

## Notary's Responsibility for Covernote Issuance as the Basis for the Bank's Trust in the Credit Agreement

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Article	Abstract.
<p>Keywords: Agreement; Covernote; Credit; Liability</p> <p>Article History Received: 2022-11-01; Reviewed: 2023-01-05; Accepted: 2023-02-28; Published:2023-02-28.</p> <p>DOI: 10.30659/jdh.v6i1.27157</p>	<p><i>Cover note as a certificate that the customer's land documents for credit applications are still in the process of certification, roya process, transfer of name, or splitting process if they are certified. However, in practice there are banks that use Covernote as a basis for credit disbursement. In matters of legal status, the Covernote issued by a Notary in the disbursement process carried out by the Bank and how the credit disbursement process by the Bank is based on the Covernote. This study aims to identify and explain the responsibilities of a Notary in publishing a Covernote and also the legal power of a Covernote. The discrepancy that occurs between the statement in the Covernote and the reality on the ground, the Notary must be responsible, whether criminally, civilly, or morally responsible.</i></p>
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### 1. Introduction

Notaries in carrying out their duties and authorities in order to achieve the service function and legal certainty in providing services to the public have been regulated in Article 1 point 1 of Act No. 30 of 2004 concerning the position of Notary, which has been amended by Act No. hereinafter referred to as UUJN.

The notary has the authority, among other things, to authorize the signature and determine the certainty of the date of the private letter by registering it in the general ledger, verifying the compatibility of the original letter with the photocopy, making copies of the original underhanded documents in the form of a copy containing the description as written and described. in the letter concerned, record private letters by registering in a special book, provide legal counseling in connection with making deeds, make deeds related to land, and make deeds of minutes of auction.<sup>1</sup>

<sup>1</sup> Government Regulation concerning Position Regulations for Officials Making Land Deeds Number 37 of 1998, at. 1

A notary is the only public official authorized to make authentic deeds regarding all actions, agreements and stipulations required by a general regulation or by interested parties to be stated in an authentic deed, guaranteeing the certainty of the date, keeping the deed and providing grosse, copy and quote, everything as long as the act of the deed by a general rule is not also assigned or excluded to officials or other people.<sup>2</sup>

Based on Article 16 paragraph (1) a of the Notary Office Law (UUJN) which states "In carrying out his position, a Notary has the obligation to act in a trustworthy, honest, thorough, independent, impartial manner, and safeguard the interests of the parties involved in legal actions".<sup>3</sup> Based on that, it is expected that a Notary can exercise his authority very well and can be trusted.

Based on the Notary Code of Ethics in Article 3 point 4 of the Notary Code of Ethics, states "Notaries and other people who assume and carry out the position of Notary Public must act honestly, independently, impartially, full of responsibility, based on laws and regulations and the contents of the Notary's oath of office. "

Notary services are often needed by banking institutions, as it is known that banking institutions often provide credit loan facilities to the public, especially to their customers. Credit Agreements and others, Authentic Deeds are needed by banks as strong evidence to guarantee debtors.

Banking institutions have the main function as institutions that collect funds from the public and distribute them effectively and efficiently in certain sectors so as to develop the country's economy. In the provisions of Article 1 number (2) of Act No. 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) which states that a bank is a business entity that collects funds from the public in the form of deposits and distribute it to the community in the form of credit and or other forms in order to develop the wheels of the community and state economy.

In practice, the activities of channeling funds by banks to people in need are always followed by additional agreements in the form of guarantees. Guarantees play an important role in the traffic of channeling funds to the public with the aim of protecting creditors, both security and legal certainty in the implementation of fulfillment of achievements by debtors. In practice, land collateral is used by creditors to serve as protection, both certainty and security in credit traffic by binding mortgage rights.<sup>4</sup>In the event of the process of imposing mortgage rights,

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<sup>2</sup>Tobing, G.h. S Lumban, (1992). *Peraturan Jabatan Notaris*, Erlangga, Jakarta, p.31

<sup>3</sup>Indonesia, Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary Public, LN No.3 of 2014,

<sup>4</sup>Gusriadi and Taufiq El Rahman, *Perlindungan Hukum Terhadap Kreditur Akibat Surat Kuasa Membebaskan Hak Tanggungan Yang Terdegradasi Sebagai Akta Di Bawah Tangan*, *Jurnal Hukum UNISSULA*, Vol. 37 No. 2, December, 2021.p. 135.

Banks are more frequent and accustomed to using Covernote in the credit disbursement process which is accompanied by a process with collateral for land tenure rights.<sup>5</sup>

With regard to the authority of a Notary in making a deed, with the aim of the deed to legally bind the parties who will carry out legal actions. The existence of written evidence in the form of an authentic deed clearly determines the rights and obligations of a person and guarantees legal certainty.<sup>6</sup> Examples such as credit, deed of credit agreement drawn up by a notary is part that binds creditors and debtors. After the credit agreement is made and signed between the creditor and the debtor, usually the creditor will then ask the Notary to make a Covernote.

A cover note is a statement containing the notary's ability to do what the creditor wants. Usually a Covernote is issued by a Notary in the event that the formal requirements for credit disbursement desired by the creditor have not been fully met by the debtor. Usually related to collateral, the validity of ownership must be ascertained beforehand.

The covernote is actually not a legal product from a Notary as specified in UUJN. Every credit that has been approved and agreed upon between the Bank as the Creditor and the Debtor must be stated in the Credit Agreement (credit contract) in writing.<sup>7</sup> The cover note is only a statement from a Notary to creditors explaining that the process related to the credit agreement between the creditor and the debtor is temporarily being processed by the Notary, such as the Imposition of Mortgage Rights.

In this case, it usually occurs in a credit agreement which requires a certificate as collateral, but the certificate to be charged with the mortgage cannot be fulfilled because it is still in process, for example, it still needs to be inherited, renamed, or other ongoing processes. In practice, the Bank will approve a credit application for a prospective debtor only on the basis of a Covernote issued by a Notary. In this case Covernote serves as a guarantee that the completeness of the credit terms is in process, Covernote functions so that the interests of other parties and clients can continue even though the completeness of the files is still in the process of being finalized.<sup>8</sup>

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<sup>5</sup>Widya Indrayeni, Akibat Hukum Diterbitkannya Covernote oleh Notaris terhadap Pihak Pihak yang berkepentingan dalam Transaksi Kredit Perbankan, Tesis, Fakultas Hukum Magister Kenotariatan Universitas Indonesia, Depok, 2012. p.3

<sup>6</sup>Subekti, (1991). *Pokok-Pokok Hukum Pedata*, Jakarta: Intermasa, p. 178

<sup>7</sup>Muhammad Djumhana, (2012). *Hukum Perbankan di Indonesia*, cet. Ke 6, Bandung: Citra Aditya Bakti, p.440

<sup>8</sup>Singgih Budiyo and Gunarto, Akibat Hukum Covernote yang dijadikan Dasar Perjanjian Kredit di Perbankan, Jurnal Akta, Vol.4, No.4, Semarang: Magister Kenotariatan Fakultas Hukum UNISSULA, 2017.p. 787

Therefore, the Notary in issuing a Covernote is not just giving a good statement regarding the debtor's guarantee as the mortgagee or the guarantee for the completeness of the files. Covernotes that have been made and issued have legal consequences, and if in the course of the process of issuing the certificate of mortgage rights there are problems and are protracted in their resolution, and if during the process there is an error that the object of guarantee for mortgage rights cannot be fully bound because the Notary does not fulfill obligations According to the Covernote issued by the Notary, this causes the bank to suffer losses, because the bank entrusts the debtor's guarantee process to the Notary based on the Covernote so that the bank can disburse loan funds to the debtor.

## 2. Research Methods

The approach method used in this study is an empirical or sociological juridical approach. Sociological juridical research is research that tends to be qualitative, based on primary data. Primary data is data obtained directly from the object.<sup>9</sup>Based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the library approach, namely by studying books, laws and regulations and other documents related to this research.

The specification of the research used is descriptive analysis, which is to describe the results of the research with data that is as complete and as detailed as possible. Descriptive research means that this research describes the nature of an individual, condition or symptom of a particular group and determines the frequency or spread of a symptom and other symptoms in society,<sup>10</sup>or research to solve problems that exist today by collecting data, compiling, classifying, analyzing, and interpreting.<sup>11</sup>

The data to be used to answer research problems in this research was conducted using 2 (two) types of data: primary data and secondary data. Secondary legal materials, namely doctrine (opinions of legal experts), and tertiary legal materials, namely legal dictionaries or encyclopedias, to obtain a comprehensive and systematic picture.

Data analysis in this study was carried out using qualitative normative methods. Normative because this research is based on existing laws and regulations as positive law. Qualitative because it is an in-depth analysis and study, which does not only stick to statistics, but focuses more on behavior and the interaction of values in a process of social reality.

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<sup>9</sup>J.Supranto, (2003), *Metode Penelitian Hukum Dan Statistic*, PT.Rineka Cipta, Jakarta, p. 2.

<sup>10</sup>Kuncoroningrat, (1981). *Metode-Metode Penelitian Masyarakat*, PT.Gramedia, Jakarta, p. 42.

<sup>11</sup>Soenarjo, (1985). *Metode Riset I*, Universitas Negeri Sebelas Maret, Surakarta, p. 8.

### 3. Results and Discussion

Notary has the duty as a public official and has the authority to make authentic deeds as well as other authorities regulated by the Notary Office Law. Based on Article 1 point 1 UUJN, Notary is defined as a public official authorized to make authentic deeds and other authorities as referred to in UUJN.<sup>12</sup>

A public official before carrying out his Duties and Positions legally must first take an oath. As long as this has not been done, then the position may not or cannot be carried out legally. Notary in carrying out the duties of his position must be based on the authority that already exists in the position.<sup>13</sup> According to Soegondo Notodisojo that Public Officials are state organs equipped with general powers, authorized to exercise part of the state powers to produce written and authentic evidence in the field of civil law.<sup>14</sup> Stating that a public official is someone who is appointed and dismissed by the government and is given the authority and obligation to serve the public in certain matters because a Notary participates in exercising a power that originates from the authority (*gezag*) of the government. In his position, there is a special characteristic that distinguishes him from other positions.

The authority of a Notary in carrying out his duties and positions is regulated in article 15 of the Notary Office Act No. 2 of 2014, namely:<sup>15</sup>

- (1) The notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations of the deed, all of that as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law.
- (2) In addition to the authority referred to in paragraph (1), the Notary also has the authority to:
  - a. legalize the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;

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<sup>12</sup>Abdul Ghofur Anshori, (2009). *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*, UII Press Yogyakarta, Yogyakarta, p. 13.

<sup>13</sup>Habib Adjie, (2012). *Bernas-Bernas Pemikiran di Bidang Notaris dan PPAT*, Mandar Maju, Bandung, p. 13.

<sup>14</sup>R. Soegondo, (1993), *Hukum Notariat di Indonesia Suatu Penjelasan*, Raja Grafindo Persada, Jakarta, p. 44.

<sup>15</sup>Article 15 Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary

- b. record private letters by registering in a special book;
  - c. make a copy of the original letter privately in the form of a copy containing the description as written and described in the letter concerned;
  - d. verify the compatibility of the photocopy with the original document;
  - e. provide legal counseling in connection with the making of the Deed;
  - f. make Deeds related to land; or g. make a deed of minutes of auction.
- (3) In addition to the authorities referred to in paragraph (1) and paragraph (2), a Notary has other authorities as regulated in laws and regulations.

Notaries in carrying out their duties and positions are required to implement office administration such as correspondence with other parties. One form of administration that is often encountered in a Notary's office is the issuance of Covernotes, particularly in bank loans. Usually the creditor will ask the Notary to make a Covernote after signing the credit agreement. Furthermore, an SKMHT will be made which will be authorized to creditors to upgrade their status to APHT. However, if the land object used as collateral for credit is still in the process of splitting, roya, and it could also be because it is not yet certified, when distributing credit, the creditor cannot receive collateral, but in practice the creditor continues to disburse the credit application if the Notary issues a Covernote.

Covernotes generally contain Notary information including:

- a) mention of the Notary's identity and work area;
- b) information regarding the type, date and number of the deed made;
- c) information regarding the management of deeds, certificates, transfer of names or other similar things
- d) information regarding the period of time for completion of the process;
- e) information regarding the party entitled to receive when the process has been completed;
- f) place and date of creation of the Covernote, signature and stamp of the Notary.

Issuance of a Covernote by a Notary is only limited to a statement regarding a legal action by the parties and is carried out before a Notary. A cover note issued by a Notary is based on the interests of the client or legal subject, namely the debtor and creditor who will enter into a bank credit agreement, in which case the collateral

object belonging to the debtor is still in legal proceedings so the bank asks the Notary to make a Covernote containing a statement in which explain the process, progress, and constraints of the debtor's collateral object.

Covernote also functions as a guarantee for the completeness of incomplete files in an application at an agency. Therefore, a Covernote issued by a Notary must be complete, transparent and informative and accompanied by attachments that support the contents of the Covernote itself. In making Covernotes carried out by a Notary has a very important role in bank credit. This happens because what the debtor will guarantee to obtain credit is still in the legal process, so that the existence of Covernote can provide additional confidence for banks in disbursing credit funds. Seeing the importance of Covernote's role, the process of making Covernote cannot be done haphazardly.

However, it is unfortunate that there are weaknesses, because the Covernote issued by a Notary is not a legal product of a Notary and has not been regulated in existing laws and regulations, so the process of proving it in court requires a longer process of time and stages in proving it.

In the issuance of Notary Covernotes, in daily practice, especially in banking, it is used as a prerequisite for disbursing credit, which has been going on for a long time and has become a customary law.<sup>16</sup>In Indonesia, custom is a source of law and is obeyed as a positive norm. Habits are human actions regarding certain things that are fixed, carried out repeatedly in the same series of actions for a long time. Habits that are believed by the community will clearly be accepted as laws that must be obeyed. However, not all customs that apply in society and/or in the business world can be used as a source of law. Good and well-accepted habits that are in accordance with the personality of the community and practices in the business world can develop into a customary law.

Article 15 UUJN regarding Notary Authority also does not stipulate the authority of a Notary in issuing Covernotes. Authority is very important for a public official in interacting with the law because with the authority he has he can act and enter into an agreement with anyone that causes legal consequences. The legal consequences in question are related to the implementation of the authority that has an impact on the rights and obligations that should be fulfilled. This means that in this case the Notary Covernote appears because as a customary practice that has

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<sup>16</sup>The definition of customary law according to Van Dijk himself: namely law that exists out of habit. According to him, custom itself is a behavior that has been around for so long that rules appear that are acceptable and desired by society. In Indonesia, custom can be a source of law. Habits can be changed into customary law and can be formulated by judges in their decisions

been going on for a long time and has become a law that originates from habit.

#### **4. Conclusion**

Based on the results of the research above, the authors can conclude that the responsibility of a Notary in issuing Covernotes for disbursing bank credit is that the Notary is fully responsible for the contents of the Covernote he issues. Covernotes issued by a Notary serve as a reference and confidence for creditors that documents related to the realization of bank credit are being managed by a Notary so that the bank based on the Covernote can approve the disbursement of credit funds requested by the debtor. Inconsistencies that occur between the statements in Covernote and the reality in the field, the Notary must be responsible, both criminally and civilly and even morally responsible.

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