

Analysis of the Legal Responsibility of the Notary for the Issuance of Covernote on Banking Credit

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Abstract

The covernote is a letter explaining that there is a process that is still ongoing in processing deeds that still need to be completed. This usually happens in credit agreements which require a certificate as a collateral object . There is no phrase that determines that the covernote is within the authority of the notary. The Cover Note itself is not an authentic deed, because it does not comply with the provisions of Article 1868 of the Civil Code. The aim of this research is to analyze the notary's responsibility for issuing covernotes on banking credit. The method used is normative research with an open legislative and conceptual approach. The notary's responsibility in issuing a covernote for disbursement of banking credit is that the covernote must be complete, transparent, and informative and accompanied by attachments that support the contents of the covernote itself. And if there is a discrepancy between the statement in the covernote and the field, the notary can be prosecuted criminally, namely participation or civil liability in the form of compensation to the bank.

1. Introduction

The existence of written evidence in the form of an authentic deed determines a person's rights and obligations and guarantees legal certainty. Apart from that, the authentic deed is expected to minimize the occurrence of disputes in legal traffic and legal relations between the permitted subject parties. An authentic act is made by or before a public official assigned by law to make the deed documents. Meanwhile, a private deed is any deed that is not made by or through the intermediary of a public

official. ¹The term general official comes from Dutch, namely *Openbare Ambtenaren*. According to the legal dictionary, one of the meanings of *Ambtenaren* is Official. Thus, *Openbare Ambtenaren* is defined as an official entrusted with the task of making authentic deeds that serve the interests of the community, and such qualifications are given to Notaries.²

A notary is a public official who carries out some of his primary government duties in private law. The laws and regulations governing Notary Positions in Indonesia are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (hereinafter abbreviated as UUJN). The authority of a Notary is regulated firmly and clearly in Article 15 UUJN, namely that a Notary has the authority to do authentic deeds regarding all deeds, agreements, and decrees that are required by statutory regulations and which are desired by interested parties to be expressed in authentic deeds, guaranteeing certainty of the date of doing the deed, keeping the deed, providing grosse, copy and quotation of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

In practice, *a covernote* is a letter explaining that a process is still ongoing in processing unfinished deeds. This usually happens in credit agreements which require a certificate as a collateral object. However, the land documents used as part of the credit agreement cannot be fulfilled because they are still in the process of making certificates or splitting certificates, roya, changing names, etc., which is still ongoing. ³The authority of a notary to issue *a covernote* is not an authority obtained by attribution from the UUJN because in Article 15 UUJN or other statutory regulations, no phrase determines that *a covernote* is the authority of a notary. *Cover Note* itself is not an authentic deed, because it does not fulfill the provisions of Article 1868 Civil Code.⁴

Furthermore, for banks, banks should provide credit based on confidence, ⁵in addition to assessing debtors based on the 5Cs, namely: character, capacity, capital,

¹Subekti, 1991, *Principles of Civil Law*, 23rd cet., Intermedia, Jakarta p.178.

²Habib Adjie, 2009, *Indonesian Notary Law, Thematic Interpretation of Law NO. 30 of 2004 concerning the position of Notary*, Refika Aditama, Bandung, p. 13.

³Ihdina Nida Marbun, Rights and Responsibilities of Notaries Regarding Certificates (*Covernotes*) for Managing Housing Certificates. *Premise law journal* , 7. h. 4.

⁴Joevy, J. (2022). Responsibilities of Notaries/Land Deed Officials in Making Credit Guarantee Agreements and Cover Notes (Study of Banyuwangi District Court Decision Number 253/Pdt. G/2020/Pn Byw). *PALAR (Pakuan Law review)*, 8(3). p. 172

⁵According to Law Number 10 of the Year 1998 concerning Banking, a bank is "a business entity that collects funds from the community in the form of savings and distributed to the community in the form of credit and other forms to improve the standard of living of many people."

collateral, conditions. Banks also always ask for guarantees or collateral. Credit security in banking practice is carried out by binding collateral. ⁶Guarantees have a very important position and benefits in supporting economic development. Because the existence of this institution can provide benefits for creditors and debtors. The benefits for creditors are the realization of security for closed trade transactions and providing legal certainty for creditors. If the debtor is unable to return the credit principal and interest, the bank or capital owner can execute the collateral. The value of the collateral is usually higher when estimating the value than the principal interest in arrears.⁷

Guarantee is the last alternative, if the business feasibility of the debtor's business prospects no longer supports the return of credit in order to withdraw funds that have been distributed to the debtor, the guarantee should consider at least two factors as follows: a) Secured, that is, it can be legally *binding*. Against the credit guarantee, and b) *Marketable*, that is, the guarantee can be immediately sold or cashed in the event of execution to pay off all of the debtor's obligations.⁸

The bank has approved the prospective debtor's credit application based on a *cover note*, which causes losses for the bank, namely bad credit. Every credit analysis must be accountable by the bank's internal regulations and statutory regulations. The provisions of bank credit guidelines must implement the principle of prudence, credit approval policies, documentation and administration, supervision and resolution of problem loans.⁹

The use of *covernotes* in disbursing banking credit plays an important role, but this does not preclude legal liability, both criminal and civil, considering that the covernote issued by a notary is not under the authority of the notary as regulated in the UUJN and is also not an authentic deed, so that the parties involved in publishing covernotes has the potential to incur losses, especially in banking. Based on this description, this research will answer the responsibilities of notary officials regarding issuing covernotes related to banking credit.

2. Research Method

⁶Muhayminah, et al. Providing Credit with Land as Guarantee, Subdistrict Head Certificate (SK) at PT. Bank Rakyat Indonesia (PERSERO) Tbk. Singamangaraja field branch. *Usu law journal*, 2017, p. 51-65.

⁷ *Ibid*

⁸ Kosasih, Johannes Ibrahim. *Access to Credit and Various Credit Facilities*, (Jakarta: Sinar Graphics, 2019), p. 21

⁹M. Bahsan, 2007, *Indonesian Banking Credit Guarantee and Guarantee Law*. Raja Grafindo, Jakarta. h. 80-82.

The method used in this research is a normative research method. According to Soerjono Soekanto and Sri Mamudji, normative legal research can also be called library research by examining library materials or secondary data alone.¹⁰ This research starts from the existence of a phenomenon or legal issue that occurs, and then efforts are made to find out what law regulates this matter and how the law regulates it, and it is hoped that we can find a solution to the problem being faced. In this research, the author uses several approaches to analyze existing problems to answer the problems comprehensively, including *The Statute Approach* and the *Conceptual Approach*.

3. Results and Discussion

A notary is a public official with the authority to make authentic deeds, so an authentic deed is a legal product from a notary. Still, in practice it is not only an authentic deed made by a notary, but there are other legal products made by a notary but are not regulated in Article 15 UUJN, namely *Covernote*.

Based on Article 15 of UUJN, which regulates the authority of Notaries, basically it does not mention *covernotes* as one of the authorities possessed by notaries, so *covernote legal actions* by Notaries are not legal actions that UUJN guides, because UUJN does not regulate provisions regarding this matter so if it is not held *covernotes* in the UUJN as a Notary's legal act, raises the question of how the notary's legal responsibility is for *the covernote* that is made, especially if *the covernote* is made by the notary without prior verification which results in the existence of *the covernote* as a Notary's legal act that is detrimental to one of the legal subjects, in this case, detrimental the bank.

The practice of carrying out the office of a Notary who publishes a *Covernote* is a statement made by the notary himself regarding a legal action between the parties and carried out before a Notary. The *covernote* legal action by the notary is based on the interests of the legal subject of the debtor and creditor who wish to enter into a banking credit agreement, however, the thing that the debtor will guarantee is still in the legal process, so the bank requests the notary to make a *covernote* containing a statement which *explains* the process, progress and obstacles to legal actions that will be guaranteed by the debtor.

A *notary's overnote* or unilateral statement is not a guarantee for credit disbursement, because to disburse credit, there are conditions that must be met first. Among these requirements are legal acts that must be carried out by the debtor

¹⁰Soejono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Overview*, 13th Edition, PT RajaGrafindo Persada, Jakarta, 2011, p. 13-14.

which requires the assistance of a notary. This legal assistance is based on a legal act that requires time due to a legal process and this is where the role of *the covernote* from the notary is played, which explains that the debtor has carried out the legal act in accordance with applicable regulations and is in the process so that this will be taken into consideration and provides confidence. to the bank, credit disbursement can be carried out because the conditions for credit disbursement have been implemented. Therefore, *the covernote* or notary's statement must be complete, transparent and informative and accompanied by attachments that support the contents of the covernote itself.

The creation of *covernotes* carried out by Notaries has a significant role regarding banking credit, this happens because what will be guaranteed by the debtor to obtain credit is still in the legal process, so the existence of the *covernote* can provide additional confidence to banks to disburse credit funds. Seeing the importance of the role of *the covernote* means that the process of making *the covernote* cannot be done immediately. Still, the notary must check with the relevant agency whether the information submitted by the debtor's legal subject is really in a legal process or not. And if what is guaranteed by the debtor in the credit application process is SHM, the notary must verify with the Land Office that the thing guaranteed by the applicant is being processed by the Land Office, which will then be checked as information that will be attached to *the covernote* which a notary will make.

The partnership between the Notary/PPAT and the bank is a legal relationship (*law binding*) that has binding responsibilities between both parties because the Notary/PPAT Covernote is an inseparable part of the process of forming 2 (two) legal events, namely the Credit Agreement and the Rights Installation Agreement. Dependency on collateral ¹¹In the credit agreement, it contains, among other things:¹²

1. Amount of credit;
2. Type and term of credit;
3. Interest rates and other fees;
4. Payment method;
5. Guarantee

The *covernote* made by the notary was carried out without prior verification, where after the bank checked with the Land Office, it was found that the SHM

¹¹Shahrullah, RS, & Djufri, WA (2018). Juridical Review of Notary/PPAT Covernotes Regarding Installation of Bank Collateral Mortgage Rights. *Journal of Law and Policy Transformation*, 2(2), 150-169. p 151-152.

¹²Budiyono, S., & Gunarto, G. (2017). Legal Consequences of Covernotes That Are Used as the Basis for Credit Agreements in Banking. *Journal of Acts*, 4(4), 785-790. p 789

guaranteed by the debtor was not registered in the debtor's name. Meanwhile, the notary has issued a *covernote* containing a statement that the notary has carried out previous verification, which is attached to *the covernote*. The notary explained in *the covernote* he made that the validity of the SHM guaranteed by the debtor had been checked at the Land Office. The data in the SHM was in accordance with the list at the Land Office and there were no civil or criminal legal problems, and the issuance process would soon be carried out – certificate of Mortgage Rights Rank I. However, what was conveyed by the notary in *the covernote* was inversely proportional to the facts on the ground after the bank checked at the Land Office.

This problem makes *the covernote* made by the Notary cause losses to the bank where the bank provides credit to the debtor because one of the reasons is the presence of a *covernote* from the notary regarding the thing that the borrower will guarantee as something that gives additional confidence to the bank that the thing guaranteed by the debtor is not in trouble.

Regarding the notary's responsibility for *the covernote* they make, it must first be seen whether the authority of *the covernote* is the authority of the notary or not, if *the covernote* is the authority of the notary. In the process of making the *covernote* there was an error in the *covernote* by the notary, so the reference to the responsibility of the notary can be seen in UUJN regarding what sanctions will be given by the notary. And suppose *the covernote* that the notary makes with an error is not under the notary's authority. In that case, the notary has committed an unlawful act, and what is the notary's responsibility if he achieves this criminal act?

Notaries have the authority regulated in Article 15 UUJN, which does not mention the authority of a notary in making *covernotes*, because a *covernote* is not an authentic deed, so, in general, the authority to make a *covernote* is not a public authority possessed by a Notary. Apart from that, in accordance with Article 15 of the UUJN, it is not stated that *the covernote* is a notary's special authority, so this means that the notary has no authority to make a *covernote* when viewed from the perspective of the particular authority he or she has which is based on the UUJN. And in other laws and regulations, *covernotes* are not mentioned as an authority possessed by a Notary, which is why there is no legal basis that can be used as a justification for a *covernote* to be something that can be made by a Notary and is under the notary's authority.

Notary is a position, so the part of a notary must have its authority. And this authority must be based on the legal basis that accompanies it. This is based on the fact that every position must be based on basic rules, which are the source of the authority of that position, because the existence of these regulations regarding

authority will certainly provide clarity and confirmation about what is and is not the authority of a job and this also includes positions. A notary is a consequence when a notary in UUJN is mentioned as a position.

The existence of regulations regarding the position of Notary Public is something that will limit what legal actions a Notary Public can and cannot carry out. When a notary does something outside his authority, the notary is tantamount to committing an unlawful act because it will raise questions on what basis the notary did this. If this is not based on a rule, then again, what the notary is doing is committing an unlawful act. So this proposition gives the understanding that authority related to a position is not obtained and obtained just like that or does not arise based on the results of discussions or discussions behind the scenes or the opinions of many people but is related to the granting of authority which must be stated clearly in a regulation. Legislation relating to the position as the basis of its authority.

Firstly, *the covernote* is the information requirements requested by the parties, secondly, *the covernote* is what the notary has done and will do and thirdly, it is about who he will hand over the work results. So the *covernote* is not a guarantee.

Covernotes can be seen as *living law* or a habit or law that lives in carrying out the duties of a notary position, this is a practice that is often carried out by Notaries in their legal actions and is something that is very closely related to the morals and credibility of the notary who is seen as a position that provides information. can be trusted. *The covernote* made by the notary is not a legal act that has to be very complicated to debate because the notary issues *a covernote* which will not be used as proof of collateral. Still, only as an introduction to the bank that will give the credit, this is done so that there is trust that is built between the bank as the holder. Mortgage rights in the future after the mortgage rights certificate is issued from the Land Office. When giving *a cover note*, *a notary* does not just provide a certificate regarding the debtor as the provider of the mortgage right, before paying attention to whether the debtor can be trusted to be given credit by the bank based on *the cover note* made by the notary. So this makes the process of making a Notary *covernote* mandatory to verify first.

The existence of *covernotes* in granting credit to banks is still required by banks, as long as there are no regulations that do not allow *covernotes to be issued* by notaries, then *covernotes* can still be issued by notaries for banking purposes.¹³ When the bank has a letter of approval for a debtor's credit application, the bank is obliged to collect

¹³ Sanjaya, IDMD (2017). Notary's Legal Responsibility for Issuing Covernotes in Providing Credit. *Riau Law Journal*, 1 (2), 180-204. p 201.

documents related to the binding object. Once collected, all documents related to the binding will be submitted to the notary to check whether the documents are complete. After the notary checks, the notary will tell the bank that all the documents are clean. After that, the bank invites the parties, both the debtor and the notary, before disbursing the credit. *The covernote* is not that *urgent* because when the bank handed over the documents to the notary, the notary checked it out of habit, so the bank asked for *a covernote to be made*.

The proposition above makes *the covernote* made by a Notary from a *living law* perspective legal if done by a Notary, because this has become a habit in notary's work practices. Apart from that, this can also be done by a Notary considering that the information the notary gives is also very high. Credibility, but the real problem is what if the legal action, in this case, the notary's making of *the covernote*, results in issues for other legal subjects, or in the process of making the notary's *covernote* before it is made, the notary does not verify it, which leads to losses experienced by the bank. The bank has reached the stage of being confident in providing disbursement of credit funds to the debtor, because of *the covernote* made by the notary, where in the *covernote* the notary explains that the guarantee given by the debtor to the bank is not in trouble.

This is why the bank then believes that the collateral certificate is in the process of being issued by the Land Office so that the bank is confident in disbursing the credit funds. However, after checking with the bank, the SHM used as collateral by the debtor turned out to be the best match for the information stated by the notary in *the covernote* he made. This is characterized by the collateral needing to be registered as collateral at the Land Office, which results in the bank being unable to rescue credit through collateral execution because the bank cannot control the collateral.

So *the covernote* is not solely what determines the granting of credit, *the covernote* is only the notary's statement and what the notary does is based on *an order* from the bank. So there is a procedure that before granting credit at the bank, the credit analysis is first given to the credit committee, the credit committee has approved it. It is given to the credit administration, the formal administration has been completed, and then the order goes to the *notary*. Based on the order from the bank, the notary makes *a covernote*. However, the notary here must be independent without any intervention from the bank to make it immediately, where the notary must also verify the documents because if something happens in the case of a problem with *the covernote*, the bank will blame the notary.

This problem is a problem caused by *the covernote* being made by a Notary

without prior verification. And *the covernote* that was made with this error after careful review is an error whose source is entirely from the notary. so that the notary is fully responsible for *the covernote* he has made. And because *covernotes* are not regulated as a notary's authority in the UUJN.

Making *covernotes* is only based on customs in the legal practice of Notaries, making the sanctions contained in the UUJN unable to be used as a basis for holding the notary responsible for *covernotes* made with errors originating from the notary. However, this does not make the notary accessible from the legal actions he has carried out because the legal actions carried out by the notary have harmed other legal subjects, in this case, the bank, so the bank suffers losses due to the *covernote* made by the notary, which is the reason why the bank gives *credit*. To debtors. Because after checking, the Land Office discovered the fact that before making *the covernote* the notary did not carry out verification, therefore the information contained in *the covernote* as a notary's statement was inversely proportional to the facts obtained in the field, so the bank suffered losses because it could not carry out the execution – collateral rights.

The notary's responsibility for *the covernote* he issues is a notary's mistake which harms other people by committing acts against the law. The notary can see this as an official carrying out an action outside his authority and breaking other legal subjects. Apart from that, the *covernote* is not a legal act of the notary's *position*. making the notary's responsibility not a positional responsibility but a personal responsibility as a legal subject that harms other parties.

An unlawful act is an act that causes harm to another legal subject, and legally this act is subject to the provisions of Article 1365 of the Civil Code. Article 1365: unlawful acts that cause harm to other people requires the person who, through their fault, to compensate for the losses experienced by the injured party. Article 1365 of the Civil Code is a responsibility based on the error of the legal subject which harms another party. By looking at this provision, an unlawful act committed by a Notary that causes losses to the bank is a mistake or unlawful act committed by the notary.

The notary's responsibility in issuing *a covernote* is that the notary is obliged to be fully responsible for the contents of the *covernote*, namely regarding the facts or truth regarding what they are doing and is obliged to complete what has been explained in the *covernote*. If it is seen that the notary is issuing *a covernote* which is not within his authority according to the UUJN, which if the existence of *the covernote* resulted in losses for other parties, the notary can be sued civilly in the form of compensation provided that the *covernote* turns out to be incorrect and is an error originating from the notary. The notary as the party issuing *the covernote* must be

fully responsible for *the covernote* they make by bearing all civil legal consequences, namely by covering losses experienced by the legal subject of the bank as the credit provider.

The position of *the Covernote* made by a notary concerning a bank credit agreement is only valid as a statement from the notary explaining that a credit or guarantee agreement has occurred. The covernote is not proof of collateral but only an introduction and temporary proof as a reference for the bank that will issue credit. The notary/PPAT covernote does not have the legal force to provide legal protection for the bank as the creditor in the credit agreement if a default occurs while the Notary/PPAT is still carrying out the collateral imposition process.¹⁴

Then, if a problem like that occurs, the notary must be responsible. For example, if this happens. What is the responsibility? It can also be included in participation, and the notary must also be compensated. This can also be done by paying to the bank. It is also a moral responsibility because a notary's actions like this will bring great shame to the notary's name.

The notary's form of responsibility for *the covernote* he made is to compensate for the loss because this was caused by the notary's taking over *the covernote*, which resulted in another legal subject, in this case, the bank in the case of banking credit suffered a loss, which was the notary's action because of his mistake.

4. Conclusion

The notary's responsibility in issuing *a covernote* regarding bank credit disbursement is based on what the notary has explained in *the covernote* that the debtor has carried out the legal action in accordance with applicable regulations and is in the process so that this will be taken into consideration and provide confidence to the bank that the credit disbursement can be done because the conditions for credit disbursement have been implemented. Therefore, *the covernote* or notary's statement must be complete, transparent, and informative and accompanied by attachments that support the contents of the *covernote* itself. And there is a discrepancy between the information in *the covernote* and the field. In that case, the notary can be prosecuted criminally, namely participation or civil liability in compensation to the bank.

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