

The Legal Position of Notary Covernote on Credit Agreement When Bad Credit Occurs

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Abstract. *The purpose of this study is to analyze: 1) The legal position of a notary covernote in a credit agreement in the event of bad credit at Bank Rakyat Indonesia Pangkal Pinang. 2). The process of settling bad loans in a credit agreement based on a notary covernote at Bank Rakyat Indonesia Pangkal Pinang. The approach method used in this study is an empirical juridical approach. The research specification used is descriptive analytical research. This type of data uses primary data and secondary data with library research and interview collection methods. The data analysis method used in this research is descriptive analysis. The results of the study concluded: 1) The legal position of a notary covernote in a credit agreement in the event of bad credit at Bank Rakyat Indonesia Pangkal Pinang is that the covernote is used as the basis for credit disbursement. Notary covernotes should not be used as the basis for credit disbursement, because basically covernotes are only temporary guarantees. A covernote made by a notary is usually only a statement that the certification process is still ongoing. Covernote does not have a legal umbrella because it is not regulated in laws and regulations, both the Banking Law and UUJN, so that the consequences that will then be caused by the existence of this covernote apply legal provisions both criminally and civilly. 2). The process of settling bad loans in a credit agreement based on a notary covernote at Bank Rakyat Indonesia Pangkal Pinang is completed through litigation/lawsuits to court. Notary G was proven to have committed a criminal act of corruption together*

and was detrimental to the state. In the decision of the Notary Court, they must be criminally responsible and fined. The use of a notary covernote in a credit agreement is basically not prohibited and is possible under the Banking Law and the Mortgage Law. In the event of non-performing loans before the issuance of mortgage rights, the bank only serves as a concurrent creditor. Legal protection for banks is based on Articles 1131 and 1132 of the Civil Code. In the event of non-performing loans before the issuance of mortgage rights, the bank only serves as a concurrent creditor. Legal protection for banks is based on Articles 1131 and 1132 of the Civil Code.

Keywords: Credit; Covernote; Mortgage; Notary.

1. Introduction

Indicators of increasing the wheels of the economy in Indonesia are currently marked by various factors, one of which is the increase in business activities that have a direct impact on increasing business by business actors, but this increase is not always followed by good financial capabilities of business actors. Business actors in meeting their financial needs are carried out in various ways, one of which is borrowing funds or capital known as credit, either through banks.¹

The granting of a credit from a bank to a customer as a debtor, of course, to provide legal certainty for the granting of such credit requires the role of a Notary related to authentic deeds. The notary is obliged to include in the deed what has truly been understood in accordance with the wishes of the appearer and read to the appearer about the contents of the deed. The statement or statement of the parties by the Notary is included in the notary deed.² A notarial deed has perfect evidentiary power so that if there is a person or party who judges or declares the deed is not true, then the person or party who judges or declares it must prove his assessment or statement in accordance with the rule of law.³

A notary who has a working relationship with a bank related to the making of an authentic deed and registration of credit guarantees, the notary is authorized to

¹I Ketut Sukawati Lanang Putra Perbawa. *Penyelesaian Kredit Macet Dalam Perbankan. Jurnal Hukum*. Fakultas Hukum Universitas Mahasaraswati Denpasar. p.62

²Abdul Ghofur Anshori. (2009). *Lembaga Kenotariatan Indonesia. Perspektif Hukum & Etika*. UII Press: Yogyakarta. p. 46.

³Habib Adjie. (2008). *Hukum Kenotariatan di Indonesia-Tafsiran Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*. Refika Aditama: Bandung. p.14.

make a deed that can show that there is a legal action from the bank (creditor) with the customer (debtor) before a notary, so that the existence of a deed printed by a notary is a matter of concern which is very important for the parties to be able to protect their interests.⁴ In the bank credit agreement, the role of the Notary through the deed he made provides legal certainty for the parties, namely the bank as the creditor and the customer as the debtor. This legal certainty guarantees the rights and obligations of each party in the credit agreement as stated in the authentic deed. This is because the authentic deed made by and before a Notary is a perfect means of proof. In the bank credit agreement, the authentic deed is evidence of a legal action in the form of providing bank credit to its customers.

Among the deeds and letters made by a Notary is a certificate called a *covernote*. *Covernote* as a notification or statement that the land documents of customers applying for credit are still in the certification process, *roya* process, transfer of name, or splitting process if they are already certified. However, in practice there are banks that use *covernotes* as a basis for credit disbursement.⁵ Based on the things described regarding the duties and authorities of Notaries according to the Act, namely the Law on Notary Positions, there is no one explanation or thing that confirms that the Notary can issue a *Covernote* to explain that the deed to be issued is still in process. So basically the *covernote* can be carried out by a Notary in all situations and conditions related to the implementation of the Notary's duties.⁶

Covernote made by a Notary based on the provisions in Article 1316 of the Civil Code which states that a *Covernote* is only an engagement born of a contract or agreement.⁷ The agreement is included in the warranty agreement as stated in Article 1316 of the Civil Code. A Notary is a party who has the authority in order

⁴Heny Pratiwi. Kekuatan Hukum *Covernote* Melalui Pemberian Kredit Bank dengan Jaminan Hak Tanggungan Apabila Terjadi Kredit Macet . *Jurnal Hukum Kenotariatan*. Volume 4 No. 3 December 2019. p.499

⁵Singgih Budiyo. Gunarto. Akibat Hukum *Covernote* Yang Dijadikan Dasar Perjanjian Kredit Di Perbankan. *Jurnal Akta*. Volume 4 No. 4 December 2017. p.785

⁶Nadya Tahsya. Pertanggungjawaban Notaris Atas *Covernote* Yang Dikeluarkan Yang Menjadi Suatu Dasar Kepercayaan Suatu Bank. *Jurnal Notary UI*. Volume 2 No. 4, 2020. p. 499

⁷Dicky Irfandi. Mohamad Fajri Mekka Putra & Siti Hajati Hoesin. Tanggung Jawab Notaris Dalam Pembuatan *Covernote* Berkaitan Dengan Perjanjian Kredit. *Jurnal Hukum*. Volume 1. No. 001. Magister Kenotariatan Fakultas Hukum Universitas Indonesia. 2019. p.15

to make a covernote that includes the promise and ability of the Notary to the bank that requires a covernote.⁸

In practice, the Bank will approve credit applications from prospective debtors only on the basis of a covernote issued by a notary. This then causes a loss for the bank, namely the occurrence of bad loans.⁹ Bad credit case at Bank BRI Pangkalpinang City, Bangka Belitung Province, which in this case involves a Notary related to the covernote he made. In addition to involving a notary, this case involves businessmen, elements of the National Land Agency (BPN), and employees of Bank BRI.

2. Research Methods

The approach method used in this study is an empirical juridical approach. The research specification used is descriptive analytical research. This type of data uses primary data and secondary data with library research and interview collection methods. The data analysis method used in this research is descriptive analysis.

3. Results and Discussion

3.1. Legal Position of Notary Covernote on Credit Agreement in the event of Bad Credit at Bank Rakyat Indonesia Pangkal Pinang

A notary is a state official who is authorized by the state in providing services to the public in the field of civil law, especially in terms of entering into agreements, and matters relating to the issuance of a notarial deed which is an authentic deed.¹⁰The arrangement regarding the position of a notary is regulated in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (UUJN). The enactment of the Law on Notary Positions provides legal protection to the public and notaries. Based on UUJN, Notaries are intended to assist and serve people who need authentic written evidence regarding legal circumstances, events, or actions. Notaries as public

⁸Juliyanto. D. W. & Imanullah. M. N "Problematika Covernote Notaris Sebagai Pegangan Bank Untuk Media Realisasi Pembiayaan/Kredit Dalam Dunia Perbankan". *Jurnal Repertorium*. Volume 5. No. 2. 2017. p. 5

⁹Rahmiah Kadir. Farida Patittingi. Nurfaidah Said. Muhammad Ilham Arisaputra. Pertanggungjawaban Notaris Pada Penerbitan Covernote. *Jurnal Mimbar Hukum*. Volume 31. No. 2. June 2019, p. 193

¹⁰G.H.S Lumban Tobing. (2001). *Peraturan Jabatan Notaris*. Jakarta: Erlangga. p.2.

officials have the authority to make authentic deeds including all deeds and agreements as regulated in Article 15 of the UUJN.¹¹

Deeds are documents and letters that have been signed and contain information about an event or thing that is the basis of a right or agreement which can be said to be a legal act.¹² The notary provides legal certainty through the authentic deed he makes. A notary deed is an authentic deed that has legal force and legal certainty that can be proven in perfect writing (*volledig bewijs*), and does not require additional evidence.¹³ An authentic deed made by a notary has perfect evidentiary power, unlike a private deed. Underhanded deeds are deeds made by interested parties without the help of public officials.¹⁴

One of the legal products issued by a notary is a *covernote* which is a certificate in the management of a certificate or document that explains the deed being made by a notary is in process and can be completed within the time period specified in the contents of the *covernote*. *Covernotes* are generally used in the credit application process at banking institutions.¹⁵

The case of bad credit caused by a notary *covernote* as the basis for credit disbursement occurred at Bank Rakyat Indonesia Pangkal Pinang City. The High Prosecutor's Office of Bangka Belitung Province revealed that this corruption case reached 45.5 billion. This case involves several Debtors, former BRI Branch Heads, 5 BRI AO staff, and Notary G. Related to the sentence against Notary G in the decision 21/Pid.Sus-TPK/2021/PN Pgp are as follows:

- To declare that Defendant Notary G has been legally and convincingly proven guilty of committing a Corruption Crime together as the Subsidiary Indictment.
- Sentencing the Defendant Notary G with imprisonment for 8 (eight) years and a fine of IDR 50,000,000.- (Fifty Million Rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 4 (four) months.

¹¹Dicky Ardiansyah, Anis Mashdurohaturun, and Munsharif Abdul Chalim. *Pembuatan Akta Otentik Pembagian Warisan Tanah oleh Notaris*. *Jurnal Akta*. Volume 8 No. 1. March 2021. p.27

¹²Salim HS. & H. Abdullah. (2007). *Perancangan Kontrak & MOU*. Jakarta: Sinar Grafika. p.101

¹³Andi Prajitno. (2010). *Apa & Siapa Notaris di Indonesia?* Cetakan Pertama. Surabaya: Putra Media Nusantara. p.51

¹⁴Taufik Makarao. (2004). *Pokok-pokok Hukum Acara Perdata*. Jakarta: Rineka Cipta. p.100

¹⁵Pande Nyoman Putra Widiantera. Sagung Wiratni Darmadi. *Akibat Hukum Covernote Yang Dibuat Oleh Notaris & Pejabat Pembuat Akta Tanah*. *Kertha Semaya Journal Ilmu Hukum*. Volume 7 No. 8, 2019. p.3

- Sentencing Defendant Notary G to pay replacement money in the amount of IDR 493,362,000,- (four hundred ninety-three million three hundred and sixty-two thousand rupiah) and if he does not pay the replacement money no later than 1 (one) month after this decision has permanent legal force, the assets may be confiscated by the Prosecutor and auctioned off for cover the replacement money, in the event that the Defendant does not have sufficient assets to pay the replacement money, he shall be punished with imprisonment for 2 (two) years.
- Determine the period of detention that has been served by the Defendant to be deducted entirely from the sentence imposed.

The sentence imposed on this Notary is greater than the prosecutor's demands. The cause of the Notary being sentenced to a criminal sentence in this case is his involvement in making a covernote that violates the rule of law and contains false information. A covernote is a statement letter in the management of a certificate or document explaining the deed that is being made by a notary who is in process and can be completed within the period specified in the contents of the covernote. Covernotes are generally used in the credit application process at banking institutions.¹⁶

The legal position of the covernote is not regulated in statutory instruments, especially in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary. Covernote is made based on custom and based on material law, namely the law of engagement. If the source of formal law in the form of habit is acceptable, does not conflict with the law and is carried out repeatedly which causes the action to be considered a truth and does not conflict with the applicable law. The making of a covernote does not have a standard setting regarding the form, procedure, requirements that must be met in making a covernote, so that a covernote made by a notary can have different shapes.¹⁷

Publishing and making covernotes need to pay attention to the legal aspects of the engagement and the terms of the validity of the agreement. Based on the Criminal Code, a covernote can be classified as an engagement that was born because of an agreement and not caused by a statutory order. Article 1233 of the Criminal Code stipulates: "every engagement is born by agreement, whether

¹⁶Ibid. p.3

¹⁷Ibid. p. 8

by law". The covernote is only binding on the parties contained and mentioned in the covernote, the parties in question are the bank as a creditor, the debtor who applies for credit, and the notary who is in the process of processing the deed from the debtor.¹⁸

The legal position of the Notary Covernote in the credit agreement at Bank Rakyat Indonesia Pangkal Pinang, the covernote is used as a temporary guarantee as well as the basis for credit disbursement. A covernote can be a strong piece of evidence in a trial, as long as its position is not denied by stronger evidence above it, such as an authentic deed. However, in the case of bad debts at BRI Pangkal Pinang, the covernote made by a notary was proven to be legally flawed, because it was made with false information and collaborated with other parties to commit crimes. With the use of Covernote in a legal act, the legal consequences that arise are that he has a legal position and he can be prosecuted if the contents are not appropriate.

Making a covernote in a credit agreement aims to provide temporary legal certainty for the parties, especially the bank. However, if the covernote contains legal defects, legal certainty for the bank as the creditor cannot be guaranteed.

Based on the theory of legal certainty, a covernote cannot guarantee legal certainty in a credit agreement. Covernote is not regulated in the Legislation. Notary covernotes should not be used as the basis for credit disbursement, because basically covernotes are only temporary guarantees. The covernote made by a notary is usually only as a statement that there is still a process of certifying land documents which are used as collateral by the credit applicant and there is still a process of changing names, roya, or the process of solving certificates for land that has been certified. In this case, because of some of these processes that make land as an object of collateral in the form of mortgage rights because the object of collateral does not yet have proof of legal ownership and has not been registered.¹⁹

AuthorityNotary Publicin relation to the issuance of Covernotes in credit agreements, both in Act No. 10 of 1998 concerning Banking and Act No. 2 of 2014 Amendments to Act No. 30 of 2004 concerning Notary Positions, there is

¹⁸Hartanti Sulihandari & Nisya Rifiani. (2013). *Prinsip – Prinsip Dasar Profesi Notaris*. Jakarta: Dunia Cerdas. p.79

¹⁹Singgih Budiyono. Gunarto. Op.cit. p.786

not a single article that regulates the authority of a notary to make Covernotes are generally used by banks. The position of the covernote made by a Notary is not evidence of collateral, because the covernote in this case only serves as a Certificate from a Notary for the Bank that will issue a credit containing the process that still has to be done for binding a guarantee so that it becomes a Mortgage Right.²⁰

Based on the theory of legal certainty, the position of the covernote does not provide guarantees for the parties. The use of a notary covernote in a credit agreement is basically also not prohibited. However, the notary must remain careful and thorough in checking the truth and validity of the documents that will become the guarantee. In fact, a notary is an official who carries out his profession which aims to provide legal services for the community by prioritizing legal protection and certainty.

3.2. Bad Loans Settlement Process in Credit Agreements Based on Notary Covernotes at Bank Rakyat Indonesia Pangkal Pinang

Various efforts have been taken by the government to reduce the quantity of bad loans in banking institutions. The government once formed a Government Bank Non-performing Loan Supervision Team to monitor the settlement of bad loans. Then an interbank credit information system (SIK) program was launched to identify customers (debtors) who had bad records because they had jammed loans. When preventive measures are deadlocked in resolving bad debts, repressive measures are taken, namely through the courts. This effort is made considering that the court is the last bastion for everyone to solve all problems, including bad loans. Before taking the court route, banks usually try to seek a settlement by deliberation by rescheduling, reconditioning, and restructuring of debtors who are in arrears on credit. If these efforts are not successful, it will be resolved through legal channels / litigation involving court institutions. Before pursuing a settlement through legal channels, it is necessary to know whether the problem of bad credit is included in the scope of civil or criminal law. In principle, bad credit is a matter of civil law, namely personal relationships between individuals or legal entities with one another in the field of assets, but if it has entered the realm of fraud or corruption, it will be included in the

²⁰Ibid.

criminal scope.²¹ Loan settlements can be settled through litigation through default or bankruptcy claims, or through non-litigation through internal bank settlements or through LAPSPI (Indonesian Banking Alternative Dispute Settlement Institution).²²

The process of settling bad loans in a credit agreement based on a notary covernote at Bank Rakyat Indonesia Pangkal Pinang is carried out by the bank through a lawsuit to the Court. In the case of bad credit, Notary G was sentenced to a criminal sentence of 8 (eight) years and a fine of IDR 50,000,000.- (Fifty Million Rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 4 (four) months. Notary G also has to pay a replacement fee of IDR 493,362,000,- (four hundred ninety three million three hundred and sixty two thousand rupiah) and if he does not pay the replacement money no later than 1 (one) month after the decision has permanent legal force, the assets can be confiscated by the Prosecutor and auctioned off to cover the replacement money,²³

The notary as the party who issues the covernote as the basis for credit disbursement must be responsible for the bad credit. This responsibility theory is closely related to the responsibility of the Notary in issuing the covernote for the benefit of the parties concerned. Although the Law on the Position of a Notary does not regulate this covernote, for the interest of those who need it, a Notary is obliged to publish it, in accordance with his duties and responsibilities as a public official who serves the public interest. Notaries can be held responsible for their mistakes if in the publication of the covernote there are elements that contain false information about the contents of the covernote. The discrepancy that occurs between the statement in the covernote and the reality on the ground, the Notary must be responsible, either criminally or civilly and even morally responsible.²⁴

Covernote Notaries do not have the legal power to provide legal protection for banks as creditors in credit agreements in the event of default when the process

²¹Tiska Pomantow. Penyelesaian Kredit Macet Melalui Pengadilan. *Journal Lex et Societatis*. Volume 1No. 1/Jan-March/2013. p.10

²²Gusti Ayu Putu Wulan Pradnyasari, I Made Arya Utama, Kedudukan Hukum *Covernote* Notaris Terhadap Perlindungan Hukum Bank dalam Perjanjian Kredit, *Jurnal Hukum Kenotariatan*, Volume 3 No. 3, December 2018. p.455

²³Decision Number 21/Pid.Sus-TPK/2021/PN Pgp

²⁴Rahmiah Kadir.Op.cit, p. 203.

of imposition of guarantees is still carried out by the Notary/PPAT. Notaries can be held responsible for their mistakes if in the publication of the covernote there are elements that contain incorrect information about the contents of the covernote.²⁵

Based on theory not quite enough Hans Kelsen said, the responsibility of Notary G in the case of bad loans at BRI Pangkal Pinang can be categorized as liability based on errors. This is because in issuing a covernote that is against the law, the notary cooperates with several parties and the notary benefits from the disbursement of the credit. Notary G is proven to have helped in the disbursement of investment credit facilities, thereby harming state finances. Based on the theory of responsibility, the responsibility of Notary G in issuing the covernote which caused bad loans at BRI Pangkal Pinang could include a form of criminal liability. Because in this case the Notary is suspected of being involved and helping the process of disbursing credit facilities issued by PT Bank Rakyat Indonesia (Persero) Tbk which is a State-Owned Enterprise (BUMN) causing losses to state finances. As for what is meant by criminal liability is something that is criminally responsible for someone who commits a criminal act or criminal act.²⁶ Perpetrators of criminal acts can be punished if they fulfill the elements and offenses listed in the Act. In addition, it is also seen from the point of view of one's ability to be responsible and accountable for one's actions. There must be an element of wrongdoing and carrying out legal actions, then a person can be punished.

In accordance with this case, the Covernote is used as the basis for disbursement of credit given by the Creditor to the Debtor, although in the contents of the Covernote there is no clause ordering credit disbursement. The practice carried out by the Bank as described previously violates the principle of prudential banking itself, because the Bank is able to disburse credit only with a covernote made by a Notary, while the legal certainty of the parties and the binding of the parties which in this case are the Bank, and the debtor or The customer arises when the object of the guarantee has registered its certificate with the National Land Agency (BPN). This causes it to appear as if the Notary

²⁵Silvia Anggraini. Akibat Hukum Pencairan Kredit Yang Didasarkan Pada *Covernote* Notaris. *Recital Review*. Vol. 2 No.2, 2020. p.137

²⁶Roeslan Saleh. (1999). *Perbuatan Pidana & Pertanggungjawaban Pidana*. Jakarta: Aksara Baru. p.75

has given an individual guarantee or personal guarantee for the covernote he has made.

A personal guarantee is an agreement between a creditor (receivable) and a third party as guarantor for the fulfillment of the debtor's obligations. An individual guarantee or personal guarantee is an individual guarantee that creates a direct relationship with a particular person. The actions of a Notary who seem to give a personal guarantee for the covernote he makes, indirectly the Notary becomes independent in making this covernote because the Notary seems to be siding with one party, namely the debtor. With the condition that the Bank can disburse credit if the Notary issues a covernote, but this has not been regulated, in making the covernote the Notary must stand alone, and not take sides with either party, because basically the Notary is not a party in the covernote.²⁷

4. Conclusion

The legal position of a notary covernote in a credit agreement in the event of bad credit at Bank Rakyat Indonesia Pangkal Pinang is that the covernote is used as the basis for credit disbursement. In the case of bad debts at BRI Pangkal Pinang, the covernote made by a notary was proven to be legally flawed, because it was made with false information and collaborated with other parties to commit crimes. Making a covernote in a credit agreement aims to provide temporary legal certainty for the parties, especially the bank. Notary covernotes should not be used as the basis for credit disbursement, because basically covernotes are only temporary guarantees. The covernote made by a notary is usually only as a statement that there is still a process of certifying land documents which are used as collateral by the credit applicant and there is still a process of changing names, roya, or the process of solving certificates for land that has been certified. Based on the legal certainty theory, a legally flawed covernote cannot guarantee legal certainty in a credit agreement. Covernote does not have a legal umbrella because it is not regulated in laws and regulations, both the Banking Law and UUJN, so that the consequences that will then be caused by the existence of this covernote apply legal provisions both criminally and civilly. The process of settling bad loans in a credit agreement based on a notary covernote

²⁷Herlina Wulandari, Urgency of Covernote Arrangement in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions Based on Notary Independence, Legal Thesis, Universitas Brawijaya, Malang, 2019, p.68

at Bank Rakyat Indonesia Pangkal Pinang is completed through litigation/lawsuits to court. Notary G was proven to have committed a criminal act of corruption together and was detrimental to the state. In the decision of the Notary Court, they must be criminally responsible and fined. The use of a notary covernote in a credit agreement is basically not prohibited and is possible under the Banking Law and the Mortgage Law.

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Regulation:

- [1] 1945 Constitution of the Republic of Indonesia.
- [2] HIR.
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