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Legal Force of Underhand Credit Agreements in Banking Practices

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Abstract. *This research examines the legal force of private credit agreements used in banking practice, with particular attention to the relationship between creditor and debtor, the binding force of agreements, and evidentiary consequences when default occurs. The research uses an empirical juridical approach with descriptive analytical specifications. Primary data are obtained through interviews and examination of credit agreement documents and banking practices, while secondary data are derived from legislation, legal books, and relevant scientific journals. The analysis focuses on the requirements for a valid agreement under Article 1320 of the Indonesian Civil Code, the binding force under Article 1338, the cancellation mechanism under Article 1266, and the evidentiary force of private deeds under Articles 1874 and 1875. The study emphasizes that a private credit agreement is not legally weak simply because it is not an authentic deed. Once validly made, it binds the parties; however, its evidentiary position differs from an authentic deed, particularly when the signature or contents are disputed. The study also underlines the need to maintain a balanced legal position between creditor and debtor and to ensure that banking credit practices remain consistent with good faith, prudence, legal certainty, and protection of both parties.*

Keywords: *Agreement; Creditors; Debtor; Evidentiary; Legal.*

1. Introduction

Banks hold a strategic position in the economy because they perform an intermediary function by collecting public funds and redistributing them to the public in the form of credit and/or other forms. This function places banks in two mutually exclusive positions: maintaining the security of collected funds and distributing them in a healthy manner to those in need. This relationship has legal consequences, as credit distribution is based on an agreement between the bank and the debtor.

Literature on banking law positions credit agreements as one of the primary instruments for providing certainty regarding the rights and obligations of banks and customers (Hermansyah, 2008).

The Banking Law defines credit as the provision of money or bills based on a loan agreement or contract between a bank and another party that requires the borrower to repay the debt after a specified period with interest.

Therefore, the element of agreement is an important basis in credit relations. In civil law, such an agreement must meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, namely agreement, capacity, a specific object, and a lawful cause (Subekti, 2005).

Credit agreements can be formalized in the form of an authentic deed or a private deed. A private deed is drawn up and signed by the parties without the intervention of a public official. Under the law of evidence, such a deed remains recognized as written evidence.

Research by Nugraheni and Utami (2023) shows that private credit agreements remain binding on creditors and debtors as long as they are based on a valid agreement. However, their evidentiary force is significantly influenced by the parties' recognition of the signatures and the contents of the agreement.

This issue demonstrates the difference between binding force and evidentiary force. Article 1338 paragraph (1) of the Civil Code states that an agreement made in accordance with the law applies as law for those who make it. This provision gives rise to the principle of pacta sunt servanda.

Thus, the form of a private deed does not automatically eliminate the binding force of the agreement. However, if a dispute arises and one party denies the signature or contents of the deed, the party submitting the deed may face a more complex burden of proof than using an authentic deed (Musyafah, 2019).

Article 1338 paragraph (3) of the Civil Code requires that agreements be executed in good faith. In credit agreements, this principle needs to be linked to the balance of the bank's position as creditor and the customer's position as debtor.

The bank has an interest in recovering the funds it has disbursed, while the debtor has the right to obtain certainty regarding the amount of the obligation, the term, interest, costs, and settlement mechanisms in the event of default. Credit agreements should not be a means of granting disproportionate authority to one party.

This principle of balance also relates to the cancellation of an agreement due to default. The relevant provision is Article 1266 of the Civil Code, not Article 1331. Article 1266 stipulates the terms of cancellation, which are deemed to be included in a reciprocal agreement if one party fails to fulfill its obligations and, in principle, places cancellation through the courts.

Therefore, the existence of a default should not be understood simply as the authority to unilaterally terminate a contractual relationship without regard to the agreement and applicable legal mechanisms. Discussion of this balance is important so that legal protection for creditors does not eliminate protection for debtors.

Previous research has shown that underhand credit agreements present different challenges compared to authentic deeds. Research on the verification of underhand deeds in the Semarang District Court indicates that, as long as they are not denied, underhand deeds can have strong evidentiary force.

However, if the signature is denied, the party submitting the document must prove its authenticity with other evidence (Hikmah, 2020). Other research on retail credit indicates that the use of underhand agreements is related to considerations of creditworthiness, risk, efficiency, and internal bank policies (Utami & Zanibar, 2017).

Based on this, empirical research into the legal force of underhand credit agreements in banking practice is crucial. Research should link the legal provisions of the agreement to credit granting practices, the forms of documents used, the types of credit facilities that utilize underhand agreements, the signing procedures, and the consequences if the debtor defaults.

In the context of this research, the focus is directed at banking practices at PT Bank Negara Indonesia (BNI) Kudus Branch Office, specifically to examine how legal certainty and protection are established through underhand credit agreements.

This study aims to analyze the legal force of underhand credit agreements in banking practices, particularly their binding position and evidentiary force in the relationship between creditors and debtors.

2. Research Methods

This research uses an empirical legal approach, examining the legal provisions governing contracts and banking and examining their application in credit-granting practices. The approaches used include a statutory approach, a conceptual approach, and a sociological/empirical approach to banking practices. The research specifications are descriptive and analytical. The research aims to describe the form of private credit agreements, the legal status of the parties, the types of credit facilities that use these documents, and the legal consequences in the event of default. Data collection was conducted using primary and secondary data. Primary data was obtained through interviews with authorized parties involved in the credit process at PT Bank Negara Indonesia (BNI) Kudus Branch Office and through the examination of relevant documents, as long as they were accessible for research purposes. Secondary data consisted of laws and regulations, legal books, and scientific journals related to contract law, banking law, evidence, and credit agreements. The data analysis method used qualitative descriptive analysis. Interview data and documents were classified, compared with relevant legal provisions and concepts, and then systematic conclusions were drawn regarding the binding force and evidentiary power of private credit agreements.

3. Results and Discussion

3.1. The Position of Underhand Credit Agreements in the Legal Relationship between Banks and Debtors

A credit agreement forms the basis of the legal relationship between a bank and a debtor. In this relationship, the bank acts as the creditor, disbursing funds, while the debtor acts as the recipient and is obligated to repay the funds according to the terms of the agreement.

Therefore, a credit agreement serves not only an administrative function but also serves as the basis for proving the rights and obligations of the parties.

The validity of private credit agreements remains subject to Article 1320 of the Civil Code. A private form is not a requirement for a valid agreement. Therefore, as long as the agreement is made by competent parties, has a specific object, and a lawful cause, the agreement is binding on both parties.

This aligns with research by Nugraheni and Utami (2023), which confirms that private credit agreements remain binding between creditors and debtors.

Article 1338 of the Civil Code stipulates that legally made agreements must be respected and enforced. In credit practice, this provision means that banks cannot ignore their obligations under the agreement, and debtors cannot avoid payment obligations solely on the grounds that the agreement was made underhand.

In banking practices and the disbursement of loan facilities, an underhand credit agreement refers to a written agreement regarding the provision of credit facilities made and signed by the bank (creditor) and the borrower (debtor) without the involvement of a signing process before an authorized public official, such as a Notary. Conceptually, based on the principle of freedom of contract enshrined in Article 1338 of the Indonesian Civil Code (KUHPerdata), any legally made agreement serves as law for those who make it. This confirms that the absence of an authentic form does not automatically invalidate the financial agreement. The existence of an underhand document remains recognized by the Indonesian civil law system as a valid legal bond that binds both parties, provided that all legal requirements for an agreement as stipulated in Article 1320 of the Civil Code—such as consensus, capacity, a specific object, and a lawful cause—have been fully met.

The legal position of an underhand agreement in the legal relationship between banking institutions and debtors essentially gives rise to distributive rights and obligations equivalent to an authentic agreement. For the bank, the document serves as a juridical foundation to disburse loan funds and collect repayments in accordance with the agreed-upon timeframes and interest rates. For the debtor, this bond grants the right to the disbursement of credit facility funds while simultaneously imposing the financial obligation to make periodic installments. As long as the debtor performs their obligations properly and no disputes arise in the future, the binding force of this underhand legal bond operates fully without procedural hurdles, establishing equally strong moral and legal obligations for the parties to abide by the clauses contained therein.

The fundamental difference and crucial aspect of the position of an underhand credit agreement lies in its evidentiary force in court in the event of payment default or breach of contract. An authentic document made by a Notary possesses perfect and binding evidentiary force (*volledig en bindend bewijskracht*), where the content and date of the act are considered true without the need for additional proof. Conversely, in accordance with the provisions of Article 1875 of the Civil Code, an underhand agreement only acquires evidentiary force equated to an authentic deed if the debtor explicitly acknowledges the truth of the signature and the contents of the document. If the debtor denies or refutes their signature before the panel of judges, the burden of proof shifts entirely to the bank to prove the authenticity of the document through criminal laboratory examinations or signature specimen matching, which naturally requires a more complicated evidentiary process.

In relation to the binding of collateral, the underhand agreement format has significant juridical limitations, particularly concerning banking property rights. For collateral in the form of land and buildings, Indonesian law mandates the registration of a Mortgage Right based on a Deed of Granting Mortgage Rights made by a Land Deed Official. Similarly, movable collateral requires the registration of Fiduciary Security through a notarial deed. If a credit facility is solely based on the core underhand agreement without authentic binding of its collateral, the banking institution will not attain the status of a separatist creditor (preferred creditor). Consequently, the bank loses its preferential right or preemptive right to directly execute the collateral if the debtor falls into bankruptcy or defaults, and the bank's position drops to that of a concurrent creditor (kreditur konkuraten) who must share the debtor's remaining assets proportionally with other creditors.

From the perspective of risk management and banking compliance, the use of underhand credit instruments is generally limited to loan facilities with limited nominal values, small-scale consumer loans, or unsecured loans (KTA). This is done to balance operational efficiency and business process flexibility with the lurking legal risks. Although banking laws and regulations from the Financial Services Authority (Otoritas Jasa Keuangan or OJK) and Bank Indonesia do not explicitly prohibit the creation of credit underhand, the banking industry remains required to apply prudential banking principles. Banks typically strengthen the validity of these underhand documents through waarmerken (registration in a special notary book) or legalization by a Notary to ensure a certain date and verify the identity of the parties signing the agreement.

The position of an underhand credit agreement in the legal relationship between banks and debtors is valid, binding, and possesses legal certainty, yet it has weaknesses in terms of executory evidentiary force and property collateral protection. Underhand documents remain effective legal instruments to facilitate fast and practical financial transaction needs. Nevertheless, for the disbursement of large-scale credit with high risk levels, banks consistently combine or transfer the agreement format into an authentic notarial deed to guarantee maximum legal protection, swift collateral execution certainty (parate executie), and minimize potential disputes regarding document validity in the future.

However, binding force is not the same as evidentiary force. An authentic deed has a distinct evidentiary character because it is drawn up by or before an authorized public official. A private deed relies more on the parties' acknowledgement of the signature and its contents. This difference constitutes the primary legal risk of using private deeds in credit relations.

3.2. Balance of Position of Creditors and Debtors

A credit relationship is a reciprocal one. The bank is obligated to provide funds as agreed, while the debtor is obligated to fulfill payments. Conversely, the bank has the right to collect, and the debtor has the right to be treated according to the terms of the contract.

The principle of balance is necessary to prevent the contractual relationship from devolving into one that grants unlimited power to one party.

In financial law and contractual relationships, the balance of position between creditors and debtors is a fundamental principle aimed at ensuring fairness and equity. Under the principle of freedom of contract, both parties theoretically enter an agreement on equal footing to negotiate terms that mutually serve their interests. This equilibrium is crucial for fostering a healthy credit environment, allowing financial institutions to lend safely while enabling borrowers to access essential capital for consumption or business expansion.

Despite this theoretical ideal, an inherent power imbalance frequently characterizes practical creditor-debtor relationships. Financial institutions, acting as creditors, typically hold dominant economic positions and utilize standardized, pre-printed adhesion contracts. Consequently, debtors are often placed in a "take-it-or-leave-it" scenario with minimal bargaining power to alter interest rates or penalty clauses. This structural asymmetry can easily lead to an unequal distribution of contractual risks favoring the stronger party.

To mitigate this structural disparity, legal frameworks and consumer protection laws actively intervene to restore fairness. Regulatory bodies enact strict rules prohibiting abusive contractual terms, such as unreasonable exoneration clauses that completely absolve creditors from liability. Additionally, transparency mandates require creditors to clearly disclose all loan-associated costs, risks, and obligations, safeguarding debtors from predatory lending practices and ensuring their fundamental rights are respected.

Conversely, maintaining this balance does not imply favoring the debtor while ignoring the creditor's legitimate rights. Creditors face substantial financial default risks, necessitating robust legal protections to ensure the recovery of disbursed funds. The legal system provides vital mechanisms like collateral binding—such as mortgages and fiduciary security—and priority execution rights. Protecting the creditor is essential, as the inability to recover assets could jeopardize broader economic stability and reduce future credit availability.

The cornerstone of maintaining this equitable relationship is the universal legal principle of good faith (*bona fides*). Good faith must govern every stage of the credit lifecycle, from initial negotiation to debt execution or restructuring. For creditors, it means conducting fair assessments and avoiding deceptive practices; for debtors, it requires honest disclosure of financial capacity and a genuine commitment to fulfilling repayment obligations.

In conclusion, the balance of position between creditors and debtors is not about achieving absolute identical power, but rather ensuring proportional legal protection and a fair allocation of duties. A well-functioning legal system harmonizes the creditor's need for security and repayment certainty with the debtor's right to fair treatment. Sustaining this delicate equilibrium is essential for promoting economic growth, maintaining public trust, and upholding justice in commercial transactions.

Bank credit agreements often take the form of standard agreements drafted by the bank. This situation makes the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code crucial. The contents of the agreement must be understandable, not contrary to the law, and its implementation must pay attention to propriety. Sjahdeini (1993) places freedom of contract in credit agreements in a relationship that is inseparable from the need for balanced protection for the parties.

Balancing does not eliminate the bank's rights as a creditor. The bank retains the right to collect and take legal action when the debtor defaults. Conversely, the debtor cannot use the principle of balancing as an excuse to avoid agreed obligations. What is required is a balance in the exercise of rights, procedures, and legal consequences.

3.3. Cancellation of Agreement and Prohibition of Unilateral Actions

Article 1266 of the Civil Code needs to be included in discussions regarding default and cancellation. This provision relates to the conditions for cancellation in reciprocal agreements. Within the legal framework of contracts, cancellation due to default is principally pursued through the courts.

This is important to distinguish between the bank's right to collect or take agreed-upon actions and the cancellation of an agreement due to the law of default.

In banking practice, clauses regarding default and accelerated repayment must be read in conjunction with the terms of the agreement and applicable law. Banks may not use contractual clauses as a basis for actions that exceed their legal authority. Conversely, debtors are also obligated to honor their agreed-upon obligations.

This principle provides space for balanced resolution. When a dispute arises regarding a breach of contract, the parties can first seek resolution through an agreed-upon mechanism.

If a resolution cannot be reached, the dispute can be resolved through an authorized forum. Thus, legal certainty is determined not only by the content of the agreement but also by how it is implemented.

3.4. Strength of Proof of Credit Agreement Deed Under Hand

Article 1874 of the Civil Code recognizes private writings as documents created without the intervention of a public official. Furthermore, Article 1875 provides strong evidentiary force for private writings acknowledged by the signing party. Consequently, private credit agreements can be important evidence in civil disputes.

Hikmah's (2020) research at the Semarang District Court showed that when a private deed is not denied, its evidentiary force is strong; conversely, if the signature is denied, the party submitting the deed must prove the document's authenticity with other evidence.

These findings indicate that evidentiary risk is an aspect that banks must consider when using private deeds.

Musyafah (2019) also pointed out the consequences for banks if credit agreements lose their authentic character. The burden of proof can be greater for banks, especially if the debtor denies their signature or the contents of the document. Therefore, procedures for identification, signing, document retention, and credit administration oversight are crucial for legal risk mitigation.

A private agreement drawn up following clear procedures, legally signed by the parties, and supported by identity documents and other credit documentation can strengthen the bank's evidentiary position.

If necessary, legalization or waarmerking can serve certain functions related to the date and/or existence of the document, but does not alter the substance of the agreement between the parties.

3.5. Types of Credit Facilities that Use Underhand Agreements

The type of credit facility that uses an underhand agreement must be determined based on the results of field research and the bank's internal regulations applicable to the research object.

This is important because not all credit products have the same document format. Differences in credit value, intended use, type of collateral, risk, and loan termination policies can influence the form of the loan agreement.

In contemporary commercial banking, the selection of legal documentation for credit facilities is heavily driven by a balance between operational efficiency and risk exposure. Underhand credit agreements—agreements executed directly between the lending institution and the borrower without the formal involvement of a notary—are predominantly utilized for specific types of credit facilities where legal complexity and transactional costs can be minimized. Banks typically deploy these underhand instruments for low-nominal, standardized, high-volume, or unsecured lending products. By bypassing the requirement for an authentic notarial deed, financial institutions can significantly streamline the loan origination process, reduce administrative overhead, and deliver rapid fund disbursements to borrowers while maintaining a legally binding contractual relationship governed by general contract law principles.

One of the most prominent categories of credit facilities utilizing underhand agreements is Unsecured Personal Loans (often referred to regionally as Kredit Tanpa Agunan or KTA). Because these facilities are granted based solely on the borrower's creditworthiness, income verification, and repayment history rather than physical collateral, the traditional legal advantages of an authentic deed—such as establishing perfected security interests like mortgages or fiduciary guarantees—are inapplicable. Consequently, executing an underhand contract is both economically practical and legally sufficient. The underhand agreement clearly outlines the principal amount, interest rate structure, repayment schedule, and default penalties, providing a straightforward legal foundation for the bank to pursue debt recovery through standard civil procedures should default occur.

Small Business Microloans and Working Capital Facilities designed for micro, small, and medium enterprises (MSMEs) also rely extensively on underhand credit agreements. To foster financial inclusion and support small-scale commercial activities, banks and microfinance institutions design credit products with minimal procedural barriers. For lower-value working capital loans or subsidized government credit programs, requiring borrowers to pay notary fees for authentic deeds would create an unnecessary financial burden that disincentivizes borrowing. Instead, banks utilize pre-approved, standardized underhand agreements, often accompanied by simple personal guarantees (borgtocht) or informal pledges of business inventory, allowing small business owners to access liquid capital quickly to maintain daily operations.

Consumer Revolving Credit facilities, including credit card issuance agreements and flexible overdraft lines, represent another key area where underhand agreements are standard practice. When a customer applies for a credit card or a revolving credit line, the legal relationship is established through a standardized application form coupled with an underhand terms and conditions agreement. This framework allows the borrower to repeatedly draw down and repay funds up to an approved limit without the need to execute fresh legal instruments for each transaction. The underhand agreement governs the continuous operation of the credit line, detailing fee structures, interest calculation methods, billing cycles, and credit limit adjustment protocols in a flexible and repeatable manner.

The modern financial ecosystem has further expanded the scope of underhand credit agreements through Financial Technology (Fintech) Peer-to-Peer (P2P) lending platforms and digital Buy-Now-Pay-Later (BNPL) credit facilities. These digital credit products operate almost exclusively on electronic underhand agreements integrated into mobile applications and web platforms. Using certified electronic signatures (e-Sign) and automated credit scoring algorithms, lenders execute underhand digital contracts instantly upon credit approval. Regulatory frameworks governing digital financial services recognize these electronic contracts as valid underhand documents, provided they satisfy legal requirements for authenticity, user consent, and data integrity, thereby enabling instant micro-lending at massive scale.

In this study, credit types were identified by grouping facilities based on their characteristics and then examining the agreement forms used. Products commonly recognized in banking portfolios, such as consumer and productive loans, cannot automatically be declared as private deeds without reviewing documents at the branch offices where the research took place.

As a research instrument, the identification can be arranged in the following table. The check marks must be filled in based on the documents actually reviewed and/or statements from authorized bank officials.

No.	Credit Type/Facility	Objective	Form of Agreement	Guarantee	Information
1	Consumer credit	Consumptive needs	Filled in based on BNI documents	Filled based on documents	Field verification
2	Productive credit	Business capital/investment	Filled in based on BNI documents	Filled based on documents	Field verification
3	Micro/retail credit	Business needs	Filled in based on BNI documents	Filled based on documents	Field verification
4	Other facilities	According to product	Filled in based on BNI documents	Filled based on documents	Field verification

Table Identification of forms of agreement based on the results of field research
Source: Primary research data, processed.

3.6. Credit Distribution Practices and BNI's Position as a Creditor

As a commercial bank, BNI performs the functions of collecting and distributing funds. Credit disbursement necessitates documentation that demonstrates the legal relationship between the bank and the debtor. Therefore, credit agreements should be viewed as part of credit risk management, not merely as administrative documents.

Banks have an interest in having credit documents available for collection and as evidence in the event of a dispute. From the debtor's perspective, these documents provide certainty regarding rights and obligations. Therefore, the existence of private credit agreements must be based on the principles of legal certainty and two-way legal protection.

The use of underhand agreements can also be linked to efficiency considerations. Research by Utami and Zanibar (2017) on retail credit indicates that the practice of using underhand documents can be related to credit ratings, risk levels, customer trust, and cost efficiency. Although the study was conducted at a different bank, the findings are relevant for comparison, not as direct evidence of BNI's practices.

Because the research object is the BNI Kudus Branch Office, conclusions regarding product types, credit ratings, authorized signatories, and internal procedures must be based on primary research data. This principle is crucial to prevent the research results from confounding other banks' policies with BNI's.

3.7. Analysis of Legal Power from the Perspective of Legal Certainty

The legal force of a private credit agreement can be analyzed through three layers. First, the validity of the agreement under Article 1320 of the Civil Code. Second, its binding force under Article 1338 of the Civil Code. Third, its evidentiary force under Articles 1874 and 1875 of the Civil Code.

These three layers must be distinguished to avoid the conclusion that a private deed lacks legal force simply because it was not drawn up by a notary.

From a legal certainty perspective, an agreement must provide clarity regarding the identity of the parties, the loan amount, the term, interest, payment obligations, collateral, default, and dispute resolution. The clearer these elements, the less room for disputes regarding the parties' intentions and obligations.

From a legal protection perspective, a balance between creditors and debtors must be maintained. Banks need certainty to protect their disbursed funds, while debtors need protection from unilateral actions. A sound credit agreement should be an instrument that balances both interests equally.

3.8. Legal Implications if the Debtor Defaults

When a debtor defaults, the credit agreement serves as the primary document used to determine the breached obligations. The bank can initiate collection and settlement actions in accordance with the contractual provisions and applicable law.

If there is a dispute regarding the existence or content of the agreement, the strength of the documentary evidence is crucial.

If the signature and contents of the private agreement are acknowledged by the debtor, their status as evidence becomes strong. If denied, further evidence may be required. Therefore, banks must maintain complete credit documentation, including identity documents, proof of disbursement, proof of payment, correspondence, and other supporting documents.

A good credit agreement should also clearly stipulate the mechanism for handling defaults. Clauses regarding maturity dates, penalties, accelerated repayment, restructuring, and dispute resolution should be read in conjunction with other legally binding provisions. This helps maintain a balance between the interests of the bank and the debtor.

4. Conclusion

The research conclusion shows that private credit agreements remain binding as long as they meet the legal requirements of an agreement based on Article 1320 of the Civil Code and are legally made, thus subject to Article 1338 of the Civil Code. This binding force differs from its evidentiary force. Private deeds can be strong evidence if the signature and contents are acknowledged, but when denied, the party submitting them needs to strengthen the evidence with other evidence. In credit relations, the position of the bank as creditor and debtor must be placed in balance, while cancellation due to default must comply with the mechanism of Article 1266 of the Civil Code. The use of private agreements must also be supported by adequate credit administration and internal procedures. One recommendation is for banks to ensure that every underhand credit agreement is drawn up with clear identification and authority of the parties, with verifiable signing procedures, proper document retention, and clauses that do not create an unreasonable imbalance. Empirical research at the BNI Kudus Branch Office also needs to document in detail the types of credit facilities that actually use underhand agreements, as this must be based on applicable internal documents and policies. This way, legal certainty for banks and legal protection for debtors can be implemented proportionally.

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