

Reconstructing Legal Protection for Mortgage Debtors Against Exoneration Clauses in Bank-Developer Agreements

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Abstract

The application of exoneration clauses in cooperation agreements between banks and property developers in housing loan (Kredit Pemilikan Rumah or KPR) financing has the potential to create an imbalance of rights and obligations, particularly for debtors as consumers of financial services. Such clauses are frequently used as instruments to limit or transfer the bank's liability, potentially conflicting with the principles of substantive justice, proportionality, and consumer protection. This study aims to analyze the legal boundaries between banking business efficiency strategies and the abuse of circumstances (*misbruik van omstandigheden*) in the implementation of exoneration clauses, as well as to formulate a reconstructed model of legal protection for KPR debtors. This research employs a normative legal research method using statutory, conceptual, and case approaches. The legal materials consist of primary, secondary, and tertiary legal sources, which are analyzed using a prescriptive legal approach. The findings indicate that exoneration clauses that unilaterally transfer liability to debtors are inconsistent with Law Number 8 of 1999 concerning Consumer Protection and disregard the principles of good faith, fairness, and contractual balance under Indonesian contract law. Therefore, the reconstruction of legal protection should be carried out through stricter limitations on the use of exoneration clauses, the implementation of a proportional allocation of risks among banks, developers, and debtors, and strengthened supervision of standard-form agreements in the banking sector. Such measures are expected to enhance legal certainty, justice, and effective legal protection for housing loan debtors.

INTRODUCTION

The development of the housing financing industry in Indonesia shows that Home Ownership Loans (KPR) are still the main instrument in meeting people's needs for decent housing. The financing pattern is generally built through legal relationships involving three subjects, namely banks as credit facility providers, developers as housing object providers, and debtors as consumers of financial services. The legal relationship is not only realized through credit agreements between banks and debtors, but also through Cooperation Agreements (PKS) between banks and developers which are the basis for the implementation of financing. Although this mechanism provides convenience for the public in obtaining access to financing, the practice of drafting agreements is often still dominated by banks as parties with a stronger bargaining position, which has the potential to cause an imbalance in the rights and obligations of the parties.¹

The principle of freedom of contract as stipulated in Article 1338 of the Civil Code gives the parties the flexibility to determine the content and form of the agreement made. However, this freedom is not an absolute freedom. The implementation of a permanent agreement must pay attention to the principles of good faith, propriety, balance, and must not contradict the provisions of laws and regulations. In the development of modern contract law, the principle of freedom of contract is no longer understood solely as legitimacy of the formal agreement of the parties, but must also be able to guarantee the achievement of substantive justice through a proportionate distribution of rights, obligations, and risks.²

One of the problems that is still often encountered in mortgage financing practices is the inclusion of exoneration clauses in standard agreements. The clause is essentially a provision that limits or even removes the liability of either party for losses that may arise during the performance of the agreement. In banking practice, exoneration clauses are often used as a business risk mitigation instrument. However, there are not a few clauses that actually shift the burden of responsibility to the debtor without providing adequate negotiation space. Such a condition causes the debtor to be in a weak position because he has to accept the entire contents of the agreement as a condition for obtaining a home financing facility.³

¹ Agus Yudha Hernoko, *Covenant Law: The Principle of Proportionality in Commercial Contracts* (Jakarta: Kencana, 2010), 31–35.

² Sutan Remy Sjahdeini, *Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia* (Jakarta: Indonesian Banker Institute, 1993), 45–52.

³ Ahmadi Miru, *Principles of Legal Protection for Consumers in Indonesia* (Jakarta: RajaGrafindo Persada, 2013), 71–79.

The existence of the exoneration clause has actually obtained normative restrictions through Article 18 of Law Number 8 of 1999 concerning Consumer Protection which prohibits business actors from including standard clauses that transfer responsibility to consumers. In addition, regulations regarding consumer protection in the financial services sector are also affirmed in the Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector which requires every financial services business actor to apply the principles of transparency, fair treatment, and the drafting of agreements that do not harm consumers. However, the implementation of the two legal instruments still faces various obstacles because the limitation of liability clause is often constructed with redaction that is difficult for the debtor to understand and is maintained in standard banking contracts.⁴

These problems become increasingly complex in the tripartite legal relationship between banks, developers, and debtors. In the practice of cooperation in financing housing projects, banks and developers first agree on the division of rights, obligations, and financing mechanisms through a Cooperation Agreement. Debtors who then apply for mortgage facilities basically do not participate in the process of forming the PKS, but still have to bear the legal consequences born from the agreement between the two parties. As a result, if there is a delay in development, administrative obstacles, or failure to disburse credit, the responsibility of each party often becomes unclear so that the position of the debtor as the most vulnerable party actually becomes the most disadvantaged party.⁵

Various previous studies have generally still placed exoneration clauses as part of the discussion of consumer protection or contract balance in general. Niru Anita Sinaga's research focuses on protecting bank customers through the Consumer Protection Law approach⁶, while Agus Yudha Hernoko emphasizes the application of the principle of proportionality in banking contracts. Other studies on abuse of circumstances have also examined the aspect of contract cancellation without providing clear limits on when a bank's risk mitigation strategy is still justified and when it has turned into a form of exploitation of debtors. Thus, there is still room for research on the relationship between

⁴ Law Number 8 of 1999 concerning Consumer Protection; Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector.

⁵ Herlien Budiono, *General Teachings of Treaty Law and Its Application in the Notary Field* (Bandung: Citra Aditya Bakti, 2014), 141-147.

⁶ Niru Anita Sinaga, "Legal Protection for Bank Customers in Credit Agreements against Standard Clauses," *Aerospace Law Scientific Journal* 9, no. 1 (2018): 33-48;

exoneration clauses, abuse of circumstances (*misbruik van omstandigheden*), and legal protection of debtors in the cooperative relationship between banks and developers.⁷

Based on these conditions, this study offers novelty in the form of reconstruction of the legal protection of mortgage debtors through the establishment of limiting limits on the use of exoneration clauses in the Cooperation Agreement between banks and developers. The reconstruction is based on the principles of substantive justice, the principle of proportionality, and the doctrine of *misbruik van omstandigheden* so that the sharing of risks in tripartite legal relationships is no longer unilaterally imposed on the debtor. With this approach, this research is expected not only to contribute to the development of treaty law in Indonesia, but also to become a normative recommendation in the preparation of standard agreements that are more fair, balanced, and provide effective legal protection for mortgage debtors.

Based on this description, this study discusses two main problems, namely how the limiting limits between the banking business efficiency strategy and the practice of abusing circumstances in the application of exaggeration clauses, and how to reconstruct legal protection for mortgage debtors in order to realize substantive justice in the legal relationship between banks, developers, and debtors.

METHODS

This research is a *normative legal research* that is oriented towards the study of legal norms to analyze legal protection for Home Ownership Credit (KPR) debtors against the application of exoneration clauses in cooperation agreements between banks and developers. Normative legal research was chosen because the focus of the research lies in the analysis of laws and regulations, legal principles, doctrines, and legal concepts that govern the legal relationship between banks, developers, and debtors in the implementation of housing financing.⁸

The research approaches used include the statute *approach*, the conceptual *approach*, and the *case approach*. The approach to laws and regulations is carried out through a review of the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, and Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector. The conceptual approach is used to examine the theory of substantive justice, the principle of

⁷ Agus Yudha Hernoko, "Contract Balance in Banking Credit Agreements with Standard Clauses," *Journal of Law and Justice* 5, no. 2 (2016): 209–223.

⁸ Peter Mahmud Marzuki, *Legal Research Methods*, Revised Edition (Jakarta: Kencana, 2021), 35–38.

proportionality, the doctrine of *misbruik van omstandigheden*, and the concept of exoneration clauses as the basis of analysis in assessing the balance of rights and obligations of the parties. Meanwhile, a case approach was used to analyze the practice of implementing exoneration clauses in the Cooperation Agreement between PT Bank Rakyat Indonesia (Persero) Tbk. and PT YEKAPE Surabaya as the object of the research.⁹

The legal materials used consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations related to treaty law, consumer protection, and the financial services sector. Secondary legal materials are in the form of scientific books, articles from national and international journals, research results, and opinions of experts relevant to the object of research. The tertiary legal materials include legal dictionaries, legal encyclopedias, and other scientific sources that function to provide explanations of legal concepts and terms used in this research.¹⁰

The collection of legal materials is carried out through *library research* by inventorying, identifying, and classifying all legal materials according to the focus of the research. Furthermore, the legal material is analyzed prescriptively using grammatical, systematic, and teleological interpretation methods to obtain legal arguments regarding the limitations on the use of exoneration clauses in cooperation agreements between banks and developers. The analysis is then used as a basis for formulating a legal protection reconstruction model that is able to realize a balance of rights and obligations of the parties based on the principles of substantive justice, legal certainty, and utility.¹¹

RESULTS AND DISCUSSION

1. Limiting Limitations between Banking Business Efficiency Strategy and Abusive Practices of Circumstances on the Application of Exoneration Clauses in Bank-Developer Cooperation Agreements

The development of the banking industry requires a financing system that is able to provide services quickly, effectively, and has a high level of legal certainty. One form of efficiency implementation is realized through the use of standard *form contracts* in the distribution of Home Ownership Loans (KPR). The use of standard agreements allows banks to standardize credit granting procedures, reduce transaction costs, speed up the financing analysis process, and provide administrative certainty in a very large number

⁹ Peter Mahmud Marzuki, *Legal Research Methods*, 133–206.

¹⁰ Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2013), 295–310.

¹¹ Peter Mahmud Marzuki, *Legal Research Methods*, 213–225.

of transactions. From an economic perspective, the mechanism is part of the business efficiency strategy which is allowed in principle as long as it does not conflict with legal provisions or consumer protection principles.¹²

Juridically, the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code gives the parties the freedom to determine the content, form, and terms of an agreement. However, this freedom cannot be interpreted as unlimited authority for one party to draft the contents of the contract unilaterally. The provisions of Article 1338 paragraph (3) of the Civil Code expressly require that every agreement be carried out in good *faith*, while Article 1339 of the Civil Code expands the binding power of the agreement to always pay attention to the propriety, customs, and provisions of laws and regulations. Therefore, business efficiency realized through standard contracts must remain within the corridor of balance of rights and obligations of the parties so as not to cause disproportionate losses to the debtor.¹³

In the practice of housing financing, the legal relationship does not only occur between banks and debtors, but also involves developers through Cooperation Agreements (PKS). The agreement regulates the marketing mechanism of housing units, procedures for disbursing credit facilities, administrative settlement, and risk sharing if there are obstacles in the development and financing process. However, the preparation of PKS is generally carried out through negotiations between banks and developers without involving the debtor as the party who ultimately bears the legal consequences of the implementation of the agreement. Such conditions cause the debtor to be in a position where he has no opportunity to affect the substance of the contract, even though various provisions in the PKS have a direct impact on his rights as a consumer of financial services.¹⁴

One of the clauses that is often found in such legal relationships is the exoneration clause. This clause is basically a provision that limits or transfers the liability of either party in the event of a loss during the execution of the agreement. In banking practice, exoneration clauses are commonly used as a risk mitigation instrument to maintain the stability of bank business activities. However, problems arise when the clause no longer functions as a risk-sharing mechanism, but turns into an instrument of transferring all responsibilities to debtors and developers. In such conditions, the goal of business

¹² Sutan Remy Sjahdeini, *Freedom of Contract and Balanced Protection for Parties in Bank Credit Agreements in Indonesia* (Jakarta: Indonesian Banker Institute, 1993), 145-149.

¹³ Agus Yudha Hernoko, *Covenant Law: The Principle of Proportionality in Commercial Contracts* (Jakarta: Kencana, 2010), 31-56.

¹⁴ Herlien Budiono, *General Teachings of Treaty Law and Its Application in the Notary Field* (Bandung: Citra Aditya Bakti, 2014), 141-147.

efficiency has shifted to a form of unilateral protection of the interests of the bank, which is contrary to the principle of contract balance.¹⁵

Law Number 8 of 1999 concerning Consumer Protection has actually provided strict restrictions on the use of standard clauses. Article 18 paragraph (1) letter a prohibits business actors from including clauses stating the transfer of responsibility, while letter g prohibits clauses that require consumers to submit to new provisions made unilaterally by business actors during the course of the agreement. This provision shows that Indonesian law does not reject the existence of standard contracts as an instrument of business efficiency, but rejects any form of clause that disproportionately eliminates or reduces the legal responsibilities of business actors. Thus, the legality of the exoneration clause must be measured on the substance of the protection provided to the consumer, not solely because the clause has been approved through the signing of the contract.¹⁶

The same principle is also affirmed in Financial Services Authority Regulation Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector. The regulation requires every financial services business actor to prepare agreement documents in a transparent, easy-to-understand manner, and does not contain provisions that are detrimental to consumers. This arrangement shows a shift in the paradigm of legal protection from simply recognizing the freedom of contract to the protection of the balance of the position of the parties. Therefore, any clause that restricts the debtor's rights must be proven to have a rational, proportionate purpose, and does not eliminate the consumer's basic right to obtain legal protection.¹⁷

In the perspective of the theory of substantive justice, the validity of a contract is not only determined by the fulfillment of the legal conditions of the agreement as stipulated in Article 1320 of the Civil Code, but must also consider the justice of the substance contained in it. John Rawls argued that justice must provide protection to those who are in the *least advantaged position*. This concept is very relevant in the legal relationship of mortgage financing because the debtor is in a position that is economically and information much weaker than banks. Therefore, the application of a clause that imposes all risks on the debtor cannot be justified only on the grounds of a formal agreement between the parties.¹⁸

¹⁵ Ahmadi Miru, *Principles of Legal Protection for Consumers in Indonesia* (Jakarta: RajaGrafindo Persada, 2013), 71-79.

¹⁶ Indonesia, Law Number 8 of 1999 concerning Consumer Protection, Article 18 paragraph (1) letter a and letter g.

¹⁷ Indonesia, Financial Services Authority Regulation Number 22 of 2023.

¹⁸ John Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Harvard University Press, 1999), 52-65.

This view is in line with the theory of proportionality put forward by Agus Yudha Hernoko. According to him, the balance in contracts is not measured based on the equality of rights mathematically, but based on the division of rights, obligations, benefits, and risks according to the capacity and contribution of each party. In the legal relationship between banks, developers, and debtors, risks arising from delays in credit disbursement, changes in the bank's internal policies, or administrative failures should not be transferred entirely to the debtor because the debtor does not have the ability to control these factors. Therefore, an exoneration clause that removes the bank's liability is absolutely contrary to the principle of proportionality in contract law.¹⁹

Further, the use of the exoneration clause can also be analyzed through the doctrine of *misbruik van omstandigheden* or abuse of circumstances. This doctrine developed as a form of protection for the party who gave consent because they were in a state of desperation, economic dependence, or inequality of bargaining position. In mortgage financing, the community's need for a house as a primary need causes debtors to often accept all the terms of the contract without having the opportunity to negotiate. This situation shows that the consent given by the debtor does not always reflect full freedom of will, but is influenced by the urgent need for home financing. If these conditions are used to include clauses that expressly limit the bank's liability, then the practice has met the characteristics of abuse of circumstances.²⁰

The findings of this study are different from some previous studies that generally only place exoneration clauses as a matter of consumer protection or contract balance in general. Niru Anita Sinaga's research focuses on the supervision of standard clauses based on the Consumer Protection Law, while Agus Yudha Hernoko emphasizes the importance of the principle of proportionality in contractual relationships. This study complements both studies by offering a limiting boundary between a business efficiency strategy that is still justifiable and an abusive practice of circumstance that must be declared to be contrary to the principle of substantive justice. Thus, the measure of the legality of the exoneration clause depends not only on the existence of a standard contract, but also on the balance of risk sharing, the existence of free will, and the fulfillment of the principle of consumer protection in the tripartite legal relationship between banks, developers, and debtors.

¹⁹ Agus Yudha Hernoko, *The Law of Agreements: The Principle of Proportionality in Commercial Contracts*, 39–61.

²⁰ J.H. Nieuwenhuis, *Principles of Covenant Law*, translated by Djasadin Saragih (Surabaya: Airlangga University Press, 1985), 112–116; Sutan Remy Sjahdeini, 182–186.

2. Reconstruction of the Legal Protection of Mortgage Debtors against the Exoneration Clause in the Bank and Developer Cooperation Agreement

Legal protection for debtors in the financing of Home Ownership Loans (KPR) can no longer be understood as limited to giving the right to file a lawsuit in the event of a breach of contract. The modern legal protection paradigm places the law as an instrument that must be able to prevent the birth of injustice from the stage of contract formation. In the legal relationship between banks, developers, and debtors, such protection must be realized through mechanisms that are able to create a balance of rights, obligations, and risk sharing since the process of drafting the Cooperation Agreement (PKS). Therefore, the reconstruction of legal protection is not only directed at resolving disputes after losses have occurred (*repressive*), but also at the establishment of a contractual system that is able to prevent the emergence of exploitative (*preventive*) clauses.²¹

So far, the construction of legal relations in mortgage financing still shows the dominance of banks as the main drafters of standard agreements. This position causes most operational and administrative risks to be transferred to developers or debtors through exoneration clauses. In fact, in the perspective of modern contract law, every risk should be imposed on the party who has the greatest ability to control the risk (*risk allocation principle*). Risks arising from the bank's internal policies, credit analysis processes, disbursement of funds, and changes in financing policies are risks that are juridically within the bank's scope of responsibility so that they cannot be transferred entirely to the debtor through standard clauses.²²

The reconstruction of legal protection must also pay attention to the characteristics of tripartite legal relationships in housing financing. Unlike bilateral legal relationships in general, the relationship between banks, developers, and debtors is an interdependent *contractual relationship*. The implementation of one party's obligations will affect the fulfillment of the other party's achievements. For example, the delay in disbursing loans by banks will have implications for the delay in the delivery of houses by developers, while construction delays can affect credit realization and debtor payment obligations. Thus, any form of limitation of liability must consider the causal relationship between the three parties so as not to impose a unilateral risk on the debtor as the weakest party.²³

²¹ Philipus M. Hadjon, *Legal Protection for the Indonesian People* (Surabaya: Bina Ilmu, 1987), 2-5.

²² Agus Yudha Hernoko, *Covenant Law: The Principle of Proportionality in Commercial Contracts* (Jakarta: Kencana, 2010), 156-170.

²³ Herlien Budiono, *General Teachings of Treaty Law and Its Application in the Notary Field* (Bandung: Citra Aditya Bakti, 2014), 145-152.

Based on the results of the analysis of the principle of substantive justice and the principle of proportionality, this study found that the reconstruction of legal protection needs to be carried out through a paradigm shift in the preparation of Cooperation Agreements between banks and developers. So far, PKS has been more oriented towards protecting the interests of banks as fund providers, while the interests of debtors only get protection indirectly through credit agreements. This condition causes the debtor's rights to be highly dependent on the substance of the PKS which is never even known or negotiated by the debtor. Therefore, the preparation of the PKS must be directed to also pay attention to the interests of the debtor as the party who receives the legal consequences of the implementation of the agreement.²⁴

The reconstruction can be realized through several legal instruments. First, any exoneration clause should be limited only to risks that are completely beyond the bank's ability to control (*force majeure*) and should not be used to remove liability due to the bank's negligence or administrative error. Second, clauses related to risk sharing must be prepared proportionately by taking into account the contribution of each party to the occurrence of losses. Third, any changes to the terms and conditions of financing that have the potential to increase the burden on the debtor must first obtain the debtor's approval as a form of implementation of the principles of transparency and freedom of will.²⁵

In addition to changes to the substance of the contract, it is also necessary to strengthen legal protection through the optimization of the supervisory function by the Financial Services Authority (OJK). So far, the supervision of standard agreements in the financial services sector has still focused more on administrative aspects than on testing the substance of clauses used by financial services business actors. In fact, the effectiveness of consumer protection is determined not only by formal compliance with the provisions of laws and regulations, but also by the ability of regulators to ensure that each clause in the agreement has reflected the principles of fairness, transparency, and balance. Therefore, the evaluation mechanism for standard agreements needs to be expanded to include testing of clauses that have the potential to disproportionately transfer liability to the debtor.²⁶

In addition to external supervision by the OJK, banks also need to implement a *periodic legal review* mechanism for all forms of standard agreements used in mortgage

²⁴ Indonesia, Law Number 8 of 1999 concerning Consumer Protection, Article 18; Indonesia, Financial Services Authority Regulation Number 22 of 2023.

²⁵ Shidarta, *Indonesian Consumer Protection Law* (Jakarta: Grasindo, 2006), 112–118.

²⁶ Widhi Handoko, *International Journal of Law and Public Policy* 2, no. 1 (2020): 14–20.

financing. The evaluation is important to ensure that the substance of the contract is aligned with the development of consumer protection regulations, court decisions, and developing contract law doctrines. The mechanism will also provide legal certainty for banks because it can minimize the risk of disputes due to the use of clauses that are contrary to the provisions of laws and regulations. Thus, the protection of debtors is not seen as an obstacle to banking business activities, but as part of the application of the principles of *good corporate governance* in the financial services sector.

The results of this study are different from Widhi Handoko's research which focuses on the reconstruction of debtors' legal protection based on the value of Pancasila justice. The research is more oriented towards the concept of legal protection in general without providing operational parameters regarding the limitation of exoneration clauses in tripartite legal relations. This study offers novelty in the form of establishing limiting limits on the use of exoneration clauses based on three indicators, namely (1) the source of the risk, (2) the ability of each party to control the risk, and (3) the proportionality of the division of responsibility. These three indicators can be used as a measure to distinguish between clauses that are still justifiable as a risk mitigation strategy and clauses that have turned into a form of abuse of circumstances (*misbruik van omstandigheden*).

Based on this construction, this study argues that legal protection for mortgage debtors will be more effective if the legal relationship between banks, developers, and debtors is built on the principle of substantive justice rather than simply being guided by the formal legality of the contract. The validity of a clause is not enough to be judged by the signatures of the parties, but must also be tested based on the balance of risk sharing, respect for freedom of will, and protection of parties with weaker bargaining positions. Thus, the reconstruction of legal protection offered in this study does not aim to reduce legal certainty for the banking industry, but rather to create a fairer, more transparent, and sustainable housing financing system for all parties involved.

CONCLUSION

The application of the exoneration clause in the Cooperation Agreement between banks and developers in the financing of Home Ownership Loans (KPR) is basically an instrument that can be used as part of the risk mitigation strategy and the efficiency of the banking business. However, the strategy has juridical limits that should not be exceeded. The exoneration clause can no longer be justified if it is used to transfer responsibilities arising from mistakes, omissions, or risks that are clearly in the control of the bank to the debtor or developer. The use of such clauses is contrary to the principle

of good faith, the principle of proportionality, the principle of substantive justice, and the provisions of Article 18 of Law Number 8 of 1999 concerning Consumer Protection. In addition, the practice fulfills the characteristics of abuse of circumstances (*misbruik van omstandigheden*) because it is born from the inequality of bargaining position that causes the debtor to not have the opportunity to negotiate the substance of the agreement freely.

The reconstruction of legal protection for mortgage debtors should be directed at the establishment of a more balanced system of tripartite legal relations between banks, developers, and debtors through risk sharing based on the principle of proportionality. The reconstruction is carried out by limiting the use of the exoneration clause to circumstances beyond the control of the parties (*force majeure*), prohibiting the transfer of responsibility for bank faults to the debtor, strengthening the principle of transparency and approval of changes in the terms of the agreement, and optimizing supervision of the substance of the standard agreement by the Financial Services Authority. This study offers novelty in the form of limiting parameters in assessing the validity of the exoneration clause based on the source of the risk, the ability of the parties to control the risk, and the proportionality of the division of responsibilities. These parameters are expected to be a guideline in the preparation of Cooperation Agreements between banks and developers so as to create legal certainty, substantive justice, and effective legal protection for mortgage debtors as consumers of financial services.

REFERENCES

- Alexy, Robert. *A Theory of Constitutional Rights*. Oxford: Oxford University Press, 2002.
- Atiyah, P. S. *The Rise and Fall of Freedom of Contract*. Oxford: Clarendon Press, 1979.
- Budiono, Herlien. *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*. Bandung: Citra Aditya Bakti, 2014.
- Hadjon, Philipus M. *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, 1987.
- Handoko, Widhi. "Reconstruction of Legal Protection for Debtors in Credit Agreements Based on Justice Value." *International Journal of Law and Public Policy* 2, no. 1 (2020): 14–20.
- Hernoko, Agus Yudha. "Keseimbangan Kontrak pada Perjanjian Kredit Perbankan dengan Klausula Baku." *Jurnal Hukum dan Peradilan* 5, no. 2 (2016): 209–223.
- Hernoko, Agus Yudha. *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*. Jakarta: Kencana, 2010.

- Ibrahim, Johnny. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2013.
- Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek).
- Marzuki, Peter Mahmud. *Metode Penelitian Hukum*. Edisi Revisi. Jakarta: Kencana, 2021.
- Miru, Ahmadi. *Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen di Indonesia*. Jakarta: RajaGrafindo Persada, 2013.
- Munir Fuady. *Hukum Kontrak: Dari Sudut Pandang Hukum Bisnis*. Bandung: Citra Aditya Bakti, 2014.
- Nieuwenhuis, J. H. *Pokok-Pokok Hukum Perikatan*. Diterjemahkan oleh Djasadin Saragih. Surabaya: Airlangga University Press, 1985.
- Peraturan Otoritas Jasa Keuangan Nomor 22 Tahun 2023 tentang Perlindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan.
- Rawls, John. *A Theory of Justice*. Revised Edition. Cambridge: Harvard University Press, 1999.
- Shidarta. *Hukum Perlindungan Konsumen Indonesia*. Jakarta: Grasindo, 2006.
- Sinaga, Niru Anita. "Perlindungan Hukum Bagi Nasabah Bank dalam Perjanjian Kredit terhadap Klausula Baku." *Jurnal Ilmiah Hukum Dirgantara* 9, no. 1 (2018): 33-48.
- Sjahdeini, Sutan Remy. *Kebebasan Berkontrak dan Perlindungan yang Seimbang bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia*. Jakarta: Institut Bankir Indonesia, 1993.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 10 Tahun 1998 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan.
- Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.