

The Role of The Notary / PPAT in Implementing Credit Agreement with Mortgage Guarantee in The Regional Development Bank (BPD) Branch of Slawi, Tegal Regency

Azhar Muzakir¹ and Lathifah Hanim²

Abstract. The purpose of this study was to: 1) To know and analyze the role of the Notary / PPAT in deed and deed granting the credit agreement Mortgage in Regional Development Bank (BPD) Branch Slawi, Tegal. 2) To determine and analyze the role of the Notary / PPAT in manufacturing Manufacture Giving Credit Agreement and the Deed of Guarantee Rights at the National Land Agency (BPN) Tegal. 3) What are the obstacles and solutions Notary / PPAT in manufacturing Manufacture Giving Credit Agreement and the Deed of Guarantee Rights at the National Land Agency (BPN) Tegal. The data used in this study are primary data, secondary data and data tertiary to support the assessment, which was then analyzed qualitative descriptive method.

Based on this study showed that the implementation of the provision of credit at PT. Bank Central Java Slawi, Tegal Branch conducted through five stages: stage of credit application, credit analysis, credit decision, the stage of manufacture of the credit agreement and the binding phase of credit with credit guarantees, loan agreements executed before Notary as a partner is obliged to check the validity of the guarantee Mortgage.

Notary PPAT role in the loan agreement with collateral Mortgage provides legal certainty for the parties to the credit agreement. Challenges and solutions faced by the Notary in conducting the manufacture of credit with security rights that is located on the non-disciplinary debtor Bank in the administration of the application for credit and the absence of the debtor or the bank on the signing of the Deed of Credit Agreement, the Deed of credit agreements already prepared draft by the banks (creditor) that it is unfair or detrimental to the customer (debtor), then often the banks (creditors) are not present in deed signatories.

Keywords: The Role Of The Notary; Mortgage Guarantee; BPD.

1. Introduction

Law is a part that cannot be separated from public life there is always a legal system, there are no legal norms of society. It is intended by Cicero that the legal system must be based on respect and protection for the community. Law seeks to maintain and regulate the balance between individual interests and the common interest to avoid conflicts. Therefore, intrinsically unjust law must be bound so that it can function properly.

It shows essentially law enforcement officials (judges, prosecutors, notary, and Police) are the defenders of truth and justice so that law enforcement officials must carry out in good faith and sincerity, so that the legal profession is an honorable and noble

¹ Students Master of Notary Law, Sultan Agung Islamic University, Email: azharmuzakir92@gmail.com

² Faculty of Law Unissula, Semarang.

profession (*officium nobile*). Therefore, noble and honorable, legal professionals are supposed to feel this profession as an option and at the same time his calling to serve others in the legal field.³

Essential Duties and Role of a Public Notary can be said to come from Article 1867, 1868 and 1870 of the Civil Code, So the role of Notaries are officials appointed by the Act to act as a public official of a Notary main authority is to make authentic act which has the strength of evidence is perfectly alias has the highest degree of written evidence. Here we can see an important and strategic role of the Notary in the Indonesian legal system right.

Notary office as well as a responsibility that requires both individual and social, especially adherence to the norms of positive law and a willingness to abide by the code of professional conduct, even a mandatory thing that will strengthen the positive legal norms that already exist.⁴

An authentic deed as the strongest evidence in any legal relations in society. In a variety of business relationships, activities in the fields of banking, land, social activities, and others need proof of the written form of the authentic act is increasing in line with increasing demand for legal certainty in a variety of economic and social relations, both at the national, regional, and global. Through authentic act which define clearly the rights and obligations, ensure legal certainty, and at the same time is also expected to avoid disputes. Although the dispute cannot be avoided, in the dispute resolution process, which is the authentic deeds written evidence gives the strongest and most tangible contribution to the settlement cheaply and quickly.⁵

Bank credit agreement is generally carried out in written form and in the form of standard agreement, the agreement may be made under the deed of the hand as well as an authentic deed. Various measures to facilitate the implementation of the preparation of documents relating to the loan in this case with an authentic deed, the bank appointed a Notary as a partner. According to Article 1 of Act No. 2 of 2014 on the Amendment of Act No. 30 of 2004 concerning Notary, the Notary is a public official authorized to make the certificate is authentic and has the other authorities referred to in this Act or under the Act more.

Notary in this case is a notary as PPAT (Land Deed Officer) is a public official who is authorized to make the deeds of authentic regarding certain legal actions. Notaries must work together to help each other and complement with the parties, namely the banks as creditors and customers as a debtor to make a deed of Notary and PPAT required in a credit agreement which would be done by the banks as creditors and customers as debtors.

Bank Central Java (Formerly known as the Central Java Regional Development Bank / BPD Central Java) is the only local bank that is useful to improve the community economy, especially in Central, Bank headquartered in Central Java Semarang, Bank was founded in Central Java 1963 under the name of PT Bank Pembangunan Daerah Jawa Tengah (PT BPD Central Java). The establishment was spearheaded by the local government as well as society leaders and private business leaders in Central Java on

³ Theo Huijbers, 1990, *Filsafat Hukum*, Kanisius, Yogyakarta, p. 145.

⁴ Liliana Tedjosaputro, 1995, *Etika Profesi Notaris dalam Penegakan Hukum Pidana*, Bayu Indra Grafika, Yogyakarta, p. 4

⁵ Republic of Indonesia, Elucidation of Act No. 2 of 2014 concerning Notary, TI.NRI No. 4432

the rationale for the need for a financial institution in the form of the Bank, that specifically assist the government in implementing development in the area.

Seeing notch credit agreement or tightly the needs of the authentic in every loan agreement is a thing that is not inevitable, and this is an authentic deed serves as proof of legal actions have been implemented.

Research Methods

Method The approach used in this study is primarily descriptive and qualitative, that is, after the data terkumpulkemudin manifested in a logical and systematic description, hereinafter analyzed to obtain clarity settlement of the problem, then the conclusions drawn deductively, are things that are common to the things that are special.

2. Results and Discussion

2.1. Implementation of The Loan Agreement With Collateral Mortgage Notary PPAT PT. Bank Central Java Branch of Slawi, Tegal

Implementation of credit at PT. Bank Central Java branch of Slawi, Tegal done through 5 phases: Phase Request credit, credit analysis, credit decision, the stage of manufacture of the credit agreement and Phase Binding of credit with the guarantee of Credit, process credit agreements starting from the receipt of the request the customer to the bank until the loan disbursement to customers. The loan application include:

- An application for a particular type of credit facility.
- Additional requests an ongoing credit.
- Application for extension or renewal of the credit period after maturity.

The process of loan agreement by the bank carried out according to the type of credit requested and type of assurance given by the debtors. In general the implementation of the credit agreement can be described as follows:

- Credit Request
Prospective debtors file a credit application is made in writing to the PT. Bank Central Java Slawi, Tegal Branch in the letter of credit applications that are already available in the form of a blank or a form which can then be filled out and signed by the prospective debtor. The shape of a form letter or standard letter has been provided by the bank among others contains:
 - The identity of borrowers, which includes name, address, telephone number, national identification number, marital status.
 - Business identity which includes business address, (TIN, certificate of incorporation, certificate of change, SIUP, SITU, HO and others), group of companies and business types.
 - Interest loan application.
 - The number of applications and the time period.
 - Availability of financial statements.
 - The type of collateral and the estimated price of Kapala Village / Sub.
- Credit analysis
Once the loan application is submitted then the sexy loans perform credit analysis with the research and review directly to prospective debtors as well as everything that has been required in relation to the business of the prospective debtor and the

collateral given in the form of certificates of land ownership to be burdened Encumbrance.

In this case assigned to conduct the analysis and direct observation to prospective debtors are:

- In terms of analyzing and making observations of the prospective debtor effort was conducted by the credit analysis.
- In terms of the validity of the collateral that is especially done by Notary PPAT land Dwikorianto Fortunately, SHSPn partner PT. Bank Branch Slawi, Tegal in Central Java.

The results of the analysis of credit signed by the Head of Marketing and then submitted to the official breaker (Branch Manager) to take a decision.

- Credit Decisions

The results of credit analysis performed by the credit department officials submitted to the breaker, the Branch Manager or officials who have credit facilities limit the delegation. The breaker can accept or reject the loan application submitted customer.

- Rejection

The decision rejecting the request of credit issued to an applicant who is technically considered to be ineligible. The refusal given in writing with reasons.

- Approval

In the event that the bank accept or approve credit applications from prospective borrowers, such approval breaker convey to prospective borrowers. In terms of this credit application approval the bank may grant some or all credit applications from prospective borrowers. Credit approval notice given to the customer to load some of the following: the identity of the debtor; The total credit facilities approved; The term of the applicable credit facilities; loans; The purpose of credit use clear; Interest rate; installment credit; Installments against collateral objects; revenue stamp; credit provision; Credit administration; Sanctions: Late payment penalties installment, Penalties for the deviation from the terms of the loan application

- Making the Credit Agreement

After receiving the letter of credit application persetujuan debtor then facing the administration gets credit for making the credit agreement. The credit agreement shall be notarized before a Notary who has been appointed PT. Bank Central Java Slawi, Tegal Branch as lender. In this case the parties can turn to the office of the Notary, or Notary can be called the office of PT. Bank Central Java Slawi, Tegal branch concerned.

Credit agreement that has been signed the parties serves as a principal agreement. Therefore after the credit agreement was made binding agreement guarantees as accesoir agreement. whereas in accordance with the provisions of Article 1320 of the Civil Code a condition of validity of a treaty agreement of the parties. The agreement is evidenced by the signatures affixed in the agreement, so that any legal risks arising from the agreement should be ready to bear the risk.⁶

- Binding Credit to Credit Agreement

⁶ Jurnal Mimbar Hukum Univesitas Islam Jakarta, Vol 6, 2003

At this stage the debtors come directly to the office of PT. Bank Branch Slawi Central Java Tegal, to sign an agreement kerdit that have been provided in the form of a blank or form accompanied with evidence of ownership of the collateral is land ownership certificate of the original and the signature of a husband and / or wife of the debtor.

In practice, such as the results of interviews with the author Dwikorianto Notary Fortunately, SH, S.Pn partner PT. Bank Branch Slawi Central Java on Wednesday, July 19, 2018 at 10:00 to 12:00 pm,⁷ which states that most banks only with the Power of Attorney Imposing Mortgage (SKMHT) without directly installed Deed Granting Mortgage (APHT) Average manufacture Deed Granting Mortgage (APHT) performed later if it turns out the banks assume the credit given to debtors the problem is this done with time and cost efficiency reasons, without the possibility enforceable guarantee the land rights of less powerful. But not for PT. Bank Central Java branch of Slawi, Tegal in terms of binding of Credit with Collateral followed by a Power of Attorney Imposing Mortgage (SKHMT) then mounted Deed Granting Mortgage must be done in accordance with the provisions of the Act for a period of one (1) month to SKMHT and followed by APHT but with no record of the transition process that guarantees the right to object, if the security object there transitioning Rights first then SKMHT installed during a period of three (3) months while waiting for the Rights of the transition process is completed and then just continued with APHT.⁸

Implementation of a credit application is based on interviews with Adnin Surgawan who served as Head of Credit Admin PT. Bank Branch Slawi, Tegal in Central Java on Thursday, July 6, 2018 at 2 p.m. to 16:00 pm,⁹ according PT information. Bank Central Java Slawi, Tegal Branch was able to carry out a credit application is procedurally.

With reference to the results of interviews with Adnin Surgawan can be said that the loan application procedure at PT. Bank Central Java Slawi, Tegal Branch is in conformity with the principles of a healthy credit as set out in Article 8 of Act No.10 of 1998 on Banking, where Article is stated that: Implementation of credit or financing based on Islamic principles before giving credit the bank should conduct assessment careful review of the character, capacity, capital, collateral and business prospects of the debtors.

PT. Bank Branch Slawi, Tegal in Central Java in order to address the latest developments, especially the banking sector and the business activities of credit risk management to third parties, the necessary provisions as operational guidelines that meet the precautionary principle, among others:

- Administration requirement imposed in the application of new credits in PT. Bank Branch Slawi Central Java Tegal is included:
 - Administrative requirements as a complete application for credit for individual borrowers (SMEs), the debtor and the debtor group companies Non-bank / bank / agency / microfinance institutions and other entities, according standards set out in the decree of the board of directors.

⁷Interview with Dewi Milasari, S. Sos., SH, M.Kn partner PT. Bank Central Java Branch Slawi, Tegal on Wednesday, July 19, 2018 at 10:00 to 12:00 pm

⁸Interview with Dwikorianto, SH, S.Pn partner PT. Bank Central Java Branch Slawi, Tegal on Wednesday, July 19, 2018 at 10:00 to 12:00 pm

⁹Interview with Adnin Surgawan, Credit Admin Section Head PT. Bank Central Java Branch Slawi, Tegal on Thursday, July 6, 2018 at 14:00 to 16:00 pm

- Debtor minimal administrative requirements for civil servants (PNS) and debtors of the company's employees with a salary cut installments related to the amount of credit limit.
- The binding guarantee / collateral by PT. Bank Branch Slawi, Tegal in Central Java. The agreement made in PT. Bank Central Java branch of Slawi, Tegal yet to meet the problems of default which led to the execution of the collateral, if it happens then the stages made by the bank as creditors, among others bill arrears directly to a debtor by the bank by way of bank went to the residence of the debtor and if not respond in good faith then the bank will call the debtor to the office of PT. Bank Central Java Slawi, Tegal Branch to complete the credit,

But according to the author interview with Admin Suragawa as Head of Credit at PT. Bank Central Java branch of Slawi, Tegal confirms that in the case of default then the settlement with the amicable way means that in case of breach of contract between the creditor and the debtor then conducted the negotiations between the parties concerned to find a solution that can benefit both parties, or if not then debtors are required to sell goods which he guarantees a guarantee to pay off credit remnants that still he paced, all this is done in order to give time to inefficiencies and reduce the level of losses if the debtor made the auction and the auction results do not meet the desired standards.

2.2.The role of the Notary PPAT in making a loan agreement with collateral Mortgage PT. Bank Branch Slawi Central Java Tegal

Notary is a public official authorized to make an authentic deed as far as the manufacture of certain authentic deed is not reserved for other public officials. No authentic deed required by the legislation in order to create certainty, order, and legal protection. In addition to an authentic deed made by or in the presence of a Notary, not only because it is required by legislation, but also as desired by the stakeholders to ensure the rights and obligations of the parties for the sake of certainty, order, and legal protection for interested parties at once, for society as a whole.

PPAT has a fundamental duty to implement part of land registration activities with a deed as proof he had done certain legal actions regarding land rights or Top Properties Unit Housing Project, which will be the basis for the registration of land registration data changes caused by the legal acts. Legal actions referred to above are:

- Buy and sell;
- Exchange;
- Grant;
- Entered into the Company (inbrenng)
- Entitlement Together
- Giving Broking / land use rights on property rights
- Giving Mortgage

When examined, the role of the notary and PPAT equally important. Besides the similarity of urgency, there are also similarities qualification. This opinion is based on several things, namely: First, PPAT is a public official. Article 1 point 1 Regulation No. 37 of 1998 on the Position Rules PPAT. Based on the article, PPAT profession is a public official as well as the Notary. Thus, the position of Notary PPAT can be equated with a public official because it has been qualified as a public official.

Second, PPAT must keep the contents of the deed. Article 34 paragraph (1) of the National Land Agency Number 1 of 2006 concerning the implementation of the provisions of Regulation No. 37 of 1998 on the Position Rules PPAT, confirms the oath of office for PPAT in order to maintain the confidentiality of the contents of the deed.

Thus, the presence of equality and the obligation for a Notary and PPAT, it should be compared is also a form of treatment for both. That is, it should also set provisions requiring permits examination in proceedings for a PPAT. Or conversely, the provision calling for Notary PPAT equated with that without permission callings.

There are 2 Form deed or loan agreements used in a credit agreement:

- Deed / notarized loan agreement (authentic)
Deed or notarized loan agreement or authentic deed or agreement means it must be made before a public official or a Notary.
- Deed / Hand Under Credit Agreement
The credit agreement under hand are agreements made and signed between the Debtor and Creditor without Notary and sometimes even in the absence of the witnesses who signed, when the witness is one tool for verification, it is this which is one of the weaknesses of the credit agreement under hand this.

In carrying out its role as a deed official credit agreement then a Notary has the duty and authority to:

- The duties of Notaries in credit agreement as a PT partner. Bank Branch Slawi Central Java Tegal, after an agreement between the Notary and the bank to work together, then the Notary PPAT has several tasks, among others:
 - Duty to make the deed of credit agreement demanded by banks
As the material of the document, the bank must provide data and information that is clearly and specifically explain the type and content of credit documents requested. Notary may not refuse a request in a deed bank credit agreement unless the request of the bank or the facing is contrary to law, public interest and decency.
 - He made on credit documents, notary responsible for:
 - * Truth, accuracy and completeness of the documents presented
 - * Leaking of bank secrecy, whether performed by a Notary or an employee or employees.
 - * The problems of the documents made, if later there was an error or intentional performed by a Notary or an employee or people -people who help job
 - Notaries charge and responsible for providing guidance, instruction, guidance to banks associated with the loan documents. Legal counseling conducted by a Notary shall be provided to clients in need of legal advice relating to the deed that will be created, because not all of the eloquent and well-informed about the law relating to the agreement to be made Notary through the creation of an authentic deed or deed under the hand.
 - Notary in charge of making the final loan documents based on concepts that have been approved by the bank.
 - Notaries charge convincing data to the bank if there are things that are not or less obvious and submit draft documents to the bank.
 - Duty to keep secret the name of the Borrower and the amount of credit requested. Objective keep the names debtor and the amount of credit requested

so that is not known by the other party because it is considered an internal matter between the parties Notary, Debtor and Creditor.

- Duty to enter into a registry book in order to be registered with the District Court.
- Notary authority in the credit agreement as a partner PT. Bank Branch Slawi Central Java Tegal:
 - The authority to make the deed of loan agreement based on the data and information that is unclear.
 - Authority to legislate or reject a deed of credit agreement, for reasons which can be accepted by law or for reasons that are detrimental to good credit agreement Creditor and Debtor.
 - The authority to certify if the terms of the completeness of the file have not been met by the Debtor or creditor.
 - Authority to request payment for its services in the form of money from the bank on the manufacture, maintenance and completion of documents that have been done, as determined on the basis of agreement between the customer and Partner known by the bank, taking into account the difficulty level of the work, its prevalence and the applicable regulations. The payment of the abovementioned services performed by the bank to partner after the partners fulfill all the obligations imposed.
 - Authority to contact the bank in order to offer services according to their individual potential, limited partnership working area is domiciled under the terms of the interests of the authorized bank official, but the authority of the use determination Notary services in accordance with the needs of the bank into the unit head right bank. Furthermore, to the interests of Notaries can and quite in touch with the leadership of the local banking unit in question.

2.3 Constraints and solutions faced by Notary PPAT and PT. Bank Central Java Branch of Slawi, Tegal in making a credit agreement with Guarantee Mortgage

As a partner bank in making a credit agreement, Notary own office separate from the bank as the partners that he used as an office, where he worked as an Officer of the Land Deed at the area, so that if the bank wants to require the services of a Notary is then the bank must contact notary advance to let them know that the banks require his services in banking jobs, this is done by the bank do envoy to discuss the agreement that will be done by the bank comes to the notary office or notary may also invite the parties to come to PT. Bank Central Java Slawi, Tegal Branch in making the agreement there are obstacles or barriers that can be classified into two obstacles that come from banks and barriers that come from the Notary:

- Barriers which came from bank
 - Negligence bank clerk
 - Bank officials is unable
 - Draft Deed of credit agreements have been prepared from the banks
- Barriers are derived from Notary
 - The existence of the carefully situations of the Notary
 - Not to return the name of which is used as the name Mortgage certificate and accuracy of the promise by the debtor

3. Closing

3.1 Conclusion

- Implementation of credit at PT. Bank Central Java branch of Slawi, Tegal done through 5 phases: Phase Request credit, credit analysis, credit decision, the stage of manufacture of the credit agreement and Phase Binding of credit with the guarantee of Credit, process credit agreements starting from the receipt of the request the customer to the bank until the loan disbursement to customers.
- The role of the Notary in the system of lending conducted by the bank is to provide legal certainty for the parties to the credit agreement, other than that the role of the Notary PPAT as well as the authorities to check against collateral in the form of Encumbrance to ascertain whether the collateral is legitimate in the eyes of the law or not, or to avoid if there is a possibility in which the collateral Mortgage guarantees made in the extant legal dispute or case law.
- Obstacles and Solutions in the face by a Notary PT. Bank Central Java branch of Slawi, Tegal in conducting the manufacture of credit with collateral Mortgage is located on the banks, with no discipline in the administration and the existence of the loan officer authorized to affect the legal force of a deed of credit agreement notarized and draft deed which has been provided from the bank (debtor) contrary to the theory of justice and UUJN because this draft is more menguntungkan dsini bank (the debtor), while the office of Notary PPAT is fair and impartial.

3.2 Suggestion

In the exercise of lending conducted at PT. Bank Branch Slawi Central Java Tegal, before carrying out an agreement with the guarantee Encumbrance should first give a brief explanation or extension of the provisions contained in the agreement agat not happen breach or default at a later date.

3. Bibliography

Book

- [1] Theo Huijbers, 1990, *Filsafat Hukum*, Kanisius, Yogyakarta.
- [2] Liliana Tedjosaputro, 1995, *Etika Profesi Notaris dalam Penegakan Hukum Pidana*, PT. Bayu Indra Grafika, Yogyakarta.
- [3] Soerjono Soekanto, 2005, *Sosiologi Suatu Pengantar*, PT. Raja Grafindo Persada, Jakarta.

Rule of law

- [1] Republic of Indonesia, Elucidation of Act No. 2 of 2014 On Notary, TI.NRI No. 4432
- [2] The explanation of the Act No. 2 of 2014 were changed Act No. 30 of 2004 concerning Notary. Article 1867 of the Civil Code

Journals and Interviews

- [1] Jurnal Mimbar Hukum Univesitas Islam Jakarta, Vol 6, 2003

- [2] Interview with Dewi Milasari, S. Sos., SH, M.Kn partner PT. Bank Central Java Branch Slawi, Tegal on Wednesday, July 19, 2018 at 10:00 to 12:00 pm
- [3] Interview with Dwikorianto, SH, S.Pn partner PT. Bank Central Java Branch Slawi, Tegal on Wednesday, July 19, 2018 at 10:00 to 12:00 pm
- [4] Interview with Adnin Surgawan, Credit Admin Section Head PT. Bank Central Java Branch Slawi, Tegal on Thursday, July 6, 2018 at 14:00 to 16:00 pm

Internet

- [1] Al-Qur'an QS. Al Baqarah: 282 <https://muslim.or.id/20961-tinjauan-syariat-terhadap-jual-beli-kredit.html>, Accessed on February 23, 2019.
- [2] [Id.m.wikipedia.org wiki / Hak_Tanggung](http://id.m.wikipedia.org/wiki/Hak_Tanggung), Accessed on February 23, 2019.
- [3] [Bankjateng.co.id/tentang-kami/profil](http://bankjateng.co.id/tentang-kami/profil), Accessed on February 23, 2019.
- [4] <http://semarang.solopos.com/read/20180806/515/932240/bi-apresia>, Accessed on February 23, 2019.