

## RIGHT TO PURCHASE OF THE GOVERNMENT'S SUBSIDISED HOUSES BY UNQUALIFIED BENEFICIARIES BASED ON ISLAMIC ECONOMIC LAW

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### Abstract

Home Ownership Loans (KPR) in the community are not only in demand by those with middle income or target groups as regulated by the Minister of Public Works and Public Housing (PUPR) Number 242/KPTS/M/2020, but also those with high income. Such ownership is a common ownership, known by the developer and the bank appointed as the debtor by the government without any legal sanctions. In practice, existing motives such as profit-seeking, investment, and others are carried out in various ways. The problem is the legal aspect of the validity of mortgage ownership by non-target groups, which is further elaborated into 1) How is the mechanism of ownership of subsidised houses regulated in the Decree of the Minister of Public Works and Public Housing (PUPR) Number 242/KPTS/M/2020, and 2) how is the legal certainty of the ownership contract of subsidised houses according to the Ministerial Decree in the perspective of ghasab law – seeing the importance of knowing how Islamic law reviews the ownership of subsidised houses/mortgages by non-target groups. This research uses descriptive analysis. Data sources are divided into two types: legal sources, such as regulations and fiqh studies. Second, field data will be collected through interviews and observations at the locations of subsidised houses around Banda Aceh.

**Keywords:** Mortgage, ghasab, off-target.

### Abstrak

Kredit Pemilikan Rumah (KPR) di masyarakat tidak hanya diminati oleh kelompok berpenghasilan menengah atau kelompok sasaran sebagaimana diatur dalam Peraturan Menteri Pekerjaan Umum dan Perumahan Rakyat (PUPR) Nomor 242/KPTS/M/2020, tetapi juga oleh kelompok berpenghasilan tinggi. Pemilikan semacam ini merupakan pemilikan bersama, yang dikenal oleh pengembang dan bank yang ditunjuk oleh pemerintah sebagai debitur tanpa sanksi hukum. Dalam praktiknya, motif-motif yang ada seperti mencari keuntungan, investasi, dan lainnya dilakukan dengan berbagai cara. Masalahnya terletak pada aspek hukum keabsahan kepemilikan hipotek oleh kelompok non-target, yang lebih lanjut dijabarkan menjadi 1) Bagaimana mekanisme kepemilikan rumah subsidi diatur dalam

Peraturan Menteri PUPR Nomor 242/KPTS/M/2020, dan 2) bagaimana kepastian hukum kontrak kepemilikan rumah subsidi menurut Peraturan Menteri dalam perspektif hukum ghasab—mengingat pentingnya memahami bagaimana hukum Islam meninjau kepemilikan rumah subsidi/hipotek oleh kelompok non-target. Penelitian ini menggunakan analisis deskriptif. Sumber data dibagi menjadi dua jenis: sumber hukum, seperti peraturan dan studi fiqh. Kedua, data lapangan akan dikumpulkan melalui wawancara dan observasi di lokasi rumah subsidi di sekitar Banda Aceh.

**Kata kunci:** Hipotek, ghasab, non-target.

## INTRODUCTION

Human needs are related to worldly life; we cannot survive without them. These needs can also serve as a means to fulfill our obligations and worship of Allah SWT.<sup>1</sup> For example, a devout Muslim is required to perform the five daily prayers. Among the various human needs, having a home is the most important. Having a private residence is the dream of many people. Unfortunately, not everyone in society has the means to realise this aspiration, as skyrocketing house prices are often an obstacle that prevents many people from realising their dream of owning a home.<sup>2</sup> The government's responsibility in implementing the law to ensure access to adequate housing for its citizens includes supporting low-income communities (MBR). The government has established various regulations to fulfill the housing needs of low-income families. One prominent regulation is the Decree of the Minister of Public Works and Housing of the Republic of Indonesia, specifically Number 242/KPTS/M/2020, which outlines income limits for the target group. While many people benefit from government programmes, some mistakenly receive assistance through the Home Ownership Credit programme despite not meeting the intended target groups. For example, certain people classified as high-income or financially capable, who do not fall into the categories stipulated in the Minister of

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<sup>1</sup> Muhammad Achyar, Chairul Fahmi, and Riadhus Sholihin, "ISLAMIC LAW REVIEW OF MONOPOLY PRACTICES IN MODERN ECONOMICS," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 5, no. 2 (2024): 288-308.

<sup>2</sup> Arifin Abdullah, "KAJIAN YURIDIS SUMBER-SUMBER HUKUM," *Al-Iqtishadiah: Jurnal Hukum Ekonomi Syariah* 2, no. 2 (2021), <https://doi.org/10.22373/iqtishadiah.v2i2.1409>.

Public Works Regulation, still take advantage of this programme in various ways.<sup>3</sup>

A clear and transparent explanation of Ghasab law is essential regarding agreements related to the purchase or ownership of subsidised housing by non-target groups. Determining whether these agreements are legitimate in subsidised home ownership is necessary. To explore this issue, I aim to investigate two key areas: firstly, the regulatory framework governing subsidised home ownership as outlined in Minister of Public Works and Housing (PUPR) Decree No. 242/KPTS/M/2020; and secondly, the legal certainty surrounding subsidised home ownership agreements from the perspective of Ghasab law.<sup>4</sup>

This paper aims to examine the mechanism of subsidised home ownership as stipulated in the Decree of the Minister of Public Works and Public Housing (PUPR) Number 242/KPTS/M/2020. In addition, I will evaluate the legal certainty of subsidised home ownership agreements (KPR) related to the decree, particularly through the lens of Ghasab law.<sup>5</sup>

Several studies address the issue of subsidised home ownership by non-target groups. One of the prominent works is a journal article by Sri Kumala Dewi entitled "Analysis of the Implementation of Subsidised Home Ownership Credit (KPR) Systems and Procedures at Bank Tabungan Negara Medan Branch," published in 2023.<sup>6</sup> The researcher concluded that Bank Tabungan Negara Medan Branch has successfully implemented the Subsidised Home Ownership Credit (KPR) program by the established standards. This is further strengthened by the e-Loan system, which can expedite the process of granting credit and assist decision-making so that the results are more effective and efficient than non-digital systems. Subsidised Home Loans (KPR) are implemented methodically in each department, thus providing quality services. The procedures governing the Subsidised

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<sup>3</sup> Yusnedi Achmad, *Aspek Hukum Dalam Ekonomi* (Yogyakarta: Deepublish, 2015).

<sup>4</sup> Cut Afra, Nahara Eriyanti, and Nasr Mohamed Arif, "SETTLEMENT OF DEFECTS IN MURABAHAH FINANCING AT BANK ACEH SYARIAH REGIONAL BIREUEN, INDONESIA," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 31, 2023): 201–21.

<sup>5</sup> Alvian Chasanal Mubarroq and Luluk Latifah, "Analisis Konsep Muamalah Berdasarkan Kaidah Fiqh Muamalah Kontemporer," *Tadayun: Jurnal Hukum Ekonomi Syariah* 4, no. 1 (2023): 95–108, <https://doi.org/10.24239/tadayun.v4i1.101>.

<sup>6</sup> SK Dewi, HA Wirananda. Analysis of the Implementation of Systems and Procedures for Providing Subsidised Home Ownership Loans (KPR) at Bank Tabungan Negara Medan Branch, Management Studies and journal.yrpiiku.com (2023).

Mortgage application process, decision making, and instalment payments are all well organised and effectively implemented.<sup>7</sup>

An article written by Nahdah Dzakiyya Radwah, Implementation of the Subsidised House Program Policy for Low-Income Communities (Mbr) in Driyorejo District, Gresik Regency,<sup>8</sup> Which was written in 2022. The study results show that the ability of community resources in Driyorejo District, Gresik Regency, is considered lacking in understanding the implementation and supervision of subsidised houses, which is not entirely on target for low-income people. Subsidized houses are often understood as cheap houses, not houses intended for low-income people.<sup>9</sup>

The article entitled "Community Response to the Subsidised Mortgage Programme in Pangandaran Regency: Case Study of Pesona Estetika Cikembulan Housing", written by Yayan Sugiyantoro in 2023, explores the public's response to the subsidised mortgage initiative.<sup>10</sup> The author notes that the public response to subsidised mortgages to provide affordable housing options for low-income individuals (MBR) is very high. Moreover, cash purchases of subsidised homes represent a significant proportion, almost 10%, of total transactions. This trend raises concerns, as the prevalence of cash buyers, typically more financially capable and not classified as MBR, may limit the availability of subsidised affordable housing to those who genuinely need it.<sup>11</sup>

The author also highlights that many prospective homebuyers expressed a desire to purchase a home through the subsidised mortgage scheme, which opens the door for potential manipulation of the system. A collaborative effort among all stakeholders is essential to effectively address this issue. The government should take the lead by setting and enforcing

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<sup>7</sup> Faizal Asdar, "Fikih Indonesia Hasbi Ash-Shiddieqy," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 17, no. 1 (2023), <https://doi.org/10.24239/blc.v17i1.1793>.

<sup>8</sup>ND Radwa, S Megawati, "Policy implementation of subsidised housing program for low-income people (MBR) in Driyorejo District, Gresik Regency" *Publika*, [www.ejournal.unesa.ac.id](http://www.ejournal.unesa.ac.id) (2023).

<sup>9</sup> Chairul Fahmi, "The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia," *Jurnal Ilmiah Peuradeun* 11, no. 2 (May 30, 2023): 667–86, <https://doi.org/10.26811/peuradeun.v11i2.923>.

<sup>10</sup>Y Sugiyantoro, S Sulardjaka, "Community Response to the Subsidised Home Mortgage Program in Pangandaran Regency (Case Study: Pesona Estetika Cikembulan Housing)", *Journal of Professional Engineers*, [ejournal2.undip.ac.id](http://ejournal2.undip.ac.id) (2023).

<sup>11</sup> Bader Mustafa Mahmoud Al Sharif, "THE IMPACT OF MACROECONOMIC VARIABLES ON THE PERFORMANCE OF ISLAMIC BANKS: AN EMPIRICAL STUDY," *International Journal of Professional Business Review* 8, no. 4 (2023), <https://doi.org/10.26668/businessreview/2023.v8i4.1347>.

regulations and supervision. Meanwhile, banks should focus not only on meeting mortgage targets but also on ensuring equitable access. Most importantly, developers must commit to thoroughly screening prospective buyers to ensure that only those who truly qualify under the MBR category can access these subsidised homes. Through this collective commitment, the programme can effectively achieve its goals and serve its intended audience.<sup>12</sup>

The article by Jerri Saputra, *The Relationship between Low-Income Communities and the Distribution of Subsidised Houses in Palembang City*, was written in 2023.<sup>13</sup> The author concludes that the relationship between low-income people and MBR is essential in distributing subsidised houses in Palembang. The number of low-income people who are limited in buying a house needs help and support from the government to get subsidised houses. Home ownership assistance is provided to low-income people through long-term funds and mortgage facilities issued by banks, both conventionally and with Sharia principles. Subsidised dwellings can only be given to low-income people, not ASN, BUMN, TNI, or Polri members, and not high-income employees, but low-income people such as traders, ojek pengkolan, and many more.<sup>14</sup>

An article written by Mita Sari, titled *Accountability in the Supervision of Subsidised Housing Distribution and the Level of Targeted Accuracy of Subsidised Housing Recipients in Palangkaraya City*, was written in 2022.<sup>15</sup> The results of the author's research concluded that the driving factor in the lack of target accuracy of subsidised housing recipients in Palangkaraya City is because the distribution supervision function has not involved the local municipal or provincial government, besides other driving factors are the lack of selectivity and accuracy of the banks in determining prospective debtors who can get subsidised houses that move on the desire to reduce the

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<sup>12</sup> Achyar, Fahmi, and Sholihin, "ISLAMIC LAW REVIEW OF MONOPOLY PRACTICES IN MODERN ECONOMICS."

<sup>13</sup> J Saputra, MR Utami, "The Relationship between Low-Income Communities and the Distribution of Subsidised Houses in Palembang City", *Journal of Business Economics*, [www.ejournal.lapad.id](http://www.ejournal.lapad.id) (2023).

<sup>14</sup> Amirizal, Arini Azka Muthia, and Sonia Ivana Barus, "The Protection of Spiritual Rights in the Sharia Banking Dispute Settlement: Overview of the Sharia Banking Law in Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 9, no. 3 (2022), <https://doi.org/10.22304/pjih.v9n3.a5>.

<sup>15</sup> M Sari, B Akhmad, "Accountability in the Supervision of Subsidised Housing Distribution and the Level of Target Accuracy of Subsidised Housing Recipients in Palangkaraya City", *Governance: Journal of Science*, [www.ejournal.upnjatim.ac.id](http://www.ejournal.upnjatim.ac.id) (2022)



risk of payment congestion by selecting prospective debtors who have a fixed income and are considered large enough.<sup>16</sup> The level of accountability in supervising the distribution of subsidised housing in Palangkaraya City can be pretty good because all aspects of the existing accountability indicators have been fulfilled. However, it is not yet fully compliant and cannot be optimal. The accuracy of the distribution of subsidised housing in Palangkaraya City is good enough, in the sense that it still needs to be improved because there are still many subsidised houses that are not used as residences by government regulations, but instead are used as a place for investment and even rented to third parties.<sup>17</sup>

The author sees that the ownership or use of subsidised mortgages by non-target groups is prohibited because there is an element of harming others, namely taking what is not their right, and controlling mortgages by people who are not entitled is classified as ghasab.

## **METHODS**

This research uses descriptive analysis through a statistical approach.<sup>18</sup> Data sources are divided into two types. The first is legal sources such as laws, government regulations, ministerial decrees, and other related regulations. Second, field data will be collected through interviews and observations at the locations of subsidised houses around Banda Aceh and Aceh Besar.

## **RESULTS AND DISCUSSION**

### **A. Legal Basis of Subdivision of a House**

Minister of Public Works and Public Housing Regulation No. 242/KPTS/M/2020 stipulates the income limits of specific target groups, the type of interest rate applicable, the subsidy period, and the terms of subsidised KPR (Home Ownership Loans).<sup>19</sup> This regulation is still based on

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<sup>16</sup> Mhd Yadi Harahap, "Pengikatan Jaminan Kebendaan Dalam Kontrak Pembiayaan Muḍārabah Sebagai Upaya Penyelesaian Sengketa Debitur Wanprestasi (Analisis Putusan MA Nomor 272/K/AG/2015 Tentang Pembiayaan Muḍārabah)," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 1 (2020), <https://doi.org/10.24090/mnh.v14i1.2999>.

<sup>17</sup> A. Yudha Harnoko; Ika Yunia Ratnawati, "ASAS PROPORSIONAL DALAM PERJANJIAN WARALABA (FRANCHISE)," *Jurnal HUKUM BISNIS*, no. Vol 1 No 1 (2015) (2015), <https://jurnal.narotama.ac.id/index.php/hukumbisnis/article/view/54/52>.

<sup>18</sup> Muhammad Siddiq Armia, *PENENTUAN METODE & PENDEKATAN PENELITIAN HUKUM*, ed. Chairul Fahmi (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022).

<sup>19</sup>Decree of the Minister of Public Works and Housing Number 242/Kpts/M/2020.

Ministerial Regulation Number 20/PRT/M/2019 concerning Ease and Assistance of Home Ownership for Low-Income Communities.<sup>20</sup> On March 24, 2020, Ministerial Decree Number 242/KPTS/M/2020 was issued in Jakarta and signed by the Minister of Public Works and Public Housing, M. Basuki Hadimuljono. This decree came into effect on April 1, 2020 and introduces some significant changes compared to the previous Ministerial Decree No. 552/KPTS/M/2016, which outlines income limits for target groups eligible for subsidised mortgages, as well as restrictions on the selling price of welfare houses and units in welfare flats, and the amount of down payment assistance subsidies. In the new decree, the maximum permissible income has been set at IDR8,000,000 (eight million rupiah) per month for Land Welfare Mortgage and Land/Floor Public House, applicable to both conventional and sharia loan options. In contrast, the previous regulation allowed an income limit of only IDR4,000,000 (four million rupiah) per month for KPR Sejahtera Tapak and IDR7,000,000 (seven million rupiah) per month for Rumah Sejahtera Susun.<sup>21</sup>

The new Ministerial Regulation also cancels Ministerial Regulation No. 535/KPTS/M/2019, which regulates restrictions on the selling price of landed houses obtained through subsidised home ownership financing loans. FLPP distribution remains valid for a maximum of 20 years during the subsidy period, while for SSB, the period is limited to 10 years. In addition, the SBUM remains set at IDR4,000,000.00 (four million rupiah).

In Papua and West Papua Provinces, a unique scheme has been established to support residents in accessing housing. This scheme sets income limits for public landed houses at IDR 8,000,000 (eight million rupiah) and public flats at IDR 8,500,000 (eight million five hundred thousand rupiah). In addition, a favourable interest rate of 4% is applied, with a maximum instalment period for KPR (Housing Loan) of 20 years. Subsidised Housing Assistance (SBUM) of IDR 10,000,000 (ten million rupiah) is available for the region to assist further. This initiative aims to empower Papuans, enabling them to take advantage of Subsidised Mortgage opportunities. For more details, it can be detailed through the following table:

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<sup>20</sup> Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (March 1, 2024): 157–66, <https://doi.org/10.1177/11771801241235261>.

<sup>21</sup>Ibid.

a. KPR Sejahtera Target Group

Maximum monthly income limit (IDR)	Highest Financing Rate/Margin	Most extended Subsidy Period (Year)	Most extended Mortgage Term (Years)
8.000.000,00	5%	10	20

Source: Decree of the Minister of Public Works and Housing  
No. 242/KPTS/M/2020

b. Target Group of Interest Difference Subsidised Mortgage (SSB) and Subsidised Mortgage

Margin Difference (SSM) Excluding Papua and West Papua Provinces

Most monthly income limit Amount (Rp)	Interest Rate/Margin Financing Highest	Most extended Subsidy Period (Year)	Most extended Mortgage Term (Tabun)
8.000.000,00	5%	10	20

Source: Decree of the Minister of Public Works and Housing No. 242/KPTS/M/2020

This Ministerial Decree also regulates the selling price limit along with the land area and floor area limit for public landed houses and public apartment units.

No.	Region	Selling Price (IDR)
1	Java (except Jakarta, Bogor, Depok, Tangerang, Bekasi) and Sumatra (except Riau, Bangka Belitung, Mentawai Islands)	150.500.000,00
2	Kalimantan (except Murung Raya Regency and Mahakam Ulu Regency)	164.500.000,00
3	Sulawesi, Bangka Belitung, Mentawai Islands, and Riau regencies (except Anambas Islands)	156.500.000,00



4	Maluku, North Maluku, Bali and Nusa Tenggara, Jabodetabek (Jakarta, Bogor, Depok, Tangerang, Bekasi), Anambas Islands, Murung Raya District and Mahakam Ulu District	168.000.000,00
5	Papua and West Papua	219.000.000,00

Source: Minister of Public Works and Housing Decree No. 242/KPTS/M/2020

## **B. Mechanism of Subsidised Mortgage Financing for Groups**

In principle, there is no distinction in the financing agreement for the target group and those outside the scope of the Home Ownership Credit (KPR) Subsidy. Both groups undergo a rigorous selection process at the application stage, before receiving financing approval from the government partner banks that disburse the mortgages.<sup>22</sup> However, there are still avenues for individuals who do not fall under the target demographics to access the mortgage subsidy, such as by manipulating income statements or using someone else's name to apply for a loan. Finally, mortgage subsidies utilise the Housing Financing Liquidity Facility (FLPP) scheme, widely known as KPR FLPP or Subsidised KPR. This programme is designed to help low-income individuals (MBR) by complying with specific terms and conditions.

### **1. Collateral Object Terms**

- a. All collateralised objects must be entirely constructed and ready for occupancy. The subsidised housing, facilities, and infrastructure must be practical and fully operational. This includes ensuring that essential utilities such as water and electricity are functioning correctly, and that the floors, walls, and roof are strong and durable. In addition, it is essential to remember that subsidised housing must include an identity plate issued or financed by the Bank.
- b. The Building Construction Permit (IMB) has been issued, which confirms that the permit is valid for one building only. The Certificate of Ownership (SHM) and Certificate of Building Use Rights (SHGB) are confirmed to be in the builder's name.

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<sup>22</sup> Chairul Fahmi and Syarifah Riyani, "ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT," *Wahana Akademika: Jurnal Studi Islam Dan Sosial* 11, no. 1 (July 17, 2024): 89–104, <https://doi.org/10.21580/wa.v11i1.20007>.

- c. Collateral values are determined based on guidelines set by the government. Of course, these values vary by region, and you can find the specific figures in the table below:

No.	Region	Most Selling Price (IDR)
1.	Java (except Jakarta, Bogor, Depok, Tangerang, Bekasi) and Sumatra (except Riau, Bangka Belitung, Mentawai Islands)	150.500.000,00
2.	Kalimantan (except Murung Raya Regency and Mahakam Ulu Regency)	164.500.000,00
3.	Sulawesi, Bangka Belitung, Mentawai Islands, and Riau regencies (except Anambas Islands)	156.500.000,00
4.	Maluku, North Maluku, Bali and Nusa Tenggara, Jabodetabek (Jakarta, Bogor, Depok, Tangerang, Bekasi), Anambas Islands, Murung Raya District and Mahakam Ulu District	168.000.000,00
5.	Papua and West Papua	219.000.000,00

## 2. General Terms and Conditions <sup>23</sup>

- Have a fixed or irregular income of at most Rp—8,000,000.00 (eight million rupiah) per month.
- Do not own a house as evidenced by a certificate from the local village head/local village head/workplace agency;
- Have never received a government subsidy for home ownership;
- Have a Taxpayer Identification Number (NPWP); and
- Submit a photocopy of the Annual Individual Income Tax Return (SPT) or a statement letter that the income concerned does not exceed the required income limit. People who meet the requirements mentioned above can then apply for a subsidised mortgage to the implementing bank by attaching the requirements that have been determined. The implementing bank then verifies the submitted subsidised mortgage application, which includes:

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<sup>23</sup>Ibid.

- 1) administrative checking of the required documents;
- 2) analyse the eligibility and repayment capacity of applicants for subsidised mortgages;
- 3) physical check of the house, building, infrastructure, facilities, and public utilities (PSU). The physical building of the house and PSU, when checked, must be ready for occupancy, functioning, and at least must be equipped with:
  - a) roofs, floors, and walls that fulfil the technical requirements of building safety, security, and reliability;
  - b) there is a piped clean water distribution network from PDAM or other clean water sources;
  - c) working power grid utilities;
  - d) neighbourhood roads that have been completed and are functioning; and
  - e) The neighbourhood drains/drainage and functioning are completed.

### **C. Definition and Legal Basis of Ghasab**

Ghasab is the masdar form of the verb, which means to take something unjustly. Etymologically, ghasab is taking something by force and blatantly.<sup>24</sup> Whereas in the terminology of Sharia, ghasab is using other people's rights by way of persecution or controlling other people's rights without the owner's permission. The issue of control is left to the opinion of most people. What is included in the rights of others is legal to grasp. Ghasab is not limited to things that are property, but also things that are benefits.<sup>25</sup> The following are some definitions of ghasab put forward by fiqh scholars, among others:

1. The Hanafi school of thought states that ghasab is defined as property that has value according to sharee'ah and is possessed without the owner's permission, so the property changes hands.
2. According to the Maliki school of thought, ghasab takes someone else's property forcefully and arbitrarily (not in the sense of robbery). This

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<sup>24</sup>Ernawati, Erwan Baharudin, "Increasing Santri Awareness of Ghasab Behaviour and Its Meaning in Islamic Law and Positive Law", *Abdimas Journal*, Volume 4 Number 2 (2018).

<sup>25</sup>Mustofa Dieb Al-Bigha, *Fiqh Islam Complete and Practical*, Translated. Achmad Sunarto (Surabaya: Insan Amanah, 1424 h), pp. 261.

definition also distinguishes between taking goods and taking benefits. According to them, the act of taking property arbitrarily takes four forms, namely: (a) taking material things without permission, which they call ghasab (b) taking the benefit of an object, not its material, which is also called ghasab (c) using something so that it is damaged or lost, such as cutting down a tree that does not belong to him, is not included in ghasab, but is called ta'addi (d) doing an act that causes damage or loss of someone else's property, such as untying the rope of a buffalo so that the buffalo is again, is not included in ghasab, but is called ta'addi. According to the Maliki scholars, all four of the above acts are subject to compensation, whether they were committed intentionally or by mistake.

3. The Shafi'i and Hanbali scholars define ghasab as taking possession of another person's property arbitrarily or by force without right. This definition is more general than the two previous definitions. According to them, ghasab is not only taking material wealth but also taking the benefit of an object.<sup>26</sup>
4. Muhammad Shatha al-Dimyati believes that ghasab possesses another person's right, even if only to benefit from it.<sup>27</sup>

The law of ghasab is haram or forbidden in Islam and the person who commits it has committed a sin. The prohibition of ghasab is established in the Qur'an, hadith and consensus. Among the verses of the Qur'an that indicate the prohibition of ghasab are the words of Allah SWT:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Meaning: "O you who believe, do not eat of one another's wealth by unlawful means, except by way of a mutually agreeable trade between you. And do not kill yourselves; surely Allah is Most Merciful to you". (Q.S: 4: 29)

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

Meaning: "And let not some of you eat of the wealth of others among yourselves by unlawful means, and let not your property be

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<sup>26</sup>Abdul Aziz Dahlan, *Encyclopaedia of Islamic Law*, Et al, Cet. 1 (Jakarta: Ichtiar Baru van Hoeve, 2006), pp. 400.

<sup>27</sup>Hendi Suhendi, *Fiqh Muamalah*, Ed. 1, Cet. 5 (Jakarta: Rajawali Perss, 2010), pp. 249.

brought before a judge, that you may eat of the wealth of others by way of sin, while you know". (Q.S: 2:188)

In Islam, the law of ghasab is haram or prohibited according to the following hadith narrated by Al-Bukhari and Muslim.

مَنْ أَخَذَ شِبْرًا مِنَ الْأَرْضِ ظُلْمًا فَإِنَّهُ يُطَوَّقُهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرْضِينَ

Meaning: "Whoever commits injustice by taking an inch of land, Allah will inflict on him seven layers of earth on the Day of Resurrection." (HR: Al-Bukhari and Muslim/Muttafaq 'Alaih).

#### D. Targeted Outgroup Strategy for Obtaining a Mortgage

With the recent boom in housing development, there has been an increasing interest from the public in buying houses for living and investment. This trend is supported by various initiatives from housing developers to attract buyers, such as offering low interest rates, facilitating down payment plans, and improving supporting infrastructure, such as wide roads and water systems. However, not everyone can afford a quality and healthy home, especially those from lower-middle-income backgrounds.<sup>28</sup>

The targets are families or households, including individuals with regular and irregular income. They are those who do not yet own a home, have not received housing assistance, and fall into the low-income category with a monthly income of up to IDR 8,000,000. The initiative aims to improve housing infrastructure and amenities by strengthening the capacity of the institutions responsible for its implementation. By providing decent housing, the programme seeks to improve the standard of human resources and plays a vital role in boosting the national economy.<sup>29</sup>

The real estate and property investment field remains a top choice for many people looking to invest; many view property investment as a primary method of increasing their wealth. Overall, it can be said that investing in

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<sup>28</sup> Sri Wahyuni et al., "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 1 (June 10, 2023): 1-23, <https://doi.org/10.1234/JURISTA.V7I1.42>.

<sup>29</sup> Ascarya Ascarya, Ugi Suharto, and Jardine A. Husman, "Proposed Model of Integrated Islamic Commercial and Social Finance for Islamic Bank in Indonesia," *Eurasian Economic Review* 12, no. 1 (2022), <https://doi.org/10.1007/s40822-022-00201-z>.

real estate and housing tends to be safer compared to other forms of investment.

Individuals looking to invest, who are usually not the primary beneficiaries of these subsidised mortgages and are referred to as the non-target group, usually employ strategies that they often use.<sup>30</sup>

First, they buy several mortgage houses at a certain price and then resell them much higher. The author found that in 2021, a buyer bought 30 units of type 36 mortgage houses in a housing complex for 165 million, and the buyer wanted to resell them for 220 million.<sup>31</sup> Then, in 2022, someone bought KPR houses in each location, which were as many as 10 - 20 housing units with cash payments. But cash here does not mean paying in full. The buyer continues to pay while the third-party buyer pays instalments to the first buyer at a higher price.<sup>32</sup> Second, by amending income statements, people can usually qualify for mortgage subsidies by establishing the income to be reported with additional details on adjusted income. This involves prior co-operation with their place of work, ensuring that during the verification phase, when the office reviews the accuracy of the income, the information reported matches what the appropriate supervisor communicated, as prior arrangements have been made.<sup>33</sup>

Thirdly, using another person's name to obtain a loan makes that person eligible for a subsidy and specific compensation. When using the name of someone who meets the criteria, one can easily get a subsidised house under the borrowed name, provided a prior agreement exists between the parties involved.<sup>34</sup>

Based on the contractual framework for subsidised housing financing, it can be understood that the contract used for nontarget groups as stated in the Decree of the Minister of Public Works and Housing No. 242/KPTS/M/2020 on Target Group Income Limits, Interest Rates, Subsidy Periods, and Subsidised Residential Ownership Periods, is the same as the contract used for target groups as referred to in the regulation.<sup>35</sup>

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<sup>30</sup> Roswita Hafni and Ahmad Rozali, "Analisis Usaha Mikro, Kecil, Dan Menengah (Umkh) Terhadap Penyerapan Tenaga Kerja Di Indonesia," *Ilmu Ekonomi Dan Studin Pembangunan* 15, no. 2 (2017).

<sup>31</sup> Results of interviews with housing owners on 9 January 2025

<sup>32</sup> Interview with housing sales on 9 January 2025.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Decree of the Minister of Public Works and Housing Number 242/Kpts/M/2020.



The contractual similarity arises because all mortgage assessors have fulfilled the requirements and completed the necessary criteria as a standard requirement for obtaining mortgage subsidies. It would be difficult, if not impossible, to identify whether or not a person belongs to the target group without a thorough investigation or verification process of the potential mortgage recipient.

Non-targeted groups, who understand the relevant regulations, can easily manage the data. In addition, the ease of access to Home Ownership Loans (KPR) contributed significantly to the ease with which these non-target groups could obtain subsidised houses they did not want. By providing various forms of encouragement and motivation, these nontarget groups were convinced that they could easily qualify for subsidised houses by utilising the same agreements used by the intended recipients.

#### **E. Legal Analysis of the Strategy of the Untargeted Group to Obtain a Mortgage**

Government policy related to subsidised housing outlines that the allocation of subsidised housing loans is intended for people with low income or who do not yet own a house. Therefore, the involvement or inclusion of the category of people not entitled to subsidies to seek profit/investment is not justified by shara' for consideration of 2 things, namely:

First, it violates the provisions outlined by the government. As explained in the regulation of the Decree of the Minister of Public Works and Public Housing (PUPR) Number 242/KPTS/M/2020 explicitly explains that the maximum income limit is 8,000,000 for those who will own a subsidised house. Still, in practice, many people can access subsidised dwellings even though they have an income that exceeds the stipulated provisions.<sup>36</sup>

Various ways are done by people who want to own a subsidised house even though they are not included in the target group referred to by the government, under the pretext of investment and seeking profit, people can access subsidised houses quite easily, one of which is by attaching or providing false information about their monthly income.<sup>37</sup>

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<sup>36</sup> Arisyanti, Kurniati, and Abd Rahman R, "Problematika Perkembangan Perbankan Syariah Di Indonesia," *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam* 4, no. 2 (2023), <https://doi.org/10.55623/au.v4i2.217>.

<sup>37</sup> Iwandi Iwandi, Rustam Efendi, and Chairul Fahmi, "THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM," *Al-Mudharabah: Jurnal*

On the other hand, the demands of the Bank as a government partner in the distribution of subsidised houses, have specific realisation targets, the high targets are in reality quite difficult to meet, so the bank will usually be more lax in the realisation of mortgage distribution for people in need, this is where opportunities open up for individuals who have an orientation to seek profits for subsidised home ownership.

According to the above arguments, people who make efforts to own subsidised houses with various kinds of efforts have violated the provisions by disobeying the government by violating the rules that have been set, manipulating conditions to benefit from mortgage ownership.

The efforts of individuals to own subsidised houses by approaching the obligation to obey government rules are wrong and violate the provisions of the responsibility to follow the government in its regulations, the government rules explicitly explain the designation of subsidised houses for people with low income with a maximum of Rp 8,000,000.00 (eight million rupiah) but by manipulating and playing games so that people who are not in the category can have the mortgage.

Second, it harms other parties, namely, low-income people who should get the subsidy policy. Here, the ownership of mortgages for people who are not entitled can be classified as *ghasab*, which is the seizure of property that is not their right. When referring to the elements of *ghasab* as explained in Article 430 KHES, namely (1) the perpetrator of *gaṣab*/seizure, (2) the victim of the seizure, (3) the seized property, and (4) the act of seizure, the actions of the unauthorised group can be categorised into the act of *ghasab*. The consequences of this act are further explained in Article 437 KHES, which states, "The perpetrator of the seizure must return the seized property to the victim of the seizure or to the guardian of the person whose property was seized". Article 438 also explains "The victim of the seizure has the right to ask for the replacement of similar property or ask for monetary compensation equivalent to the object seized, to the perpetrator of the seizure if the seized property to be returned has been modified or has decreased in quality". Furthermore, the victim of the seizure (*ghasab*) can request a refund of the depreciation of the goods seized, as explained in Article 439 KHES, "The perpetrator of the seizure is obliged to pay the price of the depreciation

of the value of the property seized if the depreciation of value occurs because of his actions".

Third, disobedience to the government. As a basic rule in Ushul Science:

تصرف الإمام على رعيته منوطاً بالمصلحة

The Imam's policy in this case, the government towards the people he leads, is to realize the benefit.<sup>38</sup> Therefore, all policies enacted by the government are, in principle, policies that have general benefits, have an impact on the good for all, and aim to protect the rights of each citizen. Every government regulation has been preceded by an in-depth study to minimise mistakes and ensure that the rules and policies that are born at every level of regulation are efforts to regulate in such a way that the rights of every citizen are protected. There is no exception in the rules of subsidised home ownership by low-income people, so that every citizen can have a livable home, and their needs are met for shelter.

## CONCLUSIONS

Ownership or use of subsidised mortgages by non-target groups is prohibited because there is an element of harming others, namely taking what is not their right. After all, it is clear that the subsidy allocation is for people earning Rp 8,000,000.00 (eight million rupiah) per month. The possession of mortgages by people who are not entitled is classified as an act of ghasab. In this context, the perpetrator of ghasab must return the seized property, such as mortgage houses, to those with the right to own them. If there is a depreciation in the price of the seized property, the perpetrator of ghasab is obliged to pay it to the property owner.

Recommendations that can be conveyed that to the community, especially community groups included in the non-target group as regulated by the Decree of the Minister of Public Works and Public Housing (PUPR) Number 242 / KPTS / 2020, it is necessary to be aware not to access the subsidised house because there are rules of prohibition and can harm others. Banks that are government partners in distributing Home Ownership Credit subsidies must be more selective and careful in the process of distributing KPR subsidised houses, especially in assessing the profile of target accuracy,

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<sup>38</sup>Abdul Mudjib, *the Rules of Jurisprudence* (Jakarta: Kalam Mulia 2005), p. 61.

as mandated by the Decree of the Minister of Public Works and Public Housing (PUPR) Number 242/KPTS/M/2020.

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