

Notary's Responsibility in Making a Cover Note as a Basis For Disbursement of Consumer Financing at Bank Syariah Indonesia in The Lampung Area

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Abstract. *A notary is a public official who is authorized to make authentic deeds and has other powers regulated in special laws, namely the Notary Law. Notaries can make a statement letter in the process of providing financing by banks which is also called a Cover Note, which is a custom in the banking world as well as being a means of evidence and reference for both the bank and the Notary himself. The contents of the Cover Note consist of what work the Notary does, the time period for completing the Notary's work. The problems in this study are 1) What is the responsibility of the Notary in making a Cover Note as the basis for disbursing financing at Bank Syariah Indonesia Lampung Area? 2) What are the legal consequences for the Notary for the Cover Note that has been made for the disbursement of financing at Bank Syariah Indonesia Lampung Area? The research method used is juridical-empirical. While this research is descriptive-analytical. This research aims to find out how the Notary's responsibility is in completing his work as stated in the Cover Note and the legal consequences for the Notary on Cover Note which has been published. The theories used are the Theory of Legal Responsibility and the Theory of Legal Protection. Until now, there has been no specific regulation governing the obligations of Notaries in issuing Cover Notes so that Notaries can be held personally responsible because it is related to the risk of Notary's reputation to the bank, but if the information conveyed in the Cover Note causes a loss, then the Notary can be held legally responsible, both civil and criminal.*

Keywords: *Cover Note, Funding Disbursement, Notary Responsibility,*

1. Introduction

Notary in English is called Notary, and in Dutch is called Van Notaris, has a very important role in legal traffic, especially in the field of civil law, because Notary is positioned as a public official, who has the authority to make authentic deeds

and other authorities. The duties, authorities and scope of a Notary are regulated in Law Number 30 of 2003 concerning the Position of Notary, hereinafter referred to as the Notary Position Law or UUJN. As amended by the issuance of Law Number 2 of 2014 concerning the Position of Notary, hereinafter referred to as UUJN.

The main authority of a Notary is to make authentic deeds regarding all acts, agreements and determinations required by statutory regulations and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosse, copies and extracts of the deed. As long as the making of the deeds is not also assigned or excluded to other officials or other people as stipulated by Law Article 15 paragraph (1) of the Republic of Indonesia Law Number 30 of 2004 concerning the Position of Notary (UUJN)]. Notaries have other authorities which are stated in Article 1 paragraph (2) of the UUJN, namely:

1. Validate signatures and determine the certainty of the date of private letters by registering them in a special book;
2. Recording letters under hand by registering them in a special book;
3. Make a copy of the original underground letter in the form of a copy containing the description as written and described in the letter in question;
4. Checking the photocopy to ensure it matches the original letter;
5. Providing legal advice regarding the preparation of deeds;
6. Making deeds relating to land; or
7. Making a deed of auction minutes

Article 15 paragraph (2) letter f UUJN also states that:

"Notaries are also authorized to make deeds relating to land."

For officials who are authorized to make land deeds, it has been regulated in the laws and regulations governing agrarian matters, namely Law Number 5 of 1960 concerning Basic Agrarian Principles or called UUPA. Although legally in Article 15 Paragraph (2) letter f of the UUJN it is determined that a Notary is authorized to make land deeds, empirically this authority cannot be exercised, because this authority is the authority of the PPAT. And to be able to make deeds regarding land, the Notary must meet the requirements that have been determined and must take the exam carried out by the Ministry of Agrarian Affairs and Spatial Planning of the National Land Agency to obtain a permit as a PPAT. In this article, Notaries have other authorities that are regulated in laws and regulations. The authority of the PPAT is only to make authentic deeds for legal acts regarding

land rights or ownership rights to apartment units located within his work. The working area of PPAT is one working area of the District/City Land Office. If viewed from the authority above, there is a difference between the position of Notary and the position in carrying out legal acts. The authority for as stated in Article 1 of Government Regulation Number 37 of 1998 is as follows:

1. Buy and sell
2. Exchange
3. Grant
4. Inflow into the Company (Inbreng)
5. Joint Rights Distribution
6. Granting of Building Use RightsUse Rights over Freehold Land
7. Granting of Mortgage Rights
8. Granting of Power of Attorney Imposing Mortgage Rights

Bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of financing (*credere*) and/or other forms in order to improve the standard of living of the people (Article 1 Number 2 of Law Number 7 of 1992 Jo. Law Number 10 of 1998 concerning Indonesian Banking). Based on Law Number 21 of 2008 concerning Sharia Banking Article 1 Number 7, it is explained that a Sharia Bank is a bank that carries out its business activities based on sharia principles.

One of Bank Syariah Indonesia's products is Consumer Financing. Consumer financing is a financing facility provided by Bank Syariah Indonesia Lampung Area to customers for the purchase of consumer goods such as Home Ownership Financing (PPR), Multipurpose Financing, and Motor Vehicle Financing. The financing distribution process at Bank Syariah Indonesia contains risks. To minimize the risk, the principle of caution must be applied to avoid problematic or stalled financing. With the tight level of competition, each bank will strive to provide fast and precise service to its customers. Sharia banks are required to have confidence based on an in-depth analysis of the faith and ability and capability of debtor customers to pay off their debts or return the financing in question as agreed. Salim HS provides a definition of collateral law as a whole of the legal rules that regulate the legal relationship between the giver and recipient of collateral in relation to the burden of collateral to obtain financing facilities. The function of the guarantee is to convince the bank that the debtor has the ability to repay the financing given to him in accordance with the agreement that has been mutually agreed upon.

Cover Note is a statement letter given by a Notary stating that there has been a signing of a financing agreement deed or a Deed of Guarantee between the Debtor and the bank, as well as other information that has been given a deed number and deed date and other information that is useful for accelerating the financing disbursement process at Bank Syariah Indonesia. The Notary issues a Cover Note as a temporary legal umbrella before all processes in the office are completed until the Certificate is submitted to Bank Syariah Indonesia. According to Muhaymiyah, a Cover Note is a statement letter or often referred to as a closing note made by a Notary.

The role, function and position of Cover Note in the banking world is very important as a temporary legal umbrella until the process at the Notary's office is completed and until the collateral object is handed over to the creditor, but the legal facts of Cover Note are not expressly regulated in the Legislation. Both in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, Government Regulation Number 37 of 1998 concerning the Position of Land Deed Maker, as well as in Law Number 4 of 1996 concerning Mortgage Rights, and Law Number 10 of 1998 concerning Banking. The creation of Cover Note is done because of the need and only becomes a temporary reference for the Bank until all deeds and collateral that have been registered are submitted. Notary as a party who has the capacity to make Cover Note by containing the contents of the Notary's ability or promise to the party who needs the Cover Note.

Notaries in carrying out legal acts in order to implement the disbursement of financing in the banking world must be in accordance with the provisions and procedures and in accordance with applicable laws and regulations. Notaries are responsible for examining documents and certificates related to the truth and authenticity of the identity and object of the guarantee before the Notary makes a Cover Note or authentic deed. Notaries must ensure that the guarantee for the Land Rights is not being burdened with Mortgage Rights. Notaries must first check the certificate at the National Land Agency or BPN to find out the status of the land. Is the certificate clean (not being burdened with Mortgage Rights), not in dispute, and not blocked.

Cover Note Notaries have been widely used in banking practices as a requirement in making financing withdrawals as explained above. Research concerning the Notary's responsibility in issuing a Cover Note if there is an error or negligence of the Notary resulting in a loss of the Cover Note made by the Notary is interesting for the author to use as research material. Empirical facts about the problems that arise with the Cover Note are as published in the mass media as follows:

1. Detik news Central Java News Website, on Tuesday, March 2, 2021 at 18.15 WIB, with the title "Beware! This Notary Staff Uses Fake Cover Notes to Fool 3

Banks". in the news article it was stated that the suspect, the Notary staff, committed a crime by falsifying the Cover Note. Initially, the suspect applied for financing to the Karanganyar city government bank using his land certificate as collateral. The certificate was then taken and replaced with a Cover Note. so the suspect submitted a fake Cover Note to the bank, as if the certificate would be changed to another name. After the certificate returned to the suspect, he switched to another bank to guarantee the same land certificate. The total loan amount is around IDR 800 million.

2. Haluan.Com Daily Website, on Thursday, October 6, 2022 at 14.56 WIB, with the title "The Naughty Footprint of Dewi Farni Djafar's Cover Note in the BNI 46 Fictitious Financing Case of IDR 40 Billion". The news article stated that Bank BNI had approved the financing by issuing a Cover Note made by a Notary, with collateral in the form of a fictitious oil palm plantation covering an area of 1,004 hectares, with a loan worth IDR 40 billion, which had successfully embezzled state and public money at Bank BNI 46, Pekanbaru branch. This case has received a court decision with the result of convicting 6 suspects.

Based on these problems, the author is interested in raising them into a scientific work entitled "Notary's Responsibility in Making Cover Notes as the Basis for Disbursement of Consumer Financing at Bank Syariah Indonesia, Lampung Area".

2. Research Methods

The research approach method used is the Sociological Juridical Approach, meaning a research conducted on the real conditions of society or the community environment with the intent and purpose of finding facts (fact finding), which then leads to identification (problem identification) and ultimately leads to problem solving (problem solution). The data collection method used in this study is by submitting a list of questions and studying library documents. What is meant by submitting written questions to research subjects in order to obtain answers to the problems in this study. While what is meant by document study is reviewing, examining, and studying legal materials that are related to this study.

3. Results and Discussion

3.1. Notary's Responsibility in Making Cover Note as Basis for Disbursement of Financing at Bank Syariah Indonesia Lampung Area

A notary is a public official who has the authority to make authentic deeds so that authentic deeds are a legal product of a notary. Article 15 paragraph (1) of the UUJN states that a notary has the authority to make authentic deeds regarding all acts, agreements and determinations, which are required by laws and regulations and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store

the deed, provide a grosse, copy and extract of the deed, all of which as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

Article 15 UUJN does not mention that Cover Note is one of the authorities owned by Notary or is a legal product of Notary. As previously explained, Cover Note is basically a statement letter containing the Notary's ability to carry out what the bank wants. Usually Cover Note is issued by Notary in the case of formal requirements for the purpose of disbursing financing desired by the bank in this case Bank Syariah Indonesia Lampung Area has not been fully met by the debtor. Usually related to collateral whose ownership validity must be ensured first by Notary and bank.

In practice, the Cover Note contains, among other things:

1. Notary's identity and area of work;
2. Information regarding the type, date and number of the deed made;
3. information regarding the processing of deeds, certificates, transfer of names or other similar matters which are still in process;
4. information regarding the time period
5. information regarding the entitled party
6. accept when the process has been completed;
7. place and date of making the Cover Note, signature and stamp of the Notary.

Cover Note issued by a Notary as a certificate of a legal action of the parties and carried out before a Notary. The Cover Note issued by a Notary is based on the interests of the legal subjects, namely the customer or debtor and the bank who wants to enter into a financing agreement.

At Bank Syarah Indonesia Lampung Area, in this case the collateral object belonging to the debtor is still in the legal process so the bank asked the Notary to make a Cover Note containing a statement explaining the process, progress, and obstacles of the debtor's collateral object.

Cover Note or a statement from a Notary is not actually a requirement for disbursement of financing at Bank Syariah Indonesia Area Lampung because to disburse a financing there are conditions that must be met first, for example the collateral object has been burdened with a mortgage or fiduciary. The burden on the collateral must be carried out by the debtor with the assistance of a Notary. This assistance is based on a legal act that takes time because of a legal process and this is where the role of the Notary's Cover Note is which explains that the legal act has been carried out by the debtor in accordance with applicable

regulations and is in process so that this can be a consideration and provide assurance to the bank that the disbursement of financing can be carried out because the requirements for disbursement of financing have been carried out or are in process. In other words, the Cover Note also functions as a guarantee of completeness of files that have not been completed in an application at the agency. Therefore, the Cover Note or Notary's statement must be complete, transparent, and informative and accompanied by attachments that support the contents of the Cover Note itself.

Related to the previous issue, namely if there is an indication of fraud by the debtor, then the Notary who has issued a Cover Note without conducting prior verification so that it is detrimental to the bank, then the Notary can be said to be negligent. The Notary's negligence here causes him to have to bear legal responsibility for his actions, namely criminal responsibility and civil responsibility. Even in this context, the Notary bears moral responsibility for the position he holds. As previously explained, if a Notary violates a legal provision related to the implementation of his position, the UUJN has determined the sanctions that can be imposed on the Notary, namely in the form of a verbal warning, written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal. Provisions regarding the dismissal of a Notary are regulated in Articles 8 to 14 of the UUJN. A Notary is temporarily dismissed from his position because:

- a. in the process of bankruptcy or suspension of debt payment obligations;
- b. under guardianship;
- c. committing disgraceful acts; or violate the obligations and prohibitions of office

Then the Notary resigns or is honorably dismissed from his position because:

- a. die;
- b. is 65 (sixty five) years old;
- c. own request;
- d. is unable spiritually and/or physically to carry out the duties of a Notary position continuously for more than 3 (three) years;
- e. concurrently holding the position as intended in Article 3 letter g.

Meanwhile, the dishonorable dismissal of a Notary from his position by the Minister upon the recommendation of the Central Supervisory Board if:

- a. declared bankrupt based on a court decision that has permanent legal force;

- b. being under continuous guardianship for more than 3 (three) years;
- c. committing acts that degrade the honor and dignity of the position of Notary; or committing serious violations of the obligations and prohibitions of the position.

This is a legal consequence if a Notary violates the provisions of the Notary's obligations and prohibitions as stipulated in the UUJN. If it is associated with the problem that has been explained previously, then the sanctions described above can be imposed on the Notary concerned. If the disbursement of financing is carried out based on a Cover Note containing incorrect information, it will certainly be very detrimental to the bank as the provider of financing and the bank cannot even take action to save the financing because the certificate that is the collateral for the financing is not controlled by the bank. The losses experienced by the bank. In the problem discussed, it is basically caused by two legal subjects, namely the debtor as the legal subject who enters into a financing agreement with the bank and the Notary who issues the Cover Note. In this case, the debtor's actions can be categorized as default and an unlawful act. The debtor's default is because the debtor no longer pays installments as stated in the financing agreement. While the debtor's unlawful act is because the debtor changes the name of the land owner in the certificate himself so that it can be indicated that there is a fraudulent offense in this case. Furthermore, the actions taken by the Notary can be categorized as an unlawful act.

Based on the explanation above, it is clear that the negligence of the Notary in issuing a Cover Note for the purpose of realizing banking financing is an action that is not in accordance with the provisions of applicable laws and regulations. This action by the Notary can reduce the level of public trust in the Notary's position. In other words, the actions taken by the Notary in this case can damage and degrade the honor and dignity of the Notary's position.

However, it should also be understood that the errors that occurred in the case should not all be blamed on the Notary. In this context, the bank also has errors. If referring to the process or stages in providing financing, there are stages that are not carried out properly by the bank, namely the data verification stage in the form of On the Spot (OTS) Checking. OTS is carried out by reviewing directly in the field regarding prospective debtors, including reviewing directly in the field to see the collateral objects.

The application of the principle of prudence in providing financing is carried out by analyzing each financing application submitted by prospective debtor customers. This is in accordance with the provisions of Article 8 paragraph (1) of the Republic of Indonesia Law Number 10 of 1998 concerning Banking. According to Kasmir, to analyze a financing application, banks generally use an analysis instrument known as the five C's of credit or 5C, including Character, Capacity,

Capital, Collateral, Condition of economy. The application of the principle of prudence by referring to the 5C analysis instrument is intended to anticipate the emergence of problematic financing in the future.

The explanation above shows that in distributing financing to the community, the bank absolutely applies the principle of prudence as is also done by Bank Syariah Indonesia Area Lampung. The bank must be able to analyze in depth and verify the truth of the documents submitted to it, especially documents related to collateral. In the case of collateral submitted in the form of land, the bank must also verify the validity of the collateral documents in order to determine whether or not the collateral is eligible to be included as collateral in the provision of banking financing.

Based on an interview with Notary Rahma Diyanti, procedurally in bank financing there is something called the minimum standard operational procedure that the bank must do. There are several aspects that must be considered in collateral, the first is the value of the collateral that covers the guarantee that will be given. Then the second is the status of the guarantee itself. The bank must pay attention to who the debtor is the holder of the rights to the thing that will be guaranteed. So if the bank applies this as a rule, bad financing may not occur.

The existence of Cover Note is currently existing and important where the Cover Note issued by the Notary will provide information so that the bank becomes confident that even though the bank realizes the financing requested by the debtor whose collateral is still in the legal process at the local Land Office, it will still be obtained and controlled by the bank. Moreover, the one who carries out the process is a Notary who is a very trusted position. However, Cover Note is not collateral, while the requirements for banking financing require collateral to be provided by the debtor as an application of the principle of prudence by the bank. The conditions described above show that in practice, Notaries gain high trust from the community and financial institutions. All related management regarding legal acts of the community and financial institutions are entrusted to the Notary.

For that reason, the author re-emphasizes that a Notary in carrying out his/her functions must pay attention to and maintain the good name and nobility of the Notary's office. As previously explained, a Notary must maintain the dignity and honor of his/her office. For that reason, a Notary in carrying out his/her functions must also always uphold the principle of caution so as not to fall into unlawful acts.

Notaries should carry out their duties in accordance with applicable legal provisions and are required to be self-aware because of the various characters of the people they deal with. No one can guarantee that every person (client) who comes to him is a good person and has good intentions, sometimes those who

come to him are people who want to take advantage of the Notary's presence with the aim of getting great benefits for themselves, thereby causing losses to other parties. The position of a Notary in carrying out his functions is required to be more active, especially in verifying data or documents presented to him.

4. Conclusion

The responsibility of the Notary in making a Cover Note as the basis for disbursement of financing at Bank Syariah Indonesia Area Lampung is that the Notary partner is fully responsible for the contents of the Cover Note issued. The Cover Note issued by the Notary becomes a reference and guarantee for Bank Syariah Indonesia Area Lampung that the documents related to the realization of the disbursement of financing are not legally flawed and are being processed by the Notary so that the bank based on the Cover Note can disburse the financing requested by the debtor. If there is a discrepancy between the statement in the Cover Note and the reality in the field, the Notary must be personally responsible, both criminally and civilly and even morally responsible. The legal consequences for Notaries for Cover Notes that have been made for the disbursement of financing at Bank Syariah Indonesia Area Lampung are the existence and good name of the Notary. If there is a Notary's statement that is not in accordance with the actual situation, it will have an impact on the injury of the Notary profession itself. It is even possible that the Notary will receive sanctions according to applicable regulations. At Bank Syariah Indonesia Area Lampung, there has never been a case related to Cover Notes made by Notary partners.

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