



Juridical Review Selling and Purchasing House in The Public Housing Credit (KPR) Process Based on Law No. 1 of 2011 Concerning Housing and Settlement Area (Study at PT. State Savings Bank Baubau Branch)

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ABSTRACT

This research was conducted to find out the juridical review of selling and buying houses in the public housing credit (kpr) process based on law no. 1 of 2011 concerning housing and settlement area pt. state savings bank baubau branc. This study uses an empirical juridical method. Researchers used instrument observation, interviews and documentation. From the results of the research, the legal consequences of transferring the debtor underhanded in the housing loan agreement (KPR-BTN) and the efforts taken by the bank to overcome it, selling mortgage houses underhanded by debtors who have not paid off their debts, is an unlawful act because The KPR house is a collateral object for the debtor's debt to the Bank, so that the Bank can sue the debtor to provide compensation for cancellation of the sale and purchase of KPR houses by the old debtor which was carried out underhand and immediately pay off all the remaining debt. The sale of KPR houses under the hands of the Debtor does not eliminate the Debtor's obligation to pay off his debts to the Bank. It is suggested that in order to avoid problems that arise in the future, people who want to transfer their debtors to KPR BTN can do so after obtaining approval from the bank as the creditor.

Keywords: PT. Bank Tabungan Negara; Selling; The Public Housing Credit (KPR)

1. Introduction

Humans as subjects in economic activity will always be faced with problems related to their life needs. Human efforts in fulfilling the most basic needs of life are also influenced by existing social and cultural aspects (F, 2018). Every human being everywhere needs a place to live which is called a house (A, 1996)). One of the fulfillment of this right to a house is the issuance of Ministerial Regulation Number 3 of 2014 concerning Housing Financing Liquidity Facilities in the Context of Housing Procurement Through Prosperous Home Ownership Credit/Financing (FLPP). The right to housing is a fundamental right for humans in carrying out their lives. Various kinds of legal instruments both international legal instruments and national legal instruments have accommodated the right to housing (Nugroho, B.A.A., 2015).

An agreement is an event that gives rise to and contains terms of rights and obligations between two parties, or in other words, an agreement contains an agreement (Satrio, J., 1995). The agreement is a very important thing because it involves the interests of the parties who make it. Therefore, every agreement should be made in writing in order to obtain a legal force, so that the goal of legal certainty can be realized (Setiawan, R., 1994). in the formulation of an agreement is a legal act in which one or more people bind one or more people. According to Rutten, the formulation of an agreement according to Article 1313 of the Civil Code is too broad and contains several weaknesses. (Purwahid Patrik, 1994)

The government issued Law Number 1 of 2011 concerning housing and settlement areas, including in Article 33 paragraphs (1) and (2) that: (1) Provide financial assistance/or public facilities in the construction of houses or houses from their own government to carry out efforts to raise funds. (2) The financing and/or facilities as referred to in paragraph (1) are in the form of a loan. The government realizes that not everyone can buy a house with cash payments. To meet housing demand, people need funds in the form of credit facilities.

Banks in general can be interpreted as financial institutions whose business activities are collecting funds from the public and channeling these funds back to the community as well as providing other banking services. while the notion of a financial institution is any company engaged in the financial sector where its activities are

either only raising funds or only channeling funds or both. According to RI Law number 10 of 1998 dated 10 November 1998 concerning Banking (article 1 paragraph 2). A bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms with the aim of improving the standard of living of many people (Kasmir, 2017)

According to the Indonesian Bankers Association (IBI) and the Banking Professional Certification Institute (LSPP) (2014 According to the Indonesian Bankers Association (IBI) and the Banking Professional Certification Institute (LSPP) (2014: 1) In essence, a bank can be defined as a business entity that collects funds from the public in the form of savings and distribute it to the community in order to improve the standard of living of the people at large. The bank also provides special facilities to assist the needs of people who fulfill housing mortgage institutions (KPR). Banks have a strategic role in the development trilogy, because banks are vehicles that can collect and distribute public funds efficiently and effectively, with democratic support based on the implementation of national economic development in order to increase equity in development and national results, economic growth and national stability to improve living standards . The function of collecting and channeling funds is closely related to the public interest, so that banks are required to maintain funds deposited with the public. Banks must be able to channel funds to the productive sector against the demand for development goals (Badruzaman, 1983)

The Baubau Branch State Savings Bank as one of the Government's Commercial Banks, one of its activities is to provide consumer credit, which is a common type of financing which, among other things, includes housing loans (KPR). Even though we mortgage (KPR) help solve the problem of housing needs, in practice there are also problems or issues that need further consideration in relevant aspects of the law, including problem credit cases. An agreement must work perfectly and be filled in accordance with the agreement stipulated in the agreement, but for some terms the agreement is often found not to be implemented properly. However, in practice loan agreements (KPR) problems are often involved, including the object of transferring a mortgage, which is used by the debtor to another party before the mortgage is paid without the knowledge of the bank, which is known by the public as credit.

Based on the above, the author wants to research Juridical Review Selling And Purchasing House In The Public Housing Credit (Kpr) Process Based On Law No. 1 Of 2011 Concerning Housing And Settlement Area (Study At Pt. State Savings Bank Baubau Branch).

2. Method

Research conducted at PT. The Baubau Branch of the State Savings Bank related to the problem of buying and selling houses in the credit process at PT. State Savings Bank (Persero) Baubau Branch Office. This type of research is empirical juridical research. The empirical juridical approach in this research is to analyze problems by combining legal materials (which are secondary data) with primary data obtained in the field. The sample was determined by purposive sampling, as many as 3 (three) customers at PT. State Savings Bank (Persero) Baubau Branch Office, and the Bank to obtain data related to the process of buying and selling houses in the credit process at PT. State Savings Bank (Persero) Baubau Branch Office. To obtain data that is in accordance with the things studied, researchers use observation, interviews, and documentation instruments. The data that has been collected is processed by descriptive analysis.

3. Result and Discussion

The process of transferring debtors in reality in the field is not always carried out with the knowledge or permission of the bank as the creditor. Selling houses that have received KPR-BTN under hand is a reality that occurs in society. Based on the results of the author's interview on June 12 2020 with the Sub Branch Manager, Mr. Sonny Fandian, that the transfer of the debtor under the hand of the debtor to a third party can occur because:

- a. Old debtors are no longer able to continue KPR-BTN installments;
- b. Old debtors experience economic difficulties;
- c. The old debtor has moved his domicile;
- d. The debtor does not have good faith in fulfilling his obligations;

e. The parties' lack of understanding of the law, especially regarding the process of transferring debtors.

The sale of a mortgage house privately by a debtor who has not paid off his debt is an illegal act because the mortgage house is a collateral object for the debtor's debt to the bank, so the bank can sue the debtor to provide compensation and immediately pay off all remaining debts. The sale of KPR houses privately by the Debtor does not eliminate the Debtor's obligation to pay off his debt to the Bank. The bank as the guarantee holder can cancel the sale and purchase of KPR houses by the old debtor which is done privately.

Sales and purchase agreements drawn up underhand in the sense that not through a Public Official (PPAT) cannot be used as a means of transferring the name of a certificate from an old debtor to a new debtor. Because the sale and purchase deed under the hand cannot be used as a legal basis for the transfer of the name of the certificate, it can be said that the sale and purchase of land has never happened. Based on the results of the author's interview on June 12 2020 with the Sub-Branch Manager Mr. Sonny Fandian that as long as the credit has not been repaid, the sale of KPR houses by old debtors is carried out underhand without the permission of the bank, legally the bank can cancel the sale through the District Court, so the sale becomes invalid.

In cases where the debtor has been transferred privately and the old debtor's domicile is no longer known, according to the author, the legal solution is to file a civil lawsuit at the local district court. Because it is the Court that can decide with its own considerations whether the transfer of the debtor under the hand can be legalized or not. As long as the bank does not question or cancel the sale and purchase, there are several alternatives that can be taken by the Bank and the Purchaser to resolve the legal impasse of the problem. The solution according to the author can be reached through 2 (two), namely:

- 1) New debtors can continue to pay installments until they are paid off according to the time period or can pay off all at once in cash with the approval of the bank and finally the bank submits all documents including certificates to the new debtor without having to reverse the name.
- 2) If the first method is not reached, the second method can be used, which can be done over the ordinary debtor without requiring the presence of the old debtor, in this case the old debtor can be represented by the Bank based on a power of attorney to sell made at the time of the credit agreement. The bank can ask the Notary/PPAT to help with this method and at the same time explain to the Notary/PPAT that actually under the hand the KPR house has been transferred from the old debtor to the new debtor and has occupied the house. However, due to the fact that the new debtor is paying the installments and the address of the old debtor is no longer known, the new debtor's application for the transfer of the debtor's house should be considered for acceptance.

For transferring debtors, Banks can use a Power of Attorney to Sell as a legal basis for the Bank to sell/transfer debtors to new debtors. However, for the transfer of this debtor there needs to be a PPAT/Notary's willingness to make the deeds. The problem is if the Notary/PPAT is not willing so that the transfer of the debtor cannot occur. For this reason, the Bank Office must find a Notary/PPAT who is willing or convince a Notary/PPAT who is not willing to make deeds.

If the Notary/PPAT is willing to assist the bank in making the deeds of transfer of the debtor without the presence of the debtor but based on a power of attorney to sell from the debtor to the Bank, which is made by the debtor at the time of the credit agreement, it will greatly assist in completing the KPR house which is sold underhand or in an empty condition and the debtor is no longer known. However, if the Notary is unwilling to help draw up the deed of transfer of the debtor without the presence of the old debtor due to worry or fear as stated in the answer above, another effort that can be taken is to file a lawsuit through the District Court where the KPR house is located, to the unknown debtor. that again.

The Bank's demands in the lawsuit include asking the District Court to allow the Bank to sell the KPR house, either in cash or over to the debtor without the presence of the old debtor. If the defendant (debtor) has been duly summoned and does not appear, then the Court will issue a *Verstek* decision (a decision without the defendant being present). Within 14 days after the decision, there was no resistance from the debtor, the decision has permanent force, so that based on the decision, the Bank can sell the house either cash/transfer of the debtor without the presence of the old debtor. With the District Court's Decision, the Notary/PPAT need not hesitate to make a deed of transfer of the debtor.

According to the author's opinion based on the Power of Attorney to Sell from the old debtor to the Bank (which already exists) made and signed at or simultaneously with the credit agreement (credit contract), the Bank can sell collateral directly to prospective buyers who have agreed to buy. The Bank does not need to hesitate or worry about the legal risk that the original debtor may appear and sue the Bank. The appearance of the original debtor and sue is very small and even impossible due to the fact that the debtor has sold (underhand) the collateral house to that other person.

4. Conclusion

The legal consequences of transferring the debtor underhanded in the housing loan agreement (KPR-BTN) and the efforts taken by the bank to overcome it. The sale of KPR houses underhand by debtors who have not paid off their debts is an act against the law because KPR houses it is a collateral object for the debtor's debt to the Bank, so that the Bank can sue the debtor to provide compensation for the cancellation of the sale and purchase of a KPR house by the old debtor which was carried out privately and immediately pay off all the remaining debt. The sale of KPR houses privately by the Debtor does not eliminate the Debtor's obligation to pay off his debt to the Bank.

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