

Legal Consequences of a House Sale and Purchase Agreement Through a Home Ownership Credit by Over Credit Underhand

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Abstract. *This study aims to analyze: 1) The legal consequences of a house sale and purchase agreement through a mortgage underhand over credit for the parties. 2) Legal protection for the parties due to an over credit sale and purchase agreement. The approach methods used in this study are the case study approach and the statute approach. This type of research is a normative legal research. The types and sources of data in this study are secondary data obtained through literature studies. The analysis in this study is prescriptive. The results of the study concluded: 1) The legal consequences of a house sale and purchase agreement through a mortgage underhand over credit for the parties carried out with trust in each other, because this trust is not based on applicable law will harm the party who receives the debtor. The loss can be in the form of default. The legal consequence of the default is that the replacement debtor cannot take the certificate that is still in the bank's possession. The replacement debtor cannot change the name, because the certificate is still registered in the name of the first debtor. 2) Legal protection for the parties due to the over credit sale and purchase agreement, namely preventive protection for the buyer can be carried out in the implementation of the sale and purchase agreement by checking the existence of evidence of ownership of land rights that are the object of the agreement. Repressive protection in decision Number 30 / Pdt.G / 2016 / PN.Cbn is by filing a lawsuit with the Court. In this decision, the Plaintiff or buyer asked the Cirebon District Court so that the decision can be used to take the KPR house certificate that is still under the control of the Bank and carry out the name change process. In his decision, the judge stated that the KPR house purchased by the plaintiff was valid and had*

permanent legal force. The judge also stated that the buyer was a buyer in good faith for the object of the dispute. One of the principles in a sale and purchase agreement is that buyers in good faith must always be protected.

Keywords: Credit; House; Over.

1. Introduction

Every citizen has the same right to obtain a decent place to live as regulated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely that everyone has the right to live in prosperity physically and mentally, to have a place to live and have a good and healthy living environment and has the right to obtain health services. In order to fulfill this basic right, especially for lower class people, the government created a subsidized housing program as stated in the Letter of the Minister of Finance of the Republic of Indonesia No. B-49/MK/I/1974. This policy is the starting point for the home ownership system which is now known as Home Ownership Credit (KPR).¹

Every home ownership credit is also carried out with an agreement. An agreement is an event where someone promises to another party to do something. The thing in question is an achievement, namely doing something, doing something and not doing something. Article 1313 of the Civil Code (KUH Perdata) formulates an agreement as an act by which one or more people bind themselves to one or more other people. With this agreement, the parties can anticipate an undesirable situation that can harm one party, such as default.

Agreements begin with differences or dissimilarities of interest between the parties. The formulation of contractual relationships generally always begins with a negotiation process between the parties. Through negotiation, the parties attempt to create forms of agreement to bring together something

¹Agustina, 2023, Protection of Sharia Bank Mortgage Consumers for Houses That Do Not Meet Specifications and Fail to Build, Proceedings of the International Seminar on Islamic Studies Medan, Volume 4 Number 1, p. 141

desired. Through agreements, these differences are accommodated and then framed with legal instruments so that they bind the parties.²

Although in Indonesia there are regulations regarding the making of deeds that must be done before a notary or authorized official, many people also choose to make private deeds. Private deeds are usually used in a sale and purchase agreement, lease, and others signed by the parties without the intermediary of a public official. Therefore, the evidentiary power of a private deed is not as perfect as an authentic deed.

An authentic deed according to Article 1868 of the Civil Code (KUHPer) is a deed that is (made) in a form determined by law, made by or in the presence of public officials who have authority for that purpose, the place where the deed or agreement is made . A deed can be said to be authentic if it meets several criteria if it is made in a form determined by law and made by or in the presence of a public official who has authority. Meanwhile, private deeds are regulated in Article 1874 of the Civil Code, which as explained by private writings are considered privately signed deeds, letters, registers, household documents and so on. writing made without the mediation of a public employee.³The law of proof of private deeds is a very complex part of the litigation process. The complexity of the situation is increasingly complicated because the proof is related to the ability to reconstruct past events or incidents as a truth. What must be proven in a private deed is the existence of a private deed agreement and the truth of the signatures of the parties in the private deed agreement.⁴

Currently, there are still many land rights transactions between sellers and buyers that are not carried out in the presence of a Land Deed Official. They carry out the sale and purchase underhand which is only proven by a receipt as proof that the sale and purchase has taken place by relying on the element of trust. Many people also still only have proof of ownership of land that is still in the name of the old owner (seller) because they have the understanding that making a land sale and purchase deed in the presence of a PPAT and registering the land at the Land Office is considered to be very

²Lathifah Hanim, MS.Noorman, 2016, Settlement of Bank Credit Agreements as a Result of Force Majeure Due to the Earthquake in Yogyakarta, Journal of Legal Reform, Faculty of Law, Unissula, Volume III Number 2, p.161

³Bambang Eko Muljono, 2017, The Proving Power of Private Deeds, Jurnal Independent, Volume 5 Number 1, page 3

⁴Ibid., page 4

costly and does not take into account the legal consequences that will occur if the land is not registered in the name of the new owner.⁵

The house sale and purchase agreement through a home ownership credit under the hand over often causes problems so that when the new owner wants to change the name of the certificate, there are obstacles. The house sale and purchase agreement through a home ownership credit (KPR) is a common transaction in the property sector. However, the emergence of the practice of a house sale and purchase agreement under the hand over credit presents legal complexities that need to be further studied.

2. Research Methods

The approach method used in this study is the case study approach and the statute approach. This type of research is a normative legal research. The type and source of data in this study are secondary data obtained through literature studies. The analysis in this study is prescriptive.

3. Results and Discussion

3.1. Legal Consequences of a House Sale and Purchase Agreement Through an Over Credit Mortgage Underhand for the Parties

Economic recovery after the Covid-19 pandemic cannot be separated from the role of the banking business, especially credit distribution. Before a credit facility is given, the bank must be sure that the credit given will actually be returned (paid off). This belief is obtained from the results of the credit assessment. In conducting the assessment, the criteria and aspects of the assessment remain the same. Usually the assessment criteria that must be carried out have become the standard for each bank to get customers who are truly profitable, carried out with the 5C and 7P principles and the 3R principle.⁶

One of the credits in the scope of banking is home ownership credit. A house is a basic need and has a very important function for human life. There are still many members of society who do not have a house, especially for those with low incomes. In meeting their needs, it is very difficult for people with low incomes to have a house in cash. The government provides a program to

⁵Meisha Poetri, 2022, Legal Force of Private Deeds in the Land Sale and Purchase Process, Galuh Justisi Scientific Journal, Faculty of Law, Galuh University, p.47

⁶ Dr. Kasmir, 2016, Banks and Banking, Rajagrafindo Persada, Jakarta, page. 140

make it easier for people to meet their housing needs, namely the Home Ownership Credit (KPR) program.⁷ Home Ownership Credit (KPR) is a facility provided to buy a house with credit to the bank. KPR is considered profitable because it can help you own your own home, even though it is not a cash purchase method. The principle of KPR is to finance the cost of buying or building a house in advance, then the funds to pay it back are made with the installments.⁸

Many mortgage customers, due to economic needs or other reasons, intend to transfer the house that is the object of the mortgage to another party or also called credit transfer (over credit). The practice of transferring Home Ownership Credit is often carried out by the debtor to another party for reasons of financial condition. The transfer of credit rights referred to in this case is the transfer of obligations in the form of housing credit installment payments, this action is a delegation, namely the transfer of obligations/attention of the debtor, when there are receivables and is a unilateral action, namely the debtor's action.⁹

The process of debtor transfer in reality in the field is not always carried out with the knowledge or permission of the bank as the creditor. The sale of a house that has obtained a mortgage underhand is a reality that occurs in society. The occurrence of debtor transfers carried out underhand by the debtor to a third party can occur because:

1. Old debtors are no longer able to continue their mortgage installments.
2. Old debtors are experiencing economic difficulties.
3. Old debtor changes domicile.
4. The debtor does not have good intentions to fulfill his obligations.
5. The parties' lack of understanding of the law, especially regarding the debtor transfer process.

⁷Handri Rahardjo, 2003, *Smart Ways to Choose and Apply for Credit*, Yogyakarta, Pustaka Yustisia, p. 94.

⁸Mariam Darus Badruzaman, 1994, *Various Business Laws*, Bandung, Alumni, pp. 15-16.

⁹Munir Fuady, 1996, *Contemporary Credit Law*, Bandung, Citra Aditya Bakti, p. 151

An example of a case of selling a KPR house underhand is Case Number 30/Pdt.G/2016/Pn.Cbn. The description of the problems in the decision in sequence is that on 12-07-1997 Sunaryo bought a house in the GSP G-50 Karyamulya housing complex in Cirebon city. In the house sale and purchase agreement, Sunaryo obtained a credit facility in the form of a KPR from BTN. On January 8, 1999 Sunaryo sold the KPR-BTN house to Sri Wartini even though the installments for the BTN KPR House had not been paid off. On May 17, 2000 Sri Wartini resold the KPR-BTN house to Djuanda with an agreement that Djuanda would pay off the installments for the KPR-BTN House and Djuanda agreed to it. The sale and purchase agreement was agreed upon, Djuanda paid the amount requested by Sri Wartini and continued the KPR for the house. The sale and purchase agreement was carried out underhand considering that at that time the land and the KPR-BTN House had not been paid off and there was mutual trust. Djuanda continued to pay the mortgage installments for the house for nine years. The settlement was made on January 10, 2007, but Djuanda did not immediately take care of the certificate because he was busy. In 2016, Djuanda just remembered and thought about the process of changing the name on the certificate. With good intentions, Djuanda took the certificate from PT. BTN Cirebon branch but was rejected by BTN, because the certificate was still registered in the name of Sunaryo. Meanwhile, Djuanda did not know the whereabouts of Sunaryo or Sri Wartini.

This case illustrates a problem that often occurs in Indonesia, that the general public assumes that the house sale and purchase agreement is sufficient with a receipt as proof of payment in full between the seller and the buyer. Many people still forget or even do not know that in the sale and purchase of a house by over credit, it does not only involve the homeowner (the first debtor), but also involves the bank as a creditor or provider of funds for financing the purchase of a KPR house and a notary who is authorized to make a deed of sale and purchase. The deed in this sale and purchase agreement is called a private deed.

The act of transferring credit without the written knowledge of the bank results in losses for the debtor who receives the transfer.¹⁰ Because the party receiving the credit transfer is not recognized by Bank BTN as the owner of the KPR House. This will have legal consequences for the KPR house

¹⁰Debby Shara, DH, & Wahjunic, 2019, Bank Rights as Creditors in Providing Apartment Ownership Credit with Apartment Sale and Purchase Agreement Collateral, ACTA DIURNAL Journal of Notary Law, Volume 2 Number 2, pp. 172–186

certificate that will be issued by the Bank.¹¹When the credit is paid off, the bank only hands over the certificate to the registered debtor, not to the party who took over the credit illegally, even though the credit taker is the person who paid the installments until it was paid off. The bank will be free from lawsuits if there is a dispute with a third party. This becomes a problem when the bank will use its rights if there is a breach of promise or the debtor is considered in default.¹²

Default is the attitude of a person who breaks a promise in carrying out his obligations as agreed between the creditor and the debtor, where the basis of the default is the agreement. A debtor can be said to be in default if a debtor:

1. Not doing what he said he would do.
2. Carries out what it promises, but not as promised.
3. Did what was promised but was late.
4. Doing something that according to the agreement you are not allowed to do.

Default is regulated in Article 1243 of the Civil Code, which states that "reimbursement of costs, losses and interest due to failure to fulfill an obligation, only begins to be required if the debtor, after being declared to have failed to fulfill his obligation, continues to fail to do so, or if something that must be given or made can only be given or made within a time limit that has passed."¹³

Over credit underhand is a transaction between a seller and a buyer with a receipt as proof of the sale and purchase transaction that has been carried out. Underhand sales and purchases are not legally permitted and do not bind third parties. In addition, underhand sales and purchases cannot be used

¹¹Arifin, J, 2019, Consumer Protection Against Developer Default Against Kpr Buildings Based on Law Number 8 of 1999 Concerning Consumer Protection, Yustitia Journal, Volume 5 Number 2, pp. 226–241.

¹²Herutomo, 2010, The Secret of Mortgage Loans Hidden by Bankers, Jakarta, Gramedia, p.22

¹³Mahfudzotin Nikmah, 2020, Legal Consequences of House Sale and Purchase Agreements Through Home Ownership Credit, JCH (Jurnal Cendekia Hukum), Volume 6 Number 1, p.20

as strong evidence in the judge's consideration of the validity of the sale and purchase of a KPR house for the object of the dispute.¹⁴

The legal consequences of a house sale and purchase agreement through a mortgage under the table for the parties that are carried out with trust in each other, because this trust that is not based on applicable law will harm the party that receives the debtor. The loss can be in the form of default.

Underhand debtor transfer is a default that often occurs in lower-middle-class communities. This is due to the lack of knowledge of the general public regarding the transfer of debtors to third parties that is carried out legally. Problems like this can be detrimental and have legal consequences for third parties as new debtors. These losses and legal consequences can be:

1. The bank refused to hand over the Home Ownership Certificate, because the certificate was still registered in the name of the first debtor.
2. The replacement debtor cannot change the name, because the certificate is still registered in the name of the first debtor.

The agreement is an important basis in making a mortgage sale and purchase agreement, because the agreement is made to protect the interests of the parties and ensure legal certainty in making sales and purchases. Legal certainty is a guarantee that the law must be implemented in a good manner. Legal certainty requires efforts to regulate the law in legislation made by authorized and authoritative parties, so that the rules have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed.¹⁵

This analysis of Gustav Radbruch's legal certainty theory provides an understanding that all legal aspects involved in a house sale and purchase agreement through a mortgage underhand over credit must be in accordance with the principles of legal certainty in order to maintain justice and sustainability in its implementation. By considering these aspects, legal certainty in the context of a house sale and purchase agreement through a mortgage is very important to prevent disputes and provide clarity on the

¹⁴Wijayanti, P., Silviana, A., & Ananingsih, S. W, 2017, Legal Consequences of Underhand Sale and Purchase of Land and Buildings That Are Burdened with Mortgage Rights (Case Study of Decision Number 416/Pdt/G/2015/PN.Smg). *Diponegoro Law Journal*, volume 6 Number 2, 1– 19.

¹⁵Asikin Zainal, 2012, *Introduction to Indonesian Legal System*, Rajawali Press, Jakarta, p. 22

rights and obligations of the parties. Positive legal validity, based on clear facts, and stable in its implementation, will create the desired legal certainty.

Based on the case, the solution that can be carried out by the substitute debtor so that the underhand house sale and purchase can have legal certainty, namely by filing a lawsuit with the District Court, with a decision that has permanent legal force regarding the validity of the underhand sale and purchase, that the substitute debtor is given the authority and power to take the certificate at the bank and carry out the name change process for the sale and purchase that has been carried out by the first debtor and the substitute debtor.

3.2. Legal Protection for Parties Due to Overcredit Sales and Purchase Agreements

Legal protection is providing protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be used to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.¹⁶According to Philipus M. Hadjon, there are two types of legal protection facilities, namely preventive legal protection and repressive legal protection.

If examined from the theory of legal protection above, preventive protection for buyers can be carried out in the implementation of the sale and purchase agreement by checking the existence of evidence of ownership of land rights that are the object of the agreement. Based on Article 1491 of the Civil Code, the Buyer can ask the seller to guarantee that the object of the agreement is in the possession of the sold safely and peacefully and guarantees from hidden defects.¹⁷Preventive legal protection is regulated in Article 32 (1) and (2) of Government Regulation Number 24 of 1997 concerning land registration. This protection is given to land rights holders to carry out a good faith. The elements contained in the legal protection given to land rights holders against people who have good faith, then the certificate holder will be controlled in a real and continuous manner without any lawsuits or

¹⁶Satjipto Raharjo, 2000, Legal Science, PT. Citra Aditya Bakti, Bandung, p. 55

¹⁷Socha Tcefortin Indera Sakti, Legal Protection for Parties in a Land Sale and Purchase Agreement Under Hand, Private Law Journal, Volume VIII No. 1 January-June 2020, p.90

objections being filed against other parties.

Repressive protection in decision Number 30/Pdt.G/2016/PN.Cbn is by filing a lawsuit with the Court. In this decision, the Plaintiff or buyer requested the Cirebon District Court that the decision can be used to take the KPR house certificate that is still under the control of the Bank and carry out the name change process. In his decision, the judge stated that the KPR house purchased by the plaintiff was valid and had permanent legal force. The judge also stated that the buyer was a buyer in good faith for the object of the dispute. One of the principles in a sale and purchase agreement is that a buyer in good faith must always be protected. Consequently, a sale and purchase agreement made by a buyer in good faith with a seller must be considered valid. If anyone is harmed as a result of the transaction, then the rights of the buyer in good faith must be protected by law. Legal protection for buyers in good faith in land transactions is only effective after a court decision has permanent legal force (in kracht van gewijsde verklaard).

A good faith buyer should be interpreted as an honest buyer, unaware of the defects in the goods purchased. This agreement can be found, among others, in the following opinions:

1. A Good Faith Buyer is defined as a buyer who is completely unaware that he is dealing with someone who is not actually the Owner.¹⁸
2. A Good Faith Buyer is someone who buys goods with full confidence that the Seller is truly the owner of the goods being sold' (Ridwan Khairandy).¹⁹
3. A Good Faith Buyer is someone who is honest and is not aware of the defects inherent in the goods he has purchased.²⁰

According to Woo Pei Yee, the requirements for a Buyer in good faith to be able to obtain legal protection must be seen from two aspects. First, namely the subjective aspect that the buyer must be honest. Second, from the objective aspect that the parties must carry out their obligations properly.²¹To ensure legal certainty and order, as well as legal protection for

¹⁸R. Subekti, 2014, Various Agreements, PT Aditya Bakti, Bandung, p. 15

¹⁹Ridwan Khairandy, 2004, Good Faith in Freedom of Contract, UI Press, Jakarta, p. 194

²⁰Agus Yudha Hernoko, 2008, The Law of Contracts: The Principle of Proportionality in Commercial Contracts, Mediatama, Yogyakarta, p. 25

²¹Ridwan Khairandy, Loc.Cit. p. 130.

the parties in the sale and purchase of land rights, formal requirements must be met. Formal requirements for the object of the sale and purchase of land rights in the form of land ownership related to the procedure for the transfer of land rights as regulated in the UUPA and PP No. 24 of 1997. According to the provisions therein, the sale and purchase of land must be proven by a deed made by and before the PPAT. To ensure legal certainty and order, the land sale and purchase process can only be carried out on land owned based on land rights, meaning land objects that are legalized with proof of ownership of land rights. Thus, the Buyer can know that the Seller is a person or party who has the right and legal right to sell.²²

The adoption of a negative publication system with a positive tendency and the unregulated property law on land has created uncertainty in cases of legal protection for the land sale and purchase process, especially protection for Good Faith Buyers. Although the UUPA has regulated land registration which can be used as a means to issue certificates that can be used as strong evidence, the negative land publication system with a positive tendency has not fully created legal certainty for Buyers from fraudulent sellers. Thus, there are many lawsuits filed by Original Owners against Good Faith Buyers who obtain land through sale and purchase agreements. The lawsuits of Original Owners against good faith buyers are basically lawsuits against property rights. The Original Owner feels that he is the owner of the goods controlled and/or owned by the Good Faith Buyer. The Original Owner feels that he has a legal relationship with the goods controlled and owned by the good faith buyer, so that the good faith Buyer has disturbed the comfort of the original owner in enjoying his property rights. According to jurisprudence, the original owner (*eigenaar*) only needs to prove that the object being requested back is his property, the Original Owner does not need to prove how he obtained the property rights.²³

A Good Faith Buyer who feels that the object being sued by the original owner is his, will maintain ownership of the object by stating the legal relationship between him and the object. A Good Faith Buyer can state how he obtained the ownership rights to the object, to prove that he is a *bezitter/eigenaar* who obtained the object in good faith, so that as a good faith *bezitter/eigenaar* must receive legal protection.

²²J. Andy Hartanto, Op.Cit. pp. 103-105

²³Sri Soedewi Asjchoen Sofyan, 1974, *Civil Law: Different Laws, Liberty*, Yogyakarta, p.60

The buyer in the above phrase can be understood as a person who enters into a sales agreement with another person, in this case the Seller. Protection for the buyer in a sales agreement is given to the guarantee of comfort in enjoying the purchased goods by requiring the seller to guarantee the Buyer's safety in enjoying the goods. Thus, the legal relationship between the Buyer and the Seller is an individual legal relationship, where the Buyer can sue the Seller for compensation if the Buyer experiences interference with the purchased goods. Furthermore, protection for the Buyer is also interpreted as protection against the material relationship between the buyer and the object. This protection is given because he obtained the property rights in good faith. The sales agreement becomes the perfect basis for the buyer to defend the purchased goods, against anyone who tries to interfere with the buyer in enjoying the goods. This sales agreement is accompanied by the transfer of property rights between the buyer and the seller.

4. Conclusion

The legal consequences of a house sale and purchase agreement through a mortgage underhand over credit for the parties carried out with trust in each other, because this trust is not based on applicable law, will harm the party who receives the transfer of the debtor. The loss can be in the form of default. The legal consequences of the default are that the replacement debtor cannot take the certificate that is still in the bank's possession. The replacement debtor cannot change the name, because the certificate is still registered in the name of the first debtor. Legal protection for the parties due to an over credit sale and purchase agreement, namely preventive protection for the buyer, can be carried out in the implementation of the sale and purchase agreement by checking the existence of proof of ownership of land rights that are the object of the agreement. Preventive legal protection is regulated in Article 32 (1) and (2) of Government Regulation Number 24 of 1997 concerning land registration. Repressive protection in decision Number 30/Pdt.G/2016/PN.Cbn is by filing a lawsuit with the Court. In this decision, the Plaintiff or buyer asked the Cirebon District Court so that the decision can be used to take the mortgage house certificate that is still in the Bank's possession and carry out the name change process. In his decision, the judge stated that the mortgage house purchased by the plaintiff was valid and had permanent legal force. The judge also stated that the buyer was a buyer in good faith of the disputed object. One of the principles in a sale and purchase agreement is that a buyer in good faith must always be protected.

Consequently, a sale and purchase agreement made by a buyer in good faith with a seller must be considered valid.

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