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Imam As Syafei Building

Faculty of Law, Sultan Agung Islamic University

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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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The Legal Strength of Covernote and Notary Responsibility for The Making of a Covernote as a Legal Product Not Regulated by Notary Laws

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Abstract

Public life requires legal certainty, including in the public service sector which is currently growing along with the increasing needs of the community itself for the existence of a service, the legal basis for Covernote is also not regulated in legislation either in Law Number 2 of 2014 on Amendment Law Number 30 of 2004 concerning Notary Position, Government Regulation Number 24 of 2014 concerning Regulation of the Position of Land Deed Making Officials, as well as Law Number 4 of 1996 concerning Mortgage Rights and Law Number 10 of 1998 concerning Banking.

*The results showed that the Covernote issued by the notary had no legal force as *ambtelijke acte*. So that covernote does not have legal binding power and does not have perfect evidentiary power. The notary is fully responsible for the covernote issued, both civil and criminal liability. And due to the law of the Notary, the covernote that was issued is not fulfilled, the Notary can be prosecuted both civil and criminal. In Civil Law, if the covernote results in losses for the parties due to the negligence of the Notary in accordance with the provisions of Article 1366 of the Civil Code and 1367 of the Civil Code, while criminally if proven to have participated in providing false information regarding the contents of the covernote, in accordance with the provisions of Article 263 (1) of the Criminal Code,*

Keywords: Legal Force, Notary, Covernote

A. INTRODUCTION

The role of a notary in the service sector is as an official who is given partial authority by the State to serve the public in the civil sector, especially in making authentic deeds. The notary institution is one of the social institutions in Indonesia. According to GHS Lumban Tobing, "this institution arises from the need in human relations which requires a means of evidence regarding the existing and / or existing civil law relationship between them"¹.

Judging from the form of the letter, Covernote is only an ordinary certificate from a notary public that the letters that are to be used as collateral are being processed by the notary. In general, Covernote Notaries have no standard rules governing the form and

procedure of writing, but covernote writing is usually done on the notary's letterhead, signed and stamped by a Notary Public, while others are adjusted to what processes are being processed at the notary's office.

Covernote's legal basis is also not regulated in the laws and regulations either in Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, Government Regulation Number 37 of 1998 concerning the Position Regulations for Land Deed Making Officials, or in Law -Act Number 4 of 1996 concerning Mortgage Rights and Act Number 10 of 1998 concerning Banking.

The reason for the notary to issue Covernote is usually because the notary has not completed his work related to his duties and authority to put in order the authentic deed. For example in the application for a Credit Agreement, if the requirements for completing a credit application are not yet

¹ G.H.S Lumban Tobing, 1999, *Peraturan Jabatan Notaris*, Erlangga, Jakarta, p. 2.

complete, such as regarding the guarantor's documents.

Based on description With this background, several problems arise that need to be discussed, as follows:

1. How is the Covernote Legal Force issued by a Notary?
2. How is the notary's responsibility for the issued Covernote not fulfilled?
3. What is the Legal Consequence of the Notary on Covernote issued

B. DISCUSSION

1. Covernote's Legal Force issued by a Notary

Cover Note classified as having formal legal sources, namely based on habit, where habits are human actions that are repeated repeatedly at the same time. When a certain custom is accepted by the community, and the habit is always repeated in such a way that an action contrary to that habit is perceived as a violation of legal feelings, then a legal habit emerges, which the association sees as law.

If we look at how the strength is binding, only look at the Cover Note which is usually used as collateral by the Bank. The Cover Note is not an authentic deed, because it is not stated in the law regarding the authority of the Notary, to issue an authentic deed. Moreover, in UUJN there has never been an article that indicates it is an authentic deed, but it is only in the form of a certificate. So here Cover Note only contains a certificate. It is not a legal product as evidence of collateral such as APHT and fiduciary certificates. So that the Cover Note may not have legal force that is legally binding (legal binding) for debtors who provide mortgage rights and creditors who hold mortgage rights².

Cover Note it can only be said that it is morally binding based on practice and need, and binding it only binds the notary if the notary does not deny his signature. The legal strength of the cover note depends entirely on the judge's judgment as stipulated in Article 1881 paragraph 2 of the Civil Code:

"If the letters expressly state that the record that has been made is to correct a deficiency in a right base for the benefit of the person named in the engagement"

2. The responsibility of the Notary against Covernote which was issued is not fulfilled

Regarding the responsibilities of a notary as a general official relating to material truth, it is divided into four points, namely³ :

- a. Civil notary responsibility for the material accuracy of the deed he makes;
- b. The notary's responsibility is criminally responsible for the material truth in the deed he makes;
- c. The responsibility of a notary based on the notary position regulations (UUJN) regarding the material truth in the deed he makes;
- d. The notary's responsibility in carrying out his / her job duties is based on the notary's code of ethics.

The notary in issuing the covernote is fully responsible for the content of the covernote and all legal consequences, namely about the facts or truths about what he does and is obliged to complete what has been explained in the covernote.

Regarding Administrative Law sanctions in the form of oral, written, temporary dismissal, honorific dismissal, or dishonorable dismissal, there is no

Syafran Sofyan, Notaris / PPAT Pejabat Lelang Kelas II, <http://www.notary.my.id/2015/02/kekuatan-hukum-cover-note-sebagai.html>

³ Abdul Ghofur, 2009, *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*, UII Press, Yogyakarta p. 34.

further explanation in the circumstances in which a Notary is sanctioned with qualifications as stated in Article 85 of the UUJN.

If the covernote issued by the notary results in losses for the parties, the notary can be prosecuted in the form of compensation provided that the covernote is not true. Liability that can be sued to the Notary on a civil basis as a result of the covernote failure caused by the Notary's mistake or negligence, whether intentional or negligent, results in other people (due to deed making) suffering losses, which means that the Notary has committed an illegal act. Compensation on the basis of an unlawful act in civil law is regulated in Article 1365 of the Civil Code, which stipulates: "Every act of breaking the law that brings harm to another person, obliges the person who due to his wrongdoing the loss to compensate for the loss".

The notary concerned cannot be asked Criminal liability can only be prosecuted to the Notary if there is a legal action from the Notary who is deliberately, with full awareness and planned by the Notary with the debtor that the published covernote is to be used as a means of doing, participating in or helping to do something. lies / provides untrue information that can harm the bank. A notary who is qualified to commit a criminal act includes, among others:

- a. Letter forgery, which is regulated in Article 263 paragraph (1) of the Criminal Code;
- b. Falsification in authentic deeds, which is regulated in Article 264 paragraph (1) number 1 of the Criminal Code;
- c. Inclusion of false information in authentic deeds, which is regulated in Article 266 paragraph (1) of the Criminal Code.

3. The legal consequences of the Notary against Covernote which were issued were not fulfilled

Every legal action will definitely have legal consequences, as well as the covernote issued by a notary. UUJN regulates that when a Notary performs his / her job, the Notary is proven to have committed a violation, the Notary may be subject to sanctions in the form of civil sanctions, administrative sanctions and the notary's code of ethics.

Losses suffered by a person are due to the notary's mistake in making Covernote, so the element must have a causal relationship between the Notary's actions and the losses that have been met. A claim for damages on the basis of an unlawful act if the perpetrator commits an act that fulfills all the elements of Article 1365 of the Civil Code, regarding who is required to prove the existence of an illegal act, according to Article 1865 of the Civil Code stipulates:

"Anyone who argues that he has a right, or in order to assert his own rights or deny a right of another person, points to an event, is obliged to prove the existence of rights to that event"

This means that in an act of breaking the law, those who are obliged to prove the existence of an illegal act are the party whose rights have been violated who must prove that their rights have been violated by others. Therefore, if the party who feels that his rights have been harmed, but cannot prove that there is a violation of the right because one of the elements is not fulfilled, then the claim for compensation on the basis of an unlawful act will not succeed.

Article 1246 of the Civil Code provides that:

"Costs, losses and interest that the debtor may claim for his replacement, generally stand for the losses he has suffered and the gains that he should be able to enjoy".

Losses means losses actually suffered due to negligence of the notary. While

interest means the profit that has been previously calculated will be received⁴. Regarding the claim for compensation in the form of compensation for expenses, losses and interest, this does not have to be fully fulfilled, but rather the losses that have actually been suffered by the creditor due to the negligence of the debtor who did not fulfill the obligations arising from the agreement.⁵.

imposed on a notary if proven to have participated in providing false information regarding the contents of the covernote he made, in accordance with the provisions of Article 263 (1) of the Criminal Code, Article 264 of the Criminal Code and Article 265 of the Criminal Code.

C. CLOSING

Conclusion

- a. *Cover Note* issued by a notary public does not have legal force as *ambtelijke acte*, so it does not have perfect evidentiary power. *Covernote* also does not have legal binding force for debtors who provide mortgage rights and creditors who hold mortgage rights. The legal power of *covernote* is entirely dependent on the judge's judgment as stipulated in Article 1881 paragraph 2 of the Civil Code.
- b. Civil liability based on unlawful acts or based on default which can be sued to the Notary if the failure of the *covernote* issued is not fulfilled, due to an error or negligence of the Notary. Meanwhile, criminal liability can only be prosecuted to the Notary if there is a legal action from the Notary which is deliberately with full awareness and conviction and is planned by the Notary of the published *covernote* to be used as a means of committing, lying or providing false information that can harm someone.
- c. The legal consequences of a *covenote* issued by a notary if the *covernote* results in losses for the parties due to the notary's negligence, then the notary can be prosecuted in the form of compensation under the provisions of Article 1366 of the Civil Code and 1367 of the Civil Code, that the *covernote* is not true. Meanwhile, criminal sanctions can be

⁴ Subekti, 2001, *Hukum Perjanjian*, Intermasa, Jakarta, p. 47.

⁵ Abdulkadir Muhammad, 2000, *Hukum Perdata Indonesia*, PT Citra Aditya Bakti, Bandung. P. 40

BIBLIOGRAPHY

Book

- Abdul Ghofur, 2009, *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*, UII Press, Yogyakarta
- Abdulkadir Muhammad, *Hukum Perdata Indonesia*, PT Citra Aditya Bakti, Bandung : 2000
- G.H.S Lumban Tobing, 1999, *Peraturan Jabatan Notaris*, Erlangga, Jakarta
- Subekti, 2001, *Hukum Perjanjian*, Intermasa, Jakarta,
- Syafran Sofyan, *Notaris / PPAT Pejabat Lelang Kelas II*,
<http://www.notary.my.id/2015/02/kekuatan-hukum-cover-note-sebagai.html>

Legislation

- Constitution of the Republic of Indonesia 1945
- Civil Law Law Book
- Law No. 2 of 2014 on Amendments to Law No. 30 on Notary Duty
- Law Number 4 of 1996 on the Right of Liability on land and things related to land
- Law Number 10 of 1998 on Banking
- Government Regulation Number 24 Yahun 2016 About 37 of 1998 About the Regulations of the Department of Land Act Making Office