

Analysis of Sale and Purchase Agreement Underhand for the Transfer of Home Ownership Loans

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ABSTRACT

The need for home ownership for the community has become a very important need at this time. The government in collaboration with banks provides convenience facilities to the public as debtors through Housing Loans (KPR) which have monthly installments determined by the Bank as a creditor in accordance with the ability of the debtor. During the mortgage process, the creditor and debtor enter into a credit agreement. In the Mortgage Act number 4 of 1996 it is regulated regarding agreements between the Debtor as the mortgagee and a financial institution, in this case the Bank as the mortgagee that as long as the installments have not been paid off, the certificate of land rights is still in the bank as collateral bound by agreement Deed of Encumbrance of Mortgage made before the PPAT as an authorized official. Using normative juridical research that occurs in people's lives, this article discusses buying and selling land that is still under credit guarantee as the basis for the transfer of rights through private agreements that are not made before the PPAT and how the legal force of ownership of land rights is for the seller who buys the land. In the results of this study it can be concluded that the credit agreement between the bank as the creditor and the debtor only binds the parties contained in the agreement and the transfer of house loans must be made before the PPAT with the knowledge of the bank as the creditor if the debtor wants to sell or does not want to continue credit again.

ABSTRAK

Kebutuhan pemilikan rumah bagi masyarakat sudah menjadi kebutuhan yang sangat penting saat ini. Pemerintah bekerjasama dengan perbankan memberikan kemudahan fasilitas kepada masyarakat sebagai debitur melalui Kredit Pinjaman Rumah (KPR) yang memiliki cicilan bulanan yang ditentukan oleh Bank sebagai kreditur sesuai dengan kemampuan debitur. Selama proses KPR berjalan maka antara kreditur dan debitur melakukan perjanjian kredit. Dalam Undang-Undang Hak Tanggungan nomor 4 tahun 1996 diatur tentang perjanjian antara Debitur sebagai pemberi hak tanggungan dengan lembaga keuangan didalam hal ini Bank sebagai penerima hak tanggungan bahwa selama cicilan belum lunas maka sertifikat hak atas tanah tersebut masih berada di bank sebagai jaminan yang diikat dengan perjanjian Akta Pembebanan Hak Tanggungan yang dibuat dihadapan PPAT sebagai pejabat yang berwenang. Menggunakan penelitian normative yuridis yang terjadi dalam kehidupan masyarakat, artikel ini membahas tentang jual beli tanah yang masih dalam jaminan kredit sebagai dasar atas peralihan hak melalui perjanjian bawah tangan yang tidak dibuat dihadapan PPAT dan bagaimana kekuatan hukum atas kepemilikan hak tanah bagi penjual yang membeli tanah tersebut. Dalam hasil penelitian ini dapat disimpulkan bahwa perjanjian kredit antara bank sebagai kreditur dengan debitur hanya mengikat para pihak yang terdapat dalam perjanjian serta peralihan kredit rumah harus dibuat dihadapan PPAT dengan sepengetahuan bank sebagai kreditur apabila debitur ingin menjual atau tidak ingin melanjutkan kredit lagi.

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I. INTRODUCTION

Indonesia as a country that has a goal of carrying out all state activities also has guidelines as stated in the fourth paragraph of the Preamble to the 1945 Constitution, which states that one of the goals of the Indonesian state is to promote public welfare.

Having a house as a shelter from the rain and heat is a form of well-being. For people with large incomes, buying a house as a place to live is not difficult. By going to a developer agency, you can get a house according to your needs and desires. But what about those on low incomes or even those from the lower classes. The selling value of taxable objects also affects people's purchasing power. Meanwhile, the desire to buy a house is very difficult and frightening considering the high value of the house that must be purchased by the middle class or low-income people. The difficulty of finding a place to live encourages entrepreneurs to build high-rise buildings or lodging for housing in big cities. Where the value of lodging rentals will increase over time.

The Director General of Housing Finance at the Ministry of Public Works and Public Housing (PUPR) said around 800,000 to 1 million new housing units are needed each year, while the number of homeless people in Indonesia reached 11.4 million at the end of 2016.(Feri Irawan, 2019). To meet the need for housing, the PUPR ministry through the Million Houses Program launched by President Joko Widodo in 2021 is expected to create 1,105,707 housing units throughout Indonesia.(Sindikatpost, 2022)

Population growth that is getting faster every year is very encouraging, Developers are competing to develop their business in the housing sector. Because everyone definitely needs a home to live in. In an unstable economic environment, developers are racking their brains to attract consumers in various ways, including building affordable homes.(Ridwan et al., 2021)

Buying a house in cash is certainly not an easy thing for the lower middle class. To find a way out of this situation, the procurement of subsidized houses is a very wise alternative for the general public, especially the lower middle class, by providing installments or credit and down payments to consumers at affordable prices. Meeting the need for housing for the community is one of the government's obligations as a form of community welfare. However, the limited amount of money one has is one of the obstacles to owning a home. Through banks, the government has issued a home ownership credit program or home ownership program which is commonly called KPR. In this case the community acts as the debtor and the banking institution acts as the creditor.

As Erzal Savero wrote in his research citing Hardjono's opinion in his book that Home Ownership Credit (KPR) is a type of credit provider provided through a bank to clients who need a special loan to fulfill their desire to find a house for housing or home improvement.(Muhammad, 2017).

Regarding the application for a house with a guarantee as stipulated in the Decree of the Minister of Public Works and Public Housing (PUPR) Number 242/KPTS/M/2020, which is the joint authority of the Bank and the government in applying for Home Ownership Credit or KPR to facilitate networks for the community in obtaining housing with credit system. Through KPR, it makes it easier for people to own a house

Bank as a financial service institution has succeeded in achieving one of its goals the government creates a livable society by combining the interests of home buyers and sellers by providing mortgages because most people cannot afford to buy a house with cash. (Tenritata et al., 2022)

Regarding this issue previously discussed relating to the transfer of debt between debtors in mortgage agreements with houses burdened with mortgage rights where banks experience problems with default customers by trying to transfer their credit so that it affects the house owned. In this study, the author discusses the private transfer of houses involving 3 (three) debtors with a bank where the agreement is carried out privately by stating that the buyer is obliged to pay off the house installments to the bank until it is paid off. So that the buyer who has paid off the installments asks for his right to a certificate as proof of home ownership.

Sometimes in the middle of the mortgage process it is still ongoing and the debtor has difficulty paying the installments, but the debtor does not want the bank to execute the mortgage object, so some debtors take steps by transferring it to another party privately without the creditor's knowledge. One of the problems with transferring mortgage loans can be seen in decision number 15 Pdt.G/2019/Pkl at the Pekalongan District Court. Whereas in this case Muhari had purchased land and buildings in cash from Erna Ardila under an underhand agreement. A few years later Muhari sold the land and the building to the Ahmadi also through an underhand agreement.

The object of the sale and purchase is still registered in the name of Erna Ardiila through a Housing Loan (KPR) at the Pekalongan branch of the Bank Tabungan Negara (BTN), where Erna still has an obligation to pay installments to BTN until it is paid off. And when Muhari transferred it to Ahmadi, it turned out that Muhari had not completed the credit installments to BTN. In this private sale and purchase, Ahmadi has paid in cash and paid off to Muhari. Even though Ahmadi had paid off all of the credit installments, Ahmadi could not obtain the certificate because the debtor listed in the Home Ownership Credit agreement at the State Savings Bank was Erna Ardila. Therefore all documents relating to the ownership of the house are only entitled to be received by Erna Ardila.

II. RESEARCH METHOD

This research is a community tool to strengthen, advance and develop science, including law, because research seeks to find the truth in a systematic, methodical and consistent manner according to the results of the analysis. (Fitra Deni, 2023)

This article uses the normative-empirical legal research method based on normative case studies in the form of products of legal behavior, for example when reviewing laws. The subject matter of this research is law, which is conceptualized as a norm or rule that applies in society, which is the reference for all behavior. (Wira Franciska et al, 2023).

By using secondary data sources in the form of laws and regulations such as the Basic Agrarian Law number 5 of 1960, the Agrarian Law Number 4 of 1996 court decisions, court decisions, legal theories, and opinions of scientists, so that the data is qualitative. This study focuses on the terms and conditions of the Agreement and the legal consequences that occur if there is a violation of the principles of the Agreement and current Indonesian legal provisions. after the author gets the results of the analysis of the research, it can be concluded that the over-over of houses that are still bound by collateral cannot be transferred privately and must be made before a Notary / PPAT with the knowledge of the Bank as a creditor.

III. RESULT AND DISCUSSION

Agreements regarding contracts are regulated in the Civil Code, more specifically in Article 1313. This provision contains an explanation that a contract is an act between several parties who are bound to each other. An agreement is a legal act, in order for an act to be considered valid it must meet all the conditions that apply to it. (Rinaldi & Putrawan, 2021).

An agreement is an act or legal action that arises due to the achievement of the will of 2 (two) or more people, where the agreement occurs depends on the parties. Legal consequences that benefit one party and at the expense of another party or reciprocity according to legal provisions

So far, ordinary people are more familiar with buying and selling which is a form of agreement. The sale and purchase can be in oral or written form. The object agreed upon in the sale and purchase may already exist or may exist in the future if the agreement has been agreed upon by both parties.(Hartono, 2022).

In connection with the making and execution of contracts in accordance with the provisions of Book III of the Civil Code (KUHP). Agreements whose property rights can be linked to Article 1320 of the Civil Code, according to which an agreement is valid if it fulfills four conditions, namely the existence of an agreement, the ability to enter into an agreement, the existence of certain things, the existence of legal reasons.(Putri et al., 2022).

According to Article 1458 of the Civil Code, "Purchases and sales are considered completed between the parties as soon as people reach an agreement on the goods and the price, even if the goods have not been delivered. price paid".(Zulaeha, 2019)

Regarding contracts, the general contractual provisions regarding the binding of the Third Book of the Indonesian Civil Code (KUH Perdata) apply to contracts for the sale and purchase of real estate, § 1313 BGB covers the design of the contract. as an act of one or more people who bind themselves to one or more other people(Daniati, 2021).

Article 1321-Article 1328 of the Civil Code has regulated the existence of an agreement between the parties where basically an agreement is deemed to have occurred when it was made by the parties unless it can be proven that the agreement occurred due to an oversight, coercion, fraud or abuse of circumstances. One theory that discusses when an agreement occurs in an agreement is the theory of will (wishteorie) where this theory teaches that an agreement has occurred when the recipient expresses the will to enter into an agreement.

However, the agreement does not always go according to the agreement desired by the parties. In certain circumstances, various things can occur which result in termination of the contract either by the parties or by a court order.(Santini, 2023).

Regarding the cancellation of the agreement, the sale and purchase agreement can be canceled and the buyer can ask for compensation if the goods being sold belong to another person as stated in Article 1471 of the Civil Code which reads: "Buying and selling of other people's goods is null and can provide a basis to the buyer to demand reimbursement of costs, losses and interest, if he does not know that the goods belong to someone else."

Aan Handriani in his writings states that in the Civil Code there are regulations regarding the risks of buying and selling: (a). If the object being sold is in the form of an item that has been determined, then the item is the responsibility of the buyer at the time of purchase, even though the delivery has not been made and the seller has the right to demand a price (Article 1460 of the Civil Code). (b). If the goods are sold by weight, number or size, then the goods remain at the responsibility of the seller until the goods are weighed, counted or measured (Article 1461 of the Civil Code).(c). If the goods are sold in piles, then the goods are the responsibility of the buyer, even though they have not been weighed, counted or measured (Article 1462 of the Civil Code). (d). The cost of the deed of sale and purchase and other additional costs will be borne by the buyer, if it has not been agreed otherwise (Article 1466 of the Civil Code)." (Handriani, 2019).

The sale and purchase agreement has several steps that must be passed in order to transfer property rights to the buyer. First, namely the stage of agreement between the parties regarding the goods and price, secondly, the stage of handing over (leveraging) the object as an object to be traded

which is regulated by Article 1475 of the Civil Code (KUH Perdata). Especially for the sale and purchase of goods that cannot be presented or indented, the delivery of the object to be sold is carried out by transferring power over the object in accordance with Article 612 of the Civil Code. All types of agreements are binding on the parties that make the contract and do not necessarily impede the rights and obligations of the parties that do so. However, for ease of proof, the agreement must be made in writing to anticipate possible problems in the future. That way, the parties can act based on the agreement that has been signed, in this case, including the sale and purchase agreement.

As has been explained that in essence the agreement is binding for the parties who make the agreement and there is an agreement between the parties to fulfill all rights and obligations both in writing and verbally. Agreements in written form can later be used as evidence when necessary.

Written evidence consists of two, namely:

a. Deed

This deed is divided into two forms, namely: (a) Authentic deed. Namely where the form has been determined by law and made before an official who has the authority where the deed is made as contained in article 1868 of the Civil Code). In this case a notary or Land Deed Making Officer (PPAT) who has been appointed by the Ministry of Law and Human Rights as well as the Minister of Agrarian Spatial Planning and the State Land Agency (ATR BPN). This authentic deed is a means of proof that can be used as evidence in court before a judge. (b) Underhand deed. Unlike the case with an authentic deed made before an authorized official, on the contrary it is only made by the parties listed in the agreement. As long as the party signing the agreement recognizes the contents of the agreement, then the agreement applies as evidence as an authentic deed.

b. Not A Deed

Not a deed which includes written evidence not a deed, including but not limited to registers, household papers and notes affixed by the creditor on a legal basis during the period under his control.

As with the sale and purchase agreement, the process of buying and selling land also has conditions to fulfill the legality of land ownership, namely light, meaning that the act was not carried out in the dark or secretly, then after the deed of sale and purchase is signed before the PPAT, the agreed payment will be made. Where delivered by the buyer in cash to the seller.

Article 26 UUPA stipulates that the transfer of land ownership rights to other people can be done through buying and selling, grants, and exchange. For buying and selling, so that the land being traded has legal certainty over ownership, it is best if the buying and selling process is carried out before an official authorized by law, namely the Land Deed Making Officer (PPAT).

According to Government Regulation Number 24 of 1997 concerning land registration, it stipulates that the process of buying and selling land must be made with an authentic deed and not underhanded because underhand agreements only bind parties who recognize the contents of the agreement and do not have legal force which can be used as evidence in court if disputes occur in the future. So that later land ownership has legal certainty, after the sale and purchase proceed with the Land Registration at the local Land Office.

The purpose of registration according to Article 3 of Government Regulation number 24 of 1997 is as follows: (Regulation of the Government of the Republic of Indonesia Number 24 of 1997 concerning Land Registration (State Gazette of the Republic of Indonesia of 1997 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 3696), 1997) (a) to provide legal certainty and legal protection to rights holders over a plot of land, apartment units and other registered rights so that they can easily prove themselves as the holder of the rights in question; (b) to provide information to interested parties, including the Government, so that they can easily

obtain the data needed to carry out legal actions regarding registered land parcels or apartment units; (c) for the implementation of orderly land administration.

After the promulgation of Law Number 5 of 1960 concerning Agrarian Principles, the notion of buying and selling land was no longer merely an agreement as stipulated in Article 1457 Jo 1458 of the Indonesian Civil Code, but a legal act of transferring rights to forever in cash later in the Implementation Regulations of the UUPA, namely Government Regulation Number 10 of 1961 which was amended by Government Regulation Number 24 of 1997, which stipulates that the sale and purchase of land must be proven by a deed drawn up by and before the Deed Making Officer Land (PPAT).

Contrary to Government Regulation number 24 of 1997 concerning Land Registration, it turns out that there are still many people who buy and sell land underground without being before a PPAT as an authorized official according to law. The parties agree to carry out sale and purchase transactions including the price of the object of the agreement. Furthermore, the buyer pays with a receipt as proof of receipt from the buyer to the seller that an act of sale and purchase has taken place.

Buying and selling land that is carried out privately will cause disputes that arise in the future because the sale and purchase agreement does not have an authentic deed issued by the PPAT as the basis for the land registration process at the local land office. The buyer only holds the receipt of payment without any land certificate that still includes the seller's name. The existence of a land certificate is a form of legal certainty that shows proof of land ownership. Without the land registration process in buying and selling as regulated in laws and regulations, it will cause losses to the buyer.

Along with the development of the times, the role of banking cannot be separated in people's lives. Bank is a business entity that is legally incorporated and operates in the field of financial services which can collect funds directly from the public and distribute them back to the community through credit legal institutions.

It is hoped that the existence of banking is not only a financial institution where people can save funds but also towards developing the economy and the quality of people's welfare.

Referring to the role of banks in people's lives, there are several functions of these banking institutions, among others. (Sumartik, 2018).

Collecting funds from the community, Various forms of savings are offered by banking institutions to the public to ensure the security of public funds, then the bank will pay interest on these public deposits. The form of these deposits can be in the form of savings, demand deposits, time deposits.

Channeling funds to the community, Savings funds originating from the community are then used for people who need loans or credit as needed. In this case the bank will apply interest on loans or credit that will be used by the community for business capital or other purposes. It is hoped that later these loans can be used to produce businesses or needs that can prosper the community and increase the country's economic development.

Broadly speaking, the Financial Services Authority (OJK) divides banks based on their functions and operational activities. (Ismanto, 2019)

Based on the function, the bank consists of: commercial banks and people's credit banks (a.) Central Bank. Is an institution that exists in a country which has a duty to maintain the stability of prices and currency values. (b). Commercial Banks, Is a legal entity that collects funds from the public in the form of savings, deposits and other forms of savings and then distributes these funds to the public in the form of credit or loans including working capital, housing loans, vehicles, education and so on as needed to improve the quality of life of the community .(c). People's Credit

Bank (BPR), Namely financial institutions engaged in services in terms of payment in conventional and sharia forms. The forms of BPR activities include collecting public funds, providing credit, providing financing and time deposits and other forms of savings as well as placing funds in the form of certificates, for example Bank Indonesia Certificates. However, BPRs do not provide funds transfer facilities between senders and recipients of funds. What distinguishes BPRs from commercial banks is that the coverage of BPRs is smaller because they are not allowed to accept deposits such as demand deposits, foreign currency and insurance.

Based on operational activities, the bank consists of: (a). Conventional Banks .Conventional Banks are banks that carry out activities in accordance with their functions, namely conventional banks and people's credit banks. In this case the bank collects funds from the community in the form of savings and other forms of deposits where the community earns interest on these savings and distributes them to the community for community needs in the form of loans and the bank charges interest on these loans to debtors.(b). Islamic Bank. Islamic banks are bankin institutions that carry out activities according to Islamic law as stated in the fatwa of the Indonesian Ulema Council (MUI). In the event that all products offered to customers have been approved by the National Sharia Council (DSN) and have obtained permission from the OJK.

With regard to the form of loans or credit, Irma Devita Purnamasari in her book states that in banking practice there are several types of credit extended to debtors or bank customers.

But broadly speaking, it can be classified into several categories, namely: (a) Current account loans, (b) Regular Revolving Loans (RR), commonly known as Demand Loans (DL)/ Revolving Loans (R/L)/ Transactional Working Capital Loans (in the form of Deposit Date Checks or opening checks with a due date based on the installment date). (c) Fixed Loans which are described in various types of facilities, including: (a). Investment Credit (IC). (b). Installment Credit. (c). Long Term Loans (PJP).(d). Home Ownership Loans (KPR). €. Term Installment Credit. (f). Consumer Loans include: Other Consumption Loans, Multipurpose Loans, Motor Vehicle Loans, Unsecured Loans (KTA).(g). Bank guarantee. (Purnamasari, 2011).

As from the description above, that Public Housing Credit (KPR) is part of the type of credit. Banks as a financial institution provide convenience by helping people to own homes by providing loans with various conditions that must be met by the community as debtors.KPR or also known as KPR is a loan product issued by banking institutions for customers who want to buy a house. In general, the amount of the ceiling provided by the bank is 70% to 80% of the house price submitted by the debtor. In addition to mortgage products offered by banks in the home ownership fulfillment program, leasing companies also offer the same thing in home ownership by outsourcing to secondary home financing institutions.

Regarding mortgages, currently there are two types of mortgages in Indonesia. Subsidized mortgages are loans aimed at helping low- and middle-income people to meet their housing needs and repair the homes they already own. The form of the subsidy provided is a subsidy to reduce credit and increase funds for the construction and repair of houses. Development loans regulated by the government, and only limited to recipients of subsidies, which in this case are related to the income of the applicant and the amount of the subsidy provided

KPR without subsidies, This credit can apply to the entire community. Everything related to mortgages is determined by the bank's policy. There are several things that must be done before deciding to buy a house through the process, including: (a) Selection of residence/ place of residence. In this case the price and ease of credit facilities is a factor of choice. (b) Gather information. It is no less important to pay attention to the facilities of the house, the safety of the surrounding environment. If the house is still under construction, the timeframe for completion and the available mortgage process must be considered. (c) Pay a receipt (booking fee), This process is a sign of a willingness to agree to buy a house and anticipate the possibility that prices will rise

or the availability of homes that have run out. If buying a house through a developer and using a mortgage, usually the buyer will be assisted by the developer to apply to the bank that is the developer's partner. (c) Submission of mortgages to the bank, If the requirements specified by the bank have been met, the bank will process the credit application by the customer. The definition of credit is basically giving money or loans based on an agreement between the parties, namely the bank as the creditor and the customer as the debtor. In this case the debtor is required to repay the loan after a specified amount including interest, compensation or profit sharing. (Wahyuono, 2021).

There are several assessments that are taken into consideration before the bank accepts submissions from prospective debtors, commonly known as 5C (Wiranti et al., 2019) (a) Character is a personality that shows potential customer qualities such as honesty, behavior and obedience. (b) Capacity, which is related to the general ability of the prospective debtor. (c) Capital or Capital which refers to the financial aspect. (d) Collaterals or securities related to guarantees that can be withdrawn if it turns out that the parties concerned cannot actually fulfill their obligations. (e) Condition, namely the direct impact of economic developments in general on the companies involved, where the company has customers to be able to have the ability to fulfill its obligations.

When a bank as a lender accepts a credit application from a debtor, there are several conditions that must be met in order to realize the loan. including several agreements that must be signed by the parties. Creditors and customers as debtors before a notary by signing a credit agreement. The credit agreement contains legal certainty to protect the interests of the parties.

There are several legal principles that must be complied with when making and fulfilling credit agreements. One of them in this case is that the bank credit agreement must be in accordance with the law of Book III of the Civil Code, which regulates obligations whose clauses are regulated in Article 1338 and Article 1320. In this case, the credit agreement is a preliminary contract (voorovereenkomst) and of course means a preliminary agreement regarding consensual delivery of money. (Badruzaman, 1991).

Obtaining an order loan or cash loan through a bank loan is usually preceded by signing a loan agreement, often also referred to as a loan agreement. A credit agreement is an agreement that forms the basis of a legal relationship between a bank and a debtor as a customer. 8 The credit contract must not only contain the principal agreement, but must also contain the provision of HT as collateral for debt. (Djia & Tan, 2022).

Collateral is an object used in an obligation contract, which the obligee refers to in the contract with the obligor. This agreement is a subsidiary agreement. This guarantee agreement protects creditors and debtors from all agreements between them. If the debtor does not pay or is unable to fulfill his obligation, the guaranteed amount must be returned to the liability. (Risvian et al., 2022)

Basically there are 5 important principles that must always be considered in order to guarantee the security and certainty of a guarantee, these five principles are: 1. The principle of publicity 2. The principle of specialists 3. The principle that means things that cannot be divided 4. The principle of Inbezittstelling 5. The principle Horizontal. (Irfan Ferdiansyah Muis et al, 2022).

In principle, any person or legal entity can become a mortgagee, as long as he has "power of attorney" to carry out legal actions against land rights which are collateral for the settlement of mortgage debt, in accordance with the provisions of the law. law. . Article 8(1) UUHT. After the Decree of the Minister of Agriculture and Regional Planning of the Republic of Indonesia/Head of State Authority No. 9 of 2019 concerning Electronically Integrated Pawn Services (hereinafter abbreviated as PERMEN ATR/KBPN No. 9 of 2019 HT) applies -el), Article 9 (5) stipulates that bills in the form of certificates of land rights or flats must be in the name of the debtor. (Asril, 2020)

Mortgage rights over land are part of agricultural sector reform, as is an important provision of the LoGA, where Article 51 states that mortgage rights can be placed on regulated property rights, business control and building control. according to law . Based on the mandate of Article 51 UUPA, Law no. 4 of 1996 concerning Mortgage Rights on Land and Land (in this document this law is called UUHT).(Novanda Suryadarma, 2021)

In addition to the home ownership credit agreement, there is also a Mortgage Granting Deed (APHT) which contains the granting of land objects or buildings on them from the debtor to the creditor as collateral for the credit proposed by the debtor. The deed also describes the amount of collateral provided by the creditor and the amount of installments that must be paid by the debtor and the length of time for the credit.

As regulated in Article 11 paragraph (2) letter h. Law Number 4 of 1996 concerning Mortgage Rights, namely the debtor promises that the mortgagee (debtor) will not relinquish his rights to the Mortgage Object or transfer it in any way for the benefit of a Third Party without prior written approval from the Mortgage Holder (creditor)). Law Number 4 of 1996 Concerning Mortgage Rights on Land and Objects,(Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda, n.d.)

So that the credit given by the bank to the debtor is safe when it is returned and does not turn into messy credit, the bank asks the debtor to guarantee the repayment of the debtor's debt. The existence of guarantees in lending is the implementation and explanation of Article 8 of Law no. 10 of 1998 concerning amendments to article 7 of the 1992 Banking Act, that "credit provided by banks contains risks, that is, in practice, banks must pay attention to the principles of credit. (Yustiana, 2020).

As long as this agreement is still in progress and the debtor has not paid off the installments to be paid, the certificate of the collateralized land is in the possession of the bank, which in this case acts as the creditor. If the debtor has paid off all the installments charged to him, the bank will carry out the Roya process by submitting a certificate in the name of the debtor as the party that has the rights over it.

Giving credit is one that is taken to own a dwelling by making installments every month. However, if the time period for granting the mortgage has not ended where the debtor decides not to proceed for certain reasons, including wanting to transfer it to another party, then the transfer of the mortgage object must be carried out with the knowledge of the creditor. The transfer of the object is commonly known as over credit.

The credit transfer process through a bank is the safest way for all parties. After the seller as the first party and the buyer as the second party agree to buy and sell, the second party can apply for a mortgage to the bank. To further facilitate the process, it is better that the application is submitted to the same bank. One of the conditions for approval of the credit is a house certificate. As long as the housing loan (KPR) lasts, the certificate is with the bank as collateral. Furthermore, the bank will evaluate the object of the credit transfer.

In the credit transfer process, there are several requirements that must be met by the buyer, including: photocopy of IMB, passbook, salary slip, identity of the buyer and seller, deed of sale and purchase notary, statement letter that the buyer will continue to pay the installments for the house, credit agreement between the buyer and the bank, power of attorney to take the certificate, photocopy of the house certificate which has been stamped by the bank as the creditor. With the fulfillment of these conditions, the obligation to the buyer is transferred to continue the mortgage installments.

In everyday life, it is often found that there is a transition of buying and selling of houses that are still in the process of mortgages at the bank. In order to avoid default which results in the object of

the credit agreement being confiscated by the bank, the debtor seeks a way out by reselling or transferring what is the object of the credit agreement. The transition method often used by debtors includes reselling or transferring what is the object of the credit agreement to a party who is able and willing to continue paying the mortgage installments. Even though the condition of the object of the credit agreement is actually still in the bank's collateral. (Israbeta Putrisani, 2019)

The seller and the buyer carry out hand-held buying and selling transactions without being before the PPAT as an authorized official and only holding on to receipts as proof of buying and selling. Then the buyer proceeds to pay monthly to the bank. Even though in reality there is only the name of the seller as the debtor and the bank as the creditor as stated in the agreement, if all the installments have been paid off by the buyer, then only the name of the seller has the right to the certificate. So this will certainly be detrimental to the buyer because it does not have a permanent legal force.

So that the credit given by the bank to the debtor is safe when it is returned and does not turn into messy credit, the bank asks the debtor to guarantee the repayment of the debtor's debt. The existence of guarantees in lending is the implementation and explanation of Article 8 of Law no. 10 of 1998 concerning amendments to article 7 of the 1992 Banking Act, that "credit provided by banks contains risks, that is, in practice, banks must pay attention to the principles of credit . (Agustini, 2018).

Judging from the case decision 15/ Pdt. G/2019/PN Street. In this case the plaintiff requested that he be able to receive a certificate on behalf of the plaintiff because the plaintiff had paid off the house installments to bank BTN as a creditor but was not granted by the judge because the sale and purchase agreement between the plaintiff as a buyer and the seller was a private agreement which was not carried out before the PPAT as an official authorized and without the knowledge of the creditor so that it has no legal force to be used as evidence in court.

After the installments for the house are paid off, the guarantee for the credit agreement ends so that the bank will hand over the certificate to the debtor stated in the credit agreement. So that authentically the certificate is also in the name of the debtor.

IV. CONCLUSION

As a way to own a home, the Bank as a financial institution provides convenience by providing Home Ownership Credit (KPR) facilities. To protect the interests of the parties and avoid default on the part of the debtor, a credit agreement is made between the debtor and the creditor and at the same time the Deed of Granting Mortgage Rights (APHT) as collateral for the object of the agreement. In the APHT there is a clause stating that the debtor is not allowed to transfer the mortgage object to a third party without written approval from the bank. In reality there are still many debtors who are unable to fulfill the obligations in the agreement by transferring to other parties. As in the Mortgage Act number 4 of 1996 article 16 paragraph 2 that the Transfer of Mortgage as referred to in paragraph (1) must be registered by the new creditor at the Land Office. From the cases discussed in this study, the debtor sold it to a third party privately without the knowledge of the bank and then the third party sold it to another party who also paid off the mortgage on the house registered in the debtor's name in the deed. . Of course the party does not have the legal power to ask for a certificate of proof of land rights in his name. because the APHT agreement only binds the parties in it, namely the debtor and the bank as the creditor

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