

NOTARY RESPONSIBILITY FOR COVERNOTES ISSUED AS BASIS FOR CREDIT DISTRIBUTION

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Abstract: *The position of a notary is a profession that is given great and high trust by the community so that what is stated in its legal product or in its statements can be considered as something true. Covernote is one of the legal products issued by a Notary which is a certificate in the management of certificates or documents that explain the deed being made by the Notary 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. Meanwhile, UUNJ does not regulate covernotes.*

Key Words: *Notary and PPAT, Covernote, Banking and Credit.*

1. INTRODUCTION:

The Notary Profession is a public official in carrying out his duties bound by the laws and regulations and the professional code of ethics. The Notary's code of ethics is a moral code determined by the Indonesian Notary Association (INI) based on the decision of the association's congress or which is determined and regulated in the laws and regulations governing the Notary professional code of ethics that must be obeyed by every member who is bound by the association.[1]

The process of credit agreement, granting Mortgage until the issuance of Mortgage Certificate takes time, so to provide certainty to the bank so that it can agree to disburse credit before the making of the Mortgage Granting Deed (APHT) is completed and the Mortgage Certificate is issued, the Notary makes a statement or *covernote*. With this *covernote*, the Notary undertakes to carry out management related to the process or stages of the Mortgage registration which must be carried out until the issuance of the Mortgage Certificate. *This covernote* issued by a Notary is used as a guide for banks to disburse credit to debtors.

2. THEORITICAL FRAMEWORK:

a. Theory of Legal Certainty

According to Gustav Radbruch justice and legal certainty are fixed parts of the law.[2]

b. Authority Theory

The term authority theory comes from an English translation, namely *Authority Of Theory*, and the Dutch language *Theorie Van Het Gezag*, while in German it is called *Theorie Der Autoritat*. [3]

c. Theory Responsibility

According to the law, responsibility is a consequence of the consequences of a person's freedom regarding his actions related to ethics or morals in carrying out an act. [4]

3. LITERATURE REVIEW:

An agreement is a legal act that causes, changes, abolishes rights, or creates a legal relationship and in this way, the agreement creates legal consequences which are the goals of the parties. If a legal action is an agreement, the people who carry out the legal action are called parties.[5]

The position of a Notary as a functional in society is still respected until now. A Notary is usually considered as an official where someone can get advice that can be relied on. Everything that is written and stipulates (constative) is true, he is a strong document maker in a legal process.[6]

According to Sunaryo, bank financial institutions are business entities that carry out activities in the financial sector by collecting funds from the public in the form of savings and distributing them to the public in the form of credit or other forms in order to improve the standard of living of the people at large.[7]

5. METHOD:

The method used in this study is an empirical juridical method, namely an approach by looking at something legal reality in society.[8]

6. DISCUSSION:

Covernotes are *customary law* in the banking world which are considered to have binding legal force for the parties. *Covernote* is used as a condition in the credit disbursement process, but is also used as a temporary guarantee during the settlement process of legal actions being carried out by the Notary or by other agencies which are related to the work carried out by the Notary.

Each Notary can issue a *covernote* that looks different from one another, and with a variety of contents. Although there are no definite rules for *covernotes* issued by Notaries, in fact *covernotes* have been accepted by many parties and are used as the basis for carrying out legal actions. The parties believe in the *covernote* which contains an official statement from the Notary. Often there are problems in completing their work where the Notary in issuing the *covernote* requested by the banking party, namely the certificate that will be used as collateral is at another bank, because the loan has not been repaid and will be repaid if the loan at the bank is disbursed and the terms of the disbursement must have a *covernote* Notary.

7. ANALYSIS:

A. Procedure for Making a *Covernote* Made by a Notary

The reason a Notary issues a *covernote* is usually because the Notary has not completed his work related to his duties and authority to issue an authentic deed.

The covernote issued by the Notary in practice is intended as a statement that the signing of the deed has actually been carried out by the debtor and the bank properly and according to the procedure before the Notary concerned. *The covernote* is needed because the installation process of Mortgage cannot be completed when signing the contract. When after signing the credit agreement and Power of Attorney to impose Mortgage Rights (SKMHT) in front of the Notary and the bank, after the fulfillment of this, the Notary can only issue a *covernote*.

B. The Notary's Responsibility for the *Covernote* That Has Been Issued

The Notary's for the *responsibility covernote* that has been issued is in the form of criminal, civil and administrative matters. Of the three *covernotes*, those that place more emphasis on the responsibility of the Notary to the *covernotes* issued are civil and administrative responsibilities.

8. CONCLUSION

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The procedure for making a *covernote* made by a Notary in Sungai Penuh City and Kerinci Regency is a) the Notary's letterhead is listed above. b) Provide notary identity. c) Include the type, date, and number of the deed made. d) Include a statement that the processing of the deed, certificate, transfer of name or others is in the process. e) Include the time period for the completion of the process. f) Write down the name of the party entitled to receive when the process is complete. g) Include the place and date the *covernote* was made, signature, and notary stamp.
- 2) The responsibility of the Notary in issuing the *covernote* is in the form of criminal, civil and administrative responsibility. Civil liability, namely if there is a false statement or information that is not in the actual condition in the *covernote*, the Notary is responsible for compensating for losses to the bank or creditor.

9. SUGGESTIONS

The suggestions given by researchers are as follows:

- 1) It is recommended that the Notary should receive the original documents from the bank when he wants to issue the covernote, so that the Notary has corroborating information when there is a problem in issuing the covernote which can later be detrimental to the Notary himself.
- 2) It is suggested to the banking side that prior to the occurrence of giving credit, ask the prospective debtor to check the guarantee/certificate that will be used as collateral first with the Notary, if the check has been carried out, the Notary will issue a letter explaining that the guarantee has no problem to be used as collateral. So when there is a credit agreement, the Notary can do his job in accordance with the agreement in the covernote.

REFERENCES:

1. Agus Santoso, 2012, *Hukum, Moral, dan Keadilan Sebuah Kajian Filsafat*, Prenada Media Group, Jakarta, 2012, page 111.
2. Achmad Ali, 2002, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Penerbit Toko Gunung Agung, Jakarta, page 82-83.
3. Salim, 2014, Arlies Septiana Nirbani, *Penetapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, RajaGrafindo Persada, Jakarta, page 183.
4. Notoatmodjo, 2010, *Etika dan Hukum*, Rineka Cipta, Jakarta, page 62.
5. Herlien Budiono, 2009, *Ajaran Hukum Perjanjian dan Penerapannya di Bidang Kenotaritan*, Citra Aditya Bakti, Bandung, page 3.
6. Tan Thong Kie, 2007, *Studi Notariat dan Serba-Serbi Praktek Notaris*, Ichtiar Baru van Hoeve, Jakarta, page 444.
7. Sunaryo, 2017, *Hukum Lembaga Pembiayaan*, Sinar Grafika, Jakarta, page 10.
8. Zainudin Ali, 2011, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, page 105.