STANDARD AGREEMENTS IN HOME OWNERSHIP CREDIT AGREEMENTS AS AN FORMULATION OF IMPLEMENTATION OF THE PRINCIPLE OF FREEDOM OF CONTRACT IN KARANGANYAR DISTRICT, INDONESIA

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ABSTRACT

Purpose: The foundation of home ownership credit is a credit arrangement that incorporates the principle of freedom of contract and is created by banks acting as creditors and customers acting as debtors. Typically, the agreement takes the form of a standard agreement that the bank has created and is presenting to the client for approval.

Methods: This research is empirical legal research that is descriptive in nature. This study uses a qualitative method, which is a way to analyze the findings of studies that generate descriptive analytical data.

Results and Conclusion: The concept of freedom of contract is implemented through standard contracts. Actually, the purpose of the standard agreement was to facilitate the customer's ability to apply for credit or financing from banks right away. However, many of the rights of customers are unaddressed as a result of the banks creating boilerplate agreements.

Research implications: Therefore, in order to create a fair contract, it is necessary to evaluate banks' application of the principle of contractual freedom in loan contracts. Furthermore, the usual agreement provides both parties who guarantee with a kind of legal protection. The normal agreement that the Bank makes in its capacity as a creditor is one-sided and does not give the customer's rights much consideration.

Originality/value: All of the rights that consumers should be able to get are not, however, covered by this legal protection. Consequently, banks must incorporate the freedom of contract principle into credit agreements.

Keywords: Credit Agreements, Legal Protection, Standard Agreements, Principle, Freedom of Contract.
bancário imediatamente. No entanto, muitos dos direitos dos clientes não são abordados como resultado da criação de acordos padronizados pelos bancos.

Implicações da investigação: Portanto, para criar um contrato justo, é necessário avaliar a aplicação pelos bancos do princípio da liberdade contratual nos contratos de empréstimo. Além disso, o acordo habitual proporciona a ambas as partes que garantem uma espécie de proteção jurídica. O acordo normal que o Banco faz na qualidade de credor é unilateral e não dá muita consideração aos direitos do cliente.

Originalidade/valor: Todos os direitos que os consumidores deveriam poder obter não são, no entanto, abrangidos por esta proteção legal. Consequentemente, os bancos devem incorporar o princípio da liberdade contratual nos contratos de crédito.

Palavras-chave: Contratos de Crédito, Proteção Legal, Contratos Padrão, Princípio, Liberdade Contratual.

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1 INTRODUCTION

Home Ownership Loans are a solution for people who want to own a home but are constrained by costs. In order to fulfil their housing needs, the residents of Karanganyar Regency are quite interested in the mortgage solutions offered by the Bank. Developers in the Karanganyar Regency are likewise supportive of home ownership loans, as seen by the widespread building of homes that can be paid for using home ownership loans that are pre-financed by the bank and then marketed to the general public. The process of providing home ownership loans starts with a contract among the bank or creditor and the debtor, who is the consumer. With the credit agreement, legal certainty was born among the two parties.(Zaid et al., 2023) Legal certainty is given so that there are no doubts among the two parties, both banks as creditors and customers as debtors. Agreements for granting Home Ownership Loans among banks and customers are usually in the form of standard agreements that have previously been made by the bank which will be presented to prospective debtors for approval. The use of the freedom of contract concept is demonstrated by the standard agreement's complete validity. The standard agreement's sections, which the bank unilaterally added, render the terms of the agreement unfair to the consumer and the bank. (Andiani et al., 2023) This is due to banks' comparative economic advantage over consumers who require finance to meet their needs as capital owners. In order for the customer to receive financing facilities from the bank, they merely need to consent to the terms stated in the home ownership loan agreement (Mutiara & Latiefah, 2023).

The freedom of contract idea is implemented by standard agreements issued by banks. In order for an agreement to result in a mutually beneficial agreement among all parties, freedom of contract must exist. In practice, freedom of contract results in the birth of domination by one of the parties which results in decisions and agreements that are born from the standard agreement that are burdensome to one of the parties, namely the debtor (Ardi et al., 2023). The lack of negotiation during the agreement's creation, which led to the customer's coercion to accept its terms, contributed to the emergence of dominance from one of the parties (Suwadi et al., 2023). Incentives are given on the basis of acceptable standard recognition so that the development provided by bank credit can be delivered to the client immediately as the client only needs to join without any discussion of toxicity. The factor of need makes the people in Karanganyar Regency, Central Java Province, Indonesia only have to agree to the contents of
the agreement so that they can immediately get a mortgage financing program from the banks. Even though the standard agreement is carried out so that there is legal certainty and legal protection (Rêgo & de Godoi, 2022), in its implementation almost all the contents of the agreement are burdensome for the customer who does not have advantages from an economic standpoint. Therefore, in the agreement for granting housing loans, it is necessary to review again so that the implementation can be balanced among all parties (Hutabarat et al., 2023).

2 METHOD

This research is an empirical legal research that is descriptive in nature. (Saputra et al., 2021) This study uses a qualitative method, which is a way to analyze the findings of studies that generate descriptive analytical data. (Saputra, 2023) The data collection technique was carried out by interviewing informants related to the object of research, which was supported by the collection of secondary materials from books and also the internet where there were research journals whose contents were related to the object of research. Furthermore, the data will be analyzed qualitatively in an interactive model (Saputra et al., 2023).

3 RESULTS AND DISCUSSION

3.1 The Principle of Freedom of Contract

The principle of freedom of contract is enshrined in Article 1338 of the Civil Code, which explains that every contract becomes law by legal commitment, i.e., it binds the person who signs it. (Saputra, 2020) Freedom of contract can be interpreted as every person is free to determine with whom he will make an agreement, free to determine all forms and contents of the agreement and free to make a choice of law. (Wiwoho et al., 2023) Freedom of contract can also be interpreted if everyone is free to make agreements with other people as long as they do not violate the norms of decency and the public interest.

3.2 Home Ownership Loans in Karanganyar Regency, Central Java, Indonesia

Home ownership credit is a banking product that allows people to own affordable homes through bank financing, which the public can repay in installments. Home ownership loans in Regency of Karangania have high interest rates for the community. (Suwadi et al., 2022) As lenders, public banks are responsible for offering home ownership loan products. Home ownership financing services help provide homes that developers can purchase through bank-financed home ownership credit programs. Construction and marketing activities of consumer housing as a group where promoters (developers) acquire credit-sensitive products (Pujiyono et al., 2020):

1. An ongoing cash contract, like a house purchase contract, is managed by a contract between the client and the developer, who will pay the developer on a regular basis over a predetermined length of time.
2. Home Ownership Credit System, which is a system for purchasing houses made by consumers by means of credit with installment payments over a long period of 5 to 15 years.
3. Because there are various home ownership loan programmes that receive government subsidies, home ownership loan products have higher interest rates from the general public. It seeks to provide for the necessities of the populace, particularly in Karangania Regency. (Pujiyono et al., 2017)
Buying a house with the Home Ownership Credit system can be done in the following ways:

1. The consumer who will eventually open a bank account and the developer enter into an earlier arrangement. The terms of the later agreement will be determined by a number of factors, including the down payment, the location, the kind of house to be bought, the cost of the land and constructing, and the length of time needed to construct and turn over the house.

2. After a clear agreement between the consumer and the entrepreneur, the entrepreneur will apply to the client for a suitable mortgage loan, after which the repayment period is usually between 5 and 15 years, depending on the client's ability to pay the application installments (Sufmi et al., 2017).


The principles that should form the foundation of the loan agreement between the lender and the borrower are permission, contractual freedom, weighting, caution, confidence, and obligation. Good faith contracts and policies. All of these principles must be considered by all parties to achieve the goal of making a contract with the wishes of all parties involved in the contract. (Pujiyono et al., 2019) Standard contracts entered into by banks to facilitate the execution of credit contracts, especially mortgage loans, implement the principle of contractual freedom. A standard contract is a way to give potential clients a quick loan without wasting a lot of time. (Rian & Oghenemaro, 2022) There is no negotiation between the client and the bank on the content of the contract, so the standard contract can be approved by both parties immediately. However, it enjoys unequal rights and obligations compared to banks that accept contracts from economically weaker clients. The main reason is the need for the customer to accept the standard contractual terms offered by the bank to obtain immediate financial benefits from the bank (Waluyo & Pujiyono, 2017).

In Indonesia, the principle of freedom of contract is governed by Articles 1329, 1332 and 1338. The notion of freedom of contract depends on when all parties agree to be bound by a contract. This freedom does not imply that freedom is restricted by the laws of decency and public interest. (Saputra et al., 2022)

The standard agreement made by the banking sector results in dominance for the banking sector. The banking party benefits economically, making prospective customers who need financing to meet their needs inevitably have to agree to the contents of the agreement. This domination causes customers to submit and comply with the contents of standard agreements made by banks, (Effendi, 2015).

In addition to the ability to enter into a contract with any person, the notion of freedom of contract should encompass the equality of all parties in the discussion of the contract's subject matter. The lack of negotiation among the borrower and the lender on the content of the credit agreement for home ownership in Karanganyar Regency creates an independent conflict with the validity of the standard agreement drawn up by the banks. In actuality, though, this system is in place because of a necessity that needs to be acknowledged in order for credit to be extended promptly and for clients to be able to satisfy their demands right away (Saputra et al., 2023).
From the perspective of legal protection, a typical contract can also be seen as an application of the contractual freedom principle. The bank enters into standard agreements to provide both parties with a legal assurance and protection. Lenders can use standard contracting as a legal precaution to give customers legal guarantees when they provide credit financing. (Ayuningtyas, 2023) In the event that the client fails or falls behind on its responsibilities, the bank is still able to retrieve the customer's payment rights thanks to this legal assurance. However, as previously said, not all consumer rights might be covered by the contract if the standard contract represents a type of banking domination. Because of this, ordinary contracts' legal protection for consumers is still regarded as inadequate. Lenders must therefore have legal protection in order to assess ordinary contracts. The Consumer Protection Act mandates that banks adhere to standard standards when creating contract clauses, both in terms of form and content. This will help to safeguard the customer's legal interests. (Handriani, 2019).

Moh Isnaeni divides legal protection based on its source into two, namely external and internal. Internal legal protection can be interpreted that the legal protection is in the agreement made by each party that promises. Legal protection in agreements is manifested in clauses formulated by each party and mutually agreed to be bound in one agreement. Legal protection in the agreement will be realized if each party has equal rights and obligations in the contents of the agreement clause. (Rukumono et al., 2023) External legal protection is a form of legal protection, especially in agreements made by the authorities to protect weak parties in terms of making agreements. The purpose of external legal protection is to shield vulnerable parties from harm, injustice, and the arbitrary pursuit of other parties' interests. In terms of economic activity, all parties must receive legal protection so that all have equal opportunities and rights, (Anas, 2023). External legal protection can be realized in articles of law that have been made by the government, such as Law Number 8 which regulates consumer protection. Article 1 paragraph 3 of the 1945 Constitution states that "the State of Indonesia is based on law", which can be interpreted if all parties have the same position before the law, therefore in making agreements everyone has the same position and opportunity. (Asrul & Hasmara, 2023) Regulations regarding legal protection for access to credit agreements may also come from regulations issued by Bank Indonesia as Indonesia's central bank. These regulations are related to the third amendment of PBI No. 20/8/PBI/2018, i.e. PBI No. 23/2/PBI/2021, Bank Indonesia as the central bank for real estate financing and value ratio financing. Payday car loans or financing. The purpose of this regulation is to encourage Bank Indonesia as a central bank to stimulate the public's purchasing power, so that banks are encouraged to restore economic conditions through debt financing for the public. (Pujiyono et al., 2017) Bank Indonesia also plays a role when there is a dispute in the credit agreement between the bank and the customer. This role was played as a mediator in the issuance of PBI No. 7/7/PBI/2005 and Bank Indonesia Regulation No. 8/5/PBI/2006 on resolving customer complaints. This regulation is a form of legal protection for customers managed by Bank Indonesia as the central bank. (Rukmono et al., 2023).

Law Number 8 of 1999 which regulates consumer protection explains that if banks need to do the following things; provide clear, correct and honest information about products and conditions as well as guarantees for services provided, treat customers in a non-discriminatory manner, guarantee banking activities based on applicable banking standards. (Hutabarat et al., 2023) Bank Indonesia as the central bank has a role to oversee the banking business in Indonesia. Bank Indonesia also pays attention to how consumer protection is carried out, especially in terms of lending by banks and their agreements. Bank Indonesia positions itself as a mediator if later there is a dispute among the bank and the customer in terms of credit (Slamet et al., 2023).
4 CONCLUSION

A reassessment of the Housing Loan Repayment Agreement's (KPR) standard clause implementation is necessary. Its foundation is the unbalanced distribution of rights and responsibilities among the involved parties, particularly with regard to clients or borrowers who are financially poor. Customers may be given the option to provide proposals for the agreement's content, which the banking parties will then work together to decide upon. To secure legal assurances and safeguards, a typical contract should contain an equitable distribution of rights and obligations between the parties. Standardized contracts between banks and customers should be implemented with the freedom of contract principle in mind. It is predicated on the idea that every contract should strive for amity and reciprocal gain in situations when the committed parties' rights and obligations are evenly distributed. From an economic standpoint, privileged banks need to be able to balance the contract by balancing the rights and duties of their clients.

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