

## Underhand Credit Transfer in Home Ownership Credit (KPR) Agreement

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**Abstract.** *This study aims to analyze the legal aspects of underhanded credit transfers in Home Ownership Credit (KPR) agreements based on applicable laws and regulations and legal protection for the parties in underhanded credit transfers. The approach method in this study is the statute approach. This type of research is a normative legal research. The types and sources of data in this study are primary, secondary and tertiary data. The analysis in this study is perspective. The results of the study indicate (1) that regulations related to home ownership credit (KPR) and credit transfers in Indonesia are regulated in various regulations, including the Banking Law, Financial Services Authority (OJK) Regulations, and internal bank regulations. (2) that underhanded credit transfers do not have binding legal force because they are not in accordance with the principles of credit agreements that require creditor approval. In addition, this practice can pose legal risks for old debtors, new debtors, and the bank. Therefore, efforts are needed to strengthen regulations and socialize the public so that credit transfers can be carried out in accordance with applicable legal procedures so that legal protection for the parties can provide legal certainty.*

**Keywords:** *Credit Transfer; Credit Agreement; Legal Protection; Private Deed.*

### 1. Introduction

Every individual has the right to live in prosperity both physically and mentally with the fulfillment of clothing, food, shelter and a comfortable, healthy and good living environment. The need for shelter (housing infrastructure) is one of the most important needs and is one of the goals of national development that has long been a government program to realize the prosperity and welfare of the

people, namely in the field of settlements and housing.<sup>1</sup>Currently, population growth in Indonesia continues to grow rapidly. One of the primary needs for the community is to have a place to live, which is also rooted in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD 1945) which states that "everyone has the right to live in prosperity physically and mentally, to have a place to live, and to have a good and healthy living environment, which are basic human needs." This is also the basis for the emergence of businesses in the property sector. In the property business, developers provide properties with various types, from simple to large according to market demand, and also provide payment facilities that can facilitate consumers, namely by paying in cash or in installments through the bank. Various work backgrounds make each person have different abilities in providing their place to live.

For home ownership purposes, there are installment facilities provided by the Bank, usually using the Home Ownership Credit (KPR) facility. The high need for housing in housing influences the emergence of the Home Ownership Credit (KPR) facility, it can be said that Home Ownership Credit (KPR) is a credit distribution to debtors provided by the bank for the purpose of buying a house and/or land to be owned, lived in or used by themselves. In addition, Home Ownership Credit (KPR) is also a type of credit facility that is given directly to consumers. This type of credit is called consumer or consumer or consumptive credit because this credit is directly aimed at consumers.

Banks have a primary function as collectors and distributors of public funds, with such banking functions, the presence of banks in society as business entities has a legal meaning and a very strategic role. Credit agreements are made between borrowing customers as debtors and banks as creditors, based on the trust of creditors that debtors will return achievements at a certain time.

One alternative to owning a house is by means of credit through a bank or in the community known as Home Ownership Credit (KPR). In providing assistance/facilities to obtain housing for low-income people, changes are made to the requirements for Subsidized Home Ownership Credit (KPR) whose funding comes from the State revenue and expenditure budget, regional revenue and expenditure budget, and/or other sources of funds spent on the implementation of housing and settlements in accordance with laws and regulations.

The government provides a Subsidized Home Ownership Credit (KPR) system for people with low purchasing power, which provides light installments and low interest rates. Subsidized Home Ownership Credit (KPR) is a home ownership credit/financing that receives assistance and/or ease of home acquisition from the government in the form of long-term cheap funds and home acquisition

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<sup>1</sup>Yunita Maulida et al., 2021, Analysis of Take Over Implementation in Sharia Housing Financing Case Study at Bank Bjb Syariah Cibinong Branch, *Al-Infaq: Journal of Islamic Economics*, (Issn: 2087-2178, E-Issn: 2579-6453) Vol. 12 No. 1

subsidies issued by the Implementing Bank both conventionally and with sharia principles.<sup>2</sup>

Subsidized Home Ownership Credit (KPR) is a home ownership credit that targets people with middle to low incomes. Home ownership through credit is very popular with many people. This is because the financial income capacity of the majority of Indonesian people who cannot afford to buy a house through cash purchases. This helps and encourages the Government to provide subsidized funds for home ownership credit facilities through the banking sector.<sup>3</sup>

Home Ownership Credit (KPR) both subsidized and unsubsidized are basically the same, some things that differentiate them are the low interest rates for subsidized houses so that the installments are light, while without subsidies the interest rate will follow the rate from Bank Indonesia so that the installments tend to increase along with the increase in the value of the interest rate which results in the installments becoming more expensive every year.

In banking practices in Indonesia, the implementation of the credit agreement can be carried out in two forms or ways, namely:

1. Credit agreements made under hand or under hand deeds.
2. Credit agreement made before a Notary or authentic deed.

The transfer of credit that occurs is usually to overcome financial problems and to prevent default which will result in the object of the credit agreement being confiscated by the bank, so the debtor seeks a way out by reselling or transferring what is the object of the credit agreement, in this case the debtor transfers his credit rights or transfers credit for the land and building.<sup>4</sup>

In relation to this, most ordinary people as debtors will try to overcome the problem of bad credit by selling or transferring the object of the agreement to a third party. The process of transferring credit rights like this is often found in practice without the knowledge of the bank and using a deed under hand.<sup>5</sup>This can ultimately cause new problems, because the bank does not have a legal relationship with the new buyer as a third party, which can cause legal uncertainty, especially for the third party.

"Article 28D paragraph (1) of the 1945 Constitution states that: Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal

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<sup>2</sup>"What is meant by Subsidized KPR?" Information Service of the Directorate General of Public Works and Housing Infrastructure Financing, <http://pembiayaan.pu.go.id/faq/faq/p/5-apa-yang-dimaksud-dengan-kpr-bersubsidi/> accessed on June 1, 2024 2025 at 21.52

<sup>3</sup>Blaang. 2016. Housing and Settlements as Basic Needs. Jakarta: Yayasan Obor Indonesia. Page 61.

<sup>4</sup>Widjaya, G., & Muljadi, K. 2005. Debt Guarantee and Liability Agreement. Jakarta: PT. Raja Grafindo Persada. p. 57

<sup>5</sup>Ristanto, S. 2008. Easy to Get Home Ownership Credit Funds. Yogyakarta: Pustaka Grahatama. p. 25

treatment before the law." With this legal regulation, the parties should have the right to obtain legal certainty.

Seeing these conditions, the author is interested in conducting research with the title: "Underhanded Credit Transfer in Home Ownership Credit (KPR) Agreements."

## 2. Research Methods

The approach methods in this study include the statute approach and the conceptual approach. The statute approach is used on the basis of analyzing all relevant laws and regulations with the legal issues being studied.<sup>6</sup>This approach aims to understand the existing legal basis. In addition, a conceptual approach is applied to analyze legal materials in order to understand the meaning contained in legal terms.<sup>7</sup>This approach aims to identify new meanings or test legal terms in theory and practice.<sup>8</sup>In this study, analysis was conducted. The type and source of data in this study are secondary data. Secondary data refers to information obtained from the literature which is the result of previous research. In this study, the method used is the literature technique (study document). In this study, the analysis was conducted prescriptively, namely to provide arguments for the research results that have been achieved.

## 3. Results and Discussion

### 3.1. Regulation of underhand credit transfer in home ownership credit (KPR) agreements

In the Civil Code (BW) that the transfer of rights or transfer of obligations is determined by "novation", because in the Civil Code (Soebekti translation) it is translated as debt renewal. From the articles regulating novation, scholars conclude that what is meant by novation is the replacement of an old obligation with a new obligation.<sup>9</sup>Viewed from the legal aspect of the debtor transfer process carried out in the distribution of Home Ownership Credit (KPR) is the law of novation. Novation is often interpreted as debt renewal, by the Civil Code it is considered as one way to cancel an agreement. Novation is a process of replacing an old agreement with a new agreement, which causes the old agreement to be canceled, so that what applies next is a new agreement with changes to its terms and conditions, and/or with changes to the parties in the agreement.

Article 1413 of the Civil Code, there are 3 ways to renew debt:

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<sup>6</sup>Mukti Fajar and Yulianto Achmad, 2015, Dualism of Normative and Empirical Legal Research, 3rd Edition, Pustaka Pelajar, Yogyakarta, page 185

<sup>7</sup>*Ibid*, p.186

<sup>8</sup>Hajar M, 2015, Models of Approach in Legal and Fiqh Research, UIN Suska Riau, Pekanbaru, p. 41

<sup>9</sup>J. Satrio, 2017, Cessie, Subrogatie, Novasie, Kompensatie & Mixed Debt, Bandung: PT. Alumni, p. 100

- a. If a debtor makes a new debt obligation for the benefit of the creditor;
- b. If a new debtor is appointed to replace an old debtor, the creditor releases him from his obligation;
- c. If as a result of a new agreement a new creditor is appointed to replace the old creditor, the debtor is released from his obligation.

The Civil Code regulates Novation from Article 1413 to Article 1424, namely in the section on the cancellation of an obligation. Novation or renewal of debt can only be carried out between people who are capable of entering into obligations (Article 1414 of the Civil Code). So that the legal act of novation must meet the legal requirements, including:

- a. Done Firmly;
- b. There is Prior Existence of Legitimate Debt;
- c. The occurrence of a change of debt, change of debtor or change of creditor;
- d. Must Meet Contract Making Requirements
- e. Delegation Alone Does Not Constitute Novation

This transfer of debtors will be made and signed in a New Credit Agreement Deed, Debt Acknowledgement, Deed of Power of Attorney to Charge Mortgage Rights/Deed of Sale and Purchase between the old debtor and the new debtor. Article 1417 of the Civil Code states how a person can make a passive subjective Novation, where the debtor offers his creditor a new debtor who is willing to bind himself for the benefit of the creditor or in other words, is willing to pay the debtor's debts. In relation to the process of transferring debtors in Home Ownership Credit (KPR) which is a legal act of novation, it will have legal consequences, namely:

- a. The old debtor will be free from his obligations, and the bank as creditor will no longer be able to collect from the old debtor.
- b. All assessor rights or privileges that were originally attached to the old agreement are not carried over to the new agreement, unless the assessor's rights or privileges are expressly retained by the creditor.

The process of transferring debtors in the distribution of Home Ownership Credit (KPR) is a Passive Subjective Novation, because in this case what happens is a change of debtor with the consent of the creditor with the release of the old debtor from his obligations. From the description of how to make a novation above, we can say that the second and third events are a change of the subject of the obligation, either the debtor or the creditor, so that people state that it is a subjective novation event in the case that what is replaced is the debtor subject. The old debtor is replaced with a new debtor, so we say there is a passive subjective novation, while in the replacement of the creditor subject we call it an active subjective novation. In the transfer of Home Ownership Credit (KPR) rights which is delegative or transfer of debt to a new debtor so that in this

case what is replaced is the debtor not the creditor, it can be said to be a passive subjective novation. The requirements for credit transfer or debtor transfer are almost the same as the requirements for a Home Ownership Credit (KPR) application, the difference is that the old debtor submits an application for debt continuation or debtor transfer. Once the requirements are met, the bank will conduct an interview with the prospective new debtor and for those who are eligible the bank will issue a Debtor Transfer Approval Letter. Based on this Agreement Letter, the notary will process the credit transfer or debtor transfer as with the previous credit agreement.<sup>10</sup>

That due to certain circumstances, the First Party can no longer continue the installments according to the previous agreement, the old debtor submits an application to the bank, a new debtor to replace the old debtor. That the bank agrees by issuing a Debtor Transfer Approval Letter and stating how many more months of installments must be paid by the new debtor with the land and building in question. Novation only occurs if the creditor, after accepting/approving the new debtor person, firmly states that he releases the old debtor from his creditors based on the old agreement and his obligation to perform (further) towards the creditor. In other words, by only accepting the offer of a new debtor submitted by the old debtor, Novation has not occurred, that is why the law requires that Novation there only occurs if the creditor has accepted the offer of the new debtor person, firmly stating that he releases the old debtor from his creditors based on the old agreement and his obligation to perform (further) towards the creditor. In other words, by simply accepting an offer from a new debtor that is put forward by the old debtor, novation has occurred, which is why the law requires that novation only occur if the creditor has accepted the offer from the new debtor, stating explicitly that he is releasing the old debtor.

The existence of a transfer of home ownership credit (KPR) so that people can easily own a house, various financial institutions, for example banks, provide credit facilities to people who want to own a house on credit. This facility is commonly known by the wider community as Home Ownership Credit or commonly abbreviated as KPR.<sup>11</sup>Banks have distributed various housing loans to the community, which in reality will certainly not always run according to the agreed credit scheme. The transfer of credit rights referred to in this case is the transfer of obligations in the form of housing credit installment payments, this action is a delegation, namely the transfer of obligations/replacement of debtors, when there are receivables and is a unilateral action, namely the debtor's action without the knowledge of the bank as the creditor, this is usually called Debtor Transfer.<sup>12</sup>

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<sup>10</sup>Suharnoko and Endah Hartati, 2016, *Doctrine of Subrogation, Novation, and Assignment*, Jakarta: Prenada Media Group, p. 98

<sup>11</sup>Fuady, M. 2013. *Law of guarantee and bankruptcy*. Jakarta: PT Citra Aditya Bakti. p. 67

<sup>12</sup>Hermansyah. 2009. *Banking law in Indonesia*. Jakarta: Kencana.

Transferring a debtor without the bank's knowledge begins with an agreement between the seller (old debtor) and the prospective buyer (new prospective debtor) who will continue to pay the credit installments until they are paid off, either according to the tenor or accelerated.

According to Gustav Radbruch, there are four things that underlie Legal Certainty, one of which is Positive Law, namely the Law and its derivative regulations, including the Regulation of the Minister of Public Works and Public Housing No. 35 of 2021 concerning the convenience and assistance of housing financing for low-income communities which prohibits Debtors receiving subsidy benefits from renting out or transferring ownership of houses obtained using a subsidy program from the government before a period of 5 (five) years, this makes the act of transferring subsidized houses before a period of 5 (five) years have no legal certainty because there is Positive Law that is violated.<sup>13</sup>

Moreover, this kind of Debtor Transfer Process has a weakness, namely if the seller or old debtor dies before the credit is paid off, this will be a problem for the buyer or new debtor when they want to take the original certificate, because the Power of Attorney to Collect Documents has been terminated with the death of the principal, according to Article 1813 of the Civil Code, one of the reasons for the termination of the grant of power of attorney is the death, guardianship, or bankruptcy of the principal or the principal.

Because power comes from the power of attorney, with the death of the power of attorney, the power given to the power of attorney will automatically be lost or terminated. Thus, the recipient of the power of attorney can no longer carry out affairs, in this case taking the certificate in the name of the person giving the power of attorney (who has died).

### **3.2. Legal Protection for the Implementation of Underhand Home Ownership Credit (KPR) Transfers**

Housing is one of the most difficult primary needs to be met, considering that not all levels of society have the financial ability to buy a decent house, especially in the midst of the current economic situation which is still not evenly growing for all people, fulfilling housing needs is still an expensive "thing" to reach. Housing development is very important for the welfare of the people considering that the population tends to continue to increase every year and this will cause a high need for good and decent housing.

In relation to this, the government has made efforts through legal instruments by enacting Law Number 4 of 1992 concerning Housing and Settlements, which among other things in Article 33 paragraph (1) and paragraph (2) states that in order to provide financial assistance/or facilities to the community in building

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<sup>13</sup>Dewi Anjani, 2022, "Legal Review of Underhand Over-Credit Practices in KPR Agreements," *Jurnal Ilmu Hukum* .15, no. 1 accessed on February 12, 2025 at 23.30 WIB

their own homes or having a government house, the government is making efforts with housing credit.

To reduce the risk factor of land and house rights transfer in KPR according to the author, the bank as a creditor must really apply the principle of prudence in providing KPR and must always have confidence based on in-depth credit analysis of the debtor's ability to repay his debt, considering the KPR granting period is relatively long ranging from 5-15 years. Assessment of the character and ability of prospective debtors with clear parameters such as the use of the 6 C principle, according to the author will be able to reduce the risk of land and KPR house rights transfer underhand during the credit. The 6 C principle is a parameter for being able to carry out credit activities in a healthy manner, the 6 C principle is as follows:<sup>14</sup>

#### *1. Character*

Character is a basis for granting credit based on trust, namely the bank's trust that the borrower has positive morals, character or personal traits and has a sense of responsibility to fulfill his obligations.

#### *2. Capacity*

Capacity is an assessment of prospective debtors regarding their ability to pay off their obligations from the business activities they will undertake, which are financed with credit from the bank. So that the bank feels confident that the business to be financed with the credit is managed by the right person.

#### *3. Capital*

Capital is the amount of funds or own capital owned by the prospective debtor. This Capital capability is reflected in the form of an obligation to organize Self Financing up to a certain amount and vice versa must be greater than the credit that will be requested from the bank.

#### *4. Collateral*

Collateral is collateral that will be submitted by the borrower or debtor as collateral for the credit received. The benefit of Collateral is as a safety device if the business financed with the credit fails or other reasons where the debtor is unable to pay off his credit from his business activities.

#### *5. Condition of Economy*

Condition of Economy is the social, economic, cultural and other situations and conditions that influence the state of the economy at a certain time or for a certain period of time which may possibly influence the smooth running of the business of the company that obtains credit.

#### *6. Constraint*

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<sup>14</sup>Teguh Pudjo Mulyono, 1996, Credit Management for Commercial Banks, Yogyakarta: BPFE, p. 48



*Constraints are limitations and obstacles that do not allow a business to be carried out in a certain place, for example, establishing a gas station business in the vicinity of many welding workshops or brick kilns.*

Regarding the replacement of debtors in KPR which is carried out legally with the approval of the bank when viewed from the legal aspect according to the author, it is a legal act of Passive Subjective Novation. This is in accordance with the provisions of Article 1417 of the Civil Code which explains how people carry out a Passive Subjective Novation, where the debtor offers his creditor a new debtor, who is willing to bind himself for the benefit of the creditor or in other words, is willing to pay the debtor's debts.

According to J. Satrio, from the description of Article 1417 of the Civil Code, it can be concluded that the novation initiative comes from the debtor, this novation is also called delegation or transfer.<sup>15</sup>The debtor transfer process in the distribution of KPR-BTN according to the author is a Passive Subjective Novation because in this case what occurs is a change of debtor with the approval of the creditor with the release of the old debtor from his obligations.

Novation in the Civil Code is translated by Soebekti as debt renewal. The law itself does not provide a formulation of what is meant by novation. From the articles regulating novation, scholars conclude that what is meant is the replacement of an old obligation with a new obligation. The word replace means that the old obligation is intentionally abolished and a new agreement is made instead, which gives birth to an obligation to replace the old one. "Intentionally abolished" means that the parties really want it or in other words it is based on us, that novation is always agreed upon. The words in the law justify such an opinion (Articles 1413, 1414, 1415 and Article 1424).<sup>16</sup>Since novation must be agreed upon, the novation agreement must meet all the requirements for the validity of the agreement (Article 1320). The novation agreement itself can be canceled if it contains defects such as error, coercion or fraud. In the event that the novation is canceled, there is a possibility that the old obligation will be revived. It is not always the case that the old obligation will be revived, because in the case of novation it is intended to delete/cancel or correct the old obligation, so the cancellation of the new obligation, for example due to default, does not revive the old obligation, because the novation here has fulfilled its task.<sup>17</sup>

A novation agreement, viewed from the old obligation that is canceled by it, is a liberatory agreement, whereas if viewed from the new obligation that arises as a result of the novation agreement, it is an obligatory agreement. Article 1413 of the Civil Code regulates that novation can occur based on the following:

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<sup>15</sup>J. Satrio, 2006, Assignment, Subrogation, Option, Compensation and Debt Mixture, Bandung: PT Alumni, p. 118

<sup>16</sup>Ibid, p. 100

<sup>17</sup>Ibid, p. 102

1. First, it is mentioned about the replacement of the old obligation with a new obligation for the person who gives the debt (creditor).
2. Second, where a new debtor is appointed to replace the old debtor.
3. Third and last, the event where a new creditor is appointed to replace the old creditor.

From the description of how to make a novation above, it can be said that in the second and third events there is a replacement of the subject of the obligation, either the debtor or the creditor, so people say that the event is a subjective novation event. What is replaced is the subject of the debtor, the old debtor is replaced with a new debtor, then it is said that a passive subjective novation has occurred, while in the replacement of the creditor subject, it is called an active subjective novation. The presence or absence of novation has an effect on the guarantees in the old obligation (Article 1421 of the Civil Code). If there is no novation, then the guarantees in the old obligation remain intact, while if there is novation, it must be reviewed whether the guarantees are installed/agreed to again in the new obligation (Article 1421 of the Civil Code).<sup>18</sup>

Novation only occurs if the creditor, after receiving/agreeing to the new debtor's person, firmly states that he releases the old debtor from his creditors based on the old agreement and his obligations (further performance towards the creditors). In other words, by only accepting the offer of a new debtor that is put forward by the old debtor, Novation has not occurred, which is why the law requires that Novation only occurs if the creditor has received the offer of the new debtor's person, firmly stating that he releases the old debtor.

Meanwhile, the characteristic that indicates the existence of Novation here is that the acceptance of a new debtor, followed by the release of the old debtor, creates a (new) obligation between the creditor and the new debtor, which simultaneously eliminates and replaces the (old) obligation between the creditor and the old debtor. The occurrence of the change of debtor is likely that the new debtor is a family member of the old debtor who is more capable, or feels that they have been indebted so that they voluntarily provide themselves to replace the old debtor to fulfill their obligations to the creditor. From the results of the credit transfer research that occurs in practice using subjective novation is rarely done. Because it is the same as making a new sale and purchase agreement. Where nk starts from the beginning again and the costs incurred are also the same as the new agreement. This is what is avoided by third parties. Because they think dealing with banks takes a long time. Therefore, debtors and third parties take shortcuts, credit transfers using the services of a notary. The time is fast and the goods/house can be received immediately and just continue the credit to the bank.

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<sup>18</sup>Ibid, p. 105

According to the author, in addition to the credit transfer process through a private deed directly by means of the "Debtor Transfer" mentioned above, there is another process that is quite safe to do, although not as perfect as a direct debtor transfer, namely the transfer of rights to land and buildings using a private deed by a notary by making a Land and Building Sale and Purchase Agreement and a power of attorney to collect the certificate at the bank when the installment period is complete and paid off.

The creation of a Power of Attorney to Sell and a Power of Attorney to Take a Certificate is carried out by the community to seek a simpler and more efficient legal breakthrough, however, according to the author, the creation of this power of attorney does not provide legal strength and protection for the buyer, for the following legal reasons:

1. Granting power of attorney is a legal act of representation to represent someone in carrying out certain legal acts. The authority of the recipient of the power of attorney is limited to carrying out certain legal acts for and on behalf of the grantor of the power of attorney. After the legal act is completed, the recipient of the power of attorney must be accountable to the grantor of the power of attorney. Granting power of attorney does not include legal acts to control or own

something from the object of power. Thus, with the granting of power of attorney, there is no transfer of land rights, so that according to the law even though the buyer holds the power of sale, the land rights are still in the hands of the previous KPR owner. In this situation, a power of sale cannot be made in the form of an absolute power of attorney that cannot be revoked because it is contrary to laws and regulations. Therefore, the power of sale is not an absolute power of attorney, it can be unilaterally revoked by the grantor of the power of attorney.

2. The author also believes that the power to take the certificate if the mortgage is paid off also has a weakness, namely that the certificate will only be handed over to the debtor and/or his heirs.

The steps and actions that need to be taken by banks to provide legal protection for credit if they find out that a debtor has been transferred under their control are as follows:

1. The bank can warn the debtor to immediately pay off the entire remaining debt because even though the mortgage house has been transferred/sold, legally it does not eliminate the debtor's obligations, in other words the debtor remains responsible for paying off his debt.

2. The debtor's action or deed by selling a mortgage house, without the Bank's permission, the Bank as the mortgage house collateral holder, can cancel the sale of the house, if the bank wishes. Legally, there has never been a sale and purchase, because for the validity of the sale and purchase (including the house),

there must be a deed of sale and purchase and a change of name certificate or change of name.

3. The bank can take legal action to execute the mortgage collateral object that has been bound by the Mortgage Right, in this case the creditor is the holder of the Mortgage Right, who can carry out the execution if the debtor defaults based on the Mortgage Agreement and the Deed of Granting of Mortgage Right..

The principle of legal certainty according to the author aims to ensure that both business actors and buyers obey the law and obtain justice in the implementation of consumer protection, and the state guarantees legal certainty. Legal protection for the rights of buyers above must be obtained by each buyer at every stage of the transaction process, both at the pre-transaction stage (since the beginning of the production process), the transaction stage (buying and selling process) and at the post-transaction stage (utilization and use of residential homes). Legal protection at each stage of the transaction then becomes the norms of protection for buyers.

Protection is used to prevent worse consequences for debtor customers. While legal protection in this case in Home Ownership Credit, especially those who receive the transfer of rights/credit transfer to continue home credit installments on the object of the agreement carried out with a sale and purchase agreement and power of attorney or agreement under hand according to the bank, namely when viewed from the strength of the deed made before a Notary. The theory of legal protection when associated with problems that occur in the field, the law has protected the buyer if at any time a dispute arises over the sale and purchase, because even though it was made under hand, the sale and purchase agreement has met the requirements of the agreement and the principles of the agreement regulated in civil law, where an agreement will be binding and become law for the parties who have made the agreement (the principle of *pacta sun servanda*), so that the agreement can be a means of evidence, although it has the power of proof only strong, not perfect.

#### **4. Conclusion**

Legal Regulations for the Implementation of Home Ownership Credit (KPR) Transfers a mechanism for transferring rights and obligations on home loans from old debtors to new debtors or from one bank to another. The transfer of Home Ownership Credit (KPR) can be done through two main mechanisms, namely through banks and underhand. The regulations governing the Transfer of Home Ownership Credit (KPR) refer to Law Number 4 of 1996 concerning Mortgage Rights, Law Number 10 of 1998 concerning Banking, and the Financial Services Authority Regulation (POJK) concerning the credit system and credit agreements. Transfer through a bank has stronger legal clarity because it involves the approval of the bank as a creditor. Meanwhile, underhand transfer has a greater legal risk because it does not involve the bank directly and can give rise to potential legal disputes. Legal protection for buyers in cases of buying and

selling houses and land underhand is very weak because buying and selling underhand does not result in the transfer of land rights. So that legally the house and land still belong to the previous KPR owner (old debtor). Legal protection for buyers can only be obtained by submitting an application for a determination to the local district court to validate the buying and selling process that has been carried out underhand. Meanwhile, for banks as creditors, they are protected by the KPR Agreement and the Mortgage Law, considering that the Mortgage gives a priority or precedence to its holder (*droit de preference*) and the Mortgage always follows the object that is guaranteed in the hands of anyone who is the object (*droit de suite*).

## 5. References

### Journal:

Yunita Maulida Dkk, 2021, Analisis Implementasi Take Over Pada Pembiayaan Hunian Syariah Studi Kasus Pada Bank Bjb Syariah Cabang Cibinong, Al-Infraq: Jurnal Ekonomi Islam, (Issn: 2087-2178, E-Issn: 2579-6453) Vol. 12 No. 1

"Apa yang dimaksud dengan KPR Bersubsidi?" Layanan Informasi Direktorat Jenderal Pembiayaan Infrastruktur Pekerjaan Umum dan Perumahan , <http://pembiayaan.pu.go.id/faq/faq/p/5-apa-yang-dimaksud-dengan-kpr-bersubsidi/> diakses tanggal 1 Juni 2024 2025 pkl. 21.52

Dewi Anjani, 2022, "Tinjauan Hukum terhadap Praktik Over Kredit di Bawah Tangan dalam Perjanjian KPR," *Jurnal Ilmu Hukum* .15, no. 1 diakses pada tanggal 12 Februari 2025 pukul 23.30 WIB

### Book:

Blaang. 2016. Perumahan dan Pemukiman sebagai Kebutuhan Pokok. Jakarta: Yayasan Obor Indonesia.

Widjaya, G., & Muljadi, K. 2005. Penanggungan Utang dan Perikatan Tanggungan Menanggung. Jakarta: PT. Raja Grafindo Persada

Ristanto, S. 2008. Mudah Meraih Dana Kredit Pemilikan Rumah. Yogyakarta: Pustaka Grahatama.

Mukti Fajar dan Yulianto Achmad, 2015, *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan Ke3, Pustaka Pelajar, Yogyakarta

Hajar M, 2015, *Model-Model Pendekatan Dalam Penelitian Hukum dan Fiqih*, UIN Suska Riau, Pekanbaru

J. Satrio, 2017, *Cessie, Subrogatie, Novasie, Kompensatie & Percampuran Hutang*, Bandung: PT. Alumni

Suharnoko dan Endah Hartati, 2016, *Doktrin Subrogasi, Novasi, dan Cessie*, Jakarta: Prenada Media Group

Fuady, M. 2013. *Hukum jaminan dan kepailitan*. Jakarta: PT Citra Aditya Bakti  
Hermansyah. 2009. *Hukum perbankan di Indonesia*. Jakarta: Kencana  
Teguh Pudjo Mulyono, 1996, *Manajemen Perkreditan Bagi Bank Komersil*,  
Yogyakarta: BPFE

**Regulation:**

The 1946 Constitution of the Republic of Indonesia

Civil Code (Burgerlijk Wetboek)

Law Number 1 of 2011 Concerning Housing and Residential Areas State Gazette  
of the Republic of Indonesia Number 7 of 2011

Law Number 4 of 1996 Concerning Mortgage Rights on Land and Objects Related  
to Land, State Gazette Number 42 of 1996

Law Number 10 of 1998 Concerning Amendments to Law Number 7 of 1992  
Concerning Banking State Gazette of the Republic of Indonesia Number  
182 of 1998

Regulation of the Minister of Public Works and Public Housing of the Republic of  
Indonesia Number: 35/PRT/M/2021 Concerning Ease and Assistance in  
Housing Financing for Low-Income Communities, State Gazette of the  
Republic of Indonesia 2021 Number 1492