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Legal Protection for Parties Who Have Good Faith in a Home Ownership Credit Agreement (Case Study of District Court Decision No. 54Pdt.G/2021/PN.Kwg)

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Abstract. *One of the problems in the implementation of Home Ownership Credit (KPR) is often encountered, including the transfer of rights to the object of Home Ownership Credit (KPR), namely the house, which is carried out by the debtor to another party before the period of the Home Ownership Credit (KPR) ends or is paid off and without the knowledge of the bank and does not use proper and correct procedures, known to the public as the transfer of rights or take over credit. Credit takeovers are often carried out by debtors through a sale and purchase agreement made by the parties themselves, without a certain standard and only tailored to the needs of the parties without facing an authorized official or known as an underhand sale and purchase agreement. The problem raised in this research is the legal certainty of the implementation of over credit under the hand and the consideration of the judge in decision No. 54/Pdt.G/2021 /PN.Kwg. The purpose of this writing is to find out the legal certainty of the implementation carried out under the hands of a home ownership credit agreement (KPR) and to find out the judge's consideration in decision No. 54/Pdt.G /2021/PN.Kwg. The author uses the Normative Juridical approach method in this research, which means that in analyzing the problem is done by studying legal materials. The results of the author's research are that the Karawang District Court gave legal certainty to Budi Nuryono as a good faith buyer and the panel of judges decided based on article 1238 of the Civil Code stating that the Defendant did not do what was promised which caused default.*

Keywords: *Agreement; Credit; Home; Loan; Ownership.*

1. Introduction

As the needs of society continue to increase in various fields of life, the need for funding also increases. Most of the funds needed to meet these needs are obtained through lending and borrowing activities or credit agreements. Banking

institutions are one of the institutions that function to store and distribute funds to the public in the form of credit to meet their needs. According to the provisions of Law No. 10 of 1998 concerning Banking does not regulate the form of a bank credit agreement, but article 1 point 11 states that: "Credit is the provision of money or bills that can be equated with it, based on agreements or agreements between banks and other parties", It is important to consider the principle of balance in legal protection against debtors who break promises, [1] An agreement can be carried out properly if the parties have fulfilled their respective obligations as agreed based on agreement and will without any party being harmed.[2]

The article adheres to the principle of freedom of contract, so the parties to the consumer financing agreement can make an agreement in accordance with the will of the parties. The principle of freedom of contract is the widest possible freedom given by the law to the public to enter into agreements about anything, as long as it does not conflict with laws and regulations, decency and public order. (Johanne Daeng Naja, 2009: 261-263) An agreement becomes valid if it fulfills the conditions specified by law. The validity of the agreement is regulated in Article 1320 of the Civil Code, among others:

a. There is an agreement between those who bind themselves. An agreement means that there is a meeting point between the parties regarding the interests of the parties.
b. Capacity to enter into an agreement. Capacity to enter into an agreement is the authority to perform legal acts on one's own.
c. A certain thing. A certain thing means the object of the agreement itself, namely what 143 is promised. The rights and obligations arising from the agreement must be clearly stated in it. Article 1333 of the Civil Code states that: "An agreement must have as its subject matter an item of at least specified type. It is not an obstacle that the amount of goods is uncertain, provided that the amount can later be determined or calculated".
d. A lawful cause. Cause is what causes people to make agreements, what encourages people to make agreements. A lawful cause means that the object of the agreement is not a prohibited object but is permitted by law.

An unlawful cause includes unlawful acts, contrary to decency and violating public order. The bank credit agreement between the bank and the debtor must fulfill the terms of the agreement as stated in Article 1320 of the Civil Code above. Based on Law Number 8 of 1999 concerning Consumer Protection (UUPK), it has been regulated that the prohibition of the inclusion of standard

[1] Cut Sarah Maulida, 'Asas Keseimbangan Terhadap Pembatalan Perjanjian Secara Sepihak Melalui Transaksi Jual Beli', 8.2 (2024), p. 243–53.
[2] Pamela and others, 'Kajian Yuridis Debitur Yang Melakukan Wanprestasi Dalam Perjanjian Kredit Dengan Pembebanan Hak Tanggungan', *Lex Privatum*, X.1 (2022), p. 172–82.

clauses in every document and/or agreement if it contains the transfer of responsibility of business actors (Article 18), but in reality it is still often found. With the reason of paying attention to the customs prevailing in the banking environment and the need for banking in the community, but the lack of public knowledge regarding the existence of standard clauses contained in every banking transaction. In the law of agreements, there are several important principles that form the basis for implementing agreements. Likewise in credit agreements, these principles are guidelines and the basis for the will of each party in achieving their goals. There are 5 principles in making agreements, namely, (Johannes Ibrahim and Lindawaty Sewu, 2004: 99):

1. *Pacta Sunt Servada* Principle. Article 1338 paragraph (1) of the Civil Code, which states that all agreements made legally shall apply as laws for those who make them. This means that both parties are obliged to obey and enforce the agreed agreement as they obey the law.
2. Consensualism Principle. The principle of consensualism has the most important meaning, namely that to give birth to an agreement it is sufficient to achieve the conditions specified in Article 1320 of the Civil Code and that the agreement has been born when an agreement has been reached between the parties involved in the agreement. That way, an agreement is valid when the conditions in Article 1320 of the Civil Code have been fulfilled and is born when the parties have said an agreement.
3. Principle of Good Faith. In the Civil Code in Article 1338 paragraph (3) states that: "the agreement must be made in good faith". In other words, every person or legal entity (legal subject) who wants to enter into an agreement must have good faith. Good faith here is a form of protection to provide legal protection for one of the parties who has good faith in the agreement both at the time of making the agreement and at the time of implementing the agreement.
4. Personality Principle. This principle relates to the subjects bound in an agreement. The principle of personality in the Civil Code is regulated in Article 1340 paragraph (1) which states that an agreement is only valid between the parties who make it. This statement implies that the agreement made by the parties is only valid for those who make it.
5. The principle of freedom of contract. This explains that every legal subject has the freedom to enter into any form of agreement or agreement that has been regulated by law. This action assumes that there is a certain freedom in society to be able to participate in juridical traffic.

In the implementation of the KPR agreement, problems are often encountered, including the transfer of rights or takeover or the KPR object, namely in the form of a house, which is carried out under the hands of the debtor to another party before the KPR is paid off and without the knowledge of the Bank or known by the public as over credit. Home ownership credit (KPR) is credit provided by the

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Bank to debtors who are used to purchase houses along with land rights built by housing development organizations, within a certain period of time the debtor returns credit (debt) to the Bank accompanied by the provision of interest. The house purchased by the debtor becomes a guarantee for the repayment of the debtor's credit (debt) to the Bank which is encumbered by Collateral Rights.

Mortgage agreements made by banks and customers are usually carried out over a long period of time. In that period of time, problems may occur. One example is default. A debtor can be said to have made a default of 4 kinds, namely:

1. The debtor does not fulfill the performance at all
2. The debtor fulfills the performance, but not as intended
3. The debtor fulfills the performance, but not on time
4. As a result of the absence of a legal relationship between the new debtor and the Bank, the new debtor will have difficulties when retrieving the certificate kept by the Bank as collateral. The initial credit agreement is still in the name of the old debtor so that at the time of mortgage repayment, the new debtor cannot take the certificate to the Bank because the Bank requires the presence of the old debtor as the party stated in the initial credit agreement. This makes it difficult for new debtors because the whereabouts of the old debtor cannot be known.

From the foregoing, questions will arise from the new debtor as the recipient of over-credit about his legal certainty and legal protection. As what happened in the sale and purchase agreement that was decided by the Karawang District Court No. 54 /Pdt.G/2021/PN. Kwg

Case No. 54 /Pdt.G/ 2021/PN.Kwg. In good faith, the plaintiff purchased the land and mortgage house from the Defendant. The sale and purchase carried out was a sale and purchase under the hands where then the plaintiff continued the remaining installments of the Defendant to the bank until finally the installments were paid off. After the installments were paid off, the plaintiff took the initiative to collect the certificate in the name of the Defendant from the bank and then changed the name to the name of the plaintiff. The bank did not grant the transfer of the name because the sale and purchase that had taken place was an underhand sale and purchase. Then the plaintiff looked for the domicile of the Defendant to later carry out the name change process, but it was no longer known where the domicile of the Defendant was (disappeared), then the plaintiff filed a lawsuit at the Karawang District Court to obtain his rights.

A Notarial Deed is an official document issued by a notary according to Civil Code article 1870 and HIR article 165 (Rbg 285) which has absolute and binding evidentiary power. A Notarial Deed is perfect evidence so that it does not need to be proven by other evidence as long as its untruth cannot be proven. Based on

Civil Code article 1866 and HIR 165, a notarial deed is the main written evidence or proof letter so that this document is a trial evidence that has a very important position.

The deeds that can be made by a Notary are as follows:

a. Establishment of Limited Liability Company (PT), amendments as well as Minutes of General Meeting of Shareholders.
b. Establishment of Foundations and other Establishment Organizations.
c. Establishment of a Business Entity - Other Business Entities
d. Power of Sale
e. Lease Agreement, Sale and Purchase Agreement
f. Description of Inheritance Rights
g. Testament
h. Establishment of a CV including amendments
i. Recognition of Debt, Credit Agreement and Granting of Mortgage Rights
j. Cooperation Agreement, Employment Contract
k. Any form of agreement that is not excluded to other officials

2. Research Methods

This research is a Normative Juridical Research, namely legal research conducted by examining library materials or also called secondary data as basic material to be researched by conducting a search for regulations and literature related to positive law and how it is implemented in practice with the support of empirical data. The approach used is a case approach and statute approach, which is an approach used to review and analyze the provisions of laws and regulations related to the research. The statutory approach is a research that prioritizes legal material in the form of laws and regulations as a basic reference material in conducting research on legal protection against debtors who break promises in the name transfer process. The case approach is to study the district court decision no 54/Pdt.G/2021/PN.Kwg.

3. Results and Discussion

3.1 Legal protection for parties who have good faith in an agreement process.

Legal protection in general is a form of service that must be carried out by law enforcement officials or security forces to provide a sense of security, both physical and mental, to victims and witnesses from threats, disturbances, terror, and violence. Meanwhile, legal protection in perspective based on the sale and purchase agreement, both for a good faith buyer and every party who has good faith is a principle in the legal system in Indonesia which is sourced from customary law which is highly upheld. Good faith in a sale and purchase

agreement process has a point of view in a consideration in the event of a dispute in the future.A good faith buyer is a buyer who does not know and cannot be deemed to have known of any defects in the process of transferring the land rights he buys; From the results of the literature review, it can be seen that there is agreement among the authors that "good faith buyers" should be interpreted as: "an honest purchaser, unaware of any defects in the goods purchased".[3]

Theoretically, the land sale and purchase dispute between the Original Owner and the Good Faith Buyer can be assumed to be a dispute between the doctrine of *nemo plus iuris transferre (ad alium) potest quam ipse habet* (a person cannot transfer anything more than what he owns) which defends the claim of the Original Owner, against the principle of bona fides (good faith) which protects the Good Faith Buyer. The legal position does seem to be a dilemma, because it puts two parties who are basically innocent to face each other in court and ask to win, due to the actions of the other party (Seller) who may be in bad faith. If the Buyer's argument is granted, then he will be considered the (new) Owner, even though the sale was made by a (supposedly) unauthorized party, while if the argument cannot be justified, then the transfer of rights is considered invalid and the Original Owner remains the legal owner. Then, the fundamental question is, in this case which party should get legal protection.

a. land rights holder or the original owner?
b. buyers who claim to be in good faith?

What is the legal basis? So far, MARI has tried to bring together the views of the agreement of the Plenary Meeting of the Civil Chamber is contained in (SEMA) No. 7/2012. In the IXth point it is formulated that: Protection: must be given to the Good Faithful Buyer even if it is later discovered that the seller was an unauthorized person (of the object of sale of land). Original Owner: can only file a lawsuit for compensation against an unauthorized Seller. "The same applies to good faith Holders of Mortgage Rights, where it is also stated in point VIII that Holders of Rights Good Faith Mortgage must be protected even if it is later discovered that the mortgagor is an unauthorized person. "From the decisions that have been traced (as attached), There were 49 decisions in favor of buyers who argued that they were in good faith. The most commonly used reason was that the sale and purchase had been conducted through a notary/PPAT or through a public auction. In 9 out of 12 decisions, it was stated that the Buyer acted in good faith, if the buyer purchased the land in the presence of a PPAT. As for the public auction, 12 out of 14 decisions stated that the buyer had acted in good faith. Meanwhile, in the other 20 decisions, the argument was rejected.

[3] Aan Handriani, 'Perlindungan Hukum Bagi Debitur Dalam Perjanjian Kredit Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen', *Pamulang Law Review*, 2.2 (2020), p. 141, doi:10.32493/palrev.v2i2.5434.

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The reason is that the buyer is considered not careful enough to check the status of the land of the sale and purchase object, or the land of the sale and purchase object is still in dispute. Buyers who make a sale and purchase before a PPAT or through a public auction are also not always considered good faith buyers. This happens, if there is data falsification in the purchase, or if (BPN) has warned the status of land that should not be traded. In connection with the auction land, the buyer is considered not in good faith,

The theoretical framework is a framework that is used to explain thoughts in the form of viewpoints, theories, theses about a case or problem (in this case the problem) which become materials for comparison, theoretical reference lines that may or may not be supported.

1. Theory of agreement
2. Theory of tort
3. Legal Protection Theory
4. Default Theory

In the Indonesian legal system, the protection of debtors is an important aspect that is regulated by various laws and regulations. Debtors are parties who have obligations in accordance with agreements that have been agreed with creditors, but may face obstacles that hinder their ability to perform their achievements on time. Legal protection of debtors aims to provide justice and balance in the legal relationship between debtors and creditors.

This legal protection is realized through various legal instruments that provide space for debtors to reorganize their obligations or get fair treatment from creditors. For this reason, legal protection for debtors who are in good faith is regulated in laws and regulations.

a. Article 1338 paragraph (3) of the Civil Code: Article 1338 paragraph (3) explains that the parties to an agreement, including the debtor, must act in good faith.
b. Law No. 8/1999 on Consumer Protection: This law provides protection to consumers who can also act as debtors, by stipulating that consumers are entitled to fair and honest treatment from business actors, including in terms of debt agreements.[4]

The meaning of good faith in the literature is then further divided into two categories, namely subjective good faith and objective good faith, although in terms of this good faith buyer, the literature in Indonesia only refers to the subjective understanding. Subjective good faith is defined as the honesty of the buyer who is not aware of any defects in the transfer of rights; while objective good faith is defined as propriety, where a person's actions (e.g. Buyer) must also

[4] Taufik Hidayat Lubis, 'Hukum Perjanjian Di Indonesia', *Jurnal Sosek*, 2.3 (2022), p. 177–90.

be in accordance with the general views of the community, In the process of granting credit, it often happens that the creditor is disadvantaged when the debtor defaults, so that a legal rule is needed in the implementation of the encumbrance of Mortgage Rights contained in a credit agreement.[5]

According to the Civil Code, however, the element of knowing whether or not the acquired property right is valid is mentioned as the main element that distinguishes between bezit (position of authority) in good faith and bezit (position of authority) in bad faith. Article 531 of the Civil Code states: "Besit in good faith occurs when the holder of besit acquires the goods by obtaining the right of ownership without knowing that there are defects in it." Meanwhile, Article 532 of the Civil Code states: "Besit in bad faith occurs when the holder knows that the goods he holds are not his property. If the Besit holder is sued before a judge and in this case is defeated, then he is considered to have acted in bad faith since the case was filed." After the enactment of the UUPA, all matters regulating land objects no longer refer to the Civil Code, although the UUPA does not contain the notion of good faith in relation to the control or acquisition of land rights. Furthermore, GR No. 24/1997 mentions the term good faith in relation to the physical control of land (Article 24) and the holder of a land title certificate (Article 32). Article 24 paragraph (2) letter a states: "the possession of the land is done in good faith and openly by the person concerned as the one entitled to the land, and is corroborated by the testimony of a trustworthy person", while Article 32 paragraph (2) states: "In the event that a certificate has been issued legally in the name of a person or legal entity who acquired the land in good faith and is in actual possession of it, another party who feels that he has a right to the land can no longer demand the exercise of that right if within 5 (five) years of the issuance of the certificate he has not lodged a written objection with the certificate holder and the Head of the Land Office concerned, nor has he filed a lawsuit in court concerning the possession of the land or the issuance of the certificate.".[6]

A Good Faith Buyer is defined as a buyer who does not at any time suspect that the person selling an object is (not the only) person entitled to the object sold. The MARI has also stated in its decisions that a buyer who is unaware of a legal defect (in the sale and purchase), is a Good Faith Buyer. After the enactment of the UUPA, MARI actually still defines a good faith purchaser as a purchaser who is unaware of any errors in the sale and purchase process (transfer of rights), such as the revocation of the Seller's Power of Attorney by the Original Owner of the land. However, good faith has also begun to acquire another meaning,

[5] Yulia Risa, 'Perlindungan Hukum Terhadap Kreditur Atas Wanprestasi Debitur Pada Perjanjian Kredit Dengan Jaminan Hak Tanggungan', *Jurnal*, 5.2 (2017), p. 78–93.
[6] Volume Number and December Issn, '*Rio Law Journal',* 2023.

namely that the Buyer is considered to be in good faith, if the sale and purchase has fulfilled the conditions specified by the Law.[7]

3.2 the agreement process carried out in an agreement process in decision number 54/Pdt.G/2021/PN.Kwg.

Based on decision number 54/Pdt.G/2021/PN. Kwg, the agreement process carried out by the debtor and the creditor agreed to make an agreement under the hand to take a Home Ownership Credit (KPR-BTN) at Griya Mas Lestari Housing Block B.3 No.06 Karawang Regency using the name of the creditor but under the hand the ownership remains in the name of the debtor. Elements of Article 1243 of the Civil Code. Furthermore, based on the contents of Article 1243 of the Civil Code, there are at least 3 elements of default, namely: there is an agreement; there is a party who breaks the promise or violates the agreement; and. has been declared negligent, but still does not carry out the contents of the agreement.

In the contents of the agreement, the creditor has promised to assist in the processing of land and building documents when the home ownership loan in his name has been paid in full by the debtor, performing an act that is not in accordance with the contents of the agreed agreement. Article 1131 of the Civil Code regulates and discusses this issue. (R.Subekti, Kitab Undang-Undang Hukum Perdata, 2004),[8] According to article 1365 of the Civil Code, default is any unlawful act that brings harm to another person, obliging the person whose fault caused the loss, to compensate for the loss. [9]

Article 1238 of the Civil Code states that if the defendant does not do what he promised to do, then it is said that he is in default or breach of promise.

According to the majlis, oral agreements are still valid as long as they fulfill the valid requirements of the agreement as stated in Article 1320 KHUPER oral agreements are also valid as long as there is no law that determines that the agreement to be made must be in writing. [10]

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[7] Baiq ermayanti, 'Perlindungan Hukum Kreditur Dan Dibitur Menurut Undang-Undang Nomor 21 Tahun 2008 Tentang Perbankan Syariah', *JURIDICA : Jurnal Fakultas Hukum Universitas Gunung Rinjani*, 5.1 (2023), p. 19–23, doi:10.46601/juridicaugr.v5i1.312.

[8] Budi sarif hidayatullah, sumarni, 'Vol 1, No 1: 2020', *Diadikasia Journal*, 1.1 (2020), p. 29–37, doi:10.21428/8c841009.086f1532.

[9] Vita Febiyanti, Murry Darmoko, and Dr.Karim, 'Tinjauan Yuridis Terhadap Konsumen Yang Melakukan Wanprestasi Pembelian Kredit Secara In-House', *Jurnal Judiciary*, 9.1 (2020), p. 1–11.

[10] Retna Gumanti, 'Syarat Sahnya Perjanjian (Ditinjau Dari KUHPerdata) Retna Gumanti Abstrak', *Jurnal Pelangi Ilmu*, 5.1 (2012), p. 2.

That from the sitting of the case in case number 54/Pdt.G/2021/PN.Kwg, it can be concluded that the agreement process carried out by the debtor and the creditor with a deed under the hand.

Deed under the hand is basically a deed made by the parties for a certain interest or purpose without including an authorized official. So in a deed under the hand the deed is sufficiently made by the parties themselves and then signed by the parties, for example receipts, agreement letters and debts. The non-participation of an authorized official is the main difference between a deed under hand and an authentic deed.

Deeds under the hand are regulated in Article 1874 of the Civil Code and Articles 286-305 RBg. Article 1874 reads "What is considered as a writing under the hand is a deed signed under the hand, letters, lists, household affairs letters and other writings made without the intermediary of a public official". This article regulates, among others:

1. All signed underhand writings are considered as underhand deeds, and if the parties wish the underhand writings to be legalized to a notary or authorized official.
2. The writings of a deed under hand must be recognized by the parties involved.
3. The means of proving an underhand deed must be examined at trial.
4. It must be written in your own words and the intent of the agreement must be clear.
5. Proof of deed under hand each party must have.
6. The evidentiary power of a deed under the hand lies in the original deed, while copies can be trusted if they are made by order of a judge and attended by both parties concerned.[11]

Furthermore, in Stbl. 1867 No. 29 also regulates the proof of the deed under the hand if there is a signature that is denied, then the party submitting the deed under the hand must prove the truth of the signature through other evidence. Thus as long as the signature is not recognized then the deed under the tangantersebut it does not bring much benefit to the party who filed it before the court. However, if the signature has been recognized then the deed under the hand for the signer, his heirs and those who get rights from them, is perfect evidence like an authentic deed that has the power of formal proof and the power of material making.[12]

[11] Ilham Muzzaki and Aris Machmud, 'Cessie Transfer Procedure in Legal Perspective', *Binamulia Hukum*, 12.1 (2023), p. 143-59, doi:10.37893/jbh.v12i1.503.
[12] Maman Djafar, 'The Legal Power of Underhand Deeds in Court Practice', *Lex Privatum*, 3.4 (2015), p. 103-10.

4. Conclusion

Legal protection in general is a form of service that must be carried out by law enforcement officials or security forces to provide a sense of security, both physical and mental, to victims and witnesses from threats, disturbances, terror, and violence, In the Civil Code in Article 1338 paragraph (3) states that: "the agreement must be made in good faith". In other words, every person or legal entity (legal subject) who wants to enter into an agreement must have good faith. An agreement becomes valid if it fulfills the conditions stipulated by law. Based on article 1238 of the civil law law states that if the defendant does not do what he promised to do, it is said that he is in default or breach of promise.

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