



## Legal Consequences of Cooperation Agreements between Notaries/PPAT and Bank Mandiri in Micro Credit Provision

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### Abstract

**Objective:** This study aims to analyze the legal standing of cooperation agreements between Notaries/Land Deed Officials (PPAT) and Bank Mandiri (Cakranegara Branch, Mataram) in the distribution of Micro-Business Loans. Specifically, the research examines the legal consequences of such agreements from the perspective of the Law on Notary Positions (UUJN) and the Notarial Code of Ethics.

**Method:** This research employs a normative legal research method, utilizing both a statutory approach and a conceptual approach. Data were collected through literature studies and analyzed qualitatively to obtain a comprehensive overview of legal compliance among the parties involved.

**Results:** The findings indicate that cooperation agreements between Notaries/PPAT and banking institutions create a contractual relationship that potentially undermines the principle of notary independence as mandated by Article 16, paragraph (1), letter a of the UUJN. This partnership model suggests self-promotion efforts, which are strictly prohibited under Article 4, point 3 of the Notarial Code of Ethics. While the involvement of Notaries/PPAT administratively ensures the legal certainty of loan documents, ethically, this cooperation pattern is vulnerable to abuse of authority and compromises the independence of public office for the sake of banking business interests.

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### 1. Introduction

A legal relationship is a relationship between legal subjects that results in legal consequences. One example of such a relationship occurs between Notaries and banking institutions through cooperation agreements to become bank partners (panel notaries). Referring to the provisions of the Law on Notary Positions (UUJN) and the Notarial Code of Ethics, there is no explicit prohibition for a Notary to agree with any party. An agreement serves as a binding instrument for legal relationships between legal subjects in performing various legal acts. An agreement is defined as "an event where one person promises to another, or where two people mutually promise to execute a certain matter."<sup>[1]</sup>

Credit agreements involving Notaries and Land Deed Officials (PPAT) fundamentally aim to provide legal certainty and protection for both parties involved in lending and borrowing. Therefore, cooperation agreements between Notaries, PPAT, and banks within the context of micro-segment business credit represent a strategic step to support smooth credit transactions and ensure legal certainty for all stakeholders. Micro-business credit, as a banking product provided to individuals for various consumptive and productive needs, requires collateral that is valid and clear under the law. One form of collateral frequently used in micro-business credit is land title certificates.

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<sup>1</sup> R. Subekti, *Hukum Perjanjian*, 19th Printing, Intermedia, Jakarta, 2002, p. 1.

In this regard, the roles of the Notary and PPAT are vital, as they are responsible for verifying and legalizing documents related to fiduciary security and mortgages (*Hak Tanggungan*), which form the basis of credit extension. Notaries are tasked with drawing up authentic deeds as evidence of legal transactions, while PPATs play a role in preparing deeds related to land rights, including sale and purchase, grants, and the encumbrance of mortgages.<sup>[2]</sup>

The collaboration between banks, Notaries, and PPATs aims to establish legal certainty in business credit transactions involving land rights as collateral. This process ensures that the collateral provided by the debtor possesses valid legality and is correctly registered, thereby mitigating the risks faced by the bank as the creditor. In this context, Notaries and PPATs do not merely facilitate the agreement but also ensure that the transactions and documents comply with prevailing laws, such as Law No. 4 of 1996 concerning Mortgage Rights, Law No. 42 of 1999 concerning Fiduciary Security, and Law No. 2 of 2014 concerning the Position of Notaries.<sup>[3]</sup>

With this cooperation agreement, it is expected that the Bank can conduct productive-segment credit operations more securely, while the public, as debtors, receive adequate legal protection. Conversely, Notaries and PPATs have the opportunity to play an active role in the success of the banking and economic sectors, leading to more stable economic growth. Collaboration between Notaries/PPATs and Banks is essential to ensure that every credit transaction involving land collateral is secure, valid, and legally guaranteed. Clarity regarding the roles of each party and an understanding of applicable regulations are key to maintaining the integrity of the banking system and increasing public trust in the financial sector.<sup>[4]</sup>

When a bank disburses credit to a debtor, it begins with the signing of a credit agreement, which may take the form of a private (*underhand*) deed or a notarial deed followed by the encumbrance of collateral. Fundamentally, a bank may utilize the services of any Notary/PPAT to execute credit binding and collateral encumbrance, provided it remains within the jurisdiction of the Notary/PPAT's authority. However, banks now appear to be selective, choosing specific Notaries/PPATs to serve as permanent partners. Due to this opportunity to become a permanent bank partner, many Notaries/PPATs seek to apply for cooperation with banks. This is driven by the high number of Notaries/PPATs in certain areas, leading to increasingly tight competition, and the belief among Notaries/PPATs that partnering with a bank will secure a continuous flow of clients and honoraria, despite the agreements being based on standardized formats pre-determined by the bank.

This situation raises issues regarding the independence of the Notary in drafting deeds and poses potential violations of Article 4, point 5 of the Notarial Code of Ethics, which explicitly prohibits Notaries from signing deeds whose process and preparation were handled by other parties.<sup>[5]</sup> Furthermore, such cooperation with banks may conflict with Article 4, point 4 of the Notarial Code of Ethics, which regulates the obligations of Notaries in exercising their

positions.

Notaries are prohibited from collaborating with agencies, services, or legal entities that essentially act as intermediaries in seeking and/or obtaining clients.<sup>[6]</sup> A Notary has the obligation to draw up authentic deeds regarding legal acts, agreements, or stipulations mandated by law or requested by interested parties to be incorporated into an authentic deed, ensuring the certainty and veracity of the deed's content. An authentic deed is a document drafted in the form prescribed by law, created by or before a public official authorized for that purpose, at the place where the deed is drawn up.

However, in practice, the cooperation process between Banks and Notaries/PPAT has not fully implemented the mechanisms and functions of their positions in accordance with the Code of Ethics, the Law on Notary Positions, or the PPAT Code of Ethics. Ideally, in such a cooperation process, the Bank should appoint the Notary/PPAT as a partner. Yet, the opposite is often found, where the Notary/PPAT is the one applying to become the Bank's partner; this is fundamentally contrary to the Notary/PPAT Code of Ethics.

In performing their duties, Notaries strive to obtain opportunities for their services to be used by interested parties, such as banking institutions. However, some Notaries occasionally behave unethically or violate the integrity of their office. If a Notary, as a public official, performs an act beyond their designated authority, it can be categorized as an abuse of authority. Pursuant to the provisions of Article 3, point 4 of the Notarial Code of Ethics, a Notary is obliged to "act honestly, independently, impartially, and with full responsibility, based on the laws and regulations and the oath of the Notary position."

Cooperation between Notaries/PPAT and Banks must be based on the Law on Notary Positions and the Notary/PPAT Code of Ethics to prevent deviations and moral failings. As is well known, a Notary/PPAT must remain independent and cannot be regulated by or biased toward a Bank. This cooperation activity has sparked controversy among Notaries/PPAT themselves because they must not be dictated to or take sides. Conversely, if a Notary/PPAT collaborates or enters into a partnership with a Bank, they become subject to and follow the Bank's regulations, which contradicts the independent nature of the Notary/PPAT and conflicts with the Notarial Code of Ethics and the Law on Notary Positions.<sup>[7]</sup>

Based on the descriptions above, the researcher is interested in conducting a study regarding the roles and responsibilities of Notaries and PPAT in micro-business credit cooperation agreements with Bank Mandiri, as well as the legal consequences of such cooperation agreements between Notaries/PPAT and Bank Mandiri for micro-business credit, reviewed from the perspective of Laws, Regulations, and the Notarial Code of Ethics.

Based on the background described above, the research questions in this study are: 1) What are the roles and responsibilities of Notaries and PPAT in micro-business credit cooperation agreements with Bank Mandiri? and 2) What are the legal consequences of cooperation agreements between Notaries/PPAT and Bank Mandiri for micro-

<sup>2</sup> Abdul R. Saliman, *Hukum Bisnis Untuk Perusahaan*, Prenada Media Group, Jakarta, p. 19.

<sup>3</sup> Law of the Republic of Indonesia No. 2 of 2014 concerning the Position of Notaries.

<sup>4</sup> Bank Indonesia Regulation No. 17/3/PBI/2015 concerning Risk Management Systems for Commercial Banks

<sup>5</sup> Tya Pancawati Hutagalung, Siti Malikatun Badriah, Ira Wati, *Kedudukan Kerjasama Notaris dan Bank*, Vol. 14, 2021, p. 358.

<sup>6</sup> Salim HS, *Pengantar Kode Etik Notaris Indonesia, Amerika Serikat, Italia, dan Kanada*, 1st Printing, Reka Cipta, Bandung, 2022, p. 152.

<sup>7</sup> Salim HS, *Peraturan-Peraturan Jabatan & Kode Etik Pejabat Pembuat Akta Tanah (PPAT)*, PT Raja Grafindo Persada, Depok, 2019, p. 257.

business credit from the perspective of Laws, Regulations, and the Notarial Code of Ethics?

## 2. Research Method

The type of research employed in this study is normative legal research. Normative legal research, also known as library-based legal research, is a methodology used to examine existing library materials or secondary data.<sup>[8]</sup> This normative method is applied by analyzing the identified legal issues through the lens of legal theories, which are then correlated with prevailing laws and regulations in practice.<sup>[9]</sup> Normative legal research typically constitutes a documentary study, utilizing sources of legal materials such as legislation, judicial decisions, contracts/agreements, legal theories, and scholarly opinions. This type of research is also referred to as doctrinal legal research, library study, or document study.<sup>[10]</sup> To analyze the issues in this study, the following approaches are utilized:<sup>[11]</sup>

1. **Statute Approach:** This involves examining laws and regulations, legal principles, and legal norms within society, sourced from legislation, books, documents, and other relevant references.
2. **Conceptual Approach:** This approach is conducted by reviewing the views and concepts of experts regarding the issues discussed. It is particularly useful when legal rules are absent or not yet established,<sup>[12]</sup> allowing expert opinions to serve as a foundation for strengthening the author's arguments.

The legal materials obtained are subsequently analyzed using a descriptive-qualitative method. This mechanism for problem-solving refers to qualitative inquiry, comparative studies, and correlational studies between various legal elements. This research encompasses the collection, analysis, and interpretation of data derived from library research, which are then formulated into a comprehensive conclusion.<sup>[13]</sup>

## 3. Discussion

### 3.1. The Roles and Responsibilities of Notaries and PPAT in Micro-Business Credit Cooperation Agreements with Bank Mandiri

#### 3.1.1. The Role of the Notary in Micro-Business Credit Cooperation Agreements with Bank Mandiri.

The institution of the Notary exists in Indonesia to realize legal certainty and protection for members of society who utilize notarial services. Within the realm of private law, the state positions the Notary as a public official authorized to draw up authentic deeds for the purpose of evidence. The legal needs of society can be observed through the increasing number of agreements formalized in the form of a notarial deed.<sup>[14]</sup>

Notaries have long been recognized in Indonesian society,

dating back to the Dutch colonial era. The profession arose from a necessity in human social interaction; the public requires a means of evidence to protect themselves within the private legal relationships they enter.

A Notary serves as an extension of the government specifically the state where the state entrusts the Notary to carry out a portion of state duties or affairs within the scope of private law. Given that Notaries exercise their office in the private legal domain, the state designates them as public officials (*pejabat umum*) authorized to create authentic deeds for evidentiary purposes.

As public officials, Notaries possess specific authority. The term "public" in this context carries a legal meaning rather than referring to the general public as an audience. A Notary as a public official is not equivalent to a public official in the government sector, who is categorized as a State Administrative Body or Official. This distinction can be seen in the resulting products of each official. For a Notary, the final product is an authentic deed, which is bound by the provisions of civil law, particularly the law of evidence.<sup>[15]</sup> Pursuant to the provisions of Article 1, point 1 of the UUJN, a Notary is a public official authorized to create authentic deeds and possesses other authorities as stipulated in the Law on Notary Positions. The designation "public official" implies that the individual performs a public function granted by the state, specifically within the jurisdiction of private law. Public officials are appointed and dismissed by the government and are vested with the authority and obligation to serve the public.<sup>[16]</sup>

According to R. Soegondo Notodisoerjo, a public official is someone appointed and dismissed by the government, granted the authority and duty to serve the public in specific matters because they participate in exercising a power derived from the government's authority (*gezag*). Inherent in this office are specific characteristics and traits that distinguish it from other positions in society.<sup>[17]</sup> Notaries are public officials (*openbare ambtenaren*) due to the close link between their authority and their primary duty: the creation of authentic deeds.

As officials authorized to create authentic deeds, Notaries must not stray from the corridor of applicable laws in performing their duties. Tan Thong Kie, in his book *Studi Notariat*, illustrates that the position of a Notary as a functionary in society remains highly respected. A Notary is generally regarded as an official from whom one obtains reliable advice. Everything written and established (*konstatir*) by them is deemed true. They are the creators of powerful documents within a legal process.<sup>[18]</sup>

In practice, a Notary is an independent public official bound by the regulations of their office and free in its execution. Although termed a public official, a Notary is not a civil servant (*pegawai negeri*) as defined in the regulations governing personnel. The qualification of public official is

<sup>8</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, 11th Printing, PT Raja Grafindo Persada, Jakarta, 2009, pp. 13-14.

<sup>9</sup> Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 8th Printing, Raja Grafindo Persada, Jakarta, 2004, p. 118.

<sup>10</sup> Muhaimin, *Metode Penelitian Hukum*, Mataram University Press, Mataram, 2020, p. 117.

<sup>11</sup> Salim H.S. and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, 1st Ed, 4th Printing, Raja Grafindo Persada, Jakarta, 2016, pp. 17-18.

<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media Group, Jakarta, 2014, p. 136.

<sup>13</sup> Bahder Johan Nasution, *Metode Penelitian Hukum*, Penerbit Maju, Bandung, 2008, p. 35

<sup>14</sup> Laurensiu Arliman S, *Notaris dan Penegakan Hukum Oleh Hakim*, Cv. Budi Utama, Yogyakarta, 2015, p. 2.

<sup>15</sup> Habib Adjie, *Sekilas Dunia Notaris & PPAT Indonesia (Kumpulan Tulisan)*, Mandar Maju, Bandung, 2009, p. 21.

<sup>16</sup> Hartanti Sulihandari and Nisya Rifiani, *Prinsip-Prinsip Dasar Profesi Notaris*, Dunia Cerdas, East Jakarta, 2013, p. 5.

<sup>17</sup> R. Soegondo Notodisoerjo, *Hukum Notariat di Indonesia Suatu Penjelasan*, Raja Grafindo Persada, Jakarta, 2009, p. 13.

<sup>18</sup> H. Adil, *Mengenal Notaris Syari'ah*, Citra Aditya Bakti, Bandung, 2011, p. 26.

not exclusive to Notaries but is also granted to Land Deed Officials (PPAT). Commensurate with the Notary's responsibility to society, there must be a guarantee of continuous supervision and guidance to ensure that the Notary's duties always align with the legal norms underlying their authority, thereby avoiding the abuse of authority or the trust granted to them.<sup>[19]</sup> In Indonesia, the duty and function of supervising Notaries are carried out by the Notary Oversight Board (*Majelis Pengawas Notaris*).

A Notary is a public official authorized to draw up authentic deeds regarding all agreements and stipulations required by general regulations or desired by interested parties to be stated in an authentic deed.<sup>[20]</sup> Furthermore, the amendment to the Law on Notary Positions defines a Notary as a public official with the authority to create authentic deeds and other authorities as specified in this Law or based on other laws. This signifies that a notarial deed is directly related to the value and dignity of the contracting parties. The promises declared within the deed are reflections of the sincere intentions conveyed by the parties.<sup>[21]</sup>

The aforementioned provisions state that a Notary is a public official. The definition provided by both the original UUJN and the Amended UUJN refers to the duties and authorities exercised by the Notary. This means that a Notary is tasked as a public official with the authority to create authentic deeds and other authorities as determined by the UUJN and other prevailing laws and regulations. Although designated as a Public Official, a Notary is not a Civil Servant (*Pegawai Negeri*) as defined by laws governing civil service employment.<sup>[22]</sup>

In the formulation of the UUJN, which states that a Notary is a Public Official (*openbaar ambtenaar*),<sup>[6]</sup> it is understood as an official whose duties pertain to the interests of the public. In this context, one may become a public official if they are appointed and dismissed by the government and vested with the authority and obligation to serve the public in specific matters.<sup>[7]</sup>

A credit agreement is an event in which two people or two parties mutually promise to perform a certain act, or an agreement made by two or more parties where each agrees to comply with what is contained in that agreement. The role of a notary in drafting banking credit agreement deeds is paramount; as public officials, notaries are required to act professionally, which includes bridging the interests of the creditor and the debtor. However, in reality, this professionalism faces the demands of the banking world—namely procedural efficiency and security in credit distribution—resulting in the practice of banking institutions leaning toward the use of standard (*boilerplate*) contracts in their credit agreements.<sup>[23]</sup>

Article 1313 of the Indonesian Civil Code (*KUH Perdata*) states: "An agreement is an act by which one or more persons bind themselves to one or more others." When linked to the theory of legal certainty in an agreement according to Article 1313 of the Civil Code, as well as the rights and obligations within a credit agreement deed, the emphasis is placed on

clear interpretation and sanctions so that an agreement can provide an equal standing between the legal subjects involved (the creditor/bank and the debtor/customer). Certainty provides clarity in performing legal acts during the execution of an agreement, whether in the form of performance (*prestasi*) or in cases of breach of contract (*wanprestasi*). If a party is aggrieved, the sanctions within the agreement must be enforced according to the consensus of the parties.<sup>[24]</sup>

From this event, a legal relationship arises between two or more persons. For an agreement to occur, it must meet the requirements for a valid contract to possess legal force. Under Article 1320 of the Civil Code, four requirements must be met for an agreement to be valid:

1. The mutual consent of those who bind themselves;
2. The capacity to agree;
3. A specific subject matter;
4. A lawful cause (*causa*).

Legally, there are two types of credit agreements used by banks: underhand agreements (*akta di bawah tangan*) and credit agreements made by and before a notary (*notariil*) or authentic deeds. An underhand credit agreement is a credit provision by a bank to its customer created only between them (creditor and debtor) without a notary.

The role of a notary in drafting credit agreement deeds, per their authority under Article 15 paragraph (1) of Law Number 2 of 2014, involves creating authentic deeds regarding all acts, agreements, and stipulations required by law or desired by interested parties, guaranteeing the certainty of the deed's creation, maintaining the deed, and providing *grosse*, copies, and excerpts of the deed. All of this applies as long as the creation of the deed is not assigned to or excluded for other officials or persons determined by law.<sup>[25]</sup> Specifically, the authority under Article 15 paragraph (1) relates to:

1. Guaranteeing the certainty of the date of creation;
2. The method of storing the deed;
3. The procedure for issuing *grosse*;
4. The method of providing copies and excerpts of the deed.

It can be stated that the benefit of a notarial deed in a bank credit agreement is as a strong and conclusive tool of evidence (*alat bukti yang kuat dan sempurna*) if a debtor challenges the validity or veracity of the credit agreement deed—for instance, by denying the existence of the credit agreement. Although such denials are rare (as problems usually involve default/*wanprestasi*), notarial deeds are essential for securing credit.

For banks or creditors, a strong legal basis for the necessity of an agreement in credit provision is derived from Article 1 paragraph (11) of Law Number 7 of 1992 concerning Banking, as amended by Law Number 10 of 1998, which defines credit as: "the provision of money or equivalent claims, based on a lending-and-borrowing agreement or consensus between the bank and another party, requiring the borrower to repay the debt after a certain period with interest,

<sup>19</sup> Ghansham Ananda, *Karakteristik Jabatan Notaris di Indonesia*, Zifatama Publisher, Sidoarjo, 2014, p. 159.

<sup>20</sup> Shidqi Noer Salsa, *Hukum Pengawasan Notaris di Indonesia dan Belanda*, Kencana, Jakarta, 2020, p. 2.

<sup>21</sup> Ghansham Ananda, *Karakteristik Jabatan Notaris di Indonesia*, Zifatama Publisher, Sidoarjo, 2014, p. 18.

<sup>22</sup> Shidqi Noer Salsa, *Hukum Pengawasan Notaris di Indonesia dan Belanda*, Kencana, Jakarta, 2020, p. 13.

<sup>23</sup> M. Kamelia and A. Mashdurihatun, "Peran Notaris dalam Pembuatan Akta Perjanjian Kredit dalam Perspektif Hukum Positif dan Hukum Islam," *Jurnal Akta*, Vol. 4, No. 4 (2017).

<sup>24</sup> Ermanto Fahamsyah, *Hukum Perdata*, Infes Media, Bali, 2024, p. 12.

<sup>25</sup> Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notaries.

compensation, or profit-sharing." [26]

### 3.2. Responsibilities of Notaries and Land Deed Officials (PPAT) in Micro-Business Credit Cooperation Agreements with Bank Mandiri

The responsibility of Notaries and PPATs in Credit Cooperation Agreements encompasses civil, administrative, and ethical accountability for the authentic credit agreement deeds they produce. They are obligated to guarantee the validity of documents, provide legal counseling, and register collateral, such as Mortgages (*Hak Tanggungan*). A Notary must ensure that the deed complies with legal procedures and serves the interests of the involved parties.

The responsibilities of a Notary in credit cooperation consist of several key areas:

1. **Legal Responsibility:** Ensuring that the deed is legally valid, the parties possess the necessary legal capacity, and all supporting documents are compliant.
2. **Civil Liability (Indemnification):** A Notary is liable for damages, costs, and interest if an unlawful act within the deed causes it to be null and void or degraded into a private (*underhand*) deed, thereby causing loss to one of the parties.
3. **Administrative Obligations:** Maintaining the original deed (*minuta akta*), delivering copies of the deed in a timely manner (typically within 7 working days), and registering the Mortgage within a maximum of 3 months after signing.
4. **Ethical Responsibility:** Upholding the Notarial Code of Ethics and the Law on Notary Positions (UUJN).

In credit cooperation agreements, the Notary functions as a bank partner serving banking needs (creating credit or security deeds) while providing legal protection for both the creditor and the debtor. Despite being a partner, the Notary is mandated to act independently and professionally, and must not alter or add to the contents of the deed without the consent of the appearers.

The state or government grants Notaries the authority to create authentic deeds, including credit agreement deeds, to protect and provide legal certainty for the parties. Furthermore, the roles of the Notary and PPAT include verifying collateral in the form of land rights to ensure its legal validity and to avoid potential legal disputes or cases. The legalization (*legalisir*) or registration (*waarmerking*) and verification of these deeds are conducted to mitigate negative factors, such as ensuring the validity of the bank's performance (in the form of money, goods, or services) and facilitating the bank's execution of collateral in the event of default.

The presence of a notary in the micro-credit process serves not only an administrative function but also acts as a guardian of legal integrity at every stage. Notarial involvement guarantees that all documents drafted and signed comply with applicable laws and reflect a valid consensus. This is crucial in the micro-credit context, where small business owners or individuals often lack a strong understanding of the legal aspects of financing agreements. Thus, the notary's role also includes an educational function providing explanations

regarding the content and legal consequences of the signed documents to ensure fair and transparent transactions.

In the micro-credit workflow, the notary's role appears at several vital stages requiring legalization and legality checks. Generally, the micro-credit workflow for a Notary begins with: [27]

1. Credit Order Letter from the Bank (Creditor).
2. **Receipt and verification of files from the Bank:** This initial step is essential as the documents contain the prospective debtor's personal information (ID, Family Card, Marriage Certificate, etc.). Accuracy and legality are paramount for the continuation of the process.
3. Drafting of SKMHT (Power of Attorney to Impose Mortgage), APHT (Deed of Granting Mortgage), and Cover Notes.
4. Deed of Granting Mortgage (APHT).
5. Issuance of the Cover Note (CN).
6. Micro-credit contract (Realization).
7. Verification of collateral certificates.
8. Preparation of deed copies.
9. Registration of the Mortgage (HT).

According to the author, the cooperation between a Notary and Bank Mandiri inevitably creates binding rights and obligations for both the public official and the bank. Regarding the partnership relationship, the bank and the notary agree on terms and conditions that become mutually binding. Based on this partnership agreement, several duties must be fulfilled, such as:

1. Providing services to the Bank every working day for notarial/PPAT deeds or other services according to the Bank's priority and needs.
2. Providing the *minuta akta* and other documents within 2 working days, or 1 working day in urgent situations.
3. Delivering copies of the deed no later than 7 working days after signing.
4. Drafting deeds according to the Bank's request or using the Bank's provided drafts while maintaining the Bank's security and interests.
5. Completing the mortgage registration process within a maximum of 3 months after signing the APHT.
6. Delivering a statement regarding the land certificate processing time to the Bank.

Fulfilling these obligations entitles the notary to certain rights, primarily the receipt of honoraria as agreed upon after completing the credit binding and mortgage registration. Additionally, the notary is entitled to compensation if there is negligence in the execution of the cooperation agreement or if there is a unilateral termination of the partnership. The notary also has the right to receive work orders from the bank regarding credit binding and collateral documentation.

Generally, civil liability occurs only when contractual or non-contractual obligations are not met. Liability arising from a contractual relationship is called contractual liability, indicating that the parties consciously established a legal relationship. Conversely, non-contractual obligations arise from prevailing laws and regulations, where the legal relationship is based not on an agreement but on acts

<sup>26</sup> Namira Tasya Maghfira, "Perjanjian kerja sama antara bank dan Notaris dan implikasi hukumnya terhadap kemandirian Notaris," Thesis, Faculty of Law, Sriwijaya University, Palembang, 2025.

<sup>27</sup> I Made Bagus Dwiki Praja Utama, I Ketut Rai Setiabudhi, Ida Bagus Wyasa Putra, "Pengaturan Penggunaan Surat Order Dalam Proses Pengikatan Agunan Kredit Berupa Hak Tanggungan," *Jurnal Ilmiah Prodi Magister Kenotariatan*, vol. 3, no. 1 (2018): 136–144.

determined by law as creating rights and duties.<sup>[28]</sup>

In drafting authentic deeds, a notary is responsible for any intentional errors or violations, in accordance with the principle of liability based on fault or negligence. However, as long as the notary exercises their authority according to regulations, they are not liable if the involved parties provide false information or break the law. Since a notary only documents what is communicated by the parties, the parties are obligated to disclose truthful information.

Because the will of the parties is reflected in the deed, the notary is essentially free from responsibility regarding the substance of the document. The notary remains passive, merely conveying the intent and purpose of the agreement. However, the notary is responsible if the deed contains contradictory information that causes loss to the parties or third parties. For example, it could be considered "legal smuggling" if a notary creates a valid deed for a house transfer without the bank's consent when the bank holds authority over the subject matter. In such cases, the bank or aggrieved parties may hold the notary accountable. A well-trained notary will refrain from such contradictory acts. As previously mentioned, a notary's professional obligation is based on the principle of liability based on error, meaning the notary is liable if an error occurs. Thus, the notary has a significant obligation to be present in bank credit agreements, minimize clerical errors, and carry out their duties within both civil and criminal frameworks.

### 3.3. Legal Consequences of Cooperation Agreements between Notaries/PPAT and Bank Mandiri for Micro-Business Credit

As a public official authorized to draw up authentic deeds, a Notary is governed by Article 1, point 1 of Law No. 30 of 2004 in conjunction with Law No. 2 of 2014 concerning the Position of Notaries, which states: "A Notary is a public official authorized to create authentic deeds and possesses other authorities as stipulated in this Law or based on other laws." In this capacity, a Notary may be held accountable for their actions regarding the creation of such deeds. As authentic deeds, Notarial deeds possess the following evidentiary powers:<sup>[29]</sup>

1. External Evidentiary Power (*Uitwendige Bewijskracht*)
2. Formal Evidentiary Power (*Formele Bewijskracht*)
3. Material Evidentiary Power (*Materiele Bewijskracht*)

A credit agreement drafted by a Notary with mortgage security entails legal consequences. As previously explained, an agreement is not merely a moral obligation but a legal one. The legal consequence of a valid agreement is that it serves as law for the parties involved. This principle, as stipulated in Article 1338 of the Indonesian Civil Code (*KUHPerdata*), implies that the consensus reached by the parties is binding and cannot be disregarded unless there is a mutual agreement or legally sufficient grounds.<sup>[2]</sup>

Article 1338 states:

1. "All legally executed agreements shall bind the parties as law."
2. "Agreements cannot be revoked except by mutual consent of the parties, or for reasons authorized by law."

Regarding the legal consequences for the Notary, these are

linked to Article 1320 of the Civil Code concerning the four essential requirements for a valid contract:<sup>[3]</sup>

1. Mutual consent of the parties;
2. Capacity to enter into an obligation;
3. A specific subject matter;
4. A lawful cause (*causa*).

Furthermore, the legal consequences for a Notary drafting a credit agreement deed—beyond fulfilling Article 1320 must also comply with the Notary's obligations under Article 16, as well as Articles 38, 39, 40, and 44 paragraphs (1) through (4) of the Law on Notary Positions. If a Notary fails to perform their duties professionally or violates these provisions, they may be subject to sanctions under Articles 84 and 85 of the Law on Notary Positions, which are categorized into two types:

1. **Civil Sanctions (Article 84):** Violations of provisions such as Article 16 paragraph (1) letter i, Article 41, 44, 48, 49, 50, 51, and 52 result in the deed only having the evidentiary power of an **underhand deed** (*akta di bawah tangan*) or being **null and void by law** (*batal demi hukum*). This grants aggrieved parties the right to sue the Notary for costs, damages, and interest.
2. **Administrative Sanctions (Article 85):** To ensure Notaries provide legal protection and certainty, Article 85 stipulates that violations of Articles 7, 16, 17, 20, 27, 32, 37, 54, 58, 59, and/or 63 shall result in:
  - Oral warnings;
  - Written warnings;
  - Temporary suspension;
  - Honorable discharge;
  - Dishonorable discharge.

Additionally, according to Soegianto, Notaries who violate the Code of Ethics may face:<sup>[5]</sup>

1. Censure;
2. Warning;
3. Temporary suspension from the Association;
4. Dismissal from the Association;
5. Dishonorable dismissal from the Association.

Members who violate the Code of Ethics are sanctioned based on the severity and frequency of the violation. Active members who undermine the dignity and honor of the profession may be sanctioned by the Central Honorary Board. Decisions regarding warnings or censures issued by the Honorary Board are final and cannot be contested.

**Legal Consequences for the Debtor/Plaintiff:** Based on material evidence, the non-application of Articles 1237, 1243, and 1244 of the Civil Code, as well as the non-applicability of *Haftung* (liability), means the debtor only holds the obligation (*schuld*) to pay the principal loan, with no obligation for damages, interest, or legal costs.

#### Author's Analysis on the Legal Impact on the Bank

The author posits that the primary legal impact on the Bank arises if the cooperation agreement leads the Notary to violate the Law on Notary Positions (UUJN) and the Notarial Code of Ethics.

<sup>28</sup> Sari Murti Widiyastuti, *Asas-Asas Pertanggungjawaban Perdata (Bagian Pertama)*, Cahaya Atma Pustaka, Yogyakarta, 2020, p. 9.

<sup>29</sup> Habib Adjie, *Sanksi Perdata dan Administrasi terhadap Notaris sebagai Pejabat Publik*, Refika Aditama, Bandung, 2009, p. 72.

### 1. Downgrading of the Authentic Deed's Status

The most significant impact is the potential loss of the deed's evidentiary strength. If essential legal requirements are violated, the deed may:

- Become an underhand deed (weaker evidentiary power).
- Be declared null and void if essential external requirements are not met.

This is detrimental to the bank, as authentic deeds (such as APHT) are vital instruments for mitigating bad credit risks and ensuring legal protection during court disputes.

### 2. Legal and Dispute Risks

If a Notary loses independence, for instance, by merely following bank drafts without proper verification, the Bank may face:

- Civil lawsuits from customers or aggrieved third parties.
- Potential annulment of the agreement due to a serious breach of law or excessive imbalance in bargaining positions.

### 3. Reputational Risk

The Bank faces negative public perception if it is revealed to be collaborating with Notaries who provenly violated ethical codes or the UUJN. While cooperation agreements are civilly valid, their execution must guarantee the Notary's independence and impartiality. A loss of independence risks making the Notary biased toward the bank, which contradicts their nature as a public official serving all levels of society fairly. Violating these principles may lead to the degradation of the deed's power, causing it to lose its status as a conclusive legal instrument.

### 4. Conclusion

Based on the discussion provided, the conclusions of this study are as follows:

#### 4.1. Roles and Responsibilities of Notaries/PPAT:

Notaries and PPATs play a crucial role as public officials who provide legal certainty through the creation of authentic deeds (such as Credit Agreement Deeds and APHT) in the distribution of micro-credit at Bank Mandiri. Their responsibilities encompass civil aspects (indemnification for errors), administrative aspects (compliance with the UUJN), and ethical codes. In this context, Notaries function not only administratively but also educationally to protect debtors who often have limited legal understanding.

#### 4.2. Independence Issues in Partnership Relationships:

There is a contradiction between the practice of partnership relationships (permanent cooperation) and the principle of notary independence. The findings indicate that intense competition often drives Notaries/PPATs to compromise their independence by applying to be bank partners and adhering to standardized formats provided by the bank. This potentially violates Article 4 of the Notarial Code of Ethics (prohibition of self-promotion and intermediaries) as well as Article 16 of the UUJN regarding the obligation to act independently and impartially.

### 5. Legal Consequences:

**For the Notary:** Violations of procedures or ethical codes may lead to the degradation of the deed into an underhanded

deed or it being declared null and void by law, alongside administrative sanctions ranging from warnings to dishonorable discharge.

**For the Bank:** The downgrading of the deed's status results in weakened evidentiary power in court, complicates the execution of collateral (mortgage execution), and creates risks of civil lawsuits and reputational damage.

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