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The Covernotes Notary or Settlement of Liability Rights in Banking Credits

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Abstract. *Covernotes are usually issued by a Notary because the Notary has not completed his work relating to the requirements that have not been met by the parties to issue a deed. The problems in this study are: The legal basis and authority of a notary in issuing a covernote, Liability of a notary's covernote in completing the making of the Mortgage, The legal consequences that arise if the Notary fails to provide a covernote for the completion of the making of the Mortgage if the loan is bad. The purpose of this study is to know and analyze the regulation or legal basis and authority of a Notary in issuing Covernotes, to know and to analyze the responsibilities of a Notary to Covernotes in completing the making of Mortgage Rights. The research method used is normative juridical, research specifications are analytical descriptive. Data sources consist of primary, secondary, tertiary legal materials. Data collection was carried out by means of a literature study. Presentation of data presented in a narrative. Juridical-qualitative data analysis. Based on the results of the conclusion that Covernote is not regulated in legislation or positive law in Indonesia. Publishing and drawing up covernotes by a notary has no legal basis. The notary's responsibility for the covernote made in granting credit by the bank is limited only to the covernote made by the notary which has expired. Legal consequences for the Notary if he fails to carry out the covernote, the Notary can be held accountable for completing it immediately. Suggestions from the conclusion that it is necessary to have arrangements in making covernotes, such as regulating the formation procedures, conditions that must be met until publication into the Notary Office Act. Notaries are more careful in carrying out their duties, especially in issuing covernotes.*

Keywords: Banking; Covernote; Mortgage; Notary.

1. Introduction

Notary as a public official, as well as a profession, has a very important position in helping to create legal certainty for the community. Notaries should be in the realm of prevention (preventive) of legal problems through authentic deeds that they make as the most perfect evidence in court. It is inconceivable if a notary actually becomes a source of problems for the law as a result of the credibility of the authentic deed he made is being questioned by the public.

History records the beginning of the birth of the notary profession as a profession of educated people and people who are close to the source of power[1]. Notaries at that time documented the history and decrees of the king. Notaries are also people close to the Pope who provide assistance in civil relations. Even in the dark ages (Dark Age 500 – 1000 AD) where the authorities could not guarantee legal certainty, notaries became a reference for disputing people to ask for legal certainty for a case.

In conclusion, since the beginning of the birth of the Notary profession, including positions that are prestigious, noble, of noble value and of high prestige.[2]The birth of the Notary Office Law (UUJN) Number 30 of 2004 which was promulgated in Jakarta on October 6, 2004, as placed in the State Gazette of the Republic of Indonesia of 2004 Number 117 which consists of 13 Chapters and 92 Articles further emphasizes the important position of the Notary as an official general public which provides legal certainty through authentic deed made.[3]

The philosophical basis for the birth of the Notary Office Act No. 30 of 2004 is the realization of guarantees of legal certainty, order and legal protection with the core of truth and justice. Through the deed he made, a notary must be able to provide legal certainty to the public who use notary services.[4]

Authentic deed essentially contains formal truths in accordance with what the parties notify the Notary. However, the Notary has the obligation to include that what is contained in the Notary's deed has really been understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the Notary's deed become clear as well as providing access to information including access to relevant laws and regulations for parties who

[1] Anke Dwi Saputro. (2009). *Pengurus Pusat Ikatan Notaris Indonesia (INI) Jati Diri Notaris Indonesia, Dulu, Sekarang, dan Dimasa Mendatang*. Jakarta : Gramedia Pustaka. p. 32
[2]Ibid. p. 33
[3]Sutrisno. (2007). Comments on the Notary Office Law. Medan. USU Notary Master's Lecture Diktat. 57
[4]Salim HS. & Abdullah. (2007). Contract Design and MOU. Jakarta. Graphics Light. p. 101-102

sign the Notary deed in carrying out their positions play an impartial and independent role (unpartiality and independence).[5]

A notary is a public official authorized to make authentic deeds as long as the making of certain authentic deeds is not specific to other public officials. The deed made before a Notary is authentic evidence, the most perfect evidence, with all the consequences.[6]The position of a Notary is a general or public position because the Notary is appointed and dismissed by the government, the Notary performs state duties, and the deed made, namely minuta (original deed) is a state document. A public official is an official who is appointed and dismissed by the general authority (government) and is given the authority and obligation to serve the public in certain matters, because of that he participates in carrying out the authority of the government.[7]

Even though a Notary is a public/public official who is appointed and dismissed by the government, a Notary is not a government/state employee who receives a salary from the government. Law No. 8 of 1974 concerning staffing matters does not apply to Notaries. Notary is a public official who also carries out government authority in the field of law but does not receive a salary from the government. However, a Notary is not a State Administrative official so that a Notary cannot be charged with criminal acts of corruption in accordance with Article 11 (a) of Act No. 30 of 2002 concerning the Corruption Eradication Commission. Article 1868 of the Civil Code provides confirmation to Notaries as public officials. Article 1868 states that, An authentic deed,

The smooth development and stability of the country's economy cannot be separated from the role of banking, which has the task and function of an institution that collects and distributes or stores funds originating from the public. Based on Law no. 10 of 1998 concerning amendments to Law no. 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) in Article 1 number 2 which states that "a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve living standards many people." One of the businesses of banking is credit, credit is one of the businesses run by banks with big risks that can be faced by banks.[8]

[5]Herlin Budiono. (2007). Collection of Civil Law Writings in the Notary Field. Bandung. Image Aditya Bakti. p. 22
[6]A. Kohar. (1983). Notary in Legal Practice. Bandung. alumni. p. 64
[7]R. Soesant. (1982). Duties, Obligations and Rights of Notary, Deputy Notary, Pradnya Paramita. Jakarta. p. 75
[8]Pradnyasari, GAPW, & Utama, IMA (2018). Legal Position of Covernote Notary Against Legal Protection of Banks in Credit Agreements. Acta Comitas: Journal of Notary Law. p. 3

Covernotes as a statement or often termed a closing note made by a Notary. The covernote is issued by a Notary because the Notary has not completed his work in relation to his duties and authority to issue authentic deeds. Covernotes of Notaries do not have the power of law as an *ambtelijke act,* so they do not have perfect evidentiary powers, but only have evidentiary powers as a guide to proof or can be used as additional evidence, and fully depend on the judge's judgment as stipulated in Article 1881 paragraph 2 of the Civil Code. , Covernotes are not regulated in the Notary Office Act (UUJN), so the consequences caused by the existence of a covernote apply general law provisions, both civil and criminal. Therefore, the form of liability that can be sued against a Notary as a result of a covernote failure caused by a Notary's mistake or negligence, is civil liability based on an unlawful act or based on default.

Based on Article 8 of Act No. 7 of 1992 on Banking which has been amended by Act No. 10 of 1998 concerning Banking, it stipulates that banks in extending credit must have confidence in the debtor to pay off his debts.

In addition to private deed and letters that can be made by a Notary, the Notary is also authorized to make and issue Covernoye which is generally issued in terms of the process of carrying out credit disbursement requested by the debtor to a banking institution.[9]The covernote in question is "a statement containing the notary's ability to carry out what the creditor wants." Issuance of a Covernote is a formal requirement for carrying out credit disbursement desired by the creditor but the requirements have not been fully met by the debtor, usually related to guarantees whose validity has not been checked.

Covernote is a statement issued by a Notary containing information that checking the object guaranteed to the Bank is in process, the issuance of this covernote is as a helper and guide for the Bank in carrying out the process of disbursing credit loans by the Bank to customers, even though the covernote itself does not have certainty law, but is only able to provide information that the guarantee object is being checked, and on this information the Notary is obliged to complete the checking process for the collateral object so that an APHT can be issued and a mortgage certificate is issued on behalf of the mortgage right holder, namely the Bank on the basis of the APHT.

UUJN does not stipulate in it that the Notary has the authority to issue a covernote explaining that it is still in process for the mortgage certificate which is the object of the birth of a credit guarantee bond and credit disbursement by the Bank. It can be seen that the authority of a Notary regulated in UUJN, Article 15 is:

[9]Kadir, R., Patittingi, F., Said, N., & Arisaputra, MI NOTARY RESPONSIBILITY FOR COVERNOTE ISSUANCE. Law Platform-Faculty of Law, Gadjah Mada University. p. 191-204

1. Make an authentic deed in which it is stated regarding actions, agreements and decisions that are not contrary to the law, along with something agreed upon between the parties which will be ascertained by the date the deed was read, copies and excerpts of the deed;

2. Validate the signature, confirm the date of the letter under the hand and register it in the book;

3. The private letter is recorded in a special book register;

4. The letter under the hand is then photocopied from the original;

5. Legalize the match of the photocopy with the original letter received;

6. Provide a legal explanation that has anything to do with the deed made;

7. Make a deed related to land.

of this authority there is not a single article which states that a Notary has the authority to issue a covernote.

The risk of granting a credit is inseparable from the quality in giving and supervising a credit. The principle of granting credit becomes a guideline for a reliable credit analyst. By adhering to the principles of sound credit, potential credit risk can be suppressed, so that the impact will not be too big.

The discrepancy between the provisions of the basic agrarian law and the principles of national land law has resulted in different views and interpretations of various problems in the implementation of the law on guarantees for home ownership, for example regarding the implementation of procedures for granting credit with guaranteed housing rights and so on.

Allah says in QS Al Baqarah/2:283.

وَاِنْ كُنْتُمْ عَلٰى سَفَرٍ وَّلَمْ تَجِدُوْا كَاتِبًا فَرِهٰنٌ مَّقْبُوْضَةٌۗ فَاِنْ اَمِنَ بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِى اؤْتُمِنَ اَمَانَتَهٗ وَلْيَتَّقِ اللّٰهَ رَبَّهٗۗ وَلَا تَكْتُمُوا الشَّهَادَةَۗ وَمَنْ يَّكْتُمْهَا فَاِنَّهٗٓ اٰثِمٌ قَلْبُهٗۗ وَاللّٰهُ بِمَا تَعْمَلُوْنَ عَلِيْمٌ

Translation: *If you are on a trip (and don't do mu`amalah in cash) while you don't get a writer, then there should be dependents held (by the debtor). However, if some of you trust some of the others, then let that trusted one increase his trust (his debt) and let him fear Allah, his Lord; and do not you (witnesses) hide*

testimony. And whoever hides it, then indeed he is a sinner in heart; and Allah is Aware of what you do. Qs.2:283[10]

The covernote issued by the Notary appears to be capable of being a guarantee by the Bank to continue disbursing credit and trust in the object guaranteed by the debtor which will later be assigned a mortgage right, by means of which the Bank continues to supervise the object of credit guarantee. The problem with the covernote is that it is not regulated in the law, so that in this case it creates confusion about the legal certainty of the covernote in credit disbursement, credit disbursement by the Bank itself can go hand in hand with the role and authority of a notary who makes and certifies the deed of credit agreement and carries out the process installation of mortgage rights at the authorized land office.[11]

2. Research Methods

This study uses a research method with a sociological juridical approach. The sociological juridical approach is intended as an application and study of the relationship between legal aspects and non-legal aspects in the operation of law in society. Sociological legal research follows the pattern of research in the social sciences, especially sociology, so this research is called sociolegal research. Sociological or empirical legal research wants to measure the effectiveness of certain laws and regulations, so operational definitions can be taken from these laws and regulations.[12]

3. Results and Discussion

3.1. Legal Basis and Notary Authorities in Issuing Covernotes

The authority of a notary to issue authentic deeds which will later become part of the legal products of the notary is regulated in the Law on the Position of a Notary. Based on Article 1868 of the Civil Code (hereinafter abbreviated as the Criminal Code), authentic deed is a deed that has been determined by the making and regulated based on statutory regulations. The legal force and proof of an authentic deed are guaranteed and protected by law, an authentic deed cannot be tampered with and it is not possible to "cancel by law".[13]In addition to authentic deeds, there are also private deeds made by the parties without going through or receiving assistance from public officials such as a notary.

[10]RI Ministry of Religion. (2004). Al-Quran and its Translation. (Jakarta: CV Publisher. p.50
[11]Bureau of Public Relations and HLN. Hasbullah, Notary and Guarantee of Legal Certainty, http://www. Legal insight. blogspot. com, accessed on September 26, 2020
[12]Soerjono Soekanto. (2010). Introduction to Legal Research. Jakarta. UIPress. p. 53
[13]Habib Adjie. (2012). Bernas Thoughts in the Field of Notary and PPAT. Bandung. Mandar Maju... thing. 12

Authentic deed and private deed clearly have differences and lead to different legal consequences and strength of proof. Not all documents made by a notary are part of an authentic deed. Covernote is a statement made and issued by a notary with all the elements contained in the covernote, such as letterhead/head of the notary's office concerned to the signature and stamp of approval from the notary who is actually not included in the authentic deed instrument, although some elements of the authentic deed fulfilled. The covernote also does not meet the requirements as a private deed, because the covernote is made by a notary who is a public official.

Covernotes are not included in authentic deed instruments and underhanded deed, meaning that legally and legally the covernote is not a legal product of a notary which also has a position as a PPAT, the legality of the covernote is questionable and can be declared not as a legal product issued by a notary. Covernotes are not found in instruments or laws in Indonesia.[14]There is no single regulation that regulates the procedures for forming and issuing covernotes by a notary.

Covernotes that are made and issued based on custom based on and guided by the legal aspects of the engagement and agreements that are not detrimental to the parties, covernotes are not prohibited in laws and regulations. Covernote is more directed at the form of an agreement between the notary and the parties.

Covernotes are made based on custom and based on material law, namely the law of engagement. If the source of formal law is in the form of acceptable habits, it is not against the law and is done repeatedly which causes the action to be considered the truth and does not conflict with the law that has been in force. Making a covernote does not have standard arrangements regarding the form, procedure, conditions that must be met in making a covernote, so that the covernote made by a notary may have a different form. It is necessary to pay attention to the legal aspects of the engagement and the legal terms of the agreement. Based on the Civil Code, a covernote can be classified as an agreement that was born because of an agreement and is not caused by a law order. Article 1233 of the Civil Code regulates: "Each agreement is born because of approval, both because of the law". The covernote is only binding on the parties contained and mentioned in the contents of the covernote, the parties referred to in writing this paper are the bank as the creditor, the debtor who submits the credit application, and the notary who is in the process of obtaining the deed from the debtor.

[14]Hartanti Sulihandari and Nisya Rifiani. (2013). Principles - Basic Principles of the Notary Profession. Jakarta. Smart World. p. 79-90.

Article 1868 of the Civil Code regulates authentic deed which is a deed in the form determined by law, made before public officials who have the power to do so at the place where the deed was made. The authentic deed itself is divided into 2, namely:

a. The deed of the parties *(Partij akte*) is a deed that makes information (contains) what the parties concerned want. For example, the parties concerned say sell or buy, then the notary party formulates the will of the parties in a deed. It is advisable for Notaries and their associations or organizations, namely INI (Indonesian Notary Association) to support the formation of rules regarding covernotes in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions so that Notaries carry out their duties, namely making covernote remains in accordance with its obligations, namely to remain independent, for example credit agreements and so on.

b. Official deed (Ambtelijke deed or Relas Deed), a deed containing official statements from the authorized official. So this deed only contains information from one party, namely the official who made it. This certificate is considered to have the strength of proof against everyone, for example a birth certificate. So *Ambtelijke Deed or Relaas Deed* is: the initiative is in the hands of officials, containing written statements from the official (*ambtenaar)* making the deed. These documents, for example: Deed of minutes/minutes of the GMS meeting of a limited liability company, deed of registration *of budel,* and others.

Private deed is a deed made by the parties themselves without the assistance of a public official to be used as evidence. Based on the meaning and form of an authentic deed and private deed, covernotes are not included in these two categories of deed. A covernote made by a notary is included in the definition of an official deed, but the regulation does not state that a covernote is an authentic deed. So that the covernote is more oriented towards the form of an agreement and is not also a private deed because the notary himself issues the covernote, it is impossible for the Covernote to be made before the official himself based on the information he himself made.

3.2. Liability of Notary covernotes in completing the making of Mortgage Rights

The term responsibility in the Notary Office Act uses the term responsibility. In the provisions of Article 65 UUJN stipulates that, Notary, Substitute Notary, Special Substitute Notary and Temporary Acting Notary are responsible for each deed made even though the Notary protocol has been submitted or transferred to the protocol depository. It can also be found in the provisions of Article 4 paragraph (2) of the Notary Code of Ethics, which in full is formulated:

"That I will maintain my attitude, behavior and will carry out my obligations in accordance with the professional code of ethics, honor, dignity and my responsibilities as a notary".

According to P. Simorangkir, responsibility is the obligation to bear or bear everything that is the duty, with all seen from good or bad actions, good actions or deeds, then responsibility means carrying out those obligations or actions properly in the case of bad actions or deeds, then responsibility means being obliged to bear the consequences of bad actions or deeds. And according to Purwahid Patrik, responsibility means that people have to bear responsibility for all their actions or everything that is obligatory and under their supervision and the consequences.

Based on the opinion above, it can be concluded that the responsibility of a Notary in the Law on Notary Office (UUJN), is intended as a Notary's attachment to legal provisions in carrying out his duties and obligations, in the sense that all actions of a Notary in carrying out his duties must be accountable legally, including all the consequences to be subject to legal sanctions for violations of the underlying legal norms.

Regarding the forms and responsibilities of a notary, Abdul Kadir Muhammad said that the forms of responsibility of a notary can be explained as follows:

1. The notary is required to make the deed properly and correctly, meaning that the deed made fulfills the will of the law and the request of interested parties because of his position.

2. A notary is required to produce a quality deed, meaning that the deed he makes is in accordance with the rules of law and the wishes of interested parties, in the real sense, not making it up. The notary must explain to interested parties the truth of the contents and procedures of the deed he made.

3. Having a positive impact means that anyone will admit that the notarial deed has perfect proof strength.

If a notary carries out his/her duties/positions in accordance with statutory regulations, the code of ethics that regulates and pays attention to and adheres to the various principles that have been described can control the notary in carrying out his/her duties/positions to remain in line and portion so as to make the notary responsible for the trust that has been given by the notary to provide services to the community related to the deeds it makes.

Basically a deed drawn up by or before a Notary, apart from being requested by law, is also for the benefit of the parties who need the services of a Notary. Also,

of course, is the need of the community in general, because the notary deed not only clarifies the status of the rights and legal obligations of the parties, but also towards the community as a third party. Supervision of notaries is carried out by the minister (Article 67 paragraph (1) of the Notary Office Law) and in its operation a supervisory board will be formed (Article 67 paragraph (2) of the Notary Office Law). The membership of the supervisory board is nine people consisting of elements:

1. Government as many as 3 people;

2. Notary organization of 3 people;

3. Experts / academics as many as 3 people.[15]

The Supervisory Board is a body that has the authority and obligation to carry out the guidance and supervision of notaries. Supervision includes the behavior of a notary in carrying out the position of a notary. The Supervisory Board based on Article 68 of the Notary Office Law consists of:

1. regional supervisory board (MPD);

2. Regional Supervisory Council (MPW);

3. Central supervisory board (MPP)

In connection with this authority, if the notary commits an act outside the authority, then the product or notarial deed is not legally binding or cannot be implemented (non-executable) and parties or those who feel harmed by the notary's actions outside of this authority, the notary can be sued civilly. district court, in other words that the covernote is not under the authority of a notary, but it is not prohibited to make it by a notary, with the proviso that if the covernote is incorrect, then it is the full responsibility of the notary with all the legal consequences.

Notaries make or issue covernotes outside of their authority as a notary.[16] Making a covernote by the notary/PPAT in the disbursement process is a form of trust that has been built by the notary/PPAT with the parties. Where in making a covernote it is usually issued by a Notary because a Notary has not finished completing his work related to the duties and authority to issue a deed. The

[15]Habib adjie. (2009). Menopong Khazanah Indonesian Notaries and PPATs (Collection of Writings on Notaries and PPATs). Bandung. PT Citra Aditya Bakti. p. 52
[16]Brierly Napitupulu "Covernote" via http://magister-kenotariatan.blogspot.co.id, accessed on March 1 2017.

principle of trust position of Notary is a position of trust that must be aligned with those who carry out the duties of a Notary's position as a person who can be trusted. Notary as a position of trust does not mean anything, if it turns out that those who carry out their duties as a Notary are people who cannot be trusted,

One form of a Notary as a position of trust, the Notary has the obligation to keep everything regarding the deed made secret and all information obtained for making the deed in accordance with the oath/promise of office, unless the law determines otherwise (Article 16 paragraph (1) letter f UUJN).

The covernote is binding on the Notary, so the Notary has a very big responsibility for the covernote issued. The covernote contains promises, so that if the things written in the covernote are not in accordance with what was agreed upon, the Notary will bear the consequences or receive demands from the bank. Notary Covernote which is used as an effective condition in a bank credit agreement, and accountability that can be demanded by a Notary in a Covernote failure due to an error or negligence from the Notary.

Regarding the error (beroepsfout) of the Notary, what needs to be questioned next is the form of the error, namely whether the error is an act of default or an unlawful act (onrechtmatige daad). The general opinion is that it is said that there has been a default if it was preceded by an agreement, whereas if it has nothing to do with the agreement then the form of the violation is called onrechtmatige daad or an unlawful act.

Associated with the covernote that has been issued by a notary, in this case it is just a statement as previously explained, made by a notary regarding a statement that the certificate belonging to the debtor is still being managed, which basically means that the issuance of a covernote by a notary is not based on an agreement in advance, both the agreement to the debtor and to the creditor (bank) as the party disbursing the credit. So it seems clear that the issuance of a covernote by a notary has nothing to do with a notary being accountable based on a default/breaking of a promise on the covernote he made in the disbursement of credit at the bank.

Basically, banks have certain reasons why they issue credit, while a deed of guarantee has not been drawn up, only based on a covernote issued by a notary, the reason is because a notary is an official, his statement must be held and a notary as a public official must be open in carrying out legal actions. The legal basis is that a notary is a public official who has the obligation to provide services openly to the public by providing correct information about the tasks that have been carried out. The covernote is used as a temporary handle by the bank until the management process for the deed made by the notary has been completed.

Previously, it should be noted that a loan agreement or agreement is the basis for the provision of money or claims that can be equated with the provision of money. The loan agreement or agreement is made by the bank with the debtor which is manifested in the form of a credit agreement. The credit agreement as a type of agreement is subject to the provisions of the contract law in positive law in Indonesia.

At first the covernote made by a notary existed due to a request for the benefit of the bank (creditor) as a binder / guarantor / guarantor in fulfilling the agreement or agreement between the debtor and the creditor when a debtor does not fulfill the terms of the agreement in this case in the form of a guarantee, namely certificate of Mortgage to a third party, namely a notary to provide guarantees as guarantor or guarantor.

Basically, the relationship between the debtor and the notary begins with the trust between the debtor and the notary for the making of the certificate which is taken care of by the notary. The debtor comes to the notary to request the services of a notary in making the certificate. The essence of this covernote is that the Notary informs that the process of completing the deed along with its registration at the BPN is ongoing and will be completed within a certain time which will be submitted as soon as possible to the bank as the creditor. Thus the disbursement of credit does not need to wait for all the processes of making the deed and registration to be completed, it is enough with a covernote made by a notary as a temporary handle for the bank.

Based on the foregoing, notaries in terms of issuing covernotes as an effective condition for disbursing credit at banks, if they do not apply the precautionary principle can cause problems in the future which can result in losses for the bank that uses them. Legally the bank which suffers a loss issued by a Notary covernote, can sue the Notary to be responsible as long as it can prove that there was an error or negligence from the Notary concerned, so the notary in this case can be held accountable by instructing/ordering the notary to renew the covernote he has made previously.[17]

The covernote made by a Notary is only valid as long as the Mortgage certificate made by the parties before the Notary has been completed. In the sense that the responsibility of a notary to the covernote that has been made, has a significant period of time, depending on the completion of the notary in completing his work to the parties involved in managing the certificates he processes.

[17]"legal deed signing" via, http://magisterkenotariatan.blogspot.co.id/2013/05/implicate-Hukum-penandatangan-akta-yg_4614.html, accessed on 10 August 2017.

The notary's responsibility in the covernote is limited to the time that the letter taken care of by the notary is still in the processing process, after the certificate made by the notary has been completed, the covernote which was previously given to the bank as a temporary handle for the bank, will be replaced with a certificate that has been completed by the notary as a form of real guarantee. However, when the certificate handled by the notary has not been completed within the specified time, for example for 3 months, the notary is responsible to the bank to extend the covernote he made, as long as the covernote extension period is further determined.

Even though a covernote from a legal perspective is not a letter, it can serve as evidence for the aggrieved party, in this case the bank (creditor). If the person making the covernote cannot fulfill his promise, then the covernote can be used as evidence and can sue or sue the notary even though the covernote uses official letterhead, the notary's signature and a position stamp.

Covernotes issued by a Notary cannot be used as individual collateral for defaults committed by the Notary's client. Covernote is only a statement issued as a temporary basis for the bank in disbursing credit. Therefore, the default committed by the debtor cannot be accounted for by the notary concerned.

Even though the covernote is morally binding and the Bank dares to issue credit with a covernote made by a notary, from the point of view of formal civil law in fact it does not have binding force and is perfect, but it is morally binding. Only with the principle of prudence and trust that the Bank has disbursed the credit and then heeds the principle of publicity (the imposition of the Mortgage must be known by the public) for this the Deed of Mortgage must be registered.[18]

In the end, the bank will still be able to obtain a mortgage certificate, so the covernote will never be disputed as a statement explaining that the issuance of the APHT and mortgage certificates is still in process.

3.3. The legal consequences that arise if the Notary is negligent in providing a covernote for the settlement of making Mortgage Rights if the credit is bad

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 binding credit or collateral. Covernote is only a temporary handle from the Bank until all deeds and guarantees that have been registered through the services of the Notary or PPAT are submitted. Therefore, with reference to the results of interviews conducted at Bank Rakyat Indonesia (Persero) Tbk. The Purwodadi

[18]Widya Indrayeni. 2012. The legal consequences of issuing a covernote by a notary to interested parties in bank credit transactions. Journal. Depok: FH UI

branch, which received a covernote for disbursing credit, by applying the principles of prudence and trust in the Bank, it is impossible for a debtor who has a collateral object to be used as an object bound by a mortgage right, so that the certificate will not be issued.

So far, covernotes have been seen as not being very accurate for bank credit and reducing the bank's rights to execute mortgage rights. It seems that the Bank and Notary and PPAT consider that there will never be a legal problem for the debtor or creditor, for the strength of the guarantee agreement for the creditor, because in the end the Bank as the creditor will still hold the mortgage certificate obtained from the land agency.

The results of the author's interview with Edy Santoso, Bank Rakyat Indonesia (Persero) Tbk employee. The Purwodadi Branch, said that indeed a covernote is an important requirement for banks to disburse credit for the benefit of debtors, without a covernote issued by a Notary, Bank Rakyat Indonesia (Persero) Tbk. do not want to disburse credit to debtors. In addition, the existence of covernotes is still valid and required by the bank.[19]Therefore, the existence of covernotes is still required by banks. Furthermore, according to Edy Santoso, there have been no problems related to the issuance of covernotes. If a problem occurs, it will be resolved by deliberation and consensus based on the agreement of both parties.

However, the covernote is still used as a guide for the bank in terms of disbursing credit for the debtor, because the contents of the covernote contain a statement from the Notary to carry out what the bank wishes, namely that the Notary can bind the guarantee of the certificate of ownership rights 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 period of time. Related to this, the theory of agreement is closely related to what was agreed between the Bank and the Notary before the issuance of the covernote, in which the bank asks the Notary to be able to carry out legal actions such as making a credit agreement deed, making a deed of granting mortgage rights, drawing up a power of attorney imposing mortgage rights as well as binding collateral certificates to the local National Land Agency. Collateral is very important for the bank because it can reduce the risk of loss for the bank (creditor). According to R. Subketi, guarantees are very important to reduce the risk of loss to the bank (creditor).[20]

[19]Eddy Santoso. Interview. At 11:00 a.m., the Office of Bank Rakyat Indonesia (Persero) Tbk. Purwodadi Branch
[20]R. Subekti. (1996). Guarantees For Credit (including Mortgage Rights) According to Indonesian Law. London alumni. Bandung. p.29.

According to Ridwan Syahrani, a self-binding agreement means that the parties in making an agreement have agreed or mutually agreed to each other's wishes issued by the parties, whether the agreement was made expressly or secretly.[21]An agreement if one of the parties violates or commits a default, then he can be held accountable for fulfilling that achievement. Therefore, if there is a default by the debtor, then there are several things that the creditor can claim if the debtor defaults, namely:[22]

1. Creditors can only request 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 accompanied by compensation to the debtor. The compensation is in the form of payment of a fine;

The emergence of covernotes is caused by a very urgent need from the bank as the creditor and debtor whose deed is in the process of making a certificate. The lack of proof of guarantee needed in the credit application process forces the bank to ask for proof of guarantee from a notary which is classified in the form of an agreement that the notary must be able to complete the management of the debtor's deed in accordance with the time period specified in the agreement which is better known as a covernote.

Covernote issued by a notary, the notary must be able to account for the contents of the covernote. With the guarantee that the covernote issued by a notary can be accounted for, the creditor will make it temporary proof of guarantee until the process of making the certificate is complete and not as collateral in a credit application. If the notary is unable to fulfill the contents of the covernote, the notary must be held accountable by immediately completing the land certificate, but the notary cannot be given administrative sanctions in accordance with the Law on Notary Positions because the covernote is not regulated in the law. However, notaries have a social burden because they are considered negligent in carrying out their obligations, causing a decrease in public trust in the notary.

[21]Ridwan Syahrani. (2000). The Ins and Outs and Principles of Civil Law. alumni. Bandung. p.214.
[22]Salim HS. Contract Law Theory & Techniques of Drafting Contracts. Op. Cit, p. 98

The results of the author's interview with Notary Endang Sri Wurkiyatun, SH, said that so far, if the Notary has not been able to carry out the contents of the covernote as expected, the Notary asks for an extension of time to complete it. Related to the problems so far that have arisen as a result of covernotes, if a Notary is repeatedly unable to carry out the contents of the covernote as expected, then the sanction received is usually a moral sanction in the form of a sense of trust from the bank that begins to diminish and ends in the transfer of trust to another Notary.[23]

Legal consequences for a notary if he fails to carry out the covernote, the notary can be held responsible for completing it immediately. Based on the agreement between the two parties, the Notary may request an extension of time to complete the contents of the covernote. If there are problems related to the issuance and implementation of the covernote, usually the sanction given to the notary is a moral sanction in the form of a bank's distrust of the notary because the notary cannot complete the contents of the covernote as expected. The notary is considered to have failed to comply with the provisions of Article 1366 of the Civil Code if the negligence is caused by the notary's mistake in carrying out and carrying out the contents of the Covernote.

Therefore, the Notary is required to always be responsible if it turns out that he has failed 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 action such as making a deed of credit agreement, making a deed of granting mortgage rights or binding collateral certificates right of ownership.

Then the theory of liability is used by the author to answer the problem in number three, because it is related to the responsibility of the Notary in relation to the legal consequences of the Notary issuing the covernote, but apparently failing to carry out the contents of the covernote itself. This theory is because it is very closely related to the notary's responsibility in issuing covernotes for the benefit of the banking sector. In this theory of responsibility there are two terms that refer to accountability, namely in the legal dictionary it mentions liability and responsibility.

Liabilitiesis a broad legal term that designates almost any character of risk or responsibility, which is certain, contingent or which may include all the actual or potential character of rights and obligations such as losses, threats, crimes, costs or conditions that create the duty to carry out the Act. . While Responsibility is

[23]Endang Sri Wurkiyatun, SH Interview. At 10:30 a.m. July 17 2017. Notary Office

responsibility for an obligation both in decisions and in skills in carrying responsibility itself. Furthermore, in the opinion of Ridwan HR that:

"Responsibility means things that can be held responsible for an obligation, and includes decisions, skills, abilities and abilities including the obligation to be responsible for the law that is implemented. In understanding and practical use, the term liability refers to legal responsibility, namely accountability due to mistakes committed by legal subjects, while the term responsibility refers to political responsibility.

The theory of legal responsibility is closely related to the legal responsibility of a notary in issuing covernotes for the benefit of the parties concerned. Even though the Notary Office Law does not regulate this covernote, it is in the interest of the party who needs it, the Notary is obliged to issue it, in accordance with his duties and responsibilities as a public official serving the public interest. According to Sugeng Istanto, accountability means the obligation to provide an answer which is a calculation of all that has happened and the obligation to provide recovery for any losses that may be caused. According to international law, state responsibility arises in the event that the state harms other countries. State responsibility is limited to accountability for acts that violate international law only.[24]

According to Abdulkadir Muhammad, the theory of responsibility in unlawful acts (tort liability) is divided into several types, namely:

1. Liability due to unlawful acts committed intentionally (intertional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant has done will result in a loss.

2. Responsibility due to unlawful acts committed due to negligence (negligence tort lil ability), is based on the concept of error (concept of fault) relating to morals and law which has been mixed (interminglend).

3. Absolute responsibility due to unlawful acts without questioning mistakes (stirck liability), is based on his actions either intentionally or unintentionally, meaning even though they are not.[25]

The notary can be held liable for his mistakes if in the issuance of the covernote there are elements that contain incorrect information about the contents of the covernote, such as a notary providing information that the certificate of ownership has been checked with the Land Agency, even though it has not been

[24]Soegeng Istanto. (1994). International law. Yogyakarta. Publishing UAJ Yogyakarta. p.77.
[25]Abdulkadir Muhammad. (2010). Indonesian Corporate Law. Image Aditya Bakti. p. 503.

checked, so that when the guarantee is bound there is problems arising from the guarantee of the certificate.

So great and high is the trust given to a notary as a public official, it shows that the position of a notary is a noble position. For this reason, Article 16 paragraph (1) number 1 UUJN stipulates that a notary must act in a trustful, honest, thorough, independent, impartial manner and protect the interests of the parties involved in legal actions. This clearly shows that the responsibility of a notary is so great in carrying out its functions. In addition, the notary also carries a considerable moral responsibility in carrying out the authorities granted by law so that if the notary commits a crime or an inappropriate act, it will injure the notary's position as a whole.

The notary's negligence in issuing a covernote whose contents contain statements or information that is not true causes him to be held legally responsible for his actions, namely criminal responsibility and civil responsibility. Even in this context, a notary bears a moral responsibility for the position he holds. As previously explained that if a notary violates a legal provision related to the exercise of his office, UUJN has determined the sanctions that can be imposed on a notary, namely in the form of verbal warning, written warning, temporary dismissal, honorable discharge, or dishonorable dismissal.

The notary's negligence in issuing a covernote for the purpose of realizing bank credit is an act that is not in accordance with the provisions of the applicable laws and regulations. This notary's action can reduce the level of public trust in the position of a notary. In other words, the actions taken by the notary in this case can damage and undermine the honor and dignity of the notary's position.

In extending credit, banks must adhere to the precautionary principle as mandated by Act No. 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law). Any provision of credit, either directly or indirectly, will affect the bank. Therefore, before granting credit is approved, it is necessary to analyze the credit application. This is in accordance with the provisions in Article 2 of the Banking Law which states that Indonesian banking in carrying out its business is based on economic democracy by using the precautionary principle. The application of the precautionary principle aims to keep the bank in good health.

One aspect of the application of the precautionary principle in lending is related to the assessment of the guarantee that will be provided by the prospective debtor customer. Banks must assess several criteria for a good guarantee, including those related to juridical, economic and social aspects. As for the assessment of the juridical aspect, it is carried out by conducting research related

to the validity and correctness of the document proof of ownership of goods that will be used as collateral for credit.

The current reality is that the presence of a notary as a bank partner in extending credit can facilitate the bank's work related to verifying documents submitted by customers. In this case, the notary performs some of the roles of the bank, for example in verifying collateral documents so that in practice, the bank no longer verifies the validity of the collateral documents. The bank only ensures the presence or absence of the collateralized goods so that the bank no longer seeks to find out the validity of the collateral. To verify the legitimacy of the collateral, the notary does this by checking with the relevant agencies. The land that is pledged as collateral, the bank only conducts a location survey to see the existence of the land in question.

The existence of covernotes currently exists and is urgent where covernotes issued by a notary will provide information so as to make the creditor/bank believe that even if the bank realizes the credit requested by the debtor whose collateral is still in the legal process, it will still be obtained and controlled by the bank. Moreover, the one who carries out the process is a notary who incidentally is a position that is very trusted. However, a covernote is not a guarantee, while bank credit conditions require that there should be a guarantee provided by the debtor as the application of the prudential principle by the bank.

A notary must maintain the dignity and dignity of his position. For this reason, the notary in carrying out his functions must also always adhere to the precautionary principle so as not to fall into acts that are against the law. Notaries should carry out their duties in accordance with applicable legal provisions and are required to be introspective because of the various characters of the people they deal with. No one can guarantee that every person (client) who comes to him is a good person and has good intentions, sometimes it is people who come to him who want to take advantage of the existence of a notary with the aim of getting a big advantage for himself so as to cause harm to other parties. The position of a notary in carrying out its functions is required to be more active.

Regarding if the Notary who makes/issues the covernote is an act of something that is wrong or also something that is right, then it can be stated that the action is an action that is not wrong and also not necessarily right. Notary in carrying out the duties of his position must be based on the authority that already exists in the Notary position itself. The authority or authority of a Notary has been mentioned in Article 15 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Office of a Notary (UUJN-P). In connection with the actions of a Notary making a covernote, it is also necessary to pay attention to the obligations and prohibitions of a Notary, especially as stipulated in Article 16

paragraph (1) letter a of the UUJN-P and the provisions of Article 17 letter i of Act No. 30 of 2004 concerning the Office of a Notary (UUJN).

Regarding the provisions regarding the Notary's authority, there is no location of the arrangement/legal basis or position of the covernote. With regard to the authority to make covernotes, if a Notary takes an action outside of the specified authority, then the product or notarial deed is not legally binding or non-executable, and parties or those who feel harmed by the Notary's actions outside the authority said, then the Notary can be sued civilly in the District Court in other words that the covernote is not under the authority of the Notary, but is not prohibited from being made by the Notary with the provision that if the covernote turns out to be incorrect, then this is the Notary's full responsibility with all legal consequences.[26]

UUJN itself does not explain the authority and duties of a notary to make covernotes. The legal consequences for the Notary and the parties, if the Notary cannot or fails to complete the covernote to become a Mortgage Right is that the party who is harmed will later be the creditor, while the debtor who has received a credit loan from the Bank then if the collateral cannot be used as a Mortgage right then the debtor must be responsible for the guarantee he gives, whereas for the notary himself the covernote only binds him morally, because it is issued at the request of the parties.

The form of responsibility of a Notary in making a covernote as collateral for debt so as not to cause criminal and civil law consequences is a commitment to carry out his/her position in an honest, morally binding, impartial, and thorough manner in reviewing and ensuring the correctness of document data and facts. object of debt security submitted by the Appearer, where if there is suspicion of irregularity or manipulation but a covernote is still made, this constitutes a prohibition for the Notary for his actions in carrying out other work that is contrary to the norms of decency that affect the honor and dignity of the Notary's position.

In addition, the Notary has the obligation to complete the management which is the duty and responsibility of the bank in a professional manner at the stipulated time so as not to cause harm to other parties. Notaries must also pay attention

[26]Based on Article 15 UUJN-P regarding the authority of a Notary, it does not mention the authority of a Notary in issuing covernotes, therefore the legal responsibility of a Notary for issuing covernotes in a credit agreement is very necessary, because if at one time it turns out that the Notary has not been able to complete what which is the contents of the covernote within the agreed timeframe between the Notary and the creditor (Bank). See: I Dewa Made Dwi Sanjaya, "Legal Responsibilities of Notaries for Issuing Covernotes in Granting Credit", Riau Law Journal Vol. 1 No.2, November 2017, Faculty of Law, University of Mataram, p.189.

to every provision in the applicable laws and regulations in issuing covernotes so as not to cause injustice to other parties.

4. Conclusion

Covernotes are not regulated in laws or positive laws in Indonesia. Publishing and drawing up covernotes by a notary has no legal basis. Covernotes are made based on a custom that can be accepted by the public, so they are trusted and considered a binding legal product. The notary has the authority to issue and make covernotes because they are classified as a form of agreement that binds the parties even though they are not regulated in laws and regulations but are regulated based on the legal terms of an agreement.

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