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Legal Force of Private Credit Agreements at Bank Perdreditan Rakyat (BPR)

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ABSTRACT: The purpose of this research is to analyze (1) the regulation regarding credit agreements that made privately according to the Banking Law and the Role of Notary Law (2) the legal force of credit agreements made privately at Bank Perkreditan Rakyat (BPR). The research method used is normative legal research. The results of the study show (1) Arrangements regarding credit agreements made underhand according to Banking Law both the Banking Law and Bank Indonesia Circular Letter No.14/20/DKBU concerning Guidelines for Credit Policies and Procedures for Bank Perkreditan Rakyat (BPR) which require banks to provide credit in any form, they are required to use/make a written credit agreement, whereas according to the Law on Notary Offices, even though private credit agreements have been made in written form, however, to increase the strength of evidence, the private credit agreement must be ratified/legalized by a notary; and (2) The legal force of the credit agreement made privately at the BPR binds the parties, both the bank and the borrowing customer.

KEYWORDS: Credit Agreement, Private Deed, Legal Force

I. INTRODUCTION

Granting credit is generally done by entering into an agreement. The agreement consists of a principal agreement, namely a debt agreement and is followed by an additional agreement in the form of a guaranteed agreement by the debtor. Munir Fuady in his book state that “every credit that has been approved and agreed upon between the lender and the credit recipient must be stated in the form of an agreement, namely a credit agreement”. (Munir Fuady, 2003)

Sutan Remy Sjahdeini stated that bank credit agreements have three characteristics that distinguish them from real money lending agreements. The first feature is consensual in nature, in which the debtor's right to withdraw or the bank's obligation to provide credit still depends on the fulfilment of all the conditions specified in the credit loan. The second feature is that the credit extended by the bank to the debtor cannot be used freely for specific purposes or purposes by the debtor, but the credit must be used according to the purpose set out in the credit agreement. The third feature is that bank credit is not always delivered in real terms but can use checks and or transfer orders. Thus, it can be said that the bank credit agreement is not a loan-replace or loanborrowing agreement as referred to in the Civil Code (Sutan Remi Sjahdeini, 2009).

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Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) does not explain the legal relationship between granting credit and customers as borrowers. One basis that is quite clear for banks regarding the necessity of a credit agreement is the provisions of Article 1 number 11 of the Banking Law, which states “that credit is given based on a loan agreement or agreement between the bank and another party that requires the borrower to pay off the debt after a certain period of time with interest. The banking credit agreement can be made with an authentic deed or with a private agreement”. In the case of a private bank credit agreement, the role of the notary is to legalize the private credit agreement.

The Banking Law does not clearly stipulate that the form of a banking credit agreement must be made unwritten or written through an underhand agreement or even must be an agreement made by a notary or authentic deed (obscure norms). The provisions of Article 1 number 11 and Article 1 number 12 of the Banking Law only state that “credit is given based on a loan agreement or agreement between the bank and another party”. This provision does not stipulate that bank credit must be granted based on a written agreement.

There is no provision in the Banking Law regarding the form of the credit agreement, so the problem is that each bank is free to choose the form of agreement the bank wants, for example, some require a notarial deed, while others only make a private agreement. In fact, in general, banks make credit agreements in the form of standard agreements. If this problem is not resolved immediately, it will have implications for increasing disputes over bank credit agreements and the existence of arbitrariness by banks, in providing credit terms that are given in the form of standard agreements.

Based on the background described above, the problem's formulation in this research can be put forward in the research questions are (1) How are the rules regarding to credit agreement that made privately according to the Banking Law and the Role of Notary Law? and (2) How is the legal force of the credit agreement that made privately at Bank Perkreditan Rakyat (BPR)?

II. RESEARCH METHOD

The research method used in this research is normative legal research. I Made Pasek Diantha give a definition about it, that "normative legal research is research conducted by examining the laws and regulations that apply or apply to a particular legal issue. Normative legal research examines law from an internal perspective with the object of research being legal norms". (I Made Pasek Diantha, 2017) And Peter Mahmud Marzuki state that "normative research is often referred to as doctrinal research, namely research whose object of study is documents of laws and regulations and library materials". (Peter Mahmud Marzuki, 2011)
And Also, Johny Ibrahim said that "normative legal research is also called research that is focused on examining the application of rules or norms in positive law". (Johny Ibrahim, 2012) According to I Made Pasek Diantha,
"Normative legal research has a role in defending the critical aspects of his legal science as a normative science" (I Made Pasek Diantha, 2017).

III. RESULT AND DISCUSSION

A. The Creditor's Legal Position on the Bank's Credit Agreement with Unregistered Mortgage Guarantee

Credit from a language perspective means trust, in the sense that if someone gets a credit facility, that person has earned the trust of the lender. As mentioned earlier, the definition of credit regulated in Article 1 number 11 of the Banking Law is "Provision of money or bills that can be equated with it based on a loan agreement or agreement between the bank and another party that requires the borrower to pay off the debt after a certain period of time with the provision of interest".

From the definition of credit in Article 1 number 11 of the Banking Law, it can be seen that the elements of credit include an element of trust. Therefore, by giving credit, it means giving trust. (Abdulkadir Muhammad, 2010) The legal subjects in the credit agreement are the signatory parties to the credit agreement, namely the creditor and the debtor. Both the creditor and the debtor. In a banking credit agreement, the legal subject consists of the bank as the creditor and the debtor, which can be an individual or a legal entity. (Mariam Darus Badrulzaman, 2013) Furthermore, Mariam Darus Badrulzaman explained the legal subject or parties to the credit agreement as follows:

1. Creditors

According to the Banking Law, it is expressly determined that creditors are banks. As a financial institution whose main business is to provide credit and services in payment traffic and money circulation. The lenders (banks) here essentially carry out indirectly the Government's duties related to the development of the economic sector to improve people's welfare according to the pattern stipulated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia).

2. Debtor

Credit Recipients are anyone who gets credit from the Bank and is required to return it after a certain period of time.(Mariam Darus Badrulzaman, 2013)

Several legal experts expressed their opinions regarding bank credit agreements, namely: (Daeng Naja, 2005)

1. R. Subekti, is of the opinion that in whatever form the granting of credit is made, in all of this what actually happens is a loan agreement as stipulated in Article 1754-Article 1769 of the Indonesian Civil Code
2. Mariam Daruz Badrulzaman, disagrees with Subekti because based on the fact that the credit agreement has its own identity which is different from the loan agreement.
3. Sutan Remy Sjahdeini provides a special understanding of credit agreements, namely "an agreement between a bank as a creditor and a customer as a debtor customer regarding the provision of money or equivalent claims which obliges the debtor to repay the debt after a certain period of time with the amount of interest, compensation or profit sharing".

Bank credit agreements are classified into types of principal agreements. (Riduan Syahrani, 2010) The main agreement is an agreement between the creditor and the debtor that stands alone without depending on the existence of other agreements.

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Johannes Ibrahim in his book state that "the credit agreement is something that determines whether or not other agreements that follow it, for example a guarantee binding agreement". (Johannes Ibrahim, 2004)

Between a private agreement and an agreement made with a notarial deed, there is a difference in terms of the strength of the proof. The difference in the strength of proof of a private credit agreement with a credit agreement in the form of a notarial deed is explained as follows:(Jopie Jusuf,
2003)

1. Private Deed

a. If one party denies the signature, then the other party must prove that the signature denied is true.
b. Either party can submit an alibi that the signature is correct but the filling is outside of his knowledge, so that in court the private credit agreement is only used as initial evidence, not as perfect evidence. (Jopie Jusuf, 2003)

2. Notarial deed

a. If one party denies the signature, that party must prove that the signature is incorrect or fake.
b. If the authentic copy is lost, it can be requested again from the notary concerned. Even if the minut (original deed) is lost, the authentic copy has the same strength as the minut.
c. Proving formal truth, it is considered true that the parties explain what is written in the deed and is material.

Based on the difference in the strength of proof between an underhanded agreement and a notarized agreement which is also called an authentic deed, a notarized agreement/authentic deed has stronger evidentiary power than an underhanded agreement. The strength of an Authentic Deed is regulated in Article 1870 of the Civil Code which says that; "an authentic deed provides between the parties and their heirs or people who have rights from them, a perfect proof of what is contained therein".

The power attached to an authentic deed, namely; Perfect (volledig bewijskracht) and binding (bindende bewijskracht), which means that if the authentic deed evidence submitted fulfills the formal and material requirements and the opposing evidence presented by the defendant does not reduce its existence, at the same time it has perfect and binding evidentiary powers attached to it (volledig en bindende bewijskracht), as said by M Yahya
Harahap in his book that "thus the truth of the contents and statements contained therein will be perfect and binding on the parties regarding what is referred to in the deed. Perfect and binding on the judge so that the judge must make it a perfect and sufficient factual basis to make a decision on the settlement of the disputed case". (M. Yahya Harahap, 2008)

If you pay attention to the description above, it can be explained that between an authentic deed and a private deed there is a principal difference, the difference between an authentic deed and a private deed is:

a. The authentic deed has a definite date, Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Role of Notary Law (hereinafter referred to as the Law on Notary Position, abbreviated as UUJN), whereas regarding the date of manufacture of private deed there is no guarantee of the date of manufacture.
b. Grosse of an authentic deed for acknowledgment of debt with the phrase at the head of the deed for the sake of justice based on Belief in the One and Only God, has executorial power as does the Judge's decision, Article 1 number 11 UUJN, while a deed made underhand has no executorial power.

(Sjaifurrachman, 2011)

c. The minutes of an authentic deed are state archives, Article 15 paragraph (1) UUJN, the authority of a notary to keep the deed, because a notary's deed is a state archive, it cannot be lost, while private deed is very likely to be lost.
d. An authentic deed is perfect proof of what is contained therein (volledig bewijs), Article 1870 of the Civil Code means that "if one party submits an authentic deed, the judge must accept it and consider what is written in the deed that something big has really happened, so the judge may not order additional evidence". Whereas private deed, in this case an agreement, if the party signing does not deny or acknowledge the signature, then the private deed has the same evidentiary power as an authentic deed, namely as perfect proof (Article 1875 of the Civil Code). But if the signature is denied, then the party submitting the agreement must prove the truth of the signature, this is the opposite of what applies to an authentic deed. (Sjaifurrachman, 2011)

Again M. Yahya Harahap said that "the value of the strength of proof attached to an authentic deed, if the formal and material requirements are fulfilled, then the deed immediately meets the minimum limit of proof without the help of other evidence. Directly valid as proof of an authentic deed, the deed is directly attached to the value of the strength of proof, namely perfect (volledig) and binding (bindende)". (M. Yahya Harahap, 2008)

As previously stated, bank credit agreements can be made with private agreements and agreements with notarial deeds. In the event that the credit agreement deed is made privately, matters such as (1) There are several weaknesses in the private credit agreement deed; (2) Archives of original letters; and (3) blank agreement form. In the banking sector, especially state-owned

banks, credit agreements can be drawn up using notarial deeds and private agreements. Private agreements are used for credits of less than 100 million, while credits with a value of more than 100 million are used for notarial deeds, there is no difference in material content between underhanded deeds and notarized deeds.

Banking actions using underhand agreements and notarial deeds are more due to demands for efficiency and costs in service, especially in bank credit agreements. Making the format of the material/content of the credit agreement in a standardized manner will clearly make it easier for banks to analyze and cover up weaknesses that may arise in the future due to developments in the legal world.

Based on the description above, it can be said that in reality, there are bank credit agreements that are made notarized and some are made privately. However, the bank asked for legalization of the deed made privately by the notary. As a result of the legalization action, in principle, in accordance with the Regulations of the Position of Notary Public, the deed already has the force of law as a strong means of proof, the legalization action does not change the private deed into an authentic deed, the deed is still a private deed, with better proof strength than a private deed which is not legalized.

UUJN does not specifically regulate credit agreements made privately. UUJN only regulates private agreements or deeds in general. Article 1 point 1 UUJN states that a Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws.

The authority of a notary is regulated in Article 15 paragraph (1) UUJN which states that "the notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations of the deed, as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law".

In addition to this authority, the notary also has the authority to; "(1) Validate the signature and determine the certainty of the date of the private letter by registering it in a special book; (2) Book private letters by registering them in a special book; (3) Make a copy of the original letter privately in the form of a copy containing the description as written and described in the letter concerned; and (4) Verify the suitability of the photocopy with the original letter. In this case the validation by the Notary includes; (1) ratification of the signature and determination of the certainty of the date the private agreement was made; (2) record private agreements; (3) make a copy of the original private agreement; and (4) verify the suitability of the photocopy with the original letter".

From the description above, it can be stated that ratification of the signature and determination of the certainty of the date the private agreement was signed, recorded the private agreement, made a copy of the original private agreement and verifying the suitability of the photocopy with the original letter, the private agreement that has obtained notarial approval provides certainty for the judge regarding the date and identity of the parties entering into the agreement, and the signature affixed under the signature of the agreement is true and affixed by the person whose name is listed in the private agreement and the person who signs under the agreement can no longer say that the parties or one of the parties does not know the contents of the private agreement, because the contents have been read and explained beforehand before the parties affix their signatures before the Notary.

Based on the description above, authentic deeds and private deeds legalized by a notary are undeniable evidence that the parties concerned have acknowledged the statement as written in the deed. The difference regarding the strength as evidence of an authentic deed with a private deed, is that the authentic deed is proof of the truth of all its contents, until otherwise there is evidence that can prove the falsity of the deed, while a private deed only has the strength of evidence, if then the signature is fully acknowledged or the truth is accepted; so that it has the power as strong evidence.

B. Legal Consequences of the Mortgage Guarantee before The Certificate of the Mortgage Right is issued

In relation to the activities carried out by the bank, it will be seen that there are two sides of responsibility, namely obligations that lie with the bank itself and obligations that are borne by the customer as a result of a legal relationship with the bank. The rights and obligations of customers are manifested in the form of achievements. Achievements that must be met by banks and customers are achievements that have been determined in the agreement between the bank and the customer for banking products.

Every credit that has been approved and agreed upon between the creditor and the debtor must be stated in a written credit agreement (credit contract). In banking practice, the form and format of the credit agreement is fully left to the bank concerned. However, there are things that must still be guided by, namely that the formulation of the agreement must not be vague or unclear, also the agreement must at least pay attention to legality and legal requirements,

At the same time, it must also contain clearly the amount of credit, the period of time, procedures for repayment of credit, and other terms that are common in credit agreements. Matters of concern are necessary, in order to prevent the cancellation of the agreement made (invalidity) so that when a legal action is carried out, (the agreement) does not violate a provision of laws and regulations. Thus, bank officials must be able to ensure that all juridical aspects related to credit agreements have been resolved and have provided adequate protection for the bank.

Each agreed credit must be stated in a written credit agreement. The form and format is submitted by Bank Indonesia to each bank to stipulate it, but in an effort to secure it, at least the following matters must be considered, namely (1) Fulfill legality and legal requirements that can protect the interests of the bank; and (2) Contains the amount, time period, procedure for repayment of credit and other credit requirements as stipulated in the said credit approval decision.

Legally made private credit agreements are also binding on the parties, both the bank and the debtor. However, credit agreements made privately contain weaknesses where one party, especially the debtor, can deny the signature stated in the credit agreement. Especially if the credit agreement is only affixed with a thumbprint. Denial of the signature and/or thumbprint in the credit agreement results in the creditor being obliged to prove that the signature and/or thumbprint is the signature or thumbprint of the debtor.

The purpose of a credit agreement must be made in written form, among other things, the credit agreement functions as the main agreement, meaning that the credit agreement is something that determines whether or not the cancellation of other agreements that follow it, for example a guarantee binding agreement, as proof of letters at a later date in the event of a dispute, and as a tool for monitoring and orderly administration of banking finance.

The use of private credit agreements can be said to be less likely to arrive at a lawsuit in court. The problem that often occurs is bad credit which is usually resolved by negotiation, rescheduling, reconditioning and restructuring. This is due to the fact that not all of the private credit agreements under hand at the BPRs have gone well. There was a time when a credit agreement could have a problem. Therefore, every bank must maintain its credit quality as well as possible and recognize the appearance of a decrease in credit quality so that problems do not occur in the credit agreement. Non-performing loans cannot be equated with bad loans. Non-performing loans are loans with bad collectability or loans that have doubtful collectability that have the potential to be bad. Meanwhile, bad credit is a condition where the debtor is unable to pay part or all of his obligations to the bank as agreed.

Thus, binding collateral is an attempt by creditors to minimize risks in extending credit. Problem loans in the bank business are things that often occur, but banks must take action to prevent problem loans from arising and make efforts to save or repair these problem loans. Efforts to rescue credit by banks aim to launch credit that is already classified as non-current, doubtful or even classified as bad credit, to return to current credit so that the debtor has the ability to repay all his debts accompanied by fees and interest to the bank.

To discuss the legal power of underhand credit agreements, it is necessary to pay attention to the following matters:

1. Understand the Purpose of the Agreement

As a written agreement made by two or more parties, each party agrees to obey what has been agreed in the agreement. Article 1313 of the Civil Code stipulates that “an agreement is an act by which one or more people bind themselves to one or more people”.

Legal scholars generally argue that the definition of agreement contained in these provisions is incomplete and too broad. It is incomplete because it only concerns unilateral agreements and is said to be too broad because it can include matters regarding marriage vows, namely actions in the field of family law that also give rise to agreements, but they are special because they are regulated in separate provisions so that Book III of the Civil Code does not directly apply to it (lex specialist derogate legigenerali).

A. Pitlo quoted in R. Subekti states that an agreement is a legal relationship that is property in nature between two or more people, on the basis of which one party is entitled and the other party is obliged to an achievement compared to another opinion expressed by Salim HS, as follows: “The agreement is a legal relationship between one subject and another subject in the field of assets, where one legal subject is entitled to achievement and so is the law between one subject and another in the field of assets, where one legal subject is entitled to achievement and so are other legal subjects obliged to carry out their achievements in accordance with what has been agreed upon”. (R. Subekti, 2012)

From the several definitions stated above, it must be understood that in an agreement there is an event that creates a relationship between two people called an agreement and where the agreement issues or creates an agreement between the two people who make it, because in its form of the agreement is in the form of a series of words containing promises or abilities spoken or written.

From the above understandings it can be seen that some of the elements contained in the agreement, namely the existence of a legal relationship which is a relationship that gives rise to legal consequences, meaning that rights and obligations will arise from both parties entering into the agreement. The next thing to pay attention to is the existence of a legal subject.

Another important thing that must be considered is achievement, which according to Article 1234 of the Civil Code can be in the form of giving something, doing something, and not doing something. The last thing that must be considered is that the object being agreed is in the field of property. As it is known that the agreement is the most important source in an engagement. Therefore, an agreement is generally an agreement that has been reached between two or more business actors which is stated in a written form and then signed by the parties, the document is referred to as a business contract. This is in accordance with what was stated by R. Subekti, that "the engagement is a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill the demand". Agreements can also be born from other sources covered by the name of the law. So, there are agreements that are born from agreements and there are agreements that are born from laws. Agreements that are born from laws can be further divided into agreements that are born because of laws only (Article 1352 of the Civil Code) and agreements that are born from laws because of an act of another person.

2. Criteria for the Legitimacy of Underhand Agreements

The validity of underhand agreements as agreements in general must meet the criteria required by Article 1320 of the Civil Code. In every agreement, whether it is an agreement made before a public official or an agreement not made before a public official, must fulfill the elements of Article 1320 of the Civil Code which determines the terms of the validity of the agreement, as follows:

"a. There is an agreement between the two parties. In its form, the agreement is in the form of a series of words containing promises or commitments spoken or written. The agreement is a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill the demand, the legal relationship between the agreement and the agreement is that the agreement issues an agreement.

b. Ability to perform legal actions. According to the Civil Code, adulthood is 21 years for men and 19 years for women. Meanwhile, according to Law Number 1 of 1974 concerning Marriage, what is meant by adults are those who are 19 years old for men and 16 years old for women.

c. The existence of the promised object, the object agreed upon in an agreement must be clear or not vague. It is important that this is regulated to provide guarantees or certainty regarding the object that has been agreed upon as an effort to prevent the emergence of fictitious agreements.

d. There is a lawful cause. Article 1335 of the Civil Code determines that an agreement that does not use a cause or lawful cause or is made with a cause that is false or prohibited, has no legal force".

From what has been described above, it can be seen the main differences between an authentic deed and an underhanded deed and are the characteristics of each of these deed, namely authentic deed (Article 1868 of the Civil Code) made in the form specified by law; made by or before an authorized public official; has perfect evidentiary power; if the truth is denied, then the party who denies must prove the truth. While private deed has the following characteristics: it is not bound by a formal form; can be made free by interested parties; if it is not denied by the party signing the deed, then the deed has perfect evidentiary power (similar to the proving strength of an authentic deed); and if the truth is denied, then the party submitting as evidence must prove the truth (through evidence or witnesses).

Based on the description above, it can be said that the legal force of private credit agreements depends on the recognition of the parties to the truth of the private credit agreement. The parties are required to confirm or deny the signature, while for the heirs it is sufficient to explain that the heirs are not familiar with the signature.

IV. CONCLUSIONS

Based on the discussion that has been described above, it can be concluded that:

1) The legal position of Arrangements regarding credit agreements made privately according to Banking Law both the Banking Law and Bank Indonesia Circular Letter No.14/20/DKBU concerning Guidelines for Credit Policies and Procedures for Bank Perkreditan Rakyat (BPR), which requires to provide credit in any form the banks are required to use/make a written credit agreement, whereas according to the Role of Notary Law (UUJN) even though private credit agreements have been made in written form, However, to increase the strength of proof, the private credit agreement must be ratified/legalized by a notary.
2) The legal force of a credit agreement made privately at a Rural Bank is binding on the parties, both the bank and the borrower's customer. The legal power of private credit agreements depends on the parties' acknowledgment of the truth of the private credit agreements. The parties can confirm or deny the signature. The private agreement has the power of birth proof, if the signature on the private agreement is acknowledged by the person concerned, then the agreement is perfect evidence that

applies to the parties concerned. A private agreement has formal evidentiary power if the signature on the agreement has been acknowledged. According to Article 1875 of the Civil Code, the material evidentiary power of an underhanded agreement recognized by the person who signed it is perfect evidence like an authentic deed, whereas against third parties underhanded agreements have free evidentiary power.

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