



Legal Force of Transfer of Home Ownership Loans (KPR) from Debtors to Third Parties without Approval from The Bank

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Abstract. Ownership of a house is now a benchmark as a form of primary needs of an individual and is used as land to invest because it has a relatively high economic value. It will be tough for low-income people to own a house by buying it in cash. For some people, building a house must incur relatively high costs. Therefore, banks provide financing funds so that people can own houses. One form of financing from banks is Home Ownership Credit or KPR. However, implementing homeownership loans (KPR) has various problems, including transferring rights to the object of home ownership loans (KPR) or mortgage loan offers. So the problem arises: How is the legal force of transferring home ownership loans (KPR) from debtors to third parties without approval from the bank? This research uses research methods in the form of descriptive analysis. The act of credit oper underhand, whether it is a sale, transfer, or anything carried out by the debtor without permission or the knowledge of the creditor or bank, is included in the type of violation, and the agreement is also not binding on third parties or new debtors. If the debtor makes the transfer before repayment at the bank, then the agreement made by the debtor to a third party is null and void.

Keywords: Buying and Selling Under Hand, Credit Oper, KPR

INTRODUCTION

Home is one of the primary needs that has a function as a place to settle or shelter for humans from several disturbances such as climate and other living things; home is the initial place where life develops and family livelihood, which contains a safe, harmonious, orderly, and healthy environment. In other words, the house is essential in improving human dignity and dignity. (Komarudin, 1997) Ownership of a house is now a benchmark as a form of primary needs of an individual and is used as land to invest because it has a relatively high economic value. Although the function of the house for human life is essential, it cannot make the whole society have it. For people who have low incomes, owning their own house by buying in cash is considered difficult for some communities. (Nikmah, Disemadi, & Purwanti, 2020) Therefore, banks must provide or facilitate financing funds for people to own houses. One form of financing from banks whose existence has developed is Home Ownership Loans or KPR. (Rochman, Triasih, & Abib, 2017).

Home Ownership Credit Facility (KPR) is a loan facility banks provide to Individual Debtors to buy land and buildings in the form of houses or repair houses. The provision of this mortgage aims

to make it easier for people to get a house by paying in installments with a specific time guarantee and predetermined interest. However, in reality, the provision of this mortgage does not always run smoothly, and it often encounters debtors who can no longer pay in installments and then transfer their mortgage to third parties. Also, such transfers are often made by underhand agreement. Based on the background exposure previously described, the problem formulation can be drawn: How is the Legal Power of Transfer of Home Ownership Credit (KPR) from the Debtor to a Third Party Without Approval from the Bank?

LITERATURE

Covenant

According to the provisions of Article 1313 of the Civil Code, an agreement is an act in which one or more persons bind themselves to one or more other persons. An agreement is between two or more parties who bind each other to carry out a thing in the realm of wealth; Abdulkadir Muhammad formulates this understanding—according to Harun Al Rashid, buying and selling land transfers land rights to other parties/people in the form of from sellers to land buyers. (Sunindhia & Widiyanti, 1988) According to the Civil Code system, the sale and purchase of land rights is carried out by making a deed of sale and purchase agreement before a notary, where each party promises each other to perform an achievement regarding the right to the land that is the object of the sale, namely the seller to sell and hand over the land to the buyer and the buyer buys and pays the price. (Effendie, 1993).

A Deed will appear after an agreement between two or more parties on an object, such as a land sale and purchase agreement. A deed is a document issued by a Notary based on Article 1870 of the Civil Code, which has absolute and binding evidentiary power. There are two types of Aka, including authentic deeds and underhand deeds. Based on Article 1868 of the Indonesian Civil Code, it is stated that an authentic deed is a document issued in a form prescribed by law by or before an authorized official at the place where the deed was made.

Deed Under Hand

The parties deliberately do a deed underhand for proof without the assistance of a deed-making official; in other words, the parties enter a deed underhand as evidence but not made by a notary or before the general officer of the deed maker. (Marilang, 2013) A deed under hand is any deed made without the intermediary of a general official, which concerning the binding force of the parties of the deed under hand is the same as an authentic deed, so if the agreement is made validly, which means it

does not contradict the law, then under article 1338 of the Civil Code, the agreement applies as law to those who make it, So that the agreement is irrevocable, except based on the agreement of both parties or based on reasons stipulated by law. (Rismadewi & Utari, 2015).

Letters as the primary evidence in civil procedural law can be classified into two groups: Authentic Deeds and Deeds Under Hand. A *deed* is a letter given a signature, which contains the events on which a right or engagement is based deliberately for proof. (Dinaryanti, 2013) So, to be classified in the sense of a deed, the letter must be signed; this signature requirement is implied in Article 1869 of the Civil Code.

Home Ownership Credit

Home Ownership Credit Co, mainly known as KPR, is one form of financing from banks whose existence has grown. Home Ownership Credit (KPR) is a facility banks provide to the public so they can buy houses in installments. The principle used in KPR is to finance first the cost of buying or building a house, then the funds to pay back are done in installments. (Badruzaman, 2014) Reflecting on Article 1 number 11 of Law Number 10 of 1998 concerning Banking (Banking Law), KPR is a form of credit or provision of funds to buy a house based on an agreement or agreement between the mortgage operator bank and the borrower (customer) within a certain period. (Nikmah, Disemadi, & Purwanti, 2020).

METHODS

The research used in this journal is descriptive research analysis, which includes description, explanation, and analysis of problems that occur, then concludes to find the correct answer as a solution to the problem analyzed. To solve legal problems and make regulations about what to do, researchers need research sources called legal documents, both primary, secondary, and tertiary. This research uses two research approach methods: conceptual *approach* (*conceptual approach*) and legal approach (*statute approach*).

DISCUSSION

In the implementation of home ownership loans (KPR), there are often various types of problems, one of which is the transfer or transfer of rights to the object of home ownership credit (KPR), namely the house, which is carried out by the debtor to other parties when the homeownership credit (KPR) has not ended or has not been paid off without being known by the Bank and certainly does not use the correct and appropriate procedures. The transfer of debtors or

credit passes carried out will cause several legal consequences, such as ownership of land and buildings obtained from Home Ownership Loans (KPR). Transferring the debtor or credit pass to a third party certainly cannot eliminate the debtor's obligation to settle debts to the Bank. As a creditor, the Bank does not know that there has been a credit pass or transfer of the debtor underhand, so the party receiving the credit pass does not have the right to have legal protection from the Bank where the Bank has a position as a distributor of home ownership credit facilities.

The purchase of a house through a mortgage facility begins with a credit agreement made to bind the debtor and the Bank so that the act of credit passing underhand, whether it is a sale, transfer, or anything carried out by the debtor without permission or the knowledge of the creditor or Bank is included in the type of violation and the agreement is also not binding on third parties or new debtors. The Bank still recognizes the existence of debtors who have made previous credit agreements with the Bank. If another party claims to have bought a house financed by a bank in the form of a mortgage, then the other party will not be recognized by the Bank as the owner of a house financed by a bank mortgage. The transfer of debtors carried out under the hands of debtors to third parties is usually based on:

- a. The old debtor is no longer able to continue paying mortgage installments;
- b. Long-time debtors experiencing economic difficulties;
- c. The old debtor moves his domicile;
- d. The debtor does not have good faith to carry out its obligations;
- e. The parties are not familiar with the law, especially regarding the transfer of debtors.

When referring to the provisions in Law Number 1 of 2011 concerning Housing and Settlement Areas, as stipulated in Article 55 paragraph (2), the transfer of debtors or credit passes for land and buildings obtained through Home Ownership Loans (KPR) must be carried out by institutions appointed by the government. Agreeing to transfer debtors under the hands of land and buildings obtained through KPR is an act that is not by the provisions in Article 55 paragraph (2) of Law Number 1 of 2011 concerning Housing and Settlement Areas. Based on the provisions in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, the act of a new debtor selling or transferring a land and building purchase credit obtained through a Home Ownership Credit (KPR) under his hand cannot be said to have participated in transferring ownership of the land and building.

This transfer of ownership is considered to have occurred only after the transfer can be proven by an authentic deed made by the authorized Land Deed Making Officer (PPAT). Transfer of debtors

to third parties through underhand transfer is one of the many forms of violations committed by debtors to creditors. On this hand, The transfer of debtors includes violations often encountered in the middle to lower society. Generally, unfamiliar knowledge regarding the transfer of debtors is one of the reasons this underhand transfer practice is often found. Problems like this cause third parties, such as new debtors, to feel disadvantaged. Examples of losses obtained are:

- a) The bank will refuse to provide a certificate of ownership of the house, because the registered certificate is not in the name of the new debtor but the first debtor.
- b) The replacement debtor cannot reverse the name, because the certificate has not been recorded in the name of the new debtor and is still a bank collateral.

Based on the provisions of Article 1880 of the Civil Code, it is explained that a deed under hand, as long as it is not affixed with a statement as stated in Article 1874 second paragraph and Article 1874 letter a, has no force against third parties except from the day it is affixed with a statement by a notary or other official appointed under laws and regulations and recorded according to laws and regulations or from the day of the death of the signatory or one of the signatories between the signatories or from the day on which the deed under that hand is proved from a deed made by a general officer or from the day on which the deed under that hand is recognized in writing by a third party facing the deed. Then, for proof, generally, the deed under the hand has the same evidentiary power as an authentic deed (*argumentum per analogical/analogy*); however, if the party who signed the letter of agreement does not deny his signature, which means he recognizes the truth written in the letter of agreement.

Based on this, the sale and purchase letter, which is only signed by the old debtor and the new debtor without involving the bank and without legalization by a notary or authorized official, has no evidentiary power that causes the bank to comply with the provisions in the sale and purchase letter. Therefore, the bank is not providing certificates for land and buildings obtained through KPR is correct and does not violate existing regulations. However, this action provides losses for new debtors who have continued to pay mortgage installments until they are paid off. Even after paying off existing installments, the new debtor cannot control land and buildings legally and, usually, only physically. In addition, new debtors are also disadvantaged because they cannot take certificates stored by the bank.

If the debtor appears and sues the bank for the debtor has sold the collateral house to someone else with an underhand system, then the bank can defend itself by answering the claim legally. If it turns out that the debtor has sold the land and buildings that are collateral in the bank by agreeing on

the hands of another third party, the bank is responsible for the transfer of rights agreement made by the debtor to a third party. Land rights can be transferred after the debtor pays off the debt to the bank. The transfer of land rights must be done by making a deed in front of the authorized official, in this case, the acting land deed maker (PPAT). If the debtor makes the transfer before repayment at the bank, then the agreement made by the debtor to a third party is null and void.

CONCLUSION

The purchase of a house through a mortgage facility begins with a credit agreement made to bind the debtor and the bank so that the act of credit passing underhand, whether it is a sale, transfer, or anything carried out by the debtor without permission or the knowledge of the creditor or bank is included in the type of violation and the agreement is also not binding on third parties or new debtors. The transfer of land rights must be done by making a deed in front of the authorized official, in this case, the acting land deed maker (PPAT). If the debtor makes the transfer before repayment at the bank, then the agreement made by the debtor to a third party is null and void.

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