

## Judicial Review of Grants House of KPR-BTN Related to Credit

**Ruslin**

*Faculty of Law, Yos Soedarso University, Surabaya, Indonesia  
Email : [ruslinfh@gmail.com](mailto:ruslinfh@gmail.com)*

### **Abstract**

*Grants As a unilateral legal act, it is stipulated in the third book of the Civil Code (BW) that mentions grant is a one-sided agreement (Genzrydig) because only one party has the obligation (the grantee), based on this agreement while the party receiving the grant has no obligation at all. In grant jurisdiction can be done by hand or made by notaries. The grant there shall be no element of coercion on the donor, which means the grantee seeks to commit a crime against the grantee whose purpose is to be quick to obtain the grant and this is confirmed in Article 1321 Civil Code (BV) which reads, "Not a word agrees legally if the agreement is given karma erroneous or obtained by coercion or fraud".*

**Keywords:** *Judicial review, Grant house, KPR-BTN, Credit*

### **I. INTRODUCTION**

Entering the complexity of human life in this era of globalization is increasingly urgent to get things in Practically and instantly. Human needs are always met with consideration of economic value, this is considering the limited time to do everything that is part of life, although the needs of the need is vital in character. Given the above conditions, forcing the public to legalize other matters relating to the interests for the effectiveness of time spent.

In the case of what happens in the process of obtaining the right to a house acquired by grant, it often avoids the standardized procedures in the house ownership regulation. Practical ways are taken with care to make grant agreements with only the closest people (family, neighbors in the area where the grant is present), to the exclusion of future impacts.

Often the recipient grants housing KPR-BTN from the giver the grant does not know that the right to housing rights of KPR BTN is a Hak Guna Bangunan (HGB) certificate, and if it wishes to increase its right to the right of procedure it must first change the certificate written on the donor's grant. Grants are unilateral legal acts which include civil law. According to Subekti (1992: 107), the grant is a treaty with the grantee, in his free and irrevocable lifetime, delivering goods for the grantee's acceptance of the surrender.

Grants under the Civil Code. Article 1666, that the grant is: An agreement by which the beneficiary, in his free time and irrevocably, deposits an object for the purposes of the grantee receiving the surrender, the Law does not recognize other grants other than grants among persons -people who are still alive.

As for the conditions to be met for the subjects (grantor and beneficiary), the provisions can be found in Article 1676 Civil Code (BV) stipulating that all persons are able to grant and grantee unless by law they are declared incapable or not competent.

Speaking of grant issues (instead of debtors) is closely related to the application of law and its alternatives, given the many grants that become issues both reviewed and mastery as well as in terms of legal clarity.

Based on the description in the introduction above, then the problem which is discussed in this research are: How does the process of transferring ownership of KPR-BTN housing to grantee before the loan is paid off?

Each activity has a specific purpose in accordance with the issues raised, in this case I have the objectives of which are as follows: Want to know juridically about the process of transferring property right, home KPR-BTN to the grantee before the credit repaid.

### **II. METHODS**

In this study using two research methods namely juridical normative research and empirical juridical research methods. Normative juridical research that is focused on studying the application of norms or norms in positive law by using various laws and regulations such as grant provisions according to KIIHPerdata (BV) Regulation of the Board of Directors of State Savings Bank Nomor: 18 / PDBIR / 1986, Letter of Bank Directors State Savings Number, 27BPR/ BTN / 1986, Letter of Directors of State Savings Bank Number: 304 / DII2BKR / 1987 relating to the problems that exist. The method of empirical juridical research in this research is and the result of collecting and finding data and information through library study to assumption or basic assumption which used in answer

problem in this research induction of verification test at recent fact contained in society. Thus the truth in a study has been declared reliable without having to go through the process of rationalization.

### **III. RESULTS AND DISCUSSION**

#### **Process of Transfer of KPR-BTN Household Rights to The Grant Receiver Before Credit is Lossed**

That a grant is granted free of charge and irrevocable means that a grant was made in advance means that the modifier may withdraw the grant without the permission of the Party granted. If before the grant has been made it has been agreed that the grant can be withdrawn, then the grant is void. This way if we see in terms of the subject, then the intended here is the grant itself. It is an agreement with the name of the recipient, in his free and irrevocable lifetime, handing a rod to another person. With the word "free" is actually only aimed for the achievement of one party only, while the receiving party does not need to give counter achievement.

Instruction of the Minister of Home Affairs No. 27 of 1973 dated 23 December 1973, which, among others, contains any of the above-mentioned agreements to be made by a deed by and before the Land Deed Authority (i.e. the PPAT appointed by the Minister of Home Affairs and the Heads of Districts due to his position) , as referred to in Article 19 of Government Regulation (PP) Number 10 of 1961 and other implementing regulations.

In the practice of housing grants on housing KPR BTN often still occur selling the house by not fulfilling the procedures as stipulated in the mortgage agreement and its implementing regulations Based on the research conducted, generally the mortgage loans and Bank Tabungan Nagara which are involved by the debtor to the grantee, done under sale and purchase agreement or using notary deed. In general, the debtor (user) who transferred the right to the KPR-BTN house before the credit term (installment) ends to the grantee, they contact the developer to sell back to the public and want to quickly, so if the developers are not immediately able to sell them back, (the debtor) will sell them by buying and selling under the hands.

In the process of transferring ownership of the KPR-BTN housing and the first owner's debtor (user) to another buyer before the credit is settled there are three kinds of transitional process:

#### 1) Agreement under the hands of a notary public

Generally house grant agreements on housing KPR-BTN by the debtor to the grantee is done on paper seal and witnessed by local RT and RW where the object of the grant agreement is located. Sometimes grant agreements under this hand, witnessed by the close family or neighbors of both parties as witnesses. This is more often done than using a notary deed.

The process of transferring property rights through agreements under the hands of unknown or unknown notaries, the debtor (user) with other buyers or the next buyer, entered into agreements or agreements on sale and purchase of houses. The house grant agreement under the hands as mentioned above is poured on a sealed paper by the local RT and RW where the grant object is located. If all the provisions of the provisions that have been agreed by both parties are fulfilled, then the grant is deemed legitimate and running.

The settlement of the transfer of letters on the ownership of the house on behalf of the first party (the debtor), is done in the future, if the installment or installment is over. Once considered legitimate, the second party (the next recipient) shall have the right to inhabit or renovate the building of the house to which the object of the grant is granted.

The transfer of ownership process above also has the responsibility of reciprocity don obligation to the next recipient party to regularly and continuously or continuously make payment of installment to the State Savings Bank until the end of the installment period.

#### 2) The agreement of transfer of right is under the control of a notary

Noting that the ownership certificate or the certificate is not submitted by the first party (debtor) before the installment period is settled then after the agreement between the first party (debtor) before the installment period is completed then after the agreement between the first party (debtor) or to the next recipient, the party facing the notary will make the deed of grant in the process of transferring the right of ownership or house of KPR-BTN.

The agreement of transfer of rights under the auspices of the notary is essentially the same as the transitional rights agreement under the hands of a notary public, only the process of the transitional agreement is clearly known as the grant agreement made by a notary.

Housing of KPR BTN housing which is still in the crediting period as mentioned above, whether done by deed under the hands unnoticed by a notary or using notarial deed is grant not yet valid and it is said to be valid if the status of ownership of right of house (certificate) is in the hands of debtor, this does not create the vulnerabilities incurred in the future for the sake of the subsequent recipients.

### 3) The process of transferring ownership of houses KPR-BTN with permission of BTN party

Above has been mentioned about the process of transfer of ownership of housing KPR-BTN before paid off and without permission and the State Savings Bank. The process is a process that is not in accordance with established procedures. The State Savings Bank itself as a creditor, actually provides the possibility for the debtor to transfer the house KPR-BTN to other parties based on certain requirements set by the State Savings Bank. The possibility that if necessary and important by the State Savings Bank.

Opportunities for the transfer of rights to housing of KPR BTN can be in the form of grants made by the State Savings Bank as a creditor, or by the first buyer (user), for certain reasons and allowed by the State Savings Bank. The above possibility is given considering the progress of the implementation of the provision of mortgage loans by the State Savings Bank arising from the need to move the rights to the house from the facility and still in a state guaranteed for the mortgage loan of Bank Tabungan Negara.

The real needs evolving within the community need to be positively responded to and attributed to the transfer of rights to housing. This effort is an effort in order to reduce monthly mortgage repayment KPR-BTN, so that everything can still be controlled and directed not to harm purpose and security of the provision of housing loan, then issued the Regulation of the Board of Directors Number 18 / PDBIR / 1986 regarding Debit Transfer / Letter of Debt Jo Letter of Directors Number 27 / BPR / BTN / 1986 on Debit Transfer Form, Jo Letter of Directors Number 304 / DII / BKR / 198? on Debit Transfer / Debt Transfer, this letter of the Board of Directors is submitted to the branch of the State Savings Bank throughout Indonesia.

The debtor can be transferred in the following circumstances.

1. The debtor has difficulty to continue installment payments, and the borrower concerned remembers and over approves to transfer his / her rights and obligations as a debtor, mortgage loan to another party (new debtor)
2. The debtor is in arrears and cannot be contacted by the Bank because the debtor does not inhabit the house and does not inform the actual address.
3. The Borrower for any reason reminds to transfer the right to the credit house to another party (new debtor), through the State Savings Bank credit facility (Article 2 of the Regulation of the Board of Directors Number 18 / PDB/ DIR / 1986).

Criteria for the transfer of ownership process through the State Savings Bank for the new (next) debtor who will receive the transfer of ownership rights to the housing of KPR BTN:

#### 1) Fixed income earners

Is a debtor who in work receive a steady income from the performance of work that he has done. Requirements that must be fulfilled by the old debtor and the new debtor against the transfer of property rights for the permanent income borrower are:

##### a) Terms of the old debtor

1. Submit letter of affirmation of approval of loan application.
2. Submit a mortgage agreement between BTN and the applicant.
3. Submit a copy of proof of payment of fire insurance premium and not in arrears.

##### b) Terms for new debtors

1. A letter from the head of the relevant agency
2. A certificate of withholding of salary.
3. Certificate of income details.
4. Photocopy of appointment letter as employee.
5. Letter of requirement to continue KPR-BTN.

## 2) Non-permanent income borrowers

Is a debtor who in work receive income not fixed from the work performance that has been done. Usually work or private entrepreneur. Non-permanent income earners this, also has requirements that must be met, among others:

- a) Certificate of income details (average family income per month).
- b) Certificate of business type undertaken.
- c) Letter of requirement to continue installment of KPRBNB.

All borrowers conducted through and with the knowledge of Bank Tabungan Negara, the agreement is made before a notary that has been appointed by the State Savings Bank and adjusted to the area where the location of the housing is located. If the new debtor candidate has fulfilled the requirements of the debtor's transfer as the applicant for the home ownership loan, the Letter of Confirmation of the Debtor Transfer Approval (SPPAD) is issued.

With the signing of letters and deeds related to the transfer of the debtor, thereby all rights and obligations and the old debtor is transferred to the new debtor, that is, to own the KPR-BTN house originating and the transfer of rights with the obligation to continue the old debtor credit installment (Pasa14 PD No. 18 / PDBmIRJ1986).

## IV. CONCLUSION AND SUGGESTIONS

### A. Conclusion

Housing of KPR BTN housing related to credit. Even if the grant house is still associated with the credit provided that both parties are not concerned especially to the donor who has been willing to give it away for free. If the donor grants the house with any credit that has not yet paid off. However, it can also vice versa as long as both parties do not make a problem then the repayment of credit can be repaid.

### B. Suggestions

Next I suggested that might be useful to further instill legal awareness for the public at large:

- a. In order to house the KPR BTN in accordance with its function is a place of residence for the community, of course, must get special attention in order to guarantee legal certainty for the owner, especially in the case of transitional rights process.
- b. We recommend that any changes intended to transfer the right to house KPR-BTN, we should not be too guided by customary law, so that we adjust to the progress of the era which for now is being actively build / enliven the rule of law as a tool of social control.

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