



Transfer of Housing Credits Under the Hands in Bank BTN Padang Branch

Eko Radian Putra; Kurnia Warman; Ulfanora

Faculty of Law, University of Andalas Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i1.1399>

Abstract

Housing development is very important for the welfare of the people considering the number of people who tend to increase every year and this will lead to high demand for good and decent dwelling. In this regard, the Government has attempted through the law instruments with the enactment of Law Number 4 of 1992 concerning Housing and Settlements which, among others, in Article 33 paragraph (1) and paragraph (2) are mentioned to provide financial aid / or convenience to the community build their own homes or have a home government make efforts with housing loans. Housing Loans (KPR) as one form of credit has been given by many private banks and government. The State Savings Bank (BTN) is one of the most well-known banks in the community as a leading bank in the provision of housing loans. This is in line with the vision of the State Savings Bank (BTN) to become a leading bank in housing finance. In this study the authors find the formulation of the problem as follows: 1) How the process of transfer of ownership of the house in the repayment of KPR under the hands of the State Savings Bank (BTN) branches of padang? 2) Why the sale and purchase of housing and land KPR BTN under the hand? 3) What is the legal protection for a third party in the event of the transfer of ownership of the house in the settlement of KPR under the hand? This study uses a kind of empirical juridical research. The authors based on the results of the study found: 1) In practice based on observations and interviews of owners of KPR BTN who had done over credit and home buyers, it can be seen that the parties only make agreements under the hand, the way is a form of legal smuggling and still do not have legal certainty 2) Economic factors are very dominant in influencing the occurrence of buying and selling houses and land under the hands, bad faith, ignorance of the community will the law 3) Sale and purchase of houses and land KPR BTN under the hands of the huum considered not transferred the right to house and land. The transfer of rights to the house and land by law only occurs when the sale and purchase of the act has been made with the PPAT deed and then there is the name of the certificate back on behalf of the buyer.

Keywords: *House; Credit; KPR; Deed Below Hand*

Introduction

Based on Article 28 paragraph 1 of the 1945 Constitution that every person has the right to live in prosperity and spirit, have a place to live, and get a good and healthy environment, which is a basic human need. Housing and settlement development is regulated by the Government in Law No. 1 of 2011

concerning Housing and Settlements which is intended to provide direction for housing and settlement development.

To meet the need for proper housing, banks as financial institutions or institutions offer Public Housing Loans (KPR) to the public, both private and government banks almost all offer housing loans with different offers from one bank to another. PT Bank Tabungan Negara Tbk (hereinafter referred to as BTN) is a state-owned commercial bank, one of which is providing consumer credit including housing loans (KPR).

KPR is a credit or financing intended for the purchase of landed houses. What is used by the site house is a building that functions as a residence which is a unit of land and buildings with proof of ownership in the form of a certificate, or a deed issued by an authorized institution or official. According to Mariam Darus Badruzaman, the credit agreement is a preliminary agreement of the transfer of money which is the result of an agreement between the lender and the recipient of the loan and regarding the legal relations between the two.

One of the problems encountered regarding the transfer of ownership of KPR houses in Bank BTN Padang, where the first debtor bought a house on credit located in Ventura Housing Block B Number 10, Parupuk Tabing Village, Koto Tengah District. With a land area of 260 m² and a building area of 100 m². After running for 1 year of credit, the debtor has experienced a decline in business, resulting in arrears for payment of obligations to BTN Padang Branch. In the end the debtor is willing to sell the house to a third party under the hand, with the aim of all obligations in the bank can be resolved. After an agreement has been reached between the debtor and the third party, the agreement is signed underhand when purchasing a house which is the object of the agreement. Where a third party gives cash to the Debtor, then the debtor repays the creditor, the bank. After repayment by the debtor, a third party that has entered into an agreement under the hand asks for their rights or obligations from the debtor to transfer the rights to the house, as well as the name on the certificate. But the existence of bad faith on the part of the debtor, which considers an underhand agreement that has been made with a third party is invalid. So starting from the background above, in this research I raise the title “**Transfer Of Housing Credits Under The Hands In Bank Btn Padang Branch**”.

Methodology

The method used in this thesis research is empirical juridical research, which is research based on field research to get primary data in the field of law. The specifications of this study are descriptive analysts, because this study is expected to obtain data that clearly illustrate what is discussed in this study. The type of data used in this study are primary and secondary data, where secondary data consists of Primary, Secondary and Tertiary Legal Materials. The data collection techniques used for research in the field are interviews and study of documentation documents. While the data obtained from this research will be analyzed using qualitative methods, namely analysis of data without using statistical formulas because the data used are not in the form of numbers. Thus what is used is only by logical explanation of the sentence based on the rules and opinions of experts.

Result

The transfer of ownership of KPR BTN in accordance with the requirements and procedures established by BTN can be described as follows:

1. Submitting a request for a transfer of debtors to BTN. The request to transfer the debtor has been provided by the bank in the form of a form that must be filled out by the applicant (the old debtor).

2. Fill in the data of the applicant (old debtor) and prospective new debtors.
3. Attach the following requirements:
 - a. Photocopy of applicant's husband and wife's KTP (old debtor) which is still valid as many as 1 (one) sheet;
 - b. 1 (one) copy of valid husband and wife ID card of new prospective buyer / debtor;
 - c. Photocopy of applicant's Family Card (old debtor) which is still valid as many as 1 (one) sheet;
 - d. Photocopy of applicant's Marriage Certificate (old debtor) which is still valid as many as 1 (one) sheet;
 - e. Photocopy of Decree or Declaration of Work legalized by the Office or related agency, for applicants who are employees
 - f. Salary slip or Statement of Income known by the Service or related institution, for applicants who are employees or employees;
 - g. Photocopy of SIUP or other Business Permit for entrepreneurial applicants;
 - h. Photocopy of Business Report or Business Record for the last 3 (three) months, for an entrepreneurial applicant;
 - i. proof of last year's tax payment.

To be able to process over credit at Bank BTN, the party who will buy the KPR-BTN house owned by the debtor to be transferred, will be re-processed by BTN as a new KPR-BTN request, in terms of the terms and conditions in the KPR-BTN application It must also be fulfilled by parties who are interested in conducting over credit. If in the assessment of the BTN the party that will buy or take over the KPR-BTN (over credit) meets the terms and conditions, BTN will accept it and henceforth it will be necessary to prepare and sign the legal documents required for it.

Based on the requirements and procedures for transferring debtors over KPR houses as described above, it can be seen that the procedure will take a long time and is not necessarily approved by the BTN, bearing in mind that the prospective new debtor will be processed from the beginning like a new debtor. And the process will continue with the creation of a new mortgage agreement and binding of collateral, if the debtor transfer process is approved. If the application for the transfer of debtors is not approved, then the old debtor will still be obliged to pay the remainder of the BTN KPR.

The process of transferring debtors or in common terms is often referred to as over credit, according to the author, it must be done legally and in accordance with agreed procedures between BTN KPR owners and the bank. The transfer of BTN KPR ownership in the credit period (before the credit period expires) is a common thing and is a legal reality that cannot be denied, this can occur by various factors outlined above. according to the author the point of emphasis in the perspective of the law is fulfilled or not the legal aspect in the legal actions of the debtor transfer.

Regarding the transfer of debtors in a KPR that is done legally with the approval of the bank if viewed from a legal perspective according to the author is a legal act of Passive Subjective Novation. This is in accordance with the provisions of Article 1417 of the Civil Code that explains how people make a Passive Subjective Novation, where the debtor offers his creditors a new debtor, who is willing to bind himself for the benefit of the creditor or in other words, is willing to pay the debtors' debts. According to J. Satrio from the description of Article 1417 of the Civil Code it can be concluded that the initiative for novation comes from the debtor, this novation is also called delegation or transfer.

Novation in the Civil Code was translated by Soebekti into a debt renewal. The law itself does not provide a definition of what is meant by innovation. From the articles governing innovation, scholars conclude that what is meant is the replacement of the old engagement with a new engagement. The word

replaces implies that the old engagement was deliberately abolished and a new agreement was made instead

The process is quite long and complicated in implementing the legal transfer of debtors at BTN, making the community less inclined to take legal channels. Because it requires a lot of requirements and not necessarily an application for a change of debtor is approved by the bank. So that the law of the market seems to take over, where there are circumstances of 2 (two) parties who need each other, there are those who need funds and there are those who need houses in the shortest possible time without complicated processes, for the benefit of both.

If the over credit process is carried out in accordance with the requirements and procedures applicable at BTN (legally) then it will have the following benefits:

- a. The certificate can be reversed on behalf of the name of the buyer, although it is still guaranteed in BTN and can only be taken after the credit is paid;
- b. Buyers can pay in BTN on their own behalf.

While the weaknesses of over credit through BTN (legally) are:

- a. The submission process as a new debtor at BTN is more complicated;
- b. Takes longer (because it must be examined by a bank credit analyst);
- c. There is a possibility of being rejected by a replacement debtor by BTN;
- d. Debtor transfer costs are usually relatively more expensive, because they have to go through procedures according to the discretion of each bank.

With the weaknesses and complexity of the over credit process legally or directly at BTN, many debtors choose to over credit underhanded or unofficially, only between the debtor and those who want to buy the KPR house, even without the binding of buying and selling witnessed by a Notary Public / PPAT as an authorized public official. Besides that, over credit under the hand is motivated by economic factors, the debtor is already pressed by economic needs, and is unable to pay more installments so he wants the over credit process as soon as possible. Another factor that causes the debtor to choose over credit under the hand is because of the lack of knowledge from the debtor about over credit that must be done according to procedures according to the BTN legally.

The transfer of a KPR house under the hands by the debtor during the credit period is an act against the law because the KPR house is a debtor debt collateral for the Bank, so that the Bank can sue the debtor to provide compensation and immediately repay all remaining debt. In the credit agreement, it was also agreed that the debtor is prohibited from transferring ownership of the object of credit, namely the house which is used as collateral for credit, under the hand and without the knowledge of the creditor.

The process of over credit underhanded will certainly cause losses in the future because it is done not by legal or according to procedures. The loss is especially for KPR home buyers, because if the KPR home buyer has paid the KPR credit but cannot reverse the name of the house certificate, because there is no valid proof of sale and purchase between the legal debtor and the KPR buyer to become the legal basis to reverse the certificate name. Plus if the debtor is no longer known to exist, this is certainly very difficult process behind the name and detrimental to the KPR buyer.

In cases where debtors have been carried out underhanded and the debtor is no longer known for his domicile, the legal step is to file a civil suit at the local District Court. Because the Court can decide by the judge's judgment, whether the transfer of debtors carried out under the hand can be authorized or not. If the defendant (debtor) has been properly summoned and has never been present, then the Court will give a decision on *Verstek* (the decision without the presence of the defendant). Within 14 days after the decision, there was no opposition from the debtor, the decision was of permanent force, and with the District Court's Decision, the Notary / PPAT should not hesitate to make the deed of the debtor transfer which then becomes a valid evidence base to be able to reverse the name of the certificate.

Conclusion

The procedure for transferring ownership rights in the period of legal mortgage release is as follows:

- a. Submits debtor transfer to BTN
- b. Fill in the application form and data
- c. Attach existing requirements at Bank BTN

Many people who do not know correctly about the necessity of over credit legally and also the economic factors behind the practice of over credit under the hand, plus the over credit process legally is complicated and requires a lot of costs. Over credit under the hand can cause future losses for KPR buyers, because it will be difficult to reverse the name of the certificate. To overcome this, one way that can be taken is to file a lawsuit to the court to get a court decision so that the Notary / PPAT can make the deed of the debtor to become a valid proof of evidence to reverse the name of the certificate.

References

- Andi Hamzah et al, 2006, *Fundamentals of Housing Law*, Jakarta: Rineka Cipta, p. 1
- Edy Putra Tje'Aman, *Banking Credit (A Juridical Review)*, Yogyakarta, Liberty, page 31.
- J. Satrio, Cessie, Subrogratie, Novatie, Kompensatie and Debt Mixing, Bandung: PT Alumni, 1999, p. 118.
- Interview with Hebib Saputra, BTN Marketing Section, Padang Branch, Padang, 7 September 2017.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).