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The Transfer of Subsidized Home Ownership Through Oper Credit Without Creditor's Knowledge in the Concept of Legal Certainty

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Abstract. *This study aims to find out and analyze the transfer of subsidized housing ownership through credit transfer without the knowledge of the creditor in the concept of legal certainty and to know and analyze what are the causes and solutions to the transfer of subsidized housing through credit transfer. The research approach method used in this thesis is a sociological juridical legal research method. The specification of this research uses descriptive analysis. The type of data used in this study is primary data which includes the 1945 Constitution; Act No. 2 of 2014; Mortgage Act; Code of Civil law; The Criminal Code, as well as secondary data containing books and other supporting documents. Collecting research data using interview techniques and study of documents or library materials. The sale of a KPR house by the debtor cannot eliminate the debtor's obligation to pay off his debt to the Bank. Switching home loans without the knowledge of the bank as the creditor before the credit is paid off is an act that the debtor may not do, this is because the contents of the credit agreement bind the first party (Bank) with the second party/credit recipient, namely the first debtor. If someone makes a house loan intentionally and without notifying the Bank as the creditor to sell or transfer it to another party, the action is classified as a "default". In addition, all credit operations carried out by the debtor without involving the Bank as the creditor do not bind third parties, namely new debtors.*

Keywords: Certainty; Credit; Transition; Transfer.

1. Introduction

One of the primary needs for the community is to have a place to live,The need for a place to live in high housing has affected the emergence of mortgage facilities. It can be said that KPR is a loan disbursement to debtors provided by a bank for the purpose of buying a house and/or land to own, live in or use alone.

Governmentproviding a subsidized mortgage system for people with low purchasing power, which provides light installments and low interest rates.

Subsidized Mortgages are home ownership loans/financing that receive assistance and/or ease of obtaining housing from the government in the form of long-term low-cost funds and housing acquisition subsidies issued by Executing Banks both conventionally and with sharia principles.[1]

In real life, the house mortgage process sometimes doesn't run smoothly, problems arise such as financial problems that cause delays in installment payments or because they want to move house, some people solve this problem by transferring the mortgage or being credited. This Oper Credit will cause new problems, namely Default which is the negligence and negligence of the debtor, there are 4 (four) types of default, namely:[2]

1. Did not do what he promised to do,

2. Carry out what was promised, but not as promised,

3. Did what was promised but too late and

4. Doing something that according to the agreement should not be done ".

Defaults that generally occur are in the form of bad credit and are usually the result of financial problems that have an impact on the debtor's inability to pay off credit on time. "A chronic disease that is very disturbing and threatens the Indonesian banking system that often occurs in the world of banking is bad credit, which must be anticipated by all parties, moreover the bank has a strategic role in Indonesia's economic activities."

By reselling or transferring what is the object of the credit agreement, in this case the debtor transfers his credit rights or oper credit to the land and building.[3]In this regard, most ordinary people as debtors will try to overcome the bad credit problem by selling or transferring the object of the agreement to a third party. The process of transferring credit rights like this is often encountered in practice, credit operations are carried out without the knowledge of the bank.[4]This can eventually lead to new problems, because the bank does not have a legal relationship with the new buyer as a third party, which can lead to legal uncertainty, especially for these third parties.

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[1]"What is meant by Subsidized KPR?" Information Service of the Directorate General of Public Works and Housing Infrastructure Financing, http://pemfundan.pu.go.id/faq/faq/ p/5-apa-yang-dimaksud-dengan-kpr- subsidized/ accessed on November 30, 2021 at 9:52 p.m.
[2]Subekti, R. (2005). Agreement. Jakarta: Intermas. p. 45.
[3]Widjaya, G., & Muljadi, K. (2005). Debt Guarantee and Dependent Liability Agreements. Jakarta: PT. King of Grafindo Persada. p. 57.
[4]Ristanto, S. (2008). Easy to Get Home Ownership Credit Funds. Yogyakarta: Grahatama Library. p. 25.

However, most people choose this way out by reselling or transferring what is the object of the credit agreement, in this case the debtor transfers his credit rights or oper credit on the land and building.[5]

Inthe research that I did in the city of Cirebon, the implementation of the credit agreement is usually done in two forms or ways, namely:

1. Credit agreement made underhand or deed underhanded.

2. Credit agreementmade before a Notary or authentic deed.

Diversionrights and credit transfers on subsidized housing loans that carry out legal actions in credit transfer transactions as creditors with debtors are subject to the principle of freedom of contract, as contained in Article 1338 of the Civil Code, which reads: "All agreements made legally apply as laws invite for those who make it. These agreements cannot be withdrawn unless agreed by both parties or for reasons stated by law to be sufficient for this purpose.[6]

Passcredit that occurs is usually to overcome financial problems and so that there is no default so that it will result 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, in this case the debtor transfer credit rights or oper credit on the land and buildings.[7]

PassUnderhand loans for subsidized mortgages if carried out before exceeding 5 years are in violation of the provisions of article 29 paragraph 4 letter e of the Regulation of the Minister of Public Works and Public Housing No.20/PRT/M/2019, where houses purchased through Subsidized KPR Credit/Financing are prohibited for transferred before exceeding 5 (five) years from the date of the contract. The following are restrictions for recipients of subsidized mortgage facilities:

1. Debtors are prohibited from earning more than the target group's income limit;

2. The debtor is prohibited from buying a landed welfare house or an apartment unit with a selling price that exceeds the selling price limit stipulated in a Ministerial Decree;

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[5]Widjaya, G., & Muljadi, K. (2005). Debt Guarantee and Dependent Liability Agreements. Jakarta: PT. King of Grafindo Persada. p. 57.
[6]Article 1338 Civil Code.
[7]Widjaya, G., & Muljadi, K. (2005). Debt Guarantee and Dependent Liability Agreements. Jakarta: PT. King of Grafindo Persada. p. 57.

3. The debtor is prohibited from occupying a welfare home or flat unit as a residence within a period of no later than 1 (one) year after the handover of the house as evidenced by the Minutes of Handover;

4. Debtors are prohibited from renting and/or transferring ownership of a landed welfare house or an apartment welfare unit in any form of legal action, except:

a. the debtor/customer dies (inheritance);

b. occupancy has exceeded 5 (five) years for a landed house;

c. the occupancy has exceeded 20 (twenty) years for an apartment welfare unit; or

d. change of place of residence in accordance with the provisions of the legislation.

5. The debtor is prohibited from receiving back housing acquisition subsidies in the form of home ownership from the Government;

In the case of not fulfilling one of the statements in number 1, number 2, number 3, number 4, and/or number 5 and if one of these statements is violated based on the results of control and supervision, then KPR Sejahtera is willing to stop and return convenience and/ or housing finance assistance that has been obtained.[8]

InIn practice, there are many houses purchased through subsidized KPR facilities that are transferred before 5 (five) years by making a binding sale and purchase agreement in front of a notary but without the knowledge of the bank as the creditor, this is usually called underhand credit, the party who buys or the recipient of the credit operation under the hand will continue the installment obligations to the creditor.

Based on the background above, the researcher is interested in discussing the study entitled Transfer of Subsidized Home Ownership Through Credit Transfers Without the Knowledge of Creditors in the Concept of Legal Certainty in Cirebon.

[8]"Prohibitions and Sanctions" Housing Financing Fund Management Center of the Ministry of Public Works and Public Housing, https://ppdpp.id/larangan-dan-sanksi/. accessed December 1, 2021 at 06.22.

2. Research Methods

The approach that the author uses in the preparation of writing this legal research is normative legal research, because in this research law is conceptualized as normative legislation and as written norms made and promulgated by institutions or by authorized state officials, law is seen as an autonomous institution, apart from other institutions in society. Therefore, the assessment carried out is only "limited" to statutory (written) regulations. The research specification used is analytical descriptive in nature which aims to present the results of the research in as much detail as possible about the problems above, as well as the obstacles faced and what legal remedies can be taken to resolve the problem. The data collection method in this study was obtained or collected through secondary data obtained by researchers from the library which is the result of research that is already available in the form of books that are usually provided in the library.

3. Results and Discussion

3.1. How to Transfer Subsidized Home Ownership Through Credit Operations Without KnowledgeCreditor In Legal Certainty Concept

There is a transfer of credit for home ownership so that people can easily own a house. Various financial institutions, for example banks, provide credit facilities to people who want to own a house on credit. This facility is commonly known by the wider community as a Home Ownership Credit or commonly abbreviated as KPR. Banks have distributed various housing loans to the public, which in reality will not always work according to the agreed credit scheme. The transfer of credit rights referred to in this case is the transfer of obligations in the form of housing loan installment payments, this action is a delegation, namely the transfer of obligations / replacement of debtors, when there are receivables and is a unilateral action, namely the actions of the debtor without the knowledge of the bank as the creditor,

Debtor transfer without the knowledge of the bank begins with an agreement between the seller (old debtor) and the prospective buyer (prospective new debtor) who will continue to pay off the credit installments until it is paid off, either according to the tenor or accelerated. After the two agreed, then they went to the Notary's office to make an Agreement regarding this Transfer of Debtors. Usually the Notary will make 3 (three) deeds, namely:

a. Sales and Purchase Binding Deed

The Deed of Sale and Purchase Agreement is made to be authentic evidence of the legal actions of the parties, by containing the agreed terms such as the credit transfer price, since when the second party continues the installments, as well as being the basis for the authority to act when the Sale and Purchase Deed is made before the PPAT for the purpose of the transfer process. certificate.

b. Deed of Power of Attorney to Sell

The deed of power of attorney to sell is made with the aim of making it easier for new buyers or debtors when the credit has been paid off and the certificate has been taken, so the buyer can take care of the transfer process by using the deed of power of attorney to act as the basis for the authority to act when a deed of sale and purchase is made before the PPAT for the purposes of the process of transferring the name of the certificate in the case of the name behind is not on the name of the new buyer or debtor.

This kind of Debtor Transfer process has weaknesses, namely if the old seller or debtor dies before the credit is paid off, this will be a problem for the new buyer or debtor when he wants to take the original certificate, because the Authorization for Document Retrieval has died with the death of the power giver, according to article 1813 Civil Code, one of the reasons for the end of the power of attorney is the death, forgiveness, or the bankruptcy of the person giving the power of attorney or the power of attorney.

Based on the article it is clear that the power of attorney is null and void or ends when the power giver or the (recipient) power of attorney dies. Because the power comes from the person giving the power of attorney, then with the death of the person giving the power of attorney, the power given to the person receiving the power will automatically disappear or fall. Thus, the recipient of the power of attorney is no longer able to carry out matters in this case taking a certificate on behalf of the person giving the power of attorney (who has passed away).

3.2. What Causes and Solutions to the Transfer of Subsidized Houses Through Credit Operations Without the Creditor's Knowledge

The process of transferring debtors in reality in the field is not always carried out with the knowledge or permission of the bank as the creditor. Selling houses that have received mortgages under hand is a reality that occurs in society.

1. Factors causing the transfer of subsidized housing debtors through credit operations without the creditor's knowledge which are carried out underhand by the debtor to third parties can occur because:

a. Old debtors have failed to pay, this factor is now happening a lot, even during the Covid 19 pandemic due to experiencing economic and income difficulties.

Not infrequently, this also raises a stimulus for mortgage over-credit procedures without the knowledge of the creditor. Old debtors are experiencing economic difficulties;

b. Old debtors move domicile;

c. The debtor does not have good faith in fulfilling his obligations;

d. Lack of understanding of the parties regarding the law, especially regarding the process of transferring debtors;

e. The new debtor had applied for a mortgage on his own behalf but was not approved by the bank, because he was driven by the desire to own a house, so he looked for alternative solutions to operate credit without the creditor's knowledge.

2. Solutionagainst the transfer of subsidized housing through a credit operation without the knowledge of the creditor:

a. It is better to choose a ready-made house

The first way to over credit a house is to try to choose a house that is ready and ready to live in. So that the information on the house is clearly stated, both the size and area of the land and the building. In addition, there is no need to carry out the process of building a house again. Maybe you just need to do a little home renovation. Therefore, the costs incurred are not large enough.

b. Find out the rest of the old owner's installments

It is important to know the remaining installments of the old owner. Don't let the remaining installments of old debtors explode so that they are borne by the buyer. Avoid asking this directly to the bank.

c. Know the Track Record of the Previous Home Owner

Before making a credit transfer, it is mandatory to find out the track record or track record of the previous home owner. Make sure the previous home owner has no outstanding arrears or fines. So that the responsibility is not borne by the new buyer. Therefore, it is very important to ask for proof of the last credit transaction.

4. Conclusion

The legal consequence of transferring home loans without the knowledge of the bank as the creditor is the birth of a new legal relationship between the first debtor and the new debtor, namely as a third party who buys a house with the credit operation. in which the new debtor is not recognized by the Bank as the recipient of financing for the purchase of the house loan and it is difficult to take a certificate for the new debtor and in the over credit agreement made underhand by the first and second debtors the agreement is invalid and not recognized by the bank because the bank does not recognize the existence of the agreement. This happened because the credit agreement was made by the bank as the creditor with the first debtor who received the credit, so the agreement only applies to the parties who made the agreement so that it is not binding on third parties who receive credit transfers from the first debtor even if it is done by making a deed.

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