TABELLIUS Journal of Law
ISSN 2988-6201
published by Master of Notarial Law Faculty of Law Universitas Islam Sultan Agung Semarang

Legal Certainty Regarding Covernotes Issued by Notaries as Temporary Guarantees for Creditors in Banking Practices

Nola Dwi Arepa[1], Shallman[2] & Arpangi[3]
[1]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, Email: Nola.unilak2020@gmail.com
[2]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, Email: shallman@unissula.ac.id
[3]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, Email: arpangi@unissula.ac.id

Abstract. *This study aims to comprehensively analyze the legal status of covernotes issued by Notaries in banking practices and the forms of legal liability in the event of negligence that results in losses for creditors. This issue is relevant because in the practice of credit disbursement, especially loans secured by mortgage rights, covernotes are often used as administrative basis before the binding and registration process of the collateral is fully completed. However, normatively, there are no explicit regulations regarding covernotes in the provisions of Law Number 2 of 2014 concerning the Position of Notaries or in the legal regime of material collateral. This research uses a normative juridical method with a statutory and conceptual approach, analyzed qualitatively through a literature review of primary, secondary, and tertiary legal materials. The analysis was conducted by examining the principle of legal certainty, the principle of prudence in banking, and the theory of legal responsibility. The research results show that the covernote is not an authentic deed as defined in the Notary Law, because it does not fulfill the formal requirements as a deed made by or before a public official in a form prescribed by law. The covernote is also not an agreement that creates a new legal relationship, but rather an administrative statement that essentially only contains information regarding an ongoing process. Therefore, the covernote does not have perfect evidentiary power or executorial power like a mortgage certificate. However, in banking practice, covernotes are often used as the basis for credit disbursement due to efficiency and business needs. This situation has the potential to create legal uncertainty if there is a failure to complete the binding or registration of collateral. In the event of losses due to a notary's negligence, legal liability can be sought in the form of civil liability based on breach of contract or unlawful acts, administrative liability through the notary's job oversight mechanism, and ethical liability in accordance with the professional code of ethics. Therefore, it is necessary to clarify the* *limitations of the function and position of covernotes to ensure legal certainty and balanced protection for all parties in banking practice.*

Keywords: *Certainty; Covernote; Legal; Notary; Responsibility.*

1. Introduction

Banking, as an intermediary institution, plays a strategic role in national economic development by collecting and channeling public funds to stimulate growth in the real sector. In carrying out this function, banks are required to apply the prudential banking principle, mandated by banking regulations and as a means of protecting against credit risk. One form of implementing the prudential principle is the requirement to provide collateral, specifically land mortgages, when granting credit. This mortgage grants the creditor a preferential position and guarantees repayment certainty in the event of default by the debtor.

In practice, before a mortgage is fully registered at the Land Office and the mortgage certificate is issued, Notaries/PPATs often issue a covernote as a temporary document stating that the collateral binding and/or registration process is in progress. The existence of this covernote essentially arose from the practical needs of the banking sector, which requires accelerated credit disbursement without having to wait for the entire administrative process to be completed. Over time, this practice has developed into a common practice (usage) in the relationship between banks and Notaries, although it is not expressly regulated by law.

However, the use of covernotes raises legal issues because they lack an explicit regulatory basis within Indonesia's positive legal system. There are no provisions that normatively regulate the form, status, or evidentiary force of covernotes within the notarial legal regime or the law on collateral. This lack of regulation has implications for legal certainty for the parties, particularly in the event of failure to complete the binding or register the mortgage. In such circumstances, questions arise regarding the extent to which covernotes can serve as a basis for legal protection for creditors and the limits of a notary's liability if the information stated in the covernote is not properly realized. Therefore, the practice of using covernotes requires a legal review to ensure its compliance with the principles of legal certainty and prudential principles in banking.

2. Research Methods

This research uses a normative juridical approach with analytical descriptive specifications. Data sources consist of primary legal materials such as the 1945 Constitution, the Civil Code, the Notary Law, and the Basic Agrarian Law; secondary legal materials in the form of Sinta-indexed books and journals such as

Jurnal Akta, Lex Privatum, and Jurnal Hukum IUS QUIA IUSTUM; and tertiary legal materials such as legal dictionaries and encyclopedias.

3. Results and Discussion

3.1. Legal Status and Evidentiary Power of Covernotes in Banking Practice

The legal status of a covernote in banking practice is essentially administrative and informative, as it merely contains information that the binding or registration process for collateral is underway. Normatively, covernotes are not recognized in Indonesia's positive legal system, either within the notary regime or in property collateral law. This regulatory vacuum indicates that covernotes are not a legal product explicitly legitimized by statutory regulations, but rather have developed as a customary practice (usage) in the relationship between Notaries/PPATs and banking institutions.[1]

From a notarial law perspective, the authority of a Notary is regulated in a limited manner in Law Number 2 of 2014 concerning the Position of Notary. A Notary is authorized to make authentic deeds regarding all acts, agreements, and provisions desired by the parties or required by statutory regulations. However, a covernote is not included in the category of authentic deeds, either as a party deed or a relaas deed. The covernote is not made in the form of minutes of the deed, is not read before the parties, and is not signed by the parties as is the procedure for making an authentic deed. Therefore, legally, a covernote does not have perfect evidentiary power and cannot be equated with an authentic deed.[2]Furthermore, in property security law, the birth of a mortgage is expressly regulated in Law Number 4 of 1996 concerning Mortgage Rights, which stipulates that a mortgage arises on the date it is recorded in the land register by the Land Office. Therefore, before registration, the mortgage does not have binding force against third parties and does not create a preferential position for the creditor.[3]In this context, the covernote has no constitutive power and cannot create or replace the birth of a mortgage right.

Theoretically, an authentic deed has three evidentiary powers: external evidentiary power (uitwendige bewijskracht), formal evidentiary power (formele bewijskracht), and material evidentiary power (materiële bewijskracht). External evidentiary power relates to the form and procedure for making the deed that meets the provisions of laws and regulations. Formal power provides certainty regarding the date, the identity of the parties, and the formal truth of the statements contained in the deed. Meanwhile, material power guarantees that

[1]RH Siregar, 2023, "The Position of Notary Covernotes in Banking Practice," IUS Journal of Law and Justice Studies, Vol. 11, No. 2, pp. 215–228, p. 220

[2]AY Putri, 2023, "Legal Implications of Notary Public Issuance of Covernote," Acta Comitas, Vol. 8, No. 1, pp. 45–60, p. 52

[3]M. Taufiq, 2023, "The Birth of Mortgage Rights and Legal Certainty for Creditors," Jurnal RechtsVinding, Vol. 12, No. 1, pp. 89–104, p. 94

the contents of the deed are considered true and binding on the parties until there is proof to the contrary through a court decision.[4]

These three evidentiary powers are not inherent in the covernote. The substance of the covernote is merely a unilateral statement by the Notary that the binding or registration process for the guarantee is being or will be carried out within a certain period. There is no process of verifying the material truth as in the creation of an authentic deed, and there are no direct legal consequences arising from the statement. Therefore, from the perspective of the law of evidence, the covernote only stands as an ordinary document with independent evidentiary power (vrije bewijskracht). The judge is free to assess its evidentiary weight based on the facts of the trial.[5]

Conceptually, this distinction emphasizes that a covernote cannot be positioned as a legal instrument that creates, transfers, or encumbers property rights. It does not create a mortgage, does not confer executorial title, and does not place the creditor in a preferential position. Therefore, in the event of a dispute, a covernote cannot be used as a basis for enforcement, unlike a mortgage certificate, which carries the injunction "For the Sake of Justice Based on Belief in the One Almighty God."

Despite lacking an explicit regulatory basis, covernotes are often used in banking practice as a basis for credit disbursement. This practice stems from the need for efficiency and accelerated business processes. In a dynamic business world, banks are required to be responsive to borrowers' financing needs. Delaying credit disbursement until the mortgage is fully registered is often seen as hindering smooth transactions and reducing the competitiveness of financial institutions.[6]However, the prudential banking principle remains the primary foundation of lending activities. This principle requires banks to conduct a thorough risk analysis before disbursing credit. The use of a cover note is essentially only an administrative risk mitigation measure, ensuring that the collateral binding process is ongoing, not a legal risk mitigation measure. Legal risk remains until the mortgage is legally registered.[7]In practice, banks often assume that the registration process will be completed within the timeframe stated in the cover note. This assumption rests on trust in the professionalism of a notary as a public official. However, this trust is sociological and lacks normative guarantees.

[4]Habib Adjie, 2022, "The Evidential Power of Authentic Deeds from the Perspective of Civil Procedure Law," Journal of Law & Development, Vol. 52, No. 3, pp. 412–430, p. 418
[5]NF Ramadhani, 2023, "Proving Private Letters in Civil Disputes," Jurnal Arena Hukum, Vol. 16, No. 2, pp. 233–250, p. 240
[6]D. Prasetyo, 2023, "Efficiency and Prudential Principles in Bank Credit Provision," Jurnal Bina Mulia Hukum, Vol. 8, No. 1, pp. 1–15, p. 7
[7]SW Lestari, 2023, "Legal Risk Management in Indonesian Banking," Indonesian Legislation Journal, Vol. 20, No. 2, pp. 155–170, p. 160.

If administrative obstacles, ownership disputes, or registration rejections by the Land Office occur, the bank has not yet obtained complete material security.[8]

Legal risks become significant if the debtor defaults before the mortgage is registered. In such circumstances, the bank only acts as a concurrent creditor, competing with other creditors for the distribution of the bankruptcy estate. Preferential status only arises after the mortgage is registered.[9]This situation demonstrates a gap between business practices and legal certainty. Sociologically, a cover note is considered sufficient to provide a temporary sense of security. However, legally, it does not mitigate potential legal risks. Therefore, several academic studies recommend that banks avoid using cover notes as the sole basis for loan disbursement without additional safeguards, such as escrow, partial fund retention, or accelerated repayment clauses in the event of failed registration.[10]

From the perspective of legal certainty theory, the use of covernotes reflects a normative gap in the positive legal system. When practice evolves faster than regulation, the need for legal reform arises to strike a balance between business efficiency and legal protection.[11]In this context, clarifying the functional limits of a covernote is crucial to avoid any misperceptions regarding its legal validity. Notaries should include a clear clause stating that a covernote does not constitute a guarantee of the granting of a mortgage, but rather merely serves as administrative information. Similarly, banks should adjust their internal policies to remain aligned with the principles of prudence and risk management.

3.2. Legal Implications and Notary Responsibilities for the Issuance of Covernotes

The use of a cover note as a basis for credit disbursement carries significant legal risks if the mortgage registration fails. These risks can arise due to administrative defects, discrepancies between legal and physical data, overlapping ownership, third-party objections, disputes over the land, or negligence in document processing. In such circumstances, the mortgage has not yet been fully established because it has not been registered as stipulated in Law Number 4 of 1996 concerning Mortgage Rights. Normatively, a mortgage is established on the date of registration in the land register by the Land Office, so until this stage is fulfilled, the creditor does not have a preferential position.[12]

---

[8]F. Ardiansyah, 2024, “Problems with Mortgage Registration,” Jurnal Notariil, Vol. 9, No. 1, pp. 67–82, p. 74
[9]E. Kurniawan, 2023, “The Position of Creditors in Bankruptcy,” Ius Quia Iustum Law Journal, Vol. 30, No. 2, pp. 300–318, p. 308
[10]L. Mahardika, 2024, “Credit Risk Mitigation Based on Material Collateral,” Journal of Legal Perspectives, Vol. 24, No. 1, pp. 101–120, p. 110
[11]B. Santoso, 2023, “Legal Certainty and Notary Practice,” Jurnal Media Hukum, Vol. 30, No. 1, pp. 55–72, p. 63
[12]M. Taufiq, 2023, “The Birth of Mortgage Rights and Legal Certainty for Creditors,” Jurnal RechtsVinding, Vol. 12, No. 1, pp. 89–104, p. 94

If the debtor defaults before the mortgage is registered, the bank only has the position of concurrent creditor who must compete with other creditors based on the principle of paritas creditorum.[13]This situation weakens the bank's legal position and increases the potential for financial loss, particularly if the debtor is insolvent. Under bankruptcy law, only secured or preferred creditors have special enforcement rights over collateral, while concurrent creditors are subject to a proportional distribution of the bankruptcy estate.[14]Thus, the use of covernotes as a basis for credit disbursement without any legally valid material guarantee has the potential to create an imbalance between business interests and legal protection.

If the failure to fulfill the guarantee is due to the negligence or error of the Notary, then based on the doctrine of legal responsibility, the Notary can be held civilly liable. The provisions of Article 1365 of the Civil Code stipulate that every unlawful act that causes a loss requires the perpetrator to compensate for the loss. The elements of an unlawful act include the existence of the act, the existence of an error (either intentional or negligent), the existence of a loss, and a causal relationship between the act and the loss. These four elements must be proven cumulatively by the injured party.[15]

In the context of the notary profession, unlawful acts are not only defined as violations of written regulations, but also include violations of official obligations, professional standards, the principle of prudence, and the principle of propriety. As public officials whose authority is regulated by Law Number 2 of 2014 concerning the Notary Public, notaries have a responsibility to act honestly, thoroughly, independently, and impartially.[16]In practice, proving causality is often crucial. The bank must prove that the losses incurred were a direct result of the notary's negligence in issuing or following up on the covernote, not solely due to the debtor's default. If the registration failure is caused by external factors beyond the notary's control, responsibility cannot be automatically placed on him or her.[17]Therefore, the limits of a Notary's liability must be analyzed proportionally by considering the scope of his authority and professional obligations.

If the covernote contains information that is inconsistent with the facts or creates the impression that all requirements have been met when legal obstacles still exist, this can be classified as professional negligence. The standard used in assessing this negligence is not that of an ordinary person, but rather the standard

---

[13]Subekti, 2003, Contract Law, Jakarta: Intermasa, p. 45

[14]E. Kurniawan, 2023, “The Position of Creditors in Bankruptcy,” Ius Quia Iustum Law Journal, Vol. 30, No. 2, pp. 300–318, p. 308

[15]Rosa Agustina, 2003, Unlawful Acts, Jakarta: Postgraduate Faculty of Law, University of Indonesia, p. 117

[16]Habib Adjie, 2015, Indonesian Notary Law, Bandung: Refika Aditama, p. 92

[17]RH Siregar, 2023, “The Position of Notary Covernotes in Banking Practice,” IUS Journal of Law and Justice Studies, Vol. 11, No. 2, pp. 215–228, p. 223

of care of a legal professional with specialized expertise.[18]The doctrine of professional liability places a notary public as a subject responsible for all actions within their authority. If a notary fails to carefully examine documents before issuing a cover note, or fails to complete the process as promised without a valid reason, such actions may be considered a violation of professional standards.[19]However, it should be emphasized that a cover note is essentially an administrative document, not a guarantee of successful mortgage registration. Therefore, a notary's liability cannot be overly expanded to encompass all business risks arising from a bank's decision to disburse credit before the collateral is fully secured. In addition to civil liability, notaries may also be subject to administrative sanctions through a supervisory mechanism by the Notary Supervisory Board. This supervisory system serves as a control instrument to maintain the integrity and professionalism of the notary profession. Administrative sanctions can include verbal warnings, written warnings, temporary suspension, and even dishonorable dismissal if proven to have violated their official duties or abused their authority.[20]

Administrative oversight is not always related to financial losses, but rather to violations of official obligations and ethical standards. Therefore, even if no civil unlawful act is proven, a notary public may still be subject to administrative sanctions if their actions are deemed to be inconsistent with the principles of prudence and professionalism. In addition to the legal aspect, the ethical dimension plays a crucial role. Notaries are bound by a professional code of ethics that demands integrity, independence, objectivity, and thoroughness. Issuing a cover note that is not based on careful examination or that contains promises beyond the scope of their official authority can be considered an ethical violation.[21]

This ethical aspect is crucial because the office of a notary is a position of trust (officium nobile). Public trust in deeds and statements issued by notaries is the foundation of the civil and banking legal systems. If this integrity is compromised, the impact will not only affect the relationship between banks and notaries, but also the stability of the legal system as a whole. The lack of normative regulation regarding covernotes creates room for diverse interpretations and has the potential to create legal uncertainty. Therefore, it is necessary to clarify the limits of the function of covernotes as merely administrative documents, not as a substitute for material collateral.[22]On the other hand, banks need to adjust their

[18]NF Ramadhani, 2023, “Proving Private Letters in Civil Disputes,” Jurnal Arena Hukum, Vol. 16, No. 2, pp. 233–250, p. 240

[19]B. Santoso, 2023, “Legal Certainty and Notary Practice,” Jurnal Media Hukum, Vol. 30, No. 1, pp. 55–72, p. 63.

[20]Sjaifurrachman & Habib Adjie, 2011, Aspects of Notary Responsibility in Making Deeds, Bandung: Mandar Maju, p. 145

[21]AY Putri, 2023, “Legal Implications of Covernote Issuance by Notaries,” Acta Comitas, Vol. 8, No. 1, pp. 45–60, p. 52.

[22]L. Mahardika, 2024, “Credit Risk Mitigation Based on Material Collateral,” Journal of Legal Perspectives, Vol. 24, No. 1, pp. 101–120, p. 110

internal policies to avoid using covernotes as the sole basis for credit disbursement. The principle of prudence must remain the primary guideline in credit risk management. This way, the balance between business efficiency and legal certainty can be maintained within the national banking system.

4. Conclusion

The legal status of a covernote in banking practice is essentially administrative and informative and does not have the full evidentiary power of an authentic deed. A covernote does not fulfill the formal and material requirements stipulated in Law Number 2 of 2014 concerning the Position of Notary, therefore it does not have executorial power and cannot be equated with a mortgage certificate as stipulated in Law Number 4 of 1996 concerning Mortgage Rights. From a legal perspective of evidence, a covernote only serves as ordinary documentary evidence whose evidentiary power is independent and depends on the judge's assessment. Therefore, the use of a covernote as a basis for credit disbursement does not guarantee the birth of preferential rights for the creditor before the mortgage is fully registered. The use of covernotes as a basis for credit disbursement carries significant legal implications, particularly if there is a failure to complete the mortgage registration. Under such circumstances, the bank risks being left with only a concurrent creditor status if the debtor defaults. If the failure is caused by the notary's negligence or error, the notary may be held civilly liable under Article 1365 of the Civil Code, and subject to administrative and ethical sanctions in accordance with the job oversight mechanism. Therefore, strict restrictions on the function of covernotes, increased prudential standards in their issuance, and adjustments to internal banking policies are needed to ensure a balance between business efficiency and legal certainty within the national banking system.

5. References

Journals:

R. H. Siregar. (2023). “Kedudukan Covernote Notaris dalam Praktik Perbankan,” *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. 11, No. 2, 215–228. Accessed on: https://ejurnal.usu.ac.id/index.php/iuskajian /

A. Y. Putri. (20230. “Implikasi Hukum Penerbitan Covernote oleh Notaris,” *Acta Comitas*, Vol. 8, No. 1, 45–60 Accessed on: https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

M. Taufiq. (2023). “Lahirnya Hak Tanggungan dan Kepastian Hukum Kreditur,” *Jurnal RechtsVinding*, Vol. 12, No. 1, 89–104, Accessed on: https://ejurnal.undip.ac.id

Habib Adjie. (2022). “Kekuatan Pembuktian Akta Autentik dalam Perspektif Hukum Acara Perdata,” *Jurnal Hukum & Pembangunan*, Vol. 52, No. 3, Accessed on: https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

N. F. Ramadhani. (2023). “Pembuktian Surat di Bawah Tangan dalam Sengketa Perdata,” *Jurnal Arena Hukum*, Vol. 16, No. 2, 233–250. Accessed on: https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

D. Prasetyo. (2023). “Efisiensi dan Prinsip Kehati-hatian dalam Pemberian Kredit Bank,” *Jurnal Bina Mulia Hukum*, Vol. 8, No. 1, 1–15. Accessed on: https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

S. W. Lestari. (2023). “Manajemen Risiko Hukum dalam Perbankan Indonesia,” *Jurnal Legislasi Indonesia*, Vol. 20, No. 2, 160. Accessed on: https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

F. Ardiansyah. (2024). “Problematika Pendaftaran Hak Tanggungan,” *Jurnal Notariil*, Vol. 9, No. 74. Accessed on: https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

E. Kurniawan. (2023). “Kedudukan Kreditur dalam Kepailitan,” *Jurnal Hukum Ius Quia Iustum*, Vol. 30, No. 2. 308. Accessed on:https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

L. Mahardika. (2024). “Mitigasi Risiko Kredit Berbasis Jaminan Kebendaan,” *Jurnal Perspektif Hukum*, Vol. 24, No. 1. 110. Accessed on: https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

B. Santoso. (2023). “Kepastian Hukum dan Praktik Kenotariatan,” *Jurnal Media Hukum*, Vol. 30, No. 1, 63. Accessed on: https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

Books:

Habib Adjie. (2015). *Hukum Notaris Indonesia*, Bandung: Refika Aditama.

Rosa Agustina. (2003). *Perbuatan Melawan Hukum*, Jakarta: Pascasarjana FH UI.

Sjaifurrachman & Habib Adjie. (2011). *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, Bandung: Mandar Maju.

Subekti. (2003). *Hukum Perjanjian*, Jakarta: Intermasa.

Internet:

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

https://ejurnal.usu.ac.id/index.php/iuskajian /

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

https://ejurnal.undip.ac.id

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com

https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/5008?utm_source=chatgpt.com