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Protection for Housing Loan Consumers in Building Insurance toward the Risk of Natural Disaster Loss during the Construction Process

Article	Abstract
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INTRODUCTION

Property business law is part of Government Policy for implementing the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IV/MPR/1973 concerning the Outlines of State Policy (GBHN). As known, TAP MPR No. IV/MPR/1973 stipulates the GBHN as a general pattern of national development, a series of continuity of development programs in all fields to realize national goals as stated in the Preamble to the 1945 Constitution and provide a clear direction for the five-year development program.

For Indonesian people, especially the lower middle class, who need loan assistance to buy goods/services or business capital, the Bank is one of the business entities that is very useful in improving people's living standards. The function of the bank in the Indonesian banking legal system is as an intermediary for people who have surplus funds and people who lack funds.¹ One form of bank's main business activity is providing credit, known as bank credit. Banks channel bank credit to the public in accordance with their main function of collecting and distributing public funds.²

One of the essential aspects in meeting housing needs, especially for the lower middle-income group, is the availability of funding through Home Ownership Credit (KPR). Based on the Bank Indonesia website, Home Ownership Credit is a credit facility provided by banks to individual customers who will buy or repair a house.

Homeownership through mortgage facilities is currently a choice in great demand by the public. With KPR facilities, people can own a house on credit or at least occupy a house without paying off the price first.³ With this mortgage, it is hoped that the community can own a house with an instalment system that can be adjusted to their financial capabilities. The bank can also benefit from the mortgage.

Risks can occur to a person's future life, such as death, illness, or being dismissed from work. While the risk in the business world can be in the form of the loss risk due to fire, damage, or loss. In the business world, it is not only how to achieve profits that must be considered by management but also how to minimize risks in carrying out company activities. Every risk that will be faced must be overcome so that it does not cause big losses. To minimize unwanted risks in the future, it is necessary for companies that are willing to bear these risks. An insurance company is a company that is willing and able to bear every risk that will be faced by the insured, both individuals and business entities.

Many factors can cause damage to the construction of the house. The age factor could impact the building's strength and resilience, in addition to human error and non-technical factors, such as natural disasters, fires, etc. Damages could cause losses to consumers. Severe damage, such as broken building structures or decreased floors; moderate damage, such as corrugated doors or frames or leaky roofs, damages the attic; minor damage, such as cracks in the walls, broken door locks or other minor problems. These damages can be examples of some of the problems consumers often experience related to home construction.

Damage can also occur due to natural disasters. Natural disasters are natural events that majorly impact the human population. Natural events can include floods, volcanic eruptions, earthquakes, tsunamis, landslides, blizzards, droughts, hail, heat waves, hurricanes, tropical storms, typhoons, tornadoes, wildfires and disease outbreaks. Indonesia, located on the Pacific Ring of Fire (ring of fire), is a series of the most active volcanoes in the world that stretches along the Pacific plate. This zone contributes almost 90 percent of earthquake events on earth and almost all of them are major earthquakes worldwide. That is what causes Indonesia to be a disaster-prone area because

¹ Tri Wirdiono, *Aspek Hukum Operasional Transaksi Produk Perbankan Di Indonesia* (Bogor: Ghalia Indonesia, 2006).

² Wirdiono.

³ Zulfia Ade, "Pelaksanaan Perjanjian Alih Debitur (Over Credit) Atas Kredit Pemilikan Rumah (KPR) Pada Pt.Bank Tabungan Negara (BTN) Cabang Padang" (UNIVERSITAS ANDALAS, 2014).

of the threat from earthquakes, tsunami waves and ground movements with a fairly high intensity.⁴ In Indonesia, various natural disasters such as earthquakes, tsunamis, volcanic eruptions, floods, landslides, droughts, and forest fires are prone to occur. Even for several types of natural disasters, Indonesia ranks first in terms of exposure to the population or the number of people who died due to natural disasters.

The National Disaster Management Agency or BNPB in 2020⁵ recorded more than 400 disasters occurring until the third week of February 2020, or as of February 10, 2020. BNPB's recorded from the beginning of the year to February 10, 2020, flood disasters have the most significant impact compared to other disasters. Distribution of types of disaster events other than hydrometeorological disasters, namely forest and land fires (karhutla) 28 events and earthquakes 1. The total number of disaster events from the beginning of January to the third week of February 2020 amounted to 455 events. Apart from impacting casualties, a number of these disaster events caused damage to infrastructures such as residences and other facilities, such as education, health, offices, and bridges. The total number of damaged houses in the heavily damaged (RB) category reached 2,512 units, moderately damaged (RS) 1,725 and lightly damaged 6,707.

In practice, it often creates legal conflicts between housing management by developers and home buyers. Such a simple case can be taken as an example if the Developer carries out the house handover to the consumer. When inspecting and receiving the house, the consumer must be in good condition and suitable for occupancy. The handover was carried out during the rainy season, but it turned out that before the handover, there was a flood in the housing complex, so when the consumer checked his house, there were several damaged parts, such as the door expanding and some parts of the wall damaged until the paint peeled off. In principle, the house owner, as the consumer, has the right to get repairs to construction services for the damage to his house. Of course, it must be preceded by an obligation to immediately report to the Developer for problems in his house. Meanwhile, as a business actor, the Developer does not immediately check and ensure the damage to the house, while the Developer should repair it immediately.

The cause of a large number of housing cases basically begins with a mismatch between what is listed in the brochure and the reality consumers receive when occupying the house,⁶ such as the low quality of the technical specifications of the house, differences in land area, delays in the delivery of buildings, problems with social and public facilities, and so on. Marketing carried out by developers is very tendentious. So it is not uncommon for the information conveyed to be misleading (misleading) or incorrect, even though consumers have already signed a Sale and Purchase Binding Agreement (PPJB) with the Developer, or even have a credit agreement with the bank providing housing loans.⁷

Wibowo, who researched the same case, found that, in reality, the debtors will not get the insurance the creditors said on the brochure.⁸ So it becomes a serious problem because the debtors

⁴ Literasi Publik, "Wilayah Indonesia Rawan Terhadap Bencana," Literasi Publik, 2018, <https://www.literasipublik.com/wilayah-indonesia-rawan-bencana>.

⁵ Theophilus Yanuarta, "Lebih Dari 400 Bencana Terjadi Hingga Minggu Ketiga Februari 2020," Badan Nasional Penanggulangan Bencana, 2020, <https://bnpb.go.id/berita/lebih-dari-400-bencana-terjadi-hingga-minggu-ketiga-februari-2020>.

⁶ Janus Sidabalok, *Hukum Perlindungan Konsumen Di Indonesia* (Bandung: PT. Citra Aditya Bakti, 2010).

⁷ Yusuf Shofie, *Perlindungan Konsumen Dan Instrumen Hukumnya* (Bandung: Citra Aditya Bakti, 2000).

⁸ Wibowo, S. A. (2020). *Perlindungan Hukum Bagi Debitur Terdampak Bencana Alam Banjir (Force Majeure) Pada PT. Bank Pembangunan Daerah Sumatera Barat Cabang Tapan Kabupaten Pesisir Selatan* (Doctoral dissertation, Universitas Islam Riau).

get *double-kills*, have accidents from natural disasters, lose their assets, and at the same time, they do not get the insurance as their right.

Several housing cases generally positioned consumers as a vulnerable group compared to developers. Both are socio-economic, technical knowledge, and ability to take legal action through court institutions. Legal protection against it is not guaranteed as expected and desired by consumers, such as not the existence of permanent legal force or special articles in the arrangements and can be seen from the settlement of disputes, responsibilities and rights and obligations are not explained in detail in the contract agreement⁹.

As for Law Number 8 of 1999 concerning Consumer Protection in Article 4 it is explained that consumers are entitled to their rights as follows:

1. The right to comfort, security, and safety in consuming goods and/or services;
2. The right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
3. The right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services;
4. The right to have their opinions and complaints heard on the goods and/or services used;
5. The right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
6. The right to receive consumer guidance and education;
7. The right to be treated or served correctly and honestly and not discriminatory;
8. The right to obtain compensation, compensation and replacement if the goods and/or services received are not in accordance with the agreement or not properly;
9. The rights regulated in the provisions of other laws and regulations.

However, in reality, the consumer is only the party who must submit to and accept the contents of the standard clause. The party offered the standard agreement does not have the opportunity to change the clauses in the agreement; thus, by law, it is doubtful whether there are elements of the agreement. The agreement is a condition for the contract's validity in the standard contract. The definition of a standard contract is a written contract made only by one of the parties to the contract. It is often found that the contract has been printed in certain forms by one of the parties.¹⁰ It is often found that the contract is printed in a certain form by one of the parties. It is a standard contract that is usually difficult for debtors. The creditor sometimes abuses circumstances against the debtor, which incriminates him, such as obliging the customer to comply all instructions and regulations.¹¹ Both those exist and those that will be regulated in the future. This clause contradicts the Principles of Consumer Protection, Bank Indonesia regulations, and a circular letter from the financial services authority.

The problems above are cases that occur in the housing business environment. Seeing the above conflict between developers and consumers, in terms of the Developer's obligations and

⁹ Fitrah, R. PERLINDUNGAN HUKUM TERHADAP KONSUMEN KREDIT PEMILIKAN RUMAH (KPR) SYARIAH TANPA BANK (STUDI KASUS: DEVELOPER BALAD RESIDENCE DEPOK) (Bachelor's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta).

¹⁰ Munir Fuady, *Hukum Kontrak Dari Sudut Pandang Hukum Bisnis* (Bandung: Aditya Bakti, 2003).

¹¹ Mohamad Nur Muliatno Abbas, "Penyalahgunaan Keadaan Dalam Kontrak Baku Perjanjian Kredit Bank," *Gorontalo Law Review* 3, no. 2 (October 29, 2020): 188–204, <https://doi.org/10.32662/golrev.v3i2.1162>.

rights, of course, when viewed from the service and convenience side, the manager should serve professionally regardless of whether the conflicts that arise come from consumers. Because, after all, consumers are buyers who buy housing from developers and inhabit the housing;; therefore, all problems must be resolved in good faith. Good development must pay attention to the side of good building construction and be calculated carefully.

Based on the results of the author's search, some theses have similarities to this paper, these scientific works include Juridical Analysis of the Implementation of Consumer Protection on Housing Loans, written by Atika Nurmayasari, University of North Sumatra. From a law perspective about insurance in the property business, a thesis written by Kikie Mogie discussed developing housing development strategies and implementing policies and reducing risks such as natural disasters, fires and others by cooperating with insurance companies to protect consumers from ignorance of the law. The difference between the two titles above with this author is that the author discusses consumer protection against housing loans associated with insurance in dealing with the occurrence of various risks.

RESEARCH METHODS

The research method used is normative juridical, which has a source of research library data. The research is descriptive-analytic, describing something with words or sentences, then separating the categories to obtain conclusions. Its approach is a statutory approach and conceptual approach. Its primary legal materials are Law Number 8 of 1999 concerning Consumer Protection, Law Number 40 of 2014 concerning Insurance, and Law Number 10 of 1998 concerning Banking.

ANALYSIS AND DISCUSSION

Legal Protection for Consumers Who Have Housing Loans and Developer Liability When There is a Risk of Loss to Natural Disasters During the Construction Process

In connection with natural phenomena related to climate and weather, the public is always advised to be alert and ready for potential hazards, such as floods, flash floods, landslides, strong winds and lightning. As described in the previous chapter, legal protection is essential in consumer protection in this case, the consumer of Home Ownership Loans.

In the case of natural disasters, it is essential to guarantee property and even our souls to still have legal protection. In this case, for Home Ownership Loans with a mortgage, consumers have the right to legal protection, for example when there is an agreement between the consumer and the Developer during the development process, if something unexpected happens in the future, the consumer has the right to claim what has become his right. Consumer protection is all efforts that guarantee legal certainty to protect consumers.

The government participates in the issue of consumer protection because of the government's obligation to pay attention to it in accordance with the objectives of the State as stated in the 1945 Constitution, which states that the State is obliged to protect the entire Indonesian nation, and the whole homeland of Indonesia and to promote public welfare, consumer protection. And addressing consumer concerns is part of the task of promoting the general welfare at large.¹²

¹² Muhammad Djumhana, *Hukum Ekonomi Sosial Indonesia* (Bandung: PT. Citra Aditya Bakti, 1994).

The United Nations, with its resolution No. 39/248 of 1985 on Consumer Protection (Guidelines for Consumer Protection), also formulated various consumer interests that need to be protected, namely;

1. Protection of consumers from harm to health and safety
2. Promotion and protection of consumers' social and economic interests
3. Availability of adequate information for consumers to give them the ability to make the right choice according to their wishes and personal needs
4. Consumer education
5. Availability of effective redress
6. Freedom to form consumer organizations to voice their opinions in the decision-making process concerning their interests.

The consumer protection principle, as stated in Article 2 of Law no. 8 of 1999, aims to provide justice to consumers when a natural disaster risk occurs, and to provide legal certainty for both developers and consumers of housing loans to comply with the law, and also to obtain security and safety for protecting consumer as well as guarantee legal certainty. The bank needs to include the customer's rights in the contract, even though the agreement used is a standard agreement. Still, the bank must not ignore the customer's rights in mortgage financing so that later in the agreement no parties are maximized. It becomes a clear point for both parties that bring comfort to consumers and impact on the bank itself, which the public will highly trust as one of the institutions in buying mortgages.¹³

From international standards, a decent or adequate house means the availability of services, materials, facilities, and infrastructure. International standards state the legal security of tenure as a principle closely related to fulfilling the people's right to housing.

Meanwhile, if the consumer feels aggrieved by the business actor or Developer, the consumer can file legal action. Legal remedies that consumers can take are legal remedies through the courts and legal remedies outside the courts. Legal remedies for consumer dispute resolution include:¹⁴

1. Legal efforts through out of court

Settlement out of court is held to agree on the form and amount of compensation and/or certain actions to ensure that the losses suffered by consumers will not occur again (Article 47 of the Consumer Protection Law). Settlement of disputes out of court as referred to in Article 47 paragraph (2) of the Consumer Protection Act does not eliminate criminal responsibility as regulated in the Act. Consumers who want to resolve consumer disputes out of court can do alternative dispute resolution/ADR issues to the Consumer Dispute Settlement Agency (BPSK). The Consumer Dispute Settlement Agency (BPSK) is a non-structural institution that has a function as an "institution that resolves consumer problems outside the court cheaply, quickly and simply". This agency is very important needed in regions and cities throughout Indonesia. Its members consist of representatives of government officials, consumers and business actors. The main tasks of BPSK include:

¹³ Sagala, R. S., & SH, M. (2021). Perlindungan Hukum Terhadap Konsumen yang Membeli KPR Melalui Bank Menurut Undang-Undang Perlindungan Konsumen. *Jurnal Keadilan*, 1(1), 1-28.

¹⁴ Susanti Adi Nugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau Dari Hukum Acara Serta Kendala Implementasi*, 1st ed. (Jakarta: Kencana Media Group, 2008).

- a. Handling consumer issues through mediation, conciliation or arbitration;
- b. Consumer consultation in terms of consumer protection;
- c. Controlling the addition of standardized parts;
- d. Giving administrative sanctions to entrepreneurs who violate the rules of Article 47 of the Consumer Protection Act, also confirming that the settlement of consumer disputes outside the court is held to reach an agreement on certain actions to ensure that the losses suffered by consumers will not happen again or will not happen again.

In this case, the form of guarantee in question is a written statement explaining that there will not be a repeat of the actions that have harmed the consumer. A consumer harmed can file a compensation claim directly to the court or outside the court through the Non-Governmental Consumer Protection agency. In contrast, a lawsuit made by a group of consumers, non-governmental consumer organizations, government, or related agencies can only be submitted to court.

2. Legal remedies through the courts

In principle, any harmed consumer can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through general courts through the court can only be taken if the effort is declared unsuccessful by one of the parties or by the disputing parties.

The legal basis for resolving consumer disputes is Article 45, paragraph (2) of the Consumer Protection Act, which states:

“Consumer dispute resolution can be reached through or out of court based on the voluntary choice of the disputing parties.”

Settlement of disputes outside the court does not eliminate criminal responsibility as provided for in the law. The authority to resolve consumer disputes through the courts within the general court environment refers to the applicable provisions in the general court environment. This means that the procedure for filing a lawsuit in consumer protection matters refers to the applicable civil procedural law.

In accordance with Article 62 Paragraph (1) of Law no. 8 of 1999, for violations of articles 8, 9, and 10, business actors may be subject to criminal sanctions and fines; “Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) , and Article 18 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).” In addition to violations of Law no. 8 of 1999 (UUPK), the Developer, in this case, can also be subject to the rules listed in the Ministerial Decree No. 9 of 1995 number III point 3, namely; “The seller guarantees and is responsible for hidden defects that are only discovered in the future, in accordance with the provisions of articles 1504 and 1506 of the Civil Code”.

The responsibilities of business actors, which are part of the obligations that bind the activities of business actors in doing business, are commonly referred to as product liability. Product Liability

is the legal responsibility of the person/entity that produces a product, of the person/entity engaged in a process to produce or distribute the product.¹⁵

The responsibility of business actors (developers) for consumer losses is regulated in Article 19 of the UUPK, which states that:

- (1) “Business actors are responsible for compensating for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.
- (2) The compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or the provision of compensation in accordance with the provisions of the applicable laws and regulations.
- (3) Compensation is given within 7 (seven) days after the transaction date.
- (4) The provision of compensation, as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error.
- (5) The provisions as referred to in paragraph (1) and paragraph (2) shall not apply if the business actor can prove that the error is the fault of the consumer.”

Business actors are responsible for all losses arising from the results of their products or services. Based on Law no. 8 of 1999, Article 19 states that business actors are responsible for providing compensation for damage, pollution, or losses suffered by consumers as a result of consuming goods and/or services produced or traded if at any time during the house construction process a natural disaster occurs. This means that the responsibility of business actors includes all losses experienced by consumers. Responsibility cannot be separated from responsibility principles because it is essential in consumer protection.

Government Regulation of the Republic of Indonesia, Number 14 of 2016, concerning the Implementation of Housing and Settlement Areas Article 94, paragraphs 3 and 4, states that;

- (3) Before the house is handed over to the owner, the house’s maintenance is the construction actor’s responsibility.
- (4) The responsibility of the development actors, as referred to in paragraph (2) is for a minimum period of 3 (three) months.

In addition to the obligations as mentioned above, the Kepmenpera in number III also states that the Developer as the seller must provide guarantees to the buyer in the form of:

- a. The Seller guarantees for the Buyer’s interests that the Land and House Buildings, which are the object of the sale and purchase binding are the full rights of the seller. And not in dispute, not subject to confiscation by the competent authority.
- b. The Seller guarantees and releases the Buyer from all claims that arise in the future, both in terms of civil and criminal matters on the Land and Building of the House.
- c. The seller guarantees and is responsible for hidden defects only discovered in the future.

It can be seen from the obligations and guarantees of the seller (Developer), then the responsibility that can be applied as an effort to protect consumers who are harmed due to damage

¹⁵ Nugroho.

to housing either due to the actions of human hands or due to natural disasters in the development process in practice can be in the form of contractual responsibilities, liability, and product liability. Contractual responsibility can be applied if the business actor has breached the contract. Product liability can be implemented by holding the Developer responsible for consumer harm caused by the product, regardless of whether or not the Developer was at fault.¹⁶

Meanwhile, if viewed from law No. 4 of 1992 concerning Housing and Settlements, housing developers also have obligations, namely Article 7 paragraph 1 that every person or entity that builds houses or housing is obligated;

- a. comply with technical, ecological, and administrative requirements
- b. carry out monitoring of the affected environment based on the environmental monitoring plan
- c. carry out environmental management based on the environmental management plan.

Article 24 of Law no. 4 of 1992 also emphasized that in building a ready-to-build environment, a business entity in the field of development (in this case, the Developer) must:

- a. Carry out land maturation, structuring land use, structuring land tenure, and structuring land ownership in the context of providing mature land plots
- b. Building a network of environmental infrastructure precedes the activities of building houses, maintaining, and managing them until they are ratified and handed over to local governments;
- c. Coordinating the implementation of the provision of public utilities;
- d. Assisting community landowners who do not wish to relinquish land rights in or around them in consolidating land
- e. Doing greenery
- f. Provide land for environmental facilities
- g. Build a house.

The problem of improving the housing environment is the Developer's responsibility by paying attention, maintaining, and building houses to prevent unwanted things from happening in the future, such as natural disasters that cannot be predicted when they occur.

For this reason, as long as the management of the housing environment has not been handed over or is in the development process, the Developer can be held accountable for managing the housing environment. If the Developer neglects to improve the housing environment he is building, based on Article 36 of Law no. 4 of 1992 can be prosecuted both criminally and civilly. In connection with disputes or disputes between developers or developers and housing consumers, it is regulated in number XI of the Ministerial Decree No. 9 of 1995, namely:

- a. If there is a dispute, difference of opinion or dispute arising in connection with/as a result of this binding, then the parties will resolve it amicably.
- b. If the amicable settlement does not bring results, the parties agree to resolve the dispute through the Indonesian National Arbitration Board (BANI).

¹⁶ Hariyanto Hariyanto, "Risk-Based Business License and Problems Arising After The Job Creation ACT," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 2 (August 23, 2022). <https://doi.org/10.29303/ius.v10i2.1082>.

- c. The costs incurred in connection with the examination by the Indonesian National Arbitration Board (BANI) are a burden and must be paid by the parties for the same amount, namely 50% (fifty percent) Seller and 50% (fifty percent) Buyer.
- d. In the event of changes, reductions, and/or additions to the contents of this Sale and Purchase Agreement, the parties will negotiate by deliberation and consensus and the results will be stated in an Addendum which is an inseparable part of this Sale and Purchase agreement.

Developers are responsible for consumer losses caused by their products, regardless of whether there is an error from the Developer or not to reduce the risks that occur, so to avoid all losses that exist between developers and consumers, the Developer cooperates with the Insurance Company. So the insurance premium is borne equally by all consumers by adding to the price of the house.

In terms of the Developer's responsibility to the housing loan consumers, the consumers must notify the loss with evidence of the loss suffered by the consumer. It is for the occurrence of the building damage is not the result of the consumer act of himself but rather the negligence of the housing developer or the result of a natural disaster such as floods, earthquakes and the aftermath of the eruption of Mount Merapi. The proof is done by the way consumers collect documents such as photos of houses that have suffered damage that the consumers themselves do not cause. After the documents are submitted to the housing developer, the housing developer checks the house and after it is proven that the house has serious damage caused by a natural disaster, the Developer is responsible for the losses suffered by consumers, in other words, the housing developer has collaborated with the insurance company on the building to reduce the amount of losses suffered by the housing developer.

As in Article 123 of the Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Settlement Areas, it regulates the mobilization and accumulation of funds, namely:

- (1) The mobilization and accumulation of funds as referred to in Article 121 paragraph (2) letter b includes:
 - a. public funds;
 - b. housing savings fund including investment returns on excess liquidity; and/or
 - c. other funds in accordance with the provisions of the legislation.
- (2) The government and regional governments are responsible for encouraging the empowerment of banks in the mobilization and accumulation of funds as referred to in paragraph (1) for the sustainable management of housing and settlement areas.
- (3) The government and regional governments encourage the empowerment of non-bank financial institutions in mobilizing and cultivating housing savings funds and other funds specifically for housing, as referred to in paragraph (1) letters b and c for the implementation of housing and settlement areas.

Through cooperation between housing developers and financial institutions, banks and non-bank financial institutions can provide guarantees for the use of cost sources where these costs are used for maintenance and repair of the housing. This is regulated in Article 125 of Indonesian Law Number 1 2011 concerning Housing and Settlement Areas, which states that the utilization of cost sources is used for financing:

1. construction;
2. home acquisition;
3. construction of houses, public houses, or self-help housing repairs;
4. home maintenance and repair;
5. improving the quality of housing and residential areas; and/or
6. other interests in the housing and settlement areas in accordance with the provisions of the legislation.

Based on Articles 127 and 128 of Indonesian Law Number 1 2011 concerning Housing and Settlement Areas mentioned and explained in the previous chapter, financing facilities and assistance are divided into 2 types, namely primary housing financing carried out by legal entities and secondary financing provided by legal entities implemented by non-bank financial institutions.

Thus, the importance of the insurance company's role in reducing the burden of risk can not be expected in the future. For the general public, the uncertainty that contains risks that can threaten anyone creates the need to overcome the risk of losses that may arise from such uncertainty. The risks can come from natural disasters, negligence, incompetence or other reasons that were not previously anticipated. In addition to avoiding risk, preventing risk and restraining the risks faced at present and in the future, insurance is a form of risk transfer. The buyer of insurance services can also expand the risk in accordance with the payment of insurance premiums that have been made in a special agreement.¹⁷

Fear of uncertainty (uncertainty) raises the need for insurance protection. In accordance with the discussion in writing this law in terms of risk transfer, housing developers (developers) can cooperate with housing insurance. In the implementation of development, the community must address various types of risks.¹⁸

As one of the efforts to mitigate risks and at the same time as an institution that collects public funds, the insurance business has a strategic position in the development and economic life of the country to create general welfare, which is the goal of the formation of the Indonesian state. In general, there are two types of property insurance: property insurance for residential homes and business insurance. This business insurance is further divided into warehouses, shops/ruko, and offices/rukan.

Even property insurance also covers the damage if the house is crashed by an aeroplane. Based on the services provided, home insurance can be divided into two types, namely:

1. Property All Risk / Industrial All Risk
2. Indonesian Fire Insurance Standard Policy (PSAKI)

Insurance Company Liability for Housing Due to Risk of Natural Disaster Losses

Consumers have rights that must be protected. in the Code of Commercial Law, responsibility is responsible in 2 (two) matters; responsibility for the goods/objects that are insured/insured (if

¹⁷ Iin Irianingsih, Sukono Sukono, and Forman Ivana S. S. S, "ESTIMASI NILAI KERUGIAN DAN PREMI ASURANSI BANGUNAN AKIBAT BANJIR SUNGAI CITARUM DI KELURAHAN BALEENDAH BANDUNG," *Jurnal Ilmiah Matematika Dan Pendidikan Matematika* 9, no. 1 (June 23, 2017): 79–90, <https://doi.org/10.20884/1.jmp.2017.9.1.2857>.

¹⁸ Nugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau Dari Hukum Acara Serta Kendala Implementasi*.

there is a defect in the item), and responsibility for the insured's person (if there is a fault of the insured's own). This responsibility must be clearly stated in the insurance policy. And it may even be included in a specific, firm promise in the policy regarding the insurer's responsibility.¹⁹ In this case, the guarantee rights owned are an effort so that the Developer (Developer) does not bear the risk of too large a loss, in which the loss is caused by an uncertain event in the future that will befall the consumer himself. or property owned by the consumer, namely the house. Therefore, to reduce this risk, in the agreement between the Developer and the recipient of the guarantee rights, they can cooperate with the Insurance Company so that the guaranteed objects, namely land and houses purchased by consumers on credit, are insured.

As explained in the previous chapter regarding the definition of insurance based on Article 246 of the KUHD, insurance has the first objective of transferring the risk posed by uncertain events, which are not expected to occur to another person who takes the risk, to compensate for the loss. Therefore, as long as there is no loss, the insurer will not compensate the insured.

Let's compare the definition between Article 246 of the Commercial Code and Article 1 point 1 of Law no. 2 of 1992 concerning the Insurance Business. It can be concluded that several insurance elements exist in an agreement. The premium should be paid every month as a consumer obligation, the obligation of the insurer to provide compensation for losses that occur to consumers. The most important insurance element is the existence of an event that is not certain to occur.

So, to avoid losses that will occur due to an event in the future, insurance companies are needed, especially in guaranteeing property owned by Home Ownership Credit consumers. In which, the property that has been regulated in the insurance regulation is a guarantee for the lives of consumers and objects that can be guaranteed in the form of house damage caused by fire. As for guaranteeing the property, there must be an agreement between the parties involved in the process of building the house which is regulated in Article 1320 of the Civil Code, which states the conditions for the validity of an agreement if there is coercion, error, or fraud (*bedrog*), the agreement can be canceled. This is due to a defect of will on the element of agreement in the said agreement. If the agreement is violated, then the other party is subject to sanctions.

Thus, insurance is an agreement that has been stated above and applies to all parties bound in it.²⁰ As an agreement, insurance has several characteristics, including:

1. An insurance agreement is a reciprocal agreement. This is because, in the insurance agreement, each party has rights and obligations that must be carried out between the insured and the insurer.
2. The insurance agreement is a conditional agreement, because the insurer's obligation to provide compensation to the insured.
3. Insurance is an agreement to transfer and share risk. This has been explained in the previous chapter.
4. The insurance agreement is consensual. The mean of consensual agreement is an agreement that has been formed with an agreement between the parties.

¹⁹ Sigalingging, O. P. S., Sagala, M. J. P., & Gultom, M. (2022). *Perlindungan Hukum Bagi Pemegang Polis Dari Perusahaan Asuransi Jiwa Yang Pailit*. *Jurnal Impresi Indonesia*, 1(7), 773-785.

²⁰ Simanjuntak, *Hukum Perdata Indonesia* (Jakarta: Prenadamedia Group, 2015).

5. Insurance is basically a compensation agreement. This means that the insurer is bound to give to the insured in proportion to the loss suffered by the insured concerned. This principle applies only to the amount insurance.
6. Insurance has a special nature of trust. Mutual trust between the parties plays a big role for the agreement to be held.
7. In insurance, there is an element of “events that are not certain to occur”. Article 1774 of the Civil Code for insurance is classified as a chancy agreement: “A chancy agreement is an act whose results, namely regarding profit and loss, both for all parties and for some parties, depending on an uncertain event. Such are insurance agreements, life-sustaining interest, gambling and betting. The first agreement is regulated in the Commercial Code.”

As explained above regarding the agreement and understanding of insurance, the role of insurance companies is needed by looking at the current state of the country natural disasters often occur, especially in the case of the house construction process we cannot predict when a loss will occur such as a natural disaster that will cause damage on the building, so it is necessary to guarantee the property.

In Article 1 point 1 of Law no. 40 of 2014, what is meant by “Insurance is an agreement between two parties, namely the insurance company and the policyholder, which is the basis for receiving premiums by the insurance company in return for:

1. Providing compensation to the insured or policyholder due to loss, damage, costs incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event; or
2. Providing payments based on the insured’s death or payments based on the insured’s life with benefits whose amount has been determined and/or based on the results of fund management.

In law no. 40 of 2014 Article 18 clearly states that an insurance company can cooperate with other parties to obtain business with a mutual agreement and already has a permit to run its business from the authorized agency.

The insurance objects, according to Article 1 number 25 of Law No. 40 2014 concerning Insurance, are life and body, human health, legal responsibilities, goods and services, and all other interests that can be lost, damaged, lost, and/or reduced in value.” So, in this case, the consumer of Home Ownership Credit is required to insure the collateral goods to transfer the risks that may occur to the collateral goods.

However, the insurance law does not clearly and explicitly regulate the risk of loss to housing caused by natural disasters both in the process of building a house and after the house is completed, but the insurance law, especially housing insurance, only regulates guarantees for consumers’ lives. The mortgage owner guarantees the house when the house is damaged by fire. Meanwhile, natural disasters can come at any time. Disasters that have become regular in the rainy season include floods and disasters such as fires, explosions, and earthquakes. The risk of weather changes, such as being hit by lightning, is also included in the responsibility. Even property insurance also covers the damage if the house is crashed by an aeroplane. For home or personal property insurance, it only covers standard risks in the form of fire and the policyholder’s life.

However, based on the explanation above, housing insurance can be expanded if the housing loan consumer wants to guarantee all his property from all risks that cannot be predicted when it occurs. Therefore, one of the insurance business associations, namely the Indonesian General Insurance Association, has issued several standard policies relevant to the property business, as follows:

1. Standard Fire Insurance Policy, hereinafter referred to as PSAKI, is based on the policy; there are five direct causes of loss to the property and/or interest insured: Fire, lightning, explosion, falling aircraft and smoke. PSAKI basically does not cover loss or damage to the insured property which is directly or indirectly caused by:
 - a. Theft and or loss during and after the occurrence of an event that is guaranteed by the policy
 - b. The willingness of the insured, the representative of the insured or another party on the orders of the insured
 - c. The other party's intention with the knowledge of the insured, unless it can be proven beyond the control of the insured
 - d. Willful error or omission by the insured or the insured's representative; forest, bush, reed, or peat fires
 - e. All kinds of explosives
 - f. Nuclear reactions include, but are not limited to nuclear radiation, ionization, fission-fusion, or radioactive contamination, regardless of whether they occur inside or outside the building where the insured property and interests are stored.
 - g. Earthquake, volcanic eruption or tsunami
 - h. All kinds of business interruptionPSAKI also does not guarantee any loss or damage to the insured property or interest which is directly or indirectly caused by:
 - a. Volcanic eruption
 - b. Fires and explosions following an earthquake or volcanic eruption
 - c. Tsunami
2. The Indonesian Earthquake Insurance Standard Policy, hereinafter referred to as PSAGBI, based on this policy provides coverage for loss or damage to the property and or interests insured directly caused by the dangers of earthquakes, volcanic eruptions, fires and explosions following the occurrence of an Earthquake and/or eruption. Volcanoes and tsunamis. PSAGBI determines that this policy does not cover any loss or damage to property or interests insured directly or indirectly caused by:
 - a. Riots, strikes, impediments to work, evil deeds, riots, popular uprisings, taking power, revolutions, rebellions, military force, invasions, civil wars, wars and hostilities, acts of treason, terrorism, sabotage or looting; in a claim, lawsuit or other cases, where the insurer states that a loss is directly or indirectly caused by one or more of the risks excluded above. It is the responsibility of the insured to prove otherwise.
 - b. Nuclear reactions, including but not limited to nuclear radiation, ionization, fusion, fission or radioactive contamination, regardless of whether it occurs within or outside the interests of the insured, under the control of the insured or not, whether the loss

is direct or indirect, proxima or remota or wholly or partly caused by or as a result of or becomes worse than the insured danger

- c. Hit by a vehicle
- d. Hurricanes and storms of any kind, whether they are caused or caused by the insured hazard or not
- e. Floods or puddles, except as a result of the insured hazard, occur within 72 hours from the occurrence of the hazard.

In addition to the above provisions, there is also a provision, which states that PSAGBI also does not cover the risk of business interruption or any kind of consequential loss in any form unless it is expressly stated in the Policy for the sum insured:

- a. debris removal, cleaning costs
- b. other party's goods which are kept and/or deposited on trust or based on commission
- c. precious metals, jewellery, unformed gemstones
- d. antiques or art items
- e. all kinds of manuscripts, plans, drawings or designs, patterns, models or castings and prints
- f. securities, bonds or all kinds of securities and documents, postage including stamps and excise stamps, coins and banknotes, checks, bookkeeping records or other business records and computer system records
- g. foundations, excavations and the like, tools and machinery, stock and other goods

This policy does not cover any loss or damage arising as a result of theft as long as the risks are covered. This policy does not cover any loss or damage caused by a fatal error or negligence exceeding the Insured's limits or at the Insured's order to damage or destroy. This policy does not cover any loss or damage caused by a willful act and or an intentional mistake by another party with the knowledge of the Insured or the Insured's action increasing the loss or damage covered by this Policy.

In the event that at the time of development, the state participates and is responsible for the continuity of the housing development, this is because the state is the regulator or the one that establishes regulations that bind the entire community and also the state that gives the developer permission to construct the housing building.

As for government policies related to funding for natural disaster management, the government does not clearly mention funding from insurance. If it is clearly stated that there is funding from insurance companies, natural disaster risk management becomes efficient and effective. The government regulates in Article 4 regarding the sources of funds for natural disaster management in Government Regulation no. 22 of 2008 concerning Funding and Management of Disaster Aid, which states:

1. Disaster management funds are a shared responsibility between the government and regional governments.
2. Disaster management funds, as referred to in paragraph (1) shall come from:
 - a. STATE BUDGET;
 - b. APBD; and/or
 - c. Public.

In the event that the building collapses due to a natural disaster, it is a force majeure, when viewed from the form of accountability according to Munir Fuady, the force majeure is included in the absolute responsibility category (without errors) Article 1367 of the Civil Code. Absolute responsibility (without fault), or strict liability in this principle, is often identified with absolute responsibility.

The principle of responsibility stipulates guilt is not a determining factor, but some exceptions allow for exemption from responsibility. Force majeure, according to Subekti in the book *Legal Aspects in Business*, are completely unpredictable, and he cannot do anything about the circumstances or events that arise beyond his expectations.²¹

In carrying out a housing development, the Developer must comply with these development requirements so that the quality of the building does not easily collapse and be damaged due to natural disasters. However, suppose the building collapses due to a terrible natural disaster. In that case, it can be said that it is a natural disaster beyond human will that can make the developer escape from his responsibility. The collapse of a building due to a natural disaster in the Construction Services Law is regulated in Article 49 letter j in that article explaining that a forced situation contains provisions regarding events that arise against the will and ability of the parties that cause harm to one party. If the collapse of the building occurs against the will of the parties as a result of a natural disaster, it is related to a state of coercion (Force Majeure).²²

Seeing the meaning of Force Majeure, in this case, the collapse of the housing building is beyond human will, Based on Article 1245 of the Civil Code regulates the release of debtors from the obligation to compensate for losses because of an event called a state of coercion. So it can be said that the coercive situation is an unintentional, unexpected incident that cannot be accounted for by the debtor and is coercive, meaning that the debtor here cannot be prosecuted if the incident occurs.²³

Article 26 paragraph (3) jo Article 33 of the Natural Disaster Management Law explains that everyone can receive compensation if they are affected by a natural disaster due to failed development or the revocation, reduction, or part or all of what the government did over property rights of everyone over an object. So the article means even though the Natural Disaster Mitigation Law does not regulate compensation for natural disaster losses without human error, the state can provide full assistance to victims based on several considerations, such as the level of damage and location points. Location point in this case refers to where the natural disaster occurred. It is the location of the development center that is being focused on by the government or not. Assistance provided by the state is non-binding. It means that the amount here is not determined so that it is in accordance with the state's financial capacity.

In other words, it is understood that when a natural disaster occurs, the government continues to assist with the considerations described above.

CONCLUSION

The government participates in consumer protection issues because it is the government's obligation to pay attention to it in accordance with the state's goals as stated in the 1945 Constitution.

²¹ Ahmad Rizki Sridadi, *Aspek Hukum Dalam Bisnis* (Surabaya: Airlangga University Press, 2009).

²² Sridadi.

²³ Sridadi.

The business actors responsibility is for all losses arising from the results of their products or services, whether damage, pollution or losses suffered by consumers, as a result, consume goods and/or services produced or traded at any time in the development process. There are natural disasters in the form of floods, earthquakes due to volcanic eruptions, etc. The insurance company's responsibility for the risk of loss due to natural disasters during construction is the risk caused by natural disasters such as floods, earthquakes and others. Therefore, to reduce this risk, agreements between developers and collateral rights recipients can work with insurance companies so that collateral objects, namely land and houses purchased by consumers on credit, can be insured.

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