

The Spraying of Collateral by the Bank is an Unlawful act Collateral Spraying by Banks is an Unlawful act

Rappin M. Alghifary

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail :

Rappindoprutama@gmail.com

Abstract. *Often a notary makes a credit agreement deed whose contents are contrary to regulations/legislation. This can cause problems later on, such as in credit agreements there is often a clause that allows banks to spray, install stickers or notice boards that state '\this land & building is under the supervision of the bank.' the rampant spraying of collateral by banks as creditors against their customers (debtors) is often considered an unlawful act, because it has embarrassed other people and resulted in lawsuits in court. However, the bank's actions are considered to be in accordance with the sop and what is agreed upon in the credit agreement deed which is an authentic deed made by a notary. In this study, the researcher will analyze whether the bank's actions are considered correct or not, whether the notary can refuse to make a deed that is contrary to regulations, moral norms and decency. Poenulis will discuss the results of the analysis of this problem. The research method used is the normative and empirical legal research method (normative juridical & empirical juridical) by conducting a study of literature materials to collect secondary data. Normative legal research is conducted by examining library materials (literature) which are secondary data while empirical research is conducted by analyzing cases in pmh lawsuit cases at the kuningan district court, west java. From the analysis that can be understood, spraying of collateral objects often occurs which results in lawsuits against banks. From the results of this study, the researcher can conclude that the bank should not carry out spraying of collateral, because it is classified as an unlawful act, the notary should not include a clause that allows the bank to spray because it is a violation of defamation, violating morality and decency in society. The notary also has the right to refuse and provide an explanation to the bank regarding the losses from including clauses that can harm others, so that they can avoid lawsuits in the future.*

Keywords: Agreement; Collateral; Notary.

1. Introduction

In early January 2023 conducted a civil dispute study between the plaintiff pt. Gigantica trigano against pt bank rakyat indonesia (persero) tbk, and others. Where the core of the dispute was the spraying of collateral belonging to the plaintiff by bank bri kuningan branch office. The lawsuit containing contentiosa, each party submitted its own arguments, where the plaintiff stated that the spraying was an unlawful act. Meanwhile, the defendant felt right because his actions were in accordance with what had been agreed upon in the credit agreement deed made by notary, so that it was an authentic deed that had perfect and binding evidentiary force (fect and binding).

This dispute is indeed very interesting to analyze by me considering that in reality an authentic deed made by a notary has perfect power in court because it is a deed of release made based on a mutual agreement between the two parties. However, if examined further, in its premises there are several articles/clauses that are considered to be contrary to laws and regulations, moral norms, and decency. Can this make the credit agreement declared null and void, because it does not meet the objective requirements regarding the validity of the agreement as stated in article 1320 of the civil code.

In writing this journal, the researcher will conduct a legal analysis of the problem so that it can produce a conclusion that can be used as a scientific research result, so that it is useful in notarial science in indonesia.

By understanding the background of the problem described above, the researcher is interested in conducting a legal analysis of the validity of a notarial deed (authentic deed) whose contents are contrary to laws and regulations. If associated with the provisions of the requirements for the validity of an agreement in article 1320 of the civil code, is it a violation of objective or subjective requirements, so that it makes it easier for judges to decide cases containing contentiosa.

- The Increasing Number Of Arbitrary Actions Taken By Banks As Creditors Towards Their Debtors/Customers Which Often Violate Laws, Morality, Decency And Customs Prevailing In Society;
- There Is An Error In The Contents Of The Credit Agreement That Is Forced By The Notary Even Though The Notary Knows And Understands That The Article/Provision Is Against The Law.
- Notaries Are Often Not Given The Freedom To Draft Deeds In Credit Agreements, Because They Are Afraid Of No Longer Being Given The Freedom.*Job Order*by The Bank.

What Is The Relevance Of Solving The Main Theme To The Development Of Legal Science?

- Correction Of The Actions Of The Bank/Creditor So That Their Actions Do Not Harm The Debtor/Customer;
- Every Engagement Agreement Made By The Parties: Bank, Customer And Notary Must Not Harm Either Party.
- The Notary Has The Right To Refuse To Include The Contents Of The Credit Agreement Deed Which He Feels Are Not In Accordance With Statutory Regulations, Norms Of Decency, Norms Of Decency And The Values That Exist In Society;

Formulation Of The Problem

1. Can A Credit Agreement Made By A Notary Be Cancelled If It Does Not Fulfill The Requirements For A Valid Agreement As Stipulated In Article 1320 Of The Civil Code?...?
2. Why Didn't The Notary Try To Reject The Contents Of The Credit Agreement Even Though He Should Have Known That The Contents Were Against The Law?...?
3. How Should A Notary Prepare A Credit Agreement Deed So That It Does Not Conflict With Laws And Regulations In The Future?...?

Every Individual Is Free To Enter Into An Agreement With Another Individual To Achieve The Desired Goal. The Parties Who Wish To Make An Agreement Are Free To Determine The Form Of The Agreement, The Contents Of The Agreement And The Terms Of The Agreement. However, In Order For The Agreement To Be Valid And To Be Used As Strong Evidence, The Parties Must Make An Agreement Before A Notary So That The Agreement Deed Becomes A Notarial Deed. In Making A Notarial Agreement Deed, The Notary Must Pay Attention To Matters That Do Not Violate Laws And Regulations, Public Order, And Morality. Before The Agreement Deed Is Made, The Notary Must Pay Attention To The Requirements For The Validity Of The Agreement According To Article 1320 Of The Civil Code, Namely:

- a. Agree Those Who Bind Themselves;
- b. Able To Make An Agreement
- c. A Certain Thing, And ;
- d. A Lawful Cause.

Notaries Must Have Extensive Knowledge Of Agreements, So That They Can Make Agreements In Any Form, Even Those That Have No Previous Examples. With In-Depth Knowledge Of Agreements, Notaries Can Ask Clients About:¹

- a. The Scope Of The Agreement To Be Made;
- b. What Data Does The Client (The Parties) Have, As Well As All Regulations Related To The Material And Substance Of The Agreement;
- c. All Regulatory Data Related To The Scope Of The Agreement Requested To Be Made;
- d. What Rights And Obligations Need To Be Formulated In The Wording Of The Agreement?

In Making A Notarial Deed Of Agreement, A Notary Needs To Build A Deed Structure And Compile A Notarial Deed According To The Anatomy Of The Deed. There Are Several Things That Can Be Used As A Basis For Building A Notarial Deed Structure, Including:²

- a. The Background To Be Promised;
- b. Identity Of The Parties (Legal Subjects);
- c. Identity Of The Object To Be Promised;
- d. Creating A Deed Framework;
- e. Formulating The Substance Of The Deed:
 - Position Of The Parties,
 - Limitations (What Is Allowed Or Not Allowed) According To The Rule Of Law. According To The Rule Of Law.
 - Things That Are Limited In Their Implementation
 - Choice Of Law And Choice Of Court
 - Dispute Resolution Clause.
 - Relationship With Other Deeds (If Any).

In Terms Of Notaries, The Role Is To Direct Clients In Making The Contents Of The Agreement So That It Does Not Conflict With The Law, General Provisions And Morality. The Agreement Must Be Based On Consensus Or Agreement From The Parties Making The Agreement. With The Principle Of Consensualism,

¹Mulyoto, 2012, Agreement; Techniques for Making and Laws of Agreements that Must be Mastered, Cakrawala Mnesia, Yogyakarta, p. xiv

²

An Agreement Is Said To Have Been Born If There Is An Agreement Or Conformity Of Will Between The Parties Making The Agreement.³

The Purpose Of Writing This Journal Is To:

- a. So That The Making Of The Credit Agreement Deed By A Notary Does Not Violate The Requirements For The Validity Of The Agreement In Accordance With Article 1320 Of The Civil Code.
- b. A Notary Can Reject/Propose Improvements To The Credit Agreement Deed Submitted By The Creditor, If There Are Provisions That Are Deemed Unfair And Violate Statutory Provisions, Politeness And Morality.
- c. A Notary Must Be Able To Draft A Credit Agreement Deed That Will Not Harm Other Parties, And Does Not Violate Statutory Provisions, In Order To Anticipate Lawsuits From Other Parties In The Future.

2. Research Methods

The legal research method used by the author is the normative-empirical legal research method where this method is basically a combination of the normative legal approach with the addition of various empirical elements. In this normative-empirical research method, it is also about the implementation of normative legal provisions (statutes) in their actions in every particular legal event that occurs in a society.

In this normative-empirical legal research, the category used is judicial case study. This approach is a legal case study approach due to the existence of a conflict so that it will involve court intervention to be able to provide a settlement decision.

The type of legal research that will be used in writing this thesis is normative empirical, conducting written legal study analysis reviewed from various aspects, namely theoretical, historical, philosophical, comparative aspects, and analyzing current applicable legislation, then explaining the shortcomings and weaknesses, so that it can predict the formation of legal regulations in the future.

3. Result and Discussion

³Ridwan Khairansy, 2004, Good Faith in Freedom of Contract, Postgraduate Program, Faculty of Law, University of Indonesia, Jakarta, p. 27

Based On The Results Of The Literature Review That Was Studied, It Can Be Stated That The Things That Need To Be Considered By A Notary In Making A Notarial Agreement Deed Are Very Useful For Notaries So That In Making A Notarial Agreement Deed Does Not Violate Existing Regulations. A Notary Must Master Knowledge Regarding Agreements And Deed-Making Techniques As Regulated In Law Number 2 Of 2014 Concerning The Position Of Notary Which Will Hereinafter Be Referred To As UUJN. A Notarial Agreement Deed Is Written And Authentic Evidence That Can Be Used At Any Time As Strong And Even Perfect Evidence For Parties Who Hold agreement.⁴The Judge Must Consider It As Perfect Evidence That Does Not Require Additional Evidence As Long As It Is Not Proven Otherwise.⁵

Before Making A Notarial Deed Of Agreement, The Notary Must Pay Attention To The Valid Requirements.

Agreement. Whether The Parties Have Fulfilled The Conditions For The Validity Of The Agreement Or Not

Conditions For The Validity Of An Agreement. The Following Is A Table That Explains The Conditions For The Validity Of An Agreement According To The Civil Code And Outside The Civil Code.

TABLE 1.

Valid Conditions Of The Agreement According To The Civil Code	Valid Conditions For Agreements Outside The Civil Code
1. Agreement Of Those Who Bind Themselves;	1. Must Be Done In Good Faith;
2. Capable Of Making An	2. Must Not Conflict With Custom;
	3. Must Be Based On The Principle Of

⁴ Mulyoto, 2012, Agreement; Techniques for Making and Laws of Agreements That Must Be Mastered, Cakrawala Media, Yogyakarta, Page 1

⁵ Ibid, pp. 1-2

Agreement;	Propriety/Appropriateness;
3. A Certain Thing And;	4. Must Not Violate/Not Conflict With Public
4. A Lawful Cause.	Order. ⁶

1. Regarding The Word Agreement, There Are Several Theories That Can Be Used As Guidelines, Namely:⁷

- 1) Will Theory This Theory Assumes That Parties Are Only Bound To Things That They Truly Desire.
- 2) Theory Of Statement Or Belief Here The Parties Are Bound To The Things That Have Been Stated, With The Understanding That From The Other Party There Is An Assumption And Belief That The Statement Is In Accordance With The True Wishes Of The Party Making The Statement.⁸

Judging From The Valid Conditions Of This Agreement, The Parts Of The Agreement Are Distinguished, Namely The Core Part

(*Young Family*), The Core Sub-Sections Are Called Essentialia And The Non-Core Parts Are Called Naturalia And Accidentalialia.⁹

- a *Essentialis* this Section Is A Characteristic That Must Be Present In An Agreement, A Characteristic That Determines Or Causes The Agreement To Be Created (Constructieve Oordeel)
- b *Nature* this Section Is An Inherent Characteristic (Natuur) Of The Agreement So That It Is Tacitly Attached To The Agreement, Such As Guaranteeing That There Are No Defects In The Item Being Sold (Vrijwaring)
- c *Accidental* this Section Is An Inherent Characteristic Of The Agreement Which Is Expressly Agreed Upon By The Parties.

Article 1330 Of The Civil Code Only States That Those Who Are Not Competent To Make Contracts Are:

- a. Immature People
- b. Those Who Are Placed Under Guardianship
- c. Women, In Cases Stipulated By Law And On

⁶ Ibid, pp. 34-35

⁷ Wirjono Prodjodikoro, Principles of Contract Law, Mandar Maju, Bandung, 2000, p. 29

⁸ Purwahid Patrik, Basics of Contract Law, Mandar Maju, Bandung, 1994 pp. 56-57

⁹ Mariam Darus Badruzaman, 2005, eka Business Law, Alumni, Bandung, p. 25

Generally Everyone Makes These Agreements.

When Making A Notarial Agreement, A Notary Must Be Honest, Careful, Thorough, Impartial To Either Party And Understand All The Regulations Relating SSS To The Deed He Or She Will Make.

As For The Prohibitions In Making Agreements For Notaries. Prohibitions For Notaries In Making Agreements:¹⁰

- a. Notaries Are Prohibited From Making Deeds Of Agreements That Favor One Party.
- b. Notaries Are Prohibited From Making Agreement Deeds That Conflict With Previously Made Deeds.
- c. Notaries Are Prohibited From Making A Deed Of Unilateral Revocation Of A Power Of Attorney Agreement Where The Deed Of Power Of Attorney Has Been Signed By Both Parties (The Principal And The Person Receiving The Power Of Attorney).
- d. Notaries Are Prohibited From Disclosing The Contents (Everything Regarding The Deed They Have Made) And All Information They Have Obtained For The Purpose Of Making The Deed.
- e. Notaries Are Prohibited From Not Reading The Contents Of The Deed To The Parties, Unless The Parties Have Read It Themselves, Understood It And Agreed To It, As Stated In Each Page Initialed By The Parties/Applicants, Witnesses And The Notary, While The Last Page Is Signed By The Parties, Witnesses And The Notary.
- F. Notaries Are Prohibited From Making Deeds Of Agreements That Are Contrary To Law, Public Order And/Or Morality.
- G. Notaries Are Prohibited From Making Simulated (Fake) Deeds, Especially For Purposes That Are Contrary To The Law. Notaries Must Pay Attention To Representation In Agreements. Representatives By Law Are Not Allowed To Be Substituted, Representative Institutions In Private Law Are Divided Into 3 (Three), Namely:¹¹

¹⁰ Mulyoto, 2012, Agreement; Techniques for Making and Legal Agreements That Must Be Mastered, Cakrawala Media, Yogyakarta, Pg. 17 Vol 5 No 1 January 2018 Things that Notaries Need to Pay Attention to When Making...(Yogi Hanapiah)

¹¹ Ibid, p. 18

- Representation Becomes Contractual, Namely Representation Due To The Granting Of Power Of Attorney, Regulated In Articles 1792 To 1819 Of The Civil Code.
- Organic Representative, Namely A Person Who Is Positioned In One Of The Organs Of A Legal Entity Representing The Legal Entity.
- Legal Representative, Namely A Person Who Because Of His Position As A Parent, For Example, Represents His Underage Child Or A Husband And Wife, If One Of Them Dies, Then The Husband/Wife Who Survives Longer (Is Still Alive), Becomes The Legal Guardian Of His Biological Child.

From The Provisions Of Article 108 Paragraph 2 Of The Civil Code, It Can Be Concluded That A Married Woman, In Order To Enter Into An Agreement, Requires Assistance Or Permission (Written Power Of Attorney) From Her Husband.¹²

For Small Agreements That Can Be Included In Household Needs, The Wife Has Been Authorized By Her Husband, Thus The Wife Is Included In The Group Of People Who Are Not Competent To Make An Agreement. The Difference With A Child Is That If A Child Is Not Yet An Adult, He Must Be Represented By His Parents Or Representative, While A Wife Must Be Assisted By Her Husband. If Someone Makes An Agreement Alone, But The One Who Appears In Front Is His Representative. But Someone Is Assisted, Meaning He Acts Alone, Only He Is Accompanied By Another Person Who Helps Him, This Assistance Can Be Replaced With A Power Of Attorney Or Written Permission.

In Making A Notarial Deed Of Agreement, It Should Be Endeavored To Contain Elements Of Completeness, Truth, Clarity And Validity. This Means:¹³

☐ Contains Elements Of Clarity, Meaning:

- Starting From The Title Of The Deed, It Must Contain/Reflect In Broad Outline The Substance Of The Contents Of The Deed.
- The Editorial Of Each Article Must Not Have Different Meanings Or Have More Than One Meaning/Can Be Interpreted Differently.
- Do Not Move On To Another Article Before Completing The Wording Of That Article.
- Contains In Detail Everything That Must Be Regulated In The Deed/Agreement.

¹² Subekti, Law of Contracts, Intermasa, Jakarta, 1990, p. 19

¹³ Ibid, p. 26

☒ Contains Elements Of Truth:

-Try As Much As Possible To Seek Material Truth. This Can Be Attempted By Providing Legal Advice To The Parties In Relation To The Deed To Be Made And Submitted Due To Legal Consequences And Sanctions In The Event Of Not Stating Or Submitting Anything Other Than The Truth.

Regarding The Nullity And Cancellation Of Contracts, The Contracts Are Regulated In Book III, Part Eight, Chapter IV (Article 1446-Article 1456 Of The Civil Code). This Section Only Briefly Regulates Part Of The Nullity, Especially Agreements Made By Those Who Are Incompetent, Namely Those Who Are Minors, Placed Under Curatele, And Defective In Will. Defects In Will Occur Due To Coercion, Error, Deception And Abuse Of Circumstances.¹⁴

The Cancellation Of An Agreement Is Divided Into:¹⁵

1. Can Be Cancelled If The Subjective Conditions Are Not Met, Namely:

- There Is No Agreement, And
- The Absence Of Capacity To Act And The Parties Making The Agreement.

2. Void By Law, If The Objective Requirements Are Not Met, Namely:

- *There Is No Cause/Object Of The Agreement*
- *Does Not Contain A Cause That Is Justified According To Law.*

3. Void By Law Due To Non-Existence, Namely Due To:

- There Is Nothing Essential/Main In The Agreement.
- Failure To Fulfill The Requirements Required By Law, For Example: PT, Foundation Was Established Without A Notarial Deed (Not Notarized).
- Fiduciary Agreements Are Made Only Under Hand (Not Notarized)
- The Establishment Of A CV Does Not Have A Limited Partnership.

Notaries Must Be Honest, Independent, Careful And Impartial, And Must Follow All Regulations, Not Limited To Notary Job Regulations But Also All Regulations Related To The Deed To Be Made.¹⁶

In Drafting A Business Contract, So That The Drafting Of The Contract Is Truly Safe And Strong From A Legal Perspective, It Is Advisable To Draft The Contract In

¹⁴ Habib Adjie, 2011, Cancellation and Revocation of Notarial Deeds, PT. Refika Aditama, Bandung, Page 4

¹⁵Mulyoto, 2012, Agreement; Techniques for Making and Laws of Agreements That Must Be Mastered, Cakrawala Media, Yogyakarta, Pages 44-45 Vol 5 No 1 January 2018: 112 - 116

¹⁶ Ibid, p. 27

As Much Detail As Possible So That In The Future If A Dispute Arises, It Can Be Minimized As Much As Possible Or Even Avoided.

4. Conclusion

In Making A Notarial Deed Of Agreement, The Notary Needs To Pay Attention To The Applicable Provisions, For That The Notary Must Use The Principle Of Caution In Making A Credit Agreement Deed In Order To Minimize Future Errors By Paying Attention To Important Things In Making A Notarial Deed. The Notary Must Have Extensive Knowledge Of The Agreement In Order To Make A Good And Correct Credit Agreement Deed.

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