

## Responsibilities and Legal Protection of Notaries as Public Officials in Issuing Covernotes Reviewed from the Perspective of Guarantee Law

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**Abstract.** *Covernote is a unilateral statement from a Notary that has no binding force, as an ordinary statement, a covernote is not classified as a notarial deed. Covernotes made by Notaries in practice give rise to several legal issues. In connection with this, The author conducted the research with the aim of finding out and analyzing it legally. conducting legal research regarding the responsibilities and protection of Notaries as public officials in issuing covernotes. To find out the above objectives, the method used is a juridical-empirical method that combines legal analysis and field data. A sociological juridical approach is applied to understand the relationship between law and social conditions, as well as the challenges faced by Notaries. Primary data is obtained from interviews with Notaries, while secondary data is taken from legal sources and related literature. Qualitative analysis is used to describe the phenomenon and understand the responsibilities of Notaries and protection of Notaries as public officials in issuing covernotes. Covernotes are not classified as authentic deeds and if the issuance of a covernote causes a loss, the Notary can be held legally responsible, both criminally and civilly. Legal protection for Notaries includes preventive aspects, such as the obligations regulated in Article 16 paragraph (1) of the Notary Law, as well as repressive aspects in the form of sanctions if a violation occurs. To clarify the Notary's responsibility in issuing a covernote, special regulations are needed in the Notary Law. In addition, Notaries are advised to be careful in issuing a covernote by ensuring that the information is in accordance with the facts.*

**Keywords:** *Covernote; Guarantee; Legal; Notary.*

### 1. Introduction

The definition of a notary is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, a

notary is a public official who is authorized to make authentic deeds and has other authorities as regulated in the law or based on other laws.

The position of Notary is stated in Article 1 of the Notary Law (hereinafter referred to as UUJN) which states that: A Notary is a public official who is solely authorized to make authentic deeds regarding all acts, agreements and determinations required by a general regulation or by an interested party to be stated in an authentic deed, guarantee the certainty of the date, keep the deed, and provide a grosse, copy and extract, all as long as the making of the deed by a general regulation is not also assigned or excluded to another official or person.

Notary is a public official, meaning someone who is appointed, given authority and obligation by the state to serve the public in certain matters. This shows the role of the state in determining the position or existence of a Notary. Without state intervention, there will never be a legal norm that gives authority to a Notary.

The authority of a notary is regulated in Article 15 paragraph (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary, namely "A notary has the authority 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 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."

One of the notary's authorities is in binding credit. In credit, Collateral is an important thing. In this credit, usually the bank will ask for the services of a notary to bind its credit collateral. Related to the Notary's authority in making a deed, the purpose of making the deed is to legally bind the parties who will carry out legal acts. For example, in credit, the credit agreement deed made by a Notary is an instrument that binds the creditor and debtor. After the credit agreement is made and signed between the creditor and debtor, usually the creditor will ask the Notary to make a covernote.<sup>1</sup>

Notaries also in their practice issue letters, called covernotes by notaries containing statements. In principle, such statements are not dependent on a particular form. Such statements can be given explicitly, but also included in one or more behaviors. Unless otherwise specified, statements are included in the delivery of other information, may be delivered in any form or may be included in one or more acts.<sup>2</sup>

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<sup>1</sup>Ramdiah, dkk. (2019). Pertanggungjawaban Notaris Pada Penerbitan Covernote, *Mimbar Hukum*. Volume 31.P. 191-204

<sup>2</sup>I Made Ari Nurjaya, I Nyoman Sumardhika, Ida Ayu Putu Widiat, kewenangan notaris terhadap pembuatan covernote, *Jurnal Konstruksi Hukum* Vol. 1, No. 2, p. 421-425

Covernotes are widely used in the notary field, but until now there has been no regulation governing the issuance of covernotes themselves. Covernotes are not actually a legal product of Notaries as stipulated in the UUJN. Covernotes are merely a statement from a Notary to a creditor explaining that the processes related to the credit agreement between the creditor and the debtor are currently being processed by the Notary, such as the imposition of credit collateral.

In issuing a covernote, the Notary/PPAT must examine the truth of the contents of the covernote. These things include all consequences that may arise and arise in the future. In addition, there are obligations that follow and are inherent in the covernote, namely that the covernote must be trusted by the creditor, in this case the Bank. The meaning of being trusted by the creditor here is that the debtor must be able to complete the contents of the covernote letter that has been issued by the Notary/PPAT. If the guarantee in the form of Mortgage Rights cannot be binding, then the credit facility provided by the creditor cannot be disbursed and can cause problems in the future such as default.<sup>3</sup>The purpose of this research is to determine the responsibilities of a notary as a public official in issuing covernotes.

## 2. Research Methods

Legal research is a process of finding legal rules, legal principles, and legal doctrines in answering the legal issues being faced. The research method is a procedure for conducting research.<sup>4</sup>The author in compiling this research uses the normative legal research method or often referred to as doctrinal legal research. Normative legal research is research based on primary and secondary legal materials to find a legal rule, legal principles, or legal doctrines as a solution to the problems faced.<sup>5</sup>

In this legal research, the author uses a statute approach. This research is conducted by examining laws and regulations related to this legal research. The author seeks answers in solving legal problems based on applicable laws and regulations. The types of legal materials in legal research are generally divided into 2 (two) forms, namely primary legal materials and secondary legal materials.

The legal material collection technique used in this study is the document study technique or library research. The collection of legal materials is carried out using a method of analyzing related content. The technique used to obtain a theoretical basis is by reviewing and studying books, laws and regulations, documents,

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<sup>3</sup>Ratih Puspitasari Winarso. (2020). Kekuatan Hukum Cover Note Yang Dibuat Oleh Notaris Berkaitan Dengan Prinsip-Prinsip Pemberian Kredit Di Pt Bank Bni Cabang Pare-Pare (Studi Kasus Putusan Pengadilan Tinggi Makassar Nomor 49/Pid.Sus.Tpk/2018/Pt.Mks, *Indonesian Notary*: P. 399

<sup>4</sup>Jonaedi Efendi. (2018). *Metode Penelitian Hukum Normatif dan Empiris*, Jakarta: Prenada Media Group. p.2

<sup>5</sup>*ibid*

archives, reports, and research results that are similar or related to the problem being studied.<sup>6</sup>In addition, this research is supplemented with interviews to obtain supporting information.

The legal material analysis technique in this study was carried out using the syllogism method which uses a deductive mindset. Syllogism is a basic form of deductive reasoning. In this case, to formulate legal facts the author starts from a major premise (general statement) which is then drawn to a minor premise (specific statement). Syllogistic for legal reasoning which is a major premise is a legal rule, while the minor premise is a legal fact where then from both of these things a conclusion is drawn.<sup>7</sup>

### 3. Results and Discussion

The position of Notary is stated in Article 1 of the Notary Position Law (hereinafter referred to as UUJN) which states that: A Notary is a public official who is solely authorized to make authentic deeds regarding all acts, agreements and determinations that are required by a general regulation or by an interested party to be stated in an authentic deed, guarantee the certainty of the date, keep the deed, and provide a grosse, copy and extract, all as long as the making of the deed is not assigned or excluded by a general regulation. to officials or other people.

A notary is a public official who carries out a profession in legal services to the community, in order to provide protection and legal guarantees in order to achieve legal certainty in society. A public official is a person who carries out part of the state's public functions, especially in the field of civil law. That in order to make an authentic deed, a person must have the position of a "public official".

Notary as a public official, in the sense of having authority with exceptions, by categorizing Notary as a public official, in this case the public which means the law Notary as a public official does not mean the same as a public official in the government sector who is categorized as a state administrative body or official, this can be distinguished from the products of each public official. Notary as a public official, the final product is an authentic deed, which is bound by civil law provisions, especially in the law of evidence.<sup>8</sup>

Collateral in a credit agreement must be examined first by the bank. To examine the collateral, the bank can also ask for help or services from a Notary.<sup>9</sup>It is possible that in the case of credit being granted by the Bank, there are several requirements related to the land to be pledged, which may still be in the process

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<sup>6</sup>*Ibid.* p.273.

<sup>7</sup>Mukti Fajar dan Yulianto Achmad. (2015). *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan Ke-3, Yogyakarta: Pustaka Pelajar. p.42

<sup>8</sup>Habib Adjie, 2008, *Civil and Administrative Sanctions Against Notaries as Public Officials*, Refika Aditama, Bandung, p. 31

<sup>9</sup>Dewi Rachmayani & Agus Suwandono. (2017). *Covernote Notaris dalam Perjanjian Kredit dalam Prespektif Hukum Jaminan*, Bandung, Jurnal Hukum. Volume 1, nomor 1, *Acta Djurnal*. p. 74

of changing the name or the process of binding the mortgage rights which is still ongoing, the Notary/PPAT will help prospective debtors to convince the Bank by issuing a cover note, which contains a statement from the Notary/PPAT that the process of certification or changing the name of a land is currently taking place.<sup>10</sup>

The issuance of covernotes is carried out because of the need and is only a temporary reference for the Bank until all deeds and guarantees that have been registered are submitted. Notary / PPAT as a party who has the capacity to make a covernote by containing the contents of the Notary's ability / promise to the party who needs the covernote.<sup>11</sup>

Covernote is a statement letter containing the Notary's ability to carry out what the creditor wants. Usually a covernote is issued by a Notary in the event that the formal requirements for the purposes of credit disbursement desired by the creditor have not been fully met by the debtor. Usually related to collateral whose ownership must first be confirmed.<sup>12</sup>

Based on Article 1 number 1 UUJN, Notary is defined as a public official who is authorized to make authentic deeds and other authorities as referred to in UUJN. The definition given by UUJN refers to the duties and authorities carried out by Notary. This means that Notary has duties as a public official and has the authority to make authentic deeds and other authorities regulated by UUJN.

The Notary is directly responsible for the content and information conveyed in the covernote. If the Notary's information conveyed in the covernote causes a loss to a party, the Notary can be held legally responsible. In this context, the legal responsibility that can be imposed on the Notary is criminal and civil responsibility. Criminally, the responsibility borne by the Notary for the covernote he issued is in terms of conveying incorrect information and can even be suspected of committing fraud. Then, civilly, Article 1365 of the Civil Code is regulated.

According to Hans Kelsen's theory of legal responsibility, a person is considered legally responsible for certain actions or bears legal responsibility. This means that the individual will be subject to sanctions if his actions violate the rule of law. When associated with the theory of responsibility, this theory is very relevant to the responsibility of Notaries in issuing covernotes for the benefit of related parties. Although the UUJN does not regulate covernotes, Notaries are still required to issue them in order to meet the interests of the parties who need

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<sup>10</sup> Nadya Tahsya Rachmasari Ham. Pertanggungjawaban Notaris Atas Covernote Yang Dikeluarkan Yang Menjadi Suatu Dasar Kepercayaan Yang Menjadi Suatu Dasar Kepercayaan Suatu Bank, *Indonesian Notary*: Vol. 2, Article 2. p. 6

<sup>11</sup>*Ibid*, p. 7

<sup>12</sup>Rahmiah Kadir et al. (2019). Notary's Accountability in Issuing Covernotes, *Mimbar Hukum*, Vol. 31, No. 2, Faculty of Law, Hasanuddin University, Makassar, p. 192

them.<sup>13</sup>

The Notary's responsibility in issuing a covernote can be in the form of criminal and civil liability. A Notary can be held criminally liable if the Notary conveys information contained in the covernote that is incorrect or is suspected of committing fraud. While the civil liability that can be imposed on a Notary is that a civil sanction can be imposed, in the form of a sanction to be replaced, a loan sanction and an interest sanction.<sup>14</sup>

Form of Notary's Legal Responsibility in Making Covernotes:<sup>15</sup>

#### 1) Civil Lawsuit

In the case where the covernote does not have binding legal force for the parties because it is only a unilateral statement from the Notary, then the covernote only results in civil liability for the Notary who issued the cover note. Because the covernote itself is a statement and promise from a Notary about the truth of the facts of a series of legal events made before him or made by him. If a deed is processed where the completion period has exceeded the time limit promised by the Notary in the covernote, it will certainly cause losses for the debtor and creditor (Bank). Therefore, the Notary's actions can be held accountable in civil law.<sup>16</sup> and is classified as an Unlawful Act (PMH) as referred to in Article 1365 of the Civil Code, which states that every act that violates the law and causes loss to another person, requires the person who caused the loss due to his/her fault to compensate for the loss.<sup>17</sup>

#### 2) Criminal Charges

If it is consciously known by the Notary that the object of the debt guarantee or collateral is fictitious, then the covernote made by the Notary is a fake document. This act is classified as a criminal act of falsifying a letter as regulated and is subject to criminal penalties as stipulated in Article 263 of the Criminal Code (KUHP), with the maximum penalty that can be imposed for the crime of falsifying a letter being six years in prison. However, in order to be subject to the criminal sanctions of Article 263 paragraph (1) of the Criminal Code as explained by R. Soesilo, the falsified letter must be a letter that:<sup>18</sup>

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<sup>13</sup>Vania Meliantha Daud & Fitra Deni. (2024). Kepastian Hukum Serta Pertanggungjawaban Notaris Atas Janji Yang Tercantum Dalam Covernote Terhadap Pihak-Pihak Dalam Transaksi Kredit Perbankan, *Palar (Pakuan Law Review)*, Volume 10, Nomor 04, October-December 2024. P. 64-83

<sup>14</sup>Interview with Sri Endang Suprikhani., SH Notary PPAT in Banjarnegara on January 13, 2024

<sup>15</sup>Vebby Damayanti, et al. 2020. Notary's Responsibility in Making Cover Note as Collateral for Debt on Land Title Certificate. *Repertorium: Scientific Journal of Notary Law*. Vol.9 No.1 p. 4

<sup>16</sup>Munir Fuady, 2005, *Unlawful Acts: A Contemporary Approach*, PT. Citra Aditya Bandung, Bandung, p. 33.

<sup>17</sup>Vebby Damayanti, et al. *op. Cit.*, p. 4

<sup>18</sup>R. Soesilo. (1991). *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor. p. 196.

- a. Can issue rights, for example diplomas, admission tickets, and contribution letters;
- b. Can issue an agreement, for example a receivable agreement, sale and purchase agreement, and rental agreement;
- c. Can issue a debt relief, for example a receipt; and
- d. A letter that may be used as information for an action or event, for example a birth certificate, postal savings book, and cash book.

### 3) Notary Code of Ethics Sanctions

In relation to the criminal act of falsifying documents by a Notary, where the act was carried out outside of his authority as a Notary in making authentic deeds, then it is also linked to the provisions in the Notary Code of Ethics, then the Notary has violated the Notary's obligations as stipulated in Article 3 number 1 and number 2 of the Notary Code of Ethics.<sup>19</sup>

Dishonorable Dismissal from Association Membership is the dismissal of a Notary from his/her position so that a person cannot become a Notary again. The Regional Supervisory Board can only provide a proposal to the Minister to issue a Dishonorable Dismissal to a Notary, so that a Notary can only be dishonorably dismissed by the Minister. Dishonorable Dismissal is regulated in the provisions of Article 12 to Article 13 of the UUJN. In this Article, a Notary can be dishonorably dismissed 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 office of Notary; or
- d. Committing serious violations of the obligations and prohibitions of office.

Notaries can also be dismissed directly by the Minister if they have been sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment for 5 (five) years or more.

## 4. Conclusion

The responsibility of a Notary as a public official in issuing a covernote A covernote is a form of unilateral statement from a Notary, so that a covernote cannot bind the parties. The unilateral statement from the Notary shows that the covernote is an ordinary statement or is classified as a letter not a deed. Thus, the covernote does not have perfect evidentiary power but only has evidentiary power as a guide to proof and/or can be used as additional evidence, and is entirely returned to the

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<sup>19</sup>Vebby Damayanti, et al. *op. Cit.*, p. 7

judge's judgment. A covernote is information submitted by a Notary, so that if the issuance of the covernote causes a loss to a party, the Notary is held legally responsible. Notaries can be charged with criminal and civil legal liability. When viewed from the responsibility of the issuance of this covernote, it is recommended that there be regulations that clearly regulate the issuance of covernotes. Moreover, the Notary Law should contain an article regarding the authority of the Notary in issuing covernotes because the contents of the covernote itself are a statement from the Notary regarding the legal acts he has carried out so that it is the responsibility of the Notary.

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