

## Notary Responsibility for Cover Notes in Bank Credit Disbursement

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**Abstract:** A notary is a public official authorized to draw up authentic documents. Notaries can also issue cover notes to serve the public besides issuing authentic and private deeds. A cover note contains information about the issuance of land ownership documents, such as land title certificates, royal transfers, and the division of one certificate into two or more certificates. Cover notes are part of bank credit agreements because these agreements are accompanied by collateral. If the collateral is being certified by a notary, the notary issues a cover note to support the bank or creditor in disbursing bank credit to customers or debtors. Consequently, if the issuance of a notary's cover note is not based on actual data, the notary may be held liable criminally, civilly, and morally.

**Keywords:** Responsibility, Notary, Cover notes

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### I. Introduction

Notaries are public officials who have the authority to draw up authentic deeds and other competences. This authority is stipulated in Law Number 30 of 2004, amended by Law No. 2 of 2014 on the Position of Notaries (called UUJN). Article 15 of the UUJN generally regulates the authority of notaries, stating that they have the authority to assemble authentic deeds. Notaries also have the authority to draw up deeds that are not under the jurisdiction of Land Deed Officials (called PPAT). Thus, notaries have the authority to draw up authentic deeds for all acts and agreements.

The purpose of a notarial deed is to legally bind the parties involved in credit transactions, such as a credit agreement drawn up by a notary. This deed is binding on the parties involved (creditor and debtor). In terms of banking, commitments can be made by private deed or by requesting a notary to draw up an authentic deed. This gives notaries a special role in banking commitment, as they are involved in the commitment between the bank and the notary before the commitment between the bank and the customer/debtor is made.

Credit agreements are based on the legal principle of freedom of contract [1]. According to Article 1338 of the Civil Code (KUHPerdara), all legally made agreements are binding on those who enter into them. An agreement cannot be revoked except by the mutual consent of both parties or for reasons deemed sufficient by law. Thus, an agreement must be executed in good faith [2]. This includes bank credit agreements for financing productive businesses and consumptive needs.

Article 1868 of the Civil Code states that an authentic deed is a deed made in the form prescribed by law by or before a public official authorised for that purpose and in the place where the deed is made, so that the authentic deed contains formal truth. A credit agreement deed drawn up by a notary serves as the basis for the bank to process bank credit in the form of loan disbursement and as a binding agreement for customers/debtors to repay their debts. In practice, after the credit agreement is signed, but before the collateral binding process such as mortgage rights, the bank/creditor will usually ask the notary to prepare a cover note for the bank credit disbursement process to the customer/debtor.

The term "covernote" comes from the English language and consists of two words: "cover" and "note" [3]. A Covernote is a letter that explains ongoing administrative processes for deeds that have not yet been completed by a notary. This usually occurs in bank credit agreements that require a certificate of title as collateral. However, the certificate on which the encumbrance will be imposed cannot yet be issued because it is still in process. This could be because it still requires certificate verification, transfer of title, or other ongoing processes.

Although cover notes drawn up by notaries fulfill the elements of authentic deeds, they are not classified as such. However, they also do not qualify as private deeds because notaries draw them up in their capacity as public officials. Therefore, the legality of cover notes is a matter of customary practice by notaries in the performance of.

Notaries are responsible for the contents of their deeds and for guaranteeing their authority and responsibilities. If the deed does not match the draft provided by the bank, it could result in losses for the bank/creditor and the customer/debtor. In this case, the notary may be sued for negligence and be required to

pay compensation to the affected parties [4]. If the deed does not comply with applicable laws and regulations, it is legally flawed, which results in its degradation or invalidation [5].

A cover note issued by a notary as collateral for a bank customer's collateral, bearing the notary's seal, will secure the collateral within a specified time frame. If, during this specified time frame, the notary is unable to complete the process, resulting in losses for the bank/creditor, the bank/creditor may incur losses due to the notary's cover note not fully securing the collateral rights. In practice, some notaries make the contents of the cover note inconsistent with the actual circumstances.

Issuing a cover note by a notary that does not correspond to the actual circumstances will result in losses for the bank or creditor and may result in the notary being held liable, both formally and materially. In banking practice, covernotes are still used as the basis for legal actions in bank/creditor credit agreements with customers/debtors before an authentic deed is issued.

However, covernotes have no legal basis because they are not regulated by legislation and are not within the authority of notaries as stipulated in Law Number 30 of 2004, amended by Law Number 2 of 2014, concerning the position of notaries. This creates a legal vacuum regarding the legality and legal protection of notaries, banks, and customers. However, notaries are sometimes negligent in carrying out their obligations, which results in incomplete certificate or ownership transfer processes and credit defaults. Consequently, the bank cannot execute the collateral because its status has not been upgraded to a deed of encumbrance, resulting in legal losses for the bank/creditor.

A notary's cover note is essentially just a statement, and banks and creditors cannot use it for bank credit disbursement. When issuing a cover note, however, notaries are guided by Article 16(1)(a) of the Notary Law. This article states that notaries must act in good faith, honestly, diligently, independently, and impartially when performing their duties. They must also protect the interests of the parties involved in legal transactions. Notaries must exercise due care when performing their duties to avoid errors or negligence when examining or verifying the completeness of the evidence or documents required by notaries, so as to avoid criminal or civil legal issues.

## **II. Research Method**

This paper was written using a normative method, which is expected to reveal legal gaps related to notaries issuing cover notes. Data sources were obtained through literature research, primarily from laws and regulations concerning the authority to issue cover notes, banking agreements, and notaries' responsibilities in this process. The discussion is limited to the authority of notaries to issue cover notes other than authentic deeds, as well as the legal protection of related parties, such as banks, notaries, and customers. Data obtained through library research was collected by studying documents, textbooks, theories, laws, regulations, articles, and scientific papers related to the issue under study.

All the data was used to answer questions about whether the authority and responsibilities of notaries as public officials in issuing cover notes are in accordance with the law; whether cover notes issued by notaries have the same legal force as notarial deeds; and how the parties involved in the bank credit disbursement process including customers, banks, and notaries are protected by law. The data is then processed and analyzed using qualitative descriptive methods. The analysis compares the data with theories and provisions to provide answers to the issues under investigation.

## **III. Discussion**

### **A. The Authority and Responsibilities of Notaries as Public Officials in Issuing Cover Notes**

A notary is a public official authorized to draw up authentic deeds recognized by the state as irrefutable evidence. A notarial deed must contain the contents of the deed and the wishes of the parties involved. Therefore, it can be concluded that a notary's authority is to formulate the parties' wishes or actions into an authentic deed while taking applicable laws into account.

As public officials who draw up authentic deeds recognized by the state as irrefutable evidence, notaries are regulated in Article 15, Paragraph 1 of the UUJN. This article states that notaries are authorized to draw up authentic deeds concerning all deeds, agreements, and stipulations required by law or desired by interested parties. This guarantees the certainty of the date of the deed's creation and provides for the storage of the deed, as well as the issuance of grosses, copies, and excerpts.

According to Article 15, paragraph (2), notaries have the authority to certify signatures and the date of handwritten letters; affix handwritten letters by registering them in a special book; make copies of original letters; and certify the conformity of photocopies with the original letters. Notaries can also provide legal advice related to the preparation of deeds and prepare deeds relating to land and minutes of meetings.

According to the provisions of Article 15 of the UUJN, a notary is not authorized to issue a covernote as a condition for bank credit disbursement because there is no legal basis for the existence of a covernote. In banking practice, however, a covernote is required by the parties involved (creditors and debtors).

A cover note is a letter of reference explaining a situation based on an agreement between a bank or creditor and a customer or debtor. According to Article 15 of the UUJN, a notary is authorized to draft deeds related to legal actions in the process of granting bank credit, which have the force of authentic evidence.

However, if a cover note is used to disburse bank credit, it is not legally valid. A notary's cover note merely signifies the notary's responsibility for the trust given by the bank/creditor to complete the documents contained in the credit agreement. However, the continuous existence of cover notes in banking practice without rejection means that they can be said to exist based on customary law.

According to Article 1868 of the Civil Code, an authentic deed is one whose form is determined by law and made by or before authorized public officials at the place where the deed is made. Therefore, an authentic deed is one made by a public official, such as a notary or a PPAT (Public Deed Official). If the cover note arises from a credit agreement between a bank and a customer, the agreement must meet the requirements for a valid contract, such as mutual consent, capacity to contract, a specific subject matter, and lawful cause, in accordance with Article 1320 of the Civil Code when linked to the UUJN.

### **B. Cover Note Issued By a Notary has the Same Legal Force as a Notarial Deed.**

Authentic deeds are an important part of the bank loan disbursement process for banks and creditors, as well as customers and debtors, as they serve as a form of legal protection for all parties involved. In banking practice, banks use cover notes prior to loan disbursement based on custom because cover notes are not yet regulated by legislation.

Bank loan agreements generally require collateral or security, which may take the form of land with a mortgage. This collateral minimizes the risk to the bank/creditor when implementing bank credit. If a customer or debtor cannot fulfill the requirements for authentic deeds, a notary will issue a certificate or cover note to certify the collateral as a lien.

During the lien certification process, the cover note is assurance to the bank that the notary will complete the collateral certification process, thus providing the basis for the bank/creditor to disburse the loan to the customer/debtor. However, the cover note is not a guarantee.

In some places, the issuance of notarial cover notes has led to disputes regarding the securing of title deeds, which requires a lengthy process that cannot be completed immediately upon signing the credit agreement. The banking sector requires collateral to provide bank credit facilities to customers so the certification of collateral as security can proceed. Therefore, banks and creditors request confirmation from notaries in the form of a statement or cover note.

The cover note explains that the lien certification process is ongoing, convincing the bank that the notary statement/cover note guarantees the existence of a lien-based credit guarantee. This proves to the bank that the notary is certifying the lien and has the authority to issue authentic deeds, allowing the bank to disburse credit facilities to customers/debtors.

Although cover notes, also known as notarial letters, have no normative legal basis and are based solely on custom, their use has become common practice in the banking world. They are created to assure the bank that prospective customers/debtors will promptly fulfill the credit application requirements, submit the necessary documents, and resolve all issues related to the collateral. The bank believes that customers/debtors will fulfill their obligations with a cover note. For customers/debtors, however, a cover note from a notary acts as a letter that facilitates the process of disbursing bank loans/credit [6].

According to Utrecht's theory of legal certainty, rules are general in nature [7]. Based on this theory, notaries must exercise caution when issuing cover notes for bank credit disbursement because no rules govern cover notes. Therefore, no article in notary law can be interpreted as giving notaries the authority to issue cover notes for banking purposes.

Using notarial cover notes in bank loan agreements can cause banks to lose money in the event of default while the binding process is ongoing [8]. Cover notes do not legally protect banks or creditors in the event of subsequent customer or debtor default, meaning banks or creditors cannot execute the collateral. Furthermore, if the cover note is used as evidence in a lawsuit for damages or unlawful acts by the parties involved, it only has the force of an ordinary letter and is considered preliminary or additional evidence, at the judge's discretion.

Article 1868 of the Civil Code states that an authentic deed is a deed that is made in the form prescribed by law by or before public officials who have the authority to do so, at the place where the deed is drawn up, so that a cover note issued by a notary does not have the same evidentiary value as an authentic deed as stipulated in Article 1320 of the Civil Code, which states the requirements for a valid authentic deed, so that a cover note is not an authentic deed in accordance with Article 1868 of the Civil Code. however, cover notes exist and are

recognised based on custom and are classified as a form of agreement arising from a contract rather than from law.

If a bank/creditor approves a prospective customer/debtor's credit application based on a notary's cover note, it means that the bank/creditor is granting credit to the customer/debtor based solely on the cover note. In other words, the bank's granting of credit is protected by the cover note. In principle, a cover note is not an authentic deed, so in this case, a cover note does not have the same perfect power as an authentic deed, because a cover note is only a letter of reference, which is a document. Thus, a cover note cannot be used as perfect evidence or as collateral in the provision of credit facilities, so that if the collateral is removed, a void occurs, which then causes losses for the bank in the form of bad credit.

Every credit analysis must be conducted in accordance with the bank's internal regulations and applicable laws. Lending at banking institutions must be based on the principle of prudent banking so that disbursed credit can benefit the community and prevent bad debt [9].

### **C. Legal Protection for Parties Involved**

Cover notes in bank loan disbursements have no legal basis; therefore, their position as a credit requirement does not yet have definite legal validity. In banking practice, however, cover notes are used in the process of granting bank loans to customers/debtors. If the notary is unable to complete the cover note, particularly the certification of collateral rights for the bank loan, there will certainly be legal consequences for the bank/creditor in the event of a customer/debtor default.

Losses incurred by banks/creditors in the event of customer/debtor default are evidenced by Corruption Criminal Court Decision Number 42/Pid.Sus-Tpk/2002/PN-MDN of the Medan District Court. A cover note or statement from a notary explains that a deed or document is still being processed. The document in question concerns the transfer of 93 building use rights, which are collateral for the State Savings Bank (BTN) Medan Branch.

The bank/creditor, the State Savings Bank (BTN) Medan Branch, and the customer/debtor PT. KAYA, with 93 building use rights certificates (SHGB) as collateral. Some of these certificates, specifically 79, are tied to the Bank SUMUT Tembung Medan branch on the HGB of PT ACR. Consequently, the loan received by the customer/debtor cannot be auctioned to cover the loan of PT. KAYA, which is in default.

Notaries must perform their duties appropriately and in accordance with what is required of them. This responsibility is borne by individuals who act morally. Responsibility lies with human actions based on free will [10]. Notaries are responsible not only to themselves and their colleagues, but also to clients and the community who need their services.

Upon examining the Corruption Criminal Court decision of the Medan District Court, case number 42/Pid.Sus-Tpk/2002/PN-MDN, it was found that a notary had assisted in the credit disbursement process of the State Savings Bank (BTN) Medan Branch. This caused losses to state finances, and the notary was held criminally liable.

Criminal liability refers to the responsibility of a person who commits a criminal act. The perpetrator must have committed an act of negligence and be found guilty of having the capacity to be held responsible or accountable for their actions. There must be a psychological connection between the perpetrator and their actions, namely intent or negligence. The perpetrator is aware of the consequences of their actions and cannot claim criminal exemption [11].

Notaries are held liable if they fail to carry out the contents of the cover note they issue because the cover note itself arises from an agreement between the bank and the notary regarding responsibilities and authority in performing duties, such as responsibility for cover notes issued by the notary. This responsibility is personal because losses incurred by third parties cannot be transferred to other parties.

The bank interprets the issuance of a cover note by a notary as having legal validity and as a sign of full confidence that the customer/debtor meets the bank's assessment of the principles of bank lending. According to Article 1365 of the Civil Code, anyone who causes loss to another person through an unlawful act is obligated to compensate for the incurred loss. Furthermore, Article 1366 of the Civil Code states that a person is liable for losses caused by their actions, negligence, or carelessness.

Notaries are public officials who serve the public interest, and they are granted legal protection in relation to their responsibilities. This protection is accompanied by legal responsibilities under laws and regulations, as well as a code of ethics that underpins the implementation of notarial duties and authorities. Any unlawful acts will certainly give rise to a negative perception of the notarial profession among the public.

In practice, banks and creditors continue to process credit disbursements based on notarial cover notes in addition to conducting creditworthiness analyses and verifying the legality of projects and collateral or guarantees. If these requirements are met, the bank will recommend approving the credit application. However, legal protection from fraud arises if the credit analysis is deemed feasible, even if collateral or guarantees are

bound by encumbrances at other banks. Therefore, if the credit is disbursed, the customer/debtor will certainly benefit, while the bank/creditor will incur losses due to inaccurate information or data. The party at fault will be held responsible for their mistake. Parties are responsible for their mistakes.

Legal protection is imposed in the form of criminal and civil liability. Criminal liability determines whether a person can be held criminally responsible [12]. Criminal liability is based on a person committing a criminal act and being at fault [13]. Civil liability protects parties if a person is harmed by another person's actions and there is no agreement or legal relationship between them. Based on the law, a legal relationship then arises between the person who caused the harm [14]

#### **IV. Conclusion**

A cover note is not an authentic deed because it is not regulated in Article 15 of Law Number 30 of 2004, which was amended by Law Number 2 of 2014 concerning the Position of Notary, so that a cover note is considered a statement from a notary made based on custom, and a cover note becomes a reference or guarantee for banks/creditors with the notary's guarantee that the documents related to the collateral promised by the customer/debtor as a condition for bank loan disbursement are still in the process of being certified by the notary. Based on the covernote, the bank/creditor then realises the loan disbursement to the customer/debtor.

As a unilateral agreement by a notary, a cover note does not have the same force as an authentic deed in accordance with Article 1868 of the Civil Code. A cover note is not a guarantee, so it is advisable that banks do not disregard the principle of prudence when using cover notes in the bank loan disbursement process. Using a cover note as the basis for bank loan disbursement is incorrect because the notary is not a guarantor. However, if the bank continues to use the cover note as the legal basis for bank loan disbursement, the consequence is that the agreement is null and void because the notary is responsible for the contents of the cover note. If the cover note is made with false information, the notary must be held criminally, civilly, and even morally liable.

#### **V. Recommendation**

Due to their importance to banking, it is hoped that the government will regulate cover notes in legislation or other implementing regulations so that they are not used as a basis for bank credit disbursement, as they do not constitute collateral. The government should clarify the legal status of cover notes to ensure that all parties understand they are merely letters of reference and not authentic deeds. Therefore, they do not give rise to rights and obligations. Notaries are expected to exercise due diligence to avoid legal problems. They need to be protected through supervision when issuing cover notes, such as through the Standard Operating Procedure (SOP) from the Indonesian Notary Association (INI). This will ensure that the cover note issuance procedure runs properly.

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