

The Notary Responsibility for Making A Power of Attorney to Sell on Subsidized Housing Loans to Debtors Who Default

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Abstract. *The notary makes a power of attorney to sell on the binding of subsidized housing loans is a legal act that has been in accordance with the law on his authority to make an authentic deed and has been based on the wishes of the appearers. However, in practice, the power of attorney (in this case, the debtor of subsidized housing loans) when there is a default, the debtor sues the notary deed to be canceled or cancelled. This study aims to identify and analyze the responsibility of the Notary for making a power of attorney to sell on subsidized housing loans to debtors who default. The research approach method used in this thesis is a normative juridical legal research method. This research specification uses descriptive analysis. The type of data used in this research is primary data which includes the Civil Code; Permenkumham No. 17 of 2021; Letter of Exit from the Head of the National Land Agency of the Republic of Indonesia, as well as secondary data containing books and other supporting documents. Collecting research data with interview techniques and study of documents or library materials. The data analysis method used in analyzing the data is a qualitative analysis of the interactive model. The results of the study show that: (1) The authority of the Notary to make a power of attorney to sell on subsidized housing loans is appropriate based on the Exit Letter of the Head of the National Land Agency No. 4398/17.3-300/XI/2011. (2) The Notary's responsibility as a public official if proven guilty of making a power of attorney to sell a house on a subsidized housing loan, then based on the Law on Notary Position, the deed in question only has the power of proof as a private deed.*

Keywords: Loans; Mortgage; Power; Selling; Subsidized.

1. Introduction

Housing subsidies are facilities or housing assistance that can be utilized by low-income communities whose implementation is through subsidized home ownership credit/financing. Article 1 number (2) PERMEN PUPR Number 20/PRT/M/2019 states that Subsidized home ownership credit is one way that can help lower-middle-income people get ownership of a decent place to live

independently. PT Bank Tabungan Negara (Persero) Tbk, was assigned by the Government to provide home ownership loans to the community with the KPR-BTN pattern, through the Very Simple Home Ownership (RSS) or Healthy Simple House (RSH) program, which received interest subsidies or down payments from government (hereinafter referred to as subsidized KPR). The form of people who take advantage of this government program is the existence of a bond or agreement between the debtor (the community receiving the subsidized mortgage) and the creditor (the bank providing the subsidized mortgage).

The home ownership program provided by the Government through the Bank often has problems experienced by the Bank as a creditor, namely when the debtor of the subsidized housing loan is in default. In this case, creditors have been harmed because they did not get back the credit funds distributed to the community, while many members of the community still need houses, on the other hand there are empty houses that are categorized as abandoned by their owners (Bank BTN debtors). And the problem that arises is that the provision of subsidized housing loans is guided by the Decree of the Board of Directors of Bank Indonesia Number 26/24/KEP/Dir dated May 29, 1993 concerning Small Business Loans and Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 4 of 1996 concerning Stipulation Deadline for Use of Power of Attorney Imposing Mortgage to Guarantee the Repayment of Certain Loans. Therefore, the Bank as the Creditor does not place a Mortgage on the object of the right that is used as collateral for the debt, but makes a Power of Attorney to impose Mortgage. In line with these problems, the policy of the National Land Agency of the Republic of Indonesia (hereinafter abbreviated as BPN RI) was issued which was emphasized in the letter issued by the BPN RI Number 4398/17.¹ In the outgoing letter the policy of the Head of BPN RI regarding the procedure for transferring land and building rights from the old owner (Bank BTN debtor) to another party by using a credit agreement, debt acknowledgment deed and power of attorney to sell.

With regard to the power of attorney to sell, Article 1796 of the Civil Code states that "the grant of power of attorney formulated in general only includes actions related to management. In order to transfer goods or attach a mortgage on it, to make a peace, or to take other actions that can only be carried out by an owner, an authorization is needed in firm words. Based on the provisions in the Civil Code, a power of attorney can be made by interested parties, but the nature and position of this power of attorney does not have the power of proof and can be

¹Letter of Exit from the Head of the National Land Agency of the Republic of Indonesia Number 4398/17.3-300/XI/2011, dated November 22, 2011, regarding the transfer of name based on the deed of recognition of debt and power of attorney to sell on a very simple and healthy house (RSH). addressed to the Board of Directors of PT. State Savings Bank (Persero) Tbk. (hereinafter abbreviated as Exit Letter of Head of BPN RI No. 4398/17.3-300/XI/2011)

questioned by the judge if the power of attorney is challenged in the future. In contrast to the power of attorney to sell made before a notary. The nature and position of this power of attorney to sell has binding evidence for the parties and can guarantee the protection of the parties. So that in practice there are Creditors who have switched to using the Deed of Power to Sell which is made and ratified before a Notary. The power of attorney to sell, if in the future the debtor defaults, it can be used as the basis for making the Sale and Purchase Deed. This is because the power of attorney to sell is considered to have higher proof of power than the power of attorney to sell. So there is an important role of the Notary in making and using the deed as the basis for buying and selling subsidized housing.

Notaries by law are given the status of public officials (*openbare ambtenaar*) who are authorized in the civil sector, but caution is needed for notaries in making the deed, especially if the making of the deed is not based on statutory provisions. The impact of the negligence and error of the notary in making the deed will be held accountable before the court. One example of a notary being a defendant for making a power of attorney to sell is the researcher found in the Supreme Court Decision Number 2650 K/Pdt/2013. In this court case, the notary is a co-defendant for making a deed of binding sale and purchase and a deed of power of attorney to sell, which after the deed is made the object in the deed made is in dispute, so that the seller commits an act of breaking a promise / default.

Based on the above problems, it is necessary to be careful with the Notary in making the Deed of Authorization to Sell, moreover the Notary makes the Deed of Power to sell at the time of the credit bond / mortgage agreement, which is intended to be used if the debtor of the subsidized housing loan defaults. the expansion of the authority of the notary in making the deed of power of attorney to sell needs to be observed and investigated the legal basis and how it is constructed, so that the notary is not responsible if there are problems between creditors and debtors in the future. This study aims to analyze the urgency of the Notary's responsibility for making the Deed of Power to Sell against subsidized housing loans to debtors who default.

2. Research Methods

This research is a normative legal research, with 2 (two) approach methods, namely; (1) Legislative Approach; and (2) Conceptual Approach. While the research specifications in writing this journal are in the form of descriptive analytical research, which describes the problems that become the object of research based on the data obtained at the time this research was carried out. The data collection method used in this research is to find the required data from the actual research object through interview and documentation steps. Meanwhile, the data analysis method used is data obtained from field studies

and document studies, which are basically level data that are analyzed descriptively qualitatively.

3. Results and Discussion

3.1. Notary's Authority on Making a Deed of Authorization to Sell Against Subsidized Home Ownership Loans

The preamble to the Notary Position Act states that a Notary as a public official who carries out his profession in providing legal services to the public, needs to get protection and guarantees in order to achieve legal certainty. has been made by a Notary.

One example case², the author's concern is the case where the State Savings Bank and the Notary are co-defendants. This case began with the sale and purchase of a house between the seller of HW (Plaintiff) and the buyer of MAT (Defendant) through the provision of credit to the State Savings Bank on behalf of the buyer. On Tuesday, June 5, 2012, the Deed of Sale and Purchase No. 14/2012 by Notary Novi NRN, and the contents of the Sale and Purchase Deed include the power of attorney to sell No. 19 before the IGM Notary. For this purpose, the sellers and buyers have made: (a) Binding of the Sale and Purchase Deed; (b) Deed of Authorization to Sell; and (c). Deed of sale & purchase.

After the sale and purchase is carried out, it is based on the seller's statement that the buyer has bad intentions and has defaulted. The seller requests the court to state that the sale and purchase agreement on the object of the case can legally be canceled/declared null and or does not have binding legal force on the sale and purchase bond, Power of Sale and Deed of Sale, this is due to a violation committed by one of the parties, namely default buyer. Seeing the lawsuit against the deed of power to sell made by a notary IGM which was caused by the buyer's default, the author examines the implications that arise; namely how the authority of a notary to make a deed and how to call a notary and how to account for it.

- **Authority of Notary to Make Deed**

The Notary Position Act (UUJN) does not specifically regulate the criminal provisions carried out by a Notary. Sanctions that can be imposed on Notaries are only in the form of sanctions on the strength of the deed that is made without authentic power or only as an underhand deed. In addition, Notaries can be given sanctions in the form of a warning to dishonorable dismissal. Notary deed as a product of public officials, then the assessment of the notary deed

²Kepajen District Court Decision Number 13/Pdt.G/2014/PN.Kpj.

must be carried out on the basis of a valid presumption (Vermoeden van Rechmatigheid)³. This principle can be used to evaluate a notarial deed, namely a notarial deed must be considered valid until there are parties who declare the deed invalid. By applying the Legitimate Presumption Principle for Notary deeds, the provisions referred to in Article 84 of the UUJN which confirms if the notary violates (does not carry out) the provisions as referred to in Article 16 paragraph (1) letters i, k, Article 41, Article 44, Article 49, Article 50, Article 59 the deed in question only has the power of proof as an underhand deed, then the cancellation of the Notary deed can only be canceled or null and void by law.⁴

This valid presumption is related to a deed that can be canceled, is an act containing defects, namely not having the authority to make a deed outwardly, formally, materially and not in accordance with the legal rules regarding the making of a Notary deed and this principle cannot be influenced to judge the deed as null and void. law, because the deed is null and void is considered never made. Thus, for certain reasons as mentioned above, the position of the Notary deed:⁵(1) Can be cancelled; (2) null and void; (3) Has the power of proof as a private deed; (4) Canceled by the parties themselves; and (5) Canceled by a court decision that has permanent legal force due to the application of the principle of Presumption of Law.

The cause of the strength of the proof of a notary deed being a deed under the hand, or a deed that is null and void by law is because the notary has violated the legislation. One of the notary violations is to make changes to the substance of the deed without being initialed or given another sign of approval by the appearers, witnesses and the notary.⁶With regard to the power of attorney made by a notary as a "accompaniment deed" of a credit agreement, which has executorial power when the debtor defaults, the author re-explains the legal basis and meaning in the articles relating to the power of attorney.

That the power of attorney can be in the form of an authentic deed (notarial deed), privately, orally/usually and secretly (Article 1793 of the Civil Code). The power of attorney to sell should be made before a notary or a notary to ensure legal certainty. In carrying out the obligations specified in the power of attorney,

³According to Philipus M. Hadjon, with this principle (Vermoeden van Rechmatigheid) every government action is always considered rechmatig until it is canceled, Philipus M. Hadjon, 1993, Government According to Law (Wet-en rechmatig Bestuur), First Printing, Yuridika, Surabaya, pp. . 5, quoted from Adjie, Habib. (2008). *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris)*. Cetakan Pertama. Bandung: Refika Aditama. p. 140.

⁴Ibid, p. 140-141

⁵Ibid, p. 141.

⁶According to Prof. Salim HS, there are 9 (nine) notarial deeds made by a notary that have the power of proof as a deed under the hand or a deed that is null and void. HS, Salim. (2018). *Peraturan Jabatan Notaris*. cetakan pertama. Jakarta: Sinar Grafika, p. 241.

there are times when the power of attorney is unable to attend due to an urgent reason. Therefore, the power of attorney is also known as the right of substitution, namely the right to transfer part or all of the power given to the recipient to another party. third. A substitution power of attorney can be issued if a clause is given in the original power of attorney.⁷

Prof. R. Subekti, SH gives the definition that a power of attorney is an agreement between the power of attorney and the recipient of the power of attorney or an agreement to grant power of attorney, in which a person gives power or authority to another person who receives it, for and on behalf of carrying out or working on an affair, with the intention of carrying out or doing something. Business is carrying out a legal act, namely an act that has legal consequences or gives birth to a legal consequence.⁸

Based on the definition put forward by Subekti above, the power of attorney must meet the conditions for the validity of the agreement as determined by Article 1320 of the Civil Code and as described above, simply a power of attorney to sell can be defined as a power of attorney from the owner of the object to another party as the beneficiary, to carry out the sale of certain goods owned by the owner of the object, including carrying out actions for the benefit of selling the object. The power of attorney acts for and on behalf of the power of attorney as the owner of the object. The power of attorney of sale includes an agreement, meaning that as long as the provisions of Article 1320 of the Civil Code are fulfilled, the power of attorney is valid as an agreement between the parties, either in the form of an underhand deed or in the form of an authentic deed.

In all cases, the power of attorney can directly sue the person appointed by the proxy as his successor (Article 1803 of the Civil Code). The right of an attorney to appoint another person as his successor in exercising his power, is called the "Right of Substitution". From the above provisions, we can conclude as follows:⁹

"If the right of substitution is granted by mentioning the name of the substitute, then if the proxy at one time appoints that person to replace him, he is free from any responsibility regarding the subsequent exercise of the power of attorney; if the right of substitution is granted without mentioning the substitute, then the power of attorney is only responsible if the giver proves that the person appointed as a substitute is an incompetent or incompetent person; Finally, if

⁷Wibowo, Arif. (2020) *Pertimbangan Hakim atas Adanya Surat Kuasa Jual Menjual Agunan Kredit Dalam Perkara kredit Macet Perkara No. 38/Pdt.G/2019/PN.Skt Di Pengadilan Negeri Surakarta*. Skripsi. Program Studi Ilmu Hukum Fakultas Hukum. Universitas Muhammadiyah Surakarta, p. 6.

⁸Subekti. R. (1999). *Aneka Perjanjian*. Bandung: Alumni. p. 145.

⁹Ibid, p. 147-148.

there is absolutely no mention of the right of substitution, then the power of attorney is fully responsible for the person he appointed as his successor."

The giver of the power of attorney is obliged to fulfill the commitments made by the power of attorney according to the power that he has given him. He is not bound by what the rest has done, other than that he has agreed expressly or tacitly (Article 1807 of the Civil Code). As has been explained, in all agreements made by an attorney on behalf of the giver, the person giving the power is the party and as this party he gets all the rights and assumes all the obligations arising from the agreements. That he has the right to directly sue the person with whom the proxy has acted in his position has been confirmed in Article 1799 of the Civil Code.¹⁰

Starting from the strength of evidence outlined in Article 1868 of the Civil Code, it can be concluded that not only formally proves the truth, the parties have explained the things contained therein or written on the deed are true. Vide Jurisprudence of the Supreme Court No. 3917 K/Pdt/1986 basically "what is stated in the notary deed must be considered to be the will of the parties". So that the lawsuit in this case was rejected by the panel of judges at the Kepanjen District Court and the deed of power to sell made by IGM Notary is valid.

- **Notary Call**

Notaries have the authority to meet the needs of the community who require authentic legal documents (deeds) in the field of civil law. If the notary makes the deed not in accordance with the applicable legal rules, then the public can prove it by filing a civil lawsuit to claim fees, compensation, and costs, this is a form of accountability of the notary to the community.¹¹ Every Indonesian citizen who commits violations and crimes can be prosecuted firmly and clearly in accordance with Article 112 of the Criminal Procedure Code (KUHP) and Article 27 paragraph (1) of the 1945 Constitution. However, what happens here is that the provisions of Article 112 of the Criminal Procedure Code (Book of the Criminal Procedure Code) and Article 27 paragraph (1) are set aside when the violation is made by an Indonesian citizen who works as a public official (Notary), which is in accordance with the preamble of the UUJN that Notary professions need to get legal protection and legal certainty in their actions to make authentic deeds.

¹⁰Ibid. p. 148-149.

¹¹Fajriyah, Nurjanatul. (2006). *Perlindungan Hukum Terhadap Kreditur (Bank) dan Debitur (Nasabah) dalam Perjanjian Kredit tanpa Agunan (KTA) Bank X*. Jurnal Hukum dan Pembangunan. Vol.36. No. 2. p. 25.

The Law on Notary Positions, the Permenkumham and the Code of Ethics for the Indonesian Notary Association (INI) have properly and clearly regulated notaries who are suspected of violating and or participating in malicious consensus. If the public or there are parties who feel aggrieved by the Notary in making the deed, that party can report it to the police/authorized parties but these authorities cannot immediately conduct an investigation as stated in Article 112 of the Criminal Procedure Code, because the authority to summon a Notary on his actions are the duty and authority of the Notary Honorary Council (MKN). In UUUJN and UUUJN-P Article 66 paragraph (1) state that in the interest of the judicial process, investigators, public prosecutors, or judges with the approval of the Honorary Council of Notaries are authorized to:

- take a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or the Notary Protocol in the Notary's depository; and
- summon the Notary to attend the examination related to the Deed or Notary Protocol which is in the Notary's custody.

The definition of the Notary Honorary Council is a body that has the authority to carry out the guidance of a Notary and the obligation to give approval or rejection for the purposes of the investigation and judicial process, for taking a photocopy of the minutes of the deed and summoning a Notary to attend an examination related to the deed or Notary Protocol that is in storage. Notary Public.¹² Furthermore, the Minister of Law and Human Rights stated that in carrying out guidance to Notaries, the Minister formed a Notary Honorary Council. The coaching as intended is carried out for the benefit of the judicial process, investigators, public prosecutors, or judges.¹³

This authority was previously the authority of the Regional Supervisory Council (MPD), which has now been declared invalid based on the Constitutional Court Decision Number 49/PUU-X/2012. Regarding the regulation of the position and form of legal protection provided by the Notary Honorary Council to Notaries, it is not yet clearly regulated in the legislation.¹⁴

The Regional Notary Honorary Council has the task of examining applications submitted by investigators, public prosecutors, or judges and giving approval or

¹²Article 1 point 1, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 17 of 2021 concerning duties and functions, requirements and procedures for appointment and dismissal, organizational structure, work procedures, and budget of the notary honorary assembly. (hereinafter referred to as Permenkumham No. 17/2021)

¹³Article 2 paragraph (1) and paragraph (2), Permenkumham No. 17/2021.

¹⁴Soegianto. (2003). *Tanggung Jawab Pendiri Dan Notaris dalam Kaitannya Dengan Penyetoran Modal Untuk Pembuatan Akta Pendirian Perseroan*. Tesis. Program Studi Magister Kenotariatan. Universitas Diponegoro, p. 181.

rejection of requests for approval to take a photocopy of the minutes of deed and summoning a Notary to be present in the investigation, prosecution, and judicial process.¹⁵ In carrying out the tasks as intended, the Regional Notary Honorary Council has the function of providing guidance in the context of:¹⁶

- Maintain the dignity and honor of the Notary in carrying out his profession; and
- Provide protection to the Notary related to the Notary's obligation to keep the contents of the deed confidential.

The procedure or stages of Summoning a Notary are based on Article 26, Article 28 – Article 30, Article 32 – Article 33 Permenkumham No. 17 of 2021 are as follows:

- Stage of Formation of the Examining Council
- Examination stage related to notarial deed or protocol
- Notary Calling Stage
- The stage of granting approval or rejection of the Investigating Panel at the request of the Investigator, Public Prosecutor or Judge.

The granting of approval or rejection of the application of the investigator, public prosecutor, or judge as intended is carried out based on the results of the examination and the decision of the plenary meeting of the Regional Notary Honorary Council. The Regional Notary Honorary Council can assist the Notary in the examination process before investigators, public prosecutors, or judges related to the example of the case discussed earlier, regarding the lawsuit addressed by the Notary IGM. The panel of judges at the Kepajen District Court stated that this rejected lawsuit was in accordance with the provisions of the Minister of Law and Human Rights, this was because the lawsuit did not go through the examination process by the Notary Honorary Council.

- **The Notary's Responsibility for Making the Deed of Authorization to Sell on subsidized housing loans to debtors who are in default**
- **Accountability for Unlawful Acts**

Prof. Yohanes Sogar Simamora in a seminar workshop on “Civil Law Upgrading”, stated that a person is liable if:¹⁷(a) there is an unlawful act; (b) Losses arise as a result of the act (Causality relationship), (c) the perpetrator is guilty; and, (d) The violated norms have strekking to avoid the occurrence of losses (Relativity). The

¹⁵Article 24 paragraph (1) Permenkumham no. 17 Year 2021

¹⁶Article 24 paragraph (2) Permenkumham No. 17 Year 2021

¹⁷Simamora, Yohanes Sogar. (2019). *Pokok-pokok Perbuatan Melanggar Hukum*. seminar workshop “Penataran Hukum Keperdataan”. Universitas Islam Bandung.

term unlawful act¹⁸Article 1365 of the Civil Code is a translation of the Dutch term "onrechtmatige daad" which is normatively regulated in Book III concerning Engagement, Title 3 Article 1365 to Article 1380 of the Civil Code and is an engagement born by law.¹⁹

An act against the law is categorized as an unlawful act if the consequences of the legal act cause harm to other parties. Losses due to unlawful acts which can be declared as unlawful acts must meet the four elements of unlawful acts as regulated in Article 1365 of the Civil Code jo. Areest Hoge Raad January 31, 1919 in the case of Cohen vs. Lindenbaum, namely:²⁰

- ❖ The existence of an act that violates a legal right of another person, or is contrary to the legal obligations of the maker, or is contrary to decency or propriety in social life in society regarding paying attention to the interests of others;
- ❖ There is an error on the part of the maker, which is done intentionally or unintentionally;
- ❖ There is a loss to the plaintiff; and
- ❖ There is a causal relationship (cause and effect) between the fault of the maker and the losses incurred.

Compensation due to unlawful acts is regulated in Article 1365 of the Civil Code, the measure of Compensation in Article 1365 of the Civil Code is only loss. The intended loss is a loss as a result of an unlawful act. The Civil Code does not regulate the compensation that must be paid due to unlawful acts, but Article 1243 of the Civil Code regulates the compensation that must be paid as a result of default, so to demand compensation due to unlawful acts the same provisions can be applied to the provisions of the Civil Code. regarding compensation due to default. Indonesian Supreme Court in Decision No. 610 K/Sip/1968 contains the consideration that the judge has the authority to determine how much compensation should be paid, even if the plaintiff demands inappropriate compensation,²¹

"Although the claim for compensation is deemed inappropriate, while the plaintiff absolutely demands that amount, the judge is authorized to determine

¹⁸The Dutch term onrechtmatige daad by some scholars translates into the terms unlawful acts and unlawful acts. MA Moegni Djojodirjo, Mariam Darus Badruzaman, Rachmat Setiawan, Abdulkadir Muhammad used the term "acts against the law". Meanwhile, Wirjono Prodjodikoro and Subekti use the term "violation of the law". (see explanation from Bakarbesy, Leonora dan Ghansham Anand. (2018). *Buku Ajar Hukum Perikatan*. Sidoarjo: Zifatama Jawara, p. 229-231).

¹⁹ Ibid, p. 229

²⁰Setiawan, R. (2004). *Pokok-Pokok Hukum Perikatan*. Bandung: Binacipta, p. 75.

²¹Agustina, Rosa. (2003). *Perbuatan Melanggar Hukum*. Skripsi. Jakarta: Fakultas Hukum Universitas Indonesia. p. 57.

how much should be paid, this does not violate Article 178 paragraph (3) HIR (ex aequo et bono)."

Compensation for losses incurred as a result of Unlawful Acts requires the role of Judge Hoge Raad in his Decision dated March 21, 1943 considering the following:²²

"In assessing the loss referred to in Article 1371 of the Civil Code, it is necessary to consider the loss of an ideal nature, so that the judge is free to determine compensation for sadness, pleasure in life, which he can actually hope to enjoy."

In proving the existence of unlawful acts committed by a notary, it must be proven that there is a loss and a causal relationship between the loss and the error. Is there a loss from the State Savings Bank (Credit) when providing this actual information the Notary did not include it in the contents of the deed? Or is there a notary error whose title is the power of attorney to sell but the articles contain the deed of delivery? So what is stated in the Notary Position Act, namely as a Notary, he must have an attitude of caution, which is a matter that must be carried out so that something similar does not make it a violation of the law or an error based on Article 1365 of the Civil Code.

But basically in this case the notary has no responsibility for the contents of the deed he made, because the contents of the deed are the will and the agreement desired by the parties. The notary only puts the agreement in the form of an authentic deed, thus the notary is only responsible for the formal form of the authentic deed as stipulated in the law. Notaries only have a role to record or write a legal act carried out by the parties facing the deed. The notary is only responsible for checking what happened, what happened to him, and what was seen by the parties who appeared and adjusted the formal requirements for making an authentic deed and then poured it into a notary deed.²³

Thus, it can be concluded that, except for the contents of the deed, every act committed by a notary can be held accountable if there is a violation committed and the act can cause harm to the parties. The notary must be responsible for the material truth of the deed if the legal advice given turns out to be something wrong or wrong in the future. A notary who makes a mistake, whether intentional or not, who commits an act that violates the law and causes other people to suffer losses, the notary can be subject to sanctions as stipulated in

²²Djojodirjo, M.A. Moegni. (1979). *Perbuatan Melanggar Hukum*. Jakarta: Pradnya Paramita, p. 76.

²³Nurkharisma, Dina., Dkk. (2020). *Pertanggungjawaban Notaris Terhadap Perjanjian Dibawah Tangan Yang Telah Dilegalisasi Yang Mengandung Perbuatan Melawan Hukum*. Jurnal. Notarius. Vol. 13 No. 2.

Article 84 of the UUJN which states that it can be a reason for parties who suffer losses to demand reimbursement of costs, compensation and interest to a notary. The compensation in question is regulated in Article 1365 of the Civil Code which states, every unlawful act that brings harm to another person, requires the person who because of his mistake in issuing this loss, replaces the loss. Thus, from the sound of the article, in order to be subject to compensation to a notary, an act that violates the law must be fulfilled, there must be an error, there must be a loss caused, and there is a relationship between the act and the loss.²⁴

Regarding the Notary, making a power of attorney to sell which was made at the time of the subsidized housing loan agreement was an act that was in accordance with what was stated in the letter issued by the National Land Agency. As in the discussion of Chapter II of this writing in the subchapter "regulations within the land agency", this can be made by a Notary in order to avoid bad debtors and debtors disappearing without knowing their whereabouts. Then in line with this provision, Ms. Ferawati SH, Coordinator of the Substance Group for the Maintenance of Land, Space, and PPAT Guidance at the National Land Agency Office of Cirebon Regency, said "that what is based on the letter issued by the National Land Agency is valid as long as there are no regulations governing or new provisions regarding the process or procedure for the transfer of land and building rights in financing subsidized housing loans". Mrs. Ferawati, SH added in her interview, "So that the Notary in making the power of attorney to sell on subsidized housing loans is not an act against the law, however, the Notary still needs to be careful in carrying out his position".²⁵ Besides that too Deed of acknowledgment of debt and power to sell at the time of the subsidized housing loan agreement is a standard agreement that has been drawn up and prepared by one of the parties, which in this case is the BANK. In a standard agreement, the other party only needs to give approval or refuse to agree to the agreement or it is called a take-it-or-leave it contract.²⁶

- **Accountability by Giving Sanctions According to the Law on Notary Positions and the Notary Code of Ethics**

The position of a notary is a position of trust that must be in line with those who carry out the duties of a notary position as a person who can be trusted not as a

²⁴Ibid, p. 756.

²⁵Interview with Mrs. Ferawati, SH, Coordinator of the Substance Group for the Maintenance of Land Rights, Space and PPAT Development, Land Office of Cirebon Regency, 6 June 2022.

²⁶Assegaf, Ahmad Fikri. (2014). *Penjelasan Hukum Tentang Klausula Baku*. Pusat Studi. Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, p. 30, quoted from Chesa Ramadhan, 2019, The Urgency of Risk Mitigation in the Agreement on the Implementation of Information Technology-Based Lending and Borrowing Services in Indonesia, Thesis, Notary Masters Study Program, Universitas Airlangga, p. 64

person who cannot be trusted, so that the position of a notary and its officials must be in line like two sides of a coin that cannot be separated.²⁷A notary in carrying out his position must be obedient and subject to UUJN, but on the other hand a notary in acting as a public official is also regulated by a code of ethics whose role is to create a standard for professionals within the organization.

The Law on Notary Positions number 2 of 2014 Article 7 paragraph (1) point a states that notaries are obliged to carry out their positions in real terms, the purpose of this article is more clearly and firmly regulated in Article 15 of this Law, namely that notaries in carrying out their positions are authorized to make deed authentic regarding all actions, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosse, copies and excerpts of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other persons stipulated by law. If a Notary violates his obligations and commits an act prohibited by UUJN, then in Article 7 paragraph (2) the notary may be subject to sanctions in the form of:

- written warning;
- temporary suspension;
- honorable dismissal; or
- dishonorable dismissal.

Regarding the legal actions of a Notary against the appearers, it is explained in Article 38 of the UUJN-P that "the contents of the Deed are the will and wishes of the interested parties". And based on Article 41 UUJN-P if this is violated by a Notary, then the Deed only has the power of proof as an underhand deed.

The Notary's accountability has also been regulated in Article 65 of the UUJN, which states that: "Notaries, Substitute Notaries, Special Substitute Notaries, and Temporary Notary Officials are responsible for every deed made even though the Notary Protocol has been submitted or transferred to the Notary Protocol custodian." According to Abdul Ghofur as quoted by Herianto Sinaga, distinguishing four points related to a notary as a public official has responsibility for the material truth of the deed he made, namely:

- The civil liability of the notary to the material truth of the deed he made;

²⁷Habib Adjie, Op.cit, p. 35.

- The notary's criminal responsibility for the material truth in the deed he made;
- The notary's responsibility based on the notary position regulation (UUJN) for the material truth in the deed he made;
- The responsibilities of a notary in carrying out his duties are based on a notary code of ethics.²⁸

The Law on Notary Positions and the Code of Ethics for the Indonesian Notary Association (hereinafter referred to as INI) are different regulations but they are interrelated. The Notary Position Act regulates more about legal products made by a Notary, namely an authentic deed, while this Code of ethics regulates the actions/behavior of a Notary as a public official. THIS code of ethics is regulated by the notary professional organization at the Extraordinary Congress of the Indonesian Notary Association which was held in 2015. There are 2 (two) positions of the code of ethics for notaries:²⁹

- Due to the nature and nature of the work of a notary who is very oriented towards legalization, so that it can become the main legal foundation regarding the status of property, rights, and obligations of the parties who use the services of the notary.
- In order to avoid injustice as a result of granting property status, rights and obligations that are not in accordance with the rules and principles of law and justice, so that it can disrupt the personal rights of the justice-seeking community, for the notary world, a code of ethics is also needed. good and modern profession.

Article 1 paragraph (8) of this Notary Code of Ethics confirms that if a notary violates the code of ethics, it will be followed up by the enforcer of this Notary Code of Ethics, namely the Notary Honorary Council. Supervision of notaries in this Notary Code of Ethics is regulated in Article 7 of this Notary Code of Ethics which contains an institution that can supervise notaries, namely the Honorary Council. Violations committed by Notaries regarding the code of ethics are actions that need to be followed up and monitored, so that in the future there will be no more violations and so that the level of discipline will increase and become an example for new notaries.

In relation to the Notary's responsibility for making the power of attorney to sell on subsidized housing loans, to determine whether the Notary has violated the UUJN and the code of ethics in carrying out his position, of course the author can

²⁸H, Sinaga. (2015). *Tanggung jawab Werda Notaris Terhadap Akta Yang Dibuatnya*. Jurnal. *Premise Law Jurnal*. vol.6. No.1–12, p. 756-757.

²⁹Yogi Priyambodo in Fuady, Munir. (2005). *Profesi Mulia (Etika Profesi Hukum bagi Hakim. Jaksa. Advokat. Notaris. Kurator dan Pengurus)*. Bandung: PT. Citra Aditya Bakti, p. 133.

emphasize that the deed of power of attorney to sell on subsidized housing loans is legal and can be tested materially. , because the deed was made based on the wishes of the parties in accordance with Article 38 of the UUJN-P. So if the debtor defaults, the power of attorney to sell can be used as a basis for transferring rights to the BANK (creditor) as the beneficiary.

4. Conclusion

The Head of the National Land Agency of the Republic of Indonesia (BPN RI) number 4398/17.3-300/XI/2011, stated that the deed of sale and purchase made by the Land Deed Making Official on the basis of the Deed of Recognition of Debt and or Power of Attorney to Sell, can be registered for the transfer of rights at the Land Office. local. If a Notary violates his position, he will be subject to sanctions based on the provisions of the Minister of Law and Human Rights Number 17 of 2021, as for the procedure or stages of summoning a Notary based on Article 26, Article 28 – Article 30, Article 32 – Article 33 Permenkumham No. 17 of 2021 are as follows: (1) Stage of Formation of the Investigating Council which is formed by the chairman of the Notary Honorary Council; (2) Examination stage related to notarial deed or protocol; (3) Notary Calling Stage; and (4) The stage of granting approval or rejection of the Investigating Panel at the request of the Investigator, Public Prosecutor or Judge. In connection with the high interest of the community for subsidized mortgage housing, the National Land Agency should be able to pay attention to the outgoing letter to be used as a regulation issued by the Ministry of ATR / Head of BPN. A notary being a defendant or co-defendant in a district court is the cause of the lack of knowledge of the appearers, of the meaning of the binding power of the agreement made based on the wishes of the parties which is then stated in an authentic deed. Regarding this matter, the parties should first understand that the contents of the deed are the will of the parties, so that what has been agreed and stated in the deed are the rights and obligations that must be carried out by the parties.

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