



The Status of the Covernote and the Role of the Notary in Banking

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ABSTRACT

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Covernotes are customary or customary law in the banking industry, and they are regarded as having legal force that is binding on the parties. When completing the authentic deed made by a notary, the covernote is used as a condition in the credit application process but serves as a temporary guarantee. The aim of this research is to know the the status of the covernote and the role of the notary in banking. This type of research approach uses normative juridical type of research. The approach used by the authors in this thesis, namely by the approach of legislation (of approach), a case approach (of approaches). Conceptual approach (conceptual approach). The result shows that whether laws and regulations are effective or not cannot stand alone but has a reciprocal relationship in society. And the law in a society will be effective because it is supported by a culture of the society that obeys and obeys the law. The government has regulated the provisions both embodied in laws and regulations. Therefore, all parties can carry out all existing rules as they should.

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1. INTRODUCTION

Notary terminology issues a Cover note as a statement in the law of mortgage guarantees and other deeds such as mortgages and fiduciaries. But on average, when disbursing credit, banks generally prefer credit secured by land tied up with mortgages, bearing in mind that land prices will continue to rise. In the Bank Indonesia dictionary, the definition of a notary A cover note is a statement stating a condition based on a certain agreement, for example, a credit agreement, where a notary controls the land certificate belonging to the debtor. If the bank agrees, a “description note” can be made when transferring names. Or better known as the “Covernote” by the Notary regarding this matter. A description of the cover note is listed in the Bank Indonesia dictionary and the OJK-Pedia. OJK-Pedia is a dictionary that provides from a to z terms of information related to finance.

Notary is presented to serve the interests of people who need a proof of authentic deed according to the request in question to the notary public. Thus the notary has the authority to make the deed and the deed he made is an authentic

deed as a means of perfect evidence, meaning if used as a tool of evidence in a court hearing does not need to be supported by other evidence tools (Marfarizal, Rahayu, and Sanusi 2020).

Covernotes are customary or customary law in the banking industry, and they are regarded as having legal force that is binding on the parties. When completing the authentic deed made by a notary, the covernote is used as a condition in the credit application process but serves as a temporary guarantee. The process of changing the name on the land ownership certificate, the roya process, the division of the land certificate into two certificates, and/or other agreements constitute the allegedly authentic deed in this instance (Bukit, Warka, and Nasution 2018). However, a notary generally makes and issues a covernote as a declaration to ensure legal certainty regarding the process of giving a deed or other document that is currently in effect (Putra, Widiantara, and Darmadi 2019).

OJKPedia refers to the Cover note as a Note of Information. A cover note is a statement stating a condition based on a certain agreement, for example, in a credit agreement, the land

certificate belonging to the debtor is controlled by a Notary in the process of transferring the name, and if the Bank agrees, a cover note can be made regarding this matter. A cover note is a statement given by a Notary to the Bank containing information that on a certain date, the Deed of Credit Agreement and Deed of Collateral Provision between the Debtor and the Bank have been executed as other information. The cover note comes from English and consists of two separate words: cover and note, where cover means to cover and note means note mark. Seeing the meaning of the two words, cover note means closing note. In notarial, the meaning of cover note is a statement, namely a certificate issued by a notary who is trusted and relied upon for signature, stamp and seal to serve as a guarantor and as strong evidence (Kie 2000).

In this writing, as notary practitioners (PPAT), banks should understand that cover notes are only a temporary guideline for banks until all deeds and guarantees registered through a notary are submitted. The cover note contains the notary's ability to carry out what the creditor wants. Usually, a cover note is issued by a Notary if the formal requirements for credit disbursement are desired by the creditor and have not been fully met by the debtor. Usually related to collateral, the validity of ownership must be ascertained beforehand.

According to Kansil (1989), a cover note is simply an ordinary administrative act performed by a notary as a public official to a specific agency or institution, the contents of which explain the implementation of its authority and functions. Kansil believes that if the community accepts a certain habit, and the habit is repeatedly carried out in such a way that an action contrary to the habit is felt as a violation of the law, a legal habit arises, which is seen by the association as law. So, a notary's issuance of cover notes can be seen as a custom. Of course, the enforceability and binding power of the cover note can be measured because the implementation of the issuance of cover notes by a notary can be classified as customary law.

Related to the parameters of a legal product so that it can be applied properly. Bruggink (1996) states that three factors become parameters for a legal product to be applied properly: having a legal, sociological, and philosophical basis for validity. The juridical or normative validity of a rule or rule is if the rule is part of a certain rule of law in which the rules of law mutually refer to one another. Such a

system of legal rules consists of an entire hierarchy of special legal rules that rests on general legal rules.

About Bruggink's opinion above, the publication of Cover notes by a Notary can be classified into empirical or sociological validity because it is carried out continuously and regularly by the public as well as Notaries and related institutions or agencies and is accepted by society. Thus, the issuance of a Cover note has the same binding power as making an agreement. According to Bruggink, Covernote's binding power only applies to its parties, namely creditors, debtors and notaries. In addition, Covernote's binding power will also bind third parties related to legal actions carried out by creditors and debtors. Because the Notary's position in this context is as an official who issues the Cover note, the contents of the Cover note have binding power to the Notary himself. The binding strength of the Cover note can only be measured from the existence of the Cover note as a guarantee for the bank that the documents required for disbursing credit are in the Notary's arrangement. So in principle, Covernote's position in this context is not as proof of collateral but only as an affirmation that collateral is in the process of being managed.

In this case, it needs to be stated by the author that the guarantee is in the form of a mortgage that requires a Cover note because the mortgage is still in the process of repayment, the process of transferring names, and is still in the form of customary ownership rights, or is still in the process of registering land at the local National Land Agency so that the debtor's credit can be immediately disbursed even though the land certificate which is the mortgage has not yet been processed, the Cover note is issued as a guide by the bank that the guarantee which is the mortgage is being processed by the Notary - PPAT who issued the Cover note. The aim of this research is to know the the status of the covernote and the role of the notary in banking.

2. METHOD

This type of research approach uses normative juridical type of research. The approach used by the authors in this thesis, namely by the approach of legislation (of approach), a case approach (of approaches). Conceptual approach (conceptual approach).

3. RESULTS AND DISCUSSION

The Status of The Covernote and The Role of The Notary in Banking

In particular, the authority of a notary to make covernotes is not stated or regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (from now on abbreviated as UUJN). And UUJN expressly and clearly explains in Article 15 UUJN that a notary has the authority to make authentic deeds regarding all actions, agreements, and stipulations that are required by laws and regulations or that are desired by interested parties to be stated in authentic deeds, guaranteeing the certainty of the date of drawing up the deed, keeping the deed, providing a gross, copy, and excerpt of the deed, all of this as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law.

Generally, there are no standard rules governing the form and procedure for writing a Covernote. However, writing a Cover note is done on a Notary's letterhead, signed and stamped by a Notary. In contrast, others are adjusted according to the process being handled at the Notary's office. And Cover note appeared because of the urgent need of debtors and creditors. The debtor is a party who wants his credit to be disbursed quickly by the bank, and the creditor is a party who wants to quickly withdraw the debtor's credit facility because, in practice in the banking world, there is a business competition that requires banks to be fast in providing credit facilities.

From the explanation above, we can see that no laws and regulations regulate cover notes, especially in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public. However, this cover note has become normal in banking and notarial affairs. So that we can see the legal sources that exist and apply to date, which is divided into two, namely Subekti, (2002):

a) Sources of Material Law

This source of law can be viewed from various angles, for example the angle of economics, history, sociology, philosophy, and so on.

b) Sources of Formal Law

1. Legislation
2. Habits
3. Legal Decisions

4. Treaty

5. Opinion of Law Scholars

From the grouping as described above, Covernote can be classified as a source of formal law, namely based on custom. Habit is a human action regarding certain things that is done repeatedly in a long time and the overall rules are obeyed by society as law, even though these rules are not set by the government. Habit is a source of law that exists in the social life of society and has been adhered to as positive life values. Habits that are then believed by the community are what will then be accepted as laws that must be obeyed.

The community accepts a certain habit, which is always repeated in such a way that actions that are contrary to the habit are felt as a violation of the feeling of breaking the law. Thus a legal habit arises, which is seen by the community as a law (Dharsana 2022). Customary law has an understanding. According to Utrecht in his book Introduction to Law, customary law is a set of rules which, although not determined by statutory bodies in an atmosphere of "werkelijkheid" (reality), are also adhered to. This is because people can accept these principles as law. Then it turns out that these legal principles are maintained by other community authorities who are not included in the statutory bodies.

According to the author's observation, in current practice, many Cover notes issued by Notaries explain matters which are not part of the Notary's authority but rather the authority of other agencies. The author is worried that the Cover note seems as if the Notary "guarantees" that an activity carried out by another agency can be ascertained by the Notary. Of course, this has created many problems in the field where notaries are considered responsible for completing activities or work under the authority of other agencies. This arises based on the habits among notaries, especially in doing deeds related to credit. Banks often take cover behind Cover notes to disburse credit. A cover note is considered a sacred letter in disbursing credit.

The author reminds us that Notaries - PPAT must be independent and careful in making Cover notes so as not to cause problems in the future. Notary-PPAT's prudence is also an effort to provide legal protection to creditors who are partners of the Notary - PPAT who makes the Cover note so as not to undermine the trust and partnership built by the creditor and

the Notary-PPAT. Notary's prudence is also a form of legal protection for the Notary. For this reason, the Notary must be able to negotiate between the Notary himself and the Bank and be firm in his stance to always act independently, where the contents of the Cover note still reflect independence and do not take sides with any party. The form of treatment of the Notary in carrying out his obligations to maintain independence in making this Cover note so that it does not take sides with one party should be by not following the Cover note format determined by the Bank.

Related to the standard format of the Bank that makes a Cover note appear as a concept of a standard agreement issued by the Bank or creditor. For this reason, it must be understood by looking at the definition of a standard agreement. A standard agreement is a written agreement that has been duplicated in the form of forms whose contents have been standardized or standardized in advance unilaterally by the party offering it. The cover note made by the Notary at the request of the Bank in a format determined by the Bank is a contract model, as explained by Widjaja Gunawan, where the Standard Contract is divided into 3 (three) types, namely (Yani 2000):

- 1) A unilateral standard agreement: the contents are determined by a party with a strong position in the agreement, for example, a creditor with a strong position as in a collective labour agreement.
- 2) The standard agreement stipulated by the government is an agreement with the object of land rights, for example, the form in the Decree of the Minister of Home Affairs concerning sale and purchase deeds, mortgage deeds, and others.
- 3) A notary or advocate determines the standard agreement: the concept has been prepared from the beginning to fulfil requests from members of the public who ask for help from a notary or advocate. It is called a contract model.

In this case, a Cover note applies like a contract model, as explained above, which is a standard agreement determined by a Notary or Advocate where the concept has been provided from the outset to fulfil requests from members of the public who request assistance from a Notary or Advocate. As explained above, the author believes that a Cover note is not an agreement because basically Cover note is a

statement. Because Cover note does not meet the requirements for the validity of the agreement as explained in Article 1320 of the Civil Code, namely: "For a valid agreement to occur, four conditions need to be met:

- 1) the agreement of those who bind themselves; (KUHPerd. 28, 1312 etc.)
- 2) the ability to engage; (KUHPerd. 1329 etc.)
- 3) a certain subject matter; (KUHPerd. 1332 etc.)
- 4) a cause that is not forbidden. (KUHPerd. 1335 etc.).

In the author's opinion, the Cover note is not an agreement because a Cover note does not fulfil the legal requirements of the first agreement, namely, agreement. The terms of the agreement's validity stipulated in article 1320 of the Civil Code is regarding the agreement or consensus of the parties. Article 1321 of the Civil Code states that an agreement is valid if it is not given due to oversight, coercion or fraud (Widjaja 2007). At the same time, a Cover note is issued by a Notary at the request of the BankBank, where the parties in the Cover note themselves are the creditor (Bank) and the debtor (customer), where the Notary only acts as the "creator". And it is in the Bank'sBank's interest to have a cover note to be sure to disburse the debtor's credit, while the provisions that are a requirement that the debtor approves the debtor have been fulfilled so that the Notary deeds in the form of a credit agreement, acknowledgement of debt, SKMHT, APHT, can be signed handle.

The law states that banks must conduct a thorough assessment before providing financing. This is bearing in mind that the source of financing funds disbursed does not fund from the BankBank itself, but funds originating from the community. Hence, applying prudential banking principles through accurate and in-depth analysis, proper distribution, good supervision, and monitoring is necessary. , financing agreements that are legal and fulfil legal requirements, strong binding guarantees and regular and complete financing documentation. Prudential banking principles apply to ensure that the disbursed financing can be returned on time according to the contract, which includes the principal loan and margin or profit sharing. Suppose the financing channelled by the BankBank to the public in large quantities is not repaid to the BankBank on time according to the contract. In that case, the

financing quality can be classified as a non-performing loan (NPL). And violations of the precautionary principle in extending credit by banks have legal consequences, where parties who commit violations can be given legal sanctions in the form of criminal sanctions or fines as stipulated in Article paragraph 2 letter b, Law Number 10 of 1998 concerning Banking.

In addition, banks should also not take cover under a notary cover note to justify disbursing credit. Article 8 of Law Number 7 of 1992 on Banking, as amended by Law Number 10 of 1998 on Banking, states that when extending credit, banks must have faith in the debtor's ability to repay his debts. Because basically, in lending activities, banks are not required to include collateral as a condition that must exist (see the definition of "collateral" in Article 1 of the Banking Law = additional collateral, etc.), but it is enough with "confidence" from the bank towards the debtor, to pay off all his debts.

In the opinion of the author, at this time, it is very urgent to enact regulations regarding Cover notes as a form of protection to avoid misuse of Cover notes by Notaries and Banks because the Bank may dictate or make Cover notes unilaterally, even though the Notary is the party making the cover notes. And, in practice, this Cover note has a big contribution and is used continuously in credit disbursement. However, a Cover note made by a Notary can also backfire for the Notary himself if the Notary needs to be more careful in making it. Special regulations regarding Cover notes are also needed for the benefit of the parties, especially as a legal umbrella or legal protection for Notaries.

Legal protection protects legal subjects through applicable laws and regulations and enforces them with a sanction. Legal protection can be divided into two, namely (Muchsin, 2003):

- 1) Preventive Legal Protection is legal protection provided by the government to prevent violations before they occur. This is contained in statutory regulations to prevent a violation and provide signs or limitations on carrying out obligations.
- 2) Repressive legal protection is the absolute protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a

dispute has occurred, or a violation has been committed.

Preventive Legal Protection is legal protection contained in statutory regulations to prevent violations before they occur. Preventive Legal Protection, in this case, requires special rules regarding Cover notes. The specific rules regarding this Cover note cover notes in general, and both cover notes are the authority of a Notary and regarding the fixed format of the cover note so that each Notary makes a Cover note with the same format and policies. This special regulation regarding Cover notes is to provide legal protection for notaries in making Cover notes so that notaries always act independently and do not cause problems in the future due to the cover notes made by them. Repressive Legal Protection is a legal protection that aims to resolve disputes through sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a violation has been committed.

Repressive legal protection is shown in the form of notary liability if the cover note is then made under the authority of the Notary, if in the future the Notary acts beyond their authority in making cover notes, and is not by existing regulations, then the Notary can be subject to civil or criminal liability. The Notary will be subject to criminal liability for acts against the law or civil liability for default.

Regarding the existence of repressive protection in the form of regulations regarding additional penalties regarding the responsibility of a Notary, if the Notary acts outside or is not by this authority, then he provides protection, especially for the Bank. However, there are regulations regarding additional penalties regarding the responsibility of a Notary if the Notary acts outside or is not by his/her authority to provide certainty, especially to the Notary when making Cover notes is the authority of the Notary, so if the Notary exercises his authority by the existing regulations but there is still disputes due to other parties, there are sanctions given to the other party, and then the MPD (Regional Supervisory Council) can protect the Notary.

This preventive and repressive protection is the existence of regulations. Still, the difference is that in preventive protection, there are special regulations regarding Cover notes in general related to authority, and the exact format, then for repressive protection, there are regulations regarding additional penalties regarding notary

liability if the Notary acts outside or not by his authority. Both preventive protection and repressive protection, in this case, are intended for protection not only for Notaries but for Banks and debtors.

For this reason, it must be of particular concern for fellow Notaries - PPAT, it is possible to be sued civilly if the contents of the Cover note are not true (Dharsana, 2022), namely based on the reason of committing an unlawful act (article 1365 of the Civil Code) with the threat of paying compensation loss if the consequences cause harm to others. In addition, it can be prosecuted criminally if it can be proven that the Notary is concerned consciously and intentionally together with the party requesting the Cover note to provide incorrect information to be able to commit an act or action which is, in essence, a crime.

The Importance of Notary Caution in Making Covernotes

With many legal smugglers in the field, the author emphasizes that PPAT Notary colleagues must first check the land rights certificate at the land office. And after, certainly, the certificate is not in dispute, the Notary - PPAT dares to convey to the bank that the prospective customer is ready to sign the contract. And it must be conveyed that the Cover note here is made to be used as a statement that the signing of the deed has been carried out by the bank and the customer in the presence of the Notary - PPAT and contains information that the certificate as collateral is being processed at the Notary - PPAT office concerned. A cover note is needed because the Mortgage installation process cannot be completed at the time of signing the contract. After signing the contract, the Notary - PPAT issues a Cover note, and the customer will also sign a Power of Attorney for Imposing Mortgage Rights (SKMHT) before the Notary - PPAT. A Notary is signing the SKMHT - PPAT to be upgraded to APHT. Financing by using a Cover note as one of the conditions for disbursement, which is a habit and general policy of the bank, in addition to fulfilling other requirements set by the bank without waiting for the completion of making a copy of the deed, legalization of the deed, or the completion of APHT registration followed by the installation of Mortgage at the office land. What does it mean that a Cover note exists due to a need in practice. That way, having a cover

note certainly has a positive impact on each party.

Therefore in terms of making a Notary Cover note - PPAT, it is necessary to do several things:

- a) Do not make Cover notes that contain things unrelated to assignments and the authority of the position of Notary. Making a Cover note is only done if the deed has been completely signed and made in compliance with the requirements and procedures stipulated by law;
- b) provide understanding to the Bank to pay attention to the fulfilment of the Bank's Prudential Principles in credit disbursement, and credit disbursement is not related to the presence or absence of a Cover note from a Notary;
- c) Not making a Cover note guarantees a situation that is not under the authority of the Notary to guarantee/state it, for example, guaranteeing that there is no problem with checking the certificate and it is by the land book at the BPN.

The implementation of the principle of prudential financing must also be carried out by banks from the beginning when the financing application is submitted until after the financing is paid off. And banks must also implement the principle of banking prudence towards cover notes which are used as conditions for disbursing financing. The things that must be considered regarding cover notes include the following:

- a) Ask for legal advice regarding the financing to be disbursed, and the Bank should also follow the legal advice given by a notary.
- b) If the notary/PPAT requests the Bank to process the disbursement of financing where there are still deficiencies in the administrative requirements, the Bank has full responsibility to immediately complete the administrative requirements.
- c) In examining the cover note, the bank officer must examine the conformity of the contents of the cover note with the financing requirements, see a clear timeframe for completing the work for the installation of Mortgage Rights, really ensure that the contents of the cover note are not just promises, and check and examine that before binding

the collateral, a notary/ PPAT has checked the certificate to the land office so that problems do not occur in the future.

- d) Disbursement of financing must be carried out if based on research and the Bank's belief that all disbursement requirements have been met. The Bank believes that all juridical aspects related to financings, such as contracts, collateral, collateral binding, insurance coverage, and other documentation requirements, have been fulfilled and have been providing security and legal protection for banks and not just because of a cover note.
- e) The Bank and the notary/PPAT must understand the provisions in terms of the Deed of Granting Mortgage Rights (APHT) made based on a Power of Attorney for Imposing Mortgage Rights (SKMHT) regarding the conditions of the Power of Attorney for Imposing Mortgage Rights, namely both regarding the validity period, authority the executing official, and the formality of doing the deed.
- f) The Land Deed Making Officer (PPAT) must refuse an application to draw up a Deed of Granting Mortgage Rights (APHT) if the Power of Attorney for Imposing Mortgage Rights (SKMHT) is not made by the person giving the Mortgage Rights, or does not meet the requirements as set out. Effective or not regulations.

4. CONCLUSION

Whether laws and regulations are effective or not cannot stand alone but has a reciprocal relationship in society. And the law in a society will be effective because it is supported by a culture of the society that obeys and obeys the law. The government has regulated the provisions both embodied in laws and regulations. Therefore, all parties can carry out all existing rules as they should. Even though the government has made laws, regulations, and policies, if there is a culture of haste in implementing the rules and making things easier, the law will be ineffective and difficult to enforce.

The Bank's prudential principles must be continuously applied to financing procedures and policies to help minimize problem

financing. In addition, there is a need for a joint agreement between the Bank and the Association of Indonesian Notary Associations and the Association of Land Deed-Making Officials regarding the use of cover notes as a condition for disbursing financing to the Bank concerned. This is intended so that the Notary - PPAT should act by his duties and authorities based on the applicable laws and regulations. And to the government, in this case, the state, should make a clear and firm legal umbrella for cover notes because it has been living law (habits) for too long, which has yet to be codified.

Based on the discussion above, the writer concludes that:

- a) The essence of the cover note is as a statement from a Notary which contains correct and correct information by the actual reality that is being given by the debtor (customer of the Bank receiving the credit) to increase confidence in the Bank for a debtor's guarantee.
- b) There is an urgency to make regulations regarding Cover notes as a form of protection to avoid misuse of Cover notes by Notaries and banking parties because the Bank can only control Notaries to make Cover notes unilaterally, even though Notaries are the parties who make Cover notes.
- c) As a manifestation of Notary independence, in terms of making a Notary Cover note, the following arrangements must be considered:
 - a. Provide information by the facts that exist.
 - b. Not in favour of either party
 - c. Communicating and clarifying other parties if one party asks the Notary to side with him.
 - d. Does not follow the standard cover note format determined by the Bank if the Notary considers the cover note to be inappropriate

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