

NOTARY FUNCTION IN TRANSFER OF SUBSIDIZED HOUSE OWNERSHIP CREDIT

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Abstract

Notary Notaries as public officials have an important role in ensuring legal certainty and protection in every agreement, including in the transfer of subsidized home ownership credit. Many credit transfers are carried out underhand, without the consent of the bank and without an authentic deed from the notary, thus creating legal uncertainty for new debtors who take over credit obligations. This study uses a normative legal research method with a statute approach, a conceptual approach, and a legal theory approach. The data used are secondary data in the form of primary, secondary, and tertiary legal materials which are analyzed qualitatively with descriptive analysis techniques. The results of the study show that: Notaries have the authority to make authentic deeds in the transfer of home ownership credit as regulated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN). Credit transfers carried out without a notarial deed and without the bank's approval are not legally recognized and are only considered as underhand agreements that have limited evidentiary power, and the failure to involve a notary in the credit transfer process can have legal consequences for the parties, especially for new debtors who do not have a clear legal standing, and are at risk of losing their rights to the house they have paid for.

Keywords : Notary, Credit transfer, Subsidized housing

INTRODUCTION

A house stands as one of the most fundamental needs in human life, representing the basic requirement of shelter. According to Article 1, number 7 of Law Number 1 of 2011 on Housing and Settlement Areas, a house is defined as "a building that functions as a place of residence or dwelling and a means of fostering a family." Additionally, Article 1, number 2 of the same law explains that "housing is a collection of houses functioning as a residential environment, which is equipped with infrastructure and environmental facilities." The desire of every individual to own a home arises not only from practical necessity but also due to considerations of religious values, well-being, health, and social security.

This essential human need for housing is further reinforced by Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which declares that "Everyone has the right to live in physical and spiritual prosperity, to reside, and to acquire a good and healthy living environment, and to receive health services." These provisions affirm the role of the state in ensuring its citizens are able to access adequate housing as part of a dignified life. Housing is thus viewed not only as physical infrastructure but also as an integral component of individual welfare and national development.

The notary, or *openbaar ambtenaar*, serves as a public official with the sole authority to create authentic deeds involving legal acts, agreements, and determinations required either by law or by the parties involved to be formalized. Notaries are empowered to record these deeds, assign official dates, store them, and issue legalized copies or excerpts, provided that such tasks are not specifically assigned to other public officials. This role becomes particularly significant when it comes to legal proof of ownership and obligations, making the notary a crucial figure in ensuring legal security in civil interactions.

The notary's function leans more towards preventive legal protection by preparing authentic deeds related to one's legal status, rights, and duties. These documents serve as the most valid form of evidence in court if disputes regarding rights or obligations emerge. In this sense, the presence of a notary acts as a legal safeguard for society, minimizing the risk of future conflicts through documentation that holds the highest evidentiary value under the law (Sjaifurrachman & Adjie, 2011).

A notary is a public official granted authority to create authentic deeds, and this role becomes particularly crucial in the context of bank credit agreements. As regulated in Article 1, point 11 of Law Number 10 of 1998, which amends Law Number 7 of 1992 on Banking, the term "credit" is defined as "the provision of money or claims that can be equated with it, based on a loan agreement or agreement between the bank and another party, requiring the borrower to repay the debt after a certain period with interest." In this framework, notaries play a fundamental part in ensuring the legal certainty of credit agreements through the preparation of valid and binding legal documents.

The involvement of a notary in banking credit matters is supported by the principle that legal certainty and proper documentation are essential in protecting the interests of both the bank as the lender and the customer as the borrower. Based on Law Number 2 of 2014 regarding the Notary Position, notaries are legally responsible for drafting authentic deeds that reflect the parties' agreements accurately and transparently. This responsibility is further discussed by Sjaifurrachman and Habib Adjie (2011), who emphasize that a notary's accountability is closely tied to the clarity and validity of the deeds they prepare, particularly in financial transactions involving large sums of money or long-term obligations.

According to Article 1, point 2 of the Banking Law, "a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms to improve the standard of living of many people." This definition highlights the central role of credit in the banking system, positioning it as a tool for economic empowerment and public welfare. The proper legal documentation of credit

distribution through the role of notaries helps ensure that both parties in the lending process are protected from disputes and that the terms of the agreement are legally enforceable.

The essence of a bank credit lies in trust from the bank toward the borrower, which is established once all requirements are fulfilled by the customer. These include the submission of complete documentation, guarantees or collateral, and meeting the eligibility criteria set by the bank. Law Number 10 of 1998 also reiterates that this trust is formalized through clear and lawful agreements. Thus, the notary's role is not only administrative but also preventive, helping reduce potential legal disputes in the future by ensuring that all legal elements of the loan are properly outlined and agreed upon (Hermansyah, 2005).

In its early stages, the primary role of credit was to promote mutual assistance among individuals to meet their daily and business needs. Over time, credit became more than just a financial tool it began to serve as a catalyst for economic and social development, benefiting borrowers, lenders, and society at large. Importantly, credit is not just about lending money; it comes with specific obligations. As explained in the literature, the debtor is not only responsible for repaying the loan but also for fulfilling the agreement to pay interest as stipulated in the contract (Kencana Prenada Media Group, p. 55).

One of the defining features of credit is the element of time. The agreement always includes a specified term between the date the credit is issued by the bank and the deadline for repayment. Repayment is usually structured in installments tailored to the borrower's financial capacity. A clear example is a home ownership loan (*Kredit Pemilikan Rumah/KPR*), which can extend up to 20 years depending on the arrangement (Ibid, p. 59). This timeline allows the borrower to gradually fulfill their obligations while maintaining financial stability.

In Indonesia, the demand for housing is consistently high, making real estate a popular form of investment. Not only are new homes sought after, but used properties are also in high demand. One practical way to acquire a house is through *over kredit*, where a new buyer continues the mortgage payments originally made by a previous owner. This often occurs because the original debtor is unable to continue payments or has relocated due to job transfers (Ibid, p. 58). When banks issue loans, they typically impose conditions such as the maximum loan amount, repayment period, credit usage purpose, interest rate, disbursement method, and required collateral. A bank's ability to manage credit risk efficiently plays a critical role in its operations. Problematic loans are a frequent challenge in the banking sector (Soeroso, 2011).

One solution to handle non-performing loans is the *over kredit* process. In this scenario, the initial debtor is replaced by a new one, effectively transferring the responsibility for the remaining debt. This transfer may be initiated by either the borrower or the bank. According to Article 1413 of the Indonesian Civil Code, the new debtor assumes not only the debt but also any collateral involved such as a house and land previously pledged by the original debtor. This change in parties frees the original debtor from their repayment obligations. The *over kredit* process involves meeting specific requirements from all parties: the old and new debtors and the bank. Furthermore, several notarial deeds are needed to legally formalize this transfer of debt responsibility (Ibid, p. 89).

In any loan agreement, one key aspect that must be clearly outlined is the duration or time element of repayment. This refers to the agreed-upon period between the moment the loan is issued by the bank and the time it must be repaid in full by the borrower. Repayment is commonly structured in installments, with terms tailored to the financial capacity of the borrower. For instance, in the case of a mortgage or *Kredit Pemilikan Rumah (KPR)*, the repayment period can extend up to 20 years (Kencana Prenada Media Group, p. 59). The installment system provides a realistic approach for borrowers to meet their obligations gradually, while still maintaining their daily financial stability.

The demand for housing in Indonesia remains consistently high, making residential properties one of the most attractive long-term investments. Not only are new houses in

demand, but even pre-owned homes continue to attract buyers. A practical method to obtain a home is through *over kredit*, where a new buyer assumes the remaining mortgage payments of the previous owner. This practice is typically pursued when the original borrower faces financial difficulties or needs to relocate due to work (Ibid, p. 58). In the banking sector, issuing credit comes with conditions such as loan amount limits, repayment terms, interest rates, disbursement methods, and collateral requirements (Ibid, p. 75). The bank's ability to manage credit risk becomes a critical factor, especially since non-performing loans are an unavoidable aspect of lending (Ibid, p. 76).

One common solution to resolve non-performing loans is through the *over kredit* process. This involves replacing the original borrower with a new one, essentially transferring all loan responsibilities. The initiative may come from either the bank or the borrower. When this transfer occurs, the original debtor is relieved from the obligation to repay the loan. According to Article 1413 of the Indonesian Civil Code, the new debtor does not only assume the loan but also inherits the collateral attached to it such as the house and land used as security. For the transfer to be valid, all parties involved the original borrower, the new borrower, and the bank must meet certain conditions, including signing several notarial deeds that legally confirm the transfer (M. Bahsan, p. 89).

The *over kredit* process does not require a completely new contract but is considered lawful if a debt novation agreement is signed, formalizing the substitution of debtors. This novation deed serves as the legal foundation for the transfer of all obligations. Authentic deeds, signed before a notary, hold high evidentiary value in court and cannot be easily disputed, unlike private agreements where signatures can be denied (R. Soeroso, 2011, p. 15). While unofficial *over kredit* transactions conducted without the bank's knowledge do occur, they are considered illegal despite being common. As long as the loan is paid smoothly, problems rarely arise, but if the loan becomes delinquent, the bank will still pursue the original borrower. In terms of mortgage loans, KPR in Indonesia comes in two forms: subsidized and non-subsidized. The subsidized KPR is targeted at lower-income individuals and involves government support, while the non-subsidized KPR is managed entirely by the bank, which determines the interest or margin independently based on internal policy.

In the legal framework of banking in Indonesia, there are two formal types of credit agreements used by banks when disbursing credit: private agreements (*akta di bawah tangan*) and notarial deeds (*akta otentik*). A private agreement refers to a contract signed only between the creditor (the bank) and the debtor (the borrower), often without the involvement of witnesses or a notary. This kind of agreement is informal and carries weaker legal force in terms of evidence. Meanwhile, an authentic or notarial credit agreement is created before and by a notary, as stated in Article 1868 of the Indonesian Civil Code, which gives the document stronger evidentiary value in legal proceedings. These authentic deeds serve to safeguard both parties and prevent future disputes by clearly stating the terms of the agreement.

Over kredit a practice where a new party takes over the remaining loan installments from the original borrower is lawful only if done with the bank's knowledge and approval. However, this often occurs privately, without any formal notification to the bank. In such cases, problems may arise, especially if the original borrower defaults. Even if the new party continues to pay the mortgage, the bank only recognizes the original borrower. This disconnect may lead to legal complications. For instance, if the loan is fully paid off and the certificate is claimed, the bank will release it only to the person whose name is on the agreement, unless legal proof of the transfer is submitted. There have been instances where original borrowers act in bad faith by reclaiming the certificate and reselling the property, which places the new payer at risk (Rahman, 1998, p. 141).

Two types of *wanprestasi* (breaches of contract) commonly occur in unofficial *over kredit* practices. The first is short-term default, where the new debtor pays installments through

the original borrower, who then fails to forward the payment to the bank. This breaks the trust and causes the bank to still hold the original borrower accountable. The second is long-term default, which becomes apparent when the loan is fully paid. The bank may still refuse to release the certificate if it was never formally notified of the transfer. According to Article 1870 of the Civil Code, an authentic deed has strong legal power that cannot be challenged easily, unlike private agreements. The notary, as regulated under the Notary Law (UUJN), plays a preventive role by preparing a legally valid deed that ensures clarity, balance, and fairness for both parties involved in the transfer of credit rights.

In the context of a mortgage loan or *Kredit Pemilikan Rumah* (KPR), transferring ownership rights should involve not just the seller and buyer, but also the bank as the holder of the collateral usually the land and building title. The buyer might think that a signed statement of full payment from the seller is sufficient, when in fact, legal ownership remains with the party listed in the credit agreement. If the bank is not involved in the process, then even after the loan is fully paid, administrative issues will still require the presence of the original borrower. This situation becomes problematic if the original borrower has passed away or cannot be contacted. The lack of proper legal procedure causes significant disadvantages for the buyer. The core issue lies in the misunderstanding of *over kredit* transactions, which are mistakenly thought to be settled once the payment between buyer and seller is completed. According to Article 1(1) of the Law on Mortgage Rights (*Undang-Undang Hak Tanggungan*), a mortgage is a guarantee placed on land rights, serving as collateral for a particular debt. The government has established systems such as KPR to regulate property transactions, but unauthorized transfers without bank involvement continue to occur, leading to legal uncertainty and potential financial loss for the new debtor (Rahman, 1998).

RESEARCH METHODS

This research titled “*The Role of Notaries in the Transfer of Subsidized Mortgage Credit Ownership*” adopts a normative legal method. Normative legal research involves examining positive law and the underlying principles, doctrines, and theories that are present in laws and regulations. As Soerjono Soekanto describes, normative legal research is based on the study of legal literature or secondary data. Peter Mahmud Marzuki further explains that this type of research aims to identify legal norms, doctrines, or principles relevant to a specific legal issue. The study presents a systematic exposition of legal rules within a certain category, explores the relationships between those rules, analyzes problematic areas, and may even predict future developments in the law. Because it relies on texts, this type of study is often referred to as doctrinal or library-based legal research.

This study specifically examines the legal norms and principles related to the role of notaries in the transfer of subsidized mortgage credit, referencing legal sources such as the *Indonesian Civil Code (KUHPerdota)*, *Law No. 10 of 1998 on Banking*, and *Law No. 2 of 2014 on the Position of Notaries (UUJN)*. The nature of the research is prescriptive-analytical, aiming to deeply investigate legal facts and provide solutions to arising legal problems. The legal approach includes two methods: the Statute Approach, which interprets and applies laws to understand how legal rules regulate the role and authority of notaries in mortgage transfers; and the Conceptual Approach, which examines doctrines, expert opinions, and legal theories to support the analysis. Legal materials used consist of primary sources, such as national laws and government regulations, and secondary sources, including academic books, journals, and other literature. Legal data is collected using library research techniques, followed by systematic processing and analysis to address the legal issues explored in the study.

RESULT AND DISCUSSION

A. Notary Authority in Transfer of House Ownership Credit

In a credit agreement, two legal subjects typically the bank and the debtor must mutually express their will to form a binding contract. In the banking industry, these credit agreements often take the form of standard or pre-formulated contracts. In such standardized contracts, the clauses are generally pre-determined unilaterally by the bank to minimize the credit risk they may face. These clauses serve primarily to protect the creditor's position in the event of default or other credit-related problems. The formation of the credit agreement itself is established through the mutual expression of consent, starting with an offer (*aanbod*) and followed by an acceptance (*aanvaarding*), aligning with the legal requirement of agreement between parties.

One way to address problematic credit is through a transfer of credit, known as *overkredit*, where the mortgage (KPR) is legally shifted either to another individual or a different bank. This method is permitted as long as it complies with applicable laws. Mortgage loans (KPR) are bank credits granted to individuals for the purchase or financing of residential properties along with their land. Typically, the debtor secures this loan by submitting the property's certificate as collateral. People often choose to transfer their mortgage for several reasons, such as more attractive interest rates offered by another bank, changes in residence, or urgent financial needs that necessitate selling the home.

There are generally two types of *overkredit* commonly practiced. The first is the transfer from one bank to another, which is usually done when the initial fixed interest rate period ends and the floating rate becomes burdensome. By switching to a different bank, borrowers aim to reduce their interest burden. The second type involves transferring the mortgage from an existing debtor to a new one. This often happens when the original owner no longer needs the property or finds a better alternative. If the transfer is to the same bank, the process tends to be simpler. However, if the new debtor chooses a different bank, a comprehensive evaluation process is carried out, including document checks and a re-assessment of the collateral's value.

Once all parties agree the seller (former debtor), the buyer (new debtor), and the bank a notarial deed is executed to legalize the transfer of credit rights. At this point, the new debtor enters a legal relationship with the bank and assumes full ownership of the property, along with all attached rights and obligations. However, the mortgage encumbrance (*Hak Tanggungan*) still technically remains with the original debtor until it is legally transferred and registered with the land office. In private law, the creation of a valid credit agreement requires legal clarity on several aspects, such as the amount of the loan, repayment terms, and specific obligations. Referring to the Indonesian Civil Code (KUH Perdata), particularly Articles 1754 to 1769, a credit agreement is fundamentally a loan agreement where the lender provides a consumable good or money, and the borrower is obligated to return the same quantity and type. As R. Subekti emphasizes, regardless of its form, a credit extension is essentially a loan agreement under these provisions (Subekti, 1986).

Describes the outcome can be an increase in knowledge, skill or product. The results also reveal the level of achievement of the target activity. If in the form of objects there needs to be an explanation of product specification, its advantages and disadvantages. Output writing should include photos, charts, graphs, charts, drawings and more. The discussion is sequential in the order in which the objectives are, and it has been described first. The discussion is accompanied by a logical argument by linking the results with theories, other results and/or research results.

Although credit agreements are not explicitly regulated in the Indonesian Civil Code (KUH Perdata), their formation must still align with the general principles of contract law contained in it. All types of agreements whether named or unnamed must comply with these foundational rules. In practice, housing purchases through developers can be executed using either an installment payment system directly to the developer within one year or through a

long-term mortgage (KPR) that may extend up to 15 years. In such transactions, legal protection for both creditor and debtor is often ensured through written agreements such as the *Perjanjian Pengikatan Jual Beli* (PPJB) and *Perjanjian Kerja Sama* (PKS), followed by the official signing of the credit agreement (*akad kredit*) with the bank. The disbursement of funds is conducted in stages according to the construction progress, such as when the foundation, walls, or roof have been completed. This system ensures that the developer fulfills their obligations before receiving the full credit amount, as agreed in the PPJB.

The legal foundation for written credit agreements is supported by Article 1 paragraph 11 of Law No. 10 of 1998, which amends Law No. 7 of 1992 on Banking. This article emphasizes the provision of funds or claims based on an agreement between a bank and another party, indicating the necessity of a written contract. While the law may not explicitly require written agreements, scholars and legal practitioners argue that written documentation is crucial for administrative clarity and legal proof. Article 1313 of the Civil Code defines an agreement as an act in which one or more parties commit themselves to one or more others. To be valid, any agreement must fulfill the conditions stipulated in Article 1320: mutual consent, legal capacity, a specific object, and a lawful cause. These elements determine the validity and enforceability of any credit agreement.

According to contract law principles under Article 1338 of the Civil Code, every agreement is binding as if it were law. These principles include the freedom to contract, consensualism, and the binding force of contracts. In addition to the general provisions of civil law, the banking sector also adheres to specific regulations that guide the provision of credit. The Civil Code further outlines in Articles 1754 to 1769 that a loan agreement involves one party lending consumable goods or money with the expectation that the same type and quantity will be returned. Subekti emphasizes that all credit extensions, regardless of form, are essentially governed as loan agreements under these articles. Thus, credit agreements must clearly state the loan amount, repayment schedule, and other essential terms to ensure legal clarity and enforceability.

In real-world practice, many people informally transfer their mortgage loans to others without involving the bank or a notary. This under-the-table approach usually stems from reasons such as financial difficulties, relocation, or mutual agreements between individuals. However, this kind of arrangement carries significant legal risks. The bank may remain unaware of the change, still holding the original debtor accountable. Meanwhile, the new debtor lacks a legal relationship with the bank, making their claim to the house legally weak. Without a notarized deed, such agreements also lack formal legal proof if disputes arise. This situation jeopardizes legal certainty for all parties original debtors, new buyers, and the bank undermining trust and stability in credit transactions. Legal certainty is essential in a modern legal system, ensuring fairness, predictability, and trust between parties, particularly in significant financial agreements such as property loans.

To comprehend how a mortgage transfer agreement is established, it is important to begin with a clear and precise definition of what this agreement entails. This understanding should include key legal aspects such as the validity requirements, the rights and obligations of the involved parties, and the potential legal consequences arising from either the fulfillment or breach of the agreement. In this regard, the notary holds a critical role. As a public official governed under Law No. 2 of 2014 an amendment to Law No. 30 of 2004 concerning the Notary Office the notary is responsible for maintaining legal order in all civil transactions, including housing credit transfers. One of their main duties is to ensure the completeness and authenticity of all relevant documents, such as land certificates, identification documents of the parties involved, and any required government permits. This verification process not only ensures the legality of the transaction but also helps prevent future legal conflicts.

Moreover, the notary is obligated to verify the identity of each party involved using official documents like national ID cards (KTP), family cards (KK), birth certificates, or passports for foreign nationals. This step is essential to prevent identity misuse or unauthorized transactions. In cases involving subsidized housing, additional government permits or recommendations are often necessary due to special regulatory provisions. These include approval letters from housing agencies and statements confirming the property's subsidized status. Beyond the basic documentation, the notary must also review supporting documents such as previous sale deeds, inheritance certificates (if applicable), statements of no dispute, and potentially other paperwork depending on the specific circumstances. The notary's role is further emphasized through the need to understand and ensure compliance with housing regulations especially Law No. 1 of 2011 concerning Housing and Settlements. This law outlines critical requirements for ownership, rights, and responsibilities of homeowners, as well as specific procedures and prohibitions on property transfers. Verifying compliance with these legal standards is essential to uphold the legality of the transaction, prevent disputes, and protect all parties involved.

In carrying out their role, notaries must fully understand the legal foundations outlined in the Housing and Settlement Law, particularly the provisions related to subsidized housing agreements. These legal references are crucial to ensure that all housing credit transfer transactions are conducted lawfully. One of the key regulations is Government Regulation No. 14 of 2016, which elaborates on several important provisions, such as buyer eligibility (Article 27), housing criteria (Article 28), and procedures for ownership transfer (Articles 32–35). Furthermore, Article 36 of the same regulation outlines the specific responsibilities of notaries or land deed officials (PPAT) in drafting the sale and purchase agreements of subsidized homes. A notary must ensure that these agreements are executed according to existing rules, in a way that secures the rights of all parties involved. Additionally, a notary's work aligns with the legal certainty theory, which emphasizes that legal acts must be clear and provide protection, particularly through the creation of authentic deeds that serve as strong evidence in court.

The notary's authority, based on Article 15 of the Notary Law (UUJN), empowers them to draft authentic deeds for any legal actions or agreements required by law or requested by interested parties. Not only do notaries create legal documents, but they also guarantee the date of execution, preserve the original deeds, and issue certified copies. These powers reinforce the notary's public function, making the deeds produced hold full evidentiary power (*volledig bewijs*) before the court, unless proven otherwise by the disputing party. Authentic deeds are classified into two types: those directly created by the notary and those made in the notary's presence, each with distinct legal implications. Notaries are expected to act impartially and uphold justice by ensuring that no agreements contradict the law. They must verify every legal requirement for a deed's authenticity to prevent legal defects that could harm the involved parties. The 1945 Constitution, particularly Article 1 paragraph (3), recognizes Indonesia as a rule-of-law state this strengthens the role of notaries as public officials who serve society by safeguarding civil transactions with legal certainty and impartiality.

B. Legal Consequences Of Transferring Credit To House Ownership Without The Bank's Knowledge

The transfer of mortgage ownership through informal or *under-the-table* arrangements typically arises when the original borrower, due to certain circumstances, is unable to continue their loan obligations. In response, banks offer a facility known as *Kredit Pemilikan Rumah* (KPR), allowing individuals to purchase a home on credit. When the original borrower wishes to delegate their responsibility, this is known as a debtor substitution. The procedure is regulated by both the Indonesian Civil Code (specifically Articles 1413–1424 regarding *novation*) and internal policies of financial institutions. The key requirement is that the new

debtor must apply and be assessed like a first-time KPR applicant. Upon approval, the bank issues a letter of consent, followed by legal formalities such as a deed of debtor transfer, sale and purchase deed in front of a PPAT, and an updated *Deed of Encumbrance Rights* (APHT), in accordance with Law No. 4 of 1996 on Mortgage Rights. This legal framework ensures that the rights and obligations related to the mortgage are clearly transferred and legally binding.

In legal terms, this debtor substitution is a form of *subjective passive novation*, where the debtor changes but the creditor (in this case, the bank) remains the same. Article 1417 of the Civil Code supports this by allowing the original debtor to propose a new party willing to assume the debt, relieving the original debtor from future obligations. The new credit agreement, which replaces the original one, is treated as an entirely new contract under novation principles. Key consequences of such a process include the release of the original debtor from liability and the discontinuation of previous ancillary rights unless explicitly retained. The notary plays an essential role in this process by drafting the necessary legal documents, such as the new credit agreement and deed of acknowledgment of debt, ensuring legal certainty. This form of credit transfer reinforces the principle of debt continuity under a new party while preserving the interests of the financial institution and protecting all involved parties within a solid legal structure.

A novation in the context of a housing loan transfer only becomes legally valid when the creditor explicitly agrees to release the original debtor from their obligations under the prior agreement. Merely accepting a new debtor proposed by the original one does not establish a novation unless the creditor formally consents and acknowledges the release of the previous debtor. The hallmark of a valid novation lies in the creditor's approval of the new debtor coupled with the discharge of the old one, thereby creating a new contractual bond between the creditor and the replacement debtor. Often, the new debtor might be a relative or acquaintance who voluntarily assumes the debt, either out of goodwill or financial capacity. However, in real-world banking practices, such formal novation processes are rarely followed due to their complexity and cost. Instead, informal agreements or “under-the-table” transfers are common, often done through a notary without notifying the bank, which expedites the process but exposes both parties to significant legal risks.

These informal or non-notified transfers of housing loans (commonly known as “under-the-table KPR sales”) usually occur through simple agreements, receipts, or even verbal arrangements, relying solely on mutual trust. Although quicker and less bureaucratic, such practices are legally fragile, as they bypass the authorized procedures involving the bank and notarized contracts. The bank still recognizes the original debtor as the liable party, and the new debtor lacks any legal standing over the property unless a formal novation and certificate name transfer are executed. This situation contradicts the principle of legal certainty a cornerstone of a just legal system and risks future disputes. For example, even if the new debtor has fully paid off the loan, they may be unable to claim ownership because the certificate remains in the name of the previous debtor. In extreme cases, the original debtor could unlawfully sell the property again, and the bank cannot be held accountable. Thus, such informal transfers undermine legal protections, and their prevalence signals the urgent need for stronger public awareness, clearer regulatory frameworks, and more active involvement from both notaries and financial institutions (Kadir, 2000).

CONCLUSIONS

In the process of credit transfer, particularly in subsidized housing, a notary holds the authority to draft authentic deeds for any legal actions, agreements, or declarations required by law or requested by the parties involved. The notary's role serves a preventive function by minimizing potential legal disputes among the original debtor, the new debtor, and the bank. Through the notarial act of credit transfer (novation), the transaction is legally formalized in a

transparent manner consistent with civil and banking laws, ensuring that all rights and obligations are clearly outlined and legally binding. This authentic deed offers strong legal protection and serves as valid evidence in court if disputes or breaches of contract occur, distinguishing it from informal agreements that may be legally void and lack legal certainty. Without the notary's involvement and the bank's approval, a credit transfer may be considered invalid, putting the new debtor at risk of being denied ownership, unable to retrieve the house certificate, and unprotected during legal conflicts. Furthermore, if the credit is fully paid by the new debtor without bank recognition, the certificate may still be withheld since the bank only acknowledges the original debtor. In such situations, the notarial deed becomes crucial as a form of legal protection and evidence, granting the new debtor a basis to seek legal clarity and enforcement of rights under the clauses embedded within the official documents.

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