

The Role of a Notary in a Credit Agreement with Mortgage Guarantee at BPR Sinar Mas Pelita Sindanglaut Cirebon

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Abstract. *In carrying out micro business activities, banks provide several products to assist business actors in running their businesses by providing working capital loans with land ownership guarantees in the form of ownership certificates. The process in the implementation of financing credit by banks involves the role of Notaries. This study discusses the role of notaries in credit agreements with mortgage guarantees at BPR Sinar Mas Pelita, focusing on the legal consequences that arise if there is a discrepancy between the land certificate and the data recorded at the National Land Agency. These problems have the potential to cause disputes, hinder the mortgage registration process, and reduce legal certainty. The purpose of this study is to determine the role of notaries in ensuring the validity of documents and resolving legal problems that arise due to differences in certificate information with data at the National Land Agency. The research method used is empirical juridical with a statutory approach and through interviews with notaries, banks and customers. The research results indicate that notaries play a crucial role as public officials, ensuring that the formal and material requirements of credit agreements are met, including verifying certificates and land data before the deed is signed.*

Keywords: Bank; Legal Consequences; Notary.

1. Introduction

National development is a process of structural change carried out continuously and sustainably. Micro, small, and medium enterprises, hereinafter abbreviated as MSMEs, are productive economic enterprises based on business scale according to statutory regulations. Microenterprises are productive businesses

owned by individuals and/or individual business entities that meet the criteria for microenterprises.¹

The role of a notary is essential in securing collateral in a bank. If the credit disbursed is running normally and is repaid on time, the bank is protected from risk. However, if the credit disbursed is not running smoothly, the bank will experience the risk of bad debt. Difficulties often arise in the settlement process in handling bad debt, one of the causes of which is the imperfect binding of collateral by the notary, resulting in the bank actually having to bear the loss. Everyone needs legal certainty and authentic evidence for their actions. Therefore, agreements or bonds made by the bank legally require the assistance of a notary in their capacity as a public official who has the authority to make authentic deeds.

The legal process for financing credit involves the role of a notary in drafting the agreement document between the bank as creditor and the debtor. Credit provided by banks certainly carries risks, so in its implementation, banks must adhere to sound credit principles. To mitigate these risks, credit guarantees, in the form of confidence in the debtor's ability and capability to repay their obligations as agreed, are an important factor that banks must consider. To obtain this confidence, before granting credit, banks must conduct a thorough assessment of the debtor's character, capabilities, collateral capital, and business prospects. If the existing elements have convinced the creditor of the debtor's capabilities, then the collateral alone is sufficient, and the bank is not required to request additional collateral.²

The function and role of Notaries in today's increasingly complex national development movement are certainly broader and more developed. The smooth and guaranteed justice and sense of security in society is the responsibility of all parties, especially the notary profession in carrying out the duties and authorities granted by the state for public services. The public who use notary services certainly have the expectation that the services provided by notaries truly have value and reliability, in addition to providing legal certainty for legal subjects, providing justice and a sense of security in society, also can protect the public from disputes and fulfill the basic rights guaranteed by the constitution for citizens.³

In a bank credit agreement, collateral serves to ensure that the creditor can immediately obtain repayment of his debt if the debtor defaults through the sale

¹Amin Purnawan and Siti Ummu Adillah, 2014, "Justice-Based Regional Tax Policy to Encourage the Growth of Small and Medium Enterprises (SMEs) in Central Java", *Journal of Legal Reform*, Vol. 1, Number 3. p. 244.

²Hermansyah, 2005, *Indonesian National Banking Law: Reviewed According to Law Number 7 of 1992 concerning Banking. As amended by Law Number 10 of 1998*, Prenada Media, Jakarta, p. 30.

³Muhammad Nurohim, 2018, "The Role of Notaries in Land Transfers Based on a Land Title Certificate from the Sub-district Head." *Focus UMPI*, Number 2, Vol. 7, p. 69.

or auction of the collateral. The provision of this collateral must be accompanied by a collateral agreement, which is then notarized, as an additional agreement due to the existence of the main agreement. Additional agreements with land or building collateral are called Mortgage Rights, which are regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The relationship between debtors and creditors in terms of guaranteeing rights and obligations in the world of capital and collateral that is fair and balanced in order to be able to realize the progress of the business world and the industrial world in order to support the progress of the national economy.⁴

PT. Bank Perekonomian Rakyat Sinar Mas Pelita, hereinafter referred to as BPR Sinar Mas Pelita, is a financial institution that provides loans in the form of credit for business actors so that they can run and improve their businesses. They have a choice of collateral according to the funds needed, one of which is land rights collateral, land rights that can be used as collateral are land ownership certificates whose ownership is in the name of the debtor himself. With a certain ceiling, land rights in the form of ownership certificates must be notarized by an authorized Notary, in credit agreements with Mortgage guarantees there are processes carried out by Notaries in the form of checking land ownership rights by the National Land Agency and so on. There was a case at BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency where the debtor had a land ownership certificate that would install a Mortgage but the results of checking the debtor's ownership certificate did not match the physical certificate.

The formulation of the research problem is the role of a notary and the legal consequences of a credit agreement with collateral in the form of a mortgage at BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency, if the collateral object has a discrepancy between the certificate and the data at the National Land Agency.

2. Research Methods

This research uses an empirical legal method with a statutory and empirical approach. Data were obtained from primary sources through interviews with notaries, banks, and debtors, as well as secondary sources through literature reviews, relevant laws, and regulations. The data were analyzed qualitatively to identify the evidentiary strength of notarial deeds and the challenges they face.

3. Results and Discussion

A credit agreement is an agreement between a debtor and a creditor, in this case a bank, that outlines the rights and obligations of each party in a loan. In practice, credit agreements often involve a notary, especially when the loan is accompanied by collateral, either in the form of property, such as land rights in the form of mortgages or personal guarantees. Banks, as formal financial

⁴Jennyola Savira, 2022, Legal Review of the Execution of Mortgage Rights on Land Ownership Rights, Trisakti Legal Reform, Vol. 4 Number 4, p. 977.

institutions, require legal certainty, legality, and protection for the loans they provide, which are realized through the creation of an agreement in the form of an authentic deed by a notary. This trust is the main foundation in credit transactions. Furthermore, from an economic perspective, credit can also be interpreted as a delay in payment, where someone can use something now and pay for it later.⁵

BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency, standardizes credit agreements that include the rights and obligations of each party, including the mutually determined term and interest rate. Sanctions apply if the debtor breaks the agreement. The difference between conventional bank loans and financing provided by banks based on Sharia principles lies in the expected profit. For conventional banks, profits are earned through interest, while for Sharia banks, profits are earned through rewards or profit sharing.⁶

The procedure for applying for credit at BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency, includes several things, namely prospective debtors must prepare important documents, credit analysis officers will assess creditworthiness using the 5C principle, namely Character (borrower's reputation), Capacity (ability to pay), Capital (financial condition, Collateral (guarantee), Condition (economic/business condition). After the analysis is carried out, a credit decision will be determined, based on the results of the analysis if approved, BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency will issue a credit agreement letter, if rejected will provide the reasons for rejection. Then the credit agreement is carried out at the BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency office, prospective debtors sign a credit agreement and a guarantee agreement can be done before a Notary if it involves collateral. Funds are disbursed according to the provisions. After the credit agreement process is completed, BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency will disburse funds in cash or to the debtor's bank account. The debtor is obliged to pay installments every month according to a predetermined schedule, consisting of principal, interest and regular savings.

In the context of a credit agreement with a Mortgage Right guarantee, the Notary plays a role in making the Deed of Granting of Mortgage Rights (APHT) in accordance with Article 10 of Law Number 4 of 1996 concerning Mortgage Rights (UUHT), ensuring the validity of documents starting from the identity of the parties, proof of ownership of land rights, to land certificates. Registering the Mortgage Right with the Land Office within a maximum of 7 working days from the signing of the APHT, as stipulated in Article 13 Paragraph (1) of the UUHT. Banks are required to have written policies related to credit or financing which at

⁵Johannes Ibrahim, 2004, Cross Default & Cross Collateral in Efforts to Resolve Problematic Credit, PT Refika Aditama, Bandung, p. 17.

⁶ Ismail, 2010, Banking Management from Theory to Application, Kencana Perdana Media, Jakarta, p. 114.

least cover all aspects specified in the guidelines for developing bank credit or financing policies as stipulated in the Financial Services Authority. One of them regulates the existence of sufficient collateral as a guarantee for the repayment of credit facilities provided by the bank.⁷

BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency, operates its business by involving a Notary as a working partner. In carrying out their role as the official who draws up credit agreements, a Notary is tasked with drafting credit agreements requested by banks. As material for drafting these documents, banks must provide very clear and detailed data and information, as well as explaining the type and content of the requested credit documents. Notaries are tasked and responsible for providing guidance, instructions, and counsel to banks regarding credit documents. Legal counseling by Notaries is mandatory for clients who require legal advice regarding the deeds to be drafted, as not all members of the public are fluent in and understand the laws pertaining to agreements to be drafted by Notaries through the preparation of authentic deeds or private deeds.

The notary is responsible for confirming the data to the bank if there are any unclear or unclear matters and submitting the draft document to the bank. He is responsible for keeping the name of the debtor and the requested credit confidential. The purpose of keeping the name of the debtor and the requested credit amount confidential is to prevent it from being known by other parties because this is considered an internal matter between the notary, debtor, and creditor. The notary enters it into a register book to be registered with the district court. All deeds that have been made and legalized 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 in the future problems arise related to the deed can be resolved according to applicable legal regulations.

The next step, once all requirements have been met, is for the creditor to issue a credit agreement, signed by the creditor/branch manager or a representative of the bank and the debtor. This agreement can be in the form of a form or other format. Based on this credit agreement, the notary/landlord (PPAT) will create a standardized credit agreement. The PPAT will then issue a mandatory document, the Deed of Grant of Mortgage Rights (APHT). The notary/landlord's next task is to register the mortgage rights at the local land office. Registration of the mortgage rights is a prerequisite for the creation of the mortgage rights and for the binding of the mortgage rights to third parties.

The problem of discrepancies between certificates and data at the National Land Agency can be in the form of differences in land area between those stated on the certificate and data at the National Land Agency, differences in location or

⁷Financial Services Authority of the Republic of Indonesia, Financial Services Authority Regulation Concerning the Obligation to Prepare and Implement Bank Credit or Financing Policies for Commercial Banks, POJK Number 42/POJK.03/2017 LN Number 1

land boundaries (pegs), measurement or depiction errors, and also differences between analog and digital data. The legal consequences if there are differences in data on the certificate and data at the National Land Agency that occurred at BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency, namely the object of the Mortgage Right becomes unclear that the Mortgage Right can only be charged to certain land areas with definite boundaries, if the boundaries are unclear then the Mortgage Right deed can be legally flawed and cause disputes during execution.

BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency cannot accept land as collateral for credit if the data in the certificate does not match the data at the National Land Agency. This is contrary to the principles of legality and banking prudence. What happened to the debtor's certificate of BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency, was that there had been a double registration or overlapping of land plots, a condition in which two or more land title certificates were issued for the same plot of land, either in whole or in part, and in the name of different parties. The cause of this occurrence could be due to administrative or technical errors at the National Land Agency, errors in making measurement letters, registration maps, or coordinate systems can result in two plots of land being considered different even though they physically overlap. The issuance of certificates on land that has been certified occurs when registering girik or letter C land which is actually already part of the certified land without a thorough check by the National Land Agency or PPAT. Inaccuracy in the process of splitting or merging certificates, where when certificates are split or merged, if they do not match the measurement letter and plot map, can lead to boundary and area conflicts, certification in the past was not integrated, meaning that before the modern land system era, many certificates were made manually and locally, so they were not recorded in the national system. When recertification, overlaps can occur. Abuse of authority or data falsification can also occur, in some cases double certificates occur because of officials or land mafia who issued a second certificate illegally.

The legal consequences if this happens are that the Bank will reject land that is indicated to be overlapping or problematic, because of the high risk during execution, there is no legal certainty regarding the collateral object based on Article 8 of Law Number 4 of 1996 (UUHT) that Mortgage Rights can only be imposed on land rights that have been registered (clear and not in dispute).

4. Conclusion

The Notary guarantees legality and legal certainty where the Notary ensures that all documents used by the parties BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency and the debtor are valid and legal. The documents examined include land certificates, debtor identity, proof of collateral ownership. The Notary/PPAT makes a Deed of Granting of Mortgage Rights (APHT), manages the process of registering the Mortgage Rights to the Cirebon Regency Land Office through an

electronic system, namely HT-electronic. The role of the Notary is very important in ensuring that credit guarantees are valid and executable, protecting BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency from legal risks and ensuring that the credit process meets formal and material requirements. The legal consequences of a credit agreement with Mortgage Rights guarantee if there is a discrepancy between the certificate and the data at the National Land Agency, the Mortgage Rights do not have executorial power, if the collateral object is not legally valid due to differences or defects in the data, then the Mortgage Rights certificate cannot be executed according to Article 14 Paragraph (1) of the Mortgage Rights Law. BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency, will have difficulty auctioning land to settle problem loans. BPR Sinar Mas Pelita Sindanglaut, Cirebon Regency, could experience financial losses due to the unsaleability of collateral, difficulties in restructuring or rescuing problem loans, and the risk of lawsuits if deemed negligent in the collateral analysis. The process of resolving this overlapping issue, if completed, will require a lengthy process, with several steps, including the split process, which must be carried out simultaneously with other certificates.

5. References

Journals:

- Amin Purnawan dan Siti Ummu Adillah, 2014, "Kebijakan Pajak Daerah Berbasis Keadilan Untuk Mendorong Pertumbuhan Usaha Kecil Menengah (UKM) Di Jawa Tengah", Jurnal Pembaharuan Hukum, Volume 1, Nomor 3.
- Jennyola Savira, 2022, "Tinjauan Yuridis Eksekusi Hak Tanggungan Atas Tanah Hak Milik", Reformasi Hukum Trisakti, Volume 4, Nomor 4.
- Muhammad Nurohim, 2018, "Peranan Notaris Dalam Peralihan Tanah Dengan Alas Hak Surat Dari Camat", Focus UMPI, Volume 7, Nomor 2.

Books:

- Hermansyah, 2005, Hukum Perbankan Nasional Indonesia: Ditinjau Menurut Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan. Yang diubah dengan Undang-Undang Nomor 10 Tahun 1998, Jakarta: Prenada Media.
- Ismail, 2010, Manajemen Perbankan dari Teori Menuju Aplikasi, Jakarta: Kencana Perdana Media.
- Johannes Ibrahim, 2004, Cross Default & Cross Collateral dalam Upaya Penyelesaian Kredit Bermasalah, Bandung: PT. Refika Aditama.

Regulation:

Financial Services Authority Regulations Concerning Obligations for Preparation and Implementation Bank Credit or Financing Policy for Commercial Banks, POJK Number 42/POJK.03/2017 LN Number 1.

Financial Services Authority Regulations Concerning Obligations for Preparation and Implementation Credit or Bank Financing Policy for Commercial Banks.

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.