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The Legal Consequences of Debtor Transfer Carried out under the Agreement, House Ownership Loans

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Abstract

Mortgage agreements often find cases, including the transfer of rights to the mortgage object, namely the house, which is carried out under the hands of the debtor to another party before the mortgage is paid off without the knowledge of the bank. This research aims to examine the validity of the house sale and purchase agreement on house ownership loans (KPR), through the debtor transfer process and to examine the legal consequences of the transfer of debtors carried out under the hands of a mortgage agreement, and also to examine the efforts have been taken by the bank to overcome it. This research used normative legal research. The results of this research showed that the transfer of debtors in general can occur with the knowledge of the bank and without the knowledge of the bank (under the hands). It can be concluded that the debtor transfer process is a form of sale and purchase agreement made between the old debtor, who is still bound by the bank credit agreement, and the new debtor. The process of transferring debtors legally must be carried out between three parties, namely the bank, the old debtor and the new debtor. The debtor transfer process must meet the requirements for a valid credit agreement, which is based on Article 1320 of the Civil Code. If there is a transfer of the debtor without the knowledge of the bank, legal remedies must be taken by the new debtor by filing a lawsuit against the old debtor and the bank to the District Court. This decision from the District Court which has permanent legal force (inkracht) is evidence of the existence of an agreement between the old debtor and the new debtor, and can be the basis for the bank to submit certificates and other documents to the new debtor. In order to avoid problems in the future, people who want to transfer debtors to mortgages can do so after obtaining approval from the bank as creditor.

Keywords: debtor transfer; mortgage agreement; underhand

INTRODUCTION

Housing development is one of the efforts to fulfill one of the basic human needs in the context of increasing and equitable distribution of the welfare of all Indonesian people, this is an elaboration of the meaning and meaning of protecting the entire Indonesian nation and promoting the welfare of the people as outlined in articles through provisions relating to human rights in Chapter X letter A of the 1945 Constitution of the Fourth Amendment, which consists of Article 28 letter A to Article 28 letter J.

Article 28 letter H of the 1945 Constitution of the Republic of Indonesia which states that:

"Everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy living environment, and to have the right to health services."

Seeing the importance of the function of the house for human life, there are still many

community members who do not have a house, but some people also have more than one house. To meet the rapidly increasing need for housing, where to own a house must meet several requirements that must be completed by both prospective sellers and prospective buyers, especially for people with mediocre or low incomes where it seems very difficult to own a house by buying cash, so that they buy a house With the Home Ownership Credit (KPR) system.

To be able to carry out credit activities in a healthy manner and ensure credit distribution, banks must also comply with several principles used in credit assessment, namely:

Principle 5 C

Principle 5 C consists of character (character), capital (capital), ability (capacity), economic conditions (condition of economic), and collateral (collateral).

Principle 5 P

The 5 P's principle consists of the classification of the borrower (party), purpose (purpose), source of payment (payment), ability to obtain profit (profitability) and protection (protection).

Principle 3 R

The 3R principle consists of the results achieved (return or returning), repayment (repayment), and the ability to bear the risk (risk bearing ability) (Ibrahim, 2019).

The principles mentioned above are benchmarks for banks in assessing prospective debtors. In assessing the application for housing loans, the 5 C method or principle as described above is applied by the bank. After the bank conducts an analysis of various aspects of the credit application, the new bank can decide whether the credit application is appropriate or not to be given credit (Djumhana, 2008).

In practice, Home Ownership Credit (KPR) agreements often find cases, including the transfer of rights to the mortgage object, namely the house, which is carried out under the hands of the debtor to another party before the mortgage is paid off without the knowledge of the bank or known to the public as over credit. The process of transferring the debtor mentioned above raises a fairly complex legal case in the future, because this matter is related to the legal certainty of the right to own the house. The reality is that at the end of the credit installment, the debtor who takes over the credit cannot take the certificate because the bank only recognizes the mortgage debtor. So, the bank will only hand over the certificate to the mortgage debtor not to other people who are not known/not recorded in the bank's data, because the data contained in the bank is only the debtor.

One example of a case regarding the transfer of a debtor without the approval of the creditor in Bali is the case of a dispute between I Ketut Suastika as the Plaintiff against Andriyani as the Defendant. This case occurred when I Ketut Suastika bought a house at Griya Tansa Trisna Housing Block L.20 type 21 on over credit from Andriyani. The process of buying this house is done over credit/over the debtor without being known by PT. Bank Tabungan Negara (Bank BTN) as the creditor and carried out with an underhand agreement signed by the parties without being legalized by a notary. After this over-credit, I Ketut Suastika continued the installments to Bank BTN until the remaining mortgage loans were paid off. Legal problems arose, when the credit was paid off I Ketut Suastika intended to take a certificate which was used as collateral but Bank BTN did not provide it with the reason that the recorded debtor was Andriyani. Bank BTN stated that the certificate must be taken by Andriyani himself or with a power of attorney from Andriyani. The problem is that Andriyani's whereabouts are no longer known. This case was then decided by the Denpasar District Court with Decision No.144/Pdt.G/2013/PN.Dps which won I Ketut Suastika and sentenced Andriyani and Bank BTN and ordered Bank BTN to hand over the certificate of the disputed house to I Ketut Suastika.

The case above raises legal problems because the transfer of the debtor cannot be carried out unilaterally by the debtor. The transfer of the debtor breaks the contractual

relationship between the creditor and the old debtor, and a new legal relationship is made with the next debtor who will continue the credit. The Civil Code regulates subrogation, but in banking practice the form of agreement is adjusted to the development of agreements in the banking world. Debtor transfer is interesting for the author to conduct thesis research, especially one that is unilaterally carried out by the debtor.

Research related to debtor transfer carried out under the agreement, house ownership loans have previously conducted by Hidayat et al. (2019) and Ramadhani (2020). The result study conducted by Hidayat et al. (2019) that examined legal protection for creditor as the mortgage holder for granting loan using collateral land and building against bad-loan debtor showed that mortgage certificate has a permanent, executorial and legal force. It has an executive force that is equivalent to a court decision that has permanent legal force and applies as a substitute for grosse acte hypotheek as long as it concerns land rights. To secure the loan granted to the debtor, the mortgage certificate holder, especially the Bank, has received legal protection in the form of a droit de preference (having precedence rights over other creditors), droit de suite, the ease of auction. In this case, the mortgage object is protected from bankruptcy and it cannot be divided into mortgage objects. In addition, the result study conducted by Ramadhani (2020) that analyze the legal consequences of transfer of home ownership loans without creditors' permission revealed 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.

Based on the background and the previous related studies above, it can be stated that the debtor transfer carried out under the agreement of house ownership loans needs to be done to look in the law perspective, how legal consequences if it occurs. Therefore, this research aims to examine the validity of the house sale and purchase agreement on house ownership loan (KPR), through the debtor transfer process and to examine the legal consequences of the transfer of debtors carried out under the hands of a mortgage agreement, and also to examine the efforts have been taken by the bank to overcome it.

METHOD

This research used normative legal research. The approach used in this research is the statutory approach, the conceptual approach and the case approach. Sources of legal materials needed in normative legal research are secondary data. Secondary data is data that is taken indirectly or that has been collected by other people outside of the research itself. The secondary data consists of primary legal materials, secondary legal materials and tertiary legal materials.

DISCUSSION

The Validity of the House Sale and Purchase Agreement for House Ownership Loans (KPR) through the Debtor Transfer

The Process of Home Ownership Loan Facility (KPR) is part of the credit facility that is aimed directly at consumers consisting of various strata in society. Since it is addressed directly to consumers, this type of credit is referred to as consumer or consumptive credit (hereinafter referred to as "consumptive credit") (Ibrahim, 2009).

Judging from the legal aspect of the engagement, the debtor transfer process carried out in the distribution of homeownership loans (KPR) is a legal act of novation. Novation is often interpreted as renewal of debt, which is considered by the Civil Code as one way to terminate the agreement. What is meant by novation is a process of replacing the old agreement by a new agreement, which causes the old agreement to be nullified, so that what follows are a new agreement with changes to its terms and conditions, and or changes to the parties in the agreement (Fuady, 2001). Therefore, the legal act of novation

must meet juridical requirements including being carried out firmly, there is already a legal debt, there is a change of debt, change of debtor or change of creditor, must meet the requirements for making a contract, delegation alone is not a novation.

Transfer of debtors or over credit can generally occur with the knowledge of the bank and without the knowledge of the bank. Regarding the definition of engagement, there is no definition of the engagement itself in Book III of the Civil Code, which regulates the law of engagement. Subekti (2010) provides a definition of what is meant by engagement law, namely a legal relationship between 2 (two) people or 2 (two) parties, based on which one party has the right to demand something from the other party and the other party is obliged to fulfill these demands. The party who has the right to demand something is called the creditor or the debtor, while the party who is obliged to fulfill the claim is called the debtor or the debtor. The relationship between the two parties is a legal relationship, which means that the debtor's rights are guaranteed by law or legislation (Subekti, 2010).

Based on Article 1320 of the Civil Code, an agreement can be said to be valid if it meets the following conditions:

Agree on those who bind themselves

How is the agreement between the bank and the old debtor and the bank with the new debtor taking over the old debtor's credit? This procedure is where a claim and debt or compensation is filed by waging a claim for debt or other compensation. So, this means that each break-off can only result in one or two solutions. All obligations of one party are removed by leaving a balance that must be paid by one party to the other party (Graham & Trotman, 1990).

The ability to make an engagement

The person made the agreement must be competent according to law. In this case, the requirement to become a debtor must be at least 21 years old or married, and a maximum age of 65 years or maximum retirement age at the end of the credit.

A certain thing

That an agreement must be regarding a certain matter, in this case the bank will reassess the old credit object to calculate the maximum ceiling that can be taken by the new debtor with the credit period desired by the new debtor. And new debtors can also take out outstanding credit (debit balance) with the remaining term of the old debtor's credit. This process can be carried out according to the ability of the new debtor as well.

A lawful cause

The credit agreement between the bank and the new debtor may not conflict with the law, morality or public order.

In practice, the process of transferring the debtor or over credit is carried out under the hands of the buyer, buying and selling a house with the seller only with proof of receipt. The buyer then pays the house in installments, as the previous seller did. The cost is relatively cheap because it is only in the form of a stamp fee for the receipt. However, this step has many drawbacks, including:

The house will be difficult to resell before it is paid off.

Documents lack legal force in case of problems in the future.

It will be difficult to get a certificate if the credit ends. The buyer must ask the seller for help to retrieve it, and then transfer the name of the certificate. Of course, this is not an easy matter, especially if the seller's whereabouts are unknown.

The transfer of name to the buyer must be accompanied by a power of attorney to sell.

Seeing the shortcomings mentioned above, whether the transfer of the debtor or over credit carried out under the hands is legal according to the law or applicable provisions. If viewed from Article 1320 paragraph (4) junto Article 1337 of the Civil Code, it can be concluded that as long as it is not about a cause that is prohibited by law or is contrary to good decency or public order, then everyone has the freedom to make an agreement.

In the Civil Code, in addition to the provisions above, there are no provisions that require or prohibit someone from binding or not binding themselves in an agreement. This is in accordance with the scope of the principle of freedom of contract. The application of the principle of consensuality in Indonesian contract law further strengthens the existence of freedom of contract. Without an agreement from one of the parties in making an agreement, the agreement made is invalid (Ibrahim, 2003).

The researcher considers that the freedom of contract in the transfer of the debtor is the will of the parties as regulated in law. Freedom of contract must be in line with the legal certainty proposed by Radbruch which states that there are three aspects, first is justice in a narrow sense, meaning that the transfer of debtors is an equal right between the parties undergoing the transfer of credit agreements. The second aspect is the goal of justice or finality, that the debtor transfer agreement must fulfil or its substance is a mutual agreement between the bank, the old debtor and the new debtor. The third aspect is legal certainty, that the transfer of debtors must be obeyed by related parties, namely banks, old debtors and new debtors.

Transfer of debtors carried out under the hands without the knowledge of the bank will result in no contractual relationship between the bank and the new debtor because the bank only recognizes the old debtor and the bank with the old debtor still has agreements that have not been written off. This creates legal uncertainty, so the researcher suggests that this debtor transfer agreement must be with the knowledge of the bank. The theory of legal protection aims to integrate and coordinate various interests in society because in traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand (Raharjo, 2000).

In connection with the transfer of debtors carried out under the hands, there are 3 (three) interests, firstly the interests of the bank where the bank wants the credit from the debtor to remain smooth until the credit is paid off. Second, the interests of the old debtor, where the old debtor wants to transfer his credit and get the remaining payments from the new debtor. The third is the interest of the new debtor, where the new debtor wishes that the process of transferring the debtor is without any obstacles so that later it will obtain legal protection so that when repaying the new debtor's credit, he can take a certificate that is still in the name of the old debtor.

With regard to the validity of the agreement based on article 1320 of the Civil Code, legal protection must meet the following provisions:

Agree with those who bind themselves

The debtor transfer agreement should be carried out with the knowledge of the bank, so as not to cause obstacles that occur in the field, for example the old debtor suddenly pays off without the knowledge of the new debtor, and the bank is not aware of the debtor transfer process carried out under the hands. So the transfer of the debtor must be known by the bank so that the contractual relationship between the bank and the old debtor is broken, and the bank knows now that the obligation is carried out by the new debtor. In this way, the bank will have to provide a new offer letter or offer letter addressed to the debtor who will take over the credit.

The ability to make an engagement

There are three parties in the debtor transfer agreement, namely the bank, the old debtor and the new debtor, that the parties in carrying out this debtor transfer must be legally competent. This means that initially the old debtor as a bank debtor has been assessed for his skills by the bank, now the new debtor must also be assessed by the bank regarding his skills.

A certain thing or a certain object

In this object, the credit ceiling or ceiling is not the same as when the credit was posted to the old debtor, because some of it was already paid in installments. Based on the books of this bank, the remaining outstanding or debit balance. The bank discusses with the new debtor regarding the outstanding that must be settled, the installment period, and then the bank confirms whether the new debtor is willing to continue the installment with the

remaining term. If the new debtor agrees, then the object of the credit agreement with the new debtor will be made with a new outstanding. It means that the credit limit is outstanding from the old debtor.

A lawful reason

The forms of credit transfer that do not conflict with the law and are allowed in the Civil Code, whether in the form of subrogation or novation or in the form of a debtor transfer agreement, are sufficient. Of course, this is adjusted to the agreement between the parties.

Based on the above provisions, this legal protection must be put forward as stated by Fitzgerald that there are certain interests by limiting various other interests, meaning that here there is a legal interest to the bank, as well as to new debtors, by limiting the interests of old debtors. The bank's contractual relationship with the old debtor will end with an underhand debtor transfer agreement.

Legal Consequences of Transfer of Debtors Underhanded in House Ownership Loans Agreements (KPR), and Efforts Taken by the Bank to Overcome It

Legal analysis of the case of I Ketut Suastika against Andriyani.

From this case, the following points can be drawn:

In this case, it can be said that the process of transfer / over credit between the Plaintiff and the Defendant was not carried out completely, so that the contractual relationship between the bank and the old debtor (Defendant) still exists. The transfer / over credit in this case is carried out based on the Affirmation Letter of Debtor Transfer Agreement without directly carrying out the process of transferring credit facilities and certificates of credit guarantees on behalf of the Plaintiff (the transferee). From the letter, it is agreed that the Plaintiff (the transferee) pays a sum of money to the Defendant (the transferor or the old debtor) and continues the remaining installments until it is paid off to the bank. In this case the bank does not provide debt relief to the Defendant (who transferred), so the bank still considers that the Defendant (the transferor) is a party to the mortgage agreement and all installments paid are on behalf of the transferor so that he is the one who has the right to take the certificate. Guaranteed when the credit installments have been paid off.

because the bank was not willing to submit the guaranteed certificate, on the grounds that the KPR Credit Agreement made between the Plaintiff and the Defendant was not carried out completely and the bank system at that time was not online, so that the credit facility and certificate were still in the name of the Defendant. Therefore, to solve this problem the solution is through a court process where the recipient of the transfer of rights requests the court to instruct the bank to submit the certificate to him on the basis that the transfer/over credit has been carried out.

This court decision can be used as a strong reason or basis for requesting the bank to submit the certificate. When the transferee comes back asking for the certificate, the bank can attach this decision, so that it will become a means of coercion for the bank in submitting the certificate. The bank is also here legally protected when handing over the certificate to the transferee because of a court order that can be used as the basis for the transfer.

The Civil Code accommodates the termination of the legal relationship between the creditor and the debtor based on Article 1381, regarding the termination of the engagement, stating that:

“Delete engagements:

due to payment;

because the offer of cash payment is followed by storage or safekeeping; due to debt renewal;

due to a debt encounter or compensation due to mixed debts;

due to debt relief;

because of the destruction of the goods owed;

due to cancellation or cancellation;

due to the validity of a condition void, which is regulated in the first chapter of this book;

due to the passage of time, that matters will be arranged in a separate chapter."

The legal relationship between the bank and the old debtor begins with the old debtor applying for credit to the bank with the aim of buying a plot of land and buildings (houses). The Bank will conduct an assessment of the credit application with the aim of putting trust and to avoid things that are not desirable in the future if the credit turns out to be approved for granting. With this credit assessment, it is hoped that the granting of this credit will not have an impact on the debtor's business failure or credit jams. The principles used in credit assessment consist of:

"The 5 C principle consists of character, capital, capacity, economic conditions, and collateral.

The 5P principle consists of the classification of borrowers (Party), purpose (Purpose), source of payment (Payment), ability to earn profit (Profitability), and protection (Protection).

The 3R principle consists of the results achieved (returns or returning), repayment (repayment), and the ability to bear the risk (risk bearing ability)" (Ibrahim, 2019).

After being assessed by the bank so that the credit facility from the old debtor is approved, the bank will issue a letter of acceptance and will then inform you about the costs required, including administration fees, provisions, life insurance, loss insurance, and notary fees.

The next step is the bank will appoint and provide an order letter to the Notary/ PPAT who has become a bank partner to check the value of the sale and purchase tax payment and the validity of the data from the old debtor, both personal data and data on the object of the guarantee that will be purchased by the old debtor, after the tax value If the data comes out and the data is valid, the Notary/PPAT will prepare the Deed of Sale and Purchase and the Deed of APHT which will usually be signed at the same time as the date when signing the credit agreement at the bank. Then after the old debtor has signed the bank credit agreement, the Sale and Purchase Deed, the APHT Deed, and the old debtor has paid the required fees, the Notary/PPAT will issue a cover note which will be given to the bank so that the credit from the old debtor can be liquidated (booking).

In accordance with the clause in the credit agreement, the old debtor is required to pay the credit installments according to the specified period until the credit is paid off, but in the middle of the installment period, the old debtor can transfer his rights and obligations to the new debtor Factors that cause the old debtor to divert credit, among others, could be because the old debtor wants to make a profit. The transfer or over credit carried out by the debtor with the aim of seeking profit can be done by selling to another party at a price higher than the price he bought. Here the old debtor diverts credit not because he is unable to continue credit installments but because he wants to make a profit.

Other factors can also be due to the old debtor experiencing delays in paying installments or installments due to economic difficulties so that they cannot continue their credit installments, or to avoid the risk of being confiscated by the bank with the occurrence of bad loans so that they will experience large losses. If the debtor is unable to continue credit installments due to economic difficulties, it will result in the debtor being said to have committed a breach of contract or default and will also result in the execution of the guarantee. Therefore, to avoid this occurrence where the debtor fails to pay off his debt as specified in the loan/credit agreement so that it will result in the object of the credit agreement being confiscated by the bank or an execution of the guarantee, the debtor looks for a way out by transferring what is the object of the agreement. The credit will be known as over-credit on the land and buildings (houses) to other parties.

From the side of the recipient of the transfer of credit (new debtor), buying a house

that is still in a credit condition at the bank, is done because of a factor to get profit with an interest rate that is still subsidized from the bank, or because there is not enough money to buy it in cash. On the other hand, it can be seen to apply for a homeownership loan that is considered very strict in terms of the requirements, or an age that exceeds the requirements in applying for credit to the bank.

After the debtor transfer agreement between the old debtor and the new debtor is reached. Then the new debtor carries out the obligations arising from the debtor transfer agreement until the remaining installments to the bank are paid off. In general, banks only find out that the object that is guaranteed for a mortgage loan has been transferred when the new debtor wants to take the house certificate that is his right to the bank.

Legal issues in an underhand debtor transfer agreement can be described as follows:

That the engagement between the bank and the old debtor is still running in accordance with the principle of privity of contract or the principle of personality which states that this agreement only applies to the parties, so that the bank only knows in this engagement only the old debtor.

That the achievements that must be made by the old debtor based on the agreement that was indeed made between the two parties, will end in accordance with the agreed grace period.

Whereas the transfer of debtors between old debtors and new debtors is a legal relationship without the knowledge of the bank, so that the legal consequences only apply between them internally.

If there are legal problems related to the old debtor and the new debtor, the bank in this case is not involved, because the bank is not included in this transfer by providing new credit facilities for new debtors.

If a problem occurs, the bank must summon the old debtor to come together with the new debtor. This certificate is handed over from the bank to the old debtor, then handed back from the old debtor to the new debtor. They will agree on how to transfer the certificate and others beyond the knowledge of the bank.

Then it turns out that if the old debtor is unable to participate in taking the certificate whose engagement has been completed due to payment, the new debtor must file a lawsuit to the District Court and the lawsuit will then have a permanent legal decision or inkracht. Based on this court decision, the bank can only submit the certificate to the new debtor.

If implemented into over-credit for homeownership, then for over-credit made by the debtor who transfers the mortgage loan (the seller) to the transferee (the buyer), as long as the bank does not release the debtor who transfers the credit (the seller) from the transferred debt. Therefore, there is no debt renewal (novation) based on Article 1413 of the Civil Code. So in this case, the debtor who transfers the credit (the seller) is still bound by the bank creditor because the bank does not expressly state his release from the obligation to the credit.

If the bank does not release the debtor who transferred the credit (the seller) from the transferred debt, referring to Article 1381 of the Civil Code regarding the abolition of the engagement, the accessoir agreement on the mortgage loan (among others: the binding agreement on the collateral-APHT) is still maintained and remains binding. The parties to the agreement. This means that the accessoir agreement remains valid because the main agreement (Credit Agreement) is still valid. The transfer of debt through a delegation without debt relief from the bank to the old debtor is not a debt renewal, which is one of the events that causes the termination of the engagement as referred to in Article 1381 of the Civil Code. Therefore, it does not cause the initial Credit Agreement of the transferred debt to be nullified, meaning that when an engagement (Credit Agreement) is not terminated due to a delegation or transfer, the additional engagement or accessoir agreement made based on the main agreement does not end either. The juridical consequence arising from the transfer of debt through delegation without the release of the old debtor's debt by the bank is that the old debtor still has an obligation to pay off the transferred debt even though

the debt has been transferred to a new debtor. The act of transferring debt through delegation or transfer must be contained in a separate Deed of Delegation and is an integral part of the original Credit Agreement and its amendments.

If the bank expressly states about the release of the debtor's debt that diverts the credit (old debtor) from its obligations, then it issues a debt renewal. This is also emphasized in Article 1420 of the Civil Code, which states:

"Only the debtor appoints someone else to pay for him, no renewal of the debt is issued."

So, debt renewal occurs when there is an affirmation stating the release of the debt from the bank to the old debtor.

Based on the case of I Ketut Suastika against Andriyani with register No. 144/ Pdt.G/2013/PN.DPs dated March 1, 2013. It can be concluded in this case that:

This case relates to the transfer of debtors that occurred at PT. State Savings Bank (BANK BTN) between the old debtor on behalf of Andriyani and the new debtor on behalf of I Ketut Suastika.

Whereas in this case, the Denpasar District Court was of the opinion that there was indeed a legal relationship between the old debtor and the new debtor and after that the new debtor continued to make payments to bank BTN until the credit was paid off.

That the bank did not know about the transfer of the debtor until the new debtor came to the bank at the time of taking the certificate.

Whereas the court declared the good faith of the new debtor who made the payment until the end of the engagement between the bank and the old debtor, this is something that is important to put forward in an engagement.

The Denpasar District Court finally decided that the new debtor was indeed a legitimate debtor in continuing the engagement between the bank and the old debtor and was given the authority to take certificates and other documents related to the engagement.

In connection with the case and legal protection presented by Fitzgeral, for new debtors (buyers) who have good intentions in bank engagements with old debtors, there are 3 (three) interests, namely:

In the interest of the bank where the bank wishes that there are no obstacles during the certificate-taking process, the bank will ask for a new debtor when the certificate-taking comes with the old debtor. If the old debtor is unable to attend, the bank will ask the new debtor to bring a power of attorney to take a certificate from the old debtor.

The interests of the old debtor, where the old debtor does not want to be included in the certificate collection at the bank, this can happen because the old debtor may have changed domicile, so it will be burdensome if he is required to come to the bank to collect the certificate.

The interests of the new debtor, where the new debtor wishes to make it easier for the bank to take the certificate, because the new debtor has good intentions in carrying out his obligations as determined by the bank. In addition, new debtors are also difficult to contact old debtors because of the possibility that the old debtor has changed domicile or has died, this of course will burden the new debtor, if at the time of taking the certificate to the bank you must be with the old debtor or bring a power of attorney from the old debtor.

The Denpasar District Court in giving a decision related to the above case is based on good faith. The definition of good faith in contract law according to P.L. Wery is:

"…that both parties must treat each other as if it were proper between polite people, without deceit, without deceit, without cunning, reasoning, without disturbing the other party, not by looking at their own interests alone, but also by looking at the interests of the other party" (Wery, 1990).

From the formulation of good faith as stated above, it can be concluded that good faith is an inner attitude or mental state of a human being that is honest, open (nothing is hidden or darkened), sincere and sincere, in accordance with his dignity as a human being.

The above formulation certainly still raises questions about the benchmarks of honesty, openness, sincerity, sincerity, and also the benchmarks of a dignified human being. On the one hand, it must be recognized by nature that the benchmarks of these things can differ from one human to another. This causes the notion of good faith to have a subjective nature. However, on the other hand, it cannot be denied that there can be a relatively, more or less equal measure of a certain human group regarding the human mental state mentioned above. In this case, the notion of good faith is said to have an objective nature.

From the formulation of Article 1338 paragraph (3) of the Civil Code, it can be concluded that good faith must be used when implementing a contract. This means that in a contract implemented, in addition to the provisions agreed in the contract that must be obeyed by the parties, but also in good faith as stated in the unwritten provisions (Gunawan, 1991).

Based on the Denpasar District Court Decision N0.144/Pdt. G/2013/PN. Dps, the Denpasar District Court assessed the good faith made by the new debtor, namely by means of the new debtor paying the old debtor's credit installments to Bank BTN up to the credit installment. Paid off, so the new debtor must be protected by law. In accordance with Fitzgerald's theory of legal protection, the Denpasar District Court in its decision has integrated various existing interests, so that legal protection for new debtors is stated expressly in the sound of its decision which punishes Bank BTN to hand over certificates to new debtors unconditionally. Anything, so that Bank BTN is required to submit a certificate which is still in the name of the old debtor to the new debtor.

The steps and actions that need to be taken by the bank to save credit if it finds out that there has been a transfer of the debtor under the hands are as follows:

The bank can warn the old debtor to immediately pay off all remaining debts because even though the mortgage house has been transferred/sold, legally it does not eliminate the obligations of the old debtor, in other words the old debtor is still responsible for paying off his debt. The assets of other old debtors can still be confiscated by the Bank to pay off their debts, as regulated in Article 1131 of the Civil Code.

Actions or actions of the old debtor by selling the mortgage house, without the permission of the bank, the bank as the holder of the mortgage home guarantee, can cancel the sale of the house, if the bank so wishes. Juridically, there has never been a sale and purchase, because for the sale and purchase to be valid (and the house), there must be a deed of sale and transfer of the name of the certificate or change of name.

In the case that there has been a transfer of the debtor which was carried out under the hands and the debtor's domicile is no longer known, according to the researcher, the legal settlement step is to file a civil suit at the local District Court. Because it is the Court that can decide at its discretion whether the transfer of the debtor carried out under the hands 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 Buyer to overcome the legal impasse of the problem.

Based on the case of I Ketut Suastika against Andriyani with register No. 144/ Pdt.G/2013/PN. Dps dated March 1, 2013. In this case, the lawsuit was initiated by the Plaintiff who bought a house from the Defendant located at Griya Tansa Trisna Dalung Housing, by paying in cash amounting to Rp. 1,000,000.00 (one million rupiah) and the rest by transfer of the debtor in the amount of Rp. 6,900,000 (six million nine hundred thousand) with a period of 180 months. Furthermore, the Plaintiff pays monthly installments of the debt amounting to Rp.78,670.00 (seventy-eight thousand six hundred and seventy rupiah) to account number 007.52520.K.00179.1 on behalf of the Defendant, and on June 5, 2012 the Plaintiff has paid off the mortgage installment of the house as stated in the details of the accelerated settlement letter dated June 5, 2012.

After the payment of the debt was settled, the Plaintiff contacted PT. State Savings Bank (BANK BTN) in order to take the collateral in the form of land certificate No. Hak Milik. 1576/Desa Dalung is described in Letter of Measurement No. 679/1994 dated 9-8-1994 covering an area of 90 M2 registered in the name of the Defendant. Furthermore, the PT. Bank Tabungan Negara (BANK BTN) did not want to provide the collateral on the pretext

that the transfer of the debtor between the Plaintiff and the Defendant was not done completely so that according to the law PT. Bank Tabungan Negara (BANK BTN) believes that the Plaintiff has no right to take the collateral before the power of attorney to take the guarantee and the Defendant is due because the guarantee is still in the name of the Defendant.

The Plaintiff has repeatedly tried to resolve this issue amicably with the Defendant and PT. State Savings Bank (BANK BTN), but the whereabouts of the Defendant could not be found and known anymore. The Plaintiff objected and suffered a loss. Finally, the Plaintiff filed a lawsuit in this case to the Denpasar District Court to ask for justice, clarity and legal certainty.

If the defendant (the old debtor) has been properly summoned but never attended, the Court will issue a Verstek decision (a decision without the presence of the defendant). Within 14 days after the decision, there is no resistance from the old debtor, the decision is permanent.

With respect to the above case, the bank as a co-Defendant was ordered by the District Court to submit a certificate which is still in the name of the Defendant to the Plaintiff without any conditions. This court decision can be used as a strong reason or basis for the bank to submit the certificate. When the Plaintiff (new debtor) comes back asking for the certificate from the bank, the bank can request an attachment to this court decision. Banks also feel legally protected when handing over the certificate to the new debtor because of a court order that can be used as a basis for transition.

The Court's decision on the case, among others, is as follows:

To declare that according to law the Defendant has defaulted because he did not submit the object of the agreement in the form of land and building the disputed object completely;

Punish the PT. State Savings Bank (Bank BTN) to submit documents of ownership of the object of dispute, namely Certificate of Ownership No. 1576 /Desa Dalung on behalf of Defendant I described in Letter of Measurement No. 679/1994 dated 9-8-1994 covering an area of 90 M2 without any conditions;

To declare according to the law that a copy of this decision can also be used as a tool for transferring rights or changing the name of the object of dispute from on behalf of Defendant I to be on behalf of the Plaintiff to the Badung Regency Land Office

From the decision of the Denpasar District Court, the Defendant did not fight back (Verzet) until the grace period to file Verzethad passed, the Denpasar District Court decision No.144/Pdt.G/2013/PN.Dps dated 27 August 2013 had permanent legal force. (inkracht) since Saturday, November 9, 2013.

With the District Court Decision, the bank has legal certainty, so that if in the future the old debtor comes to the bank to request a certificate which is still in the name of the old debtor, the bank can explain to the old debtor that the certificate has been taken by the new debtor on the basis of attachments. District Court decision. So that the new debtor has the right to take the certificate to the bank and transfer the rights to the new debtor's name. With the District Court's decision, the Notary/PPAT does not need to hesitate to make a deed of transfer of the debtor.

CONCLUSION

Debtor transfer process is a form of sale and purchase agreement made between the old debtor, who is still bound by the bank credit agreement, and the new debtor. The process of transferring debtors legally must be carried out between three parties, namely the bank, the old debtor and the new debtor. The debtor transfer process must meet the requirements for a valid credit agreement, which is based on Article 1320 of the Civil Code. The debtor transfer process carried out under the hands does not mean that it does not fulfill the validity of an agreement, because the agreement made by the parties can be carried out based on the principle of freedom of contract. The debtor transfer process carried out under the hands of this has legal constraints due to the absence of involvement

from the bank, where the bank does not know about the transfer process that has been carried out between the old debtor and the new debtor. The debtor transfer process carried out under the hands is a transfer of debt through delegation, in the absence of debt relief from the bank to the old debtor, this is not a debt renewal (novation) which is one of the events that causes the annulment of the engagement in accordance with Article 1381 of the Civil Code. The debtor transfer agreement made under the hands is an unfinished novation (onvolndige novatie), so that the bank's contractual relationship with the old debtor has not been abolished. This underhand debtor transfer agreement only has a legal relationship between the parties, namely the old debtor and the new debtor. The bank has no legal attachment to the new debtor, because the bank still has an attachment to the old debtor. The transfer of debtors will only have legal consequences for the bank, with a new credit agreement between the bank and the new debtor, so in this process there are three parties, namely the bank, the old debtor and the new debtor. Efforts are made in the process of transferring new debtors that can provide legal certainty and protection for all parties involved, where between the bank and the old debtor the engagement has been abolished because there has been a payment made by the new debtor, then between the bank and the new debtor an agreement is made based on the balance debit or outstanding of existing loans. If there is a transfer of the debtor without the knowledge of the bank, as in the case above, legal remedies must be taken by the new debtor by filing a lawsuit against the old debtor and the bank to the District Court. This decision from the District Court which has permanent legal force (inkracht) is evidence of the existence of an agreement between the old debtor and the new debtor, and can be the basis for the bank to submit certificates and other documents to the new debtor.

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