Advances in Social Science, Education and Humanities Research, volume 590
Proceedings of the 2nd International Conference on Law Reform (INCLAR 2021)

Construction of Home Ownership Credit Take Over Agreement in the Perspective Legal Certainty

Herwastoeti[1*]

[1] Lecture of the *Faculty of Law, University of Muhammadiyah Malang, Indonesia*
[*]*Corresponding author. Email: herwastoeti@umm.ac.id*

ABSTRACT

Home Ownership Credit is loans provided by the Bank to people who need funding to buy houses with collateral/collateral in the form of land and houses purchased. Home Ownership Credit has a very important function in the process of housing ownership because according to Bank Indonesia data, the majority of people rely on Home Ownership Loan s as a financing facility to own a house. However, in the implementation of these loans, sometimes people as Home Ownership Loan debtors experience default and cannot repay the loans that have been given by the Bank, then the debtor transfers their Home Ownership Loans to other debtors whose terms are carried out on a *take over* basis. The meaning of taking over a Home Ownership Loan is taking over someone's house installments that have not been completed or paid off. The problem that arises is when the *take over* of the Home Ownership Loan is carried out under the hands without the knowledge of the creditor (the Bank) then the Bank does not want to submit the certificate because the person who took the certificate was not the person listed in the certificate. So in the *take over* of the Home Ownership Loan, it is necessary to carry out a *take over* agreement so that there is legal certainty for the buyer as the new debtor in taking over the Home Ownership Loan. To have legal certainty, the buyer (the new debtor) should be able to make a sale and purchase before a notary and also ask the Notary to make a Power of Attorney for Certificate So that if the Home Ownership Loan has been paid off, the buyer (the new debtor) will not have difficulty presenting the old debtor and will not get a rejection from the Bank (the creditor) because the name listed on the house certificate on the Bank as collateral for the Home Ownership Credit is still the name of the old debtor.

Keywords: *Take over, Home Ownership Credit.*

1. INTRODUCTION

The bank is a business entity that collects funds from the public in the form of savings and then distributes them to the public in the form of credit and other forms to improve the standard of living of the community[1]. Banks have facilities as financial intermediaries (financial intermediary) for two parties who have excess funds (surplus units) and for people who need funds (deficit units), meaning that bank activities collect funds from the wider community and then channel back the money that has been collected to the public through granting a loan or credit. The provision of credit by the bank to the debtor is based on the trust or confidence of the bank that the credit provided will be returned by the debtor according to the agreed and agreed period.

One of the loans disbursed by banks is Home Ownership Loan. Home Ownership Loan Agreements are made by banks as creditors and debtors to provide legal protection and certainty for homeownership through Home Ownership Loan facilities. This Home Ownership Loan agreement is inseparable from the open system of contract law. The Home Ownership Loan agreement is based on a statement of will contained in a document using standard conditions based on the agreement of the parties. However, sometimes the Home Ownership Loan debtor defaults so that he cannot repay the Home Ownership Loan that has been agreed with the creditor (bank). Default is a condition where the debtor does not perform (does not carry out his obligations) and he can be blamed[2]. The failure of the debtor's fault to be fulfilled can occur due to two things: due to the debtor's fault, either due to intentional or due to negligence, and also due to force majeure beyond the ability of the debtor.

Default (negligence) of a debtor may be a debtor did not meet achievement; debtors meet achievement but not as agreed; the debtor fulfills the performance but is not on time (late), and the debtor does something that according to the agreement should not be done (based on Putusan Nomor: 707/Pdt. G/2016/PN.Bks). Default of a Home Ownership Loan debtor is often the debtor transfers his Home Ownership Loan secretly without the knowledge of the creditor (bank). So then in many cases, the Bank does not easily submit proof of homeownership to new Home Ownership Loan buyers (take over) even though they have paid off their Home Ownership Loan to the bank, so legal problems arise because the Bank does not want to submit proof of ownership in the form of a certificate to the new debtor who takes over the Home Ownership Loan even though proof of repayment has been shown. This then becomes a legal issue for the lawsuit in the District Court as happened in the civil lawsuit case at the Bekasi District Court (based on Putusan Nomor: 707/Pdt. G/2016/PN.Bks).

Based on the description above, the problem to be studied is how should the take over of Home Ownership Loan be done to provide protection and legal certainty for the take over of Home Ownership Loan to new debtors) who takes over Home Ownership Loan?

2. METHOD

This research is normative (doctrinal) research[3]. In doctrinal legal research, there are several approaches, with a normative (doctrinal) approach to obtain information from various aspects regarding legal problems that occur to be sought. The approach used in this legal research is the statute approach and the case approach[4]. The legal approach is carried out by examining laws and regulations related to legal issues. The case approach is carried out by examining cases related to legal issues to be studied or reviewed. In this study the case of the take over of Home Ownership Loan s (take over) in Decision Number: 707/Pdt.G/2016/PN.Bks.

3. RESULT

Article 1 paragraph 11 of Law Number 10 of 1998 concerning Banking states that credit is "The provision of money or equivalent claims, based on an agreement or loan agreement between a bank and another party which requires the borrower to repay the debt after a certain period. with the amount of interest.

Every credit that has been approved and agreed upon between the creditor and the debtor must be stated in a written credit agreement (credit contract)[5]. In the Banking Law, the term "credit agreement" is not found. The term credit agreement can be seen in the Decree of the Board of Directors of the Bank No. 7/162/KEP/DIR and Circular Letter of Bank Indonesia Number 27/7/UPPB dated March 31, 1995, concerning Obligations to Prepare and Implement Bank Credit Policies for Commercial Banks, which state that every credit that has been approved and agreed upon by the credit applicant is stated in the credit agreement in writing[6].

Some legal experts argue that the credit agreement is essentially a loan agreement as regulated in the Civil Code. Article 1754 of the Civil Code states "Lending and borrowing is an agreement in which one party gives to another party a certain amount of goods that are exhausted due to use, on the condition that the latter party will return the same amount of the same type and quality".

According to Thomas Suyatno et.al in his book "Fundamentals of Credit," there are several elements of credit, namely: the element of trust, namely the belief of the creditor that the achievements he provides in the form of money, goods, or services will be received. return within a certain period in the future; The grace period is a period between awarding achievements and contra-achievements that will be received in the future; Elements of Degree of Risk is the level of risk that will be faced as a result of the existence of a period that separates the award of achievement from the counter-achievement that will be received at a later date[7]. The credit period given is long, the risk is also high.

In credit, debtors are often asked to provide representations, warranties, and covenants. In these representations, the debtor is asked to provide information for processing credit grants. Meanwhile, warranties are promises, for example promises that the debtor will protect the assets that have been used as collateral to obtain the credit. Meanwhile, covenants are promises to do something, such as promises that the debtor will not sell or transfer all or most of his assets without the permission of the creditor[5].

Home Ownership Credit is a financing product or loan given to home buyers with a credit or financing scheme up to a certain percentage of the price of the house or property. If the community gets financing or a Home Ownership Loan loan, there is no need to provide funds in the amount of the house price, but it is enough to provide funds for the down payment only and the rest can be paid in installments every month during the term of the Home Ownership Credit.

In the procedure for granting a Home Ownership Loan, there are three stages which include; The submission stage is "Credit application," namely the applicant, in this case, the prospective debtor, must attach the required documents. The second stage is "document research", which is carried out by the bank on the credit application file, if it is not complete, the prospective debtor completes it. The third stage is "approval of credit grants" where the Bank approves the credit application of the prospective debtor if the bank considers and has confidence that the prospective debtor can repay the credit given. In taking a Home Ownership Loan, there are several things that prospective debtors must consider:

a. Interest Rate Type. Choice of interest rates, namely: Fixed interest rates for a certain period after subsequent disbursement Floating or, Floating interest rates from disbursement until the loan is paid off

b. The credit ceiling is the maximum number of Home Ownership Loan loans allowed by the bank.
c. Payment Percentage (Loan to Value / LTV). The maximum credit limit facility is 85% - 90% of the collateral value based on the bank's assessment.
d. Credit Term. How long the loan period is given. Currently, the longest a bank provides a credit period is 20 years.
e. Protection. Home Ownership Loan because of the long term so that it has a high risk, in this case, it needs life insurance protection and also fires in the event of a disaster either to the debtor or to the property that is the collateral for the Home Ownership Loan, the creditor also does not suffer a loss.

Home Ownership Loan credit decisions can be in the form of being approved on request or not approved as requested or rejected. Credit decisions are submitted to the credit applicant in writing. If the decision is approved, then the decision letter must contain information about the approved credit, such as the amount of the approved credit limit, credit period, interest rate, installments, interest rate, payment procedures, and other conditions.

Then the prospective debtor concerned must also provide a sign of approval if it has agreed to all the terms and conditions offered by the bank, by affixing a signature to the copy of the letter, then it is returned to the bank issuing the approval letter for granting the Home Ownership Loan loan.

After the applicant approves the credit decision and has fulfilled all the requirements, the next process is the implementation of the credit contract. In the implementation of the credit agreement, the interested parties sign several deeds, namely the deed of sale and purchase, credit agreement, and power of attorney to impose Home Ownership Loan rights. In addition, there are documents in the binding of collateral/collateral, namely the deed of the encumbrance of Home Ownership Loans and certificates of Home Ownership Loan rights. After the execution of the credit agreement, the bank will disburse the credit realization funds to the seller/developer as repayment of the price of the house purchased by the debtor.

In banking practice, in reality, many debtors default because they are unable to continue their Home Ownership Loan installments, which then transfers the Home Ownership Loan to another party. This is referred to as a takeover by the new buyer/debtor. Take over Home Ownership Loan has several types:

a. Take over interbank Home Ownership Loans. Interbank take over is a take overdone by other banks, in interbank Home Ownership Loan take over the debtor can transfer the Home Ownership Loan program from one bank to another. This is done because Home Ownership Loan s other banks offer prices or interest that are much lower than the bank at the beginning of your debtor doing a Home Ownership Loan so that payments or installments are cheaper. This inter-bank Home Ownership Loan take over can also be done if the debtor wants to switch from a conventional bank Home Ownership Loan to a sharia bank Home Ownership Loan.
b. Take over buying and selling Home Ownership Loans, Take over buying and selling Home Ownership Loan s is where the buyer takes over someone's house installments that have not been completed or paid off because the debtor is unable to continue the Home Ownership Loan installments. In the take-over of the Home Ownership Loan, the sale and purchase will involve 3 people, namely, the buyer as the applicant for the take-over of the Home Ownership Loan, the seller of the house whose house is to be purchased, and the bank.
c. Take over Home Ownership Loan under the hand, is an unofficial way where this happens because of an agreement between the seller of the house to the buyer, without involving the bank. The buyer will pay a sum of money to the seller as a take over fee, then the remaining Home Ownership "Loan installments will be paid by the buyer. The bank did not know that the house had changed hands, meaning that the take over of the Home Ownership Loan was transferred secretly. Some of the risks of taking over Home Ownership Loan s under the hands are a. When the buyer fails to pay the installments, the seller is still responsible for the failure of the installment; b. The seller over-credits the house to several buyers without the knowledge of the new debtor (buyer); c. The seller can one day pay off the credit, and take the certificate at the bank without the buyer's knowledge; d. After the house is paid off, the certificate is still in the seller's name, and the bank will not hand over the house ownership certificate to someone whose name is not on the certificate.

This is also the author's study in this discussion, namely the case where a buyer's lawsuit occurred through a take over Home Ownership Loan which then filed a lawsuit in the Bekasi Court. This case began in 1989, Martono obtained a homeownership credit facility from BTN Bekasi Branch. Then on March 21, 1990, the Home Ownership Loan sale and purchase application (take over) were submitted between Martono (Defendant I) and Chandra Yakup (Defendant II). In 1995, another takeover was carried out between Chandra Yakup and

Dino Suprianto (Defendant III) which was carried out only with proof of purchase receipts. In 2003, another take-over transaction between Dino Suprianto (Defendant III) and Djumiati (Plaintiff IV) was also carried out only with proof of receipt. Since the take over of the Home Ownership Loan Djumiati (plaintiff IV) has controlled and occupied the house in question, then in 2010 Djumiati paid off the Home Ownership Loan as evidenced by proof of repayment from BTN Bekasi. However, when Djumiati was about to take the certificate which was previously a guarantee for the homeownership loan, the State Savings Bank was refused. Djumiati was asked to present Martono as the person whose name is listed on the certificate of ownership of the house. Djumiati has tried to bring Martono but his residential address is not known, so because of not getting certainty when the certificate at BTN can be taken, Djumiati (Plaintiff) filed a civil lawsuit at the Bekasi District Court to obtain legal certainty about his rights as a Home Ownership Loan taker so that he gets certainty the law on the ownership of the house in question. In a civil lawsuit filed by a new debtor (Djumiati) to the Bekasi District Court, the Bank is a "Co-Defendant" because it does not want to submit a house certificate on behalf of Defendant I (Martono) as the old debtor.

After going through the trial process and the judge also presented witnesses and also evidence in which the "Plaintiff" had also controlled and occupied the house as well as other evidence, the Bekasi District Court Judge's Decision, in Decision Number: 707/Pdt.G/2016/PN Bks stated that the take over sale and purchase process was declared valid and Djumiati (Plaintiff) was declared the legal owner of the house and the Bank must submit a House Certificate in the name of the Defendant (Martono) to the Plaintiff (Djumiati).

So that the take over of the Home Ownership Loan has legal certainty, if there is a take over of the Home Ownership Loan, a buying and selling process should be carried out before a notary, and also a deed of power of attorney for taking certificates is made so that if this homeownership loan has been paid off by the debtor (new buyer), there is no need again presenting the seller (the old debtor) so that the Home Ownership Loan take-over process can provide more legal certainty for buyers (new debtors), this is an effort so that when the Home Ownership Loan has been paid off by the new debtor, there is no need to present the old debtor, which in cases such as In the case of taking over Home Ownership Loan which is the study of this author, the existence of the old debtor is not known.

4. CONCLUSION

Take Over Home Ownership Loan by a new debtor must be carried out with a notarial deed before a Notary so that the takeover of this Home Ownership Loan can be made "Sale and Purchase Agreement" and "Power of Attorney for Certificate Retrieval" so that it meets the requirements as stipulated in the Law so that this Home Ownership Loan take over is legal and binding. This Home Ownership Loan Take Over is notified to the bank so that when the Home Ownership Loan has been paid in full the certificate retrieval by the new debtor as the buyer who takes over the Home Ownership Loan does not experience rejection from the Bank as the creditor who holds the guarantee for proof of homeownership.

In the *take over* of the Home Ownership Loan, it is necessary to carry out a *take over* agreement so that there is legal certainty for the buyer as the new debtor in taking over the Home Ownership Loan. To have legal certainty, the buyer (the new debtor) should be able to make a sale and purchase before a notary and also ask the Notary to make a Power of Attorney for Certificate So that if the Home Ownership Loan has been paid off, the buyer (the new debtor) will not have difficulty presenting the old debtor and will not get a rejection from the Bank (the creditor) because the name listed on the house certificate on the Bank as collateral for the Home Ownership Credit is still the name of the old debtor.

REFERENCES

[1] D. Siamat, *Manajemen Lembaga Keuangan*. Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, 2001.
[2] H. Raharjo, *Hukum Perjanjian di Indonesia*. Yogyakarta: Pustaka Yustisia, 2009.
[3] B. Sunggono, *Metodologi Penelitian Hukum*. Bandung: Rajawali Press, 2008.
[4] P. M. Marzuki, *Penelitian Hukum*. Jakarta: Prenada Media, 2005.
[5] M. Djumhana, *Hukum Perbankan*. Bandung: Citra Aditya Bakti, 2006.
[6] R. Usman, *Aspek-Aspek Hukum Perbankan di Indonesia*. Jakarta: Sinar Grafika, 2006.
[7] T. Suyatno, *Dasar-dasar Perkreditan*. Jakarta: Gramedia, 2007.