

The Responsibilities of Notaries in Making Deeds Affecting Bad Credit at Bank Rakyat Indonesia

Sigit Priambodo Ady^{*)} & Bambang TriBawono^{**)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: sigitpriambodo@gmail.com

^{**)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: bambang@unissula.ac.id

Abstract. *This study aims to analyze: 1) Implementation of the making of the credit agreement deed at Bank Rakyat Indonesia. 2) The responsibility of a notary in making a deed that has an impact on bad credit at Bank Rakyat Indonesia. The approach method in this research is a sociological juridical approach. The specification of the research used is descriptive analytical research. Types of data using primary and secondary data. Data collection by interview method and literature study. The data analysis method used is qualitative analysis. The results of the study concluded: 1) The implementation of making a credit agreement deed at Bank Rakyat Indonesia is carried out based on an agreement between the debtor and the creditor. After the credit agreement is signed by the debtor and the party representing BRI, then waarmeking will be carried out by a Notary appointed by PT. Bank Rakyat Indonesia (Persero) Tbk. The credit agreement deed is notarized, the binding is carried out simultaneously with the binding of collateral / Mortgage. In granting the Mortgage before the PPAT, it must be attended by the Mortgage Giver and the Mortgage recipient and witnessed by 2 (two) witnesses. 2) The responsibility of a notary in making a deed that has an impact on bad credit at Bank Rakyat Indonesia Decision Number 52/Pdt.G/2020/PN Cjr Notary cannot be directly held accountable individually, collectively, based on errors or absolute liability. This is because the notary only mewaarmeking credit agreement deed that has been agreed upon by the debtor and the party representing BRI, namely the head of the PT branch. Bank Rakyat Indonesia (Persero). Regarding collateral/guarantee, before the binding of the notary has also checked in advance regarding the correctness, so that if bad credit occurs until the auction of collateral/guarantee, it is absolutely the responsibility of the parties themselves.*

Keywords: Bank; Credit; Responsibility.

1. Introduction

The increasing wheel of the economy in Indonesia is currently characterized by various factors, one of which is the increase in business activities which has a direct impact on increasing business by business actors, but this increase is not always followed by good financial capabilities of business actors. Business actors in meeting their financial needs are carried out in various ways, one of which is borrowing funds or capital, known as credit, either through banks. In Indonesia, what regulates banking is Act No. 7 of 1992 concerning Banking which was amended by Act No. 10 of 1998.¹

The development of legal science and the need for law in society is increasing the form of the agreement applied. The agreement is growing along with the times, in order to obtain legal certainty and protection, the community puts the agreement into an authentic deed. Article 1868 of the Civil Code requires that a deed has the strength of authentic evidence, it must be made by an authorized Public Official. So not everyone can or may make an authentic deed, but only public officials who are authorized by law to make authentic deed.²

Granting a credit from a bank to a customer as a debtor, of course, to provide legal certainty guarantees for the granting of this credit, the role of a notary regarding authentic deeds is required. Notary is a public official who has the authority to make authentic deeds and other authorities as referred to in Act No. 2 of 2014 regarding amendments to Act No. 30 of 2004 concerning the Position of Notary. In his explanation it is stated that a Notary is a public official authorized to make authentic deeds as long as the making of certain authentic deeds is not specific to other public officials. The need for written agreements made before a notary is to guarantee legal certainty and to fulfill strong evidentiary law for the parties to the agreement.³ Notary deed made in accordance with the wishes of the appearer who has an interest in ensuring or guaranteeing the rights and obligations of the appearer to a public official (Notary).

The journey of a notary in Indonesia has developed in accordance with the development of the Indonesian state and nation. Contemporary history of Indonesia records that during the reformation era there was a significant change in the notary institution. This change was marked by the success of the Reform

¹I Ketut Sukawati Lanang Putra Perbawa. Settlement of Bad Credit in Banking. Law Journal. Faculty of Law Mahasaraswati Denpasar University. p.62

²Maslihan & Sukarmi. Notary Authority in Making Authentic Deeds Relating to Cooperation Contracts. Deed Journal. Volume 5 Number 2 March 2018. p.15

³Abdul Jalal, Suwitno & Sri Endah Wahyuningsih. Involvement of Notary Officials in Unlawful Acts and Participating in Crime in Forging Documents. Deed Journal. Volume 5 Number 1 March 2018. p.228

Order government in enacting Act No. 30 of 2004 concerning the Position of Notary Public (UUJN), which was later amended by Act No. 2 of 2014.⁴

The notary is obliged to include in the deed what has really been understood according to the will of the appearer and read to the appearer the contents of the deed. The statements or statements of the parties are written by a notary in a notarial deed.⁵The notarial deed has perfect evidentiary power so that if there is a person or party who judges or declares the deed to be incorrect, then the person or party who evaluates or declares is obliged to prove his judgment or statement in accordance with the law.⁶A notary who has a work relationship with a bank related to making authentic deeds and registering credit guarantees, the notary has the authority to make a deed which can show that there is a legal action from the bank (creditor) with the customer (debtor) before the notary, so that the deed printed by the notary is which is very important for the parties to be able to protect their interests.⁷

A deed drawn up before a notary is called a notarial or authentic deed or an authentic deed. The existence of a notary deed in a legal state, especially Indonesia, has a crucial function, the recognition of a notary deed as a deed that has perfect evidentiary strength makes the position of a notary deed as the first and foremost means of evidence in civil evidentiary law, so that its existence needs to be regulated in such a way so that the power of proof of the notarial deed does not become a boomerang for the parties who make it.⁸In the bank credit agreement, the role of a Notary through the deed he made provides legal certainty for the parties, namely the bank as the creditor and the customer as the 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 proof tool. In a bank credit agreement, an authentic deed is proof of a legal action in the form of giving bank credit to its customers.

Handling bad credit often has difficulties or problems in the settlement process. Difficulties in resolving bad loans experienced by the bank can be caused by imperfect binding of collateral/collateral carried out by a Notary, this causes the

⁴Rita Permanasari & Akhmad Khishni. Legal Immunity for Notaries Who Disclose Secrets . Position. Deed Journal. Volume 5 Number 2 March 2018. p.26

⁵Abdul Ghofur Ansari. (2009). Indonesian Notary Institution. Legal and Ethical Perspectives. Yogyakarta: UII Press. p. 46.

⁶Habib Adjie. (2008). Notary Law in Indonesia-Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary. Bandung: Refika Aditama. p.14.

⁷Heny Pratiwi. Legal Strength of Covernote Through Bank Loans with Guaranteed Mortgage Rights in the Event of Bad Loans. Journal of Notary Law. Volume 4 Number 3 December 2019. p.499

⁸Nawaaf Abdullah & Munsyarif Abdul Chalim. Position and Authority of a Notary in Making Authentic Deeds. Deed Journal. Volume 4 Number 4 December 2017. p.657

Bank to suffer losses. The Deed of Credit Agreement made by a Notary sometimes causes bad credit. As in the Cianjur District Court Decision Number 52/Pdt.G/2020/PN Cjr, where a customer actually sued BRI Bank because the Bank auctioned off credit guarantees. The customer does not fulfill the credit agreement as stated in the Deed of Credit Agreement, but the customer does not receive a bank guarantee that a change of house and land is auctioned by the bank.

2. Research Methods

The approach method in this research is a sociological juridical approach. The specification of the research used is descriptive analytical research. Types of data using primary and secondary data. Data collection by interview method and literature study. The data analysis method used is descriptive qualitative analysis.

3. Results and Discussion

3.1 Implementation of Credit Agreement Deed Making at Bank Rakyat Indonesia

Credit can be disbursed immediately to the operational section officer. With the disbursement of the credit, the debtor has the obligation to return the credit on time along with the interest, the payment can be made directly or in installments based on the provisions stated in the credit agreement. As for the letters that must be filled in and signed by the prospective debtor in order to disburse credit with guaranteed Mortgage at PT. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Offices are:⁹

1. Deed of Credit Agreement
2. Power of Attorney to Charge Mortgage Rights (SKMHT)
3. Mortgage Granting Deed (APHT)

The letter that must be filled in and signed by the prospective debtor in order to cash out is the Deed of Credit Agreement. The Deed of Credit Agreement made by a Notary sometimes causes bad credit. As in the Cianjur District Court Decision Number 52/Pdt.G/2020/PN Cjr, where a customer actually sued BRI Bank because the Bank auctioned off credit guarantees. The customer does not fulfill the credit agreement as stated in the Deed of Credit Agreement, but the customer does not receive a bank guarantee that a change of house and land is auctioned by the bank.

⁹ibid.

The implementation of making a credit agreement deed at Bank Rakyat Indonesia in Cianjur Regency is carried out based on the agreement of the debtor and creditor parties. After the credit agreement is signed by the debtor and the party representing BRI, namely the head of the PT branch. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office, a notary appointed by PT. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office. The credit agreement deed is notarized, the binding is carried out simultaneously with the binding of collateral / Mortgage. The imposition of Mortgage is carried out through 2 (two) stages of activity, namely:¹⁰

1. Mortgage granting stage

The Deed of Granting Mortgage Rights (APHT) was made by PPAT, which was preceded by a credit agreement. The granting of Mortgage Rights is carried out by making APHT by the PPAT-Notary appointed by PT. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office to take care of various kinds related to agreements and other legal issues. In granting the Mortgage before the PPAT, it must be attended by the Mortgage Giver and the Mortgage recipient and witnessed by 2 (two) witnesses. If the debtor is unable to attend, it can be delegated to another party. The authorization must be made before a Notary/PPAT which is called a Power of Attorney for Imposing Mortgage Rights (SKMHT) in the form of an authentic deed. SKMHT must be given directly by the Mortgage Giver. In the SKMHT it is mandatory to clearly state the object of Mortgage Right, amount owed, name and identity of the creditor, name and identity of the debtor. The SKMHT that has been made by the Notary cannot be withdrawn for any reason because it is to protect the interests of creditors and cannot end unless the power of attorney in question has been exercised or because the time limit for its use has expired.

2. Mortgage Registration Stage

Not later than 7 (seven) days after signing the APHT, the PPAT appointed by PT. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office sends APHT and other certificates to the local land office. As proof of the existence of a Mortgage, the Land Office issues a Mortgage Certificate. The certificate contains the words "For the sake of Justice Based on Belief in the One and Only God". Thus it has the same executorial power as a court decision that already has permanent legal force. So the irah-irah is intended to confirm the existence of executorial power on the Mortgage Right certificate, so that if the debtor defaults, it is ready to be executed as is his right to a court decision that has permanent legal force.

¹⁰Ibid

The notary/PPAT before committing to the land that will become collateral/guarantee will check the certificate made at the local National Land Agency. Certificate checking is carried out by bringing the original certificate to the National Land Agency. If from the results of checking the certificate it is known that there is a blockage, then an explanation is requested as to the reason for the blocking. If the block is carried out by an individual, efforts are made to revoke the block, because the National Land Agency must set a time limit for the block to be carried out by an individual. Implementation of the credit agreement with the guarantee of Mortgage at PT. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office, in this case credit guarantees play an important role in whether or not a credit application is granted by a prospective debtor to PT.

The form of credit security in banking practice is carried out by binding guarantees. Collateral has a very important position and benefits in supporting economic development. Because the existence of this institution can provide benefits to creditors and debtors. The benefits of creditors are the realization of security for closed trade transactions and providing legal certainty for creditors.¹¹The debtor is unable to return the principal and interest, the bank or capital owner can execute the collateral object. The value of the collateral object is usually at the time of making an estimate of its value when compared to the principal interest in arrears.¹²

The function of guarantee legally is for legal certainty of repayment of debt in a credit or debt agreement or certainty of the realization of an achievement in an agreement. Legal certainty is one of the goals of law, as stated by Gustav Radbruch, law aims for justice, usability and certainty.¹³According to Gustav Radbruch, there are four things that form the basis of the meaning of legal certainty, including:¹⁴

1. Positive law is the law.

Collateral can be interpreted as assets that can be tied up as collateral to ensure certainty of debt repayment if in the future the debtor does not pay off his debt by selling collateral and taking payment from the sale of assets that are collateral. Credit guarantees are anything that has an easy value for cash which are bound by promises as collateral for payment of debtors' debts based on credit agreements made by creditors and debtors. Credit guarantees are divided into 4 (four) types,

¹¹Tan Kamello. (2004). *Fiduciary Guarantee Law*. London: Alumni. p. 2.

¹²Salim HS. (2004). *Development of Guarantee Law in Indonesia*. Jakarta: Raja Grasindo Persada. p.29.

¹³H. Chaerudin. (1999). *Philosophy An Overview*. Cianjur: FH ELEMENTS. p. 19.

¹⁴Gustav Radbruch in Satjipto Rahardjo. (2000). *Legal studies*. Bandung: Citra Aditya Bakti. p.9.

namely birth guarantees by law, namely Article 1131 of the Civil Code, birth guarantees by agreement, material guarantees, debt guarantor guarantees.¹⁵

2. Law is based on facts or established legal basis.

The deed of credit agreement provides legal certainty for creditors and debtors, legal certainty is one of the essential principles because in the law of the agreement everyone is given the freedom to agree what and with whomever, in this case banking and customers. So that it can be said what does it mean that legislators give freedom to everyone to enter into agreements if the law of the agreement itself does not contain legal certainty, however this does not mean that legal certainty is only contained in contract law but is also contained in law in general.

3. Real facts must be formulated clearly, so as to avoid misunderstanding and easy to implement.

This legal certainty is by increasing guarantees through guarantee institutions known in Indonesian law. Material guarantee institutions can be in the form of mortgages, verban credit, fiduciary, and mortgages.¹⁶ Legal certainty must be an absolute part of a legal system. In the credit agreement, the bank customer must be able to provide certain objects that are linked as collateral. If the bad credit occurs because the debtor does not carry out his achievements as contained in the credit agreement, then before carrying out the execution of collateral, the debtor must first be declared in default, which is done through a court decision. For this reason, before suing the creditor, he must carry out a subpoena whose contents are so that the debtor fulfills his default. If the debtor does not fulfill his performance, he will be sued on the basis of default, with which the court decides that the debtor has defaulted, then he can execute the collateral provided by the debtor.

4. Positive law should not be easily changed.

The legal basis regarding the necessity of having a credit agreement in bank credit appears in Article 1 number 11 and number 12 of Act No. 10 of 1998 concerning Banking, which states that credit is given based on a loan agreement or agreement between a bank and another party. Each agreed credit must be stated in a written credit agreement.

¹⁵Sutarno. (2005). *Legal Aspects of Credit at Banks*. New York: Alfabeta. p.144.

¹⁶Mariam Darus Badruzaman. (1998). *Indonesian Collateral Legal Framework in Indonesian Guarantee Law Basic Economic Law Series*. Bandung: Citra Aditya Bakti. p. 68.

3.2 Notary Responsibilities in Making Deeds Affecting Bad Credit at Bank Rakyat Indonesia, Cianjur Regency

The notary in making the credit agreement deed can be held accountable if it causes a dispute in the future. As for the form of responsibility of a Notary as a public official related to material truth, it is divided into four points, namely:¹⁷

1. Civil notary responsibility for the material truth of the deed he made.
2. The notary's criminal responsibility for the material truth in the deed he made.
3. The notary's responsibility is based on the Notary's office regulations (UUJN) for the material truth in the deed he made.
4. The responsibilities of a Notary in carrying out his/her duties are based on the Notary's code of ethics.

In addition to fulfilling the requirements set by law in order for a deed to be authentic, a Notary in carrying out his duties must be responsible for the deed he made. What is stated in the beginning and end of the deed which is the responsibility of the Notary is an expression that reflects the actual situation at the time the deed was drawn up.

Regarding the responsibilities of a notary related to the responsibility of a notary in making a deed that has an impact on bad credit at Bank Rakyat Indonesia, Cianjur Regency, based on Decision Number 52/Pdt.G/2020/PN Cjr, a notary cannot be directly held accountable individually, collectively, based on mistakes or absolute liability. This is because the notary only mewaarmeking credit agreement deed that has been agreed upon by the debtor and the party representing BRI, namely the head of the PT branch. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office. Regarding collateral/guarantee, before the binding of the notary has also checked in advance regarding the correctness, so that if bad credit occurs until the auction of collateral/guarantee, it is absolutely the responsibility of the parties themselves.

The responsibility of a notary in UUJN is intended as a notary's attachment to legal provisions in carrying out his duties and obligations, in the sense that all actions of a notary in carrying out his duties must be legally accountable, including with all the consequences to be subject to legal sanctions for violations of norms. the underlying law. When the deed made by the notary later becomes problematic or causes harm to one of the parties to the deed, then in this case the notary cannot be directly blamed or held accountable, because the notary's deed is the wish and

¹⁷Abdul Ghofur Ansari. (2009). Indonesian Notary Institution. Yogyakarta: Ull Press. p. 34

request of the parties, not suggestions or the notary's opinion, but the contents of the deed are the actions of the parties and not the deeds or actions of a notary.

4. Conclusion

The implementation of making a credit agreement deed at Bank Rakyat Indonesia in Cianjur Regency is carried out based on an agreement between the debtor and the creditor. After the credit agreement is signed by the debtor and the party representing BRI, namely the head of the PT branch. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office, a notary appointed by PT. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office. The credit agreement deed is notarized, the binding is carried out simultaneously with the binding of collateral / Mortgage. The notary's responsibility in making a deed that has an impact on bad credit at Bank Rakyat Indonesia, Cianjur Regency based on Decision Number 52/Pdt.G/2020/PN Cjr Notary cannot directly be held accountable individually, collectively, based on guilt or absolute liability. This is because the notary only mewaarmeking credit agreement deed that has been agreed upon by the debtor and the party representing BRI, namely the head of the PT branch. Bank Rakyat Indonesia (Persero) Tbk Cianjur Branch Office. Regarding collateral/guarantee, before the binding of the notary has also checked in advance regarding the correctness, so that if bad credit occurs until the auction of collateral/guarantee, it is absolutely the responsibility of the parties themselves.

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