

## Validity of Authentic Deed of Credit Agreement Whose Signing is Done Circularly

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**Abstract.** *This study aims to determine and analyze the validity of authentic deeds of banking credit agreements signed in a circular manner, to determine and analyze the legal consequences of signing authentic deeds of credit agreements signed in a circular manner. This study uses a normative legal research method and uses the Legislation approach method. The type of data used in this study is secondary data which includes primary legal data including the 1945 Constitution; Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, as well as secondary data containing books and other supporting documents. Data collection used in this study is a literature study. The data analysis method in this study is prescriptive as proposed by Mukti Fajar and Yulianto Acmad. Based on this study, it is concluded that a credit agreement can be degraded into a private deed if the signing is carried out in a circular manner or not simultaneously. The person appearing who is not present when signing the deed violates the provisions of Article 44 paragraph (1) of the Notary Law which states that "Immediately after the deed is read, the deed is signed by each person appearing, witness, and Notary, unless there is a person appearing who cannot sign by stating the reason, because the signing of the deed cannot be done immediately after the deed is read by the Notary. If there is degradation of the deed and it is detrimental to the parties, the Notary can be held civilly responsible, namely being sued for damages, costs and interest.*

**Keywords:** Deed; Degradation; Position; Signing.

### 1. Introduction

The Republic of Indonesia as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia guarantees certainty, order, and legal protection for every citizen. In order to guarantee certainty, order, and legal

protection, authentic written evidence is needed regarding acts, agreements, determinations, and legal events made before or by authorized officials.<sup>1</sup>

Notaries have a very important role as a country that adheres to the Civil Law System to serve the community in terms of making authentic deeds as valid evidence in the legal act. This authentic evidence serves to create balance and order in a legal relationship, namely how the legal relationship is, what the legal act is, and why a legal event occurs (*rechtsfeiten*).

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the position of Notary in Article 1 paragraph (1) explains that "A Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws."<sup>2</sup>

The authority of a Notary as referred to in the Notary Law (UUJN) Article 15 with his profession as the maker of authentic deeds accompanied by the rapid and dynamic development of community needs has increased the intensity and complexity of legal relations which of course provide certainty, legal protection and order which are based on truth and justice.

An authentic deed essentially contains formal truth in accordance with what the parties have informed the Notary. However, the Notary has an obligation to include that what is contained in the Notarial deed has truly been understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the authentic deed are clear, and providing access to information, including access to related laws and regulations for the parties signing the deed. The parties can freely determine to agree or disagree with the contents of the authentic deed they have signed.<sup>3</sup>

A Notary must be careful and responsible in carrying out his/her duties. Notaries must know and understand the authentic requirements, validity, and reasons for the cancellation of a deed. This is a preventive measure so that there are no defects in the making of authentic deeds by Notaries. Another thing is so that the interests of the community are not harmed, especially the parties contained in the deed.<sup>4</sup>

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<sup>1</sup>Muhammad Luthfan Hadi Darus. (2017). *Hukum Notariat dan Tanggung Jawab Jabatan Notaris*, Yogyakarta: UII Press. p. 1.

<sup>2</sup>Agus Pandoman. (2017). *Teori dan Praktek Akta; Perikatan Publisoitas dan Non Publisitas*. Cetakan Pertama, Yogyakarta: Utama Kreasi.

<sup>3</sup>Christin Sasauw, 2015, Tinjauan Yuridis Tentang Kekuatan Mengijat Suatu Akta Notaris, *Jurnal Lex Privatum*, Vol. 3 No. 1, p. 98. url. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/7030>

<sup>4</sup>Sjaifurachman dan Habib Adjie. (2011). *Aspek Pertanggung Jawaban Notaris dalam Pembuatan Akta*, Bandung: Mandar Maju. p. 121.

The obligation of a Notary to read the deed in front of the person appearing in the presence of at least 2 (two) witnesses and signed at that time by the person appearing, witnesses, and Notary is regulated in the Provisions of Article 16 paragraph (1) letter l UUJN. This provision is reaffirmed in Article 44 UUJN which states that immediately after the deed is read, the deed is signed by each person appearing, witness, and Notary, except if there is a person appearing who cannot sign by stating the reason. The provisions for reading and signing are an integral part of the official deed (*verlijden*).

The deed made by a Notary has perfect evidentiary power, both externally, formally, and materially. Therefore, it must be fulfilled in terms of authority, formality, and substance of the deed, for that reason a Notary must be held accountable for the external, formal, and material truth of the deed. If the deed is not made as stipulated in the laws and regulations, it will result in the deed losing its authenticity or the deed being cancelled. The cancellation of a deed can cause the Notary to be liable.<sup>5</sup>

Legal problems that befall a Notary and place the Notary as a defendant, because the deed he made is legally flawed and results in losses for one of the parties. Notary errors in carrying out his duties and authorities are often caused by lack of knowledge (*onvoldoende kennis*), lack of experience (*onvoldoende ervaring*), or lack of understanding (*onvoldoende inzicht*).

Notaries who do not comply with or do not carry out their obligations in accordance with the provisions of Article 16 paragraph (1) letter m UUJN, in this case a Notary who does not read and sign the deed in front of the parties and witnesses, will be subject to legal consequences, namely as follows. First, the legal consequences for the Notary are temporary dismissal from his position as a Notary for having violated the obligations and prohibitions of the position as stated in Article 9 paragraph (1) letter d UUJN. Second, the legal consequences for the deed are that the deed will lose its authenticity or be degraded to a private deed as stated in Article 16 paragraph (8) UUJN.<sup>6</sup>

Regarding compensation, it is regulated in Article 84 of the UUJN, where the provisions of this article emphasize that violations committed by a Notary which result in the deed being degraded to a private deed or a deed being null and void

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<sup>5</sup>Ghansham Anand dan Agus Yudha Harnoko. (2016). Upaya Tuntutan Hak Yang Dapat Dialihkan Oleh Pihak Yang Berkepentingan Terhadap Akta Notaris Yang Cacat Yuridis, *Jurnal Perspektif Hukum*, Vol. 16, No. 2, p. 156. url. [https://repository.unair.ac.id/87061/1/11.%20%28Jurnal%29%20%20Upaya%20Tuntutan...%20Yuridis\\_compressed.pdf](https://repository.unair.ac.id/87061/1/11.%20%28Jurnal%29%20%20Upaya%20Tuntutan...%20Yuridis_compressed.pdf)

<sup>6</sup>Mia Elvina. (2020). Implikasi Hukum Terhadap Akta Yang Dibuat Oleh Notaris Yang Tidak Dibacakan Dan Ditandatangani Secara Bersama-Sama, *Jurnal Lex Renaissance* No. 2 Vol. 5 April, p. 446. url. <https://journal.uui.ac.id>

by law can be a reason for the parties who suffer losses to reimburse costs, compensation and interest to the Notary.

A series of deviations and violations committed by Notaries in carrying out their duties and authorities often occur in practice, especially those related to bank credit agreement deeds. Although it is consciously known that such actions are contrary to applicable laws and regulations, such practices are still ongoing.

Reading the deed until the signing of the deed is a unity of the deed formalization (*verlijden*), in this case the focus of the discussion is the signing of the deed which is done circularly or often referred to as the signing of the deed which is done not simultaneously, where the signing must be done before a Notary. That before the deed is signed, it is first read in front of the parties concerned in order to convey the truth of the contents of the deed with the wishes of the parties and then the deed is signed, of course in front of the parties and two witnesses.

## **2. Research methods**

The research method used in this thesis is normative legal research. Normative legal research is conducted with the intention of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be according to law.<sup>7</sup>The approach method used in this research is the statutory approach method, where the statutory approach method is an approach carried out by examining all laws and regulations related to the problem (legal issue) being discussed.<sup>8</sup>Data sources come from primary data and secondary data. The data collection method used is literature study. The data analysis method used in this study is prescriptive as proposed by Mukti Fajar and Yulianto Achmad.

## **3. Results and Discussion**

### **3.1. Validity of Authentic Deed of Credit Agreement Whose Signing is Done Circularly**

A signature in the general sense is a signature that can be defined as a composition (letters) of signs in the form of writing from the signer, with which the person making the statement/information can be individualized. This definition includes an assumption that a statement made in writing must be signed by the person concerned.

The term Legitimacy is a translation of the Dutch legal term *rechmatig* which can be interpreted as based on law. In English, the term legitimacy is called legality

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<sup>7</sup>Mukti Fajar dan Yulianto Achmad. (2017). *Dualisme Penelitian Hukum Normatif Dan Empiris, Cetaka IV*, Yogyakarta: Pustaka Pelajar. p. 36.

<sup>8</sup>Johani Ibrahim. (2007). *Teori Dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing. p. 300.

which means lawfulness or in accordance with the law. This concept of legitimacy was born from the concept of a state of law where government actions must be based on applicable legal provisions which are based on the application of the principle of legality in all government legal actions.<sup>9</sup>

This means that this validity refers to a form of recognition that is believed to be true, legal and valid, which according to the law is also something that is legal and there is no doubt about it.<sup>10</sup>

To implement a credit agreement at the Bank, the Notary has the following duties and authority:

1) The duties and responsibilities of a Notary in a credit agreement as a Bank partner, after an agreement has been reached between the Notary and the bank to cooperate, the Notary has several duties, including:

a. In charge of making the deed of agreement requested by the bank. As a material for making the document, the bank must provide very clear and detailed data and information and explain the type and material of the requested credit document. The notary may not refuse the bank's request to make a deed of credit agreement unless the request from the bank or the party appearing is contrary to public interest legislation and morality.

b. For the credit documents he makes, the Notary is responsible for:

a) The truth, accuracy and completeness of the documents presented.

b) Leakage of bank secrets, whether by a notary or an employee or staff member.

c) Problems with the documents he has created, if at a later date there is an error and/or deliberate action by the Notary or employees or people who assist him in his work.

c. Notaries are 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 deeds to be made, because not all people are fluent and understand the law regarding

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<sup>9</sup>Sofyan Hadi dan Tomy Michael. (2017). Prinsip keabsahan (rechtmatigheid) Dalam Penetapan Keputusan Tata Usaha Negara, Fakultas Hukum Universitas 17 August 1945, Surabaya, Vol. 5, No, 2, p. 3. url. <https://repository.unissula.ac.id/33526/1/Magister%20Kenotariatan%2021302200095fullpdf.pdf>

<sup>10</sup> Liga Sabina Luntungan. 2013. Keabsahan Alat Bukti Short Message Service (SMS) Dan Surat Elektronik Dalam Kasus Pidana, *Lex Crimen* Vol. 2, No. 2, p. 134. Url. <https://ejournal.unsrat.ac.id/v2/index.php/lexcrimen/article/view/10603/0>

agreements to be made by Notaries through the making of authentic deeds or private deeds.

d. The notary is responsible for making final credit documents based on the concept that has been approved by the bank.

e. The notary is tasked with informing the bank of the data if there are things that are unclear or unclear and submitting the draft document to the bank.

f. In charge of keeping the name of the debtor and the amount of credit requested confidential. The purpose of keeping the name of the debtor and the amount of credit requested confidential is so that it is not known by other parties because this is considered an internal matter between the Notary, Debtor and Creditor.

g. In charge of entering into the register book to be registered with the District Court. All deeds that have been made and delegated by the Notary must be entered into the register book and registered with the District Court so that the deed has permanent legal force, and if later there is a problem related to the deed, it can be resolved according to applicable legal regulations.

2) The authority of a notary in credit agreements as a bank partner:

a. The authority to make a credit agreement deed 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 Notary. A Notary is authorized to make authentic or private deeds in a specified legal area regarding all acts, agreements and provisions required by laws and/or regulations and/or those desired by the interested party to be stated in an authentic or private deed as long as the making of the deeds is not also assigned or excluded to other officials or other persons determined by law.

b. The authority to legalize or refuse to make a credit agreement deed, for reasons that are acceptable by law or for reasons that the credit agreement is detrimental to both the creditor and the debtor. 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 Notary which states that the authority of a Notary is to legalize deeds, including validating signatures and determining the certainty of the date of a private letter made by an interested party by registering in a special book that has been provided by the Notary.

c. The authority to validate if the requirements for completeness of the files have not been met by the debtor and creditor. The files are used by the Notary for administration in connection with the making of the deed requested to the Notary.

d. The authority to request compensation for his services in the form of money from the bank for the preparation, management and completion of documents

that have been carried out, the amount of which is determined based on 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 provisions.

Based on the principle of legal certainty, when making an authentic deed of a credit agreement that does not comply with the provisions contained in the applicable regulations, the position of the deed can be questioned. Legal certainty regarding the position of an authentic deed made by a Notary is very important for the parties.

Credit agreements made using authentic notarial deeds must be guided by the provisions as stipulated in Law No. 30 of 2004, in conjunction with Law No. 2 of 2014 concerning the Position of Notary. The provisions regarding the procedures for making authentic deeds made by Notaries include:

a. Made with the provisions as stipulated in Article 38 UUJN where every notarial deed must consist of:

1) The beginning of the deed/Deed Head, the body of the deed, and the end/closing of the deed. The beginning/deed head contains: the title of the deed, deed number, time, day, date, month and year as well as the full name and domicile of the Notary.

2) The body of the deed contains the full name, place and date of birth, citizenship, occupation, title, position, place of residence of the parties and/or the person they represent. Furthermore, the body of the deed contains information regarding the acting position of the presenter, the contents of the deed which constitute the wishes and desires of the interested parties as well as the full name, place and date of birth, occupation, title, position and residence of each identifying witness.

3) The end/closing of the deed containing a description of the reading of the deed, (Article 16 paragraph 1 letter m and Article 16 paragraph 7 UUJN). Furthermore, a description of the signing and place of signing or translation of the deed if any, full name, place and date of birth, occupation, position, position, and residence of each witness to the deed, a description of the absence of changes that occurred in the making of the deed or a description of the existence of changes in the form of additions, deletions, and replacements and the number of changes.

b. The reading of the authentic deed must be done to the parties by the Notary unless the parties state to the Notary that they already know/understand its contents, and the condition if the deed is not read must be stated at the end of the deed before the closing sentence of the deed. In addition, the parties, witnesses and the Notary must initial each page of the deed.



c. The signing of the authentic deed of Notary must be done by the parties, witnesses before the Notary. The presence of the parties, witnesses and Notary in one place (Notary's office) physically in the signing of the authentic deed of Notary of the credit agreement.<sup>11</sup>

When the existing requirements are not met and are not in accordance with applicable law, it can result in the deed made by a Notary being reduced in its evidentiary power to become a private deed or even be canceled by law, and no legal action is required by the person concerned who has an interest in the deed where this becomes passive. Passive in question is a cancellation where there is no active action or action by the parties concerned in an agreement. Therefore, the agreement is canceled by law because indirectly there are several requirements that have not been met so that the Notary's responsibility for the deed he made loses its authenticity.<sup>12</sup>

Reading and signing of a deed that is not done before a Notary will result in a decrease in the evidentiary value of an authentic deed to become a deed under hand as stated in Article 16 paragraph (9) UUJN and violates the provisions of Article 4 paragraph (6) of the Indonesian Notary Code of Ethics which has consequences in the form of sanctions imposed on Notary members who violate the code of ethics. A decrease in the status of the strength of evidence of a Notary deed can occur in its creation if there is a violation of the provisions of applicable legal requirements. One form of such violation is making deeds that do not correspond to the facts. Then what happens very often and is of concern is related to the non-reading of the deed and the signing of the deed that is not done by the Notary in front of the parties together.

Therefore, although a private deed is included as one of the evidence in court, in practice a private deed is difficult to use as evidence because of its weak nature and requires perfect evidence. It is different from an authentic deed as evidence that has perfect evidentiary power and does not require additional evidence and cannot be denied unless another party can prove otherwise.<sup>13</sup>

### **3.2. Legal Consequences of Signing an Authentic Credit Agreement Deed Carried Out Circularly**

In general, the signature of the parties is required in a notarial deed, this indicates that the parties have agreed to what is contained or agreed to by both parties,

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<sup>11</sup> Rosnantiti Prayitno. (2008). *Sejarah Lembaga Kenotariatan di Indonesia*, Jakarta: Rajawali Press.p. 20.

<sup>12</sup> Habib Adjie. (2015). *Kebatalan dan Pembatalan Akta Notaris*, Bandung: Rafika Aditama. p. 76.

<sup>13</sup><http://download.garuda.kemdikbud.go.id/article.php?article=1016601&val=15463&title=CONSEQUENCES> Hukum Akta Notariil Yang Tidak Dibacakan Dalam Penandatanganan Perjanjian Kredit, 2018, Accessed on 13 february 2025, at 22:25 Wib, p.17.



namely the parties themselves. Signing must have the meaning of seeing (reading) and agreeing to what is written.

Circular signing is the signing of an agreement without the presence of one of the parties not being present or one of the parties not being able to appear to sign the deed simultaneously. In relation to this, Article 16 paragraph (1) letter m of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary ("Law 2/2014") regulates that one of the obligations of a Notary in carrying out his position is:

*"Reading the Deed in front of the person appearing in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a private Will Deed, and signed at that time by the person appearing, witnesses, and Notary."*<sup>14</sup>

If all the provisions as stipulated by UUJN in the procedures and methods for making an authentic deed have all been fulfilled by the Notary, then the credit agreement deed made by the Notary using the authentic deed has legality and binding legal force for the parties as an authentic deed and is perfect evidence if a dispute occurs between the parties in court.

Legal protection is a protection given to legal subjects in the form of devices that are both preventive and repressive, both verbal and written. In other words, it can be said that legal protection is a depiction of the function of law itself, which has the concept that law provides justice, order, certainty, benefit, and peace.

Notarial Deed is a formulation or crystallization of information on statements from the parties presented before a Notary. The Notary cannot force his wishes or opinions to be followed by the parties, but the Notary is obliged to provide an explanation from a legal perspective, if the Notary's suggestion is approved by the parties and then stated in the deed, then this is the desire of the parties themselves, and not the desire or statement of the Notary. Based on the substance of the deed, there are declarative Notarial deeds and Constitutive Notarial deeds.

The notary is obliged to guarantee the certainty of the day, date, month, year and time of appearance stated or stated in the initial part of the notarial deed, as proof that the parties appeared and signed the deed on the day, date, month, year and time stated in the deed.

An authentic deed of a credit agreement notary that does not meet the procedures and methods for making authentic words as stipulated in Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary, then its authenticity is degraded to a deed under hand. This means that the Notary as a public official has failed to make an authentic deed of credit agreement to the

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<sup>14</sup>Hukum Online. <https://www.hukumonline.com/klinik/a/bolehkah-akta-otentik-ditandatangani-secara-circular -lt5fcf374d7306f/> accessed 11-05-2024, at 14:31 Wib.

parties because he did not comply with the provisions as contained in Article 38, Article 16 paragraph 7 of Law Number 30 of 2004 in conjunction with Law Number 2 of 2014 concerning the Position of Notary.

The legal consequences of the notary's failure to fulfill these provisions in making a credit agreement deed are that the deed can no longer be used as perfect evidence if a dispute occurs between the creditor and the debtor in court. In this case, the creditor's rights to execute the object of the credit guarantee given by the debtor are also hampered, because the credit agreement deed is degraded into a private deed.

An authentic notarial deed whose evidentiary power is degraded to a deed under hand due to the signing of the deed by the parties not being carried out simultaneously becomes a responsibility that can be categorized as a personal or private responsibility of the Notary. A Notary must also be aware that the product of his deed is interpreted as an effort by the state to create legal certainty and protection for the community. The basis of responsibility is divided into two types, namely error and risk. Thus, liability on the basis of fault (liability without on fault) and liability without fault (liability without fault) are known. The basic principle of liability on the basis of fault means that a person must be responsible because he made a mistake because it harms others.<sup>15</sup>

Notaries who are proven to have committed unlawful acts in carrying out their profession are required to be responsible for their actions. In imposing sanctions on Notaries, there are several conditions that must be met, namely fulfilling the formulation of acts prohibited by law, there is a loss caused by the act, and the act must be unlawful, both formally and materially. Formal in the sense that it has fulfilled the formulation in the law, materially fulfilling the test with the code of ethics and the Notary Law.

According to the author, a Notary is responsible for the authenticity of the deed he/she made, so that based on the existing responsibility and if it is associated with the degradation of an authentic deed into a private deed due to the signing of the deed circularly (not simultaneously), then the Notary can be held legally responsible. In this context, civil liability can be imposed, where the party who suffers a loss due to the degradation of an authentic deed into a private deed can demand reimbursement of costs, compensation and interest from the Notary concerned as stated in Article 84 of the UUJN.

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#### 4. Conclusion

The validity of a notarial deed whose signing is carried out in a circular manner without the presence of a notary will result in the deed losing its power or being degraded to a private deed. The legal consequences of signing an authentic deed of credit agreement whose signing is carried out in a circular manner result in its evidentiary value decreasing to a private deed as stated in Article 16 paragraph (9) UUJN and violating the provisions of Article 4 paragraph (6) of the Notary Code of Ethics which has consequences in the form of sanctions imposed on Notaries who violate the code of ethics, namely in the form of reprimands, warnings, schorsing (temporary dismissal), onsetting (dismissal) from membership of the association, dishonorable dismissal from membership of the association. Because the signing of the deed simultaneously by the parties, witnesses and the notary is an obligation required by the UUJN. It is advisable for a Notary to comply with all applicable laws and regulations and must uphold the Notary's oath of office in carrying out his duties and authority in making authentic deeds of credit agreements so that the risk of the deed made by the Notary does not give rise to legal consequences in the future and the legal force of the deed made by the Notary has legal force as perfect evidence.

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