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Implementation of The Transfer of Home Ownership Credits Under The Law

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Abstrak

This study investigates the role of banks in Indonesia's national growth, namely through the allocation of credit for home ownership financing. It delineates the legal frameworks regulating mortgage agreements, underscoring the responsibilities of borrowers and the banks' rights to enforce collateral in instances of default. The study analisys complications stemming from the assignment of mortgage liabilities to third parties, emphasizing the difficulties of legal acknowledgment and safeguarding for new debtors when the initial borrower neglects to notify the bank of these transfers. The study investigates two main legal issue : the execution of debtor transfers in house ownership credit contracts, and the legal safeguards afforded to secondary creditors in cases of default by the principal debtor. The studies seek to elucidate the intricacies of mortgage agreements and strengthen legal protections for all parties involved.

Keywords : Legal Protection; Credit Transfer; Home Ownership Under The Law

1. INTRODUCTION

National development that has been carried out so far is a continuous development effort aimed at creating a just and prosperous Indonesian society as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). In order to achieve this goal, development does not only emphasize certain aspects but also collaborates various related aspects such as education, economy, finance, infrastructure, and others.

As the implementation of this policy, the State then places Banks as a means of collecting and distributing funds. This objective is as stated in Law Number 7 of 1992, which was later amended by Law Number 10 of 1998 concerning Banking in Article 1 paragraph (2), which states that a Bank is a business entity that collects funds from the public in the form of deposits and then distributes them to the public in the form of credit and other forms in order to improve the standard of living of the people.

One form of fund distribution to the community carried out by banks is the provision of credit. Law Number 10 of 1998 defines credit as the provision of money or bills or anything equivalent to that, based on the agreement or loan agreement between the bank and another party, which obliges the borrower to repay the money after a certain period with the provision of interest.

Banking transactions in the field of credit provide a role for banks as financial institutions that supply funds to debtor customers, which can take the form of credit, such as investment credit, working capital credit, small business

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credit, and other types of credit according to the needs of their debtor customers.[1]. As with general credit, a mortgage also emphasizes the use of collateral that must be provided by the debtor. The collateral referred to here is the land/house purchased with the mortgage facility.

When the choice is to prioritize investment, there is a potential to view land as capital that can be exploited to encourage business activities and land control on a very large scale by investors. This represents a significant expansion of the country's social justice ideals, which are now firmly rooted in the values of collective responsibility and shared prosperity[2]

The collateral in the form of a Mortgage on Land required in the mortgage loan agreement by the creditor is considered very safe by the bank, as regulated in Article 6 of Law Number 4 of 1996 concerning Mortgages on Land, which states that if the debtor defaults, the first holder of the Land Rights has the right to sell the object of the Mortgage at their own discretion through a public auction and take repayment of their debt from the proceeds of the sale. (parate eksekusi). But this guarantee is not absolutely applied by the creditor, meaning there is still a possibility of other guarantees being requested by the creditor. This is done by the creditor solely to further secure the repayment of the credit that has been issued.

The bank, as a party in various credit activities, should appropriately establish a legal foundation that can serve as a basis for both the bank and members of the community who require funding. Generally, banks have established binding rules for both parties in the form of written agreements..

Considering the significant risk that the bank will incur if the debtor defaults, the bank's credit agreements, particularly the mortgage agreement, are provided in standard form. The bank provides a blank (form, model) credit agreement whose content has been prepared in advance. This form is presented to every credit applicant. The content is communicated with the applicant. The applicant is asked for their opinion on whether they can accept the terms in the form. The empty fields (not yet filled) in that form are things that cannot be filled in beforehand, such as the loan amount, interest, purpose, and loan term.[3]

The mortgage agreement between the bank and community members is made in the form of a standard agreement. Where, in the agreement, the agreement of both parties is limited to what has been proposed by the bank. If the second party, namely the debtor, agrees to all the terms set by the bank, then the mortgage agreement can be agreed upon and binding on both parties. However, if the debtor does not agree to all the terms set by the bank, then the agreement becomes void and non-binding on both parties. (take it or leave it).

In the implementation of the mortgage agreement, various problems often arise. The main issue is the debtor's inability to fulfill their obligations as stated in the mortgage agreement. Often, the debtor neglects their obligations to the bank, such as the obligation to make monthly loan installment payments. If, within a certain period, the debtor fails to fulfill their obligations each month, the bank can then execute the collateral, which is the house that is the subject of the mortgage agreement.

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1 Andrew Nathanael Saroinsong, "Fungsi Bank Dalam Sistem Penyaluran Kredit Perbankan," *Jurnal Elektronik Bagian Hukum Keperdataan* 2, no. 3 (2014): 130–37.

2 Muh Afif Mahfud, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, "Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice," *Jambura Law Review* 6, no. 2 (2024): 240–63, https://doi.org/10.33756/jlr.v6i2.24166.

3 Mariam Darus Badrulzaman, *Perjanjian Kredit Bank* (Indonesia: Cetakan ketiga, Alumni, Bandung, 1983).

One way that debtors resolve their inability to meet the obligations stated in the mortgage agreement is by transferring the mortgage to a third party. This third party then acts as a substitute for the debtor in fulfilling their obligations to the bank, such as continuing the monthly credit payments for a certain period as agreed upon between the first debtor and the second debtor.

In Article 1874 of the Civil Code, it is explained that "handwritten documents are considered as documents signed by hand, letters, registers, household correspondence, and other writings made without the intervention of a public officer."With the signing of a handwritten document equivalent to a thumbprint, accompanied by a dated statement from a notary or another official designated by law, it is evident that he recognizes the thumbprint affixer, or that another person has been introduced to him, that the contents of the deed have been explained to that other person, and that thereafter the thumbprint is affixed in front of the aforementioned official.[4]

Often, the problem arises if the mortgage transfer agreement is executed in the form of a private deed. The first debtor often neglects the obligations to report to the Bank regarding the mortgage transfer agreement they have signed with a third party (the second debtor), so the Bank is unaware that a transfer has occurred. In this case, the legal status and legal protection for third parties (the second debtor) become very weak.

Based on the presentation, the author is interested in conducting research on "The Implementation of Debtor Transfer in Home Ownership Credit Agreements" with the following two issues: ***first,*** How is the implementation of debtor transfer in home ownership credit (KPR) agreements?. ***Second,*** What is the legal protection for the second debtor if the first debtor defaults on the terms of the KPR transfer agreement?.

This research falls under normative legal research or library research. This research focuses on the analysis of the implementation of debtor transfer in mortgage agreements and the legal protection for the second debtor in the event of default by the first debtor. This research analyzes the legal norms found in legislation related to the transfer of debtors and the obligations of the parties in mortgage agreements. The methods used are the statutory approach and the conceptual approach, as well as the method of analyzing legal source materials. Therefore, this research is expected to provide a clear understanding of the implementation of debtor transfer in mortgage agreements as well as legal protection for the second debtor involved in the agreement.

2. ANALYSIS AND DISCUSSION

2.1 Debtor Transfer in Home Ownership Credit Agreements (KPR).

2.1.1 Credit Transfer Conducted in Accordance with Bank Procedures with a Notarial Deed

Government Regulation Number 24 of 1997 concerning Land Registration in all forms as stated in Article 37 paragraph (1) states that: "the transfer of land rights and ownership rights over apartment units through sale, exchange, donation, incorporation into a company, and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered if proven by a deed made by the authorized

4 Sonang Nimrot Jewel, "Peralihan Hak Atas Rumah KPR Melalui Jual Beli Di Bawah Tangan," *Unnes Law Journal* 2, no. 2 (2013): 106–22, http://journal.unnes.ac.id/sju/index.php/ulj.and the other party to pay the price that has been promised. Buying and selling land is a legal act according to Government Regulation No. 24 oyear 1997 shall be conducted before a Land Deed Official (PPAT

Land Deed Official in accordance with the applicable laws and regulations." This means that all forms of land rights transfer can only be carried out if proven by a deed made by the Land Deed Official. (PPAT).

A notarial deed is a document prepared according to the format prescribed by law and made in the presence of an authorized public official, as well as at the location where the deed is prepared. Article 1868 of the Civil Code defines an authentic deed as a deed prepared in the form prescribed by law, made by or in the presence of an authorized public official, at the location where the deed is prepared. A notarial deed is a document prepared according to the format prescribed by law and made in the presence of an authorized official at the location where the deed is prepared. Article 1868 of the Civil Code defines an authentic deed as a deed prepared in the form prescribed by law, made by or in the presence of an authorized public official, at the location where the deed is prepared..

So, an authentic deed is a document prepared by an authorized official, in accordance with established regulations, with or without the assistance of the interested party, which records the request of that party to be included in the deed. The deed is prepared by or in the presence of a public official who has the authority to create the document. According to that definition, an authentic act is understood as follows:
1. Made in the form specified by the Law
2. Made by and/or in the presence of a Public Officer or Official designated by Law
3. Public officials by and/or in the presence of whom the deed is made must have the authority to do so.

The implementation of the KPR transfer agreement made in front of a notary and in accordance with the procedures of the lending bank, rights and obligations will certainly be transferred to the new debtor after the signing of the transfer deed in front of a notary, namely the credit agreement deed involving three parties: the old debtor, the new debtor, and the lending bank. After the signing occurs, a legal relationship between the new debtor and the bank will also arise at that moment, with the new debtor as the owner of the land and building, inheriting rights and obligations according to the period set by the bank.[5]

The transfer of rights to land and buildings through the transfer of KPR debtors at BTN Bank occurs because the credit period has not yet ended or the old debtor has not yet settled the debt. The transfer of debtors happens after an agreement between the old debtor as the seller and the new debtor as the buyer. The old debtor acting as the seller will transfer the object that will become the buyer's right, and the buyer as the new debtor is willing to pay the remaining installments to the bank that has a KPR agreement with the seller, namely the old debtor, after obtaining approval from the credit-giving bank.

The law must provide protection to all parties in accordance with their legal status because everyone has the same position before the law. Every legal relationship will lead to different rights and obligations or the parties to the engagement have their respective rights and obligations that must be fulfilled. If the rights and obligations are not fulfilled, it will cause harm to one of the parties in the engagement, therefore in order to protect and reduce problems, legal protection is needed[6].

5 Munir Fuady, *Hukum Perkreditan Kontemporer* (Indonesia: Bandung, PT. Citra aditya Bakti, 1996)., pg. 54

6 Cahya Khaerani, Budi Santoso, and Hanif Nurwidhiyanti, "Granting of Mortgage Loans With Guarantees of Land Right Owned by Third Parties in Banking Agreements," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 2 (2022): 378–403.

Based on the author's interview with Hilda Fitriana, Loan Service, PT. Bank Tabungan Negara Mataram Branch, it was stated that PT. Bank Tabungan Negara provides a special institution that can be used by customers to transfer their mortgage, known as Kredit Griya Utama. Kredit Griya Utama is a credit facility provided for the purpose of purchasing a house (new/old), an unfinished house (KGU Indent), or a take-over house.

So, PT. Bank Tabungan Negara provides facilities to KPR loan customers who are no longer able to fulfill their obligations under the KPR agreement to find new customers to replace the old ones. This Main Housing Credit Facility (KGU) essentially makes the house that is in the KPR process, which is a non-performing loan, the object of the agreement, with the house being the object of the KGU sale and purchase. Therefore, any process of transferring the KPR loan that has been or will be carried out by the debtor is not recognized and not permitted by PT. Bank Tabungan Negara, except in the form of the Main Housing Credit.[7]

The requirements that must be met by customers to obtain the Griya Utama Credit facility, among others[8]:

1. Indonesian Citizen.
2. Have reached the age of 21 or are married.
3. Has had a work period or has been running a business for at least 1 (one) year.
4. Having a Personal NPWP for credit values > Rp. 100 million or SPT Article 21 Form A1 for applicants with credit values > Rp 50 million to < Rp. 100 million.

Prospective customers who have met these requirements must attach the following documents.[9] :

1. Credit Application Form.
2. Photocopy of ID card, Family Card, Marriage Certificate/Divorce Certificate.
3. Latest passport photos of the applicant and partner.
4. Original last pay slip or Income Statement.
5. Photocopy of the Permanent Employee Appointment Decree.
6. Photocopy of Bank BTN savings or other banks for at least the last three months.
7. Photocopy of SPT PPh Article 21 for credit >50 million to 100 million.
8. Photocopy of NPWP for credit application >100 million.
9. Photocopy of the Company Establishment Deed and its amendments, SIUP, TDP, and SITU.
10. Photocopy of Practice Licenses.
11. Photocopy of SHM/SHGB and IMB.

2.1.2 The Transfer of Credit Conducted at the Initiative of the Parties by Making an Agreement Before a Notary or with a Private Agreement

The transfer of credit in a mortgage (KPR) under the table is defined as an action of transfer carried out without the knowledge of the bank as the credit provider and not conducted in the presence of an authorized officer, in this case, a notary. The under-the-table credit transfer agreement is only valid for the parties who make it, in

7 "Based on the Results of the Author's Interview with Hilda Fitriana, Loan Service PT. Bank Tabungan Negara Mataram Branch. Dated July 12, 2015. Jalan Pejanggik Number 90-101 Cakranegara, Mataram.," n.d.

8 "Based on the Results of the Author's Interview with Hilda Fitriana, Loan Service PT. Bank Tabungan Negara Mataram Branch. Dated July 12, 2015. Jalan Pejanggik Number 90-101 Cakranegara, Mataram."

9 "Based on the Results of the Author's Interview with Hilda Fitriana, Loan Service PT. Bank Tabungan Negara Mataram Branch. Dated July 12, 2015. Jalan Pejanggik Number 90-101 Cakranegara, Mataram."

this case, the debtor transferring the credit and the debtor receiving the credit transfer. The bank still only recognizes the first debtor who applied for the mortgage process.

According to the existing procedures, such actions should not be taken by the debtor because any form of transfer of mortgage rights must be done with the approval and knowledge of the bank as the lender..[10] Thus, the legal action is considered a unilateral legal action by the bank, where the sale and purchase agreement only binds the two parties who made the agreement, while the object of the agreement is still related to a third party, namely the lending bank.[11]

Article 16 paragraph (1) of Law Number 4 of 1992 concerning Housing and Settlement states that: "Home ownership can be transferred and assigned through inheritance or other rights transfer methods in accordance with applicable laws and regulations." Meanwhile, Article 16 paragraph (2) states that: "The transfer of home ownership as referred to in paragraph (1) is carried out with an authentic deed.".

Based on the provisions in Article 16 paragraph (2) of Law Number 4 of 1992 concerning Housing and Settlement, any transfer of housing ownership conducted with a private deed is not in accordance with the applicable laws and regulations.

Based on the author's interview with Hilda Fitriana, Loan Service PT. Bank Tabungan Negara Mataram Branch, the process of transferring credit under the table is not permitted, not recommended, and prohibited by the Bank.[12] Thus, any risks that arise in the future are beyond the knowledge and responsibility of PT. Bank Tabungan Negara.

Furthermore, Article 14 paragraph (5) letters b, c, and d of the BTN Credit Agreement state that without prior written approval from the bank, the debtor is prohibited :

a. Encumbering the house again with a mortgage or any other type of encumbrance for the benefit of any party other than the Bank.,
b. Renting, selling, or allowing the placement or use of, or transferring control of, the property to another party
c. Handing over the house to another party
d. Pledging the right to receive rent on that property
e. Receiving a down payment, rent, or any other payment or compensation related to the rental, placement, sale, or any other form of control over the house from another party.

In Article 15 paragraph (1) letter c, it is stated that the debtor's actions resulting in the debtor being declared in default are if the debtor violates the provisions or fails to fulfill their obligations as agreed in Article 11, Article 12, Article 13, and Article 14 of this Credit Agreement. Therefore, the transfer of credit carried out by the debtor without the knowledge of the Bank party according to the PT. Bank Tabungan Negara Credit Agreement constitutes a default.

The transfer of credit conducted under the table can be interpreted as a transfer action carried out only between the parties involved and without the knowledge of the Bank. This action can be considered a unilateral legal act, so the lending Bank still recognizes the first debtor as the party bound by the credit agreement. As a result, there is a very high risk for the second debtor who receives the transfer. This

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10 Agnes Kusuma Putri, "Perjanjian Pengalihan Kepemilikan Rumah Objek Kredit Pemilikan Rumah (KPR) Secara Dibawah Tangan" (Fakultas Hukum Universitas Indonesia, 2010), https://lib.ui.ac.id/abstrakpdf?id=131025&lokasi=lokal.

11 Agnes Kusuma Putri.

12 "Based on the Results of the Author's Interview with Hilda Fitriana, Loan Service PT. Bank Tabungan Negara Mataram Branch. Dated July 12, 2015. Jalan Pejanggik Number 90-101 Cakranegara, Mataram."

is because everything regarding the object and ownership of the house, which serves as collateral in the credit agreement, is still written in the name of the first debtor, namely the debtor who is transferring.[13] The act of transferring credit informally without the written knowledge of the Bank poses a risk of loss for the second debtor. This is because the second debtor is not recognized by the Bank as a participant in the mortgage. Consequently, this affects the existence of the certificate that will be issued by the Bank at the time of mortgage settlement, where the certificate still bears the name of the first debtor, as it is the first debtor who entered into the mortgage agreement with the Bank. The Bank only recognizes and knows the debtor who enters into the credit agreement with the Bank.

The transfer of rights or the name change on the certificate as proof of ownership from the first debtor to the second debtor with a private agreement cannot be executed, because the transfer of land rights can only be registered if it can be proven with a deed made by the Land Deed Official. (PPAT). This is stipulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which states that :

"Transfer of land rights and ownership of apartment units through sale, exchange, donation, incorporation into a company, and other legal acts of transfer, except for transfers through auction, can only be registered if proven by a deed made by an authorized PPAT in accordance with applicable legal provisions."

Based on the above provisions, the PPAT will create a deed of the legal act of the transfer of rights with the form, content, and method of its creation as stipulated in Article 38 of Government Regulation Number 24 of 1997.[14] Thus, it is clear that the sale and purchase of land rights is valid when conducted in the presence of an authorized official, namely the Land Deed Official.

As a result of the credit transfer conducted with a private deed, the second debtor who has settled their credit installments and intends to retrieve the KPR object certificate held by the Bank and transfer the name to the second debtor, a power of attorney made in the presence of a Notary is required.

In practice, based on the author's research findings, to protect the legal rights of the second debtor, the parties then create and use a sale and purchase binding deed and a power of attorney made by a Notary to grant rights to the second debtor over the mortgage object. The sale and purchase binding deed and the power of attorney constitute a single deed made by the Notary in order to transfer rights to the second debtor.[15]

The binding sale and purchase agreement is an auxiliary agreement that serves as a preliminary agreement and is flexible in form. Generally, a binding sale and purchase agreement contains promises that must be fulfilled first by one party or both parties before the main agreement is executed, which is the ultimate goal of the parties. Those requirements can certainly vary. For example, the seller whose land certificate is in the process of being transferred at the National Land Agency office, but the seller

13 "Based on the Results of the Author's Interview with Hilda Fitriana, Loan Service PT. Bank Tabungan Negara Mataram Branch. Dated July 12, 2015. Jalan Pejanggik Number 90-101 Cakranegara, Mataram."

14 "Article 38 of Government Regulation Number 24 of 1997 (1) Pembuatan Akta Sebagaimana Dimaksud Dalam Pasal 37 Ayat (1) Dihadiri Oleh Para Pihak Yang Melakukan Perbuatan Hukum Yang Bersangkutan Dan Disaksikan Oleh Sekurang Kurangnya 2 (Dua) Orang Saksi Yang," n.d.

15 "Based on the Results of the Author's Interview with Notary Fikry Said, Dated July 10, 2015. Airlangga Street Mataram," n.d.

intends to sell the land. In order to address this issue, a binding sale and purchase agreement was made as a preliminary agreement while waiting for the fulfillment of the conditions for the main agreement, namely the sale and purchase before the authorized PPAT to create it.[16]

The reasons for the parties entering into a sales agreement are, among others :[17]

a. If the land certificate is still in the registration process at the National Land Agency Office, and if the sale and purchase transaction is paid in installments or in installments.
b. If the object is currently occupied or rented by another party while the buyer wants the object they purchased to be empty.
c. If the object is bound by a Mortgage Right or used as collateral at the Bank, the royalty process must be carried out first.

The binding sale and purchase agreement is a preliminary agreement, so usually, the agreement contains promises from the parties that include provisions when the conditions for the sale and purchase before the PPAT have been met. After the conditions for the sale and purchase have been fulfilled, the parties can return to carry out the sale and purchase before the PPAT.[18]

Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power as a Transfer of Land Rights, in the preparation of the sale and purchase binding deed must include :

1) The clear reason in the premise regarding the creation of a sales binding agreement..
2) The object of the agreement and the price of the object that will be bought and sold, as well as the method of payment..
3) Guarantee from the prospective seller regarding the ownership of the parcel and the absence of visible and hidden defects, not encumbered and not in dispute/seizure.
4) Promise of the handover of the land in its condition on the day of the sale and purchase agreement.
5) The seller promises that they have never granted authority to anyone else regarding the land to be sold, except to the prospective buyer.
6) The seller promises that they will not independently take legal action that has been authorized to the prospective buyer.
7) Other specific promises, such as the obligation to pay electricity, water, telephone, land and building tax (PBB) bills, until the vacating date, the procedure for vacating, and so on.
8) General power of attorney that cannot be revoked by the prospective seller to the prospective buyer for the management of the land until the sale is completed.

Legally, the evidentiary power of a land sale and purchase binding agreement made in the presence of a Notary, who is a public official, is very strong. This is because the position of the land sale and purchase binding agreement made in the presence of a Notary is an authentic piece of evidence. An authentic deed is a deed made in the form prescribed by law, created by or in the presence of public officials authorized for that purpose at the place where the deed is made.[19]

The binding sale and power of attorney that occur between the parties are internal actions that take place only between the parties and are considered private agreements,

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16 Herlien Budiono, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan* (Jakarta.Citra Lamtorogung Persada, 2010).

17 Rifky Anwar, "Efektivitas Pelaksanaan Substansi Akta Ikatan Jual Beli Di Kabupaten Sumbawa" (Program Magister Kenotariatan Fakultas Hukum Universitas Mataram, Tesis, 2015).

18 Rifky Anwar.

19 Rifky Anwar., pg. 57

even though the sale binding and power of attorney are made in the presence of an authorized official, namely a Notary. Because, the action does not involve the Bank as the creditor, so the Bank only knows and recognizes the first debtor.

The notary made a power of attorney from the first debtor to the second debtor, where the power of attorney is used for the collection of the certificate after the loan has been paid off. Based on the power of attorney, it is the second debtor who takes legal actions related to the transfer of the mortgage object in his name with the Bank..

In addition to the sale and purchase agreement and power of attorney, the seller or the first debtor is also advised to create a signed statement containing a declaration of the transfer of land rights as of the credit transfer, even though the certificate is still in the name of the first debtor. However, since the rights have already been transferred, the first debtor is no longer entitled to settle and take the certificate. This statement is then submitted to the relevant bank. The second debtor can directly take the certificate and documents related to the house, by bringing the supplementary documents, namely[20] :

a. Proof of payment settlement from the bank
b. Payment of fire insurance premiums if previously paid for the house
c. Valid Identity Card (KTP)
d. Notarized power of attorney for the collection of the original certificate.

Based on the documents brought and shown by the second debtor to the Bank, the Bank can no longer complicate the transfer of the certificate in the name of the first debtor. These documents serve as the basis for the Bank to issue the certificate that serves as collateral.[21]

The above is in accordance with the intent and purpose of the theory of responsibility, particularly the strict liability principle (strict liability principle/absolute liability principle/no-fault liability principle), which in the development of modern society, the application of this strict liability principle is then viewed from the consideration of broad social values (a broad sense of social judgement) where someone who engages in activities for their own benefit must bear all the consequences of those activities..

The first debtor, as the party offering the credit transfer, is morally obligated to fulfill their duties in meeting the rights of the second debtor, particularly concerning the transfer of the mortgage object. All actions required and stipulated by the Bank for the transfer of rights over the mortgage object from the first debtor to the second debtor, after the mortgage credit is paid off by the second debtor, should be fulfilled by the first debtor as mandated by the strict liability principle.

2.2 Legal Protection of the Second Debtor in a Mortgage Transfer Agreement Made Solely by the Parties with a Private Agreement

Credit transfer conducted under the table is essentially a sale and purchase agreement. Article 1457 of the Civil Code provides a definition of sale and purchase, which is an agreement whereby one party binds itself to deliver an object and the other party to pay the promised price. The sale and purchase of a house through credit transfer conducted under the table involves two legal aspects, namely property law and contract law..[22] Thus, the implementation of credit transfer must take into account the legal provisions related to property and contractual issues. The first debtor and the second debtor, each acting

20 Agnes Kusuma Putri, "Perjanjian Pengalihan Kepemilikan Rumah Objek Kredit Pemilikan Rumah (KPR) Secara Dibawah Tangan."pg. 55
21 Agnes Kusuma Putri.
22 Agnes Kusuma Putri.. Pg. 69

as the seller and the buyer respectively, both have their own rights and obligations.The seller is obligated to deliver the sold goods, while the buyer is obligated to pay the agreed price.

The first debtor has the primary obligation to deliver the object of the sale and purchase agreement to the second debtor immediately after the second debtor pays the agreed-upon price. As you know, in the mortgage transfer agreement, the object of the sale and purchase agreement for the mortgage transfer conducted by the first debtor and the second debtor still belongs to the Bank. Delivery must be made by the seller to the buyer according to the provisions of Article 1459 of the Civil Code, which states that ownership of the sold goods does not transfer to the buyer until the goods have been delivered according to the provisions of Articles 612, 613, and 616.

Regarding the object of the mortgage, which is a house that is an immovable property, its delivery follows the provisions in Articles 616 and 620 of the Civil Code. Article 616 of the Civil Code states that "the delivery or designation of immovable property is carried out by announcing the relevant deed in the manner specified in Article 620."

Article 620 of the Civil Code states :

"By adhering to the provisions outlined in the previous three articles, the aforementioned announcement is made by transferring a complete authentic copy of the deed or the judge's decision to the mortgage storage office within the jurisdiction where the immovable property to be delivered is located, and by registering this copy in the designated register. Along with this, the concerned party must also submit a second authentic copy or excerpt of the deed or judge's decision, so that the mortgage custodian can record the date of transfer along with the relevant section and register number."

The informal transfer of the mortgage without the bank's written approval results in losses for the debtor receiving the transfer, specifically the second debtor. This is because the recipient of the credit transfer is a new debtor who is not recognized by the lending bank. This, of course, impacts the existence of the bank's certificate produced during the mortgage procedure, which is still written in the name of the original debtor. The inclusion of the name on the certificate is altered based on the first debtor's credit agreement with the bank. The bank only knows and acknowledges borrowers who have entered into a credit agreement with the bank.

PT. Bank Tabungan Negara, as one of the largest mortgage facility providers in Indonesia, will not recognize or provide protection to individuals who have received the transfer of PT. Bank Tabungan Negara's customers' mortgages through unofficial means. Therefore, under any circumstances, PT. Bank Tabungan Negara only recognizes the original debtor customers who signed the mortgage agreement with PT. Bank Tabungan Negara.[23]

The action of the debtor in the case of transferring a mortgage with a private deed carries a significant risk that must be faced by the debtor receiving the transfer or assignment of installment obligations from the first debtor. The consequences and issues that the second debtor must face include[24] :

1. Occurrence of Default by the Debtor

23 "Based on the Results of the Author's Interview with Hilda Fitriana, Loan Service PT. Bank Tabungan Negara Mataram Branch. Dated July 12, 2015. Jalan Pejanggik Number 90-101 Cakranegara, Mataram."

24 Agnes Kusuma Putri, "Perjanjian Pengalihan Kepemilikan Rumah Objek Kredit Pemilikan Rumah (KPR) Secara Dibawah Tangan.", pg. 63

The first debtor's action to transfer their credit or delegate their installment obligations to another party is one of the common methods used to avoid the occurrence of default by the first debtor. The first debtor is trying to find a solution by selling or transferring their credit installment obligations to another party deemed capable of continuing the credit installments. If the credit transfer is carried out in accordance with the regulations of the lending bank, then any issues that arise can be resolved procedurally by the lending bank, meaning they become the responsibility of the debtor receiving the transfer. However, in practice, it often happens that some members of the community still use the method of informal credit transfer, which is only conducted between the parties involved, meaning that all arising risks still involve the original debtor who is bound to the Bank.

2. Losses Suffered by Debtors

Bank credit agreements are naturally agreements that disadvantage the debtor, where in the credit agreement, which is a standard agreement, there are clauses that are vaguely determined by the Bank, namely[25] :

a. The bank is authorized to unilaterally determine the selling price of collateral in the event of the sale of collateral due to the debtor's default.
b. Debtor customers are required to comply with all existing regulations and those that will be determined later by the Bank.
c. Debtor customers must grant an irrevocable power of attorney to the Bank to take any actions deemed necessary by the Bank.
d. The inclusion of exemption clauses that release the Bank from claims for damages suffered by the debtor as a result of such actions.
e. The debtor's negligence is determined solely by the Bank unilaterally.
f. The determination and calculation of bank interest that often disadvantage debtors.

With the existence of the aforementioned provisions, the position of the debtor becomes increasingly weak. This is because, in the event of a loan default or when the collateral is sold, the Bank will still require the presence of the first debtor to receive the remaining refund or payment. Meanwhile, the second debtor cannot receive the refund because they do not have the authority to accept or return the money..

In addition to the losses related to collateral and unclear home ownership, the second debtor also experienced several other losses, including[26]:

a. In the event of default, the object of the agreement cannot be transferred back, either privately or by transferring the debtor.
b. Cannot conduct the sale of collateral under the table.
c. An alternative resolution with the Bank if the house is seized or enters the State Receivables Management Agency (BUPN) and the State Auction Receivables Management Agency (BUPLN), is that the first debtor must still be present to receive the refund from the Bank, whereas the first debtor is sometimes difficult to locate, has passed away, or even their last known address is unknown.
d. The second debtor cannot utilize the insurance facility related to the house collateral.
e. The long credit and repayment periods cause the tax rate to be high. The tax includes, among others, the Land and Building Acquisition Duty.

Problematic loans are caused by both internal or external reasons, such as the bank or the debtor. Banks use the Non-Performing Loan (NPL) ratio to identify problematic loans and may take actions such as asset seizure, collateralization, or eviction orders.

25 Agnes Kusuma Putri., pg. 64
26 Agnes Kusuma Putri.., pg. 65

The bank can do this since the KPR house is still collateral for the bank, and hence the bank has the right to execute that collateral in accordance with bank laws.

In the mortgage agreement, the bank strongly defends the credit object, which also serves as collateral, in this case land and buildings.The mortgage right is the appropriate collateral institution for collateral objects such as land and buildings. Law Number 4 of 1996 governs mortgage rights. According to Article 1 paragraph (1) of the UUHT, the Land Mortgage Right Along with Objects Related to the Land is a security right imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), with or without other objects that are an integral part of the land, for the settlement of certain debts, which gives a preferential position.

The bank, as the holder of the mortgage, has a priority position compared to other creditors. Therefore, the first debtor transferring the home loan to the second debtor with a private deed cannot be done arbitrarily, because the house as the collateral object is still under a mortgage with a mortgage lien. This is in accordance with the special characteristics of the mortgage, which is that the mortgage is[27] :

a. Giving priority or precedence to its holder, also known as droit de preference.
b. Always follows the object guaranteed in the hands of whoever the object is in, or referred to as droit de suite. This privilege is emphasized in Article 7 of Law Number 4 of 1996. Even though the object of the mortgage has been transferred to another party, the mortgage creditor still has the right to sell it through a public auction if the debtor defaults.
c. Meeting the principles of specialty and publicity so that it can bind third parties and provide legal certainty for the interested parties.
d. Easy and certain in its execution..

Therefore, it will be very difficult for the second debtor to obtain their rights over the mortgage object even though they have fulfilled the first debtor's obligations to the Bank according to the mortgage transfer agreement they made with the first debtor, because the mortgage object is secured with a Mortgage Right..

Based on the author's research, there are several forms of protection and efforts that can be undertaken by the new debtor as the buyer of the mortgage rights who receives the credit transfer informally to ensure that the purchase of the mortgage object can formally become their right, including the following.:

a. Before the transfer of credit occurs informally, the first debtor is given the opportunity to fulfill all their obligations, especially those related to the monthly installment payments that must be made to the Bank. In this case, the debtor, as the party who entered into the credit agreement with the bank, should carry out and complete all their obligations.
b. The buyer (new debtor) should transfer the certificate name through an official debtor transfer process. The new debtor transfer can be carried out by first proving the validity of the agreement, and if the agreement can be proven, the debtor transfer process can be conducted in front of the authorized official.
c. Providing clear and detailed information about all the risks that could disadvantage the buyer. (debitur baru). The risk may involve a lengthy process that must be completed in establishing the name transfer of the certificate and the Building Permit.
d. If the buyer (new debtor) has settled all debt obligations on behalf of the first debtor and has received a statement of settlement from the Bank, then when the

27 H Salim HS, "Perkembangan Hukum Jaminan Di Indonesia," 2006.

new debtor takes documents such as the certificate and IMB, they must be able to show a notarial deed stating that there has been a transfer and assignment of rights to the KPR house from the first debtor to the new debtor who receives the credit transfer.

e. The notary makes a power of attorney from the first debtor to the second debtor, where the power of attorney is used to collect the certificate after the loan has been settled. Based on this power of attorney, the second debtor is the one who takes legal actions related to the transfer of the KPR object in their name with the Bank.
f. Then, the new debtor will be given the authority to collect related documents such as the IMB certificate from the bank. All matters regarding the private sale and purchase agreement made between the first debtor and the second debtor must be validated by the District Court. If the second debtor cannot meet these requirements, the resolution process will be carried out through the District Court.

The protective measures that the second debtor can take, with the assistance and good faith of the first debtor, are a concrete application of the theory of legal protection. Essentially, as Fitzgerald stated, the law aims to integrate and coordinate various interests within society because, as we know, in the traffic of interests, protection of various interests on the other side.

Legal protection must consider stages, namely that legal protection arises from a legal provision and all legal regulations provided by society are essentially an agreement of that society to regulate the behavioral relationships among its members and between the members of society and the government.

It should be remembered that law is not merely law in written form such as regulations and agreements, but also encompasses further aspects such as rules that live within society and legal principles. Therefore, legal protection is not only provided by written legal regulations but can also be provided by unwritten regulations ideally. Therefore, the implementation of credit transfer agreements, especially those made with private deeds, should pay attention to the protections provided by unwritten regulations by upholding the principle of good faith, thus ensuring legal protection for the rights and interests of the second debtor.

3. CONCLUSION

The implementation of the mortgage transfer agreement in the city of Mataram is generally carried out in two ways: the mortgage transfer conducted in accordance with banking procedures and using a notarial deed, and the mortgage transfer conducted without the knowledge of the Bank using a private deed. The mortgage transfer conducted in accordance with the procedures of PT. Bank Tabungan Negara is through the provided Griya Utama Credit facility. The mortgage transfer conducted without the knowledge of the Bank is carried out by the debtor's customer involving a third party, where the third party is outside the mortgage agreement and unknown to the Bank.

Legal protection for third parties (second debtors) in the event of default is highly determined by the mechanism in the transfer of home ownership credit. If the transfer of home ownership credit is followed by the creation of a sale and purchase agreement, power of attorney to sell, and a statement of transfer of ownership rights since the transfer of home ownership credit, then the second debtor legally receives legal protection. However, if the opposite is done without the sale and purchase agreement, power of attorney to sell, and statement of transfer of rights since the transfer of credit, then legally the second party receives less legal protection because, based on the KPR agreement made between the Bank and the first Debtor, there is a clause that requires prior Bank approval in the transfer of KPR.

BIBLIOGRAPHY

Agnes Kusuma Putri. "Perjanjian Pengalihan Kepemilikan Rumah Objek Kredit Pemilikan Rumah (KPR) Secara Dibawah Tangan." Fakultas Hukum Universitas Indonesia, 2010. https://lib.ui.ac.id/abstrakpdf?id=131025&lokasi=lokal.

"Article 38 of Government Regulation Number 24 of 1997 (1) Pembuatan Akta Sebagaimana Dimaksud Dalam Pasal 37 Ayat (1) Dihadiri Oleh Para Pihak Yang Melakukan Perbuatan Hukum Yang Bersangkutan Dan Disaksikan Oleh Sekurang Kurangnya 2 (Dua) Orang Saksi Yang," n.d.

"Based on the Results of the Author's Interview with Hilda Fitriana, Loan Service PT. Bank Tabungan Negara Mataram Branch. Dated July 12, 2015. Jalan Pejanggik Number 90-101 Cakranegara, Mataram.," n.d.

"Based on the Results of the Author's Interview with Notary Fikry Said, Dated July 10, 2015. Airlangga Street Mataram," n.d.

Herlien Budiono. *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan*. Jakarta. Citra Lamtorogung Persada, 2010.

HS, H Salim. "Perkembangan Hukum Jaminan Di Indonesia," 2006.

Jewel, Sonang Nimrot. "Peralihan Hak Atas Rumah KPR Melalui Jual Beli Di Bawah Tangan." *Unnes Law Journal* 2, no. 2 (2013): 106–22. http://journal.unnes.ac.id/sju/index.php/ulj.

Khaerani, Cahya, Budi Santoso, and Hanif Nurwidhiyanti. "Granting of Mortgage Loans With Guarantees of Land Right Owned by Third Parties in Banking Agreements." *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 2 (2022): 378–403.

Mahfud, Muh Afif, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik. "Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice." *Jambura Law Review* 6, no. 2 (2024): 240–63. https://doi.org/10.33756/jlr.v6i2.24166.

Mariam Darus Badrulzaman. *Perjanjian Kredit Bank*. Indonesia: Cetakan ketiga, Alumni, Bandung, 1983.

Munir Fuady. *Hukum Perkreditan Kontemporer*. Indonesia: Bandung, PT. Citra aditya Bakti, 1996.

Rifky Anwar. "Efektivitas Pelaksanaan Substansi Akta Ikatan Jual Beli Di Kabupaten Sumbawa." Program Magister Kenotariatan Fakultas Hukum Universitas Mataram, Tesis, 2015.

Saroinsong, Andrew Nathanael. "Fungsi Bank Dalam Sistem Penyaluran Kredit Perbankan." *Jurnal Elektronik Bagian Hukum Keperdataan* 2, no. 3 (2014): 130–37.