

DAFTAR ISI

PENGANTAR PENYUNTING	i
ASPEK HUKUM PENGENDALIAN PENCEMARAN AIR	1
✓ THE LEGAL INSTITUTION OF HOUSE TRANSACTION AT PERUM PERUMNAS WITH HOUSE OWNERSHIP CREDIT AT BANK TABUNGAN NEGARA PERSERO TBK IN MAKASSAR CITY	11
KAWIN DI BAWAH TANGAN/ KAWIN <i>SIRI</i> DI KOTA MAKASSAR (<i>Analisis Persepsi dan Dampak Hukum</i>)	27
KUALIFIKASI KEJAHATAN SEBAGAI PELANGGARAN HAK ASASI MANUSIA BERAT DI INDONESIA	47
PROSES HUKUM YANG ADIL DALAM KONTEKS SISTEM PERADILAN PIDANA DI INDONESIA	61
DESENTRALISASI DAN REFORMASI HUKUM : Kasus di Sumatera Barat	75
PENGUNAAN TANAH UNTUK PEMBANGUNAN PERUMAHAN YANG BERWAWASAN LINGKUNGAN DI KABUPATEN GOWA (<i>Suatu Kajian Yuridis Formal</i>)	95
POLIGAMI DALAM HUKUM ISLAM	107
BIODATA PENULIS	120
RESENSI	122
OBITUARI	124



THE LEGAL INSTITUTION OF HOUSETRANSACTION AT PERUM PERUMNAS WITH HOUSE OWNERSHIP CREDIT AT BANK TABUNGAN NEGARA PERSERO TBK. IN MAKASSAR CITY

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Abstract

The property business is one of indicator showing the developed and underdeveloped of economy in one regency or state because it absorbed a lot of capital, labors, and other support manufacture industry. The supplying of property has been the government program through Perum Perumnas as one of property developer assigned to provide the adequate house for lower economy community and PT. Bank Tabungan Negara Persero Tbk as the fund provider institution in form of house ownership credit based on the decree of Financial Ministry Number 49/IV/1974, house transaction through KPR-BTN created some legal institution namely the legal institution of house order, the legal Institution of Transaction and the Institution of KPR-BTN transaction . The Content and Form of this Legal Infrastructure generally less understandable by the buyer candidate, so ti make possible to create the loss.

Key words : *Property business-legal Institution*

A. INTRODUCTION

Property business developed simultaneously with the population growth getting larger and needs the facility of business place and adequate house. Specially for house, government make the program of housing providing from lower economy community that has been started from the old Government (Ordex Baru) through Ministry of People House and capability to materialize the simple house /the very simple house development amount 600.000 units house in five

years (1992-1997). The successful of old government in developing RS/RSS has fulfilled most community that has not yet possessed the house at that time. In addition, government were assumed capable to provide the employment in a large number because the house industry involved many support industries as well as private developer (Kompas, November 27, 2004).

The role of Perum Perumnas as the implementer of government policy to provide the house for community further regulated in the government regulation (PP Nomor 15 Tahun 2004), where in the article (2) letter B said that in the certain condition Perum Perumnas conducted the task given in the effort to fulfill the house need for the community level that has lower income.

The implementation of government regulation by Perum Perumnas were constrained by the limitation of fund and low affordable of community. Therefore, government appointed the bank institute to participate in funding the house payment for community in form of subsidy house ownership credit. Based on the decision letter of Financial Ministry (SK Menkeu RI Nomor 49/IV/1974), one of the bank appointed by government as the provider of house ownership

credit is PT. Bank Tabungan Negara Persero Tbk.

The sale and buying of house built by Perum Perumnas were conducted through KPR-BTN by involving three parts namely, the developer as the implementer of house project and settlement directly as the sale, house buyer or usually user act as the debitur and BTN as provider/provider of KPR or Creditor. The form of sale and buying with the related third parts create some legal agreement institution that generally less understanding by the buy the candidate/debitor.

B. SCOPE OF PROBLEM

The subject of this research will focus on the legal institution House transaction provided by Perum Perumnas with the facility KPR-BTN.

C. THE OBJECTIVE AND THE BENEFIT OF THIS RESEARCH

The aim of this research was to know the legal institution of house transaction provided by Perum Perumnas with KPR-BTN. The benefit of this research were expected to give the thought contribution for the development of law science particularly business law.

D. THEORETICAL BACKGROUND

1. The definition of Agreement

The agreement were formulated in the article 1313 KUHPdata stated that the action of one person or more restricting themselves to one or more persons.

Many civil Law scholar generally said that the definition existing in the article 1313 KUHPdata above are not complete and too wide.

The incomplete definition in the article 1313 KUHPdata make the law scholars make the definition aiming to accomplish the comprehension towards the legal agreement. The idea of this law scholars for example :

Subekti (1979 : 1) said that the agreement is an event where someone make agreement to other people or where two persons make the agreement to implement it.

Wirjono Prodjodikoro (1981:17) said that the agreement is the legal relationship about the property of two parts in this case, one parts make agreement or considered they agree to conduct one thing while

the other parts have rights to claim the implementation of this agreement.

From the above definition, Salim (2003 :4) said that the contract must fulfill some aspects, namely :

1. There is rule system
Legal system in the contract can be divided into two type namely the writing and oral. The legal system of writing contract is the rule existing in the regulation, jurisprudence, and treaty. While legal system of the oral contract is the law that appear, grow, and live in the community. For example free sale and buying, yearly sale and buying, and etc. This concept derived from the traditional law.
2. Law subject
The other term of law subject is "rechtperson", "Rechtsperson" defined as the rights and obligation support that become the subject of law in contract law is the creditor and debitur. Creditor is the borrowers while debitur is the creditor
3. Achievement
Achievement is what become the rights of creditor and the obligation of debitur. Achievement consisting of :
 - a. Giving anything
 - b. Make something

c. Nothing to make

4. Agreement

In the article 1320 KUHPerdata, it found the four legal requirement of agreement. One of the word is consensus. The consensus is the suitability of the intention statement between any parts.

5. Legal Consequence

Every agreement constructed by some parts creating the legal consequence. The legal consequence is the appearance of rights and obligation. The rights is the enjoyable thing while the obligation is the burden.

To protect the implementation of rights and obligation among the parts, KUHPerdata article 1320, stated the legal requirement of agreement, namely :

1. Agree to tie themselves
2. Capable for the agreement
3. Knowledgeable about the agreement
4. Rightful things

The first requirement is they agree to tie themselves and the second requirement is capable to conduct the agreement sometimes called the subjective requirement. Due to this requirement must be fulfilled by those who make the agreement (legal subject in this agreement), if it can not be fulfilled, this agree-

ment can be cancelled. While the requirement number 3 or about the certain things and requirement number 4 is the rightful thing called the objective requirement because this requirement must be fulfilled by the agreement object (legal object in the agreement), if it can not be fulfilled, the agreement cancel upon the law.

Viewed from the legal requirement of agreement in the article 1320 KUHPerdata. Asser Rutten (Mariam Darus 1989 :75) differ the agreement become two parts namely :

1. The core parts (*Wezenlijk Oordeel*)
2. the peripheral parts (*non wezenlijk oordeel*)

The core part of this agreement called the essential aspects, while the peripheral parts consisting of natural aspect and accident. The essence aspect is the characteristic that must exist in the agreement. The characteristic determining or causing the agreement created (*Constructive Cardeel*) as the agreement among the parts and the object of agreement. The natural aspect is the natural trait of agreement that inherently exist in the agreement. While the accident aspect

is the aspect that must be contained strictly in the agreement. For example, the place of settling the conflict, If it is differed between the natural aspects with accident, it can be said that natural is the essence of agreement regulated by the law although some parts may avoid it or replace while accident is the supplement aspect provided by the parts where the law unregulated it.

2. Sale and Buying Agreement

The sale and buying agreement create two side of civil legal namely the legal of things and the legal of agreement. This said that in the point of thing law, sale and buying create the rights for two parts on the claim in form of submitting the thing in one side and the payment of sale price in the other side. while from the agreement side, sale and buying is the form of agreement creates the obligation in form of submitting the sold thing by seller and the submitting of money by the buyer to the seller.

The definition of sale contains the action replacing or transfer the goods/thing with the expectation to receive the payment.

While word "Buy" is an action to possess the thing or goods that still in the other mastery by submitting a few money to the goods owners. The formulation of sale and buying was also given by some legal scholar as follows :

Subekti (1981 :63) said that the agreement of sale and buying is the agreement where one part restricting themselves to submit the own rights on the goods from other parts to pay the price that has been promised.

Salim (2003:49) said that the agreement is the agreement made by the sale and buying parts to submit the sale and buying object to the buyer and has rights to receive price and the buyer obligate to pay the price and has rights to receive the object.

From two idea above, it can be said that the moment of creating the sale and buying agreement when the agreement occurred which then created the rights and obligation of seller and buyer. Therefore, in the agreement of sale and buying often called as the obligator agreement. With this obligator characteristic, it proved that the agreement of sale and buying has not yet replaced the owner-

ship rights, it is only create the rights and obligation for seller and buyers.

3. Credit Agreement

The definition of credit derived from the Greek language i.e. *Credere* means the trust or trustful. Relating with the word "trust", Tjiptonugroho (1973:5) said that the core of credit is the trust, namely the aspect that must be hold as the red thread crossing the philosophy of credit actually, whatever form, variation and diversity and from whatever come from and to whosoever.

Article 1 point 1 regulation number 8 year 1998 about Bank stated that credit is the providing of money or claim equalized with or based on the agreement and approval of borrowing and lends between bank and other parts to obligate the borrower to pay full their credit the certain time by charging the interest.

Subekti (1989 :41) said that the credit agreement actually is the borrowing and lending agreement where the regulation were not decided in specific form, so it can be made under the official document provided by notary both writing and oral.

Mariam Darus (1983: 28)

said that bank Credit agreement is the pre agreement of money transfer or submission. This agreement is the result of consensus between the giver and the creditor.

The credit agreement were not regulated in bank Regulation so it obey to Book II Bab XIII article 1754 to article 1758 KUHPerdata about the agreement of borrowing and lending.

Article 1754 KUHPerdata said that the borrowing and lending is the agreement where the first part giving to other part a series of goods completely finish because of usage, with the requirement that the second part returning the same goods completely.

According to Budi Utomo (2000:123) in order to receive the credit proposal by the debitur candidate has fulfilled the conditions decided by Bank and it was well known with 5 C namely:

- 1) *Character* (the character of buyer candidate). This can be known by asking their relationship environment
- 2) *Capital* (the basic capital of buyer candidate). Do the debitur candidate posses the previous capital to start a new business.
- 3) *Capacity* (the capability of

debitur candidate). In this case it is necessary to analyze the capability of debitur candidate to pay full their credit. It doesn't means lead to the business activity.

- 4) *Collateral* (the available guarantee provided by debitur candidate). In article 8 UU Number 10 year 1998. There were no obligation for debitur to give the guarantee but by existing the "trust aspect" Bank as credit provider asking for guarantee and collateral because the guarantee had task to speed and protect, giving the rights and authority of bank to get the full payment from the debitur.
- 5) *Condition of Economy* This is very impotent to be analyzed particularly relating with credit given to them assumed voluntarily. For example when the economy crisis occurred and the bank interest increase 36 % per year so the business advantages for debitur is only to pay the bank interest.

4. Provider Bank of KPR facility

The provider of KPR facil-

ity were regulated in the decision of State Ministry of People house Number 02/KPTS/1990 about the supplying of house and settlement supported by the facility of KPR, said that KPR was the credit given to the community with the fixed and unfixed income of household income maximum Rp. 900.000 per months, for KPR can be larger type i.e. from Type 21 to type 70, while for household with maximum income Rp. 450.000 per months, KPR given with type 15 to 21.

One of the bank appointed by the government to conduct the people house funding is PT Bank Tabungan Negara Persero Tbk. Based on the decree of Financial Ministry RI, Number 49/IV/1974.

E. RESEARCH METHOD

1. Research location

Research location conducted at Perum Perumnas and Bank Tabungan Tabungan Negara, cabang Makassar by considering that Perum Perumnas has been the government developer and Bank tabungan Negara Persero Tbk as the provider of KPR facility for lower community, therefore is

can be obtained the related document with the research object.

2. The Technique of Collecting Data

In collecting the data, research instrument used were the library research from the result of research, journal, magazine, newspaper, and form of house transaction with KPR facility obtained from Perum Perumnas and BTN.

3. Data Analysis

The obtained data were then analyzed qualitatively and presented in form of description analysis.

F. THE RESULT OF RESEARCH AND DISCUSSION

The results of research on the transaction agreement of the house provided by Perum Perumnas with facility KPR-BTN, it was obtained the description that there were three parts in the agreement namely :

- a. Perum Perumnas as the developer and then sold to the lower economy community (consumers)
- b. PT. bank Tabungan Negara Persero Tbk. Cabang Makassar as the provider of House Own-

ership Credit facility (KPR) or creditor.

- c. Buyer (user) as the buyer and receiver part of KPR-BTN

Three parts of this agreement created three legal institution and possessing the different legal relationship namely :

1. House Order Agreement Institution (PPR)

The agreement of house order is the agreement indicating the willing of buyer candidate to buy the house built by Perum Perumnas. Therefore the buyer candidate fill the form sheet of house buying proposal provided by Perum Perumnas.

The buyer candidate fulfilling the requirement contained in PPR will be invited by Perum Perumnas to conduct the selection of location by enclosing the evidence of prepayment money.

The payment of prepayment is also the requirement to conduct the house order (PPR). Other requirement must be fulfilled by the buyer candidate is personal identity card and 2 (two) stamps Rp. 6.000.

According to the writer, the agreement of house order disadvantaged the buyer candidate because of unlimited time as

explained in the article 3, saying that the duration of this agreement workable since the signing of the house order agreement letters (PPR) to the end of the time stated in this agreement (KPR-BTN).

There is not limitation time when the house ordered by buyer will be submitted in PPR giving the time for Perum Perumnas to determine when the house will be settled. It can be (1) one year, 2 (two) years, (5) five years. This situation make the buyer candidate didn't know whether the order house receivable in the intended time, while the buyer candidate has paid the prepayment of house building.

The other weaknesses of PPR was the available agreement were not conducted in Notary/under hand so Perum Perumnas may cancel partially PPR every time, if the building house can not be sold based on the decided target.

2. Transaction (sale and buying) Agreement Infrastructure

The arrangement of house sale and buying provided by Perum Perumnas with facility

KPR-BTN can be conducted in 2 (two) ways namely:

1. The Agreement of House Sale and Buying and the submission of land use

This type of sale and buying transaction conducted with the buyer candidate if the used land to build the house is the land with the management rights status. The management rights is one of the rights on the land that were not regulated in agrarian regulation (UUPA), but regulated in the Ministry of Internal Affairs number 1 year 1977 (PMDN No. 1 year 1977), where in the article 1 said that the holder of management rights can submit some parts of land to the third parts based on the condition determined by Perum Perumnas.

In the article 5, the agreement of house sale and buying and the submission land use saidthat this official document workable as the report of submission, while the use of new land are legal and perfect by the issuing of Building Rights.

From the article 5 above, it

can be known that the sale and buying of house between Perum Perumnas and buyer (user), both parts signing the agreement of sale and buying but the official document of sale and buying, so the agreement functioning as the meeting report of submitting building usage from seller to buyer. This form of sale and buying agreement constructed by Perum Perumnas to assist the buyer to make the credit transaction in BTN as the Bank provider of KPR. The other aspect were the certificate of Land Ownership Rights and Building usage rights were still in the process of publishing in the National Land Board where the time take the time at least three months.

The regulation of rights and obligation in this agreement and submission of land use regulated in some following article :

Article 1 indicated what sold and submitted usage in this day replaced and moved to second part and all the advantages, and loss started today become their

own (or by the second parts).

Article 2 indicated what sold and submitted usage with this official document replaced and moved to second part in feasible things (in feittelijke toestand) today and about this situation, the second part in another day will make any claims.

This two articles really make loose the buyer parts because giving the burden for all the appeared loss after signing this buying and sale agreement to the buyer parts and may not claim to Perumnas. While in the signature of new agreement were the step of land and building submission excluded the permission of land and building use as stated in article 6.....that this official document workable as the meeting report of submission, while the permission of new land use legal and complete by the publishing of HGB certificate.

The submission of sale and buying object in article 1459 KUH Perdata stated that the ownership of sold goods

cannot move to buyer if the submission has not yet conducted based on the decided submission. So the guarantee rights on goods still exist. Self submission excluded from the submission of goods as mentioned in the house sale and buying agreement provided by Perum Perumnas but must be submitted the rights on the goods (HGB and IMB). Therefore, the house seller (Perum Perumnas) was not only enough to submit the house to stay by the buyer but they have to submit in form of *Juridische* levering, namely the buying and sale agreement must be conducted during the submission of land ownership evidence issued by National Land Board in form of HGB certificate. During the process of HGB and Ownership certificate, judicially it can not be the ownership on the sale and buying object.

- b. The Official document of Sale and Buying
The usage of sale and buying document for the house provided by Perum Perumnas if the location/land used to build

the house was the ownership or Building certificate or Building Use Certificate. The form of sale and buying with the official document will giving the rights transfer judicially from seller to the buyer after signing the agreement.

3. KPR-BTN Agreement Institution

1. The proposal of KPR-BTN

The proposal of KPR-BTN is the proposal conducted by the house buyer candidate of Perum Perumnas to BTN that has already signed KPR-BTN. The conditions to obtained KPR-BTN are as follow :

- a. Submitting the proposal completely with the documents
- b. After completing the documents, BTN will invite the applicants of KPR-BTN by asking the assistance of Perum Perumnas to conduct the interview. In the interview, the applicant of KPR-BTN will be asked about all the data submitted to BTN and analyzed by us-

ing method 5 C, namely :

1. Character

In this session, BTN generally want to know details about the character of debitur candidate

2. Capacity

In this session, BTN ry to analyze whether the fund proposed is normal or exceed from the available capability of debitur. BTN will see the resources of income of applicant by correlating with the daily needs.

3. Capital

This parts is the important aspect for BTN because it relating with the debitur candidate needs the credit. Therefore BTN is necessary to review the potency of available capital for example house price Rp. 100 million, prepayment 20 % from the house price = Rp. 20 million. The proposed credit 80 % from the house price = Rp. 80 millions. According to BTN, total credit really burden the debitur candidate, so BTN will give KPR facil-

ity with spread between prepayment 50 % and house sale price 50 % = Rp. 50 millions.

4. Collateral

BTN will appraise the collateral (land and building) given by debitur, whether comparable with the requested credit. This is important if the debitur were not capable to fulfill their credit, the collateral will be auctioned in the future to settle their credit.

5. Condition of Economy

This relating with the economy condition of creditor in the time they propose the credit, and the economy condition for five years later.

2. KPR-BTN Credit Transaction

By receiving the proposal and the fulfillment of term and conditions in SP3K by debitur candidate, Perum Perumnas based on the request of BTN invites the debitur candidate to implement the credit transaction by bring:

a. KTP and House

order Agreement

- b. Batara or Pradana Account Books
- c. Prepayment Receipt and Card
- d. Bringing the prepayment and receipt

In the article 1 point (1) the credit agreement between Bank Tabungan Negara (BTN) and debitur stated that by signing the agreement, debitur agreed to draw and use total credit Rp. In this case, the signature of this credit is the date of credit drawing, debitur obligated to fulfill their obligation based on the agreement.

If comprehending the above sentence, the agreement given with the signature of credit agreement by debitur showed that the moment of agreement appearance was in form of consensus while the credit materialization is the realization of real agreement.

3. Credit Guarantee and Protection system

Debitur guarantee and the protection system

regulated in the article 3 KPR-BTN as follows :

- a. to make sure the repayment of all things based on the rule of this agreement or because whatever it must be paid by debitur to bank, both the primary borrowings, credit, interest and other cost, so the debitur giving the guarantee of goods (property) for example house and land mentioned in the particular official document both notaries and under hand based on the consideration and bank Condition, while the official document of guarantee was the part that can not be separated from this credit agreement.
- b. Debitur agreed and obligated and protected themselves to submit all the documents both original and legal and approve all the property submitted as the guarantee including in the article (1), to bank used to implement the property protection as the credit guarantee and further mastered by Bank to the full payment of all their credit.

The rule of article 3 from this agreement KPR-BTN were not fully implemented because it pointed as the guarantee by debitur as credit guarantee, Building certificate or Ownership Rights Certificate or ownership Certificate. Because at the time signed the agreement of sale and buying and credit transaction, the certificate of ownership evidence has not yet existed so as the substitution the debitur signing the letter of authority. This form can not be pointed as the guarantee rights as regulated in article 4 point (1) regulation Number 5 year 1996 about the guarantee rights said that the object of guarantee rights can only be conducted towards the rights on the land namely:

- a. Ownership rights
- b. Business rights
- c. Building rights

G. CONCLUSION AND SUGGESTION

1. Conclusion

The sale and buying agree-

ment with the facility of KPR-BTN involving 3 (three) parts namely, Perumnas, Buyer, and BTN and created 3 (three) forms of legal infrastructure namely : the agreement of house order (PPR), the agreement of sale and buying and the agreement of KPR-BTN. The form of legal institution were related each other and regulating the different rights and responsible between one and another.

2. Suggestion

It is better the requirement contained in the legal institution of house sale and buying agreement were not merely constructed to protect the interest of Perum Perumnas (sale/developer) and Bank parts but also pay attention the balance of rights and responsible of buyer as the receiver of KPR. The objective is to protect the buyer from the exploitation efforts conducted by the dominant position in the agreement.

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