

The Effectiveness of Imposing Sanctions on Notaries/PPAT Recipients of Work Given by Pt. Regional Development Bank of West Java and Banten Tbk,. Consequences of Work that Exceeds the Completion Period/Service Level Agreement (SLA)

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Abstract. *The work of a Notary/PPAT as a bank partner often experiences obstacles in the process, so that the obstacles that arise result in the work of the Notary/PPAT being completed beyond the completion period/Service Level Agreement (SLA), as stated in the Cooperation Agreement between the Notary/PPAT and bank. This study aims to determine the level of effectiveness of imposing sanctions on Notaries/PPAT Bank partners as a result of work that has passed its completion period, along with obstacles and solutions to reduce the non-fulfillment of Notary/PPAT Partner obligations to banks. The research approach method used in this thesis is namely the sociological juridical approach. The specification of the research used is analytical descriptive. The type of data used in this research is primary data which includes the applicable laws and regulations in Indonesia. The results of the study show that: First, 91% of the 33 (thirty three) Notaries/PPAT partners at the Regional Office III of bank BJB are of the opinion that the imposition of sanctions is very effective as a preventive measure for the bank against the large number of Notary/PPAT work that has not been completed and exceeds the SLA. Second, for work that goes beyond the SLA, as much as 9% is hampered by binding credit, both credit agreements and addendums, while as much as 91% of work is hampered by binding collateral, such as Mortgage, Fiduciary, Mortgage, and Pledge. The solution to this problem is to evaluate the performance of the partner Notary/PPAT, regular monitoring, and reconciliation.*

Keywords: Agreement; Cooperation; Effectiveness; Sanctions.

1. Introduction

A state based on law must be based on good and just laws without discriminating. So with this, the notion of good law is democratic law, which is based on the opinion and will of the people in accordance with the legal

awareness of the people. Meanwhile, what is meant by just law is law that fulfills the intent and purpose of law, namely justice.

For the realization of a constitutional state, one of which is the need for legal instruments to regulate balance and justice in all areas of the life of the Indonesian people through statutory regulations without neglecting the function of jurisprudence. According to A. Hamid S. Attamimi, statutory regulations are all legal rules formed by all levels of institutions in a certain form, with certain procedures, usually accompanied by sanctions and generally applicable and binding on the people.

So that in an effort to realize a good and just legal state, law enforcement officers are needed. Among the public officials who assume the duties of the state, there are officials who are called Notaries. Notary is a public official specially appointed by the state to deal with issues of making authentic deeds regarding all actions, agreements and stipulations that are required by a general regulation or by interested parties to be stated in an authentic deed, guaranteeing the certainty of the date, keeping the deed and provide the grosse, copies and excerpts thereof, all as long as the making of the deed by a general rule is not also assigned or excluded to officials or other people. Thus the notary profession is a noble profession (*officium nobile*) because the notary profession is very closely related to humanity. A notary is one of the state officials whose position is urgently needed at this time, where people no longer recognize agreements based on mutual trust without black and white as the people used to know. Today, every agreement made by the community will definitely refer to a notary as a means of the validity of the agreement made. For this reason, the position of a notary is becoming increasingly important in today's times.

In his work, the Notary is also required to have accountability for his work to the community where the Notary's presence is to meet the needs of the community who require authentic legal documents (deeds) in the field of civil law so that the Notary has the responsibility to serve the community. And the public can sue the Notary civilly to demand fees, compensation and interest, if it turns out that the deed made can be proven to be made not in accordance with the applicable legal regulations, this is a form of accountability of the Notary to the public.¹

Banking is one of the institutions that use the services of a Notary in carrying out the process of binding credit, as well as binding collateral. The process of making a credit agreement begins with the appointment or order of a notary by the bank, namely a notary partner of the bank. The signing of the credit agreement is the final process of a series of processes from both the bank and the debtor. However, the signing of the credit agreement is the first step for a notary to bind

¹Sri Endah Wahyuningsih, "The Precautionary Principle for Notaries/Ppat in Carrying out their Duties and Responsibilities in Efforts to Prevent Criminalization Based on the Code of Ethics", in the Deed Journal, Volume 4, September 2017, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/akta/article/viewFile/1807/1356> accessed on November 23 at. 22.03.

collateral. Credit agreements that are made authentically are usually only for medium and large loans, with medium or long terms, such as refinancing loans, investment loans, working capital loans and syndications. In practice, in applying for credit at banks, for binding with a notarial deed, a draft credit agreement deed is prepared by a notary, but the terms and conditions are determined by the bank, which is addressed to the debtor.

In completing work with banks, commitments are made to the notary's work completion period, or what is known as the Service Level Agreement (SLA) in accordance with the agreement between the bank and the notary at the initial signing of the cooperation agreement. The SLA determines the length of time given to the bank according to the type of work.

Failure to fulfill the obligations of the Notary/PPAT in completing his work, in the cooperation agreement between the bank and the Notary/PPAT partner, the consequences have been determined in accordance with what was agreed upon, starting from a warning letter to terminating the Notary/PPAT cooperation as a bank partner.

2. Research Methods

In this study, two approaches are combined, namely the sociological juridical approach. The juridical approach is an approach in terms of statutory regulations and legal norms in accordance with the existing problems², a sociological approach that focuses more on studying the principles, concepts, views of the community, legal doctrines obtained from secondary legal materials, as well as laws and regulations that apply both related to the issues discussed.

3. Results and Discussion

3.1. Effectiveness of Imposing Sanctions on Notaries/PPAT Bank BJB partners

bank BJB is a commercial bank in the form of a Limited Liability Company whose business activities are in the field of banking services and services, one of which is providing credit facilities to debtors, namely the First Party. Whereas the Second Party is a Notary concurrently a PPAT who has the expertise, ability and authority to provide services for making Authentic Deeds regarding agreements/bindings required by the First Party to carry out the business activities referred to above. Duties or obligations based on legal authority,

²Sri Endah Wahyuningsih, "Effectiveness of Implementing E-Ticket Fines for Traffic Violators Based on Law Number 22 of 2009 Concerning Road Traffic and Transportation (Study at Rembang Police Station)", in *Khaira Ummah Law Journal*, Volume 12, December 2017, <http://jurnal.unissula.ac.id/index.php/jhku/article/viewFile/2293/1721> accessed on 23 November at. 21.10

whether originating from laws or from agreements, may result in the responsibility of the Second Party as executor of obligations. Every grant of authority is always followed by an obligation or responsibility from him. Notary/PPAT is given the authority to make an authentic deed, therefore the Notary/PPAT concerned has the obligation to fulfill everything that has been determined and agreed upon. Thus, thus the Notary/PPAT accepts the consequences that will arise if the agreement and/or authority is not fulfilled (default).

In the event that an agreement arises between the First Party and the Second Party, the following is the mechanism for the cooperation agreement between the First Party and the Second Party:

1. The Second Party submits an offer to the First Party, in this case the bank BJB Branch Office regarding cooperation for making Authentic Deeds, while the conditions have been determined by the First Party based on applicable internal provisions;
2. The Branch Office checks all the completeness of the requirements that must be fulfilled by the prospective Partner based on the Checklist for submitting Notary/PPAT cooperation;
3. If the conditions are met and fulfilled, the bank BJB Branch Office forwards the application for cooperation and the files to the Regional Office accompanied by a letter of introduction signed by the Branch Manager;
4. The Regional Office conducts verification and field visits to examine the correctness and suitability of the data submitted by the Notary/PPAT of prospective Partners, as well as a survey of supporting facilities and infrastructure;
5. If it is appropriate and fulfilled, the Regional Office makes a memorandum of analysis on the application for Notary/PPAT cooperation which is submitted to the Head Office along with the required documents for prospective Partners;
6. The Head Office reviews and re-verifies the application of prospective Partners to be able to provide and submit a Notary/PPAT collaboration decision memo (accepted/rejected);
7. The Notary/PPAT cooperation decision memo is then submitted to the Branch Office and if it is approved to become a Partner, a Cooperation Agreement (PKS) is made by the Regional Office with a maximum period of 14 (fourteen) working days from the date of the cooperation decision memo from the Head Office.

The First Party gives Work to the Second Party to:

- a. Make an Authentic Deed along with copies and excerpts;
- b. Legalization or *Waarmerking* on private agreements or other documents;
- c. Completion of the process and examining the truth and validity of the legal aspects attached to the authentic deed in accordance with the applicable laws and regulations;

- d. Completing the process of certifying land rights or other certification processes;
- e. Completing the perfect collateral binding process for credit collateral submitted by the Debtor to the First Party;
- f. Provide a written statement or legal opinion for the work submitted and carried out by the Second Party;
- g. In the event that the completion of the authentic deed process outside the work area of the Second Party or for such work requires special expertise, the Second Party may cooperate with other Notaries/PPT but the responsibility remains attached to the Second Party;
- h. Other types of work required by the First Party and can be carried out by the Second Party in accordance with applicable laws and regulations

Covernotes aims to explain that the processes related to binding credit and binding collateral are still in the process of being worked on by the Notary/PPAT, which means that there is a process that is still ongoing and has not been completed. In banking practice, usually a covernote is issued by a Notary in terms of formal requirements for the purposes of disbursing credit, including credit binding and also collateral binding, the covernote is used as a guarantee for the bank to disburse credit facilities because the bank has confidence that the collateral object is in the process of being registered with the Notary provide certainty that the object will be registered in the future. Banks in practice have confidence that the Notary/PPAT is a professional official and is considered the most knowledgeable in checking the requirements in the process of making a guarantee deed and the registration process. Based on this, it can be understood that the urgency of the covernote is needed by the community, especially the debtor because without a covernote it greatly impacts debtors who are very urgent to disburse credit facilities, so the covernote is used as a Notary/PPAT commitment in the process of completing credit and collateral binding, which then emerges a sense of bank confidence in the disbursement of credit facilities. Covernote is not a notary legal product as specified in UUJN. Based on the above, *Service Level Agreement*(SLA) or service level agreement is a special agreement or obligation set by bank BJB. SLA is needed by bank BJB as a service provider to the debtor, and has been agreed upon by the Notary/PPAT Partner for completion, so that the SLA is the timeframe for completion of work determined by bank BJB to the Notary/PPAT Partner for the completion of the work, which has been included both in the internal provisions bank BJB or in a cooperation agreement with Notary/PPAT.

Based on the results of the questionnaire distributed via google form to Notaries/PPATs in collaboration with bank BJB Regional Office III (Banjar Branch, Ciamis Branch, Cirebon Branch, Garut Branch, Indramayu Branch, Kuningan Branch, Majalengka Branch, Pangandaran Branch, Patrol Branch, Patrol Branch Singaparna, Sumber Branch, Sumedang Branch, Tasikmalaya Branch) as many as

33 Notary/PPAT responses, and it has been obtained that the Notary/PPAT managed by bank BJB are mostly over 40 years old, which means that the age of Notary/PPAT is still under the age pension, namely under the age of 62 (sixty two) years when working with bank BJB, and a conclusion is obtained regarding the submission of the Notary / PPAT monthly performance report, which is divided into 3 (three) types, including:

1. Notary/PPAT Performance Report;
2. Notary/PPAT Fee & Fee Report;
3. Notary/PPAT Work Arrears Report.

All Notaries/PPATs routinely send Notaries/PPAT monthly reports between the end of the reporting month and a maximum of the 5th of the following month, so that the performance progress of the Notary/PPAT can be monitored more by the bank.

The effectiveness of imposing sanctions on Notaries/PPATs receiving work, obtained results of 91% of 33 (thirty three) Notaries/PPATs who were of the opinion that the imposition of sanctions was very effective as a bank preventive measure against the large number of Notary/PPAT work that had not been completed and exceeded the SLA.

3.2. Notary/PPAT Obstacles in Completion of Work, as well as Solutions for PT. West Java and Banten Regional Development Bank, Tbk.

In the internal provisions of bank BJB, it has regulated sanctions so that there is a balance between the bank and the Notary/PPAT in fulfilling their rights and obligations, which is then set forth in a cooperation agreement which has been used as one of the standard clauses by bank BJB in giving approval to cooperate between bank BJB and candidate Notary/PPAT. As for the sanctions that can be imposed are as follows:

1. Fine Sanctions

If the Notary/PPAT due to their negligence and/or mistakes causes a delay or failure to complete the work in a timely manner and if the delay or non-completion of the work causes losses to the First Party or other parties, the Second Party is obliged to compensate for losses including the cost of completing the work incurred as a result. Based on the results of the questionnaire, it was obtained that a percentage of 9% was hampered by binding credit, both credit agreements and addendums, which are the realm of the Notary's authority. Meanwhile, as much as 91% of work is hampered by binding collateral, such as Mortgage, Fiduciary, Mortgages, and Pledges.

2. Administrative Sanctions

The decision to impose administrative sanctions can in the form of:

1. Temporary suspension of the granting of Work to Partner Notary/PPAT or temporary postponement of the extension of cooperation; and
2. Termination of cooperation between Notary/PPAT partners and bank BJB.

3.3. Barriers to Completion of Notary/PPAT Work

Based on the results of the questionnaire, it was obtained that a percentage of 9% was hampered by binding credit, both the credit agreement and the addendum, which is the realm of the Notary's authority. Meanwhile, as much as 91% of work is hampered by binding collateral, such as Mortgage, Fiduciary, Mortgages, and Pledges. Binding of collateral as collateral in extending credit by banks to debtors until credit is repaid is something that must be done. Collateral is the right and power over the goods handed over by the debtor and/or a third party as the owner of the collateral to the bank in order to guarantee the repayment of the debtor's debt, if the credit received cannot be paid off according to the time agreed in the credit agreement or addendum.³ It is often found in credit agreements that the binding is not perfect, this is possible because the clauses made are not in accordance with the agreement. This gives a condition that the credit agreement does not have perfect binding and has legal defects. Thus, the Notary/PPAT in issuing covernotes must be based on the precautionary principle, the following are some of the obstacles that generally occur, including:

- a. Expiration of the SKMHT and APHT time limits;
- b. The debtor is absent and does not sign the APHT (uncooperative debtor);
- c. The defense office does not complete APHT registration according to the specified time limit;
- d. If the collateral is confiscated, then the SKMHT cannot be upgraded to a Mortgage Right;
- e. If the SKMHT will be upgraded to Mortgage Right when the credit is bad, it will cause difficulties in imposing Mortgage encumbrance fees;
- f. In relation to the grant of power of attorney, if the person giving the power of attorney to charge this Mortgage Dies/bankrupts, the SKMHT will be cancelled.
- g. There is a transfer of Notary/PPAT, resulting in delays in the binding process for collateral that is still unresolved at another Notary/PPAT;
- h. The expiration of the cooperation agreement between the Notary/PPAT and the bank, so that the bank has difficulty coordinating with the Notary/PPAT;
- i. Change of Notary/PPAT employees who handle the collateral binding process;
- j. Unpaid taxes by the debtor;
- k. Inheritance problems and all the consequences that arise;
- l. Divorce, so that it has an impact on collateral which is joint property;
- m. There is a third party claim regarding the collateral object;
- n. Lack of knowledge on the part of banks regarding the binding of fiduciary guarantees, so that the binding of fiduciary guarantees is carried out under the hand without being registered with the Fiduciary Registration Office, on the basis

³ Zulfah Ivanka Salshabilla, "Functions of Document Control and Binding of Collateral as Collateral in Provision of Banking Credit", in *Lex Privatum* Vol. IX/No. 13/Dec/2021, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/viewFile/38491/35112>, accessed on August 9, 2022 at 23.00.

of this it results in the guarantee object being late for registration of the fiduciary bond by a Notary;

- o. Lost/destroyed goods that are in the process of being fiduciary bound;
- p. Period for registration of mortgage loading on ships at the Kesyahbandaran and Port Authority Offices;
- q. there are no clear rules regarding the costs required to take care of the registration of a mortgage on a ship so that the processing costs can increase, so that the Notary and the mortgage provider experience problems negotiating the cost of the mortgage binding process,
- r. and other obstacles.

3.4. Monitoring and Evaluation

- a. Partner notaries/PPATs are required to report their performance which includes completed and unfinished work, both those that are still within the SLA and those that have exceeded the SLA, as well as a recapitulation of the list of work received by the Notary/PPAT in the current reporting month to the Regional Office;
- b. There is a periodic evaluation every 6 (six) months and in writing and the results of the evaluation are set forth in the form of a report. Evaluation of the Partner's performance as referred to is carried out on the fulfillment of the following provisions:
 - 1. *Service Level Agreement*(SLA) work completion;
 - 2. Percentage of work that has not been completed to the number of jobs obtained by Notaries/PPAT Partners during the evaluation period;
 - 3. The quality of the deed (conformity of the contents and clauses of the deed with the order letter);
 - 4. Discipline of Notaries/PPAT Partners to always attend the implementation of credit contracts and comply with statutory provisions;
 - 5. Ease of coordination and communication between bank BJB and partner Notaries/PPATs;
 - 6. Administrative completeness (quality and enforceability of covernotes, certificates/receipts of BPN orders, notices of leave, etc.).

3.5. Reconciliation of Notary/PPAT Partners with bank BJB

Reconciliation can be carried out if the results of the evaluation state that there are still many bank orders that have not been completed by the Notary/PPAT Partners and have exceeded the timeframe for completion. In reconciliation activities, between the bank and the Notary/PPAT Partner, in principle, match the suitability of the Notary/PPAT Partner's work data along with the progress of the settlement, including any obstacles. Occupational data is obtained based on monthly reports submitted by the Notary/PPAT to the bank. With reconciliation, it is hoped that there will be a middle way that is agreed upon by the parties in

an effort to complete the work of the Partner Notary/PPAT so that the Notary/PPAT can again apply for an extension of the cooperation with the bank.

4. Conclusion

Conclusions from the results of this study namely the effectiveness of imposing sanctions on Notaries/PPATs that exceed the timeframe for completing their work, as many as 91% of 33 (thirty three) Notaries/PPATs are of the opinion that the imposition of sanctions is very effective as a preventive measure for banks. About Obstacles and solutions in completing the work of the Notary/PPAT obtained the results of the questionnaire with the percentage of 9% is hampered by binding credit, both credit agreements and addendums, while as much as 91% of work is hampered by binding collateral, such as Mortgage, Fiduciary, Mortgages, and Pledges. So, solutions that can be taken as a preventive measure for banks to reduce and even overcome these problems are routinely evaluating the performance of Notaries/PPAT partners, monitoring regularly, and holding reconciliations.

5. References

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Regulation:

Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary