TABELLIUS Journal of Law
ISSN 2988-6201
published by
Master of Notarial Law
Faculty of Law
Universitas Islam Sultan Agung
Semarang

Use of a Deed of Power of Attorney to Sell as a Credit Agreement Guarantee Binding at the People's Economic Bank Cempaka Wadah Sejahtera, Pekanbaru City

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Abstract. *The Use of a Deed of Power of Attorney to Sell as a Collateral Bond for a Credit Agreement at Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City, is not in accordance with applicable regulations. Mortgage is the only collateral for land recognized as collateral for debt repayment. Therefore, the creditor or bank should install a mortgage on the collateral that has been made in the credit agreement, as legal certainty to obtain executorial rights regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land in the event of a bad credit. The first research is to find out what are the considerations of Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City in using a deed of power of attorney to sell as a collateral bond for a credit agreement, secondly to find out how the legal certainty of the use of a deed of power of attorney to sell as a collateral bond for a credit agreement by Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City. This research method is empirical juridical legal research. The results of this study are that the binding of credit agreement collateral using a notarial power of attorney was carried out by Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City, considering the increasingly tight price competition between banks. Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City, considers the use of a power of attorney to be more efficient and cost-effective for debtors. A power of attorney has binding legal force for the parties involved. This means that the party granting the power of attorney and the party receiving the power of attorney are bound by the provisions and obligations contained in the power of attorney. However, the power of attorney does not have an executorial nature as stipulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, which means that the power of attorney cannot be used directly as a basis for legal execution without going through an additional process.*

Keywords: *Agreement; Credit; Mortgage; Sale.*

1. Introduction

In line with increasingly rapid economic growth, people need funds as capital to start or develop their businesses. The government has realized that the need for funding is an important element in achieving its economic growth goals, so banks were established as financial institutions that provide the funds needed by the community. Based on Law Number 10 of 1998, Article 1, paragraph (2), concerning Amendments to Law Number 7 of 1992 concerning Banking, a bank is defined as a business entity that collects funds from the community in the form of deposits and distributes them back to the community in the form of credit or other forms, with the aim of improving the welfare of the community in general. When distributing funds to the community in the form of loans, the bank automatically makes an agreement with the community as a commitment to comply with the provisions contained in the agreement.

The agreement between a bank and the public is known as a credit agreement. The definition of a credit agreement is not clearly regulated by law. However, in Law Number 10 of 1998, Article 1, Number 11, which amends Law Number 7 of 1992 concerning Banking, credit is defined as the provision of money or documents equivalent to such money, based on a loan agreement that requires the borrower to repay the debt after a specified period of time with interest. Referring to this definition, a credit agreement can be understood as a loan agreement between a bank and another party, in which the borrower is required to repay the debt within a specified period of time with additional interest payments.

In a credit agreement, the bank acts as a creditor that provides loans to debtors on the condition that collateral is provided. In this credit granting process, the bank stipulates collateral as an additional agreement or safeguard that can be used to repay debts in the future if the debtor cannot fulfill their obligations, in accordance with the provisions contained in Articles 1131 and 1132 of the Civil Code. Article 1131 of the Civil Code states that all of the debtor's assets, both movable and immovable, existing and future, serve as collateral for all of the debtor's personal obligations. The role of collateral in bank lending is as a source of last resort for repayment of loans given to customer debtors. This indicates that if the main source for repaying the debtor's debt, namely income obtained from the debtor's business (first way out), turns out to be insufficient, then the results of the collateral execution (second way out) are expected to function as a last alternative source of repayment that the bank can rely on for the debtor.[1]

One type of asset that can be used as collateral is land. Land, as property, is considered a strong form of collateral because it has a fairly high and stable economic value, so it can be accepted by various lending institutions, including

[1]Neneng Nurhasanah and Panji Adam, Sharia Banking Law: Concepts and Regulations, Sinar Grafika, Jakarta, 2017, p. 202

banks and other entities. The use of land as collateral in the Indonesian legal system is regulated by Law Number 4 of 1996 concerning Mortgage Rights on Land and Related Assets. Article 1 paragraph (1) of the Mortgage Law states that Mortgage rights are security rights imposed on land rights as regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles, whether or not accompanied by other objects that are an inseparable part of the land, for the repayment of certain debts, which give priority rights to certain creditors over other creditors.

A mortgage is the only guarantee on land that is recognized as collateral for debt repayment. The object of the mortgage is any object or right that can be associated with the mortgage, namely:[2]

1) Land ownership rights

2) Cultivation Rights

3) Building rights

4) Use rights over state land, as long as the use rights are registered and the use rights have the nature of being transferable

5) Usage rights over freehold land

6) Rights to land including buildings, plants and works that already exist or will exist which are an integral part of the land.

7) Apartments and ownership rights to apartment units

8) Underground, as long as it is physically connected to the building above ground.

Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, abbreviated as BPRCWS, is an official financial institution under the supervision of the Financial Services Authority (OJK). This institution focuses on serving MSMEs and local communities with easy procedures. Bank Perekonomian Rakyat Cempaka Wadah Sejahtera Pekanbaru Branch also provides general banking services, which include channeling funds to the public in the form of credit agreements. Collateral guarantees for loans provided by Bank Perekonomian Rakyat Cempaka Wadah Sejahtera Pekanbaru Branch are carried out through official deeds prepared by a notary. There are two types of notarial deeds used as collateral in credit agreements, namely the Power of Attorney to Encumber Mortgage Rights (SKMHT) and the Deed of Power of Attorney to Sell (KUM), as well as personal credit agreements prepared by the bank.

A Power of Attorney to Encumber a Mortgage (SKMHT) is an agreement in which a person authorizes another party to encumber land rights. Meanwhile, a Deed of

[2]Munir Fuady, Debt Guarantee Law, Erlangga, Jakarta, 2013, p. 72

Power of Attorney to Sell (KUM) is a deed of power of attorney that authorizes the recipient of the power of attorney to sell the land rights covered by the power of attorney. A Power of Attorney to Sell cannot serve as a legal basis or guarantee for the repayment of a debtor's debt. This is because the right to sell, transfer, or relinquish rights to a land certificate is the absolute authority of the debtor as the landowner. If a power of attorney to sell is used as collateral for a debt, then the power of attorney does not have the legal force that can be enforced to carry out legal acts in the form of transfer, sale, and/or relinquishment of rights to anyone, even if the power of attorney has been signed by an authorized public official. [3]

Based on this, there is a policy at the People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru Branchthat for credit values below IDR 100,000,000 (one hundred million rupiah) and below, binding is only carried out using a Power of Attorney to Sell without using a deed Power of Attorney to Encumber Mortgage Rights (SKMHT) and without Deed of Granting Mortgage Rights (APHT).[4] Based on the background that has been stated above, the author is interested in conducting research with the problem formulation: First, What are the considerations People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru Branch in using a power of attorney to sell as a binding guarantee for a credit agreement? Second, Howlegal certainty from the use of a power of attorney to sell as binding collateral for a credit agreement by People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru Branch?

Several theories will be applied in this academic thesis. These theories include: The Theory of Legal Certainty, which states that legal protection is a service provided by law for legal subjects and protected objects, and Theory of Legal Protection, which discusses and analyzes the nature, form, or purpose of protection provided by law to its subjects.[5]

Satjipto Rahardjo defines legal protection as an effort to safeguard individual interests by granting human rights that empower individuals to act in their behalf. Satjipto Rahardjo's theory of legal protection is influenced by Fitzgerald's view of the purpose of law. According to Fitzgerald, the purpose of law is to unite and regulate a number of interests in society by providing protection and limitations to those interests.[6]

[3]Khalifah Nur Maulidan, "The Validity of a Deed of Power of Attorney to Sell as Collateral for a Debt Agreement," Jurnal Hukum, No. 1 Vol. 1 April 2021: 11-20, p. 16
[4]Results of an Interview with Sarwani, Legal Admin of the Cempaka Wadah Sejahtera People's Economic Bank, Pekanbaru City, on Friday, June 12, 2026, in Pekanbaru City
[5]Salim HS and Erlies Septiana Nurhani, Application of Legal Theory in Thesis and Dissertation Research, PT. Raja Grafindo Persada, Jakarta, 2013, p. 262
[6]Tedi Sudrajat and Endra Wijaya, Legal Protection Against Government Actions, Sinar Grafika, Jakarta, 2020, p. 96

To implement and provide legal protection, a location or facility is required, often referred to as a legal protection medium. Legal protection media are divided into two types, as follows:[7]

1) Preventive Legal Protection

Preventive legal protection is a form of legal protection that is preventative in nature. This legal protection is provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations and provides guidelines or limitations for fulfilling obligations.

2) Repressive Legal Protection

Repressive legal protection is legal protection that functions to resolve disputes. Repressive legal protection is final protection in the form of fines, imprisonment, and additional penalties imposed when a dispute has already occurred or a violation has been committed.

Theory of Legal Certainty, According to Kelsen, law is defined as a collection of norms. Norms can be understood as statements that highlight the aspect of "what should be," or das sollen, by encompassing various provisions regarding actions that must be taken. These norms are the result of conscious human actions. Legislation containing general provisions serves as a guideline for individuals in their behavior within society, both in their interactions with others and in the broader social context. These provisions serve as limits for society in imposing burdens on or taking action against individuals. The existence and application of these provisions create legal certainty.[8]

According to Utrecht, the concept of legal certainty has two meanings. First, the existence of general norms allows individuals to understand what actions are permitted and what are prohibited. Second, legal certainty provides individuals with protection from arbitrary government action because these general norms provide information regarding the burdens or actions the state can impose on individuals.[9]

Legal certainty is realized through broad regulations. The general characteristics of legal regulations indicate that the purpose of law is not to achieve justice or benefit, but rather to achieve certainty itself. Legal certainty means the application of firm, stable, consistent, and coherent rules, the implementation of which is not influenced by subjective factors. Certainty and justice are not merely ethical

[7]Salim HS and Erlies Septiana Nurhani, Op. Cit, p. 264
[8]Peter Mahmud Marzuki, Introduction to Legal Science, Kencana, Jakarta, 2017, p. 137
[9] https://www.gramedia.com/literasi/pengertian-kepastian-hukum, (accessed February 15, 2024)

demands but are in fact characteristics of law. An unclear and unjust law is not necessarily a bad law.[10]

2. Research Methods

To address the aforementioned issues, the approach used is an empirical juridical approach. This approach involves legal research by analyzing existing legal regulations and aims to develop theories regarding the existence and role of law in society. This research also pays special attention to field practices related to legal aspects or regulations relevant to the research subject under study, as well as analyzing applicable legal norms and relating them to existing facts in society. The characteristics of this research are descriptive and analytical, namely, explaining the laws and regulations related to the legal theories that are the focus of this research.[11]applicable regulations, related to legal theories and the application of positive law related to the issues investigated in this research. This research only conducts analysis at the descriptive level, namely analyzing and presenting information in a structured manner for easy understanding or conclusion. The types of data used in this research are: Primary data, which refers to information collected directly from the location through interview sessions., which had previously been prepared by formulating the main questions (interview guide) related to this research as a guide, and adapting them to the situation when the interview took place.In this case, the author obtained data through field research by conducting interviews with respondents, namely the respondents in this study from the Bank Perekonomian Rakyat Cempaka Wadah Sejahtera Pekanbaru Branch, in this case the legal department, credit analysts, and asset management department. Secondary Data Secondary data is material that provides an explanation of primary data sources relating to the use of a power of attorney to sell as a binding guarantee by People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru Branch Secondary data was obtained from library research in the form of books, legal journals and research results as well as laws and regulations. Secondary data sources come from legal materials, including: Primary legal materials are sources that contain provisions and have legal force, such as laws. Secondary legal materials mean all sources that provide information regarding primary legal materials. This includes journals, reference books, scientific works from academics, and relevant research results. Tertiary legal materials are sources that provide data or guidance and also explanations regarding primary and secondary legal materials, for example, the Big Indonesian Dictionary (KBBI) and Legal Dictionaries and Encyclopedias.

[10]Cst Kansil, Christine, ST Kansil, Engelien R, Palandeng and Godlieb N Mamahit, Dictionary of Legal Terms, Gramedia Pustaka, Jakarta, 2009, p. 385
[11]Zainuddin Ali, Legal Research Methods, Sinar Grafika, Jakarta, 2011, p. 105

3. Results and Discussion

Research results represent a snapshot of the data obtained from the research questions posed. Findings should provide answers to the issues identified in the research questions. The presentation of research results should be clear and concise. In addition to comprehensively explaining the data, research results should also summarize the scientific findings.

The results of research at the People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru Branch show that credit agreements are divided into two types, namely:[12]

1) Commercial credit is a loan service provided by banks to customers or debtors to support ongoing business operations. These loans are generally used to finance working capital needs, purchase stock, acquire equipment, expand a business, or meet other business-related needs. The collateral binding process for this credit is achieved by granting a mortgage on the collateral in question.

2) Micro, small, and medium-sized loans are loans provided to debtors or lower-middle-class individuals to start their own micro, small, and medium-sized businesses. The collateral is secured using a notarial power of attorney for loans worth less than IDR 100,000,000 (one hundred million rupiah) and above. If the loan value is above IDR 100,000,000 (one hundred million rupiah), the collateral is secured by a mortgage.

People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru BranchEstablish categories for micro, small, and medium-sized credit borrowers based on the provisions of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises. By implementing these guidelines, banks ensure that each borrower is categorized appropriately, allowing for more precise and proportional lending based on the borrower's business size. This action supports banks in managing credit risk more effectively and ensures that the financial assistance provided truly aligns with the borrower's business needs and capabilities.[13]

Here is a recap of the number of bindings in People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru City can be described as follows:

Table List of Compositions of Guarantee Binding

No	Type of Credit	Amount	
		2024	2023
1	Commercial Credit	31Debtor	29 Debtors

[12]Results of an Interview with Mahdi Putra, Credit Committee Officer of the Cempaka Wadah Sejahtera People's Economic Bank, Pekanbaru City, on Friday, June 12, 2026, in Pekanbaru City.
[13]Interview Results withMahdi Putra, Credit Committee Officer of the Cempaka Wadah Sejahtera People's Economic Bank, Pekanbaru City, On Friday, June 12, 2026, at Pekanbaru City.

2	Micro, Small and Medium Enterprises Credit	62 Debtors	70 Debtors

Source: People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru City

Mahdi Putra as the Credit Committee Officer of Bank Cempaka Wadah Sejahtera, Pekanbaru City, explained that the use of a power of attorney to bind credit guarantees in the micro, small and medium sectors for loan values below IDR.100,000,000 (one hundred million rupiah)Pricing is based on competitive pricing among banks when determining discounts when granting loans or financing to customers. This significantly impacts customers, especially if the loan is small but subject to high administrative fees. With a power of attorney to sell as collateral for the loan, it is hoped that the loan agreement process will be simplified and can be executed quickly and efficiently.[14]

The following is a list of prices for determining bank administration fees and collateral binding fees.Cempaka Bank, the Prosperous Container of Pekanbaru City.

Table List of Administration Prices and Guarantee Binding Fees

No	Type	Price
1	Bank Administration	IDR 1,000,000
2	Power of Attorney to Sell	IDR 350,000
3	Power of Attorney Imposing Mortgage Rights	IDR 350,000
4	Deed of Grant of Mortgage Rights	Rp 1% of Credit Value
5	Certificate Plotting	IDR 500,000
6	Change Certificate Area	IDR 500,000
7	Roya Certificate	IDR 500,000
8	Write-off of Outstanding BPHTB	IDR 500,000

Source: People's Economic Bank Cempaka Wadah Sejahtera Pekanbaru City 2026

The table of administrative and collateral binding fees compiled shows the administrative and collateral binding fees that will be charged to debtors requesting credit. The table also shows that binding collateral with a power of attorney to sell has a significantly lower cost than binding collateral with a mortgage.

Sarwani as the Legal Admin of the Cempaka Wadah Sejahtera People's Economic Bank, Pekanbaru City, said that the bank accepts land as collateral with the following types of land rights:[15]

[14]Results of an Interview with Mahdi Putra, Credit Committee Officer of the Cempaka Wadah Sejahtera People's Economic Bank, Pekanbaru City, on Friday, June 12, 2026, in Pekanbaru City.
[15]Interview Results of Sarwani, Legal Admin of the People's Economic Bank Cempaka Wadah Sejahtera, Pekanbaru City, on Friday, June 12, 2026, in Pekanbaru City.

1) Right of ownership
2) Building rights
3) Land Certificate
4) Compensation Certificate

Collateral binding in a loan agreement involving land and related objects must be done by creating a mortgage right on the land in question. Among the various types of collateral, only two are permitted to be subject to mortgage rights: Ownership Rights and Building Use Rights. Meanwhile, other types of collateral, such as Land Certificates and Compensation Certificates, cannot be subject to mortgage rights. This is because these two types of collateral do not meet the legal requirements for the implementation of mortgage rights.

A. Legal Considerations of the People's Economic Bank Cempaka Wadah Sejahtera, Pekanbaru City in Using a Deed of Power of Attorney to Sell as Collateral for a Credit Agreement

The use of a Power of Attorney to secure collateral in loan contracts has become common practice among banks, both in the State-Owned Enterprise (SOE) and Regional-Owned Enterprise (BUMD) sectors. For example, the Bangkinang Branch of Bank Tabungan Negara (BTN) in Kampar Regency also uses a power of attorney to secure collateral for the loans they offer. This demonstrates that, despite the availability of other options, the use of a power of attorney remains a reliable strategy for safeguarding the bank's interests in managing the credit provided.

The use of a power of attorney to sell executed through a notary does offer economic benefits. The process is simpler and the costs involved are lower compared to other methods of securing collateral. This makes it an attractive option for all parties involved in economic transactions, particularly in the context of financing or loan agreements. However, from a legal perspective, particularly in relation to the theory of legal protection, several important issues arise. The theory of legal protection emphasizes the importance of legal security for all parties involved in a transaction, including protection from risks that could threaten their rights. Legal protection encompasses elements such as strict regulations, legal certainty, and efficient law enforcement.

Satjipto Rahardjo's theory of legal protection draws inspiration from Fitzgerald's stated purpose of law. According to Fitzgerald, the purpose of law is to unite and regulate various interests in society through the protection and limitations of those interests. Based on this understanding, Satjipto Rahardjo defines legal protection as an effort to protect individual interests by granting human rights to act in accordance with those interests. Based on Satjipto Rahardjo's theory of legal protection, a power of attorney to sell does not provide legal guarantees equivalent to other collateral instruments such as mortgages. Mortgages have a stronger legal foundation and are regulated in detail in statutory regulations, thus providing more certain guarantees for creditors, such as banking institutions. Meanwhile, a power of attorney to sell does not have clear provisions in the regulations, resulting in uncertainty that can be detrimental to creditors, especially in the event of a dispute or default.

While a power of attorney may seem economical, its use as collateral can conflict with the main principle of legal protection theory, namely legal certainty and security for all parties involved. This uncertainty can pose significant legal risks for banks as financing providers, as they lack the protections comparable to those afforded by strictly regulated collateral such as mortgages.

The theory of legal protection according to Philipus M. Hadjon classifies two forms of legal protection for the people based on the means, namely:

1) Preventive protection gives citizens the opportunity to vote before the government makes a final decision to avoid conflict.

2) Repressive protection aims to resolve disputes. Post-decision legal protection aims to resolve conflicts. Legal protection is a guarantee provided by the state for all individuals to exercise their legal rights and interests as legal subjects.

The repressive legal protection outlined by Philipus M. Hadjon aims to resolve problems that arise following a legal violation or default. However, if a power of attorney to sell is used as a means to secure credit collateral but fails to provide effective repressive legal protection, this can lead to problems. The power of attorney to sell lacks clear procedures and steps in situations where the debtor cannot fulfill their obligations. As a result, the bank, as the creditor, may face difficulties in enforcing collateral and resolving disputes, which can be detrimental to all parties involved.

A loan agreement is also known as the primary agreement that forms the basis of the loan relationship between a bank and a debtor. It is generally accompanied by a collateral agreement, which is an accessory agreement that follows the principal agreement, the credit agreement. Collateral is a requirement for the creditor to minimize the risk of the debtor being unable to fulfill all obligations related to the credit disbursed. With collateral, if the debtor is unable to pay, the creditor can take steps to demand repayment of the loan.[16]

Assets commonly used as collateral in debt transactions include land and objects directly connected to it, such as houses, office buildings, warehouses, hotels, and so on. Land as collateral is regulated in detail in Law Number 4 of 1996 concerning Mortgage Rights on Land and objects related to the land. Article 4 of Law Number 4 of 1996 clearly identifies land rights that can be used as collateral for debt. There

[16]Badriyah Harun, Resolution of Problematic Credit Disputes, Pustaka Yustisia, Yogyakarta, 2010, p. 67

are five categories of land rights that are permitted to be pledged as collateral through Mortgage Rights., that is:

1) Right of ownership

2) Cultivation Rights

3) Building rights

4) Rights of Use, both Ownership Rights and Rights to State Land

5) The rights to land, including buildings, plants and works that already exist or will exist, are an inseparable part of the land and are the property rights of the land rights holder, which are clearly and firmly stated in the document granting the rights to the land in question.

The binding of collateral in a credit agreement involving land and objects related to or connected to the land requires the imposition of a mortgage on the land in question. The process for imposing this mortgage is carried out in two stages: granting the mortgage and registering the mortgage, and can be explained in detail as follows.:

1) Mortgage Assignment Stage

The granting of Mortgage Rights is carried out through the preparation of a Deed of Granting of Mortgage Rights by a PPAT in accordance with applicable regulations. The process of granting Mortgage Rights is an important element in the transfer to a third party, because it includes a promise to repay the debt. This procedure is regulated in Article 10 Paragraph (2) of the UUHT.[17]

2) Mortgage Rights Registration Stage

Article 13 paragraph (2) and paragraph (3) of the Mortgage Law explains how to register Mortgage Rights. The implementation procedures are as follows:[18]

1) After the APHT document has been signed by all parties involved, the PPAT will send the APHT document along with other necessary documents to the Land Office. This delivery must be made by the relevant PPAT no later than 7 (seven) working days after the APHT document is signed.

2) Registration of Mortgage Rights is carried out by the land agency by compiling a land book regarding Mortgage Rights and recording it in the land book for rights related to the Mortgage Right object and copying this information on the relevant land rights certificate.

[17]Supriadi, Agrarian Law, Sinar Grafika, Jakarta, 2018, p. 193
[18]Sutan Remy Sjahdeini, Mortgage Rights Principles, Basic Provisions and Problems Faced by Banking (A Study of Mortgage Rights Law), Alumni, Bandung, 2009, pp. 144-145

3) The registration date for the Mortgage Rights in the land book is the seventh day after all the documents required for registration have been fully received, and if the seventh day falls on a holiday, the date in the land book will be changed to the next working day.

Further details regarding the granting of Mortgage Rights over land are regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning the Determination of the Time Limit for the Use of a Power of Attorney to Encumber Mortgage Rights in Order to Guarantee the Repayment of Certain Credits. Article 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning the Determination of the Time Limit for the Use of a Power of Attorney to Encumber Mortgage Rights in Order to Guarantee the Repayment of Certain Credits states:

Power of Attorney to Encumber Mortgage Rights to guarantee repayment of credit/financing/loans is valid until the end of the main agreement, namely as follows:

a. Credit/Financing/Loans provided to Micro and Small Business customers, within the scope of the definition of productive businesses owned by individuals and/or individual business entities.

b. Credit/Financing/Loans intended for housing procurement, namely:

Ownership or repair of a core house, simple house or apartment with a maximum land area of 120 m^2 (one hundred and twenty square meters) and a building area of no more than 36 m^2 (thirty six square meters); and

c. Other productive credit/financing/loans with a ceiling of up to 100,000,000 (one hundred million rupiah).

This provision can be interpreted that the Power of Attorney to Encumber Mortgage Rights can be used as an option to provide mortgage rights on land that can be carried out when the debtor experiences default, because it is valid until the main agreement ends. Therefore, binding collateral by utilizing a notarial deed of power of attorney to sell at the Bank Perekonomian Rakyat Cempaka Wadah Sejahtera located in Pekanbaru City is not in accordance with the provisions stipulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 22 of 2017 concerning Determination of the Time Limit for Using the Power of Attorney to Encumber Mortgage Rights to Guarantee Credit Repayment.

B. Legal Certainty of the Use of a Deed of Power of Attorney to Sell as a Collateral for a Credit Agreement by the People's Economic Bank Cempaka Wadah Sejahtera in Pekanbaru City

The notarial deed's role as a supplementary agreement in bank credit plays a significant role, particularly in providing legal certainty and protection for all parties involved. Credit contracts generally consist of two categories of agreements: the main agreement and additional agreements (accessoir). The main agreement, the credit agreement itself, governs the principal debt between the debtor and creditor. Additional agreements are designed to provide guarantees or strengthen the rights and obligations already agreed upon in the main agreement.

The position and role of a notarial power of attorney for sale deed in the context of a supplementary agreement for bank credit is that it provides very strong evidence. This means that in the event of a future dispute, this document can be used as legal evidence and recognized by the court without requiring further proof regarding the accuracy of its contents, unless there is an allegation that the document was drafted fraudulently or contains errors. A notarial power of attorney for sale deed is binding on all parties involved and has strong evidentiary force. There are three types of powers contained in a notarial deed, namely:[19]

1) The power of proof is born (binding), where a deed in the form of a letter or certificate must be treated in accordance with the provisions of notarial deeds unless there is evidence to the contrary. The notary is obliged to explain and ensure that the signature of the authorized party has the power of proof against third parties.

2) Formal evidentiary force, where the individual who certifies provides a statement that the signature is genuine.

3) Substantial power, which shows that the content of the notarial deed and the party who is the object of the deed are valid as evidence for themselves, or in other words, there is a desire for other parties to see that the legal actions stated in the deed are valid.

Although a notarial power of attorney (Power of Attorney) has high evidentiary value and can serve as significant evidence in court, its application in bank loan contracts often raises legal issues. This is because a Power of Attorney (Power of Attorney) does not provide the same legal protection as a mortgage as stipulated in Law No. 4 of 1996 concerning Mortgage Rights. Based on the principle of legal certainty, the provisions regarding the granting of power of attorney in the Civil Code provide a basis for individuals to understand their limitations and rights.

[19]Febriandini, TS "Study of the Evidential Strength of Letters in Civil Disputes in District Courts", Verstek Journal, Number 1, 2014, 176-187

According to Kelsen, legal certainty is a collection of norms. These norms are expressions that highlight the "ought" or "das sollen," including several regulations about what must be done. Norms are the product of deliberative human actions. Laws containing general provisions serve as guidelines for individuals' behavior within society, both in interactions with other individuals and in social contexts. These provisions serve as boundaries for society in imposing burdens or taking action against individuals. The existence and implementation of these regulations create legal certainty. Power of attorney deeds do not have clear provisions in the law regarding their use as credit collateral, so they cannot be used as a reference by banks in their role as lenders. This lack of clarity can lead to legal confusion in the implementation of credit contracts, potentially detrimental to all parties involved. As Kelsen stated, legal certainty depends heavily on the existence of clear and detailed regulations. Without clear provisions, banks may face challenges in defending their rights in the event of a contractual breach, which in turn could undermine the stability and security of financial transactions.

According to Utrecht, legal certainty has two meanings. First, there are general norms that enable individuals to understand permitted and prohibited actions. Second, there is legal protection for individuals against arbitrary government actions because with general norms, individuals can understand the obligations that can be imposed or carried out by the state. From Utrecht's understanding of legal certainty, it is clear that a power of attorney to sell does not provide sufficient legal certainty. This is because the deed fails to meet the legal criteria necessary to serve as a binding credit guarantee. In the context of legal certainty, a legal instrument must have a clear and reliable basis to protect the rights of all parties involved. However, because a power of attorney to sell is not created to function as a binding credit guarantee, its use in that context presents significant legal risks and has the potential to create uncertainty in enforcing the creditor's rights in the event of default. Therefore, a power of attorney to sell should not be used as a binding credit guarantee. The results of an interview with Ririt Elmitra Rasyid as a special staff of asset management of Bank Perekonomian Rakyat Cempaka Wadah Sejahtera Pekanbaru City said that the power of sale is the basis of the power owned by the bank to put pressure on debtors who are in default to force the debtor to carry out their debt payment obligations by threatening to sell collateral if they do not pay their debts. If there is a customer or debtor whose credit is in default, several stages will be carried out to resolve it:[20]

1) First warning letter with a period of 14 working days

2) Second warning letter with a period of 14 working days

3) Third warning letter with a period of 14 working days

[20]Interview Results with Ririt Elmitra Rasyid, Special Staff of Asset Management of Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City, on Friday, June 12, 2026, in Pekanbaru City

4) If the debtor does not respond to the warning letter, the debtor will be summoned to meet with the bank to discuss finding a solution to the problematic credit.

5) If the debtor is not present, then the collateral execution will be carried out, either through auction for collateral subject to mortgage rights, or private sale for collateral bound using a power of attorney deed or what is usually called a Notarial KUM..

The process of resolving problem loans faces various obstacles in its implementation. One problem frequently encountered by banks is debtor uncooperativeness, which complicates and prolongs the process of resolving problem loans. According to the bank's explanation, if the debtor is unwilling to fulfill their obligations, the bank has the right to file a lawsuit in court for breach of contract. However, the bank stated that it has never actually taken steps to file a lawsuit. This is because the threat of selling collateral is often enough to instill fear in debtors, encouraging them to fulfill their obligations without resorting to legal action. Another obstacle faced by the bank is the difficulty in finding buyers for collateral sold illegally by the bank based on a notary's power of attorney.[21] A power of attorney issued by a bank as a form of credit collateral contains the transfer of power of attorney to the bank. This power of attorney is granted with irrevocable and irrevocable conditions, and therefore cannot be terminated for reasons stated in Articles 1813, 1814, and 1816 of the Civil Code or for other reasons. This occurs because the granting of power of attorney is an integral part of the credit agreement between the debtor and the bank. A power of attorney is also included in the category of lastgeving powers of attorney, meaning that the power of attorney is specific and granted for a specific purpose. If a deed drawn up before a notary wishes to be annulled by one party, then the annulment has no legal force. Cancellation can only be carried out if both parties mutually agree and together go to the notary to draw up the deed for annulment or revocation. If one party refuses to annul, the party seeking annulment must file a lawsuit in court.[22]

A power of attorney to sell is legally binding on all parties involved. In other words, both the grantor and the recipient must comply with the terms and responsibilities contained in this power of attorney. However, a power of attorney to sell is not executory. This means it cannot be directly used as a basis for legal execution without going through additional procedures. One reason a power of attorney to sell is not executory is that this document cannot be registered like a mortgage registration. In the mortgage registration process, the collateral for a particular property or asset is officially recorded with an authorized institution or agency, for

[21] Interview Results with Ririt Elmitra Rasyid, Special Staff of Asset Management of Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City, on Friday, June 12, 2026, in Pekanbaru City

[22]Taufiq Utomo et al., "Legal Protection for Power of Attorney Whose Deed is Unilaterally Revoked by the Grantor of Power of Attorney",*Student Journal of the Faculty of Law, Brawijaya University*, 2017, p. 26

example, the National Land Agency (BPN), thus having clear legal force and being enforceable if necessary.

4. Conclusion

The conclusion in this study is first, the consideration of Bank Perekonomian Rakyat Cempaka Wadah Sejahtera Kota Pekanbaru in using a deed of power of attorney to sell as a credit collateral binding is to compete with other banks in terms of administrative costs, especially because customers with small credit amounts are often burdened by large administrative deductions. By using a deed of power of attorney to sell, the credit process is expected to be faster and more efficient thanks to its simpler procedures and lower costs. However, when viewed from a legal perspective associated with the theory of legal protection that emphasizes the importance of providing legal security for all parties in the transaction, including protection of rights from detrimental risks, then the use of this deed of power of attorney to sell does not provide adequate legal protection for the bank, because it does not have executorial powers such as mortgage rights which are clearly regulated in Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land.Second,The power of attorney for sale used by Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City, has binding legal force for the parties involved. This means that the party granting the power of attorney and the party receiving the power of attorney are bound by the provisions and obligations contained in the power of attorney. This power of attorney contains various rights and responsibilities that must be complied with by both parties, so that every action taken based on the power of attorney has legal legitimacy. Although the power of attorney for sale has binding legal force, this power of attorney does not have an executorial nature. This means that the power of attorney cannot provide legal certainty to be used directly as a basis for legal execution without going through an additional process. This additional process, Bank Perekonomian Rakyat Cempaka Wadah Sejahtera, Pekanbaru City, adopts a family approach by prioritizing deliberation and consensus in handling bad debts. The suggestion in this study is that even with consideration of price competition and speeding up and simplifying the process for its customers, Bank Perekonomian Rakyat Cempaka Wadah Sejahtera Kota Pekanbaru should still pay attention to the risks that will exist in the event of a bad loan if using a power of attorney to sell that does not have a clear guarantee execution flow. Therefore, it would be better if the bank uses a Power of Attorney to Encumber Mortgage Rights whose cost is relatively the same as a power of attorney to sell as an alternative to encumbering Mortgage Rights on land that can be done when the debtor is in default because it is valid until the principal agreement ends.

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