

PERSPECTIVE ON LEGAL CERTAINTY OF COVERNOTE MAKING BY A NOTARY TO REALIZE HIS INDEPENDENCE AS A GENERAL OFFICIAL IN CREDIT AGREEMENTS IN BANKING INSTITUTIONS

I Kadek Hery Cahyadi^{1*}

^{*1}Universitas Muhammadiyah Sumatera Utara
(email: kadekherycahyadi@gmail.com)

Abstract: In general, the collateral used as collateral is in the form of land and/or house certificates. Collateral used as collateral in a credit agreement must be checked first by the bank. Usually, when checking credit guarantees, banks require the assistance of a notary. The role and function of a Notary is very important in helping the government and the public who need Notary services to provide certainty, order and legal protection, which can be made in the form of an authentic deed. A covernote is a closing note that is used as a "temporary" guarantee as proof that someone is guaranteed what has been created before him until it is finished, so once the matter is finished, it means that the covernote has no meaning. The covernote emerged because it started with a credit agreement, where credit guarantees as collateral for the material used as collateral did not yet exist. So the covernote issued by the Notary is used as temporary collateral by the debtor so that the creditor can issue credit loan funds to the debtor.

Keywords: Legal Certainty, Covernote, Notary.

Introduction

As time goes by, the needs of today's society cannot be separated from the legal aspect, and demands for the provision of legal services are also increasing. Currently, society has abandoned legal acts in the form of agreements based on mutual trust in one another. However, currently the agreements made by the community lead to validity that meets formal requirements in accordance with applicable laws and regulations (Cipto Soenaryo, 2022).

These formal requirements are created in the form of law, which aims to regulate the order of society's life so that it is in accordance with applicable rules, morals and norms. So that order, justice, certainty can be maintained, and crime can be prevented, and the law also aims to realize community welfare. In realizing this prosperity, the community is expected to increase economic income. Community economic growth can be increased through employment opportunities and other businesses aimed at increasing a decent income, because from a decent income the family's needs can be met properly.

One of the efforts to obtain a decent income can be done through entrepreneurship, which is supported by good capital. To obtain this capital, banking institutions are one of the financial institutions that have a strategic role in a country's economy. Banking has the main function as an intermediation institution, namely collecting funds from the public and channeling them effectively and efficiently to real sectors to drive development and stability of the country's economy. Banking as an institution that collects funds from the public is explained in Article 1 number 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (UUP), stating that banks are: "Business entities that collect funds

from the public in form of savings and distribute them to the community in the form of credit and/or other forms in order to improve the standard of living of many people."

Banks are financial institutions that function as depositors of funds, distributors of funds, and provide other banking services (Ismail, 2011). Distribution of funds to people in need is usually in the form of credit and/or other forms in order to improve the standard of living of many people, in order to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Article 4 of the UUP states that; "Indonesian banking aims to support the implementation of national development in order to increase equality, economic growth and national stability towards improving the welfare of the people at large." Banking acts as an instrument to create stability and maintain balance in macroeconomic conditions. The most dominant thing banks do in maintaining economic balance is lending. Providing credit aims to help people obtain additional business capital. Through credit activities and various services provided, banks serve financing needs and streamline payment system mechanisms for all economic sectors. Article 1 number 11 of the UUP explains that; "credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest."

Banks in providing credit must implement the principle of prudence as regulated in Article 8 paragraph (1) of the UUP which confirms that in providing credit or financing based on sharia principles, commercial banks must have confidence based on in-depth analysis or the intentions and capabilities and capabilities of the Debtor Customer. to pay off the debt or return the financing as agreed. This confidence is obtained from the results of assessing the credit application before the credit is granted. Assessment of credit applications carried out by banks can be carried out in various ways through analysis of the 5C's Principles, namely character, capacity, capital, condition of economy, collateral (Rachmat Firdaus dan Maya Ariyanti, 2004).

Credit analysis based on the 5C principles will help banks minimize bank losses due to lending. Apart from being known as the 5C principles, there are also the 4P and 3R principles. The 4P principles include personality, purpose, prospect, and payment. The 3R principles include returns, repayment and risk bearing ability. These three principles are always used as guidelines for banks when deciding on credit agreements (Dewi Rachmayani dan Agus Suwandono, 2017).

Credit as one of the bank's business activities certainly has high risks for the bank. To provide assurance of credit repayment from debtor customers, banks always ask for special guarantees or collateral. A special guarantee is a guarantee in the form of a special appointment or delivery of certain goods, as a guarantee for the repayment of the debtor's obligations/debts to a certain creditor, which only applies to that particular creditor. Firdaus and Ariyanti stated that collateral is property belonging to the debtor which will be tied up as collateral in the event of the debtor customer's inability to settle their debt in accordance with the credit agreement. In general, the collateral used as collateral is in the form of land and/or house certificates. Collateral used as collateral in a credit agreement must be checked first by the bank. Usually, when checking credit guarantees, banks require the assistance of a notary. The role and function of a Notary is very important in helping the government and society who need Notary services to provide certainty, order and legal protection, which can be made in the form of an authentic deed.

Literature Review

1. *Covernote* Notaris

Legal certainty requires objective and trustworthy services so that rights and obligations can be guaranteed and fulfill the elements of justice. One of the legal uncertainties that can be encountered in the banking world or in the practice of making deeds by notaries is the issuance of a certificate or what is usually called a *covernote*. A certificate issued by a notary or notary *covernote* is a statement document made by a notary as proof of the management of a land certificate deed or other deed that is in the process of being renovated, changing the name of land ownership, or splitting a land certificate into two certificates and so on. However, in the processing process the notary has not been able to complete it, while the client, in this case the owner of the certificate or deed, wants to use it as collateral for a credit loan at the bank by using a mortgage.

To speed up the credit disbursement process, the bank requests a *Covernote* from the notary concerned as a guarantee that the certificate will be completed within the specified time period in accordance with the contents of the notary's *Covernote*. The *covernote* is used as a substitute for the lack of proof of collateral, due to necessity and is only temporary evidence until the notary completes the land ownership deed which is in process with the bank. The role, function and position of *Covernote* are not regulated in statutory regulatory instruments, especially in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries.

Covernotes in the banking world have become customary law and are considered to have binding force between the parties. *Covernotes* are used as temporary collateral in the credit disbursement process. In fact, there is a legal vacuum in its implementation, because it is not regulated in statutory regulations and is not included in notary legal products. The practice of using *Covernotes* as evidence of temporary collateral is a practice without being based on a legal instrument or it can be said that there has been a legal vacuum in the implementation of *Covernotes*.

Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

1. Kedudukan Notaris Sebagai Pejabat Umum dalam Perjanjian Kredit

Notaries are public officials whose position is very much needed by society in carrying out legal acts, therefore the position of notaries becomes increasingly important in society. The existence of a Notary as a public official who has the authority to make authentic deeds as confirmed in Article 1868 of the Civil Code, that; "An authentic deed is a deed in a form determined by law, made in the presence of public servants who have authority for that purpose in the place where the deed is made." Furthermore, Article 1 number 7 of Law Number 2 of

2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (UUJN-P) determines; "a notarial deed is a deed made by or before a Notary in accordance with the form and procedures stipulated in this law."

Herlien Budiono said that Article 1868 of the Civil Code does not explain who is meant by a public employee/official and what the form of an authentic deed is. However, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries appoints Notaries as public officials and provides the basis and procedures for making authentic deeds (Herlien Budiono, 2013).

A Notary can hold the same position as a Land Deed Drafting Officer (PPAT), because the position of Notary and PPAT are like two currencies, different but inseparable, and these positions are related to each other. Article 1 number 1 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Officials Making Land Deeds explains that PPAT is a general official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.

To create valid and strong evidence, one of them is made in the form of an authentic deed which is valid written evidence. An authentic deed is also a perfect piece of evidence, having a legal relationship in people's lives, both in the banking sector, social sector and in the economic sector which requires written evidence in the form of an authentic deed. This develops because every legal relationship interaction carried out by society requires legal certainty. Subekti said that an authentic deed is a deed made by or in the presence of a public official who according to law is assigned to make these deeds, while a private deed is any deed that is not made by or with the intermediary of a public official (Subekti, 1991).

An authentic deed is a deed made in the form determined by law by and before an official authorized to make it, where the truth of the things written therein is deemed to be true as long as no other party can prove the truth to the contrary. In general, an authentic deed is made by and before a Notary and/or PPAT regarding a legal act related to an agreement and transfer of land rights, because this is within the authority of the Notary and PPAT. Apart from that, the Notary's authority is to issue letters for administrative purposes and correspondence, such as covernotes, report letters regarding testamentary information to the Ministry of Law and Human Rights, and so on..

2. Use of Covernotes in Credit Agreements

In practice, a statement letter (covernote) is usually made for credit purposes. Where the credit agreement deed made by a Notary is an instrument that binds creditors and debtors. After a credit agreement is made and signed between the creditor and debtor, the creditor usually asks the Notary to make a covernote (Tri Jata Ayu Premesti, 2022).

To speed up the credit disbursement process, the bank requests a covernote from the Notary concerned as a guarantee that the certificate will be completed within the specified time period in accordance with the contents of the Notary's covernote. The covernote is used as a substitute for the lack of proof of guarantee. Because there is a need and it is also only temporary evidence until the Notary completes the land ownership deed which is in process with the bank.

The covernote is actually a statement made by a Notary who is also the Official Land Deed Maker, but the covernote is not included in authentic deed instruments or private deeds. Based on the form and procedures for making authentic deeds and private deeds, covernotes are not included in the classification of these deeds. Covernotes made by a Notary are included in the classification of official deeds, because the covernotes are made and explained by the Notary. Juridically, there is no single rule that states that a covernote is an authentic deed made by or before a Notary, and it is also not a private deed because the covernote is made by a Notary

based on the request of creditors and debtors. So the covernote leads to a relationship of engagement or agreement between the parties who are related to each other.

The role, function and position of covernotes are not regulated in statutory regulatory instruments, especially in UUJN-P. So it is necessary to question and analyze the legal strength of the creation and application of covernotes made by Notaries as temporary collateral to banks. Likewise, the authority of a Notary in making covernotes, because there are no regulations governing the authority of Notaries in making covernotes, then if things that violate the law occur from the application of the covernote, what is the Notary's responsibility for the covernote he makes, and what is the legal certainty of covernote which is used as temporary collateral in banking.

Irma Devita Purnamasari explained that the link between a deed made by a Notary and a banking contract must provide legal certainty regarding a legal event. The deed must comply with the provisions of the law regarding the types of deeds that must be made using a notarial deed, such as binding guarantees (mortgage rights, fiduciary rights, pawns, mortgages), transfer of land rights, deeds relating to legal entities.

A covernote is a closing note that is used as a "temporary" guarantee as proof that someone is guaranteed what has been created before him until it is finished, so once the matter is finished, it means that the covernote has no meaning. The covernote emerged because it started with a credit agreement, where credit guarantees as collateral for the material used as collateral did not yet exist. So the covernote issued by the Notary is used as temporary collateral by the debtor so that the creditor can issue credit loan funds to the debtor. Credit is based on an agreement, as explained in Article 1313 of the Civil Code, that an agreement is an act in which one or more people bind themselves to one or more other people. Therefore, in its implementation, covernotes must pay attention to the legal requirements of agreements and engagements. Covernotes can be categorized as an engagement that arises because of an agreement and not because of law. Article 1233 of the Civil Code explains that "every agreement is created either because of an agreement (agreement) or because of law".

The obligation that arises as a complementary tool is due to a lack of proof of collateral needed by the debtor to apply for credit to the creditor, so this forces the bank to ask for collateral from a notary. This is classified in the form of an agreement, that the Notary must be able to complete the management of material guarantees, the administrative documents of which are still in process, and must be completed within the time period specified in the agreement. A statement (covernote) containing the agreement is something that is usually made by a Notary. Because the statement (covernote) was made at the request of the banking or other financial institution. There is no legal umbrella for this habit of making covernotes. However, current legal developments and advances require everything to be faster, more effective and easier. So there is a need for legal certainty in every interaction between two or more parties. This requires the state to always prioritize law as the basis for all activities of the state and society.

Conclusion

A covernote is a closing note that is used as a "temporary" guarantee as proof that someone is guaranteed what has been created before him until it is finished, so once the matter is finished, it means that the covernote has no meaning. The covernote emerged because it started with a credit agreement, where credit guarantees as collateral for the material used as collateral did not yet exist. So the covernote issued by the Notary is used as temporary collateral by the debtor so that the creditor can issue credit loan funds to the debtor.

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