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# THE ROLE OF NOTARIES IN BANKING CREDIT AGREEMENTS: ANALYSIS OF LAWS NO. 10 OF 1998 AND NO. 2 OF 2014

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Keywords

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Abstract. The position of a Notary, as a General Officer who makes an authentic deed is very much needed in banking business activities, one of which is in making a deed of banking credit agreement involving customers and banks, to guarantee the truth of the contents set forth in the banking credit agreement, so that the truth is not publicly disclosed. no doubt. The approach method is normative juridical, namely legal research conducted by reviewing and testing secondary data in the form of positive law. The research specification used is descriptive analytical, that is, systematically describes the facts and problems related to the role of a notary in banking credit agreements in the event that the debtor defaults in relation to Law no. 10 of 1998 jo. Law No. 2 of 2014 concerning changes to the position of a notary. Notaries are very important in helping to create legal certainty and protection for the community. This legal certainty and protection can be seen through the authentic deed made as perfect evidence in court. Whereas the role of a notary in the deed of banking credit agreement made notarial by a notary is very useful for creditors if the debtor defaults on the strength of the evidence. In banking practice, making credit agreements with private deeds can also provide execution guarantees because both notarial and private deeds are always followed by institutions with other guarantee institutions whose deeds are executorial such as APHT.

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## 1. INTRODUCTION

Indonesia's banking industry after the crisis, began to show improvement. This important signal of Indonesia's economic recovery can be seen in the return of the intermediary function of banks, namely banks as intermediaries between parties who lack funds for both working capital and investment and those who will channel funds through savings, time deposits and other types of placements, as indicated by increased credit growth. although still very slow (Yusuf & Maryanto, 2018).

The position of a Notary, as a General Officer who makes an authentic deed is very much needed in banking business activities, one of which is in making a deed of banking credit agreement involving customers and banks, to guarantee the truth of the contents set forth in the banking credit agreement, so that the truth is not publicly disclosed. no doubt. In Article one point 1 of Law no. 2 of 2014 concerning Notary Positions states, "Notaries are public officials who are authorized to make authentic deeds and have other authorities as referred to in this Law or based on other laws.

Article 1 Reglement op het Notary (Regulation of Notary Position) hereinafter abbreviated as PJN, i.e. Notary is a special public official (the only one), authorized to make authentic deeds regarding all acts, agreements and stipulations required by general regulations or by Interested parties are required to declare in an authentic deed, guarantee the certainty of the date, keep the deed and provide grosse, a copy or a quote, all of this if the making of such a deed, by general regulations is not assigned or specified to an official or other person (Setyaningsih et al. ., 2018).

From the article, it can be seen that a notary is a public official who is authorized to make an authentic deed. This means that their authority only covers the making of authentic deeds which have been expressly assigned to them by law. The other officials referred to include PPAT, Civil Registry Officers and the Head of the District Court. From Article 1 of the Notary Position Regulations, it can be concluded that the main task of a Notary is to make authentic deeds, namely an absolute and perfect

deed, meaning that if a party submits an official deed, the judge must accept it and consider what is written in the deed. has really happened so that the judge may not order additional evidence.

In terms of credit agreements, the position of banks as creditors and customers as debtors is never balanced. The Bank before disbursing its credit, first enters into a Credit Agreement with the prospective debtor. However, until now, there are no guidelines or demands that can be used as a reference by banks, regarding what content or clauses should or should not be included in a credit agreement. In terms of credit agreements, the position of banks as creditors and customers as debtors is never balanced. There are times when the bank is stronger than the asabah (debtor), in terms of the customer (debtor) including weak economic entrepreneurs.

Bank credit agreements when viewed from the form, are generally in the form of standard agreements. Standard agreements, are the concepts of written promises, which are prepared without discussing the contents and are usually stated in an unlimited number of agreements of a certain nature. In addition, with a standard agreement, the entrepreneur can express his will freely, without interference from other parties, so that the other party (the community) only has to agree or not with the contents of the standard agreement. Mariam Darus Badrulzaman emphasized that by using standard agreements, entrepreneurs gain efficiency in the use of costs, energy, and time (Firdaus, 2012).

Standard agreements in business practice are not new anymore. The practice of using standard agreements at the present time, which demands fast life steps, seems to be unstoppable, some even predict that the use of standard agreements will tend to increase, although here and there there are complaints or dissatisfaction from various groups, especially the community (consumers). . In practice, each bank has provided blanks (forms, models). Credit agreement, the contents of which have been prepared in advance (standard form). The phenomenon of credit agreements with their standard clauses, raises new legal problems with the enactment of Law no. 8 of 1999 concerning Consumer Protection, regulates the provisions for the inclusion of standard clauses.

The role of a Notary is very important in making a deed of banking credit agreement, a Notary as a Public Official, is required to be professional, one of which is bridging the interests of debtors and creditors in making credit agreement deeds, but in reality the attitude of professionalism is faced with the demands of the banking world, namely efficiency in banking procedures and security in lending, so that in practice banking institutions tend to use standard agreements in their credit agreements (SUSANTO, 2019).

The position of a notary as a functionary in society is still recognized today. Notaries are trusted by the public as a place to ask questions in the field of civil law and are believed by the questioner that he will get reliable answers or advice. The function of a notary as a provider of information and advice to the public in general is a characteristic of a notary position. Notaries are trusted because everything written and determined by a notary is true, and a notary is the maker of documents in a legal process. This is in accordance with the provisions of Article 16 paragraph (1) letter e of Law no. 2 of 2014. Article one point (1) of Law no. 02 of 2014 concerning Notary Positions provides an understanding of the position of a notary, that the main task of a notary is to make an authentic deed, as the strongest and most complete evidence, what is stated in a notary deed must be accepted, not only because it is required by legislation, but also but because it is also desired by interested parties to ensure the rights and obligations of the parties, for the sake of certainty.

The existence of the Law on Notary Positions is expected to be a guide for Notaries in carrying out their duties and positions. However, along with the number of Notaries who focus on a certain area, especially in big cities in Indonesia, this causes competition. The tight competition among Notaries encourages Notaries to do things that are not commendable in order to get clients which in the end can degrade the dignity of the Notary's position. Such actions include setting a lower notary service rate than the one stipulated, collaborating with certain service bureaus in making a deed, making billboards as promotional media and justifying any means that are contrary to the Law on Notary Positions (Kamelia, 2017).

One of the things that can be found is regarding the binding between the Bank and the Notary in the form of a cooperation agreement between the Bank and the Notary. Referring to the provisions of the Law on Notary Positions, it does not explicitly prohibit Notaries from entering into agreements with

any party, but in practice the implementation of cooperation agreements between Banks and Notaries is not in line with the Law on Notary Positions and the Notary Code of Ethics. As a result, the Notary becomes independent and sided with the Bank (Hidayat, 2019).

In the Law on the Position of Notaries Article 16 paragraph (1) letter a it is stated that, in carrying out their positions, Notaries are obliged to: act honestly, thoroughly, independently, impartially and protect the interests of the parties involved in legal actions. The cooperation agreement between the bank and the notary arises as the existence and role of the notary is very necessary in making the credit deed. The work submitted by the Bank to the Notary includes legalizing credit agreements, making deed of debt acknowledgment, power of attorney to sell, making power of attorney to impose mortgage rights and making other deeds deemed necessary by the Bank. So based on the description of the background above, the researcher is interested in identifying how the role of a notary in credit agreements is related to Law no. 10 of 1998 Jo. Law No. 2 of 2014 concerning changes to the position of a Notary.

## 2. METHOD

This research is normative legal research, which is a research that covers legal principles, legal systematics, level of legal synchronization, legal history, and also legal comparisons. This research is also a research that collects and collects data and examines various data sources consisting of primary, secondary, and tertiary legal materials. The approach method used in this research is normative juridical. The data collection technique used by the researcher is library research, namely conducting research on documents that are closely related to the research title in order to obtain a theoretical basis and obtain information in the form of formal provisions and data through existing official texts. While the data analysis used by the researcher is a qualitative juridical analysis, namely the analysis of qualitative data using a normative juridical approach, in order to provide clarity about the object under study (Gamar, 2020).

## 3. RESULTS AND DISCUSSION

### 3.1 The Role of Notaries in Credit Agreements Associated with Law no. 10 of 1998 concerning Changes in the Notary Position

The role of the Notary in banking credit agreements is linked to Law no. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of a Notary, the position or role of a notary here is as a bank partner in binding Credit Collateral. The role of a notary is very necessary in binding additional collateral at the bank, if the credit disbursed runs normally and is paid off on time, the bank is protected from risk, but if the credit disbursed does not run smoothly, one of the reasons is that imperfect collateral binding is carried out by the notary, the bank risk of incurring losses. Meanwhile, what a Notary should do is make a document that is authentic for both parties to the agreement, there should be no partiality on either side (Purwanto & Sukarmi, 2017).

This happens because a notary is because the notary is authorized to make a form of authentic deed that is able to provide legal protection to the parties to the agreement. Notaries are very important in helping to create legal certainty and protection for the community, because notaries as public officials are authorized to make authentic deeds, as long as the making of authentic deeds is not reserved for other public officials. This legal certainty and protection can be seen through the authentic deed he made as perfect evidence in court. The evidence is perfect because the authentic deed has three powers of proof, namely the power of external evidence, the power of formal evidence and the strength of material evidence.

Basically the form of a deed is not a problem, whether it is a private deed or an authentic deed made by or before a notary, as long as the parties remain committed to carrying out the obligations and rights contained in the deed. It will be a problem for the parties if one of the agreed parties reneges on the agreement and a dispute is born that can harm many parties. This risk can occur due to differences in the interests of each individual, unclear identity and denial of an achievement which ultimately leads to conflict between individuals. Therefore, it is important for the individual to equip himself with a

letter or document that can protect him from all legal relationships, because the choice of an authentic deed is felt as the right thing to write and ratify an agreement (Risa, 2017).

Notaries as public officials can provide guarantees and legal protection through the formulation of authentic deeds that they make. The deed is a reflection of the fulfillment and implementation of rights and obligations between a legal subject and other legal subjects from a civil case, the main means of evidence (evidence) is writing, while in a criminal case, testimony. Bearing in mind that a notary is considered an honorable profession because it is in charge of serving the interests of the general public. An honorable position places a burden and responsibility on every Notary to maintain the prestige and honor of the Notary profession.

The prestige and honor of the Notary profession in carrying out his duties as a public official must be maintained, because it requires rules that regulate, limit and serve as guidelines for Notaries in carrying out their positions and behaving. 2 of 2004 concerning Amendments to Law No. 30 of 2014 concerning the Position of Notary. The Law on Notary Positions is the only law that regulates the position of a Notary in Indonesia, replacing the Staatsblad of 1860 No. 3 Regarding Notary Position Regulations . This Law is expected to provide general guidelines for Notaries and in it there are also strict sanctions for any Notary who violates the Law (Farahdiba, 2019).

Notaries as a profession have an association, namely the Indonesian Notary Association (INI). The Congress of the Indonesian Notary Association on January 27, 2005 established a new Code of Ethics for Notaries. The Notary Professional Code of Ethics regulates the behavior of a Notary that must be obeyed by every Notary in carrying out his position and also outside of carrying out his position. However, the sanctions imposed for violations of the Notary Code of Ethics are only disciplinary sanctions that apply internally to the organization. The Notary Code of Ethics consists of eight chapters, namely general provisions which contain the notions contained in the Notary Code of Ethics. The provisions in the Articles of Association of the Indonesian Notary Association must be obeyed by Notaries. The provisions in the Articles of Association also relate to the Notary Code of Ethics, namely Article 12 which regulates the Honorary Council and Article 13 concerning the Notary Code of Ethics and its enforcement. Different from the two previous provisions, this Article of Association does not have sanctions.

In addition to the regulations mentioned above, the Notary must also comply with the applicable laws and regulations and the propriety that exists in society. The existence of the Law on Notary Positions and the Notary Code of Ethics are expected to be a guide for Notaries in carrying out their duties and positions. However, along with the number of Notaries who focus on a certain area, especially in big cities in Indonesia, this causes competition. The tight competition among Notaries encourages Notaries to do things that are not commendable in order to get clients which in the end can degrade the dignity of the Notary's position (Utami et al., 2018).

Such actions include setting a lower Notary service rate than the one stipulated, collaborating with certain service bureaus in making a deed, making billboards as promotional media and justifying any means that are contrary to the Law on Notary Positions and the Notary Code of Ethics. Notaries are squeezed by a life of materialism which leads to moral decline. As a result, there are some notaries who practice the philosophy of trading rather than carrying out their roles as public officials. They pro-actively go to the market to visit clients, offer services, negotiate fees and carry out engagements like businessmen in general.

One of the things that can be found is regarding the binding between the Bank and the Notary in the form of a cooperation agreement between the Bank and the Notary. Referring to the provisions of the Notary Position Act and the Notary Code of Ethics, it does not expressly prohibit Notaries from entering into agreements with any party, but in practice the implementation of cooperation agreements between Banks and Notaries is not in line with the Notary Position Act and the Notary Code of Ethics. As a result, the Notary becomes independent and sided with the Bank. Whereas in the Law on Notary Positions Article 16 paragraph 1 letter a it is stated "In carrying out his position, a Notary is obliged to: act honestly, thoroughly, independently, impartially and protect the interests of the parties involved in legal actions. The cooperation agreement between a bank and a notary arises as the presence of a notary is indispensable in making a deed in the field of credit. The work submitted by the Bank to the Notary

includes legalizing credit agreements, making deed of debt acknowledgment, power of attorney to sell, making power of attorney to impose mortgage rights and making other deeds deemed necessary by the Bank (Suhendry, 2013).

The deed of agreement which is legalized or warmerking by a Notary is not only a form of ratification of the agreement, but leads to the prevention of legal problems that arise in the future. This practice can be seen if a customer enters into an agreement with the Bank where the agreement is in the form of an authentic deed, legalization and warmeking. Of course, these agreements must use the services of a Notary from a Notary who has been appointed by the Bank concerned. Prior to the appointment, a cooperation agreement between the Bank and the Notary concerned must be drawn up regarding the provision of Notary services.

### 3.2 The Role of Notaries in Banking Credit Agreements in the Case of Default Debtors Associated with Law no. 10 of 1998 Jo. Law No. 2 of 2014 concerning Changes in the Notary Position

Credit agreements made either by private deed or notarial deed, are generally made in the form of a standard agreement, namely by means of both parties, namely the bank and the customer, signing an agreement that has previously been prepared the contents or clauses by the bank in a printed form. In the event that the bank credit agreement is made with a Notary Deed, the bank will ask the notary to refer to the credit agreement model of the bank concerned. Notaries are asked to guide the clauses of the relevant bank credit agreement model. At Bank X and Bank Y the form of the credit agreement is a standard agreement made under the hand and legalized by a Notary, even though the form and material of the credit agreement between one bank and another bank is not the same which is adjusted to the needs and circumstances (Sugiarto et al., 2018).

In discussing defaults, we cannot escape the agreement because without an agreement, there will never be a vice-presidency. The agreement is regulated in Book III of the Civil Code (hereinafter referred to as BW) in the chapter on engagement, namely that an agreement is valid if it has fulfilled the conditions stated in Article 1320 BW, namely they agree that they are binding themselves, the ability to make a contract. engagement, a certain thing, a lawful cause.

Basically, BW does not regulate bank credit agreements, even the Banking Law does not recognize the term bank credit agreement. In the instruction it is stated that in providing credit in any form, banks are required to use a "credit agreement". With this prior determination, the prospective debtor can do other things besides agreeing and signing the agreement because he really needs the credit. Such a credit agreement is a one-sided agreement. The determination of the agreement unilaterally by the bank is to prevent unwanted things from happening. Because it is usually the debtor who is naughty, the bank does not bear all the risks if the credit is bad (Thamrin, 2021).

At this time one of the parties can cancel, either the bank or the prospective debtor. If the bank knows that the prospective debtor cannot be trusted and has a bad reputation, the bank can cancel and has a bad reputation, the bank can cancel the agreement, as well as the prospective debtor if at that time he no longer needs credit then he can sue parties who cancel the credit agreement at this time because this is in accordance with the Banking Law.

Based on Article 1 number 11 of Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking explained the definition of Credit. Credit is the provision of money or equivalent claims, based on an agreement or loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest. In the provisions of the article, what is meant by agreement or loan-borrowing agreement is a form of credit agreement where the agreement must be made in written form. The agreement in the Banking Credit Agreement must be made in writing. This provision is contained in the Elucidation of Article 8 of Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking, which requires banks as credit providers to make written agreements. The requirement for a banking agreement to be in written form has been stipulated in the main banking provisions by Bank Indonesia as referred to in Article 8 paragraph (2) of the Banking Law (Noviaditya, 2010).

The credit agreement has several functions, namely (1) the credit agreement functions as the main agreement, meaning that the credit agreement is something that determines the cancellation or failure of other agreements that follow it, for example a guarantee engagement agreement (2) The credit agreement serves as evidence regarding the limitations of rights and obligations. obligations between creditors and debtors.

Based on the Elucidation of Article 10 of Law no. 4 of 1996 it is explained that an agreement that gives rise to a debt-receivable relationship whose repayment is guaranteed can be made in two forms, namely in the form of an underhand deed or an authentic deed, depending on the legal provisions governing the subject matter of the agreement.

In banking practice, credit agreements made in writing are stated in two forms, namely credit agreements or underhand deeds, which are agreements made only between the parties without being in the presence of an authorized official in making the deed, namely a notary. In fact, usually, the signing of the agreement deed is not attended by witnesses who affix their signatures. This private deed is usually in the form of a draft which is prepared by the bank first and then offered to prospective debtor customers for approval. The standardized agreement contains all kinds of terms and conditions, in the form of a form and its contents are never discussed or negotiated with the prospective debtor customer first. If the prospective debtor customer is not happy with the clauses contained in it, then there is no opportunity to protest against the clauses that are not allowed by the prospective customer, because the agreement has been standardized by the banking institution concerned, not by banking officers who are dealing directly with the prospective debtor. . Thus, prospective debtors who wish to apply for credit must agree to all the terms and conditions proposed by the bank as the creditor (Oktarini & Kusuma, 2020).

In practice, this private deed or credit agreement has several weaknesses, so that this private deed does not provide guarantees for repayment of creditors' receivables and legal protection for creditors. Some of the weaknesses of this private deed are (1) If there is a default by the debtor, which in the end will take legal action through the judicial process, then if the debtor in question denies or does not acknowledge his signature, it will weaken the bank's position when litigating in court and raw. the legal force of the credit agreement (2) Because the agreement or deed under the hand is only made between the parties, then there may be a lack of data that should be completed for a credit binding interest.

An authentic deed is a letter or writing or an agreement for granting credit by a bank to its customers which is only made by or in the presence of a notary. The definition of an authentic deed is contained in Article 1868 of the Civil Code, namely: "An authentic deed is a deed in the form determined by law, made by or in the presence of public officials in power for that purpose at a place where the deed was made (Scorvenny, 2020).

That what banks need to remember is that a notary as a public official is also an ordinary human being. Thus, in entering into a credit agreement before a notary, bank credit is still required to play an active role in checking all legal aspects and necessary completeness, because the possibility of errors or mistakes in a credit agreement made notarial still exists. Thus, the banking sector does not absolutely depend on a notary, but a notary must be considered as a partner in the implementation of a credit agreement. In addition, the bank still expects a legal opinion from a notary regarding every credit release, so that the notary can act as one of the filters of the legal aspect of a credit release (Sijabat, 2019).

The advantage of a notarial (authentic) deed of credit agreement or debt acknowledgment is that a Grosse Deed of Debt Recognition can be requested which has executive power, meaning that it is equated with a judge's decision which the bank hopes that the execution will no longer need to go through a lawsuit process which usually takes a long time and cost a lot. The form of legal protection given to creditors when the debtor defaults according to the Elucidation of Article 10 of Law no. 4 of 1996 is contained in the form of the credit agreement itself which is contained in written form, which is either a private deed or an authentic deed (Sari, 2020).

If the credit rescue efforts made fail, then in the end the credit in question becomes bad credit. After the credit is declared to be bad, then the action that can be taken by the creditor is to take action to settle or collect the credit. What is meant by settlement or collection of bad loans is the creditor's

efforts to recover payment from the debtor for credit that has become bad. To settle or collect loans that are already at the non-performing quality stage, in dealing with bad loans, it is emphasized through several efforts that are more legal in nature, namely, among others, gross execution of deed of acknowledgment of debt and collateral, execution of gross mortgage deed/certificate of rights. dependents, through judicial bodies, through arbitration or alternative dispute resolution bodies, and finally through forced institutions.

## 4. CONCLUSION

The role of the notary here is as a partner of the bank in binding the credit collateral. The role of a notary is very necessary in binding additional collateral at the bank, if the credit disbursed runs normally and is paid off on time, the bank is protected from risk, but if the credit disbursed does not run smoothly, one of the reasons is that imperfect collateral binding is carried out by the notary, the bank risk of incurring losses. Meanwhile, what a notary should do is make a document that is authentic for both parties to the agreement, there should be no partiality on either side. This happens because the notary has the authority to make an authentic deed that is able to provide legal protection to the parties to the agreement. Notaries are very important in helping to create legal certainty and protection for the community. This legal certainty and protection can be seen through the authentic deed he made as perfect evidence in court. Whereas the role of a notary in the deed of banking credit agreement made notarial by a notary is very useful for creditors if the debtor defaults on the strength of the evidence. In banking practice, making credit agreements with private deeds can also provide execution guarantees because both notarial and private deeds are always followed by institutions with other guarantee institutions whose deeds are executorial such as APHT. Besides that, in a default dispute between a debtor and a creditor, the deed is not the reason used. The parties are only concerned about the default, not the deed.

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