

Consumer Protection Law of Transactions in Home Ownership in the District Malang

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Abstraction

Issues of legal protection of the consumer in the home ownership transactions in Malang regency related to civil law and administrative law. Technical for it involves the parties, the Notary and the Bank, in particular the State Savings Bank. technically, that the transfer of rights (oper credit), must be made through the office of the Notary. The mechanism is, the parties that the seller and buyer, together came to Notary, with the completeness of the required file. From research conducted, there are obstacles in the transfer of the debtor or oper credit with the Bank. The main factor of the constraints caused by the debtor's old and new prospective borrowers that can not be met and the present together facing the Bank. Both have done right transfer under hand, they made themselves. Of course without notify the State Savings Bank. For this case the bank will refuse to process forwarding the mortgage debt. To solve it is by imploring the determination letter from the District Courts. In accordance to the above, it seems relevant to people who intend to continue the transfer of title by way of credit (credit oper), you should immediately take care of and dealing with Parties State Savings Bank. The goal is to ascertain the debtor's credit position long. In the implementation of the Home Ownership Loan Agreement, the Bank is expected to always pay attention and apply the precautionary principle and perform credit analysis carefully, thoroughly and in depth from various aspects based on the principles that apply universally in the world of banking. It is necessary to avoid or anticipate the emergence of transfer of credit problems in the future. To avoid constraints in the implementation of the transfer of the debtor (oper credit), must follow the procedures of the Bank without deviation. The Bank should proactively conduct the necessary verification of the entire preoses and documents needed. This is to prevent the judicial process that takes a long time and cost a fortune.

Keywords: Legal Protection, Home Ownership Transaction, the Bank and Notary

A. Background

The Bank has a primary function as a collector and distributor of public funds. With this function, the Bank's presence in the community as business entities have juridical significance and strategic role. The credit agreement made between borrowers of funds as the debtor and the Bank as a lender, on the basis of the confidence of creditors that the debtor will restore achievement at a particular time.

The house is a basic need and has a very important function for human life, as well as one of the basic human needs, housing in the law called the settlement has a very strategic function as a family education center, nursery culture, and improving the quality of future generations. Including his role as the embodiment of identity. However, the issue of housing and settlements in general are still perceived as a burden and a mere consumer needs.

On the other hand, housing and settlement sector can indeed serve as a locomotive of the economy and the creation of productive employment. Thus the implementation of housing and settlement sector can be placed as part of the productivity of the city / region.

The characteristics and potential including the ability and capacity of each of the regions in the housing and settlement in fact very diverse, local and contextual. For this however the need to continue the implementation of the operational strategy is developed in accordance with the plurality and independence that exist at the local level.

Seeing the importance of home functions for human life, but there are still many members of the public who do not have homes. On the other sisi some people may also have more than one home. To meet the needs of the growing home, in the simple understanding to have had to meet several administrative requirements that must be completed by both prospective sellers and prospective buyers. What else for the people who earn a mediocre or low. For them very difficult to have a house by buying in cash. This is a requirement of administration.

As an example for the purchase of homes through the Home Loan Savings Bank (KPR-BTN). In this case the government provides a system of home sales with Credit facility homeownership through the State Savings Bank, known as the Home Loan Savings Bank (KPR-BTN).

In an administrative perspective, there is no rule for it. Based on the Ministry of Finance of the Republic of Indonesia Nomor29 / KMK.01 / 1996 About Pngurusan State Credit Loans for Housing-State Savings Bank (KPR-BTN) no provisions on this matter. Article 1 (1), the Minister of Finance of the Republic of

Indonesia Number 29 / KMK.01 / 1996, mentioned in question, the Housing Credit - State Savings Bank (KPR-BTN) is the housing loans granted by the State Savings Bank. The goal is to help members of the public, in order to buy a house, with the land to be owned and occupied themselves.

Then there is the copy of the Minister of Finance of Indonesia Nomor 340 / KM / .01 / 2000, On State Credit Management Savings Bank Housing Loan (KPR-BTN). In Article 1 (1) stated that the Housing Loan Savings Bank, hereinafter referred KPR-BTN are loans granted by PT. State Savings Bank (Persero) to assist members of the public, in order to buy a house / building together with the land owned or occupied for themselves. Including building houses / buildings on the land itself, improve / enhance the added value of its own and other credit. Collateral in the form of houses / buildings and land owned or applicant.

For buyers who meet the requirements in the agreement can be signed an agreement ordering home mortgages agreement of the State Savings Bank. Once signed by the buyer as the owner of the house and land as well as the new debtor of the State Savings Bank, with credit guarantees homes and land.

In the terms of the agreement mortgage loans is confirmed that, during the loan period the purchaser or the debtor is prohibited to sell or transfer the right to housing and land at another party without prior consent from the State Savings Bank. During the term of mortgage loans from the State Savings Bank is not over or repaid by the debtor.

The transfer of rights to housing and land through a mortgage (KPR-BTN), performed by the debtor old to new borrowers. The term of the credit still in installments, the transfer is usually the case. Technically with installment payments, or the other way when the debtor time to move the task and settled in another city.

Another possibility, due solely to make a profit, so that if a potential new debtor does not have a supporting letter to letter. This situation makes it difficult to take the documents in the State Savings Bank (BTN). Most do not need to Notary in advance, to be made selling power, the power to take the documents and binding sale and purchase. With this new debtor after the debtor to pay off the old loan (the seller), can take the documents. Including a certificate that is still under warranty at the State Savings Bank (BTN).

Debtor in terms of avoiding default in payment of installments of housing loans by transferring the rights and open new credit to borrowers. Under the terms of the transfer of rights and open Bank loans should be done by the debtor over to reprocess back the remaining loans in the Bank. But it is happening right transfer credit without the knowledge of the Bank, which poses new problems.

A third party who continued installments and at the time the mortgage is paid off, the third party wants to take the certificate, Banks only want to deal with the first party while the first party who knows his whereabouts. Purchase agreement only on the basis of receipts alone create legal certainty to third parties are weak. But there is also a transfer of rights and open loans made before the Notary, which in this case deed made is deed statement, deed of novation, the deed of sale and purchase agreement and deed of power took the certificate, so that when the loan installments already paid a third party can retrieve the certificate to the Bank.

The transfer of rights and credit open done secretly debtors, the Bank remains protected by the Mortgage are used as collateral in Housing Credit Agreement. But the Bank in the transfer of rights and credit open expects that the debtor perform the transfer of the debtor with the knowledge of the Bank in order to avoid things that are not desirable at a later date and is not detrimental to many parties.

Examining the above problems, it is important and fundamental to analyze the problem as the title above which legal protection of the consumer in the home ownership transactions.

2. Research Methodology

An elaboration on this issue using normative research. ie using secondary data (research literature). By using this type of normative legal research, conducted review of the laws and regulations relating to the Legal Protection of home ownership in the transaction.

In connection with the above, this type of research is an inventory of legal materials, which conduct an inventory of the legal material relating to the Legal Protection of the Parties to the transaction homeownership. Transfer of Housing Lender. In addition, test the consistency of regulation provisions concerning the Legal Protection of the Parties to the diversion Home Ownership contained in the laws.

The legal materials analyzed include laws pertaining to the protection of the law in question, namely the Code of Civil Code (Civil Code); The draft Trade Law; Law No. 8 of 1999 on Consumer Protection, the Minister of Finance of the Republic of Indonesia Number 29 / KMK.01 / 1996 About Pngurusan State Credit Loans for Housing-State Savings Bank (KPR-BTN); The Minister of Finance of the Republic of Indonesia Number 340 / KM / .01 / 2000, On State Credit Management Savings Bank Housing Loan (KPR-BTN).

Material is analyzed based on the performance of a descriptive analysis, based on content analysis (content analysis), which highlights the text or the content of legal norms of the laws and regulations related to issues of legal protection in housing transactions by way of interpretation (interpretation) or hermeneutik, and systematization based on qualitative analysis

3. Results and Analysis

a. Conceptualization Commitments and Transactions

a) The concept of Engagement

If two people or two parties promised each other for example, do or give something means each person or entity that committed themselves to the others to do or give them something of the agreement. In other words, to create a bond between them arising from their actions make an appointment. The bond intangible their rights and obligations to be met by each of the parties.

That the rights and obligations that bind both parties here arising from the Act, instead of the agreement. Bonds as stated in both examples above, both born from the agreement, as well as the birth of the Act, between the two parties in legal terms is called the engagement and the laws that govern part called the law of the engagement.

From the brief illustration presented above it appears that the engagement is a relationship, because it involves the bond between two or more parties, namely the party entitled to so-called creditors and parties are obliged called debtor. The relationship is regulated and authorized by the law, so therefore the engagement is said to be a legal relationship. The legal relations concerning property, ie all are worth the money and interests are protected by law.

These interests be given, done or not done something by the debtor to the creditor. On that basis, the engagement is typically defined as the legal relationship regarding wealth between two parties whereby one party can sue the other party to give, do, or not do something.

In terms of content, the tie is a form of obligation to give / give up something, like the seller shall deliver the goods it sells to the buyer. There is a form of an obligation to do something as a liability of the freight forwarder for transporting it promised, and there is also a form of not doing anything. As tenant promises not to use the house he rented for purposes outside the agreement.

b) Sources Engagements

Sources engagement in Indonesian law there are two, namely (1) the agreement, and (2) of the Law. This is confirmed in Article 1233 of the Civil Code, "Every engagement is born either as consent (agreement), as well as the Law." The agreement is the most important source of engagement.

Act as a source of engagement distinguished into Law alone and Law in relation to the actions of people. Engagements born of Law alone is the obligation of engagement in it directly ordered by Law. Such rights and obligations arising between father and son in living things, also some rights and obligations between the owner of the yard adjacent accordance with the provisions of the Law (Article 625 of the Civil Code). Relations arising from maintenance obligations (Article 321 of the Civil Code), and the relationship of the pupil and the guardian (Article 385, 409 of the Civil Code).

Engagements born from Act-inflicted person is an engagement that arise because of the actions carried out by someone and then Act establishes the rights and obligations arising from such actions. The act divided into two kinds: (1) act according to the law (*rechtmatige daad*), and (2) an unlawful act (*onrechtmatige daad*).

Examples of engagement arising from the Act for their actions according to the law (*rechtmatige daad*) are people who do what is called "payment without debt" (*onverschuldigde betaling*) mentioned in Article 1359 of the Civil Code. No debt payment means the payment made by a person based on the allegation that he owes and therefore he made payments. But apparently he did not owe. Then the payment is not payable as described by the Act stated irrevocably and payee is obliged to return it.

In addition to the actions according to the law there is also a tort (*onrechtmatige daad*). This act, if committed by a person, the provisions of Law occurs the engagement between the perpetrators of illegal acts that the person harmed by such actions as defined in Article 1365 of the Civil Code. In other words, every tort that bring harm to others creates obligations on perpetrators of acts due to his fault the loss incurred to provide compensation for loss.

In *Nieuw Burgelijk Wetboek* (Civil Code New) The Netherlands can be concluded that there are three sources of engagement, namely: (1) legal acts (*rechtshandelingen*), (2) the source of legislation (*wettelijke bronnen*), and (3) sources designated by the Act (*bronnen waarnaar de wet verwijst*)

c) Standard Agreement

The Indonesian government officially through Law No. 8, 1999 use the term clause standard as can be found in Article 1 point 10 of the Consumer Protection Law. In the aforementioned article stated that the clause standard are any rules or terms and conditions have been prepared and determined in advance unilaterally by businesses set forth in a document and / or a binding contract and must be met by the Customer.

Meaning and the standard agreement was an agreement that almost all clauses are standardized by the wearer and others basically do not have the opportunity to negotiate or ask for changes. As for which is not standardized are some other things that are very specific object of the agreement. Thus the standard agreement is an agreement that is set unilaterally by the manufacturers / businesses / seller containing provisions generally accepted (mass) so that the consumer only has 2 options are to approve or disapprove any real estate.

characteristic standard contract as follows: standard contracts prepared in advance in bulk, it is determined by the parties by the strong position of its economy, the debtor always receive it because of being pressured by his need, shape particular, consumers do not participate in determining the content of the agreement, consumers only have the option to accept or do not accept.

Opinion of the above it can be concluded that the implications of this in the contract of sale transactions of housing is an unlikely candidate for raw agreements, namely:

- a. The form of a written agreement
- b. Format standardized agreement
- c. The terms of the agreement are determined by the employer
- d. consumers only accept or reject
- e. Raw agreement benefits employers

d) The principle of the Agreement on Sale and Purchase Agreement Housing

In the implications of the use of raw treaty on the law of treaties, there are 3 main principles, namely the principle of freedom to enter into agreement, konsensualisme principle and the principle of binding force. As for the implications of the use of raw agreement on some principles of contract law, namely:

- a. The principle of freedom of covenant
- b. principle Konsensualisme
- c. The principle of binding force

b. Transfer of Rights in Housing Credit

Credit comes from the Roman credere which means belief or creed or creditum which means I believe. Black's Law Dictionary, gives the sense that the credits are: The ability of a business man to borrow money, or Obtain goods on time, in consequence of the favorable opinion he held by a particular lender, as to his solvency and reliability. Sedangkan according to Law No. 10 Year 1998 on changes on Law No. 7 of 1992 on Banking, Article 1 point (11), explaining that the "credit" is: "the provision of money or equivalent receivables denganitu, based on the borrowing and lending between the Bank and another party requiring the party borrower to repay the debt after a certain period of time with interest".

For understanding the financing in Article 1 point (12) of Law No. 10 Year 1998 on Banking was: "Financing based on Sharia Principles is to provide cash or equivalent was based on agreements between the Bank and another party requiring the party financed to restore cash or after a certain period in exchange or for the results".

From the above it can be explained that the credit atau pembiayaan can be either cash or dengan uang value is measured, for example, the Bank financed loans for buying a house or car. Then an agreement between the bank (creditor) to customer credit recipient (debtor), that they had agreed in accordance dengan perjanjian he has made. In the credit agreements covered dan liability rights of each party, including the period and interest set together. Similarly, the issue of sanctions if the debtor break a promise to the agreements that have been made together. The difference between the loans granted by the Bank under conventional financing provided by the Bank based on sharia principles is situated on the expected profit.

For the Bank based on the principle of conventional profits earned through interest while the Bank is based on the principle of profit sharing in the form of rewards or profit sharing. In a broad sense is defined as trust loans. Similarly, credit in Latin means "credere" means to believe. The purpose of the trust for the lender is that he believes the loan recipient that the distributed credit will definitely be returned according to the agreement. As for credit recipients constitutes acceptance of trust therefore has an obligation to pay the appropriate time period.

The elements contained in granting a credit facility are as follows:

1. Trust;
2. Agreement;
3. Duration;
4. Risk;
5. The compensations.

The term loan agreement comes from the English language, namely *contraccredit*. In English law, the credit agreement includes loan of money Bank. The term loan agreement is not found in *instruksi* governments and various Circular. However, in Article 1 point 3 Rancangan Undang About Credit Banking Act, has determined the understanding credit agreement. "The loan agreement is an agreement and / or agreement made jointly between creditors and debtors on a number of credit with the agreed conditions, for which the debtor is obliged to repay loans that have been received within a certain period with interest and costs as agreed".

Furthermore, in Article 1 number 4 and number 5 Credit Banking Act specified that the parties to the credit agreement, the creditor and the debtor. "Creditors is a bank that provides loans to borrowers under its credit agreements. Debtors are people, legal entity or other entity that receives credit from lenders under its credit agreements. Meanwhile, in the 10 years of Law No. 1998 on the Amendment of Law No. 7 of 1992 About

Banking determined that the parties involved in the loan agreement the Bank is the Bank and customers debtor ". It is clear that the parties involved in the loan agreement with the Bank is Bank customers debtor.

Meanwhile, the object of the loan agreement the Bank is in the form of credit or cash, with a system of payment by installments. Thus, the momentum of the Bank is the successor agreement since it was signed credit agreement between the Bank and customers debtor. Since then arose rights and obligations of the parties.

c. Credit Guarantees in Housing

Term assurance is a translation of the Dutch language, namely *zekerheid* or *cautie*. *Zekerheid* or *cautie* generally include ways to ensure compliance with the creditors bill, in addition to the common responsibility of the debtor against his belongings.

In addition to the term assurance, also known as collateral. The term collateral may reading in Article 1 paragraph 23 of Law No. 10 Year 1998 Tentang Amendment to Law No. 7 of 1992 on Banking, collateral is: "Extended warranty customers debtor submitted to the Bank in order mendapaktan credit facility or financing based on Syariah principles". In laws and regulations can be found also in article 1131 Civil Code and an explanation of Article 8 of Law No. 10 of 1998, but in both peraturantersebut not explain what is meant by the guarantee.

Nonetheless both the above conditions can be known, that assurance is closely connected with debt problems. Usually the loan agreement to borrow money, the creditor asks the debtor to provide cash collateral, lenders ask borrowers to provide collateral. What if, after a period of time has been agreed it turned the debtor does not repay.

According to Billy Supramono, mentioning that the collateral padaprinsipnya must belong to the debtor, but the Act also acquiring goods powered by third parties are used as collateral, provided the parties concerned to give up the goods used as collateral debtors "

Applicability of the guarantee agreement has always depended on the agreement anyway. If the agreement substantially completed then the guarantee agreement also completed. For there may be someone willing to guarantee a debt if the debt itself is no form. The nature of the agreement were called *accessoir*.

Proposed construction guarantees Hartono Hadisoeparto and M. Bahsan cited by H. Salim HS, states that: "Something that is given to creditors to induce the belief that the debtor will fulfill the obligations that can be valued in money arising from an engagement".

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Collateral material has characteristics precedes material in artimemberikan rights over certain objects and have the inherent nature and follow the object in question. While the individual guarantee does not entitle preceded on certain objects, but only secured by the assets of a person through a person who ensures the wealth of a person through those that guarantee the fulfillment of the engagement in question.

Sri Soedewi Masjchoen Sofwan expressed understanding of collateral material (material) and the guarantee of an individual is: Collateral material is a guarantee in the form of absolute rights over an object, which has the characteristics of having a direct connection on a particular object, can be maintained against anyone, always follow the object and transferable.

For the transfer of rights to the house with the land, through the Home Loan Savings Bank (KPR-BTN), for new borrowers, this is the case where the credit period is still not over yet no longer the repayment of the debtor. In the implementation of the transfer of the debtor, the case with the agreement between the debtor old (sellers) with a new debtor (buyer), where the transfer of rights to the house with the land, the seller (the debtor old) will shift are entitled to a house and land to the new debtor (buyer)

In the next phase the new debtor, is willing to continue the rest of the installment to the State Savings Bank (BTN), after their first-notification confirmation approval of the transfer of State Saving Bank (BTN). In this respect the rights and liabilities will be transferred to the new debtor formally after the signing, the letters / documents (Credit Agreement), and the deed before the Notary.

signature performed by the Seller (debtor old) with the buyer (new debtor), and Chairman of the State Savings Bank Branch Office. Since then there was a legal relationship between the new new debtor, with the State Savings Bank (BTN), new borrowers as the owners of houses and land, as well as who has the right and obligation to continue the installments in accordance with the timeframe set by the State Savings Bank (BTN).

In the process of credit on the house and land (over the debtor), while the procedure is carried out by PT. State Savings Bank (BTN), is as follows, the new debtor must first fill out a request form forwarding mortgage debt (mortgage), which was also attended by the old debtors.

Furthermore, the Bank will verify the completeness of the data by officers Savings Bank Negara (BTN), after the data is complete and eligible, then do the interview of the new debtor, by the clerk loan service (part of Credit), after which the Bank, will KPK to conduct meetings (credit approval Committee), whether the request over the debtor approved or rejected. If approved will be published SP3K (Notification Letter and the Affirmation Agreement Transfer of Credit), by the Bank, then the Bank will create a schedule for the signing of loan agreement, before the Notary.

After the Bank signed, the loan agreement along with new borrowers, including borrowers a long time, then the rights and obligations transferred to the new debtor, including to maintain and care homes are purchased and paid in an orderly and regular installments every month until the loan is paid off. Then after the credit agreement was approved by the Bank, The Bank will bring the file to be signed before a Notary.

As for the implementation of the provision of credit, by the State Savings Bank, would follow the established provisions of the headquarters. Likewise all the procedures at each branch office, in the granting of credit, including the approval of transfer of the debtor, the State Savings Bank (BTN) Branch, will follow.

Terms and conditions of the General Agreement Home Loan Savings Bank stated that "The credit agreement shall become effective and binding upon both parties immediately after it is signed by the Bank and the Borrower". Of these provisions can be interpreted that with the holding of a credit agreement by the buyer, then the buyer is bound as a debtor in the State Savings Bank.

The credit agreement shall become effective and binding upon both parties after the signing of the credit agreement by the Bank and borrowers. In this case the debtor will be tied to what has been determined by the Bank. But under certain conditions to do assignment with consent from the Bank.

In the implementation of the transfer of the debtor, it is recommended to the seller (the old debtors) and the buyer (new debtor), preferably face to face with the Bank, to make the process clearer and more perfect execution. Thus it can be avoided things that have not etiket of both the seller and the buyer. Therefore with the parties to appear in person, hope there is legal certainty and the known position of the debtor credit long. Including to determine the rights and obligations of the debtor Party old and new borrowers, also can protect both sides between the debtor of the old with the new debtor default.

During the installment process runs diperkenan to new borrowers to renovate the house, its provisions do not encroach on the land. The trick is to notify the State Savings Bank, that will carry out the renovation of the house occupied by the new debtor. For it must comply with the provisions of the local government and the IMB (Building permit) should be updated. In addition to the debtor is allowed to renovate the new, the important thing is to pay attention, nurturing and caring for house purchases and pay in an orderly and regular installments every month until the loan is paid off.

To process credit oper house purchased in the mortgage (mortgage) through the State Savings Bank (BTN), this is a prudent step and formally to be the implementation of the transfer of the debtor. In practice there are two ways to credit oper formally, through the State Savings Bank, namely;

1. the parties, the Seller (debtors old) together prospective new borrowers, present and immediately came to the branch office of the State Savings Bank, and facing in the credit department of administration or customer service and ask about the transfer of rights in question.
2. apply a credit for later download will act as a new Debtor Debtor replace seller as long.
3. in the case of credit approved by the State Savings Bank (after examination requirements), then the buyer will act as a new Debtor Debtor replace seller as long. Buyers will sign a new loan agreement on its behalf, following deed Purchase and binding guarantee (Letter of Authority imposes Encumbrance)

Regarding the conditions that must be completed by the prospective new borrowers to transfer the

debtor equal to the loan application process is in principle the mortgage (mortgage) is financed in advance the cost of purchase or construction of houses. Likewise, funds to pay back the installments done.

Credit (mortgages) could usually begins after the available funds of about 30-40% of the price of the home, depending on the policy of the Bank. Before the mortgage (KPR) is approved, the buyer will be required to complete requirements for a mortgage (KPR), among others;

- a. photocopy of identity card (KTP) applicant.
- b. marriage certificate or divorce, when a married or when divorced
- c. Family Card (KK)
- d. The certificate of the citizen (for citizen offspring)
- e. Payslips or a deed of company or professional license
- f. The certificate of employment
- g. document ownership of collateral (SHM, IMB, UN)
- h. saving account
- i. submit a recent photograph.
- j. certificate of employment, from SK beginning and end;
- k. attached Certificate of Income / paycheck, and the Employee Card Retirement Card.

That in addition to the transfer of rights to the houses and buildings (oper credit) through the State Savings Bank directly by way of "over Borrower" is, no other process is reasonably safe to do, although not as perfect control of the debtor directly, ie using the services of a Notary, through deed made.

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As a Notary, in general there is never a problem to the deed made, for the parties to immediately notify the PT. State Savings Bank (Persero), while the mechanism is as follows:

- a) The seller and buyer come to the Notary Office with the completeness of the files as described below: - The data object of the sale (land / building), photocopy of the certificate (which contains a description / stamp of the bank that the land and the building was pledged to the Bank in respect of), the following Copy of IMB, photocopy Credit agreement, a copy of Identity Card and family Card Seller and the Buyer, copies of conjugal Copy of family Card Copy of Marriage Certificate Copy Description citizen or rename (if any, to citizen descent).
- b) made a binding Sale and Purchase deed on the transfer of land and buildings following question yag power of attorney to pay the remaining installments and the power to take the certificate.
- c) the seller signed a letter of notification to the State Savings Bank, regarding the transfer of rights over the land in question is essentially since this transfer, although anguran and certificates are still on the seller's behalf, but because his rights have already switched the seller no longer eligible to pay off their own and take the original certificate with regard to the State Savings Bank.
- d) after a copy of the deed is completed, sellers together with buyers to convey to the State Savings Bank Parties, a copy of the deed as stated in point 2 of the following letter referred to point c.

As for the advantages and disadvantages of using the transfer of the debtor is a Notary deed process easier and faster and relatively cheaper cost. The disadvantage is:

1. The certificate is still the name of the seller and still in jaminkan to the State Savings Bank (BTN).
2. Buyers installments to the State Savings Bank (BTN) on behalf of the seller.
3. If the transfer of rights is not notified to the State Savings Bank (BTN) (as point 4), at worst the seller may at any time repay itself to the State Savings Bank (BTN) and take the original certificate of land and buildings that have been dialihkan.Oleh for that in carrying out the transfer of the debtor by using a notarial deed shall proceed with the notice to the creditor / State Savings Bank.

Despite weaknesses (which can be bridged), credit transfer using notarial deed still much safer than credit oper / transfer of the right to use a lot of redirects letter under the hand. Or even without using any mail or simply by receipt only. The reason is that the presence of the Notary deed and proof of notification, then at settlement later that the buyer can take the original certificate with evidence in the form of notarial deed that has been previously signed by both parties.

That credit oper using tesebut notarial deed can only be performed one time only. This means that only from the original owner to the first buyer. If the first buyers will pass down the house again, then the first buyer must be able to present the original owner to be created for new transactions. Therefore the process of transferring through the Notary office just as the solution to which the seller, will move the task to another area or because the buyer is not enough to have the cost of the transfer of the debtor.

d. Sale and Purchase The Notary

Basically, the process of transfer of land rights for the sale and purchase must be made by a deed of sale made before the Land Deed Official (PPAT), sale and purchase of properties that are in cash. This means the right to

land was switched on immediately after the approval of the price and paid by the buyer. However, in practice not always the implementation of land purchase made in cash, it happens that, for some things, such as buyer, has not paid the full or letter / land documents were incomplete.

In the issue that therefore tricked by binding sale and purchase, which made the seller and the buyer. To legitimize and strengthen the binding site is made, the binding sale and purchase agreement, the land ownership between the seller and the buyer, with a binding deed of the purchase agreement, the seller is bound to hand over the land papers to the buyer. Likewise buyers, is bound to hand over the money to the seller, in accordance with the agreement.

The binding sale and purchase of birth due to the requirements to be implemented selling can not be fulfilled, and this is not perfect / not yet finished. In a binding sale and purchase of the wills of the parties is willing to sell and the other party is willing to buy.

Legally understanding purchase agreement referred to in Article 1457 the draft Civil Code, it is stated that: "Buying and selling is an agreement, whereby one party binds itself to submit a material and the other party to pay the price that has been promised."

From the above either judicially or by definition raised by scholars, the sale and purchase agreement in principle is a binding agreement between the parties. In this case the parties bind themselves to surrender ownership of objects / goods to the other party, and other parties bind themselves to pay the agreed price.

In practice, many obstacles faced by the State Savings Bank, in the case of transfer of a credit or charge borrowers. For the parties, ie the seller (the old borrowers) and prospective buyers (new debtor), there is generally no. During the parties' irreconcilable and both are present directly to the State Savings Bank (BTN), as in the case of *mengalihan* rights requested active, the Bank, is the debtor, here the Bank, will only conduct and process the transfer of the rights, if any files Prerequisite is complete.

Furthermore the Bank, namely PT. Bank National Savings (Persero), will process the transfer. If there is the Sellers (debtors old) and the new debtor (buyer), no barriers, only delays the implementation process over the course of the debtor, until the two parties could be presented. Actually obstacles, resulting from the debtor intends to hold the transfer. Both are known to have carried out transactions binding agreement under the hands of their own making, and based on the receipt as a sign of redemption, without the involvement and notification to the PT. State Savings Bank (BTN), or a Notary Public.

In terms of implementation over the debtor, can only be processed and executed by the Bank, if the credit of the debtor has been running for one (1) year. After that, the party may apply for the transfer. However, if an urgent situation, whereby the seller will soon move the task, the other stricken area, while the term of the credit agreement is not up to one year, should be recommended to the office of the Notary. The goal is to asked for letters or deed necessary, as a consequence of the new debtor will bear all the costs and benefits.

During every obstacle in general can be addressed either by involving other parties. If the prospective new borrowers, continue to monitor the presence of the debtor time to give exact information supported by existing facts. This rarely happens, generally the buyer in advance and strive to be able to bring the seller, or the old debtors.

It often happens in society is because there are some people who do not know the ins and outs of credit oper. Or also other reasons which the seller or the buyer, already know the transfer process but procrastinate to hold diversion in the State Savings Bank (BTN). As a result, they are only making agreement under hand.

In this case many who regard that the evidence of proof of settled between buyers and sellers just been completed. But they do not realize that buying and selling on credit or installments, involve not only homeowners, but also involves the Bank as collateral for the owners of land and buildings in question. In this connection Party still something to do with the State Savings Bank. For that, of course, there are "rules" within the law that must be complied with by the party to the transaction oper credit / transfer of such rights.

If the buyer has paid credit borrowers a long time (the seller), they have sought for so long, but still can not unknown sellers (borrowers long), then the best way is recommended to buyers to engage third parties or suggested by the determination of the district court. The Bank usually explain and advocate, to the debtor (buyer). That if it had been pursued was already no longer known whereabouts Sales (old debtor), then to find information in advance as certain. About the presence of the debtor (potential sellers) to get the address of the debtor old or heir apparent.

When it was known that the debtor has died, must bring a letter supporting letter which was passed by the authorities. Therefore, the Bank is not able to process, file redirects if there is no longer a debtor. Or they can not attend or their representatives (the letters are strong evidence). If the old debtor and the buyer (new debtor), come and facing to the Notary intend to transfer of land and the house, certainly not a problem. cause the Notary will give a clear direction and information and will contact the Bank, so that these obstacles can be overcome. If it has been attempted, so long can not also be contacted, while credit has been repaid by the buyer, it is recommended to buyers to *menyelasaikannya* through the establishment of local courts.

Static information and clear, how the process should be carried out over the debtor. If the seller is not

known to exist, of course penyelesaiannya involving local District Court, but usually the parties are not willing to resolve such cases to court. This is because the cost is too expensive, and the procedure is also quite long, so that the buyer to consider the size of the costs to be incurred

Further stated that the buyer also must include supporting documents. Most do not like the purchase receipt and letters seller also has to complete. so that the Court may reconsider his decision.

e. The Legal Protection for Buyers and Banks in the Process Purchase

Transfer of ownership KPR BTN through the buying and selling is not prohibited as long as it is done in accordance with procedures established by the BTN. Against buying and selling homes and land KPR-BTN carried out under the hand can not be dibuatkannya by Notary and Land Deed Official (PPAT). if the process is done without the consent of BTN as creditors and not in accordance with the procedures applicable, the Notary may not make aktanya as evidence has happened pengalihan kepemilikan KPR BTN, with any deed. If the Notary make a deed relating dengan pengalihan KPR BTN then Notary can be sued di kemudian hari by the injured party. In particular buyer and the Bank, as it has a deed contrary to the law.

Regarding the legal consequences arising from buying and selling homes and land mortgage-BTN carried out under the hand, according to the author is not a legal effect, based on legal arguments as follows:

- a. Home KPR BTN is the object of the guarantee are tied with Mortgage as collateral for debt repayment KPR BTN debtors. In the Deed of Encumbrances Encumbrance (APHT) have agreed that debitordilarang to divert and or relinquish their rights to object jaminantannya the permission and approval of the Bank as creditor. Thus, if there is a transfer KPR BTN house under hand, the debtor has been in default of the agreement that has been agreed even farther debtor has committed an unlawful act. Ie, without the right has done acts that could harm others.
- b. The transition of land rights case with the signing of the deed of the land hakatas transition (either a deed of sale, exchange, and other grants). The signing was done in the presence of the competent authority in this case the Land Deed Official, so that when the transition of land rights carried out under hand juridically invalid. Thus has no binding legal effect. This means that the old law the debtor is fixed as the legal owner of the unit houses the KPR BTN.

Buying and selling land and houses KPR BTN conducted under tanganakan very detrimental to the buyer (new owner). In addition to the above to buyers(KPR BTN in transition under hand) experience trouble to take the title deed of BTN, because the Bank will only hand over the certificates to the old debtors. This is further complicated if the debtor is not willing to take a long time or a long time the debtor is no longer unknown. Thus for legal protection for buyers very weak.

legal protection of the home and land buyers KPR BTN conducted in under the counter can only be obtained by submitting an application. The goal is to obtain a determination of the Court in the District Court. The benefit is to authorize the sale process conducted under the hand. As for the Bank as the creditor has been protected by the Treaty of mortgage and Mortgage Rights Act. This is because Mortgage provides a preferred position or precede to the holder (droit de preference). It is stated in Article 1 paragraph 1 and Article 20 paragraph (1) of the Law Mortgage. Mortgage always follow the object secured in the hands of whoever the object is (droit de suite).

Stated in Article 7 of Law encumbrance that Encumbrance stay abreast of the object in the hands of whoever the object is located. This means that right continued to follow wherever the object (in the hands of anyone else) that the goods are located. That right continues to follow the people who have it. Thus Mortgage Rights still weigh on its object (land and house KPR BTN) although it has been transferred.

According to the authors of the cases of buying and selling KPR BTN under the hands of legally considered not theris a transfer right to a home and land. The transfer of rights to housing and land occurs when a new law has done that acta purchase made with PPAT deed and then there behind the certificate name became the name of the buyer.

Thus the house is still property of the debtor is the guarantee debts to the Bank. In the cases have occurred over the debtor and the debtor do in bawahtangan soon no longer known domicile, then according to the authors step settlement is legally filed a lawsuit in the District Courts. Because courts to decide in its sole discretion that over the debtor conducted under dapatdisahkan hand or not. If the defendant (debtor) has been properly called, was never present, then the court will give putusanVerstek (decision without the presence of the defendant).

Within 14 days after the verdict, no perlawanan dari debtors, the decision was finalized, so the top decision the bank can sell the house either cash / debitur tanpa presence over the long debtors. With the District Court, Notary / PPAT should not hesitate to make the deed over debtors.

For the sale of home mortgage under the hand by debtors who have not pay off debt constitute an unlawful act for the home mortgage loan guarantees it merupakan debtor objects to the Bank. Thus with Bank may sue the debtor to provide indemnity and to pay off the rest of its debts. Sales of home mortgages under the hands of the debtor, the debtor not abolished obligation to repay their debts to the Bank.

In this case the Bank as collateral holders can purchase home mortgage cancellation by the old debtors conducted under the hand. Letters purchase made under the hands of the meaning no through Public Official (PPAT) can not be used as the certificate name of the debtor for old to new borrowers. Therefore, the deed of sale under the hand can not be used as a legal pad behind the name of the certificate, it can be said land purchase was unprecedented.

Steps and actions that need to be taken if the credit to save Bank know has happened over the debtor under the hand is as follows:

- a. Bank warns debtors can immediately replay all remaining debt because, although the home mortgage has been transferred / sold, legally not eliminate the obligation of the debtor, in other words, the debtor remains liable to repay their debts.
- b. Actions or deeds of mortgage borrowers to sell the house, without the permission of the Bank, the Bank as the holder of the guarantee home mortgages, may cancel the sale of the house, if the Bank wants. Legally actually never happened buy and sell, due to the validity of the sale and purchase (below the house), there must be a deed of sale and transfer of title certificates or behind the name.
- c. Banks can make legal effort bail KPR execution of object-BTN which has been tied up with the Mortgage, in this case the BTN is the holder of Mortgage, which can execute if the debtor defaults, on the basis KPR and Agreement Granting Mortgage Deed.

In this case the BTN need to conduct socialization and dissemination of adequate information on the transfer of debituryang in accordance with the provisions of BTN. Thus it can be understood society at large. BTN also need to create a system that is more efficient than the debtor, so the new debtor is not burdened by the high cost and a long time. Wisdom is important to address and prevent the occurrence of KPR BTN transition under hand.

BTN also needs according to the author continuously monitors the state of the debtor and the object of KPR BTN (home), so as to anticipate any deviation by the debtor. If the shift of land rights under hand, an alternative way of solving the most sense of fairness for all parties are advised to the buyer to request court approval. While efforts to execution should be used as a last resort.

In connection with the above, the legal consequences that will arise can be broken down as follows:

- a. Debtor old and new borrowers a deed binding sale belidan power and deed of power of attorney issued before Notary can also the debtor time to deliberately and secretly without the knowldge party beneficiary rights transfer credit / debtor the new holding repayment to the bank and took a certificate and all documents tersebut. The action related to home as it would be very likely to occur due to the creditor Bank and the Bank still recognizes that the debtor is still registered as the legal owner atasagunan in the credit agreement, because both certificates and all documents and credit agreements that exist in banks are still registered in her name.
- b. The new debtor party suffered some losses, namely when experiencing defaults may not transfer any more either under hand or through the transfer of the debtor. Or can not make the sale of collateral under hand.

Similarly, when the alternative settlement with Bank have been seized or entered in the State Receivables Agency / BUPN and Auctions State Receivables Agency / BUPLN, they should bring the debtor. It objectives are to receive a refund of his money from the bank, while the first debitu not necessarily the last known place of residence. Or lack of certainty of home ownership through credit from Bank repaid.

Nor can utilize the related insurance denganagunan the house. With credit repayment duration up or it will be increasingly higher taxes to be paid, namely Customs Acquisition Rights to Land and Buildings / BPHTB having to bear the tax sale and purchase.

4. Conclusion

That the implementation of the transfer of rights through the transfer of the debtor to the Bank, the mechanism is as follows: The parties are debtors old with the new debtor, both present directly facing the credit loan. Next step is complete the application form forwarding Home Loan debt, namely by asking about the transfer of rights in question.

If the request is approved by forwarding credit debt The Bank, then the buyer will act as the new debtor replace seller as long Debtor. Furthermore the parties, to Notary, for the signing of the papers and the deed required, among which SP3K (Notification Letter and the Affirmation Agreement Transfer of Credit), mail new credit agreement, the deed of sale and binding guarantee with a Power of Attorney charge Encumbrance (SKMHT) and Mortgage or Deed Giving (APHT). For the payment of taxes transitional land rights, if taxed according to the applicable tax treatment. In this regard, the tax can be covered by one of the parties. But generally tax borne by the old debtors (the seller) is the Income Tax on goods / items (PPH). While the tax on purchases (new debtor) that customs Acquisition of Land and Building (BPHTB).

That the transfer of rights (oper credit), must be made through the office of the Notary. The mechanism is as follows: the parties of the seller and buyer, together came to Notary, with the completeness of the required

files.

Next Notary made certificate and letter of the Right to transfer The house is still in the process of credit at the Bank, namely by completing the sale and purchase of the data object (land / building). Concretely, in the form of a photocopy of the certificate, which is stamped and accompanied by a declaration from the bank, where the land and the building is still under guarantee at the Bank. Included a photocopy of the letter of credit agreement, on the part of sellers include a photocopy of the Identity Card (KTP) husband and wife. Next attach the Family Card, letter / certificate of marriage from the buyer, National Identity Card, letter / certificate of marriage and family card, letter Description citizen or rename (when there's citizen descent).

Next, from the deeds will be made by notary, is a deed of Sale and purchase, on the transfer of rights to housing and land. Sell power Deed, to processtransition land rights and power of attorney retrieval certificates and other documents, after the credit is repaid. Once completed copy of the deed of Notary, buyers and sellers together, told The Bank, regarding transfer of rights over the land in question. The point is that since this diversion, although the installments and the certificate is still on the seller's behalf, but because his rights have already switched the seller no longer eligible to pay off their own and take the original certificate relating to the Bank.

From research conducted, there are obstacles in the transfer of the debtor or oper credit with the Bank. The main factor is the constraints caused by the debtor's old and new prospective borrowers that can not be met and the present together facing the Bank. Both have to transfer the rights under the arms, which they made themselves. Of course without notify the State Savings Bank. for this case the bank will refuse to process forwarding mortgage debt, is. To solve it is by imploring the determination letter from the District Courts.

In accordance to the above, it seems relevant to people who intend to hold the transfer of rights by forwarding the credit (credit oper), you should immediately take care of and dealing with Parties State Savings Bank. The goal is to ascertain the debtor's credit position long. In the implementation of the Home Ownership Loan Agreement, the Bank is expected to always pay attention and apply the precautionary principle and perform credit analysis carefully, thoroughly and in depth from various aspects based on the principles that apply universally in the world of banking. It is deemed necessary to avoid or anticipate the emergence of transfer of credit problems in the future.

To avoid constraints in the implementation of the transfer of the debtor (oper credit), must follow the procedures of the Bank without deviation. The Bank hareus proactive necessary verification to entire preoses and documents needed. This is to prevent the judicial process that takes a long time and cost a fortune.

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