

Notary's Authority in Making Deeds Related to the Takeover of Collateral (AYDA) as an Alternative for Resolving Bad Credit

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Abstract. *This research aims to analyze: 1) The authority of notaries in the Notary Position Law (UUJN) regarding the making of collateral takeover deeds (AYDA) as an alternative for resolving bad credit. 2) Procedures that must be followed by notaries in assisting in resolving bad debts through AYDA. The approach used in this research is the statutory approach. This type of research is normative legal research. The type and source of data in this research is secondary data. obtained by literature study. The analysis in this research is prescriptive. The results of the research are concluded: 1) The authority of a notary in the Notary Position Law (UUJN) is related to making a collateral takeover deed (AYDA) as an alternative for resolving bad credit, namely making authentic deeds to transfer collateral belonging to customers who receive facilities. The bank must legally have a legal basis for the transfer of collateral. The deeds made by the Notary in the implementation of AYDA are the Deed of Sale and Purchase Agreement, the Deed of Authorization to Sell, and the Deed of Settlement Agreement for problematic financing with the voluntary delivery of collateral. Notaries also play a role in the process of changing the name of collateral, PPJB, and matters relating to Mortgage Rights (SKMHT and APHT), carrying out the roya process for objects to be mortgaged at the National Land Agency, to ensure that the collateral objects are not bound by any agreement. For the process of selling collateral through an auction at the State Property and Auction Services Office, hereinafter referred to as KPKNL, the notary acts as a Class II Auction Officer as the official who makes the Deed of Auction Minutes. In connection with the implementation of AYDA in banking, of course there is still a need for a notary as an official who has the authority to make authentic deeds as per their authority in Article 15 UUJN. 2)*

The procedures that must be followed by notaries in assisting in resolving bad debts through AYDA are examining documents and information, verifying ownership and authority, coordinating between related parties, preparing legal deeds, registering and archiving documents and providing legal certainty. Notaries have the responsibility to ensure that the process of resolving bad debts and making deeds occurs in accordance with applicable law. This includes ensuring the validity of documents and clarity of the legal processes involved.

Keywords: AYDA; Credit; Notary.

1. Introduction

Rapid economic growth and continuously developing business dynamics have encouraged an increase in banking activities and financial transactions. According to the provisions of Article 1 Number 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms. Other forms in order to improve the standard of living of many people. Then, so that people want to save their money in the bank, the banking sector provides incentives in the form of remuneration that will be given to the depositors. The remuneration can be in the form of interest, profit sharing, gifts, services or other remuneration. After obtaining funds in the form of deposits from the public, the banks then turn these funds back or sell them back to the public in the form of loans or better known as credit, and are also subject to loan services to credit recipients in the form of interest and administration fees, the amount of which depends on the amount savings interest.¹

Credit in this context is one of the main instruments used by individuals and companies to meet capital needs. However, like other financial instruments, credit also faces the risk of non-payment or bad credit. Bad credit can be a serious problem for financial institutions and the borrowers concerned. In an effort to overcome bad credit, financial institutions usually look for alternative solutions that can minimize losses and facilitate credit recovery. One alternative that can be taken is through Collateral Acquisition (AYDA), which involves a notary as the party who has the authority to make deeds related to the transaction.

¹Kasmir, 2015, Banks and Other Financial Institutions, Raja Grafindo Persada, Jakarta, p. 25.

The position of a notary is very important in helping to create legal certainty for the community. Notaries are in the realm of preventing legal problems through authentic deeds that they make as the strongest evidence in court. The most important position of the notary profession is its main task as a maker of authentic deeds. Article 1870 of the Civil Code states that an authentic deed is absolute and strong evidence for the parties who made it. Notaries are given the authority by law to create absolute evidence. This implies that the contents stipulated in the authentic deed are basically considered correct.²

Notaries have a very unique role. For society, notaries appear as figures who have public authority, instructors and givers of advice. The position of notary has two essential characteristics and traits, namely impartiality and independence in providing assistance to clients. It is a credo, a belief, that these two characteristics are inherent in and identical to the behavior of notaries in carrying out their office.³ The notary in a bank credit agreement has a role through the deed he makes to provide legal certainty for the parties, namely the bank as creditor and the customer as debtor. This legal certainty guarantees the rights and obligations of each party in the credit agreement as stated in the authentic deed. This is because an authentic deed made by and before a Notary is a perfect means of proof.

Problematic credit is part of bank credit management, because problem credit is a risk that is often faced in the banking business. As a business institution, banks must minimize problem loans so that businesses continue to run and public trust in banks is maintained. The last effort taken by banks to resolve problem loans is through repossessed assets (AYDA). AYDA is an important component for every bank to pay attention to in maintaining asset quality and managing credit risk. AYDA's aim is to reduce the number of Non-Performing Loans (NPL) or the percentage of bad loans, because the higher the NPL value, the more unhealthy a bank's business activities will be.⁴

Banks can carry out AYDA because financing from customers who receive facilities is in bad condition. AYDA can be carried out because it is a mandate as

²Rizki Nurmayanti, Akhmad Khisni, Roles and Responsibilities of Notaries in Carrying Out Deeds, *Deed Journal*, Vol. 4 No. December 4, 2017, p. 611

³Umi

⁴Rizki, Ridha, 2023, The Existence of the Power to Sell in Settlement of Bad Debtors' Credit Through the AYDA Process (Assets Taken Over by Banks), *SENTRI: Scientific Research Journal*, Volume 2 Number 7, p.2588

regulated in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, Article 40 paragraph (1) of the Sharia Banking Law, Article 32 of Bank Indonesia Regulations Number 13/13/PBI/2011 and Article 34 of the Financial Services Authority Regulation Number 16/POJK.03/2014. AYDA is an attractive option for dealing with bad credit by involving the transfer of collateral ownership, but this requires the involvement of a notary to make a valid and valid deed. Making deeds related to AYDA must comply with the legal provisions regulated in the Notary Position Law (UUJN). Notaries play a central role in ensuring the validity and enforceability of legal documents.

2. Research Methods

This type of research is normative legal research. The approach method used in this research is the statutory approach. The type and source of data in this research is secondary data. obtained by literature study. The analysis in this research is prescriptive.

3. Results and Discussion

3.1. Authority of a Notary in the Law on Notary Positions (UUJN) Regarding the Making of Collateral Acquisition Deeds (AYDA) as an Alternative for Settlement of Bad Credit

Credit is a business sector of banking that has a broad scope and requires professional handling and integrity. This is not an exaggeration, because basically the root of the definition of credit itself is trust. The word credit comes from Roman, namely from the word *credere* which means trust. Thus, the basis of the relationship that exists from credit activities between the parties must also be based on mutual trust, namely that the creditor (bank) who provides credit believes that the credit recipient (debtor) will be able to fulfill everything that has been agreed, whether regarding the time period, achievements and counter-achievements.⁵

The implementation of the credit agreement cannot be separated from the role of the notary in making the authentic deed. A notary is a state official who is

⁵Herlina Wulandari, *The Urgency of Covernote Regulations in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions Based on Notary Independence*, Legal Thesis, Brawijaya University, Malang, 2019, p.61

given authority by the state to provide services to the public in the field of civil law, especially in matters of entering into agreements and matters relating to the issuance of notarial deeds which are authentic deeds.⁶ Regulations regarding notary positions are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN). The enactment of the Notary Position Law provides legal protection for the public and notaries. Based on UUJN, Notaries are intended to help and serve people who need authentic written evidence regarding circumstances, events or legal actions. Notaries as public officials have the authority to make authentic deeds, including regarding all deeds and agreements as regulated in Article 15 UUJN.⁷

Deeds are documents and letters that have been signed and contain information regarding an event or thing which is the basis of a right or agreement which can be said to be a legal act.⁸ Notaries provide legal certainty through authentic deeds they make. A notarial deed is an authentic deed that has legal force and legal certainty which can be proven by perfect writing (*volledig bewijs*), and does not require additional evidence.⁹ Authentic deeds made by a notary have perfect evidentiary power, unlike private deeds. Private deeds are deeds made by interested parties without the assistance of public officials.¹⁰ In implementing a credit agreement at a Bank, a Notary has the following duties and authorities:

1. Notary duties and responsibilities in credit agreements include:
 - a. Tasked with making credit agreement deeds requested by the bank. As material for making the document, the bank must provide very clear and detailed data and information and explain the type and material of the credit document requested. A notary may not refuse a bank's request to make a credit agreement deed unless the request from the bank or the party facing it is contrary to law, public interest and morality.
 - b. For the credit documents he creates, the Notary is responsible for:

⁶GHS Lumban Tobing, 2001, *Notary Position Regulations*, Erlangga, Jakarta, p.2.

⁷Dicky Ardiansyah, Anis Mashdurohatun, and Munsharif Abdul Chalim, *Making an Authentic Deed of Distribution of Land Inheritance by a Notary*, *Journal of Deeds*, Volume 8 Number 1, March 2021 p.27

⁸Salim HS. and H. Abdullah, 2007, *Contract and MOU Design*, Sinar Graphics, Jakarta, p.101

⁹Andi Prajitno, 2010, *What and Who are Notaries in Indonesia?*, First Printing, Putra Media Nusantara, Surabaya, p.51

¹⁰Taufik Makarao, 2004, *Principles of Civil Procedure Law*, Rineka Cipta, Jakarta, p.100

- 1) Truth, accuracy and completeness of the documents presented.
 - 2) Leaks of bank secrets, whether carried out by a Notary or his or her officers or employees.
 - 3) Problems with the documents he makes, if in the future there are mistakes and/or deliberate actions made by the Notary or employees or people who help him with his work.
- c. The notary is tasked and responsible for providing guidance, instructions and guidance to banks regarding credit documents. Legal counseling carried out by Notaries must be given to clients who need legal advice regarding the deed that will be made, because not all people are fluent and understand the law relating to agreements that will be made by Notaries through making authentic deeds or private deeds.
 - d. The notary is tasked with creating final credit documents based on concepts that have been approved by the bank.
 - e. The notary is tasked with confirming the data to the bank if there are things that are unclear or unclear and submitting the draft document to the bank.
 - f. Duty to keep the name of the debtor and the amount of credit requested confidential. The aim is to keep the name of the debtor and the amount of credit requested confidential so that it is not known to other parties because this is considered an internal matter between the Notary, Debtor and Creditor.
 - g. Tasked with entering it into the register book to be registered with the District Court. All deeds that have been made and legalized by a Notary must be entered in a register book and registered with the District Court so that the deed has permanent legal force, and if in the future problems related to the deed arise, they can be resolved according to the applicable legal rules.
2. Notary's authority in credit agreements:
 - a. Authority to make credit agreement deeds based on clear data and information. This is in accordance with the authority of a Notary according to Article 15 paragraph (1) of Law Number 30 of 2004 concerning the Position of a Notary, a Notary has the authority to make authentic or private deeds in a predetermined legal area regarding all acts, agreements and provisions required by statutory regulations and/or those desired by those interested to be stated in authentic deeds or private deeds as long as the making of such deeds is not also assigned or excluded to other officials or other persons as determined by law.

b. Authority to legalize or refuse to make a credit agreement deed, for reasons acceptable by law or because the credit agreement is detrimental to both creditors and debtors. This is in accordance with the authority of a Notary according to Article 15 paragraph (2) letter a of Law Number 30 of 2004 concerning the Position of a Notary which states that the authority of a Notary is to legalize deeds, including, among other things, validating signatures and determining the certainty of the date of the underhand letter made by the party. those interested by registering in a special book that has been provided by the Notary.

c. Authority to ratify if the requirements for completeness of files have not been fulfilled by the Debtor or Creditor. These files are used by the Notary for administration in connection with the preparation of the deed requested by the Notary.

d. Authority to request compensation for services in the form of money from the bank for the preparation, processing and completion of documents that have been carried out, the amount of which is determined on the basis of an agreement between the customer and the Partner known to the bank, taking into account the level of difficulty of the work, customs and applicable regulations.

The authority of a notary regarding the preparation of a collateral takeover deed (AYDA) as an alternative for resolving bad credit is the attribution authority mandated by statutory regulations as regulated in Article 15 Paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 2004 concerning Notary Positions.

The role of the notary in implementing AYDA is in the process of changing the name of the guarantee, PPJB, and matters relating to Mortgage Rights (SKMHT and APHT). The notary also plays a role in carrying out the roya process for objects to be mortgaged at the National Land Agency, to ensure that the collateral is not bound by any agreement. For the process of selling collateral through an auction at the State Property and Auction Services Office, hereinafter referred to as KPKNL, the notary acts as a Class II Auction Officer as the official who makes the Deed of Auction Minutes. Auction Minutes are minutes of the auction held by the Auction Officer which is an authentic deed and has perfect evidentiary power. Meanwhile, for the process of selling collateral outside of auction, the bank is hands-off, meaning that only the debtor and the prospective buyer themselves deal with the notary. The bank exempts the sale of collateral by the debtor to anyone, provided that the collateral certificate or proof of the

legality of the collateral is still in the control of the bank and the sales process does not exceed the mutually agreed time. When the debtor has found a prospective buyer, the debtor must first pay off his debts to the bank so that the collateral certificate secured by the bank can be returned to the debtor for PPJB to be carried out and his name transferred to the notary concerned.

The risks of implementing AYDA for notaries generally occur if there are internal problems with either the bank or the debtor or his heirs. The notary will be withdrawn as the defendant if the case related to AYDA has been filed in the District Court. The notary here is the deed-making official who is responsible for the deed he makes regarding a credit or taking over the collateral. Apart from the problems related to the reasons for the lawsuit explained above, the notary can also be withdrawn as a defendant by the bank if he is proven to have been negligent or made an error in the deed he made. However, the reason lawsuits like this are very rare is because every notarial deed related to banking, before it is ratified as an authentic deed, the banking legal party will first check the contents of the deed. This greatly minimizes the occurrence of fraud or negligence as well as notary errors in making the deed.

3.2. Procedures that must be followed by notaries in assisting in resolving bad debts through AYDA

In developments in the banking sector, notaries are an important element in every banking transaction operation, especially in making financing contract deeds. The role of a notary in making a deed of financing contract at a bank is that in the case of financing, it always requires a contract that contains complete clauses to guarantee legal certainty in order to minimize risks by the bank.¹¹Here are some procedures that a notary may have to follow to help resolve bad debts:

1. Document and Information Inspection

Notaries examine documents related to credit and collateral involved in resolving bad debts. This includes credit documents, agreements, as well as related collateral documents.

2. Verify Ownership and Authority

¹¹Sentiya Dwi Ningsih, 2017 *The Role of Notaries in the Implementation of Deeds of Financing Agreements in Sharia Banks According to Law Number 2 of 2014 concerning the Position of Notaries*", *Journal of Deeds*, Vol. 4, no. 1, p. 81.

The notary checks and verifies the ownership of the collateral and the authority of the parties involved, including creditors, debtors and other related parties.

3. Coordination Between Related Parties

Notaries can facilitate meetings between related parties, assist negotiations, and facilitate the agreement process between creditors and debtors.

4. Preparation of Legal Deeds

Based on the agreement reached, the notary draws up a deed that complies with the law governing the settlement of bad debts, possibly including the AYDA concept. This deed reflects a legal agreement between the parties involved.

5. Document Registration and Archiving

After making a deed or legal document, the notary will register and archive the document in accordance with applicable regulations.

6. Providing Legal Certainty

Notaries have the responsibility to ensure that the process of resolving bad debts and making deeds occurs in accordance with applicable law. This includes ensuring the validity of documents and clarity of the legal processes involved. Regarding AYDA or bad credit settlement, notaries can play an important role in facilitating the process, ensuring that all necessary procedures are carried out in accordance with applicable law and in accordance with the agreement of the parties involved.

Based on Gustav Radbruch's theory of legal certainty, positive law is legislation. This means that to provide legal protection for the Notary and the parties, the implementation of the credit agreement must be in accordance with the legislation. The role of a Notary in a credit agreement is to make a credit agreement deed to provide legal certainty for the parties in carrying out their rights and obligations. The main authority of the Notary is to make authentic deeds, in order for a deed to have its authenticity as an authentic deed in order to guarantee legal certainty, it must fulfill the provisions as an authentic deed regulated in Article 1868 of the Civil Code,

The process of implementing bad credit settlement through taking over debtor assets/Asset settlement (AYDA) is carried out using the following procedures:

1. Voluntary surrender by the debtor is carried out by making an asset transfer/credit settlement agreement, a Sale and Purchase Deed or a sale and purchase agreement and a power of sale.
2. Auction of mortgage rights via KPKNL/State Auction Office via Auction Minutes
3. Takeover through legal process/litigation/execution auction via District Court through Auction Minutes.

The takeover of collateral/assets of the debtor/guarantor, either through execution or compensation, must be carried out in the name of the bank concerned. Taking over the collateral/assets of the debtor/guarantor through execution can be done directly in the name of the bank or by using a deed de command and if after 1 (one) year it cannot be sold to another party, then the name must be transferred to the bank. The bank's takeover of collateral objects belonging to debtors with bad credit carries the risk of failure or delays in repayment. Banks must believe that the credit they will provide can be repaid on time by debtor customers and will not develop into non-performing loans or bad credit. Banks acting as buyers of their own collateral in execution auctions or commonly known as Foreclosed Assets (AYDA) have the potential to increase auction productivity and speed up settlement of debtor obligations. And the Use of Deeds of Command in the Context of Private Commercial Banks as Buyers of Auction Objects.¹²

Banks can carry out AYDA in accordance with Article 12A of the Banking Law which of course is not free from risks in the form of reporting from interested parties in the deed, however the bank in this case is in a safe position because it is supported by valid legal evidence. Notaries in their role related to the AYDA process can also have risks, but the possibility of these risks occurring is very small considering that the bank's Legal Division is also very careful in correcting every work the notary does. Therefore, notaries as bank partners will be very careful in making deeds in order to increase the bank's trust in their partner notaries and to maintain the honor and dignity of the notary's position.

¹²Ibid., p.105

4. Conclusion

The authority of a notary in the Notary Position Law (UUJN) relates to making collateral takeover deeds (AYDA) as an alternative for resolving bad credit, namely making authentic deeds to legally transfer collateral belonging to customers receiving facilities to the bank, there must be a legal basis for the transfer. a guarantee. The deeds made by the Notary in the implementation of AYDA are the Deed of Sale and Purchase Agreement, the Deed of Authorization to Sell, and the Deed of Settlement Agreement for problematic financing with the voluntary delivery of collateral. Notaries also play a role in the process of changing the name of collateral, PPJB, and matters relating to Mortgage Rights (SKMHT and APHT), carrying out the roya process for objects to be mortgaged at the National Land Agency, to ensure that the collateral objects are not bound by any agreement. For the process of selling collateral through an auction at the State Property and Auction Services Office, hereinafter referred to as KPKNL, the notary acts as a Class II Auction Officer as the official who makes the Deed of Auction Minutes. In connection with the implementation of AYDA in banking, of course there is still a need for a notary as an official who has the authority to make authentic deeds as per their authority in Article 15 UUJN. The AYDA process certainly contains risks for the notary as the maker of proof of legality, because the AYDA process is always followed by a name change process as a form of transfer of ownership of the house or land before a Notary/PPAT. The procedures that must be followed by notaries in assisting in resolving bad debts through AYDA are examining documents and information, verifying ownership and authority, coordinating between related parties, preparing legal deeds, registering and archiving documents and providing legal certainty. Notaries have the responsibility to ensure that the process of resolving bad debts and making deeds occurs in accordance with applicable law. This includes ensuring the validity of documents and clarity of the legal processes involved. Regarding AYDA or bad credit settlement, notaries can play an important role in facilitating the process, ensuring that all necessary procedures are carried out in accordance with applicable law and in accordance with the agreement of the parties involved.

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