



LEGAL POWER OF COVERNOTES MADE BY NOTARIES IN THE PROVISION OF CREDIT BY BANK

**Tripetra Yokhanan Tarigan¹, Suprayitno², Rosnidar Sembiring³, Agus Armaini RY⁴,
Doddy Safnul⁵**

^{1,2,3,4,5}Master of Notary Study Program, Faculty of Law, Universitas Sumatera Utara, Indonesia.

*Correspondence: tripetrayokhanan@gmail.com, Suprayit91@gmail.com, oni_usu@yahoo.com

Abstract

The legal force of covernotes made by notaries in the granting of credit by banks is an important topic because of their vital role in banking and property transactions in Indonesia. Covernotes have become a common practice to speed up the credit disbursement process before all legal documents are processed, even though they are not authentic deeds. The status of covernotes raises serious questions about their legal force, because they are not explicitly regulated in the Notary Law. Cases of misuse of covernotes that have resulted in major losses for banks and customers increasingly emphasize the urgency of clarifying the legal status and limitations of the use of this instrument. The formulation of the problem in this study is, namely what is the function and legal position of covernotes made in the process of granting credit by banks, what is the authority of notaries in making covernotes in the disbursement of credit at banks, and what are the legal consequences of covernotes by notaries in the process of granting credit by banks. The research method used is empirical juridical, combining normative legal analysis with field research. Literature studies were conducted to examine legal regulations and literature, while field research included interviews with Notary Yetty Rosliana Sembiring and banking parties, as well as observations at notary offices. The data were analyzed qualitatively to understand the legal force of covernotes in bank credit practices. Covernotes in the bank credit process function as temporary collateral and instruments to accelerate credit disbursement, although they do not have the same legal force as notarial deeds. The authority of a notary to make a covernote is not explicitly regulated in the UUJN, but can be linked to the general authority of a notary in Articles 15 and 16 of the UUJN. The legal consequences of making a covernote that does not correspond to the facts can be very serious, including potential financial losses for the bank, criminal and administrative sanctions for notaries, civil lawsuits, and broader impacts on public trust in the notary profession and the banking system. This shows the importance of the integrity and caution of notaries in making covernotes, as well as the need for clearer regulations to regulate this practice in order to protect the interests of all parties involved and maintain the stability of the legal and banking systems.

Keywords: *Legal Force, Covernote, Notary, Bank Credit.*

1. INTRODUCTION

Notaries and Land Deed Officials (PPAT) are two legal professions that have important roles in the legal system in Indonesia. Notaries are public officials who are authorized to make authentic deeds and have other authorities as referred to in the Notary Law (UUJN). This means that notaries have other authorities besides just making authentic deeds. Meanwhile, PPAT is a public official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or Property Rights for Apartment Units.

Notaries and PPATs are both public officials who are authorized to make authentic deeds, but there are differences in the main duties and functions (tupoksi) of both. Notaries have broader authority in making authentic deeds, covering all acts, agreements, and determinations required by laws and/or desired by the interested party to be stated in an authentic deed. Meanwhile, the authority of PPATs is limited to making deeds related to land rights or Ownership Rights of Apartment Units, such as deeds of sale and purchase, deeds of exchange, deeds of gift, deeds of

entry into a company, and deeds of division of joint rights. Notaries are often asked to make covernotes in the practice of providing credit by banks as one of the supporting documents. Covernote is a statement letter made by a notary stating that a deed is in the process of being completed or has been processed by the notary concerned, but the making of this covernote is not included in the authority of the notary as regulated in the UUJN. This raises problems related to the legal force of the covernote.

The notary who issues the covernote does not only provide a letter containing information about the guarantee from the debtor as the party providing the guarantee regarding the completeness of the files at an agency. The covernote is used as a substitute for the lack of evidence of collateral, because of the need and is only temporary evidence until the notary completes the land ownership deed that is in process to the bank. This condition occurs because the land as the object of collateral does not yet have valid proof of ownership and has not been registered, so it cannot be used as an object of collateral in the form of a mortgage. The process of registering the land rights is being carried out at the relevant Notary's office.

The issuance of a covernote by a Notary does not only occur in the context of collateral law in the form of a mortgage certificate, but can also be issued by a Notary in other deeds such as pawns, mortgages, and fiduciaries, but the focus of the discussion in this writing only examines mortgage rights, considering that on average in the disbursement of credit by banks for debtors, banks are more accustomed to disbursing credit accompanied by mortgage rights, where the object of the mortgage guarantee is land.

The problem regarding the legal force of covernotes is increasingly complex considering the absence of specific regulations governing covernotes. UUJN does not explicitly mention covernotes as one of the notary's authorities. Likewise, the PPAT Job Regulation (PJPPAT) does not regulate the creation of covernotes by PPATs. The absence of clear regulations regarding covernotes creates legal uncertainty for the parties involved in the use of covernotes, including notaries, PPATs, banks, and customers.

The ambiguity of the rules regarding covernotes can also potentially lead to abuse of authority by notaries or PPATs. Without clear rules, notaries or PPATs can make covernotes irresponsibly, for example by providing information that is not in accordance with the facts or making covernotes for deeds that have not actually been processed. This can certainly be detrimental to the parties who rely on the covernote, especially the bank in providing credit.

On the one hand, covernotes can help the credit granting process by banks to run faster. Banks can use covernotes as temporary collateral that the mortgage certificate is in the process of being completed, so that the credit disbursement process does not need to wait until the mortgage certificate is completed, but on the other hand, the issuance of covernotes when the mortgage certificate is not ready can pose legal risks, both for the notary and for the bank.

For notaries, the issuance of the covernote can be considered an action that is not in accordance with the code of ethics of the notary profession, because it provides information that is not in accordance with the facts. This can have legal consequences for the notary concerned, for example in the form of administrative sanctions from the notary professional organization or criminal sanctions for assistance in making false certificates.

For banks, covernotes issued when the mortgage certificate is not ready can create legal risks if it turns out that the mortgage certificate was never completed. In this situation, the bank can suffer losses because it does not have a valid and legally binding guarantee for the credit that has been disbursed. If there is a default or bad credit, the bank will have difficulty in executing the guarantee because the mortgage certificate does not exist.

One of the problems related to the issuance of notary covernotes was experienced by a Notary in Medan City, as this case is included in the corruption case of bad credit worth Rp39.5 billion that was revealed, involving a notary in making a covernote that did not correspond to the actual situation. This case shows how important the responsibility and integrity of a notary is in carrying out their duties. The notary was proven to have made a Credit Agreement Deed that listed 93 collateral in the form of Building Use Rights (SHGB) as collateral. However, the information in



this deed did not correspond to the actual conditions, thus helping to commit the crime of corruption.

The legal consequences of making this incorrect covernote are very serious. The notary was found guilty and sentenced to prison and a fine. This shows that the making of a covernote by a notary has serious legal consequences if it is proven to be inconsistent with the facts or used to facilitate a crime.

2. IMPLEMENTATION METHOD

Types and Nature of Research

This type of legal research uses empirical legal research. Empirical legal research aims to analyze problems carried out by combining legal materials with primary data obtained in the field. Empirical legal research includes research on legal identification and research on legal effectiveness. This research is descriptive in nature, the purpose of which is to formulate actions to solve problems that have been identified. This is then done in order to provide a picture or formulate the problem according to the existing circumstances and facts.

Research Approach

The legal research approach used in writing this law is the statutory approach, which means "to understand and comprehensively analyze the hierarchy of statutory regulations and principles in statutory regulations". The statutory approach is carried out by examining all statutory regulations and regulations related to the legal issue being handled. This research approach also uses a conceptual approach (Conceptual Approach), the conceptual approach is intended "to analyze legal materials so that the meaning contained in legal terms can be known". This is done as an effort to obtain new meanings contained in the terms being studied.

Data source

Usually the types of data are distinguished into primary data and secondary data. Primary data is "data obtained directly from the first source, while secondary data includes official documents, books, research results in the form of reports, and so on". Primary data is data obtained directly from the field which includes information or data from interviews with Mrs. Yetty Rosliana Sembiring, SH, as a Notary-PPAT in Medan City who is authorized to answer questions regarding the issuance of covernotes. The source of primary data is information obtained directly with the problems that are the object of research.

Secondary Data Secondary data is data collected to support the objectives of this research, including official documents, books, research results and so on.

3. RESULTS AND DISCUSSION

LEGAL CONSEQUENCES OF COVERNOTES BY NOTARIES IN THE PROCESS OF GRANTING CREDIT BY BANK

Legal Basis for Making Covernotes by Notaries

A notary is a public official who is solely authorized to make authentic deeds regarding all acts, agreements and determinations that are required by a general regulation or that the interested party wishes to state in an authentic deed, guarantee the certainty of the date, keep the deed and provide a grosse, copy and extract, all as long as the making of the deed is not assigned or excluded to another official or person.

Covernote is not an authentic deed issued by a notary but rather a Statement Letter made by the Notary himself on a legal action of the parties carried out by the parties before the Notary. This covernote sometimes becomes the final instrument to close all legal actions to follow up on other legal actions.

Covernote is used as a requirement in the disbursement of the credit because it is considered as a temporary handle for the bank before the mortgage certificate is issued. The bank feels safe with the issuance of the covernote by the notary/PPAT. The financing disbursed after the Covernote is submitted to the bank is a form of appropriate and fast service amidst the high level of

competition between banks. The Notary Law and the Government Regulation of the Land Deed Making Officer do not regulate in a single article that can be interpreted as the authority of a notary who also serves as a PPAT to issue a certificate called a covernote so that the covernote does not have permanent legal force and does not guarantee legal certainty. However, based on the needs in banking practices and becoming a habit, the covernote appears and is only morally binding between the notary/PPAT and the bank.

The covernote used in this practice was born and grew from the notary's long-standing habits, and is often practiced in carrying out his/her duties. The practice determined in making the covernote itself is in the form of a statement letter made by the notary himself/herself for a legal action of the parties carried out by the parties before the notary himself/herself. For example, when a Credit Agreement, which is then made into a SKMHT (Power of Attorney for Mortgage Encumbrance) and/or APHT (Deed of Mortgage Encumbrance), because all have been signed by the parties before the Notary, even though administratively the notary has not been completed, then for the benefit of the Bank and the parties (debtors), the Notary will make/issue a Kovernot, which states that the legal actions of the parties have been completed, if the Bank has received such a covernote, there is sufficient reason for the Bank to disburse the credit.

There are several examples of notary covernote certificates, for example:

1. If the debtor wants to take out a loan from the Bank and the goods to be pledged are still in the process of being roya, while the Bank will only disburse the loan if the goods pledged have been completed in the fiduciary roya first, then one solution so that the credit can be disbursed by the Bank is that the Notary will issue a covernote containing information that the certificate of ownership of the goods is in the process of being roya and when it has been completed in the roya it will be deposited into the Bank.
2. If a Limited Liability Company is waiting for a decision letter of ratification as a Legal Entity from the Ministry of Law and Human Rights of the Republic of Indonesia and the process of its administration is delegated to a Notary's office, the Notary will issue a covernote, which states that the letter is being processed at the Ministry of Law and Human Rights of the Republic of Indonesia and when the administration is complete it will be submitted to the relevant parties.

Regarding the making of covernotes by notaries, referring to the provisions of the notary's authority as stated in Article 15 of Law Number 2 of 2014 concerning the Position of Notaries regarding the amendment to Law Number 30 of 2004 concerning the Position of Notaries, there is no mention of the making of covernotes within the authority of notaries, but this does not mean that notaries cannot issue covernotes. The making of covernotes is also not included in the prohibitions contained in Article 17 Paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, namely that notaries are prohibited from:

1. Carrying out office outside the area of office;
2. Leaving the area of office for more than 7 (seven) consecutive working days without a valid reason;
3. Concurrently serving as a civil servant;
4. Concurrently serving as a state position;
5. Holding concurrent positions as an advocate;
6. Holding positions as leader or employee of a state-owned enterprise, regional-owned enterprise or private enterprise;
7. Concurrently serving as Land Deed Making Official and/or Class II Auction Official outside the Notary's place of residence;
8. Become a Substitute Notary; or
9. Carrying out other work that is contrary to religious norms, morality, or propriety that may affect the honor and dignity of the position of Notary.

Deeds or documents that are in the process of being processed at the Notary's office but have not been completed, while the client (Interested Party) needs the deed or document, then the Notary can issue a certificate stating that the deed or document is being processed at the Notary's Office concerned. In practice, this certificate is usually called a covernote. The authority to make a



deed is the authority of a Notary and also the authority of a PPAT. From the method of making it, a deed can be divided into 2 (two) parts, namely an Authentic Deed and a Private Deed. An authentic deed is a deed in a form determined by law, made by or before authorized public officials for that purpose at the place where the deed is made. Private deeds are deeds signed under the hand such as letters, registers, household documents and so on (Article 1874 of the Civil Code) and are also deeds that are intentionally made by the parties themselves, whether or not made by an official who has the authority to make a deed which is used by the parties as evidence that a legal act has occurred.

From the definition of authentic deeds and private deeds above, it can be interpreted that covernotes are not included in a deed, either authentic deeds or private deeds. Not included in authentic deeds because the making of covernotes is not determined by law and not included in private deeds because the making of covernotes is carried out by a Public Official, namely a notary. Covernotes are made based on the needs in the banking world as one of the requirements for disbursing credit which is used as a temporary handle by the bank for the notary's promise/ability to carry out certain legal acts.

A notary is an official who is authorized to make a deed of credit agreement between a debtor and a creditor, while a PPAT is a public official who is authorized and appointed to make a deed of transfer of land rights located in his/her work area, so if it is connected with the provision of credit from the Bank to the debtor, then the PPAT is authorized to make a mortgage on the land that is the collateral whose work area is in accordance with the collateral land. However, sometimes a Notary and a PPAT are held and held by the same person because a Notary can also serve as a PPAT.

Credit activities contain risks, especially for banks as creditors. To reduce and minimize risks in credit implementation, banks require credit guarantees as certainty of debtor debt repayment if the debtor defaults on his promise to the Bank as a creditor. With the existence of such credit guarantees, it will provide protection, both for the legal certainty of creditors that their credit will still be returned even though the debtor is in default, namely by executing the object of the bank's credit guarantee in question.

Debtors in bank credit usually want the credit to be disbursed quickly, because it can speed up the business turnover process or as a solution to urgent needs. The credit disbursement process takes a long time. Especially with land collateral using Mortgage Rights. In this regard, a notary is needed to speed up the credit disbursement by issuing a certificate or Covernote.

The existence of covernote creation is due to the need for completeness of requirements in the banking world, especially in the credit disbursement process, so that notaries/PPAT may issue the covernote for the benefit of the parties in need. As long as the covernote does not conflict with Pancasila, laws, public order and morality. Although there are no regulations governing it, the creation of a covernote is one form of notary service to the public as a public official.

Covernote, although not a Notary and PPAT product according to the laws and regulations, is quite effective in disbursing credit. After someone becomes a PPAT, the position of Notary has also been held. Thus, based on the belief of the PPAT as an official who will send the APHT (Mortgage Deed) and other documents (such as the Certificate of Ownership) are complete, then there is no doubt for the Notary as well as the PPAT to issue a covernote so that with the trust of the notary and the debtor who provides the mortgage, it provides sufficient reasons for the Bank to be able to disburse the credit. In general, there are no standard rules governing the form and procedure for writing a Notary covernote process, however, the writing of the covernote is usually done on the Notary's letterhead, signed and stamped by the Notary, while the rest is adjusted to the process currently being processed at the Notary's office.

Legal Power of Covernotes Made by Notaries

The legal force of a covernote made by a notary is a crucial aspect in banking practices and property transactions. Although a covernote is not an authentic deed like a notarial deed, this document has a legal significance that cannot be ignored. A covernote is basically a certificate issued by a notary stating that a legal process is ongoing and will be completed within a certain

period of time. Its legal force lies primarily in the credibility and integrity of the notary who issues it.

In the context of Indonesian law, covernotes do not have an explicit legal basis in the legislation. However, their use has become a widely accepted practice in banking and property transactions. The legal force of covernotes can be analyzed from several aspects. First, in terms of contract law, covernotes can be considered as a form of obligation between a notary and the bank and client. The notary, by issuing a covernote, implicitly promises to complete the legal process stated in the covernote. This creates a legal obligation for the notary to fulfill the promise.

Second, from the perspective of evidentiary law, covernotes can function as written evidence in civil cases. Although they do not have perfect evidentiary power like authentic deeds, covernotes can still be used as evidence of an ongoing legal process. In the event of a dispute, covernotes can be one of the pieces of evidence considered by the judge in making a decision.

Third, in the context of notary professional ethics, the creation of a covernote is closely related to the notary's obligation to act honestly, carefully, independently, and to protect the interests of the parties involved in legal acts. Violation of the commitment stated in the covernote may have implications for ethical sanctions for the notary concerned. This provides an additional dimension to the binding power of the covernote in terms of professional ethics.

It should be noted that the legal force of a covernote is highly dependent on its content. A carefully crafted covernote, containing accurate information and clear commitments, will have greater legal force than a carelessly crafted covernote. Therefore, a notary such as Yetty Rosliana Sembiring, SH, who has a reputation for creating covernotes with high standards, indirectly increases the legal force of the covernotes she creates.

In banking practice, covernotes are often used as a basis for credit disbursement before all formal requirements are met. This shows that banking institutions place significant legal value on covernotes. However, it is important to note that banks usually have additional risk mitigation mechanisms, such as additional agreements or personal guarantees, to complement the covernote. This indicates that although the covernote has legal force, it is not considered an absolute legal guarantee.

From a consumer protection perspective, the legal force of the covernote is also relevant. The covernote can be seen as a form of protection for consumers (in this case, the debtor) because it provides certainty that the necessary legal process is ongoing and will be completed. If the notary fails to fulfill the commitments stated in the covernote, the potential consumer has grounds for filing a lawsuit.

In the context of administrative law, although the creation of covernotes is not specifically regulated in the Notary Law, this action can be considered as part of the general authority of a notary to provide legal services to the public. Thus, covernotes have administrative legitimacy as a product of an authorized public official.

It is also important to consider the jurisprudential aspect in assessing the legal force of covernotes. Although there has been no Supreme Court decision that specifically discusses the legal status of covernotes, several decisions of first instance and appellate courts have recognized the existence and function of covernotes in banking transactions. This indirectly provides legal recognition to the practice of using covernotes.

In recent developments, several notary associations have begun to formulate standards and guidelines for creating covernotes. This initiative can be seen as an effort to strengthen the legal position of covernotes by creating uniform standards of practice. If these guidelines are widely adopted, this has the potential to increase the legal force of covernotes in the future.

In conclusion, although the covernote does not have the same legal force as an authentic deed, this document still has substantial legal significance in notarial and banking practices. Its legal force is mainly derived from the credibility of the notary, its function in legal transactions, and its de facto recognition by banking institutions and legal practitioners. However, given the absence of specific regulations, the legal force of the covernote remains the subject of evolving interpretation and practice. Therefore, the use of the covernote must still be accompanied by caution and a clear understanding of the limits of its legal force.



Legal Consequences of Using Covernotes in Granting Credit

Covernote is an important instrument in the credit granting process, but its use can have significant legal consequences. As a certificate issued by a notary, covernote is often used as a basis by banks to disburse credit before the collateral binding process is complete. However, this practice carries legal risks that need to be considered by all parties involved.

The use of Covernote also cannot guarantee that there will be no problems if the Notary/PPAT has not been able to complete the certification process and there is a bad debt, the banking party cannot execute the guarantee, because the status of the land has not been upgraded to APHT, so that the legal consequences for the bank as the creditor will be harmed.

For notaries, making covernotes carries a great legal responsibility. Notaries can be held liable both civilly and criminally if it is proven that the covernote they made contains false or misleading information. As seen in the case of bad debt corruption worth Rp39.5 billion, a notary can be sentenced to criminal penalties for his involvement in making covernotes that do not correspond to the actual situation.

This case began in 2011 when Canakya Suman, as the director of PT. Krisna Agung Yudha Abadi (PT. KAYA), intended to buy a plot of land measuring 13,860 m² from PT. Agung Cemara Realty (PT. ACR) represented by Mujianto. The land is located on Jalan Sumarsono, Graha Metropolitan Helvetia Complex, Sunggal District, Deli Serdang Regency. Canakya Suman planned to build 151 commercial housing units under the name of Perumahan Takapuna Residence on the land. However, financially, Canakya Suman did not have the ability to buy the land and carry out the construction of the housing.

To realize the sale and purchase of the land, Mujianto as Director of PT. ACR agreed with Canakya Suman that Mujianto would take credit from Bank Sumut Tembung Branch, but all obligations for payment and settlement of the credit were charged to Canakya Suman. The credit from Bank Sumut Tembung Branch was realized on March 2, 2012 based on Credit Agreement Number 008/KC024.APK/KRK/2012 amounting to Rp35 billion with a term of one year. The credit collateral was in the form of SHGB No. 402 in the name of PT. ACR which was divided into 151 SHGB.

Canakya Suman made a down payment to Mujianto of Rp6,756,750,000 which was paid in 8 installments using Bank CIMB Niaga Giro Bills from November to December 2011. Then, he made another 6 installments from January to June 2012 with a total of Rp38,288,250,000. However, the payment for the land purchased by Canakya Suman from Mujianto was still not paid off. When the Credit Agreement at Bank Sumut matured on March 3, 2013, Canakya Suman was unable to pay off the credit. As a solution, Mujianto extended the credit agreement at Bank Sumut to a Current Account Credit Agreement Number 011/KC024.APK/KRK/2013 dated March 28, 2013 worth Rp23.9 billion with a term of one year.

Facing financial difficulties to complete the construction of Takapuna Residence Housing and pay off the credit at Bank Sumut, Canakya Suman then submitted a credit application to PT. BTN Medan Branch Office on July 8, 2013. In the credit application process, Canakya Suman was introduced to Ferry Sonefille as Branch Manager of PT. BTN Medan Branch Office by Dayan Sutomo, who at that time served as Chairman of the UMKM Committee at KADIN North Sumatra. In the credit application, Canakya Suman stated that the legal status of the Takapuna Residence Housing project was in the name of PT. ACR and all Building Use Rights Certificates (SHGB) that would be used as collateral totaling 151 SHGB were also in the name of PT. ACR. He also explained that most of the SHGB were currently in the status of credit collateral at Bank Sumut Tembung Branch.

Despite knowing the condition, PT. BTN Medan Branch Office still processed Canakya Suman's credit application. They conducted a credit feasibility analysis and stated that the legality of the project and credit collateral had been fulfilled. On August 21, 2013, Aditya Nugroho as Credit Analyst made a Credit Analysis Tool (PAK) Number 072/PAK-KYG/Mdn.Ut/HCLU/VIII/2013 which recommended the granting of Construction Working Capital Credit (Kredit Yasa Griya) of Rp49 billion to PT. KAYA.

At this stage, notary EV as Notary/PPAT who cooperated with PT. BTN Medan Branch Office began to be involved in the credit granting process. On February 24, 2014, notary EV held a Legal Meeting with PT. BTN Medan Branch Office and Canakya Suman to discuss and examine the required documents that must be completed. Despite knowing that 79 of the 93 SHGB that would be used as collateral were still bound by mortgage rights at Bank Sumut and had not been paid off, notary EV still made a Credit Agreement Deed No. 158 dated February 27, 2014 between PT. BTN Medan Branch Office and PT. KAYA worth Rp39.5 billion. Furthermore, EV made a statement letter (covernote) Number 74/EA/Not/DS/II/2014 dated February 27, 2014 which stated as if all the requirements for changing the name of the 93 SHGB from PT. ACR to PT. KAYA had been received. In fact, the notary EV knew that the BPHTB (Land and Building Acquisition Fee) and PPh (Income Tax) fees required for the name change process had not been paid. This certificate was then used by PT. BTN Medan Branch Office as one of the requirements in order to fulfill the completeness of the requirements for the disbursement of KYG Credit Phase I.

Based on the documents made by notary EV, PT. BTN Medan Branch Office then disbursed credit to PT. KAYA in five stages starting from March 2014 to December 2014, with a total disbursement reaching Rp39.5 billion. This disbursement was carried out even though the requirements for changing the name and placing mortgage rights had not been fully met. Of the 93 SHGBs used as collateral, only 5 SHGBs were successfully changed names and placed with a Deed of Granting of Mortgage Rights (APHT).

Notary EV's actions in creating documents that do not correspond to the actual situation and providing misleading information have helped to disburse credit that should not have been approved. This action is contrary to the Circular of the Board of Directors of PT. Bank Tabungan Negara (Persero) Tbk Number 18/DIR/CMO/2011 dated May 24, 2011 and resulted in state losses of IDR 39.5 billion according to the audit results of the BPKP Representative Office of North Sumatra Province based on the Audit Report on the Calculation of State Financial Losses Number S-846/PW02/5.1/2021 dated July 27, 2021. For his actions, notary EV was charged with violating Article 2 paragraph (1) in conjunction with Article 18 paragraph (1) letter b of the Corruption Law in conjunction with Article 56 point 2 of the Criminal Code or Article 3 in conjunction with Article 18 of the Corruption Law in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. This case shows how important integrity and accuracy are in carrying out the duties of a notary/PPAT, especially in transactions involving bank credit and state assets.

The corruption case involving EV, a notary/PPAT, has gone through three levels of court with different decisions, indicating the complexity and severity of the case. As in the first instance, the Medan District Court in its decision Number 42/Pid.Sus-TPK/2022/PN.Mdn imposed a relatively light sentence on notary EV. He was sentenced to 1 year and 6 months in prison and a fine of IDR 100 million with the provision that if the fine is not paid, it will be replaced with 1 month in prison. This decision reflects the considerations of the first instance judge who may have seen mitigating factors. However, at the appeal level at the Medan High Court, through Decision Number 9/PID.SUS-TPK/2023/PT MDN, notary EV's sentence was increased. The High Court changed the District Court's decision by imposing a 2-year prison sentence, while the fine remained at IDR 100 million, subsidiary to 1 month in prison. This change shows that the High Court views this case as more serious and requires a heavier sentence.

Finally, at the cassation level, the Supreme Court through decision Number 5710K/Pid.Sus/2023 dated November 23, 2023 gave a much heavier verdict. The Supreme Court sentenced notary EV to 8 years in prison, along with a fine of Rp400 million, subsidiary to 3 months in prison. This Supreme Court decision shows a very serious assessment of the crime committed by EV, with a significant increase in the sentence both in terms of the length of imprisonment and the amount of the fine.

The striking differences between the first instance, appeal, and cassation decisions reflect the complexity of the case and the different interpretations of the law at each level of the courts. The much more severe Supreme Court decision may have been based on a more comprehensive consideration of the impact of the crime on state finances and the integrity of the banking system, as well as the important role of EV as a notary/PPAT in facilitating the crime.



This EV notary case provides a clear picture of the serious legal consequences of a notary making a covernote that does not correspond to the actual situation. Covernotes, which should be a reliable legal instrument in banking and property transactions, have instead become a tool that is misused and results in huge losses for the state. In this case, the covernote made by notary EV (Number 74/EA/Not/DS/II/2014 dated February 27, 2014) stated as if all the requirements for changing the name of 93 SHGB from PT. ACR to PT. KAYA had been received and could be implemented. In fact, the reality was very different. EV clearly knew that the BPHTB (Land and Building Acquisition Fee) and PPh (Income Tax) fees which were absolute requirements for the name change process had not been paid. Furthermore, 79 of the 93 SHGB used as collateral were still bound by mortgage rights at Bank Sumut and had not been paid off.

The legal consequences of making a cover note that is not in accordance with the facts are very broad and serious. First, the cover note became the basis for PT. BTN Medan Branch Office to disburse credit to PT. KAYA. The disbursement of credit that should not have been approved resulted in a state loss of Rp39.5 billion, according to the results of the BPKP audit. Second, this action violates public trust in the notary profession as a public official who is authorized to make authentic deeds. Notaries have an obligation to act honestly, carefully, independently, impartially, and protect the interests of the parties involved in legal acts. Furthermore, making a cover note that is not in accordance with the facts also violates the provisions of the Notary Law and the Notary Code of Ethics. Notaries are obliged to act in a trustworthy, honest, careful, independent, and impartial manner. By making a cover note that is not in accordance with the actual situation, notary EV has violated the fundamental principles in carrying out his position as a notary.

Another legal consequence is the damage to the integrity of the banking and property systems. This incorrect covernote has allowed for the disbursement of credit that should not have been approved, which in turn can threaten the stability of the banking system. This also has the potential to create legal uncertainty in property transactions, considering that the status of ownership and encumbrances of land rights become unclear.

In terms of criminal law, the creation of a covernote that does not match the facts has fulfilled the elements of a criminal act of corruption as regulated in the Corruption Eradication Law. Notary EV is considered to have assisted in the occurrence of a criminal act of corruption by providing information that does not correspond to the actual situation, which results in state financial losses. The Supreme Court's decision to sentence notary EV to 8 years in prison and a fine of Rp400 million reflects how serious the legal consequences are of making a covernote that is not in accordance with the facts. This sentence not only serves as a deterrent for notary EV, but also as a stern warning to all notaries in Indonesia about the severe legal consequences if they abuse their authority in making covernotes.

This case also highlights the need for reform in the oversight system for notaries and the issuance of covernotes. A stricter mechanism is needed to ensure that each covernote issued truly reflects the actual situation. This may include cross-verification with relevant agencies, such as the National Land Agency and the Tax Office, before the covernote is issued. Furthermore, this case highlights the need to improve integrity and professionalism in the notary profession. Continuing education and professional ethics training need to be strengthened to ensure that each notary fully understands their responsibilities and the consequences of their actions. Notary professional organizations also need to improve internal supervision and apply strict sanctions for members who violate the code of ethics.

Finally, this case is a valuable lesson for all parties involved in banking and property transactions. Banks, as parties that rely on covernotes in the credit disbursement process, need to be more careful and conduct independent verification of the information contained in the covernote. This may include direct inspection to the National Land Agency or other relevant agencies to ensure the validity of the information provided. Thus, the legal consequences of the creation of a covernote that is not in accordance with the facts by notary EV not only affect himself, but also have broad implications for the legal, banking, and property systems in Indonesia. This case is an important momentum to conduct a comprehensive evaluation and improvement in notary practices and the use of covernotes in legal transactions in Indonesia.

The legal consequences of making a covernote that does not correspond to the facts by an EV notary have very broad and multi-dimensional implications, which include civil, criminal, administrative legal aspects, as well as systemic impacts on the notary profession and the banking system in Indonesia. From a civil law perspective, the creation of a covernote that is not in accordance with the facts has violated the fundamental principles of contract law, especially the principle of good faith as regulated in Article 1338 paragraph (3) of the Civil Code. The covernote, as a statement issued by a notary, should be a reliable document in legal transactions. However, in this case, the covernote has become an instrument that is misleading and detrimental to other parties, especially PT. BTN Medan Branch Office as the credit provider. Furthermore, the actions of notary EV can be categorized as an unlawful act as regulated in Article 1365 of the Civil Code.

This opens up opportunities for the injured party, in this case PT. BTN Medan Branch Office or even the state, to file a civil lawsuit for the losses incurred. The potential for this civil lawsuit is not only limited to demands for material compensation for the amount of the credit disbursed (Rp. 39.5 billion), but can also include immaterial losses such as damage to the bank's reputation and loss of public trust. From a criminal law perspective, the actions of notary EV have fulfilled the elements of a criminal act of corruption as regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Specifically, his actions can be categorized as an act of "assisting" the occurrence of a criminal act of corruption as regulated in Article 15 of the Corruption Law. This is reflected in the Supreme Court's decision which sentenced him to 8 years in prison and a fine of Rp400 million. However, the consequences of criminal law do not stop at imprisonment and fines.

Based on Article 18 of the Corruption Law, EV as a notary can also be subject to additional criminal penalties in the form of:

1. Confiscation of movable or immovable property used for or obtained from criminal acts of corruption.
2. Payment of compensation in an amount that is at most equal to the assets obtained from the criminal act of corruption.
3. Closure of all or part of the company for a maximum period of 1 year.
4. Revocation of all or part of certain rights or the elimination of all or part of certain benefits that have been or may be granted by the government to the convict.

In the context of the notary profession, the most significant legal consequence is the potential revocation of a notary's practice license. Based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, specifically Article 13, a notary can be dishonorably dismissed from his/her position by the Minister upon the recommendation of the Central Supervisory Board if the person concerned has been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime that is punishable by imprisonment of 5 years or more. With an 8-year prison sentence from the Supreme Court, notary EV clearly meets this criterion.

From an administrative law perspective, this case also has implications for the notary supervision system. The Notary Supervisory Board, both at the regional, local, and central levels, may face scrutiny over the effectiveness of their supervision. This may encourage reform in the notary supervision system, including the possibility of implementing a routine audit mechanism for covernotes issued by notaries. Furthermore, this case also has implications for banking law. Bank Indonesia and the Financial Services Authority (OJK) may issue new regulations that tighten the covernote verification procedure in the credit granting process. This may include requiring banks to conduct independent verification of the information contained in the covernote, or even limiting the use of covernotes in the credit disbursement process.

From a land law perspective, this case shows weaknesses in Indonesia's land registration system. The National Land Agency (BPN) may be encouraged to improve its land information system, so that the status of land ownership and encumbrances can be verified in real time by interested parties. In a broader context, this case also has implications for corporate law. PT. KAYA as a credit recipient, although not a direct subject in this criminal case, may face its own legal consequences. This may include the possibility of bankruptcy if it is unable to repay the



credit, or even the potential for criminal investigation of the company's directors for alleged involvement in the fraud scheme. Furthermore, this case may trigger changes in legal education in Indonesia, especially in the curriculum of notary professional education. Greater emphasis may be placed on professional ethics and the legal consequences of violations of such ethics.

Finally, from a sociological legal perspective, this case may have an impact on public perception of the notary profession and the banking system in Indonesia. The decline in public trust may have long-term implications for the stability of the country's legal and financial systems. Thus, the legal consequences of the creation of a covernote that is not in accordance with the facts by EV notaries go beyond individual consequences and have the potential to drive systemic changes in various aspects of the legal system in Indonesia.

Covernotes, as a legal instrument often used in property and banking transactions, play a crucial role in facilitating the smooth running of business and investment. However, when the integrity of this instrument is compromised, the impact can be very broad and profound. The creation of a covernote that does not correspond to the actual facts not only violates the ethics of the notary profession, but also threatens the foundation of trust that is the basis of the entire legal and economic system.

In a broader context, cases of covernote abuse could prompt comprehensive reforms in various aspects of the legal system in Indonesia. This could include tightening regulations on notary practices, improving oversight mechanisms, and even reforming the land registration system. The National Land Agency, for example, might be encouraged to develop a more transparent and accessible land information system, so that land status verification can be carried out more efficiently and accurately. In the banking sector, such incidents may trigger a revision of stricter risk management policies. Banks may develop more comprehensive due diligence procedures, no longer relying solely on covernotes in the credit disbursement process. This in turn may increase the security of banking transactions, but also potentially slow down business processes and increase transaction costs.

From a criminal law perspective, the cases of covernote abuse may prompt law enforcement to pay more attention to potential corruption in the private sector. This may result in a broader interpretation of what constitutes "state loss" in the context of corruption, given the systemic impact that fraudulent practices in the property and banking sectors can have. Furthermore, this situation may trigger a broader discussion about the ethics of the legal profession in Indonesia. Professional organizations such as the Indonesian Notary Association may be encouraged to strengthen their codes of ethics and improve internal disciplinary mechanisms. This could include more intensive continuing education programs, regular audits of members' practices, and stricter sanctions for violators of the code of ethics.

In the realm of legal education, cases such as these can be a catalyst for curriculum reform. Law schools and notary professional education programs might place greater emphasis on professional ethics, not only as a theoretical subject but also through case studies and practical simulations that prepare prospective legal professionals to face ethical dilemmas in real practice. From a macroeconomic perspective, disruptions to the integrity of the legal and banking systems could have far-reaching ripple effects. Investors, both domestic and foreign, may become more cautious about transacting property or applying for credit in Indonesia. This could slow economic growth in the short term, but it could also encourage improvements to a more transparent and efficient system in the long term.

Ultimately, the challenges posed by the misuse of covernotes and similar legal instruments should be seen as an opportunity to strengthen Indonesia's legal and economic systems. Through targeted and comprehensive reforms, Indonesia can build a more resilient, transparent and trustworthy system. This will not only increase investor confidence and facilitate economic growth, but also strengthen the rule of law and professional integrity in the country. In the increasingly advanced digital era, perhaps it is also time for Indonesia to consider modernizing its covernote system, perhaps by adopting blockchain technology or other digital verification systems that can improve the security and traceability of legal transactions. Such innovations, if implemented properly, can significantly reduce the risk of forgery or misuse of legal documents.

CONCLUSION

Based on the research results and discussion, the following conclusions can be drawn:

1. Covernote in the process of providing credit by banks functions as a temporary guarantee and an instrument to accelerate credit disbursement. Legally, a covernote has the status of a certificate issued by a notary, although it does not have the same legal force as a notarial deed. Its function is to bridge the delay in issuing official documents such as mortgage or fiduciary certificates, thus allowing the bank to disburse credit before all formal requirements are met. Although it does not have executorial power, a covernote still has legal value as evidence of an ongoing legal process and the notary's commitment to completing the required documents.
2. The authority of a notary to make a cover note for credit disbursement at a bank is not explicitly regulated. However, this practice can be associated with several provisions in the UUJN, especially Article 15 paragraph (1) which gives the notary the authority to make authentic deeds regarding all acts, agreements, and determinations required by laws and/or desired by the interested party. In addition, Article 15 paragraph (2) letter e gives the notary the authority to provide legal counseling in connection with the making of deeds, which can be interpreted to include providing information in the form of a cover note. Article 16 paragraph (1) letter a is also relevant, because it requires the notary to act in a trustworthy, honest, fair, independent, impartial manner, and to protect the interests of the parties involved in the legal act, principles that must be applied in making a cover note. Although there is no article that specifically regulates cover notes, the practice of making them by a notary can be considered as part of the implementation of the notary's general authority in providing legal certainty and serving the interests of the community, especially in banking transactions.
3. The legal consequences of a notary's covernote in the process of granting credit by a bank can be very serious and have wide-ranging impacts. If the covernote is not in accordance with the facts or is misleading, this can result in the disbursement of credit that should not have been approved, cause financial losses to the bank, and potentially harm state finances if it involves a state-owned bank. From a legal perspective, notaries can face criminal sanctions (including imprisonment and fines) if proven to be involved in corruption or fraud. Administratively, notaries risk losing their license to practice. In a civil context, notaries can be sued on the basis of unlawful acts. More broadly, cases like this can reduce public trust in the notary profession and the banking system, and have the potential to trigger regulatory changes in notarial practices and bank credit procedures.

REFERENCES

- No. 30 Tahun 2004 Tentang Jabatan Notaris. Bandung: Refika Aditama.
- (2008). Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik. Bandung: Refika Aditama.
- (2009). Meneropong Khazanah Notaris dan PPAT Indonesia. Bandung: Citra Aditya Bakti.
- (2009). Sekilas Dunia Notaris & PPAT Indonesia. Bandung: Mandar Maju.
- Anshori, Abdul Ghofur. (2009). Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika. Yogyakarta: UII Press.
- Bahsan, M. (2018). Hukum Jaminan Dan Jaminan Kredit Perbankan Indonesia. Jakarta: PT. RajaGrafindo Persada.
- Budiono, Herlien. (2007). Notaris dan Kode Etiknya. Medan: Upgrading & Refreshing Course Nasional Ikatan Notaris Indonesia.
- Bungin, Burhan. (2009). Penelitian Kualitatif : Komunikasi, Ekonomi, Kebijakan Publik, dan Ilmu Sosial Lainnya. Jakarta: Kencana.



- Cahyadi, Antonius dan Manullang, E. Fernando M. (2014). Pengantar Ke Filsafat Hukum. Jakarta: Kencana Prenada Media Group.
- Darus, M Luthfan Hadi. (2017). Hukum Notariat dan Tanggungjawab Jabatan Notaris. Yogyakarta: UII Pres.
- Fuady, Munir. (2014). Teori-teori Besar Dalam Hukum: Grand Theory. Jakarta: Prenada Media.
- Gajali, Djoni S. dan Usman, Rachmadi. (2012). Hukum Perbankan. Jakarta: Sinar Grafika.
- Hajar M. (2015). Model-Model Pendekatan Dalam Penelitian Hukum dan Fiqh. Pekanbaru: UIN Suska Riau.
- Harris, Freddy dan Helena, Leny. (2017). Notaris Indonesia. Jakarta: Lintas Cetak Djaja.
- Herdiansyah, Haris. (2010). Metode Penelitian Kualitatif untuk Ilmu-ilmu Sosial. Jakarta: Salemba Humanika.
- Hermansyah. (2019). Hukum Perbankan Nasional Indonesia. Jakarta: Prenada Media.
- HS, Salim dan Nurbani, Erlies Septiana. (2015). Penerapan Teori Hukum Pada Penelitian Disertasi dan Tesis, Buku Kedua. Jakarta: Raja Grafindo Persada.
- Koesoemawati, Ira dan Rijan, Yunirman. (2009). Ke Notaris, Mengenal Profesi Notaris, Memahami Praktik Kenotariatan, Ragam Dokumen Penting yang diurus Notaris, Tips agar tidak tertipu Notaris. Jakarta: Raih Asa Sukses.
- Lubis, Suhwardi K. (2013). Etika Profesi Hukum. Jakarta: Sinar Grafika.
- Manullang, E. Fernando M. (2017). Legisme, Legalitas, dan Kepastian Hukum. Jakarta: Kencana Prenada Media.
- Margono. (2021). Asas Keadilan, Kemanfaatan dan Kepastian Hukum dalam Putusan Hakim. Jakarta: Sinar Grafika.
- Marzuki, Peter Mahmud. (2010). Penelitian Hukum. Jakarta: UI Press.
- , (2020). Teori hukum. Jakarta: Prenada Media.
- Mertokusumo, Sudikno. (2014). Mengenal Hukum Suatu Pengantar. Yogyakarta: Liberty.
- Mochtar, Zainal Arifin dan Hiariej, Eddy O.S. (2021). Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum. Jakarta: Rajawali Pers.
- Muhammad, Abdulkadir. (2004). Hukum dan Penelitian Hukum. Bandung: PT. Citra Aditya Bakti.
- , (2006). Etika Profesi Hukum. Bandung: Citra Aditya Bakti.
- , (2012). Hukum Perdata Indonesia. Bandung: Citra Aditya Bakti.
- Nachrawi, Gunawan dan Agung, I Gusti Agung Ngurah. (2020). Teori Hukum. Bandung: CV Cendekia Press.
- Notodisoerjo, Soegondo. (2002). Hukum Notariat di Indonesia Suatu Penjelasan. Jakarta: Raja Grafindo Persada.
- Pandu, Yudha. (2009). Himpunan Peraturan Perundang-undangan Jabatan Notaris dan PPAT. Jakarta: Indonesia Legal Center Publishing.
- Prajitno, A.A. Andi. (2000). Apa dan Siapa Notaris Di Indonesia. Jakarta: PNM.
- Pramudya, Kelik dan Widiatmoko, Ananto. (2010). Pedoman Etika Profesi Aparat Hukum. Jakarta: Pustaka Yustisia.
- Purba, Hasim dan Purba, Muhammad Hadyan Yunhas. (2019). Dasar-Dasar Pengetahuan Ilmu Hukum. Jakarta: Sinar Grafika.
- Purnamasari, Irma Devita. (2011). Panduan Lengkap Hukum Praktis Populer: Kiat-Kiat Cerdas, Mudah, dan Bijak Memahami Masalah Hukum Jaminan Perbankan. Bandung: Kaifa.
- Santoso, Urip. (2010). Pendaftaran dan Peralihan Hak atas Tanah. Jakarta: Kencana.
- Saputro, Anke Dwi. (2008). Jati Diri Notaris Indonesia Dulu, Sekarang, dan di Masa Datang. Jakarta: Gramedia Pustaka.
- Sjaifurrachman dan Adjie, Habib. (2011). Aspek Pertanggung Jawaban Notaris Dalam Pembuatan Akta. Bandung: CV Mandar Maju.
- Soekanto, Soerjono. (2014). Pengantar Penelitian Hukum. Jakarta: UI Press.
- Sugiyono. (2016). Metode Penelitian Kuantitatif Kualitatif. Jakarta: Alfabeta.
- Sulihandari, Hartanti dan Rifiani, Nisya. (2013). Prinsip-Prinsip Dasar Profesi Notaris. Jakarta Timur: Dunia Cerdas.

Legal Power of Covernotes Made by Notaries in Granting Credit by Banks

Tripetra Yokhanan Tarigan, Suprayitno, Rosnidar Sembiring, Agus Armaini RY, Doddy Safnul

- Sumaryono, Eugenius. (2008). *Etika Profesi Hukum (Norma-Norma Bagi Penegak Hukum)*. Yogyakarta: Kanisius.
- Surya, Achmad, dkk. (2020). *Teori Hukum: "Sejarah, Hakikat, Makna dan Hubungannya Dengan Moral"*. Bandung: Widina Bhakti Persada.
- Susanti, Dyah Ochtorina dan Efendi, A'an. (2015). *Penelitian Hukum (Legal Research)*. Jakarta: Sinar Grafika.
- Untung, Budi. (2019). *Kredit Perbankan Di Indonesia*. Yogyakarta: ANDI.
- Wiratna. (2017). *Metode Penelitian*. Yogyakarta: PT.Pustaka Baru.
- Zed, Mestika. (2008). *Metode Penelitian Kepustakaan, Ed. Ke-2*. Jakarta: Yayasan Obor Indonesia.
- Akbar, Abiandri Fikri. (2021). "Peran Dan Tanggung Jawab Notaris Dalam Pembuatan Akta Perjanjian Dalam Bahasa Asing Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Jabatan Notaris". *Palar (Pakuan Law Review)*, Volume 07, Nomor 02, Juli-Desember 2021.
- Adjie, Habib. (2005). "Undang-Undang Jabatan Notaris (UUJN) Sebagai Unifikasi Hukum Pengaturan Notaris". *RENOVI*, Nomor 28. Th. III, 3 September 2005.
- Gusti, Nugraha Pratama Septiansyah, (2023). "Peran Covernote Notaris Sebagai Dasar Pencairan Kredit Oleh Bank", *Jurnal Education and development*, Vol.11 No.1.
- Kusumawati, Lanny. (2017). "Kajian Yuridis Terhadap Penggunaan Covernote Notaris Pada Perjanjian Kredit Perbankan". *Repertorium*, Vol. 4, No. 2.
- Mido, M. (2017). "Tanggung Jawab Notaris Dalam Pembuatan Covernote". *Jurnal Hukum dan Kenotariatan*, Vol. 1, No. 1.
- Pradnyasari, Gusti Ayu Putu Wulan. (2018). "Kedudukan Hukum Covernote Notaris Terhadap Perlindungan Hukum Bank dalam Perjanjian Kredit". *Acta Comitas : Jurnal Hukum Kenotariatan*, Vol. 3, No. 3, Desember 2018.
- Untono, Aurn Drake. (2023). "Kekuatan Hukum Covernote Oleh Notaris Sebagai Syarat Pencairan Kredit Bank". *Jurnal Education and development*, Vol.11, No.1, Edisi Januari 2023.
- Wijaya, I Gede Arya. (2019). "Kekuatan Hukum Covernote Notaris sebagai Produk Hukum Notaris". *Acta Comitas : Jurnal Hukum Kenotariatan*, Vol. 4, No. 1, April 2019.
- Winarso, Ratih Puspitasari. (2020). "Kekuatan Hukum Cover Note Yang Dibuat Oleh Notaris Berkaitan Dengan Prinsip-Prinsip Pemberian Kredit Di PT Bank Bni Cabang Pare-Pare (Studi Kasus Putusan Pengadilan Tinggi Makassar Nomor 49/PID.SUS.TPK/2018/PT.MKS)". *Indonesian Notary*, Vol. 2, Article 19.
- Kitab Undang-Undang Hukum Perdata.
- Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Jabatan Notaris.
- Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan.
- Peraturan Pemerintah Nomor 24 Tahun 2016 tentang Perubahan Atas Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.