



## Binding Agreement for Sale and Purchase of Land in a Notarial Manner Whose Certificate Object Bounding in the Right of Dependents

Rayhan Isha Mahendra<sup>1</sup>, I Wayan Yasa<sup>2</sup>, Firman Floranta Adonara<sup>3</sup>

<sup>1</sup>Student of Faculty of Law, University of Jember

<sup>2,3</sup>Lecturer Faculty of Law, University of Jember

### ABSTRACT

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Cases of notarized land sales and purchase legal agreements where the object of the certificate is tied in mortgage rights were discovered in many housing estates in Jember. The origin of this issue was the seller's desire to avoid bad credit by transferring his mortgage rights. This research's technique is normative law, which is based on a conceptual and statutory approach. The collected research results indicate that the legal force of a notarially agreed-upon binding sale and purchase agreement does not meet the objective elements of the agreement, and the provision in the form of agreement performance is inconsistent with article 1320 of the Burgerlijk Wetboek. The agreement deed also breaches Law No. 4 of 1996 Article 11(2) letter g concerning Mortgage, which relates to the guarantee of the mortgage right not to transfer the object of the mortgage right, so rendering the agreement void. The legal effect of this notarized, binding sale and purchase agreement is that the house purchased on credit becomes a mortgaged property at the bank, allowing the bank to sue the debtor for the remaining credit payments. Efforts to settle the legal settlement of this sale and purchase agreement, include the creditor issuing subpoenas to the debtor requiring quick payment of all outstanding debts. The creditor may also sell the pawned goods at a public auction to settle the debtor's account.

### Keywords:

Agreement, Land Sale and Purchase, Dependent Rights

### I. INTRODUCTION

A legal agreement is a contract that binds two or more parties that sign it and abide by the provisions that have been pledged. Book III of the Burgerlijk Wetboek contains laws governing contract law that can bind two parties that wish to bind themselves, or what is known as a Legal Agreement (Gunawan Johannes and Bernadette M. Waluyo, 2021). Additionally, agreements can be stated to have policy conformance with one or more parties. A contract is an allocation in which one party promises or swears to another party, or in which two parties guarantee each other's achievement of a goal. This chance gives rise to a connection between two individuals known as an engagement. According to Indonesian Civil Law, a contract is a legal bond that imposes responsibilities and confers rights on the persons involved.

*Corresponding Author: Rayhan Isha Mahendra*

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According to Article 1313 of the Burgerlijk Wetboek, activities that bind the parties can result in an overeenkomst, or the formation of an agreement between the parties. The agreement includes a statement of the parties' intentions or goals, which will be drafted in accordance with the desired outcomes. The legal impact of the existence of a legally binding agreement between the parties is an increase in obligations and rights for the parties who have bound themselves to the agreement. In this aspect, the obligation is to fulfill a victory originating from one party or part of a party against another party who has the right to this victory.

In the world of banking exist credit agreements and sale-and-purchase agreements, which are the agreements between the parties that result in these accomplishments. Banks in Indonesia must adhere to the idea of caution when conducting business in the banking industry (*prudential banking*). In addition to providing financial services, the bank acts as an intermediary between individuals who need money and those who have more. Banks act as financial mediators when conducting business, relying on "trust" from society to guide the implementation of banking activities (Dwi Nur'aini Ihsan, 2014). Article 1 paragraph 2 of Law No. 10 of 1998 pertaining to Amendments to Law No. 7 of 1992 pertaining

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to Banking explains that a bank is an institution that collects customer deposits and distributes them to the broader community in various forms, such as debit, credit, and other forms, for the benefit of society.

According to Law No. 10 of 1998 Article 1 number 2 concerning Amendments to Law No. 7 of 1992 Concerning Banking, banking consists mainly of the collecting and transfer of funds to consumers in general. To guarantee that public funds are efficiently safeguarded, banks must provide assurance that the cash they collect and disperse is adequately protected (Muhammad Djumhana, 2012). Banks must be able to transfer these monies to more productive enterprises in order to fulfill development goals. Character (*Capability*), capital (*Capital*), and collateral (*Guarantee*) are among the 5C lending criteria that banks must meet in order to execute credit operations (economic conditions). This concept serves as a signal to banks when evaluating prospective borrowers. This idea is widely acknowledged in the banking industry and ensures that credit is distributed in accordance with the function and purpose of the loan. By using this method, it is possible to reduce bank losses and nonperforming loans.

The government launched a service program in the form of Housing Loans (KPR) to assist the public in financing their fundamental necessities, such as pricey boards. The Bank offers the community a Housing Loan Program (KPR). Home Ownership Loans (KPR) are under the category of consumer credit. (Nur Suci Atmawati and Muhammad Saifi, Dwiatmanto, 2015). In other words, Home Ownership Loans (KPR) are utilized to finance goods and services that directly meet the needs of the borrower. In other words, Home Ownership Loans (KPR) are utilized to finance goods and services that directly meet the needs of the borrower. Financial institutions offer Housing Loans (KPR) to make it easier for individuals to build, renovate, or expand their homes through the use of low-interest monthly payments. Home Ownership Loans (KPR) are in high demand by the general population, resulting in unanticipated changes and fluctuations by banks, namely the *Non-Performing Loan* ratio.

Home Ownership Credit (KPR) is a low-interest loan issued by a bank for the purchase of a home. Even though Home Ownership Credit (KPR) does not use cash or direct transactions, it is nonetheless deemed profitable because it makes it easier for people to own a home or board (Iswi Hariyani, Cita Yustisia and R. Serfianto D. Purnomo, 2018). The goal or premise of a Home Ownership Loan (KPR) is to provide a way for financing the purchase or building of a home through a bank loan, with periodic repayments. The objective is to make it easy for consumers to pay off the loan little-by-little according to the specified period and not be burdened by high economics while purchasing a home.

Home Ownership Loans (KPR) have the potential to help overcome finances in buying a house. However, in practice there are several issues that need further legal

scrutiny (Iswi Hariyani, Cita Yustisia and R. Serfianto D. Purnomo, 2018). It is hoped that the credit agreement can be implemented in line with the agreement's stated wishes, but it is often the case that the agreement cannot be implemented as planned under certain circumstances. Bad credit is an example of the severe legal issues that frequently arise in this country.

In general, poor credit is a circumstance in which the debtor or borrower is deemed ineligible to continue repaying or paying the agreed obligation. This may occur if the debtor or borrower lacks sufficient funds, is unable to pay, or faces business paralysis, among other reasons. If the debtor is too deep in delaying payments, the bank will provide an increase in interest based on the terms of the loan, which the longer the amount will be, the higher it will be. So that the debt tends to grow, resulting in the borrower's inability to repay it. Consequently, the borrower transfers the land title to the bank's mortgage rights, which can have legal repercussions.

Several housing estates in Jember were found to contain instances of notarized land sales and purchase agreements where the goal of the certificate is a mortgage. The origin of this issue was the seller's intention to transfer his mortgage rights in order to prevent a poor credit rating. The seller sells land that is encumbered by a bank's mortgage, and the buyer agrees to the sale and is aware that the land is encumbered by a bank's mortgage. The buyer and seller then execute a binding sale and purchase agreement that specifies the conditions agreed upon by both parties, The buyer will receive a house and a plot of land from the seller in exchange for the agreed-upon sum, and the seller will issue a receipt. The second party or buyer will reimburse the remaining installments to PT State Savings Bank Tbk until the debt is settled. The signature of the Sale and Purchase Deed prior to the PPAT for the transfer of the certificate's name will occur after the buyer has received the certificate from the bank.

Contrary to Law No. 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to Land Article 11 Paragraph 2 letter G, which provides that the attainment of a mortgage right or debtor's refusal to transfer the mortgage object casts doubt on the legal force of the preceding agreement. The case then revealed that the vendor marketed the property using a mortgage (KPR), which was paid in cash and in installments over time. The vendor installs a payment mechanism in phases in order to establish a contractual connection with the consumer. The agreement between the buyer and seller is established in front of a notary, but certain conditions must be met before it can be regarded legally binding for both parties. The buyer acknowledges that the certificate agreed upon as the subject of the sale and purchase remains tied to the seller's bank credit collateral in relation to the unfinished credit arrangement. This is the result of the seller being unable to meet his bank credit requirements on time, the seller or debtor being unable to pay off the certificate from the bank, forcing the seller to wish to sell the house,

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which is still in a mortgage state with the bank. This difficulty frequently arises in a sale and purchase agreement when the object of the certificate is guaranteed by the bank, because the majority of people desire to obtain a home at an affordable price, but do not consider the potential future ramifications. Therefore, it is intriguing to do a more in-depth analysis of notarized binding land sale and purchase agreements in which the subject of the certificate is secured by a mortgage.

## II. FORMULATION OF THE PROBLEM

Based on multiple connected explanations, the researched problem has been formulated as follows:

1. Does the notarized land sale and purchase agreement with a mortgage that is secured by the subject of the certificate have legal force?
2. What are the legal ramifications of a notarized property sale and purchase agreement whose subject is subject to a mortgage?

## III. LITERATURE REVIEW

### Banks concept

A bank is one sort of enterprise associated with savings, money circulation, and deposits, among others. According to the financial dictionary, the terminology originates from the French word *banque* and the Italian word *banco*. Both terms signify owner or cabinet, which relates to the two most essential duties of a commercial bank: lending and depository. (Arifin Zainul, 2002). Banks are financial entities that collect and distribute public monies in the form of savings, current accounts, and time deposits, as well as loans, both directly and indirectly. The distribution of funds is intended for working capital, investments, and deposits, as well as for the long and medium term.

A bank is defined legally by Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. It portrays the bank as an institution whose primary duty is to collect money from individuals and distribute it to others, so expanding their life expectancy. (Muhammad Djumhana, 2012). It is clear that the fundamental purpose of banking is to collect assets from the broader public, direct these assets to certain locations, and then offer financial aid to these areas and the assets they contain.

### Agreement Concept

Article 1313 of the *Burgerlijk Wetboek* defines an agreement as when one or more parties enter into an agreement with one or more other parties to achieve a reciprocal aim. Two parties must consent to be bound by the terms of the agreement for it to become a legally enforceable contract. According to the well-known definition of engagement in Indonesian civil law, engagement is a connection that results in legal rights and responsibilities for the parties. According to Article 1234 of the Dutch Constitutional Law, the following rights and duties apply:

- a) Give something;

- b) Do something; or
- c) Didn't do anything

Article 1233 of the *Burgerlijk Wetboek* states that an agreement can be formed either by agreement or by law in the agreement. According to Article 1352 of the *Burgerlijk Wetboek*, human activities in the form of an agreement are legal consequences that might give rise to agreements that are born from law, originate primarily from law, or arise as legal consequences.

### Credit agreement

Credit is the primary business activity in the banking lexicon, as the major source of income for banks is derived from payments from credit operations like interest and profit. The Greek word "Credere" meaning "trust" is the source of the name "credit". Evidently, the fundamental concept of credit is trust. All parties participating in the financing process must have confidence in one another's ability to meet their obligations in terms of timeline, accomplishments, and outcomes. Chapter I article 1 number 11 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 about Banking defines credit as an agreement between a bank and another party in which the borrower is obligated to return the debt with interest after a specified length of time.

The Fives letter of Credit, or 5C, is an analytical method frequently used by the banking industry to establish whether or not an individual can be trusted with credit. Included in this are the following criteria:

- a) Character (Character)
- b) Capacity (Capacity)
- c) Capital (Capital)
- d) Condition of Economi (Condition of Economi)
- e) Collateral (Collateral)

The structure and interpretation of credit agreements are not specifically spelled out in the law. Article 1 number 11 of Banking Law Number 10 of 1998 defines credit as the distribution of money or bills that can be equivalent to it., based on a loan arrangement or other agreement between the bank and another party requiring the borrower to repay the debt with interest after a specified period of time. On the basis of this definition, a credit agreement can be regarded as a lending and borrowing arrangement between a bank as a creditor and another party as a debtor, requiring the debtor to repay the debt after a specified period of time with the supply of interest.

### Mortgage Concept

According to the Big Indonesian Dictionary, dependents are things that are utilized as collateral, whereas the guarantee itself refers to dependents on loans taken out. The definition of mortgage rights in Article 1 Number 1 of Law Number 4 of 1996 respecting Mortgage Rights on Land and Objects Related to Land states that the debtor provides the creditor with guarantees for specific sized immovable goods and products determined by the government. to

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guarantee debts. According to Budi Harsono, a Mortgage Right is the control of land rights that grants the creditor the capacity to take action regarding the land that is used as collateral. The mortgage right is not to be physically controlled and utilized; rather, it is to be sold if the debtor defaults, with the revenues serving in whole or in part as full payment of the debtor's obligation to the creditor.

Mortgage rights are collateral rights that are encumbered on land rights, as described in law No. 5 of 1960 pertaining to the Basic Agrarian Regulations, which explains the following other objects that are an integral part of the land for repayment of certain debts, thereby giving certain creditors priority position over other creditors. Mortgage rights can be interpreted as guarantees for the repayment of certain debts. Under addition to land, additional items like as buildings, plants, and other works that are an intrinsic component of the land may be used as collateral in mortgage rights.

### Agreement Deed Concept

The transfer of property rights must comply with existing legal requirements, particularly in light of the recent settlement of land acquisition and sale owing to interest. As evidence of land agreements and transactions, a Sale and Purchase Deed is necessary for the most common transfer of land rights at the Land Office. The deed is used to link the sale and purchase of land in order to provide legal assurance regarding the validity of the property acquisition and sale, which requires extra legal procedures. Each party shall be afforded legal protection for agreements and land transfers with other parties. Registration of land cannot be justified by a binding sale and purchase document because, in many instances, the land in question is not yet standing permanently or temporarily until the sale and buy process is finalized., This is not an acceptable excuse, as the prerequisites for registering the transfer of land rights are a sale and purchase agreement drawn up in front of the land registrar.

Burgerlijk Wetboek recognizes two forms of deed, namely authentic deed and private deed. As stated in Article 1867 of the Burgerlijk Wetboek, it reads as follows: "An authentic deed or private deed is used as evidence". A written deed is a type of evidence, but a legal deed and a private deed are used in practice in different ways. A deed is regarded to be original if it is written in accordance with the law. The conditions for drafting the original deed of transport are met by the notary and other officials who have been explicitly appointed to register the deed. KUA or Religious Affairs Office officials who prepare marriage certificates and Property Deed Making Authorities (PPAT) who prepare land sale and purchase deeds are examples of public officials. This argument asserts that the original deed carries significant weight in court because it was drafted by powerful officials. If the document is signed by a person who is not authorized to do so, it will not be recognized as an official document.

### Certificate Concept

Land certificates are proof of ownership and rights of a person over land or land. Land certificates issued by the National Land Agency (BPN) are very vital state documents. Printed by Peruri who has been entrusted by BPN, land certificates can be made independently or through PPAT services. According to Article 3 of Government Regulation No. 24 of 1997 Concerning Land Registration, the aim of land registration is as follows:

- a) Providing legal certainty and legal protection to holders of rights over a plot of land, apartment unit and other registered rights so that by proving himself as the holder concerned.
- b) To make it easier for interested parties, including the government, to access the relevant data by providing them with information.
- c) To provide Land Office information on registration maps, land registers, measurement papers, land books, and name lists.
- d) In order to create organized land administration.

According to Article 19 paragraph 2 letter c of Law Number 5 of 1960 pertaining to Basic Agrarian Regulations and Article 32 paragraph 1 of PP 24/1997 pertaining to land registration, certificates proving land rights are admissible as evidence of the strongest kind.

## IV. METHOD

This form of research, namely doctrinal or normative legal research, is employed to resolve legal challenges associated with this topic. Therefore, the concept and law approach was applied in the development of this research. Non-legal, secondary, and primary legal materials are employed in the analysis of the law and are gathered through literature reviews.

### V. Discussion

#### 1. The legal effect of a binding sale and purchase agreement that has been notarized and whose certificate is enshrined in a mortgage

Article 1313 Burgerlijk Wetboek explains the definition of an agreement is a legally binding agreement that binds one or more individuals to other or more individuals. An agreement that is recognized or can be said to be valid in the sphere of law is one that satisfies enough legal conditions for the agreement between individuals to be acknowledged by law or legislation.

The sale and purchase agreement in the problems above has not formed a sale and purchase law that can be said to be complete, because the agreement continues to depend on certain accomplishments in completing the concept of perfection in a sale and purchase agreement in general.



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Therefore, this sale and purchase agreement is a conditional agreement. In general, it is said to be conditional because there are requirements that are employed as hangers or stringent conditions in the case of suspending the implementation of a flawless or flawless agreement if an achievement is not met, as indicated in Article 1253 of the Burgerlijk Wetboek.

The obligation will be canceled if the conditions outlined in the conditional agreement that cancels have been met. If all or portion of the requirements have been met, the situation will revert to its former state. The original circumstance was as if the engagement had never occurred or had been extended for an additional period of time after the engagement term had expired. According to Article 1265, paragraph 1, Burgerlijk Wetboek says that connected to provisions that abrogate are provisions that, when completed, terminate the engagement and impose requirements on the creditor to return the received object. According to this article, provisions that abolish are conditions that, if met, terminate the debtor's engagement and its responsibility to return the received object. Article 1266, paragraph (1) Burgerlijk Wetboek, non-fulfillment of responsibility towards one of the parties in an agreement with an equal number of parties provides a provision for dissolving or terminating the agreement. The reciprocal agreement stipulates that each side must fulfill its responsibilities. As a safeguard for parties acting in good faith in reciprocal agreements, Burgerlijk Wetboek provides that the conditions for annulment must always exist, even if the agreement is not terminated separately. According to Article 1266 paragraph (2) of the Burgerlijk Wetboek, the judge must be requested to annul the agreement. If parties are unable to fulfill their commitments or obligations based on the agreement, the agreement is born with the legal condition that it is null and void. As evidenced by the agreement, the buyer intends to make payments for the remaining sale and purchase of the building and land at the agreed upon period. According to the commitment contained in the deed of agreement, the certificate may not be redeemed by the seller who serves as security for the seller's debt to the bank.

Section 5 of Book III In Article 1457 of Burgerlijk Wetboek, which regulates sales and purchases exactly, it is stated that a sale and purchase agreement is one in which one party promises to supply the item of sale and the other party agrees to pay the stipulated amount. The sale and purchase agreement imposes reciprocal obligations on the parties carrying out the sale and purchase agreement. As evidenced by this formulation, both the vendor, who must deliver an item, and the consumer, who must pay the purchase price for the item, have responsibilities. This is a form of involvement in the transfer of objects; essentially, this is money with a value and a quantity that has been decided and specified by agreement. This is analogous to and in conformity with the argument made in Article 1333 paragraph (1) of the

Burgerlijk Wetboek, which states that a principal is required for an object for which at least the type has been determined. In this case, the seller is required to supply an item and is entitled to payment, whereas the buyer is forced to pay and is entitled to receive an item. Not available on the sale and buy agreement if this condition is not met. Prior to acceptance, the sale and purchase agreement does not automatically result in the transfer of property rights from the seller to the buyer for the object to be purchased.

The agreement for the sale and purchase of building and land rights differs from the general sale and buy agreement outlined in Burgerlijk Wetboek. The fulfillment of agreements to purchase and sell the rights to buildings and land requires a certain legal perspective. In accordance with the Burgerlijk Wetboek, the sale and purchase of land and building use rights are mandatory in general. In Burgerlijk Wetboek, a sale and buy agreement is defined as an agreement referred to in Articles 1457 to 1540 of the Civil Code, which is known by a specific name and has unique requirements in the law.

The process of transferring the object that has become the subject of an agreement between the seller and the buyer is then carried out. This agreement has not resulted in the transfer of the seller's rights to the object of the agreement to the buyer. Article 1458 of the Burgerlijk Wetboek permits the transfer of additional rights following the transfer of the object in accordance with the terms of the agreement. According to the Civil Law, a transfer happens when the ownership rights to an object are transferred, and it is evident from a legal standpoint that there is a legal and actual transfer of ownership rights, such as in a bank credit arrangement. Burgerlijk Wetboek noted that once a permanent agreement is reached, the sale and purchase agreement would be declared legally binding, obliging the buyer and seller to enter into the arrangement.

In accordance with Article 1320 of the Burgerlijk Wetboek, a contract or agreement must satisfy the conditions for whether or not it is acceptable, which include a lawful purpose, specific matters, relevant skills, and agreement. The agreement is regarded binding and legitimate in terms of the law if it contains the following four provisions: (1) an unprohibited reason; (2) a specific thing; (3) the ability to print an engagement; and (4) the agreement of those who bind themselves.

It was determined that the agreement in question breached law, public order, norms, and decency because it lacked the objective principles of the agreement, such as the existence of the subject matter in the object of the agreement and object clauses in the form of accomplishments. The agreement must contain provisions that are permitted by law or legislation, in which case the sale and purchase agreement remains valid despite the fact that the subject of the sale and purchase agreement has changed to a mortgage and the seller has transferred the mortgage without the bank's knowledge.

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The transfer of rights in the sale and buy agreement is a type of agreement that has the potential to produce issues due to the criteria listed below: (a) The land title that is the subject of the agreement is currently underwritten by the bank; (b) the unwritten conditions are not satisfied; and (c) the written conditions are not satisfied.

There will be no transfer of rights if there is a concealed flaw in the sale and purchase agreement between the seller and the buyer since the land is still under the status of a bank mortgage, thus there will be no transfer of rights. In terms of business ethics, the notary recommends the debtor to repay the bank's credit loan and then purchase and sell a home.. However, in many instances the debtor refuses because he is unable to fulfill his credit obligations in financial terms and must transfer credit, despite the fact that the certificate remains mortgaged by the bank.

In the problem under investigation, the notary prints the deed of agreement on the sale and purchase notwithstanding the existing legal regulations, notably the non-fulfillment of the provisions in article 1320 of the Burgerlijk Wetboek, which results in the lack of objective provisions in the agreement, This is plainly not in conformity with article 11(2) letter of Mortgage Law No.4 of 1996, which specifies that the mortgage buyer is not permitted to transfer the mortgaged property. As a result, the notary's printed deed of sale and purchase agreement has no legal effect, as the buyer's protection was not considered and the document did not conform with the applicable legal regulations.

### **2. Legal Repercussions of Binding Sale and Purchase Agreements with Certificates Bound in Mortgage Rights**

As a result of an act committed to achieve an effect sought by the perpetrator, this is explained in the law under the term legal repercussions. The act of carrying out legal actions, namely activities carried out in obtaining a desired effect on the law. Legal consequences are repercussions that result from legal occurrences and can take the following forms: (1) The emergence of penalties when actions that violate the law are committed; (2) The emergence, extinction, or modification of a legal relationship between two or more legal subjects in which the obligations and rights of one party confront the obligations and rights of the other; (3) The emergence, extinction, or modification of a legal situation.

The response of debtor customers in delegating payment obligations or transferring credit is to find a way out of defaulting on creditors by selling or paying off credit payments to other parties who are able or willing to pay off their credit installments. The transfer of credit rights or credit obligations is carried out in line with the regulations of the creditor bank, i.e., by transferring the debtor, so that the creditor bank can handle procedurally any problems that may emerge, which are the debtor's responsibility. In practice, some individuals continue to transfer credit via sales and buy

agreements and power of attorney. As a result, the buyer who is in charge of delivering these obligations can still be involved, and the first debtor is still responsible for all the risks that are connected to the bank.

Default is governed by Article 1238 of the Burgerlijk Wetboek, which states that the debtor is negligent if the agreement itself specifies that the debtor would be deemed negligent after a specified amount of time has passed or if he has been found negligent by a warrant or other similar action. Sanctions and penalties, among other legal repercussions, are some of the effects defaulting debtors experience; (a) If the District Court grants the debtor's request, the debtor must pay court costs because the debtor's explanation of the situation is incorrect; (b) The debtor is obligated to pay for the agreement and to annul it with the payment of damages if it may be carried out (Article 1267 Burgerlijk Wetboek); (c) If the commitment is to derive something, as soon as a default occurs (Article 1237 paragraph (2) Burgerlijk Wetboek), the implication shifts to the debtor; (d) If the agreement has reciprocity, the creditor may request cancellation and termination of the agreement through a judge (Article 1266 Burgerlijk Wetboek); (e) The debtor is obligated to make good on expenses that the creditor has borne (Article 1243 Burgerlijk Wetboek);

The agreement given to the owner of the first mortgage cannot remove the mortgage, which is his responsibility; and if the mortgage object is transferred by the mortgage right or in the course of regular business the rights have been relinquished, the owner of the mortgage right may get some or all of the compensation for the mortgage right in the repayment of the collateral; This requires written consent from the mortgage holder before the mortgagee can surrender the rights to the items that are subject to the mortgage.

The parties can establish a written agreement and specify it in the agreement's contents to be charged with the responsibility of upholding their responsibilities thanks to the strong relationship between obligations and rights demonstrated in the agreement process. The debtor who transfers the mortgage on the home (the seller) to the debtor who gets the transfer of credit must be able to pay their credit obligations jointly (the buyer). The result of this action is the appearance of risks for the debtor who receives the transfer since every action related to the transfer of an item of ownership of a building that is still subject to the bank's mortgage specified in the credit agreement is an issue (buyer). Problematic since the numerous mortgage rights archives will still serve as the depositor's collateral at the lending bank; when the mortgage is a part of the credit agreement and is specified in its terms, as well as when ownership has been registered in the debtor's name and the debtor is attempting to sell the property to a third party.

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## VI. CONCLUSION

1. This notarized binding sale and purchase agreement does not satisfy the objective terms of the agreement, and the paragraph regarding the manner of agreement execution is inconsistent with Article 1320 of the Burgerlijk Wetboek. The agreement deed also breaches Law Number 4 of 1996 Article 11 paragraph (2) Letter g Concerning Mortgage Rights, which specifies that the mortgagee's obligation is not to transfer the object of the mortgage; therefore, the agreement is invalid.
2. The legal effect of a notarized, binding sale and purchase agreement is that a residence bought for on credit becomes a mortgaged asset in the bank, so allowing the bank to compel the debtor to pay off the remaining credit payments. This is due to the fact that the proof of the third-party sale and purchase agreement is not yet an official deed, as all ownership paperwork are still being underwritten by the bank.

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