

The Role of The Land Deed Officials in Mortgage Right Credit Agreement in PT. Bank Jateng Branch Slawi, Tegal Regency

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Abstract. This study aims to determine the implementation of Credit Agreement with the guarantee of Mortgage Right made by Notary of Land Deed Officials at PT. Bank Jateng Branch Slawi, Tegal Regency, to know the role of Notary Land Deed Officials, to know the constraints faced by Notary and what the solutions can be considered to solve the problem. This legal investigation included a descriptive type of empirical legal research. Research location was at PT. Bank Jateng Branch Slawi, Tegal Regency and the Notary office of Dewi Milasari, S. Sos., S.H., M.Kn as Notary PPAT partner. Based on this research, it found that credit granting mechanism in PT. Bank Jateng Branch Slawi, Tegal Regency is done through 5 stages: stage of loan application, credit analysis, credit decision, credit agreement and credit binding stage. Before credit agreement is executed, Notary as a partner is obliged to check the validity of guarantee of Mortgage Rights, Notary PPAT in credit agreement with guarantee of Mortgage right provides legal certainty for parties holding credit agreement. The constraint faced by Notary in making credit with Mortgage Right is the credit agreement draft which has been prepared by bank (creditor). However, the contents are unfair or more disadvantageous to the customer (the debtor), and the banking party often (creditor) absent in the signing of the deed.

Keywords: Role of Land Deed Officials; Credit Agreement; Mortgage Rights

1. Introduction

Notary position requires both individual and social responsibilities, especially adherence to positive legal norms and willingness to submit to professional code of ethics. The code of ethics is the mandatory which strengthen the existing positive law norms⁴. Authentic Acts is as the strongest evidence in every legal relationship in people's lives such as in various business relationships, activities in banking, land, social activities, etc. The need for authentication in the form of authentic deeds is increasing in line with the growing demand for legal certainty in various economic and social relations, both at national, regional and even global level. The authentic deeds clearly define the rights and obligations of the parties included in an agreement, ensure legal certainty, and at the same time also expected to avoid the occurrence of disputes. However, such disputes are inevitable. In the process of dispute resolution, authentic deeds are the strongest and most complete written evidence provide a concrete contribution to the settlement of cases in a cheap and quick manner.⁵

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⁴ Liliana Tedjosaputro *Etika Profesi Notaris dalam Penegakan Hukum Pidana* PT. Bayu Indra Grafika Yogyakarta 1995 page. 4

⁵ Republic of Indonesia Explanation of Act Number 2 of 2014 concerning Notary Position TI. NRI Number 4432

Bank loan agreements are generally done in written form and in the form of standard agreements. This agreement may be made by an authentic deed or underhand deed. Various steps to facilitate the implementation of making documents related to credit, an authentic deed, the bank appoints a Notary as a partner first. According to Article 1 of Law Number 2 Year 2014 Concerning Amendment to Law Number 30 Year 2004 Concerning Position of Notary, Notary is a public official authorized to make authentic deed and have other authority as meant in this Act or by Law others.

Based on the background of the above problems, the problems studied in this research were formulated as follows: How the implementation of Credit Agreement with the guarantee of Mortgage Rights made by Notary PPAT in PT. Bank Jateng Branch Slawi, Tegal Regency?; How the role of Notary PPAT in making credit agreement with the guarantee of Rights of PT. Bank Jateng Branch Slawi, Tegal Regency ?; What are the constraints faced by Notary PPAT in making credit agreement in PT. Bank Jateng (Central Java) Branch Slawi, Tegal Regency and What are the solutions?

Research methods

This research used social legal research approach, Tamahana stated that socio-legal studies are addressed to Law and Society Studies⁶. This approach was done to understand the law in the context, it is a non-doctrinal approach. Through this approach, the objects of law were interpreted as part of social subsystem among other social subsystem.⁷

In this paper, the type of approach used was the sociological juridical approach, by identifying and conceptualizing the law as a real and functional social institution in the real life system.

Sources of Law Material used in this thesis research were: Primary legal material, it was obtained directly by the authors of the data source in the field in the form of social actions and information from the parties involved with the object under study⁸. Among others: Interview to the Public Notary PPAT (Land Deed Officials) partner PT Bank Jateng Branch Slawi Tegal District, Interview of the credit of PT. Bank Jateng Branch Slawi, Tegal Regency. Secondary legal materials were used to supplement existing data by collecting data by reading, studying and taking literary books, notaries or PPAT and other writings that deal with the issues in detail⁹. Tertiary legal materials were obtained from legal dictionaries, legal journals, internet and so forth.

Techniques of collecting legal materials were conducted through facts and data in the field that included the primary legal materials. The respondents were relevant to the problems. Secondary sources of law were literature books of law science and other legal writings relevant to the problem.

To analyze the legal materials that have been collected, it can be used technical description. This technique was used to describe the situation or event, this technique did not seek or explain the relationship, did not test the hypothesis or made

⁶ Anis Mashdurohatur, Redyanto Sidji, Gunarto and Mahmutarom, *Factors Causing Banking Cyber Crime in Indonesian, International Journal of Economic Research*, Volume 14 Number 15 2017, p.295

⁷ Widhi Handoko *Contoh Penulisan Proses Penelitian Dalam Metode Penelitian*.

<http://widhihandoko.com/?tag=metode-penelitian-kualitatif> diakses pada tanggal 16 Maret 2018

⁸ *Ibid*.

⁹ Soerjono Soekanto *Sosiologi Suatu Pengantar* PT. Raja Grafindo Persada Jakarta 2005 page. 52

predictions¹⁰. Evaluation techniques were done by judging something to be appropriate or inappropriate, agree or disagree, true or false, valid or invalid. The evaluations were done by the researchers by using primary material as well as in secondary legal material. Argumentation techniques cannot be separated from evaluation techniques because judgments must be based on reasons of legal reasoning.

2. Results and Discussion

2.1. Implementation of Credit Agreement with guarantee of Mortgage Right made by Notary PPAT at PT. Bank Jateng Branch Slawi, Tegal Regency

Implementation of credit application always use prudential principles and perform the stages of credit application procedures such as checking the guarantee of guarantee rights and completeness of the requirement of credit application. In fact, basically the bank wants to simplify and do more efficient the loan application process for the customer (debtor), so it is less pay attention to existing procedures. However, the banks always do its actions based on Article 8 of Law Number 10 of 1998 on Banking in conducting lending activities. The article states that: Implementation of credit or financing based on sharia principles prior to giving credit to the bank must make a careful assessment of the character, capability, capital, collateral and business prospects of the debtor's customers.

PT. Bank Jateng Branch Slawi Tegal Regency in order to address the development of the banking world especially business activities and credit risk management to third parties, it is necessary provision as operational guidance that fulfill the principle of caution, among others:

- Pay attention to the completeness of the credit application administration requirements
- The amount of grant and limit of authority of Officials in deciding the credit ceiling
- The binding of collateral/security as a Mortgage Right.

Agreement made at PT. Bank Jateng Branch Slawi Tegal regency has not yet encountered default problems (wanprestasi) causing until the execution of goods collateral.

Notary PPAT in the implementation of previous credit agreement must check the credit guarantee in the form of land certificate in the National Land Office, to ensure that the guarantee is clean or not in the object of Mortgage Rights, then Notary PPAT start to make notarial credit agreement according to order or file provided by party bank, followed by SKMHT and/or APHT. In the case of credit agreement, SKMHT and/or APHT Notary of PPAT must pay attention to the completeness and suitability of file given by the bank such as ID Card of the parties and P2K (Credit Approval Approval), also the credit ceiling value and the value of the Mortgage Right.¹¹

2.2. Role of PPAT Notary in making credit agreement with guarantee of Rights of PT. Bank Jateng Branch Slawi, Tegal Regency

Notary is a public official authorized to make an authentic deed so long as the making of certain authentic deeds is not reserved for other general officials. The making of an authentic deed is required by law and regulation in order to create

¹⁰ M. Hariwijaya *Metodologi Dan Teknik Penulisan Skripsi Tesis Dan Disertasi* Azzgrafika Yogyakarta 2007 page. 48

¹¹ Interviewed with Notaris PPAT Dewi Milasari S.Sos.,S.H.,M.Kn in her office Tegal Regency

certainty, order, and legal protection. In addition to the authentic deeds made by or in the presence of Notary, not only because it is required by laws and regulations, but also because it is desired by the parties concerned.

Not unlike the notary, PPAT (Land Deed Officials) also has an important role in the implementation of land administration and land registration data. According to Government Regulation No. 24/1997 on Land Registration, the transfer and loading of land can be registered only if it is proven by the PPAT Deed. The PPAT is a public official authorized to make authentic deeds concerning certain legal acts concerning land or property rights over apartment units.

If we see deeper, the role of PPAT Notary is equally important. In addition to equality of urgency, there is also a similarity of qualifications. This opinion is based on several things, namely: First, PPAT is a public official. Article 1 point 1 of Government Regulation Number 37 Year 1998 on PPAT Regulation of Position. Based on the article, the position of PPAT (Land Deed Officials) is a public official as is the case with Notary. Thus, the position of PPAT can be aligned with the Notary as a public official because it has met the qualifications as general officials.

Secondly, PPAT is required to keep the contents of the deed confidential. Article 34 paragraph 1 of the Regulation of the National Land Affairs Number 1 of 2006 concerning the provisions of the implementation of Government Regulation Number 37 of 1998 on the PPAT Regulation of the Position is to enforce the oath of PPAT in order to maintain the confidentiality of the deed.

There are 2 forms of deed or credit agreement used in a credit agreement:

- Notarial Credit Agreement (authentic)
This Notarial or Authentic Agreement means that the deed or agreement must be made before a public official or a Notary. In this notarial credit agreement, there is an advantage in terms of proof between the parties, that they have explained what is written in the deed (the power of formal proof).
- Underhands Deed/Agreement
The credit agreement under the hand is an agreement made and signed between the Debtor and the Creditor before the Notary even sometimes without the witnesses who signed the deed, whereas the witness is one tool for proof. This is one of the weaknesses of the underhand credit agreement

The role of PPAT Notary in the crediting system by the banks is to provide legal certainty for the parties holding the credit agreement. Besides, the role of Notary PPAT as well as the authorized party is to check the guarantee goods in the form of Mortgage right to ascertain whether the guarantee goods lawful or unlawful, or to avoid if there is any possibility that the collateral goods in the Mortgage is still in a legal dispute. A certified treaty or *warmarking* certificate and check by this Notary is a matter to undertake to reduce negative factors if the debtor breaks promise or other legal issue.

Notary also has an additional role after the credit agreement between PT. Bank Jateng Branch Slawi, Tegal Regency with its customers is completed, the Notary must make the Roya process (removal of Mortgage Rights) to the guarantee goods so as not to cause a legal case, so that the Guaranteed Rights guarantee goods has not been caught in the agreement process.

2.3. Obstacles faced by Notary PPAT in making credit agreement at PT. Bank Jateng Branch Slawi, Tegal Regency and What are the solutions?

As a partner of a bank in making a credit agreement, Notary has its own office separate from the bank as its partner which he uses as an office where he works as

Land Acquisition Authority in his territory. Thus, if the bank wants to require services from the Notary, the bank must contact the Notary telling that the bank needs its services in banking work. In making the agreement there are obstacles.

Obstacles from banks are:

- **Bank officer negligence**
Less or incomplete Debtor file due to bank officer negligence is due to expired ID Card. A perfect credit agreement is one that meets the requirements of defining loan identity, loan amount, interest rate, loan usage, name or form of goods, place and location of collateral. The solution used by the Notary in facing this obstacle is to appeal to the bank officer in order to accept the request for credit application from the customer. It should receive more attention to focus on the acceptance of formal requirements carefully about the identity of the parties including ensuring the certainty of the signature and check the other files.
- **The corresponding section of the credit section concerned is absent.**
The credit agreement in the legal aspect is very important, especially as a proof tool in general notarial credit agreement made by Notary. It is due to the validity of a deed of the parties present together at the time of reading the deed until the completion is read as well as the signing of the deed. If one party is not present in the deed reading, it causes the deed to be degraded to a deed under the hand. The degradation of this deed causes the status of SKMHT and APHT made by a Notary to be null and void, thus causing non-compliance with the Mortgage Right. The solution provided by the Notary is to reschedule the signing of the agreement or the binding of the credit for the legal certainty of the parties.
- **Draft Deed of credit agreement has been prepared from the banks**
Bank loan agreements are generally done in written form and in the form of standard agreements. This agreement may be made by an authentic deed. Various steps to facilitate the implementation of the creation of documents relating to credit in this case are by an authentic deed.
The credit agreement in the case of an authentic deed of the bank has prepared a draft of the contents of the credit agreement which the content of the deed is considered unfair to the customer (debtor). This is contradictory to Article 16 paragraph 1 Notary acts trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of related parties in legal action. In the case of non-alignment the Notarial Deed of credit agreement is not allowed to benefit only the bank (creditor) only.
The draft of this bank agreement is also contrary to the theory of justice law. The definition of justice can be understood as a value used to create a balanced relationship between people by giving what is the right of a person by procedure and when there is a violation of justice, a person needs to be punished. In the case of a credit agreement, the implementation should pay attention to the interests of the parties between the bank and its customers. The solution provided in this constraint is the notary still uses several drafts from the bank but still provides changes in the draft so as to provide justice between the parties.

3. Closing

3.1. Conclusion

Implementation of credit at PT. Bank Jateng Branch Slawi, Tegal Regency carried out with the principle of caution in accordance with article 8 of Law 10 Year 1998, In the

case of credit agreement Notary PPAT partners are obliged to check the status of the land in the Land Office.

The role of a notary in a system of credit extended by banks is to provide legal certainty for the parties entering into credit agreements. In addition, the role of PPAT notary as well as the authorized party to check the guarantee goods in the form of guarantee right guaranteed the guarantee goods is legal in the eyes of the law and not in dispute, In addition Notary also play a role in doing Roya if it turns out the guarantee is still attached to the Mortgage Rights.

Constraints faced by a Notary in a credit agreement in PT Bank Jateng Branch Slawi, Tegal Regency are on the banking side, with no discipline in administrating and the existence of a credit officer authorized to affect the legal power of a Notarial credit agreement and the draft deed already provided by the bank. It is contrary to the theory of justice and UUJN (Notary Law) because this draft is more conditional on the bank (debtor) while the position of PPAT Notary is fair and impartial.

3.2. Suggestions

In the implementation of lending conducted at PT. Bank Jateng Branch Slawi, Tegal Regency, before executing the agreement accompanied by Dependent Rights should first give brief explanation or counseling about the provisions in the agreement is not happening injury promise or wanprestasi (default).

The role of PPAT Notary is quite important, so that the Notary partner of PT. Bank Jateng Branch Slawi Tegal regency provides a little spare time for notary counterparts in order to check the guarantee of Mortgage Rights more accurate.

Constraints in this credit agreement can be minimized with the discipline of the banking officers from the thoroughness in administering and the presence of authorized credit officers, due to the legal power of notarial deed in the perfect proof and legal certainty. The draft deed should be made by the Notary PPAT itself as it sees from justice between the parties to keep each other's interests.

4. References

- [1] Abdul Gofur Anshori 2006 *Pokok-Pokok Hukum Perjanjian Islam di Indonesia* Citra Media Yogyakarta.
- [2] Anis Mashdurohatun, Redyanto Sidji, Gunarto and Mahmutarom, *Factors Causing Banking Cyber Crime in Indonesian, International Journal of Economic Research*, Volume 14 Number 15 2017
- [3] Al-Qur'an dan terjemahannya 2008 *Surat Al- Baqarah ayat 282* Departemen Agama Republik Indonesia Bandung.
- [4] Budi Untung 2000 *Kredit Perbankan di Indonesia* Andi Yogyakarta.
- [5] Habib Adjie & Muhammad Hafidh 2014 *Akta Perbankan Syariah Yang Selaras Pasal 38 UUJN-P* Pustaka Zaman Semarang.
- [6] Id.m. wikipedia.org/wiki/Hak_Tanggung
- [7] Liliana Tedjosaputro 1995 *Etika Profesi Notaris dalam Penegakan Hukum Pidana* PT. Bayu Indra Grafika, Yogyakarta.
- [8] M. Hariwijaya 2007 *Metodologi Dan Teknik Penulisan Skripsi* Tesis Dan Disertasi Azzgrafika Yogyakarta.
- [9] R. Setiawan 1999 *Pokok-Pokok Hukum Perikatan* Bina Cipta Bandung.
- [10] Soerjono Soekanto 1986 *Pengantar Penelitian Hukum* Penerbit Universitas Indonesia Press Jakarta.
- [11] Undang-Undang Dasar Republik Indonesia Tahun 1945

- [12] Undang-undang nomor 2 tahun 2014 tentang perubahan undang-undang nomor 30 tahun 2004 tentang Jabatan Notaris.
- [13] Widhi Handoko *Contoh Penulisan Proses Penelitian Dalam Metode Penelitian*.
<http://widhihandoko.com/?tag=metode-penelitian-kualitatif>