Legal Consequences of Transfer of Home Ownership Loans without Creditors' Permission

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Abstract

The transfer of mortgage loans is carried out without prior approval from the bank as the debtor and is carried out under an underhand loan agreement between the parties. This research uses normative juridical legal research methods (normative research), namely legal research conducted by examining library materials or secondary data. The research specification in this paper is descriptive analytical research. Based on the results of the research, it is known that the transfer demands several things that need to be known, namely changes or additions to the provisions of this agreement can only be done after there is an agreement and it is done in writing that is signed by the creditor and debtor, the debtor is not entitled to transfer or transfer rights and obligations, part or all based on this credit agreement to other debtors without prior written approval from the creditor, the creditor can transfer or transfer part or all of the rights and obligations under the credit agreement to other creditors with prior written notification to the debtor.

Keywords:
Home Ownership Credit, Creditors, Debtors.

How to cite:
Ramadhani, Rahmat, (2020), “Legal Consequences of Transfer of Home Ownership Loans without Creditors' Permission”, IJRS: Internasional Journal Reglement Society Vol. 1 (2), Pages 31-37.

A. Introduction

The house as a place to live has a strategic role in shaping the character and personality of the nation as one of the efforts to develop a complete Indonesian human being, self-aware, independent and productive so that the fulfillment of a place to live is a basic need for every human being, which will continue to exist and develop according to stages or stages. human life cycle. This is what underlies entrepreneurs to run a property business. The property business from time to time continues to increase. Developers have business opportunities by offering houses of various types, from very simple types of houses to the largest types. Prices also adjust, from the low to the most expensive. Apart from having the type and price according to market demand, the developer also makes it easy for consumers to be able to buy the house in an indirect way. The credit system from the bank is a facility that provides convenience to consumers. Apart from making it easier for consumers, developers are also helped by the facilities provided by the bank.

Obstacles and difficulties are precisely related to capital procurement, therefore the role of banks is urgently needed. The banking relationship between the executing bank and the customer must be based on the principle of partnership (equality), which is further elaborated through the fiduciary principle, the prudential principle, and the principle of confidentiality, as well as the principle of knowing the customer (know your customer principle). The definition of credit according to Muchdarsyah Sinungan in Adrian's book is a performance award by one party to another party and the achievement will be returned at a certain time accompanied by a performance contract in the form of interest.

The achievement that must be made by the debtor for the credit given to him is not only to pay off the debt but also to be accompanied by interest in accordance with the previously agreed agreement.

1 Urip Santoso, Hukum Perumahan, Jakarta: Kencana, (2014), p.1-2.
2 Djoeni S. Gazali dan Rachmadi Usman, Hukum Perbankan, Jakarta: Sinar Grafika, (2012), p.26.
3 Adrian Sutedi, Hukum Hak Tanggungan, Jakarta: Sinar Grafika, (2010), p.19-20.
4 Hermansyah, Hukum Perbankan Nasional Indonesia, Jakarta: Kencana, (2011), p.57.
The agreement referred to here is the most important source of the birth of the alliance, because the agreement is a legal act performed by two parties, while the alliance born of the law is made without the will of the parties concerned, because the alliance is a legal relationship (rechtsbetrekking) by the law itself is regulated and validated the way the relationship is. So the agreement is an abstract meaning, while the agreement is a concrete thing or an event.

Purchase of land through a Home Ownership Credit (KPR), a house sale and purchase agreement based on the initial agreement, namely the Credit Agreement and the collateral binding. Credit agreements entered into between the Bank and the Customer (Creditor and Debtor) within a long credit period, there is a risk of problems arising if there is default by the Debtor against the Creditor, which results in default. Default (negligence and negligence) of the debtor can be in 4 (four) types, namely: 1). Not doing what he was supposed to do; 2). Carry out what was promised, but not as promised; 3). Doing what was promised but too late; 4). Doing something that is according to the agreement should not be done.

These problems usually occur due to financial problems experienced by the debtor, resulting in default which results in the inability of the debtor to pay properly (bad credit), debtor negligence or negligence can lead to sanctions and penalties. In this regard, to overcome debtor's financial problems so that defaults occur which result in the confiscation of the object of the credit agreement by the Bank, what the debtor usually does is by selling or transferring the object of the agreement. The debtor transfers or over-credits the land and buildings (houses) on it to another party without involving the bank.

Many Home Ownership Credit customers, due to economic needs or other reasons, intend to transfer the house which is the object of the Home Ownership Credit to another party or it is also known as the transfer of credit (over credit). Transfer of credit (over credit) means transferring the obligation to pay off credit from one party to another. In the practice of transferring credit (over credit), home ownership is carried out because the debtor is no longer able to continue paying the installments, which in practice the transfer of credit (over credit) is often carried out by the debtor to another party due to financial conditions.

These transfers are often carried out without the prior approval of the bank concerned and are carried out under an underhand credit transfer agreement between the parties. Whereas in the formal procedure the transfer of housing ownership credit must be carried out with the knowledge and approval of the bank. Underhand agreements for credit transfers only bind the two parties making the agreement, while the object that was agreed upon is still related to a third party, namely the bank that provides the credit. In addition, the object and house ownership that become collateral in the credit agreement are still written on behalf of the transferor debtor. Article 17 paragraph 4 Regulation of the Minister of Public Works and Public Housing Number 20 / PRT / M / 2014 also stipulates that subsidized KPR houses may not be leased or ownership transferred unless they have been occupied for more than 5 years for the landed house and 20 years for the apartment. This policy is allowed in accordance with the rules contained in the Regulation of the Minister of Public Works and Public Housing Number 20 / PRT / M / 2014. This new regulation changes the Regulation of the Minister of Public Housing Number 3 of 2014 which previously prohibited over-subsidized housing loans and could even be subject to sanctions.

Based on the description above, the focus of the problem can be drawn which will then be discussed in this study, namely how is the process of transferring the Home Transfer Credit according to the Applicable Law? and what are the legal consequences of transferring a Home Ownership Credit without the permission of the creditor ?. This research uses normative juridical legal research methods (normative research), namely legal research carried out by examining library materials or secondary data.

The research specification in this paper is descriptive analytical research. Descriptive is to show the comparison or relationship of a set of data with another set of data, and its purpose is to provide an

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5 Abdul Hakim Siagian, *Hukum Perdata*, Medan: USU Pers, (2015), p.135.
6 Abdul Hakim Siagian, *Ibid.*, p.92-93.
7 Abdul Hakim Siagian, *Ibid.*, p.135.
8 Abdul Hakim Siagian, *Ibid.*, p.200-201.
9 Seokanto dan Sri Muji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Rajawali Pers, (2003), p.15.
overview, study, explain and analyze. In accordance with the type and nature of the research, the data source used in this paper is secondary data consisting of primary legal material in the form of Law Number 10 of 1998 concerning Banking, Act 23 of 1999 concerning Bank Indonesia, Law Number 14 of 2016 Concerning Public Housing Savings, Law Number 1 Year 2011 Concerning Housing and Settlement Areas, Law Number 4 Year 1996 Concerning Mortgage Rights to Land and Objects Related to Land, Regulation of the Minister of Public Works and Public Housing Number 20 / PRT / M / 2014 Concerning Liquidity Facility for Home Financing through Credit / Prosperous Home Ownership Financing for Low-Income Communities. Secondary legal materials consist of books, scientific journals, papers and scientific articles that can provide an explanation of primary legal materials. Tertiary legal materials; in the form of a Big Indonesian Dictionary and others in finding definitions of terms related to the problem.

The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotations, search for legal literature, books and others related to the identification of problems in this research by offline or online. Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion.

B. Discussion

1. The Process of Transfer of Housing Loans According to the laws in force in Indonesia

Buying and selling is regulated in articles 1457-1540 of the Civil Procedure Code. Based on Article 1457 of the Civil Procedure Code, that: "Sale and purchase is an agreement, whereby one party binds himself to deliver an object, and the other party to pay the price that has been promised." The sale and purchase is deemed to have occurred between the two parties, immediately afterwards these people reached an agreement on the material and the price, even though the material had not been delivered, nor had the price been paid in full (Article 1458 of the Civil Code of Procedure). An agreement made between the seller and the buyer. The seller is obliged to submit the object of sale and purchase to the buyer and is entitled to receive the price and the buyer is obliged to pay the price and is entitled to receive the object. The elements listed in the definition above are: 1). The existence of legal subjects, namely sellers and buyers; 2). There is an agreement between the seller and the buyer about the goods and prices; 3). There are rights and obligations that arise between the seller and the buyer.

There are various ways of payment in buying and selling, one of which is the credit system. The credit system in question is a facility provided by the Bank that can facilitate consumers and developers or sellers. A developer or seller is a person or legal entity or other entity that builds and / or sells a house that is the object of credit and / or collateral based on a credit agreement. The bank as the party providing the credit is entitled to have a deed signed by the three parties as a bank document. The form of deed that the bank will have is a copy of the deed. Based on Law Number 2 of 2014 concerning the Position of Notary Article 1 number 9, a copy of the deed is a word-for-word copy of all deeds and at the bottom of the copy of the deed is the phrase "given as a copy with the same sound".

After signing the credit agreement and deed, the debtor only gets a copy of the Letter of Confirmation of Approval of Credit Provision and a copy of the credit agreement from the bank can be taken more and less for one week after the credit agreement takes place. The credit agreement will be used when taking the photocopy of the certificate that has been returned in the name of the debtor at a time determined by the bank which is usually 1 to 1 ½ years after the credit agreement and for taking the original certificate can be done after the credit is paid off. Furthermore, the debtor can carry out his obligations, namely making credit installment payments until completion in accordance with the credit period set by the bank in the Credit Provision Agreement. Installments are the amount of money to pay the principal plus the interest that the debtor must pay monthly as specified in the credit agreement.

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10 Soekanto, Pengantar Penelitian Hukum, Jakarta: UI Press, (1996), p.63.
11 Peter Mahmud Marzuki, Penelitian Hukum, Jakarta: Kencana Prenada Media Group, (2011), p.171.
12 Salim, HS, Hukum Kontrak (Teori dan Teknik Penyusunan Kontrak), Jakarta: Sinar Grafika, (2003), p.49.
13 Salim, HS, Ibid.
Over time, the credit provided by the bank will not always run smoothly as expected in the credit agreement. Environmental conditions can affect the smooth operation and liabilities of the debtor to the bank so that credit is extended to potential debtors or cause failure. External environmental conditions that can affect failure in providing credit, namely changes in economic conditions and policies / regulations. The failure of the debtor to fulfill his obligations to the bank which causes credit problems. Efforts are made by the bank where after identification, evaluation and rescue actions are carried out, the bank believes that the debtor has no prospects for carrying out the obligations related to the credit facilities it has received or in improving its credit collectibility, as well as to safeguard / minimize the bank from increasingly risk / loss. large, through efforts to repay the credit facilities provided to debtors.

Efforts to pay off or settle non-performing loans are aimed at obtaining returns or repayment of debtors' liabilities in the hope of minimizing the bank's risk of increasing losses, which can be done through: 1). Deposit from debtors; 2). Sale of collateral goods; 3). Take over debtor's credit facilities by other creditors (other banks or investors); 4). Execution of mortgage rights through an auction hall; 5). Litigation (settlement through court). Environmental conditions may make the debtor unable to make the next installment payment, which results in installments arrears. Not a few debtors have experienced credit defaults which eventually make the debtor take action not to continue paying installments but instead transfer the Home Ownership Credit. According to law, each creditor or debtor may transfer position to another party. For example, a creditor transfers to another creditor or a debtor transfers to another debtor.14 It's just that usually the bank has rules or requirements so that the transfer can be done.

In order not to cause disputes, the possibility of a change in the agreement and the possibility of a transfer need to be regulated in the agreement and can be formulated: 1). Changes or additions to the terms of this agreement can only be made after an agreement is made and is done in writing, which is signed by the creditor and debtor; 2). The debtor is not entitled to transfer or pass the rights and obligations in part or in whole based on this credit agreement to another debtor without prior written approval from the creditor; 3). Creditors can transfer or transfer part or all of the rights and obligations based on the credit agreement to other creditors with prior written notification to the debtor.15

The bank allows the debtor to transfer credit in order to prevent possible further losses to the creditor. It's just that to transfer the Home Ownership Credit, the bank uses Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Settlement Areas in Article 55 paragraph (1), namely: Individuals who own a public house with facilities provided by the government or local government can only renting out and / or transferring ownership of a house to another party in terms of: 1). Inheritance; 2). Occupancy after a period of at least 5 (five) years; or 3). Change of residence due to better social economic levels.

Likewise, according to the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 20 / PRT / M / 2014 concerning Liquidity Facilities for Housing Financing in the Context of Acquiring Houses through Credit / Financing for Prosperous Home Ownership for Low-Income Communities, as stated in Article 17 Number 4 that Rumah Sejahtera Tapak or Rumah Sejahtera Flats can only be rented out and / or ownership is transferred in the following cases: 1). Inheritance; 2). Has been inhabited for more than 5 (five) years for a prosperous tapak house; 3). Has been inhabited for more than 20 (twenty) years for a welfare apartment unit; 4). Change of residence due to socio-economic improvements, and; 5). For the interests of executing banks in the context of settling non-performing loans or financing.

Particularly for transfers made on the basis of the reason for occupancy reaching a period of at least five years (i.e. the minimum period of occupancy in a public house since the convenience of the Government or Regional Government is obtained) and / or moving residence due to a better socio-economic level, it can only be done by an institution appointed or established by the Government or Regional Government in the housing and settlement sector.16 This is contained in Article 55 paragraph (1) of Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Settlement Areas and Article 17 Number 4 of Regulation of the Minister of Public Works and Public Housing of the

14 Sutarno, Aspek-Aspek Hukum Perkreditan Pada Bank, Bandung: Alfabeta, (2004), p.125.
15 Sutarno, Ibid., p.125-126.
16 Andika Wijaya dan Wida Peace Ananta, Hukum Bisnis Properti di Indonesia, Jakarta: Grasindo, (2017), p.126.
Republic of Indonesia Number 20 / PRT / M / 2014 concerning Liquidity Financing Facilities Housing in the Context of Acquiring a Home through Loans / Financing of Prosperous Homes for Low-Income Communities.

It has been explained in the regulation that transfers are not prohibited but can be done when the house has been occupied for more than 5 (five) years. However, most debtors do not understand these rules so that debtors violate these rules. Every time you make a credit agreement, the bank that is given the authority to handle the credit agreement process always notifies you that this Home Ownership Credit may not be transferred if it is less than 5 (five) years from the installment period.

The transfer of housing loans can be done in 2 ways, namely:

1. Transfer through bank approval

   There is no prohibition for debtors who wish to transfer houses whose certificates are still as bank collateral, but not less than 5 years of installment period and through bank approval. Transfer of credit through bank approval must also go through several stages before finally making a credit agreement again. The procedures that must be done or passed are: (a). The debtor must declare his inability to continue paying the remaining installments by reporting to the bank; (b). The debtor brings in parties who will continue their credit so that they can be analyzed by the bank by completing the initial requirements such as applying for credit initially; (c). If the new debtor meets the criteria and is deemed eligible to continue the payment of the remaining credit installments by making a credit agreement again, the new debtor must submit a return request for credit to the bank; (d). Re-perform the credit agreement with the new debtor and then the payment of the remaining credit will run as usual in accordance with the general installment payment. The first debtor who is initially bound by a credit agreement with the bank, after the credit agreement is carried out again with the new debtor, then it is written off or declared complete all relationships with the first debtor, which will then be followed by the new debtor.

2. Without bank approval

   Debtors who have tied themselves to bank credit agreements who are no longer able to make mortgage installments are looking for new borrowers to buy and continue to pay for the remaining mortgage installments at the bank. Without reporting to the bank, the debtor engages in an agreement with the new debtor who states that he is willing to buy and continues to pay the remaining mortgage installments to the bank. This is done because the debtor's lack of knowledge about the transfer process. This agreement is carried out with the agreement of the debtor as the seller and the new debtor as the buyer and who will continue to pay the remaining mortgage installments to the bank by signing the deed made in notarial.

   The making of these deeds must also complete the documents as a reference for making the deeds, such as: 1). Identity Card of the seller's husband and wife along with the seller's Family Card (if already married); 2). Buyer's Identity Card; 3). Photocopy of certificate as collateral at the bank; 4). Savings book and ATM; 5). Current Account for Home Ownership Credit installments; and 6). Home Ownership Credit Agreement legalized by a notary. An agreement like this usually requires 3 kinds of deeds, namely: 1) Sale and Purchase Agreement (PJB); 2) Authorization for document retrieval in the form of a certificate that becomes collateral at the bank; and 3) Power to sell.

2. Legal Consequences of Transfer of Home Ownership Loans without Creditors' Permission

   Law Number 10 of 1998 concerning Banking does not formulate the definition and construction of the legal relationship in the provision of bank credit. It's just that it can be seen that the birth of bank credit is based on the loan-borrowing agreement (money) between the bank as a creditor and another party, the borrowing customer of funds as a debtor within a certain period, which has been agreed or mutually agreed upon and the borrower has an obligation. to pay off this debt by giving an amount of interest, reward, or profit sharing.17

   So far, credit granting has always been tied to a credit agreement made between the bank as the creditor and the debtor customer. Usually the credit agreement is made in a standard agreement, where the bank first determines the contents of the credit agreement that is more profitable for him. The

   17 Djoni S. Gazali dan Rachmadi Usman Op.Cit., p.313.
debtor only has to state whether he is willing or not with the agreement. If the debtor is unwilling or disagreeing, the debtor can file an appeal with the bank and the credit agreement will be postponed until the decision on the appeal results is issued. Of course, there are potential problems in the process of transferring housing loans. After the transfer of credit from a debtor to a new buyer which results in the elimination of the old relationship between the debtor and the bank (creditor). Most debtors do not understand about the transfer of Home Ownership Loans without the knowledge of the bank, so the bank still considers the debtor to be bound by credit installments, so when the installments are paid, the payment is still considered to be made by or on behalf of the debtor and when the installments are paid off, the bank's obligation to provide a certificate to the debtor.

Given that there are so many debtors who do not understand credit transfers. Actually, the bank does not prohibit the transfer of credit, it's just that the bank has provisions for transferring credit. Like when the credit agreement takes place, the bank employee who is given the authority to handle the credit agreement always tells each debtor that: "This house cannot be over credited before 5 years". The diversion that is often made by a debtor is to transfer his debt, in this case the debt is an installment or mortgage payment which he has taken on credit from the bank. Basically the bank does not have a problem regarding this transfer when the installments on the credit are paid smoothly every month, but for this kind of credit transfer, the injured party is still the buyer under hand because the name registered with the bank is only the old debtor.

The transfer of credit carried out in secret is detrimental to third parties, namely if the Ministry of Public Works and Public Housing conducts a sudden inspection (sidak) and it is found that the occupant of the house is not the debtor who signed the agreement, then the interest rate in the installment payment, which was originally the subsidized interest rate will be rose to commercial interest rates. After the credit installment is paid off, the bank will not issue a certificate if it is taken by someone other than the name of the debtor listed on the certificate (first debtor) unless there is a notary deed of power. The increase in installment interest rates, which was originally 5%, will increase to 8% according to the policy of the board of directors.

Taking the certificate by using an under-hand agreement alone cannot if it is not made in a notary way, the letter is invalid or the same as cannot be used to take a certificate at the bank. Taking the certificate must be proven by bringing a notarized agreement. In addition to harming third parties, the transfer of credit without the knowledge or permission of the bank can cause harm to the bank itself, therefore protection is required for the bank as the creditor in the activity of providing credit. Banks create safety fences to protect money disbursed through credit from the risk of loss. The security fence that is made is usually a guarantee that must be provided by the debtor. The purpose of the guarantee is to protect credit from the risk of loss, whether intentional or unintentional.

Legal protection if the new debtor is in default, the creditor has a guarantee to ensure certainty of repayment of the debt by selling and taking repayment of the sale of the assets that become the guarantee. The guarantee function is to give the bank the right and power to get repayment of these collateral if the debtor is unable to pay off his debt at the time specified in the agreement. A person who has a debt while the debtor does not pay off the debt, all the assets that become collateral can be auctioned and the results of the auction can be taken a certain amount to pay the debt to the creditor.

C. Conclusion

The transfer demands several things that need to be known, namely changes or additions to the terms of this agreement can only be done after an agreement is made and it is done in writing signed by the creditor and debtor, the debtor is not entitled to transfer or transfer rights and obligations partially or completely based on the agreement. This credit to another debtor without prior written approval from the creditor, the creditor may transfer or transfer part or all of the rights and obligations based on the credit agreement to other creditors with prior written notification to the debtor. The bank allows the debtor to transfer credit in order to prevent possible further losses to the creditor. It's just that to transfer the Home Ownership Credit, the bank uses Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Settlement Areas in Article 55 paragraph (1), namely: Individuals

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18 Djoni S. Gazali dan Rachmadi Usman *Ibid.*, p.337.
19 Kasmir, *Dasar-Dasar Perbankan*, Jakarta: Rajawali Pers, (2012), p.123.
20 Sutarno, *Op.Cit.*, p.94.
21 Sutarno, *Ibid.*, p.146.
who own a public house with facilities provided by the government or local government can only Renting out and / or transferring ownership of a house to another party in the case of inheritance, occupancy after a period of at least 5 (five) years or moving residence due to better social economic levels.

The transfer of credit carried out in secret is detrimental to third parties, namely if the Ministry of Public Works and Public Housing conducts a sudden inspection (sidak) and it is found that the occupant of the house is not the debtor who signed the agreement, then the interest rate in the installment payment, which was originally the subsidized interest rate will be rose to commercial interest rates. After the credit installment is paid off, the bank will not issue a certificate if it is taken by someone other than the name of the debtor listed on the certificate (first debtor). It is better if the creditor should convey to the debtor the statutory regulations and other regulations regarding credit that apply clearly so that no party is harmed, either the creditor as a credit service provider or the debtor as a credit service user and the debtor must be more careful in choosing other parties who will make a further installment payment of the credit so as not to cause harm to himself and the creditor.

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