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Judul Makalah : Financial And Legal Barries In Implementing Secondary Mortgage Facilities In  
Indonesia

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# **1. Submission**



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## [RLJ] Submission Acknowledgement

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Editor RLJ <editor@russianlawjournal.org>

23 Agustus 2022 pukul 14.58

Kepada: Paramita Prananingtyas <pptyas@live.undip.ac.id>

Dear Prananingtyas,

Thank you for submitting the manuscript, "GET BEYOND THE BARRIES OF SECONDARY MORTGAGE FACILITIES IN INDONESIA" to Russian Law Journal (RLJ). With the online journal management system that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site:

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## [RLJ] Send to review

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Editor RLJ <editor@russianlawjournal.org>

27 September 2022 pukul 23.18

Kepada: Paramita Prananingtyas <pptyas@live.undip.ac.id>

Dear Prananingtyas,

We have reached a decision regarding your submission to Russian Law Journal (RLJ), "GET BEYOND THE BARRIES OF SECONDARY MORTGAGE FACILITIES IN INDONESIA".

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# GET BEYOND THE BARRIES OF SECONDARY MORTGAGE FACILITIES IN INDONESIA

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**Submitted  
Manuscript**

## **Abstract**

The author is motivated to research the use of mortgage backed securities to solve the housing supply backlog problem in Indonesia. The first problem is regarding the legality of mortgage backed securities in Indonesia, the second problem is about the disinterest of the housing industry in Indonesia to take advantage of mortgage backed securities, and the second problem is optimizing existing resources to make mortgage backed securities more attractive. Since its establishment in 1998 until 2015 the mortgage backed securities or secondary housing financing facility has not been maximally utilized by the financial industry in Indonesia as an alternative source of funds to finance the provision of housing. The financial industry is still making maximum use of primary housing financing by providing loans whose funds come from third party funds. Mortgage backed securities are not attractive to the financial industry because the subject of implementation, namely PT SMF Persero, is less well known and because there are doubts about the financial benefits of mortgage backed securities for the financial industry and investors. This research is based on empirical studies conducted directly on the housing finance provider industry sector in Indonesia. A major breakthrough was made by creating new securities in the Indonesian capital market that can make mortgage backed securities more attractive, namely EBA SP (asset backed securities participation securities), in this way mortgage backed securities are expected to be traded on the secondary market. The legal aspects to support the birth and operation of mortgage backed securities in Indonesia are complete, but the operational use of mortgage backed securities is experiencing problems due to the lack of interest in the financial industry in the issuance process and the character factor of the securities issued. The financial industry providing housing finance in Indonesia demands that the pricing of the issuance of mortgage backed securities and the trading process be made more attractive to investors.

**Keywords:** mortgage-backed securities, funding, financial barriers

## **Introduction**

Housing and settlements are one of the basic human needs, having a strategic function as a center for family education, cultural nurseries, and improving the quality of future generations. The government's ability to meet the needs of housing and settlements is relatively very limited. Community resources and potentials need to be developed to be able to meet their housing and settlement needs independently, supported by government efforts through the creation of a conducive housing provision climate.

The Government of Indonesia has a National Medium-Term Development Plan 2015-2019, which includes a plan to provide housing in Indonesia. Fulfillment of decent housing supported by adequate infrastructure, facilities and utilities needs special attention. Inequality between supply and demand is still a major problem in the provision of basic infrastructure, especially for low-income people (MBR). In the housing sector, the limited capacity of developers has not been supported by incentive regulations. Low-income communities also have a problem, namely the low affordability of building or buying a house, so that they cannot live in decent houses. The shortage of providing housing needs or known as the housing backlog has led to new innovations so that the problems that hinder the provision of housing are unraveled, among others by providing capital financial instruments for housing finance.

Since 2010 the Government of Indonesia has had a program known as the Housing Financing Liquidity Facility, namely channeling housing loans for simple and very simple houses through the banking system. Housing loans that have been disbursed, both from the FLPP program and non-FLPP programs such as KPR and KPA, can theoretically be turned into a source of funds by means of securitization, known as mortgage backed securities (MBS).

Mortgage backed securities are a way to expand the sources of financing for housing development. It has been known in the world since 1934 in the United States, initially the pattern of securitization of housing loans was carried out in order to revive the United States economy which was slumped during the Great Depression, at which time people's incomes declined. drastically as well as house prices. This condition has resulted in banks as owners of housing loans experiencing liquidity difficulties. So finally, the United States Government decided to establish a Government Sponsored Enterprise to buy mortgages or housing credit guarantees owned by banks in the form of securities. The securities will then be re-marketed in the form of a secondary mortgage. Mortgage-based securities that have been attempted to be used as an alternative source of funding for housing finance in Indonesia have not worked as they should. From 1998 to 2015 this secondary

housing financing facility was not widely known and used by primary housing finance providers and other investors.

There are 3 problems that will be analyzed in this paper. The first problem is regarding the legality of secondary housing financing (SMF) in Indonesia. The second problem is to find out why housing loan holders are not interested in issuing mortgage backed securities and why investors are not interested in investing in mortgage backed securities in Indonesia. The third problem is how to optimize all available resources to make mortgage backed securities more attractive to issue and trade in both the primary and secondary markets, so that mortgage backed securities as securities will be more financially attractive.

## **Literature Review**

Initially, the emergence of asset securitization in America was driven by government programs that sought to increase the liquidity of the residential mortgage market. To realize this program, the government formed the Federal Home Loan Bank in 1932, which provided housing credit facilities for the American people. Then to form the secondary mortgage market, the American government established three institutions, namely: 1. The Federal National Mortgage Association (FNMA) or known as Fannie Mae in 1938, 2. The Government National Mortgage Association (GNMA) or known as Ginnie Mae designation in 1968 which is a fraction of Fannie Mae and 3. The Federal Home Loan Mortgage Corporation (FHLMC) otherwise known as Freddie Mac in 1970. These three institutions have two main functions in developing the secondary housing market, namely being a sponsor for the issuance of mortgage-backed securities by banks, and acting as guarantors for investors, namely providing assurance on the smooth and timely payment of interest and principal to investors (The Congress of the United States, the Congressional Budget Office : Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market, December 2010).

The first time the securitization of assets in the form of mortgage-backed securities with the underlying asset in the form of mortgages was issued in 1968 through Ginnie Mae. Then asset securitization techniques developed and in 1985 successfully issued securities with underlying assets in the form of car loans. Then, the development of asset securitization transactions in America has increased very rapidly, both in the securitization market, types of underlying assets, forms and mechanisms (Fabozzi et al., 2000).

The rapid growth of the securitization market since 1968, which was marked by the development of volume, number of originators, types of underlying assets and forms of

securitization, subsequently experienced difficult times following the emergence of the sub-prime mortgage crisis in 2007. The highest growth in the sub-prime mortgage market occurred in the period 2001 to 2006. This growth was triggered by, among other things, high investor interest in high-yielding investment products and support from government institutions such as Fannie Mae, Ginnie Mae and Freddie Mac. On the other hand, when securitization grows rapidly, the quality of the securitization market decreases significantly due to the characteristics of various parties and factors involved in the transaction process, namely: 1). Lending banks loosen credit requirements such as high loan to value ratios, 2). Bad debtor quality, such as low loan score, high level of indebtedness, low ability to provide data and documentation, 3). Loans such as product type, installment terms, loan amount, higher loan interest rates than prime loans and 4). Macroeconomic conditions such as rising house prices, household income and rising unemployment (Keys et al., 2009). The sub-prime mortgage crisis has actually been detected and recognized by the parties, however, the deterioration of the quality of the securitization market is covered by the tendency of rising house prices from 2003 to 2005. The various types of asset securitization development referred to, the securitization market is dominated by the form of Mortgage-Backed Securities-MBS guaranteed by the three US government institutions, then Asset-Backed Securities-ABS with underlying assets in the form of credit card bills, car loans, other consumer credit and Collateralized Loan Obligation-CLO. A total of 3,650 MBS was issued for €715.21 million, followed by 2,427 ABS issued for €363.19 million and finally 2,504 CDOs were issued for €316.72 million (Gramlich, 2007).

Supervision of the implementation of asset securitization in America does not refer to special laws and regulators but is subject to state and federal regulations such as the Securities Act of 1933, Securities Exchange Act of 1934, Trust Indenture Act of 1939, Investment Advisors Act of 1940, Investment Company Act of 1940, Internal Revenue Code of 1986, US Bankruptcy Code and the Dodd-Frank Wall Street Reform and Consumer Protection Act. The regulators with the authority and responsibility are the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (Hancock & Passmore, 2011)

The reasons for conducting securitization transactions are, among others, to obtain cheaper funding, benefits from the balance sheet structure, savings in the amount of capital, alternative sources of funding, profit from the difference between the cost of funds in the capital market and the proceeds from the sale of assets through securitization. To maintain a

sufficient level of capital, the originator in the form of a bank must comply with other regulations, namely the Basel rule, which states that banks must maintain a sufficient level of capital when conducting asset securitization transactions. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act regulations will regulate originators in the form of financial institutions, to increase the amount of capital in order to increase the ability to absorb risk in the event of a loss (Ambrose & Pennington-Cross, 2000).

In America itself, the form of SPV can vary depending on tax factors, originators and investors involved in the transaction. The two most commonly used forms of SPV are Trusts and Limited Liability Companies (LLCs) and the least used are Limited Partnerships. In this case, the SPV can be owned by the originator or by an independent party. The use of SPV by independent parties can be used as one of the steps to avoid the bankruptcy risk of the SPV if the courts in America treat the underlying assets in securitization activities as still owned by the originator. To avoid this risk, it is necessary to believe that SPV assets are separate from the originator which can be seen from indicators such as separate financial statements and legally the SPV is an independent party.

To respond to the financial crisis, the American government carried out various initiatives including two main programs aimed at restoring liquidity and confidence in the financial industry, namely: 1). The Term Asset-Backed Securities Loan Facility (TALF) started in November 2008 and by the time this program ended in June 2010 the outstanding loan amount was US\$43 billion, and 2). the Public Private Investment Program (PPIP), was launched in March 2009 and started investing in September 2009. The source of funds for the PPIP program is a combination of the Troubled Asset Relief Program (TARP), private investors and loans from TALF. The PPIP's working mechanism is by buying troubled assets owned by banks and as of May 1, 2011 the amount has reached US\$1 trillion and eight PPIPs have been formed. Although the volume of securities transactions was lower than the volume before the financial crisis, CLO and ABS transactions have started to grow in 2011. In future developments, the promulgation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010 will change the financial industry given its broad impact on business actors, performance and development in America. The implementation of the said law will affect asset securitization activities because there are tightening regulations on the roles of rating agencies and investment managers, risk retention and capital adequacy ratios. In addition, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 requires national registration of companies that are mortgage originators and the Credit Card

Accountability Responsibility and Disclosure Act of 2009 also asks to stop imposing egregious fees on credit card holders (Barth et al., 2004)

The parameters of the ideal secondary housing finance market are the stability of macroeconomic conditions; competitive market structure; standardization of mortgage instruments; servicing techniques from mortgage-backed securities issuing institutions and providers of secondary mortgage facilities as well as government policies (Lea & Bernstein, 2000).

Mortgage backed securities and secondary mortgage facilities have also been recognized and practiced in several countries in the world. An example is France. Trading in Asset Backed Securities (EBA) in France has been regulated by The Securitization Law No.88-1201 dated December 23, 1988 and gave rise to the term Fonds Commun de Créances (FCC) or French SPV. This is in contrast to the UK and Germany which do not have specific laws regarding asset securitization. Subsequently, several amendments to the Law have been made and the most recent was the 2008 Ordinance which aims to improve the quality of securitization implementation and change the name of the FCC to Fonds Commun de Titrisation (FCT). The Financial Markets Authority (Autorité des Marchés Financiers) – AMF is the main agency authorized and responsible for the conduct of securitization activities in France (Farruggio & Uhde, 2015).

FCT's legal status is co-ownership, without any legal personality such as having no capital, shareholders, management or employees, but only consisting of investment managers and custodians. Thus, FCT will be free from bankruptcy problems (remote bankruptcy). In further developments, FCT securitizes various types of claims such as credit card bills, trade receivables, commercial credit and consumer loans, mortgage claims (KPR) and insurance risk claims with the exception of claims that are categorized as default, doubtful and in the process of legal litigation. In addition, the technique of transferring assets from the originator to the FCT is carried out through the use of special documents (bordereau) for cost and efficiency considerations. In general, the formation of the FCT is carried out in France and in carrying out securitization activities always refers to various regulations issued by the AMF and the Monetary and Financial Code. However, if there is an FCT formed abroad, the FCT cannot operate in France. This type of credit enhancement is carried out to increase the rating of securities issued, such as: 1. Guarantees provided by the originator, affiliated parties of the originator or by insurance companies, 2. Cash reserve funds and 3. Overcollateralisation (Association of Corporate Treasurers (United Kingdom), Association for Financial

Professionals (United States), Association Française de Trésoriers D'Entreprise (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

In subsequent developments, the 2007 American sub-prime mortgage crisis had a significant impact on the decline in transaction volume and investor interest in asset securitization activities in France. The French regulator then refined the practice of asset securitization by amending the Securitization Law through the 2008 Ordinance. Furthermore, in the September 2009 Quarterly Review, the Bank for International Settlement reviewed the rules of the game to reactivate and strengthen the securitization process by highlighting several aspects such as the limited level of complexity and transparency of transactions and the high dependence on ratings from rating agencies. To simplify the securitization process, the authorities set a standardization of the structure, including reducing the number of tranches. In addition, new standards have been set regarding disclosure and reporting procedures as well as supervision of rating companies (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), Association Française de Trésoriers D'Entreprise (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

### **Housing Provision Policy in Indonesia**

The Government of the Republic of Indonesia has a policy direction and development strategy to increase efforts to sustain economic development, through the following strategies: (i) Increasing economic growth which is continuously maintained in a positive manner by reducing disparities between regions; (ii) Increasing the level of income (per capita) and reducing the income gap between groups; (iii) Increase in employment so that the unemployment rate decreases; (iv) Reducing the poverty rate so that the number of poor people is reduced; (v) Food security includes price stabilization so that inflation rates are low; (vi) Energy security, especially increasing public access to energy, increasing efficiency and the national energy mix; (vii) Increasing access to transportation/community mobility; (viii) Application of production patterns/economic activities and consumption patterns that are efficient (not wasteful) and environmentally friendly (RPJMN 2015-2019, 2014). The second direction of development policy is to increase efforts to sustain social development, among others through a strategy to increase service affordability and access to education, health, housing, clean water and community sanitation services (RPJMN 2015-2019, 2014). Specifically to spur economic growth more specifically in terms of housing, the Government has had several specific policy directions, which are called policy directions for inclusive

economic growth in an effort to increase equity, which include directing fiscal policies that support the livelihoods of the poor and vulnerable, especially public spending that is targeted social assistance such as conditional cash assistance, housing assistance for the poor, assistance for agricultural and fisherman production, assistance for improving the skills of farmers, fishermen, and other underprivileged people's businesses. The policy direction of the Government of the Republic of Indonesia in terms of providing housing infrastructure does not only stop at the availability of housing for the poor but also for workers in industrial areas, TNI soldiers and Polri (RPJMN 2015-2019, 2014).

Since 2010 the Government of Indonesia has had a program called the Housing Financing Liquidity Facility (FLPP). This regulation regarding FLPP was initially stated in Permenpera Number 14 and 15 of 2010, then amended by Minister of Public Housing Regulation (Permen) No. 04 of 2012, concerning Housing Procurement through Credit for Financing for Welfare Home Ownership with the support of Housing Financing Liquidity Facility (FLPP) and Regulation of the Minister of Public Housing No. 05 of 2012 concerning Instructions for Implementing Housing Through Credit for the Financing of Prosperous Home Ownership. Subsequently, it was amended by Regulation of the Minister of Public Works and Public Housing Number 20/PRT/M/2014 and 21/PRT/M/2014. Based on these regulations, the Government has been able to channel FLPP funds which are used to help finance the community to own a landed house for five years. years since 2010 – 2015 with a fund of IDR 16.5 trillion (Pt. Dirjen Pembiayaan Perumahan Kementerian Pekerjaan Umum dan Perumahan Rakyat (PUPR) Maurin Sitorus dalam Forum Redaksi Bersama oleh Kementerian Komunikasi dan Informatika, Antara News Kamis, 19 Maret 2015 16:33 WIB). The distribution of FLPP is carried out through the distribution of FLPP mortgages. FLPP (housing financing liquidity facility) is housing financing support for MBR (low-income people), to get KPRSh (Simplified Healthy Home Ownership Credit). The management of the FLPP program funds is carried out by the Kemenpera BLU-PPP (Public Service Agency for the Public Housing Financing Center) in collaboration with banking institutions that have collaborated with the Ministry of Industry. There are 16 banks, namely Bank BTN, BRI, BTN S, BNI, BRI Syariah, Bank MANDIRI, Bank MANDIRI Syariah, Bank Artha Graha, Bank Bukopin, BPD East Kalimantan, BPD North Sumatra, BPD Central Java, BPD East Java, BPD Southeast Sulawesi, BPD Nagari, BPD North Sumatra Sharia. The cooperation between the Government (Kemenpupera) and banks is carried out through PKO (operational cooperation agreements) in the context of housing procurement through credit or financing for prosperous housing. The FLPP Mortgage Program is a housing finance assistance

program for low-income communities with various benefits, such as a fixed-margin interest rate of 7.25% for the life of the loan, including life and fire insurance protection and free of VAT.

Specifically for banks that will become implementing banks, both commercial banks, sharia commercial banks and sharia business units, the requirements to become implementing banks are: a) Submit a statement of interest in becoming an Implementing Bank in the context of implementing the FLPP program; b) Have a minimum value of Composite Rating Three (PK-3) in accordance with Bank Indonesia Regulations; c) Have at least 2 (two) years of experience in issuing home ownership credit/financing (KPR); d) Have infrastructure for managing credit/mortgage financing at least: (i) Having a work unit organization for managing home ownership credit/financing; (ii) Having personnel managing home ownership credit/financing; (iii) Possess information technology for credit management/home ownership financing; and (iv) Have a home ownership credit/financing policy; e) Have an adequate service network at the provincial and/or national level; f) Have a plan to issue a Prosperous KPR within 1 (one) year; g) Signing a Collective Agreement with the Deputy for Financing or an official appointed by the Minister; and h) Signing an Operational Cooperation Agreement (PKO) with PPP.

The largest third-party funds came from time deposits, especially time deposits with a time period of 1 month. Problems will arise if third party funds in the form of short-term deposits are used to finance long-term housing loans, in banking this condition is known as a maturity mismatch. The emergence of a maturity mismatch in banking operations will cause problems, namely liquidity difficulties and public distrust of banks. The government has arranged so that there is no maturity mismatch through the Loan to Deposit Ratio (LDR) setting. The Government of the Republic of Indonesia through Bank Indonesia has periodically issued Bank Indonesia Regulations regarding this LDR, namely Circular Letter of Bank Indonesia Number 15/40/DKMP dated September 24, 2013 Regarding the Implementation of Risk Management in Banks Providing Credit or Financing for Property Ownership, Credit or Financing Property Backed Consumption, and Motor Vehicle Loans or Financing amended by Bank Indonesia Regulation Number 17/10/PBI/2015 concerning Loan To Value Ratio Or Financing To Value Ratio For Property Loans Or Financing And Down Payments For Motor Vehicle Loans Or Financing. The regulation will regulate the Loan to Value (LTV ratio) ratio, namely the ratio between the credit value that can be given by the Bank to the value of the collateral in the form of property at the time of lending based on the latest appraisal price; financing to value ratio (FT ratio) which is the ratio between the value

of financing that can be provided by the Bank to the value of collateral in the form of property at the time of financing based on the last appraisal price. Bank Indonesia will set limits on the LTV Ratio or RTV Ratio for conventional property loans and sharia property loans, in the form of buying landed houses, flats, shop houses, home offices.

The limited availability of third-party funds and the precautionary element from the banking regulator and the banking industry in the context of lending has resulted in limited funds being channeled into housing development. The Government of the Republic of Indonesia was then moved to utilize secondary housing financing facilities, following what has been implemented by the United States Government.

### **Legality of Housing Secondary Financing**

A secondary mortgage facility company was established specifically to raise long-term funds which will then be channeled to financing institutions, namely banks that experience funding gaps. The financing facility provided by SMF is a financing facility specifically organized to be given to financing institutions (banks) in the context of lending through the housing loan scheme. This financing system is growing rapidly in the United States, followed by developments in other countries in the world such as France, Latin America, Australia, New Zealand, Japan, Hong Kong, Thailand, Philippines, Taiwan, Malaysia and Singapore (Tim Studi EBA Departemen Keuangan Republik Indonesia Badan Pengawas Pasar Modal 2003). This process is often referred to as the asset securitization process.

Securitization has several definitions, among others, according to Joan Barmat, securitization is an open market for marketing collateralized financial instruments (financial securities) in the form of collateral for cash claims and claims for collateral for immovable property (Joan Barmat, 1990) Leon T Kendal defines securitization as a process to package individual debts and other debt instruments, then convert the packaging into securities to increase the status or rating of these securities to third party investors (Kendall, 2000).

The securitization process in Indonesia has been initiated since 1998 with the Decree of the Minister of Finance No. 132/KMK.014/1998 concerning Secondary Housing Financing Facilities, which regulates business fields, procedures for establishment and licensing, sources of funds, prudential regulation (prudence principle), supervisors and supervisors, sanctions. Unfortunately, this provision does not work perfectly because it is not followed by the realization of the establishment of an SMF institution that carries out the secondary housing financing in question. Until then in 2005 a series of interrelated

regulations emerged to support the establishment of the SMF institution and the trading of securities issued by the SMF.

The legal basis for asset securitization and trading of asset-backed securities is Law of the Republic of Indonesia No. 8 of 1995 concerning Capital Market Article 1 paragraph 5 which states that securities include "securities, namely debt acknowledgments, commercial securities, stocks, bonds, proof of debt, Participation Units in Collective Investment Contracts, futures contracts on securities and any derivatives of securities".

Then through Capital Market Supervisory Agency Regulation no. IX.K.1.1 Attachment to Decision of the Chairman of BAPEPAM no Kep -28/PM/2003 dated July 21, 2003 concerning Guidelines for Collective Investment Contracts for Asset Backed Securities, in article 1 letter (a) it is stated that KIK EBA is a contract between an investment manager and a custodian bank that binds asset-backed securities holders, where the investment manager is authorized to manage the collective investment portfolio and the custodian bank is authorized to carry out collective custody.

KIK's participation unit whose portfolio consists of financial assets in the form of claims arising from commercial securities, leases, conditional sale and purchase agreements, installment loan agreements, credit card claims, lending including mortgages for housing or apartments, debt securities that are guaranteed by the Government, means of credit enhancement/cash flow as well as equivalent financial assets and other financial assets related to these financial assets. From this definition, it can be concluded that what is included in the KIK EBA are securitized securities originating from assets that have a stream of cash flow in the form of claims arising from commercial securities, credit card claims, claims arising in the future (future receivables), and the provision of credit, including KPR and KPA.

The granting of a KPR or KPA is including a bill or collection of mortgage receivables that can be securitized so that data is traded through the secondary market, what is traded is the right to collect a collection of mortgage receivables and the mortgage lending bank as the original creditor (originator) to a special institution established for that purpose ( special purpose vehicle) which buys it at the same time issues securities with asset collateral for the mortgage receivables collection.

PT Sarana Multigriya Finansial (Persero) is a special institution that is given the authority to carry out this task, as a special purpose vehicle that buys and issues securities with guaranteed assets for the collection of mortgage receivables. The special purpose vehicle or secondary mortgage company required to perform asset securitization is established under the Government Regulation of the Republic of Indonesia Number 5 of 2005 concerning State

Equity Participation of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Secondary Financing of Housing, in article 1 it is stated that there is a need for alternative financing other than banks as providers of funding for housing needs, namely the establishment of a secondary housing finance company. Article 2 of this Government Regulation states that the purpose and objectives of the limited liability company as referred to in Article 1 are specifically to carry out: a) Financing business activities in the form of secondary housing financing facilities at banks and financial institutions that provide housing loans; b) Collect public funds to finance secondary housing financing activities by issuing long-term and or short-term securities; and c) Other activities in order to support the activities as referred to in letters a and b above.

The implementation of Government Regulation No. 5 of 2005 concerning the Republic of Indonesia State Equity Participation for the Establishment of a Limited Liability Company (Persero) in the Sector of Secondary Housing Financing is carried out by issuing Presidential Regulation No. 19 of 2005 concerning Secondary Housing Financing. Article 1 paragraph (13) states that securitization is the transformation of illiquid assets into liquid ones by purchasing financial assets from original creditors and issuing asset-backed securities. This securitization process will be submitted to a vehicle called a special purpose vehicle or secondary mortgage company, namely a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and simultaneously issue Asset Backed Securities.

### **Constraints on the Utilization of Mortgage Backed Securities and Secondary Mortgage Facilities by the Financial Industry and Investors in Indonesia**

PT. SMF (Persero) was established with the aim of providing liquidity facilities in housing secondary financing (KPR) and securitizing mortgage assets to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). To obtain more comprehensive data from the financial industry regarding the role and potential of mortgage backed securities and secondary mortgage facilities by PT SMF Persero, this study also uses focus group discussions (FGD) and in-depth interviews. The FGD was held on December 4, 2014 at the Perbanas Jakarta office with representatives from 12 (twelve) national banks and non-bank financial companies, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, BCA Bank, Panin Bank, BIIMaybank, Permata Bank; and MNC Multi Finance. In addition, in-depth interviews were also held on 2 and 3 December 2014 with several financial

institutions that have become or will become potential investors for SMF products, namely the President Director of the Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk.

From FGDs and in-depth interviews, it can be seen that with respect to PT SMF Persero and secondary housing financing, the profile of the financial industry can be divided into three profile categories, namely:

1. Profile of the financial industry that has used SMF products (already become SMF consumers)

PT SMF Persero's products provided are liquidity facilities in secondary housing financing (KPR) and mortgage asset securitization to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). Several financial institutions have utilized liquidity facilities in housing secondary financing, including Bank BTN, Bank Muamalat, Bank DKI and MNC Multifinance. These banks and financial institutions experience several advantages with the liquidity facilities provided by SMF. First, SMF's liquidity facility can increase the capacity of this financial institution to finance mortgages. Second, through the provision of mortgages, this financial institution will receive a collection fee that can be used to increase profits, so this will automatically increase capital. Third, the liquidity facility from SMF can overcome the maturity mismatch problem that is commonly faced by financial institutions in providing mortgages. Maturity mismatch occurs when players in the banking industry and financial institutions use short-term third-party funds (DPK) to finance mortgages which are long-term loans. Although some of the above financial institutions have utilized liquidity facilities from SMF, the proportion of SMF funds is still very small in the financing portfolio of these banks and financial institutions (between 10%-15%). The main thing that is of concern to users of this liquidity facility is that the 'price' given by SMF for secondary mortgage financing is perceived to be relatively high. In other words, the pricing provided by SMF for liquidity facilities is not competitive because it can reduce potential profits for banks and financial institutions that use them. Besides the 'pricing' problem, Bank BTN also complained about the limited funds available at SMF for financing liquidity. SMF's limited funds also make banks and financial institutions still rely on third party funds (DPK) in financing their mortgages.

2. Profile of the financial industry that has the potential to become SMF consumers

Several financial institutions, such as general insurance and BPJS, have the potential to become investors for SMF by utilizing EBA securitization products. However, there are things that prevent this financial institution from using SMF's products. First, it relates to the rules from OJK. Until now, there is no regulation from OJK that regulates the investment portfolio of general insurance companies in KIK EBA which is included in Risk Based Capital (RBC) for insurance. According to OJK regulations, what are included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate, maximum 20% of total investment), shares (maximum 10%).

3. Profile of the financial industry that has not become a potential SMF consumer.

Financial institutions, both government-owned and private, which until now have not become SMF consumers have the main reason that mortgage financing is not the focus of the financial institution's business. Among these financial institutions do have mortgages, but the portion is very small, mortgage securitization is carried out, these banks take advantage of idle funds that are cheap. In addition, the reluctance of these financial institutions to invest in EBAs is because they are concerned about the risk of issuance. Investors doubt the liquidity of the EBA as a prime mortgage. Even though this fear is actually unfounded, the condition for KIK EBA is smooth credit. Every year this credit will be evaluated and if it is not current it will be exchanged. In other words, the reluctance of financial institutions to use SMF's services is due to their ignorance about SMF's products. Besides that, there is no regulation from OJK regarding portfolios in KIK EBA that are included in the calculation of RBC for insurance, which have been included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate) a maximum of 20% of the total investment, shares (max 10 %).

Banking as an economic institution that is heavily regulated will be monitored for its operations by many parties, so that when developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and for the general public. In terms of asset securitization (issuance of asset-backed securities), the banking sector requires that the issuance be categorized as hedging.

The reluctance of the financial industry to utilize secondary housing facilities also leads to the condition of PT SMF Persero as the sole provider of housing secondary financing. Weaknesses from the internal side, PT SMF (Persero) are, among others, due to: 1) Funds available for refinancing are relatively limited; 2) 'Pricing' or the price set by PT SMF Persero for liquidity facilities is considered to be relatively high, making it less competitive; 3) Lack of socialization of the existence of PT SMF Persero, many banks and non-bank financial institutions are not aware of the existence, function and role of PT SMF Persero; 4) The term of the loan facility (refinancing) from PT SMF Persero is a maximum of 15 years, it is felt that it is not financially useful for the business; 5) The securities rating issued by PT SMF Persero is still at AA+; 6) The KPR EBA is not yet known as securities in the banking industry and financial institutions.

Other factors that arise from the financial industry's reluctance to utilize secondary financing facilities are because: 1) Banking and multi-finance companies prioritize the use of third party funds for mortgage financing; 2) Several banks organize their own securitization for housing finance; 3) The reluctance of mortgage lenders, both banks and multifinance companies, to take advantage of the Securitization and Refinancing facilities provided by PT SMF Persero because they are related to problems in financial recording (accounting); 4) Regulations from OJK for financial institutions, such as general insurance, do not yet regulate investment in the form of EBA.

### **Attempts to Make Mortgage Backed Securities and Secondary Mortgage Facilities Attractive Housing Secondary Financing**

In order to build a secondary housing finance market through securitization, this is done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. Secondary financing sources for housing, apart from own capital, are also obtained from the issuance of Asset Backed Securities in the form of Debt Securities and Participation Letters. In order to issue Debt Instruments, the Special Purpose Vehicle (SPV) acts as the issuer. Special Purpose Vehicle (SPV) is a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial

Assets and at the same time issue Asset Backed Securities. Meanwhile, in the context of issuing the Participation Letter, the Company or the Trustee shall act as the publisher. With regard to the unprepared primary housing market, so that there is no set of eligible mortgage assets for securitization, the Company may provide loans to banks or financial institutions to issue mortgages with the requirements of using standardized documents set by the Company. In this regard, the loan period is adjusted to the average mortgage term. Thus, it is necessary to change the loan term by the Company.

Fulfilling the increasing housing needs of the community and to stabilize the housing market, the government established a Secondary Mortgage Facility (SMF) by issuing the Minister of Finance Decree of the Republic of Indonesia N0.132/KMK.014/1998 dated 27 February 1998 concerning the Company's Secondary Housing Financing Facility. According to article 1 of the Decree of the Minister of Finance of the Republic of Indonesia N0.132/KMK.014/1998 dated February 27, 1998, what is meant by the Secondary Mortgage Facility is a medium or long term loan to a bank that provides mortgages with collateral in the form of claims for the mortgage. and Mortgage on house and land. PT Sarana Multigriya Finansial Persero builds and develops the secondary housing finance market in Indonesia to increase the capacity and sustainability of housing finance and overcome the maturity mismatch. This is done by channeling long-term funds from the capital market to mortgage lenders through securitization transactions and loan distribution. Through these two transactions, the volume of mortgages will be increasing and sustainable, so that they can support decent and affordable home ownership for the people of Indonesia.

The Indonesian Financial Services Authority in 2014 issued a regulation to further encourage the use of asset securitization through the issuance of derivatives with securities known as EBA SP (asset-backed securities in the form of participation letters). Financial Services Authority Regulation number 23/POJK.04/2014 concerning Guidelines for Issuance and Reporting of Asset-Backed Securities in the Form of Participation Letters for Secondary Financing for Housing.

Asset-Backed Securities in the Form of Participation Letters, hereinafter referred to as EBA-SP, are Asset-Backed Securities issued by Issuers whose portfolio is in the form of a Collection of Receivables and is proof of proportional ownership of the Collection of Receivables which are jointly owned by a group of EBA-SP holders. Fixed Cash Flow EBA-SP is an EBA-SP that provides its holders with certain income, such as debt securities holders. EBA-SP Variable Cash Flow is an EBA-SP that provides its holder with an indefinite income such as to the holder of equity securities.

The parties in the issuance of the EBA SP, namely the Issuer, are the Parties who issue the EBA-SP in the context of Secondary Financing for Housing. Secondary Housing Financing is the implementation of medium and/or long term fund distribution activities to the Originating Creditors by purchasing the Collection of Receivables from the Originating Creditors and selling them through the issuance of EBA-SP; or purchase of Collection of Receivables from Original Creditors from the issuance of EBA-SP. There are also several parties who are indirectly involved in the EBA SP issuance process, namely: i) Servicer is a party who is responsible for processing and supervising payments made by debtors, taking initial actions such as warnings because the debtor is late or fails to fulfill his obligations, conducting negotiations, resolving claims against debtors and other services specified in the service provision agreement; ii) Original Creditor (Originator) is a bank or other financial institution that owns and sells its Financial Assets to the Issuer in order to issue EBA-SP; iii) Supporting professions consist of Accountants, Legal Consultants, Notaries, Securities Rating Companies, Trustees, Custodian Banks.

The objects of securities in the issuance of EBA SP which consist of: i) Collected Receivables are all Financial Assets that have been purchased by the Issuer from the Originator and sold to the EBA-SP holder through the issuance of the EBA-SP; or from the issuance of the EBA-SP; ii) Financial Assets are receivables obtained by the Original Creditor from the provision of Home Ownership Credit to the debtor, including the collateral/guarantee along with the mortgage attached to it, iii) Home Ownership Credit, hereinafter abbreviated as KPR, is a credit facility issued by the Original Creditor to the debtor to purchase a house ready to live in; iv) EBA-SP Credit/Cash Flow Improvement Facility is a facility that aims to improve the quality of Collection of Receivables for payment to EBA-SP holders.

EBA SP issuance must also make a prospectus as a liaison medium between investors and issuers. The EBA-SP Prospectus must contain all details of Material Information or Facts regarding the EBA-SP and the required information and/or information in this Financial Services Authority Regulation. The Prospectus is prohibited from containing untrue information about Material Facts or not containing correct information about Material Facts required so that the Prospectus does not provide a misleading picture. The prospectus must be made in such a way that it is clear and communicative. The presentation and delivery of important information in the Prospectus is not obscured by less important information which causes the important information to escape the attention of the reader. The most important facts and considerations should be summarized and disclosed at the beginning of

the Prospectus. The order of submission of facts in the Prospectus is determined based on the relevance of the facts, and is not determined based on the order as stated in this Financial Services Authority Regulation. Disclosure of Material Information or Facts and/or the use of photos, diagrams, and/or tables in the Prospectus is prohibited from providing a misleading image.

Original Creditors in order to issue EBA-SP, must prepare Financial Assets that meet the requirements set by the Issuer; submit KPR documents for inspection by the Issuer or their proxies; prepare accurate information regarding the Collection of Receivables or other information required by the Issuer or its proxies; guarantee the correctness of information, data, and documents related to Financial Assets; and submit information, data, and documents to the Issuer if necessary. The Originating Creditor is responsible for the legal limits of the Financial Assets sold and their documents; and to provide compensation for losses due to the invalidity of the sold Financial Assets and their documents.

## **CONCLUSION**

The legal aspects to support the birth and operation of mortgage backed securities and secondary mortgage facilities in Indonesia are quite complete. However, the operational use of mortgage backed securities and secondary mortgage facilities carried out by PT Sarana Multigriya Finansial Persero experienced problems due to several things, namely the lack of interest in the financial industry due to the asset securitization implementing factor and due to the character factor of the securities issued. So there needs to be socialization to the banking industry and financial institutions regarding the tasks and products issued by PT SMF Persero, because there are still many banks, insurance companies, pension fund companies, who are not familiar with PT SMF Persero's products. A maximum socialization effort is needed so that the financial industry and investors, both investors, are more familiar with mortgage backed securities and secondary housing financing facilities implemented by PT SMF

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## **Legislation**

Peraturan Badan Pengawas Pasar Modal (BAPEPAM) Nomor IX.K.1.1 Lampiran Keputusan Ketua BAPEPAM Nomor Kep-28/PM/2003 tanggal 21 Juli 2003 tentang Pedoman Kontrak Investasi Kolektif Efek Beragun Aset (Asset Backed Securities)

Peraturan Otoritas Jasa Keuangan Nomor 23/POJK.04/2014 Tentang Pedoman Penerbitan Dan Pelaporan Efek Beragun Aset Berbentuk Surat Partisipasi Dalam Rangka Pembiayaan Sekunder Perumahan

Peraturan Presiden Republik Indonesia Nomor 19 Tahun 2005 jo Peraturan Presiden Republik Indonesia Nomor 1 Tahun 2008 tentang Pembiayaan Sekunder Perumahan

Rancangan Awal Rencana Pembangunan Jangka Menengah Nasional 2015-2019, Buku II Agenda Pembangunan Bidang , Kementerian Perencanaan Pembangunan Nasional / Badan Perencanaan Pembangunan Nasional 2014

## **2. Peer review process \_\_\_ #1**



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**GET BEYOND THE BARRIES OF SECONDARY MORTGAGE FACILITIES IN  
INDONESIA**

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**Abstract**

The author is motivated to research the use of mortgage backed securities to solve the housing supply backlog problem in Indonesia. The first problem is regarding the legality of mortgage backed securities in Indonesia, the second problem is about the disinterest of the housing industry in Indonesia to take advantage of mortgage backed securities, and the second problem is optimizing existing resources to make mortgage backed securities more attractive. Since its establishment in 1998 until 2015 the mortgage backed securities or secondary housing financing facility has not been maximally utilized by the financial industry in Indonesia as an alternative source of funds to finance the provision of housing. The financial industry is still making maximum use of primary housing financing by providing loans whose funds come from third party funds. Mortgage backed securities are not attractive to the financial industry because the subject of implementation, namely PT SMF Persero, is less well known and because there are doubts about the financial benefits of mortgage backed securities for the financial industry and investors. This research is based on empirical studies conducted directly on the housing finance provider industry sector in Indonesia. A major breakthrough was made by creating new securities in the Indonesian capital market that can make mortgage backed securities more attractive, namely EBA SP (asset backed securities participation securities), in this way mortgage backed securities are expected to be traded on the secondary market. The legal aspects to support the birth and operation of mortgage backed securities in Indonesia are complete, but the operational use of mortgage backed securities is experiencing problems due to the lack of interest in the financial industry in the issuance process and the character factor of the securities issued. The financial industry providing housing finance in Indonesia demands that the pricing of the issuance of mortgage backed securities and the trading process be made more attractive to investors.

**Keywords:** mortgage-backed securities, funding, financial barriers

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**Commented [U3]:** Keywords must consist of at least 4 words or phrases.

**Introduction**

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Housing and settlements are one of the basic human needs, having a strategic function as a center for family education, cultural nurseries, and improving the quality of future generations. The government's ability to meet the needs of housing and settlements is relatively very limited. Community resources and potentials need to be developed to be able to meet their housing and settlement needs independently, supported by government efforts through the creation of a conducive housing provision climate.

The Government of Indonesia has a National Medium-Term Development Plan 2015-2019, which includes a plan to provide housing in Indonesia. Fulfillment of decent housing supported by adequate infrastructure, facilities and utilities needs special attention. Inequality between supply and demand is still a major problem in the provision of basic infrastructure, especially for low-income people (MBR). In the housing sector, the limited capacity of developers has not been supported by incentive regulations. Low-income communities also have a problem, namely the low affordability of building or buying a house, so that they cannot live in decent houses. The shortage of providing housing needs or known as the housing backlog has led to new innovations so that the problems that hinder the provision of housing are unraveled, among others by providing capital financial instruments for housing finance.

Since 2010 the Government of Indonesia has had a program known as the Housing Financing Liquidity Facility, namely channeling housing loans for simple and very simple houses through the banking system. Housing loans that have been disbursed, both from the FLPP program and non-FLPP programs such as KPR and KPA, can theoretically be turned into a source of funds by means of securitization, known as mortgage backed securities (MBS).

Mortgage backed securities are a way to expand the sources of financing for housing development. It has been known in the world since 1934 in the United States, initially the pattern of securitization of housing loans was carried out in order to revive the United States economy which was slumped during the Great Depression, at which time people's incomes declined drastically as well as house prices. This condition has resulted in banks as owners of housing loans experiencing liquidity difficulties. So finally, the United States Government decided to establish a Government Sponsored Enterprise to buy mortgages or housing credit guarantees owned by banks in the form of securities. The securities will then be re-marketed in the form of a secondary mortgage. Mortgage-based securities that have been attempted to be used as an alternative source of funding for housing finance in Indonesia have not worked as they should. From 1998 to 2015 this secondary

housing financing facility was not widely known and used by primary housing finance providers and other investors.

There are 3 problems that will be analyzed in this paper. The first problem is regarding the legality of secondary housing financing (SMF) in Indonesia. The second problem is to find out why housing loan holders are not interested in issuing mortgage backed securities and why investors are not interested in investing in mortgage backed securities in Indonesia. The third problem is how to optimize all available resources to make mortgage backed securities more attractive to issue and trade in both the primary and secondary markets, so that mortgage backed securities as securities will be more financially attractive.

### Literature Review

Initially, the emergence of asset securitization in America was driven by government programs that sought to increase the liquidity of the residential mortgage market. To realize this program, the government formed the Federal Home Loan Bank in 1932, which provided housing credit facilities for the American people. Then to form the secondary mortgage market, the American government established three institutions, namely: 1. The Federal National Mortgage Association (FNMA) or known as Fannie Mae in 1938, 2. The Government National Mortgage Association (GNMA) or known as Ginnie Mae designation in 1968 which is a fraction of Fannie Mae and 3. The Federal Home Loan Mortgage Corporation (FHLMC) otherwise known as Freddie Mac in 1970. These three institutions have two main functions in developing the secondary housing market, namely being a sponsor for the issuance of mortgage-backed securities by banks, and acting as guarantors for investors, namely providing assurance on the smooth and timely payment of interest and principal to investors (The Congress of the United States, the Congressional Budget Office : Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Marke,t December 2010).

The first time the securitization of assets in the form of mortgage-backed securities with the underlying asset in the form of mortgages was issued in 1968 through Ginnie Mae. Then asset securitization techniques developed and in 1985 successfully issued securities with underlying assets in the form of car loans. Then, the development of asset securitization transactions in America has increased very rapidly, both in the securitization market, types of underlying assets, forms and mechanisms (Fabozzi et al., 2000).

The rapid growth of the securitization market since 1968, which was marked by the development of volume, number of originators, types of underlying assets and forms of

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securitization, subsequently experienced difficult times following the emergence of the sub-prime mortgage crisis in 2007. The highest growth in the sub-prime mortgage market occurred in the period 2001 to 2006. This growth was triggered by, among other things, high investor interest in high-yielding investment products and support from government institutions such as Fannie Mae, Ginnie Mae and Freddie Mac. On the other hand, when securitization grows rapidly, the quality of the securitization market decreases significantly due to the characteristics of various parties and factors involved in the transaction process, namely: 1). Lending banks loosen credit requirements such as high loan to value ratios, 2). Bad debtor quality, such as low loan score, high level of indebtedness, low ability to provide data and documentation, 3). Loans such as product type, installment terms, loan amount, higher loan interest rates than prime loans and 4). Macroeconomic conditions such as rising house prices, household income and rising unemployment (Keys et al., 2009). The sub-prime mortgage crisis has actually been detected and recognized by the parties, however, the deterioration of the quality of the securitization market is covered by the tendency of rising house prices from 2003 to 2005. The various types of asset securitization development referred to, the securitization market is dominated by the form of Mortgage-Backed Securities-MBS guaranteed by the three US government institutions, then Asset-Backed Securities-ABS with underlying assets in the form of credit card bills, car loans, other consumer credit and Collateralized Loan Obligation-CLO. A total of 3,650 MBS was issued for €715.21 million, followed by 2,427 ABS issued for €363.19 million and finally 2,504 CDOs were issued for €316.72 million (Gramlich, 2007).

Supervision of the implementation of asset securitization in America does not refer to special laws and regulators but is subject to state and federal regulations such as the Securities Act of 1933, Securities Exchange Act of 1934, Trust Indenture Act of 1939, Investment Advisors Act of 1940, Investment Company Act of 1940, Internal Revenue Code of 1986, US Bankruptcy Code and the Dodd-Frank Wall Street Reform and Consumer Protection Act. The regulators with the authority and responsibility are the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (Hancock & Passmore, 2011)

The reasons for conducting securitization transactions are, among others, to obtain cheaper funding, benefits from the balance sheet structure, savings in the amount of capital, alternative sources of funding, profit from the difference between the cost of funds in the capital market and the proceeds from the sale of assets through securitization. To maintain a

sufficient level of capital, the originator in the form of a bank must comply with other regulations, namely the Basel rule, which states that banks must maintain a sufficient level of capital when conducting asset securitization transactions. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act regulations will regulate originators in the form of financial institutions, to increase the amount of capital in order to increase the ability to absorb risk in the event of a loss (Ambrose & Pennington-Cross, 2000).

In America itself, the form of SPV can vary depending on tax factors, originators and investors involved in the transaction. The two most commonly used forms of SPV are Trusts and Limited Liability Companies (LLCs) and the least used are Limited Partnerships. In this case, the SPV can be owned by the originator or by an independent party. The use of SPV by independent parties can be used as one of the steps to avoid the bankruptcy risk of the SPV if the courts in America treat the underlying assets in securitization activities as still owned by the originator. To avoid this risk, it is necessary to believe that SPV assets are separate from the originator which can be seen from indicators such as separate financial statements and legally the SPV is an independent party.

To respond to the financial crisis, the American government carried out various initiatives including two main programs aimed at restoring liquidity and confidence in the financial industry, namely: 1). The Term Asset-Backed Securities Loan Facility (TALF) started in November 2008 and by the time this program ended in June 2010 the outstanding loan amount was US\$43 billion, and 2). the Public Private Investment Program (PPIP), was launched in March 2009 and started investing in September 2009. The source of funds for the PPIP program is a combination of the Troubled Asset Relief Program (TARP), private investors and loans from TALF. The PPIP's working mechanism is by buying troubled assets owned by banks and as of May 1, 2011 the amount has reached US\$1 trillion and eight PPIPs have been formed. Although the volume of securities transactions was lower than the volume before the financial crisis, CLO and ABS transactions have started to grow in 2011. In future developments, the promulgation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010 will change the financial industry given its broad impact on business actors, performance and development in America. The implementation of the said law will affect asset securitization activities because there are tightening regulations on the roles of rating agencies and investment managers, risk retention and capital adequacy ratios. In addition, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 requires national registration of companies that are mortgage originators and the Credit Card

Accountability Responsibility and Disclosure Act of 2009 also asks to stop imposing egregious fees on credit card holders (Barth et al., 2004)

The parameters of the ideal secondary housing finance market are the stability of macroeconomic conditions; competitive market structure; standardization of mortgage instruments; servicing techniques from mortgage-backed securities issuing institutions and providers of secondary mortgage facilities as well as government policies (Lea & Bernstein, 2000).

Mortgage backed securities and secondary mortgage facilities have also been recognized and practiced in several countries in the world. An example is France. Trading in Asset Backed Securities (EBA) in France has been regulated by The Securitization Law No.88-1201 dated December 23, 1988 and gave rise to the term Fonds Commun de Créances (FCC) or French SPV. This is in contrast to the UK and Germany which do not have specific laws regarding asset securitization. Subsequently, several amendments to the Law have been made and the most recent was the 2008 Ordinance which aims to improve the quality of securitization implementation and change the name of the FCC to Fonds Commun de Titrisation (FCT). The Financial Markets Authority (Autorité des Marchés Financiers) – AMF is the main agency authorized and responsible for the conduct of securitization activities in France (Farruggio & Uhde, 2015).

FCT's legal status is co-ownership, without any legal personality such as having no capital, shareholders, management or employees, but only consisting of investment managers and custodians. Thus, FCT will be free from bankruptcy problems (remote bankruptcy). In further developments, FCT securitizes various types of claims such as credit card bills, trade receivables, commercial credit and consumer loans, mortgage claims (KPR) and insurance risk claims with the exception of claims that are categorized as default, doubtful and in the process of legal litigation. In addition, the technique of transferring assets from the originator to the FCT is carried out through the use of special documents (bordereau) for cost and efficiency considerations. In general, the formation of the FCT is carried out in France and in carrying out securitization activities always refers to various regulations issued by the AMF and the Monetary and Financial Code. However, if there is an FCT formed abroad, the FCT cannot operate in France. This type of credit enhancement is carried out to increase the rating of securities issued, such as: 1. Guarantees provided by the originator, affiliated parties of the originator or by insurance companies, 2. Cash reserve funds and 3. Overcollateralisation (Association of Corporate Treasurers (United Kingdom), Association for Financial

Professionals (United States), Association Française de Tresoriers D'Entreprise (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

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In subsequent developments, the 2007 American sub-prime mortgage crisis had a significant impact on the decline in transaction volume and investor interest in asset securitization activities in France. The French regulator then refined the practice of asset securitization by amending the Securitization Law through the 2008 Ordinance. Furthermore, in the September 2009 Quarterly Review, the Bank for International Settlement reviewed the rules of the game to reactivate and strengthen the securitization process by highlighting several aspects such as the limited level of complexity and transparency of transactions and the high dependence on ratings from rating agencies. To simplify the securitization process, the authorities set a standardization of the structure, including reducing the number of tranches. In addition, new standards have been set regarding disclosure and reporting procedures as well as supervision of rating companies (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), Association Française de Tresoriers D'Entreprise (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

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### **Housing Provision Policy in Indonesia**

The Government of the Republic of Indonesia has a policy direction and development strategy to increase efforts to sustain economic development, through the following strategies: (i) Increasing economic growth which is continuously maintained in a positive manner by reducing disparities between regions; (ii) Increasing the level of income (per capita) and reducing the income gap between groups; (iii) Increase in employment so that the unemployment rate decreases; (iv) Reducing the poverty rate so that the number of poor people is reduced; (v) Food security includes price stabilization so that inflation rates are low; (vi) Energy security, especially increasing public access to energy, increasing efficiency and the national energy mix; (vii) Increasing access to transportation/community mobility; (viii) Application of production patterns/economic activities and consumption patterns that are efficient (not wasteful) and environmentally friendly (RPJMN 2015-2019, 2014). The second direction of development policy is to increase efforts to sustain social development, among others through a strategy to increase service affordability and access to education, health, housing, clean water and community sanitation services (RPJMN 2015-2019, 2014). Specifically to spur economic growth more specifically in terms of housing, the Government has had several specific policy directions, which are called policy directions for inclusive

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economic growth in an effort to increase equity, which include directing fiscal policies that support the livelihoods of the poor and vulnerable, especially public spending that is targeted social assistance such as conditional cash assistance, housing assistance for the poor, assistance for agricultural and fisherman production, assistance for improving the skills of farmers, fishermen, and other underprivileged people's businesses. The policy direction of the Government of the Republic of Indonesia in terms of providing housing infrastructure does not only stop at the availability of housing for the poor but also for workers in industrial areas, TNI soldiers and Polri (RPJMN 2015-2019, 2014).

Since 2010 the Government of Indonesia has had a program called the Housing Financing Liquidity Facility (FLPP). This regulation regarding FLPP was initially stated in Permenpera Number 14 and 15 of 2010, then amended by Minister of Public Housing Regulation (Permen) No. 04 of 2012, concerning Housing Procurement through Credit for Financing for Welfare Home Ownership with the support of Housing Financing Liquidity Facility (FLPP) and Regulation of the Minister of Public Housing No. 05 of 2012 concerning Instructions for Implementing Housing Through Credit for the Financing of Prosperous Home Ownership. Subsequently, it was amended by Regulation of the Minister of Public Works and Public Housing Number 20/PRT/M/2014 and 21/PRT/M/2014. Based on these regulations, the Government has been able to channel FLPP funds which are used to help finance the community to own a landed house for five years. years since 2010 – 2015 with a fund of IDR 16.5 trillion (Plt. Dirjen Pembiayaan Perumahan Kementerian Pekerjaan Umum dan Perumahan Rakyat (PUPR) Maurin Sitorus dalam Forum Redaksi Bersama oleh Kementerian Komunikasi dan Informatika, Antara News Kamis, 19 Maret 2015 16:33 WIB). The distribution of FLPP is carried out through the distribution of FLPP mortgages. FLPP (housing financing liquidity facility) is housing financing support for MBR (low-income people), to get KPRSh (Simplified Healthy Home Ownership Credit). The management of the FLPP program funds is carried out by the Kemenpera BLU-PPP (Public Service Agency for the Public Housing Financing Center) in collaboration with banking institutions that have collaborated with the Ministry of Industry. There are 16 banks, namely Bank BTN, BRI, BTN S, BNI, BRI Syariah, Bank MANDIRI, Bank MANDIRI Syariah, Bank Artha Graha, Bank Bukopin, BPD East Kalimantan, BPD North Sumatra, BPD Central Java, BPD East Java, BPD Southeast Sulawesi, BPD Nagari, BPD North Sumatra Sharia. The cooperation between the Government (Kemenpupera) and banks is carried out through PKO (operational cooperation agreements) in the context of housing procurement through credit or financing for prosperous housing. The FLPP Mortgage Program is a housing finance assistance

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program for low-income communities with various benefits, such as a fixed-margin interest rate of 7.25% for the life of the loan, including life and fire insurance protection and free of VAT.

Specifically for banks that will become implementing banks, both commercial banks, sharia commercial banks and sharia business units, the requirements to become implementing banks are: a) Submit a statement of interest in becoming an Implementing Bank in the context of implementing the FLPP program; b) Have a minimum value of Composite Rating Three (PK-3) in accordance with Bank Indonesia Regulations; c) Have at least 2 (two) years of experience in issuing home ownership credit/financing (KPR); d) Have infrastructure for managing credit/mortgage financing at least: (i) Having a work unit organization for managing home ownership credit/financing; (ii) Having personnel managing home ownership credit/financing; (iii) Possess information technology for credit management/home ownership financing; and (iv) Have a home ownership credit/financing policy; e) Have an adequate service network at the provincial and/or national level; f) Have a plan to issue a Prosperous KPR within 1 (one) year; g) Signing a Collective Agreement with the Deputy for Financing or an official appointed by the Minister; and h) Signing an Operational Cooperation Agreement (PKO) with PPP.

The largest third-party funds came from time deposits, especially time deposits with a time period of 1 month. Problems will arise if third party funds in the form of short-term deposits are used to finance long-term housing loans, in banking this condition is known as a maturity mismatch. The emergence of a maturity mismatch in banking operations will cause problems, namely liquidity difficulties and public distrust of banks. The government has arranged so that there is no maturity mismatch through the Loan to Deposit Ratio (LDR) setting. The Government of the Republic of Indonesia through Bank Indonesia has periodically issued Bank Indonesia Regulations regarding this LDR, namely Circular Letter of Bank Indonesia Number 15/40/DKMP dated September 24, 2013 Regarding the Implementation of Risk Management in Banks Providing Credit or Financing for Property Ownership, Credit or Financing Property Backed Consumption, and Motor Vehicle Loans or Financing amended by Bank Indonesia Regulation Number 17/10/PBI/2015 concerning Loan To Value Ratio Or Financing To Value Ratio For Property Loans Or Financing And Down Payments For Motor Vehicle Loans Or Financing. The regulation will regulate the Loan to Value (LTV ratio) ratio, namely the ratio between the credit value that can be given by the Bank to the value of the collateral in the form of property at the time of lending based on the latest appraisal price; financing to value ratio (FT ratio) which is the ratio between the value

of financing that can be provided by the Bank to the value of collateral in the form of property at the time of financing based on the last appraisal price. Bank Indonesia will set limits on the LTV Ratio or RTV Ratio for conventional property loans and sharia property loans, in the form of buying landed houses, flats, shop houses, home offices.

The limited availability of third-party funds and the precautionary element from the banking regulator and the banking industry in the context of lending has resulted in limited funds being channeled into housing development. The Government of the Republic of Indonesia was then moved to utilize secondary housing financing facilities, following what has been implemented by the United States Government.

### **Legality of Housing Secondary Financing**

A secondary mortgage facility company was established specifically to raise long-term funds which will then be channeled to financing institutions, namely banks that experience funding gaps. The financing facility provided by SMF is a financing facility specifically organized to be given to financing institutions (banks) in the context of lending through the housing loan scheme. This financing system is growing rapidly in the United States, followed by developments in other countries in the world such as France, Latin America, Australia, New Zealand, Japan, Hong Kong, Thailand, Philippines, Taiwan, Malaysia and Singapore (Tim Studi EBA Departemen Keuangan Republik Indonesia Badan Pengawas Pasar Modal 2003). This process is often referred to as the asset securitization process.

Securitization has several definitions, among others, according to Joan Barmat, securitization is an open market for marketing collateralized financial instruments (financial securities) in the form of collateral for cash claims and claims for collateral for immovable property (Joan Barmat, 1990). Leon T Kendal defines securitization as a process to package individual debts and other debt instruments, then convert the packaging into securities to increase the status or rating of these securities to third party investors (Kendall, 2000).

The securitization process in Indonesia has been initiated since 1998 with the Decree of the Minister of Finance No. 132/KMK.014/1998 concerning Secondary Housing Financing Facilities, which regulates business fields, procedures for establishment and licensing, sources of funds, prudential regulation (prudence principle), supervisors and supervisors, sanctions. Unfortunately, this provision does not work perfectly because it is not followed by the realization of the establishment of an SMF institution that carries out the secondary housing financing in question. Until then in 2005 a series of interrelated

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regulations emerged to support the establishment of the SMF institution and the trading of securities issued by the SMF.

The legal basis for asset securitization and trading of asset-backed securities is Law of the Republic of Indonesia No. 8 of 1995 concerning Capital Market Article 1 paragraph 5 which states that securities include "securities, namely debt acknowledgments, commercial securities, stocks, bonds, proof of debt, Participation Units in Collective Investment Contracts, futures contracts on securities and any derivatives of securities".

Then through Capital Market Supervisory Agency Regulation no. IX.K.1.1 Attachment to Decision of the Chairman of BAPEPAM no Kep -28/PM/2003 dated July 21, 2003 concerning Guidelines for Collective Investment Contracts for Asset Backed Securities, in article 1 letter (a) it is stated that KIK EBA is a contract between an investment manager and a custodian bank that binds asset-backed securities holders, where the investment manager is authorized to manage the collective investment portfolio and the custodian bank is authorized to carry out collective custody.

KIK's participation unit whose portfolio consists of financial assets in the form of claims arising from commercial securities, leases, conditional sale and purchase agreements, installment loan agreements, credit card claims, lending including mortgages for housing or apartments, debt securities that are guaranteed by the Government, means of credit enhancement/cash flow as well as equivalent financial assets and other financial assets related to these financial assets. From this definition, it can be concluded that what is included in the KIK EBA are securitized securities originating from assets that have a stream of cash flow in the form of claims arising from commercial securities, credit card claims, claims arising in the future (future receivables), and the provision of credit, including KPR and KPA.

The granting of a KPR or KPA is including a bill or collection of mortgage receivables that can be securitized so that data is traded through the secondary market, what is traded is the right to collect a collection of mortgage receivables and the mortgage lending bank as the original creditor (originator) to a special institution established for that purpose (special purpose vehicle) which buys it at the same time issues securities with asset collateral for the mortgage receivables collection.

PT Sarana Multigriya Finansial (Persero) is a special institution that is given the authority to carry out this task, as a special purpose vehicle that buys and issues securities with guaranteed assets for the collection of mortgage receivables. The special purpose vehicle or secondary mortgage company required to perform asset securitization is established under the Government Regulation of the Republic of Indonesia Number 5 of 2005 concerning State

Equity Participation of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Secondary Financing of Housing, in article 1 it is stated that there is a need for alternative financing other than banks as providers of funding for housing needs, namely the establishment of a secondary housing finance company. Article 2 of this Government Regulation states that the purpose and objectives of the limited liability company as referred to in Article 1 are specifically to carry out: a) Financing business activities in the form of secondary housing financing facilities at banks and financial institutions that provide housing loans; b) Collect public funds to finance secondary housing financing activities by issuing long-term and or short-term securities; and c) Other activities in order to support the activities as referred to in letters a and b above.

The implementation of Government Regulation No. 5 of 2005 concerning the Republic of Indonesia State Equity Participation for the Establishment of a Limited Liability Company (Persero) in the Sector of Secondary Housing Financing is carried out by issuing Presidential Regulation No. 19 of 2005 concerning Secondary Housing Financing. Article 1 paragraph (13) states that securitization is the transformation of illiquid assets into liquid ones by purchasing financial assets from original creditors and issuing asset-backed securities. This securitization process will be submitted to a vehicle called a special purpose vehicle or secondary mortgage company, namely a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and simultaneously issue Asset Backed Securities.

#### **Constraints on the Utilization of Mortgage Backed Securities and Secondary Mortgage Facilities by the Financial Industry and Investors in Indonesia**

PT. SMF (Persero) was established with the aim of providing liquidity facilities in housing secondary financing (KPR) and securitizing mortgage assets to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). To obtain more comprehensive data from the financial industry regarding the role and potential of mortgage backed securities and secondary mortgage facilities by PT SMF Persero, this study also uses focus group discussions (FGD) and in-depth interviews. The FGD was held on December 4, 2014 at the Perbanas Jakarta office with representatives from 12 (twelve) national banks and non-bank financial companies, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, BCA Bank, Panin Bank, BIIMaybank, Permata Bank; and MNC Multi Finance. In addition, in-depth interviews were also held on 2 and 3 December 2014 with several financial

institutions that have become or will become potential investors for SMF products, namely the President Director of the Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk.

From FGDs and in-depth interviews, it can be seen that with respect to PT SMF Persero and secondary housing financing, the profile of the financial industry can be divided into three profile categories, namely:

1. Profile of the financial industry that has used SMF products (already become SMF consumers)

PT SMF Persero's products provided are liquidity facilities in secondary housing financing (KPR) and mortgage asset securitization to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). Several financial institutions have utilized liquidity facilities in housing secondary financing, including Bank BTN, Bank Muamalat, Bank DKI and MNC Multifinance. These banks and financial institutions experience several advantages with the liquidity facilities provided by SMF. First, SMF's liquidity facility can increase the capacity of this financial institution to finance mortgages. Second, through the provision of mortgages, this financial institution will receive a collection fee that can be used to increase profits, so this will automatically increase capital. Third, the liquidity facility from SMF can overcome the maturity mismatch problem that is commonly faced by financial institutions in providing mortgages. Maturity mismatch occurs when players in the banking industry and financial institutions use short-term third-party funds (DPK) to finance mortgages which are long-term loans. Although some of the above financial institutions have utilized liquidity facilities from SMF, the proportion of SMF funds is still very small in the financing portfolio of these banks and financial institutions (between 10%-15%). The main thing that is of concern to users of this liquidity facility is that the 'price' given by SMF for secondary mortgage financing is perceived to be relatively high. In other words, the pricing provided by SMF for liquidity facilities is not competitive because it can reduce potential profits for banks and financial institutions that use them. Besides the 'pricing' problem, Bank BTN also complained about the limited funds available at SMF for financing liquidity. SMF's limited funds also make banks and financial institutions still rely on third party funds (DPK) in financing their mortgages.

2. Profile of the financial industry that has the potential to become SMF consumers

Several financial institutions, such as general insurance and BPJS, have the potential to become investors for SMF by utilizing EBA securitization products. However, there are things that prevent this financial institution from using SMF's products. First, it relates to the rules from OJK. Until now, there is no regulation from OJK that regulates the investment portfolio of general insurance companies in KIK EBA which is included in Risk Based Capital (RBC) for insurance. According to OJK regulations, what are included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate, maximum 20% of total investment), shares (maximum 10%).

3. Profile of the financial industry that has not become a potential SMF consumer.

Financial institutions, both government-owned and private, which until now have not become SMF consumers have the main reason that mortgage financing is not the focus of the financial institution's business. Among these financial institutions do have mortgages, but the portion is very small, mortgage securitization is carried out, these banks take advantage of idle funds that are cheap. In addition, the reluctance of these financial institutions to invest in EBAs is because they are concerned about the risk of issuance. Investors doubt the liquidity of the EBA as a prime mortgage. Even though this fear is actually unfounded, the condition for KIK EBA is smooth credit. Every year this credit will be evaluated and if it is not current it will be exchanged. In other words, the reluctance of financial institutions to use SMF's services is due to their ignorance about SMF's products. Besides that, there is no regulation from OJK regarding portfolios in KIK EBA that are included in the calculation of RBC for insurance, which have been included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate) a maximum of 20% of the total investment, shares (max 10 %).

Banking as an economic institution that is heavily regulated will be monitored for its operations by many parties, so that when developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and for the general public. In terms of asset securitization (issuance of asset-backed securities), the banking sector requires that the issuance be categorized as hedging.

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The reluctance of the financial industry to utilize secondary housing facilities also leads to the condition of PT SMF Persero as the sole provider of housing secondary financing. Weaknesses from the internal side, PT SMF (Persero) are, among others, due to: 1) Funds available for refinancing are relatively limited; 2) 'Pricing' or the price set by PT SMF Persero for liquidity facilities is considered to be relatively high, making it less competitive; 3) Lack of socialization of the existence of PT SMF Persero, many banks and non-bank financial institutions are not aware of the existence, function and role of PT SMF Persero; 4) The term of the loan facility (refinancing) from PT SMF Persero is a maximum of 15 years, it is felt that it is not financially useful for the business; 5) The securities rating issued by PT SMF Persero is still at AA+; 6) The KPR EBA is not yet known as securities in the banking industry and financial institutions.

Other factors that arise from the financial industry's reluctance to utilize secondary financing facilities are because: 1) Banking and multi-finance companies prioritize the use of third party funds for mortgage financing; 2) Several banks organize their own securitization for housing finance; 3) The reluctance of mortgage lenders, both banks and multifinance companies, to take advantage of the Securitization and Refinancing facilities provided by PT SMF Persero because they are related to problems in financial recording (accounting); 4) Regulations from OJK for financial institutions, such as general insurance, do not yet regulate investment in the form of EBA.

### **Attempts to Make Mortgage Backed Securities and Secondary Mortgage Facilities Attractive Housing Secondary Financing**

In order to build a secondary housing finance market through securitization, this is done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. Secondary financing sources for housing, apart from own capital, are also obtained from the issuance of Asset Backed Securities in the form of Debt Securities and Participation Letters. In order to issue Debt Instruments, the Special Purpose Vehicle (SPV) acts as the issuer. Special Purpose Vehicle (SPV) is a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial

Assets and at the same time issue Asset Backed Securities. Meanwhile, in the context of issuing the Participation Letter, the Company or the Trustee shall act as the publisher. With regard to the unprepared primary housing market, so that there is no set of eligible mortgage assets for securitization, the Company may provide loans to banks or financial institutions to issue mortgages with the requirements of using standardized documents set by the Company. In this regard, the loan period is adjusted to the average mortgage term. Thus, it is necessary to change the loan term by the Company.

Fulfilling the increasing housing needs of the community and to stabilize the housing market, the government established a Secondary Mortgage Facility (SMF) by issuing the Minister of Finance Decree of the Republic of Indonesia N0.132/KMK.014/1998 dated 27 February 1998 concerning the Company's Secondary Housing Financing Facility. According to article 1 of the Decree of the Minister of Finance of the Republic of Indonesia N0.132/KMK.014/1998 dated February 27, 1998, what is meant by the Secondary Mortgage Facility is a medium or long term loan to a bank that provides mortgages with collateral in the form of claims for the mortgage. and Mortgage on house and land. PT Sarana Multigriya Finansial Persero builds and develops the secondary housing finance market in Indonesia to increase the capacity and sustainability of housing finance and overcome the maturity mismatch. This is done by channeling long-term funds from the capital market to mortgage lenders through securitization transactions and loan distribution. Through these two transactions, the volume of mortgages will be increasing and sustainable, so that they can support decent and affordable home ownership for the people of Indonesia.

The Indonesian Financial Services Authority in 2014 issued a regulation to further encourage the use of asset securitization through the issuance of derivatives with securities known as EBA SP (asset-backed securities in the form of participation letters). Financial Services Authority Regulation number 23/POJK.04/2014 concerning Guidelines for Issuance and Reporting of Asset-Backed Securities in the Form of Participation Letters for Secondary Financing for Housing.

Asset-Backed Securities in the Form of Participation Letters, hereinafter referred to as EBA-SP, are Asset-Backed Securities issued by Issuers whose portfolio is in the form of a Collection of Receivables and is proof of proportional ownership of the Collection of Receivables which are jointly owned by a group of EBA-SP holders. Fixed Cash Flow EBA-SP is an EBA-SP that provides its holders with certain income, such as debt securities holders. EBA-SP Variable Cash Flow is an EBA-SP that provides its holder with an indefinite income such as to the holder of equity securities.

The parties in the issuance of the EBA SP, namely the Issuer, are the Parties who issue the EBA-SP in the context of Secondary Financing for Housing. Secondary Housing Financing is the implementation of medium and/or long term fund distribution activities to the Originating Creditors by purchasing the Collection of Receivables from the Originating Creditors and selling them through the issuance of EBA-SP; or purchase of Collection of Receivables from Original Creditors from the issuance of EBA-SP. There are also several parties who are indirectly involved in the EBA SP issuance process, namely: i) Servicer is a party who is responsible for processing and supervising payments made by debtors, taking initial actions such as warnings because the debtor is late or fails to fulfill his obligations, conducting negotiations, resolving claims against debtors and other services specified in the service provision agreement; ii) Original Creditor (Originator) is a bank or other financial institution that owns and sells its Financial Assets to the Issuer in order to issue EBA-SP; iii) Supporting professions consist of Accountants, Legal Consultants, Notaries, Securities Rating Companies, Trustees, Custodian Banks.

The objects of securities in the issuance of EBA SP which consist of: i) Collected Receivables are all Financial Assets that have been purchased by the Issuer from the Originator and sold to the EBA-SP holder through the issuance of the EBA-SP; or from the issuance of the EBA-SP; ii) Financial Assets are receivables obtained by the Original Creditor from the provision of Home Ownership Credit to the debtor, including the collateral/guarantee along with the mortgage attached to it, iii) Home Ownership Credit, hereinafter abbreviated as KPR, is a credit facility issued by the Original Creditor to the debtor to purchase a house ready to live in; iv) EBA-SP Credit/Cash Flow Improvement Facility is a facility that aims to improve the quality of Collection of Receivables for payment to EBA-SP holders.

EBA SP issuance must also make a prospectus as a liaison medium between investors and issuers. The EBA-SP Prospectus must contain all details of Material Information or Facts regarding the EBA-SP and the required information and/or information in this Financial Services Authority Regulation. The Prospectus is prohibited from containing untrue information about Material Facts or not containing correct information about Material Facts required so that the Prospectus does not provide a misleading picture. The prospectus must be made in such a way that it is clear and communicative. The presentation and delivery of important information in the Prospectus is not obscured by less important information which causes the important information to escape the attention of the reader. The most important facts and considerations should be summarized and disclosed at the beginning of

the Prospectus. The order of submission of facts in the Prospectus is determined based on the relevance of the facts, and is not determined based on the order as stated in this Financial Services Authority Regulation. Disclosure of Material Information or Facts and/or the use of photos, diagrams, and/or tables in the Prospectus is prohibited from providing a misleading image.

Original Creditors in order to issue EBA-SP, must prepare Financial Assets that meet the requirements set by the Issuer; submit KPR documents for inspection by the Issuer or their proxies; prepare accurate information regarding the Collection of Receivables or other information required by the Issuer or its proxies; guarantee the correctness of information, data, and documents related to Financial Assets; and submit information, data, and documents to the Issuer if necessary. The Originating Creditor is responsible for the legal limits of the Financial Assets sold and their documents; and to provide compensation for losses due to the invalidity of the sold Financial Assets and their documents.

## CONCLUSION

The legal aspects to support the birth and operation of mortgage backed securities and secondary mortgage facilities in Indonesia are quite complete. However, the operational use of mortgage backed securities and secondary mortgage facilities carried out by PT Sarana Multigriya Finansial Persero experienced problems due to several things, namely the lack of interest in the financial industry due to the asset securitization implementing factor and due to the character factor of the securities issued. So there needs to be socialization to the banking industry and financial institutions regarding the tasks and products issued by PT SMF Persero, because there are still many banks, insurance companies, pension fund companies, who are not familiar with PT SMF Persero's products. A maximum socialization effort is needed so that the financial industry and investors, both investors, are more familiar with mortgage backed securities and secondary housing financing facilities implemented by PT SMF

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### **Legislation**

Peraturan Badan Pengawas Pasar Modal (BAPEPAM) Nomor IX.K.1.1 Lampiran Keputusan Ketua BAPEPAM Nomor Kep-28/PM/2003 tanggal 21 Juli 2003 tentang Pedoman Kontrak Investasi Kolektif Efek Beragun Aset (Asset Backed Securities)

Peraturan Otoritas Jasa Keuangan Nomor 23/POJK.04/2014 Tentang Pedoman Penerbitan Dan Pelaporan Efek Beragun Aset Berbentuk Surat Partisipasi Dalam Rangka Pembiayaan Sekunder Perumahan

Peraturan Presiden Republik Indonesia Nomor 19 Tahun 2005 jo Peraturan Presiden Republik Indonesia Nomor 1 Tahun 2008 tentang Pembiayaan Sekunder Perumahan Rancangan Awal Rencana Pembangunan Jangka Menengah Nasional 2015-2019, Buku II Agenda Pembangunan Bidang , Kementerian Perencanaan Pembangunan Nasional / Badan Perencanaan Pembangunan Nasional 2014

## Response Reviewer 1

### Reviewer

This paper fits within the scope of the journal and offers a worthy discussion of the field, particularly in the context of Indonesian legislation. However, the paper must be revised in order to be considered for publication in this journal. Comments and reviews are provided in the manuscript (bubble comments). And we suggest minor revisions.

### Responses:

1. Please rewrite. The title does not represent the contents of the paper

Done

**FINANCIAL AND LEGAL BARRIES IN IMPLEMENTING SECONDARY  
MORTGAGE FACILITIES IN INDONESIA**

2. Please rewrite. It does not reflect the summary of the contents of the paper

Done

The research is motivated to analyze mortgage backed securities to solve the housing supply backlog problem in Indonesia. The first problem is regarding the legality of mortgage backed securities in Indonesia, the second problem is about the disinterest of the housing industry in Indonesia to take advantage of mortgage backed securities, and the second problem is optimizing existing resources to make mortgage backed securities more attractive. Since its establishment in 1998 until 2015 the mortgage backed securities or secondary housing financing facility has not been maximally utilized by the financial industry in Indonesia as an alternative source of funds to finance the provision of housing. The financial industry is still making maximum use of primary housing financing by providing loans whose funds come from third party funds. Mortgage backed securities are not attractive to the financial industry because the subject of implementation, namely PT SMF Persero, is less well known and because there are doubts about the financial benefits of mortgage backed securities for the financial industry and investors. This research is based on empirical studies

conducted directly on the housing finance provider industry sector in Indonesia. A major breakthrough was made by creating new securities in the Indonesian capital market that can make mortgage backed securities more attractive, namely asset backed securities- securities participation (EBA SP), in this way mortgage backed securities are expected to be traded on the secondary market. The legal aspects to support the birth and operation of mortgage backed securities in Indonesia are complete, but the operational use of mortgage backed securities is experiencing problems due to the lack of interest in the financial industry in the issuance process and the character factor of the securities issued. The financial industry providing housing finance in Indonesia demands that the pricing of the issuance of mortgage backed securities and the trading process be made more attractive to investors.

**3. Keywords must consist of at least 4 words or phrases.**

Done

**Keywords:** mortgage-backed securities, funding, financial barriers, legal impediment, Indonesia

**4. How it is important also needs to be explained. How is the sequence of research and strengthens the choice of method used.**

This paper is prepared based on a non-doctrinal research in which law is not conceptualized in moral philosophy as a norm *ius constituendum* and as a norm *ius constitutum*, but laws and statutory regulations are empirically observed in reality. The approach used is the socio legal approach or socio legal approach, which represents the existence of law in the practice of community life. The types of data used are primary data and secondary data. Primary data were obtained from field research conducted by means of FGDs and direct interviews with resource persons. The FGD was held on December 4, 2014 at the Perbanas Building Jakarta which was attended by representatives of the Indonesian national financial industry, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, Bank BCA, Bank Panin, BIIMaybank, Permata Bank; and MNC Multi Finance. During the FGD, the participants were asked the same questions in turn regarding the understanding of secondary housing finance, the use of

secondary housing finance by securitizing housing mortgage bills from FGD participating banks, as well as regarding the existence of PT Sarana Multigriya Finansial (SMF) Persero. In-depth interviews were conducted on 2 December 2014 with the President Director of Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk., the questions asked were the same, namely understanding of financing secondary housing, the use of secondary housing finance by securitizing housing bills for the main source of housing loans and regarding PT Sarana Multigriya Finansial (SMF) Persero.

- 5. Presentation of results and discussion is monotonous and tedious and can obscure the focus of the discussion. Preferably it is classified into specific points. Also, relevant studies need to be discussed in more detail.**

Done.

The main problem that arises to be able to realize the direction of the development policy above is regarding the imbalance between supply and demand housing. In the housing sector, the limited capacity of developers who have not been supported by incentive regulations plus the low affordability of low-income people in building or buying houses is one of the main reasons why there are still many low-income people who do not live in livable houses. The facilitation of providing decent housing for MBR during 2005-2013, such as the construction of simple rental flats, provision of basic infrastructure and facilities, provision of housing financing liquidity facilities (FLPP) and increasing housing micro-credits are still not well targeted. This problem is getting more difficult because facilitation activities have not been accompanied by strengthening the role of the government and local governments as enablers, but rather playing a role as developers which generally will be faster and more efficient if carried out by the community and developers (RPJMN 2015-2019, 2014).

The Government of the Republic of Indonesia has given a special mandate to three State-Owned Enterprises (BUMN) in housing development, namely Perum Perumnas, PT. State Savings Bank (BTN), Tbk and PT. Sarana Multigriya Finansial Persero. The role of Perumnas in building houses for MBR is still not optimal and is faced with competition from housing developers. Likewise, the State Savings Bank (BTN) and Sarana Multigriya

Finansial (SMF), which are expected to be the catalyst for housing finance for MBR, still require additional liquidity.

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If the Implementing Bank has and fulfills these requirements, then they will be responsible for providing part of the financing for KPR Sejahtera credit/financing in accordance with the proportion of KPR Sejahtera funding. The Implementing Bank is responsible for targeting accuracy, use of FLPP funds, and credit/financing risk, and is willing to be audited by the internal supervisory apparatus of the Ministry of Public Housing and/or external supervisors in accordance with statutory regulations.

Housing financing through the FLPP and NON FLPP programs is the primary source of financing for housing development in Indonesia. The primary source of housing finance has limitations, namely the availability of funds to be channeled by banks. Banks (Government-Owned Banks, National Private Banks, Foreign Private Banks and Rural Banks) as the main players in primary housing financing rely on 'Third Party Funds/DPK' funds, where the third party funds come from demand deposits, savings and time deposits, such as seen in the table below ([www.bi.go.id](http://www.bi.go.id)).

Table 1. Banking Third Party Funds by type 2009 – 2014 in trillion rupiah

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Presidential Regulation No. 19 of 2005 also states that the purpose of secondary housing financing is to provide financing facilities in order to increase the capacity and sustainability of housing finance that is affordable by the community. Furthermore, Presidential Regulation No. 19 of 2005 also provides details regarding the company in question, among others in article 15 that the government will establish a Secondary Housing Company as the intended financial institution; which must be in the form of PT; Then it also

regulates the limits of actions that cannot be taken by the company, namely not being able to make direct participation (become a shareholder) or purchase company shares through the capital market.

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The existing legal umbrella, which provides a legal basis for the issuance and trading of asset securitization securities and the institution that is given the task, mandate and authority to be able to issue and trade asset securitization securities with the main purpose of housing secondary financing, still leaves several problems, including: Another is the absence of a legal umbrella that requires every institution that carries out primary housing financing activities to transact with SMF to maximize secondary housing financing. If the main objective for secondary housing financing is not achieved optimally, then the SMF intended to be established will experience economic obstacles, although there are incentives in article 20 but the ten-year time limit to be able to operate in the primary housing finance market is felt to be insufficient. If it can be assessed economically that the participation of more players as primary housing finance providers, then SMF's duties as primary housing finance providers should be extended or not set with a time limit.

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From FGDs and in-depth interviews, it can be seen that with respect to PT SMF Persero and secondary housing financing, the profile of the financial industry can be divided into three profile categories.

The first is the profile of the financial industry that has used SMF products (already become SMF consumers). PT SMF Persero's products provided are liquidity facilities in secondary housing financing (KPR) and mortgage asset securitization to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). Several financial institutions have utilized liquidity facilities in housing secondary financing, including Bank BTN, Bank Muamalat, Bank DKI and MNC Multifinance. These banks and financial institutions experience several advantages with the

liquidity facilities provided by SMF. First, SMF's liquidity facility can increase the capacity of this financial institution to finance mortgages. Second, through the provision of mortgages, this financial institution will receive a collection fee that can be used to increase profits, so this will automatically increase capital. Third, the liquidity facility from SMF can overcome the maturity mismatch problem that is commonly faced by financial institutions in providing mortgages. Maturity mismatch occurs when players in the banking industry and financial institutions use short-term third-party funds (DPK) to finance mortgages which are long-term loans. Although some of the above financial institutions have utilized liquidity facilities from SMF, the proportion of SMF funds is still very small in the financing portfolio of these banks and financial institutions (between 10%-15%). The main thing that is of concern to users of this liquidity facility is that the 'price' given by SMF for secondary mortgage financing is perceived to be relatively high. In other words, the pricing provided by SMF for liquidity facilities is not competitive because it can reduce potential profits for banks and financial institutions that use them. Besides the 'pricing' problem, Bank BTN also complained about the limited funds available at SMF for financing liquidity. SMF's limited funds also make banks and financial institutions still rely on third party funds (DPK) in financing their mortgages.

The second is the profile of the financial industry that has the potential to become SMF consumers. Several financial institutions, such as general insurance and BPJS, have the potential to become investors for SMF by utilizing EBA securitization products. However, there are things that prevent this financial institution from using SMF's products. First, it relates to the rules from OJK. Until now, there is no regulation from OJK that regulates the investment portfolio of general insurance companies in KIK EBA which is included in Risk Based Capital (RBC) for insurance. According to OJK regulations, what are included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate, maximum 20% of total investment), shares (maximum 10%).

Lastly, the third is the profile of the financial industry that has not become a potential SMF consumer. Financial institutions, both government-owned and private, which until now have not become SMF consumers have the main reason that mortgage financing is not the focus of the financial institution's business. Among these financial institutions do have mortgages, but the portion is very small, mortgage securitization is carried out, these banks take advantage of idle funds that are cheap. In addition, the reluctance of these financial institutions to invest in EBAs is because they are concerned about the risk of issuance. Investors doubt the liquidity of the EBA as a prime mortgage. Even though this fear

is actually unfounded, the condition for KIK EBA is smooth credit. Every year this credit will be evaluated and if it is not current it will be exchanged. In other words, the reluctance of financial institutions to use SMF's services is due to their ignorance about SMF's products. Besides that, there is no regulation from OJK regarding portfolios in KIK EBA that are included in the calculation of RBC for insurance, which have been included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate) a maximum of 20% of the total investment, shares (max 10 %). Banking as an economic institution that is heavily regulated will be monitored for its operations by many parties, so that when developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and for the general public. In terms of asset securitization (issuance of asset-backed securities), the banking sector requires that the issuance be categorized as hedging.

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The issuance of EBA SP through an agreement process carried out by the parties, based on the guidelines for issuing EBA SP in POJK no 23/04/2014. EBA-SP offered through a Public Offering must be rated by a Securities Rating Company.

Issuance and trading of EBA SP through a sale and purchase process must be supported by the opinion of a Legal Consultant, must meet the sale and drop off requirements according to generally accepted accounting principles and must be carried out consistently and supported by the opinion of an Accountant.

For EBA SP issued from the source of the original collection of receivables, the Issuer or Original Creditor can only purchase Financial Assets in the EBA-SP Receivable Pool at a maximum of 10% (ten percent) of the total value of the Collected Receivables. The EBA-SP holder's rights to the Collection of Receivables must be stated in the Prospectus or EBA-SP Disclosure Document and supported by a legal opinion from a Legal Consultant stating that the EBA-SP holder's rights are as contained in the EBA-SP Prospectus or Disclosure Document.

...

PT SMF Persero can build a secondary mortgage market through securitization, which can be done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters.

Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. The emergence of the new securities regulations referred to as EBA SP above will greatly assist PT SMF Persero to be able to carry out its duties to perform asset securitization by issuing mortgage backed securities. The things that need to be done so that PT SMF Persero as a government institution that is given a special task of conducting housing loan securitization is to provide greater capital for PT SMF Persero so that it can carry out the task of mesecuritizing housing loans into EBA SP, and the next task is for stock exchange regulator in Indonesia to be able to build a secondary market, so that EBA SP is attractive for investors to buy and resell.

As stated by PT. Mandiri Pension Fund that PT SMF Persero should be able to play an active role in becoming a market creator or secondary market creator for these asset-backed securities, so that investors are more interested in investing in buying EBA that has been issued and the issuance is facilitated by PT SMF Persero.

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#### **6. Adjust to the style of citations and references adopted by the journal (APA style).**

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## Response Reviewer 2

### Reviewer 2:

I think this paper is interesting but still needs major revision in some points. Below are my comments and suggestions. Authors must pay close attention and revise the paper accordingly.

#### 1. Abstract

Abstract is a source of information independent from the article. It is written after the main text of the article is finished. It includes description of the main subject, problems, object, work purpose and its results. It indicates what is new in this document compared to others related to the subject and purpose.

The abstract should be prepared according to international standards and include the following points:

- Introduction to the research topic.
- Purpose of the scientific research.
- Description of scientific and practical significance of the work.
- Description of the research methodology.
- Main results, conclusions of the research work.
- The value of the conducted research (what contribution this work has made to the relevant field of knowledge).
- Practical value of the work results.

The research is motivated to analyze mortgage backed securities to solve the housing supply backlog problem in Indonesia. The first problem is regarding the legality of mortgage backed securities in Indonesia, the second problem is about the disinterest of the housing industry in Indonesia to take advantage of mortgage backed securities, and the

second problem is optimizing existing resources to make mortgage backed securities more attractive. Since its establishment in 1998 until 2015 the mortgage backed securities or secondary housing financing facility has not been maximally utilized by the financial industry in Indonesia as an alternative source of funds to finance the provision of housing. The financial industry is still making maximum use of primary housing financing by providing loans whose funds come from third party funds. Mortgage backed securities are not attractive to the financial industry because the subject of implementation, namely PT SMF Persero, is less well known and because there are doubts about the financial benefits of mortgage backed securities for the financial industry and investors. This research is based on empirical studies conducted directly on the housing finance provider industry sector in Indonesia. A major breakthrough was made by creating new securities in the Indonesian capital market that can make mortgage backed securities more attractive, namely asset backed securities- securities participation (EBA SP), in this way mortgage backed securities are expected to be traded on the secondary market. The legal aspects to support the birth and operation of mortgage backed securities in Indonesia are complete, but the operational use of mortgage backed securities is experiencing problems due to the lack of interest in the financial industry in the issuance process and the character factor of the securities issued. The financial industry providing housing finance in Indonesia demands that the pricing of the issuance of mortgage backed securities and the trading process be made more attractive to investors.

## 2. Introduction

The introduction is intended to provide an introduction to the topic of the article and explain the purpose of the study. When writing the introduction, the author should first state the general topic of the research. Next, it is necessary to reveal the theoretical and practical significance of the work and describe the most authoritative and accessible to the reader publications on the topic under consideration. In the introduction, the author also identifies the problems that have not been solved in previous studies, which this article is intended to solve.

The introduction is necessarily clear:

- the purpose and object of the research undertaken by the author. The work should contain a certain idea, a key idea to which it is devoted. To articulate the purpose, you must answer the question: "What do you want to create as a result of the research? This result may be a new methodology, classification, algorithm, structure, a new version of a known technology,

methodical development, etc. The formulation of the purpose of any work usually starts with verbs: find out, identify, form, justify, check, define, etc. The object is the material of study.

- relevance and novelty. Relevance of a topic is the degree of its importance at the moment and in the given situation. It is the ability of the results of the work to be applicable to fairly significant scientific and practical problems. Novelty is what distinguishes the result of this work from the results obtained by other authors. Its purpose is to study and evaluate existing works on this topic. It is preferable not only to list previous studies, but also to critically review them and generalize the main points of view.

This paper is prepared based on a non-doctrinal research in which law is not conceptualized in moral philosophy as a norm *ius constituendum* and as a norm *ius constitutum*, but laws and statutory regulations are empirically observed in reality. The approach used is the socio legal approach or socio legal approach, which represents the existence of law in the practice of community life. The types of data used are primary data and secondary data. Primary data were obtained from field research conducted by means of FGDs and direct interviews with resource persons. The FGD was held on December 4, 2014 at the Perbanas Building Jakarta which was attended by representatives of the Indonesian national financial industry, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, Bank BCA, Bank Panin, BIIMaybank, Permata Bank; and MNC Multi Finance. During the FGD, the participants were asked the same questions in turn regarding the understanding of secondary housing finance, the use of secondary housing finance by securitizing housing mortgage bills from FGD participating banks, as well as regarding the existence of PT Sarana Multigriya Financial (SMF) Persero. In-depth interviews were conducted on 2 December 2014 with the President Director of Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk., the questions asked were the same, namely understanding of financing secondary housing, the use of secondary housing finance by securitizing housing bills for the main source of housing loans and regarding PT Sarana Multigriya Finansial (SMF) Persero.

### 3. Literature review

The literature review is the theoretical core of the research. Its purpose is to study and evaluate existing works on this topic. It is preferable not only to list previous studies, but also to critically review them and generalize the main points of view.

Another country that can be used as a comparison is China (People's Republic of China). The implementation of asset securitization in China is carried out through two methods, namely: 1. Credit asset securitizations, using trusts as SPVs whose implementation is under the authority of the capital market institutions, the People's Bank of China (PBOC) and the central bank, the China Banking Regulatory Commission (CBRC), and 2. Corporate asset securitizations, using customer asset management plans as SPVs, and are under the supervision of the China Securities Regulatory Commission (CSRC). The types of securitization that have been used as pilot projects are Residential Mortgage-Backed Securitizations (RMBS), Collateralised Loan Obligation (CLO) transactions, Non-Performing Loan (NPL) securitization, Commercial Mortgage-Backed Securitizations (CMBS) and car loan securitization. The majority of these transactions were retained securities, i.e. securities in the junior tranche category were still held by the originator (Calice, 2011).

The first pilot asset securitization project was carried out in December 2005, initiated by the China Construction Bank and China Development Bank. Then in 2006, the number of securitization transactions reached CNY 3.07 billion. The success of the first round of transactions continued in the second pilot project, which was dominated by private banks. Furthermore, during 2009 asset securitization activities experienced a vacuum because nothing was approved by the regulator. In its development, asset securitization activities in China are not only limited to the banking sector but also extend to the telecommunications, infrastructure and leasing business sectors. Then, during 2008 to 2009 there was known informal securitization, in which the bank (originator) packaged a group of loans into investment products which were then sold to individual investors. However, its features, such as no secondary market, result in investors having to hold the securities until maturity, the transferred assets are still recorded in the originator's balance sheet, apart from being the originator, they also act as a distributor of the investment product, The custodian and credit manager are the same party or are affiliated parties, thus making this instrument more risky than conventional securitization. In view of the high risk, in July 2010 the CBRC stopped the informal securitization activities. The PRC Trust Law (Trust Law) guarantees the implementation of asset securitization in China, and is also supported by various regulations issued by the PBOC and CBRC. The types of assets that can be securitized are various types of loans such as mortgages, car loans, NPLs, commercial loans and small business loans.

Meanwhile for corporations, it includes various types of toll ticket bills, equipment rental, electricity bills, build-transfer projects and others. However, the development of asset securitization in China is not market-driven, considering that its implementation is closely monitored by the regulator, such as the determination of the originator and the type of underlying assets that have been previously determined by the regulator. Types of credit enhancement that are commonly used are overcollateralisation, determination of retained spreads and formation of subordinated tranche categories. In addition, the role of rating agencies only focuses on assessing the underlying assets of asset securitization transactions.

Furthermore, the growth of synthetic securitization, which is a form of derivative credit, has not yet developed in China, which is mainly due to the lack of support from the derivative credit market and Chinese regulatory policies (Hilbers et al., 2001)

In the ASEAN region, Thailand can be an interesting example. SMC or Secondary Mortgage Corporation was established in 1997 in Thailand under the Emergency Decree on Secondary Mortgage Finance Corporation B.E. 2540 (1997). The main objective of establishing SMC is to establish a secondary housing finance market in Thailand in order to increase the capacity and availability of funds to build housing through asset securitization. Based on these regulations, the primary market for housing finance is a market where housing finance is formed through housing credit facilities, then the secondary market for housing finance is a market where housing loans are traded. In the secondary market, there is a mechanism through the capital market to finance the construction and marketing of housing. The Thai government allows for the emergence of a Mortgage Company, which is a company whose line of business is providing housing finance (housing loans), then the Mortgage Company will securitize assets (housing loan bills) and sell them to SMC. Previously, SMC had standardized the types of housing loans that could be securitized. Securities collateralized by mortgage bills sold to SMC will be remarketable to investors (Hachaiyaphum, 2016). The benefits of a secondary market for housing loans in Thailand will be enjoyed by several parties, namely banks, capital markets, investors and housing developers.

In Thailand, there is also a reverse mortgage for homeowners who are more than 60 years old. Homeowners are allowed to securitize their home ownership or other immovable assets to the government through the SMC. The owners of these immovable assets will get regular monthly income based on age, collateral value and Thailand's national housing loan interest rate. This is done so that the elderly in Thailand get regular monthly income, guaranteed quality of life and reduce the burden on the government to care for them. The

reverse mortgage will then be marketed by SMC in the Thai capital market (Hachaiyaphum, 2016).

Another country in the ASEAN region that already has a secondary market for housing finance is Malaysia. Cagamas Berhad is the national housing finance company responsible for the development of the secondary housing finance market in Malaysia. Established in 1986 with government seed funding to facilitate and encourage home ownership in Malaysia. The company purchases housing loans from primary lenders and raises funds from the market by issuing debt securities in the form of long-term bonds and Medium-Term Notes. Cagamas Berhad is one of the successful secondary housing finance companies. Cagamas Berhad managed to get a AAA rating and maintain a AAA credit rating from the Rating Agency of Malaysia (RAM) and Malaysian Rating Corporation (MARC) and has proven that in its two decades of operations it has never experienced problems or defaults. This is because there is a government guarantee for the bonds issued by Cagamas Berhad (Malpezzi & Mayo, 1997).

#### 4. Discussion

In this part of the article author's analytical, systematized material should be presented. The results of the research should be described in sufficient detail to allow the reader to follow its stages and assess the validity of the conclusions made by the author. In terms of volume, this part is central to the scientific article.

It is desirable to compare the results presented in the article with previous works in this field by both the author and other researchers. Such comparison will additionally reveal the novelty of the work performed and give it objectivity.

Done.

The main problem that arises to be able to realize the direction of the development policy above is regarding the imbalance between supply and demand housing. In the housing sector, the limited capacity of developers who have not been supported by incentive regulations plus the low affordability of low-income people in building or buying houses is one of the main reasons why there are still many low-income people who do not live in livable houses. The facilitation of providing decent housing for MBR during 2005-2013, such as the construction of simple rental flats, provision of basic infrastructure and facilities, provision of housing financing liquidity facilities (FLPP) and increasing housing micro-

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From FGDs and in-depth interviews, it can be seen that with respect to PT SMF Persero and secondary housing financing, the profile of the financial industry can be divided into three profile categories.

The first is the profile of the financial industry that has used SMF products (already become SMF consumers). PT SMF Persero's products provided are liquidity facilities in secondary housing financing (KPR) and mortgage asset securitization to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). Several financial institutions have utilized liquidity facilities in housing secondary financing, including Bank BTN, Bank Muamalat, Bank DKI and MNC Multifinance. These banks and financial institutions experience several advantages with the liquidity facilities provided by SMF. First, SMF's liquidity facility can increase the capacity of this financial institution to finance mortgages. Second, through the provision of mortgages, this financial institution will receive a collection fee that can be used to increase profits, so this will automatically increase capital. Third, the liquidity facility from SMF can overcome the maturity mismatch problem that is commonly faced by financial institutions in providing mortgages. Maturity mismatch occurs when players in the banking industry and financial institutions use short-term third-party funds (DPK) to finance mortgages which are long-term loans. Although some of the above financial institutions have utilized liquidity facilities from SMF, the proportion of SMF funds is still very small in the financing portfolio of these banks and financial institutions (between 10%-15%). The main thing that is of concern to users of this liquidity facility is that the 'price' given by SMF for secondary mortgage financing is perceived to be relatively high. In other words, the pricing provided by SMF for liquidity facilities is not competitive because it can reduce potential profits for banks and financial institutions that use them. Besides the 'pricing' problem, Bank BTN also complained about the limited funds available at SMF for financing liquidity. SMF's limited funds also make banks and financial institutions still rely on third party funds (DPK) in financing their mortgages.

The second is the profile of the financial industry that has the potential to become SMF consumers. Several financial institutions, such as general insurance and BPJS, have the potential to become investors for SMF by utilizing EBA securitization products. However, there are things that prevent this financial institution from using SMF's products. First, it relates to the rules from OJK. Until now, there is no regulation from OJK that regulates the investment portfolio of general insurance companies in KIK EBA which is included in Risk Based Capital (RBC) for insurance. According to OJK regulations, what are included in the

calculation of RBC for insurance companies are time deposits, bonds (government and corporate, maximum 20% of total investment), shares (maximum 10%).

Lastly, the third is the profile of the financial industry that has not become a potential SMF consumer. Financial institutions, both government-owned and private, which until now have not become SMF consumers have the main reason that mortgage financing is not the focus of the financial institution's business. Among these financial institutions do have mortgages, but the portion is very small, mortgage securitization is carried out, these banks take advantage of idle funds that are cheap. In addition, the reluctance of these financial institutions to invest in EBAs is because they are concerned about the risk of issuance. Investors doubt the liquidity of the EBA as a prime mortgage. Even though this fear is actually unfounded, the condition for KIK EBA is smooth credit. Every year this credit will be evaluated and if it is not current it will be exchanged. In other words, the reluctance of financial institutions to use SMF's services is due to their ignorance about SMF's products. Besides that, there is no regulation from OJK regarding portfolios in KIK EBA that are included in the calculation of RBC for insurance, which have been included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate) a maximum of 20% of the total investment, shares (max 10 %). Banking as an economic institution that is heavily regulated will be monitored for its operations by many parties, so that when developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and for the general public. In terms of asset securitization (issuance of asset-backed securities), the banking sector requires that the issuance be categorized as hedging.

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The issuance of EBA SP through an agreement process carried out by the parties, based on the guidelines for issuing EBA SP in POJK no 23/04/2014. EBA-SP offered through a Public Offering must be rated by a Securities Rating Company.

Issuance and trading of EBA SP through a sale and purchase process must be supported by the opinion of a Legal Consultant, must meet the sale and drop off requirements according to generally accepted accounting principles and must be carried out consistently and supported by the opinion of an Accountant.

For EBA SP issued from the source of the original collection of receivables, the Issuer or Original Creditor can only purchase Financial Assets in the EBA-SP Receivable Pool at a maximum of 10% (ten percent) of the total value of the Collected Receivables. The

EBA-SP holder's rights to the Collection of Receivables must be stated in the Prospectus or EBA-SP Disclosure Document and supported by a legal opinion from a Legal Consultant stating that the EBA-SP holder's rights are as contained in the EBA-SP Prospectus or Disclosure Document.

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PT SMF Persero can build a secondary mortgage market through securitization, which can be done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. The emergence of the new securities regulations referred to as EBA SP above will greatly assist PT SMF Persero to be able to carry out its duties to perform asset securitization by issuing mortgage backed securities. The things that need to be done so that PT SMF Persero as a government institution that is given a special task of conducting housing loan securitization is to provide greater capital for PT SMF Persero so that it can carry out the task of mesecuritizing housing loans into EBA SP, and the next task is for stock exchange regulator in Indonesia to be able to build a secondary market, so that EBA SP is attractive for investors to buy and resell.

As stated by PT. Mandiri Pension Fund that PT SMF Persero should be able to play an active role in becoming a market creator or secondary market creator for these asset-backed securities, so that investors are more interested in investing in buying EBA that has been issued and the issuance is facilitated by PT SMF Persero.

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## 5. Conclusion

The conclusion contains a brief formulation of the study results. It repeats the main ideas of the main part of the work in a concise form. It is better to formulate any repetitions of the material presented with new phrases, new formulations that differ from those expressed in the main part of the article. In this section, the results should be compared with the goal stated at the beginning of the work. In conclusion, the results of comprehension of the topic are summarized, conclusions, generalizations, and recommendations are made, which

follow from the work, their practical significance is emphasized, and the main directions for further research in this area are defined. In the final part of the article, it is desirable to include attempts to forecast the development of the discussed issues.

On the other hand, the financial industry also requests that the costs of issuing EBA and EBA SP securitization of housing loans by PT SMF Persero can be carried out at a "pricing" that is not too expensive. So, they will choose this product as a primary source of housing financing. The last thing that must be carried out by the Government of the Republic of Indonesia is the creation of a "secondary market" to trade EBA SP originating from the housing loan. So that the EBA SP product does not only stop at the primary market but can also be traded on the secondary market, which will be very attractive to investors.

Finally, with attractive products, large amounts of funds offered, competitive pricing, housing loan securitization carried out by PT SMF Persero can help the Government overcome the housing backlog.

# FINANCIAL AND LEGAL BARRIERS IN IMPLEMENTING SECONDARY MORTGAGE FACILITIES IN INDONESIA

Revised 1

## Abstract

The research is motivated to analyze mortgage backed securities to solve the housing supply backlog problem in Indonesia. The first problem is regarding the legality of mortgage backed securities in Indonesia, the second problem is about the disinterest of the housing industry in Indonesia to take advantage of mortgage backed securities, and the second problem is optimizing existing resources to make mortgage backed securities more attractive. Since its establishment in 1998 until 2015 the mortgage backed securities or secondary housing financing facility has not been maximally utilized by the financial industry in Indonesia as an alternative source of funds to finance the provision of housing. The financial industry is still making maximum use of primary housing financing by providing loans whose funds come from third party funds. Mortgage backed securities are not attractive to the financial industry because the subject of implementation, namely PT SMF Persero, is less well known and because there are doubts about the financial benefits of mortgage backed securities for the financial industry and investors. This research is based on empirical studies conducted directly on the housing finance provider industry sector in Indonesia. A major breakthrough was made by creating new securities in the Indonesian capital market that can make mortgage backed securities more attractive, namely asset backed securities- securities participation (EBA SP), in this way mortgage backed securities are expected to be traded on the secondary market. The legal aspects to support the birth and operation of mortgage backed securities in Indonesia are complete, but the operational use of mortgage backed securities is experiencing problems due to the lack of interest in the financial industry in the issuance process and the character factor of the securities issued. The financial industry providing housing finance in Indonesia demands that the pricing of the issuance of mortgage backed securities and the trading process be made more attractive to investors.

**Keywords:** mortgage-backed securities, funding, financial barriers, legal impediment, Indonesia

## Introduction

Housing and settlements are one of the basic human needs, having a strategic function as a center for family education, cultural nurseries, and improving the quality of

future generations. The government's ability to meet the needs of housing and settlements is relatively very limited. Community resources and potentials need to be developed to be able to meet their housing and settlement needs independently, supported by government efforts through the creation of a conducive housing provision climate.

The Government of Indonesia has a National Medium-Term Development Plan 2015-2019, which includes a plan to provide housing in Indonesia. Fulfillment of decent housing supported by adequate infrastructure, facilities and utilities needs special attention. Inequality between supply and demand is still a major problem in the provision of basic infrastructure, especially for low-income people (MBR). In the housing sector, the limited capacity of developers has not been supported by incentive regulations. Low-income communities also have a problem, namely the low affordability of building or buying a house, so that they cannot live in decent houses. The shortage of providing housing needs or known as the housing backlog has led to new innovations so that the problems that hinder the provision of housing are unraveled, among others by providing capital financial instruments for housing finance.

Since 2010 the Government of Indonesia has had a program known as the Housing Financing Liquidity Facility, namely channeling housing loans for simple and very simple houses through the banking system. Housing loans that have been disbursed, both from the FLPP program and non-FLPP programs such as KPR and KPA, can theoretically be turned into a source of funds by means of securitization, known as mortgage backed securities (MBS).

Mortgage backed securities are a way to expand the sources of financing for housing development. It has been known in the world since 1934 in the United States, initially the pattern of securitization of housing loans was carried out in order to revive the United States economy which was slumped during the Great Depression, at which time people's incomes declined. drastically as well as house prices. This condition has resulted in banks as owners of housing loans experiencing liquidity difficulties. So finally, the United States Government decided to establish a Government Sponsored Enterprise to buy mortgages or housing credit guarantees owned by banks in the form of securities. The securities will then be re-marketed in the form of a secondary mortgage. Mortgage-based securities that have been attempted to be used as an alternative source of funding for housing finance in Indonesia have not worked as they should. From 1998 to 2015 this secondary housing financing facility was not widely known and used by primary housing finance providers and other investors.

There are 3 problems that will be analyzed in this paper. The first problem is regarding the legality of secondary housing financing (SMF) in Indonesia. The second problem is to find out why housing loan holders are not interested in issuing mortgage backed securities and why investors are not interested in investing in mortgage backed securities in Indonesia. The third problem is how to optimize all available resources to make mortgage backed securities more attractive to issue and trade in both the primary and secondary markets, so that mortgage backed securities as securities will be more financially attractive.

This paper is prepared based on a non-doctrinal research in which law is not conceptualized in moral philosophy as a norm *ius constituendum* and as a norm *ius constitutum*, but laws and statutory regulations are empirically observed in reality. The approach used is the socio legal approach or socio legal approach, which represents the existence of law in the practice of community life. The types of data used are primary data and secondary data. Primary data were obtained from field research conducted by means of FGDs and direct interviews with resource persons. The FGD was held on December 4, 2014 at the Perbanas Building Jakarta which was attended by representatives of the Indonesian national financial industry, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, Bank BCA, Bank Panin, BIIMaybank, Permata Bank; and MNC Multi Finance. During the FGD, the participants were asked the same questions in turn regarding the understanding of secondary housing finance, the use of secondary housing finance by securitizing housing mortgage bills from FGD participating banks, as well as regarding the existence of PT Sarana Multigriya Finansial (SMF) Persero. In-depth interviews were conducted on 2 December 2014 with the President Director of Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk., the questions asked were the same, namely understanding of financing secondary housing, the use of secondary housing finance by securitizing housing bills for the main source of housing loans and regarding PT Sarana Multigriya Finansial (SMF) Persero.

## **Literature Review**

Initially, the emergence of asset securitization in America was driven by government programs that sought to increase the liquidity of the residential mortgage market. To realize this program, the government formed the Federal Home Loan Bank in 1932, which provided housing credit facilities for the American people. Then to form the secondary mortgage market, the American government established three institutions, namely: 1. The

Federal National Mortgage Association (FNMA) or known as Fannie Mae in 1938, 2. The Government National Mortgage Association (GNMA) or known as Ginnie Mae designation in 1968 which is a fraction of Fannie Mae and 3. The Federal Home Loan Mortgage Corporation (FHLMC) otherwise known as Freddie Mac in 1970. These three institutions have two main functions in developing the secondary housing market, namely being a sponsor for the issuance of mortgage-backed securities by banks, and acting as guarantors for investors, namely providing assurance on the smooth and timely payment of interest and principal to investors (The Congress of the United States, the Congressional Budget Office : Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market, December 2010).

The first time the securitization of assets in the form of mortgage-backed securities with the underlying asset in the form of mortgages was issued in 1968 through Ginnie Mae. Then asset securitization techniques developed and in 1985 successfully issued securities with underlying assets in the form of car loans. Then, the development of asset securitization transactions in America has increased very rapidly, both in the securitization market, types of underlying assets, forms and mechanisms (Fabozzi et al., 2000).

The rapid growth of the securitization market since 1968, which was marked by the development of volume, number of originators, types of underlying assets and forms of securitization, subsequently experienced difficult times following the emergence of the sub-prime mortgage crisis in 2007. The highest growth in the sub-prime mortgage market occurred in the period 2001 to 2006. This growth was triggered by, among other things, high investor interest in high-yielding investment products and support from government institutions such as Fannie Mae, Ginnie Mae and Freddie Mac. On the other hand, when securitization grows rapidly, the quality of the securitization market decreases significantly due to the characteristics of various parties and factors involved in the transaction process, namely: 1). Lending banks loosen credit requirements such as high loan to value ratios, 2). Bad debtor quality, such as low loan score, high level of indebtedness, low ability to provide data and documentation, 3). Loans such as product type, installment terms, loan amount, higher loan interest rates than prime loans and 4). Macroeconomic conditions such as rising house prices, household income and rising unemployment (Keys et al., 2009). The sub-prime mortgage crisis has actually been detected and recognized by the parties, however, the deterioration of the quality of the securitization market is covered by the tendency of rising house prices from 2003 to 2005. The various types of asset securitization development referred to, the securitization market is dominated by the form of Mortgage-Backed

Securities-MBS guaranteed by the three US government institutions, then Asset-Backed Securities-ABS with underlying assets in the form of credit card bills, car loans, other consumer credit and Collateralized Loan Obligation-CLO. A total of 3,650 MBS was issued for €715.21 million, followed by 2,427 ABS issued for €363.19 million and finally 2,504 CDOs were issued for €316.72 million (Gramlich, 2007).

Supervision of the implementation of asset securitization in America does not refer to special laws and regulators but is subject to state and federal regulations such as the Securities Act of 1933, Securities Exchange Act of 1934, Trust Indenture Act of 1939, Investment Advisors Act of 1940, Investment Company Act of 1940, Internal Revenue Code of 1986, US Bankruptcy Code and the Dodd-Frank Wall Street Reform and Consumer Protection Act. The regulators with the authority and responsibility are the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (Hancock & Passmore, 2011)

The reasons for conducting securitization transactions are, among others, to obtain cheaper funding, benefits from the balance sheet structure, savings in the amount of capital, alternative sources of funding, profit from the difference between the cost of funds in the capital market and the proceeds from the sale of assets through securitization. To maintain a sufficient level of capital, the originator in the form of a bank must comply with other regulations, namely the Basel rule, which states that banks must maintain a sufficient level of capital when conducting asset securitization transactions. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act regulations will regulate originators in the form of financial institutions, to increase the amount of capital in order to increase the ability to absorb risk in the event of a loss (Ambrose & Pennington-Cross, 2000).

In America itself, the form of SPV can vary depending on tax factors, originators and investors involved in the transaction. The two most commonly used forms of SPV are Trusts and Limited Liability Companies (LLCs) and the least used are Limited Partnerships. In this case, the SPV can be owned by the originator or by an independent party. The use of SPV by independent parties can be used as one of the steps to avoid the bankruptcy risk of the SPV if the courts in America treat the underlying assets in securitization activities as still owned by the originator. To avoid this risk, it is necessary to believe that SPV assets are separate from the originator which can be seen from indicators such as separate financial statements and legally the SPV is an independent party.

To respond to the financial crisis, the American government carried out various initiatives including two main programs aimed at restoring liquidity and confidence in the financial industry, namely: 1). The Term Asset-Backed Securities Loan Facility (TALF) started in November 2008 and by the time this program ended in June 2010 the outstanding loan amount was US\$43 billion, and 2). the Public Private Investment Program (PPIP), was launched in March 2009 and started investing in September 2009. The source of funds for the PPIP program is a combination of the Troubled Asset Relief Program (TARP), private investors and loans from TALF. The PPIP's working mechanism is by buying troubled assets owned by banks and as of May 1, 2011 the amount has reached US\$1 trillion and eight PPIPs have been formed. Although the volume of securities transactions was lower than the volume before the financial crisis, CLO and ABS transactions have started to grow in 2011. In future developments, the promulgation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010 will change the financial industry given its broad impact on business actors, performance and development in America. The implementation of the said law will affect asset securitization activities because there are tightening regulations on the roles of rating agencies and investment managers, risk retention and capital adequacy ratios. In addition, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 requires national registration of companies that are mortgage originators and the Credit Card Accountability Responsibility and Disclosure Act of 2009 also asks to stop imposing egregious fees on credit card holders (Barth et al., 2004)

The parameters of the ideal secondary housing finance market are the stability of macroeconomic conditions; competitive market structure; standardization of mortgage instruments; servicing techniques from mortgage-backed securities issuing institutions and providers of secondary mortgage facilities as well as government policies (Lea & Bernstein, 2000).

Mortgage backed securities and secondary mortgage facilities have also been recognized and practiced in several countries in the world. An example is France. Trading in Asset Backed Securities (EBA) in France has been regulated by The Securitization Law No.88-1201 dated December 23, 1988 and gave rise to the term Fonds Commun de Créances (FCC) or French SPV. This is in contrast to the UK and Germany which do not have specific laws regarding asset securitization. Subsequently, several amendments to the Law have been made and the most recent was the 2008 Ordinance which aims to improve the quality of securitization implementation and change the name of the FCC to Fonds Commun de Titrisation (FCT). The Financial Markets Authority (Autorité des Marchés Financiers) –

AMF is the main agency authorized and responsible for the conduct of securitization activities in France (Farruggio & Uhde, 2015).

FCT's legal status is co-ownership, without any legal personality such as having no capital, shareholders, management or employees, but only consisting of investment managers and custodians. Thus, FCT will be free from bankruptcy problems (remote bankruptcy). In further developments, FCT securitizes various types of claims such as credit card bills, trade receivables, commercial credit and consumer loans, mortgage claims (KPR) and insurance risk claims with the exception of claims that are categorized as default, doubtful and in the process of legal litigation. In addition, the technique of transferring assets from the originator to the FCT is carried out through the use of special documents (bordereau) for cost and efficiency considerations. In general, the formation of the FCT is carried out in France and in carrying out securitization activities always refers to various regulations issued by the AMF and the Monetary and Financial Code. However, if there is an FCT formed abroad, the FCT cannot operate in France. This type of credit enhancement is carried out to increase the rating of securities issued, such as: 1. Guarantees provided by the originator, affiliated parties of the originator or by insurance companies, 2. Cash reserve funds and 3. Overcollateralisation (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), Association Française de Tresoriers D'Entreprise (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

In subsequent developments, the 2007 American sub-prime mortgage crisis had a significant impact on the decline in transaction volume and investor interest in asset securitization activities in France. The French regulator then refined the practice of asset securitization by amending the Securitization Law through the 2008 Ordinance. Furthermore, in the September 2009 Quarterly Review, the Bank for International Settlement reviewed the rules of the game to reactivate and strengthen the securitization process by highlighting several aspects such as the limited level of complexity and transparency of transactions and the high dependence on ratings from rating agencies. To simplify the securitization process, the authorities set a standardization of the structure, including reducing the number of tranches. In addition, new standards have been set regarding disclosure and reporting procedures as well as supervision of rating companies (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), Association Française de Tresoriers D'Entreprise (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

Another country that can be used as a comparison is China (People's Republic of China). The implementation of asset securitization in China is carried out through two methods, namely: 1. Credit asset securitizations, using trusts as SPVs whose implementation is under the authority of the capital market institutions, the People's Bank of China (PBOC) and the central bank, the China Banking Regulatory Commission (CBRC), and 2. Corporate asset securitizations, using customer asset management plans as SPVs, and are under the supervision of the China Securities Regulatory Commission (CSRC). The types of securitization that have been used as pilot projects are Residential Mortgage-Backed Securitizations (RMBS), Collateralised Loan Obligation (CLO) transactions, Non-Performing Loan (NPL) securitization, Commercial Mortgage-Backed Securitizations (CMBS) and car loan securitization. The majority of these transactions were retained securities, i.e. securities in the junior tranche category were still held by the originator (Calice, 2011).

The first pilot asset securitization project was carried out in December 2005, initiated by the China Construction Bank and China Development Bank. Then in 2006, the number of securitization transactions reached CNY 3.07 billion. The success of the first round of transactions continued in the second pilot project, which was dominated by private banks. Furthermore, during 2009 asset securitization activities experienced a vacuum because nothing was approved by the regulator. In its development, asset securitization activities in China are not only limited to the banking sector but also extend to the telecommunications, infrastructure and leasing business sectors. Then, during 2008 to 2009 there was known informal securitization, in which the bank (originator) packaged a group of loans into investment products which were then sold to individual investors. However, its features, such as no secondary market, result in investors having to hold the securities until maturity, the transferred assets are still recorded in the originator's balance sheet, apart from being the originator, they also act as a distributor of the investment product, The custodian and credit manager are the same party or are affiliated parties, thus making this instrument more risky than conventional securitization. In view of the high risk, in July 2010 the CBRC stopped the informal securitization activities. The PRC Trust Law (Trust Law) guarantees the implementation of asset securitization in China, and is also supported by various regulations issued by the PBOC and CBRC. The types of assets that can be securitized are various types of loans such as mortgages, car loans, NPLs, commercial loans and small business loans. Meanwhile for corporations, it includes various types of toll ticket bills, equipment rental, electricity bills, build-transfer projects and others. However, the development of asset securitization in China is not market-driven, considering that its implementation is closely

monitored by the regulator, such as the determination of the originator and the type of underlying assets that have been previously determined by the regulator. Types of credit enhancement that are commonly used are overcollateralisation, determination of retained spreads and formation of subordinated tranche categories. In addition, the role of rating agencies only focuses on assessing the underlying assets of asset securitization transactions.

Furthermore, the growth of synthetic securitization, which is a form of derivative credit, has not yet developed in China, which is mainly due to the lack of support from the derivative credit market and Chinese regulatory policies (Hilbers et al., 2001)

In the ASEAN region, Thailand can be an interesting example. SMC or Secondary Mortgage Corporation was established in 1997 in Thailand under the Emergency Decree on Secondary Mortgage Finance Corporation B.E. 2540 (1997). The main objective of establishing SMC is to establish a secondary housing finance market in Thailand in order to increase the capacity and availability of funds to build housing through asset securitization. Based on these regulations, the primary market for housing finance is a market where housing finance is formed through housing credit facilities, then the secondary market for housing finance is a market where housing loans are traded. In the secondary market, there is a mechanism through the capital market to finance the construction and marketing of housing. The Thai government allows for the emergence of a Mortgage Company, which is a company whose line of business is providing housing finance (housing loans), then the Mortgage Company will securitize assets (housing loan bills) and sell them to SMC. Previously, SMC had standardized the types of housing loans that could be securitized. Securities collateralized by mortgage bills sold to SMC will be remarketable to investors (Hachaiyaphum, 2016). The benefits of a secondary market for housing loans in Thailand will be enjoyed by several parties, namely banks, capital markets, investors and housing developers.

In Thailand, there is also a reverse mortgage for homeowners who are more than 60 years old. Homeowners are allowed to securitize their home ownership or other immovable assets to the government through the SMC. The owners of these immovable assets will get regular monthly income based on age, collateral value and Thailand's national housing loan interest rate. This is done so that the elderly in Thailand get regular monthly income, guaranteed quality of life and reduce the burden on the government to care for them. The reverse mortgage will then be marketed by SMC in the Thai capital market (Hachaiyaphum, 2016).

Another country in the ASEAN region that already has a secondary market for housing finance is Malaysia. Cagamas Berhad is the national housing finance company responsible for the development of the secondary housing finance market in Malaysia. Established in 1986 with government seed funding to facilitate and encourage home ownership in Malaysia. The company purchases housing loans from primary lenders and raises funds from the market by issuing debt securities in the form of long-term bonds and Medium-Term Notes. Cagamas Berhad is one of the successful secondary housing finance companies. Cagamas Berhad managed to get a AAA rating and maintain a AAA credit rating from the Rating Agency of Malaysia (RAM) and Malaysian Rating Corporation (MARC) and has proven that in its two decades of operations it has never experienced problems or defaults. This is because there is a government guarantee for the bonds issued by Cagamas Berhad (Malpezzi & Mayo, 1997).

### **Housing Provision Policy in Indonesia**

The Government of the Republic of Indonesia has a policy direction and development strategy to increase efforts to sustain economic development, through the following strategies: (i) Increasing economic growth which is continuously maintained in a positive manner by reducing disparities between regions; (ii) Increasing the level of income (per capita) and reducing the income gap between groups; (iii) Increase in employment so that the unemployment rate decreases; (iv) Reducing the poverty rate so that the number of poor people is reduced; (v) Food security includes price stabilization so that inflation rates are low; (vi) Energy security, especially increasing public access to energy, increasing efficiency and the national energy mix; (vii) Increasing access to transportation/community mobility; (viii) Application of production patterns/economic activities and consumption patterns that are efficient (not wasteful) and environmentally friendly (RPJMN 2015-2019, 2014). The second direction of development policy is to increase efforts to sustain social development, among others through a strategy to increase service affordability and access to education, health, housing, clean water and community sanitation services (RPJMN 2015-2019, 2014). Specifically to spur economic growth more specifically in terms of housing, the Government has had several specific policy directions, which are called policy directions for inclusive economic growth in an effort to increase equity, which include directing fiscal policies that support the livelihoods of the poor and vulnerable, especially public spending that is targeted social assistance such as conditional cash assistance, housing assistance for the poor, assistance for agricultural and fisherman production, assistance for improving the skills of

farmers, fishermen, and other underprivileged people's businesses. The policy direction of the Government of the Republic of Indonesia in terms of providing housing infrastructure does not only stop at the availability of housing for the poor but also for workers in industrial areas, TNI soldiers and Polri (RPJMN 2015-2019, 2014).

The main problem that arises to be able to realize the direction of the development policy above is regarding the imbalance between supply and demand housing. In the housing sector, the limited capacity of developers who have not been supported by incentive regulations plus the low affordability of low-income people in building or buying houses is one of the main reasons why there are still many low-income people who do not live in livable houses. The facilitation of providing decent housing for MBR during 2005-2013, such as the construction of simple rental flats, provision of basic infrastructure and facilities, provision of housing financing liquidity facilities (FLPP) and increasing housing micro-credits are still not well targeted. This problem is getting more difficult because facilitation activities have not been accompanied by strengthening the role of the government and local governments as enablers, but rather playing a role as developers which generally will be faster and more efficient if carried out by the community and developers (RPJMN 2015-2019, 2014).

The Government of the Republic of Indonesia has given a special mandate to three State-Owned Enterprises (BUMN) in housing development, namely Perum Perumnas, PT. State Savings Bank (BTN), Tbk and PT. Sarana Multigriya Finansial Persero. The role of Perumnas in building houses for MBR is still not optimal and is faced with competition from housing developers. Likewise, the State Savings Bank (BTN) and Sarana Multigriya Finansial (SMF), which are expected to be the catalyst for housing finance for MBR, still require additional liquidity.

Since 2010 the Government of Indonesia has had a program called the Housing Financing Liquidity Facility (FLPP). This regulation regarding FLPP was initially stated in Permenpera Number 14 and 15 of 2010, then amended by Minister of Public Housing Regulation (Permen) No. 04 of 2012, concerning Housing Procurement through Credit for Financing for Welfare Home Ownership with the support of Housing Financing Liquidity Facility (FLPP) and Regulation of the Minister of Public Housing No. 05 of 2012 concerning Instructions for Implementing Housing Through Credit for the Financing of Prosperous Home Ownership. Subsequently, it was amended by Regulation of the Minister of Public Works and Public Housing Number 20/PRT/M/2014 and 21/PRT/M/2014. Based on these regulations, the Government has been able to channel FLPP funds which are used to help

finance the community to own a landed house for five years. years since 2010 – 2015 with a fund of IDR 16.5 trillion. The distribution of FLPP is carried out through the distribution of FLPP mortgages. FLPP (housing financing liquidity facility) is housing financing support for MBR (low-income people), to get KPRSh (Simplified Healthy Home Ownership Credit). The management of the FLPP program funds is carried out by the Kemenpera BLU-PPP (Public Service Agency for the Public Housing Financing Center) in collaboration with banking institutions that have collaborated with the Ministry of Industry. There are 16 banks, namely Bank BTN, BRI, BTN S, BNI, BRI Syariah, Bank MANDIRI, Bank MANDIRI Syariah, Bank Artha Graha, Bank Bukopin, BPD East Kalimantan, BPD North Sumatra, BPD Central Java, BPD East Java, BPD Southeast Sulawesi, BPD Nagari, BPD North Sumatra Sharia. The cooperation between the Government (Kemenpupera) and banks is carried out through PKO (operational cooperation agreements) in the context of housing procurement through credit or financing for prosperous housing. The FLPP Mortgage Program is a housing finance assistance program for low-income communities with various benefits, such as a fixed-margin interest rate of 7.25% for the life of the loan, including life and fire insurance protection and free of VAT.

Specifically for banks that will become implementing banks, both commercial banks, sharia commercial banks and sharia business units, the requirements to become implementing banks are: a) Submit a statement of interest in becoming an Implementing Bank in the context of implementing the FLPP program; b) Have a minimum value of Composite Rating Three (PK-3) in accordance with Bank Indonesia Regulations; c) Have at least 2 (two) years of experience in issuing home ownership credit/financing (KPR); d) Have infrastructure for managing credit/mortgage financing at least: (i) Having a work unit organization for managing home ownership credit/financing; (ii) Having personnel managing home ownership credit/financing; (iii) Possess information technology for credit management/home ownership financing; and (iv) Have a home ownership credit/financing policy; e) Have an adequate service network at the provincial and/or national level; f) Have a plan to issue a Prosperous KPR within 1 (one) year; g) Signing a Collective Agreement with the Deputy for Financing or an official appointed by the Minister; and h) Signing an Operational Cooperation Agreement (PKO) with PPP.

If the Implementing Bank has and fulfills these requirements, then they will be responsible for providing part of the financing for KPR Sejahtera credit/financing in accordance with the proportion of KPR Sejahtera funding. The Implementing Bank is responsible for targeting accuracy, use of FLPP funds, and credit/financing risk, and is

willing to be audited by the internal supervisory apparatus of the Ministry of Public Housing and/or external supervisors in accordance with statutory regulations.

Housing financing through the FLPP and NON FLPP programs is the primary source of financing for housing development in Indonesia. The primary source of housing finance has limitations, namely the availability of funds to be channeled by banks. Banks (Government-Owned Banks, National Private Banks, Foreign Private Banks and Rural Banks) as the main players in primary housing financing rely on 'Third Party Funds/DPK' funds, where the third party funds come from demand deposits, savings and time deposits, such as seen in the table below ([www.bi.go.id](http://www.bi.go.id)).

Table 1. Banking Third Party Funds by type 2009 – 2014 in trillion rupiah

Information	December 2009	December 2010	December 2011	December 2012	December 2013	December 2014
Current Account	465,222	535,855	652,708	767,070	846,781	934,067
Savings	585,707	733,157	898,245	1,076,830	1,212,707	1,534,098
Time deposit	899,783	1,069,811	1,234,072	1,381,298	1,604,480	1,869,005
Total	1,950,712	2,338,823	2,785,025	3,225,198	3,663,968	4,337,170

The largest third-party funds came from time deposits, especially time deposits with a time period of 1 month. Problems will arise if third party funds in the form of short-term deposits are used to finance long-term housing loans, in banking this condition is known as a maturity mismatch. The emergence of a maturity mismatch in banking operations will cause problems, namely liquidity difficulties and public distrust of banks. The government has arranged so that there is no maturity mismatch through the Loan to Deposit Ratio (LDR) setting. The Government of the Republic of Indonesia through Bank Indonesia has periodically issued Bank Indonesia Regulations regarding this LDR, namely Circular Letter of Bank Indonesia Number 15/40/DKMP dated September 24, 2013 Regarding the Implementation of Risk Management in Banks Providing Credit or Financing for Property Ownership, Credit or Financing Property Backed Consumption, and Motor Vehicle Loans or Financing amended by Bank Indonesia Regulation Number 17/10/PBI/2015 concerning Loan To Value Ratio Or Financing To Value Ratio For Property Loans Or Financing And Down Payments For Motor Vehicle Loans Or Financing. The regulation will regulate the Loan to Value (LTV ratio) ratio, namely the ratio between the credit value that can be given by the

Bank to the value of the collateral in the form of property at the time of lending based on the latest appraisal price; financing to value ratio (FT ratio) which is the ratio between the value of financing that can be provided by the Bank to the value of collateral in the form of property at the time of financing based on the last appraisal price. Bank Indonesia will set limits on the LTV Ratio or RTV Ratio for conventional property loans and sharia property loans, in the form of buying landed houses, flats, shop houses, home offices.

The limited availability of third-party funds and the precautionary element from the banking regulator and the banking industry in the context of lending has resulted in limited funds being channeled into housing development. The Government of the Republic of Indonesia was then moved to utilize secondary housing financing facilities, following what has been implemented by the United States Government.

### **Legality of Housing Secondary Financing**

A secondary mortgage facility company was established specifically to raise long-term funds which will then be channeled to financing institutions, namely banks that experience funding gaps. The financing facility provided by SMF is a financing facility specifically organized to be given to financing institutions (banks) in the context of lending through the housing loan scheme. This financing system is growing rapidly in the United States, followed by developments in other countries in the world such as France, Latin America, Australia, New Zealand, Japan, Hong Kong, Thailand, Philippines, Taiwan, Malaysia and Singapore. This process is often referred to as the asset securitization process.

Securitization has several definitions, among others, according to Joan Barmat, securitization is an open market for marketing collateralized financial instruments (financial securities) in the form of collateral for cash claims and claims for collateral for immovable property (Joan Barmat, 1990) Leon T Kendal defines securitization as a process to package individual debts and other debt instruments, then convert the packaging into securities to increase the status or rating of these securities to third party investors (Kendall, 2000).

The securitization process in Indonesia has been initiated since 1998 with the Decree of the Minister of Finance No. 132/KMK.014/1998 concerning Secondary Housing Financing Facilities, which regulates business fields, procedures for establishment and licensing, sources of funds, prudential regulation (prudence principle), supervisors and supervisors, sanctions. Unfortunately, this provision does not work perfectly because it is not followed by the realization of the establishment of an SMF institution that carries out the secondary housing financing in question. Until then in 2005 a series of interrelated

regulations emerged to support the establishment of the SMF institution and the trading of securities issued by the SMF.

The legal basis for asset securitization and trading of asset-backed securities is Law of the Republic of Indonesia No. 8 of 1995 concerning Capital Market Article 1 paragraph 5 which states that securities include "securities, namely debt acknowledgments, commercial securities, stocks, bonds, proof of debt, Participation Units in Collective Investment Contracts, futures contracts on securities and any derivatives of securities".

Then through Capital Market Supervisory Agency Regulation no. IX.K.1.1 Attachment to Decision of the Chairman of BAPEPAM no Kep -28/PM/2003 dated July 21, 2003 concerning Guidelines for Collective Investment Contracts for Asset Backed Securities, in article 1 letter (a) it is stated that KIK EBA is a contract between an investment manager and a custodian bank that binds asset-backed securities holders, where the investment manager is authorized to manage the collective investment portfolio and the custodian bank is authorized to carry out collective custody.

KIK's participation unit whose portfolio consists of financial assets in the form of claims arising from commercial securities, leases, conditional sale and purchase agreements, installment loan agreements, credit card claims, lending including mortgages for housing or apartments, debt securities that are guaranteed by the Government, means of credit enhancement/cash flow as well as equivalent financial assets and other financial assets related to these financial assets. From this definition, it can be concluded that what is included in the KIK EBA are securitized securities originating from assets that have a stream of cash flow in the form of claims arising from commercial securities, credit card claims, claims arising in the future (future receivables), and the provision of credit, including KPR and KPA.

The granting of a KPR or KPA is including a bill or collection of mortgage receivables that can be securitized so that data is traded through the secondary market, what is traded is the right to collect a collection of mortgage receivables and the mortgage lending bank as the original creditor (originator) to a special institution established for that purpose ( special purpose vehicle) which buys it at the same time issues securities with asset collateral for the mortgage receivables collection.

PT Sarana Multigriya Finansial (Persero) is a special institution that is given the authority to carry out this task, as a special purpose vehicle that buys and issues securities with guaranteed assets for the collection of mortgage receivables. The special purpose vehicle or secondary mortgage company required to perform asset securitization is established under the Government Regulation of the Republic of Indonesia Number 5 of 2005 concerning State

Equity Participation of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Secondary Financing of Housing, in article 1 it is stated that there is a need for alternative financing other than banks as providers of funding for housing needs, namely the establishment of a secondary housing finance company. Article 2 of this Government Regulation states that the purpose and objectives of the limited liability company as referred to in Article 1 are specifically to carry out: a) Financing business activities in the form of secondary housing financing facilities at banks and financial institutions that provide housing loans; b) Collect public funds to finance secondary housing financing activities by issuing long-term and or short-term securities; and c) Other activities in order to support the activities as referred to in letters a and b above.

The implementation of Government Regulation No. 5 of 2005 concerning the Republic of Indonesia State Equity Participation for the Establishment of a Limited Liability Company (Persero) in the Sector of Secondary Housing Financing is carried out by issuing Presidential Regulation No. 19 of 2005 concerning Secondary Housing Financing. Article 1 paragraph (13) states that securitization is the transformation of illiquid assets into liquid ones by purchasing financial assets from original creditors and issuing asset-backed securities. This securitization process will be submitted to a vehicle called a special purpose vehicle or secondary mortgage company, namely a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and simultaneously issue Asset Backed Securities.

Presidential Regulation No. 19 of 2005 also states that the purpose of secondary housing financing is to provide financing facilities in order to increase the capacity and sustainability of housing finance that is affordable by the community. Furthermore, Presidential Regulation No. 19 of 2005 also provides details regarding the company in question, among others in article 15 that the government will establish a Secondary Housing Company as the intended financial institution; which must be in the form of PT; Then it also regulates the limits of actions that cannot be taken by the company, namely not being able to make direct participation (become a shareholder) or purchase company shares through the capital market.

This regulation can be said to be the legal basis for the establishment of PT Sarana Multigriya Finansial as a Persero which is engaged in secondary housing financing with initial capital from state assets separated by Rp.1 trillion (one trillion rupiah) from the APBN for the 2005 fiscal year. In 2008, the Government made amendments to Presidential

Regulation No. 19 of 2005 concerning Secondary Financing of Housing by issuing Presidential Regulation No. 1 of 2008 concerning Secondary Financing of Housing.

The existing legal umbrella, which provides a legal basis for the issuance and trading of asset securitization securities and the institution that is given the task, mandate and authority to be able to issue and trade asset securitization securities with the main purpose of housing secondary financing, still leaves several problems, including: Another is the absence of a legal umbrella that requires every institution that carries out primary housing financing activities to transact with SMF to maximize secondary housing financing. If the main objective for secondary housing financing is not achieved optimally, then the SMF intended to be established will experience economic obstacles, although there are incentives in article 20 but the ten-year time limit to be able to operate in the primary housing finance market is felt to be insufficient. If it can be assessed economically that the participation of more players as primary housing finance providers, then SMF's duties as primary housing finance providers should be extended or not set with a time limit.

### **Constraints on the Utilization of Mortgage Backed Securities and Secondary Mortgage Facilities by the Financial Industry and Investors in Indonesia**

PT. SMF (Persero) was established with the aim of providing liquidity facilities in housing secondary financing (KPR) and securitizing mortgage assets to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). To obtain more comprehensive data from the financial industry regarding the role and potential of mortgage backed securities and secondary mortgage facilities by PT SMF Persero, this study also uses focus group discussions (FGD) and in-depth interviews. The FGD was held on December 4, 2014 at the Perbanas Jakarta office with representatives from 12 (twelve) national banks and non-bank financial companies, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, BCA Bank, Panin Bank, BIIMaybank, Permata Bank; and MNC Multi Finance. In addition, in-depth interviews were also held on 2 and 3 December 2014 with several financial institutions that have become or will become potential investors for SMF products, namely the President Director of the Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk.

From FGDs and in-depth interviews, it can be seen that with respect to PT SMF Persero and secondary housing financing, the profile of the financial industry can be divided into three profile categories.

The first is the profile of the financial industry that has used SMF products (already become SMF consumers). PT SMF Persero's products provided are liquidity facilities in secondary housing financing (KPR) and mortgage asset securitization to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). Several financial institutions have utilized liquidity facilities in housing secondary financing, including Bank BTN, Bank Muamalat, Bank DKI and MNC Multifinance. These banks and financial institutions experience several advantages with the liquidity facilities provided by SMF. First, SMF's liquidity facility can increase the capacity of this financial institution to finance mortgages. Second, through the provision of mortgages, this financial institution will receive a collection fee that can be used to increase profits, so this will automatically increase capital. Third, the liquidity facility from SMF can overcome the maturity mismatch problem that is commonly faced by financial institutions in providing mortgages. Maturity mismatch occurs when players in the banking industry and financial institutions use short-term third-party funds (DPK) to finance mortgages which are long-term loans. Although some of the above financial institutions have utilized liquidity facilities from SMF, the proportion of SMF funds is still very small in the financing portfolio of these banks and financial institutions (between 10%-15%). The main thing that is of concern to users of this liquidity facility is that the 'price' given by SMF for secondary mortgage financing is perceived to be relatively high. In other words, the pricing provided by SMF for liquidity facilities is not competitive because it can reduce potential profits for banks and financial institutions that use them. Besides the 'pricing' problem, Bank BTN also complained about the limited funds available at SMF for financing liquidity. SMF's limited funds also make banks and financial institutions still rely on third party funds (DPK) in financing their mortgages.

The second is the profile of the financial industry that has the potential to become SMF consumers. Several financial institutions, such as general insurance and BPJS, have the potential to become investors for SMF by utilizing EBA securitization products. However, there are things that prevent this financial institution from using SMF's products. First, it relates to the rules from OJK. Until now, there is no regulation from OJK that regulates the investment portfolio of general insurance companies in KIK EBA which is included in Risk Based Capital (RBC) for insurance. According to OJK regulations, what are included in the

calculation of RBC for insurance companies are time deposits, bonds (government and corporate, maximum 20% of total investment), shares (maximum 10%).

Lastly, the third is the profile of the financial industry that has not become a potential SMF consumer. Financial institutions, both government-owned and private, which until now have not become SMF consumers have the main reason that mortgage financing is not the focus of the financial institution's business. Among these financial institutions do have mortgages, but the portion is very small, mortgage securitization is carried out, these banks take advantage of idle funds that are cheap. In addition, the reluctance of these financial institutions to invest in EBAs is because they are concerned about the risk of issuance. Investors doubt the liquidity of the EBA as a prime mortgage. Even though this fear is actually unfounded, the condition for KIK EBA is smooth credit. Every year this credit will be evaluated and if it is not current it will be exchanged. In other words, the reluctance of financial institutions to use SMF's services is due to their ignorance about SMF's products. Besides that, there is no regulation from OJK regarding portfolios in KIK EBA that are included in the calculation of RBC for insurance, which have been included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate) a maximum of 20% of the total investment, shares (max 10 %). Banking as an economic institution that is heavily regulated will be monitored for its operations by many parties, so that when developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and for the general public. In terms of asset securitization (issuance of asset-backed securities), the banking sector requires that the issuance be categorized as hedging.

The reluctance of the financial industry to utilize secondary housing facilities also leads to the condition of PT SMF Persero as the sole provider of housing secondary financing. Weaknesses from the internal side, PT SMF (Persero) are, among others, due to: 1) Funds available for refinancing are relatively limited; 2) 'Pricing' or the price set by PT SMF Persero for liquidity facilities is considered to be relatively high, making it less competitive; 3) Lack of socialization of the existence of PT SMF Persero, many banks and non-bank financial institutions are not aware of the existence, function and role of PT SMF Persero; 4) The term of the loan facility (refinancing) from PT SMF Persero is a maximum of 15 years, it is felt that it is not financially useful for the business; 5) The securities rating issued by PT SMF Persero is still at AA+; 6) The KPR EBA is not yet known as securities in the banking industry and financial institutions.

Other factors that arise from the financial industry's reluctance to utilize secondary financing facilities are because: 1) Banking and multi-finance companies prioritize the use of third party funds for mortgage financing; 2) Several banks organize their own securitization for housing finance; 3) The reluctance of mortgage lenders, both banks and multifinance companies, to take advantage of the Securitization and Refinancing facilities provided by PT SMF Persero because they are related to problems in financial recording (accounting); 4) Regulations from OJK for financial institutions, such as general insurance, do not yet regulate investment in the form of EBA.

### **Attempts to Make Mortgage Backed Securities and Secondary Mortgage Facilities Attractive Housing Secondary Financing**

In order to build a secondary housing finance market through securitization, this is done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. Secondary financing sources for housing, apart from own capital, are also obtained from the issuance of Asset Backed Securities in the form of Debt Securities and Participation Letters. In order to issue Debt Instruments, the Special Purpose Vehicle (SPV) acts as the issuer. Special Purpose Vehicle (SPV) is a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and at the same time issue Asset Backed Securities. Meanwhile, in the context of issuing the Participation Letter, the Company or the Trustee shall act as the publisher. With regard to the unprepared primary housing market, so that there is no set of eligible mortgage assets for securitization, the Company may provide loans to banks or financial institutions to issue mortgages with the requirements of using standardized documents set by the Company. In this regard, the loan period is adjusted to the average mortgage term. Thus, it is necessary to change the loan term by the Company.

Fulfilling the increasing housing needs of the community and to stabilize the housing market, the government established a Secondary Mortgage Facility (SMF) by issuing the Minister of Finance Decree of the Republic of Indonesia N0.132/KMK.014/1998 dated 27 February 1998 concerning the Company's Secondary Housing Financing Facility. According

to article 1 of the Decree of the Minister of Finance of the Republic of Indonesia N0.132/KMK.014/1998 dated February 27, 1998, what is meant by the Secondary Mortgage Facility is a medium or long term loan to a bank that provides mortgages with collateral in the form of claims for the mortgage. and Mortgage on house and land. PT Sarana Multigriya Finansial Persero builds and develops the secondary housing finance market in Indonesia to increase the capacity and sustainability of housing finance and overcome the maturity mismatch. This is done by channeling long-term funds from the capital market to mortgage lenders through securitization transactions and loan distribution. Through these two transactions, the volume of mortgages will be increasing and sustainable, so that they can support decent and affordable home ownership for the people of Indonesia.

The Indonesian Financial Services Authority in 2014 issued a regulation to further encourage the use of asset securitization through the issuance of derivatives with securities known as EBA SP (asset-backed securities in the form of participation letters). Financial Services Authority Regulation number 23/POJK.04/2014 concerning Guidelines for Issuance and Reporting of Asset-Backed Securities in the Form of Participation Letters for Secondary Financing for Housing.

Asset-Backed Securities in the Form of Participation Letters, hereinafter referred to as EBA-SP, are Asset-Backed Securities issued by Issuers whose portfolio is in the form of a Collection of Receivables and is proof of proportional ownership of the Collection of Receivables which are jointly owned by a group of EBA-SP holders. Fixed Cash Flow EBA-SP is an EBA-SP that provides its holders with certain income, such as debt securities holders. EBA-SP Variable Cash Flow is an EBA-SP that provides its holder with an indefinite income such as to the holder of equity securities.

The parties in the issuance of the EBA SP, namely the Issuer, are the Parties who issue the EBA-SP in the context of Secondary Financing for Housing. Secondary Housing Financing is the implementation of medium and/or long term fund distribution activities to the Originating Creditors by purchasing the Collection of Receivables from the Originating Creditors and selling them through the issuance of EBA-SP; or purchase of Collection of Receivables from Original Creditors from the issuance of EBA-SP. There are also several parties who are indirectly involved in the EBA SP issuance process, namely: i) Servicer is a party who is responsible for processing and supervising payments made by debtors, taking initial actions such as warnings because the debtor is late or fails to fulfill his obligations, conducting negotiations, resolving claims against debtors and other services specified in the service provision agreement; ii) Original Creditor (Originator) is a bank or other financial

institution that owns and sells its Financial Assets to the Issuer in order to issue EBA-SP; iii) Supporting professions consist of Accountants, Legal Consultants, Notaries, Securities Rating Companies, Trustees, Custodian Banks.

The objects of securities in the issuance of EBA SP which consist of: i) Collected Receivables are all Financial Assets that have been purchased by the Issuer from the Originator and sold to the EBA-SP holder through the issuance of the EBA-SP; or from the issuance of the EBA-SP; ii) Financial Assets are receivables obtained by the Original Creditor from the provision of Home Ownership Credit to the debtor, including the collateral/guarantee along with the mortgage attached to it, iii) Home Ownership Credit, hereinafter abbreviated as KPR, is a credit facility issued by the Original Creditor to the debtor to purchase a house ready to live in; iv) EBA-SP Credit/Cash Flow Improvement Facility is a facility that aims to improve the quality of Collection of Receivables for payment to EBA-SP holders.

The issuance of EBA SP through an agreement process carried out by the parties, based on the guidelines for issuing EBA SP in POJK no 23/04/2014. EBA-SP offered through a Public Offering must be rated by a Securities Rating Company.

Issuance and trading of EBA SP through a sale and purchase process must be supported by the opinion of a Legal Consultant, must meet the sale and drop off requirements according to generally accepted accounting principles and must be carried out consistently and supported by the opinion of an Accountant.

For EBA SP issued from the source of the original collection of receivables, the Issuer or Original Creditor can only purchase Financial Assets in the EBA-SP Receivable Pool at a maximum of 10% (ten percent) of the total value of the Collected Receivables. The EBA-SP holder's rights to the Collection of Receivables must be stated in the Prospectus or EBA-SP Disclosure Document and supported by a legal opinion from a Legal Consultant stating that the EBA-SP holder's rights are as contained in the EBA-SP Prospectus or Disclosure Document.

EBA SP issuance must also make a prospectus as a liaison medium between investors and issuers. The EBA-SP Prospectus must contain all details of Material Information or Facts regarding the EBA-SP and the required information and/or information in this Financial Services Authority Regulation. The Prospectus is prohibited from containing untrue information about Material Facts or not containing correct information about Material Facts required so that the Prospectus does not provide a misleading picture. The prospectus must be made in such a way that it is clear and communicative. The presentation and delivery

of important information in the Prospectus is not obscured by less important information which causes the important information to escape the attention of the reader. The most important facts and considerations should be summarized and disclosed at the beginning of the Prospectus. The order of submission of facts in the Prospectus is determined based on the relevance of the facts, and is not determined based on the order as stated in this Financial Services Authority Regulation. Disclosure of Material Information or Facts and/or the use of photos, diagrams, and/or tables in the Prospectus is prohibited from providing a misleading image.

Original Creditors in order to issue EBA-SP, must prepare Financial Assets that meet the requirements set by the Issuer; submit KPR documents for inspection by the Issuer or their proxies; prepare accurate information regarding the Collection of Receivables or other information required by the Issuer or its proxies; guarantee the correctness of information, data, and documents related to Financial Assets; and submit information, data, and documents to the Issuer if necessary. The Originating Creditor is responsible for the legal limits of the Financial Assets sold and their documents; and to provide compensation for losses due to the invalidity of the sold Financial Assets and their documents.

PT SMF Persero can build a secondary mortgage market through securitization, which can be done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. The emergence of the new securities regulations referred to as EBA SP above will greatly assist PT SMF Persero to be able to carry out its duties to perform asset securitization by issuing mortgage backed securities. The things that need to be done so that PT SMF Persero as a government institution that is given a special task of conducting housing loan securitization is to provide greater capital for PT SMF Persero so that it can carry out the task of mesecuritizing housing loans into EBA SP, and the next task is for stock exchange regulator in Indonesia to be able to build a secondary market, so that EBA SP is attractive for investors to buy and resell.

As stated by PT. Mandiri Pension Fund that PT SMF Persero should be able to play an active role in becoming a market creator or secondary market creator for these asset-

backed securities, so that investors are more interested in investing in buying EBA that has been issued and the issuance is facilitated by PT SMF Persero.

## CONCLUSION

The legal aspects to support the birth and operation of mortgage backed securities and secondary mortgage facilities in Indonesia are quite complete. However, the operational use of mortgage backed securities and secondary mortgage facilities carried out by PT Sarana Multigriya Finansial Persero experienced problems due to several things, namely the lack of interest in the financial industry due to the asset securitization implementing factor and due to the character factor of the securities issued. So there needs to be socialization to the banking industry and financial institutions regarding the tasks and products issued by PT SMF Persero, because there are still many banks, insurance companies, pension fund companies, who are not familiar with PT SMF Persero's products. A maximum socialization effort is needed so that the financial industry and investors, both investors, are more familiar with mortgage backed securities and secondary housing financing facilities implemented by PT SMF Persero.

On the other hand, the financial industry also requests that the costs of issuing EBA and EBA SP securitization of housing loans by PT SMF Persero can be carried out at a "pricing" that is not too expensive. So, they will choose this product as a primary source of housing financing. The last thing that must be carried out by the Government of the Republic of Indonesia is the creation of a "secondary market" to trade EBA SP originating from the housing loan. So that the EBA SP product does not only stop at the primary market but can also be traded on the secondary market, which will be very attractive to investors.

Finally, with attractive products, large amounts of funds offered, competitive pricing, housing loan securitization carried out by PT SMF Persero can help the Government overcome the housing backlog.

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## **2. Peer review process \_\_\_\_ #2**



Paramita Prananingtyas <pptyas@live.undip.ac.id>

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## [RLJ] Send to review

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Editor RLJ <editor@russianlawjournal.org>

2 Februari 2023 pukul 21.28

Kepada: Paramita Prananingtyas <pptyas@live.undip.ac.id>

Dear Prananingtyas,

We have reached a decision regarding your submission to Russian Law Journal (RLJ), "GET BEYOND THE BARRIES OF SECONDARY MORTGAGE FACILITIES IN INDONESIA".

Our decision is to: Revisions Required

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Reviewers have reviewed and commented on your submitted manuscript. They advise the author(s) to revise the manuscript. Their comments are attached to the email and/or to the bottom of this letter. If not, for your convenience log onto your profile to view the reviewers' comments.

Please revise and upload the revised manuscript and all documents required. The author has 14 days from now to revise the manuscript.

If you have any questions, please contact me.

Thank you for considering this journal as a venue for your work.

Best regards,

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## [RLJ] Revised Version Acknowledgement

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Editor RLJ <editor@russianlawjournal.org>

10 Februari 2023 pukul 14.11

Kepada: Paramita Prananingtyas <pptyas@live.undip.ac.id>

Dear Prananingtyas,

Thank you for submitting the revision of manuscript, "GET BEYOND THE BARRIES OF SECONDARY MORTGAGE FACILITIES IN INDONESIA" to Russian Law Journal (RLJ). With the online journal management system that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site:

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If you have any questions, please contact me.

Thank you for considering this journal as a venue for your work.

Best regards,

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**Reviewer 2:**

I think the paper now is good. It only needs to be proofread by native speakers or certified experts.

**Responses:**

The paper has been proofread natively to increase readability. Please check the revised manuscript.

# FINANCIAL AND LEGAL BARRIERS IN IMPLEMENTING SECONDARY MORTGAGE FACILITIES IN INDONESIA

Revised 2

## Abstract

The research is motivated to analyze mortgage ~~backed securities to solve the housing supply backlog problem in Indonesia~~ backed securities to solve Indonesia's housing supply backlog problem. The first problem is regarding the legality of mortgage backed securities in Indonesia, the second problem is about the disinterest of the housing industry in Indonesia to take advantage of mortgage backed securities, and the second problem is optimizing existing resources to make mortgage backed securities more attractive. Since its establishment in 1998 until 2015, the mortgage backed securities or secondary housing financing facility has not been maximally utilized by the financial industry in Indonesia as an alternative source of funds to finance the provision of housing. The financial industry is still making maximum use of primary housing financing by providing loans whose funds come from ~~third-third~~ party funds. Mortgage backed securities are not attractive to the financial industry because the subject of implementation, namely PT SMF Persero, is less well known and because there are doubts about the financial benefits of mortgage backed securities for the financial industry and investors. This research is based on empirical studies conducted directly on the housing finance provider industry sector in Indonesia. A major breakthrough was made by creating new securities in the Indonesian capital market that can make mortgage backed securities more attractive, namely asset backed securities- securities participation (EBA SP); in this way, mortgage backed securities are expected to be traded on the secondary market. The legal aspects ~~to supportof~~ supporting the birth and operation of mortgage backed securities in Indonesia are complete, but the operational use of mortgage backed securities is experiencing problems due to the lack of interest in the financial industry in the issuance process and the character factor of the securities issued. The financial industry providing housing finance in Indonesia demands that the pricing of the issuance of mortgage backed securities and the trading process be made more attractive to investors.

**Keywords:** mortgage-backed securities, funding, financial barriers, legal impediment, Indonesia

## Introduction

Housing and settlements are one of ~~the~~ basic human needs, having a strategic function as a center for family education, cultural nurseries, and improving the quality of future generations. The government's ability to meet the needs of housing and settlements is relatively very limited. Community resources and potentials need to be developed to be able to meet their housing and settlement needs independently, supported by government efforts through the creation of a conducive housing provision climate.

The Government of Indonesia has a National Medium-Term Development Plan 2015-2019, which includes a plan to provide housing in Indonesia. ~~Fulfillment~~ The fulfillment of decent housing supported by adequate infrastructure, facilities, and utilities needs special attention. Inequality between supply and demand is still a major problem in the provision of basic infrastructure, especially for low-income people (MBR). In the housing sector, the limited capacity of developers has not been supported by incentive regulations. Low-income communities also have a problem, namely the low affordability of building or buying a house, so ~~that~~ they cannot live in decent houses. The shortage of ~~providing housing needs or housing needs~~, known as the housing backlog, has led to new innovations so that the problems that hinder the provision of housing are unraveled, among others by providing capital financial instruments for housing finance.

Since 2010 the Government of Indonesia has had a program known as the Housing Financing Liquidity Facility, namely channeling housing loans for simple and very simple houses through the banking system. Housing loans that have been disbursed, both from the FLPP program and non-FLPP programs such as KPR and KPA, can theoretically be turned into a source of funds by means of securitization, known as mortgage backed securities (MBS).

Mortgage backed securities are a way to expand the sources of financing for housing development. It has been known in the world since 1934 in the United States, initially, the pattern of securitization of housing loans was carried out in order to revive the United States economy, which was slumped during the Great Depression, at which time people's incomes declined. ~~drastically~~ Drastically as well as house prices. This condition has resulted in banks as owners of housing loans experiencing liquidity difficulties. So finally, the United States Government decided to establish a Government Sponsored Enterprise to buy mortgages or housing credit guarantees owned by banks in the form of securities. The securities will then be re-marketed in the form of a secondary mortgage. Mortgage-based securities that have been attempted to be used as an alternative source of funding for housing finance in Indonesia have not worked as they should. From 1998 to 2015, this secondary

housing financing facility was not widely known and used by primary housing finance providers and other investors.

There are 3 problems that will be analyzed in this paper. The first problem is regarding the legality of secondary housing financing (SMF) in Indonesia. The second problem is to find out why housing loan holders are not interested in issuing mortgage backed securities and why investors are not interested in investing in mortgage backed securities in Indonesia. The third problem is how to optimize all available resources to make mortgage backed securities more attractive to issue and trade in both the primary and secondary markets, so that mortgage backed securities as securities will be more financially attractive.

This paper is prepared based on a non-doctrinal research in which law is not conceptualized in moral philosophy as a norm *ius constituendum* and as a norm *ius constitutum*, but laws and statutory regulations are empirically observed in reality. The approach used is the socio legal approach or socio legal approach, which represents the existence of law in the practice of community life. The types of data used are primary data and secondary data. Primary data were obtained from field research conducted by means of FGDs and direct interviews with resource persons. The FGD was held on December 4, 2014 at the Perbanas Building Jakarta which was attended by representatives of the Indonesian national financial industry, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, Bank BCA, Bank Panin, BIIMaybank, Permata Bank; and MNC Multi Finance. During the FGD, the participants were asked the same questions ~~in turn regarding the understanding of secondary housing finance, the use of secondary housing finance by securitizing housing mortgage bills from FGD participating banks, as well as regarding the understanding of secondary housing finance, the use of secondary housing finance by securitizing housing mortgage bills from FGD participating banks, and~~ regarding the existence of PT Sarana Multigriya Financial (SMF) Persero. In-depth interviews were conducted on 2 December 2014 with the President Director of Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk., the questions asked were the same, namely understanding of financing secondary housing, the use of secondary housing finance by securitizing housing bills for the main source of housing loans and regarding PT Sarana Multigriya Finansial (SMF) Persero.

## Literature Review

Initially, the emergence of asset securitization in America was driven by government programs that sought to increase the liquidity of the residential mortgage market. To realize this program, the government formed the Federal Home Loan Bank in 1932, which provided housing credit facilities for the American people. Then to form the secondary mortgage market, the American government established three institutions, namely: 1. The Federal National Mortgage Association (FNMA) or known as Fannie Mae in 1938, 2. The Government National Mortgage Association (GNMA) or known as Ginnie Mae designation in 1968 which is a fraction of Fannie Mae and 3. The Federal Home Loan Mortgage Corporation (FHLMC) otherwise known as Freddie Mac in 1970. These three institutions have two main functions in developing the secondary housing market, namely being a sponsor for the issuance of mortgage-backed securities by banks, and acting as guarantors for investors, namely providing assurance on the smooth and timely payment of interest and principal to investors (The Congress of the United States, the Congressional Budget Office : Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market, December 2010).

The first time the securitization of assets in the form of mortgage-backed securities with the underlying asset in the form of mortgages was issued in 1968 through Ginnie Mae. The asset securitization techniques developed, and in 1985 successfully issued securities with underlying assets in the form of car loans. Then, the development of asset securitization transactions in America has increased very rapidly, both in the securitization market, types of underlying assets, forms, and mechanisms (Fabozzi et al., 2000).

The rapid growth of the securitization market since 1968, which was marked by the development of volume, number of originators, types of underlying assets and forms of securitization, subsequently experienced difficult times following the emergence of the sub-prime mortgage crisis in 2007. The highest growth in the sub-prime mortgage market occurred in the period 2001 to 2006. This growth was triggered by, among other things, high investor interest in high-yielding investment products and support from government institutions such as Fannie Mae, Ginnie Mae, and Freddie Mac. On the other hand, when securitization grows rapidly, the quality of the securitization market decreases significantly due to the characteristics of various parties and factors involved in the transaction process, namely: 1). Lending banks loosen credit requirements such as high loan to value ratios, 2). Bad debtor quality, such as low loan score, high level of indebtedness, low ability to provide data and documentation, 3). Loans such as product type, installment terms, loan amount, higher loan interest rates than prime loans, and 4). Macroeconomic conditions such as rising

house prices, household income and rising unemployment (Keys et al., 2009). The sub-primemortgageprime mortgage crisis has actually been detected and recognized by the parties, however, the deterioration of the quality of the securitization market is covered by the tendency of rising house prices from 2003 to 2005. The various types of asset securitization development referred to, the securitization market is dominated by the form of Mortgage-Backed Securities-MBS guaranteed by the three US government institutions, then Asset-Backed Securities-ABS with underlying assets in the form of credit card bills, car loans, other consumer credit and Collateralized Loan Obligation-CLO. A total of 3,650 MBS was issued for €715.21 million, followed by 2,427 ABS issued for €363.19 million and finally 2,504 CDOs were issued for €316.72 million (Gramlich, 2007).

Supervision of the implementation of asset securitization in America does not refer to special laws and regulators but is subject to state and federal regulations such as the Securities Act of 1933, Securities Exchange Act of 1934, Trust Indenture Act of 1939, Investment Advisors Act of 1940, Investment Company Act of 1940, Internal Revenue Code of 1986, US Bankruptcy Code and the Dodd-Frank Wall Street Reform and Consumer Protection Act. The regulators with the authority and responsibility are the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (Hancock & Passmore, 2011)

The reasons for conducting securitization transactions are, among others, to obtain cheaper funding, benefits from the balance sheet structure, savings in the amount of capital, alternative sources of funding, profit from the difference between the cost of funds in the capital market and the proceeds from the sale of assets through securitization. To maintain a sufficient level of capital, the originator in the form of a bank must comply with other regulations, namely the Basel rule, which states that banks must maintain a sufficient level of capital when conducting asset securitization transactions. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act regulations will regulate originators in the form of financial institutions; to increase the amount of capital in order to increase the ability to absorb risk in the event of a loss (Ambrose & Pennington-Cross, 2000).

In America itself, the form of SPV can vary depending on tax factors, originators, and investors involved in the transaction. The two most commonly used forms of SPV are Trusts and Limited Liability Companies (LLCs), and the least used are Limited Partnerships. In this case, the SPV can be owned by the originator or by an independent party. The use of SPV by independent parties can be used as one of the steps to avoid the bankruptcy risk of

the SPV if the courts in America treat the underlying assets in securitization activities are still owned by the originator. To avoid this risk, it is necessary to believe that SPV assets are separate from the originator ~~which-who~~ can be seen from indicators such as separate financial statements, and legally, the SPV is an independent party.

To respond to the financial crisis, the American government carried out various initiatives, including two main programs aimed at restoring liquidity and confidence in the financial industry, namely: 1). The Term Asset-Backed Securities Loan Facility (TALF) started in November 2008 and by the time this program ended in June 2010 the outstanding loan amount was US\$43 billion, and 2). the Public Private Investment Program (PPIP), was launched in March 2009 and started investing in September 2009. The source of funds for the PPIP program is a combination of the Troubled Asset Relief Program (TARP), private investors and loans from TALF. The PPIP's working mechanism is by buying troubled assets owned by banks and as of May 1, 2011 the amount has reached US\$1 trillion and eight PPIPs have been formed. Although the volume of securities transactions was lower than ~~the volume before the financial crisis, CLO and ABS transactions have~~ before the financial crisis, CLO and ABS transactions started to grow in 2011. In future developments, the promulgation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010 will change the financial industry, given its broad impact on business actors, performance, and development in America. The implementation of the said law will affect asset securitization activities because there are ~~tightening~~ regulations on the roles of rating agencies and investment managers, risk retention and capital adequacy ratios. In addition, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 requires national registration of companies that are mortgage originators and the Credit Card Accountability Responsibility and Disclosure Act of 2009 also asks to stop imposing egregious fees on credit card holders (Barth et al., 2004)

The parameters of the ideal secondary housing finance market are the stability of macroeconomic conditions; competitive market structure; standardization of mortgage instruments; servicing techniques from mortgage-backed securities issuing institutions and providers of secondary mortgage facilities as well as government policies (Lea & Bernstein, 2000).

Mortgage backed securities and secondary mortgage facilities have also been recognized and practiced in several countries in the world. An example is France. Trading in Asset Backed Securities (EBA) in France has been regulated by The Securitization Law No.88-1201 dated December 23, 1988 and gave rise to the term Fonds Commun de Créances

(FCC) or French SPV. This is in contrast to the UK and Germany which do not have specific laws regarding asset securitization. Subsequently, several amendments to the Law have been made and the most recent was the 2008 Ordinance which aims to improve the quality of securitization implementation and change the name of the FCC to Fonds Commun de Titrisation (FCT). The Financial Markets Authority (Autorité des Marchés Financiers) – AMF is the main agency authorized and responsible for the conduct of securitization activities in France (Farruggio & Uhde, 2015).

FCT's legal status is co-ownership, without any legal personality such as having no capital, shareholders, management or employees, but only consisting of investment managers and custodians. Thus, FCT will be free from bankruptcy problems (remote bankruptcy). In further developments, FCT securitizes various types of claims such as credit card bills, trade receivables, commercial credit and consumer loans, mortgage claims (KPR) and insurance risk claims with the exception of claims that are categorized as default, doubtful and in the process of legal litigation. In addition, the technique of transferring assets from the originator to the FCT is carried out through the use of special documents (bordereau) for cost and efficiency considerations. In general, the formation of the FCT is carried out in France ~~and in carrying out s.~~ Securitization activities always refers to various regulations issued by the AMF and the Monetary and Financial Code. However, if there is an FCT formed abroad, the FCT cannot operate in France. This type of credit enhancement is carried out to increase the rating of securities issued, such as: 1. Guarantees provided by the originator, affiliated parties of the originator or by insurance companies, 2. Cash reserve funds and 3. ~~Overcollateralisation~~ Overcollateralization (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), Association Française de Trésoriers D'Entreprise (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

In subsequent developments, the 2007 American sub-prime mortgage crisis ~~had a significant impact on~~ significantly impacted the decline in transaction volume and investor interest in asset securitization activities in France. The French regulator then refined the practice of asset securitization by amending the Securitization Law through the 2008 Ordinance. Furthermore, in the September 2009 Quarterly Review, the Bank for International Settlement reviewed the ~~rules of the game to reactivate and strengthen the securitization process by highlighting several aspects such as the limited level of~~ game rules to reactivate and strengthen the securitization process by highlighting several aspects such as the limited complexity and transparency of transactions and the high dependence on ratings from rating

agencies. To simplify the securitization process, the authorities set a standardization of the structure, including reducing the number of tranches. In addition, new standards have been set regarding disclosure and reporting procedures as well as supervision of rating companies (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), Association Française de Trésoriers D'Entreprise (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

Another country that can be used as a comparison is China (People's Republic of China). The implementation of asset securitization in China is carried out through two methods, namely: 1. Credit asset securitizations, using trusts as SPVs whose implementation is under the authority of the capital market institutions, the People's Bank of China (PBOC) and the central bank, the China Banking Regulatory Commission (CBRC), and 2. Corporate asset securitizations, using customer asset management plans as SPVs, and are under the supervision of the China Securities Regulatory Commission (CSRC). The types of securitization that have been used as pilot projects are Residential Mortgage-Backed Securitizations (RMBS), Collateralised Loan Obligation (CLO) transactions, Non-Performing Loan (NPL) securitization, Commercial Mortgage-Backed Securitizations (CMBS) and car loan securitization. The majority of these transactions were retained securities, i.e., securities in the junior tranche category were still held by the originator (Calice, 2011).

The first pilot asset securitization project was carried out in December 2005, initiated by the China Construction Bank and China Development Bank. Then in 2006, the number of securitization transactions reached CNY 3.07 billion. The success of the first round of transactions continued in the second pilot project, which ~~was dominated by private banks~~private banks dominated. Furthermore, during 2009 asset securitization activities experienced a vacuum because ~~nothing was approved by the regulator~~the regulator approved nothing. In its development, asset securitization activities in China are ~~not only limited to the banking sector but also~~limited to the banking sector and extend to the telecommunications, infrastructure and leasing business sectors. Then, during 2008 to 2009 there was known informal securitization, in which the bank (originator) packaged a group of loans into investment products which were then sold to individual investors. However, its features, such as no secondary market, result in investors having to hold the securities until maturity, the transferred assets are still recorded in the originator's balance sheet, apart from being the originator, they also act as a distributor of the investment product, The custodian and credit manager are the same party or are affiliated parties, thus making this instrument more risky than conventional securitization. In view of the high risk, in July 2010 the CBRC stopped the

informal securitization activities. The PRC Trust Law (Trust Law) guarantees the implementation of asset securitization in China, and is also supported by various regulations issued by the PBOC and CBRC. The types of assets that can be securitized are various types of loans such as mortgages, car loans, NPLs, commercial loans and small business loans. Meanwhile for corporations, it includes various types of toll ticket bills, equipment rental, electricity bills, build-transfer projects and others. However, the development of asset securitization in China is not market-driven, considering that its implementation is closely monitored by the regulator, such as the determination of the originator and the type of underlying assets that ~~have been previously determined by the regulator~~the regulator has previously determined. ~~Types of credit enhancement that are~~Common credit enhancement types commonly used are ~~overcollateralisation~~overcollateralization, determination of retained spreads and formation of subordinated tranche categories. In addition, ~~the role of rating agencies only focus~~rating agencies only focus on assessing the underlying assets of asset securitization transactions.

Furthermore, the growth of synthetic securitization, which is a form of derivative credit, has not yet developed in China, which is mainly due to the lack of support from the derivative credit market and Chinese regulatory policies (Hilbers et al., 2001)

In the ASEAN region, Thailand can be an interesting example. SMC or Secondary Mortgage Corporation was established in 1997 in Thailand under the Emergency Decree on Secondary Mortgage Finance Corporation B.E. 2540 (1997). The main objective of establishing SMC is to establish a secondary housing finance market in Thailand in order to increase the capacity and availability of funds to build housing through asset securitization. Based on these regulations, the primary market for housing finance is a market where housing finance is formed through housing credit facilities, then the secondary market for housing finance is a market where housing loans are traded. In the secondary market, there is a mechanism through the capital market to finance the construction and marketing of housing. The Thai government allows for the emergence of a Mortgage Company, which is a company whose line of business is providing housing finance (housing loans), then the Mortgage Company will securitize assets (housing loan bills) and sell them to SMC. Previously, SMC had standardized the types of housing loans that could be securitized. Securities collateralized by mortgage bills sold to SMC will be remarketable to investors (Hachaiyaphum, 2016). The benefits of a secondary market for housing loans in Thailand will be enjoyed by several parties, namely banks, capital markets, investors and housing developers.

In Thailand, there is also a reverse mortgage for homeowners who are more than 60 years old. Homeowners are allowed to securitize their home ownership or other immovable assets to the government through the SMC. The owners of these immovable assets will get regular monthly income based on age, collateral value and Thailand's national housing loan interest rate. This is done so that the elderly in Thailand get regular monthly income, guaranteed quality of life and reduce the burden on the government to care for them. The reverse mortgage will then be marketed by SMC in the Thai capital market (Hachaiyaphum, 2016).

Another country in the ASEAN region that already has a secondary market for housing finance is Malaysia. Cagamas Berhad is the national housing finance company responsible for the development of the secondary housing finance market in Malaysia. Established in 1986 with government seed funding to facilitate and encourage home ownership in Malaysia. The company purchases housing loans from primary lenders and raises funds from the market by issuing debt securities in the form of long-term bonds and Medium-Term Notes. Cagamas Berhad is one of the successful secondary housing finance companies. Cagamas Berhad managed to get a AAA rating and maintain a AAA credit rating from the Rating Agency of Malaysia (RAM) and Malaysian Rating Corporation (MARC) and has proven that in its two decades of operations it has never experienced problems or defaults. This is because there is a government guarantee for the bonds issued by Cagamas Berhad (Malpezzi & Mayo, 1997).

### **Housing Provision Policy in Indonesia**

The Government of the Republic of Indonesia has a policy direction and development strategy to increase efforts to sustain economic development, through the following strategies: (i) Increasing economic growth which is continuously maintained in a positive manner by reducing disparities between regions; (ii) Increasing the level of income (per capita) and reducing the income gap between groups; (iii) Increase in employment so that the unemployment rate decreases; (iv) Reducing the poverty rate so that the number of poor people is reduced; (v) Food security includes price stabilization so that inflation rates are low; (vi) Energy security, especially increasing public access to energy, increasing efficiency and the national energy mix; (vii) Increasing access to transportation/community mobility; (viii) Application of production patterns/economic activities and consumption patterns that are efficient (not wasteful) and environmentally friendly (RPJMN 2015-2019, 2014). The second direction of development policy is to increase efforts to sustain social development,

~~among others~~ through a strategy to increase service affordability and access to education, health, housing, clean water and community sanitation services (RPJMN 2015-2019, 2014). Specifically to spur economic growth more specifically in terms of housing, the ~~Government government~~ has had several specific policy directions, which are called policy directions for inclusive economic growth in an effort to increase equity, which include directing fiscal policies that support the livelihoods of the poor and vulnerable, especially public spending that is targeted social assistance such as conditional cash assistance, housing assistance for the poor, assistance for agricultural and fisherman production, assistance for improving the skills of farmers, fishermen, and other underprivileged people's businesses. The policy direction of the Government of the Republic of Indonesia in terms of providing housing infrastructure does not only stop at the availability of housing for the poor but also for workers in industrial areas, TNI soldiers and Polri (RPJMN 2015-2019, 2014).

The main problem that arises to be able to realize the direction of the development policy above is regarding the imbalance between supply and demand housing. In the housing sector, the limited capacity of developers who have not been supported by incentive regulations plus the low affordability of low-income people in building or buying houses is one of the main reasons why ~~there are still many low-income people whom many low-income people still~~ do not live in livable houses. The facilitation of providing decent housing for MBR during 2005-2013, such as the construction of simple rental flats, provision of basic infrastructure and facilities, provision of housing financing liquidity facilities (FLPP) and increasing housing micro-credits are still not well targeted. This problem is getting more difficult because facilitation activities have not been accompanied by strengthening the role of the government and local governments as enablers, but rather playing a role as developers which generally will be faster and more efficient if carried out by the community and developers (RPJMN 2015-2019, 2014).

The Government of the Republic of Indonesia has given a special mandate to three State-Owned Enterprises (BUMN) in housing development, namely Perum Perumnas, PT. State Savings Bank (BTN), Tbk and PT. Sarana Multigriya Finansial Persero. The role of Perumnas in building houses for MBR is still not optimal and is faced with competition from housing developers. Likewise, the State Savings Bank (BTN) and Sarana Multigriya Finansial (SMF), which are expected to be the catalyst for housing finance for MBR, still require additional liquidity.

Since 2010 the Government of Indonesia has had a program called the Housing Financing Liquidity Facility (FLPP). This regulation regarding FLPP was initially stated in

Permenpera Number 14 and 15 of 2010, then amended by Minister of Public Housing Regulation (Permen) No. 04 of 2012, concerning Housing Procurement through Credit for Financing for Welfare Home Ownership with the support of Housing Financing Liquidity Facility (FLPP) and Regulation of the Minister of Public Housing No. 05 of 2012 concerning Instructions for Implementing Housing Through Credit for the Financing of Prosperous Home Ownership. Subsequently, it was amended by Regulation of the Minister of Public Works and Public Housing Number 20/PRT/M/2014 and 21/PRT/M/2014. Based on these regulations, the ~~Government-government~~ has been able to channel FLPP funds which are used to help finance the community to own a landed house for five years. years since 2010 – 2015 with a fund of IDR 16.5 trillion. The distribution of FLPP is carried out through the distribution of FLPP mortgages. FLPP (housing financing liquidity facility) is housing financing support for MBR (low-income people), to get KPRSh (Simplified Healthy Home Ownership Credit). The ~~management of the FLPP program funds is carried out~~FLPP program funds are managed by the Kemenpera BLU-PPP (Public Service Agency for the Public Housing Financing Center) in collaboration with banking institutions that have collaborated with the Ministry of Industry. There are 16 banks, namely Bank BTN, BRI, BTN S, BNI, BRI Syariah, Bank MANDIRI, Bank MANDIRI Syariah, Bank Artha Graha, Bank Bukopin, BPD East Kalimantan, BPD North Sumatra, BPD Central Java, BPD East Java, BPD Southeast Sulawesi, BPD Nagari, BPD North Sumatra Sharia. The cooperation between the Government (Kemenpupera) and banks is carried out through PKO (operational cooperation agreements) in the context of housing procurement through credit or financing for prosperous housing. The FLPP Mortgage Program is a housing finance assistance program for low-income communities with various benefits, such as a fixed-margin interest rate of 7.25% for the life of the loan, including life and fire insurance protection and free of VAT.

Specifically for banks that will become implementing banks, both commercial banks, sharia commercial banks and sharia business units, the requirements to become implementing banks are: a) Submit a statement of interest in becoming an Implementing Bank in the context of implementing the FLPP program; b) Have a minimum value of Composite Rating Three (PK-3) in accordance with Bank Indonesia Regulations; c) Have at least 2 (two) years of experience in issuing home ownership credit/financing (KPR); d) Have infrastructure for managing credit/mortgage financing at least: (i) Having a work unit organization for managing home ownership credit/financing; (ii) Having personnel managing home ownership credit/financing; (iii) Possess information technology for credit management/home ownership financing; and (iv) Have a home ownership credit/financing

policy; e) Have an adequate service network at the provincial and/or national level; f) Have a plan to issue a Prosperous KPR within 1 (one) year; g) Signing a Collective Agreement with the Deputy for Financing or an official appointed by the Minister; and h) Signing an Operational Cooperation Agreement (PKO) with PPP.

~~If the Implementing Bank has and fulfills these requirements, then~~ Suppose the Implementing Bank has and fulfills these requirements. In that case, they will be responsible for providing part of the financing for KPR Sejahtera credit/financing in accordance with the proportion of KPR Sejahtera funding. The Implementing Bank is responsible for targeting accuracy, use of FLPP funds, and credit/financing risk, and is willing to be audited by the internal supervisory apparatus of the Ministry of Public Housing and/or external supervisors in accordance with statutory regulations.

Housing financing through the FLPP and NON FLPP programs is the primary source of financing for housing development in Indonesia. The primary source of housing finance has limitations, namely the availability of funds to be channeled by banks. Banks (Government-Owned Banks, National Private Banks, Foreign Private Banks and Rural Banks) as the main players in primary housing financing rely on “Third Party Funds/DPK” funds, where the third party funds come from demand deposits, savings and time deposits, such as seen in the table below ([www.bi.go.id](http://www.bi.go.id)).

Table 1. Banking Third Party Funds by type 2009 – 2014 in trillion rupiah

Information	December 2009	December 2010	December 2011	December 2012	December 2013	December 2014
Current Account	465,222	535,855	652,708	767,070	846,781	934,067
Savings	585,707	733,157	898,245	1,076,830	1,212,707	1,534,098
Time deposit	899,783	1,069,811	1,234,072	1,381,298	1,604,480	1,869,005
Total	1,950,712	2,338,823	2,785,025	3,225,198	3,663,968	4,337,170

The largest third-party funds came from time deposits, especially time deposits with a time period of 1 month. Problems will arise if third party funds in the form of short-term deposits are used to finance long-term housing loans, in banking this condition is known as a maturity mismatch. The emergence of a maturity mismatch in banking operations will cause problems, namely liquidity difficulties and public distrust of banks. The government has arranged so that there is no maturity mismatch through the Loan to Deposit Ratio (LDR) setting. The Government of the Republic of Indonesia through Bank Indonesia has

periodically issued Bank Indonesia Regulations regarding this LDR, namely Circular Letter of Bank Indonesia Number 15/40/DKMP dated September 24, 2013 Regarding the Implementation of Risk Management in Banks Providing Credit or Financing for Property Ownership, Credit or Financing Property Backed Consumption, and Motor Vehicle Loans or Financing amended by Bank Indonesia Regulation Number 17/10/PBI/2015 concerning Loan To Value Ratio Or Financing To Value Ratio For Property Loans Or Financing And Down Payments For Motor Vehicle Loans Or Financing. The regulation will regulate the Loan to Value (LTV ratio) ratio, namely the ratio between the credit value that can be given by the Bank to the value of the collateral in the form of property at the time of lending based on the latest appraisal price; financing to value ratio (FT ratio) which is the ratio between the value of financing that can be provided by the Bank to the value of collateral in the form of property at the time of financing based on the last appraisal price. Bank Indonesia will set limits on the LTV Ratio or RTV Ratio for conventional property loans and sharia property loans, in the form of buying landed houses, flats, shop houses, home offices.

The limited availability of third-party funds and the precautionary element from the banking regulator and the banking industry in ~~the context of lending has~~ lending have resulted in limited funds being channeled into housing development. The Government of the Republic of Indonesia was then moved to utilize secondary housing financing facilities, following what has been implemented by the United States Government.

### **Legality of Housing Secondary Financing**

A secondary mortgage facility company was established specifically to raise long-term funds which will then be channeled to financing institutions, namely banks that experience funding gaps. The financing facility provided by SMF is a financing facility specifically organized to be given to financing institutions (banks) in the context of lending through the housing loan scheme. This financing system is growing rapidly in the United States, followed by developments in other countries in the world such as France, Latin America, Australia, New Zealand, Japan, Hong Kong, Thailand, Philippines, Taiwan, Malaysia and Singapore. This process is often referred to as the asset securitization process.

Securitization has several definitions, among others, according to Joan Barmat, securitization is an open market for marketing collateralized financial instruments (financial securities) in the form of collateral for cash claims and claims for collateral for immovable property (Joan Barmat, 1990). Leon T Kendal defines securitization as a process to package

individual debts and other debt instruments, then convert the packaging into securities to increase the status or rating of these securities to third party investors (Kendall, 2000).

The securitization process in Indonesia has been initiated since 1998 with the Decree of the Minister of Finance No. 132/KMK.014/1998 concerning Secondary Housing Financing Facilities, which regulates business fields, procedures for establishment and licensing, sources of funds, prudential regulation (prudence principle), supervisors and supervisors, sanctions. Unfortunately, this provision does not work perfectly because it is not followed by the realization of the establishment of an SMF institution that carries out the secondary housing financing in question. Until then in 2005 a series of interrelated regulations emerged to support the establishment of the SMF institution and the trading of securities issued by the SMF.

The legal basis for asset securitization and trading of asset-backed securities is Law of the Republic of Indonesia No. 8 of 1995 concerning Capital Market Article 1 paragraph 5 which states that securities include “securities, namely debt acknowledgments, commercial securities, stocks, bonds, proof of debt, Participation Units in Collective Investment Contracts, futures contracts on securities and any derivatives of securities”.

Then through Capital Market Supervisory Agency Regulation no. IX.K.1.1 Attachment to Decision of the Chairman of BAPEPAM no Kep -28/PM/2003 dated July 21, 2003 concerning Guidelines for Collective Investment Contracts for Asset Backed Securities, in article 1 letter (a) it is stated that KIK EBA is a contract between an investment manager and a custodian bank that binds asset-backed securities holders, where the investment manager is authorized to manage the collective investment portfolio and the custodian bank is authorized to carry out collective custody.

KIK's participation unit whose portfolio consists of financial assets in the form of claims arising from commercial securities, leases, conditional sale and purchase agreements, installment loan agreements, credit card claims, lending including mortgages for housing or apartments, debt securities that ~~are guaranteed by the Government~~the government guarantees, means of credit enhancement/cash flow as well as equivalent financial assets and other financial assets related to these financial assets. From this definition, it can be concluded that what is included in the KIK EBA are securitized securities originating from assets that have a stream of cash flow in the form of claims arising from commercial securities, credit card claims, claims arising in the future (future receivables), and the provision of credit, including KPR and KPA.

The granting of a KPR or KPA is including a bill or collection of mortgage receivables that can be securitized so that data is traded through the secondary market, what is traded is the right to collect a collection of mortgage receivables and the mortgage lending bank as the original creditor (originator) to a special institution established for that purpose (special purpose vehicle) which buys it at the same time issues securities with asset collateral for the mortgage receivables collection.

PT Sarana Multigriya Finansial (Persero) is a special institution that is given the authority to carry out this task, as a special purpose vehicle that buys and issues securities with guaranteed assets for the collection of mortgage receivables. The special purpose vehicle or secondary mortgage company required to perform asset securitization is established under the Government Regulation of the Republic of Indonesia Number 5 of 2005 concerning State Equity Participation of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Secondary Financing of Housing, in article 1 it is stated that there is a need for alternative financing other than banks as providers of funding for housing needs, namely the establishment of a secondary housing finance company. Article 2 of this Government Regulation states that the purpose and objectives of the limited liability company as referred to in Article 1 are specifically to carry out: a) Financing business activities in the form of secondary housing financing facilities at banks and financial institutions that provide housing loans; b) Collect public funds to finance secondary housing financing activities by issuing long-term and or short-term securities; and c) Other activities in order to support the activities as referred to in letters a and b above.

The implementation of Government Regulation No. 5 of 2005 concerning the Republic of Indonesia State Equity Participation for the Establishment of a Limited Liability Company (Persero) in the Sector of Secondary Housing Financing is carried out by issuing Presidential Regulation No. 19 of 2005 concerning Secondary Housing Financing. Article 1 paragraph (13) states that securitization is the transformation of illiquid assets into liquid ones by purchasing financial assets from original creditors and issuing asset-backed securities. This securitization process will be submitted to a ~~vehicle called a special purpose vehicle or secondary mortgage company, namely~~ special purpose vehicle or secondary mortgage company, a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and simultaneously issue Asset Backed Securities.

Presidential Regulation No. 19 of 2005 also states that the purpose of secondary housing financing is to provide financing facilities in order to increase the capacity and

sustainability of housing finance that is affordable by the community. Furthermore, Presidential Regulation No. 19 of 2005 also provides details regarding the company in question, among others in article 15 that the government will establish a Secondary Housing Company as the intended financial institution; which must be in the form of PT; Then it also regulates the limits of actions that cannot be taken by the company, namely not being able to make direct participation (become a shareholder) or purchase company shares through the capital market.

This regulation ~~can be said to be~~ the legal basis for the establishment of PT Sarana Multigriya Finansial as a Persero which is engaged in secondary housing financing with initial capital from state assets separated by Rp.1 trillion (one trillion rupiah) from the APBN for the 2005 fiscal year. In 2008, the ~~Government~~ government made amendments to Presidential Regulation No. 19 of 2005 concerning Secondary Financing of Housing by issuing Presidential Regulation No. 1 of 2008 concerning Secondary Financing of Housing.

The existing legal umbrella, which provides a legal basis for the issuance and trading of asset securitization securities and the institution that is given the task, mandate and authority to be able to issue and trade asset securitization securities with the main purpose of housing secondary financing, still leaves several problems, including: Another is the absence of a legal umbrella that requires every institution that carries out primary housing financing activities to transact with SMF to maximize secondary housing financing. If the main objective for secondary housing financing is not achieved optimally, then the SMF intended to be established will experience economic obstacles, although there are incentives in article 20 but the ten-year time limit to be able to operate in the primary housing finance market is felt to be insufficient. If it can be assessed economically that the participation of more players as primary housing finance providers, then SMF's duties as primary housing finance providers should be extended or not set with a time limit.

### **Constraints on the Utilization of Mortgage Backed Securities and Secondary Mortgage Facilities by the Financial Industry and Investors in Indonesia**

PT. SMF (Persero) was established ~~with the aim of providing liquidity facilities in housing secondary financing (KPR) and securitizing to provide liquidity facilities in housing secondary financing (KPR) and securitize~~ mortgage assets to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). To obtain more comprehensive data from the financial industry regarding the role and potential of mortgage backed securities and secondary mortgage facilities by PT SMF

Persero, this study also uses focus group discussions (FGD) and in-depth interviews. The FGD was held on December 4, 2014 at the Perbanas Jakarta office with representatives from 12 (twelve) national banks and non-bank financial companies, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, BCA Bank, Panin Bank, BIIMaybank, Permata Bank; and MNC Multi Finance. In addition, in-depth interviews were also held on 2 and 3 December 2014 with several financial institutions that have become or will become potential investors for SMF products, namely the President Director of the Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk.

~~From FGDs and in-depth interviews, it can be seen~~GDs and in-depth interviews show that with respect to PT SMF Persero and secondary housing financing, the profile of the financial industry can be divided into three profile categories.

The first is the profile of the financial industry that has used SMF products (already become SMF consumers). PT SMF Persero's products provided are liquidity facilities in secondary housing financing (KPR) and mortgage asset securitization to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). Several financial institutions have utilized liquidity facilities in housing secondary financing, including Bank BTN, Bank Muallamat, Bank DKI and MNC Multifinance. These banks and financial institutions experience several advantages with the liquidity facilities provided by SMF. First, SMF's liquidity facility can increase the capacity of this financial institution to finance mortgages. Second, through the provision of mortgages, this financial institution will receive a collection fee that can be used to increase profits, so this will automatically increase capital. Third, the liquidity facility from SMF can overcome the maturity mismatch problem that ~~is commonly faced by financial institutions~~financial institutions commonly face in providing mortgages. Maturity mismatch occurs when players in the banking industry and financial institutions use short-term third-party funds (DPK) to finance ~~mortgages which are long-term loan~~long-term mortgages. Although some of the above financial institutions have utilized liquidity facilities from SMF, the proportion of SMF funds is still very small in the financing portfolio of these banks and financial institutions (between 10%-15%). The main thing that is of concern to users of this liquidity facility is that the 'price' given by SMF for secondary mortgage financing is perceived to be relatively high. In other words, the pricing provided by SMF for liquidity facilities is not competitive because it can reduce potential profits for banks and financial institutions that use them. Besides the 'pricing' problem, Bank BTN also complained about the limited funds available

at SMF for financing liquidity. SMF's limited funds also make banks and financial institutions still rely on third party funds (DPK) in financing their mortgages.

The second is the profile of the financial industry that has the potential to become SMF consumers. Several financial institutions, such as general insurance and BPJS, have the potential to become investors for SMF by utilizing EBA securitization products. However, ~~there are things that~~ some things prevent this financial institution from using SMF's products. First, it relates to the rules from OJK. Until now, ~~there is no regulation from OJK that~~ no regulation from OJK regulates the investment portfolio of general insurance companies in KIK EBA which is included in Risk Based Capital (RBC) for insurance. According to OJK regulations, what are included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate, maximum 20% of total investment), shares (maximum 10%).

Lastly, the third is the profile of the financial industry that has not become a potential SMF consumer. Financial institutions, both government-owned and private, which until now have not become SMF consumers have the main reason that mortgage financing is not the focus of the financial institution's business. Among these financial institutions do have mortgages, but the portion is very small, mortgage securitization is carried out, these banks take advantage of idle funds that are cheap. In addition, the reluctance of these financial institutions to invest in EBAs is because they are concerned about the risk of issuance. Investors doubt the liquidity of the EBA as a prime mortgage. Even though this fear is ~~actually unfounded, the condition for KIK EBA~~ unfounded, KIK EBA's condition is smooth credit. Every year this credit will be evaluated and if it is not current it will be exchanged. In other words, the reluctance of financial institutions to use SMF's services is due to their ignorance about SMF's products. Besides that, there is no regulation from OJK regarding portfolios in KIK EBA that are included in the calculation of RBC for insurance, which have been included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate) a maximum of 20% of the total investment, shares (max 10 %). Banking as an economic institution that is heavily regulated will be monitored for its operations by many parties, ~~so that when developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and for~~ When developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and the general public. In terms of asset securitization (issuance of asset-backed securities), the banking sector requires that the issuance be categorized as hedging.

The reluctance of the financial industry to utilize secondary housing facilities also leads to the condition of PT SMF Persero as the sole provider of ~~housing secondary~~ secondary housing financing. Weaknesses from the internal side, PT SMF (Persero) are, among others, due to: 1) Funds available for refinancing are relatively limited; 2) ~~'Pricing'~~ or the price set by PT SMF Persero for liquidity facilities is considered to be relatively high, making it less competitive; 3) Lack of socialization of the existence of PT SMF Persero, many banks and non-bank financial institutions are not aware of the existence, function and role of PT SMF Persero; 4) The term of the loan facility (refinancing) from PT SMF Persero is a maximum of 15 years, it is felt that it is not financially useful for the business; 5) The securities rating issued by PT SMF Persero is still at AA+; 6) The KPR EBA is not yet known as securities in the banking industry and financial institutions.

Other factors that arise from the financial industry's reluctance to utilize secondary financing facilities are because: 1) Banking and multi-finance companies prioritize the use of third party funds for mortgage financing; 2) Several banks organize their own securitization for housing finance; 3) The reluctance of mortgage lenders, both banks and multifinance companies, to take advantage of the Securitization and Refinancing facilities provided by PT SMF Persero because they are related to problems in financial recording (accounting); 4) Regulations from OJK for financial institutions, such as general insurance, do not yet regulate investment in the form of EBA.

### **Attempts to Make Mortgage Backed Securities and Secondary Mortgage Facilities Attractive Housing Secondary Financing**

In order to build a secondary housing finance market through securitization, this is done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, ~~in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporter~~ companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters in securitization transactions. Furthermore, ~~regarding the distribution of loans to banks and/or financial institutions, it~~ the distribution of loans to banks and/or financial institutions is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. Secondary financing sources for housing, apart from own capital, are also obtained from the issuance of Asset Backed Securities in the form of Debt Securities and Participation Letters. In order to issue Debt Instruments, the Special Purpose Vehicle (SPV)

acts as the issuer. Special Purpose Vehicle (SPV) is a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and at the same time issue Asset Backed Securities. Meanwhile, in the context of issuing the Participation Letter, the Company or the Trustee shall act as the publisher. With regard to the unprepared primary housing market, so that there is no set of eligible mortgage assets for securitization, the Company may provide loans to banks or financial institutions to issue mortgages with the requirements of using standardized documents set by the Company. In this regard, the loan period is adjusted to the average mortgage term. Thus, it is necessary to change the loan term by the Company.

Fulfilling the increasing housing needs of the community and to stabilize the housing market, the government established a Secondary Mortgage Facility (SMF) by issuing the Minister of Finance Decree of the Republic of Indonesia N0.132/KMK.014/1998 dated 27 February 1998 concerning the Company's Secondary Housing Financing Facility. According to article 1 of the Decree of the Minister of Finance of the Republic of Indonesia N0.132/KMK.014/1998 dated February 27, 1998, what is meant by the Secondary Mortgage Facility is a medium or long term loan to a bank that provides mortgages with collateral in the form of claims for the mortgage. and Mortgage-mortgage on house and land. PT Sarana Multigriya Finansial Persero builds and develops the secondary housing finance market in Indonesia to increase the capacity and sustainability of housing finance and overcome the maturity mismatch. This is done by channeling long-term funds from the capital market to mortgage lenders through securitization transactions and loan distribution. Through these two transactions, the volume of mortgages will be increasing and sustainable, so that they can support decent and affordable home ownership for the people of Indonesia.

The Indonesian Financial Services Authority in 2014 issued a regulation to further encourage the use of asset securitization through the issuance of derivatives with securities known as EBA SP (asset-backed securities in the form of participation letters). Financial Services Authority Regulation number 23/POJK.04/2014 concerning Guidelines for Issuance and Reporting of Asset-Backed Securities in the Form of Participation Letters for Secondary Financing for Housing.

Asset-Backed Securities in the Form of Participation Letters, hereinafter referred to as EBA-SP, are Asset-Backed Securities issued by Issuers whose portfolio is in the form of a Collection of Receivables and is proof of proportional ownership of the Collection of Receivables which are jointly owned by a group of EBA-SP holder group of EBA-SP holders jointly owns. Fixed Cash Flow EBA-SP is an EBA-SP that provides its holders with certain

income, such as debt securities holders. EBA-SP Variable Cash Flow is an EBA-SP that provides its holder with an indefinite income such as to the holder of equity securities.

The parties in the issuance of the EBA SP, namely the Issuer, are the Parties who issue the EBA-SP in the context of Secondary Financing for Housing. Secondary Housing Financing is the implementation of medium and/or long term fund distribution activities to the Originating Creditors by purchasing the Collection of Receivables from the Originating Creditors and selling them through the issuance of EBA-SP; or purchase of Collection of Receivables from Original Creditors from the issuance of EBA-SP. There are also several parties who are indirectly involved in the EBA SP issuance process, namely: i) Servicer is a party who is responsible for processing and supervising payments made by debtors, taking initial actions such as warnings because the debtor is late or fails to fulfill his obligations, conducting negotiations, resolving claims against debtors and other services specified in the service provision agreement; ii) Original Creditor (Originator) is a bank or other financial institution that owns and sells its Financial Assets to the Issuer in order to issue EBA-SP; iii) Supporting professions consist of Accountants, Legal Consultants, Notaries, Securities Rating Companies, Trustees, Custodian Banks.

The objects of securities in the issuance of EBA SP which consist of: i) Collected Receivables are all Financial Assets that have been purchased by the Issuer from the ~~Originator~~ and sold to the EBA-SP holder through the issuance of the EBA-SP; or from the issuance of the EBA-SP; ii) Financial Assets are receivables obtained by the Original Creditor from the provision of Home Ownership Credit to the debtor, including the collateral/guarantee along with the mortgage attached to it, iii) Home Ownership Credit, hereinafter abbreviated as KPR, is a credit facility issued by the Original Creditor to the debtor to purchase a house ready to live in; iv) EBA-SP Credit/Cash Flow Improvement Facility is a facility that aims to improve the quality of Collection of Receivables for payment to EBA-SP holders.

The issuance of EBA SP through an agreement process carried out by the parties, based on the guidelines for issuing EBA SP in POJK no 23/04/2014. EBA-SP offered through a Public Offering must be rated by a Securities Rating Company.

~~Issuance and trading of EBA SP through a sale and purchase process must be supported by the opinion of a Legal Consultant~~The opinion of a Legal Consultant must support issuance and trading of EBA SP through a sale and purchase process, must meet the sale and drop off requirements according to generally accepted accounting principles and must be carried out consistently and supported by the opinion of an Accountant.

For EBA SP issued from the source of the original collection of receivables, the Issuer or Original Creditor can only purchase Financial Assets in the EBA-SP Receivable Pool at a maximum of 10% (ten percent) of the total value of the Collected Receivables. The EBA-SP holder's rights to the Collection of Receivables must be stated in the Prospectus or EBA-SP Disclosure Document and supported by a legal opinion from a Legal Consultant stating that the EBA-SP holder's rights are as contained in the EBA-SP Prospectus or Disclosure Document.

EBA SP issuance must also make a prospectus as a liaison medium between investors and issuers. The EBA-SP Prospectus must contain all details of Material Information or Facts regarding the EBA-SP and the required information and/or information in this Financial Services Authority Regulation. The Prospectus is prohibited from containing untrue information about Material Facts or not containing correct information about Material Facts required so that the Prospectus does not provide a misleading picture. The prospectus must be made in such a way that it is clear and communicative. The presentation and delivery of important information in the Prospectus is not obscured by less important information which causes the important information to escape the attention of the reader. The most important facts and considerations should be summarized and disclosed at the beginning of the Prospectus. The order of submission of facts in the Prospectus is determined based on the relevance of the facts, and is not determined based on the order as stated in this Financial Services Authority Regulation. Disclosure of Material Information or Facts and/or the use of photos, diagrams, and/or tables in the Prospectus is prohibited from providing a misleading image.

Original Creditors in order to issue EBA-SP, must prepare Financial Assets that meet the requirements set by the Issuer; submit KPR documents for inspection by the Issuer or their proxies; prepare accurate information regarding the Collection of Receivables or other information required by the Issuer or its proxies; guarantee the correctness of information, data, and documents related to Financial Assets; and submit information, data, and documents to the Issuer if necessary. The Originating Creditor is responsible for the legal limits of the Financial Assets sold and their documents; and to provide compensation for losses due to the invalidity of the sold Financial Assets and their documents.

PT SMF Persero can build a secondary mortgage market through securitization, which can be done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, ~~either~~ through a public offering or a private placement. In addition, ~~in securitization transactions, companies can act as global~~

~~coordinators, guarantors, securitization administrators, and/or Credit Supporter companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters in securitization transactions.~~ Furthermore, ~~regarding the distribution of loans to banks and/or financial institutions, it~~ the distribution of loans to banks and/or financial institutions is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. The emergence of the new securities regulations referred to as EBA SP above will greatly assist PT SMF Persero ~~to be able to carry out its duties to perform asset securitization by issuing mortgage~~ in carrying out its duties to perform asset securitization by issuing mortgage-backed securities. The things that need to be done so that PT SMF Persero as a government institution that is given a special task of conducting housing loan securitization is to provide greater capital for PT SMF Persero so that it can carry out the task of mesecuritizing housing loans into EBA SP, and the next task is for stock exchange regulator in Indonesia to be able to build a secondary market, so that EBA SP is attractive for investors to buy and resell.

As stated by PT. Mandiri Pension Fund that PT SMF Persero should be able to play an active role in becoming a market creator or secondary market creator for these asset-backed securities, so that investors are more interested in investing in buying EBA that has been issued and ~~the issuance is facilitated by PT SMF Persero~~ PT SMF Persero facilitates the issuance.

## **Conclusion**

The legal aspects to support the birth and operation of mortgage backed securities and secondary mortgage facilities in Indonesia are quite complete. However, the operational use of mortgage backed securities and secondary mortgage facilities carried out by PT Sarana Multigriya Finansial Persero experienced problems due to several things, namely the lack of interest in the financial industry due to the asset securitization implementing factor and due to the character factor of the securities issued. So there needs to be socialization to the banking industry and financial institutions regarding the tasks and products issued by PT SMF Persero, because there are still many banks, insurance companies, pension fund companies, who are not familiar with PT SMF Persero's products. A maximum socialization effort is needed so that the financial industry and investors, both investors, are more familiar with mortgage backed securities and secondary housing financing facilities implemented by PT SMF Persero.

On the other hand, the financial industry also requests that the costs of issuing EBA and EBA SP securitization of housing loans by PT SMF Persero can be carried out at a "pricing" that is not too expensive. So, they will choose this product as a primary source of housing financing. The last thing that must be carried out by the Government of the Republic of Indonesia is the creation of a "secondary market" to trade EBA SP originating from the housing loan. So that the EBA SP product does not only stop at the primary market but can also be traded on the secondary market, which will be very attractive to investors.

Finally, with attractive products, large amounts of funds offered, competitive pricing, housing loan securitization carried out by PT SMF Persero can help the Government government overcome the housing backlog.

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## **4. Acceptance & Galley proof**



Paramita Prananingtyas <pptyas@live.undip.ac.id>

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# FINANCIAL AND LEGAL BARRIERS IN IMPLEMENTING SECONDARY MORTGAGE FACILITIES IN INDONESIA

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**Abstract** - The research is motivated to analyze mortgage-backed securities to solve the housing supply backlog problem in Indonesia. The first problem is regarding the legality of mortgage backed securities in Indonesia, the second problem is about the disinterest of the housing industry in Indonesia to take advantage of mortgage backed securities, and the second problem is optimizing existing resources to make mortgage backed securities more attractive. Since its establishment in 1998 until 2015 the mortgage backed securities or secondary housing financing facility has not been maximally utilized by the financial industry in Indonesia as an alternative source of funds to finance the provision of housing. The financial industry is still making maximum use of primary housing financing by providing loans whose funds come from third party funds. Mortgage backed securities are not attractive to the financial industry because the subject of implementation, namely PT SMF Persero, is less well known and because there are doubts about the financial benefits of mortgage backed securities for the financial industry and investors. This research is based on empirical studies conducted directly on the housing finance provider industry sector in Indonesia. A major breakthrough was made by creating new securities in the Indonesian capital market that can make mortgage backed securities more attractive, namely asset backed securities- securities participation (EBA SP), in this way mortgage backed securities are expected to be traded on the secondary market. The legal aspects to support the birth and operation of mortgage backed securities in Indonesia are complete, but the operational use of mortgage backed securities is experiencing problems due to the lack of interest in the financial industry in the issuance process and the character factor of the securities issued. The financial industry providing housing finance in Indonesia demands that the pricing of the issuance of mortgage backed securities and the trading process be made more attractive to investors.

**Keywords:** mortgage-backed securities, funding, financial barriers, legal impediment, Indonesia

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### Introduction

Housing and settlements are one of the basic human needs, having a strategic function as a center for family education, cultural nurseries, and improving the quality of future generations. The government's ability to meet the needs of housing and settlements is relatively very limited. Community resources and potentials need to be developed to be able to meet their housing and settlement needs independently, supported by government efforts through the creation of a conducive housing provision climate.

The Government of Indonesia has a National Medium-Term Development Plan 2015-2019, which includes a plan to provide housing in Indonesia. Fulfillment of decent housing supported by adequate infrastructure, facilities and utilities needs special attention. Inequality between supply and demand is still a major problem in the provision of basic infrastructure, especially for low-income people (MBR).

In the housing sector, the limited capacity of developers has not been supported by incentive regulations. Low-income communities also have a problem, namely the low affordability of building or buying a house, so that they cannot live in decent houses. The shortage of providing housing needs or known as the housing backlog has led to new innovations so that the problems that hinder the provision of housing are unraveled, among others by providing capital financial instruments for housing finance.

Since 2010 the Government of Indonesia has had a program known as the Housing Financing Liquidity Facility, namely channeling housing loans for simple and very simple houses through the banking system. Housing loans that have been disbursed, both from the FLPP program and non-FLPP programs such as KPR and KPA, can theoretically be turned into a source of funds by means of securitization, known as mortgage backed securities (MBS).

Mortgage backed securities are a way to expand the sources of financing for housing development. It has been known in the world since 1934 in the United States, initially the pattern of securitization of housing loans was carried out in order to revive the United States economy which was slumped during the Great Depression, at which time people's incomes declined. drastically as well as house prices. This condition has resulted in banks as owners of housing loans experiencing liquidity difficulties. So finally, the United States Government decided to establish a Government Sponsored Enterprise to buy mortgages or housing credit guarantees owned by banks in the form of securities. The securities will then be re-marketed in the form of a secondary mortgage. Mortgage-based securities that have been attempted to be used as an alternative source of funding for housing finance in Indonesia have not worked as they should. From 1998 to 2015 this secondary housing financing facility was not widely known and used by primary housing finance providers and other investors.

There are 3 problems that will be analyzed in this paper. The first problem is regarding the legality of secondary housing financing (SMF) in Indonesia. The second problem is to find out why housing loan holders are not interested in issuing mortgage backed securities and why investors are not interested in investing in mortgage backed securities in Indonesia. The third problem is how to optimize all available resources to make mortgage backed securities more attractive to issue and trade in both the primary and secondary markets, so that mortgage backed securities as securities will be more financially attractive.

This paper is prepared based on a non-doctrinal research in which law is not conceptualized in moral philosophy as a norm *ius constituendum* and as a norm *ius constitutum*, but laws and statutory regulations are empirically observed in reality. The approach used is the socio legal approach or socio legal approach, which represents the existence of law in the practice of community life. The types of data used are primary data and secondary data. Primary data were obtained from field research conducted by means of FGDs and direct interviews with resource persons. The FGD was held on December 4, 2014 at the Perbanas Building Jakarta which was attended by representatives of the Indonesian national financial industry, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, Bank BCA, Bank Panin, BII Maybank, Permata Bank; and MNC Multi Finance. During the FGD, the participants were asked the same questions in turn regarding the understanding of secondary housing finance, the use of secondary housing finance by securitizing housing mortgage bills from FGD participating banks, as well as regarding the existence of PT Sarana Multigriya Financial (SMF) Persero. In-depth interviews were conducted on 2 December 2014 with the President Director of Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk., the questions asked were the same, namely understanding of financing secondary housing, the use of secondary housing finance by securitizing housing bills for the main source of housing loans and regarding PT Sarana Multigriya Finansial (SMF) Persero.

## 1. Literature Review

Initially, the emergence of asset securitization in America was driven by government programs that sought to increase the liquidity of the residential mortgage market. To realize this program, the government formed the Federal Home Loan Bank in 1932, which provided housing credit facilities for the American people. Then to form the secondary mortgage market, the American government established three institutions, namely: 1. The Federal National Mortgage Association (FNMA) or known as Fannie Mae in 1938, 2. The Government National Mortgage Association (GNMA) or known as Ginnie



Mae designation in 1968 which is a fraction of Fannie Mae and 3. The Federal Home Loan Mortgage Corporation (FHLMC) otherwise known as Freddie Mac in 1970. These three institutions have two main functions in developing the secondary housing market, namely being a sponsor for the issuance of mortgage-backed securities by banks, and acting as guarantors for investors, namely providing assurance on the smooth and timely payment of interest and principal to investors (The Congress of the United States, the Congressional Budget Office : Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Marke,t December 2010).

The first time the securitization of assets in the form of mortgage-backed securities with the underlying asset in the form of mortgages was issued in 1968 through Ginnie Mae. Then asset securitization techniques developed and in 1985 successfully issued securities with underlying assets in the form of car loans. Then, the development of asset securitization transactions in America has increased very rapidly, both in the securitization market, types of underlying assets, forms and mechanisms (Fabozzi et al., 2000).

The rapid growth of the securitization market since 1968, which was marked by the development of volume, number of originators, types of underlying assets and forms of securitization, subsequently experienced difficult times following the emergence of the sub-prime mortgage crisis in 2007. The highest growth in the sub-prime mortgage market occurred in the period 2001 to 2006. This growth was triggered by, among other things, high investor interest in high-yielding investment products and support from government institutions such as Fannie Mae, Ginnie Mae and Freddie Mac. On the other hand, when securitization grows rapidly, the quality of the securitization market decreases significantly due to the characteristics of various parties and factors involved in the transaction process, namely: 1). Lending banks loosen credit requirements such as high loan to value ratios, 2). Bad debtor quality, such as low loan score, high level of indebtedness, low ability to provide data and documentation, 3). Loans such as product type, installment terms, loan amount, higher loan interest rates than prime loans and 4). Macroeconomic conditions such as rising house prices, household income and rising unemployment (Keys et al., 2009). The sub-prime mortgage crisis has actually been detected and recognized by the parties, however, the deterioration of the quality of the securitization market is covered by the tendency of rising house prices from 2003 to 2005. The various types of asset securitization development referred to, the securitization market is dominated by the form of Mortgage-Backed Securities-MBS guaranteed by the three US government institutions, then Asset-Backed Securities-ABS with underlying assets in the form of credit card bills, car loans, other consumer credit and Collateralized Loan Obligation-CLO. A total of 3,650 MBS was issued for €715.21 million, followed by 2,427 ABS issued for €363.19 million and finally 2,504 CDOs were issued for €316.72 million (Gramlich, 2007).

Supervision of the implementation of asset securitization in America does not refer to special laws and regulators but is subject to state and federal regulations such as the Securities Act of 1933, Securities Exchange Act of 1934, Trust Indenture Act of 1939, Investment Advisors Act of 1940, Investment Company Act of 1940, Internal Revenue Code of 1986, US Bankruptcy Code and the Dodd-Frank Wall Street Reform and Consumer Protection Act. The regulators with the authority and responsibility are the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (Hancock & Passmore, 2011)

The reasons for conducting securitization transactions are, among others, to obtain cheaper funding, benefits from the balance sheet structure, savings in the amount of capital, alternative sources of funding, profit from the difference between the cost of funds in the capital market and the proceeds from the sale of assets through securitization. To maintain a sufficient level of capital, the originator in the form of a bank must comply with other regulations, namely the Basel rule, which states that banks must maintain a sufficient level of capital when conducting asset securitization transactions. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act regulations will regulate originators in the form of financial institutions, to increase the amount of capital in order to increase the ability to absorb risk in the event of a loss (Ambrose & Pennington-Cross, 2000).

In America itself, the form of SPV can vary depending on tax factors, originators and investors involved in the transaction. The two most commonly used forms of SPV are Trusts and Limited Liability Companies (LLCs) and the least used are Limited Partnerships. In this case, the SPV can be owned by

the originator or by an independent party. The use of SPV by independent parties can be used as one of the steps to avoid the bankruptcy risk of the SPV if the courts in America treat the underlying assets in securitization activities as still owned by the originator. To avoid this risk, it is necessary to believe that SPV assets are separate from the originator which can be seen from indicators such as separate financial statements and legally the SPV is an independent party.

To respond to the financial crisis, the American government carried out various initiatives including two main programs aimed at restoring liquidity and confidence in the financial industry, namely: 1). The Term Asset-Backed Securities Loan Facility (TALF) started in November 2008 and by the time this program ended in June 2010 the outstanding loan amount was US\$43 billion, and 2). the Public Private Investment Program (PPIP), was launched in March 2009 and started investing in September 2009. The source of funds for the PPIP program is a combination of the Troubled Asset Relief Program (TARP), private investors and loans from TALF. The PPIP's working mechanism is by buying troubled assets owned by banks and as of May 1, 2011 the amount has reached US\$1 trillion and eight PPIPs have been formed. Although the volume of securities transactions was lower than the volume before the financial crisis, CLO and ABS transactions have started to grow in 2011. In future developments, the promulgation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010 will change the financial industry given its broad impact on business actors, performance and development in America. The implementation of the said law will affect asset securitization activities because there are tightening regulations on the roles of rating agencies and investment managers, risk retention and capital adequacy ratios. In addition, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 requires national registration of companies that are mortgage originators and the Credit Card Accountability Responsibility and Disclosure Act of 2009 also asks to stop imposing egregious fees on credit card holders (Barth et al., 2004)

The parameters of the ideal secondary housing finance market are the stability of macroeconomic conditions; competitive market structure; standardization of mortgage instruments; servicing techniques from mortgage-backed securities issuing institutions and providers of secondary mortgage facilities as well as government policies (Lea & Bernstein, 2000).

Mortgage backed securities and secondary mortgage facilities have also been recognized and practiced in several countries in the world. An example is France. Trading in Asset Backed Securities (EBA) in France has been regulated by The Securitization Law No.88-1201 dated December 23, 1988 and gave rise to the term *Fonds Commun de Créances* (FCC) or French SPV. This is in contrast to the UK and Germany which do not have specific laws regarding asset securitization. Subsequently, several amendments to the Law have been made and the most recent was the 2008 Ordinance which aims to improve the quality of securitization implementation and change the name of the FCC to *Fonds Commun de Titrisation* (FCT). The Financial Markets Authority (*Autorité des Marchés Financiers*) - AMF is the main agency authorized and responsible for the conduct of securitization activities in France (Farruggio & Uhde, 2015).

FCT's legal status is co-ownership, without any legal personality such as having no capital, shareholders, management or employees, but only consisting of investment managers and custodians. Thus, FCT will be free from bankruptcy problems (remote bankruptcy). In further developments, FCT securitizes various types of claims such as credit card bills, trade receivables, commercial credit and consumer loans, mortgage claims (KPR) and insurance risk claims with the exception of claims that are categorized as default, doubtful and in the process of legal litigation. In addition, the technique of transferring assets from the originator to the FCT is carried out through the use of special documents (*bordereau*) for cost and efficiency considerations. In general, the formation of the FCT is carried out in France and in carrying out securitization activities always refers to various regulations issued by the AMF and the Monetary and Financial Code. However, if there is an FCT formed abroad, the FCT cannot operate in France. This type of credit enhancement is carried out to increase the rating of securities issued, such as: 1. Guarantees provided by the originator, affiliated parties of the originator or by insurance companies, 2. Cash reserve funds and 3. Over-collateralization (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), *Association Française des Trésoriers d'Entreprise* (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

In subsequent developments, the 2007 American sub-prime mortgage crisis had a significant impact on the decline in transaction volume and investor interest in asset securitization activities in France. The French regulator then refined the practice of asset securitization by amending the Securitization Law through the 2008 Ordinance. Furthermore, in the September 2009 Quarterly Review, the Bank for International Settlement reviewed the rules of the game to reactivate and strengthen the securitization process by highlighting several aspects such as the limited level of complexity and transparency of transactions and the high dependence on ratings from rating agencies. To simplify the securitization process, the authorities set a standardization of the structure, including reducing the number of tranches. In addition, new standards have been set regarding disclosure and reporting procedures as well as supervision of rating companies (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), *Association Française des Trésoriers d'Entreprise* (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

Another country that can be used as a comparison is China (People's Republic of China). The implementation of asset securitization in China is carried out through two methods, namely: 1. Credit asset securitizations, using trusts as SPVs whose implementation is under the authority of the capital market institutions, the People's Bank of China (PBOC) and the central bank, the China Banking Regulatory Commission (CBRC), and 2. Corporate asset securitizations, using customer asset management plans as SPVs, and are under the supervision of the China Securities Regulatory Commission (CSRC). The types of securitization that have been used as pilot projects are Residential Mortgage-Backed Securitizations (RMBS), Collateralized Loan Obligation (CLO) transactions, Non-Performing Loan (NPL) securitization, Commercial Mortgage-Backed Securitizations (CMBS) and car loan securitization. The majority of these transactions were retained securities, i.e. securities in the junior tranche category were still held by the originator (Calice, 2011).

The first pilot asset securitization project was carried out in December 2005, initiated by the China Construction Bank and China Development Bank. Then in 2006, the number of securitization transactions reached CNY 3.07 billion. The success of the first round of transactions continued in the second pilot project, which was dominated by private banks. Furthermore, during 2009 asset securitization activities experienced a vacuum because nothing was approved by the regulator. In its development, asset securitization activities in China are not only limited to the banking sector but also extend to the telecommunications, infrastructure and leasing business sectors. Then, during 2008 to 2009 there was known informal securitization, in which the bank (originator) packaged a group of loans into investment products which were then sold to individual investors. However, its features, such as no secondary market, result in investors having to hold the securities until maturity, the transferred assets are still recorded in the originator's balance sheet, apart from being the originator, they also act as a distributor of the investment product, The custodian and credit manager are the same party or are affiliated parties, thus making this instrument more risky than conventional securitization. In view of the high risk, in July 2010 the CBRC stopped the informal securitization activities. The PRC Trust Law (Trust Law) guarantees the implementation of asset securitization in China, and is also supported by various regulations issued by the PBOC and CBRC. The types of assets that can be securitized are various types of loans such as mortgages, car loans, NPLs, commercial loans and small business loans. Meanwhile for corporations, it includes various types of toll ticket bills, equipment rental, electricity bills, build-transfer projects and others. However, the development of asset securitization in China is not market-driven, considering that its implementation is closely monitored by the regulator, such as the determination of the originator and the type of underlying assets that have been previously determined by the regulator. Types of credit enhancement that are commonly used are over-collateralization, determination of retained spreads and formation of subordinated tranche categories. In addition, the role of rating agencies only focuses on assessing the underlying assets of asset securitization transactions.

Furthermore, the growth of synthetic securitization, which is a form of derivative credit, has not yet developed in China, which is mainly due to the lack of support from the derivative credit market and Chinese regulatory policies (Hilbers et al., 2001)

In the ASEAN region, Thailand can be an interesting example. SMC or Secondary Mortgage Corporation was established in 1997 in Thailand under the Emergency Decree on Secondary Mortgage

Finance Corporation B.E. 2540 (1997). The main objective of establishing SMC is to establish a secondary housing finance market in Thailand in order to increase the capacity and availability of funds to build housing through asset securitization. Based on these regulations, the primary market for housing finance is a market where housing finance is formed through housing credit facilities, then the secondary market for housing finance is a market where housing loans are traded. In the secondary market, there is a mechanism through the capital market to finance the construction and marketing of housing. The Thai government allows for the emergence of a Mortgage Company, which is a company whose line of business is providing housing finance (housing loans), then the Mortgage Company will securitize assets (housing loan bills) and sell them to SMC. Previously, SMC had standardized the types of housing loans that could be securitized. Securities collateralized by mortgage bills sold to SMC will be re-marketable to investors (Hachaiyaphum, 2016). The benefits of a secondary market for housing loans in Thailand will be enjoyed by several parties, namely banks, capital markets, investors and housing developers.

In Thailand, there is also a reverse mortgage for homeowners who are more than 60 years old. Homeowners are allowed to securitize their home ownership or other immovable assets to the government through the SMC. The owners of these immovable assets will get regular monthly income based on age, collateral value and Thailand's national housing loan interest rate. This is done so that the elderly in Thailand get regular monthly income, guaranteed quality of life and reduce the burden on the government to care for them. The reverse mortgage will then be marketed by SMC in the Thai capital market (Hachaiyaphum, 2016).

Another country in the ASEAN region that already has a secondary market for housing finance is Malaysia. Cagamas Berhad is the national housing finance company responsible for the development of the secondary housing finance market in Malaysia. Established in 1986 with government seed funding to facilitate and encourage home ownership in Malaysia. The company purchases housing loans from primary lenders and raises funds from the market by issuing debt securities in the form of long-term bonds and Medium-Term Notes. Cagamas Berhad is one of the successful secondary housing finance companies. Cagamas Berhad managed to get a AAA rating and maintain a AAA credit rating from the Rating Agency of Malaysia (RAM) and Malaysian Rating Corporation (MARC) and has proven that in its two decades of operations it has never experienced problems or defaults. This is because there is a government guarantee for the bonds issued by Cagamas Berhad (Malpezzi & Mayo, 1997).

## 2. Housing Provision Policy in Indonesia

The Government of the Republic of Indonesia has a policy direction and development strategy to increase efforts to sustain economic development, through the following strategies: (i) Increasing economic growth which is continuously maintained in a positive manner by reducing disparities between regions; (ii) Increasing the level of income (per capita) and reducing the income gap between groups; (iii) Increase in employment so that the unemployment rate decreases; (iv) Reducing the poverty rate so that the number of poor people is reduced; (v) Food security includes price stabilization so that inflation rates are low; (vi) Energy security, especially increasing public access to energy, increasing efficiency and the national energy mix; (vii) Increasing access to transportation/community mobility; (viii) Application of production patterns/economic activities and consumption patterns that are efficient (not wasteful) and environmentally friendly (RPJMN 2015-2019, 2014). The second direction of development policy is to increase efforts to sustain social development, among others through a strategy to increase service affordability and access to education, health, housing, clean water and community sanitation services (RPJMN 2015-2019, 2014). Specifically to spur economic growth more specifically in terms of housing, the Government has had several specific policy directions, which are called policy directions for inclusive economic growth in an effort to increase equity, which include directing fiscal policies that support the livelihoods of the poor and vulnerable, especially public spending that is targeted social assistance such as conditional cash assistance, housing assistance for the poor, assistance for agricultural and fisherman production, assistance for improving the skills of farmers, fishermen, and other underprivileged people's businesses. The policy direction of the Government of the Republic of Indonesia in terms of providing housing infrastructure does not only stop at the availability of housing for the poor but also for workers in industrial areas, TNI soldiers and Polri (RPJMN 2015-2019, 2014).

The main problem that arises to be able to realize the direction of the development policy above is regarding the imbalance between supply and demand housing. In the housing sector, the limited capacity of developers who have not been supported by incentive regulations plus the low affordability of low-income people in building or buying houses is one of the main reasons why there are still many low-income people who do not live in livable houses. The facilitation of providing decent housing for MBR during 2005-2013, such as the construction of simple rental flats, provision of basic infrastructure and facilities, provision of housing financing liquidity facilities (FLPP) and increasing housing micro-credits are still not well targeted. This problem is getting more difficult because facilitation activities have not been accompanied by strengthening the role of the government and local governments as enablers, but rather playing a role as developers which generally will be faster and more efficient if carried out by the community and developers (RPJMN 2015-2019, 2014).

The Government of the Republic of Indonesia has given a special mandate to three State-Owned Enterprises (BUMN) in housing development, namely Perum Perumnas, PT. State Savings Bank (BTN), Tbk and PT. Sarana Multigriya Financial Persero. The role of Perumnas in building houses for MBR is still not optimal and is faced with competition from housing developers. Likewise, the State Savings Bank (BTN) and Sarana Multigriya Finansial (SMF), which are expected to be the catalyst for housing finance for MBR, still require additional liquidity.

Since 2010 the Government of Indonesia has had a program called the Housing Financing Liquidity Facility (FLPP). This regulation regarding FLPP was initially stated in Permenpera Number 14 and 15 of 2010, then amended by Minister of Public Housing Regulation (Permen) No. 04 of 2012, concerning Housing Procurement through Credit for Financing for Welfare Home Ownership with the support of Housing Financing Liquidity Facility (FLPP) and Regulation of the Minister of Public Housing No. 05 of 2012 concerning Instructions for Implementing Housing Through Credit for the Financing of Prosperous Home Ownership. Subsequently, it was amended by Regulation of the Minister of Public Works and Public Housing Number 20/PRT/M/2014 and 21/PRT/M/2014. Based on these regulations, the Government has been able to channel FLPP funds which are used to help finance the community to own a landed house for five years. years since 2010 - 2015 with a fund of IDR 16.5 trillion. The distribution of FLPP is carried out through the distribution of FLPP mortgages. FLPP (housing financing liquidity facility) is housing financing support for MBR (low-income people), to get KPRSh (Simplified Healthy Home Ownership Credit). The management of the FLPP program funds is carried out by the Kemenpera BLU-PPP (Public Service Agency for the Public Housing Financing Center) in collaboration with banking institutions that have collaborated with the Ministry of Industry. There are 16 banks, namely Bank BTN, BRI, BTN S, BNI, BRI Syariah, Bank MANDIRI, Bank MANDIRI Syariah, Bank Artha Graha, Bank Bukopin, BPD East Kalimantan, BPD North Sumatra, BPD Central Java, BPD East Java, BPD Southeast Sulawesi, BPD Nagari, BPD North Sumatra Sharia. The cooperation between the Government (Kemenpupera) and banks is carried out through PKO (operational cooperation agreements) in the context of housing procurement through credit or financing for prosperous housing. The FLPP Mortgage Program is a housing finance assistance program for low-income communities with various benefits, such as a fixed-margin interest rate of 7.25% for the life of the loan, including life and fire insurance protection and free of VAT.

Specifically for banks that will become implementing banks, both commercial banks, sharia commercial banks and sharia business units, the requirements to become implementing banks are: a) Submit a statement of interest in becoming an Implementing Bank in the context of implementing the FLPP program; b) Have a minimum value of Composite Rating Three (PK-3) in accordance with Bank Indonesia Regulations; c) Have at least 2 (two) years of experience in issuing home ownership credit/financing (KPR); d) Have infrastructure for managing credit/mortgage financing at least: (i) Having a work unit organization for managing home ownership credit/financing; (ii) Having personnel managing home ownership credit/financing; (iii) Possess information technology for credit management/home ownership financing; and (iv) Have a home ownership credit/financing policy; e) Have an adequate service network at the provincial and/or national level; f) Have a plan to issue a Prosperous KPR within 1 (one) year; g) Signing a Collective Agreement with the Deputy for Financing or an official appointed by the Minister; and h) Signing an Operational Cooperation Agreement (PKO) with PPP.

If the Implementing Bank has and fulfills these requirements, then they will be responsible for providing part of the financing for KPR Sejahtera credit/financing in accordance with the proportion of KPR Sejahtera funding. The Implementing Bank is responsible for targeting accuracy, use of FLPP funds, and credit/financing risk, and is willing to be audited by the internal supervisory apparatus of the Ministry of Public Housing and/or external supervisors in accordance with statutory regulations.

Housing financing through the FLPP and NON FLPP programs is the primary source of financing for housing development in Indonesia. The primary source of housing finance has limitations, namely the availability of funds to be channeled by banks. Banks (Government-Owned Banks, National Private Banks, Foreign Private Banks and Rural Banks) as the main players in primary housing financing rely on 'Third Party Funds/DPK' funds, where the third party funds come from demand deposits, savings and time deposits, such as seen in Table 1 (www.bi.go.id).

Table 1. Banking Third Party Funds by type 2009 - 2014 in trillion rupiah

Information	December 2009	December 2010	December 2011	December 2012	December 2013	December 2014
Current Account	465,222	535,855	652,708	767,070	846,781	934,067
Savings	585,707	733,157	898,245	1,076,830	1,212,707	1,534,098
Time deposit	899,783	1,069,811	1,234,072	1,381,298	1,604,480	1,869,005
<b>Total</b>	<b>1,950,712</b>	<b>2,338,823</b>	<b>2,785,025</b>	<b>3,225,198</b>	<b>3,663,968</b>	<b>4,337,170</b>

The largest third-party funds came from time deposits, especially time deposits with a time period of 1 month. Problems will arise if third party funds in the form of short-term deposits are used to finance long-term housing loans, in banking this condition is known as a maturity mismatch. The emergence of a maturity mismatch in banking operations will cause problems, namely liquidity difficulties and public distrust of banks. The government has arranged so that there is no maturity mismatch through the Loan to Deposit Ratio (LDR) setting. The Government of the Republic of Indonesia through Bank Indonesia has periodically issued Bank Indonesia Regulations regarding this LDR, namely Circular Letter of Bank Indonesia Number 15/40/DKMP dated September 24, 2013 Regarding the Implementation of Risk Management in Banks Providing Credit or Financing for Property Ownership, Credit or Financing Property Backed Consumption, and Motor Vehicle Loans or Financing amended by Bank Indonesia Regulation Number 17/10/PBI/2015 concerning Loan To Value Ratio Or Financing To Value Ratio For Property Loans Or Financing And Down Payments For Motor Vehicle Loans Or Financing. The regulation will regulate the Loan to Value (LTV ratio) ratio, namely the ratio between the credit value that can be given by the Bank to the value of the collateral in the form of property at the time of lending based on the latest appraisal price; financing to value ratio (FT ratio) which is the ratio between the value of financing that can be provided by the Bank to the value of collateral in the form of property at the time of financing based on the last appraisal price. Bank Indonesia will set limits on the LTV Ratio or RTV Ratio for conventional property loans and sharia property loans, in the form of buying landed houses, flats, shop houses, home offices.

The limited availability of third-party funds and the precautionary element from the banking regulator and the banking industry in the context of lending has resulted in limited funds being channeled into housing development. The Government of the Republic of Indonesia was then moved to utilize secondary housing financing facilities, following what has been implemented by the United States Government.

### 3. Legality of Secondary Financing for Housing

A secondary mortgage facility company was established specifically to raise long-term funds which will then be channeled to financing institutions, namely banks that experience funding gaps. The financing facility provided by SMF is a financing facility specifically organized to be given to financing institutions (banks) in the context of lending through the housing loan scheme. This financing system is growing rapidly in the United States, followed by developments in other countries in the world such as France, Latin America, Australia, New Zealand, Japan, Hong Kong, Thailand, Philippines, Taiwan, Malaysia and Singapore. This process is often referred to as the asset securitization process.

Securitization has several definitions, among others, according to Joan Barmat, securitization is an open market for marketing collateralized financial instruments (financial securities) in the form of collateral for cash claims and claims for collateral for immovable property (Joan Barmat, 1990). Leon T Kendal defines securitization as a process to package individual debts and other debt instruments, then convert the packaging into securities to increase the status or rating of these securities to third party investors (Kendall, 2000).

The securitization process in Indonesia has been initiated since 1998 with the Decree of the Minister of Finance No. 132/KMK.014/1998 concerning Secondary Housing Financing Facilities, which regulates business fields, procedures for establishment and licensing, sources of funds, prudential regulation (prudence principle), supervisors and supervisors, sanctions. Unfortunately, this provision does not work perfectly because it is not followed by the realization of the establishment of an SMF institution that carries out the secondary housing financing in question. Until then in 2005 a series of interrelated regulations emerged to support the establishment of the SMF institution and the trading of securities issued by the SMF.

The legal basis for asset securitization and trading of asset-backed securities is Law of the Republic of Indonesia No. 8 of 1995 concerning Capital Market Article 1 paragraph 5 which states that securities include "securities, namely debt acknowledgments, commercial securities, stocks, bonds, proof of debt, Participation Units in Collective Investment Contracts, futures contracts on securities and any derivatives of securities".

Then through Capital Market Supervisory Agency Regulation no. IX.K.1.1 Attachment to Decision of the Chairman of BAPEPAM no Kep -28/PM/2003 dated July 21, 2003 concerning Guidelines for Collective Investment Contracts for Asset Backed Securities, in article 1 letter (a) it is stated that KIK EBA is a contract between an investment manager and a custodian bank that binds asset-backed securities holders, where the investment manager is authorized to manage the collective investment portfolio and the custodian bank is authorized to carry out collective custody.

KIK's participation unit whose portfolio consists of financial assets in the form of claims arising from commercial securities, leases, conditional sale and purchase agreements, installment loan agreements, credit card claims, lending including mortgages for housing or apartments, debt securities that are guaranteed by the Government, means of credit enhancement/cash flow as well as equivalent financial assets and other financial assets related to these financial assets. From this definition, it can be concluded that what is included in the KIK EBA are securitized securities originating from assets that have a stream of cash flow in the form of claims arising from commercial securities, credit card claims, claims arising in the future (future receivables), and the provision of credit, including KPR and KPA.

The granting of a KPR or KPA is including a bill or collection of mortgage receivables that can be securitized so that data is traded through the secondary market, what is traded is the right to collect a collection of mortgage receivables and the mortgage lending bank as the original creditor (originator) to a special institution established for that purpose ( special purpose vehicle) which buys it at the same time issues securities with asset collateral for the mortgage receivables collection.

PT Sarana Multigriya Finansial (Persero) is a special institution that is given the authority to carry out this task, as a special purpose vehicle that buys and issues securities with guaranteed assets for the collection of mortgage receivables. The special purpose vehicle or secondary mortgage company required to perform asset securitization is established under the Government Regulation of the Republic of Indonesia Number 5 of 2005 concerning State Equity Participation of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Secondary Financing of Housing, in article 1 it is stated that there is a need for alternative financing other than banks as providers of funding for housing needs, namely the establishment of a secondary housing finance company. Article 2 of this Government Regulation states that the purpose and objectives of the limited liability company as referred to in Article 1 are specifically to carry out: a) Financing business activities in the form of secondary housing financing facilities at banks and financial institutions that provide housing loans; b) Collect public funds to finance secondary housing financing activities by issuing long-term and or short-term securities; and c) Other activities in order to support the activities as referred to in letters a and b above.

The implementation of Government Regulation No. 5 of 2005 concerning the Republic of Indonesia State Equity Participation for the Establishment of a Limited Liability Company (Persero) in the Sector of Secondary Housing Financing is carried out by issuing Presidential Regulation No. 19 of 2005 concerning Secondary Housing Financing. Article 1 paragraph (13) states that securitization is the transformation of illiquid assets into liquid ones by purchasing financial assets from original creditors and issuing asset-backed securities. This securitization process will be submitted to a vehicle called a special purpose vehicle or secondary mortgage company, namely a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and simultaneously issue Asset Backed Securities.

Presidential Regulation No. 19 of 2005 also states that the purpose of secondary housing financing is to provide financing facilities in order to increase the capacity and sustainability of housing finance that is affordable by the community. Furthermore, Presidential Regulation No. 19 of 2005 also provides details regarding the company in question, among others in article 15 that the government will establish a Secondary Housing Company as the intended financial institution; which must be in the form of PT; Then it also regulates the limits of actions that cannot be taken by the company, namely not being able to make direct participation (become a shareholder) or purchase company shares through the capital market.

This regulation can be said to be the legal basis for the establishment of PT Sarana Multigriya Finansial as a Persero which is engaged in secondary housing financing with initial capital from state assets separated by Rp.1 trillion (one trillion rupiah) from the APBN for the 2005 fiscal year. In 2008, the Government made amendments to Presidential Regulation No. 19 of 2005 concerning Secondary Financing of Housing by issuing Presidential Regulation No. 1 of 2008 concerning Secondary Financing of Housing.

The existing legal umbrella, which provides a legal basis for the issuance and trading of asset securitization securities and the institution that is given the task, mandate and authority to be able to issue and trade asset securitization securities with the main purpose of housing secondary financing, still leaves several problems, including: Another is the absence of a legal umbrella that requires every institution that carries out primary housing financing activities to transact with SMF to maximize secondary housing financing. If the main objective for secondary housing financing is not achieved optimally, then the SMF intended to be established will experience economic obstacles, although there are incentives in article 20 but the ten-year time limit to be able to operate in the primary housing finance market is felt to be insufficient. If it can be assessed economically that the participation of more players as primary housing finance providers, then SMF's duties as primary housing finance providers should be extended or not set with a time limit.

#### **4. Constraints on the Utilization of Mortgage Backed Securities and Secondary Mortgage Facilities in Indonesia**

PT. SMF (Persero) was established with the aim of providing liquidity facilities in housing secondary financing (KPR) and securitizing mortgage assets to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). To obtain more comprehensive data from the financial industry regarding the role and potential of mortgage backed securities and secondary mortgage facilities by PT SMF Persero, this study also uses focus group discussions (FGD) and in-depth interviews. The FGD was held on December 4, 2014 at the Perbanas Jakarta office with representatives from 12 (twelve) national banks and non-bank financial companies, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, BCA Bank, Panin Bank, BII Maybank, Permata Bank; and MNC Multi Finance. In addition, in-depth interviews were also held on 2 and 3 December 2014 with several financial institutions that have become or will become potential investors for SMF products, namely the President Director of the Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk.

From FGDs and in-depth interviews, it can be seen that with respect to PT SMF Persero and secondary housing financing, the profile of the financial industry can be divided into three profile categories.

The first is the profile of the financial industry that has used SMF products (already become SMF consumers). PT SMF Persero's products provided are liquidity facilities in secondary housing financing (KPR) and mortgage asset securitization to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). Several financial institutions have utilized liquidity facilities in housing secondary financing, including Bank BTN, Bank Muamalat, Bank DKI and MNC Multifinance. These banks and financial institutions experience several advantages with the liquidity facilities provided by SMF. First, SMF's liquidity facility can increase the capacity of this financial institution to finance mortgages. Second, through the provision of mortgages, this financial institution will receive a collection fee that can be used to increase profits, so this will automatically increase capital. Third, the liquidity facility from SMF can overcome the maturity mismatch problem that is commonly faced by financial institutions in providing mortgages. Maturity mismatch occurs when players in the banking industry and financial institutions use short-term third-party funds (DPK) to finance mortgages which are long-term loans. Although some of the above financial institutions have utilized liquidity facilities from SMF, the proportion of SMF funds is still very small in the financing portfolio of these banks and financial institutions (between 10%-15%). The main thing that is of concern to users of this liquidity facility is that the 'price' given by SMF for secondary mortgage financing is perceived to be relatively high. In other words, the pricing provided by SMF for liquidity facilities is not competitive because it can reduce potential profits for banks and financial institutions that use them. Besides the 'pricing' problem, Bank BTN also complained about the limited funds available at SMF for financing liquidity. SMF's limited funds also make banks and financial institutions still rely on third party funds (DPK) in financing their mortgages.

The second is the profile of the financial industry that has the potential to become SMF consumers. Several financial institutions, such as general insurance and BPJS, have the potential to become investors for SMF by utilizing EBA securitization products. However, there are things that prevent this financial institution from using SMF's products. First, it relates to the rules from OJK. Until now, there is no regulation from OJK that regulates the investment portfolio of general insurance companies in KIK EBA which is included in Risk Based Capital (RBC) for insurance. According to OJK regulations, what are included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate, maximum 20% of total investment), shares (maximum 10%).

Lastly, the third is the profile of the financial industry that has not become a potential SMF consumer. Financial institutions, both government-owned and private, which until now have not become SMF consumers have the main reason that mortgage financing is not the focus of the financial institution's business. Among these financial institutions do have mortgages, but the portion is very small, mortgage securitization is carried out, these banks take advantage of idle funds that are cheap. In addition, the reluctance of these financial institutions to invest in EBAs is because they are concerned about the risk of issuance. Investors doubt the liquidity of the EBA as a prime mortgage. Even though this fear is actually unfounded, the condition for KIK EBA is smooth credit. Every year this credit will be evaluated and if it is not current it will be exchanged. In other words, the reluctance of financial institutions to use SMF's services is due to their ignorance about SMF's products. Besides that, there is no regulation from OJK regarding portfolios in KIK EBA that are included in the calculation of RBC for insurance, which have been included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate) a maximum of 20% of the total investment, shares (max 10 %). Banking as an economic institution that is heavily regulated will be monitored for its operations by many parties, so that when developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and for the general public. In terms of asset securitization (issuance of asset-backed securities), the banking sector requires that the issuance be categorized as hedging (Suadi, 2021; Hasan & Mustafa, 2022).

The reluctance of the financial industry to utilize secondary housing facilities also leads to the condition of PT SMF Persero as the sole provider of housing secondary financing. Weaknesses from the internal side, PT SMF (Persero) are, among others, due to: 1) Funds available for refinancing are relatively limited; 2) 'Pricing' or the price set by PT SMF Persero for liquidity facilities is considered to be relatively high, making it less competitive; 3) Lack of socialization of the existence of PT SMF Persero, many banks and non-bank financial institutions are not aware of the existence, function and role of PT SMF Persero; 4) The term of the loan facility (refinancing) from PT SMF Persero is a maximum of 15 years, it is felt that it is not financially useful for the business; 5) The securities rating

issued by PT SMF Persero is still at AA+; 6) The KPR EBA is not yet known as securities in the banking industry and financial institutions.

Other factors that arise from the financial industry's reluctance to utilize secondary financing facilities are because: 1) Banking and multi-finance companies prioritize the use of third party funds for mortgage financing; 2) Several banks organize their own securitization for housing finance; 3) The reluctance of mortgage lenders, both banks and multi-finance companies, to take advantage of the Securitization and Refinancing facilities provided by PT SMF Persero because they are related to problems in financial recording (accounting); 4) Regulations from OJK for financial institutions, such as general insurance, do not yet regulate investment in the form of EBA.

##### **5. Mortgage Backed Securities and Secondary Mortgage Facilities in Housing Secondary Financing**

In order to build a secondary housing finance market through securitization, this is done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. Secondary financing sources for housing, apart from own capital, are also obtained from the issuance of Asset Backed Securities in the form of Debt Securities and Participation Letters. In order to issue Debt Instruments, the Special Purpose Vehicle (SPV) acts as the issuer. Special Purpose Vehicle (SPV) is a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and at the same time issue Asset Backed Securities. Meanwhile, in the context of issuing the Participation Letter, the Company or the Trustee shall act as the publisher. With regard to the unprepared primary housing market, so that there is no set of eligible mortgage assets for securitization, the Company may provide loans to banks or financial institutions to issue mortgages with the requirements of using standardized documents set by the Company. In this regard, the loan period is adjusted to the average mortgage term. Thus, it is necessary to change the loan term by the Company.

Fulfilling the increasing housing needs of the community and to stabilize the housing market, the government established a Secondary Mortgage Facility (SMF) by issuing the Minister of Finance Decree of the Republic of Indonesia N0.132/KMK.014/1998 dated 27 February 1998 concerning the Company's Secondary Housing Financing Facility. According to article 1 of the Decree of the Minister of Finance of the Republic of Indonesia N0.132/KMK.014/1998 dated February 27, 1998, what is meant by the Secondary Mortgage Facility is a medium or long term loan to a bank that provides mortgages with collateral in the form of claims for the mortgage. and Mortgage on house and land. PT Sarana Multigriya Finansial Persero builds and develops the secondary housing finance market in Indonesia to increase the capacity and sustainability of housing finance and overcome the maturity mismatch. This is done by channeling long-term funds from the capital market to mortgage lenders through securitization transactions and loan distribution. Through these two transactions, the volume of mortgages will be increasing and sustainable, so that they can support decent and affordable home ownership for the people of Indonesia.

The Indonesian Financial Services Authority in 2014 issued a regulation to further encourage the use of asset securitization through the issuance of derivatives with securities known as EBA SP (asset-backed securities in the form of participation letters). Financial Services Authority Regulation number 23/POJK.04/2014 concerning Guidelines for Issuance and Reporting of Asset-Backed Securities in the Form of Participation Letters for Secondary Financing for Housing.

Asset-Backed Securities in the Form of Participation Letters, hereinafter referred to as EBA-SP, are Asset-Backed Securities issued by Issuers whose portfolio is in the form of a Collection of Receivables and is proof of proportional ownership of the Collection of Receivables which are jointly owned by a group of EBA-SP holders. Fixed Cash Flow EBA-SP is an EBA-SP that provides its holders with certain income, such as debt securities holders. EBA-SP Variable Cash Flow is an EBA-SP that provides its holder with an indefinite income such as to the holder of equity securities.



The parties in the issuance of the EBA SP, namely the Issuer, are the Parties who issue the EBA-SP in the context of Secondary Financing for Housing. Secondary Housing Financing is the implementation of medium and/or long-term fund distribution activities to the Originating Creditors by purchasing the Collection of Receivables from the Originating Creditors and selling them through the issuance of EBA-SP; or purchase of Collection of Receivables from Original Creditors from the issuance of EBA-SP. There are also several parties who are indirectly involved in the EBA SP issuance process, namely: i) Servicer is a party who is responsible for processing and supervising payments made by debtors, taking initial actions such as warnings because the debtor is late or fails to fulfill his obligations, conducting negotiations, resolving claims against debtors and other services specified in the service provision agreement; ii) Original Creditor (Originator) is a bank or other financial institution that owns and sells its Financial Assets to the Issuer in order to issue EBA-SP; iii) Supporting professions consist of Accountants, Legal Consultants, Notaries, Securities Rating Companies, Trustees, Custodian Banks.

The objects of securities in the issuance of EBA SP which consist of: i) Collected Receivables are all Financial Assets that have been purchased by the Issuer from the Originator and sold to the EBA-SP holder through the issuance of the EBA-SP; or from the issuance of the EBA-SP; ii) Financial Assets are receivables obtained by the Original Creditor from the provision of Home Ownership Credit to the debtor, including the collateral/guarantee along with the mortgage attached to it, iii) Home Ownership Credit, hereinafter abbreviated as KPR, is a credit facility issued by the Original Creditor to the debtor to purchase a house ready to live in; iv) EBA-SP Credit/Cash Flow Improvement Facility is a facility that aims to improve the quality of Collection of Receivables for payment to EBA-SP holders.

The issuance of EBA SP through an agreement process carried out by the parties, based on the guidelines for issuing EBA SP in POJK no 23/04/2014. EBA-SP offered through a Public Offering must be rated by a Securities Rating Company.

Issuance and trading of EBA SP through a sale and purchase process must be supported by the opinion of a Legal Consultant, must meet the sale and drop off requirements according to generally accepted accounting principles and must be carried out consistently and supported by the opinion of an Accountant.

For EBA SP issued from the source of the original collection of receivables, the Issuer or Original Creditor can only purchase Financial Assets in the EBA-SP Receivable Pool at a maximum of 10% (ten percent) of the total value of the Collected Receivables. The EBA-SP holder's rights to the Collection of Receivables must be stated in the Prospectus or EBA-SP Disclosure Document and supported by a legal opinion from a Legal Consultant stating that the EBA-SP holder's rights are as contained in the EBA-SP Prospectus or Disclosure Document.

EBA SP issuance must also make a prospectus as a liaison medium between investors and issuers. The EBA-SP Prospectus must contain all details of Material Information or Facts regarding the EBA-SP and the required information and/or information in this Financial Services Authority Regulation. The Prospectus is prohibited from containing untrue information about Material Facts or not containing correct information about Material Facts required so that the Prospectus does not provide a misleading picture. The prospectus must be made in such a way that it is clear and communicative. The presentation and delivery of important information in the Prospectus is not obscured by less important information which causes the important information to escape the attention of the reader. The most important facts and considerations should be summarized and disclosed at the beginning of the Prospectus. The order of submission of facts in the Prospectus is determined based on the relevance of the facts, and is not determined based on the order as stated in this Financial Services Authority Regulation. Disclosure of Material Information or Facts and/or the use of photos, diagrams, and/or tables in the Prospectus is prohibited from providing a misleading image.

Original Creditors in order to issue EBA-SP, must prepare Financial Assets that meet the requirements set by the Issuer; submit KPR documents for inspection by the Issuer or their proxies; prepare accurate information regarding the Collection of Receivables or other information required by the Issuer or its proxies; guarantee the correctness of information, data, and documents related to Financial Assets; and submit information, data, and documents to the Issuer if necessary. The Originating Creditor is responsible for the legal limits of the Financial Assets sold and their documents;

and to provide compensation for losses due to the invalidity of the sold Financial Assets and their documents.

PT SMF Persero can build a secondary mortgage market through securitization, which can be done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. The emergence of the new securities regulations referred to as EBA SP above will greatly assist PT SMF Persero to be able to carry out its duties to perform asset securitization by issuing mortgage backed securities. The things that need to be done so that PT SMF Persero as a government institution that is given a special task of conducting housing loan securitization is to provide greater capital for PT SMF Persero so that it can carry out the task of securitizing housing loans into EBA SP, and the next task is for stock exchange regulator in Indonesia to be able to build a secondary market, so that EBA SP is attractive for investors to buy and resell.

As stated by PT. Mandiri Pension Fund that PT SMF Persero should be able to play an active role in becoming a market creator or secondary market creator for these asset-backed securities, so that investors are more interested in investing in buying EBA that has been issued and the issuance is facilitated by PT SMF Persero.

### Conclusion

The legal aspects to support the birth and operation of mortgage backed securities and secondary mortgage facilities in Indonesia are quite complete. However, the operational use of mortgage backed securities and secondary mortgage facilities carried out by PT Sarana Multigriya Finansial Persero experienced problems due to several things, namely the lack of interest in the financial industry due to the asset securitization implementing factor and due to the character factor of the securities issued. So there needs to be socialization to the banking industry and financial institutions regarding the tasks and products issued by PT SMF Persero, because there are still many banks, insurance companies, pension fund companies, who are not familiar with PT SMF Persero's products. A maximum socialization effort is needed so that the financial industry and investors, both investors, are more familiar with mortgage backed securities and secondary housing financing facilities implemented by PT SMF Persero.

On the other hand, the financial industry also requests that the costs of issuing EBA and EBA SP securitization of housing loans by PT SMF Persero can be carried out at a "pricing" that is not too expensive. So, they will choose this product as a primary source of housing financing. The last thing that must be carried out by the Government of the Republic of Indonesia is the creation of a "secondary market" to trade EBA SP originating from the housing loan. So that the EBA SP product does not only stop at the primary market but can also be traded on the secondary market, which will be very attractive to investors.

Finally, with attractive products, large amounts of funds offered, competitive pricing, housing loan securitization carried out by PT SMF Persero can help the Government overcome the housing backlog.

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# FINANCIAL AND LEGAL BARRIERS IN IMPLEMENTING SECONDARY MORTGAGE FACILITIES IN INDONESIA

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**Abstract** - The research is motivated to analyze mortgage-backed securities to solve the housing supply backlog problem in Indonesia. The first problem is regarding the legality of mortgage backed securities in Indonesia, the second problem is about the disinterest of the housing industry in Indonesia to take advantage of mortgage backed securities, and the second problem is optimizing existing resources to make mortgage backed securities more attractive. Since its establishment in 1998 until 2015 the mortgage backed securities or secondary housing financing facility has not been maximally utilized by the financial industry in Indonesia as an alternative source of funds to finance the provision of housing. The financial industry is still making maximum use of primary housing financing by providing loans whose funds come from third party funds. Mortgage backed securities are not attractive to the financial industry because the subject of implementation, namely PT SMF Persero, is less well known and because there are doubts about the financial benefits of mortgage backed securities for the financial industry and investors. This research is based on empirical studies conducted directly on the housing finance provider industry sector in Indonesia. A major breakthrough was made by creating new securities in the Indonesian capital market that can make mortgage backed securities more attractive, namely asset backed securities- securities participation (EBA SP), in this way mortgage backed securities are expected to be traded on the secondary market. The legal aspects to support the birth and operation of mortgage backed securities in Indonesia are complete, but the operational use of mortgage backed securities is experiencing problems due to the lack of interest in the financial industry in the issuance process and the character factor of the securities issued. The financial industry providing housing finance in Indonesia demands that the pricing of the issuance of mortgage backed securities and the trading process be made more attractive to investors.

**Keywords:** mortgage-backed securities, funding, financial barriers, legal impediment, Indonesia

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#### Introduction

Housing and settlements are one of the basic human needs, having a strategic function as a center for family education, cultural nurseries, and improving the quality of future generations. The government's ability to meet the needs of housing and settlements is relatively very limited. Community resources and potentials need to be developed to be able to meet their housing and settlement needs independently, supported by government efforts through the creation of a conducive housing provision climate.

The Government of Indonesia has a National Medium-Term Development Plan 2015-2019, which includes a plan to provide housing in Indonesia. Fulfillment of decent housing supported by adequate



infrastructure, facilities and utilities needs special attention. Inequality between supply and demand is still a major problem in the provision of basic infrastructure, especially for low-income people (MBR). In the housing sector, the limited capacity of developers has not been supported by incentive regulations. Low-income communities also have a problem, namely the low affordability of building or buying a house, so that they cannot live in decent houses. The shortage of providing housing needs or known as the housing backlog has led to new innovations so that the problems that hinder the provision of housing are unraveled, among others by providing capital financial instruments for housing finance.

Since 2010 the Government of Indonesia has had a program known as the Housing Financing Liquidity Facility, namely channeling housing loans for simple and very simple houses through the banking system. Housing loans that have been disbursed, both from the FLPP program and non-FLPP programs such as KPR and KPA, can theoretically be turned into a source of funds by means of securitization, known as mortgage backed securities (MBS).

Mortgage backed securities are a way to expand the sources of financing for housing development. It has been known in the world since 1934 in the United States, initially the pattern of securitization of housing loans was carried out in order to revive the United States economy which was slumped during the Great Depression, at which time people's incomes declined. drastically as well as house prices. This condition has resulted in banks as owners of housing loans experiencing liquidity difficulties. So finally, the United States Government decided to establish a Government Sponsored Enterprise to buy mortgages or housing credit guarantees owned by banks in the form of securities. The securities will then be re-marketed in the form of a secondary mortgage. Mortgage-based securities that have been attempted to be used as an alternative source of funding for housing finance in Indonesia have not worked as they should. From 1998 to 2015 this secondary housing financing facility was not widely known and used by primary housing finance providers and other investors.

There are 3 problems that will be analyzed in this paper. The first problem is regarding the legality of secondary housing financing (SMF) in Indonesia. The second problem is to find out why housing loan holders are not interested in issuing mortgage backed securities and why investors are not interested in investing in mortgage backed securities in Indonesia. The third problem is how to optimize all available resources to make mortgage backed securities more attractive to issue and trade in both the primary and secondary markets, so that mortgage backed securities as securities will be more financially attractive.

This paper is prepared based on a non-doctrinal research in which law is not conceptualized in moral philosophy as a norm *ius constituendum* and as a norm *ius constitutum*, but laws and statutory regulations are empirically observed in reality. The approach used is the socio legal approach or socio legal approach, which represents the existence of law in the practice of community life. The types of data used are primary data and secondary data. Primary data were obtained from field research conducted by means of FGDs and direct interviews with resource persons. The FGD was held on December 4, 2014 at the Perbanas Building Jakarta which was attended by representatives of the Indonesian national financial industry, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, Bank BCA, Bank Panin, BII Maybank, Permata Bank; and MNC Multi Finance. During the FGD, the participants were asked the same questions in turn regarding the understanding of secondary housing finance, the use of secondary housing finance by securitizing housing mortgage bills from FGD participating banks, as well as regarding the existence of PT Sarana Multigriya Financial (SMF) Persero. In-depth interviews were conducted on 2 December 2014 with the President Director of Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk., the questions asked were the same, namely understanding of financing secondary housing, the use of secondary housing finance by securitizing housing bills for the main source of housing loans and regarding PT Sarana Multigriya Financial (SMF) Persero.

## 1. Literature Review

Initially, the emergence of asset securitization in America was driven by government programs that sought to increase the liquidity of the residential mortgage market. To realize this program, the



government formed the Federal Home Loan Bank in 1932, which provided housing credit facilities for the American people. Then to form the secondary mortgage market, the American government established three institutions, namely: 1. The Federal National Mortgage Association (FNMA) or known as Fannie Mae in 1938, 2. The Government National Mortgage Association (GNMA) or known as Ginnie Mae designation in 1968 which is a fraction of Fannie Mae and 3. The Federal Home Loan Mortgage Corporation (FHLMC) otherwise known as Freddie Mac in 1970. These three institutions have two main functions in developing the secondary housing market, namely being a sponsor for the issuance of mortgage-backed securities by banks, and acting as guarantors for investors, namely providing assurance on the smooth and timely payment of interest and principal to investors (The Congress of the United States, the Congressional Budget Office : Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market, December 2010).

The first time the securitization of assets in the form of mortgage-backed securities with the underlying asset in the form of mortgages was issued in 1968 through Ginnie Mae. Then asset securitization techniques developed and in 1985 successfully issued securities with underlying assets in the form of car loans. Then, the development of asset securitization transactions in America has increased very rapidly, both in the securitization market, types of underlying assets, forms and mechanisms (Fabozzi et al., 2000).

The rapid growth of the securitization market since 1968, which was marked by the development of volume, number of originators, types of underlying assets and forms of securitization, subsequently experienced difficult times following the emergence of the sub-prime mortgage crisis in 2007. The highest growth in the sub-prime mortgage market occurred in the period 2001 to 2006. This growth was triggered by, among other things, high investor interest in high-yielding investment products and support from government institutions such as Fannie Mae, Ginnie Mae and Freddie Mac. On the other hand, when securitization grows rapidly, the quality of the securitization market decreases significantly due to the characteristics of various parties and factors involved in the transaction process, namely: 1). Lending banks loosen credit requirements such as high loan to value ratios, 2). Bad debtor quality, such as low loan score, high level of indebtedness, low ability to provide data and documentation, 3). Loans such as product type, installment terms, loan amount, higher loan interest rates than prime loans and 4). Macroeconomic conditions such as rising house prices, household income and rising unemployment (Keys et al., 2009). The sub-prime mortgage crisis has actually been detected and recognized by the parties, however, the deterioration of the quality of the securitization market is covered by the tendency of rising house prices from 2003 to 2005. The various types of asset securitization development referred to, the securitization market is dominated by the form of Mortgage-Backed Securities-MBS guaranteed by the three US government institutions, then Asset-Backed Securities-ABS with underlying assets in the form of credit card bills, car loans, other consumer credit and Collateralized Loan Obligation-CLO. A total of 3,650 MBS was issued for €715.21 million, followed by 2,427 ABS issued for €363.19 million and finally 2,504 CDOs were issued for €316.72 million (Gramlich, 2007).

Supervision of the implementation of asset securitization in America does not refer to special laws and regulators but is subject to state and federal regulations such as the Securities Act of 1933, Securities Exchange Act of 1934, Trust Indenture Act of 1939, Investment Advisors Act of 1940, Investment Company Act of 1940, Internal Revenue Code of 1986, US Bankruptcy Code and the Dodd-Frank Wall Street Reform and Consumer Protection Act. The regulators with the authority and responsibility are the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (Hancock & Passmore, 2011)

The reasons for conducting securitization transactions are, among others, to obtain cheaper funding, benefits from the balance sheet structure, savings in the amount of capital, alternative sources of funding, profit from the difference between the cost of funds in the capital market and the proceeds from the sale of assets through securitization. To maintain a sufficient level of capital, the originator in the form of a bank must comply with other regulations, namely the Basel rule, which states that banks must maintain a sufficient level of capital when conducting asset securitization transactions. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act regulations will regulate originators in



the form of financial institutions, to increase the amount of capital in order to increase the ability to absorb risk in the event of a loss (Ambrose & Pennington-Cross, 2000).

In America itself, the form of SPV can vary depending on tax factors, originators and investors involved in the transaction. The two most commonly used forms of SPV are Trusts and Limited Liability Companies (LLCs) and the least used are Limited Partnerships. In this case, the SPV can be owned by the originator or by an independent party. The use of SPV by independent parties can be used as one of the steps to avoid the bankruptcy risk of the SPV if the courts in America treat the underlying assets in securitization activities as still owned by the originator. To avoid this risk, it is necessary to believe that SPV assets are separate from the originator which can be seen from indicators such as separate financial statements and legally the SPV is an independent party.

To respond to the financial crisis, the American government carried out various initiatives including two main programs aimed at restoring liquidity and confidence in the financial industry, namely: 1). The Term Asset-Backed Securities Loan Facility (TALF) started in November 2008 and by the time this program ended in June 2010 the outstanding loan amount was US\$43 billion, and 2). the Public Private Investment Program (PPIP), was launched in March 2009 and started investing in September 2009. The source of funds for the PPIP program is a combination of the Troubled Asset Relief Program (TARP), private investors and loans from TALF. The PPIP's working mechanism is by buying troubled assets owned by banks and as of May 1, 2011 the amount has reached US\$1 trillion and eight PPIPs have been formed. Although the volume of securities transactions was lower than the volume before the financial crisis, CLO and ABS transactions have started to grow in 2011. In future developments, the promulgation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010 will change the financial industry given its broad impact on business actors, performance and development in America. The implementation of the said law will affect asset securitization activities because there are tightening regulations on the roles of rating agencies and investment managers, risk retention and capital adequacy ratios. In addition, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 requires national registration of companies that are mortgage originators and the Credit Card Accountability Responsibility and Disclosure Act of 2009 also asks to stop imposing egregious fees on credit card holders (Barth et al., 2004)

The parameters of the ideal secondary housing finance market are the stability of macroeconomic conditions; competitive market structure; standardization of mortgage instruments; servicing techniques from mortgage-backed securities issuing institutions and providers of secondary mortgage facilities as well as government policies (Lea & Bernstein, 2000).

Mortgage backed securities and secondary mortgage facilities have also been recognized and practiced in several countries in the world. An example is France. Trading in Asset Backed Securities (EBA) in France has been regulated by The Securitization Law No.88-1201 dated December 23, 1988 and gave rise to the term *Fonds Commun de Créances* (FCC) or French SPV. This is in contrast to the UK and Germany which do not have specific laws regarding asset securitization. Subsequently, several amendments to the Law have been made and the most recent was the 2008 Ordinance which aims to improve the quality of securitization implementation and change the name of the FCC to *Fonds Commun de Titrisation* (FCT). The Financial Markets Authority (*Autorité des Marchés Financiers*) - AMF is the main agency authorized and responsible for the conduct of securitization activities in France (Farruggio & Uhde, 2015).

FCT's legal status is co-ownership, without any legal personality such as having no capital, shareholders, management or employees, but only consisting of investment managers and custodians. Thus, FCT will be free from bankruptcy problems (remote bankruptcy). In further developments, FCT securitizes various types of claims such as credit card bills, trade receivables, commercial credit and consumer loans, mortgage claims (KPR) and insurance risk claims with the exception of claims that are categorized as default, doubtful and in the process of legal litigation. In addition, the technique of transferring assets from the originator to the FCT is carried out through the use of special documents (*bordereau*) for cost and efficiency considerations. In general, the formation of the FCT is carried out in

France and in carrying out securitization activities always refers to various regulations issued by the AMF and the Monetary and Financial Code. However, if there is an FCT formed abroad, the FCT cannot operate in France. This type of credit enhancement is carried out to increase the rating of securities issued, such as: 1. Guarantees provided by the originator, affiliated parties of the originator or by insurance companies, 2. Cash reserve funds and 3. Over-collateralization (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), *Association Française des Trésoriers d'Entreprise* (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

In subsequent developments, the 2007 American sub-prime mortgage crisis had a significant impact on the decline in transaction volume and investor interest in asset securitization activities in France. The French regulator then refined the practice of asset securitization by amending the Securitization Law through the 2008 Ordinance. Furthermore, in the September 2009 Quarterly Review, the Bank for International Settlement reviewed the rules of the game to reactivate and strengthen the securitization process by highlighting several aspects such as the limited level of complexity and transparency of transactions and the high dependence on ratings from rating agencies. To simplify the securitization process, the authorities set a standardization of the structure, including reducing the number of tranches. In addition, new standards have been set regarding disclosure and reporting procedures as well as supervision of rating companies (Association of Corporate Treasurers (United Kingdom), Association for Financial Professionals (United States), *Association Française des Trésoriers d'Entreprise* (France). 2004. Exposure Draft: Code of Standard Practices for Participants in the Credit Process).

Another country that can be used as a comparison is China (People's Republic of China). The implementation of asset securitization in China is carried out through two methods, namely: 1. Credit asset securitizations, using trusts as SPVs whose implementation is under the authority of the capital market institutions, the People's Bank of China (PBOC) and the central bank, the China Banking Regulatory Commission (CBRC), and 2. Corporate asset securitizations, using customer asset management plans as SPVs, and are under the supervision of the China Securities Regulatory Commission (CSRC). The types of securitization that have been used as pilot projects are Residential Mortgage-Backed Securitizations (RMBS), Collateralized Loan Obligation (CLO) transactions, Non-Performing Loan (NPL) securitization, Commercial Mortgage-Backed Securitizations (CMBS) and car loan securitization. The majority of these transactions were retained securities, i.e. securities in the junior tranche category were still held by the originator (Calice, 2011).

The first pilot asset securitization project was carried out in December 2005, initiated by the China Construction Bank and China Development Bank. Then in 2006, the number of securitization transactions reached CNY 3.07 billion. The success of the first round of transactions continued in the second pilot project, which was dominated by private banks. Furthermore, during 2009 asset securitization activities experienced a vacuum because nothing was approved by the regulator. In its development, asset securitization activities in China are not only limited to the banking sector but also extend to the telecommunications, infrastructure and leasing business sectors. Then, during 2008 to 2009 there was known informal securitization, in which the bank (originator) packaged a group of loans into investment products which were then sold to individual investors. However, its features, such as no secondary market, result in investors having to hold the securities until maturity, the transferred assets are still recorded in the originator's balance sheet, apart from being the originator, they also act as a distributor of the investment product, The custodian and credit manager are the same party or are affiliated parties, thus making this instrument more risky than conventional securitization. In view of the high risk, in July 2010 the CBRC stopped the informal securitization activities. The PRC Trust Law (Trust Law) guarantees the implementation of asset securitization in China, and is also supported by various regulations issued by the PBOC and CBRC. The types of assets that can be securitized are various types of loans such as mortgages, car loans, NPLs, commercial loans and small business loans. Meanwhile for corporations, it includes various types of toll ticket bills, equipment rental, electricity bills, build-transfer projects and others. However, the development of asset securitization in China is not market-driven, considering that its implementation is closely monitored by the regulator, such as the determination of the originator and the type of underlying assets that have been previously determined by the regulator. Types of credit

enhancement that are commonly used are over-collateralization, determination of retained spreads and formation of subordinated tranche categories. In addition, the role of rating agencies only focuses on assessing the underlying assets of asset securitization transactions.

Furthermore, the growth of synthetic securitization, which is a form of derivative credit, has not yet developed in China, which is mainly due to the lack of support from the derivative credit market and Chinese regulatory policies (Hilbers et al., 2001)

In the ASEAN region, Thailand can be an interesting example. SMC or Secondary Mortgage Corporation was established in 1997 in Thailand under the Emergency Decree on Secondary Mortgage Finance Corporation B.E. 2540 (1997). The main objective of establishing SMC is to establish a secondary housing finance market in Thailand in order to increase the capacity and availability of funds to build housing through asset securitization. Based on these regulations, the primary market for housing finance is a market where housing finance is formed through housing credit facilities, then the secondary market for housing finance is a market where housing loans are traded. In the secondary market, there is a mechanism through the capital market to finance the construction and marketing of housing. The Thai government allows for the emergence of a Mortgage Company, which is a company whose line of business is providing housing finance (housing loans), then the Mortgage Company will securitize assets (housing loan bills) and sell them to SMC. Previously, SMC had standardized the types of housing loans that could be securitized. Securities collateralized by mortgage bills sold to SMC will be re-marketable to investors (Hachaiyaphum, 2016). The benefits of a secondary market for housing loans in Thailand will be enjoyed by several parties, namely banks, capital markets, investors and housing developers.

In Thailand, there is also a reverse mortgage for homeowners who are more than 60 years old. Homeowners are allowed to securitize their home ownership or other immovable assets to the government through the SMC. The owners of these immovable assets will get regular monthly income based on age, collateral value and Thailand's national housing loan interest rate. This is done so that the elderly in Thailand get regular monthly income, guaranteed quality of life and reduce the burden on the government to care for them. The reverse mortgage will then be marketed by SMC in the Thai capital market (Hachaiyaphum, 2016).

Another country in the ASEAN region that already has a secondary market for housing finance is Malaysia. Cagamas Berhad is the national housing finance company responsible for the development of the secondary housing finance market in Malaysia. Established in 1986 with government seed funding to facilitate and encourage home ownership in Malaysia. The company purchases housing loans from primary lenders and raises funds from the market by issuing debt securities in the form of long-term bonds and Medium-Term Notes. Cagamas Berhad is one of the successful secondary housing finance companies. Cagamas Berhad managed to get a AAA rating and maintain a AAA credit rating from the Rating Agency of Malaysia (RAM) and Malaysian Rating Corporation (MARC) and has proven that in its two decades of operations it has never experienced problems or defaults. This is because there is a government guarantee for the bonds issued by Cagamas Berhad (Malpezzi & Mayo, 1997).

## 2. Housing Provision Policy in Indonesia

The Government of the Republic of Indonesia has a policy direction and development strategy to increase efforts to sustain economic development, through the following strategies: (i) Increasing economic growth which is continuously maintained in a positive manner by reducing disparities between regions; (ii) Increasing the level of income (per capita) and reducing the income gap between groups; (iii) Increase in employment so that the unemployment rate decreases; (iv) Reducing the poverty rate so that the number of poor people is reduced; (v) Food security includes price stabilization so that inflation rates are low; (vi) Energy security, especially increasing public access to energy, increasing efficiency and the national energy mix; (vii) Increasing access to transportation/community mobility; (viii) Application of production patterns/economic activities and consumption patterns that are efficient (not wasteful) and environmentally friendly (RPJMN 2015-2019, 2014). The second direction of development policy is to increase efforts to sustain social development, among others through a strategy to increase service affordability and access to education, health, housing, clean water and community



sanitation services (RPJMN 2015-2019, 2014). Specifically to spur economic growth more specifically in terms of housing, the Government has had several specific policy directions, which are called policy directions for inclusive economic growth in an effort to increase equity, which include directing fiscal policies that support the livelihoods of the poor and vulnerable, especially public spending that is targeted social assistance such as conditional cash assistance, housing assistance for the poor, assistance for agricultural and fisherman production, assistance for improving the skills of farmers, fishermen, and other underprivileged people's businesses. The policy direction of the Government of the Republic of Indonesia in terms of providing housing infrastructure does not only stop at the availability of housing for the poor but also for workers in industrial areas, TNI soldiers and Polri (RPJMN 2015-2019, 2014).

The main problem that arises to be able to realize the direction of the development policy above is regarding the imbalance between supply and demand housing. In the housing sector, the limited capacity of developers who have not been supported by incentive regulations plus the low affordability of low-income people in building or buying houses is one of the main reasons why there are still many low-income people who do not live in livable houses. The facilitation of providing decent housing for MBR during 2005-2013, such as the construction of simple rental flats, provision of basic infrastructure and facilities, provision of housing financing liquidity facilities (FLPP) and increasing housing micro-credits are still not well targeted. This problem is getting more difficult because facilitation activities have not been accompanied by strengthening the role of the government and local governments as enablers, but rather playing a role as developers which generally will be faster and more efficient if carried out by the community and developers (RPJMN 2015-2019, 2014).

The Government of the Republic of Indonesia has given a special mandate to three State-Owned Enterprises (BUMN) in housing development, namely Perum Perumnas, PT. State Savings Bank (BTN), Tbk and PT. Sarana Multigriya Finansial Persero. The role of Perumnas in building houses for MBR is still not optimal and is faced with competition from housing developers. Likewise, the State Savings Bank (BTN) and Sarana Multigriya Finansial (SMF), which are expected to be the catalyst for housing finance for MBR, still require additional liquidity.

Since 2010 the Government of Indonesia has had a program called the Housing Financing Liquidity Facility (FLPP). This regulation regarding FLPP was initially stated in Permenpera Number 14 and 15 of 2010, then amended by Minister of Public Housing Regulation (Permen) No. 04 of 2012, concerning Housing Procurement through Credit for Financing for Welfare Home Ownership with the support of Housing Financing Liquidity Facility (FLPP) and Regulation of the Minister of Public Housing No. 05 of 2012 concerning Instructions for Implementing Housing Through Credit for the Financing of Prosperous Home Ownership. Subsequently, it was amended by Regulation of the Minister of Public Works and Public Housing Number 20/PRT/M/2014 and 21/PRT/M/2014. Based on these regulations, the Government has been able to channel FLPP funds which are used to help finance the community to own a landed house for five years. years since 2010 - 2015 with a fund of IDR 16.5 trillion. The distribution of FLPP is carried out through the distribution of FLPP mortgages. FLPP (housing financing liquidity facility) is housing financing support for MBR (low-income people), to get KPRSh (Simplified Healthy Home Ownership Credit). The management of the FLPP program funds is carried out by the Kemenpera BLU-PPP (Public Service Agency for the Public Housing Financing Center) in collaboration with banking institutions that have collaborated with the Ministry of Industry. There are 16 banks, namely Bank BTN, BRI, BTN S, BNI, BRI Syariah, Bank MANDIRI, Bank MANDIRI Syariah, Bank Artha Graha, Bank Bukopin, BPD East Kalimantan, BPD North Sumatra, BPD Central Java, BPD East Java, BPD Southeast Sulawesi, BPD Nagari, BPD North Sumatra Sharia. The cooperation between the Government (Kemenpupera) and banks is carried out through PKO (operational cooperation agreements) in the context of housing procurement through credit or financing for prosperous housing. The FLPP Mortgage Program is a housing finance assistance program for low-income communities with various benefits, such as a fixed-margin interest rate of 7.25% for the life of the loan, including life and fire insurance protection and free of VAT.

Specifically for banks that will become implementing banks, both commercial banks, sharia commercial banks and sharia business units, the requirements to become implementing banks are: a) Submit a statement of interest in becoming an Implementing Bank in the context of implementing the

FLPP program; b) Have a minimum value of Composite Rating Three (PK-3) in accordance with Bank Indonesia Regulations; c) Have at least 2 (two) years of experience in issuing home ownership credit/financing (KPR); d) Have infrastructure for managing credit/mortgage financing at least: (i) Having a work unit organization for managing home ownership credit/financing; (ii) Having personnel managing home ownership credit/financing; (iii) Possess information technology for credit management/home ownership financing; and (iv) Have a home ownership credit/financing policy; e) Have an adequate service network at the provincial and/or national level; f) Have a plan to issue a Prosperous KPR within 1 (one) year; g) Signing a Collective Agreement with the Deputy for Financing or an official appointed by the Minister; and h) Signing an Operational Cooperation Agreement (PKO) with PPP.

If the Implementing Bank has and fulfills these requirements, then they will be responsible for providing part of the financing for KPR Sejahtera credit/financing in accordance with the proportion of KPR Sejahtera funding. The Implementing Bank is responsible for targeting accuracy, use of FLPP funds, and credit/financing risk, and is willing to be audited by the internal supervisory apparatus of the Ministry of Public Housing and/or external supervisors in accordance with statutory regulations.

Housing financing through the FLPP and NON FLPP programs is the primary source of financing for housing development in Indonesia. The primary source of housing finance has limitations, namely the availability of funds to be channeled by banks. Banks (Government-Owned Banks, National Private Banks, Foreign Private Banks and Rural Banks) as the main players in primary housing financing rely on 'Third Party Funds/DPK' funds, where the third party funds come from demand deposits, savings and time deposits, such as seen in Table 1 (www.bi.go.id).

Table 1. Banking Third Party Funds by type 2009 - 2014 in trillion rupiah

Information	December 2009	December 2010	December 2011	December 2012	December 2013	December 2014
<b>Current Account</b>	465,222	535,855	652,708	767,070	846,781	934,067
<b>Savings</b>	585,707	733,157	898,245	1,076,830	1,212,707	1,534,098
<b>Time deposit</b>	899,783	1,069,811	1,234,072	1,381,298	1,604,480	1,869,005
<b>Total</b>	1,950,712	2,338,823	2,785,025	3,225,198	3,663,968	4,337,170

The largest third-party funds came from time deposits, especially time deposits with a time period of 1 month. Problems will arise if third party funds in the form of short-term deposits are used to finance long-term housing loans, in banking this condition is known as a maturity mismatch. The emergence of a maturity mismatch in banking operations will cause problems, namely liquidity difficulties and public distrust of banks. The government has arranged so that there is no maturity mismatch through the Loan to Deposit Ratio (LDR) setting. The Government of the Republic of Indonesia through Bank Indonesia has periodically issued Bank Indonesia Regulations regarding this LDR, namely Circular Letter of Bank Indonesia Number 15/40/DKMP dated September 24, 2013 Regarding the Implementation of Risk Management in Banks Providing Credit or Financing for Property Ownership, Credit or Financing Property Backed Consumption, and Motor Vehicle Loans or Financing amended by Bank Indonesia Regulation Number 17/10/PBI/2015 concerning Loan To Value Ratio Or Financing To Value Ratio For Property Loans Or Financing And Down Payments For Motor Vehicle Loans Or Financing. The regulation will regulate the Loan to Value (LTV ratio) ratio, namely the ratio between the credit value that can be given by the Bank to the value of the collateral in the form of property at the time of lending based on the latest appraisal price; financing to value ratio (FT ratio) which is the ratio between the value of financing that can be provided by the Bank to the value of collateral in the form of property at the time of financing based on the last appraisal price. Bank Indonesia will set limits on the LTV Ratio or RTV Ratio for conventional property loans and sharia property loans, in the form of buying landed houses, flats, shop houses, home offices.



The limited availability of third-party funds and the precautionary element from the banking regulator and the banking industry in the context of lending has resulted in limited funds being channeled into housing development. The Government of the Republic of Indonesia was then moved to utilize secondary housing financing facilities, following what has been implemented by the United States Government.

### 3. Legality of Secondary Financing for Housing

A secondary mortgage facility company was established specifically to raise long-term funds which will then be channeled to financing institutions, namely banks that experience funding gaps. The financing facility provided by SMF is a financing facility specifically organized to be given to financing institutions (banks) in the context of lending through the housing loan scheme. This financing system is growing rapidly in the United States, followed by developments in other countries in the world such as France, Latin America, Australia, New Zealand, Japan, Hong Kong, Thailand, Philippines, Taiwan, Malaysia and Singapore. This process is often referred to as the asset securitization process.

Securitization has several definitions, among others, according to Joan Barmat, securitization is an open market for marketing collateralized financial instruments (financial securities) in the form of collateral for cash claims and claims for collateral for immovable property (Joan Barmat, 1990). Leon T Kendal defines securitization as a process to package individual debts and other debt instruments, then convert the packaging into securities to increase the status or rating of these securities to third party investors (Kendall, 2000).

The securitization process in Indonesia has been initiated since 1998 with the Decree of the Minister of Finance No. 132/KMK.014/1998 concerning Secondary Housing Financing Facilities, which regulates business fields, procedures for establishment and licensing, sources of funds, prudential regulation (prudence principle), supervisors and supervisors, sanctions. Unfortunately, this provision does not work perfectly because it is not followed by the realization of the establishment of an SMF institution that carries out the secondary housing financing in question. Until then in 2005 a series of interrelated regulations emerged to support the establishment of the SMF institution and the trading of securities issued by the SMF.

The legal basis for asset securitization and trading of asset-backed securities is Law of the Republic of Indonesia No. 8 of 1995 concerning Capital Market Article 1 paragraph 5 which states that securities include "securities, namely debt acknowledgments, commercial securities, stocks, bonds, proof of debt, Participation Units in Collective Investment Contracts, futures contracts on securities and any derivatives of securities".

Then through Capital Market Supervisory Agency Regulation no. IX.K.1.1 Attachment to Decision of the Chairman of BAPEPAM no Kep -28/PM/2003 dated July 21, 2003 concerning Guidelines for Collective Investment Contracts for Asset Backed Securities, in article 1 letter (a) it is stated that KIK EBA is a contract between an investment manager and a custodian bank that binds asset-backed securities holders, where the investment manager is authorized to manage the collective investment portfolio and the custodian bank is authorized to carry out collective custody.

KIK's participation unit whose portfolio consists of financial assets in the form of claims arising from commercial securities, leases, conditional sale and purchase agreements, installment loan agreements, credit card claims, lending including mortgages for housing or apartments, debt securities that are guaranteed by the Government, means of credit enhancement/cash flow as well as equivalent financial assets and other financial assets related to these financial assets. From this definition, it can be concluded that what is included in the KIK EBA are securitized securities originating from assets that have a stream of cash flow in the form of claims arising from commercial securities, credit card claims, claims arising in the future (future receivables), and the provision of credit, including KPR and KPA.

The granting of a KPR or KPA is including a bill or collection of mortgage receivables that can be securitized so that data is traded through the secondary market, what is traded is the right to collect a collection of mortgage receivables and the mortgage lending bank as the original creditor (originator) to



a special institution established for that purpose ( special purpose vehicle) which buys it at the same time issues securities with asset collateral for the mortgage receivables collection.

PT Sarana Multigriya Finansial (Persero) is a special institution that is given the authority to carry out this task, as a special purpose vehicle that buys and issues securities with guaranteed assets for the collection of mortgage receivables. The special purpose vehicle or secondary mortgage company required to perform asset securitization is established under the Government Regulation of the Republic of Indonesia Number 5 of 2005 concerning State Equity Participation of the Republic of Indonesia for the Establishment of a Limited Liability Company (Persero) in the Secondary Financing of Housing, in article 1 it is stated that there is a need for alternative financing other than banks as providers of funding for housing needs, namely the establishment of a secondary housing finance company. Article 2 of this Government Regulation states that the purpose and objectives of the limited liability company as referred to in Article 1 are specifically to carry out: a) Financing business activities in the form of secondary housing financing facilities at banks and financial institutions that provide housing loans; b) Collect public funds to finance secondary housing financing activities by issuing long-term and or short-term securities; and c) Other activities in order to support the activities as referred to in letters a and b above.

The implementation of Government Regulation No. 5 of 2005 concerning the Republic of Indonesia State Equity Participation for the Establishment of a Limited Liability Company (Persero) in the Sector of Secondary Housing Financing is carried out by issuing Presidential Regulation No. 19 of 2005 concerning Secondary Housing Financing. Article 1 paragraph (13) states that securitization is the transformation of illiquid assets into liquid ones by purchasing financial assets from original creditors and issuing asset-backed securities. This securitization process will be submitted to a vehicle called a special purpose vehicle or secondary mortgage company, namely a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and simultaneously issue Asset Backed Securities.

Presidential Regulation No. 19 of 2005 also states that the purpose of secondary housing financing is to provide financing facilities in order to increase the capacity and sustainability of housing finance that is affordable by the community. Furthermore, Presidential Regulation No. 19 of 2005 also provides details regarding the company in question, among others in article 15 that the government will establish a Secondary Housing Company as the intended financial institution; which must be in the form of PT; Then it also regulates the limits of actions that cannot be taken by the company, namely not being able to make direct participation (become a shareholder) or purchase company shares through the capital market.

This regulation can be said to be the legal basis for the establishment of PT Sarana Multigriya Finansial as a Persero which is engaged in secondary housing financing with initial capital from state assets separated by Rp.1 trillion (one trillion rupiah) from the APBN for the 2005 fiscal year. In 2008, the Government made amendments to Presidential Regulation No. 19 of 2005 concerning Secondary Financing of Housing by issuing Presidential Regulation No. 1 of 2008 concerning Secondary Financing of Housing.

The existing legal umbrella, which provides a legal basis for the issuance and trading of asset securitization securities and the institution that is given the task, mandate and authority to be able to issue and trade asset securitization securities with the main purpose of housing secondary financing, still leaves several problems, including: Another is the absence of a legal umbrella that requires every institution that carries out primary housing financing activities to transact with SMF to maximize secondary housing financing. If the main objective for secondary housing financing is not achieved optimally, then the SMF intended to be established will experience economic obstacles, although there are incentives in article 20 but the ten-year time limit to be able to operate in the primary housing finance market is felt to be insufficient. If it can be assessed economically that the participation of more players as primary housing finance providers, then SMF's duties as primary housing finance providers should be extended or not set with a time limit.

#### 4. Constraints on the Utilization of Mortgage Backed Securities and Secondary Mortgage Facilities in Indonesia

PT. SMF (Persero) was established with the aim of providing liquidity facilities in housing secondary financing (KPR) and securitizing mortgage assets to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). To obtain more comprehensive data from the financial industry regarding the role and potential of mortgage backed securities and secondary mortgage facilities by PT SMF Persero, this study also uses focus group discussions (FGD) and in-depth interviews. The FGD was held on December 4, 2014 at the Perbanas Jakarta office with representatives from 12 (twelve) national banks and non-bank financial companies, namely Bank BRI, Bank BNI, Bank Mandiri, Bank BTN, Bank Muallamat, Bank OCBC, Bank CIMB Niaga, BCA Bank, Panin Bank, BII Maybank, Permata Bank; and MNC Multi Finance. In addition, in-depth interviews were also held on 2 and 3 December 2014 with several financial institutions that have become or will become potential investors for SMF products, namely the President Director of the Mandiri Pension Fund and the Director of the Indonesian Pension Fund Association and on 3 December 2014 with the President Director of PT BTN Persero, Tbk.

From FGDs and in-depth interviews, it can be seen that with respect to PT SMF Persero and secondary housing financing, the profile of the financial industry can be divided into three profile categories.

The first is the profile of the financial industry that has used SMF products (already become SMF consumers). PT SMF Persero's products provided are liquidity facilities in secondary housing financing (KPR) and mortgage asset securitization to support increasing the volume and number of mortgages with funding sourced from the issuance of Asset Backed Securities (EBA). Several financial institutions have utilized liquidity facilities in housing secondary financing, including Bank BTN, Bank Muallamat, Bank DKI and MNC Multifinance. These banks and financial institutions experience several advantages with the liquidity facilities provided by SMF. First, SMF's liquidity facility can increase the capacity of this financial institution to finance mortgages. Second, through the provision of mortgages, this financial institution will receive a collection fee that can be used to increase profits, so this will automatically increase capital. Third, the liquidity facility from SMF can overcome the maturity mismatch problem that is commonly faced by financial institutions in providing mortgages. Maturity mismatch occurs when players in the banking industry and financial institutions use short-term third-party funds (DPK) to finance mortgages which are long-term loans. Although some of the above financial institutions have utilized liquidity facilities from SMF, the proportion of SMF funds is still very small in the financing portfolio of these banks and financial institutions (between 10%-15%). The main thing that is of concern to users of this liquidity facility is that the 'price' given by SMF for secondary mortgage financing is perceived to be relatively high. In other words, the pricing provided by SMF for liquidity facilities is not competitive because it can reduce potential profits for banks and financial institutions that use them. Besides the 'pricing' problem, Bank BTN also complained about the limited funds available at SMF for financing liquidity. SMF's limited funds also make banks and financial institutions still rely on third party funds (DPK) in financing their mortgages.

The second is the profile of the financial industry that has the potential to become SMF consumers. Several financial institutions, such as general insurance and BPJS, have the potential to become investors for SMF by utilizing EBA securitization products. However, there are things that prevent this financial institution from using SMF's products. First, it relates to the rules from OJK. Until now, there is no regulation from OJK that regulates the investment portfolio of general insurance companies in KIK EBA which is included in Risk Based Capital (RBC) for insurance. According to OJK regulations, what are included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate, maximum 20% of total investment), shares (maximum 10%).

Lastly, the third is the profile of the financial industry that has not become a potential SMF consumer. Financial institutions, both government-owned and private, which until now have not become SMF consumers have the main reason that mortgage financing is not the focus of the financial institution's business. Among these financial institutions do have mortgages, but the portion is very small, mortgage



securitization is carried out, these banks take advantage of idle funds that are cheap. In addition, the reluctance of these financial institutions to invest in EBAs is because they are concerned about the risk of issuance. Investors doubt the liquidity of the EBA as a prime mortgage. Even though this fear is actually unfounded, the condition for KIK EBA is smooth credit. Every year this credit will be evaluated and if it is not current it will be exchanged. In other words, the reluctance of financial institutions to use SMF's services is due to their ignorance about SMF's products. Besides that, there is no regulation from OJK regarding portfolios in KIK EBA that are included in the calculation of RBC for insurance, which have been included in the calculation of RBC for insurance companies are time deposits, bonds (government and corporate) a maximum of 20% of the total investment, shares (max 10 %). Banking as an economic institution that is heavily regulated will be monitored for its operations by many parties, so that when developing variations in financing and funding, it is necessary to pay attention to the legal protection available both for the bank and for the general public. In terms of asset securitization (issuance of asset-backed securities), the banking sector requires that the issuance be categorized as hedging (Suadi, 2021; Hasan & Mustafa, 2022).

The reluctance of the financial industry to utilize secondary housing facilities also leads to the condition of PT SMF Persero as the sole provider of housing secondary financing. Weaknesses from the internal side, PT SMF (Persero) are, among others, due to: 1) Funds available for refinancing are relatively limited; 2) 'Pricing' or the price set by PT SMF Persero for liquidity facilities is considered to be relatively high, making it less competitive; 3) Lack of socialization of the existence of PT SMF Persero, many banks and non-bank financial institutions are not aware of the existence, function and role of PT SMF Persero; 4) The term of the loan facility (refinancing) from PT SMF Persero is a maximum of 15 years, it is felt that it is not financially useful for the business; 5) The securities rating issued by PT SMF Persero is still at AA+; 6) The KPR EBA is not yet known as securities in the banking industry and financial institutions.

Other factors that arise from the financial industry's reluctance to utilize secondary financing facilities are because: 1) Banking and multi-finance companies prioritize the use of third party funds for mortgage financing; 2) Several banks organize their own securitization for housing finance; 3) The reluctance of mortgage lenders, both banks and multi-finance companies, to take advantage of the Securitization and Refinancing facilities provided by PT SMF Persero because they are related to problems in financial recording (accounting); 4) Regulations from OJK for financial institutions, such as general insurance, do not yet regulate investment in the form of EBA.

##### **5. Mortgage Backed Securities and Secondary Mortgage Facilities in Housing Secondary Financing**

In order to build a secondary housing finance market through securitization, this is done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. Secondary financing sources for housing, apart from own capital, are also obtained from the issuance of Asset Backed Securities in the form of Debt Securities and Participation Letters. In order to issue Debt Instruments, the Special Purpose Vehicle (SPV) acts as the issuer. Special Purpose Vehicle (SPV) is a limited liability company appointed by a financial institution that carries out Secondary Housing Financing activities specifically established to purchase Financial Assets and at the same time issue Asset Backed Securities. Meanwhile, in the context of issuing the Participation Letter, the Company or the Trustee shall act as the publisher. With regard to the unprepared primary housing market, so that there is no set of eligible mortgage assets for securitization, the Company may provide loans to banks or financial institutions to issue mortgages with the requirements of using standardized documents set by the Company. In this regard, the loan period is adjusted to the average mortgage term. Thus, it is necessary to change the loan term by the Company.



Fulfilling the increasing housing needs of the community and to stabilize the housing market, the government established a Secondary Mortgage Facility (SMF) by issuing the Minister of Finance Decree of the Republic of Indonesia NO.132/KMK.014/1998 dated 27 February 1998 concerning the Company's Secondary Housing Financing Facility. According to article 1 of the Decree of the Minister of Finance of the Republic of Indonesia NO.132/KMK.014/1998 dated February 27, 1998, what is meant by the Secondary Mortgage Facility is a medium or long term loan to a bank that provides mortgages with collateral in the form of claims for the mortgage. and Mortgage on house and land. PT Sarana Multigriya Finansial Persero builds and develops the secondary housing finance market in Indonesia to increase the capacity and sustainability of housing finance and overcome the maturity mismatch. This is done by channeling long-term funds from the capital market to mortgage lenders through securitization transactions and loan distribution. Through these two transactions, the volume of mortgages will be increasing and sustainable, so that they can support decent and affordable home ownership for the people of Indonesia.

The Indonesian Financial Services Authority in 2014 issued a regulation to further encourage the use of asset securitization through the issuance of derivatives with securities known as EBA SP (asset-backed securities in the form of participation letters). Financial Services Authority Regulation number 23/POJK.04/2014 concerning Guidelines for Issuance and Reporting of Asset-Backed Securities in the Form of Participation Letters for Secondary Financing for Housing.

Asset-Backed Securities in the Form of Participation Letters, hereinafter referred to as EBA-SP, are Asset-Backed Securities issued by Issuers whose portfolio is in the form of a Collection of Receivables and is proof of proportional ownership of the Collection of Receivables which are jointly owned by a group of EBA-SP holders. Fixed Cash Flow EBA-SP is an EBA-SP that provides its holders with certain income, such as debt securities holders. EBA-SP Variable Cash Flow is an EBA-SP that provides its holder with an indefinite income such as to the holder of equity securities.

The parties in the issuance of the EBA SP, namely the Issuer, are the Parties who issue the EBA-SP in the context of Secondary Financing for Housing. Secondary Housing Financing is the implementation of medium and/or long-term fund distribution activities to the Originating Creditors by purchasing the Collection of Receivables from the Originating Creditors and selling them through the issuance of EBA-SP; or purchase of Collection of Receivables from Original Creditors from the issuance of EBA-SP. There are also several parties who are indirectly involved in the EBA SP issuance process, namely: i) Servicer is a party who is responsible for processing and supervising payments made by debtors, taking initial actions such as warnings because the debtor is late or fails to fulfill his obligations, conducting negotiations, resolving claims against debtors and other services specified in the service provision agreement; ii) Original Creditor (Originator) is a bank or other financial institution that owns and sells its Financial Assets to the Issuer in order to issue EBA-SP; iii) Supporting professions consist of Accountants, Legal Consultants, Notaries, Securities Rating Companies, Trustees, Custodian Banks.

The objects of securities in the issuance of EBA SP which consist of: i) Collected Receivables are all Financial Assets that have been purchased by the Issuer from the Originator and sold to the EBA-SP holder through the issuance of the EBA-SP; or from the issuance of the EBA-SP; ii) Financial Assets are receivables obtained by the Original Creditor from the provision of Home Ownership Credit to the debtor, including the collateral/guarantee along with the mortgage attached to it, iii) Home Ownership Credit, hereinafter abbreviated as KPR, is a credit facility issued by the Original Creditor to the debtor to purchase a house ready to live in; iv) EBA-SP Credit/Cash Flow Improvement Facility is a facility that aims to improve the quality of Collection of Receivables for payment to EBA-SP holders.

The issuance of EBA SP through an agreement process carried out by the parties, based on the guidelines for issuing EBA SP in POJK no 23/04/2014. EBA-SP offered through a Public Offering must be rated by a Securities Rating Company.

Issuance and trading of EBA SP through a sale and purchase process must be supported by the opinion of a Legal Consultant, must meet the sale and drop off requirements according to generally accepted



accounting principles and must be carried out consistently and supported by the opinion of an Accountant.

For EBA SP issued from the source of the original collection of receivables, the Issuer or Original Creditor can only purchase Financial Assets in the EBA-SP Receivable Pool at a maximum of 10% (ten percent) of the total value of the Collected Receivables. The EBA-SP holder's rights to the Collection of Receivables must be stated in the Prospectus or EBA-SP Disclosure Document and supported by a legal opinion from a Legal Consultant stating that the EBA-SP holder's rights are as contained in the EBA-SP Prospectus or Disclosure Document.

EBA SP issuance must also make a prospectus as a liaison medium between investors and issuers. The EBA-SP Prospectus must contain all details of Material Information or Facts regarding the EBA-SP and the required information and/or information in this Financial Services Authority Regulation. The Prospectus is prohibited from containing untrue information about Material Facts or not containing correct information about Material Facts required so that the Prospectus does not provide a misleading picture. The prospectus must be made in such a way that it is clear and communicative. The presentation and delivery of important information in the Prospectus is not obscured by less important information which causes the important information to escape the attention of the reader. The most important facts and considerations should be summarized and disclosed at the beginning of the Prospectus. The order of submission of facts in the Prospectus is determined based on the relevance of the facts, and is not determined based on the order as stated in this Financial Services Authority Regulation. Disclosure of Material Information or Facts and/or the use of photos, diagrams, and/or tables in the Prospectus is prohibited from providing a misleading image.

Original Creditors in order to issue EBA-SP, must prepare Financial Assets that meet the requirements set by the Issuer; submit KPR documents for inspection by the Issuer or their proxies; prepare accurate information regarding the Collection of Receivables or other information required by the Issuer or its proxies; guarantee the correctness of information, data, and documents related to Financial Assets; and submit information, data, and documents to the Issuer if necessary. The Originating Creditor is responsible for the legal limits of the Financial Assets sold and their documents; and to provide compensation for losses due to the invalidity of the sold Financial Assets and their documents.

PT SMF Persero can build a secondary mortgage market through securitization, which can be done by buying a collection of financial assets from banks and/or financial institutions and then selling them to investors, either through a public offering or a private placement. In addition, in securitization transactions, companies can act as global coordinators, guarantors, securitization administrators, and/or Credit Supporters. Furthermore, regarding the distribution of loans to banks and/or financial institutions, it is intended to increase the volume of mortgages disbursed by the said banks and/or financial institutions. The emergence of the new securities regulations referred to as EBA SP above will greatly assist PT SMF Persero to be able to carry out its duties to perform asset securitization by issuing mortgage backed securities. The things that need to be done so that PT SMF Persero as a government institution that is given a special task of conducting housing loan securitization is to provide greater capital for PT SMF Persero so that it can carry out the task of securitizing housing loans into EBA SP, and the next task is for stock exchange regulator in Indonesia to be able to build a secondary market, so that EBA SP is attractive for investors to buy and resell.

As stated by PT. Mandiri Pension Fund that PT SMF Persero should be able to play an active role in becoming a market creator or secondary market creator for these asset-backed securities, so that investors are more interested in investing in buying EBA that has been issued and the issuance is facilitated by PT SMF Persero.

### Conclusion

The legal aspects to support the birth and operation of mortgage backed securities and secondary mortgage facilities in Indonesia are quite complete. However, the operational use of mortgage backed securities and secondary mortgage facilities carried out by PT Sarana Multigriya Finansial Persero

experienced problems due to several things, namely the lack of interest in the financial industry due to the asset securitization implementing factor and due to the character factor of the securities issued. So there needs to be socialization to the banking industry and financial institutions regarding the tasks and products issued by PT SMF Persero, because there are still many banks, insurance companies, pension fund companies, who are not familiar with PT SMF Persero's products. A maximum socialization effort is needed so that the financial industry and investors, both investors, are more familiar with mortgage backed securities and secondary housing financing facilities implemented by PT SMF Persero.

On the other hand, the financial industry also requests that the costs of issuing EBA and EBA SP securitization of housing loans by PT SMF Persero can be carried out at a "pricing" that is not too expensive. So, they will choose this product as a primary source of housing financing. The last thing that must be carried out by the Government of the Republic of Indonesia is the creation of a "secondary market" to trade EBA SP originating from the housing loan. So that the EBA SP product does not only stop at the primary market but can also be traded on the secondary market, which will be very attractive to investors.

Finally, with attractive products, large amounts of funds offered, competitive pricing, housing loan securitization carried out by PT SMF Persero can help the Government overcome the housing backlog.

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