Proceeding 2nd International Conference on
Law, Economy, Social and Sharia 2024 Vol. 2
https://icless.net/ ISSN: 2985-4679
Page: 128-143

Legal Position of Notary's Cover Note Regarding Bank's Legal Protection in Credit Agreements

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Abstract

The signing of a credit agreement between a bank and a debtor involving collateral is generally bound by a notarial deed, which will undergo the collateralization process. Before the collateralization process is completed, the notary will issue a Cover note to the bank as the creditor. The purpose of this study is to evaluate the position of the Cover note issued by the notary in the bank credit agreement and the extent to which the legal strength of the notary's Cover note provides legal protection for the bank in the credit agreement. The research method used is normative legal research. The results show that the position of the Cover note issued by the notary or PPAT in the bank credit agreement is limited to explaining the existence of credit or collateral binding. The Cover note is not evidence of collateral but a temporary record and evidence that serves as a reference for the bank when granting credit. The notary's Cover note does not have legal strength to protect the bank as the creditor in the credit agreement if default occurs while the collateralization process is still ongoing by the notary.

Keywords: *Cover Note, Legal Protection, Credit Agreement*

I. INTRODUCTION

Banking has an important role in supporting the course of development and maintaining economic stability for the State, which is related to its function as an institution tasked with collecting and then distributing funds originating from the community effectively and efficiently. Based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) Article 1 number 2 determines that a bank is a business entity that collects funds from the public in the form of savings, then Then these funds are distributed back to the community in the form of loans or credit in the form of other distribution of funds, as a manifestation of the bank's role in raising the community's standard of living. Credit as one of the many businesses carried out by banks certainly

carries quite a large risk for the bank. Banks always ask for special guarantees or collateral to provide certainty regarding credit repayment from debtor customers.
Guarantee/collateral is wealth in the form of property owned by the debtor which will be used as collateral if a situation arises of the debtor customer's inability to pay off the debt they have based on the existing credit agreement.[1] The collateral in the credit agreement must be examined first by the bank. To examine the collateral, the bank can also ask for help or the services of a notary. The use of Notary services is now very commonly used by people who deal with civil matters. The legal basis for the authority of a notary as a public official who has the authority to make authentic deeds can be seen from the provisions of Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN), Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN Amendments). Article 1 number 1 UUJN determines that public officials have the authority to make authentic deeds and have other authority as intended in this law or based on other laws as a notary. The role and function of a notary are crucial in helping the government and other parties who need it to provide certainty, order, and legal protection in making authentic deeds.
A notary has broader authority than a PPAT, among other things, a notary can validate a signature and ensure and determine the date of a private letter by registering it in a ledger, recording a private letter by registering it in a special book, making a copy a private letter containing an explanation as written and stated in the relevant letter, validating the original document which has been matched with a photocopy, providing outreach regarding making deeds, making land deeds or also making auction minutes deeds. Based on Government Regulation Number 37 of 1998 concerning Officials Making Land Deeds, Article 1 determines that PPAT is a public official who is given the authority to make authentic deeds for legal acts relating to land rights or ownership rights to apartment units. Apart from deeds and letters made by Notaries, some letters are the focus of this research, namely in the form of Cover notes which are generally issued by Notaries regarding requests for credit loans to banking institutions.
A cover note is a letter containing information made by a notary where the cover note is issued by the notary at the time a credit agreement has been entered into to make a binding agreement on the collateral of a credit agreement issued by the bank.[2] The

[1] Firdaus, R., dan Ariyanti, M. (2004). Manajemen Perkreditan Bank Umum. Bandung. Alfabeta. hlm. 87.
[2] Cahyono, B. I. (2015). Analisis Sistem Dan Prosedur Pembiayaan Kredit Pemilikan Rumah Syariah (KPRS) Murabahah Untuk Mendukung Pengendalian Intern (Studi Pada PT. BTN Syariah Cabang Jombang). Jurnal Administrasi Bisnis, 25(1). 1-8, hlm. 6.

bank in this case acts as an accredited or credit provider. The reason for issuing a cover note is that a notary has not been able to complete the work he is carrying out related to his authority and duties in issuing an authentic deed. The existence of this cover note itself is considered very important about the provision of credit by banks, but the fact is that legally speaking this cover note has not been regulated expressly in legislation either in UUJN, UUJN Amendments, or in Law Number 4 of 1996 concerning Mortgage Rights (hereinafter referred to as UUHT) and the Banking Law. Cases that often occur in the practice of providing collateral with mortgage rights in credit agreements occur due to collateral in the form of a plot of land whose ownership is still in the form of a seal, girik, or petok in the name of the prospective debtor customer. The notary stated that he was able to assist banks and prospective debtor customers with the process of registering land rights until the issuance of the Ownership Rights Certificate (SHM) and binding collateral with mortgage rights until the issuance of the mortgage rights certificate. As proof of this capability, the notary usually issues a Cover note as an effective condition for credit disbursement in the credit agreement.[3] Paying close attention to the duties and authority of Notaries in the UUJN and UUJN Amendments, no article confirms that a notary can make a cover note to explain that the deed that will later be made is being processed. For example, when information is required that a certificate of mortgage rights is a prerequisite for the existence of a collateral agreement for an agreement regarding the disbursement of credit by the bank, then the bank can carry out the disbursement. Likewise, concerning the duties and authority of the PPAT as regulated in Government Regulation Number 37 of 1998 concerning Position Regulations for Officials Making Land Deeds, there is not a single article that regulates the authority of the PPAT to make a Cover note for the process of providing collateral in bank credit agreements. The cover note was created because it was needed as a guide for the bank until all the deeds and guarantees or collateral registered with the notary had been submitted. The cover note made by a notary is based on the provisions in Article 1338 paragraph (1) of the Civil Code which determines that all contracts (agreements) made legally apply as law for those who make them where Article 1338 paragraph (1) is one of the principles In contract law, namely the principle of freedom of contract. A notary is a

[3] Rachmayani, D., & Suwandono, A. (2017). Covernote Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan. Acta Diurnal Jurnal Ilmu Hukum Kenotariatan, 1 (1). 73-86, hlm.75.

party who has the authority to make a cover note which includes the notary's promise and commitment to the bank that requires the cover note.[4]

The notary who issues the Cover note does not just provide a letter containing good information about the guarantee from the debtor as the party providing the guarantee regarding the completeness of the files at an agency. It is clear that in issuing a cover note there will be legal consequences, if in the process of imposing credit guarantees, for example, the process of assigning mortgage rights, there are problems and the resolution takes quite a long time, be it problems during the process of making the certificate or bad credit occurs before the Mortgage Certificate is issued, of course. This will bring problems in the future, especially regarding legal protection for banks as creditors. Based on the description above, further research was carried out with the title of the legal position of notary cover notes regarding the legal protection of banks in credit agreements. Based on the background of this problem, problems arise such as what is the position of the cover note issued by the notary in the bank credit agreement? and what is the legal power of a notary's cover note in providing legal protection for banks in credit agreements? This writing aims to further develop legal science, especially in the field of notarial matters Cover note notarial deeds to provide legal protection for banks as creditors.

II. LITERATURE REVIEW

1. Cover Note

A cover note is an official document created by a notary public who also serves as an official Land Deed Officer (PPAT). It is distinct from authentic deeds or private deeds, as it does not hold legal standing or inclusion within these formal instruments. Consequently, the cover note, despite being produced by a notary with PPAT status, is not recognized as a legally binding product in accordance with legal norms.[5]

The emergence of the cover note was prompted by an urgent requirement from the bank, acting as both the creditor and the debtor involved in the certification process of their deed. Insufficient collateral evidence in the credit application process compelled the bank to seek confirmation of collateral from the notary.

[4] Juliyanto, D. W., & Imanullah, M. N. (2018). Problematika Covernote Notaris Sebagai Pegangan Bank Untuk Media Realisasi Pembiayaan/Kredit Dalam Dunia Perbankan. Jurnal Repertorium, 5(2).51-64, hlm. 53.

[5] Habib Adjie (2018), Bernas-Bernas Pemikiran Di Bidang Notaris Dan PPAT, Bandung: Mandar Maju, hlm.34

Proceeding 2nd International Conference on
Law, Economy, Social and Sharia 2024 Vol. 2
https://icless.net/ ISSN: 2985-4679
Page: 128-143

This confirmation took the form of an agreement, commonly referred to as the cover note, mandating the notary to complete the processing of the debtor's deed within a specified timeframe.

The cover note, when issued by a notary, serves as temporary proof of collateral, distinct from its role in the credit application, until the certificate-making process concludes. In the event that the notary fails to fulfill the contents of the cover note, they are required to promptly complete the land certificate. However, administrative sanctions under the Law on Notary Positions cannot be imposed since cover notes are not regulated by that law.

Despite the absence of legal consequences, notaries bear a social burden as they are perceived to be negligent in fulfilling their obligations, resulting in a decline in public trust. In instances where a notary struggles to meet the expectations outlined in the cover note, they may request an extension of time for completion. Concerning the current issues arising from cover notes, repeated failure by the notary to meet the stipulations typically results in moral sanctions. This is manifested in a diminishing sense of trust from the bank, ultimately leading to a transfer of trust to another notary.[6]

2. Legal Protection

Philipus M. Hadjon explained that legal protection in Dutch language legal literature is known as legal protection Van de Burgers[7], from his understanding, it can be concluded that in the word protection, there is an attempt to provide the rights of the protected party with the obligations undertaken. If it is related to banking, a form of legal protection for creditors and debtors is contained in the credit agreement. In the agreement made between creditors and debtors, the rights and obligations of each party are stated, and the parties must carry out and fulfil the contents of the agreed agreement. Before providing a loan, the creditor must have carried out an analysis of the debtor's capabilities and the value of the goods to be guaranteed to anticipate if the debtor defaults within the loan term. Analysis of prospective debtors must be carried out carefully by the creditor by applying the principle of prudence through a thorough assessment of the character, abilities, capital, collateral, and business prospects of the prospective debtor.

[6] Sjaifurrachman & Adjie, (2011), Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta, Bandung: Mandar Maju, hlm.110.
[7] Philipus M. Hadjon (2007), Perlindungan Hukum Bagi Rakyat Indonesia, Surabaya, Bina Ilmu, hlm. 1

Proceeding 2nd International Conference on
Law, Economy, Social and Sharia 2024 Vol. 2
https://icless.net/ ISSN: 2985-4679
Page: 128-143

Philipus M. Hadjon explained that legal protection can be viewed from two things: a. Preventive legal protection. This protection can be achieved in two ways, namely through statutory regulations and through agreements. This legal protection is defined as the protection provided before a dispute occurs to prevent disputes. b. Repressive legal protection Legal protection is obtained by taking general justice or kinship methods. This legal protection aims to resolve disputes that arise if there is a violation of legal norms in statutory regulations.

3. Credit Agreements

Credit in banking activities is the most important business activity. The largest income from bank business comes from income from credit business activities, namely in the form of interest and fees.[8]

The credit agreement itself is an unnamed agreement, even though the Banking Law defines credit. The Banking Law only defines credit but does not further regulate the form or content of credit agreements. The credit agreement is anonymous because there is no specific regulation in the credit agreement either in law or in the Banking Law.[9] Banking Law as legal basis implementation Banking activities have determined several provisions related to credit. The Banking Law stipulates that Indonesian banks conduct their business using the principle of prudence to improve the health of banks, including in terms of credit. Every grant of credit, either directly or indirectly, will have an impact on the bank.

Therefore, before credit is approved, it is necessary to analyze the credit application. This is under the provisions in Article 2 of the Banking Law which states that Indonesian banking in carrying out its business is based on economic democracy by using the principle of prudence. The application of the principle of prudence aims for the bank to remain in a healthy condition, maintain public trust in the bank, and be able to provide economic benefits to the community.

III. METHODOLOGY

This research uses normative legal methods to fill the gap in norms related to cover notes in bank credit agreements. The approach involves analysis, concepts, and legislation, with sources of legal material from library research. Primary legal materials come from statutory regulations, and secondary legal materials involve literature, books, papers, and related documents. Primary legal material collection

[8] Muhamad Dhjumhana (2000), Hukum Perbankan di Indonesia, Citra Aditya Bakti, Bandung, hlm. 471
[9] *Ibid*. Hlm. 133

techniques involve analysis of books, writings of legal experts, and tertiary sources such as dictionaries. In analyzing legal materials, this research involves description, explanation, evaluation, and argumentation to reach conclusions regarding research problems.

IV. RESULT AND DISCUSSION

A. Cover Note Legal Position Determined by Notary in Bank Credit Agreement

The credit agreement itself is an anonymous agreement, even though the Banking Law has defined credit. Banking Law only provides a definition of credit but does not further regulate the form or content of credit agreements. The credit agreement is an anonymous agreement because there is no specific regulation in the credit agreement either in law or in the Banking Law.[10]

The legal foundation for conducting banking activities, as established by the Banking Law, includes specific provisions pertaining to credit. According to this law, Indonesian banks are obligated to operate with the principle of prudence, focusing on enhancing overall bank health, particularly concerning credit. The approval of any credit, whether direct or indirect, carries implications for the bank. Therefore, a thorough analysis of credit applications is required prior to approval.

This requirement is in line with Article 2 of the Banking Law, which mandates that Indonesian banks, in the course of their business operations, adhere to economic democracy and the principle of prudence. The application of the precautionary principle is aimed at ensuring the ongoing health of banks, preserving public trust in banks, and contributing to the economic well-being of the community.

The application of the principle of prudence in granting credit is carried out by analysing each credit application submitted by prospective debtor customers.

This is in accordance with the provisions of Article 8 paragraph (1) of the Banking Law. To analyze a credit application, banks generally use instruments analysis known as the fives of credit or 5C, including Character, Capacity, Capital, Collateral, Condition of economy.[11]

Procedures in credit generally start from submitting a credit application from a prospective debtor customer, the credit analysis process, the credit disbursement process, to the credit implementation feedback process. These credit procedures and policies are implemented in accordance with the flow of the credit granting process,

[10] *Ibid.*
[11] Kasmir (2009,), Bank dan Lembaga Keuangan Lainnya, Raja Grafindo, Jakarta: hlm. 109.

supported by the principle of prudence (prudential banking) in credit distribution. These procedures and stages are taken by the bank so as not to cause credit problems in the future.

Implementing the precautionary principle in the provision of credit involves evaluating the collateral offered by potential debtor customers, with a focus on various criteria encompassing juridical, economic, and social aspects. Juridical assessment entails scrutinizing the validity and accuracy of documents verifying ownership of the goods intended as credit collateral.

Typically, in cases where mortgage rights are granted, the collateral presented by the prospective debtor is often certified land. This practice is essential because the registration of mortgage rights at the Land Office requires the inclusion of a land title certificate. This requirement is stipulated in Article 13, paragraph (3) of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, referred to as the Mortgage Rights Law. The provision specifies that the Land Office conducts the registration of Mortgage Rights by creating a land book of Mortgage Rights, recording it in the land book of rights to the land subject to the Mortgage Right, and annotating the certificate of land rights associated with the mortgage.

The provisions regarding the existence of a land title certificate during the process of granting mortgage rights are not absolute. This is based on the Elucidation of Article 8 paragraph (1) of the Banking Law, which states that land with proof of ownership in the form of girik, petuk, and other similar things can be used as collateral. This is also emphasized again in the Elucidation of Article 10 paragraph (3) of the Mortgage Law, which determines that the imposition of Mortgage Rights on land rights whose proof of ownership is in the form of girik, petuk, and other similar things is still possible as collateral according to the Law. Mortgage Rights provided that the granting of mortgage rights is carried out simultaneously with the application for registration of rights to the land. This possibility is intended to allow holders of uncertified land rights to obtain credit. Apart from that, this possibility is also intended to encourage certification of land rights in general.

The Banking Law and the Mortgage Law provide opportunities for land whose ownership is still in the form of girik, petuk and the like to be used as collateral with mortgage rights. So in a credit agreement, even though the land has not been certified, the notary is willing to assist the bank in the process of registering land rights up to the issuance of a mortgage rights certificate by issuing a cover note.

A cover note is a statement letter or often termed a closing note made by a Notary. The cover note is issued by the Notary because the Notary has not completed his work about his duties and authority to issue authentic deeds.[12] Notary cover notes generally contain the following:

- The credit agreement or debt letter is still in the process of being finalized at the notary.
- The process of registering land rights or changing the name of land rights certificates and binding credit guarantees is still in the process of being completed at the Land Office.
- The credit agreement or debenture and binding of the credit guarantee when completed will be given to the bank.

The process of credit agreement, granting mortgage rights until the issuance of a mortgage rights certificate takes time, to provide certainty to the bank so that they can agree to disburse the credit before the Deed of Granting Mortgage Rights (APHT) is completed and the mortgage rights certificate is issued, the notary makes a statement or cover note. With this cover note, the notary undertakes to carry out the processing of land rights, making APHT, and registration of mortgage rights up to the issuance of the mortgage rights certificate. The cover note issued by the notary is used as a guide for banks to disburse credit to debtor customers.

The process of Granting dependent rights by making APHT is basically that the grantor of dependent rights must appear in person before the PPAT. However, if for some reason he is unable to attend in person, he must appoint another party as his authority with a Power of Attorney to Encumbrance Rights (SKMHT). In practice, in the credit agreement of making SKMHT from the debtor customer to the bank. This SKMHT must be made with a notary deed or PPAT deed.

The Mortgage Rights Law has determined the time limit for making APHT from SKMHT based on the status of land rights. SKMHT regarding registered land rights must be followed by making an APHT no later than 1 (one) month after it is granted. The SKMHT regarding land rights that have not been registered must be followed by the preparation of a Deed of Granting Mortgage Rights no later than 3 (three) months after it is granted. SKMHT that is not followed by making an APHT within the time specified above is null and void by law.

[12] Muhaymiyah Tan Kamelo (et.al), "Pemberian Kredit dengan Jaminan Tanah Surat Keterangan (SK) Camat Pada PT. Bank Rakyat Indonesia (Persero) Tbk. Cabang Medan Sisingamangaraja", USU Law Journal, Vol. 5 No. 1, Januari 2017, hlm. 59.

The time limit for making APHT from SKMHT is one of the reasons why binding collateral with mortgage rights on land that has not been certified is imperfect. Incomplete binding of collateral occurs because there are often disputes or objections from community members regarding the process of registering land rights stating that the land does not belong to the debtor or the debtor cannot show proof of acquisition of the land.

The Land Office will not issue a certificate of title to the land before there is clarity regarding the status of the land. By not issuing the land title certificate which will serve as collateral, the process of registering mortgage rights cannot be processed, which results in incomplete binding of the collateral, while credit disbursement has been carried out based on the notary's cover note.

The inclusion of notary cover notes in credit agreements is not expressly prohibited. However, it is imperative for the notary to exercise caution and diligence in verifying the authenticity and validity of the documents intended for use as collateral. This heightened obligation for careful scrutiny arises because the notary providing services to the bank is considered an affiliated party. As per Article 1, number (2) letter c of the Banking Law, an affiliated party encompasses entities that offer services to the bank, including but not limited to public accountants, appraisers, legal consultants, and other consultants.

Apart from that, notary is a profession that has its characteristics compared to other professions. Article 1 of the Notary Position Law states that a notary is a public official who has the authority to make authentic deeds and other authorities. The role and function of a notary are crucial in helping the government provide certainty, order, and legal protection in making authentic deeds. Notaries have an independent and impartial position in carrying out their office. In connection with this, notaries in carrying out their duties must comply with the professional code of ethics, because notary is an honourable profession (officium nobile).

Moreover, Article 16, paragraph (1) letter a of the Law on the Position of Notaries stipulates that in fulfilling their role, Notaries are required to act with trustworthiness, honesty, thoroughness, independence, and impartiality, while safeguarding the interests of all parties involved in legal actions. To enforce these obligations, the Law on the Position of Notaries has established sanctions for notaries in case of violations of Article 16, paragraph (1) letters a to i. As outlined in Article 16, paragraph (11) of the Law on the Position of Notaries, these sanctions may take the form of a written warning, temporary dismissal, honourable dismissal, or dishonourable dismissal.

The utilization of cover notes in credit agreements is closely tied to the bank's role. In practice, banks may sometimes act less cautiously due to business competition in acquiring potential debtor customers, fearing that such customers might opt for other banks. However, even in the pursuit of customers, banks are obligated to take measures to ensure that the credit they extend does not encounter issues. Article 29, point (3) of the Banking Law emphasizes that, in providing credit or financing based on Sharia principles and engaging in other business activities, banks are required to adopt methods that safeguard the interests of both the bank and the customers who have entrusted their funds to the bank, thereby avoiding harm to either party.

Banks are mandated to adhere to the principle of prudence, serving as a guiding principle for the effective operation of their business and as a criterion for evaluating potential debtor customers. The principle of prudent banking underscores that banks, in the execution of their functions and business activities, must exercise caution and discretion to safeguard the public funds entrusted to them.[13] Banks can adopt a proactive approach to minimize potential losses by conducting a comprehensive 5C analysis of credit applications submitted by prospective customers. In credit agreements, one crucial aspect that banks assess is the collateral. The purpose of collateral evaluation is to instill confidence in prospective debtor customers. In the event of unforeseen circumstances leading to debtor default and the credit turning bad, the collateral serves as a safeguard, providing a means for the bank to recover the credit through the execution of the collateral.

B. Notary Cover Note Legal Capability in Providing Legal Protection for Banks as Creditors in Credit Agreements

The presence of law within society serves as a mechanism for establishing public peace and order, ensuring the preservation of significance in the interactions between individuals. Law essentially functions as a safeguard for human interests, manifesting in the form of norms or procedures. It constitutes a collection of rules or conceptual frameworks with general and normative attributes—general in its application to all, and normative in specifying what actions are permissible or impermissible, as well as outlining the procedures for enforcing compliance with these standards.[14]

[13] chmadi Usman (2023), Aspek-Aspek Hukum Perbankan di Indonesia, Gramedia Pustaka Utama, Jakarta: 2001. hlm. 22

[14] Sudikno Mertokusumo, Mengenal Hukum Suatu Pengantar, Liberty, Yogyakarta, hlm. 39.

Proceeding 2nd International Conference on
Law, Economy, Social and Sharia 2024 Vol. 2
https://icless.net/ ISSN: 2985-4679
Page: 128-143

Banks, in order to safeguard and guarantee the repayment of credit extended to debtor customers, consistently require collateral. Typically, the collateral sought by the bank is specific, referring to particular assets owned by the debtor. This collateral can take the form of movable assets or immovable assets, such as land. However, it is common for banks to prefer collateral in the form of land, which is associated with a mortgage right.

A mortgage is a guarantee institution that gives creditors the position of preferred creditors, whose repayment of receivables takes priority over other creditors from the proceeds from the sale of collateral objects. This mortgage right has been regulated in the Mortgage Rights Law.

Article 10, paragraph (1) of the Mortgage Rights Law specifies that the establishment of Mortgage Rights is preceded by a commitment to offer Mortgage Rights as security for the repayment of specific debts. This commitment is explicitly stated and forms an integral part of the corresponding debt agreement or any other agreement that gives rise to the debt. The agreement concerning the granting of mortgage rights is considered an accessory agreement, directly linked to the existence of the principal agreement, typically a credit agreement. The process of establishing mortgage rights is executed through the creation of the Deed of Granting Mortgage Rights (APHT) by a Land Deed Official (PPAT).

Typically, the process of granting a mortgage right involves the issuance of a certificate of land rights, specifying the land that will serve as the subject of the mortgage right. However, an exception exists as outlined in Article 10, paragraph (3) of the Mortgage Rights Law. This provision stipulates that if the subject of the Mortgage Right involves land rights resulting from the conversion of older rights that meet registration criteria but have not been officially registered, the grant of the Mortgage Right is executed concurrently with the application for the registration of rights to the relevant land.

While the utilization of notary cover notes in credit agreements is permissible, issues can arise if the debtor defaults and the guarantee agreement remains incomplete, particularly if the Mortgage Rights Certificate has not been issued. In such scenarios, the bank's status becomes that of a concurrent creditor, limiting its ability to enforce the collateral object due to not holding the position of a preferred creditor of the Mortgage Rights holder.

Mortgage rights as one of the material rights are generally a legal provision that is coercive (dwingend recht). In order for a bank to be called a mortgage right holder who acts as a preferred creditor, a bank must follow the procedures specified in the

Proceeding 2nd International Conference on
Law, Economy, Social and Sharia 2024 Vol. 2
https://icless.net/ ISSN: 2985-4679
Page: 128-143

Mortgage Rights Law. The mortgage right arises after registration of the mortgage right, which is proven by the issuance of a mortgage rights certificate. The bank acts as a preferred creditor if the registration of mortgage rights at the land office has been carried out as evidenced by the issuance of a Mortgage Rights Certificate. This is to fulfil the publicity principle of mortgage rights. So if there is an imperfect binding of collateral which results in the Mortgage Certificate not being issued, then the bank's position in the credit agreement is only as a concurrent creditor. The bank has not received legal protection as a preferred creditor based on the Mortgage Law regarding the repayment of its receivables, because legally the position of the bank is not yet the holder of mortgage rights.

In credit agreements where a Mortgage Certificate is not issued, banks may not receive legal protection from the Mortgage Law. However, from the perspective of collateral law, banks still obtain protection. The legal support for banks in such cases is derived from the provisions of Articles 1131 and 1132 of the Civil Code. These articles are categorized as general guarantees or statutory guarantees. Unlike specific agreements, general guarantees are not explicitly stipulated but emerge as a result of legal provisions.

Article 1131 of the Civil Code states that all the debtor's property, whether movable or immovable, whether existing or which will exist in the future, is borne by all personal obligations. All assets belonging to the debtor will serve as collateral for repayment of the debtor's debts to all creditors. The debtor's assets include movable and fixed objects, both those that already existed at the time the debt and receivable agreement was entered into and those that will come into existence at a later date and will become the property of the debtor after the debt and receivable agreement is entered into. In this way, all of the debtor's assets will become collateral for the repayment of his debt. This general guarantee is created by law, so there is no need for a previous guarantee agreement.

Article 1132 of the Civil Code states that the object is a joint guarantee for all those who owe it; The income from the sale of these objects is distributed according to balance, namely according to the size of each receivable, unless there are valid reasons for priority among the receivables. Based on Article 1132 of the Civil Code, all creditors have the same position towards other creditors. The creditors are held as concurrent creditors so that no creditor has priority over other creditors (preferred creditors).

Based on Articles 1131 and 1132 of the Civil Code, it is still possible for banks to make efforts to settle loans whose collateral is not perfect. Efforts to resolve credit

Proceeding 2nd International Conference on
Law, Economy, Social and Sharia 2024 Vol. 2
https://icless.net/ ISSN: 2985-4679
Page: 128-143

can either be carried out through non-litigation processes (outside court) or litigation (through court).

The credit settlement process through a non-litigation process can be resolved internally by the bank through the banking institution or alternative dispute resolution institutions in the financial services sector, in this case, the Indonesian Banking Dispute Resolution Alternative Institution (LAPSPI). LAPSPI in resolving banking disputes through mediation, adjudication, and arbitration. However, specifically dispute resolution through arbitration must be based on the existence of an arbitration agreement.

Settlement of credit disputes through the litigation process can be done through a default lawsuit through the general court or a bankruptcy lawsuit through the commercial court. Dispute resolution through a breach of contract lawsuit is filed in the district court. Settlement of lawsuit disputes in court is often ineffective and inefficient because the process is long and costs a lot. In addition, resolving disputes through court can sometimes damage the name and reputation of the bank in the eyes of customers or potential bank customers.

Apart from resolving disputes through default lawsuits in court, banks can also file bankruptcy lawsuits for debtor customers in commercial courts. However, to be able to file for bankruptcy some requirements must be met. These requirements are as stipulated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law), namely debtors who have two or more creditors and do not pay off at least one of their debts. has matured and can be collected, and declared bankrupt by a court decision, either at his request or at the request of one or more of his creditors. Based on Article 2 paragraph (2) of the Bankruptcy Law, for a bank to file for bankruptcy, it must ensure that there are a minimum of 2 (two) creditors and does not pay in full 1 (one) debt that is due and collectible. However, the bankruptcy lawsuit process also takes a long time so it is not effective and efficient for the bank.

Legal protection for banks in the event of incomplete binding of collateral which results in the mortgage certificate not being issued is still protected by Articles 1131 and 1132 of the Civil Code. However, the protection provided by Articles 1131 and 1132 of the Civil Code only provides banks with the position of concurrent creditors. This certainly does not protect the bank considering that as a concurrent creditor, the bank must share proportionally with other creditors in terms of repayment of its receivables from the sale of all of the debtor's assets. In this case, it is very possible

Proceeding 2nd International Conference on
Law, Economy, Social and Sharia 2024 Vol. 2
https://icless.net/ ISSN: 2985-4679
Page: 128-143

that the credit given to the debtor may not be fully repaid if the debtor's assets are not sufficient to pay off the debt which must be paid to its creditors proportionally. Apart from that, efforts that can be carried out by banks as creditors are generally still possible, namely through litigation and non-litigation processes. However, these efforts require a process that takes time and costs, which of course is not desired by the bank.

Guarantees have a very important function in a credit agreement which is to provide a guarantee of certainty for creditors that the funds that have been distributed to debtor customers will be returned. Apart from providing protection to creditors, providing collateral under the provisions of applicable laws and regulations can also protect debtors. The law must provide equal protection to the parties.

The law must not take sides (protect) just one party, but also all parties. For this reason, this credit agreement must be implemented under applicable statutory provisions so that the objectives of the law can be achieved.

V. CONCLUSION

The inclusion of notary cover notes in credit agreements is generally permissible under the Banking Law and the Mortgage Law. However, when utilizing a cover note as the basis for disbursing bank credit, a notary must exercise caution and conduct a thorough examination to ensure the truth and validity of the collateral object document. This scrutiny is crucial to prevent complications during the registration of land rights and the granting of mortgage rights at the Land Office.

In the context of legal protection for banks in credit agreements involving notary cover notes, particularly in the event of default before the issuance of mortgage rights, the bank is afforded a position as a concurrent creditor. This legal safeguard is grounded in Articles 1131 and 1132 of the Civil Code. Resolving credit issues can take the form of litigation through default or bankruptcy lawsuits, or non-litigation methods such as internal settlement within the bank or through LAPSPI (Indonesian acronym for the Security Rights Fiduciary).

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