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The Juridical Review the Roles and Responsibilities of Notaries in Credit Agreements in Banking

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Abstract. *An authentic deed is a deed made in a form determined by law, made by or before a public official in charge for that at the place where the deed was made. Some of the objectives of this study are first to find out the benefits of a credit agreement with a notarial deed when compared to private deed, second to analyze standard agreements in bank credit agreements in relation to the principle of freedom of contract, third to find out the role and responsibilities of notaries in credit agreements on Banking and fourth to find out what factors influence the roles and responsibilities of a notary in the credit agreement at Semarang Banking. The research method used is through statutory and empirical approach methods, using primary data and secondary data.*

Keywords: Agreement; Credit; Notary.

1. Introduction

Notaries in carrying out their duties and authorities for the sake of carrying out service functions and achieving legal certainty in providing services to the public, have been regulated and set forth in a separate law, namely Act No. 30 of 2004 concerning the Position of Notary, State Institution of the Republic of Indonesia of 2004 Number 117 (hereinafter referred to as UUJN), which law has been amended with the promulgation of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004, State Gazette of the Republic of Indonesia of 2014 Number 3 (hereinafter referred to as the Amendment Law on UUJN) .

Deeds made by a notary can be a legal basis for the status of property, property rights and obligations of a person. Mistakes in a deed made by a notary can cause a person's rights to be revoked or a person's burden of an obligation, therefore a notary in carrying out his duties must comply with various provisions mentioned in the Notary Office Law (UUJN). Pursuant to Article 1 paragraph 1 of

Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Office of a Notary Public, a Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law. A notary who draws up a deed that can be used as written evidence that has evidentiary power.[1]

Collateral or collateral is an important component in determining the size and eligibility of a debtor in making credit. Collateral must be adjusted to the loan ceiling value that will be given. The collateral value cannot be less than the credit limit provided. This is where the role of a notary is urgently needed by banks, this is related to legal risk of assets pledged as collateral by the debtor as credit collateral, if the credit provided becomes bad, the sale of collateral will not cause problems for the bank in the future. Therefore, notary services are needed in the banking world, because banking activities involve a lot of transactions with customers, where these transactions are made in an agreement/contract. To prevent undesirable things from happening, for example denial,

In this case one of them is in making a bank credit agreement deed involving the customer and the bank, in order to guarantee the truth of the contents set forth in the bank credit agreement, so that publicly there is no doubt about the truth. The author is interested in raising the use of notaries in credit agreements in banking.

2. Research Methods

The approach method used in this thesis is Juridical Empirical. Empirical juridical method is an approach that is based on applicable law and based on reality in practice.[2] This empirical juridical research consists of the word "juridical" which means that law is seen as a norm or das sollen, because in discussing the problem this research uses legal materials (both primary legal materials and secondary legal materials). As well as the word "empirical" which means law as a social, cultural or das sein fact, because in this study it uses primary data obtained from the field.

3. Results and Discussion

3.1. Role And Responsibilities Of Notary In Banking Credit Agreements

[1]Chairunnisa Said Selenggang, "Notary Profession as a Public Official in Indonesia". (Paper presented at the 2008 Campus Introduction Program for Masters Students of the Ministry of Education, Depok: 2008).

[2]Soerjono Soekanto and Sri Mamudji, 2009, Normative Legal Research A Brief Overview, PT Raja Grafindo Persada, Jakarta, p. 26.

In accordance with the Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, abbreviated as the Law on Notary Position (UUJN). In more detail in Article 1 paragraph 1 UUJN, it gives the following understanding of a notary:

> "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws."

In Article 1 it is the implementation and provisions of Article 1868 of the Civil Code which regulates: "an authentic deed is a deed in the form determined by law, made by and or before a public official who is authorized to do so, at the place where the deed was made. "

The conclusion of Article 1 of the UUJN is to make authentic deeds, which according to Article 1870 of the Civil Code will give the parties who make them an absolute and perfect proof meaning that what is written on the deed is true.

The authority of a notary includes four things, viz[3]

1. The notary is authorized as long as it concerns the deed he made. Notaries are only authorized to make authentic deeds in the field of civil law as long as they are not authorized by other public officials and are not authorized to make authentic deeds in the field of public law;
2. The notary is authorized as long as it concerns the people for whose benefit the deed was drawn up. Notaries are not authorized to make deeds for the benefit of everyone, as stated in article 52 of Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Office of a Notary;
3. The notary must be authorized as far as the place where the deed was made. In accordance with Article 19 of Act No. 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Office of a Notary, a notary is not authorized to make deeds outside the territory of his position;
4. The notary must be authorized as long as it is related to the time of making the deed. Notary may not make deeds while he is on leave or dismissed from his position and also he may not make deeds while he is in office.

The notary and the deed are an inseparable part, because the position of the notary's deed becomes authentic because the notary's position as a public official has been determined by law. From a formal juridical point of view, there

[3]Ngadino, 2019, Duties and Responsibilities of Notary Office in Indonesia, UPGRIS PRESS, Semarang, page 8.

are 2 (two) types of agreements or credit agreements used by banks in releasing their credit, namely:

1. Underhand credit agreement/binding or private deed;

2. Credit agreements/bindings made by and before a notary (notarial) or authentic deed.

Working capital loans in banking have situational conditions, namely if the value of the loan amount is not too large or when binding collateral, an authentic notarial deed is not required, then the working capital credit agreement is made underhand. However, if the granting of working capital loans is of great value and supporting notarial deeds are required such as fiduciary guarantee deeds and several statements that need to be legalized, then a notary is needed in implementing the working capital credit. Most of the existing agreement deed in working capital credit in banking uses a notarial deed. According to an interview with one of the banking debtors, the use of a Notary in Working Capital Loans will provide a sense of security and comfort in executing credit. Ease is also obtained when carrying out these credit terms. From the start of making the deed to the legalization of the statement, everything is made by a Notary partner of the Bank.

In the credit agreement made by a notary, if an error is found by the bank in the future which includes the contents of the article in the credit agreement, the notary will make a renvoi based on the approval of the creditor and debtor. Apart from being based on the size of the credit value, the use of a notary in a credit agreement, namely in the form of a notarial deed, can avoid potential risks in the event of disputes and defaults between the bank and the debtor who borrows credit for his business capital needs.

In banking, consumer credit uses a Notary based on the type of credit. This is because there are no regulations requiring the use of an Authentic Deed (Notarial) from a Notary in the Credit Agreement for consumer credit at the Bank. For Home Ownership Credit, the implementation of home ownership credit uses the services of a notary in its implementation. The world of banking uses the services of a notary in new home ownership loans. The deed made at the notary is

a. Deed of Credit Agreement
b. Power of Attorney to Perform Mortgage Rights (SKMHT)
c. Mortgage Binding Deed (APHT)

As for the Sale and Purchase Deed, the services of a Land Deed Making Officer (PPAT) are used.

For motor vehicle loans, the agreement uses an authentic (notarial) deed including a credit agreement and a fiduciary deed. This type of binding was adopted because of the nature of the goods that are easily movable. This deed must be registered with the Ministry of Law and Human Rights, which can now be done online or online.

For multi-purpose loans or personal loans, all multi-purpose loans in banking use private deed. That is because in its implementation the guarantee given to the Bank can be in the form of an employee appointment decree or a Deposit issued by the Bank. So that in binding as well as the credit agreement deed using private deed. In this case the banking party has made a standard or standard agreement whose signature is carried out when the disbursement process will be carried out. This is contained in the provisions of article 15 of the draft credit agreement which reads "this credit agreement was signed in Semarang at the time the realization was made in duplicate, each of which was sufficiently stamped and had the same original evidentiary power".

Juridically, regarding the condition of using private deed in multipurpose credit agreements or personal loans, the role and responsibilities of a notary in multipurpose credit agreements or personal loans do not exist. Even though multipurpose loans or personal loans can only use a maximum loan limit of 500 million, the use of private deed still has a potential risk in the verification process if a dispute arises between the bank and the debtor.

Based on the interview above, it can be concluded, if the credit agreement is encumbered with mortgage rights, then the bank uses the services of a notary in making the Deed of Encumbrance of Mortgage, similarly if the collateral is a movable object, the bank uses the services of a notary to make the fiduciary bond. As well as in the use of authentic deed other notaries will follow if the credit includes these two things. This is stated in the Board of Directors Circular Number 6/SE-KRD/V/2012 concerning Credit Collateral.

Not all loans within the scope of banking use the services of a notary. Some credit using private deed. However, there are also several deeds using legalized deed or Waarmeking by a notary. Differences in legalization and Waarmeking based on InsideLaw No. 30 of 2004 concerning the Position of Notaryas amended withLaw No. 2 of 2014(“Notary Position Law”) and other related laws. In Article 15 paragraph (2) letter a of the Notary Office Law, a Notary, in his position, has the authority to validate signatures and determine the certainty of the date of private documents, by registering them in a special book. This provision constitutes the legalization of a private deed made by an individual or by the parties on sufficiently stamped paper by way of registration in a special book provided by a Notary. In short, the point of this legalization is, the parties make the letter, bring it to the Notary, then sign it before the Notary, then record it in

the Legalization Book. It is the date at the time of signing before the Notary, as the date of the legal action, which gives birth to the rights and obligations between the parties. detailed explanation, The notary can also read/explain the contents of the letter or only certify the signature and confirm the date. The point remains that the parties must sign their signatures before the Notary, and then the signatures are ratified by him. The notary determines the certainty of the date, as the date when the private agreement was signed between the parties. The notary then writes the Legalization editorial on the letter. Ratification of signatures and determination of date certainty, is recorded in a special book, namely the Legalization Book. The notary who witnesses and certifies the signature, determines the certainty of the date, as an official authorized by law to explain/confirm/ensure that it is correct on the date as written in the Legalization Book, the parties made an agreement under the hand and before him to sign the letter. The editorial written on the legalization sheet is limited to the notary's responsibility.

In Article 15 paragraph (2) letter b of the Notary Office Law, a Notary, in his position, also has the authority to record private documents, by registering them in a special book. The book in particular is called the Book of Registration of Letters Under the Hand. In daily life, this authority is also known as Registration of private letters with the code: "Register" or Waarmerking or Waarmerk. The point of this registration is that the parties have signed the letter, either a day or a week before, then bring the letter to the Notary to be registered in the Book of Registration of Private Letters. Its function is, to the agreement/agreement that has been agreed upon and signed in the letter, apart from the parties, there are other parties who are aware of the existence of the agreement/agreement, this is done, one of them is to eliminate or at least minimize denial from one party. The rights and obligations between the parties are born at the time of signing the letter that has been carried out by the parties, not at the time of registration with the Notary. The Notary's responsibility is limited to confirming that the parties made an agreement/agreement on the date stated in the letter registered in the Book of Registration of Private Letters.[4]

In practice in banking, making a private deed is considered the same as making a credit agreement deed with a notary, this can be seen in daily practice which does not force the making of a deed of a credit agreement to be notarized, this is because with a private credit agreement will provide the same security as a notarial deed, in principle what the bank wants to achieve through a credit agreement is the power over guarantees if the debtor defaults, with a private deed with this objective can also be realized.

[4]Followed from the internethttps://www. Hukumonline.com/klinik/a/perbedaan-legalization-dan-iwaarmerking-i-dokuk-lt54b7b0bedaa2aaccessed on 4 August 2022 at 23:00 WIB

It also does not mean that a notarial deed is something that does not need to be made, because in practice in banking it is also found that credit agreement deed is made with a notarized deed, regardless of the credit value the agreement is always made with a notarized deed, according to the author this fact is meant to give strength more evidence against documents, apart from being a standard procedure, such action is more of an element of security.

In several cases of default, credit agreements with notarized or underhanded deeds are not a problem or basis for objection, because in these cases the main thing is proof of default actions committed by the debtor. This is related to the debtor's guarantee, so that in cases of default the debtor tends to try to release the burden of responsibility on the grounds that there is overmacht in him concerning business activities and national economic conditions.

With respect to cases of default, which in the end raises questions about the position of the credit agreement deed made in a notarized or underhanded deed, the results of the author's research do not obtain such cases. From the elaboration above, it can be stated that the benefits of a notarial deed in a bank credit agreement are as strong and perfect evidence if it occurs in the event that the debtor disputes the validity or correctness of the credit agreement deed that has been made, for example by not acknowledging the existence of the credit agreement. Even though this has never been done. This happens because usually what is at issue is only the default as described above. However, to secure large amounts of credit, a notarial deed is still required.

Between private deed and notarial deed in banking, in practice, there is no significant difference, because the existence of the deed is not a problem in an act of default, what is the problem is the default itself, concerning how the debtor will proceed to pay the installments.

3.2. Factors Affecting The Duties And Responsibilities Of Notary In Credit Agreements In Banking

In implementing credit agreements in banking, it can be stated that one of the factors that influence the role and responsibilities of a notary in the process of making a credit agreement is based on the bank's policy as outlined in a Directors Circular Letter.

In this regard, the roles and responsibilities of a notary, especially in the use of his services, are determined by the direction of banking policy. So that not all credit agreements made in banking use notary services. The banking party has the right to determine whether or not it is necessary to use the services of a notary in the credit granting process. In its application, there is no Directors Circular Letter explaining the obligation to use a notary. So that the policy factor

of the credit breaker is the central credit board of directors which determines whether the credit in the process requires the role and responsibility of a notary, in this case the use of a notary or not needed or underhanded. The banking party, in this case the banking sector, also has the right to determine which notary is a partner in order to expedite the credit granting process.

One of the factors that influence the role and responsibilities of a notary in the process of granting credit in banking is the level of credit risk it provides. In this case, if the level of credit risk is large enough, collateral is required so that loans distributed generally require collateral, and in practice they always use the services of a notary.

The use of notary services in connection with credit which is considered to have a large risk is generally carried out through a credit agreement followed by legalization by the notary. The involvement of the notary is then carried out by making a deed of imposition of mortgage rights (APHT) on guarantees that are pledged as collateral, especially guarantees for immovable objects, and by binding fiduciaries to guarantees for movable objects. Regarding the risk of self-credit collateral, it has actually been regulated in the Directors Circular Letter No. 006/SE-KRD/V/2012 concerning the list of acceptable guarantees. In terms of general requirements for Collateral, among others

a. Collateral Must have economic value
b. In general, the collateral value must be greater than the amount of credit granted
c. Can be bound according to applicable legal provisions
d. The Collateral Items are free from disputes and are not being pledged as collateral to other parties

To overcome the credit risk of collateral, especially in points c and d, the role and responsibility of a notary is needed to carry out the credit process.

Granting credit with a value of more than IDR 10 billion requires using the services of a notary in processing the credit agreement and binding the mortgage rights, while for credit values that are below IDR 10 billion, the use of the services of a notary is based on the discretion of the credit breaker.

consumer credit given to employees in practice does not use the services of a notary so that the credit agreement made is only a private credit agreement. This is done because in general the value of credit extended for consumer credit is quite small and especially for employees with direct salary deductions, the credit agreement does not use the services of a notary at all.

4. Conclusion

The role and responsibilities of a notary in making credit agreements in banking are needed, this can be seen from the cooperation carried out by the banking sector with several notaries who are partners. However, in practice, not all credit agreements made between banking parties and debtors use the services of a notary, even though a bank credit agreement deed made notarized will be very beneficial for creditors, especially in terms of the strength of evidence. Banking credit agreements made by banking parties with debtor customers do not all use the services of a notary. This is influenced by banking policies carried out by the directors, the level of credit risk extended, and the amount of credit given to borrowers.

5. References

Journals:

[1] Chairunnisa Said Selenggang, "Notary Profession as a Public Official in Indonesia". (Paper presented at the 2008 Campus Introduction Program for Masters Students of the Ministry of Education, Depok: 2008).

[2] Oting Supartini and Anis Mashdurohatun, The Legal Consequences of the Credit Agreement Deed Made by a Notary With Guaranteed Mortgage Rights of Legal Certainty and Fairness of the Parties, Journal of Legal Renewal, Volume III No. 2, (May – August 2016), p. 204

[3] Ulya, Zaki. 2015. The Existence of the Aceh Land Agency as a Regional Apparatus in Aceh in the Aspect of Legal Certainty in the Land Sector. Journal of the Constitution, Volume 12, Number 3, September 2015

Regulation:

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

Internet:

Followed from the internethttps://www. Hukumonline.com/klinik/a/perbedaan-legalization-dan-iwaarmerking-i-dokuk-lt54b7b0bedaa2a