

## Transfer of Ownership Rights of House Ownership Credit by Debtor to a Third Party Before Installments are Paid in Kendal Regency

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**Abstract.** *This study aims to determine and analyze the process of transfer of land rights in the law of mortgage collateral (KPR), to determine and analyze the legal consequences of the transfer of land rights as collateral for mortgages (KPR) that are still in the installment period. The research approach method used in this thesis is the normative legal research method. The specifications of this study use descriptive analysis. The types of data used in this study are primary data which include the 1945 Constitution; Law Number 30 of 2004 in conjunction with Law Number 20 of 2004; Civil Code; Regulation of the Minister of Public Works and Public Housing No. 20 / PRT / M / 2019, as well as secondary data containing books and other supporting documents. Collection of research data with library materials. The data analysis method used in analyzing the data is qualitative historical analysis. The results of the study show that the transfer of ownership rights to a mortgage house from the debtor to a third party as a buyer before the installments are paid off without the creditor's approval is a legal act that is not permitted. The legal consequence of the transfer of ownership rights to a mortgage house by the debtor to a third party as a buyer before the installments are paid off without the creditor's approval is the absence of legal certainty.*

**Keywords:** Credit; Debtor; Ownership; Transfer.

### 1. Introduction

Population growth in Indonesia continues to grow rapidly. One of the primary needs for the community is to have a place to live, which is also rooted in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution) which states that "everyone has

the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment, which are basic human needs."<sup>1</sup>

This is also the basis for the emergence of the real estate business. In the property business, developers offer a variety of properties, from simple to spacious, to meet market demand. They also offer convenient payment options for consumers, including cash payments or installments through banks. Different occupations mean that each person has different abilities when it comes to providing a home.

Based on the above phenomenon, the government must work hard to improve the welfare of its low-income communities, namely by providing housing and residential area facilities and assistance for the community through the implementation of housing and residential areas based on areas and community self-reliance so that they form a functional unit in the form of physical spatial planning, economic life, and socio-cultural life that is able to guarantee environmental sustainability in line with the spirit of democracy, regional autonomy and openness in the order of life in society, nation and state.<sup>2</sup>

Banks primarily function as collectors and distributors of public funds. This banking function, in turn, makes their presence within society as business entities legally significant and strategic. Credit agreements are made between borrowers (debtors) and banks (creditors), based on the creditor's trust that the borrower will repay the loan within a specified timeframe.<sup>3</sup>

One alternative to owning a home is through a bank loan, commonly known as a Home Ownership Loan (KPR). To provide assistance/facilitate housing access for low-income communities, changes have been made to the requirements for Subsidized Housing Loans, which are funded by the State Budget, Regional Budgets, and/or other sources of funds allocated for housing and settlement development in accordance with statutory regulations.

The government provides a subsidized mortgage system for those with low purchasing power, offering low installments and low interest rates. Subsidized mortgages are home ownership loans/financing programs that receive government assistance and/or facilitate home acquisition in the form of low-cost,

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<sup>1</sup>Ester Natalia Manurung, Yani Pujiwati, and Anita Afriana, 2023, "The Validity of Agreements and Legal Consequences of Private Transfers of Home Ownership Loans by Debtors," *Acta Diurnal Journal of Notary Law*, Vol. 6, No. 2, p. 115.

<sup>2</sup>Galih Putri Sudarsono, 2024, "Legal Consequences of the Transfer of Receivables (Cessie) on Subsidized Home Ownership Credit (KPR) Default Loans," *Arus Jurnal Sosial dan Humaniora*, Vol. 4, No. 2, p. 82

<sup>3</sup>Anggraeni R., Nova Monaya, and Sudiman Sihotang, 2024, "Analysis of the Evidential Strength of a Notarized Home Ownership Credit Agreement Deed According to the Civil Code," *Jurnal Karimah Tauhid*, Vol. 3, No. 6, p. 204.

long-term financing and housing acquisition subsidies issued by implementing banks, both conventionally and in accordance with sharia principles.<sup>4</sup>

Subsidized mortgages (KPR) are a type of home ownership loan targeted at low- and middle-income individuals. Home ownership through mortgages is highly sought after by many. This is due to the financial resources of the majority of Indonesians, who cannot afford to purchase a home through cash. This helps and encourages the government to provide subsidized funds for home ownership loans through the banking sector.<sup>5</sup>

Home Ownership Credit, both subsidized and unsubsidized, is basically the same, some things that differentiate it are low interest rates for subsidized houses so that installments are light, while without subsidies the interest rate will follow the rate from Bank Indonesia so that installments tend to increase along with the increase in the value of the interest rate which results in installments becoming more expensive every year.<sup>6</sup>

Reviewing the reality that occurred regarding the transfer of ownership rights over Home Ownership Credit by the debtor to a third party without a written or unwritten request to the bank before paying off the installments, the author found that there was a lack of clarity in the implementation of Article 14 paragraph 5 letters (c) and (d), concerning Occupation and Maintenance of the Home Ownership Credit Agreement (KPR), where there were differences in interpretation between the parties who entered into the Home Ownership Credit agreement, namely the creditor and the debtor. The creditor considered that the debtor had breached his promise because he had transferred the object of the mortgage right, namely the Home Ownership Credit house that had not been paid off without the consent of the creditor to a third party as the buyer, while the debtor considered himself not to have breached his promise because the debtor had tried to continue paying the installments of the Home Ownership Credit house but through a third party as the buyer.

Based on the background above, the researcher is interested in discussing a study entitled: TRANSFER OF OWNERSHIP RIGHTS TO HOUSE OWNERSHIP CREDIT BY DEBTORS TO THIRD PARTIES BEFORE PAYING OFF INSTALLMENTS IN KENDAL REGENCY.

## 2. Research Methods

The author used a normative legal approach in compiling this legal research. Law

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<sup>4</sup>"What is meant by subsidized mortgages?" Information Services of the Directorate General of Public Works and Housing Infrastructure Financing, <http://pembiayaan.pu.go.id/faq/faq/p/5-what-is-meant-with-subsidized-mortgage/> accessed, October 16, 2025, at 22.52 WIB.

<sup>5</sup>Blaang, 2016, Housing and Settlements as Basic Needs, Yayasan Obor Indonesia, Jakarta, p.61.

<sup>6</sup>Hamler Hamler, 2023, "Legal Protection of Debtors in the Transfer of Receivables (Cessie) to Third Parties without Notification to the Debtor for Home Ownership Credit (KPR)," JOEL: Journal of Educational and Language Research, Vol. 2, No. 1, p. 33.

is conceptualized as normative legislation. This research specification uses analytical descriptive methods, which aim to present the research results in as much detail as possible regarding the problems, obstacles encountered, and legal remedies that can be taken to resolve them. Data sources come from primary and secondary data. Data collection methods include document studies and library materials. The data analysis method used is qualitative historical analysis.

### **3. Results and Discussion**

#### **3.1. The Process of Transferring Land Rights in Home Ownership Credit (KPR) Guarantee Law**

The purpose of land registration is to guarantee the legality and security of land rights. This is done for the benefit of land rights holders so that they can easily prove that they are entitled to land certificates in certain areas of the country, apartment ownership, requirements for the right of use, use and lease of buildings and other requirements for legal rights to land or apartment ownership can be registered, if proven by PPAT official acts under applicable law. Dependent rights, such as the right to security, are regulated by Law of 1996, Law Number 4 concerning Mortgage Rights (UUHT), mortgage rights are guaranteed land rights as stipulated in 1960. Law Number 5 on the basic rules regulated in the Agricultural Principles (UUPA), whether or not to pursue other things that are unity with the state, to pay certain debts, which provide certain other equivalent positions.<sup>7</sup>

Mortgage Rights have the following characteristics: Mortgage Rights have the advantage of Article 1 paragraph (1) UUHT This means that if the debtor does not fulfill his promise or does not pay his debt, the mortgagee has the right to pay off his debt by paying collateral. Article 2 (UUHT) This means that the mortgage charges all mortgage facilities from each installment. Partial payment of the secured debt does not mean that part of the goods are freed from the mortgage burden. For example, 100 million debt secured by a mortgage of 10,000 m2 debt is paid in part for 20 million Housing project plots, unless explicitly agreed in the mortgage deed. A mortgage is subject to import duty (Article 7 UUHT), meaning that the mortgagee has the right to pursue collateral even though the collateral is movable and belongs to another party (for example, buildings, land and buildings).

Mortgage rights are available Article 10 (1) and Article 18 paragraph (1) (UUHT) This means that mortgage rights are not stand-alone rights but arise or expire depending on the main agreement, namely a credit agreement or other debt agreement. The mortgage that guarantees it will also be transferred to the new creditor. In practice, both individuals and banks must comply with the provisions of the law on mortgage rights, ensuring that land rights have been registered with the local National Land Agency (BPN). Regarding the authority of Notaries/PPAT

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<sup>7</sup>Sutarno, 2009, Agrarian Law and Land Rights, Sinar Grafika, Jakarta, p. 155.

regarding the extension of the law and the actions of Notaries to carry out lending transactions without registering a VPA (Virtual Private Network).

Based on the principles of freedom of contract and unanimity. Article 1338 of the Civil Code states that everything that has entered into an agreement is valid for the parties who entered into it and if the law is imposed on those who entered into it. Thus, this type is considered an open system. This means that by making this agreement it is possible for the parties to determine the contents of the agreement and as a rule for themselves, the limitations in the agreement must not conflict with statutory provisions, general rules and ethical norms.

The credit agreement is a real principal agreement. As a principal agreement, the guarantee agreement is an additional agreement (*accessoir*). What this means is that the existence and termination of the guarantee agreement depends on the main agreement, or in other words, the guarantee agreement always accompanies the main agreement. Credit agreements are generally made in advance in the form of a standard contract by the bank as creditor while the debtor only studies and understands them.

### **3.2. Legal Consequences of Transfer of Land Rights Guaranteed for Home Ownership Credit (KPR) That is Still in the Installment Period**

Transferring a subsidized mortgage without the creditor's consent may violate the principle of contractual compliance, which underpins the legal relationship between the parties involved in the loan agreement. This can result in serious legal consequences for the party making the transfer without the creditor's consent. Subsidized mortgage loan agreements typically contain a clause governing the terms and conditions of the loan transfer, including the creditor's consent as a prerequisite. If the transfer is made without the creditor's consent, it may be considered a violation of this clause.

If a mortgage transfer is made without the creditor's consent and the third party who purchased the house is aware of this, the creditor has the right to sue the third party to return the house or pay the remaining mortgage debt. This applies even if the third party purchased the house in good faith and was unaware that the house was being used as collateral for the mortgage. In this case, the creditor can file a lawsuit against the party who carried out the transfer and seek compensation for any losses incurred due to the violation. These losses can include the loss of the creditor's right to control credit management and the risks associated with the credit transfer.

According to Herlien Budiono, a Sales and Purchase Agreement (PPJB) is an assistance agreement that functions as a preliminary agreement in free form.<sup>8</sup>From the above definition, it can be concluded that the definition of a Sales

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<sup>8</sup>Herlien Budiono, 2004, General Teachings of Contract Law and Its Application in the Notary Sector, Citra Aditya Bakti, Bandung, p.167.

and Purchase Agreement (PPJB) is a preliminary agreement made before the implementation of the main agreement or the principal agreement (Budiono 2004). The Sales and Purchase Agreement (PPJB) as an agreement that arises due to needs and is not expressly regulated in the form of statutory regulations, the Sales and Purchase Agreement (PPJB) does not have a specific (specific) form. The form of the Sales and Purchase Agreement (PPJB) is free as stated by Herlien Budiono above, which means that the basis of the Sales and Purchase Agreement (PPJB) is the principle of freedom of contract.

The principle of freedom of contract is defined as the freedom of legal subjects to enter into or not enter into an agreement, the freedom to determine with whom to enter into an agreement and the freedom to determine the content and form of the agreement).<sup>9</sup>The freedom of the parties in making an agreement, there is a limitation that the freedom to contract is limited by three things, namely not being prohibited by law, not being contrary to morality, and not being contrary to public order as stated in Article 1338 of the Civil Code.<sup>10</sup>This principle allows legal entities to enter into and regulate their own agreements not yet regulated in the Civil Code. With this principle of freedom of contract, legal entities can create new agreements not yet recognized in law (known as anonymous agreements, namely agreements whose types and regulations are not yet outlined in the Civil Code).<sup>11</sup>

The discussion as mentioned above is related to Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which states that the transfer of land rights through sale and purchase must be proven by a deed of transfer of land rights made by and before a PPAT.<sup>12</sup>The main duties and authorities of the PPAT are to carry out some land registration activities by making deeds as evidence of certain legal acts regarding land rights, which will serve as the basis for registering changes to land registration data. In this case, the transfer of land rights through sale and purchase must be proven by a Sale and Purchase Deed made by and before the PPAT. The role of the PPAT in the implementation of land registration functions as an extension of the government in implementing the objectives of land registration as an effort to provide legal certainty in the Land Sector.

This problem, the Sale and Purchase Agreement (PPJB) has legal consequences that bind the parties who made it but cannot be used as evidence of the transfer of rights or a means of changing the name of the certificate from the debtor to a third party. The Sale and Purchase Agreement Deed (PPJB) is only a temporary agreement so that there must be a subsequent legal act, namely a legal handover so that the sale and purchase process is carried out perfectly. This means that the

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<sup>9</sup>Budhayati, 2009, *Contract Law and Principles of Agreements*, Graha Ilmu Publisher, Yogyakarta, p. 122

<sup>10</sup>Ahmad Zamroni, 2019, *Contract Law*, Jakarta, Kencana, p.78.

<sup>11</sup>Ibid. p. 79.

<sup>12</sup>Government Regulation Number 24 of 1997 concerning Land Registration, Article 37 paragraph (1).

handover related to evidence and ownership documents must also be submitted to the buyer. The Sale and Purchase Agreement Deed (PPJB) made by both parties is considered valid because the agreement has been carried out by fulfilling the subjective and objective requirements as stipulated in Article 1320 of the Civil Code. In this case, the Sale and Purchase Agreement Deed (PPJB) has strong and perfect evidentiary legal force because the PPJB is a Notarial Deed made before a Notary. However, the Deed of Sale and Purchase Agreement (PPJB) is not a requirement for land registration so that third parties as buyers cannot directly process the registration of the transfer of land rights at the Land Office.

#### 4. Conclusion

The transfer of ownership rights over a mortgage house from the debtor to a third party as a buyer before the installments are paid off without the creditor's approval is a legal act that is contrary to the house occupancy and maintenance clause in Article 14 paragraph (5) letters (c) and (d) of the Home Ownership Credit Agreement between PT. Bank Tabungan Negara (Persero) Tbk. The legal consequence of the transfer of ownership rights over a mortgage house by the debtor to a third party as a buyer before the installments are paid off without the creditor's approval is the lack of legal certainty because the transfer of land rights cannot be registered directly at the Land Office. This is because the legal relationship between the creditor and the debtor has not been completed where the object being bought and sold is still under the control of the creditor and the land status is still bound by mortgage rights and if transferred must be with the creditor's approval as regulated in Article 14 paragraph 5 letters (c) and (d) of the Home Ownership Credit Agreement between PT. Bank Tabungan Negara (Persero) Tbk.

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