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The Role of The Position of a Notary in Bank Credit Agreements

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ABSTRAK

Kedudukan notaris sebagai pejabat umum diatur dalam Pasal 1 Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris. Notaris memiliki kewenangan untuk membuat akta otentik yang memiliki kekuatan pembuktian yang kuat serta memberikan kepastian hukum. Dalam konteks pemberian kredit bank, peran notaris menjadi sangat penting untuk menjamin perlindungan hukum bagi kreditur maupun debitur. Namun demikian, penggunaan jasa notaris dalam proses perjanjian kredit tidak lepas dari berbagai hambatan. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual, guna menganalisis kerangka hukum serta pertimbangan praktis dalam penggunaan jasa notaris pada proses perjanjian kredit bank. Tujuan dari penelitian ini adalah untuk mengkaji pentingnya keterlibatan notaris dalam perjanjian kredit serta mengidentifikasi faktor-faktor penghambat yang memengaruhi keputusan untuk melibatkan notaris. Hasil penelitian menunjukkan bahwa terdapat beberapa faktor yang dapat menjadi hambatan dalam pelibatan notaris dalam perjanjian kredit bank. Faktor-faktor tersebut meliputi: (1) Faktor kebijakan bank, yang umumnya didasarkan pada peraturan internal atau keputusan direksi; (2) Faktor risiko kredit, khususnya terkait dengan jenis dan sifat agunan (baik bergerak maupun tidak bergerak); dan (3) Faktor nilai kredit, di mana besaran kredit yang diberikan memengaruhi kebutuhan untuk melibatkan notaris. Faktor-faktor ini menunjukkan bahwa keputusan untuk menggunakan jasa notaris dipengaruhi oleh kombinasi pertimbangan hukum, risiko, dan kebijakan internal bank. Penelitian ini menekankan pentingnya peran notaris dalam memberikan kepastian hukum dan perlindungan bagi semua pihak dalam transaksi kredit, serta menyarankan agar kerangka regulasi yang lebih jelas dapat meningkatkan efektivitas jasa notaris di sektor perbankan.

Kata Kunci: Notaris, Perjanjian, Kredit Bank

ABSTRACT

The position of a notary as a public official is regulated in Article 1 of Law Number 2 of 2014, which amends Law Number 30 of 2004 concerning the Position of a Notary. A notary is granted the authority to draw up authentic

deeds that serve as strong legal evidence and provide legal certainty. In the context of bank credit granting, the role of a notary becomes vital in ensuring legal protection for both creditors and debtors. However, the utilization of notary services in the credit agreement process is not without challenges. This study employs a normative juridical research method, with a statutory and conceptual approach, to analyze the legal framework and practical considerations involved in the use of notary services during the bank credit agreement process. The purpose of this research is to examine the significance of notary involvement in credit agreements and to identify the inhibiting factors that influence the decision to involve a notary. The findings reveal that there are several factors that can hinder the involvement of notaries in bank credit agreements. These include: (1) **Bank policy factors**, which are often based on internal regulations or board of directors' decisions; (2) **Credit risk factors**, particularly related to the type and nature of collateral involved (movable or immovable assets); and (3) **Credit value factors**, where the amount of credit extended determines the necessity of involving a notary. These factors illustrate that the decision to engage a notary is influenced by a combination of legal, risk-related, and internal policy considerations.This study highlights the importance of notary involvement in ensuring legal certainty and protection for all parties in credit transactions and suggests that a clearer regulatory framework may enhance the effectiveness of notary services in the banking sector

Keywords: Notary, Agreement, Bank Credit

INTRODUCTION

Based on Article 1313 of the Civil Code, the definition of an agreement is "An agreement is an act in which one or more people bind themselves to one or more other people".

If observed, the elements in an agreement include:

a) Participation from at least two parties;
b) There is agreement between the parties involved;
c) Goals to be achieved;
d) Achievements to be implemented;
e) Can be in oral or written form;
f) Contain certain conditions as part of the contents of the agreement.

According to Ahmadi Miru, there are several principles in the agreement, including:(Miru, 2007)

1. Principle of Consensualism: A contract or agreement is formed when an agreement is reached, which means that the agreement creates rights and obligations for the parties involved.
2. Principle of Freedom of Contract: Freedom of contract is an important principle in contract law. This principle often refers to Article 1338 paragraph (1) BW which states that "all agreements made legally apply as law for those who make them."

The principle of freedom of contract according to Indonesian contract law includes the scope stated by Sutan Remy Sjahdeini, explains:

(1) Freedom to make or not make agreements;
(2) Freedom to choose the party with whom he wishes to make an agreement;
(3) Freedom to make or choose the cause of the agreement to be made;
(4) Freedom to determine the object of the agreement;
(5) Freedom to determine the form of an agreement;
(6) Freedom to accept or deviate from optional provisions of the law.(Sjahdeini, 1993)

3. Principle of Binding Contracts (Pacta Sunt Servanda)

   Every individual involved in a contract is bound by the obligation to fulfill the contents of the contract. Contracts carry promises that must be kept, and these promises have the same legal force as the law. This is confirmed in Article 1338 paragraph (1) BW which states that "all agreements made legally apply as law for those who make them."

4. Principle of Good Faith

   The principle of good faith is regulated in Article 1338 paragraph (3) BW which emphasizes that the implementation of the agreement must be carried out in good faith. Although the emphasis on good faith generally occurs at the pre-agreement stage, this principle must always be the basis at every stage of the agreement to ensure that the interests of all parties are always taken into account by the other party.

Apart from that, Article 1320 of the Civil Code states the conditions for the validity of an agreement, including:

1. There is an agreement that binds the parties;
2. Legal capacity to carry out the engagement;
3. There are certain main issues which form the substance of the agreement;
4. There is a reason that does not violate the law.

HMA Savelberg, in a book written by Mariam Darus Badrulzaman in 1989 (page 21), explains that credit has two meanings. First, as the basis of an agreement where someone has the right to demand something from another party. Second, as a guarantee where someone hands over something to another person with the intention of getting back what was handed over.

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Article 1 number 11, defines "Credit is the provision of money or bills that can be equated with it based on or a loan agreement between the Bank and another party which requires the borrower to pay off the debt after a certain period of time with interest".

According to Raymond P. Kent, as quoted by Thomas Suyatno, credit is the right to receive payment or the obligation to make payment at the requested time or in the future in return for the delivery of goods at this time. (Suyatno, 2007)

Every credit agreement between the creditor and debtor must be realized in the form of a written credit agreement or credit agreement. The definition of a credit agreement is a basic agreement that is formal and real. As the main agreement, the guarantee agreement is considered as an assessor, the existence and expiration of which depends on the main agreement. The real nature means that the existence of a credit agreement is determined by the delivery of money by the bank to the customer. (Badrulzaman, 1987)

In Muhammad Djumhanna's book (2012: 43), Ch. Gatot Wardoyo explained several functions of credit agreements. First, the credit agreement acts as the main agreement that determines the validity or cancellation of other agreements, such as collateral agreements. Second, the credit agreement functions as evidence that regulates the limits of rights and obligations between creditors and debtors. Third, the credit agreement acts as a tool for monitoring credit.

In providing credit, banks must carry out an in-depth analysis of the debtor customer's intentions, abilities and ability to pay their obligations. After the credit is approved, the bank needs to monitor the use of the credit, as well as the debtor's ability and compliance in fulfilling its obligations. Apart from that, banks are also expected to review, assess and bind the collateral provided by debtors so that they comply with applicable requirements.

Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning banking stipulates that commercial banks that provide credit or financing based on sharia principles must believe in the intentions, abilities and capabilities of debtor customers to pay off their debts or return financing in accordance with by agreement. Commercial banks are also required to have and implement credit or financing guidelines based on sharia principles in accordance with the provisions stipulated by Bank Indonesia.

Muhammad Djumhana defines banking law as a collection of legal regulations that regulate the activities of bank financial institutions, covering all aspects, seen in terms of their essence and existence, as well as their relationship with other areas of life.

Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking provides definitions related to banking. According to the law:

1. Banking refers to all aspects related to banks, including institutions, business activities, as well as methods and processes for carrying out business activities.
2. Banks are defined as business entities that collect funds from the public in the form of savings and allocate them back to the community in the form of credit or other forms, with the aim of

improving the standard of living of many people.

Article 1 numbers 3 and 4 of Law Number 10 of 1998 further divides the types of banks based on their activities:

a. Commercial Banks are banks that operate either conventionally or based on sharia principles. In their activities, commercial banks provide services in payment traffic. Commercial banks can also specialize or provide greater focus on certain activities, such as long-term financing, financing for cooperatives, developing entrepreneurs from economically weak groups/small entrepreneurs, developing non-oil and gas exports, and developing housing construction.
b. Rural Credit Banks are banks that carry out business activities, both conventionally and based on sharia principles, without providing services in payment traffic. For example, Rural Credit Banks is not involved in providing payment services.

The most significant provision from the description above is that banks, in providing credit, must be based on the existence of a guarantee. According to Article 2 paragraph (1) of the Decree of the Directors of Bank Indonesia Number 23/69/Kep/Dir dated 28 February 1991 concerning Guarantees for Providing Credit, guarantees in providing credit are defined as the bank's confidence in the debtor's ability to repay the credit in accordance with the agreement. Before providing credit, banks need to carry out a thorough assessment of the debtor's character, abilities, capital, collateral and business prospects in order to gain this confidence. (Djumhana, 2012)

The Civil Code, in Article 1131, does not specifically discuss the definition of collateral. However, the article explains that "All the debtor's property, whether movable or immovable, whether existing or new that will exist in the future, is borne by all his individual obligations."
Regarding credit collateral, the law notes that collateral is additional collateral given by debtor customers to banks in order to provide credit or financing facilities based on sharia principles (Article 1 Number 23 of Law Number 10 of 1998 concerning Amendments to Law Number 7 1992 concerning Banking).

In credit agreements between customers and banks, the role of a notary is very important. Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries states "A notary is a public official who has the authority to make authentic deeds and other authorities as intended in this Law".
In general, bank credit agreements are prepared in writing and follow a standard agreement format. The agreement can be produced through a private deed or an authentic deed. To make it easier to produce credit-related documents, especially in authentic deed format, banks usually appoint a notary as a partner or partner.(Budiono, 2007)

Article 1 Law Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notaries confirms that a notary is a public official who has the authority to make authentic deeds and has other authorities in accordance with the law. The existence of a notarial deed is closely related to the role of the notary himself. Article 1868 of the Civil Code explains that an authentic deed is a deed whose form is determined by law, made by or before an authorized public official, and in the place where the deed is made.

The elements of an authentic deed in this article include:

1. making and ratifying the deed in accordance with the law
2. making by or before an authorized legal official
3. manufacture at a place determined by the authorized official. (Notodisoerjo, 1993)

In a credit agreement, bank customers are required to provide an object as collateral. In a legal context, collateral is a collection of norms that regulate or relate to collateral in the context of debts and receivables, such as in money loans. The credit guarantee function in a credit agreement involves several aspects, including as a step to guarantee credit repayment, as a motivational driver for debtors, and as a related element in banking operations. (Bahsan, 2007)

The delivery of credit collateral by the customer to a banking institution can be in the form of securities, goods (materials), or a promise to guarantee debt, making it material or personal collateral. Material collateral gives rights to the holder of the credit collateral, which is usually assessed before being accepted as an object of collateral for the loan provided, through an assessment from a legal and economic perspective. (Bahsan, 2007)

The role of a notary in making banking credit agreement deeds is very important, where notaries as public officials are required to act professionally and bridge the interests of creditors and debtors in making credit agreement deeds. However, in practice, banking institutions tend to use standard credit agreements for the efficiency of banking procedures and the security of providing credit.

The presence of a notary cannot be separated from the public's need for strong evidence in every legal incident. Notaries are expected to carry out their duties properly in accordance with the Law on Notary Positions and the Notary Code of Ethics, which is equipped with strict sanctions for violators. (Prodjodikoro, 2000)

The cooperation agreement between the bank and the notary is often based on an agreement where the notary is asked by the bank to make a credit agreement between the bank and the debtor. Although the notary is in principle independent, in practice, the agreement clauses are mostly determined by the bank. Law Concerning Notary Positions and Notary Code of Ethics Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 does not expressly prohibit notaries from

entering into agreements with certain parties, but in carrying out their duties, notaries are expected to act honestly, independently, impartially and safeguard the interests of the parties involved. Credit agreements in providing credit play an important role, and special attention is given to both banks as creditors and customers as debtors. In the context of providing credit, legal and ethical rules must be adhered to to maintain fairness and integrity in every banking transaction.

The role of a notary is very vital in the process of binding collateral at the bank. If credit runs smoothly and payments are made on time, banks can avoid risks; However, if credit experiences problems and does not go according to plan, the bank may face the risk of bad credit. Handling bad debts is often complex, and one of the factors that can cause difficulties is suboptimal collateral binding carried out by notaries, so that banks end up bearing real losses.

Every individual wants legal certainty and has written evidence of the transactions or agreements they make. Therefore, agreements or bonds made by banks in a juridical context require the involvement of a notary as a public official who has the authority to make authentic deeds. In the case of authentic agreements or bindings made by banks and their customers, the notary functions as a party who can provide legal protection by making authentic deeds. The existence of a notary is important because his expertise in drafting authentic deeds provides legal protection to all parties involved in the agreement.

According to Article 15 paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, it states: "Notaries have the authority to make authentic deeds regarding all contractual acts and provisions required by statutory regulations and /or as desired by those interested to be stated in the Authentic Deed, guaranteeing certainty of the date of making the deed, storing the deed, providing grosse, and a copy of the deed excerpt."

In making a notarial deed, the notary can provide advice if there is a difference of opinion between the parties regarding the need for a deed in the agreement. A notarial deed drawn up before a notary as a public official has formal and material evidentiary value, which can support the principle of prudence in the process of granting credit by the bank.

Notary services as public officials who prepare authentic deeds are very important in banking business activities, especially in making bank credit agreement deeds involving customers and banks. The function of a notary in ensuring the correctness of the contents of a bank credit agreement is regulated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary.

The role of a notary is very necessary for banks regarding legal risks regarding assets used

as credit collateral by debtors. In a problem credit situation, a notary helps ensure that the sale of collateral does not cause legal problems in the future. Therefore, notary services have crucial value in the banking world, especially in managing transactions with customers that are regulated through agreements or contracts. In order to avoid risks such as denial, banks tend to choose to make agreements in the form of authentic deeds.

However, there is a research gap in practical implementation, namely the suboptimal use of notary services in every stage of the bank credit agreement process, particularly in cases involving small-value loans or those without fixed collateral. Most previous studies have focused more on the general role of notaries, without specifically examining the inhibiting factors that affect notary involvement in the credit granting process from the perspective of internal bank policies and risk management. Based on the discussion above, the focus of this writing is the contribution of the notary position in bank credit agreements by Law Number 2 of 2014 concerning the Position of Notaries, as well as identifying the obstacles that notaries may face in issuing bank credit agreement deeds.

RESEARCH METHOD

In writing this scientific work, the author used a research method in the form of a normative research method by conducting research from library materials or secondary data. This type of legal research has the characteristic that law is a regulation written in statutory regulations and law is conceptualized as a rule or norm which is a benchmark for human behavior. The author conducted a study using a statutory and regulatory approach and a principles approach. The techniques for collecting legal materials used as references for writers come from books, literature, regulations, journals and the internet. The study was carried out on the application of the principles in the credit agreement, the implementation of the Notary's position in accordance with the provisions of statutory regulations and the obstacles thereto. This research was conducted to find out the role of the Notary in bank credit agreements.

RESULTS & DISCUSSION

1. Contribution of Notary Positions in Bank Credit Agreements According to Law no. 2 of 2014 concerning the Position of Notary

The definition of a notary is defined in Law No. 2 of 2014 concerning the Law on the Position of Notaries (UUJN), in article 1: "A public official is authorized to make authentic deeds regarding all deeds, agreements and authorities such as guaranteeing the certainty of the date, keeping the deed, providing grosses and copies or quotations and other authorities as intended in

the Law."

In Article 1 UUJN above is the implementation and provisions of Article 1868 of the Civil Code which explains: "an authentic deed is a deed which, in the form determined by law, is made by and/or before a public official authorized to do so, in the place where the deed is made. ."

In Article 1 of the Notary's Position Regulations, it is stated that notaries have the main task of making authentic deeds. According to Article 1870 of the Civil Code, this authentic deed provides absolute and perfect proof for the party who made it, confirming the truth of the contents of the deed.

Notaries have special authority in accordance with Article 15 paragraphs 1, 2 and 3 of Law Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions. A notary has the authority to make authentic deeds regarding deeds, agreements and stipulations that are required by statutory regulations or desired by the parties involved. The notary is also responsible for ensuring the certainty of the date the deed was made, storing the deed, and providing a grosse, copy and quotation of the deed. This authority cannot be transferred or delegated to other officials or persons as determined by law.

Apart from the main authority, notaries have additional responsibilities in accordance with paragraph (2) of Article 15 UUJN. This includes validating the signature, determining the exact date of the private document, recording the private document, making a copy of the deed, confirming the suitability of the photocopy to the original document, providing legal counseling, making deeds relating to land, and making auction minutes deeds. All of these actions are part of the authority and daily duties of a notary.

It is stated in Article 1 of the Regulations on the Notary's Office that he makes authentic deeds, which according to Article 1870 of the Civil Code will provide the parties who make them with absolute and perfect proof, meaning that what is written in the deed is indeed true.

A notary, apart from having the authority to make authentic deeds both by and in front of him, is a notary's main daily duties as explained in Article 15 paragraphs 1, 2 and 3 of Law Number No. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning Notary Positions (UUJN) which carries out the following actions:

1) The Notary has the authority to make authentic Deeds regarding all deeds, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, store the Deed, provide grosses, copies and quotations of the Deed, all of this as long as the deed is made is not also assigned or excluded to other officials or other

people as determined by law.

2) Apart from the authority as intended in paragraph (1), the Notary also has the authority to:
   a. Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
   b. Record letters privately by registering them in a special book;
   c. Make a copy of the original letter under your hand in the form of a copy containing the description as written and depicted in the letter concerned;
   d. Validate the suitability of the photocopy with the original letter;
   e. Providing legal counseling regarding the making of Deeds;
   f. Make deeds relating to land; or
   g. Make a deed of auction minutes.

Article 1 of the Notary's Position Regulations states that notaries are responsible for drawing up authentic deeds. In accordance with Article 1870 of the Civil Code, the making of the deed provides a basis for evidence that cannot be doubted and is perfect, confirming the truth of the contents of the deed. The main duties of a notary, apart from having the authority to make authentic deeds in his presence or in person, are explained in Article 15 paragraphs 1, 2 and 3 of Law Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions (UUJN). Notaries, in carrying out their duties, carry out the following steps:

1. A notary has the authority to make authentic deeds which include all deeds, agreements and stipulations required by statutory regulations or desired by interested parties. The notary is also responsible for ensuring the certainty of the date the deed was made, storing the deed, and providing a grosse, copy and quotation of the deed. This authority cannot be transferred or delegated to other officials or other persons as determined by law.
2. Apart from these powers, a notary can also:
   a. Validate the signature and establish the certainty of the date of the underwritten letter by recording it in a special book.
   b. Record letters privately by recording them in a special book.
   c. Make a copy of the deed from the original letter under your hand containing the description as written and depicted in the letter concerned.
   d. Validate the suitability of the photocopy with the original letter.
   e. Providing legal counseling related to making Deeds.
   f. Prepare Deeds relating to land.
   g. Prepare a Deed of auction minutes.
3. Apart from the authority as described in paragraphs (1) and (2), notaries also have other authorities regulated in statutory regulations. Giving this task shows that there is trust in

the officials, and the deeds they make have three evidentiary powers in law, including external evidentiary powers, formal evidentiary powers and material evidentiary powers.

The notary and the deed made are inseparable entities, because the authentic status of a notary's deed originates from his or her role as a public official which is mandated by law. Formally, from a juridical perspective, there are two types of credit agreements or ties applied by banks in providing credit:

1. Private credit agreement or bond; And
2. Agreement or credit bond drawn up by and before a notary (notariil) or authentic deed.

A private credit agreement or deed refers to an agreement providing credit by a bank to its customers which is agreed only between the creditor and debtor without involving a notary. There are several aspects that need to be understood regarding private credit agreements:

1. Private credit agreements have several weaknesses, including:
    a. If a violation occurs by the debtor and results in legal action through the judicial process, if the debtor denies his signature, it can result in the loss of legal force of the credit agreement that has been made. Article 1877 of the Civil Code notes that if a person denies his writing or signature, the Judge must order an examination of the veracity of the writing or signature before the Court.
    b. Because this agreement is only made by the parties and the form is provided by the bank, there is a possibility that there is a lack of data that should be completed for credit bond purposes. In fact, on the basis of service, an agreement can be signed even though the agreement form is still blank. This weakness can harm the bank in disputes with customers.
2. Archives or files of original documents are also a weakness of private agreements, because if the original is lost for any reason, the bank does not have archives or original files that can be used as evidence regarding the existence of the agreement. This can weaken the bank's position in dispute resolution.
3. In the case of a private credit agreement, the risk of the debtor denying or denying the contents of the agreement is very large. This is because the credit agreement form has been prepared by the bank, allowing the debtor to argue that he only signed a blank form without knowing the contents of the agreement.

A notarial (authentic) credit agreement deed refers to an agreement providing credit by a bank to its customers which is only drawn up by or in the presence of a notary. The definition of an authentic deed can be found in Article 1868 of the Civil Code, which states the following:

1. The party authorized to make an authentic deed is a notary, unless such authority is given to another official or individual. Other officials who have the authority to make authentic deeds include Registrars in court hearings, bailiffs in making exploits, Prosecutors or Police in preliminary examinations, Civil Registry Employees in making birth or marriage certificates, and the government in making regulations. Another person known as onbezoldigde-hulpmagistraten ex Article 39 paragraph (6) HIR can also make a verbal process for an authentic deed.
2. Authentic deeds are distinguished between those made "by" and those made "in the presence of" a public official. This distinction results in a distinction between the "verbal process of the deed" made by the notary and the "partij deed" made "in the presence of" the notary. In making the verbal process of a deed, the notary writes what he himself sees and experiences about actions and events, while in making a deed partij, the notary reads the contents of the deed, followed by signing by the presenters and witnesses.
3. The contents of an authentic deed include all "deeds" required by law to be made in an authentic deed, as well as all "agreements" and "authorization" desired by interested parties. An authentic deed can include "legal acts" required by law, such as making a testament, marriage agreement, or making a deed regarding the formation of a PT. In addition, an authentic deed can contain agreements desired by the parties, such as sale and purchase, lease, or control.
4. An authentic deed provides certainty regarding the date, where the notary is obliged to state the year, month and date when the deed was made. Violation of this obligation can cause the deed to lose its authentic character, making it only have the strength of a private deed (Article 25 S.1860-3) of the Regulation on the position of notary in Indonesia. (Waluyo, 2004)

Regarding notarial or authentic credit agreement deeds, several important aspects need to be understood:

1. Strength of Proof: In an authentic deed, there are three types of strength of proof. First, formal proof between the parties confirming that they have explained the contents. Second, material evidence that confirms that the events mentioned in the deed actually occurred. Third, external evidence which shows that on a certain date, both parties have appeared before a public official, that is a notary, to explain the contents.
2. Grosse Deed of Debt Acknowledgment: Another advantage of a notarial deed of credit agreement or acknowledgment of debt is the possibility of requesting a grosse Deed of Acknowledgment of Debt. This grosse has executorial power and is considered equivalent to a judge's decision. This is expected to speed up the execution process without going through

a lawsuit process which takes time and money.

3. Reliance on Notaries: Even though notaries play an important role, the presence of legal officers at banks also has a big role in making credit agreement deeds. In the credit agreement process or debt acknowledgment before a notary, the legal officer remains active in checking the legal aspects and required completeness. Even though there is the possibility of error, the notary is not only considered a party who is completely relied on, but also as a partner or partner. Banks will usually provide guidelines to notaries based on the model credit agreement that has been prepared by the bank. (Widjaja, 2000)

A notarial deed provides comprehensive evidentiary power regarding the contents of the deed which includes the wishes of the parties, the time of implementation, and the veracity of the parties signing. The importance of a notarial deed is closely related to the burden of proof for the documents supporting the agreement. In making a bank credit agreement deed, a notary is often faced with the challenge of his role as a Public Official who must guarantee the strong will of the parties and the correctness of approval of the contents of the credit agreement.

In the practice of bank credit agreements, notaries often have to be cooperative by following the bank's wishes, including the act of signing a deed brought by the debtor without the presence of the creditor. This is in line with Article 15 paragraph 1 UUJN, where a notary has the authority to make authentic deeds related to deeds, agreements and stipulations that are required by statutory regulations or that are desired by interested parties.

The role of notaries and PPATs as public officials cannot be separated from the provisions of statutory regulations, especially the Law on Notary Positions and Government Regulations governing Land Deed Making Officials (PPAT). They are recognized as public officials with the authority to make authentic deeds, including agreements, especially in bank credit agreements (Article 15 paragraph (1) UUJN) with other authorities in accordance with Article 15 paragraphs (1), (2), and (3) UUJN to serve the interests of public.

In granting credit, notaries have an important role, especially when the credit agreement involves mortgage or fiduciary rights. Notaries are used to ratify and make Deeds of Imposition of Mortgage Rights in the case of credit agreements that are encumbered with mortgage rights, and to create fiduciary obligations if movable objects are guaranteed by the debtor. (Widjaja, 2000)

Basically, even though the agreement between the debtor and creditor is signed in the presence of a notary after explaining the meaning of the contents of the deed, the notary's legalization of the standard deed of agreement can be accepted as strong evidence that the debtor

has agreed. Banking credit agreements can be made notarially or privately, but deeds made privately by the bank are often required to be ratified by a notary. Although legalization does not change the status of a private deed to be authentic, this action provides better legal force and proof than a private deed without legalization.

The requirement for credit agreements to be prepared in writing and in accordance with the format determined by Bank Indonesia is grounded in both legal regulations and established legal theories. Legally, this requirement is based on Law Number 7 of 1992 concerning Banking, as amended by Law Number 10 of 1998, which mandates that banks follow prudential principles in extending credit and comply with applicable regulations set by the banking authority. Bank Indonesia, through its regulations (Peraturan Bank Indonesia/PBI) and circular letters, often establishes standard formats and required content for credit agreements to ensure consistency, transparency, and proper risk management. These regulations are also intended to protect consumers by ensuring that loan agreements are not one-sided or overly burdensome, in line with the provisions of Law Number 8 of 1999 concerning Consumer Protection, particularly Article 18.

From a theoretical standpoint, the requirement reflects the principle of legal certainty (teori kepastian hukum), which ensures that agreements are clear, predictable, and enforceable. It also aligns with general contract law principles under the Indonesian Civil Code (KUHPerdata), specifically Articles 1320 and 1338, which emphasize the need for lawful consent, a clear object, and fairness in agreements. While credit agreements are often classified as standard form contracts (perjanjian baku), they must still maintain a fair balance between the rights and obligations of banks and customers. Moreover, from a regulatory theory perspective, state intervention in private contracts, especially in sectors like banking, is justified to uphold public interest, financial stability, and consumer protection.

Therefore, the use of standardized credit agreement formats as mandated by Bank Indonesia not only fulfills legal and regulatory obligations but also serves to uphold legal certainty and fairness in the banking sector. The credit agreement must be prepared in writing in the form and format determined by Bank Indonesia, containing information regarding the amount, time period, procedures for credit repayment, and other credit requirements in accordance with the credit approval decision. These principles are the basis for making credit agreements, and these principles have been recognized as the main guidelines. Some banks can add provisions as needed, making it a standard agreement format in the banking sector, especially in credit agreements.

The process of making a bank credit agreement deed begins with a credit application from the

debtor. After the collateral assessment and debtor eligibility is approved, the credit amount is determined, and a Credit Approval Notification Letter (SPPK) is issued containing details of the credit amount, interest, term, provisions and other costs. This stage involves negotiations between debtors and creditors. After the contents of the SPPK are approved and signed by the debtor, the SPPK becomes the basis for making a credit agreement. (Untung, 2000)

2. Barriers to Notaries in Issuing Bank Credit Agreement Deeds

The involvement of notaries in the preparation of bank credit agreement deeds is essential for ensuring legal certainty, validity, and enforceability of the agreement. However, in practice, several barriers hinder notaries from playing an optimal role in this process. These barriers include internal bank policies that limit the use of notarial services, credit risk considerations based on the type of collateral provided, and the value of the credit extended. Smaller or unsecured loans, for example, are often excluded from notarial documentation due to cost-efficiency concerns or simplified internal procedures. The impact of these barriers is significant, as they may reduce the legal protection available to both creditors and debtors, weaken the evidentiary strength of credit agreements, and potentially lead to legal disputes or enforcement difficulties in the future. Without notarial authentication, the legal status of credit agreements may become vulnerable, especially in cases involving default or contested claims. Therefore, addressing these barriers is critical to reinforcing the role of notaries in the credit process and ensuring stronger legal safeguards in banking transactions.

There are factors that can influence or become obstacles in the use of notary services in the process of granting credit or credit agreements carried out by banks. One of the main factors is bank policy, which is reflected in the board of directors' decisions governing the use of notary services.

1. Bank policy factor

The bank's discretion factor plays a key role in determining whether notary services will be fully utilized in the credit agreement process. Not all credit agreements made by banks always involve the services of a notary, because this policy is regulated in the Company Handbook. The Company Handbook is the main reference in credit activities and contains instructions regarding credit agreements. Some of the aspects covered in the book involve:

a. A credit agreement is a bond between parties to determine the rights and obligations in a loan agreement between the debtor and the bank.
b. The preparation of credit agreements, whether notarized or privately, must follow a

standard format based on credit law guidelines.

c. The credit agreement must be signed by a debtor who has authority, is authorized to sign, and has legal capacity. If the competent debtor cannot sign the credit agreement, then the credit cannot be disbursed.
d. Signing credit agreements and supporting agreements through authorized institutions is not permitted.
e. If there are clauses in the credit agreement that are not in accordance with the decision of the credit management unit, changes can be made with the approval of the credit division and the division that handles legal matters.

It is important to pay attention to and follow the bank's policies stated in the Company Handbook to determine whether a credit agreement requires the involvement of a notary or can be completed by other means.

2. Risk level factors

The second factor that influences the use of notary services in the process of granting bank credit is the level of credit risk associated with the transaction. If the level of credit risk is considered high, the bank requires collateral as a security measure. In general, credit with a high level of risk requires the use of notary services. In this context, the involvement of a notary occurs through making a deed of encumbrance of mortgage rights (APHT) for the collateral provided, especially for collateral for immovable objects, as well as by binding fiduciaries for collateral for movable objects.

3. Factor in the size of the credit value

The third factor that plays a role in the decision to use notary services is the amount of credit provided. For credit with a value of more than IDR 5,000,000 (five million), the bank requires the involvement of a notary in the credit agreement process and binding of mortgage rights, in accordance with bank policy and Bank Indonesia Regulation PBI No. 7/3/PBI/2005 concerning the Maximum Limit for Providing Commercial Bank Credit, as well as Decree. BI Director No. 27/162/KEP/DIR dated 31 March 1995 concerning Guidelines for Preparing Credit Policies for Commercial Banks. However, it should be noted that consumer credit given to Civil Servants often does not involve the services of a notary in practice, so that the credit agreement made is only a private agreement.

CONCLUSION

Article 15 paragraph (1) (2) and (3) Law no. 2 of 2014 concerning the Position of Notaries confirms that Notaries have a role as public officials who have the authority to make authentic deeds.

Especially in the context of notarial bank credit agreements, the role of a notary is very important because it provides legal protection for creditors and debtors. The function of a Notary also includes providing evidentiary power and other authorities that support services in the interests of the community.

Factors inhibiting the use of notary services in the process of granting credit/credit agreements provided by the bank:

a. Bank policy as outlined in the board of directors' decision letter regarding notary services in bank credit agreements;
b. Risk level, The credit provided by the bank with collateral such as movable and immovable objects;
c. The size of the credit given by the bank (credit above Rp. 5,000,000,- (five million) using an authentic agreement/notary service and private agreements between creditors and debtors are still legalized by a notary. The bank in granting bank credit should make the credit agreement deed is clear and uses a notary's deed as legal protection between debtors and creditors. Notaries and banks can provide legal counseling about the role of a deed in a credit agreement.

Several factors that can hinder the use of notary services in the process of granting credit or credit agreements by banks are as follows:

a. Bank Policy: The decision to involve a notary in a bank credit agreement often depends on the bank's internal policy, which is reflected in the board of directors' decision letter regarding the use of notary services.
b. Risk Level, Credit risk, including types of collateral such as movable and immovable objects, can be a consideration in determining whether a notary will be involved in the credit granting process.
c. Credit Value, the size of the credit value can also influence the decision to use an authentic agreement or notary services, especially in the case of credit above Rp. 5,000,000 (five million rupiah), where the use of a notarial deed is considered more common. However, private agreements can still be legalized by a notary.

It is recommended that banks make clear credit agreement deeds for each credit transaction to provide optimal legal protection for debtors and creditors. It is also important for notaries and banks to provide legal education to parties regarding the role and importance of deeds in credit agreements. Many borrowers, particularly individual or small-scale business customers, may lack adequate understanding of the legal implications and protective functions of notarial deeds. This limited awareness can result in underestimating the importance of involving a notary in the credit process,

leading to weakened legal certainty and greater vulnerability in the event of disputes or defaults. Therefore, future research is recommended to explore the development and implementation of structured legal education programs or outreach initiatives led by notaries in collaboration with financial institutions. These programs could aim to enhance public knowledge on the legal value of authentic deeds, the procedural safeguards they provide, and their role in protecting the interests of both debtors and creditors. Investigating the impact of such educational efforts on borrower behavior and legal compliance in credit agreements could offer valuable insights into strengthening the legal framework and the effectiveness of notarial involvement in the banking sector.

REFERENCES

Adjie, Habib dan Muhammad Hafidh. 2014. *Akta Perbankan Syariah Yang Selaras Pasal 38 UUJN*. Semarang: PT Pustaka Rizki Putra.

Asuan dan Susi Yanuarsi. 2022. Kontribusi Jabatan Notaris Dalam Perjanjian Kredit Bank. *Solusi*, Vol. 20 (3). 387-404.

Badrulzaman, Mariam Darius. 1987. Perjanjian Kredit Bank. Bandung: Alumni.

Bahsan, M. 2007. *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*. Jakarta: Raja Grafindo Persada.

Budiono, Herlien. 2007. *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan*. Bandung: PT Citra Aditya Bakti.

Djumhana, Muhammad. 2012. *Hukum Perbankan Indonesia*. Bandung: Citra Aditya Bakti.

Fitriyani dan Ardi Muthahir. 2021. Peranan Notaris Dalam Perjanjian Kredit Perbankan Tentang Pinjaman Uang. *El-Ghiroh*, Vol. XIX (1), 1-14.

Marzuki, Peter Mahmud. 2005. *Penelitian Hukum*. Jakarta: Kencana.

Miru, Ahmadi. 2007. *Hukum Kontrak dan Hukum Perancangan Kontrak*. Jakarta: Raja Grafindo Persada

Notodisoerjo, R. Soegondo. 1993. *Hukum Notariat Di Indonesia Suatu Penjelasan*. Jakarta: Raja Grafindo Persada.

Prodjodikoro, Wirjono. 2000. *Perbuatan Melanggar Hukum*. Bandung: Mandar Maju.

Subekti. 2004. *Hukum Perjanjian*. Bandung: Intermasa.

Soerjono Soekanto dkk,. 2012. *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.

Suyatno, Thomas. 2007. *Dasar-Dasar Perkreditan Pada Bank*. Jakarta: Gramedia Pustaka Utama.

Sjahdeini, Sutan Remi. 1993. *Kebebasan Berkontrak*. Jakarta: Institut Bankir Indonesia.

Untung, H. Budi. 2000. *Kredit Perbankan Di Indonesia*. Yogyakarta: Andi Offset,.

Waluyo, Doddy Radjasa. 2004. *Hanya Ada Satu Pejabat Umum, Notaris, Media Notariat, Membangun Notaris Profesional*. Bandung: Citra Aditya.

Widjaja, Gunawan dan Ahmad Yani. 2000. *Seri Hukum Bisnis : Jaminan Fidusia*. Jakarta: PT.Raja Grafindo Persada.

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

Law Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary