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Legal Validity of Credit Agreement Deeds Not Made Before a Notary

Silvira Rossa Isvandyra
Universitas Jenderal Soedirman

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Abstract
Legislation requires the making of authentic deeds to be carried out in realizing the achievement of welfare, as well as legal protection for the Community according to their needs. Therefore, bank officials must ensure that all legal aspects related to the credit agreement have been completed and have provided adequate protection for the bank. Credit agreements at banks can be made by making private deeds and also with authentic deeds made by a notary. Credit agreements using notarial deeds are usually carried out after the procedures and methods for implementing a credit feasibility survey to the debtor have been approved by the bank. Therefore, the making of authentic notarial deeds in the case of bank credit agreements is read by a notary to the parties, with the aim that the parties making the agreement gain a clear understanding of the matters contained or the material of the credit agreement. The role of a notary in the preparation of credit agreement deeds carried out by the banking party is as an official authorized to prepare credit agreement deeds. Furthermore, the notary also plays a role in checking the guarantee of the object to which the mortgage is attached in terms of guaranteeing the legality of the object in order to avoid risks and anything that could possibly cause legal problems with the guaranteed object so that no party feels disadvantaged.

Corresponding Author:
Silvira Rossa Isvandyra
Universitas Jenderal Soedirman
Email: silvirar.isvandrya1129@gmail.com

1. INTRODUCTION

According to A. Abdurrachman, "A bank is a type of financial institution that carries out various services, such as providing loans, circulating currency, supervising currency, acting as a place to store valuables, financing business companies".1 Banks play an important role in a financial institution in the economic sector of society. Based on Article 1 point 11 of Law No. 10 of 1998 concerning Banking, "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party that requires the borrower to repay his debt after a certain period of time with the provision of interest".

According to R. Subekti, in whatever form the provision of credit arises, in essence what occurs is a loan agreement as regulated in Articles 1754 to 1769 of the Civil Code.4 As explained, this is an agreement whereby one party gives another party a certain amount of goods that are used up due to use, on the condition that the latter party will return the same amount of money of the same type and quality.

Legislation requires the creation of authentic deeds to be carried out in order to realize the achievement of order, as well as legal protection for the Community according to their needs. Thus, bank officials must be able to ensure that all legal aspects related to the credit agreement have been completed and have provided adequate protection for the bank.

An agreement according to its definition in Article 1313 of the Civil Code is an agreement, namely an act by which one or more people bind themselves to one or more other people. Then the requirements for something to be stated as an agreement if it meets Article 1320 of the Civil Code, namely the agreement of those who bind themselves, the capacity to make a contract, a certain thing, a lawful cause. A credit agreement that is stated in the form of an Authentic Deed requires the role of a Notary in the process of making it. In the process of implementing the provision of bank credit, it is usually associated with various requirements, including the maximum amount of credit, credit term, purpose of credit use, credit interest rate, method of withdrawing credit funds, credit repayment schedule, and credit guarantee.

Explained in Article 15 Paragraph (1) of the UUJN which states "The notary is authorized to make an Authentic Deed regarding all acts, agreements, and stipulations that are required by law and/or that are required by the interested parties to be stated in the authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosses, copies and excerpts of the deed, all of that as long as the making of the deed is not also assigned or excluded to other officials or other persons prescribed by law".

Credit agreements at banks can be made by preparing a deed under hand and also with an authentic deed made by a notary. Credit agreements using notarial deeds are usually carried out after the procedures and methods for implementing a credit feasibility survey for debtors have been approved by the bank. Therefore, the making of an authentic notarial deed in the case of a bank credit agreement is read by a notary to the parties, with the aim that the parties making the agreement obtain a clear understanding of the matters contained or the material of the credit agreement. The signing of the credit agreement deed is done by the bank and the debtor in front of a notary followed by the signing of the credit agreement deed by witnesses and by the notary. The signing of the credit agreement deed made by a notary indicates the validity of the implementation of the credit agreement which must be obeyed and implemented in good faith by the parties who made the agreement.

A notary is a public official who is authorized by the State to serve the public in the civil field. One of the authorities of a notary based on Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary ("UUJN"), namely the authority to prepare and make authentic deeds. Legislation requires the preparation of authentic deeds to be carried out in order to achieve order, legal certainty, and legal protection for the public according to their needs. In connection with Article 1868 of the Civil Code ("KUHPerdata"), it states that: "an authentic deed is a deed according to the form determined by law, made by or before public officials who are authorized to do so at the place where the deed is made."

As an authorized official, a notary has the right to make an authentic deed related to an act, agreement, and also a determination in accordance with the direction in the general rules or what is desired by the parties to make a deed. As is known, a deed can be said to be an authentic deed if it meets the elements contained in Article 1868 of the Civil Code, but if it is connected to the provisions of Article 38 UUJN, there is a discrepancy regarding the strict sanctions received by the notary who makes the deed as stated in Article 38 UUJN. Therefore, the provisions stipulated in Article 1868 of the Civil Code apply, which states that in the statutory regulations the requirements that must be met in the provisions are not met by the deed as previously mentioned as a deed and can also be said to be defective in its form so that the evidence of the deed only has the power of proof as a private deed with the signatures of the parties.

Banking as one of the financial institutions, has a strategic value in the life of the national economy. The institution is intended as an intermediary for parties who have excess funds (surplus of funds), with parties who are lacking and need funds (lack of funds),

so that the role of the actual financial institution is as a financial intermediary for the community (financial intermediary). In relation to this, the bank can provide loans to debtors through credit agreements by the bank in relation to the agreement (contractual relationship) in the form of lending.

In relation to this, the role of a Notary is very important in helping to create legal certainty and protection for the community, because a Notary as a public official is authorized to make authentic deeds. This legal certainty and protection is seen through the authentic deeds he makes as perfect evidence in court. In banking practice, credit agreements are made using private deeds and these notarial deeds are more due to demands for efficiency and costs in services, especially in banking credit agreements. However, in practice, there are times when bank credit agreements are not legalized by a notary because of cost efficiency, which causes a legal problem when a bad credit occurs.

2. RESEARCH METHOD

The research method used is Normative Juridical in order to provide useful results. This normative juridical method is collaborated with literacy that is equated with the problems studied, and prioritizes its analysis by using applicable laws and regulations as an important basis in analyzing legal problems. Secondary data sources, such as books, articles, and legal journals. This study aims to understand the relevant legal context and interpret existing provisions. The type of approach used in this study is the Conceptual Approach through the doctrinal view and the Legislation Approach, namely analyzing laws and regulations that have a correlation and legal relationship to the problems studied. Data Collection Method the author uses a literature study related to the object and cites references including Legislation, Journals, Books, Articles and the Internet. The Data Analysis Method used is a qualitative analysis based on legislation, expert views, legal concepts and theories and an understanding of the results of the analysis itself.

3. RESEARCH RESULTS AND DISCUSSION (12 Pt)

3.1. Legal Consequences of Credit Agreements Made by Notaries that are Not Read and Signed Together.

An authentic deed is defined as a deed made before an authorized official whose contents have been agreed upon by the parties making the deed. In an authentic deed, the rights and obligations of the parties can be clearly determined, guaranteeing legal certainty and it is also hoped that disputes can be avoided. Although such disputes can be avoided in the dispute resolution process, an authentic deed which is written and complete evidence provides a real contribution to the resolution of cases cheaply and quickly.

The obligation of a Notary to read the deed before the person appearing in the presence of at least 2 (two) witnesses and signed at that time by the person appearing, witnesses, and Notary is regulated in the Provisions of Article 16 paragraph (1) letter l UUJN. This provision is reaffirmed in Article 44 UUJN which states that immediately after the deed is read, the deed is signed by each person appearing, witness, and Notary, unless there is a person appearing who cannot sign by stating the reason. The provisions for reading and signing are an integral part of the deed formalization (verlijden). Then, the word in front of in the signing of the deed is the presence of a Notary in the deed formalization process (verlidjen) or face to face as regulated in the explanation of Article 16 paragraph (1) letter m UUJN. In practice, the signing of the deed where the signing is not carried out in the presence of the parties and witnesses when the making of the deed of encumbrance occurs simultaneously in different places. It is impossible to be in 2 (two) different places at the same time.

In practice, it has often happened that the time of signing the deed cannot be done at the same time between the parties appearing before the Notary. Thus, the Notary cannot state in the deed in question according to the truth, that the deed was immediately after being read to the parties appearing, signed by them, the witnesses and the Notary. The signing of a deed that is not simultaneous between the parties appearing before the witnesses and the Notary often occurs in the banking world, namely at the time of signing a credit agreement deed.

Banks as creditors with their service function to customers have the principle of fast, precise and efficient service in terms of time and cost. Due to time efficiency, there is a "justification" in the process of reading and signing the deed by a Notary who is not attended by the bank party. The signature is usually located at the end of the deed. In the basic rules or principles in English common law that apply to standard agreements so that the exclusion clauses (and other burdensome clauses) contained in a written agreement signed by the parties bind the parties concerned.

Likewise regarding the presence of the parties, where in the reading and signing of a deed, the witnesses and the Notary have an obligation to be present and sign the deed. In the provisions of Article 16 paragraph (1) letter m of the Notary Law, it states, "The Notary is obliged to read the deed before the person appearing in the presence of at least 2 (two) witnesses and signed at that time by the person appearing, witnesses, and the Notary." The validity of a Notarial deed which includes the form, content, authority of the official who makes and the making of the deed must meet the requirements that have been determined in the applicable laws and regulations.

Reading and signing of a deed that is not done before a Notary will result in the authentic deed's evidentiary value being reduced to a deed under hand as stated in Article 16 paragraph (9) UUJN and violates the provisions of Article 4 paragraph (6) of the Code of Ethics of the Indonesian Notary Association which has consequences in the form of sanctions imposed on members (in this case Notaries) who violate the code of ethics, namely in the form of reprimands, warnings; schorsing (temporary dismissal) from association membership, onzetting (dismissal) from association membership, dishonorable dismissal from association membership. Failure to fulfill the requirements that have been determined according to law can also cause the Notarial deed to be null and void by law.

The decline in the status of the strength of the Notary's deed evidence can occur in its making when there is a violation of the provisions of applicable legal requirements. One form of such violation is making deeds that do not correspond to the facts. Then, what happens very often and is of concern to the Author is related to the non-reading of the deed and the signing of the deed that is not carried out by the Notary in front of the appearer (client) together.

The term cancellation is active, meaning that even though the terms of the agreement have been fulfilled, the parties involved in the agreement wish that the agreement made is no longer binding on them for certain reasons, either based on an agreement or by filing a lawsuit for cancellation in a general court, for example the parties have agreed to cancel the deed that they have made, or it is known that there are formal aspects of the deed that have not been fulfilled, which were not previously known, and the parties want to cancel it. Regarding the position of a notarial deed that is not read by a notary, basically a notarial deed is an authentic deed that has legal force in terms of evidence. However, this cannot be separated from the procedures and methods for making authentic deeds in accordance with applicable regulations. These rules are limitations for notaries in burdening or taking action against individuals. The existence of these rules and the implementation of these rules creates legal certainty.

Based on the Principle of Legal Certainty, the making of an authentic deed that does not comply with the provisions contained in applicable regulations, then the position of the deed can be questioned. The legal certainty of the position of an authentic deed made by a notary is very important for the parties.

3.2.Legal Validity of Credit Agreement Deeds Not Made Before a Notary.

The definition of Validity refers to a form of recognition of something that is believed to be true, legal and legitimate. In English it is defined as validity and *legality.* Legitimacy is something that is legal according to which there is no doubt in it. Validity can also be equated with the word validity, and truth. According to the Big Indonesian Dictionary (KBBI), validity means legal nature. According to the legal dictionary, validity is described in several languages, such as convalescence, which has the same meaning as to *validate, to legalize, to ratify, to acknowledge meaning* to validate, or ratify something, based on this understanding, validity is a limitation for every action and is definite. Its purpose is to protect a person's rights from prohibited actions.

According to Kuntjoro Purbopranoto, in order for validity to be realized, there are two conditions that must be met, namely material and formal conditions. Material conditions are more about the content of the decision of a law that was created, while formal conditions are more about the creation, time period and purpose of why the validity was created.

Credit agreement deed is included in authentic deed, where authentic deed is deed made before a notary. Notary is a public official authorized to make authentic deeds where as far as no other public official is not specialized in making certain authentic deeds. In order to create protection, law, legal certainty and order, in making authentic deeds there are some that are required by laws and regulations. Authentic deed made by and/or before a notary is not only made because it is required by laws and regulations, but also made because of the desire or will of the interested party to ensure the rights and obligations of the parties obtain legal certainty, order, and overall legal protection for interested parties for all of society.

In the preparation of a credit agreement, a notary has an important role. The following are the duties and authorities of a notary in the preparation of a credit agreement deed carried out by a notary as an authorized official, including. In general, notaries and banks have a partnership or cooperation relationship. After there is cooperation or agreement between the notary and the bank, the notary as a partner of the bank has a duty in preparing the credit agreement. In addition, notaries also play a role in realizing the principle of balance and also the principle of prudence in credit agreements. Where this provides guidelines in credit facilities that are used as a reference or reference for the parties in the credit agreement.

Notaries have the duty to make credit agreements requested by the bank. In making credit agreements, notaries are required to provide explanations and directions regarding the steps that should be taken. Notaries must also ensure that the deed made does not conflict with moral norms, public order, and laws and regulations. Notaries must explain this to the bank because if the request is made by the bank, the agreement made can be null and void by law. This means that making an agreement that does not comply with applicable provisions cannot be forced. Previously, the notary asked the bank for information regarding customer data or prospective debtors. The data provided by the bank is useful for making agreement documents so that the data provided is clear and detailed data regarding the debtor. Furthermore, the bank states the type and substance requested to the notary as the maker of the deed.

Notaries are tasked with providing understanding or counseling to banks regarding the law, especially those related to credit. This includes those related to the creation of authentic words and private deeds because these matters are not widely understood or known by the general public. Therefore, notaries are responsible for providing explanations and guidance, as well as the advice needed, especially regarding the deeds to be made.

a. The notary has the task of making final documents based on the draft agreement approved by the bank. Of course, this has been adjusted to the applicable regulations.
b. The notary is tasked with validating data regarding anything lacking or even unclear regarding the data to the bank and submitting the document concept to the bank.
c. Notaries are required to keep confidential the information contained in the credit agreement, especially regarding the identity and amount of credit from the debtor. This is because it is the privacy of the parties and is internal, so its confidentiality must be maintained.

The role in the credit agreement made between the debtor and the creditor before a notary, is more emphasized on the implementation of the notary's authority not materially but formally. The role of the notary is seen when the parties in front of him formulate a debt agreement and also provide an explanation to the parties, so that the parties understand their rights and obligations as a whole towards the credit agreement they have made, and if necessary, reject it when the agreement of the parties made is considered unbalanced. Based on Article 1338 of the Civil Code, the principle of balance is reflected when the parties who will make an agreement are given freedom.30 The freedom in question is not absolute in accordance with Article 1338 of the Civil Code, but must be balanced with rules where such freedom is permitted as long as it does not conflict with the Law, morality and public order, propriety and customs in its implementation or creation.

An authentic deed has 3 (three) evidentiary powers. The three evidentiary powers can be seen as follows:

a. External force (uitwendige bewijsracht) Regarding this matter based on Article 1875 of the Civil Code, this proof only exists in authentic deeds, where the deed can prove itself as an authentic deed against perfect evidence. This is only possessed by authentic deeds and is different from private deeds where external proof is not provided for private deeds.
b. Material evidence (materiele bewijskracht) Regarding the material evidentiary force of an authentic deed, there is a difference between the statements of the parties stated in the deed and the statement of the notary stated therein. Not only in fact, that the evidence stated in the deed exists, but also the contents of the deed are evidence as true for every person, who requests the making of the deed as evidence against him so that the deed has material evidentiary force. Article 1870, Article 1871, Article 1875 of the Civil Code intends to explain regarding the evidentiary force between the heirs and their recipients and the parties concerned, the deed completely states the truth and provides evidence.
c. Formal proof (formele bewijskracht) Formal proof in an authentic deed is proven by a notary or authorized official who states that the truth written in the deed from what is described in the deed made by the notary is true where it is made and/or witnessed and signed by the notary as a public official who is authorized to carry out his/her position. The truth of the deed is proven by the truth regarding what is seen, heard and witnessed by the notary himself. On the other hand, in a private deed according to law or will have the power of proof only looking at the statement

that is said to be true where the parties to the agreement acknowledge the signing in the private deed as their signature. This means that the proof of an authentic deed has formal power, namely guaranteeing the truth of the date, the truth of the identity of the parties or those present in the agreement, regarding the place where it was made and the truth of the signatures affixed to the deed. The making of a deed of agreement by a notary and collateral that is checked by a notary is a form of guarantee of the validity and return of credit. Legalized or warmerking and checked by a notary is something that is done to reduce negative factors, for example, that the performance given in the form of money, goods, and services provided by the bank really also makes it easier for the bank to execute the collateral object if there is a bad credit and other problems.

4. CONCLUSION

The role of a notary in the preparation of a credit agreement deed carried out by the banking party is as an official authorized to prepare a credit agreement deed. Furthermore, the notary also plays a role in checking the collateral object that is attached with a mortgage in terms of guaranteeing the legality of the object in order to avoid risks and all things that may cause legal problems with the collateral object so that no party feels disadvantaged. Thus, the role of a notary in the preparation of a credit agreement deed is to ensure legal certainty for the parties in the credit agreement. In the regulation, there are two forms of credit agreements, namely a credit agreement made privately and a credit agreement made before a notary. The banking law does not specify the formation of a credit agreement made by a bank but only states that a credit agreement must be made in writing. Meanwhile, the formation is left to the policies of the bank concerned, on the condition that the agreement does not conflict with morality, public order and laws and regulations.

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