



# The Division Of Gono-Gini's Property from The Credit Agreement with The Deed Under The Hand Between The Husband and Wife and The Outstanding Creditor Is Associated with The Banking Law and The Notary Office Law

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## ABSTRACT

*The Banking Law does not explain the regulation regarding the form of credit agreement in the banking world, it must be made in the form of an underhand agreement or must use an authentic deed made before a notary. Meanwhile, the Notary Position Act only regulates private agreements and the authority of a notary in making authentic deeds, but does not specifically regulate credit agreements made in the form of notarial or private deeds. The purpose of this study is to analyze how the validity of private credit agreements is seen from the Banking Act and UUJN as well as arrangements for the distribution of gono-gini assets for couples who have divorced from the results of private credit agreements between husband and wife and creditors who have not been paid off. To answer the main problems in this study, the author uses a juridical - normative research method and is sourced from secondary data, with an emphasis on the use of library materials as a source of research. Based on the results of the author's research, the credit agreement under the hand can be said to be valid if the credit agreement is recognized by the customer. Because the legal force of an underhand credit agreement depends on the recognition of the parties, the party whose name and signature are included in the underhand deed. In addition, the distribution of gono-gini assets must be based on the principle of justice, which is to be divided equally between both parties.*

## ABSTRAK

Kurangnya kondisi ekonomi masyarakat berdampak memunculkan banyaknya perjanjian kredit. Indonesia banyak memfasilitasi berbagai macam bentuk pinjaman yang dapat dilakukan pada lembaga keuangan manapun dengan memenuhi persyaratan yang disediakan oleh lembaga keuangan tersebut. Undang-Undang Perbankan tidak menjelaskan tentang pengaturan mengenai bentuk perjanjian kredit dalam dunia perbankan, harus dibuat dalam bentuk perjanjian dibawah tangan atau harus menggunakan akta otentik yang dibuat dihadapan notaris. Sementara Undang-Undang Jabatan Notaris hanya mengatur mengenai perjanjian bawah tangan dan kewenangan notaris dalam membuat akta otentik saja tetapi tidak mengatur secara khusus mengenai perjanjian kredit yang dibuat dalam bentuk akta notariil maupun bawah tangan. Tujuan dari penelitian ini adalah untuk menganalisa bagaimana keabsahan perjanjian kredit dibawah tangan dilihat dari Undang-Undang Perbankan dan UUJN serta pengaturan pembagian harta gono-gini bagi pasangan yang telah melakukan perceraian dari hasil perjanjian kredit bawah tangan antara suami-isteri dengan kreditur yang belum lunas. Untuk menjawab pokok permasalahan dalam penelitian ini maka Penulis memakai metode penelitian yuridis - normatif dan bersumber pada data sekunder, dengan menitik beratkan kepada penggunaan bahan pustaka sebagai sumber penelitiannya. Berdasarkan hasil penelitian Penulis bahwasanya perjanjian kredit di bawah tangan dapat dikatakan sah apabila perjanjian kredit tersebut diakui oleh nasabah. Karena kekuatan hukum perjanjian kredit dibawah tangan bergantung pada pengakuan para pihak, pihak yang tecantum nama dan tanda tangannya di dalam akta bawah tangan tersebut. Selain itu pembagian harta gono-gini harus berdasarkan prinsip keadilan yaitu dibagi rata kepada kedua belah pihak.

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## I. INTRODUCTION

*The provision of credit is carried out because there are still many people who need loan funds to cover all aspects of life needs related to the economy and to start a business that requires a large injection of funds. Because of the urgency of this, in Indonesia many facilitate various forms of loans that can be made to any financial institution by fulfilling the requirements provided by the financial institution. One of them is the bank as a lender or creditor and the customer as the debtor.*(Ashadi L. Diab, 2017) Basically, customers can be from various groups, either individuals or in the form of companies or other business entities. For individual customers who are married, to make a credit agreement, it is necessary to have the consent of their spouse if in marriage they have never made a marriage agreement before. This is done to protect the creditor so that there will be no disputes in the future, because in the Marriage Law Number 1 of 1974 it is classified as a category of division of common property and inherited property (Aurora Mayawa, 2022) *Regarding joint property is property obtained at the time when the marriage has taken place, in other words, all legal actions related to property in marriage require the consent of the spouse if there is no previous marriage agreement. This can be the basis for the division of gono-gini property in the future in the event of a divorce*(Aurora Mayawa, 2022).

Borrowing a certain amount of money can be done with a credit agreement carried out by the bank as a creditor with its customers and must meet certain requirements to meet the standard criteria in the loan and loan agreement. One of the requirements that must be done by the bank as a creditor is to use / make a credit agreement in writing which aims to provide a sense of security to the bank, but this is not regulated more clearly in the Banking Law. Article 1338 of the Civil Code explains the principle of freedom of contract, which in that Article frees the parties to determine the form of the agreement can be done in writing or unwritten. The form of the agreement in writing has the advantage of providing legal certainty for the parties who make it. (Salim HS, 2006) The Banking Act does not provide further as to whether the credit agreement should be in written form or not. This provision can be done using the form of an authentic written agreement, with an agreement made before a notary or only with the form of an agreement under the hands of. (Mariam Darus Baruldzaman, 1991).

The form of a written agreement made only under the hand between the bank as the creditor and the customer as the debtor has weak evidentiary power, and has many losses that will be suffered by the bank if the customer / debtor reneges on the signature stated in the written agreement under the hand unless otherwise proven. (Nawaaf Abdullah & Munsyarif Abdul Chalim, 2017) This does not apply if the credit agreement is carried out with an authentic deed made before a notary, because according to the Notary Office Act, a notary is a general officer who is authorized to make an authentic deed that can be proven authentic, and has been made in such a way as to be in accordance with the applicable law in making it, read out, witnessed and signed by notaries, witnesses, and the initiators involved in it. (Nawaaf Abdullah & Munsyarif Abdul Chalim, 2017) Because basically the deed made by the notary has perfect evidentiary power.

The Banking Law does not explain the arrangements regarding the form of credit agreements in the banking world, they must be made in the form of agreements under the hands or must use authentic deeds made before a notary. The provisions of Article 1 number 11 and Article 1 number 12 of the Banking Law only state that the provision of credit is based on the agreement or agreement of the loan agreement between the bank and the customer. (Hermansyah, 2007) This provision does not provide for the granting of credit to be carried out in the form of under the hand or by using an authentic deed.

In practice in the banking world, there are many credit agreements carried out by banks as creditors using only underhand agreements. The bank as a creditor only enters into credit agreements with its customers and is free to choose the form of agreements at will, this allows banks to make their own standards regarding the credit agreements they will make. This creates arbitrariness on the part of the bank as a creditor, because it is not expressly regulated regarding the form that must be followed in making bank credit agreements in the Banking Law.

In credit agreements made with a nominal value of less than 100 million, many banks make credit agreements only in the form of an agreement under the hand, this happens because of demands for efficiency and costs in their service, while credit with an amount of more than 100 million is used by notarial deeds, to provide security to the bank because the notarial deed has perfect evidentiary power. (Djumhana, 2000).

The Notary Office Law only regulates underhand agreements and notary authority in making authentic deeds only but does not specifically regulate credit agreements made in the form of notarial or underhand deeds. The Notary Office Law only explains the making of deeds under the hand that can be done between the interceptors where the deed is legalized by the notary, namely given the date of manufacture and signed by the interceptor and notary, and certifies the signature. In addition to those already mentioned, notaries are also authorized to record letters under the hand by registering in a special book. (R. Sugondo Notodisoerjo, 1993) The underhand agreement that has obtained notarized notarization provides for the judge with certainty about the date and identity of the party entering into the credit agreement, and the signature included under the hand of the agreement is true to the property of the person whose name is stated in the agreement. The party who signed the agreement cannot circumvent the signature because the notary has legalized and read the underhand deed in front of the person who has signed the agreement. (Dina Nurkharisma, Budi Santoso, & Irma Cahyaningtyas, 2020) Therefore, from this description, it can be said that authentic deeds and deeds under the hands legalized by notaries cannot be denied anymore.

The legal force of the underhand credit agreement depends on the recognition of the parties, the party whose name and signature are included in the underhand deed, may acknowledge and deny the signature affixed to the underhand agreement. As a consequence of the recognition of the signature, the underhand credit agreement becomes valid and has perfect evidentiary power. However, if the signature is denied by the person who signed it then the underhand agreement has no evidentiary power unless it can be proved otherwise. (Avina Rismadewi, 2020).

This applies if the credit agreement is carried out in the marriage, then the husband and wife, they must both acknowledge / deny their signatures, not just one of the parties, because it relates to property in the marriage. If in a credit agreement under the hand made by the bank as a creditor party with the debtor who is a divorced husband and wife who has not been paid off, then the distribution of gono property from the credit proceeds can be seen in Article 37 of the Marriage Law Number 1 of 1974 (Undang-Undang Perkawinan Nomor 1 Tahun 1974, Pasal 37, n.d.) and Article 163 of the Civil Code which describes joint property in marriage. (Undang-Undang Perkawinan Nomor 1 Tahun 1974, n.d.).

Based on the background that has been described above, the author formulates the formulation of the problem as follows: First, How the validity of the credit agreement made by deed under the hand with the bank as the creditor is related to the Banking Law and the Notary Position Law. Second, How is the mechanism for regulating the distribution of gono-gini property for married couples

obtained from the results of credit agreements made by deeds under the hands between husband and wife and bank creditors that have not been paid off.

## II. RESEARCH METHOD

Methodology is an absolute element that must be present in the research and development of science. (Soerjono Soekanto, 1986) Research is an effort to analyze and carry out constructions methodologically, systematically, and consistently, research can be said to be a means to strengthen, foster, and develop human science. (Soerjono Soekanto & Sri Mahmudji, 2002) The research method used in this study is normative juridical research, which is research that emphasizes the use of secondary data or norms of written legal norms. The type of data used in this study is a type of secondary data obtained from literature materials. (Soerjono Soekanto & Sri Mahmudji, 2002) The secondary data in this study is divided into three types in the form of:

- a. Primary Legal Materials, which consist of Law Number 1 of 1974 concerning Marriage, Banking Law, Notary Position Law, and Civil Code;
- b. Secondary Legal Materials, consisting of research and writing in the field of law obtained from legal literature include Books, Journals, and Theses;
- c. Tertiary Law Material, which consists of a Large Dictionary of Indonesian.

The data collection tool used in this study is a literature or document study method. After all the data is obtained by the Author, then it is analyzed with a qualitative approach. A qualitative approach is used because this research uses literature research that produces descriptive analytical data. (Burhan Bungin, 2001).

## III. RESULTS AND DISCUSSION

1. The validity of a credit agreement made by a deed under the hand with the bank as the creditor party is associated with the Banking Act and the Notary Position Act

The bank as a financial intermediary is one of the financial institutions that provide facilities to the general public directly such as payments, storage, and loans or credit. An important function of the bank itself is as an intermediation institution (financial intermediary) which has the task of collecting funds from people who are overfunded, to then distributing them to people who need funds. (Mariam Darus Badruzaman, 1994) As already mentioned, one of the bank facilities provided to the community is in the form of loans or credit to bank customers who need loan funds. In the process of providing credit, requirements are required as stated in the form of an agreement or credit agreement. The credit agreement is made because the bank feels confident that the credit given to the customer will return, because before the bank can carry out the credit agreement, the bank must provide a credit assessment to its customer on whether it is able or not to return the loan funds. This is done to avoid non-performing loans in the future. (Mariam Darus Badruzaman, 1994)

The standard of the bank's assessment of its customers is measured from the aspects of 6C and 7P, the meaning of the analysis of 6C is as follows:

### a. *Character*

Confidence in the nature and character / disposition of the customer who will be given credit is a trustworthy person, it can be measured from the background of the customer himself, how his lifestyle, work, hobby, and family situation. This is done so that the bank knows the customer's ability to pay.

### b. *Capacity*

In this perspective, the bank sees the ability of customers as seen from their education, the ability of business in running their business is also measured in this aspect, including everything related

to business and the rules that govern the field of government in business ventures. In the end, it will be known the customer's ability to return funds.

c. *Capital*

This aspect looks at how the use of funds carried out by customers is effective, it can be measured from the balance sheet of the profit and loss statement provided by the customer to the bank, and sees whether it is appropriate when viewed in terms of solvency, liquidity, rentability, and other measures that can be given in the report. In addition, the capital obtained by customers must be seen from where the source of capital is.

d. *Collateral*

The guarantee provided by the customer who will borrow money from the bank, can be in the form of physical or non-physical guarantees that can be assessed with money. The guarantee itself must exceed the amount of credit provided and be researched in such a way as to its validity, so that in the event of a bad credit the guarantee can be used as soon as possible.

e. *Condition*

Credit assessment in addition to the conditions of the customer must also be assessed the current and future economic and political conditions, and must also be assessed regarding the business prospects of customers financed by the bank. The business prospects of customers should be relatively good so as to minimize non-performing loans carried out by customers in the future

f. *Competence*

Certainty of who has the authority as a customer who can make a loan to the bank, this is necessary in order to avoid the possibility of the debtor refusing to return the agreed credit. In addition, a credit assessment can be carried out using the analysis method. (Kasmir, 2004)

7P adalah sebagai berikut :

a. *Personality*

This aspect is an assessment of the personality of the client as well as the behavior of the client on a daily basis including his past, which includes the behavior, attitude shown by the client, and the actions taken by the customer if facing a problem.

b. *Party*

This aspect is a classification from customers regarding the classification of certain groups in terms of capital, character, and loyalty. So that customers can get facilities from banks according to their classification.

c. *Purpose*

This aspect is to find out the purpose of the customer in taking a credit loan, including what type of loan the customer will take. This is done to find out the needs of customers to borrow whether for investment or working capital, productive, or consumptive, and so on.

d. *Prospect*

This aspect is to provide an assessment of the customer's business in the future whether it is profitable or not, in other words, it has great prospects in the future or not. This is done to minimize losses that will be suffered by banks and customers.

e. *Payment*

This aspect measures how the customer's efforts in returning loan loans that have been taken from the bank, measured based on which sources of funds to return the loan funds. If the source of income is the more mana will be the better, so that the repayment of loan funds can be closed in one business sector to another.

f. *Profitability*

This aspect is to analyze how the debtor's ability to find operating profit, it is measured from the period of whether the debtor's operating profit will increase or whether it will remain the same, let alone use the additional loan funds he will get.

g. *Protection*

This aspect aims to maintain business and guarantee protection. Protection in this case can be in the form of guarantees of goods and people, for example certificates and other securities can be used as collateral. (Hermansyah, 2008).

The assessment of customers carried out using the 6C and 7P formulas provides an analysis in its confidence for the bank to provide loan funds to customers who need loans. Because the analysis can minimize the risk of non-performing loans in the future, so that banks can provide confidence to customers who can pay off the credit loan. After the bank feels confident and trusts, a credit agreement is made with credit terms depending on the type of loan it takes. (Diani Ajeng Larasati & Tony Seno Aji, 2019).

It is stated that banks are required to use "credit agreement agreements" in providing any form of credit. In bpr, this is stated in Bank Indonesia Circular Letter Number 14/20/DKBU concerning Credit Policy Guidelines and Procedures for Rural Banks. In Article 1 paragraph (11) and paragraph (12) of Law Number 10 of 1998 concerning Banking, it is stated that there is a need for a credit agreement in banking credit, this is the legal basis where it is stated that credit is given upon approval or agreement to borrow from a bank with a debtor. (Mariam Darus Badruzaman, 2008).

Borrowing a certain amount of money can be done with a credit agreement carried out by the bank as a creditor with its customers and must meet certain requirements to meet the standard criteria in the loan and loan agreement. (Hamzah Fatoni, 2008) One of the requirements that must be done by the bank as a creditor is to use / make a credit agreement in writing which aims to provide a sense of security to the bank, but this is not regulated more clearly in the Banking Law. The Banking Act does not provide further as to whether the credit agreement should be in written form or not. This provision can be done using the form of an authentic written agreement, with an agreement made before a notary or only with the form of an agreement under the hands of. (Cita Astungkara, 2014) Formal juridically, according to Budi Untung, there are 2 forms of credit agreements used by banks in making their credit agreements with debtors, namely:

1. Credit agreement with deed under hand. The credit agreement with the deed under the hand is intended to be the provision of credit carried out only by creditors and debtors without a notary. In the signatory of the credit agreement with the deed under the hand, the witness does not affix his signature because the presence of the witness is only as a means of proof in civil cases in court.
2. Credit agreement with an authentic deed or agreement made by and before a notary. A deed of bank credit agreement with an authentic deed is a credit agreement from a bank as a creditor to its customers made by and before a notary, which has perfect evidentiary power." (H. Budi Untung, 2012).

The form and format of the credit agreement in banking practice is handed over entirely to the bank concerned. However, it is not necessarily that the agreement is made unclearly and must not be vague, there are things that must be negotiated by the bank concerned. In addition, the agreement must pay attention to the validity and legal requirements, as well as the amount of the amount must be contained in the credit agreement, regarding credit payment procedures, term, and other terms that are often used in credit agreements. This is necessary which aims to prevent the invalidity of the agreement that has been made, so that it is expected not to violate the legal provisions in a law when the credit agreement is made. Therefore, the juridical aspect must first be considered and ensured by bank officials that the credit agreement has provided optimal protection for the bank.

The form of a written agreement made only under the hand between the bank as the creditor and the customer as the debtor has weak evidentiary power, and has many losses that will be suffered by the bank if the customer / debtor reneges on the signature stated in the written agreement under the hand unless otherwise proven. This does not apply if the credit agreement is carried out with an authentic deed made before a notary, because according to the Notary Office Act, a notary is a general officer authorized to make an authentic deed that can be proven authentic, and has been made in such a way as to be in accordance with the applicable law in making it, read, witnessed and signed

by notaries, witnesses, and the interceptors involved in it. Because basically a deed made by a notary has perfect evidentiary power. (Febri Rahmadhani, 2020)

The Banking Law does not explain the arrangements regarding the form of credit agreements in the banking world, they must be made in the form of agreements under the hands or must use authentic deeds made before a notary. The provisions of Article 1 number 11 and Article 1 number 12 of the Banking Law only state that the provision of credit is based on the agreement or agreement of the loan agreement between the bank and the customer. This provision does not provide for the granting of credit to be carried out in an underhand form or by using an authentic deed and does not regulate the agreement must be in written or unwritten form. The Banking Law only regulates the elements that must be present in the provision of credit, namely the element of trust, which is regulated in Article 1 number 11 of the Banking Law. (Sulystiandari, 2012)

This gives the bank the freedom to make a credit agreement in any form, as long as there is an agreement and trust from both parties. In practice in the banking world, there are many credit agreements carried out by banks as creditors using only underhand agreements. The bank as a creditor only enters into credit agreements with its customers and is free to choose the form of agreements at will, this allows banks to make their own standards regarding the credit agreements they will make. This creates arbitrariness on the part of the bank as a creditor, because it is not expressly regulated regarding the form that must be followed in making bank credit agreements in the Banking Law.. (Ashofatul Lailiyah, 2014)

In credit agreements made with a nominal value of less than 100 million, many of the banks make credit agreements only in the form of underhand agreements, this happens because of demands for efficiency and costs in their services, while credit with an amount of more than 100 million is used by notarial deeds, to provide security to the bank because the notarial deed has perfect evidentiary power. The Notary Office Law only regulates underhand agreements and notary authority in making authentic deeds only but does not specifically regulate credit agreements made in the form of notarial or underhand deeds. The Notary Office Law only explains the making of deeds under the hand that can be done between the interceptors where the deed is legalized by the notary, namely given the date of manufacture and signed by the interceptor and notary, and certifies the signature. In addition to those already mentioned, notaries are also authorized to record letters under the hand by registering in a special book. (Whenahyu Teguh Puspa, 2016)

The underhand agreement that has obtained notarized notarization provides for the judge with certainty about the date and identity of the party entering into the credit agreement, and the signature included under the hand of the agreement is true to the property of the person whose name is stated in the agreement. The party who signed the agreement cannot circumvent the signature because the notary has legalized and read the underhand deed in front of the person who has signed the agreement. Therefore, from the description, it can be said that authentic deeds and deeds under the hands legalized by notaries cannot be denied anymore.

The legal force of the underhand credit agreement depends on the recognition of the parties, the party whose name and signature are included in the underhand deed, may acknowledge and deny the signature affixed to the underhand agreement. As a consequence of the recognition of the signature, the underhand credit agreement becomes valid and has perfect evidentiary power. But if the signature is denied by the person who signed it then the underhand agreement has no evidentiary power unless it can be proved otherwise. This applies if the credit agreement is carried out in the marriage, then the husband and wife, they must both recognize / deny their signatures, not only one of the parties, because it relates to property in the marriage.(H.S Lumban Tobing, 2019)

2. The mechanism for regulating the distribution of gono-gini property for married couples obtained from the results of credit agreements made by deeds under the hands between husband and wife and bank creditors that have not been paid off

The husband and wife in forming a household need wealth to meet the needs for the continuity of a marriage formed. The property acquired by the husband and wife according to the Marriage Law

Number 1 of 1974 is divided into inherited property and joint property. Article 35 paragraphs (1) and (2) of Law Number 1 of 1974 explains property in marriage. According to Article 35 paragraph (1) of the Marriage Law Number 1 of 1974 that, the joint property of the husband and wife includes the property obtained by the husband and wife throughout the marriage, until what includes the joint property is the result and income of the husband, the proceeds and income of the wife. (Satrio, 1993) Harta bersama meliputi:

- a. Property acquired throughout the marriage;
- b. Property acquired as a gift, gift or inheritance if not specified as such;
- c. Debts incurred during the marriage except those that are the personal property of each husband and wife. (Darmabrata, 2016)

Meanwhile, according to Article 35 paragraph (2) of the Marriage Law Number 1 of 1974 confirms that, "Inherited property is property obtained by each husband and wife before marriage, as well as gifts, grants or inheritance received from third parties during marriage". Meanwhile, according to Article 35 paragraph (2) of the Marriage Law Number 1 of 1974 confirms that, "Inherited property is property obtained by each husband and wife before marriage, as well as gifts, grants or inheritance received from third parties during marriage. Then, Marriage will not necessarily go smoothly, in which there are many differences of opinion among husbands and wives that allow divorce to occur. The result of the divorce breakup affects the property they acquired during the marriage, or in other words the joint property they acquired in the marriage will become gono-gini property. If the marriage is broken up due to divorce, further legal remedies and arrangements regarding the division of gono-gini property can be regulated according to religious law, customary law, and other laws, regulated according to the existing law before or at the time the divorce event occurred for the husband and wife concerned.

At the time of marriage, divorced couples may enter into a previous credit agreement, which can be due to instability in economic conditions in the household which causes inevitably lending credit to the bank. The credit agreement made by the husband and wife to the bank creditor must be based on the consent and knowledge of both parties, because the legal act is carried out in the marriage which concerns the common property in the marriage. (Aurora Mayawa, 2022) At the time of marriage, divorced couples may enter into a previous credit agreement, which can be due to instability in economic conditions in the household which causes inevitably lending credit to the bank. The credit agreement made by the husband and wife to the bank creditor must be based on the consent and knowledge of both parties, because the legal act is carried out in the marriage which concerns the common property in the marriage.

According to Article 37 of the Marriage Law Number 1 of 1974, it states that if the marriage breaks up due to divorce of common property is regulated according to their respective laws. Property acquired during marriage becomes common property, the explanation of Article 37 of the Marriage Law, which is meant by law, respectively, is religious law and customary law, as well as other laws. (Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan, n.d.) Article 37 of the Marriage Law Number 1 of 1974 means that if there is a problem in the division of gono-gini property, the law for the division of property is returned to the agreement of the husband and wife. This means that the husband and wife have the right to determine what the gono-gini price distribution will look like, whether to follow religious law, customary law, or to follow the agreement of both parties.

If it is associated with a credit agreement made in the form of an underhand deed then the binding force of the agreement will be perfect if the party whose name is mentioned in the deed does not deny and expressly acknowledge that the signature stated in the letter of agreement is his signature. Provided that the agreement has complied with Article 1320 of the Civil Code on the terms of the validity of the agreement and does not violate the norms so that there is good faith in its manufacture. (subekti, n.d.) In a view of Article 163 of the Civil Code, it states that all debts owed by the two husbands and wives together, which are made during the marriage, must be counted as joint losses. What one and the wife's husband and wife deprived of, did not include the joint loss. This means that

if there is a debt in a marriage, then the debt must be borne by both parties. If there is a divorce before the debt is paid off, then the gono gini property is used first to pay off the debts, then it is divided equally to the husband and wife

#### IV. CONCLUSION

The validity of a credit agreement made by a deed under the hand with the bank as the creditor party if it is related to the Banking Act and the Notary Position Act can be said to be valid if the credit agreement is recognized by the customer. Since the legal force of the underhand credit agreement depends on the recognition of the parties, the party whose name and signature are included in the underhand deed, may acknowledge and deny the signature affixed to the underhand agreement. As a consequence of the recognition of the signature, the underhand credit agreement becomes valid and has perfect evidentiary power. But if the signature is denied by the person who signed it then the underhand agreement has no evidentiary power unless it can be proved otherwise. This is because the Banking Law does not explain the form of credit agreement that must be used, the Banking Law only states that credit is carried out based on approvals and agreements regulated in Article 1 number 11 and number 12 of Law Number 10 of 1998 concerning Banking, and must be based on the element of trust as mentioned in Article 1 number 11 of the Banking Law. The Notary Office Law itself does not regulate underhand credit agreements, uujn only regulates underhand agreements that are legalized and recorded in the book of underhand deeds made by notaries. So that this gives freedom to the bank to determine what form of credit agreement to use as long as it does not violate existing norms. Preferably to protect the interests of the bank, the credit agreement should be in the form of an authentic deed made before a notary because it has perfect evidentiary power and cannot be denied.

An underhand credit agreement may be binding and have perfect legal force if it is not denied and acknowledged by the person who signed the agreement. Then the credit agreement made under the hand becomes valid and applies law to the one who made it. The underhand credit agreement made by the husband and wife will be binding if the husband and wife recognize the signature in the agreement as theirs. As a legal consequence if they recognize the signature, the clauses contained in the credit agreement must be carried out, including regarding the repayment of debts from the credit agreement. If a divorce occurs between the husband and wife who recognizes the existence of the credit agreement and has not fulfilled the repayment of the debt, according to Article 37 of the Marriage Law Number 1 of 1974, it will be regulated according to their respective laws, meaning that the agreement between the husband and wife will use which law. In addition, the obligation to repay the debt for the husband and wife who have made the divorce remains binding on them, as per what is stated in Article 163 of the Civil Code which states that all the debts of the two husbands and wives together, made during the marriage, must be counted as joint losses. So it can be concluded that if in a marriage there is a debt, then the debt must be borne by both parties. If there is a divorce before the debt is paid off, then the gono gini property is used first to pay off the debts, then it is divided equally to the husband and wife / according to the agreement they have made before.

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