

Accountability of Land Deed Officials (PPAT) for Making Covernotes in Bank Credit Agreements

Sigid Purnomo

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:
sigid.pitikpurnomo@gmail.com

Abstract. *This study aims to examine and analyze the right time for Notaries-PPATs to issue covernotes, as well as the urgency and legal problems with the issuance of covernotes, along with the responsibilities of Notaries-PPATs in issuing covernotes. This study uses a normative legal method with a literature study data collection or processing technique. The research specification is analytical prescriptive, namely a study aimed at obtaining suggestions on what should be done to overcome certain problems that can produce new arguments, theories or concepts as prescriptions in solving the problems faced. The results of this study indicate that the right time for PPATs to issue covernotes is when PPATs have truly had confidence in everything agreed upon in the covernote. The urgency of issuing covernotes for creditors as a temporary legal umbrella before the matters agreed upon in the covernote are fulfilled. The problems that arise from within PPATs include the PPAT's carelessness and lack of assertiveness in checking the certificate. All legal consequences related to the covernote are the full responsibility of the PPAT concerned. Notaries-PPATs are required to be based on the principle of caution. That before issuing a covernote, first check the collateral object, so that it can be ensured that the certificate is in a clean condition. The Notary-PPAT is responsible for the promise contained in the covernote. Banks should be selective in choosing debtors and Notaries-PPAT as partners.*

Keywords: *Covernote; Responsibility; Trust.*

1. Introduction

A notary is a public official who is authorized by law to make authentic deeds. 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 Law on

the Position of Notary or UUJN. As amended by the issuance of Law Number 2 of 2014 concerning the Position of Notary, hereinafter referred to as UUJN. Meanwhile, the regulation regarding PPAT is regulated in Government Regulation Number 37 of 1998 concerning the Regulation on the Position of Land Deed Maker.

The significant role of a Notary and PPAT in legal acts, especially in the scope of civil law, one of which is making authentic deeds. Notaries and PPATs are officials who are part of the subject of the system. The state as the regulator of all aspects of national and state life has complete physical facilities and special norms that are generally recognized, the implementation of which can be enforced to guide and meet the needs of society, especially those that regulate agreements. The duties and authorities of a notary are to regulate in writing the legal relations between parties who mutually request the services of a notary. This authority is used as a basis for Notaries if later a law is born which includes a clause that requires the use of an authentic deed. Increasing public awareness requires perfect proof to anticipate and/or to resolve disputes that will occur in the future.

As a Bank partner in making authentic deeds, PPAT is authorized to make a Deed that shows that a legal act has occurred by the parties before the PPAT. The deed made by the PPAT is an important thing for the parties to be able to protect their interests.

The PPAT issues a covernote as a temporary legal umbrella before all processes in the PPAT office are completed until the Certificate is submitted to the creditor. The covernote issued by the PPAT occurs in the law of land rights guarantees. Banking prioritizes credit with land guarantees which are then bound by mortgage rights, considering the price of land that continues to rise. Therefore, collateral in the form of mortgage rights requires a covernote as a temporary legal umbrella for creditors. This is because the mortgage rights still have to go through the roya process, change of name, are still in the form of customary ownership rights, or are still in the process of land registration at the local Land Agency.

PPAT in carrying out legal acts for the implementation of credit disbursement in the banking world must be in accordance with the provisions and procedures of the applicable Laws and Regulations. Notaries and PPATs are responsible for examining documents and certificates related to the truth and authenticity of the identity and object of collateral before the PPAT makes an authentic deed. The PPAT must ensure that the collateral for the Land Rights is not being burdened with Mortgage Rights.

The role, function and position of covernote in the banking world is very important as a temporary legal umbrella until the process at the PPAT office is completed and until the collateral object is handed over to the creditor, but the

legal facts of the covernote 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 a covernote is carried out because of the need and is only a temporary reference for the Bank until all deeds and collateral that have been registered are submitted. PPAT as the party who has the capacity to make a covernote by containing the contents of the PPAT's ability/promise to the party who needs the covernote.

There are several examples of the uses of a notary's certificate/covernote, for example:

1. If the debtor wants to take out a loan from the bank and the goods to be pledged are still in the fiduciary process, whereas the bank will only disburse the loan if the goods pledged have completed the fiduciary process first, then one solution so that the loan can be disbursed by the bank is by having the notary issue a cover note.
2. When a Credit Agreement is made, then a SKMHT and/or APHT is made, because all of them have been signed by the parties before a Notary, even though administratively the notary has not been completed, then for the benefit of the Bank (creditor) and the debtor, the PPAT will make/issue a covernote, which states that the legal actions of the parties have been completed.

2. Research Methods

The type of research used in collecting data as material for writing this thesis is Normative Juridical. The research approach used in this thesis is the Prescriptive Analysis approach and legislation. Prescriptive research, namely research aimed at obtaining suggestions on what should be done to overcome certain problems that can produce new arguments, theories or concepts as prescription in solving the problems faced. Prescriptive means that the object of legal science is the coherence between legal norms and legal principles, the coherence between legal rules and legal norms, and the coherence between individual behavior and legal norms.⁶ Meanwhile, the statutory regulatory approach is an approach that is carried out by examining all regulations related to the legal issues being handled. By studying doctrinal views and regulations in legal science, ideas will be found that give rise to legal understandings, legal concepts, and legal principles relevant to the issues faced. This understanding is a basis for researchers in building a legal argument in solving the issues faced.

3. Results and Discussion

3.1. The Right Time for PPAT to Issue Covernote

Credit disbursement made by creditors to debtors contains risks for banks. Therefore, banks are required to apply the principle of caution in every credit disbursement to debtors. Banks are required to know the ins and outs of prospective customers who submit credit applications to avoid losses to the bank in the future.

Banks are required to conduct a thorough assessment of their customers in various aspects. The assessment is intended so that the bank has confidence in the ability of prospective debtors to fulfill their obligations. The obligation for such assessment is regulated in Article 8 of Law Number 10 of 1998, which reads as follows:

"General Bank Business, Article 8 of Law Number 10 of 1998, includes:

- 1) In providing credit or financing based on sharia principles, general banks are required to have confidence based on in-depth analysis of the good faith and ability and capability of the debtor customer to pay off his debt or return the financing in question in accordance with what was agreed.
- 2) Commercial banks are required to have and implement credit and financing guidelines based on sharia principles, in accordance with the provisions stipulated by Bank Indonesia."

Based on the explanation of Article 8 paragraph (1) of Law Number 10 of 1998, what must be assessed by the bank before providing credit is the character, ability, capital, collateral and business prospects of the customer. This is then known as "The Five C of Credit Analysis" or the 5C's principle. This principle will provide information regarding the good faith and ability of the customer to pay off the loan and interest. The meaning and explanation of the 5C's principle are as follows:

a. Character Assessment

The assessment of the character or personality of the prospective debtor is intended to determine the honesty and good faith of the prospective debtor to pay off or return the loan, so that it will not cause difficulties for the Bank in the future.

b. Capacity Assessment

Banks must research the prospective debtor's expertise in their business field and their material capabilities, so that the Bank is sure that the business they will finance is managed by the right people, so that the prospective debtor will be able to pay off or return their loan within a certain period of time.

c. Capital Assessment

Banks must conduct a comprehensive analysis of the financial position regarding the past and the future, so that the potential debtor's capital capacity to support the financing of the project or business of the potential debtor in question can be determined.

d. Collateral Valuation

To cover the payment of bad debts, prospective debtors are generally required to provide collateral in the form of high-quality, easily liquidated collateral with a value that is at least equal to the amount of credit or fees given to them.

e. Debtor Business Prospect Assessment (Condition of Economy)

Banks must analyze the market conditions at home and abroad, both past and future, so that the future marketing of the project results or business of prospective debtors financed by the bank can be known. In addition to paying attention to these things, banks must also know the purpose of using credit and their credit development plans as well as the urgency of the requested credit.

Based on the description above, The Five C of Credit Analysis is an important thing for banks in providing credit to their customers, because it can provide confidence that the debtor can fulfill their obligations. Confidence according to the article is a guarantee for the bank to provide credit to customers or prospective debtors. The elements that can create confidence as referred to in Article 8 paragraph (1) of Law Number 10 of 1998 above can be referred to as the main guarantee for the credit-providing bank.

Mortgage Rights are guarantees whose objects are land rights, while Fiduciary Rights are guarantees whose objects are movable objects, both tangible and intangible, and immovable objects, especially buildings, which cannot be burdened with Mortgage Rights as referred to in Law Number 4 of 1996. According to Article 1 number 1 of Law 4/1996, it is stipulated that:

"The Mortgage Right on land and objects related to the land, hereinafter referred to as the Mortgage Right, is a security right imposed on the land rights as referred to in Law Number 5 of 1960 concerning other objects that are an integral part of the land, for the payment of certain debts, which gives priority to other creditors."

Furthermore, the provisions of Article 10 paragraph (1) and (2) of Law Number 4 of 1996 explain:

"Procedures for Granting, Registering, Transferring and Erasing Mortgage Rights:

(1) The granting of a Mortgage Right is preceded by a promise to provide a Mortgage Right as a guarantee for the payment of a certain debt, which is stated in and is an inseparable part of the debt agreement in question or other agreement which gives rise to the debt.

(2) The granting of Mortgage Rights is carried out by making a Deed of Granting of Mortgage Rights by the PPAT in accordance with applicable laws and regulations."

Article 10 paragraph (2) of Law Number 4 of 1996 above indicates that the Granting of Mortgage Rights must be made with a PPAT Deed. This is further emphasized in Article 44 paragraph (1) of Government Regulation Number 24 of 1997 Concerning Land Registration (hereinafter referred to as PP 24/1997), which reads:

"Encumbrance of Rights:

a. Encumbrance of Mortgage Rights on land rights or ownership rights on apartment units. Encumbrance of building use rights, usage rights and lease rights on ownership rights and other encumbrances on land rights or ownership rights on apartment units determined by laws and regulations can be registered if it can be proven by a deed made by an authorized PPAT according to the applicable laws and regulations."

Furthermore, Article 13 paragraph (1) and (2) of Law Number 4 of 1996, reads:

"Granting of Mortgage Rights:

- (1) Granting of Mortgage Rights must be registered at the Land Office
- (2) No later than 7 (seven) working days after signing the Deed of Granting of Mortgage Rights as referred to in Article 10 paragraph (2), the PPAT is obliged to send the Deed of Granting of Mortgage Rights and other required documents to the Land Office."

Registration of the Deed of Granting of Mortgage Rights is not only ordered by Law Number 4 of 1996 Article 13, and Article 44 of Government Regulation Number 24 of 1997, as follows:

"Imposition of Mortgage Rights:

- (1) The encumbrance of mortgage rights on land rights or ownership rights on apartment units, encumbrance of building use rights, use rights and lease rights for buildings on ownership rights, and other encumbrances on land rights or ownership rights on apartment units are only determined by statutory regulations and can be registered if they can be proven by a deed made by an authorized PPAT according to the applicable statutory regulations.

(2) The provisions referred to in Article 38, Article 39, and Article 40 also apply to the making of the PPAT deed referred to in paragraph (1)."

Similar to the Fiduciary Guarantee Registration, based on Government Regulation Number 21 of 2015, Fiduciary Guarantee Registration is no longer done manually but is done electronically (online). This reads as follows:

"Article 2 regarding General Provisions for Fiduciary Registration:

(1) Applications for registration of Fiduciary Guarantees, applications for correction of Fiduciary Guarantee certificates, applications for changes to Fiduciary Guarantees are submitted by the Fiduciary Recipient, the attorney or representative of the Fiduciary Guarantee, and notification of the deletion of certificates in paragraph (1) are submitted through the Fiduciary Guarantee registration system to the Minister.

(2) The application as referred to in paragraph (1) is submitted through the electronic Guarantee Registration system."

The provisions for the Fiduciary Guarantee Registration Application are explained in Article 4:

"Application for Registration of Fiduciary Guarantee as referred to in Article 3 must be submitted within a maximum period of 30 (thirty) days from the date of making the Fiduciary Guarantee deed."

Article 13 paragraph (2) of Law Number 42 of 1999 stipulates that the fiduciary registration office records the Fiduciary Guarantee in the Fiduciary Register book on the same date as the date of receipt of the registration application. Based on the Fiduciary Register Book, the Fiduciary Registration Office issues a Fiduciary Certificate which is a copy of the Fiduciary Register book.

The issuance of a Mortgage Certificate and a Fiduciary Guarantee Certificate makes the debt given by the creditor to the debtor have binding legal force. Both certificates determine whether or not the debt with Mortgage collateral and debt with Fiduciary Guarantee will be disbursed. This means that debt with Mortgage collateral will only be disbursed if the Mortgage Certificate has been issued, as well as the Fiduciary Guarantee, it will only be disbursed if there is a Fiduciary Guarantee certificate.

PPAT issues a covernote as a Certificate, not only in the law of collateral rights, but also in other deeds such as pawns, mortgages, and fiduciaries. Banking prioritizes credit with land collateral which is then bound by collateral rights, considering the price of land that continues to rise. Therefore, collateral rights require a covernote because the collateral rights still have to go through the process of roya, change of name, are still in the form of customary ownership rights, or are still in the process of land registration at the local Land Agency. For this reason, so that the debtor's credit can be disbursed immediately even

though the land certificate that is the collateral right has not been processed, the Notary/PPAT who works with the relevant bank will be asked to issue a covernote as a reference for the bank during the process of issuing a Certificate for collateral that is being processed by the Notary/PPAT is complete.

That the issuance of a covernote occurs when the Notary/PPAT has truly believed in the process of urgent needs of the debtor and creditor. The debtor as the party who wants his credit to be quickly disbursed by the bank, and the creditor as the party who wants to quickly disburse the credit application submitted by the debtor. In practice in the banking world, there is business competition that requires banks to be quick in providing credit facilities to debtors. Therefore, the lack of collateral data owned by the debtor is resolved by the issuance of a covernote by the PPAT. The covernote made by the PPAT plays an important role in the implementation of credit disbursement in the banking world. The covernote is used as proof of collateral binding and/or temporary support for the bank in disbursing credit. The covernote is issued by the bank's partner PPAT because the process of binding the Mortgage Rights takes quite a long time and of course the bank needs a temporary support before the Mortgage Certificate is received by the Bank. In the banking world, the Notary/PPAT is a position of trust that has been trusted in the credit disbursement process, one of which is by issuing a covernote.

Furthermore, the Notary/PPAT will first check the land title certificate at the land office. After it is certain that the certificate is not in dispute, the Notary/PPAT will dare to convey to the bank that the prospective customer is ready to sign the credit disbursement agreement. In practice, a covernote is made by the Notary/PPAT to be used as a statement that the signing of the deed has been carried out by the bank and the customer in front of the relevant PPAT. A covernote is needed because the process of installing the Mortgage Right cannot be completed at the time of signing the agreement. After the Credit Agreement and Power of Attorney to Encumber the Mortgage Right are signed, hereinafter referred to as SKMHT in front of the Notary/PPAT and the bank, after that the PPAT will issue a covernote. The signing of the SKMHT is carried out by the PPAT to be upgraded to APHT.

The process of forming or creating a covernote by PPAT can be described as follows:

1. Prospective customers who apply for credit disbursement from the Bank because the requirements for credit disbursement have been met, the prospective debtor signs the Credit Agreement deed, the SKMHT deed before a Notary and the Bank.
2. Specifically for non-home loans, small business loans within a period of 1 month, SKMHT must be upgraded to APHT for land that has registered its ownership rights. Meanwhile, land that has not been registered requires 3

(three) months for APHT upgrade.

3. In practice, banks usually ask Notaries-PPATs to register APHTs at the Land Agency Office to then issue a Mortgage Certificate that can be used as collateral, and the bank holds the power of attorney over the collateral object, and with the Mortgage Right the bank can execute the collateral object if the debtor providing the Mortgage Right does not fulfill his debt payment obligations.

The position and certainty of the covernote appears in the process when the debtor has signed the SKMHT. The covernote is not proof of credit collateral, only a statement made by the PPAT as an official who made the deed that a credit binding has occurred.

Covernote only as a temporary reference for the Bank until all deeds and guarantees are submitted, but the covernote is still used as a reference for the bank in disbursing credit. The contents of the covernote contain the Notary-PPAT's promise to be able to carry it out by providing certainty of completion within a specified time period. In relation to this, the theory of the agreement is very closely related to what is agreed between the bank and the PPAT before the covernote is issued, where the bank asks the PPAT to be able to carry out legal acts such as making a Credit Agreement Deed, making a Power of Attorney to Charge Mortgage Rights and making a Deed of Granting Mortgage Rights.

Credit disbursement with the issuance of a covernote by the PPAT is a common practice and policy of the bank in addition to the fulfillment of other requirements set by the bank without waiting for the completion of the making of a copy of the deed, legalization, or completion of APHT registration at the Land Office. The existence of a covernote is due to the need in practice. This has become something natural by giving trust to a Notary to issue a covernote, because a notary is a position of trust.

Notary-PPAT is a public official who is authorized by law. Every act carried out by Notary-PPAT is regulated in the law, and Notary-PPAT must comply with the provisions contained therein. To avoid mistakes in carrying out the position that can cause losses, both to the Notary-PPAT himself and to the parties directly related to the Notary-PPAT, a Notary is required to thoroughly understand everything related to the Notary Law.

That the Notary's position is a position of trust, and therefore someone is willing to entrust something to him. The Notary is obliged to keep confidential everything that has been told to him as a Notary. Even though there are some that are not stated in the deed. Covernotes in practice are made by Notaries who also serve as PPAT partners of the bank, where covernotes are used as a statement letter made to explain that the signing of the deed has actually been carried out by the bank and the customer before the Notary-PPAT. Covernotes

are related to financing that is bound by Mortgage Rights which contain information that the certificate that is the collateral is being processed at the Notary/PPAT office concerned with the process of installing the Mortgage Rights cannot be completed at that time. The legal basis for making a covernote is not regulated in the UUJN, so that a covernote is not the main task of a Notary/PPAT. However, in practice, Notaries-PPATs can issue covernotes based on requests from banks as the basis for the bank's trust in Notaries-PPATs.

Covernote issued by PPAT is the same as issuing a Letter for administrative purposes or in the case of correspondence. Based on the definition of a notary as referred to in the Notary Law, a Notary is a public official who has attributive authority because the authority given to a Notary cannot be shared with anyone as regulated in the Notary Law.

Based on the provisions in the Notary Law and the regulations on the Land Deed Officials (PPAT), there is not a single article that can be interpreted as the authority of a Notary-PPAT to issue a Certificate of Information referred to as a covernote which is commonly used by banks in disbursing credit.

Notaries in carrying out their duties must be controlled by the notary code of ethics. In this case, several legal considerations must be considered, including:

- a) A notary is a public official whose duty is to carry out public interests.
- b) Notaries in carrying out their duties must not tarnish the good name of the corps of legal profession practitioners.
- c) Notaries in carrying out their duties do not tarnish the good name of the Notary institution
- d) Because notaries work by implementing the law in the products they produce, this code of ethics is expected to always remember to uphold the nobility of their duties and the dignity of their position, and carry out their duties by fulfilling the requirements stipulated by legislation.

According to Syafran Sofyan, there is not a single article in Law Number 2 of 2014 concerning the Position of Notary that can be interpreted as the authority of a Notary to issue a Certificate called a covernote. In practice, a covernote can be used as collateral by a bank. However, a covernote is not an authentic deed. This is also emphasized in the law concerning the authority of a notary to issue an authentic deed, so that if viewed legally, in reality a covernote does not have binding and perfect legal force. According to Syafran Sofyan, banks should not easily disburse credit based on a notary's covernote, but banks should still adhere to the principle of prudence, namely the 5C principle (Character, Capital, Capacity, Collateral, and Condition of Economy).

In carrying out his/her position, a notary must take an oath/promise of office as stated in the Notary Position Law, Article 4 paragraph (2), which reads:

“I am the one who swears/promises

- That I will obey and be loyal to the Republic of Indonesia, Pancasila, the 1945 Constitution of the Republic of Indonesia, the Law on the Position of Notary and other laws and regulations.
- That I will maintain my attitude and behavior and will carry out my obligations in accordance with the code of professional ethics, honor, dignity and responsibility as a Notary.
- That I will keep confidential the contents of the deed and information obtained in the course of carrying out my duties.
- That in order to be appointed to this position, either directly or indirectly, under any name or pretext, I will never give or promise anything to anyone.”

Based on the description of Article 4 paragraph (2) above, a Notary promises/swears not to give or promise anything to anyone. This is contrary to the statement written in the covernote, which contains the Notary's promise to complete his duties in accordance with the statement stated in the covernote.

The right time for PPAT to issue a covernote is when the PPAT is sure to issue a covernote which contains a promise that the PPAT will complete all processes stated in the covernote he made. Although the bank at that time did not have a legal umbrella, so it was not completely safe to disburse credit. However, PPAT with existing documents or data and the signing of the credit agreement deed and SKMHT deed, and has checked the collateral object with a clean status, then the PPAT will issue a covernote as a temporary reference as a legal umbrella until the registration process for the collateral object that is pledged at the bank has issued a Mortgage Certificate and/or Fiduciary Guarantee Certificate.

3.2. Urgency and Legal Problems with the Issuance of Covernote

Credit Agreement in the banking world is a form of agreement between the debtor and the creditor, that there has been an agreement between the two parties to make a debt. Credit disbursement in the banking world is a natural thing if the bank asks the bank's partner Notary to make a covernote to facilitate credit disbursement with all the requirements for credit disbursement not yet fulfilled.

The urgency of issuing a covernote in this case becomes an important thing for creditors as a temporary legal umbrella before all documents as agreed by the PPAT are completed and submitted to the bank as a creditor. While the urgency of issuing a covernote for the debtor is so that the credit applied for by the debtor can be disbursed immediately.

Covernote is not a product of the authority of a Notary-PPAT, because the authority of a Notary-PPAT according to the laws and regulations is only one, namely to make an authentic deed. According to him, a covernote is a Statement from a Notary containing everything that is agreed upon as stated in the covernote, where the contents listed in the covernote are still in process or being worked on by the Notary-PPAT. It is further explained that the covernote exists because of the need in practice. The urgency of issuing a covernote is an important thing for the smooth running of credit disbursement, both for creditors and debtors, the bank as the creditor requires a covernote so that credit disbursement can be carried out immediately so that the bank does not lose prospective customers, where the debtor wants the credit submitted to be disbursed immediately.

In the disbursement of credit in the banking world, it is normal for the Notary who is a partner of the bank to issue a covernote in accordance with the interests of the parties, but the PPAT in this case must act carefully before issuing a covernote which contains the PPAT's promise to fulfill the obligations and responsibilities stated in the covernote so as not to harm one or both parties.

The use of covernotes in Credit Agreements is basically not prohibited. However, the use of covernotes in credit disbursement will cause problems when the debtor defaults, while the binding of the collateral has not been completed with the issuance of the Mortgage Right certificate. This will make the Bank's position as a concurrent creditor, so that the bank cannot execute the collateral object not as a preferred creditor holding the Mortgage Right.

Mortgage Rights as one of the property rights are generally a mandatory legal provision. Mortgage Rights are born after the registration of Mortgage Rights with the issuance of a Mortgage Rights Certificate. This fulfills the principle of publicity of Mortgage Rights. So if there is an imperfect collateral binding that causes the Mortgage Rights Certificate not to be issued, the bank has not received legal protection based on the Mortgage Rights Law regarding the settlement of its receivables, because legally the bank does not yet have the status of a Mortgage Rights holder.

Problems that arise with the issuance of a covernote by a Notary-PPAT can occur due to various things, including the party who appears or signs the deed is not the person who has the right and is not authorized to the collateral object being pledged. The legal problems that occur are related to the covernote, where the certificate that is pledged will be processed by the Land Office and will be installed with Mortgage Rights, but after the signing of the Credit Agreement and SKMHT Deed, then the credit submitted by the debtor has been disbursed by the creditor by holding on to the Notary/PPAT covernote, the Mortgage Right registration process cannot be registered immediately because the collateral object to be registered after being checked on the collateral object that has been declared clean by conducting an oral check with the Land Office, but then the

collateral object has a blocked status. In this case, the Notary who has issued the covernote as agreed therein cannot be carried out in accordance with the promise contained in the covernote relating to the completion period in carrying out the Mortgage Right registration process. However, in this case, there is no legal problem that is detrimental to one or both parties due to the non-compliance of the fulfillment of the promise that has been stated in the covernote. Before the signing of the Credit Agreement and SKMHT, the certificate to be pledged has been confirmed in advance that the certificate is clean (not burdened with Mortgage Rights) by conducting a verbal check with the Land Office Officer. However, along with the ongoing process that has been carried out by submitting a Roya Application and a request for the installation of Mortgage Rights, it turns out that the certificate is recorded at the Land Office in a blocked status, so that the certificate cannot be processed.

As with the status of the certificate that has been blocked, the process that should be carried out by the PPAT to immediately issue the Mortgage Certificate that has been agreed in the covernote for the trust given by the Bank as the Creditor is hampered. This will be very detrimental to the creditor when the debtor defaults by not carrying out his obligations in making installment payments so that bad credit can occur, in this case the creditor cannot execute the guarantee because the Mortgage Certificate has not been issued. While the covernote made by the Notary is not a guarantee that can be executed because it does not have legal force as a basis for executing the guarantee.

The problem that occurs in the making of covernotes by Notaries/PPAT is due to the indecisiveness of Notaries in issuing covernotes for credit disbursement based on verbal checks carried out by one of the officers at the National Land Agency Office. Because with this, it cannot guarantee the accuracy of the information provided. National Land Agency officers when conducting verbal checks do not carry out the proper procedures such as official checks. In addition to these factors, it is a habit for most notaries to entrust the process to assigned employees, and trust on the basis of friendship.

Furthermore, the problems arising from the use of covernotes in credit disbursement cannot be separated from the role of the bank itself. Not only factors from within the Notary can cause legal problems as explained above, problems can also arise from outside the Notary/PPAT. Problems from outside the Notary/PPAT also arise when the Bank in practice often acts less carefully due to business competition reasons in obtaining debtors. This happens because of concerns that prospective debtors will run to other banks, without ensuring that the credit will not become a problem credit. Often the bank does not conduct a detailed survey of the collateral object to be pledged. The legal flaw in the issuance of covernotes that results in bad debts is because the Bank wants the credit disbursement process to be carried out immediately. This encourages the Notary-PPAT to carry out the tasks given to him by the bank to be followed

up immediately.

3.3. Responsibilities of PPAT in Issuing Covernotes

Credit disbursement carried out with Mortgage Guarantee or Fiduciary Guarantee is not carried out procedurally by waiting for the issuance of the Mortgage Certificate and Fiduciary Guarantee Certificate. As is known, the issuance of the Mortgage Certificate or Fiduciary Certificate, more specifically the Mortgage Certificate, requires time in the process of issuing the Mortgage Certificate because it cannot be completed at the same time as the signing of the Credit Agreement deed and SKMHT.

The Deed of Granting of Mortgage Rights will be made by the PPAT if he is shown valid proof of ownership of land rights (original certificate) which is used as collateral. If the debtor cannot show the original certificate for the land for any reason, then the PPAT must refuse to make a Deed to support the disbursement of credit. This is regulated in Article 39 paragraph (1) letter a of Government Regulation Number 24 of 1997 which stipulates: that the PPAT must refuse to make a deed if he is not shown the original certificate of land rights which is used as the basis for making the deed.

Credit disbursement with collateral of Mortgage Rights or Fiduciary Guarantee can only occur if the Mortgage Certificate or Fiduciary Guarantee Certificate has been issued, but this is not always the case, as long as the credit agreement has been signed and the Mortgage Certificate or Fiduciary Guarantee Certificate is in process. If it has not been processed at all for the issuance of the Mortgage Certificate or Fiduciary Guarantee Certificate, the credit will not be disbursed by the bank.

The process of installing Mortgage Rights cannot be carried out on the same day together with the signing of the credit agreement deed, while the debtor is constrained by the date and time if the credit is not disbursed on the same day. Therefore, as long as the Mortgage Rights registration process has not been completed, the bank will still disburse the credit if the Notary/PPAT issues a Statement, in this case usually called a covernote. The contents of the covernote are a statement that the land title certificate used as the collateral object is in the process of installing Mortgage Rights and there is a time period and contains a promise from the Notary/PPAT to immediately complete the process so that the Mortgage Rights certificate is issued which will then be immediately submitted to the creditor.

Procedure for making a credit agreement, the bank provides a letter/order to the Notary/PPAT which contains information about the debtor's data, type of credit, credit allocation, amount of credit, credit interest, credit guarantee, and other terms containing agreements agreed by the debtor and the bank. In addition to the data as mentioned, the bank also submits a certificate that is

used as collateral to the Notary/PPAT to be checked regarding the object of the guarantee/collateral to the Land Office. After the results of the check are out, the bank together with the debtor comes to meet the Notary/PPAT. Previously, the Notary/PPAT will make a draft of the deed based on the letter/order that has been sent by the bank, after the deed is read by the Notary/PPAT in front of the parties to be signed by the parties, the letter/order that has been signed by the parties is attached to the minutes of the deed.

That the disbursement of credit with collateral of Mortgage Rights or Fiduciary Guarantee is still carried out even though the Mortgage Certificate or Fiduciary Guarantee Certificate has not been issued, as long as the creditor/bank is sure that the certificate will be issued. It is further explained that the creditor/bank will disburse credit to its customers after the parties, namely the creditor and debtor, have signed the credit agreement and the Power of Attorney to Install Mortgage Rights (SKMHT), and the collateral is in the process. If with Fiduciary Guarantee, credit can also still be disbursed before the issuance of the Fiduciary Guarantee Certificate, but after the credit agreement and Fiduciary Guarantee deed have been signed by the debtor and creditor.

In the description above, it is explained that the creditor/bank disburses the credit even though the Mortgage Certificate or Fiduciary Guarantee Certificate has not been issued as long as there is confidence from the bank that the certificate will definitely be issued. In practice, the confidence that the Mortgage Certificate or Fiduciary Guarantee Certificate will exist is because of the underlying basis/reason, namely because of the covernote from the Notary/PPAT.

Covernote is not a product that is the authority of a Notary or PPAT, because the authority of a Notary or PPAT according to statutory regulations is only to make authentic deeds. According to him, a covernote is actually a statement from a Notary containing what has been done by the Notary or what the Notary is doing is still in process. It was further explained that the covernote exists because of the need in practice. It was emphasized by the resource person that according to him the contents of the covernote are nothing more than a statement that the collateral object is being processed as explained in the covernote, it would be strange if a Notary dared to issue a covernote while he did not do what was explained in the covernote. If in addition to explaining when the work was completed, according to the Notary-PPAT who issued the covernote, it is beyond the limits of authority. Therefore, a Notary/PPAT in issuing a covernote must be careful, what he explains in the covernote is what he is really doing. If a party requests that the covernote also contain information about when the work will be completed, then the Notary or PPAT must reject it because what is requested is beyond his authority, according to him the Notary/PPAT who issues the covernote must be responsible for the contents therein. If the covernote only contains information about what is

being worked on, then the Notary or PPAT who issues the covernote is only responsible for the truth of the information. However, if in addition to containing information about what has been done, it also contains a promise about when the work will be completed, then the person who issues the covernote is not only responsible for the truth of his information, but is also responsible for when the Mortgage Certificate or Fiduciary Guarantee Certificate is issued.

That the covernote in addition to containing information about what has been done by the Notary who issued the covernote can also contain thoughts about when the work will be completed. It is further explained that the covernote contains such content because that is what the bank wants and according to him the Notary/PPAT who issued the covernote does not make promises, only estimates and these estimates are based on careful calculations. It is further explained that the Notary or PPAT who made the covernote is only responsible for the information in the covernote, because that is what he did. However, the Notary/PPAT who made the covernote is not responsible for the final result of what was done (issuance of the Mortgage Certificate and Fiduciary Guarantee Certificate) because that is beyond his authority. That what is meant by what was done is completed, namely the issuance of the Mortgage Certificate or Fiduciary Guarantee Certificate. However, this does not guarantee that what was done will definitely be completed at the time as stated in the covernote. What is in the covernote is only an estimate. The notary-PPAT who issues the covernote is only responsible for the truth of the information in the covernote, namely what he has done, and is not responsible for when the Mortgage Certificate or Fiduciary Guarantee Certificate is issued.

Covernote contains a promise from a Notary or PPAT that if the Mortgage Certificate has been issued, it will be immediately submitted to the bank within a certain period of time. In the case of a covernote containing such, then the covernote can be said to be a statement letter from the Notary/PPAT regarding what was done or done in front of him in connection with the request in the form of a letter of application sent by the bank. Responsibility for the covernote made by the Notary-PPAT is the full responsibility of the Notary-PPAT, where the Notary-PPAT must be responsible for fulfilling everything that has been agreed in the covernote made. Notaries-PPATs who have committed unlawful acts related to the covernote they made can be subject to penalties, both civil and criminal.

4. Conclusion

The legal urgency of issuing a covernote is an important thing for the Bank in disbursing credit. The issuance of a covernote for creditors is as a temporary legal umbrella before all documents as agreed by the PPAT are completed and submitted to the creditor. The legal problems that occur with the issuance of a covernote come from

within and outside the PPAT. The problems from within the Notary come from the Notary's carelessness and indecisiveness in checking the certificate and checking the suitability of all identities. The problems from outside the PPAT are the bank's carelessness in selecting debtors, as well as the bank's carelessness in conducting surveys and the ins and outs of the objects to be pledged. Responsibility for the covernote made by the PPAT is the full responsibility of the PPAT, where the PPAT must be responsible for fulfilling everything that has been agreed upon in the covernote made. PPAT who has committed an unlawful act related to the covernote he made can be subject to punishment, both civil and criminal.

5. References

Book

- Abdul Ghofur Anshori, Indonesian Notary Institution, Legal and Ethical Perspectives, First Edition, UII Press, Yogyakarta, 2009
- Abdul Ghofur Anshori, Islamic Contract Law in Indonesia (Concept, Regulation, and Implementation), Gadjah Mada University Press, Yogyakarta, 2010
- Abdulkasir Muhammad, Financial and Financing Institutions, PT Citra Aditya Bakti, Bandung, 2000
- Abdul Kadir Muhammad, Contract Law. Citra Aditya Bhakti, Bandung 1992
- Adnan Buyung Nasution, Inspiration for the Constitutional Government of Indonesia (Socio-Legal Study of the 1956-1959 Constituent Assembly), Temprint, Jakarta, 2001 Ahmad Azhar Basyir, Principles of Muamalat Law (Islamic Civil Law), UII Press, Yogyakarta, 2000
- Djoni S. Gozali and Rachmadi Usman, 2012, Banking Law, Sinar Grafika, Jakarta
- Dwi Wahyu Juliyanto, Thesis, Position of Covernote as a Basis for Banks in the Settlement of Financing Contract Products by Notaries/Land Deed Officials (PPAT Bank Partners and Customer Financing Relationship Media in the Banking World Reviewed from Law Number 2 of 2014 Concerning Notary Positions and Notary Code of Ethics, UNS, Surakarta, 2017
- E. Sumaryono, 1995, Legal Profession Etiquette: Norms for Law Enforcers, Yogyakarta, Kanisius
- Farthurahman Djalil, Sharia Contract Law in the Compilation of Contract Law, PT. Citra Aditya Bakti, Bandung, 2001
- Habib Adjie, Indonesian Notary Law (Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary), PT Refika Aditama, First Edition, Surabaya, 2008
- Habib Adjie, 2009, Civil and Administrative Sanctions Against Notaries as Public Officials, Bandung: Rafika Aditama

- Hassanudin Rahman, Legal Aspects of Bank Credit Provision in Indonesia, PT Citra Aditya Bakti, Bandung, 1995
- J. Satrio, Law of Contracts (Contracts in General). Citra Aditya Bakti, Bandung, 1992
- J.Satrio, Contract Law, Contracts in General, First Edition, Alumni, Bandung 1993
- Jehani Libertus, Practical Guide to Drafting Agreement Letters Complete with Examples: Sale and Purchase Agreement, Rental Agreement, Lending and Use Agreement, Lending and Borrowing Agreement, Employment Agreement, Franchise Agreement, Power of Attorney, (Jakarta: Visimedia, 2007),
- Kasmir, Basics of Banking, Rajawali Press, Jakarta, 2014
- KRMT Tirto Mertodiningrat, Overview of Civil Law and Commercial Law, Ctk I Development, Jakarta 1986
- See the Inaugural Speech of Professor of Contract Law Prof. Dr. Ridwan Khairandy, SH, M.Hum at the Faculty of Law, Islamic University of Indonesia in front of the Open Senate Session of the Islamic University of Indonesia, February 8, 2011
- Luthfan Hadi Darus, Notarial Law and the Responsibilities of the Notary Office, Yogyakarta, UII Pres, 2017
- Madjedi Hasan, Pacta Sunt Servanda Implementation of the Principle of Binding Promise in Production Sharing Contracts in the Oil and Gas Sector. PT Fikahari Aneska. Jakarta, 2005
- Mahadi 1989. Philosophy of Law: An Introduction, Citra Aditya Bakti, Bandung
- M. Luthfan Hadi Darus, Notarial Law and the Responsibilities of the Notary Office, UII Press, Yogyakarta, 2017
- M. Yahya Harahap, Legal Aspects of Contracts, Ctkl, PT. Alumni, Bandung 1982
- Muhammad Syaifuddin quoted Herlien Budiono's opinion in General Teachings on Contract Law and its Application in the Notary Sector.
- Muhammad Djumhana, Banking Law in Indonesia, PT Citra Aditya Bakti, Bandung, 2006
- Putu Ayu Lestari Dewi, Thesis, 2013, Notary's Responsibility for Making Covernotes as a Legal Product Not Regulated in the Notary Law, Yogyakarta
- Rachmadi Usman, Legal Aspects of Banking in Indonesia, PT Gramedia Pustaka Utama, Jakarta, 2001
- Rizky Wulandari, 2015: Basic Considerations of Banks in Disbursing Credit Based on Cover Notes in Sleman Regency, Thesis, Master of Notary Study Program, Gajah Mada University, Yogyakarta
- R. Setiawan, Principles of Engagement Law, Putra Abardin Bandung Publishers 1997
- R. Subekti and R. Tjitrosudibio, Civil Code, Jakarta, Pradnya Paramitha, 1996
- R. Wirjono Prodjodikoro, Principles of Contract Law, Sumur Badnung, Jakarta, 1989
- Salim HS, Contract Law Theory & Contract Drafting Techniques, Etc.

- First, SinarGrafika, Jakarta, 2003
- Satjipto Raharjo, Legal Studies, (Jakarta: PT. Citra Aditya Bakti, 2000)
- Sjaifurrachman, Aspects of Notary's responsibility in making deeds, 2011, Bandung, Mandar Maju
- Soedjono Dirdjosworo, The Mystery Behind Problematic Contracts, Volume I, Mandar Maju, Bandung 2002
- Sudikno Mertokusumo, Understanding the Law, Ctk I, Liberty, Yogyakarta 1986
- Supardi, Ethics and Responsibilities of the Legal Profession in Indonesia, Sinar Graphics, Jakarta, 2008
- Subekti 1, Civil Code, Seventh Edition, Pradnya Paramita, Jakarta, 1975, Article 1868
- Subekti, Law of Evidence, Seventeenth Edition, Pradnya Paramita, Jakarta, 2008
- Subekti, Contract Law, PT. Intermasa, Jakarta, 2001
- Sutan Remy Sajahdeini, Freedom of Contract and Balanced Protection for Parties in Bank Indonesia Credit Agreements, Indonesian Bankers, Jakarta, 1993
- Tan Thong Kie, Notary Studies & All About Notary Practice, Book I, Ichtar Baru Van Hoeve, Jakarta
- The Center for Education and Training Team of the Faculty of Law Laboratory, Islamic University of Indonesia, Contract Drafting Practice Module, Seventh Edition. Yogyakarta, 2013
- Wawan Muhwan Hariri, Contract Law, supplemented by Contract Law in Islam, CV Pustaka Setia, Bandung, 2011
- Wirjono Prodjodikoro, Principles of Contract Law, CV. Mandar Maju, Bandung, 2011
- Yulies Tiena Masriani, Introduction to Indonesian Law, (Jakarta: Sinar Grafika, 2008

Legislation

Civil Code

Government Regulation Number 21 of 2015 concerning Procedures for Fiduciary Registration and Costs for Making Fiduciary Guarantee Deeds

Law Number 2 of 2014 concerning the Position of Notary

Government Regulation Number 37 of 1998 Concerning Land Deed Making Officials (PPAT)

Law Number 24 of 1997 concerning Land Registration

Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land

Law Number 7 of 1992 concerning Banking

Internet

SyafranSofyan http://advisHukumnotaris.com/brita/opini/syafran_po_wered_Hukum-

Cover_note_as_effective_condition_for_credit_disbursement

Journals and Articles

Daniel P. O' Gorman , Redefining Offers In Contract Law, Mississippi Law Journal Vol. 82:6, 2013, p.2