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Criminal Liability by Notaries for Issuing Covernotes that Result in State Financial Losses

Israk Namuhamdilah

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: namuhamdilahisrak@gmail.com

Abstract. *This study aims to analyze: 1)Criminal Liability by Notaries for the Issuance of Covernotes that Result in State Financial Losses 2) Considerations of Judges in Supreme Court Decision Number 4242 K/Pid.Sus/2023. 3) Example of a Credit Agreement Deed This type of research falls within the scope of normative legal research. The approach method used in this research is the statutory approach (statue approach), Conceptual Approach and using Case Studies approach. The type of data uses secondary data obtained through literature study. The data analysis method used in this study is prescriptive. The research results concluded: 1).Criminal Liability by Notary for the issuance of Covernote which resulted in State Financial Loss. Notary can be punished, this is because he has issued a Covernote that is not in accordance with the truth. Covernote is not an authentic Deed, only a closing statement whose contents explain that the file or Collateral is in process and will be completed within a certain period of time. However, in this case the Notary is punished with the crime of Corruption because as a result of the Issuance of the covernote the Creditor Suffered a Loss of Rp. 22,650,000,000,- (twenty two billion six hundred and fifty million rupiah) this is because of the incorrect information in the covernote, and in fact the Notary knows the function of the covernote is requested by the Bank, therefore the notary is sentenced to imprisonment for 4 years and a fine of Rp. 200,000,000,- (two hundred million rupiah)) 2). Considerations of the Judge in Supreme Court Decision Number 4242 K/Pid.Sus/2023. Based onThe Judge's consideration of the defendant in criminal because it has a significant role, because without the Covernote the credit cannot be disbursed, the Judge's consideration is actually contrary to the Principle of Legality "An act can be punished except by the power of criminal regulations in existing legislation, before the act was committed, basically the Covernote itself is not regulated in the Notary Law,Therefore, it is not appropriate for a notary to be punished because of a certificate which is only an administrative requirement from banking, the contents of which are a promise to complete the work.*

Keywords: *Covernote; Notary Responsibility; State Financial Loss.*

1. Introduction

The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) expressly stipulates that the Republic of Indonesia is a state based on the rule of law. One of the principles of a state based on the rule of law is the guarantee of legal certainty, legal order, and legal protection, all based on the values of truth and justice.

The term notary, as is known, originates from the Roman word notarius, which was given to people who worked or dedicated themselves as writers. Notary gradually acquired a different meaning, referring to someone who kept records in shorthand. .

Article 1 Paragraph 1 of the Notary Public Law contains a definition of a Notary which states "that a notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in the relevant laws". In this case, a notary, as explained by Law Number 02 of 2014, an amendment to Law Number 30 of 2004 concerning Regulations on the Notary Public, states that a notary is a public official, who is authorized to make authentic deeds and has other authorities as referred to in this Law (abbreviated as UU) or based on other laws. As an official authorized to make authentic deeds, a notary has been given the authority to make various authentic deeds.

According to Article 15 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), it states:

1) The Notary has the authority to make authentic Deeds regarding all acts, agreements and stipulations which are required by statutory regulations and/or which are desired by those interested to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, store the Deed, provide grosses, copies and quotations of the Deed, all of this as long as the making of the Deed is not also assigned or excluded to another official or other person as determined by law.

2) In addition to the authority as referred to in paragraph (1), a Notary also has the authority to:

a. validate the signature and determine the certainty of the date of the underwritten letter by registering it in a special book;

b. record the letter privately by registering it in a special book;

c. make a copy of the original private letter in the form of a copy containing the description as written and described in the letter in question;

d. verify the suitability of the photocopy with the original letter;

e. provide legal advice regarding the preparation of deeds;

f. making deeds relating to land; or

g. make a Deed of auction minutes

3) Apart from the authority as referred to in paragraph (1) and paragraph (2), a Notary has other authority as regulated in statutory regulations.

Regarding the notary's authority to draw up deeds, the purpose of such deeds is to legally bind the parties involved in the legal action. In credit, for example, a credit agreement deed drawn up by a notary is a binding instrument between the creditor and debtor. After the credit agreement is drawn up and signed between the creditor and debtor, the creditor will typically request a notary to draw up a covernote. The covernote referred to here is a statement containing the notary's commitment to carry out the creditor's wishes. A notary typically issues a covernote when the debtor has not fully met the formal requirements for disbursement of the credit requested by the creditor. This usually relates to collateral, the legality of which must be verified by the notary and the creditor.

Cover noteis a letter of information or often referred to as a closing note made by a notary. The reason a notary issues this cover note is at the request of the creditor, in this case the bank, as a basis for the bank to disburse the loan. The cover note is a form of written statement issued by the notary stating that the certificate is in process and is not in a problematic state.

The Notary in carrying out his duties and authorities violates the provisions of the Laws and Regulations based on Article 15 Paragraph (1) and Article 16 Paragraph (1) letter a to the Notary Position Law, as in the Supreme Court Decision Number 4242 K/Pd.Sus/2023. In this case, Notary Dewi Farni Dja'far who is domiciled in Pelalawan Regency, Pekanbaru City, Riau Province where Notary Dewi Farni Djafar, has issued a covernote through BNI Bank but in reality he made a covernote that did not match the actual situation or provided false information for the credit disbursement process.

Based on that, he was sentenced to 4 (four) years in prison, where initially the judge sentenced him to 12 (twelve) months in prison and the Public Prosecutor increased it to 4 (four) years due to an appeal and cassation by rejecting the defendant's demands, upholding the District Court Decision Number 51 / Pid.Sus-Tpk / 2022 / Pn.Pbr and canceling the Appeal Decision Number 6 / Pid.Sus-Tpk / Pt.Pbr by paying attention to the evidence in the trial by paying attention to approximately 500 (five hundred) SKT (Land Certificate) plots and 146 (one hundred and forty-six) SKRPT (Land Ownership History Certificate) plots that have not been completed by and also assisting PT. Barito Riau Jaya in providing credit facilities in issuing covernotes.

Based on the court decision above, Notary Dewi Farni Dja'far was tried under Article 3 of Law Number 31 of 1999 in conjunction with Law Number 2 of 2001 concerning Criminal Acts of Corruption, in conjunction with Article 56 Paragraph (1) of the Criminal Code so that the Notary in this case was negligent in carrying out his duties and position as a Notary which is contrary to Article 16 Paragraph (1) letter a because he was not trustworthy, honest, thorough, independent, impartial, and did not protect the interests of the parties involved in the legal act which resulted in negligence in issuing a certificate or covernote.

Supreme Court Decision Number 4242 K/Pid.Sus/2023 in this case, the Notary was convicted based on the Criminal Act of Corruption because he was negligent in issuing a covernote, so the Notary was based on the Decision in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 2 of 2001 concerning Criminal Acts of Corruption in conjunction with Article 56 Paragraph (1) of the Criminal Code.

In the practice of implementing a credit agreement where the bank as the creditor can disburse the debtor's loan with a covernote requirement as a form of follow-up to the administration of the completion of the guarantee that will be given to the bank. Although the covernote is a form of guarantee statement made by a notary, this does not make the covernote included in the authentic deed because the covernote will only be the basis for information on documents that are still in the completion stage or still in process. And there is no article in Law Number 2 of 2014 concerning the Position of Notary that does not directly state the authority of a notary to issue a covernote.

In banking practice, Notaries often issue covernotes related to the provision of credit, the contents of which are deeds, documents, and others that will be completed and submitted within a certain period. However, if the provision of credit is problematic (bad credit), the Notary is involved in committing a criminal act of corruption, as a result of the covernote issued by the Notary. In fact, the provision of covernotes issued by Notaries to Banks is only an internal administrative relationship, where the Notary is not related to the actions of Debtors who default on credit facilities provided to the Bank. Based on the description above, in this case the author is interested in conducting research with the title: "Criminal Liability by Notaries for the Issuance of Covernotes Resulting in State Financial Losses".

2. Research Methods

This research can be classified as a normative legal research. The approach methods used in this research are the statute approach and the case study approach. The type of data used is secondary data obtained through literature studies. The data analysis method used in this study is prescriptive.

3. Results and Discussion

3.1. Criminal liability by a notary for issuing a cover note that results in state financial losses.

Article 1, number 1 of the UUJN states that a notary is a public official authorized to draw up authentic deeds and to exercise other powers in accordance with the provisions stipulated in the UUJN. This explanation relates to the functions and authorities exercised by a notary. This indicates that a notary has obligations as a public official, the authority to draw up authentic deeds, and other powers subject to the UUJN regulations.

As a public official, a Notary carries out state duties and serves the public with the authority granted and the obligations entrusted to him. Therefore, a Notary participates in exercising the power and authority of the state represented by the government, which is what distinguishes a Notary from other officials. Like other public officials, a Notary plays a role in providing legal services to the public. The role of a Notary in this case is very important because, based on the authority he has, a Notary as a public official is the only one authorized to make authentic deeds.

Based on the description of the authority, it is known that the authority of a Notary is divided into:

a) General Authority

Based on the authority held by a Notary as stated in Article 15 of the UUJN and the evidentiary power of the notary's deed, there are 5 (five) conclusions, namely:

1. Other Officials who have been determined by Law are not excluded;

2. Concerning the deeds that must be made, they are authentic deeds concerning all actions, agreements and provisions that are required by legal regulations to be made or desired by the person concerned;

3. The duties of a Notary are to formulate the wishes/actions of the parties into an authentic deed, taking into account the applicable legal regulations;

4. Regarding the interests of the legal subject, it must be clear in whose interests the deed was made;

1. As an authentic deed, a notarial deed has perfect evidentiary force. Therefore, it does not need to be proven or supplemented with other evidence. If any person or party assesses or declares the statement to be untrue, the person/party assessing or declaring it untrue must prove the assessment or statement in accordance with applicable law. The evidentiary force of a notarial deed is related to the public nature of the notary's office. As long as a notarial

deed cannot be proven to be untrue, the deed is an authentic deed containing true information from the parties supported by valid documents and witnesses who can be accounted for in accordance with the provisions of the applicable laws and regulations.

b) Special Authority

Article 15 paragraph (2) of the UUJN regulates the special authority of Notaries to carry out certain legal actions, namely:

1. Validate signatures and determine the certainty of the date of private letters by registering them in a special book;

2. Recording private letters by registering them in a special book;

3. Make copies of original private letters in the form of copies containing descriptions as written and described in the letter in question;

4. Carry out validation of the suitability of the photocopy with the original letter;

5. Providing legal advice regarding the preparation of deeds;

6. Making deeds related to land; and/or

7. Making a deed of auction minutes.

The Supreme Court's decision to prosecute Notary DFD under Article 3 of Law Number 31 of 1999 in conjunction with Law Number 2 of 2001 concerning Criminal Acts of Corruption, in conjunction with Article 56 Paragraph (1) of the Criminal Code (referred to as the Criminal Code) so that Notary Dewi Farni Dja'far in this case has abused her authority as a Notary which is contrary to Article 16 Paragraph (1) letter a because she is not trustworthy, honest, thorough, independent, impartial, and does not protect the interests of the parties involved in legal actions which resulted in negligence in issuing a certificate or cover note.

Because in the trial facts the defendant said he knew that the Cover note requested by Witness Erson Napitupulu was used for credit disbursement, and stated that the Collateral that would be used as collateral by the Bank was still in the process of applying for rights from SKT (Land Certificate) to become a Right to Cultivate, Right to Build certificate.

Existence cover note Notary/PPAT in the handover of banking credit has become a customary practice, but in the statutory regulations, both UUJN, Banking Law and HT Law, there are no provisions governing the existence of cover notes, so it is necessary to regulate the legal consequences to achieve legal certainty that can provide legal protection for those who give and receive credit and also people who are related to them to get protection from a strong guarantee institution and can provide legal certainty for all people who have an interest.

Even though the Cover note is not regulated in the Notary Law, if there is an untrue statement in the Cover note and it results in State Financial Loss, the notary can be punished with the Crime of Corruption, even though the defendant in the trial facts were not found to have received any benefit from issuing the cover note for the disbursement of the credit.

Based on the theory of legal responsibility, it is a theory that looks at the responsibility of legal subjects or perpetrators for costs or losses arising as a result of their mistakes or negligence, as well as their obligation to receive appropriate punishment.

This theory focuses on the responsibility of individuals or legal entities for the legal consequences of their actions. If a person or entity commits an unlawful act, they are considered responsible for bearing the costs or losses arising from that act. In addition, if the act is a criminal act, they can also be subject to appropriate penalties as a form of legal responsibility.

Notaries' ability to issue cover notes is not regulated in Article 15 Paragraphs 1 and 2 of the UUJN, so there is no obligation for notaries to issue cover notes. However, in banking practice, particularly in banking transactions, to provide certainty regarding the management of ongoing or unfinished work, cover notes are required for the granting of credit. The absence of specific regulations governing the use of cover notes opens up the opportunity for abuse that could potentially violate criminal law.

According to the author, the panel of judges was not careful in handing down the decision because in the law on notary positions, the position and legality of Cover notes are not regulated in Article 15 paragraph (1), and of course this decision is in conflict with Article 1 paragraph (1) of the Criminal Code which regulates "The principle of legality (nullum delectum nulla poena sine praevia lege poenali) is aan act can be punished except by virtue of criminal regulations in existing legislation, before the act was committed.

3.2. Judge's Considerations in Supreme Court Decision Number 4242/K/Pid.Sus/2023.

Considering that, therefore, the Supreme Court is of the opinion that the Defendant's actions have fulfilled the criminal elements in Article 2 Paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 56 Paragraph (1) of the Criminal Code as charged in the second alternative subsidiary charge, therefore the defendant has been proven guilty and sentenced;

Considering that regarding the sentence imposed on the defendant based on Supreme Court Regulation Number 1 of 2020 concerning the guidelines for

Sentencing Article 2 and Article 3 of the Corruption Eradication Law, the Defendant's actions based on the State's financial losses amounting to IDR 22,650,000,000 (twenty two billion six hundred and fifty million rupiah) are in the moderate category, the aspect of the Defendant's fault has a significant role, because without a Notary's statement (Cover note) signed by the Defendant, the witness's KIR facility EN cannot be disbursed, the aspect of the impact of the error falls into the low category because it only impacts the Regency level and taking into account that the Defendant's actions fall within the qualifications of assistance as stipulated in Article 56 of the Criminal Code.

According to the analysis of the Notary Author DFD based on Supreme Court Decision Number 4242 K/Pid.Sus/2023 has been proven to have participated in assisting in committing a crime together with PT. Barito Riau Jaya by issuing a Cover note or Statement Letter where this Cover note existed because of a request from the BNI Pekanbaru Branch, so that based on this decision he was proven guilty and sentenced under Article 3 of Law Number 31 of 1999 in conjunction with Law 21 of 2001 concerning Criminal Acts of Corruption, in conjunction with Article 56 Paragraph (1) of the Criminal Code.

Cover note does not have perfect legal force like an authentic deed, so that Cover note is only an obligation that is born and a contract or an agreement, namely a unilateral statement by a Notary as per Article 1237 of the Civil Code, then the legal consequences if there are problems that arise and there are parties who feel disadvantaged by the Cover note in civil, criminal and administrative terms, there are 3 (three) aspects of Notary responsibility, as follows:

1. Administrative responsibility The administrative aspect of notary responsibility is reflected in Article 85 of the UUJN which states "administrative sanctions that can be imposed on Notaries who violate their job duties or provisions stipulated in the UUJN. These sanctions are administrative in nature and are not related to criminal or civil sanctions." where if a Notary violates the Laws and Regulations, the Notary will be given administrative sanctions by the INI Supervisory Board, there are 5 (five) types of administrative sanctions, namely:

a. Verbal warning

b. Written warning

c. Temporary suspension

d. Honorable dismissal

e. Dishonorable dismissal. Notaries may also be subject to other sanctions as stipulated in the Notary Code of Ethics, as follows:

a. Warning

b. Warning

c. Temporary suspension from membership of the association

d. Honorable dismissal from association membership

e. Dishonorable dismissal from association membership

2. Civil liability of the Cover note, which is a unilateral statement and statement from the Notary and its legal force is only binding on the creditor, the Notary still has civil responsibility for the Cover note he made. By imposing sanctions or fines or even compensation given and is obliged to compensate the injured parties in the Supreme Court Decision Number: 4242 K/Pid.Sus/2023.

3. Criminal liability Notaries can also be held accountable under criminal law if the Notary carries out legal acts prohibited by law or makes mistakes or commits unlawful acts intentionally or negligently which cause losses to other parties. This can be threatened with Article 3 in conjunction with Article 18 of the Corruption Law Number 31 of 1999 which can be punished with imprisonment of at least 1 (one) year and a maximum of 20 years, and a minimum fine of Rp. 50,000,000,- (fifty million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah), and also in certain circumstances can be sentenced to life imprisonment.

A cover note does not have the full legal force of an authentic deed as stipulated in Article 1868, and it does not meet the requirements for an authentic deed as stipulated in Article 38 of the UUJN. Essentially, a cover note is simply an agreement born out of an agreement or contract. This agreement falls under a unilateral statement as stipulated in Article 1237 of the Civil Code because its performance is unilateral, i.e., solely with the Notary. Notaries are criminally liable as stipulated in Supreme Court Decision Number: 4242 K/Pid.Sus/2023.

Because the Cover note he made is considered incorrect and contrary to Article 16 Paragraph (1) UUJN and is considered to have abused authority as per Article 3 of the Corruption Crime Law. There is no legal regulation regarding the Cover note and because the Cover note is a unilateral statement made by the Notary, the Notary's responsibility in making the Cover note is not a criminal responsibility because of the nature of criminal law, namely ultinum remedium, but rather the Notary's form of responsibility for the Cover note is a civil responsibility if there is a party who feels disadvantaged or an administrative responsibility, namely that an administrative sanction can be given by the Notary Supervisory Board, so that in this case the Notary can only be charged with participating because in this case the cover note made by the Notary is only a statement regarding unfinished work as a condition of providing credit to Bank BNI, the cover note issued by the Notary does not have a legal relationship to the Creditor and Debtor, so the Notary does not know the credit disbursement process.

Based on that, the Notary was punished due to negligence in issuing a cover note, where the Notary made a cover note based on the SKT (Land Certificate) issued by the bank, where this SKT was issued by the Village/Sub-district Head. In fact, this SKT is not valid to be an object of Bank collateral and has no legal force, where this is regulated in Law Number 4 of 1996 concerning Mortgage Rights (HT Law), in Article 4 Paragraph (1) "Mortgage Rights can only be burdened with registered land rights, namely Ownership Rights, Cultivation Rights, Building Use Rights, and Use Rights over State Land" Which means, land with SKT status (which is not registered with the BPN) cannot be burdened with mortgage rights.

The provision of credit to banks is also emphasized in Law Number 10 of 1998 concerning Banking, Article 8 Paragraph (1) which states "in providing credit, banks are required to have confidence based on a thorough analysis of the intentions and capabilities and ability of the debtor to repay their debts in accordance with what was agreed", where the bank is required to ensure that the guarantee (collateral used is valid and has legal force, so that it can violate the principle of prudence in the basic principle of 5 c, namely collateral.

So that the Notary in this case can punished for being negligent and not checking the status of land rights to be used as collateral and the Notary can also be involved because it is related to state losses, because the Bank as the credit provider is a State-Owned Bank which results in state losses.

Based on the results of this research, according to the author, the judge's considerations in this decision were inappropriate, because based on the judge's considerations, the panel declared the defendant proven guilty and sentenced under Article 3 of Law Number 31 of 1999 in conjunction with Law Number 21 of 2001 concerning Criminal Acts of Corruption, in conjunction with Article 56 Paragraph (1) of the Criminal Code, however this is very much in conflict with Article 1 paragraph 1 of the Criminal Code (Principle of Legality), which reads " "No act can be punished except by virtue of existing criminal law provisions." This article emphasizes that a person can only be punished if his act was regulated by law before the act was committed (the principle of non-retroactivity).

Based on the judge's consideration, the defendant has a significant role, because without a cover note or a letter of statement signed by the defendant, the credit applied for cannot be disbursed, in the author's opinion the decision made by the panel of judges was based on the cover note, while the cover note is not regulated in the Notary Position Law (UUJN), therefore it is not appropriate for a Notary to be sentenced to criminal penalties because of a letter of statement which is only an administrative requirement from banking, the contents of which are a promise to complete the work, and state a process that is being carried out.

4. Conclusion

a. A notary can be punished if he issues a false covernote, provides information in the covernote that does not correspond to reality, even though the covernote is not an authentic deed and is not regulated in the Notary Law (UUJN), the covernote is a living law or habit that is lived and carried out by the notary in carrying out his duties, basically the covernote is only a letter of closing a job that has been done or a process that will be carried out and a promise to immediately complete the process, if there are lies or untrue statements that are detrimental to state finances, in this case the notary must be responsible for what he stated in the covernote, and there is a lack of care on the part of the notary in issuing the covernote. b. The relationship between the bank and the notary is only an internal relationship because it is related to the deed made by the notary in terms of providing credit facilities where the bank makes an order to the notary in the form of a covernote as an administrative requirement, because there is work that has not been completed or is still in progress, so that the certificate aims to provide a statement regarding work that has not been completed or is still in progress as a requirement for credit disbursement at the bank. and in this case the Notary must apply the Principle of Prudence in issuing a covernote, and the legal consequences of the information provided by the notary, the notary is subject to 4 years in prison and a fine of Rp. 200,000,000 (two hundred million rupiah).

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