Comparison Before entering into the substance of the bank credit agreement, it must first begin with a comparative sentence that contains the identity, legal basis, and position of the parties who will enter into a bank credit agreement. This explains in detail the identity, legal basis, and position of the legal subject of the bank credit agreement. A bank credit agreement will be considered valid if signed by a legal subject who is authorized to carry out such legal action. 3. Substantive A

bank credit agreement contains clauses that are the terms and conditions for granting credit. Indeed, what is meant or desired by these regulations is a written agreement, so in those regulations, the term written credit agreement or written credit agreement should be used instead of the credit agreement as stated. A grant of credit by a bank even if it is given without a written agreement is in itself an agreement as well. Credit agreements are generally made in the form of a standard agreement, in which the bank and the debtor customer sign an agreement that the bank has prepared its contents or clauses in a printed form. The applicant is only asked for his opinion on whether he can accept the conditions contained in the blank form or not. Based on the case that the bank credit agreement is made with a notary deed, the bank will ask the notary to be guided by the credit agreement model of the bank concerned. Notaries are asked to guide the clauses of the relevant bank credit agreement model.

#### **4.2 Based on the Implementation of the Home Loan**

Agreement, it is often found that one party cannot carry out the performance well, or what is called default, causing problems between the parties that must be resolved together. Based on these circumstances, action must be taken so that the problem is immediately resolved properly by the parties and for the smooth implementation of the credit agreement so that the agreement is carried out properly by the contents of the agreement. These problems can be in the form of non-performing loans or called bad loans.

Based on the ability to pay according to the Decree of the Board of Directors of Bank Indonesia Number 31/147/KEP/DIR dated November 12, 1998, they are as follows:

- a. Current, ie if it meets the following criteria:
  1. Payment of installments of principal and interest quickly;
  2. Has an active account mutation.
- b. Special attention is paid to
  1. There are arrears in principal and/or interest installments that have not exceeded 90 (ninety) days;
  2. Account mutations are relatively low;
  3. the agreed contract;
  4. Supported by a new loan.
- c. Substandard if it meets the following criteria:
  1. There are arrears in payment of principal and/or interest that have exceeded 90 (ninety) days;
  2. Account frequency is relatively low;
  3. There is a violation of the contract that has been agreed for more than 90 (ninety) ) days;
  4. There are indications of financial problems faced by the debtor;
  5. Weak financial documentation.
- d. Doubtful, namely if it meets the following criteria:
  1. There are arrears of principal and/or interest that have exceeded 180 (one hundred and eighty) days;
  2. There has been a default of more than 180 (one hundred and eighty) days;
  3. There has been interested capitalization;
  4. Weak legal documentation for credit agreements. as well as binding guarantees

#### **4.3 Default Resolution**

In Home Ownership Loans, if the bank as the creditor has decided to take rescue action, of course it depends on the difficulties faced by the customer, then the choices of

actions that can be taken are as follows: 1. Settlement through debt restructuring through legal and non-legal channels. One of the efforts to settle bad loans through non-legal channels is restructuring. The legal basis for restructuring is the Letter of the Board of Directors of Bank Indonesia number 31/150/KEP/DIR dated November 12, 1998 concerning Credit Restructuring. Rescheduling actions can be given to debtors who still show good faith to pay off their obligations. Government regulations and global conditions are quite supportive. This rescheduling action was carried out because there was an excess of financing to the object of credit (over finance). Collateral controlled by the bank is sufficient to overcome and meet the juridical requirements. b. Reconditioning, namely changes as or all of the financing requirements, including changes in payment schedules, installment amounts, time periods and/or discounts as long as they do not add to the remaining customer obligations that must be paid. to the bank. Requirements for return can be done in various ways, namely; 1) Changes in interest rates; 2) Changes in the procedure for calculating interest; 3) Giving relief on interest arrears; 4) Giving relief on fines; 5) Providing relief from fees/fees; 6) Bank participating in equity participation as regulated in Article 10 paragraph 2 of Decree of the Board of Directors of Bank Indonesia No. 31/147/KEP/DIR dated 12-11-1998; 7) Changes in the management of debtor companies, usually the bank gives an opinion in the formation of the composition of the management; 8) Changes in credit terms; 9) Changes in other terms; 10) Additions collateral; 11) Change of legal form from CV to PT, thereby increasing the effective paid-up capital; 12) Combination of the forms of reconditioning above. Reconditioning action can be given to debtors who are still in good faith to pay off their obligations, which based on quantitative evidence is an alternative the best. Government regulations and global economic conditions are quite supportive. This reconditioning action was carried out because the debtor experienced a shortage of working capital. Collateral controlled by the bank is sufficient to overcome and meet the juridical requirements.

## V. Conclusion

The legal arrangement of the mortgage agreement refers to Article 1 number 11 of Law Number 10 of 1998 concerning Banking, in that article, there are the words: Provision of money or bills based on an agreement or loan agreement between the bank and other parties. The sentence indicates that the granting of credit must be made into an agreement, while the credit agreement according to the Civil Law regulated in the Third Book of the Civil Code Article 1754-1769 is one of the forms of a loan-borrowing agreement. -Each party will obtain its rights and obligations. What is the right of the debtor is the obligation of the bank, and what is the obligation of the debtor is the right of the bank. Basically, the implementation of the Home Ownership Loan agreement is made based on a free agreement with the meaning that the agreement can be made freely. Every form of agreement is made between two parties who are capable of acting for the sake of the law to carry out an achievement that does not conflict with the applicable law, morality, and public order, in agreeing the granting of a loan.

For credit, the bank needs to pay attention to the restrictions regulated by the applicable legislation, especially in this case the provisions of Article 1337 jo 1320 of the Civil Code. must pay attention to the provisions of the applicable legislation specifically regarding Home Ownership Credit. Each creditor and debtor should be mutually responsible for their rights and obligations as stated in the mutually agreed agreement so that they do not cause unwanted problems together in the future. It is preferable to implement the Home Ownership Credit agreement to resolve problems that arise as an



example of a default problem for the debtor if it occurs, it should be resolved by way of deliberation to reach a mutual agreement or by way of kinship between the debtor and the creditor.

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