

Independence of Notary PPAT As Bank Partner

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ABSTRACT

Notary as a public official who has the authority to make authentic deeds and other deeds mandated by law, where the authentic deeds in accordance with Article 1868 of the Civil Code are deeds made in the form stipulated by law by or in the presence of public officials authorized to that is at the place where the deed was made, and has perfect evidentiary power before a court, unless otherwise stated. In the Bank's operational activities related to the function of the Bank as a channeling institution for funds to the public, it is very necessary to have an authentic deed as a form of legality recognition of the engagement between the Bank and its debtors, and therefore the role of a notary as a partner is urgently needed. However, in the fact, implementation, the Notary must provide an offer to the Bank so that he can enter into a cooperation agreement with the Bank for the preparation of authentic deeds and other matters. The existence of a cooperation agreement between the Bank and the Notary has resulted in the Notary's independence being questioned because it seems as if the Bank can do anything because he is the employer and the Notary is the recipient of the work. Therefore, this study analyzes the level of independence of a notary when he becomes a partner in a bank by conducting research with the juridical-normative method and using a statutory and conceptual approach. The results obtained from this research are the existence of cooperation with the Bank to make the Notary as part of the Bank so that he is not independent in making authentic deeds including in his daily practice both before the cooperation until the time of cooperation. And on this matter, if it is proven that the Notary is not independent, then the authentic deed he has made will become deeds under the hands of the Notary and is threatened by being sued by parties who feel aggrieved by the authentic deed.

Key word: Notary bankruptcy, Notary PPAT.

1. INTRODUCTION

In accordance with Article 1 point 1 of Law Number 4 Year 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position (UUJN) which states that Notary Public Bahwa is a public official authorized to make authentic deed and other authority as referred to in the legislation. This is a translation of the term *openbare ambtenaren* contained in Article 1 of the Notary Office Regulation which reads:

De notarissen zijn openbare ambtenaren, uitsluitend bevoegd, om authentieke akten op te maken wegens alle handelingen, overeenkomsten en beschikkingen, waarvan eene algemeene verordening gebiedt of de belanghebbenden verlangen, dat bij authentiek geschrift bijkijken zal, daarvan de dagteekening te verzekeren, de akten in bewaring te houden en daarvan grossen, afschriften en uittreksels uit te geven; alles voorzoover het opmaken dier akten door eene algemeene verordening niet ook aan andere ambtenaren of personen opgedragen of voor hebehouden is.

If translated into Indonesian, approximately the following: " Notary is the only public official authorized to make an authentic deed concerning all acts, agreements and determinations required by a general regulation or by the interested person is required to be stated in an authentic

deed, guarantee the certainty of the date, keep the deed and provide grosse, copies and quotations, all as long as the making of the deed by a general regulation is not also assigned or excluded to other officials or others" That it is broadly the authentic deed can only be made and given by a public official namely a Notary where the deed serves as documentation of a civil legal event in the form of deeds, alliances and determinations so that the event has legal certainty(Habib Adjie, 2009). What is an authentic deed? An authentic deed under Article 1868 of the Civil Code is a deed made in a form prescribed by law by or in the presence of the public official authorized for it where the deed was made. Therefore, the authentic deed has perfect evidentiary power before the court unless it can be proven otherwise. Because of the value of an authentic deed, notary position is a position that is highly trusted by the public to obtain legal certainty over legal activities or events carried out, therefore it is mandatory for Notary Public to maintain public trust in him (Tan Thong Kie, 2000).

One of the institutions that need the authentic deed is the banking industry where in accordance with Law No. 10 of 1998 on Banking explains that the Bank is a business entity that collects funds from the community in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the community. To legitimize its function, the Bank needs an authentic deed and for that the Bank makes Notaris as one of its operational partners.

As one of the joint economies of the State, the Bank is also obliged to comply with the laws and regulations governing it in addition to the Banking Law where pure banking transactions are agreements between customers and banks that give rise to alliances and agreements between the two parties. As an amplifier of such transactions, an authentic deed is required, and in accordance with the level of strength of the evidence, the authentic deed is something that is required, although there is a deed under the hands that is sometimes also used in banking transactions. The risk of deed under the hands of the person whose signature is stated in the deed under the hand, may deny the authenticity of the signature, and the Bank as the party that will use the deed must prove that the debtor's signature is genuine. Although bankers know that the deed under the hands is very risky but still done on the grounds of convenience or already equally aware, for example the use of standard contracts in the agreement between the customer / debtor and the Bank, especially in the credit agreement.

Recognizing that legal aspects are very important in protecting the Bank's business (*risk mitigation*), Bank Indonesia has included legal risks(including *legal documents*)as part of the Bank's risk management assessment in the following paper will be outlined several matters related to Bank Indonesia policy related to risk managementd.h.i *legal risk and* a review of the practices and legal constraints in the documentation of credit lending law.

Bank Indonesia regulation related to lending which is the main activity of the Bank is a high risk to the health and business continuity of the Bank. On the other hand, most of the funds owned by the Bank are funds derived from the collection of public funds. Therefore, lending by banks must be carefully regulated (*prudent*) by the provisions of Bank Indonesia laws and regulations. Law No. 10 of 1998 on Banking expressly regulates that the Bank always adheres to the principle of prudence in carrying out its business activities, including in providing credit. One of the principles of prudence is to use notarial deed in conducting agreements or credit agreements with debtors.

Therefore, in almost all Banks in Indonesia they consider Notary Public to be a partner in business activities so it is very important the existence of a Notary Public for a Bank. In practice, Notaris offers cooperation to become a partner of the Bank in the making of authentic deed, which begins with a cooperation agreement between Notary And Bank. If the Bank agrees to the offer given then Notary and The Bank will sign a cooperation agreement that is usually in standard form and made under the hands with sufficient stamps (Saranya, 2008).

Notary's important role in providing services to the Bank is in the making of deed, contracts of banking products and binding of guarantees (especially in the case of dependent and fiduciary rights).

That the problem here is the shift in the value of a Notary Public for a Bank which was originally considered as an honorable official so that the Bank complies with whatever is required by the Notary when the Bank requests services for the authenticity of the alliance it makes, whereas now due to the reasons of business competition and the increasing number of Notary officials appointed by the Minister so that the Notary often relents and according to what is desired by the Bank to keep obtaining orders from the Bank so that it is as if the Bank is currently king of the Notary.

Is this what the UUJN wants for notary public? Whereas the Indonesian Notary Association (INI) has created a Code of Notary Ethics which is a guide for Notary Public to act either within or outside its position so that the notary public as a noble profession is maintained, but still often found notary public who ask to be an associate or partner of a Bank. Is this the so-called Independent Notary? Based on this background, researchers conducted a study with the title INDEPENDENSI NOTARY AS BANK PARTNER.

2. RESEARCH METHODS

Research Type

The research used in this research is normative juridical research. Normative juridical research is research that examines various laws and regulations that apply or are applied to a

particular legal problem. Ronald Dworkin called it doctrinal research, a study that analyzes the law as *law as it is written in the book* (DasSollen), which is the law in the form of ideals how it should be, and the law as it is decided by the judge through judicial process. (Soekiswati & Absori, 2019).

This is to find a relationship between the Uujn and the Notary Code of Ethics with the requirement of Notary as a banking partner to assess how the independence of Notary To the banking..

Problem Approach

The approaches used in this study are as follows:

a. Approach to Legislation (*Statue Approach*)

This approach is carried out by studying the laws and regulations related to the legal issues that are being addressed. This approach is done for how Notaris should behave in relation to himself as a General Officer to his clients who come from banking.

b. Conceptual Approach)

The conceptual approach moves away from the views and doctrines that develop in the science of law. Studying the views and doctrines in the science of law, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles relevant to the issues at hand. In conceptual approach, new concepts or theories will be found in accordance with the purpose of this research, berperilaku namely how notary public should respond and behave as a public official to his clients from the banking world.

The problem is stated in the formulation of the problem which will then be internalized with the concepts and theories proposed as a library review of this research.

2. RESEARCH RESULTS AND DISCUSSIONS

Notary's Reference as Bank Associate

Notary public official has the authority to make authentic deed and other authority according to law, it means that Notary has the right to his/her position in terms of legal service to the community by making authentic deed and other matters. Authentic deed in this case is deed on credit alliance/agreement, guarantee, and others.

Notary As Banking Partner

In the making of authentic deed conducted by Notary as a public official, there are 3 (three) groups of legal subjects, namely the face or the interested parties, witnesses and notary public. In this case, Notaris is not a party to the making of deed. Notary is only as an official because of its authority to make authentic deed in accordance with the wishes of the parties / face.

The character of the legal relationship between Notary and the face is:

- a. There is no need for an agreement either oral or written in the form of granting power of attorney to make a deed or to perform certain works;
- b. Those who come before Notary Public, assuming that Notary Public has the ability to help formulate the wishes of the parties in writing in the form of an authentic deed;
- c. The final result of notary action based on notary authority derived from the request or desire of the parties themselves; Dan
- d. Notary public is not a party to the deed in question (Sisman et al., n.d.)

That the legal relationship between The Notary and the front-facing party, in this case the Bank, regarding the making of authentic deeds, then there should be no contractual relationship between the two because it has *violated the law (onrechtmatigedaad)* because the Notary is outside the parties and must be independent.

The notary public must *wilsvorming* the parties themselves for the purpose of having their actions or legal actions formulated into an authentic deed in accordance with the authority of the Notary Public, then the Notary public shall make a deed at the request or desire of the facer, then in this case there has been a legal relationship between the Notary and the facer. Notary must ensure that the deed made has protected the interests of the parties concerned protected by the deed while still referring to the prevailing laws and norms (Wiharjokusumo, 2019).

That in principle, Notary only serves the will of the parties facing and has an interest in the content of the agreement to be declared, must be passive and tasked to record or write in the deed about anything described by the parties, has no right to change, reduce or add to what is explained by the confronters. According to Yahya Harahap, so that the deed made does not violate the law and norms, the Notary Public carries out the authority in the form of (A'yun, 2014)

- a. Constantir or determine what happened before his eyes;
- b. have the right to coordinate or determine the facts obtained in order to straighten out the contents of a more feasible deed.

As long as Notaris carries out its duties in accordance with the Uujn and has fulfilled all the procedures and requirements in the making of the deed, and the deed in question has also been in accordance with the parties facing the Notary, then the claim in the form of unlawful acts based on article 1365 of the Civil Code that is "any unlawful act, which brings harm to another, obliges the person whose arena is wrong to issue the loss, indemnified it" is impossible to do.

Procedures for cooperating with the Bank as a partner:

1. notary service offering in the form of submission of a letter of application in which the name, position, place of position and working area, notary office address and supporting data to the

Bank that aims to ensure that the Bank and its customers can use the services of the Notary in the making of the deed required by the Bank.

2. The Bank will then provide a form containing the requirements determined by the Bank as a condition of becoming a partner to a Notary Public.
3. After Notaris completes and submits to the Bank, the Bank will then provide a cooperation agreement with Notaris and both parties sign the cooperation agreement made under hand and stamped sufficiently.
4. Then, if there is a client / debtor who will sign a credit agreement, then the Bank will give the name of the Notary who becomes a partner as a reference for the place where the signature of the agreement is carried out.

Notary public that has been appointed and agreed by the debtor and the Bank, will then make an authentic deed in the form of a credit agreement based on the Letter of Approval of Credit Grant given by the Bank to the debtor, after making the deed, the Notary will read it before the Bank and creditors who then if agreed and agreed, each will give paraf and sign the minuta of credit agreement deed together with at least 2 (two) witnesses. After the minuta signing process is completed, the Bank will issue a copy of the deed of credit agreement to the Bank to be distributed based on the Bank's mechanism.

Violations as Bank Associates

As a general official authorized to make authentic deed for the parties in need, Notary has the right to accept the client or reject the client, because with the authentic deed he made, the recorded legal event has become a tool of evidence that is not in doubt validity before the court. Therefore, a Notary Public has legal and moral responsibility (Roba, 2019).

As the embodiment of that responsibility, Notary Public should always stick to the Uujn and The Code of Notary Ethics that has been made in order to maintain the notary marwah as an honorable profession and guardian of legal justice for the public. So the use of the principle of "Prudence" is absolutely absolute for Notary in carrying out its position because what is produced by it can have legal consequences for the parties and can also drag the Notary into legal problems that occur between the parties.

Related to the relationship as a partner of the Bank, various problems often occur in practice where the Notary seems to have no legal force when dealing with the Bank. The classic reason for notary public is that the Bank is an employer for them so that the Notary public inevitably has to accept so that the work tap is not clogged.

Some things that may result in the profession or position of Notary Public is tarnished related to cooperation as a partner of the Bank, if it is examined from the UUJN and the Notarial Code of Ethics are as follows:

- a. Proposal for cooperation offer by Notary Public to Bank and application as bank partner.

This proves that there is a violation of Notary ethics in carrying out its duties as stipulated in Article 4 number 3 of the Notary Code of Ethics, which is part of the publication and self-promotion (marketing activities) carried out by Notaris in an effort to market its services for the benefit of obtaining clients.

In this case, Notaris as an honorable profession in which to become a Notary Public is appointed by the Minister by law so that by making a proposal to offer cooperation as if it has "dropped the self-esteem" of Notary as a public official because it must "beg" the Bank in order to be a client of the Bank. This will have an impact on the public that the Notary Public is nothing more than the Bank's assistants/employees in terms of making authentic deed and other matters required by the Bank in the framework of civil events.

- b. Banks that agree to be partners will provide the client to a Notary Public as long as the Notary Public meets the requirements provided.

This fact can certainly be categorized as a Notary Bank intermediary to find or obtain clients in the form of bank customers themselves to make authentic deed or other notary services. This is clearly contrary to Article 4 number 4 of the Notary Code of Ethics, namely "Notary public and others who hold and hold notary positions are prohibited from cooperating with service bureaus/people/legal entities that in nature act as intermediaries to find or obtain clients".

Notary Integrity as a public official is very necessary in dealing with this because it should be with various authorities given to Notary by Law, such as The Right of Reneging, making notary public do not need to look for clients but clients who come to Notary, because those who need his services are the parties while the Notary only coordinates and records in the deed at the wishes of the parties. If you have to wait for the overflow of clients from the Bank, the dignity of Notary Public is destroyed because by receiving the work of making authentic deed from the Bank which in fact should be those who ask the Notary to make an authentic deed for their legal actions. And it is as if the Bank also doubles as an intermediary or "realtor" for Notary to get clients.

- c. Requirements to provide security in the form of deposits in the Bank to be able to become a partner of the Bank

That by placing funds as collateral to the partner Bank, there is immediately a legal relationship between the Notary and the Bank that results in the independence of a Notary Public will be lost because there is interest between the two parties although it is denied that the Notary Will work professionally in receiving the work of making authentic deed from the Bank.

Examples of this include:

1. To become a partner of Bank Tabungan Negara (BTN), a Notary Public /PPAT must be a priority customer by having deposits in BTN amounting to Rp 200,000,000.- (two hundred million rupiah) for Bank products and Rp 50,000,000.- (fifty million rupiah) for non-Bank products. It is evident from Notary MoU PP-IPPAT with BTN signed by President Director of BTN No. 19/MoU/DIR/2018 and No.285/PP-IPPAT/VII/2018, dated July 27, 2018 concerning the provision of banking services and the making of deed in the framework of banking activities.
2. To become a partner at Bank Rakyat Indonesia (Persero) Tbk (BRI), in accordance with letter Number B. IS1- -KW-V/ADK/02/2020, dated February 1, 2020 concerning Deposit Requirements for Partners in the Jakarta Regional Regional Office Credit Division I, addressed to Notary & PPAT Partners of the Regional Office of BRI Jakarta 1, where Notary / PPAT is required to have deposits in BRI in the form of BRITAMA deposits or BRI Giro with a minimum value of Rp 250,000,000.- (two hundred and fifty million rupiah) and will be blocked during becoming a partner (Jonaedi Efendi et al., 2018)

The existence of such provision has the potential for the independence of a Notary Public / PPAT to be pawned and immediately has violated the Code of Ethics Notariat, especially in Article 4 number 9, namely "conducting businesses, either directly or indirectly that lead to the emergence of unhealthy competition with fellow notary partners", and Article 4 number 14, namely "helping sesame peer groups that are exclusive with the aim of serving the interests of an intansi or institution, let alone closing the possibility for other Notary to participate".

d. Exclusive agreement with partner bank

The contents of notary service *cooperation agreements* with banks are often mentioned in their premise that this agreement is non-exclusive but in fact Notary services are exclusive, this can be known in the cooperation agreement between the Bank and Notary as stated in the agreement stated that "Notary has the certainty to perform services and will devote serious efforts in providing services and will provide services for the best interests of the Bank", and Notary Must "provide services to the Bank every working day both in the making of notarial deed / PPAT, as well as other services in accordance with the priority of time and needs of the Bank".

The content of this cooperation agreement with the Bank strongly indicates that Notary Public must comply and submit to the bank's wishes as an employer, as the embodiment of Pacta Sunser Vanda's principle and consensus principle, which causes Notary's integrity and self-esteem to be broken and floated. Related to the violation of the contents of this agreement is reflected in the prohibition of a Notary Public to act in accordance with Article 4 number 14 of

the Notary Code of Ethics as stated above concerning special services to certain institutions or institutions or parties.

The examples of the above cases show the weak independence of a Notary Public who also doubles as PPAT when dealing with banks where in accordance with banking rules consider Notary / PPAT is a partner and therefore must be made a cooperation agreement. Although this is common in the world of notary but is this the right Notary in accordance with the spirit of uujn and notary code? Is it only because of the demands of the stomach that the dignity and dignity of the noble Notary office become pawned?

Notary Independence as a Bank Associate

Notary as a General Official, Notary Public must be independent. This independent question the independence of the General Officer from the intervention or influence of other parties or given the task by other agencies. Therefore in this independent concept must be balanced with the concept of accountability. With the understanding of independence and accountability as mentioned above, it is expected that Notaris can know where and how the duties and responsibilities of Notary As a public official in carrying out their duties/ positions.

About the necessity to sign a cooperation agreement with the Bank should be seen article by article first whether there is an indication of weakening the status of the Notary or even professional organization, because the fact of the cooperation agreement with the Bank makes Notary notary not independent and siding with the Bank. The Bank is used as a notary public intermediary to obtain clients, notary services that are exclusive to the Bank, the determination of notary service honorarium determined by the Bank, the reading of credit binding deed only before the debtor not in front of the parties and the making of a notarial deed based on the Bank's request.

The independence of a Notary Public has been outlined in Article 16 paragraph (1) letter a UUJN namely "In carrying out its position, Notary Has an obligation: to act honestly, carefully, independently, impartially and safeguard the interests of the relevant parties in legal action". The rule is also stipulated in the provisions of the Notary Code of Ethics, namely in Article 3 paragraph 4 which states "Notary public and others who hold and hold the position of Notary Public shall: act honestly, independently, impartially, responsibly, based on the laws and the contents of notaryoaths.

The notary must:

- a. Autonomous
- b. Impartial
- c. It does not depend on anyone (independent), which means in carrying out his/her duties can not be mixed by the party that appointed him or by other parties (Massier, 2008)

Notary public must prioritize the balance between the rights and obligations of the parties facing Notary Public. This is based on Article 16 paragraph (1) letter a UUJN i.e. Notary Public is obliged to act by safeguarding the interests of the parties. Notary public should be able to consider the wishes of the parties so that the interests of the parties are maintained proportionally *which is* then poured in the form of Notarial deed. In addition, Notary Public shall provide services in accordance with the provisions of Article 16 paragraph (1) letter d uujn unless there is a reason to reject it (Setiabudi, n.d.).

Result of The Law of Notary Deed That Is Not Independent

The implementation of notary service cooperation agreement with the Bank that violates the provisions of Article 16 paragraph 1 letter a UUJN and Article 3 number (4) of the Notary Code of Ethics may cause the authentic deed made by the Notary to become a deed under the hands or null and void.

Notarial Deed that is proven to be formil is flawed then its position becomes under the hands and position of notarial deed that has the power of proof as a deed under the hands or notarial deed becomes null and void not based on notarial deed does not meet subjective requirements and objective requirements, but in this case because:

- a. UUJN has determined for itself the provision of the terms of notarial deed that has the power of proof as a deed under the hands or notarial deed becomes null and void deed, namely because it does not meet external requirements.
- b. Notary public has been not careful, not thorough and not appropriate in applying the rule of law related to the implementation of notary office duties based on uujn and also in applying the rule of law related to the contents of deed.

The existence of a notary cooperation agreement made by the Bank as one of the face parties can be used as the basis for suing a Notary Public as an act against the law, because the Notary Is not authorized to make the relevant deed and the notarial deed is defective in its form. The claim against Notary in the form of reimbursement of costs, compensation, and interest as a result of notarial deed has the power of proof as a deed under hand or null and void, based on the existence of a typical legal relationship between the Notary and the face of the law for inaccuracy, inaccuracy, inaccuracy in administrative techniques of making deed based on uujn and the application of the rule of law contained in the deed concerned for the face is not based on the ability to master the science of notary in particular and law in general.

When Notaris commits violations in carrying out its duties and positions, Notaris is threatened with sanctions as stated in Article 84 and Article 85 of the Constitution. Sanctions against Notary Public are categorized into 2 (two), namely civil sanctions in the form of reimbursement, compensation, and interest are the consequences that will be received by notary

public on the demands of the face if the deed concerned only has the power of proof as a deed under the hands or deed becomes null and void, as specified in Article 84 uujn. In addition to civil sanctions, administrative sanctions are also determined in the form of verbal reprimands, written reprimands, temporary dismissals, respectful dismissals, until dismissal with disrespect, as specified in Article 85 of the Uujn.

The claim against Notaris in the form of reimbursement, compensation and interest as a result of notarial deed has the power of proof as deed under hand or null and void, based on the existence of:

1. The typical legal relationship between notary public and the confronters is a form of unlawful conduct.
2. Inaccuracies, inaccuracies and inaccuracies in:
 - a. Administrative techniques of making a deed based on uujn;
 - b. The application of various rule of law contained in the deed concerned for the facerers, which is not based on the ability to master the science of notary in particular and law in general.

If, furthermore, Notary Public is required to civil case on the deed related to reimbursement of costs, compensation and interest, then first it must be proven that:

1. The existence of suffered losses;
2. Between the losses suffered and the violation or negligence of the Notary there is a clauseal relationship; Dan
3. The violation (act) or kelalian is caused by an error that can be accounted for to the notary public concerned

4. CONCLUSION

1. That the Cooperation Agreement made between a Notary And a Bank for a Notary Public to be a partner of the Bank can be classified as a legal relationship, which is very contrary to the Notary Office Law and the Notary Code of Ethics, because the Notary Is only authorized to coordinate or actualize the wishes of the accusers, who should not know at all, in an authentic deed. The existence of legal relationship between the Bank and Notary in an authentic deed making has entered into the category of Acts Against The Law (*onrechtmatigedaad*) because it causes the Notary to be one of the parties in the deed and there is an interest in the deed so that the independence of the Notary in the making of authentic deed becomes very absurd or biased or can be said to be no longer independent (Adjie, n.d.).

Moreover, in practice, there are always things that cause the Notary Public to have no legal force when dealing with the Bank as a partner so that the Notary Often accepts what the Bank wants under the pretext of still being able to be given a job by the Bank.

2. The implementation of notary service cooperation agreement with the Bank violates the provisions of Article 16 paragraph 1 letter a UUJN and Article 3 number (4) of the Notary Code of Conduct, namely the attitude of indigity and impartiality of the Notary to the Bank so as to cause the authentic deed made by the Notary to be deed under hand or null and void, as a result of the law of the Notarial deed as such, it can be used as an excuse for the party suffering losses to demand reimbursement of costs, compensation and interest to the Notary Public.

Suggestions

1. It is recommended that Notaris does not make cooperation agreements with the Bank because it is prone to violations of the law and the effect is that the Notary Public becomes independent and results in the occurrence of UnlawfulActs (*Onrechtmatigedaad*).
2. Notary public must be neutral, impartial to one of its customers (Bank), because one of notary's duties is to prevent problems. Provisions of the Uujn governing the reasons for the change in the power of proof of authentic deed into deed under hand or null and void by law should continue to be remembered and studied by notary public because the public can sue the Notary public civilly demanding reimbursement of costs, compensation and interest if it turns out that the deed can be proven to be made not in accordance with the applicable law.

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