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## **Validity of Covernotes Issuance by Notary in Banking Credit Disbursement**

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### **Abstract**

The Notary's Covernote is a guarantee to act as a temporary holding for the bank to disburse credit while waiting for the relevant deeds to be processed by the Notary. A notary is a public official who in principle has the authority to make authentic deeds and other authorities as in the Notary Position Law or other laws. This research is aimed at analyzing the validity of covernotes in disbursing banking credit and analyzing the legal implications for notaries if

they fail to carry out the contents of the covernote in disbursing banking credit. The research results show that first, the validity of the covernote in disbursing banking credit is stated in, Legal implications for the Notary if they fail to carry out the contents of the covernote, the Notary can ask for an extension of time to complete the work and be subject to moral sanctions against them.

**Keywords:** Covernote, Notary, Banking Credit Disbursement

### **1. Introduction**

The needs of society from various levels, especially those related to private or civil legal acts, make the existence of Notary Institutions very necessary. Notary is a job that provides services to the needs of the community who carry out an act, agreement or stipulation that is required by law or as desired by the parties who need it.<sup>1</sup> Habib Adjie said that in essence the existence of the Notary institution was caused by the public's need for authentic written evidence that could clearly determine a person's rights and obligations as a legal subject, in the traffic of public life. The existence of a Notary is appointed by the competent Authority based on the Law, not only for the personal interests of the person appointed as Notary, but for the interests of the community who must be served by him and also for the interests of the state.<sup>2</sup>

The credit agreement made by the creditor and the debtor is the main agreement concerning debts and receivables, where the creditor is the party who owes the debt while the debtor is the party who owes the debt, and to be more binding on legal actions between the parties, an authentic agreement is usually drawn up by a Notary. According to Rudi Indra Jaya and Ikmasari Ika, a credit agreement is a basic agreement (main agreement) which must be implemented when both parties, namely the creditor and debtor, have agreed to provide and use credit facilities. Credit agreements usually include material collateral which must be made in a security agreement which has material rights and is an asset (additional). One of the guarantees with material rights is mortgage rights.<sup>3</sup>

Making it by a Notary, usually the creditor (Bank) first asks the Notary to issue a covernote. What is meant by covernote is a statement containing a statement of the Notary's ability to carry out what is desired by the creditor, in this case the bank/finance, where the contents of the covernote include information about the signing of the credit agreement between the debtor and the creditor, and the delivery of collateral as collateral. By the debtor to the creditor, a deed granting mortgage rights has been signed, but all of this is still being processed by the Notary.

<sup>1</sup> I Dewa Made Dwi Sanjaya, *Tanggung Jawab Hukum Notaris Terhadap Penerbitan Covernote Dalam Pemberian Kredit*, Riau Law Journal Vol. 1 No.2, November 2017 h. 181.

<sup>2</sup> Habib Adjie, *Aspek Pertanggung Notaris Dalam Pembuatan Akta Cetak Ke-I* (Bandung: Mandar Maju 2011), h.10.

<sup>3</sup> Indra jaya, Rudi dan Ikmasari Ika, *Kedudukan Akta izin Roya Hak Tanggungan sebagai Pengganti Sertifikat Hak Tanggungan Yang Hilang* (Jakarta: Visimedia, 2016), h.1.

Covernotes are really needed by creditors as parties who owe money (lenders), because they contain the Notary's ability to carry out the contents of the covernote. Without this covernote, the creditor (bank) will not be able to disburse funds to the debtor. In the Law on the Position of Notary, the term covernote is not found, but only in the banking world, so a covernote is not an authentic deed. Based on Article 1868 of the Civil Code which states that an authentic deed is a deed made in the form determined by law by or before a public official who has authority for the location of the deed itself.

Covernotes are one of the powers of a Notary which is not regulated by the Law on the Position of a Notary, in Article 15 of the Law on the Position of a Notary. Based on the article above, it does not at all mention the authority of a Notary in issuing a covernote, therefore the Notary's legal responsibility for publishing a covernote This credit agreement is very necessary, because if at any time it turns out that the Notary has not been able to complete the contents of the cover note within the time period agreed between the Notary and the (bank). Based on the description above, according to the author, there is a vacuum of norms governing this covernote.

### Formulation of the Problem

1. What is the validity of a notary's covernote in disbursing banking credit?
2. What are the legal implications for the Notary if they fail to carry out the contents of the covernote in disbursing banking credit?

### 2. Methods

The research method in this writing is a normative juridical method using a statutory approach and a conceptual approach. The sources of legal materials in this research consist of primary legal materials, secondary legal materials and non-legal materials. Analysis of legal materials is obtained and interpreted with a deductive mindset, namely drawing conclusions from general things to specific things. Normative juridical research is a legal research method in which the subject matter is studied in the form of legal and regulatory documents and literature.<sup>4</sup> The aim of normative legal research is to provide information about detailed propositions that systematically raise questions about the rules governing a particular area of law as well as to analyze the relationship between a particular law and other laws. As a form of the final result, the author will provide an assessment and explanation of what can be done and can be applied in accordance with the subject matter being discussed in this scientific work.

### 3. Discussion

#### 3.1 Validity of Notary Covernotes in Banking Credit Disbursement

Notaries as explained in the general provisions of Article 1, Article 1 of the Law on the Position of Notaries, state that a Notary is a public official who, in principle, has the authority to make authentic deeds and has other authorities in accordance with those referred to in the Law on the

Position of Notaries or other Laws.<sup>5</sup> This means that the Notary has other powers apart from just making authentic deeds. An authentic deed is a deed issued by a notary which has legal force with perfect legal certainty as written evidence which then does not require any additional evidence, the judge is bound by this.<sup>6</sup> Apart from issuing an authentic deed, a Notary can also issue a covernote. A covernote is a statement containing the commitment of a Notary with a signature and stamp to guarantee the deeds that are still in the process of being completed.<sup>7</sup> In the general Indonesian dictionary, a Notary's covernote is a statement stating a situation based on a certain agreement, for example a credit agreement, where the debtor's land certificate is in the hands of a Notary in the context of a checking process with BPN, transfer of name through sale and purchase and roya, If the bank agrees, a notary can make a cover note regarding this matter. In notarial terms, the meaning of a covernote is a certificate, namely a certificate issued by a notary who is trusted and relied on for his signature, stamp and seal as a guarantor and as strong evidence.<sup>8</sup>

Therefore, if you look at the binding power, just look at the covernote which is usually used as collateral by the bank. A covernote is not an authentic deed, because the law does not state the authority of a Notary to issue an authentic deed in the form of a covernote. Moreover, in the UUJN there is never an article that indicates the covernote is an authentic deed, but it only takes the form of a statement.<sup>9</sup> The covernote issued by the Notary is not used as proof of collateral, but only as an introduction to the Bank that will issue the credit, at least there will be trust built between the Bank as the holder of the mortgage right after the issuance of the mortgage right certificate from the land agency.<sup>10</sup> Covernote is an engagement that arises as a result of an agreement and does not arise by law. It could also be said that Covernote is an engagement based on custom that occurs in Notary practice, as regulated in Article 1233 of the Civil Code.<sup>11</sup>

When issuing a cover note, a notary does not just provide a statement stating that the debtor is the provider of the

<sup>5</sup> Dewi, I.A R.C.D, *Keanggotaan Notaris Dalam Organisasi Ikatan Notaris Indonesia: Mandatory Vs Voluntary*. Acta Comitatus, Vol. 3, No.2, 2018, h. 270

<sup>6</sup> Anji Prajitno, *Apa dan Siapa Notaris di Indonesia?*. (Surabaya: Putra Media Nusantara, 2010). h. 51

<sup>7</sup> Sanjaya, I.D.M.D. *Tanggungjawab Hukum Notaris Terhadap Penerbitan Covernote Dalam Pemberian Kredit*. Riau Law Journal, Vol. 1, No. 2, 2017. h. 183

<sup>8</sup> Yanis Maladi, *Reforma Agraria Berparadigma Pancasila Dalam Penataan Kembali Politik Agraria Nasional*, Jurnal Hukum Jatiswara, <https://journal.ugm.ac.id/jmh/article/viewfile/16108/10654>, h.31.

<sup>9</sup> Vikriatuz Zahro, Iswi Hariyani, & Iwan Rachmad Soetijono, *Juridical Implications of the Issuance of Covernotes by A Notary as Basis of Disbursing Credit of Banking*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), h. 102-118.

<sup>10</sup> Ahmad Farich Sultoni, *Batas Pertanggungjawaban Notaris atas Pembuatan Akta Otentik*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 1, ((2021)), h. 69-90.

<sup>11</sup> Rizki, R.. *Kekuatan Hukum Covernote Yang Dikeluarkan Oleh Notaris Terhadap Jaminan Yang Gagal Di Lakukan Pengikatan*. Skripsi Universitas Syah Kuala. 2015. h. 30

<sup>4</sup> Abdurrahman Soejono, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2003), h, 56.

mortgage right and can be trusted for credit.<sup>12</sup> Before it is disbursed, the notary will check with the land agency that the title certificate for the land has actually been registered or can fulfill the administrative requirements for issuing a certificate for the mortgage right. The author can describe the process of forming or making a covernote by a Notary as follows:

1. Prospective customers who want funds or money from the Bank due to the Bank's requirements to disburse credit when there is collateral right that is guaranteed, the prospective debtor together goes to the Notary to make an SKMHT, with the Bank then the prospective debtor gives power of attorney to the Bank via SKMHT via letter made by a Notary.
2. Especially for non-home loans, small business loans must be upgraded within 1 month from SKMHT to APHT to PPAT for land whose title has been registered, while unregistered land requires three months to increase its APHT.
3. In field practice, usually the Bank asks the Notary to register the APHT with the Land Agency to then issue a mortgage certificate which can be used as collateral and the Bank has the power to execute the collateral object if the debtor providing the mortgage does not fulfill its debt payment obligations.

Then the position and certainty of the covernote arises in the process when the debtor has provided the SKMHT to the Bank, especially in practice, the PPAT also functions as a Notary, so the completeness of the land files in the form of a Certificate of Ownership, land certificate, sale and purchase deed is checked by the Notary before the Notary issues/publishes the covernote, To give confidence to the Bank, the mortgage certificate will definitely be registered. Therefore, for debtors who want credit as soon as possible, a covernote made by the Notary as a letter shows that the issuance of the guarantee certificate is still in process.<sup>13</sup>

Regarding the legal power of the Covernote, we need to understand and know the position of the Covernote. Covernote is an authentic deed, private letter or ordinary letter. Theoretically, an authentic deed is perfect as evidence as regulated in Article 1870 of the Civil Code.<sup>14</sup> This means that an authentic deed was created from the start with the aim of proving it in the future if a dispute arises. An Authentic Deed is a letter made before a public official authorized by law, the official in question is a Notary as regulated in Article 1868 of the Civil Code.<sup>15</sup>

Article 1 paragraph (1) of the Law on the Position of Notaries states that a Notary is a public official who has the

authority to issue authentic deeds and other authorities determined by the laws and regulations currently in force. Article 15 of the Law on the Position of Notaries describes the authority of notaries, but none of the regulations state that Notaries have the authority to issue Covernotes. In connection with the authority regulated in Article 15 of the Law on Notary Positions, if a notary performs actions outside the regulated authority of the Notary then the legal product or deed is not an authentic deed. This means that the Notary in issuing the Covernote is outside of his authority, but the Notary is not prohibited from making the Covernote.

### **3.2 Legal Implications for Notaries If They Fail to Implement the Contents of the Covernote in Banking Credit Disbursement**

The covernote is not proof of credit collateral, only a statement from the Notary/PPAT as the official who made the deed that there has been a binding of credit or collateral. The covernote is only a temporary holding for the Bank until all deeds and guarantees that have been registered through the services of a Notary or PPAT are handed over.

<sup>16</sup> So, the Bank that accepts the covernote to disburse credit, by applying the principles of prudence and trust in the Bank, it is impossible for a debtor whose collateral object is used as an object bound by a mortgage right that the certificate will not be issued. The covernote which has so far been seen as not very accurate for the Bank's credit and reduces the Bank's rights to execute mortgage rights. It seems that the Bank and Notary and PPAT think it will never become a legal problem for the debtor or creditor, because the guarantee agreement for the creditor is strong, because in the end the Bank as the creditor will still hold the mortgage certificate obtained from the land agency.

Covernotes are an important requirement for banks to disburse credit for the benefit of debtors. Without a covernote issued by a Notary, Bank Bukopin does not want to disburse credit for debtors. Apart from that, the existence of the covernote is still valid and required by banks.

However, the covernote is still used as a guide for the bank in terms of disbursing credit to the debtor, because the contents of the covernote contain a statement from the Notary to carry out the bank's wishes, namely that the Notary can bind the property rights guarantee certificate that has been given by the debtor to the bank. The contents of the covernote contain a promise from the Notary to be able to carry it out by providing certainty of completion within a certain time period. Related to this, the agreement theory is very closely related to what was the agreement between the Bank and the Notary before the covernote was issued, where the bank asked the Notary to be able to carry out legal actions such as making a credit agreement deed, making a deed granting mortgage rights, making a letter. impose mortgage power of attorney rights and certificates of binding guarantees on the local National Land Agency. Guarantees are very important for banks because they can reduce the risk of loss for the bank (creditor).<sup>17</sup>

<sup>12</sup> Rachmayani, D. & Suwandono, A. *Covernote Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan*. Acta Diurnal, Vol. 1, No. 1. 2017, h. 75

<sup>13</sup> Bayu Indra Permana, et.al., *Legal Certainty of Income Tax Exemption on the Transfer of Rights to Land in the Sharing of Collective Integration Rights*, *International Journal of Social Science and Education Research Studies*, Vol. 2. No. 11, 2022, h. 13.

<sup>14</sup> Tjukup. I. K. et al. *Akta Notaris (Akta Autentik) Sebagai Alat Bukti Dalam Peristiwa Hukum Perdata*. Acta Comitatus, Vol. 1, No. 2, 2016. h. 182

<sup>15</sup> Isro Vita Nugrahaningsih, *The Role of Regional Honor Council In Maintaining The Honor of Notary Position*, *Jurnal Ilmu Kenotariatan*, Vol. 4, No. 1, (2023), h. 14-24.

<sup>16</sup> Lintang Cahyani Andira & Iswi Hariyani, *Keabsahan Kontrak Elektronik Dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi*, *Jurnal Ilmu Kenotariatan*, Vol. 1, No. 2, (2020), h. 34-54.

<sup>17</sup> Rifandika Naufal Afif, Andi Muh Ihsan, & Dita Elvia Kusuma Putri, *Akibat Hukum Bagi Notaris Terhadap Penyalahgunaan Keadaan Dalam Pembuatan Akta Autentik*, *Jurnal Ilmu Kenotariatan*, Vol. 5, No. 1, (2024), h. 45-61.

According to R. Subekti, collateral is very important to reduce the risk of loss to the bank (creditor).<sup>18</sup> The ideal guarantee can be seen from a self-binding agreement, meaning that the parties in making an agreement have agreed or mutually agreed to each other's wishes issued by the parties, whether the agreement is made expressly or tacitly.<sup>19</sup> In an agreement, if one of the parties violates or defaults, they can be held accountable for fulfilling that performance. Therefore, if a default occurs by the debtor, there are several demands that the creditor can make if the debtor commits a default, namely:

1. Creditors can only ask for fulfillment of achievements from the debtor;
2. Creditors can request fulfillment of achievements accompanied by compensation to the debtor (Article 1267 of the Civil Code);
3. Creditors can sue and ask for compensation, only possible losses due to delays (HR 1 November 1918);
4. Creditors can demand cancellation of the agreement;
5. Creditors can demand cancellation along with compensation to the debtor. Compensation is in the form of payment of a fine.

If the Notary fails to carry out the contents of the covernote, then the Notary can be held responsible for completing it. It is hoped that the Notary will ask for an extension of time to complete it.<sup>20</sup> Regarding the current problems that have arisen as a result of covernotes, if the Notary is repeatedly unable to carry out the contents of the covernote as expected, then the sanctions received are usually moral sanctions in the form of a sense of trust from the bank that begins to decrease and the transfer results in trust in another Notary. Therefore, the Notary is required to always be responsible if he fails to carry out the contents of the covernote. Because basically the birth of the covernote is the result of an agreement or agreement between the bank and the Notary, where the Notary is willing to carry out what is requested by the bank in carrying out or making a legal act such as making a credit agreement deed, making a deed granting mortgage rights or binding a certificate guarantee. Right of ownership.

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<sup>18</sup> R.Subekti, Pemberian Jaminan-Jaminan Untuk Kredit (termasuk Hak Tanggungan) Menurut Hukum Indonesia, Alumni Bandung, Bandung, 1996. h.29.

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