Volume 2 No. 2. April 2023 ISSN: 2828-4836

Accountability of Notaries in Issuing Covernotes ...

Master of Notary Law, Faculty of La

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## Accountability of Notaries in Issuing Covernotes Related to the Implementation of Credit Agreements at Banks

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Abstract. This study aims to analyze: 1) The form of notary liability for the issuance of notary covernotes used in the process of credit agreements at Bank BPD SULTRA, 2) Legal consequences for the issuance of notary covernotes used in implementing credit agreements at Bank BPD Sultra. The use of research methods is qualitative research through a sociological juridical approach and research specifications in the form of descriptive analysis. The type of data used is primary data derived from interviews and documentation, secondary data through library research, the data analysis method used is descriptive qualitative data analysis. The results of this study conclude that: 1) Notaries must keep their promises based on the cover notes issued, the emergence of problems in the covernote causes the notary to be held accountable by resolving the problem, even though there are no administrative sanctions in accordance with UUJN because covernotes are not regulated in the law, the notary still has a social burden to bear because he is considered negligent in his obligations and the loss of public trust in the notary said, as a form of responsibility the notary will issue an extension cover note to ask for an extension of time in resolving the problem. 2) The legal consequences arising from unresolved covernotes and causing losses to related parties will rely on several points, namely: a notary may be subject to professional responsibility, including the obligation to compensate for losses incurred, A notary may be subject to disciplinary action by the supervisory body or authorized notary institution in the form of a warning, reprimand, or revocation of a notary's license to practice lawsuits which may include demands for compensation, cancellation of transactions, or other legal actions deemed appropriate for the losses suffered.

**Keywords:** Accountability; Credit; Covernote; Notary.

### 1. Introduction

As a manifestation of increasing the implementation of sustainable, just and prosperous national development in accordance with the 1945 Constitution, the government needs to carry out efforts to equalize development, economic growth and national stability by paying attention to harmony and balance. One facility that has an important role in coordinating and maintaining the balance of these elements is the banking system. Banking institutions, as part of financial institutions that have strategic value in a country's economy, play a strategic role. In lending activities by banking institutions, it is important to have a credit agreement. The function of the credit agreement is for the purposes of proof, especially as authentic evidence made by and before a notary.<sup>1</sup>

Examining the discussion on credit, it is important to adhere to the precautionary principle in accordance with Article 7 of Act No. 21 of 2011 concerning the Financial Services Authority. This is caused by the risk of failure or default in each credit grant. When extending credit, banks must pay attention to the requirements set forth in Article 8 paragraphs (1) and (2) of Act No. 10 of 1998 concerning Banking. Banks are required to follow the credit guidelines set by Bank Indonesia and conduct a thorough evaluation of the debtor's ability and readiness to pay off his credit. Previously, the bank had to check the collateral used as collateral in the financing agreement. To conduct an examination of the guarantee, the bank may ask for help or use the services of a Notary.<sup>2</sup>

A notary who has a working relationship with a bank related to making authentic deeds and registering credit guarantees has the authority to draw up a deed showing legal action between the bank (creditor) and the customer (debtor) before a notary. Therefore, the existence of a deed made by a notary is very important for the parties to protect their interests. In a bank credit agreement, the role of a notary in drawing up a deed provides legal certainty for the bank as the creditor and the customer as the debtor. This existence guarantees the rights and obligations of each party in the credit agreement which is documented in an authentic deed. An authentic deed drawn up by and before a notary is a complete evidentiary tool. In the bank credit agreement,<sup>3</sup>

<sup>&</sup>lt;sup>1</sup>Yusman,Adi., Widhi Handoko, and Rakhmat Bowo Suharto. (2022). "The Legal Position of Notary Covernote on Credit Agreement When Bad Credit Occurs." in Sultan Agung Notary Law Review 4, no. 2 (August 1, 2022): 433, https://doi.org/10.30659/sanlar.4.2.433-445.accessed on 7 June 2023 <sup>2</sup>Revelation,Gatot Utomo, Amin Purnawan, and Soegianto Soegianto. (2022). "Legal Protection for Banks in Using Notary Covernotes in Credit Agreements That Cause Bad Loans," in Sultan Agung Notary Law Review 4, no. 2 (August 1, 2022): 532, https://doi.org/10.30659/sanlar.4.2.532-542.Retrieved 7 June 2023

<sup>&</sup>lt;sup>3</sup>Pratiwi,Henny Pinatih, (2019). "Legal Power of Covernote through Provision of Bank Credit with Guaranteed Mortgage Rights in the Event of Bad Credit," in Acta Comitas: Journal of Notary Law 4,

Based on the deed or letter issued by the notary himself, there is a deed called a covernote which is usually used in the context of credit applications, this is in line with the results of an interview conducted by notary A which stated that "this covernote has become a normal habit in the banking world. and the world of notarization so that it can be classified as a source of formal law which is based on habits that are carried out repeatedly for a long time in society as laws that must be obeyed, even though they are not stipulated by the government".<sup>4</sup>

Covernote as a notification or statement that the land document of the party applying for credit is still in the process of certification, royalty process, name transfer, or separation process if it is already certified. However, in practice there are still banks that use cover notes as the basis for disbursing credit. Based on the explanation regarding the duties and powers of a Notary in accordance with the Notary Office Law, there is no explanation or provision stating that a Notary has the authority to issue a Covernote explaining that the deed to be drawn up is still in process. Therefore, in principle, a Notary can use Covernote in all situations and conditions related to the performance of a Notary's duties.

A notary who issues a deed or cover note does not carelessly provide information about the process of obtaining an unfinished deed. Covernotes are not meant to be the main collateral in a deed, especially when used as proof of collateral. On the other hand, the cover note aims to serve as an introduction to interested parties, to provide trust and fulfill the credit application requirements that will be made by the creditor as a notary client. This research will focus on the urgency and professionalism of notaries in providing services to the public, especially in issuing notary covernotes. The notary is responsible for managing, completing, and carrying out legal action relations between related parties as a form of responsibility in serving the community. Notaries have demands to act prudently and pay attention to the value of legal propriety, in accordance with what is regulated in Article 17 of the Law on Notary Offices (UUJN) which includes restrictions for Notaries in carrying out their duties.

no. 3 (31 December 2019): 498–507, https://doi.org/10.24843/AC.2019.v04.i03.p14.Retrieved 8 June 2023

<sup>&</sup>lt;sup>4</sup>Interview with A, a Notary in Kendari, Tuesday, 13 June 2023

<sup>&</sup>lt;sup>5</sup>Budiyono,Singgi. and Gunarto, (2017). "The Legal Consequences of Covernotes Used as the Basis for Credit Agreements in Banking," in the Journal of Deed 4, no. 4 (December 18, 2017): 785–90, https://doi.org/10.30659/akta.v4i4.2615.Retrieved 9 June 2023

<sup>&</sup>lt;sup>6</sup>Tasya, Nadia. "Accountability of a Notary for a Covernote Issued Which Becomes a Basis of Trust for a Bank". In UI Notary Journal. Volume 2 No.4, 2020. p. 499. Retrieved 10 June 2023

<sup>&</sup>lt;sup>7</sup>Farid,Muhammad Havis. (2022), "Use of Covernotes by Notaries as Guarantees for Disbursement of Credit at Institutions (Case Study of the Supreme Court of the Republic of Indonesia Number: 181/PDT/2019/PT MKS)", Thesis, Faculty of Law, University of Jambi.Retrieved 11 June 2023

The use of Covernote by a Notary in approving a credit application by a Bank may result in losses, such as the occurrence of bad credit or other losses which will later result in civil problems experienced by both the debtor and the creditor. Therefore, all evaluations related to creditworthiness must be carried out accurately, in accordance with the Bank's internal regulations and applicable laws and regulations. In the credit process, Banks must adhere to the principle of prudence to ensure that the loans provided benefit the community and prevent bad credit from occurring. As a public official representing the government, a notary has a big responsibility for every deed he makes. If a deed faces dispute in the future, it is necessary to ask whether the fault lies with the Notary himself, parties who provide dishonest information to the Notary, or there is an agreement between the Notary and one of the parties involving collusion in achieving certain goals. If there is a legal error in the deed issued by the Notary due to the Notary's negligence or intention, the Notary is responsible for the deed. This responsibility applies to both creditors (clients) and banking institutions related to Covernote. If there is a legal error in the deed issued by the Notary due to the Notary's negligence or intention, the Notary is responsible for the deed. This responsibility applies to both creditors (clients) and banking institutions related to Covernote. If there is a legal error in the deed issued by the Notary due to the Notary's negligence or intention, the Notary is responsible for the deed. This responsibility applies to both creditors (clients) and banking institutions related to Covernote.8

The role of a notary in legal actions has a high level of importance, which is given by the state. As a state official, a notary is required to be responsible for every deed he publishes. Notaries have an obligation to comply with applicable regulations, including the Law on Notary Position, and comply with the legal profession's code of ethics, namely the Notary's code of ethics. If a deed issued by a notary then a dispute occurs, this needs to be questioned. Was the dispute caused by a notary's mistake which intentionally benefited one of the parties involved, or the mistake of the parties who did not provide the actual documents. If the deed issued by a notary contains legal defects due to a notary's mistake, either due to negligence or on purpose, Notaries must provide moral and legal accountability. However, this must be proven with sufficient evidence before the notary can be legally prosecuted.<sup>9</sup>

<sup>&</sup>lt;sup>8</sup>Harris,Freddy & Leny Helena. (2017), Notary Indonesia, Lintas Print Djaja, Jakarta, p. 128.Retrieved 12 June 2023

<sup>&</sup>lt;sup>9</sup>Jami. (2019)."Faking Authentic Deeds as Aspect of Notary Crime", in the BESTUUR Journal, "p. 116, , https://jurnal.uns.ac.id/bestuur/article/view/40453.Retrieved 13 June 2023

#### 2. Research Methods

The use of research methods is qualitative research through a sociological juridical approach and research specifications in the form of descriptive analysis. The type of data used is primary data derived from interviews and documentation, secondary data through library research, the data analysis method used is descriptive qualitative data analysis.

### 3. Results and Discussion

# 3.1Accountability of Notaries for the Issuance of Covernotes with Credit Contract Agreements at Bank BPD Sultra

Giving credit to the bank determines the requirements that must be met by the debtor (customer) before granting credit. One such requirement is a guarantee. Collateral is a factor that becomes an important guideline in granting credit, because collateral is one of the determining factors for the size of credit that will be given by the creditor (bank) to the debtor (customer) in addition to economic conditions. the provision of credit facilities for collateral is a very important element, because the debtor's economic condition is not always stable, if the debtor's economic condition falls in a critical position and is no longer able to pay its debts, then the collateral will be sold. If the sales proceeds are not sufficient to cover the debtor's debt, the creditor is harmed. The credit agreement contains, among other things:

- a. The amount of credit
- b. Type and term of credit
- c. Interest rates and other fees
- d. Payment method
- e. Guarantee.

This explanation is continuous with the results of interviews conducted by Khairah Umayah Said as the Head of Bank BPD Sultra who in his interview said that based on Book 1 of the 2nd Revision Credit Guidelines PT.BPD SULTRA, at the application stage, after the credit application file is received by the bank, the sales officer must check the completeness of the files and record them in the credit application registration book, affix signature/ initials on the application sheet as a sign that the credit application has been received in its entirety. The documents that must be attached by the prospective debtor/debtor to the credit application are as follows:

- Credit Application Letter
- 2. Copy of Company Profile
- 3. Photocopy of Identity (KTP) of the prospective debtor
- 4. Family card and marriage/divorce certificate
- 5. Photocopy of NPWP for debtors with a credit limit above IDR 50,000,000.-
- 6. Photocopy of business permits and financial reports
- 7. Copy of collateral (SHM, BPKB, Purchase Invoice, PBB, IMB).

The Sales Officer must ensure that the documents received and the debtor have been verified in accordance with the original, as evidenced by a verification stamp (with date, signature and name of officer).<sup>10</sup>

If the debtor wants to get credit from the creditor (bank), then there are several stages in the assessment process starting from submitting a credit proposal and the required documents, checking the authenticity of the document, credit analysis until the credit is disbursed. These stages in granting credit are necessary to ensure creditworthiness. The feasibility of a credit, at each stage an in-depth assessment is always carried out. Assessments in which there are deficiencies, the bank can ask the customer to complete these deficiencies or even the credit application is immediately rejected. The stages in granting credit can be described as follows:

- a. Assessment of the applicant's file (prospective debtor);
- b. Data verification, namely:
- 1) On the Spot (OTS) Checking;
- 2) Bank Checking;
- 3) Trade Checking or Personal Checking;
- c. Assessment and analysis of credit needs;
- d. credit decision;

<sup>&</sup>lt;sup>10</sup>Interview with Khairah Umayah Said Head of Bank BPD Sultra, Monday 12 June 2023

e. Signing of credit agreements and other agreements;

### f. Credit realization.<sup>11</sup>

The majority of the collateral used in the process of granting credit facilities is land. However, because the level of public knowledge is still low about land, many still consider proof of payment of tax objects as proof of ownership of land rights. Proof of payment for the object is commonly referred to as the SPPT (Notification of Taxes Payable). So people's awareness to certify land is still lacking, so that many lands in rural areas still have the status of customary land.

As referred to in Act No. 5 of 1960 concerning the Basic Agrarian Law (hereinafter referred to as the UUPA), credit guarantees in the form of land must be secured with mortgage rights, namely collateral rights imposed on land rights. Land derived from old rights can be used as the object of a Power of Attorney to impose Mortgage Rights (hereinafter referred to as SKMHT) as meant in Article 15 paragraph (4) UUHT, which reads:

"A Power of Attorney to impose Mortgage Rights on Land that has not been registered must be followed by a Deed of Granting Mortgage Rights no later than 3 months after being granted."

Making SKMHT by Notary/PPAT is done after signing the credit agreement by the debtor. The SKMHT is authorized to creditors to upgrade their status to APHT. However, the problem is if the land object used as collateral for credit is still in the process of splitting, the royal process, and it can also be because it has not been certified, when distributing credit, the creditor does not receive collateral, but in practice the creditor continues to disburse the credit application if the Notary/PPAT issues covernote.

The notary issues a cover note as a statement, not only in the law of mortgage guarantees, but also in other deeds such as mortgages, mortgages, fiduciaries. However, what will be studied in this paper is only mortgages, considering that on average in disbursing credit by banks, the banks prefer credit with collateral for land which will be bound with mortgages, given that land prices will continue to rise. Therefore, only guarantees in the form of mortgages that require a covernote because mortgages are still in the process of repatriation, transfer of

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<sup>&</sup>lt;sup>11</sup> Andrew N. Saroinsong, (2014). "BANK FUNCTIONS IN THE BANKING CREDIT DISTRIBUTION SYSTEM," in the Journal of Lex Privatum 2, no. 3 (5 November 2014), https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/6166.Retrieved 14 June 2023

names, are still in the form of customary property rights, or are still in the process of registering land at the local Land Agency. 12

Further discussion regarding the notary covernote explains that the covernote contains descriptions including:

- 1. Mention of the Notary's identity and position.
- 2. Covernote Register Number created
- 3. Information regarding the legal event that contains the signing of the contract that has taken place.
- 4. Description of the deed made.
- 5. Information regarding the time period for completion of the deed made.
- 6. Information regarding an explanation of the party authorized to receive.
- 7. Information regarding the place and date when the certificate was made.
- 8. Signature and stamp in accordance with management. 13

The legal position of the covernote drawn up by a Notary in the credit agreement has not been explicitly regulated in laws and regulations. The same thing was conveyed by notary A, one of the notaries in Kendari, Southeast Sulawesi, that basically covernotes are not included in the authority of a notary and there is no single statutory regulation that regulates covernotes, especially in UUJN itself where there is no legal certainty in the position the covernotes.<sup>14</sup>

So great and high is the trust given to a notary as a public official, it shows that the position of a notary is a noble position. For this reason, Article 16 paragraph (1) number 1 UUJN stipulates that notaries must act in a trustworthy, honest, thorough, independent, impartial manner and protect the interests of the parties involved in legal actions. This clearly shows that the responsibility of a notary is so great in carrying out its functions. In addition, the notary also carries a considerable moral responsibility in carrying out the powers granted by law so

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<sup>&</sup>lt;sup>12</sup>Budiyono, Singgih. and Gunarto, Loc. cit.

<sup>&</sup>lt;sup>13</sup> Oktarini, A., & Agung Dharma Kusuma, A. (2020) "The Role and Function of a Covernote in the Implementation of Credit Disbursements by Banks," in Udayana Master Law Journal (Udayana Master Law Journal) 9, no. 4 (31 December 2020): 811–20, https://doi.org/10.24843/JMHU.2020.v09.i04.p10.Retrieved 14 June 2023

<sup>&</sup>lt;sup>14</sup>Interview with Noratis A, a notary in Kendari, Southeast Sulawesi, Tuesday, 13 June 2023

that if the notary commits a crime or an inappropriate act, it will injure the position of the notary as a whole.<sup>15</sup>

The notary's negligence in issuing a covernote whose contents contain statements or information that is not true causes him to be held legally responsible for his actions, namely criminal responsibility and civil responsibility. Even in this context, a notary bears a moral responsibility for the position he holds. As previously explained that if a notary violates a legal provision related to the exercise of his office, UUJN has determined the sanctions that can be imposed on a notary, namely in the form of verbal warning, written warning, temporary dismissal, respectful discharge, or dishonorable dismissal.

# 3.2 Legal Consequences for the Issuance of Covernotes by Notaries Used in Executing Credit Agreements at Bank BPD Sultra

The presence of one of the deeds issued by a notary in the form of a covernote was caused by an urgent need from the bank as a creditor and debtor who was in the process of making a certificate. The lack of proof of guarantee required in a credit application encourages the bank to ask for proof of guarantee from a notary in the form of an agreement stipulating that the notary must complete the process of processing the debtor's deed in accordance with an agreed time period, known as a cover note.

Every covernote issued must be accounted for by the notary who issued it, there is a guarantee that the covernote issued by the notary can be accounted for, the creditor uses the covernote as proof of temporary guarantee until the process of making the certificate is complete, not as collateral in a credit application. If the notary is unable to comply with the contents of the covernote, the notary must be responsible for completing the land certificate immediately. Although there are no administrative sanctions that can be given to a notary in accordance with the Law on Notary Office because covernotes are not regulated in the law, notaries still have a social responsibility because they are considered negligent in carrying out their obligations, which results in a decrease in public trust in the notary.<sup>16</sup>

The explanation above is in line with the results of an interview conducted by notary A that if a notary is not able to carry out the contents of the covernote as expected, the notary usually asks for an extension of time to complete it.

<sup>&</sup>lt;sup>15</sup>Nyoman,Pande Putra Widiantara. and AA Sagung Wiratni Darmadi, "Legal Consequences of Covernotes Made by Notaries and Land Deed Officials," in Kertha Semaya: Journal of Legal Studies 7, no. 9 (July 3, 2019): 1–13, https://doi.org/10.24843/KM.2019.v07.i08.p02.Retrieved 15 June 2023

<sup>&</sup>lt;sup>16</sup>Sjaifurrachman and Habib Adjie, 2011, Aspects of Notary Liability in Making Deeds, Mandar Maju, Bandung, p. 65.

Regarding the problems arising from the covernote, if the notary is repeatedly unable to carry out the contents of the covernote as expected, then the sanction received is usually a moral sanction in the form of losing the bank's sense of trust in the notary and culminating in a transfer of other beliefs.<sup>17</sup>

The legal consequences that occur when a notary fails to carry out Covernote, the notary can be held responsible for resolving it immediately. According to the agreement between the two parties, the notary may request an extension of time to complete the contents of the Covernote. If there are problems related to the issuance and implementation of the Covernote, the sanction that is generally given to the notary is a moral sanction in the form of distrust from the bank towards the notary because the notary cannot fulfill the contents of the Covernote as expected. The notary is deemed to have violated the provisions of Article 1366 of the Civil Code if the negligence is caused by the notary's mistake in carrying out and carrying out the contents of the Covernote,

- 1. Errors in preparing covernotes: errors or omissions in preparing covernotes that result in losses to creditors or debtors, the notary is professionally responsible. The notary may be asked to compensate for losses arising from such errors or omissions.
- 2. Negligence in verifying documents and information: a notary has the responsibility to verify documents and information related to credit transactions. If there is negligence in carrying out the verification which causes losses to the parties involved, the notary can be held responsible for the consequences.
- 3. Violation of legal provisions: a notary has the responsibility to ensure that all legal procedures and requirements are met in preparing a notary covernote. If there is a violation of legal provisions committed by a notary and results in losses to related parties, the notary may be held liable in accordance with applicable legal regulations.
- 4. Sanctions and lawsuits: If a party who feels aggrieved files a lawsuit against a notary, the notary may be subject to legal proceedings and be subject to sanctions or fines in accordance with a court decision or the competent authority.<sup>18</sup>

Further discussion of the legal consequences related to the issuance of covernotes, looking at the criminal aspect, the responsibility that is borne by a notary for the covernote he publishes is in terms of conveying incorrect

<sup>&</sup>lt;sup>17</sup>Interview with Noratis A, a notary in Kendari, Southeast Sulawesi, Tuesday, 13 June 2023

<sup>&</sup>lt;sup>18</sup>Ibid, Thursday, 15 June 2023

information and can even be suspected of committing fraud. Then in civil terms, Article 1365 of the Civil Code stipulates that

"Any unlawful act that causes harm to other people, obliges the person who because of his mistake to issue the loss, compensate for the loss."

Article 1366 of the Civil Code further regulates:

"Everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness."

Referring to Article 1366, the actions of the notary, whether intentional or unintentional, must still be responsible for the losses suffered by the creditor.

#### 5. Conclusion

Covernotes not governed by legislation or positive law in Indonesia. The issuance and preparation of cover notes by a notary does not have a specific legal basis. Covernotes are made based on customs accepted by the community, so they have trust and are considered a binding legal product. The notary has the authority to issue and make cover notes because it is a form of agreement that binds the parties, even though it is not explicitly regulated by laws and regulations, but is regulated based on the legal terms of an agreement. Legal consequences for a notary who fails to carry out the published covernote, the notary can be held responsible for completing it immediately. In accordance with the agreement between the two parties, the Notary may request an extension of time to complete the contents of the cover note. If there are problems related to the issuance and implementation of the covernote, usually the sanction given to the Notary is a moral sanction in the form of a lack of trust from the bank in the Notary because the Notary cannot complete what is expected in the covernote.

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