

The Role of Notaries in Supporting Efforts To Settle Problem Credit at People's Credit Banks

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Abstract. Banks in running their business to provide loan/credit services to the public really need Notaries and PPAT to assist in making notarial deeds of agreements and binding collateral. In making credit agreements, of course, the Bank and the borrowing customer (debtor) must pay attention to the contents of the credit agreement they signed, starting from the definition, obligations arising from the agreement, and the consequences of default that provide certainty to the bank to be able to make settlement efforts and provide legal protection in accordance with the provisions of applicable laws and regulations. This study aims to determine the role of notaries in providing support to banks in efforts to resolve their problem loans and also to determine the obstacles notaries face in providing support to banks for the resolution of problem loans. The problems in this study are analyzed using the theory of legal certainty and the theory of legal protection. The research approach uses a sociological juridical approach, which is qualitative in nature with the research specification being descriptive analysis and data analysis using qualitative descriptive methods. The primary data collection method was obtained through guided interviews with related parties, supported by secondary data obtained from the literature as supplementary reference material. The results of this study The role of Notaries in supporting efforts to resolve problematic loans in banks include ensuring the perfection of the deed made by the notary must be in accordance with the provisions in order to have binding legal force, Conducting ratification of the addendum to the credit agreement on efforts to resolve problematic loans through credit restructuring in accordance with the provisions, Providing clear legal education to debtors in order to better understand their obligations and rights as well as the legal consequences of the impact of default that occurs and can assist the Bank in the AYDA (Collateral Taken Over) process by making a PPJB (Sale and Purchase Binding Agreement) so that sales can be carried out in the future. The obstacles are the busy schedule of the notary himself to carry out the addendum agreement, and the existence of an

APHT process that has not been completed but the credit is about to mature and is problematic due to the provisions of the stages at the land office. And the suggestion is that Notaries must be professional in accordance with the Notary Law by upholding the code of ethics. Notaries in carrying out collateral binding must pay attention to the Laws that regulate guarantees in accordance with the Fiduciary Guarantee Law and the Law on Mortgage Rights. Notaries can provide legal education to problem debtors at partner banks when making addendum agreements for credit restructuring or other matters.

Keywords: Banks; Credit; Efforts to Resolve Problematic Credit; The Role of Notaries.

1. Introduction

The Republic of Indonesia as a State of Law, is affirmed in the 1945 Constitution of the Republic of Indonesia, Article 1 Paragraph (3), namely "The Republic of Indonesia is a state of law." The state of law is the basis of the state and the outlook on life of every Indonesian citizen, and Pancasila is the source of all laws applicable in the Republic of Indonesia. The function of law is one of the means of social change that exists in society.¹ One of the interests of Indonesian citizens that must be protected is in the area of personal financial management of Indonesian citizens. One form of financial protection provided by the Indonesian State to its citizens is through regulations regarding Banking Institutions. On March 25, 1992, President Soeharto ratified Law Number 7 of 1992 concerning Banking, where through this Law it is hoped that banking can be created based on economic democracy with its main function as a collector and distributor of public funds, having a strategic role to support the implementation of national development, in order to increase the equality of development and its results, economic growth, and national stability towards improving the standard of living of the people.²

According to the Big Indonesian Dictionary (KBBI), a bank is a business entity in the financial sector that attracts and issues money to the community, especially... providing credit and services in payment transactions and money circulation. Banks are institutions that operate much like other companies, with the goal of making a profit.³ A bank can be simply defined as a financial institution whose business activities are collecting funds from the public and distributing these funds

¹Yusril Ilza Amri, Bambang Tri Bawono & Ira Alia Maerani, Criminal Investigation of Motorcycle Stealing Goods, *Law Development Journal*, Volume 3 Issue 1, March, 2021, p. 25

²Hermansyah. (2012). *Hukum Perbankan nasional Indonesia*, Edisi Kedua. Jakarta : Kencana, p. 160.

³Maryanto, (2011), *Buku Pintar Perbankan*, Yogyakarta : Andi Offset, p. 1

back to the public and providing other banking services.⁴ Various aspects and objects of life have been regulated by the business of banks, namely attracting money from the public and channeling it back to the community. In this case, a bank can encourage the public to participate in improving the Indonesian economy in general and the economic growth of the community itself in particular. The longer banks demonstrate their existence in the economic sector, the more evident their role in society becomes. More and more people are using the products and services offered by banks. Society requires bank products and services to achieve its economic interests.⁵

Banks require Notary and PPAT partners to assist in the preparation of agreement deeds and collateral binding. The role of a Notary is essential in binding collateral and granting mortgage rights. Both banks and borrowing customers (debtors) require legal certainty as authentic evidence of their actions, agreements made by their own will, thus requiring the assistance of a Notary as a public official who has the authority to make authentic deeds because their actions, agreements or provisions are required by applicable laws and regulations.

In making a credit agreement, of course, the Bank and borrowing customers (debtors) must pay attention to the contents of the credit agreement they signed, starting from the definition, obligations arising from the agreement, and the consequences of default that provide certainty to the bank to be able to make settlement efforts. And in an effort to guarantee these interests and legal certainty, it requires the role of Notary assistance to be able to carry out notarial credit binding and collateral binding in accordance with applicable laws and regulations so that it can be used as a strong basis for resolving credit problems arising from defaults committed by debtors (customers). The importance of this research is because the author wants to ensure the role of Notaries in providing legal certainty to the Bank regarding notarial credit binding and collateral binding in providing loans to the community and can also support banks in resolving their problematic credit, therefore, this research aims to determine the role of Notaries in providing support to Banks in efforts to resolve their problematic credit.

2. Research Methods

a. Approach Method

The approach method used in this research is a sociological juridical approach method.

b. Research Specifications

Based on the problem formulation above, this research is classified as descriptive analytical research.

⁴Kasmir, (2012), *Manajemen Perbankan*, Jakarta : Raja Grafindo Persada, p. 12

⁵Adityah Pontoh, *Pertanggungjawaban Korporasi Terhadap Tindak Pidana Pembobolan Rekening Nasabah Bank*, *Lex Privatum*, Vol. 6 No. 1 (2018), p. 91-98

c. Method of collecting data

- Documentation
- Observation
- Interview

d. Data Analysis Methods

Data analysis in this study used a qualitative descriptive method.

3. Results and Discussion

3.1. The Role of Notaries in Providing Support to Banks in Efforts to Resolve Problematic Credit

In carrying out the practice of providing credit to the public, PT. BPR Nusamba Tanjungsari requires Notary and PPAT partners to assist in making agreement deeds and binding collateral. The role of a Notary is very necessary in binding collateral and granting mortgage rights. Both banks and borrowing customers (debtors) require legal certainty as authentic evidence of their actions, agreements made by their own will, so they require the assistance of a Notary as a public official who has the authority to make authentic deeds because their actions, agreements or provisions are required by applicable laws and regulations. In making a credit agreement, of course, the Bank and borrowing customers (debtors) must pay attention to the contents of the credit agreement they signed, starting from the understanding, obligations arising from the agreement, and the consequences of default that provide certainty to the bank to be able to make settlement efforts. And in an effort to guarantee these interests and legal certainty, it requires the role of Notary assistance to be able to carry out notarial credit binding and collateral binding in accordance with the provisions of applicable laws and regulations so that it can be used as a basis for resolving credit problems that arise due to defaults made by debtors (customers).

Regarding this notarial/authentic credit agreement deed, there are several things you need to know:

- 1) The power of proof, in an authentic deed there are 3 (three) types of power of proof:
 - a) First, proving that both parties have explained what is written in the deed (formal evidentiary force).
 - b) Second, proving between the parties concerned that the event mentioned there really happened (the strength of material evidence or what we call the strength of proof increases).
 - c) Third, it proves not only between the parties concerned but also to third parties that on the date stated in the deed, both parties appeared before a

notary and explained what was written in the deed (outside evidentiary power).

2) Dependence on notaries

This notarial deed will provide perfect evidentiary power for the parties, perfect in the sense of truth regarding the contents of the deed relating to the wishes of the parties, the execution time relating to the date the deed was made and the truth of the parties who signed the deed. A notarial deed is very important, this is closely related to the burden of proof regarding the supporting documents for the birth of an agreement.

It can be argued that the benefit of a notarial deed in a bank credit agreement is that it serves as strong and complete evidence in the event that the debtor disputes the validity or authenticity of the credit agreement, for example by denying its existence. While this is rare, as issues typically involve default, a notarial deed is essential to secure the credit.

Efforts to resolve problematic loans undertaken by banks that require assistance from a notary

a) Credit restructuring

Based on Article 1 Regulation of the Financial Services Authority of the Republic of Indonesia Number 1 of 2024 concerning the Asset Quality of People's Economic Banks explains that "Credit Restructuring is an improvement effort carried out by BPRs in credit activities for Debtors who are experiencing difficulties in fulfilling their obligations."

The provisions regarding Credit Restructuring are technically contained in Article 29 Regulation of the Financial Services Authority of the Republic of Indonesia Number 1 of 2024 concerning the Asset Quality of People's Economic Banks, explains that BPRs can carry out Credit Restructuring for Debtors who, according to the BPR's assessment, meet the following criteria:

- a. The debtor is experiencing difficulties in paying the principal and/or interest on the credit;
- b. If the debtor has good business prospects and is deemed capable, the BPR is required to outline the credit restructuring in the credit agreement. The credit agreement in question must reference the previous credit agreement.

The timing of the Addendum is also important to consider. It should not be created after the principal agreement has expired. Furthermore, the intent and purpose of each agreed-upon provision in the Addendum must be clear. The language used must be simple and easily understood by all parties involved, eliminating room for double interpretation or uncertainty. Furthermore, the Addendum document must

be complete, encompassing all relevant details and the urgency of the agreement. Essentially, an agreement (Addendum) must contain several elements: *essentialia*, *naturalia*, and *accidentalialia*.⁶

In implementing the addendum to the main agreement for credit restructuring, of course, the form of the main agreement must also be adjusted. In addition to legalizing the addendum that has been made, in this case, the notary is also asked to provide clear legal education to the debtor so that they better understand their obligations and rights as well as the legal consequences of the impact of default that occurs after the credit restructuring addendum is carried out.

b. Foreclosed Assets (AYDA)

Based on Article 1 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 1 of 2024 concerning the Asset Quality of People's Economic Banks, it is explained that "Foreclosed Collateral, hereinafter abbreviated as AYDA, is an asset obtained by BPR either in part or in whole by means of purchase through auction or outside of auction based on voluntary surrender by the collateral owner or based on the power to sell outside of auction from the collateral owner, in the event that the debtor does not fulfill its obligations to BPR with the provision that the collateral purchased will be disbursed as soon as possible."

Based on Article 40 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 1 of 2024 concerning the Asset Quality of People's Economic Banks, it is stated that the takeover of AYDA is temporary and must be disbursed as soon as possible starting from the takeover of AYDA by BPR.

Seeing the strict provisions of AYDA and to anticipate the impact of changes in the debtor's intentions regarding this matter, the BANK requires the role of a notary, this is to make a notarial agreement regarding the transfer of collateral, making a PPJB through PPAT, and so on.

c. Credit Settlement Through Litigation

Execution of Mortgage Rights

Based on Article 6 Law of the Republic of Indonesia Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land explains that if the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object under his own power through a public auction and take payment of his receivables from the proceeds of the sale.

The sale through public auction above is called *parate execution*. *Parate execution* is an execution without the need to involve the court. The institution of *parate execution* is the right of a creditor to sell under his own authority or as if it were

⁶Anom, I Gusti Ngurah. "Addendum Kontrak Pemborongan Perspektif Hukum Perjanjian Di Indonesia." *Jurnal Advokasi* 5, No. 2 (2015): 185

his own, objects that have been pledged by the debtor for the repayment of his debt in public with the usual conditions, very simply, because without involving the debtor and without Fiat or the determination or permission of the Judge and the executorial title.⁷According to Rahmadi Usman, parata execution is the implementation of an execution without the assistance of a court.⁸

In order to be able to carry out this execution parate, of course, it is necessary to bind the Mortgage Right guarantee in accordance with the Mortgage Right Law, in this case the role of a Notary is needed to ensure that the binding of the mortgage right that has been carried out is in accordance with the applicable provisions and is not legally flawed.

Fiduciary Guarantee Execution

The term "fiduciary" in Indonesian means handing over ownership rights through trust, while the Dutch terminology is also Fiduciare Eigendom Overdacht (FEO). Fiducia comes from the word "fieds," meaning trust. Trust means that the guarantor believes that handing over ownership rights is not intended to actually become the property of the creditor who owns the object. If the principal fiduciary agreement is paid off, the collateral will return to the guarantor's possession.⁹

According to Marhaenis in his book, civil law is associated with fiduciary guarantee law, giving the term "Trust Agreement", namely from the words Fiduciair Eigendom Overdracht or abbreviated to FEO, which is called the term Fiduciair Eigendom Overdracht (FEO) which often occurs in society, especially in the banking world, where a customer (debtor) asks the bank for a crisis and what is used as collateral is a movable object but the movable collateral is handed over by the owner of the object to the person who lent the money (Creditor) but the object remains controlled and used by the owner.¹⁰

In carrying out the execution of Fiduciary guarantees, of course, this is very dependent on the validity of the fiduciary deed made by the notary and the fiduciary registration at AHU Online which is also carried out by the Bank's partner notary. The notary in making the Fiduciary deed must really pay attention to the obligations according to the Notary Law and in registering it with the Ministry of Law through AHU Online to obtain a fiduciary certificate must be in accordance with the provisions of the time limit for Fiduciary registration, because if the time limit is exceeded, the police cannot provide assistance in the security process for

⁷Teddy Anggoro, Parata eksekusi: Hak Kreditur Yang Menderogasi Hukum Formil (Suatu Pemahaman Dasar Dan Mendalam), *Jurnal Hukum Dan Pembangunan* vol.3 No.4, 2007, p. 536

⁸Ananda Fikri Ayu Saraswati, Dilematis Eksekusi Hak Tanggungan Melalui Parate Eksekusi Dan Eksekusi Melalui Grosse Akta, *Jurnal Repertorium*, Vol.2 No.2, 2015, p. 54

⁹Nazia Tunisia, Peran Otoritas Jasa Keuangan Terhadap Pengawasan Pendaftaran Jaminan Fidusia, *Jurnal Cita Hukum*, Volume 3 Number 2, accessed on July 27, 2025, p. 362

¹⁰Mahaenis Abdul Hay, (2017). Hukum perdata, Jakarta : Yayasan Pembinaan Keluarga UPN Veteran, p.185

the application for security assistance from PT BPR Nusamba Tanjungsari and also the criminal process for alleged criminal acts regulated in the Fiduciary Law committed by the debtor.

- 1) Making efforts to report police allegations of Fiduciary crimes in accordance with the Fiduciary Law.

If there is an alleged criminal act committed by the debtor, the BPR will provide understanding and education to the debtor so that they can immediately resolve it for actions that violate the criminal acts regulated in Article 35 and/or Article 36 of the Law on Fiduciary Guarantees, coordinating with the police to make a police report on the alleged criminal act committed by the debtor.

Through the Lawsuit Route to the Court

The lawsuit efforts carried out by BPR are carried out in 2 ways, namely:

- Simple Claims;

Based on the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2019 concerning Amendments to the Regulation of the Supreme Court Number 2 of 2015 concerning Procedures for Settling Simple Lawsuits, it is explained that "Simple Lawsuit Settlement is a procedure for examining in court for civil lawsuits with a maximum material claim value of IDR 500,000,000.00 (five hundred million rupiah) which is resolved using simple procedures and evidence."

General lawsuit

- General lawsuit

Based on the Civil Procedure Code in general.

Litigation efforts for civil lawsuits in court through simple lawsuits are the main priority in filing lawsuits in court because of their simplicity and shorter time (both in the initial hearing and appeal). In carrying out a lawsuit, the evidence of the agreement as the basis for the lawsuit must be complete, especially for agreements that have been notarized, of course, the strength of the evidence is perfect. This is very dependent on the perfection of the deed that has been prepared by the notary, which must comply with the provisions of the Notary Law.

3.2. Obstacles Faced by Notaries in Assisting in the Resolution of Problematic Loans at PT. BPR Nusamba Tanjungsari.

In order to provide support for credit binding and resolution of problematic credit at BPR, there are several obstacles that come from the bank and from the notary, including the following:

- 1) Obstacles from the Bank.
 - a) There is a desire between the bank and the debtor to restructure the credit, but the debtor's spouse has died, whereas in the previous agreement he was still alive and signed the credit agreement as a guarantor, and the debtor's child as an heir is not yet an adult (still 10 years old). If the above occurs, then steps are taken before credit restructuring is carried out (addendum to the previous notarial credit agreement) then the debtor is required to take care of a

guardianship letter for the minor child in Court, so that a Court Decision will be issued regarding the guardianship of the debtor's minor child, and accompanied by a certificate of heirs, then based on the completeness of these requirements, an addendum to the notarial credit agreement can be carried out at the partner Notary in the presence of the bank and the debtor (in this case the debtor acts as himself and as guardian of the minor child in accordance with the Court's decision regarding Child Guardianship).

- b) During the implementation of the addendum agreement to the notarial credit agreement, several of the heirs who were supposed to sign were outside Java, at the time of the previous notarial credit agreement, the heirs were present and signed as guarantors for the debtor's credit using collateral belonging to the heirs. The solution taken by the notary is to explain the importance of a letter of approval for the credit addendum from the heirs who previously signed the notarial credit agreement, this can be done by each of the heirs making a statement letter and notarial power of attorney made by the local notary (the work area where the heirs are currently domiciled) and from the basis of the letter of approval and notarial power of attorney which explains that the heirs give their approval and power of attorney to the debtor to make an addendum agreement to the previous notarial credit agreement, then the addendum agreement to the notarial credit agreement can be signed.
- c) There is an APHT process that has not been completed but the credit is about to mature and is already problematic.

Some People's Economic Banks (BPR) in some of their product policies for the agricultural sector have short-term 3 (three) months to 6 (six) months. The APHT process can sometimes take up to 3 months to complete, especially for customary land ownership collateral processed SHM at the same notary as the notary who binds the credit or occurs for SHM collateral resulting from PTSL where the APHT installation process in some areas is required to be re-floated by the local ATR/BPN office. When this occurs, the notary can suggest to the bank that an addendum or extension of the term can be made to resolve the credit problem and if problems persist, the APHT appointment will be completed before the maturity of the future extension.

4. Conclusion

The Role of Notaries in Providing Support to Banks in Efforts to Resolve Problematic Credit. In its lending practices, PT. BPR Nusamba Tanjungsari requires notary and land office (PPAT) partners to assist in drafting deeds of agreement and securing collateral. The role of a notary is essential in drafting authentic deeds for credit agreements and securing collateral, including the granting of mortgage and fiduciary rights. The benefit of a notarial deed in a bank credit agreement is as strong and perfect evidence if the debtor questions the validity or truth of the credit agreement deed that has been made. This is to ensure the bank's certainty

in resolving its problem loans. The perfection of the deed made by a notary must comply with the provisions of the Notary Public Law. Conducting ratification of the addendum to the credit agreement regarding efforts to resolve problematic credit through credit restructuring channels in accordance with the provisions of Financial Services Authority Regulation Number 7 of 2024 concerning People's Economic Banks (BPR). Provide clear legal education to debtors so that they better understand their obligations and rights as well as the legal consequences of the impact of default that occurs. Assisting the Bank in ensuring the approval of the debtor (along with the parties related to the ownership of the collateral) for the AYDA (Assumed Collateral) process carried out by the bank by making a PPJB (Sale and Purchase Agreement) so that there are no changes from the debtor in the future and ensuring the debtor's willingness to empty the collateral so that the sale of the collateral can be easy, because one of the AYDA requirements carried out by the Bank is that the Bank must provide a statement of payment to the debtor.

5. References

Journals:

- Adityah Pontoh, Pertanggungjawaban Korporasi Terhadap Tindak Pidana Pembobolan Rekening Nasabah Bank, *Lex Privatum*, Vol. 6 No. 1 (2018).
- Ananda Fikri Ayu Saraswati, Dilematis Eksekusi Hak Tanggungan Melalui Parate Eksekusi Dan Eksekusi Melalui Grosse Akta, *Jurnal Repertorium*, Vol.2 No.2, 2015.
- Anom, I Gusti Ngurah. "Addendum Kontrak Pemborongan Perspektif Hukum Perjanjian Di Indonesia." *Jurnal Advokasi* 5, No. 2 (2015): 185.
- Nazia Tunisia, Peran Otoritas Jasa Keuangan Terhadap Pengawasan Pendaftaran Jaminan Fidusia, *Jurnal Cita Hukum*, Volume 3 Number 2, accessed on July 27, 2025.
- Teddy Anggoro, Parata eksekusi: Hak Kreditur Yang Menderogasi Hukum Formil (Suatu Pemahaman Dasar Dan Mendalam), *Jurnal Hukum Dan Pembangunan* vol.3 No.4, 2007.
- Yusril Ilza Amri, Bambang Tri Bawono & Ira Alia Maerani, Criminal Investigation of Motorcycle Stealing Goods, *Law Development Journal*, Volume 3 Issue 1, March, 2021

Books:

- Hermansyah. (2012), *Hukum Perbankan nasional Indonesia*, Edisi Kedua. Jakarta : Kencana
- Kasmir, (2012), *Manajemen Perbankan*, Jakarta : Raja Grafindo Persada
- Mahaenis Abdul Hay, (2017). *Hukum perdata*, Jakarta : Yayasan Pembinaan Keluarga UPN Veteran
- Maryanto, (2011), *Buku Pintar Perbankan*, Yogyakarta : Andi Offset