INTERNATIONAL SIGNIFICANCE OF NOTARY

Volume 3 Issue 1, 2023
E-ISSN: **3025-3993**

THE ROLE AND FUNCTIONS OF THE NOTARY IN THE PROCESS OF HOUSE OWNERSHIP LOANS AT THE BANK AS AN EFFORT FOR ASSET SAFETY AND CLARITY OF LEGAL STATUS
(Case Study at Bank BTN Malang Branch Office)

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Abstract: The house serves as a place to gather and communicate for the family. The ability in the economy makes it a consideration for every family to build or buy a residential house. Home Ownership Loans (KPR) are long-term loans provided by banks in collaboration with developers to make it easy for consumers to own their own homes by paying installments to the bank. Every financing or credit has a fairly high risk of default. The formulation of the problems to be discussed are: (1) What is the role and function of the Notary in the KPR process at BTN Malang? (2) What are the efforts for asset safety and clarity of legal status made by a notary? The type of research that will be used by the author is empirical juridical research. Data analysis was carried out in a qualitative descriptive manner. The problem approach uses a conceptual and statutory approach. By utilizing primary and secondary data obtained in the field through interviews and document studies. The results of this research are the role and function of the notary in terms of mortgage agreements, namely the notary acting as a public servant because he is appointed by the government to serve the community's needs for valid legal documents. Efforts for safety assets carried out by a Notary in a Home Ownership Credit (KPR) agreement by the State Savings Bank (BTN) Malang Branch, including making a Deed of Authorization to Sell, a Certificate of Imposing Mortgage Rights (SKMHT), and if a default debtor occurs, then Bank BTN Malang Branch submit an application to the Notary/PPAT to increase the Certificate of Imposing Mortgage Rights (SKMHT) to the Deed of Granting Mortgage Rights (APHT), which is then registered by the Notary/PPAT at the Land Office for the issuance of Mortgage Certificates.

Keywords: Notaries, Mortgages, Bankin

1. Introduction

The house serves as a place to gather and communicate for the family. The ability in the economy makes it a consideration for every family to build or buy a residential house. Banking is one of the solutions for people who need funds to be able to buy a house, one of the banks that provides Home Ownership Credit facilities. Mortgages arose because there was a high need among the people to be able to own a house without being matched by an increase in purchasing power in the community. Home Ownership Loans (KPR) are long-term loans provided by banks in collaboration with developers to make it easy for consumers to own their own homes by paying installments to the bank.1

[1] Johannes, Ibrahim, *Mengupas Tuntas Kredit Komersial dan Konsumtif Dalam Perjanjian Bank*, Bandung: CV Mandar Maju, 2004, hlm 5

Every financing in Islamic banks or credit in conventional banks has its own risks. Every financing or credit has a fairly high risk of default. Default is stated in the agreement if the achievements or obligations of each party or one of the parties entering into the agreement are not fulfilled. Not a few debtors (customers) did not do what was promised, or violated the agreement which was declared in default, if the debtor did or did something that should not be done, such as: not doing what he was promised to do, carrying out what was promised, but not as agreed, doing what was promised but it was too late, and the last thing was to do something that according to the agreement he was not allowed to do.

Not only the debtor (customer) can default, the creditor (bank) can also default. Where the bank usually does not carry out its obligations as a creditor. As mortgage financing develops in conventional banks and Islamic banks, it often leaves customers disappointed. If a conventional bank uses an interest system, there are many customer complaints that are disappointed because credit installments suddenly increase without prior notification.

The object that becomes the bank's credit guarantee must be in accordance with the guidelines used by the bank concerned, including regarding guarantees that are permissible for a credit grant, so that the guarantee can truly become an effective means of repayment of credit in the event of default by the debtor, then it has become a necessity if creditors and recipients as well as other related parties receive protection through a strong collateral rights institution and can provide legal certainty for all interested parties.

In Indonesia, the birth of a guarantee institution for land, namely the Mortgage Right mandated in Article 51 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA). Within 36 years, the law in question was finally born. The birth of Law Number 4 of 1996 was intended to replace the provisions concerning Credit Verband and Mortgage on land, this was a fundamental change in the Guarantee Law, especially the law on material guarantees, regarding land and this was also confirmed in Article 29 UUHT NO. 4 of 1996 that: With the coming into force of this (the) Law, the provisions regarding Credietverband as stated in the Staatsblad 1908-452 jo Staatsblad 1909-686 and Staatsblad 1909-584 as amended by the Staatsblad 1937-190 jo. Staatsblad 1937-191 and the provisions regarding the Hypoteek as referred to in book II of the Indonesian Civil Code insofar as it concerns the imposition of Mortgage Rights on land rights and objects related to land are declared no longer valid. This UUHT aims to provide a basis for the enforcement of a strong Mortgage Institution, including regarding the position of a Power of Attorney for Imposing Mortgage Rights (SKMHT).2

BTN as a creditor in granting subsidized housing loans to debtors generally does not physically control the object that is collateral for credit, but only has administrative material rights. The binding of collateral objects in the form of land, namely property

[2] Boedi Harsono, *Hukum Agrarua Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Cet 8, Jakarta: Djambatan, 2007, hlm 443

rights, building use rights and business use rights, the process is only up to the Power of Attorney for imposing mortgage rights (SKMHT). the guarantee is factual.

2. Method

The type of research that will be used by the authors is empirical juridical research. The data source for this research is data taken from the first source in the form of interviews with respondents who are considered appropriate for data collection. Other data sources that researchers use in this study come from books and journals that discuss bank credit and notary positions and other documents related to this research. In the data analysis process, the researcher uses a qualitative descriptive analysis which tends to use systems thinking to explain the data presented, then the technique used by the researcher to draw conclusions is by inductive thinking techniques.[3]

3. The Role And Functions Of A Notary In The Home Owenership Credit Process At Bank BTN Malang

Notaries act as public servants because they are appointed by the government to serve the public's need for valid legal documents. In carrying out their daily tasks, notaries are officials who act passively in the sense that they are waiting for people to come to them to be served. The notary profession has a heavy responsibility in serving the public interest and the notary has the task of arranging in writing authentic deeds legal relations between the parties requesting the services of a notary by consensus.

In accordance with Law Number 30 of 2004 concerning the Position of Notary Public which is compiled in the Law on Notary Position, hereinafter abbreviated as (UUJN). In more detail in article 1 of the UUJN, it gives the following understanding of a notary: "A public official has the authority to make authentic deeds regarding all actions, agreements and authorities such as guaranteeing the certainty of the date, keeping the deed, providing grosse and copies or quotations and other authorities as referred to in the Law." In Article 1 PJN is the implementation and provisions of Article 1868 of the Civil Code which regulates: "an authentic deed is a deed in the form determined by law, made by and or before a public official who is authorized to do so, at the place where the deed was made "

The conclusion of Article 1 of the Notary's Office Regulations is to make authentic deeds, which according to Article 1870 of the Civil Code will provide the parties who make them an absolute and perfect proof meaning that what is written on the deed is true. The notary and the deed are an inseparable part, because the position of the notary's deed becomes authentic because the notary's position as a public official has been determined by law. From a formal juridical point of view, there are 2 (two) types of agreements or credit agreements used by banks in releasing their credit, namely:

a) Private credit agreement/binding or private deed; And

b) Credit agreements/bindings made by and before a notary (notarial) or authentic deed.[4]

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[3] Sugiyono, 2011, *Metode Penelitian Kuantitatif dan Kualitatif dan R&D,* Bandung, Alfabeta, hlm. 59

[4] Shidarta, 2006, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir,* Bandung, PT. Revlika Aditama, hlm 82-84

In making a bank credit agreement deed, often in practice a notary is faced with the problem of his position as a Public Official who must guarantee the strong will of the parties contained in the contents of the credit agreement, this strong will includes the correctness of the agreement of the parties to the formation of the contents of the credit agreement , but usually in a bank credit agreement, the notary must act cooperatively by complying with the wishes of the bank, such as signing a deed brought by the debtor without the need for the presence of the creditor as a appearer who did not come at that time, so that the bank has directly arranged the work of the notary.

The notary in the agreement only carries out the procedure of validating the credit agreement deed which is considered to have been agreed upon by the parties. The notary reads, explains the purpose and contents of the credit agreement to the parties. Because according to the procedure before the deed is brought and a notary's signature is requested, the creditor and debtor parties have discussed it beforehand.

This means that the notary has a role in every birth of an authentic deed relating to land, so that every appearer, both an individual and a legal entity who uses the services of a notary for the making of an authentic deed, the law strictly provides legal certainty and guarantees that the notary's deed has the force strong evidence of its authenticity.[5]

The role of Notaries and PPATs as public officials is certainly inseparable from the laws and regulations that govern them, especially the Law on Notary Positions and Government Regulations governing Land Deed Making Officers (PPAT), public officials referred to in Article 1 point 1 UUJN as public officials who has the authority to make authentic deeds in agreements, especially in bank credit agreements (Article 15 paragraph (1) UUJN) which has other authorities as referred to in Article 15 paragraphs (1) (2) and (3) UUJN and to serve the public interest.

The credit agreement must be made in writing, the form and format submitted by Bank Indonesia to each bank to stipulate it, at least it must regulate matters regarding the amount, period, procedure for repayment of credit and other credit conditions as stipulated in the approval decision credit. These main things must always be the basis for making credit agreements, and in fact these basics have been accepted as the main reference. In some banks, additions are made according to the needs and used as a standard agreement format in banking activities, especially in the field of credit agreements.[6] Notary by law given the authority to set forth all the actions, agreements, and determinations desired by the parties who deliberately come before the Notary to accommodate the information in an authentic deed, and so that the deed he makes has complete evidence strength and has its validity.

4. Fforts For Safety Assets And Clarity Of Legal Status Made By Notaries

State Savings Bank (BTN) Malang Branch as a bank that also provides housing loan facilities (KPR) in practice could experience something when the debtor defaults, therefore clarifies all the provisions related to the debtor's obligations as well as in the

[5] M Luthfan Hadi Darus, 2017, Hukum Notariat dan Tanggungjawab Jabatan Notaris,Yogyakarta: UII Pres hlm.29

[6] H. Budi Untung, Kredit Perbankan Di Indinesia (Yogyakarta: Andi Offset, 2000), hlm.40

case of default debtors. In practice, if there is a default by the debtor, there are several efforts to save assets or steps taken by Bank BTN Malang Branch as the creditor against the default debtor, including the following:

a) Using the power of attorney deed made at the time the loan was realized at the time the credit agreement was signed.

Bank BTN Malang Branch in using the deed of power of attorney to sell is made notarized. This means that a deed of authorization to sell is drawn up from the owner (debtor) to the bank (creditor) on the grounds that if the debtor defaults, the bank can sell assets or in other ways that the creditor deems necessary.

b) Upgrade SKMHT to APHT

In other efforts, you can then upgrade SKMHT to APHT and then register it with the land office, which then the bank can execute the mortgage auction after the issuance of the mortgage certificate for the asset. The elucidation of Article 15 paragraph (1) of the Mortgage Law that was submitted previously is clear that the Power of Attorney for Imposing Mortgage Rights (SKMHT) does not yet have an executive function, so it must be continued by increasing the position of the Power of Attorney for Imposing Mortgage Rights (SKMHT) to become a Deed of Granting Mortgage Rights (APHT) which must then be registered at the Land Office on existing collateral so that it has an executive function.

c) Cessie's attempt

Furthermore, namely efforts to cessie by the bank as a creditor, namely by transferring receivables on behalf of and other goods that are not bodily, carried out by making authentic or underhanded deeds, which delegate rights over goods or guarantees to other people as parties third or new creditors. In a cessie, the accessoir agreement is not deleted just because it has been transferred to a third party as a new creditor, nor are old debts deleted even though they have been transferred to a new creditor. However, so far the cessie effort has rarely been used by Bank BTN Malang Branch in practice, but it does not rule out the possibility of being used because cessie is one of the rescue efforts by each bank against default debtors.

d) Novation

The novation effort is one of the efforts to end the agreement between the bank (creditor) and the recipient of the credit facility (debtor). Novation can also be used to save problem loans by transferring old debtors to new debtors along with assets that are collateral for credit which is called passive subjective novation or transferring old creditors to new creditors which is called active subjective novation or changing the contents or object of the agreement while the creditor's position and the debtor does not change which is called objective novation.

Novation or debt renewal is a new agreement that abolishes the old agreement and at the same time creates a new agreement that replaces the old agreement. This novation effort is regulated in Article 1423 jo. Article 1424 of the Civil Code. Where in the article describes novation consists of 3 (three) types, namely passive subjective novation, active subjective novation and objective novation. Of the three types of novation, all of them can be used to carry out credit rescue, regarding which type is chosen depends on the agreement between the creditor and the debtor based on the analysis and possible opportunities to carry out credit rescue.

In practice, the transfer of the debtor or passive subjective novation is taken over by the new debtor, not only the debt but the debt and part or all of the collateral (assets) depending on the agreement between the creditor, the old debtor and the new debtor. This guarantee will be owned and managed by the new debtor so that it becomes a source of income that will be used to pay his debts to creditors. the law transfers credit guarantees from old debtors to new debtors as compensation for taking over the debt.7 Everyone is free to enter into agreements with anyone, even they are free to determine the form, content and terms of the agreement. However, many ordinary people do not understand that an agreement must meet the requirements for the validity of the agreement stipulated in Article 1320 of the Civil Code. In this case, if one of the parties to the agreement is harmed, it is very difficult to file a lawsuit, due to the invalidity of the agreement they made. For this reason, the role of the Notary is very necessary in making the Deed of Agreement, so that the parties are fulfilled and their goals are achieved so that defaults do not occur in the future. As long as the agreement is still valid, the parties must comply with the articles in the agreement that they agreed to until the end of the agreement. In making the articles in a deed of agreement, the notary's role is to direct so that they do not conflict with the law, public order, and decency.8

In terms of the role of the notary in the case of a debtor defaulting on the provision of a Housing Loan (KPR) facility by the State Savings Bank (BTN) Malang Branch, the notary in this case has played a role since the credit agreement was made. then the efforts made by the notary include, among others:

a. The Notary makes the Deed of Authorization to Sell by the State Savings Bank (BTN) Malang Branch to the Notary to make the Deed of Power of Attorney to sell. The notarized deed was drawn up with the aim of granting power of attorney to sell the collateral object from the owner (debtor) to the bank (creditor), with the intention of anticipating that if the debtor defaults, the bank can sell assets or in other ways that the creditor deems necessary.
b. he Notary makes a Power of Attorney for Imposing Mortgage Rights (SKMHT). This means that even if it has to be made with an authentic deed, the choice is not only a notarial deed but can also be made with a deed of the Official for Making Land Deeds (PPAT). From these provisions SKMHT must contain a number of matters including:
    1) Does not contain the power to perform other legal actions than imposing a Mortgage. Does not contain the power of substitution.
    2) State clearly the object of the Mortgage, the amount of debt and the name and identity of the creditor, the name and identity of the debtor if the debtor is not the giver of the Mortgage. Therefore, a Power of Attorney for Imposing Mortgage Rights (SKMHT) which is made in a notarized manner specifically only contains the authorization to impose Mortgage Rights.
c. The Notary as PPAT makes the Deed of Granting Mortgage Rights (APHT) At the stage of making the Deed of Granting Mortgage Rights (APHT) by the Notary/PPAT it is requested by the Bank BTN Malang Branch if in the event that the debtor defaults on

[7] Hassanudin Rahman, 1995, *Aspek-Aspek Hukum Pemberian Kredit Perbankan di Indonesia*, PT. Citra Aditya Bakti, Bandung. Hlm. 53

[8] Sumini, dan Amin Purnawan, Peran Notaris dalam Membuat Akta Perjanjian Notariil, Jurnal Akta Vol. 4 No. 4 Desember 2017, hlm.2

the agreement on the Home Ownership Credit facility (KPR) by the Bank State Savings Account (BTN) Malang Branch. Interview with Mr. Satya Adhi Gurmilang SH MKn Notary/PPAT Malang. In this case the step that must be taken by the creditor in upgrading the SKMHT to APHT until the Mortgage Right is formed is to make an application letter to the Notary/PPAT to upgrade the SKMHT to APHT. Notary/PPAT within 7 days after signing the granting of mortgage rights must send APHT and other documents to the Land Office. Furthermore, the Land Office makes a mortgage land book and records in the land book the land rights that are the object of the mortgage and copies the records on the certificate of land rights in question. Mortgage rights are born on the day the date the mortgage land book is made which then issues the Mortgage Certificate.

The authentic agreement or binding made by the bank with the customer requires the help of a notary. This happens because the notary has the authority to make an authentic deed that is able to provide legal protection to the parties making the agreement. In the case of granting credit based on a credit agreement, this credit agreement needs special attention both by the bank as the creditor and by the customer as the debtor, because the credit agreement has a very important function in granting, managing and managing the credit itself.9

5. Conclusion

The role and function of the notary in the case of a mortgage agreement is that the notary acts as a public servant because he is appointed by the government to serve the public's needs for valid legal documents. In practice, a notary is faced with the problem of his position as a public official who must guarantee the strong will of the parties contained in the contents of the credit agreement, this strong will includes the truth of the agreement of the parties to the formation of the contents of the credit agreement, but usually in the bank credit agreement, the notary must act cooperatively by complying with the wishes of the bank, such as signing a deed brought by the debtor without the need for the presence of a creditor as an appearance who did not come at that time, so that the bank has actually directly arranged the work of the notary.

Efforts for safety assets carried out by a Notary in a Home Ownership Credit (KPR) agreement by the State Savings Bank (BTN) Malang Branch, including making a Deed of Authorization to Sell, a Certificate of Imposing Mortgage Rights (SKMHT), and if a default debtor occurs, then Bank BTN Malang Branch submit an application to the Notary/PPAT to increase the Certificate of Imposing Mortgage Rights (SKMHT) to the Deed of Granting Mortgage Rights (APHT), which is then registered by the Notary/PPAT at the Land Office for the issuance of Mortgage Certificates.

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