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Validity of House Take Over (Credit Transfer) Sales and Purchase Agreements for House Ownership Credit (Kpr) Made Through Underhanded Letter Legalized by a Notary (Case Study: Decision No. 43/PDT.G/2022/PN.KDI and Decision No. 76/PDT/2022/PT.KDI)

Umi Kalsum
Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: Ummikaa8893@gmail.com

Abstract. *This study aims to analyze the legal validity of the takeover (credit transfer) purchase agreement for KPR houses made through a private letter and legalized by a notary, as well as the form of legal protection for the parties. The research method used a normative legal method with a normative juridical approach through literature studies, legislation, court decisions, and interviews as supporting data. The analysis was conducted using descriptive-qualitative analysis by examining the provisions of contract law, notary law, and banking law related to mortgage takeover practices. The results of the study indicate that mortgage takeover agreements made privately and legalized by a notary remain valid and binding as long as they meet the requirements of Article 1320 of the Civil Code. Notary legalization only provides certainty regarding the identity of the parties, the date of signing, and the signature, but does not transfer the debtor's status to the buyer because the legal relationship with the bank remains subject to the applicable credit agreement. Legal protection for buyers is provided preventively through notary legalization which strengthens the evidentiary value of the agreement, and repressively through dispute resolution in court in the event of default. The court decisions studied indicate that takeover agreements that meet the requirements for a valid agreement still receive recognition and legal protection in civil law.*

Keywords: *Legal; Protection; Validity.*

1. Introduction

As social beings, humans cannot fulfill their own needs, so they constantly interact with others, one of which is through buying and selling activities. Buying and selling is a legal act involving a seller and a buyer and gives rise to a legal relationship in the form of rights and obligations for the parties. In civil law, buying and selling is a form of agreement that is the source of the birth of a contract.

Based on Article 1234 of the Civil Code (KUHPerdata), performance in a contract can be in the form of giving something, doing something, or not doing something. Therefore, every agreement that has been agreed upon must be implemented in good faith as regulated in Article 1338 of the Civil Code.

Constitutionally, the regulation regarding land and buildings is based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the land, water, and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. In addition, Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees equality of position for every citizen before the law and the right to recognition, guarantees, protection, and fair legal certainty. Therefore, every legal act related to the transfer of land rights must be carried out in accordance with the provisions of laws and regulations in order to provide legal certainty for the parties.

In practice, the sale and purchase of land and buildings often begins with a Sales and Purchase Agreement (PPJB) as a preliminary agreement before the Deed of Sale and Purchase (AJB). A PPJB is essentially an agreement that contains the parties' agreement to carry out the sale and purchase after certain conditions are met. This agreement can be made in the form of an authentic deed or a private letter. Based on Article 1458 of the Civil Code, a sale and purchase is deemed to have occurred once an agreement regarding the goods and price is reached, even if the goods have not been delivered and the price has not been paid. However, for objects such as land and buildings, the transfer of rights must be carried out in accordance with land law provisions through a deed drawn up by an authorized official.

A common legal issue in society is the practice of taking over or transferring mortgages (KPR) through a private letter that is then legalized by a notary. This practice is carried out without involving the bank as the creditor, even though the house certificate remains the collateral. Notarization only provides certainty regarding the identity of the parties, the date of signing, and the authenticity of the signatures, but does not transform the private letter into an authentic deed or guarantee the validity of the agreement's substance under land and banking law.

On the other hand, until now there has been no regulation that explicitly regulates the mechanism for taking over KPR through a private letter legalized by a notary, thus creating legal uncertainty for sellers, buyers, banks, and notaries.

The problem is reflected in Decision Number 43/Pdt.G/2022/PN.KDI and Decision Number 76/PDT/2022/PT.KDI. The case began when Mrs. Y obtained a Home Ownership Credit (KPR) facility from PT Bank Tabungan Negara (Persero) Tbk. Kendari Branch Office for a house in AR Housing Block C Number 60. After the credit agreement, Mrs. Y took over the house to Mrs. N through a private letter that had been legalized by a notary. For approximately three years, Mrs. N occupied the house, paid credit installments, and carried out renovations. However, Mrs. Y then refused to acknowledge the existence of the takeover agreement and claimed to remain the owner of the house, so the dispute continued to criminal and civil proceedings and was decided by the Kendari District Court and the Southeast Sulawesi High Court.

The case shows the existence of problems regarding the validity of the mortgage takeover agreement made through a private letter and legalized by a notary, especially related to the evidentiary power of notary legalization, legal protection for parties in good faith, and legal certainty regarding the implementation of the agreement. Starting from these problems, this study aims to analyze the validity of the takeover sale and purchase agreement (credit transfer) of a Home Ownership Credit (KPR) made through a private letter legalized by a notary based on Decision Number 43/Pdt.G/2022/PN.KDI and Decision Number 76/PDT/2022/PT.KDI.

2. Research Methods

This research is a normative legal research with a normative juridical approach that focuses on the study of positive legal norms, legal principles, doctrines, and court decisions related to the validity of the takeover (credit transfer) sale and purchase agreement for Home Ownership Credit (KPR) made through a private letter and legalized by a notary. The approach used includes a statutory approach carried out by examining the provisions of the Civil Code, the Notary Law, the Basic Agrarian Law, the Banking Law, the Mortgage Law, and other related laws and regulations. The conceptual approach is used to analyze the concept of the validity of agreements, sale and purchase agreements, private letters, takeovers (credit transfers), and notary legalization, while the case approach is carried out through an analysis of Decision Number 43/Pdt.G/2022/PN.KDI and Decision Number 76/PDT/2022/PT.KDI. The data used consists of secondary data as the main data obtained through literature studies of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Law Number 10 of 1998 concerning Banking, Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 4 of 1996 concerning Mortgage Rights, and court decisions that are the object of research. Secondary legal materials consist of books, scientific journals, research results, and expert opinions, while tertiary legal materials include legal dictionaries and information sources from relevant official websites. To strengthen the normative analysis, this research is also supported by primary data obtained through interviews with PT Bank Tabungan Negara (Persero) Tbk. and judges at the District Court. Data collection was conducted through literature review and interviews as supporting data. All data obtained were analyzed using qualitative descriptive methods, namely by systematically describing and interpreting the data based on statutory provisions, legal doctrine, and court decisions to answer the research problem formulation.

3. Results and Discussion

3.1 The validity of the takeover (credit transfer) sale and purchase agreement for a credit house based on Decision Number 43/PDT.G/2022/PN.KDI and Decision Number 76/PDT/2022/PT.KDI.

The validity of an agreement under Indonesian civil law is determined by Article 1320 of the Civil Code (KUHPerdata), which requires agreement between the parties, capacity, a specific object, and a lawful cause. These four requirements are the primary parameters in determining whether an agreement is binding on the parties.

The concept of good faith is explained in Article 1338 paragraph (3) of the Civil Code. Agreements must be fulfilled in good faith, as stipulated in the article. The transactions and purchases concerned must be considered valid, and buyers who act in good faith must be protected. Good faith in question means behaving in a morally correct manner. This principle of good faith is categorized into two meanings.[1]

a. In an objective sense, good faith requires that an agreement be based on moral and ethical standards, meaning that the agreement must be implemented in a way that does not harm either party.

b. In a subjective sense, it refers to the concept of good faith that exists in a person's thoughts and intentions. In this situation, honesty can be considered good faith. The honesty of a buyer who is unaware of any flaws in the transfer of rights is considered subjective good faith.[2]

In the case analyzed through Decision Number 43/Pdt.G/2022/PN.KDI in conjunction with Decision Number 76/PDT/2022/PT.KDI, the Panel of Judges first assessed the evidence presented by the parties. The High Court upheld the Kendari District Court's decision by considering that the evidence presented showed that there had been a transfer (takeover) of the house credit from the Plaintiff to a third party (N) based on the Over Credit Agreement dated February 1, 2019. The Court also considered that N had returned the credit agreement money, occupied the house since February 2019, and continued to pay installments until it was paid off. These facts were supported by the testimony of witnesses so that the private agreement letter obtained evidentiary value in the case.

[1]Ahmad Riansyah et al., (2022) Application of the Principle of Good Faith in the Implementation of Land Sale and Purchase Agreements, Consensus: Journal of Legal Studies, Vol.1, No.2, p. 44.
[2]T Latiful and Marlia Sastro, 2023, Legal Protection for Buyers in Good Faith (Study of Decision Number 67/Pdt/2015/PT BNA), Suloh, Vol.11. No.2, Page 2.

Based on these legal facts, the Panel of Judges concluded that the takeover agreement had fulfilled the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. The parties who made the agreement were competent legal subjects, the object of the agreement was clearly the BTN AR house Block C Number 60, there was an agreement regarding the transfer of credit, and no reasons were found that were contrary to law, morality, or public order. Therefore, the agreement was binding on the parties based on the principle of pacta sunt servanda as stipulated in Article 1338 paragraph (1) of the Civil Code.[3]

Legalization by a notary in this case does not change the status of the private letter into an authentic deed.[4]The function of legalization is limited to proving that the parties have signed the document before a notary, while the contents of the agreement remain the responsibility of the parties. Thus, legalization provides certainty regarding the identity of the parties, the date of signing, and the authenticity of the signatures, but does not guarantee the substance or implementation of the agreement.[5]

A land sale and purchase agreement between a seller and a buyer is generally just an agreement, meaning the land does not yet fully belong to the buyer. However, the sale and purchase agreement between the seller and the buyer is binding, creating an agreement in which both parties have personal rights over each other. Before the transfer of the goods takes place, ownership of the goods does not immediately transfer from the seller to the buyer based on the sale and purchase agreement alone.[6]In this case, sanctions are imposed to force the defaulting party to fulfill its obligations. Article 584 of the Civil Code states that ownership rights are acquired through transfer based on a civil event to transfer ownership rights, carried out by a person who has the right to act independently with the object. This provision means that no one has rights over another person greater than the rights they themselves possess.[7]

From a banking law perspective, there is a difference between the validity of an agreement under civil law and its enforceability against the bank as a creditor. Although a takeover agreement is declared valid under civil law, the transfer of debtor status does not occur automatically because every mortgage loan transfer

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[3]Subekti, Contract Law, Intermasa, Jakarta, 2005, p. 13

[4]Habib Adjie, Indonesian Notary Law (Thematic Interpretation of Law Number 30 of 2004 concerning the Position of Notary), Fifth Edition, Refika Aditama, Bandung, 2018, p. 87

[5]GHS Lumban Tobing, Regulations on the Position of Notary, Erlangga, Jakarta, 1999, p. 53

[6]Asta Tri Setiawan, Sri Kistiyah and Rofiq Laksamana, (2021), Problems of the Legality of Land Sales and Purchases Under Land Rights in Transmigration Areas, Tunas Agraria Journal, Vol.4, No.1 Pg. 29.

[7]Alexander Samuel, (2025), Certainty and Legal Protection for KPR Takeover Debtors Due to Underhand Sales and Purchase Agreements (Ppjb) (Case Study of Decision Number 311/Pdt.G/2019/Pn.Bks), Journal of Law, Faculty of Law, Esa Unggul University, Jakarta, Vol 2 No 2, Pg. 74

must obtain the bank's approval. Without such approval, the legal relationship between the parties remains valid, but the debtor's position before the bank remains that of the original debtor as recorded in the loan agreement. Therefore, in the event of default or bad debt, the bank still has the right to collect from the debtor who is still administratively bound by the loan agreement.

This analysis shows that the practice of over-crediting through underhand letters is essentially permissible as long as the requirements for a valid agreement are met. However, such agreements only create legal consequences between the parties and have no legal consequences for the bank without the creditor's formal consent. Therefore, the validity of the agreement under civil law does not necessarily alter the legal relationship under the previously established credit agreement with the bank.

A takeover sale and purchase agreement recognized as valid by banks is one executed through an official credit transfer mechanism in accordance with established procedures. This is because banks adhere to the original credit agreement, which remains legally binding. Banks only recognize credit transfers (takeovers) executed through official procedures, namely:

1) Approval from the bank,

2) Repayment or termination of old credit,

3) Continued with the creation of a new credit agreement or a final sale and purchase mechanism followed by a new Sale and Purchase Deed (AJB).

Thus, whether a takeover sale and purchase agreement is drawn up before a notary or in the form of a private letter, even if it has been legalized by a notary, it cannot automatically be considered a valid basis for the agreement according to the banking sector. Furthermore, the object of the agreement still serves as collateral or security for the bank.[8]

In principle, banks maintain that court decisions have the highest legal force. However, in the practice of credit transfers (takeovers), even if a court decision has been issued, the transfer must still follow the procedures established by the bank. Therefore, even if the decision declares a third party entitled to the land and building at issue, the third party is still required to comply with the bank's provisions and procedures.[9]

That as long as the credit has not been paid off and the certificate is still the object of collateral, the original Debtor is still legally bound to the bank, so that credit payments made by third parties are considered voluntary payments by the Bank.

[8]Andi Ratu Alam, Interview, Head of CLU PT. Bank Tabungan Negara KC Kendari, April 27, 2026

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In the judge's considerations, it was stated that the Third Party had the right to ownership of the credit documents, which did not mean that the Bank directly executed the guarantee.[10]Thus, legal certainty for the Third Party in this case is reflected in the recognition and legal protection of the Third Party who has acted in good faith, as long as the rights are obtained through a valid agreement. The panel of judges in its considerations essentially assessed that the Take Over Agreement has fulfilled the requirements for a valid agreement as regulated in Article 1320 of the Civil Code. In this case, the element of agreement is seen from the signing of the agreement and payment of the price by the Buyer. The element of capacity is fulfilled because the party is an adult legal subject and is not under guardianship.

3.2 Legal protection for buyers in the Home Ownership Credit (KPR) takeover (credit transfer) Sale and Purchase Agreement made through a private letter legalized by a Notary based on Decision Number 43/PDT.G/2022/PN.KDI and Decision Number 76/PDT/2022/PT.KDI.

Legal protection is the main objective of the implementation of law as stated by Gustav Radbruch who places legal certainty, justice and utility as the basic values of law.[11]In this case, the judge's considerations were not only based on the formal aspects of ownership, but also took into account the legal facts that showed the actual implementation of the takeover agreement by the parties.

The Panel of Judges granted legal protection to the takeover recipient (N) because it was proven to have fulfilled all of its obligations under the agreement. Evidence of payment of replacement money for the credit agreement, installment payments until full payment, physical possession of the house since February 2019, and witness statements indicated consistent implementation of the agreement. Therefore, the judges considered that the legal relationship between the Plaintiff and N was a real legal relationship and worthy of legal protection.

From the perspective of legal certainty, the decision recognizes the existence of private agreements as evidence that has the power of proof if supported by other evidence that is consistent with each other.[12]Thus, even though the agreement is not in the form of an authentic deed, its existence can still be used as a basis for judges' considerations in resolving civil disputes. Article 1338 of the Civil Code regulates this, which states that all agreements formed in accordance with the law are legally binding on the parties involved. The agreement cannot be canceled except by mutual agreement, or for specific reasons stipulated by law. In court,

[10]Rahmansyah, Interview, Sub Head of PT. Bank Tabungan Negara KC Bau-Bau, May 2, 2026

[12]M. Yahya Harahap, Civil Procedure Law, Sinar Grafika, Jakarta, 2017, p. 672

witnesses serve as evidence that can strengthen the proof that a legal relationship has existed.[13]

For the seller, this ruling confirms that a person who has voluntarily entered into an agreement cannot renege on its terms if its implementation has taken place and is proven by valid evidence. This principle implements the principle of pacta sunt servanda, which requires that every legally entered into agreement be enforceable as law for the parties.

On the other hand, the decision also provides legal certainty for the bank as a creditor. Although the judge acknowledged the validity of the takeover agreement under civil law, the court still did not transfer the debtor's position to the takeover recipient. Thus, the bank's right to collect obligations from debtors registered in the bank administration remains protected in accordance with banking law. The separation between the parties' civil legal relationship and their legal relationship with the bank demonstrates that legal protection is provided proportionally to all interested parties.

Furthermore, the notary's position in this case also enjoys legal certainty. Legalization performed by a notary does not create liability for the contents of the agreement, but merely proves that the parties signed the document before the notary. Therefore, the notary cannot be held responsible for any breach of contract or disputes arising from the implementation of the agreement as long as the legalization is carried out in accordance with the authority granted by the Notary Law.[14]

Based on these overall considerations, Decision Number 43/Pdt.G/2022/PN.KDI, which was upheld by Decision Number 76/PDT/2022/PT.KDI, reflects the application of the principle of legal certainty in resolving mortgage takeover disputes. This decision not only assesses the formal aspects of ownership but also provides protection for the legal relationship that has been implemented in good faith by the parties, without disregarding the bank's rights as a creditor.

4. Conclusion

A mortgage mortgage takeover (credit transfer) agreement made through a private letter and legalized by a notary is valid under civil law as long as it meets the requirements of Article 1320 of the Civil Code. Decisions Number 43/Pdt.G/2022/PN.KDI and 76/PDT/2022/PT.KDI recognize the agreement as a valid legal relationship between the parties. However, notary legalization does not transform the letter into an authentic deed and does not transfer the debtor's status to the buyer. Until bank approval is obtained, the recognized debtor

[13]M Zaky Adriansa et al., (2022) Legal Force of Land Sale and Purchase Agreements Made Privately, Jurnal Hukum, Vol. XVI, No. 2, P. 141

[14]Habib Adjie, Civil and Administrative Sanctions against Notaries as Public Officials, Refika Aditama, Bandung, 2013, p. 92.

remains the original debtor. Legal protection is provided through preventive protection (notary legalization that guarantees the identity, signature, and date of the agreement) and repressive protection (dispute resolution through the courts). The courts provide protection to buyers who act in good faith and fulfill their obligations. However, this protection only applies to civil relations between the parties, while the bank continues to recognize the original debtor until the credit transfer is officially carried out in accordance with banking regulations. Those planning to take over a mortgage-backed home must go through an official mechanism with bank approval to ensure legal certainty regarding ownership status and their position as debtors. Notaries should exercise prudence by providing a comprehensive explanation of the content and legal consequences of the takeover agreement. Banks, meanwhile, need to improve regulations and education regarding official loan transfer procedures to minimize the potential for disputes.

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