

## Legal Protection for Banks in Using Notary Covernotes in Credit Agreements That Cause Bad Loans

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**Abstract.** *The purpose of this study is to analyze: 1) The role of the Notary in making the Covernote in the credit agreement. 2) Legal protection for Banks in the use of Notary Covernotes in credit agreements resulting in bad loans. The approach method used is a sociological juridical approach. The research specifications used are analytical descriptive. This type of data uses primary and secondary data obtained through interviews and literature studies. The data analysis method used is descriptive qualitative. The results of the study concluded: 1) The role of the Notary in making Covernotes on credit agreements in Pangkal Pinang City is not based on statutory regulations. Because neither the UUJN nor the Banking Law regulates the covernote. But here the Notary makes a covernote because he is a partner of the Bank. Because the covernote is not regulated in the Law on Notary Positions (UUJN), then the consequences caused by the covernote apply general legal provisions. Notaries can be sentenced to criminal, if it can be proven in court. 2) Legal protection for banks in the use of notary covernotes in credit agreements is not guaranteed by law. Because the guarantee binding is not perfect. Banks in order to secure and ensure the return of loans given to debtor customers will always ask for guarantees. Guarantee is a means of preventive legal protection. Banks as creditors even use covernotes as the basis for credit disbursement, but still receive repressive protection, based on Articles 1131 and 1132 of the Civil Code.*

**Keywords:** *Agreement; Credit; Covernote; Protection.*

## 1. Introduction

Efforts to realize an increase in the implementation of sustainable, just and prosperous national development based on the 1945 Constitution, the government must carry out equitable development, economic growth and national stability that pays attention to harmony, harmony and balance. One of the facilities that have a strategic role in harmonizing and balancing these elements is banking.<sup>1</sup> Banking institutions as one of the financial institutions that have strategic value in the economic life of a country In banking credit activities, one of the most important things is the existence of a credit agreement. The function of the credit agreement is for proof purposes, especially authentic evidence made by and before a notary. An authentic deed is a deed in the form determined by the law.

Article 1 number (1) of Act No. 30 of 2004 as amended by Act No. 2 of 2014 concerning Notary Positions states that a notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this law or based on other laws. The legal basis for a notary in carrying out his duties is that a notary has the authority over all actions, requirements, and determinations regulated by law. There are several other powers of a notary in this article, namely guaranteeing the time of manufacture, grosse, copies and quotations of the deed.<sup>2</sup>

In relation to the authority that must be possessed by a public official in making an authentic deed, a notary may only carry out his/her position in a predetermined legal area, so that a deed made by a notary outside the legal area of his/her position is invalid. The notary's job is to provide assistance on making an authentic deed. And so, it is important for a notary to be able to understand the provisions regulated by law so that the general public who do not know or do not understand the rule of law can understand correctly and do not do things that are contrary to the law.<sup>3</sup>

A notary is a public official who can provide legal guarantees and protection through the formulation of an authentic deed he makes. Based on this, a notary

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<sup>1</sup>Sulistiani. Jawade Hafidz. Kerjasama Notaris-PPAT Terhadap Bank Di Dalam Pembuatan Akta Pemberian Hak Tanggungan. *Jurnal Akta*. Volume 4 No. 4 Desember 2017. p.708

<sup>2</sup>Sujanayasa. Ariawan. Kedudukan Saksi Instrumentair. *Acta Comitatus : Jurnal Hukum Kenotariatan*. Volume 1 No. 2, 2016. p.284

<sup>3</sup>Nawaaf Abdullah. Munsyarif Abdul Chalim. Kedudukan Dan Kewenangan Notaris Dalam Membuat Akta Otentik. *Jurnal Akta*. Vol. 4 No. 4 Desember 2017. p.655

is seen as an honorable profession because it is in charge of serving the interests of the general public. This honorable position places a burden and responsibility on every Notary to maintain the prestige and honor of the Notary profession. In the bank credit agreement, the role of the Notary through the deed he made provides legal certainty for the parties, namely the bank as the creditor and the customer as the debtor. This legal certainty guarantees the rights and obligations of each party in the credit agreement as stated in the authentic deed. This is because the authentic deed made by and before a Notary is a perfect means of proof.<sup>4</sup>

The provision of credit must be carried out using the precautionary principle in accordance with Article 7 of Act No. 21 of 2011 concerning the Financial Services Authority. This is because every grant of credit will contain the risk of failure or congestion. In disbursing credit, Banks are required to pay attention to matters as stipulated in Article 8 paragraphs (1) and (2) of Act No. 10 of 1998 concerning Banking. That banks are required to apply credit guidelines in accordance with those stipulated by Bank Indonesia and conduct in-depth analysis of the ability and ability to pay debtor customers to pay off their credits. Collateral guaranteed in the financing agreement must first be examined by the bank. To examine the collateral, the bank can ask for assistance or the services of a Notary.

Bad credit case at Bank BRI Pangkalpinang City, Bangka Belitung Province. The mega-corruption case has dragged on a number of people, including businessmen, unscrupulous BPN offices, and a number of high-ranking officials and employees of Bank BRI Pangkalpinang City. which caused a loss to the State amounting to Rp. 50 billion. A number of alleged perpetrators from the business community, as well as a number of employees of Bank BRI Pangkalpinang have been detained by the Prosecutor's Office of the Province of Bangka Belitung. The case also involved a Notary, namely in the case of publishing cover notes or covernotes. The notary's authority to issue Covernotes is not regulated in the UUJN, so this creates a void in norms related to the issuance of Covernotes by a notary.<sup>5</sup>The Notary's authority to issue this covernote is not mandatory under

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<sup>4</sup>Amalia Chusna. Peran Notaris Dalam Penyelesaian Kredit Dengan Jaminan Hak Tanggungan (Studi Kasus Di Bank Tabungan Negara (Persero) Tbk). *Tesis Hukum*. Unissula Semarang, 2020. p.2

<sup>5</sup>Henny Pratiwi. Kekuatan Hukum *Covernote* Melalui Pemberian Kredit Bank dengan Jaminan Hak Tanggungan Apabila Terjadi Kredit Macet. *Acta Comitatus: Jurnal Hukum Kenotariatan*. Vol. 4 No. 3 December 2019. p. 503

the order of the Law, but only to issue it as a giver of information for the sake of implementing credit disbursement by the Bank.<sup>6</sup>

*Covernote* contains information written and made by a Notary who is trusted and relied upon for his signature, stamp, and seal in order to guarantee the deeds he has made. *Covernotes* issued by a notary in a credit agreement should be carried out with full responsibility so as not to cause problems in the future. As for the contents of the *Covernote*, the validity and correctness of the *Covernote* should not be doubted so that it can provide legal protection for the parties, especially for creditors or banks. Based on the background of the problem above, the writer raised this thesis with the title "Legal Protection for Banks in Using Notary *Covernotes* in Credit Agreements That Cause Bad Loans in Pangkal Pinang City".

## 2. Research Methods

The approach method used in discussing this research problem is a sociological juridical approach. The research specifications used are descriptive analytical research. This type of data uses primary and secondary data obtained through interviews and literature studies. The data analysis method used is descriptive qualitative.

## 3. Results and Discussion

### 3.1. The Role of Notaries in Making *Covernotes* on Credit Agreements

The existence of a Notary is inseparable from the community's need for the importance of strong evidence in every legal event. Therefore, notaries carry out their duties and positions to the community properly. This can only be done if the Notary behaves and is guided by what is stated in the Law on Notary Positions and the Notary Code of Ethics. Both provisions are equipped with strict sanctions for violators.<sup>7</sup>

Bad credit cards caused by notary violations occurred in Pangkalpinang City. The BRI Pangkalpinang working capital credit (KMK) corruption case cost the state nearly Rp 50 billion. The mega-corruption case dragged on a number of people, including businessmen, BPN Office personnel, and Bank BRI Account Officer (AO)

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<sup>6</sup>Diah Oktarini. Dharma Kusuma. Peran dan Fungsi *Covernote* dalam Pelaksanaan Pencairan Kredit Oleh Bank. *Jurnal Magister Hukum Udayana*. Volume 9 No. 4 2020. p.816

<sup>7</sup>Wirjono Prodjodikoro. (2000). *Unlawful Acts*. Bandung: Forward Mandar. p.6.

employees in Pangkalpinang City. The case also involved a notary. The involvement of the GM Notary in the corruption case of Bank BRI Pangkalpinang is related to the Bank in the loan process, namely in the case of issuing covernotes<sup>8</sup>.

Notary GM became a defendant in the Corruption Case for Working Capital Loans (KMK) BRI Pangkalpinang, because the covernote product that Notary GM issued was considered the basis for disbursement of credit from banks. This case has been decided by the Pangkal Pinang District Court with a decision Number 21/Pid.Sus-TPK/2021/PNPgp. In his decision, the judge stated that Notary GM had been legally and convincingly proven to have committed a criminal act of corruption together as a subsidiary indictment and sentenced him to 8 years in prison and a fine of IDR 50,000,000 (fifty million rupiah) subsidiary 4 months. Notary GM is also sentenced to pay a replacement fee of Rp. 493,000,000 (four hundred and ninety three million rupiah), if it is not paid within a month after this decision, it will have permanent legal force. the GM Notary's property can be confiscated by the prosecutor and auctioned off to cover the replacement money. If you do not have sufficient assets to pay the replacement money, you will be sentenced to 2 years in prison.

*Covernote* is a statement letter given by a Notary to the Bank containing information that on a certain date the deed of credit agreement and deed of guarantee between the debtor and the bank have been signed, as well as other information. The covernote is only a temporary guide for the bank until the submission of all the deeds and guarantees that have been registered through the services of a notary/PPAT. Covernotes generally contain Notary information, including:

- The mention of the identity of the notary/PPAT and its working area.
- Information regarding the type, date and number of the deed made.
- Information regarding the management of deeds, certificates, transfer of names or other similar matters which are still in process.
- Description of the timeframe for the completion of the process.
- Information regarding the party entitled to receive when the process has been completed.
- Place and date of making Covernote, signature and notary stamp.

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<sup>8</sup><http://kabarone.com/2021/02/menyikapi-notaris-babel-tersangka-bank-not-can-berlindung-pada-cover-note-terkait-kredit/>. accessed on June 16, 2022. at 17.00

There is not a single article in Act No. 30 of 2004 in conjunction with Act No. 2 of 2014 concerning the Position of a Notary or in the Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning the Regulation of the Position of the Maker of Land Deeds which can be interpreted as the authority of a notary or PPAT to issue a certificate known as a Covernote. Covernote Notaries do not have legal power as an *ambtelijke acte*, so they do not have perfect evidentiary power, but only have evidentiary power as a guide to proof or can be used as additional evidence, and are completely dependent on the judge's judgment as stipulated in Article 1881 paragraph 2 of the Criminal Code. Civil.

The position of the Covernote made by a Notary is not evidence of collateral, because the covernote in this case only serves as a Certificate from a Notary for the Bank that will issue a credit containing the process that still has to be done for binding a guarantee so that it becomes a Mortgage Right. Covernote in this case does not also mean as completeness of the file but as a guarantee that it is true that the file is still in process, here the principle of trust is strongly put forward between the parties in this case between a notary and a client, a notary and a bank, and between a notary and an agency.<sup>9</sup>

The role of the Notary in making the covernote in the credit agreement in Pangkal Pinang City is not regulated in the Legislation. However, here the Notary makes a covernote because he is a partner of BRI. In the BRI Pangkalpinang Working Capital Loan (KMK) agreement, which failed, the covernote issued by the Notary GM was considered as the basis for disbursement of credit from the bank. The use of a notary covernote in a credit agreement is basically not prohibited. However, the notary must remain careful and thorough in checking the truth and validity of the documents that will become the guarantee. The obligation to be careful is because the notary who provides services to the bank is an affiliated party. Because the covernote is not regulated in the Law on Notary Positions (UUJN),

Judging from the theory of authority, according to the author, a Notary as a public official obtains authority by attribution, because the authority is created and granted by UUJN. However, in the case of the institution that publishes the covernote, it is not clear who is authorized to make the covernote. In the

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<sup>9</sup>Gusti Ayu Putu Wulan Pradnyasari. I Made Arya Utama. Kedudukan Hukum *Covernote* Notaris Terhadap Perlindungan Hukum Bank dalam Perjanjian Kredit. *Acta Comitatus: Jurnal Hukum Kenotariatan*. Volume 3 No. 3 Desember 2018. p.453

concept of a deed based on Article 1868 BW and Article 1874 BW concerning authentic deed and private deed, the covernote cannot be categorized as an authentic deed or a private deed. There is no clarity regarding the form of the covernote. There is still a lot of confusion in the covernote content. In terms of substance, there are differences in the use of the terms, namely "certificate letter" and "Notary Statement" because there is no clear arrangement regarding covernotes in both the UUU and the Banking Law.

Juridically, the regulation regarding the authority of a Notary to issue a covernote is not regulated in the laws and regulations. Notary actions in issuing covernotes are only a habit carried out by notaries in notarial practice. Covernotes can be classified as having sources from formal legal sources, namely based on habits where habits are human actions that are carried out regularly and repeatedly within a certain time. According to Kansil, if a certain habit is accepted by the community, and the habit is repeatedly carried out in such a way that actions that are contrary to the habit are felt as a violation of legal feelings, then a legal habit arises which is seen as law by the association.

### **3.2. Legal Protection for Banks in Using Notary Covernotes in Credit Agreements That Cause Bad Loans**

There is no legal basis for making a covernote by a notary, but a covernote is made based on custom by taking into account the legal aspects of the engagement and agreement and is not detrimental to the parties, so the covernote is not prohibited and is included in the instrument of an engagement or agreement. Therefore, the covernote in its implementation needs to pay attention to the conditions for the validity of the agreement and engagement. Covernote tends to be categorized as an engagement that was born because of an agreement, not because of the law. Based on Article 1233 of the Civil Code, that is, every engagement is born either by agreement or by law.<sup>10</sup>

*Covernote* which is issued by a Notary is also not used as evidence of collateral, but only as an introduction to the Bank that will issue credit. true in the process, at least there is trust that is built between the notary and the bank, between the notary and the agency, and also between the notary and the client.<sup>11</sup>The role and

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<sup>10</sup>I Made Ari Nurjaya. I Nyoman Sumardhika. Ida Ayu Putu Widiati Kewenangan Notaris Terhadap Pembuatan Covernote. *Jurnal Konstruksi Hukum*. Volume 1. No. 2. October 2020. p.423

<sup>11</sup>Singgih Budiyono. Gunarto. Akibat Hukum *Covernote* Yang Dijadikan Dasar Perjanjian Kredit di Perbankan. *Jurnal Akta*. Volume 4 No. 4 December 2017. p.787

function of a notary is very important in helping parties in need, in order to provide certainty, order and legal protection in making authentic deeds.

Legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice. According to Philipus M. Hadjon, there are two kinds of legal protection facilities, namely preventive legal protection means repressive legal protection facilities.

Based on the theory of legal protection, the Bank in order to secure and ensure the return of loans given to debtor customers will always ask for guarantees. Guarantee is a means of preventive legal protection. Guarantees requested by banks are usually special guarantees, namely guarantees that refer to certain objects belonging to the debtor. The collateral can be in the form of movable or immovable objects such as land.

The usefulness of Covernote cannot guarantee that there will be no problems if the Notary cannot complete the certification process and if there is a bad credit then the bank cannot execute the object of collateral because the mortgage registration process is not completed, resulting in legal consequences for the creditor in this case the bank will be harmed. Notaries can be held responsible for their mistakes if in the publication of the covernote there are elements that contain false information about the contents of the covernote. The discrepancy that occurs between the statement in the covernote and the reality on the ground, the Notary must be responsible, either criminally or civilly and even morally responsible.<sup>12</sup>

The use of a notary covernote in a credit agreement is basically not prohibited. However, the use of covernotes in credit agreements will cause problems when the debtor customer has defaulted while the binding of the guarantee has not been completed, namely with the issuance of the Mortgage Certificate. This will make the bank's position as a concurrent creditor, so that the bank cannot execute the object of the guarantee because the bank's position is not the preferred creditor of the mortgage holder.

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<sup>12</sup>Diah Oktarini. Op.cit. p.819



Legal protection for banks in the use of notary covernotes in credit agreements resulting in bad loans in Pangkal Pinang City is not fully guaranteed by legislation. Because the binding of the guarantee has not been completed, namely with the issuance of the Mortgage Certificate. Even though they do not get legal protection from the Mortgage Law, they still get protection from a guarantee law. Legal protection for banks in this case is based on the provisions of Articles 1131 and 1132 of the Civil Code. These two articles are called general guarantees or guarantees according to law. General guarantees that arise are not specifically agreed upon, but arise because of the law. Based on the theory of legal protection, banks as creditors even use covernotes as the basis for credit disbursement, but still get repressive protection. Based on Articles 1131 and 1132 of the Civil Code, it is still possible for banks to make efforts to settle loans where the collateral binding is not perfect. Efforts to settle these loans can either be done through non-litigation processes or through litigation.

#### **4. Conclusion**

The role of the Notary in making the Covernote on the credit agreement in Pangkal Pinang City is not based on statutory regulations. Because neither the UUJN nor the Banking Law regulates the covernote. However, here the Notary makes a covernote because he is a partner of BRI. In the BRI Pangkalpinang Working Capital Loan (KMK) agreement, which failed, the covernote issued by the Notary GM was considered the basis for disbursement of credit from the bank. Because the covernote is not regulated in the Law on Notary Positions (UUJN), the consequences caused by the covernote apply to general legal provisions, both civil and criminal. Notaries can be sentenced to criminal, if it can be proven in court. The judge's decision in the BRI Pangkal Pinang KMK corruption case, The judge stated that Notary GM has been legally and convincingly proven to have committed a criminal act of corruption together as a subsidiary indictment. 2) Legal protection for banks in the use of notary covernotes in credit agreements is not guaranteed by law. Because the guarantee binding is not perfect. Banks in order to secure and ensure the return of loans given to debtor customers will always ask for guarantees. Guarantee is a means of preventive legal protection. Banks as creditors, even though they use covernotes as a basis for credit disbursement, still receive repressive protection. Based on Articles 1131 and 1132 of the Civil Code, it is still possible for banks to make efforts to settle loans where the collateral binding is not perfect.

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### Regulation:

- [1] 1945 Constitution of the Republic of Indonesia

[2] Civil Code

[3] Act No. 10 of 1998 concerning Banking

[4] Article 7 of Act No. 21 of 2011 concerning the Financial Services Authority.

[5] Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary.

**Internet:**

<http://kabarone.com>