

The Role of a Notary in Making A Syndicated Loan Authentic Deed

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Abstract. *The purpose of this research is to analyze & find out: 1). The role of the Notary in the implementation of the authentic deed of syndicated loan (syndicated loan) 2). Barriers & solutions in making authentic syndicated credit deeds. The approach method in this research is a sociological juridical approach. The data used are primary & secondary data obtained through interviews & literature study, data analysis was carried out by analytical descriptive. The results of the research concluded: 1). The role of the Notary in the implementation of the authentic deed of syndicated loan (syndicated loan) includes, among others, making a deed of a syndicated credit agreement requested by the bank, providing guidance to the bank regarding credit documents, making final credit documents, confirm the data to the bank if there are things that are not or are not clear, keep the name of the debtor & the amount of credit requested, & enter it into the register book to be registered with the district court. 2) Obstacles & solutions in Making Authentic Deeds for Syndicated Loans, namely: difficulties in making authentic deeds before a Notary at the same time & place, dual duties & problems with guarantee institutions. The solution that can be done to overcome these obstacles is that the Notary should add HR in his office to help the Notary's tasks, the bank must also add HR, so that there is no double duty. To deal with problems related to guarantee institutions, the Paripassu Security Sharing Agreement (Security Sharing Agreement) emerged.*

Keywords: Agreement; Credit; Deed; Notary; Public; Syndication.

1. Introduction

Along with the development of the dynamics of social life, the interaction between individuals is getting wider, especially in relationships that are economic & commercial in nature, including those involving engagements or agreements.¹

In economic activity, humans need business capital to support these activities and business continuity, where in getting help Capital loans are generally obtained from financial institutions in the form of credit agreements. The definition of credit as formulated in Article 1 paragraph (11) of the Banking Law, credit is the provision of money or an equivalent claim, based on an agreement or loan agreement between a bank and another party which requires the borrower to repay the debt after a certain period of time. certain interest.²In the process of granting credit, banks do not only provide small amounts of credit, but banks also make large amounts of credit. In lending activities with large amounts, the ceiling is not possible to be charged to only one bank, due to the existence of a credit limit limit by each bank or also known as syndicated loans or "syndicated loans".³

According to the dictionary on the official website of Bank Indonesia, syndicated credit is the provision of credit by a group of banks to one debtor, whose credit amount is too large to be given by only one bank.⁴ Iswahjudi A. Karim in his paper entitled "Syndicated Loans" states that "syndicated loans" are loans given by several syndicated creditors, which usually consist of banks and/or other financial institutions to a debtor, which is usually a legal entity. to finance one or more projects (building or factory construction) belonging to the debtor.⁵

KSyndicated credit is a financing technique to avoid the Maximum Lending Limit (BMPK). Syndication gave rise to two terms, namely loan syndication & syndicated loan. Credit syndication is a syndicate whose participants consist of credit giving institutions that were formed with the aim of providing credit to a

¹Dewi Kurnia Putri, Amin Purnawan, Perbedaan Perjanjian Pengikatan Jual Beli Lunas dengan Perjanjian Pengikatan Jual Beli Tidak Lunas, *Jurnal Akta*, Vol. 4 No. 4 Desember 2017, p. 624, p.624

² Bryan A Garner, (1999), *Black's Law Dictionary, Sevent Edition*, p.375

³ Adrian Sutedi, (2012), *Tinjauan Yuridis Letter Of Credit & Kredit Sindikasi*, Bandung: Alfabeta, p.166

⁴ <https://www.bi.go.id>, accessed on 17 September 2021, 10.15 WIB

⁵ <https://ibfgi.com/credit-syndication/>, accessed on 17 September 2021, 10.20 WIB

company that needs credit in order to finance a project, while syndicated credit is credit granted by a credit syndicate.⁶

Notary's urgent position in human life makes the process of somebody towards an expert Notary becomes important.⁷ Notaries are public officials who are independent (independent) have the right to regulate & determine the office, both in the form of the location and shape of the building & employees from the amount and salary, not depending on other officials or institutions.⁸

The existence of a Notary is very important in the midst of people's lives. Notaries provide guarantees of certainty, order and legal protection to the public regarding the making of authentic deeds.⁹ The nature of the work of a Notary is oriented towards legalization, so that it can become the main legal foundation regarding the status of property, rights & obligations of a client who uses the services of the Notary.¹⁰ As a notary, he must adhere to the code of ethics for the position of a notary, because without it, the dignity of professionalism will be completely lost.¹¹

According to Bertens, a professional code of ethics is a norm set and accepted by a professional group that directs or instructs its members how to act and at the same time guarantees the moral quality of the profession in the eyes of the public.¹² The role of law in society's demands on the importance of the legal consequences of a deed, sue a notary as a public official must always be able to keep abreast of legal developments in providing information to the public who need & keep the deeds made to always be able to provide certainty law clearly.¹³

⁶ Sutan Remy Sjahdeini, (2008), *Kredit Sindikasi: Proses Pembentukan & Aspek Hukumnya*, Pusaka Utama Grafitti, Jakarta, p.2

⁷ Darmodiharjo & Shidarta, (2004), *Pokok-Pokok Filsafat Hukum, Apa & Bagaimana Filsafat Hukum Indonesia*, Jakarta: Gramedia Pustaka Utama, p. 265

⁸ Andi Prajitno, (2015), *Apa & Siapa Notaris di Indonesia (Sesuai UUJN Nomor 2 Tahun 2014)*, Surabaya: Perwira Media Nusantara, p. 34

⁹ Putri A.R, 2011, *Perlindungan Hukum Terhadap Notaris (Indikator Tugas-Tugas Jabatan Notaris yang berimplikasi Perbuatan Pidana)*, Softmedia, Medan, p.32

¹⁰ Munir Fuady, 2005, *Profesi Mulia (Etika Profesi Hukum Bagi Hakim, Jasa Advokat, Notaris, Kurator & Pengurus)*, Citra Aditya Bakti, Bandung, p.133

¹¹ Suhrawardi K, (2008), *Etika Profesi Hukum*, Sinar Grafika, Jakarta, p.35

¹² Abdul Kadir Muhammad, (2006), *Etika Profesi Hukum*, Bandung: Citra Aditya Bakti, p.77

¹³ Dimas Agung, Ahmad Khisni, Akibat Hukum Akta Di Bawah Tangan yang dilegalisasi oleh Notaris, *Jurnal Akta*, Vol. 4 No. 4 December 2017, p.728

2. Research Methods

The approach method used in this research is a sociological juridical approach. Primary & secondary data sources were obtained by interview & study document method. The data that has been collected both from field research and library research were analyzed using descriptive analysis methods.

3. Results and Discussion

3.1. The Role of Notaries in the Implementation of Syndicated Loan Authentic Deeds

Before the realization of credit is implemented, the bank must be able to estimate the smooth return of credit & interest payments or lending policies. In addition, the bank needs to conduct an assessment of the business feasibility of prospective debtors to find out the amount of income or income so that banks can avoid or minimize the risk of bad credit (Non Performing Loans).¹⁴

The activity of providing credit is one of the functions of banking institutions as contained in the provisions of Act No. 10 of 1998 on the amendment of Act No. 7 of 1992 concerning Banking. The increasing development of the economy as it is today as well as the increasing application for credit facilities from the public and entrepreneurs, cannot allow banks to be free to provide credit facilities considering that there are provisions for limiting credit grants called the maximum credit limit (BPMK) or legal lending limit which limits a certain amount of credit bank in distributing credit. If a credit application that exceeds the BPMK is approved, two or more banks will join so that they can provide the credit requested by the debtor, known as syndicated credit financing.¹⁵

Syndicated credit is a loan or loan granted by two or more financial institutions with similar terms and conditions, using general documentation & administered by a bank agent, prepared by an arranger who is in charge & responsible for starting the customer loan request process until the signing process credit

¹⁴Rory Handria no, Analisis Sistem Informasi Pemberian Kredit Pada PT Bank Rakyat Indonesia (Persero) Tbk (Studi Pada Bank Bri (Persero) Tbk Kantor Unit Syamsudin Noor), *Jurnal Ekonomi & Bisnis*, Vol. 10. No.1 March 2017, p.198

¹⁵Hasanuddin Rahman, (1998), *Aspek – Aspek Hukum Pemberian Kredit Perbankan di Indonesia*, citra Aditya Bakti, Bandung, p. 113

agreement.¹⁶ The legal basis for syndicated loans is regulated in legislation, including:

- a. Circular to all Banks & Non-Bank Financial Institutions in Indonesia, SE No.21/11/BPPP dated 27 October 1988 concerning granting credit to management or shareholders.
- b. Circular to all Banks & Non-Bank Financial Institutions in Indonesia SE No. 21/ 18/BPPP, dated March 25, 1989 regarding the LLL for debtors & group debtors as well as management, shareholders & their families.
- c. UU no. 7 of 1992 concerning Banking (LNRI 1992 No. 31, Supplement to LNRI No. 3472).
- d. UU no. 10 of 1998. regarding amendments to Law no. 7 of 1992.
- e. BI Board of Directors Decree No. 26/21/KEP/DIR dated May 29, 1993 regarding the LLL.

The parties involved in the syndicated credit contract are creditors & debtors. The difference here is that the creditor has more than one party. Legal entity as an effort to emphasize and clarify the legal status of the parties in order to create legal certainty. The creditors are banks, both private and government. It is also possible with foreign banks in international syndicated loans. The only other financial institution permitted by Bank Indonesia is securities. Other financial institutions such as cooperatives, pawnshops & others have not been able to participate due to conflicts with Bank Indonesia regulations. Legal entities that participate as syndicated participants are represented by people who have been authorized by the company.¹⁷

Credit applications for each bank generally require a guarantee to overcome the risk of non-return of the credit provided. In a syndicated loan, the credit guarantee used depends on the project being financed. However, in general, the collateral used is not much different from ordinary credit guarantees. The binding method is almost the same as regular credit, there are only a few bindings that need to be added.¹⁸

The process of granting a syndicated loan must be passed in several stages, starting from the emergence of an arranger until a syndicated credit agreement is signed & finally the syndicated loan can be used by the debtor. The three

¹⁶ Ibid.

¹⁷Herlina Suryati Bachtiar, (2002), *Aspek Legal Kredit Sindikasi*, First Edition, Raja Grafindo Persada, Jakarta, p. 2

¹⁸ M. Bahsan, (2002), *Penilaian Jaminan Kredit Perbankan Indonesia*, Rejeki Agung, Jakarta, p.102

stages are the pre-mandate phase, the post-mandate phase, and the post-signing phase.¹⁹ The stages of syndicated loan implementation are:

- a. If the bank has received the credit application, the debtor gives a mandate to the bank to carry out syndicated financing. Mandate is the authority given by the prospective credit recipient to the arranger or to the arranger to form a credit syndication consisting of banks that will provide the financing needed by the prospective credit recipient. This mandate is usually preceded by a telephone first and then in written form.²⁰ Arranger is a party that acts as an intermediary for communication between creditors and debtors. Banks that are mandated to syndicate financing (arranger) request documents or information related to the company or project to be financed. This document or information is prepared by the customer himself. These documents and information are used as the basis for producing an info memo & an indication of the terms and conditions of the project to be financed.
- b. *Arranger* then make an offer letter to a bank or non-bank financial institution for project financing, attached with information on the terms and conditions and documents required for the analysis process for the offered banks or financial institutions. This info memo containing data about customer information & the project to be financed will certainly be taken into consideration for banks or financial institutions to accept the offer or not.
- c. After obtaining the bank or financial institution that accepts the offer, a project presentation & visit to the project site will be carried out by the debtor, prospective creditor & arranger. This is required for credit analysis by syndicated participating banks. The approval & financing portion or terms and conditions are submitted by the syndicated participants to the arranger. The joint credit decision letter is submitted to the debtor with a copy to the creditor.
- d. The next step is the preparation of draft documentation. This draft documentation includes credit contracts, guarantee binding deeds, & other deeds. This draft documentation plays an important role because acceptance of syndicated loan offers is sometimes still conditional and dependent on this document. The draft documentation is then discussed in a syndicated meeting (legal meeting) which is attended by arrangers, debtors, creditors, prospective agents, & notaries. The notary here has an important role in making the deed of binding the syndicated agreement.
- e. After the documents are ready, the syndicated credit contract is signed. Usually done with a special ceremony called the loan signing ceremony.

¹⁹Mohammad Kharis, Kredit Sindikasi dalam Perspektif Hukum & Peraturan Perbankan (Studi Kasus Pada PT Bank DKI), *Jurnal Hukum*, Vol. 7 No.1, p.93

²⁰Remy S. Op Cit, p.20

All parties involved signed the signature. This syndicated loan contract is the most important document, as a guide in the implementation of syndicated loans & is authentic evidence. After the signing of the contract as a sign of agreement & the start of the contract.

The implementation of the binding of the credit agreement of the debtor & creditor must be made in the form of an authentic deed. Making this authentic deed cannot be separated from the role & authority of the Notary. The authority of a Notary is general as stipulated in Article 15 Paragraph (1), namely that a Notary is authorized to make an authentic deed regarding all actions, agreements & provisions required by a Prevailing Law &/or by the interested parties it is desired to be stated in an authentic deed, guaranteeing certainty of the date of making the deed, keeping the deed, providing grosse, copy & quote of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials stipulated by law.²¹

Notaries as public officials play a role in creating a product called an authentic deed, which is bound by the provisions of civil law, especially in the law of evidence.²² The deed made by a Notary in notarial practice is called a relaas deed or a deed of minutes which contains a description of the Notary that is seen & witnessed by the Notary himself at the request of the parties, so that the actions or actions of the parties are carried out & poured into the form of a Notary deed. Deed made or told before a Notary, the parties wish that the description or statement is poured in the form of a Notary deed.²³

Notaries in becoming partners of the Bank have a role, namely as a public official who has the right to make a credit agreement deed that has the duties and authorities that are their responsibility. His duties include making a syndicated credit agreement deed requested by the bank, providing guidance to the bank regarding credit documents, making final credit documents, confirming the data to the bank if there are things that are not or less clear, keep the name of the debtor & the amount of credit requested, and enter it into the register book in order to be registered with the district court. The role of the Notary in the credit

²¹ Soegianto, (2015), *Etika Profesi & Perlindungan Hukum Bagi Notaris*, Farisma Indonesia, Yogyakarta, p.42

²² Herry Susanto, (2010), *Peranan Notaris dalam Menciptakan Keputusan dalam Kontrak*, UII Press, Yogyakarta, p.39

²³Ibid., p. 44

system carried out by the banking sector is to provide protection and legal certainty for the parties who enter into credit agreements.

3.2. Barriers & Solutions in Making Authentic Syndicated Credit Deeds

Credit is the main activity in banking because from there the largest income from the bank's business, income from credit business activities is in the form of interest & fees. Considering the wide scope and elements that surround this credit activity, it is not excessive that the handling must be carried out carefully with the support of professionalism and moral integrity that must be attached to the human resources and credit officials.²⁴ Providing credit based on a credit agreement, this credit agreement needs special attention both by the bank as a creditor and by the customer as a debtor, because the credit agreement has a very important function in granting, managing and managing the credit itself.²⁵ In the process of making a credit agreement, a bank will find it difficult to determine the size of the interest rate & the length of the credit period and the procedure for paying off debts given to its customers if the bank has to negotiate these things with each customer. This is what causes banks to consider it necessary to standardize many credit terms through the use of credit agreements.²⁶ The making of the authentic deed of syndicated credit experienced several obstacles, these obstacles include:

- a. Difficulty in making an authentic deed before a Notary at the same time & place. The large number of notary duties causes the notary to be unable to serve the bank at all times in making the credit agreement deed. In practice, notaries sometimes send their employees to the bank to process the credit agreement deed. In addition, the busyness of bank directors causes them to be unable to enter into joint credit agreements with bank customers together before a Notary. The signing of the credit agreement deed is sometimes done at a different time & place.
- b. There are multiple tasks. This is due to the fact that the bank still lacks human resources at this time, so the Customer Service section also performs the duties of an Account Officer, also known as the credit department. According to its function, the Account Officer section is to analyze the proposed credit decision so that the credit provided is right

²⁴ Muhammad Djumhana, 2006, Indonesian Banking Law, Citra Aditya Bakti, Bandung, p.47.

²⁵ Sarana Widia & Adrian Sutedi, (2006), *Implikasi Hak Tanggungan Terhadap Pemberian Kredit Oleh Bank & Penyelesaian Kredit*, Cipta Jaya, Jakarta, p. 43.

²⁶ Mariah Kamelia, Anis Mashdurohatun, Peran Notaris Dalam Pembuatan Akta Perjanjian Kredit Dalam Perspektif Hukum Positif & Hukum Islam, *Jurnal Akta*, Vol. 4 No. 4 Desember 2017, Unissula, Semarang, p.577

on target & safe for the bank. Meanwhile, the customer service section only does documentation.

- c. Another obstacle is the problem of guarantee institutions. There is a fundamental problem with guarantee institutions in the syndicated financing process. As explained above, syndicated loans occur between several banks (as creditors) and one debtor in large amounts of funds. If several banks (creditors) face one debtor in providing credit, while the debtor only has one guarantee (eg Project Financing), it will be difficult to bind the guarantees of several banks to one guarantee. Whereas in a syndicate usually the syndicates consist of institutions that already have good communication and relationships. Moreover, if, for example, the debtor only has collateral for movable objects, for example gold bars, then this is clearly impossible to rank again, because in the pawn there is the principle of *inbezitstelling*.

Possible solutions done To overcome these obstacles, namely:

- a. Notaries should increase their human resources in their offices to assist the notary's tasks, this is so that the notary can perform more important tasks. For example, attending a syndicated loan agreement drafting meeting. Because if there are employees present, it is feared that the authentic deed will not fulfill the elements in making the agreement, which makes the agreement deed a deed under the hand.
- b. The bank also has to add human resources, so that there is no double duty. This dual assignment will also affect the implementation of syndicated loans because the work done is less than optimal.
- c. To deal with problems related to guarantee institutions, the *Paripassu* Security Sharing Agreement (Security Sharing Agreement) emerged. The binding of collateral on a *Paripassu* basis is generally an agreement that binds the creditor/debtor/collateral owner to regulate the repayment method obtained from the disbursement of the guarantee, the distribution of which is based on the amount of the creditor's contribution owed by the debtor to him.

4. Conclusion

The role of the Notary in the implementation of the authentic deed of syndicated credit (syndicated loan), namely making a deed of syndicated credit agreement requested by the bank, providing guidance to the bank regarding credit documents, making final credit documents, confirming the data to the bank if there are things that unclear or unclear, keep the name of the Debtor & the amount of credit requested, & enter it into the register book in order to be registered with the District Court. The role of the Notary in the credit system

carried out by the banking sector is to provide protection and legal certainty for the parties who enter into credit agreements. Obstacles & solutions in making an authentic deed of syndicated credit, namely the difficulty in making an authentic deed before a notary at the same time & place, there is a dual task of the bank, another obstacle is the problem of guarantee institutions. The solution that can be done to overcome these obstacles is that the Notary should add human resources in his office to help the Notary's tasks, this is so that the Notary can perform more important tasks. For example, attending a syndicated loan agreement drafting meeting. The bank also has to add human resources, so that there is no double duty. This dual assignment will also affect the implementation of syndicated loans because the work done is less than optimal. To deal with problems related to guarantee institutions, the *Paripassu* Security Sharing Agreement (Security Sharing Agreement) was formed.

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