



## The Role of the Notary in the Creation of Subsidized Housing Procurement Agreements between Consumers, Developers, and PT. Bank BTN Mataram Branch

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### ABSTRACT

The objective of this research is to explain and analyze the role of the notary in the creation of subsidized housing procurement agreements between consumers, developers, and PT. Bank BTN Mataram Branch. It also aims to identify the common issues faced by consumers in the process of purchasing subsidized housing through credit. The approach methods used in this study include the Statute Approach, Conceptual Approach, Analytical Approach, and Sociological Approach. The findings are as follows: First, the absence of the notary's role can result in the invalidity and incompleteness of the subsidized housing ownership agreement. Second, without the involvement of a notary, key responsibilities such as verifying the completeness of documents, ensuring compliance with regulations. The absence of notarial verification on documents like the property ownership certificate, the identity of the parties involved, government permits, and other supporting documents can result in the invalidity of the transaction. Without a notary, the conformity of the agreement with the applicable laws and regulations is not guaranteed, including the examination of the validity requirements according to both positive law and Islamic law. Moreover, without a notary, the formulation of contract clauses that violate regulations related to housing subsidies may occur, jeopardizing the legal certainty and protection of the parties involved.

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## INTRODUCTION

Adequate housing is a human necessity worldwide, whether in developing or developed countries. Economic growth that does not keep pace with rapid population growth makes it difficult for individuals to own a home. The high demand for housing leads to rising land prices. High land prices make it increasingly difficult for people, especially those with low incomes, to own a decent home in their desired location. This situation drives individuals to choose housing complexes, so they do not need to find land to build a house. This issue has been addressed by entrepreneurs in the housing sector. These entrepreneurs offer homes in various sizes and types to meet the desires and needs of individuals.

According to Law No. 1 of 2011 on Housing and Settlement Areas, housing is defined as: "a collection of houses that are part of a settlement, whether in urban or rural areas, equipped with infrastructure, facilities, and public utilities as a result of efforts to provide decent and habitable homes." Homeownership in housing complexes can be obtained in two ways: cash or credit. For low-income people, purchasing a home with cash is considered very burdensome. Thus, many individuals opt to buy homes on credit. According to Law No. 10 of 1998 concerning the Principles of Banking, credit is defined as: "The provision of money or claims equivalent to money based on a loan agreement between a bank and another party, where the borrower is obliged to repay their debt after a certain period with an agreed interest.

Even purchasing a home on credit is still considered challenging by many due to the down payment (DP) that must be prepared and the high installment interest rates. In response, the government provides subsidies to low-income people for homeownership in housing complexes. The KPR (Home Ownership Credit) subsidy by the government is an effort to increase homeownership among low-income people, allowing them to purchase homes on credit with lower down payments and interest rates. For parties involved in the sale of homes on credit, legal protection will be provided if they have written proof of a housing purchase agreement on credit. A sale and purchase agreement is a reciprocal agreement between one party and another. One party transfers ownership rights to a property, while the other agrees to pay a price, consisting of a sum of money, as compensation for acquiring those ownership rights.

In practice, the form of agreement and the legal relationship binding each party is as follows:

1. Law No. 10 of 1998 on the Principles of Banking. 2 R. Subekti, *Various Agreements*, 10th edition, Bandung: Citra Aditya Bakti, 1995, p. 23.
1. Between the consumer and the developer, there is a binding sale and purchase agreement (SPPJB) either in the form of an underhand agreement or a notarial deed, which is later elevated to a sale and purchase deed in front of a land deed official (PPAT).
2. Between the consumer as the debtor and the bank as the creditor, there is a home ownership credit agreement and/or debt acknowledgment with the power to sell, either underhand or in a notarial deed.

3. Between the developer and the bank, there is a cooperation agreement for providing home ownership credit facilities with collateral (usually in the form of a notarial deed). (Sutarno; 2005)

The binding sale and purchase agreement signed by the developer and the consumer is the main agreement for the home ownership credit agreement made between the debtor and the creditor. Any deviation in signing the sale and purchase agreement will lead to legal issues for the parties, especially the consumer. According to Article 7 of Law No. 8 of 1999 on Consumer Protection, businesses are obliged to provide compensation, reimbursement, and/or restitution for damages resulting from the use and utilization of traded goods. Additionally, businesses must provide compensation, reimbursement, and/or restitution for the benefits of goods and services that do not meet the terms previously agreed upon.

The legal issues become more complicated and detrimental to consumers if the developer breaches the sale and purchase agreement and the home ownership credit agreement, such as if the developer is late or unable to deliver the house to the consumer within the agreed timeframe, and/or the construction or house provided by the developer does not match the agreed terms (Sutarno; 2005).

Based on the background described above, the research questions in this study are: What is the role of the notary in drafting the agreement for the provision of subsidized housing between the consumer, developer, and PT. Bank BTN, Mataram Branch? And what factors cause problems in the subsidized housing sale and purchase process through credit?

## **THEORYTICAL REVIEW**

According to Law No. 1 of 2011 on Housing and Settlement Areas, housing is defined as: "a collection of houses that are part of a settlement, whether in urban or rural areas, equipped with infrastructure, facilities, and public utilities as a result of efforts to provide decent and habitable homes." Homeownership in housing complexes can be obtained in two ways: cash or credit. For low-income people, purchasing a home with cash is considered very burdensome. Thus, many individuals opt to buy homes on credit. According to Law No. 10 of 1998 concerning the Principles of Banking, credit is defined as: "The provision of money or claims equivalent to money based on a loan agreement between a bank and another party, where the borrower is obliged to repay their debt after a certain period with an agreed interest.

## **METHODOLOGY**

The type of research used is normative-empirical legal research. Normative-empirical legal research is a type of legal research that not only examines the normative system within legislation but also observes the reactions and interactions that occur when that normative system is applied in society as the object of study.

The research methods used in this study include the statute approach, the conceptual approach, and the sociological approach, which are explained in more detail as follows:

1. The data analysis method is the process of organizing and sorting data into patterns, categories, and basic descriptive units, so themes can be identified, and working hypotheses can be formulated. The purpose of data analysis is to organize the data collected. After field data is gathered using the data collection methods explained above, the researcher will manage and analyze the data using qualitative descriptive analysis (Amiruddin and Zainal Asikin; 2014).
2. The data analysis used in this research is qualitative data analysis. Qualitative data analysis involves working with the data, organizing it, and dividing it into manageable units, systematizing it, searching for and discovering patterns, and identifying what can be conveyed to others.
3. Qualitative data analysis is a technique used to describe and interpret the collected data, providing a general and comprehensive overview of the actual situation.

## **RESULTS AND DISCUSSION**

### **The Role of a Notary in Drafting Agreements for the Provision of Subsidized Housing Between Consumers, Developers, and PT. Bank BTN, Mataram Branch**

The amendment to Law No. 30 of 2004 on Notary Positions through Law No. 2 of 2014 concerning the Position of Notaries states that a Notary is a public official authorized to create authentic deeds and has other authorities as stipulated in this Law or other laws. This means that a Notary is a public official who is specifically granted authority by law to create an authentic document, which has perfect evidentiary power. Article 1 point 1 of the Law on Notaries (UUJN) defines a Notary as a public official authorized to create authentic deeds and other authorities as referred to in Article 15 of the UUJN.

The position of a Notary as a public official means that the authority granted to a Notary is never given to other officials unless that authority falls under the jurisdiction of other officials in making authentic deeds and carrying out other related authorities, which remain the exclusive domain of the Notary. In contrast to the formulation of the new UUJN, the older Notary Regulations (PJN, Ordinance *staatblad* 1860 Number 3) defined a Notary as: (the definition would typically follow here). Let me know if you need more information or clarification on this part.

A notary is the sole public official authorized to create authentic deeds concerning all actions, agreements, and determinations required by general regulations or desired by interested parties to be recorded in an authentic deed. The notary ensures the certainty of the date, stores the deed, and issues grosse, copies, and excerpts, as long as the creation of the deed is not specifically assigned or excluded to another official or individual by general regulation.

When comparing the new formulation of the Law on Notary Positions (UUJN) with the old Notary Regulations (PJN), it is clear that the UUJN provides a broader definition of a notary as a public official authorized to create

deeds. The term "authorized" in both the PJN and UUJN is necessary to fulfill the provisions of Article 1868 of the Civil Code, which states that an authentic deed must be made by or before an authorized public official. To enforce this provision, legislators must create regulations that designate public officials authorized to make authentic deeds, which is why notaries are appointed as such officials under both the PJN and UUJN.

In the UUJN, the term "sole" is no longer explicitly mentioned, but the understanding of the notary's role has not radically changed. This is because the term "sole" is implied within the explanation of the UUJN, which clarifies that a notary is the public official authorized to create authentic deeds that are not assigned to other public officials. The explanation further emphasizes the importance of the notary profession in creating authentic deeds, as required by legislation to ensure legal certainty, order, and protection. Authentic deeds made by or before a notary are also desired by interested parties to establish the rights and obligations of the parties, providing legal certainty, order, and protection for both the parties and society at large.

A public official known as a Notary has the authority regulated under Article 15 of Law No. 2 of 2014 concerning the Position of Notary, which includes the following:

- a. Authorized to create official deeds regarding all actions, agreements, and determinations required by legislation or requested by relevant parties to be stated in an official deed, ensuring the certainty of the deed's date, storing the deed, issuing copies and excerpts of the deed, as long as the creation of such a deed is not assigned to other officials or individuals as determined by law.
- b. In addition to the above authority, a Notary also has the power to:
  1. Legalize signatures and determine the date of privately made documents by registering them in a special book.
  2. Record privately made documents by registering them in a special book.
  3. Provide copies of original privately made documents by transcribing the contents and images contained within them.
  4. Verify the conformity of photocopies with the original documents.
  5. Provide legal counseling related to deed preparation.
  6. Create deeds related to land matters.
  7. Draft auction minutes.

In addition to these authorities, the Notary also holds other powers as regulated in Article 16, paragraph (1) letters (a)-(n) of Law No. 2 of 2014. The profession of a Notary plays a crucial role in ensuring legal certainty and protection for the public. The role of the Notary is regulated in Law No. 2 of 2014 regarding Amendments to Law No. 30 of 2004 concerning the Position of Notary. According to this regulation, a Notary is defined as a public official authorized to create authentic deeds and has other authorities as stipulated in this law (Article 1 point 1). In his book, Habib Adjie explains that the main task of a Notary is to formalize legal relationships between parties in the form of an authentic deed (Habib Adjie; 2008). Authentic deeds made by Notaries hold

strong evidentiary power in court, thus ensuring legal certainty for the involved parties.

In addition to creating authentic deeds, Notaries have other important authorities such as legalizing signatures, providing legal consultation, and preparing copies or grosse of deeds. According to G.H.S. Lumban Tobing in his book, these powers of Notaries are crucial for ensuring order and legal certainty in civil legal activities (G.H.S. Lumban Tobing, 1999). When performing their duties and exercising their powers, Notaries are expected to be professional, honest, and adhere to the code of ethics. A Notary must prioritize the interests of the public and the state over personal interests. This aligns with Tan Thong Kie's view in his book (2007), which states that Notaries are an extension of the state in providing services to the public. The role of Notaries is also critical in various areas of law, such as civil law, corporate law, land law, and family law (Tan Thong Kie, 2007). M. Yahya Harahap highlights the importance of authentic deeds made by Notaries as evidence in civil court proceedings (M. Yahya Harahap, 2009). In the context of subsidized housing purchases, the role of Notaries is especially significant. Article 1, point 1 of the UUJN states, "A Notary is a public official authorized to create authentic deeds and has other authorities as stipulated in this law or other laws." According to UUJN, Notaries play a crucial role in the disbursement of housing finance through mortgage agreements between banks and developers. The Notary, as a public official creating authentic deeds, will include the agreed clauses between the developer and the bank and bind both parties in accordance with Article 1338, paragraph (1) of the Civil Code, which reads: "All agreements made in accordance with the law have the force of law for those who make them." Additionally, Article 15, paragraph (2) of the UUJN states that:

In addition to the authorities referred to in paragraph (1), a Notary is also authorized to:

1. Legalize signatures and determine the date of private documents by registering them in a special book;
2. Record private documents by registering them in a special book;
3. Create copies of original private documents, including transcribing the content and images contained within them;
4. Verify the conformity of photocopies with the original document;
5. Provide legal counseling related to the creation of deeds;
6. Create deeds related to land matters; or
7. Draft auction minutes.

According to the article, a Notary's role extends beyond merely drafting deeds in agreements between developers and banks. A Notary must also serve as a legal counselor, ensuring that the agreement complies with the law and that the formal data provided is accurate, although not the substantive content. This means that the deeds created by the Notary play a crucial role in the legal journey of the agreements, as they involve the parties concerned. The Notary's authority encompasses four main aspects:

1. Authority over the deed created: The Notary must be authorized regarding the deed they are creating.

2. Authority regarding the parties involved: The Notary must be authorized concerning the individuals for whom the deed is made.
3. Authority over the location: The Notary must be authorized concerning the location where the deed is created.
4. Authority over the timing: The Notary must be authorized regarding the time of the deed's creation.

These authorities must align with the jurisdiction where the Notary is based, as outlined in Article 18 of the UUJN, which states: "A Notary has their place of duty in a district or city and their jurisdiction covers the entire provincial area of their office location." If a deed does not comply with the UUJN regulations, it may be downgraded to a private deed. Additionally, the legal counseling role of the Notary must be neutral, even if there is a conflict of interest, as Notaries often have collaborations with banks.

For instance, as a public official who creates deeds for the establishment of a company, as stipulated in Article 7, paragraph (1), which states: "A company is established by 2 (two) or more persons with a notarial deed made in Indonesian," a Notary can review and convey important aspects to ensure that the company's establishment deed complies with legal regulations.

Moreover, Notaries who also serve as Land Deed Officials (PPAT) have additional responsibilities. According to Government Regulation (PP) No. 24 of 2016 on Amendments to PP No. 37 of 1998 regarding Land Deed Officials (PPAT), a Land Deed Official (PPAT) is defined as: "A public official authorized to create authentic deeds concerning certain legal actions related to land rights or ownership of apartment units." In this crucial role, a Notary as a PPAT must ensure that collateral used for credit is appropriate and that it can be split (splitting). Additionally, a Notary serving as a PPAT must also secure the collateral with a mortgage, as outlined in Article 1, point 4 of Law No. 4 of 1996 concerning Mortgage Rights (UUHT). A Land Deed Official (PPAT) is a public official authorized to create deeds for the transfer of land rights, encumbrance of land rights, and authorization for encumbering Mortgage Rights according to applicable regulations.

The establishment of Mortgage Rights is crucial to provide the bank, as the creditor, with the preferential right to sell the collateral to recover the debt from the collateral. This is in accordance with Article 6 of the Mortgage Rights Law (UUHT), which states: "If the debtor defaults, the holder of the primary Mortgage Right has the right to sell the Mortgage object at their own authority through public auction and to recover their debt from the proceeds of the sale."

### **Factors Contributing to Problems in Subsidized Housing Transactions**

Problematic Credit refers to the provision of credit facilities that carry the risk of default. Consequently, the credit cannot be collected, leading to financial losses. According to the Indonesian Bankers Association, problematic credit can be understood in several ways (perkim.id):

1. Credit Not Meeting Targets: Credit that fails to meet the performance targets set by the bank.
2. Future Risk: Credit with the potential for future risk to the bank.

3. Difficulty in Meeting Obligations: Credit where the debtor faces challenges in fulfilling obligations, including principal repayment, interest payments, penalties for delays, and bank fees.
4. Threat to Repayment: Credit where the repayment is in jeopardy, particularly if the expected sources for repayment are inadequate, preventing the bank from reaching its targets.
5. Default on Repayment: Credit where there is a breach of repayment terms, leading to arrears or potential losses for the debtor's company, posing broader risks to the bank.
6. Difficulty in Settling Obligations: Credit where the debtor struggles with repayment of principal, interest, or bank fees.
7. Special Attention Categories: Credit categorized as special attention, substandard, doubtful, and non-performing, or even performing credits with potential for arrears.

Additionally, factors contributing to problematic credit or non-performing loans are influenced by both internal and external factors related to the bank. According to Ismail, not all credit provided by banks to debtors will proceed smoothly as anticipated in the credit agreement (Ismail; 2010). Generally, there are two main factors that cause problematic credit: Internal Factors: These include the bank's internal processes, policies, and practices that might impact the effectiveness of credit management and collection. External Factors: These encompass external conditions such as economic downturns, changes in market conditions, or other external pressures that affect the debtor's ability to repay. 1. Internal Factors

- a. Inaccurate Analysis: This can lead to poor predictions regarding what will happen over the credit term. For example, if credit is provided without properly assessing needs, the borrower may struggle to make payments exceeding their ability.
- b. Collusion: There may be collusion between bank officials handling the credit and the borrower, leading to the approval of credit that should not have been granted. An example is when the bank overestimates the value of collateral.
- c. Limited Knowledge: Bank officials may lack sufficient knowledge about the debtor's type of business, which impairs their ability to perform accurate and effective analysis.
- d. Excessive Intervention: Over-involvement from related parties, such as commissioners or bank directors, may compromise the independence of credit decision-making.
- e. Credit Monitoring: Ineffective supervision and monitoring of the borrower's credit can also contribute to problems.

## **External Factors**

### ***Intentional Factors***

1. Deliberate Default: Borrowers may intentionally avoid making payments, showing a lack of willingness to fulfill their obligations.



2. Excessive Expansion: Debtors might undertake excessive expansion, requiring more funds than anticipated, impacting their ability to manage the Mortgage Credit (KPR).
3. Misuse of Credit Funds: Borrowers may misuse credit funds for purposes other than those declared in their credit application, such as using funds meant for investment for Mortgage Credit (KPR) instead.

#### ***Unintentional Factors***

1. Limited Company Capacity: The debtor may want to meet obligations as per the agreement, but the company's limited capacity prevents them from making payments.
2. Market Competition: If a company cannot compete effectively in the market, it may experience decreased sales and losses.
3. Policy Changes: Changes in government policies and regulations can impact the debtor's business operations.
4. Natural Disasters: Natural calamities can cause significant losses to the debtor.

#### **Obstacles in the Process of Subsidized Housing Sales on Credit at PT. Bank BTN Mataram Branch**

1. Credit Requirements: Consumers may not meet credit requirements, resulting in credit application rejections even after paying booking fees or down payments. This hampers the credit sale process.
2. Non-Performing Loans: Existing non-performing loans may force developers to buy back the financed property, adding unexpected expenses and financial strain on the developer.
3. Delay in Property Handover: Delays in delivering the financed property, especially when the construction is not completed on time despite the consumer having made payments, can result in penalties. Developers may face fines of 0.1% per day, up to a maximum of 5% of the sale price, unless the delay is due to force majeure.

#### **CONCLUSION**

The Role of a Notary in the Creation of Subsidized Housing Procurement Agreements Between Consumers, Developers, and PT. Bank BTN Mataram Branch According to the Notarial Law (UUJN), notaries play a crucial role in the financing of housing units through Mortgage Credit (KPR) facilitated by the Cooperation Agreement (PKS) between banks and developers. As a public official authorized to create authentic deeds, a notary will record the clauses agreed upon between the developer and the bank, binding both parties in accordance with Article 1338 paragraph (1) of the Civil Code, which states: "All agreements made in accordance with the law are binding as law for those who make them." Thus, the role of the notary in the creation of subsidized housing procurement agreements primarily involves drafting the deed in the PKS between the developer and the bank. The notary must ensure that the PKS complies with the law and does not violate legal provisions, and the notary

must verify that the provided data is formally accurate, though not materially. This means that the notary's deed plays a significant role in determining the legal course of the agreement because it involves all parties. Factors Hindering the Process of Selling Subsidized Housing on Credit at PT. Bank BTN Mataram Branch:

1. Failure to Meet Credit Requirements: Consumers not meeting credit requirements can lead to credit applications being rejected by the bank, even if consumers have paid the booking fee or down payment. This causes delays in the credit sale process.
2. Non-performing Loans: Credit defaults by consumers at the bank may require the developer to buy back the credit objects. This results in additional costs for the developer beyond the budget, which is detrimental to the developer.
3. Delay in Object Handover: Delays in handing over the credit object from the developer to consumers who have completed their payments but where the unit's construction is not finished. This results in the developer incurring a delay penalty of 0.1% per day, with a maximum penalty of 5% of the sale price, unless the delay is caused by force majeure.

#### **FURTHER STUDY**

This research still has limitations so further research on the topic still needs to be done "The Role of the Notary in the Creation of Subsidized Housing Procurement Agreements Between Consumers, Developers, and PT. Bank BTN Mataram Branch."

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