

Implementation of Cooperation Between Notaries and Banks in Preparing Fiduciary Security Deeds (Case Study: Pt. BPR Bumi Sediaguna, Tegal Regency)

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Abstract. *The role of a notary is very important in helping to create certainty and legal protection for the community, because a notary as a public official is authorized to make an authentic deed, the implementation of the notarial deed, one of them is a guarantee of the fiduciary over to the notary at bank did not. But in practice in carrying out business it, always has difficulty in making the deed fiduciary security. The purpose of the research is to analyze: 1) Implementation of cooperation with the notary in making the deed in pt fiduciary security. Earth Sediaguna district Tegal BPR. 2) Obstacles and solutions in the implementation of cooperation with the notary in making the deed in pt fiduciary security. Earth Sediaguna district Tegal BPR. The approach method in this study is an approach to legislation (state approach). This type of research includes the scope of normality empirical legal research. Type and data sources in this study are primary data and secondary data obtained research on library or library research and field research. The analysis in this study is descriptive. Research concluded: 1). A fiduciary agreement stated in a notary deed called a fiduciary bail deed. Confirmation of fiduciary security agreements was made with a notary deed by attaching debit documents related to fiduciary security binding. Credit agreements made with fiduciary guarantees are not legal guarantees., but it appears because there is a need for contracts between banks as creditors and customers as debtors. Legal function of binding fiduciary objects in fiduciary bail certificates cannot be separated from credit agreements. But in practice often the received documents are incomplete, This led to delays in the creation of fiduciary bail certificates. 2) Obstacle and solution in implementing notary cooperation with the bank in creating fiduciary bail certificate in pt. BPR Earth is used. The moor district is often incomplete on banks. Input data into credit agreements.*

Keywords: Cooperation; Fiduciary; Implementation; Obstacles.

1. Introduction

National development that has been implemented so far is an effort of sustainable development based on the achievement of a just and prosperous society, Pancasila, and the 1945 Constitution, to achieve the goals in the implementation of development, harmony and harmony must continue to be considered. Along with the increasingly developing economy in Indonesia, the development of businesses in various sectors carried out by business actors is also increasingly widespread. To carry out the development of these businesses, business actors need a very large amount of funds in a relatively short time. One source of these funds can be obtained from the Bank. One of the means that has a strategic role in harmonizing and balancing these elements is banking. Article 8 of Law Number 10 of 1998 concerning Banking, banks in providing credit must have confidence based on in-depth analysis of the conditions of customers who receive loans from the bank.

The activity of borrowing and lending money has been done for a long time in the lives of people who have known money as a means of payment. Almost all people have made the activity of borrowing and lending money something that is very necessary to support development of economic activities and to improve the standard of living.

Basically, credit can be given by anyone who has the ability. After the credit agreement is approved by both parties, then an obligation arises in the creditor, namely to provide a loan of money that has been agreed to the debtor, and the debtor's obligation is to pay the receivables at a predetermined time accompanied by interest that has been agreed upon by the parties., the next step is the process of signing the credit agreement.

Bank credit agreements are generally made in written form and in the form of standard agreements, this agreement can be made with a private deed or an authentic deed. Various steps to facilitate the implementation of the creation of documents related to credit in this case with an authentic deed, the bank appoints a notary as a partner/partner.

Article 11 to Article 18 of Law Number 42 of 1999 concerning Fiduciary Guarantees stipulates that objects that are either within the territory of the Republic of Indonesia or outside the Republic of Indonesia must be registered. Provisions regarding the existence of obligations

Fiduciary guarantee registration can be said to be an important breakthrough considering that in general the object of fiduciary guarantee is an unregistered object so it is difficult to know who the owner is.

The role of a notary is very important in helping to create legal certainty and protection for the community, because a notary as a public official has the authority to make authentic deeds, as long as the making of authentic deeds is not specifically for other public officials. The notary ensures that the process of

making a fiduciary deed is in accordance with applicable legal provisions and that the document has valid and binding legal force between the parties involved, namely the fiduciary giver (the party who grants the guarantee rights) and the fiduciary recipient (the party who receives the guarantee rights). This is related to the legal risk of assets pledged by the debtor as credit collateral, if the credit given becomes bad, the sale of collateral does not cause problems for the bank in the future. Therefore, notary services are very much needed in the banking world, because banking activities often carry out transactions with customers, where these transactions are made in an agreement/contract

The implementation of the making of a Notarial Deed, one of which is a Fiduciary Guarantee Deed to a Bank, cannot be separated from the role of a Notary. The activity between the bank and the debtor who carries out the transfer of the Fiduciary guarantee every interested in making an agreement between them. From a banking perspective, a Notarial Deed is a strong evidence and provides protection for the bank in a credit agreement as a principal agreement, especially a Fiduciary guarantee agreement. Article 1 paragraph (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary.

Cooperation between Notary and People's Economic Bank (BPR), which functions as a credit institution and savings place for the people of Tegal Regency. This BPR provides credit to the community with fiduciary guarantees. PT. Bank Perekonomian Rakyat Bumi Sediaguna abbreviated as PT. BPR Bumi Sedia guna is a Limited Liability Company that has a Financial Services Business, especially motor vehicle financing facility products that require the role of a Notary in providing legal certainty for each agreement. In practice, PT. BPR Bumi Sediaguna cooperates with a notary in carrying out its business.

2. Research methods

The author uses a type of research called empirical normative legal research. Normative-empirical legal research (applied law research) is research that uses normative-empirical legal case studies in the form of legal behavioral products. The data sources used in this research are primary and secondary data or literature which includes various books, documents. and legislation - invitations related to the research problem.

The analysis process carried out in this study This study uses a qualitative data analysis method, namely the process of analyzing data by presenting it descriptively or in a picture using words obtained from the findings so that this qualitative study does not use numbers in its research but uses descriptions, this study prioritizes quality over quantity.⁸ The discussion in the initial stage is done by conducting an inventory of the laws and regulations related to the problem that is the object of the study. While for the second stage, a discussion will be carried out in the form of a discussion, between various secondary data and primary data related to various laws and regulations.

3. Results and Discussion

3.1. Implementation of Notary Cooperation with Banks in Making Fiduciary Guarantee Deeds at PT. BPR Bumi Sediaguna, Tegal Regency.

Banks in carrying out their business activities, especially in terms of distributing credit to the community, require the role of a Notary to help carry out legal collateral binding through a notarial. In this case, the Notary must cooperate (help and complement each other) with the bank to issue a Notarial deed required in a credit agreement that will be carried out by the bank with its debtor.⁹ In this legal research, the author refers to the Bumi Sediaguna People's Economic Bank which has so far functioned as a place for credit and savings for the community in the Regency. Tegal. A The form of collateral used by PT. BPR Bumi Sediaguna is a fiduciary guarantee. The fiduciary agreement is stated in a notarial deed called a fiduciary guarantee deed. Confirmation of the form of the fiduciary guarantee agreement is made with a notarial deed. PT. BPR Bumi Sediaguna provides credit to the community in Tegal Regency by using collateral in this case in the form of motor vehicles which are proven through Proof of Motor Vehicle Ownership or abbreviated as BPKB for two-wheeled or more vehicles.

The role of a notary in making deeds of material guarantees (fiduciary) is within his authority in Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notaries, namely making authentic deeds regarding all acts, agreements and stipulations required by statutory regulations and or what is desired by the interested person to be stated in an authentic deed, guarantee certainty of the deed making, store the deed, provide grosses, copies and quotations of the deed, all of this as long as the making of the deed is not also assigned or excluded to other officials or other persons determined by law.

Based on the results of the interview with Mrs. Eva Novi Pahlawanita SH, M.Kn as a Notary in Tegal Regency, it can be explained that the Implementation of Notary Cooperation with Banks in Making Fiduciary Guarantee Deeds at PT. BPR Bumi Sediaguna Tegal Regency must be in accordance with the Fiduciary Guarantee Law, both from collecting the required documents, signing the minutes of the deed, ratification of the Fiduciary Guarantee Deed, to the final stage, namely the registration of the Fiduciary Guarantee Deed,

The Fiduciary Guarantee Law stipulates a special form (Notarial Deed) for Fiduciary Guarantee agreements, namely that as regulated in Article 1870 of the Civil Code which states that a Notarial Deed is an authentic deed that has perfect evidentiary power. Given that the object of Fiduciary Guarantee is generally unregistered movable property, it is only natural that the form of the deed authenticity is considered to be the most able to guarantee legal certainty regarding the object of fiduciary guarantee.

The application for registration of Fiduciary Guarantee is submitted within a maximum period of 30 (thirty) days from the date of making the Fiduciary

Guarantee deed. In addition to having to be made in authentic form, the Fiduciary Guarantee Deed (AJF) must also be registered. The Directorate General of General Legal Administration of the Ministry of Law and Human Rights as an institution that carries out the registration of fiduciary guarantees follows up on the online fiduciary system by issuing Circular Letter of the Director General of AHU No. AHU-06.OT.03.01 of 2013 concerning the Implementation of the Electronic Fiduciary Guarantee Registration Administration System (Online System), hereinafter referred to as the "Circular Letter of the Director General of AHU". For more detailed information, please see the official page of the Ministry of Law and Human Rights on the website www.ditjenahu.kemenkumham.go.id.

3.2. Obstacles and Solutions to the Implementation of Notary Cooperation with Banks in Making Fiduciary Guarantee Deeds at PT. BPR Bumi Sediaguna, Tegal Regency.

Banks are often incomplete in inputting data into the Credit Agreement, this happens because the bank has not fully used the dual control method. Dual Control is two different people to complete a process so as to reduce input error data. This is due to the limited Human Resources in PT. BPR Bumi Sediaguna. To avoid this, the bank is required to re-check the Credit Agreement before it is signed by the debtor and submitted to the Notary.

The above Credit Agreement is made by the bank, in this case PT BPR Bumi Sediaguna, so its responsibility should only be limited to what it does. The maker of the credit agreement, namely PT BPR Bumi Sediaguna, is responsible for ensuring that all information listed in the credit agreement is in accordance with the collateral documents submitted by the debtor.

These documents must be stated correctly and in detail in the Credit Agreement agreed by the bank and the debtor. The Credit Agreement is a reference for the Notary as the maker of the Fiduciary deed. So that if in the future a legal problem arises or the debtor experiences a default, the bank can file a lawsuit against the debtor or if the debtor files a lawsuit against the bank, the bank can prove it through the contents of the Credit Agreement that has been mutually agreed upon between the debtor and the bank by attaching all documents contained in the contents of the Credit Agreement.

Document inconsistencies can be considered to hinder the making of a Fiduciary guarantee deed and can cause legal problems. For example, the debtor or Fiduciary provider experiences a default or breach of promise and the bank has given a first warning letter up to last by the Bank, but the debtor does not fulfill its obligations. The Bank as a creditor and Fiduciary recipient has the right to execute the guarantee.

Execution of collateral can be done by selling the fiduciary collateral object through auction or through private sale based on the agreement of the giver and recipient of the Fiduciary. The execution can be done if the collateral submitted is in accordance with and stated in the Credit Agreement. If in the Credit Agreement there is a discrepancy in the collateral submitted, the debtor can file

a lawsuit against the Bank so that the collateral execution process experiences obstacles.

Document inconsistencies can cause problems in the process of executing collateral or debt collection. The official document can be an Identity Card that lists the name, place and date of birth and address or a Vehicle Registration Certificate (BPKB) that lists the Brand, Type, chassis number, engine number, police number and year of manufacture. Documents that do not match the agreement can risk losing the right to the collateral. For example, if there is a discrepancy in the data of the vehicle being pledged, the creditor may have difficulty in enforcing the collateral rights.

The Fiduciary Guarantee Deed is made on the basis of a Credit Agreement. This Fiduciary Guarantee Deed is made as evidence, meaning that the deed is a perfect power and that means that the proof is sufficient with the deed itself, a deed is considered as valid evidence that can be used to prove the validity of an agreement, transaction, or legal event before the law. With a deed, the parties obtain legal certainty regarding their rights and obligations. The deed clearly states what has been agreed upon and is used as a reference to resolve disputes or claims that may arise in the future.

Article 35 of Law No. 42 of 1999 concerning Fiduciary Guarantee states that Any person who intentionally falsifies, changes, removes or in any way provides misleading information, which if known by one of the parties does not give rise to a Fiduciary Guarantee agreement, shall be punished with imprisonment of at least 1 (one) year and a maximum of 5 (five) years and a fine of at least Rp. 10,000,000,- (ten million rupiah) and a maximum of Rp. 100,000,000,- (one hundred million rupiah). And Article 36 The Fiduciary Provider who transfers, pawns, or rents out the Object that is the object of the Fiduciary Guarantee which is done without prior written consent from the Fiduciary Recipient, shall be punished with imprisonment of at most 2 (two) years and a fine of at most Rp. 50,000,000,- (fifty million rupiah).

4. Conclusion

The fiduciary agreement is stated in a notarial deed called a fiduciary guarantee deed. Confirmation of the form of the fiduciary guarantee agreement is made with a notarial deed. Therefore, in a legal agreement, a fiduciary guarantee is more distinctive / specific compared to a guarantee that arises based on the law that has been regulated in article 1131 of the Civil Code. The legal function of binding the fiduciary object in a fiduciary guarantee deed cannot be separated from the credit agreement. But in practice, the documents received are often incomplete, this causes a delay in making a fiduciary guarantee deed. Fiduciary Guarantee, Law Number 42 of 1999 Article 4 explains that a fiduciary guarantee is a supporting agreement to a principal agreement that creates an obligation for the parties to fulfill an achievement. The burden of objects with fiduciary guarantees is made with a notarial deed in Indonesian and is a fiduciary guarantee deed Obstacles and Solutions in the Implementation of Notary

Cooperation with Banks in Making Fiduciary Guarantee Deeds at PT. BPR Bumi Sediaguna, Tegal Regency is that the bank is often incomplete in inputting data into the Credit Agreement, this happens because the bank has not fully used the dual control method. This is due to the limited Human Resources in PT. BPR Bumi Sediaguna. To avoid this, the bank is required to do

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