

Position Of Covernote In Fulfilling The Requirements Of A Credit Agreement In Banking

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ABSTRACT

The role and function of Notary-PPAT is very important in assisting the government, especially the banking sector, or other parties who need the presence of a Notary to be able to provide certainty, order, and legal protection in legal acts that are stated in authentic deeds. In addition to authentic deeds and private letters made by Notaries, there is one type of letter that seems to be a Notary's legal product that is often requested by banks to be made and issued in order to guarantee a legal act of the interested parties, namely a statement letter used as a temporary guarantee called a covernote. The position of the covernote in fulfilling the requirements of the credit agreement in banking becomes a complement if there is a process that has not been completed on the credit guarantee, the creditor (bank) asks the Notary-PPAT to make and issue a covernote, although the covernote is not part of the process for making a deed of encumbrance of rights. The covernote is proof of the binding of the guarantee and/or temporary hold for the bank in disbursing the credit. At the request of the bank, the Notary-PPAT makes and issues a covernote because the administration of the binding of the guarantee at the land office by the Notary-PPAT has not been completed.

Keywords: Covernote, The Requirements, Credit Agreement.

A. Introduction

Banking institutions as one of the financial institutions have a strategic role in a country's economy. This important role is to support the development process and maintain economic stability for the country. Banking has a primary function as an intermediary institution, namely collecting funds from the community and distributing them effectively and efficiently to real sectors to drive development and the stability of the country's economy.¹

¹ Dewi Rachmayani dan Agus Suwandono, "Covernote Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan", *Acta Diurnal; Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad*, Vol. 1, No. 1 (Desember 2017), hlm. 74

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), which states that a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of the people. A bank is a financial institution that functions as a fund custodian, fund distributor, and provides other banking services. The 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 the people, in order to achieve a just and prosperous society based on the Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

Credit as one of the bank's business activities certainly has a high risk for the bank. To provide a guarantee of certainty of credit repayment from debtor customers, banks always ask for special collateral or guarantees. Special collateral is collateral in the form of a specific designation or delivery of goods, as collateral for the settlement of the debtor's obligations/debts to certain creditors, which only applies to certain creditors. Collateral used as collateral in a credit agreement must be checked first by the bank. Usually, the bank requires assistance from a Notary in checking credit collateral. The role and function of a Notary are very important in assisting the government and the community who need Notary services to provide certainty, order, and legal protection, which can be made in the form of an authentic deed.

A Notary can hold a concurrent position as a Land Deed Making Officer (PPAT), because the position of Notary and PPAT are like two sides of the same coin, different but inseparable, and the 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 the Regulation on the Position of Land Deed Making Officer explains that PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land

rights or ownership rights to apartment units. It can also be said that a Notary is a public official who is authorized to make authentic deeds regarding an act, agreement and determination that is required by a general regulation or by an interested party to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide grosse, copies and excerpts, all as long as the making of the deed by a general regulation is not also assigned or excluded to other officials or people.²

The role and function of Notary-PPAT is very important in assisting the government, especially the banking sector, or other parties who need the presence of a Notary to be able to provide certainty, order, and legal protection in legal acts that are stated in authentic deeds. In addition to authentic deeds and private letters made by Notaries, there is one type of letter that seems to be a Notary's legal product that is often requested by banks to be made and issued in order to guarantee a legal act of the interested parties, namely a statement letter used as a temporary guarantee called a covernote.

B. Research Methods

Legal research is a series of systematic mechanisms in conducting research.³ In this case, legal research is conducted to find solutions and answers to a problem that has been determined in the legal issue that is used as the object of research. The research method used to answer the problem. This research is a type of normative legal research.⁴ This study uses secondary data sources. Secondary data sources, This research data consists of secondary data. Secondary data is data obtained from literature studies that are relevant to this study. Secondary data is "data sourced from literature studies (library research) related to publications, namely library data listed in official documents.

C. Analysis And Discussion

² G.H.S Lumban Tobing, *Peraturan Jabatan Notaris* (Jakarta: Erlangga, 1991), hlm. 31

³ Abdulkadir Muhammad. *Hukum dan Penelitian Hukum*. Cetakan I. (Bandung: Citra Aditya Bakti, 2004), hlm. 57.

⁴ Jhonny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*. (Malang: Bayumedia Publishing, 2008), hlm. 47

In making a bank credit agreement deed, the role of a Notary is very important, where the Notary as a public official is required to act professionally, one of which is to bridge the interests of creditors and debtors in making a credit agreement deed. However, in reality, this professional attitude is faced with the demands of the banking world, namely the efficiency of banking procedures and security in providing credit, so that in practice banking institutions tend to use standard agreements in their credit agreements.⁵

A standard agreement is a form of agreement that has been provided by the bank as a creditor, while the debtor only studies and understands it well. Such an agreement is usually called a standard contract, where in the agreement the debtor is only in a position to accept or reject without any possibility of negotiating or bargaining. Herlien Budiono said that bank credit agreements are generally made in written form and in the form of standard agreements, this agreement can be made with a private deed or an authentic deed. Various steps to facilitate the implementation of making documents related to credit in this case with an authentic deed, the bank appoints a notary as a partner.⁶

The credit agreement deed made by a Notary can provide legal protection or legal certainty for both, legal certainty is one of the essential principles because in the law of agreements everyone is given the freedom to promise anything and with anyone in this case banking and customers. So it can be said what does it mean for the legislators to give everyone the freedom to enter into an agreement if the law of agreement itself does not contain legal certainty, however, this does not mean that legal certainty only exists in the law of agreements, but also in law in general. Legal certainty must be absolute in a legal system.

⁵ Mariah Kamelia dan Anis Mashdurohatun, "Peran Notaris Dalam Pembuatan Akta Perjanjian Kredit Dalam Perspektif Hukum Positif dan Hukum Islam", *Jurnal Akta*, Vol. 4, No. 4 (Desember 2017), hlm. 577.

⁶ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan* (Bandung: Citra Aditya Bakti, 2015). Lihat juga Asuan dan Susi Yanuarsari, "Kontribusi Jabatan Notaris dalam Perjanjian Kredit Bank", *Jurnal Solusi*, Vol. 20, No. 3 (September 2022), hlm. 388- 389.

In banking practice, all banks have implemented the use of standard contracts where the agreement is made in written form and the contents have been determined unilaterally by the creditor, and its nature is to force the debtor to agree. This is done by the creditor so that the creditor does not have difficulty remembering the entire contents of the agreement. The debtor is only asked for an opinion on whether to agree to the offers and can fulfill all the requirements specified in the agreement or not. After this has been agreed, the credit agreement can be made with an authentic deed by a Notary.

The bank in this case acts as a creditor or credit provider. The reason for issuing the covernote is because the Notary has not been able to complete the work he has done related to his authority and duties in issuing an authentic deed. In cases that often occur in the practice of providing collateral with mortgage rights in credit agreements, this occurs due to the existence of collateral in the form of a plot of land whose ownership is still in the form of a seal, girik, or petok in the name of the prospective debtor customer. In this case, the Notary states that he is able to assist the bank and prospective debtor customers in the process of registering land rights until the issuance of the Ownership Certificate (SHM) and binding the collateral with mortgage rights until the issuance of the mortgage certificate. As proof of this ability, the Notary usually issues a covernote as an effective condition for the disbursement of credit in the credit agreement.

Covernote made by a Notary as a statement of the Notary's ability to carry out the process of imposing a guarantee on what type of credit will be given by the bank, which includes things such as an agreement has been signed between the bank and the debtor, collateral has been given from the debtor to the bank as a creditor, a power of attorney deed has been signed to charge HT or a deed of granting HT, all of which are still in process through the Notary partner of the bank concerned.

D. Conclusion

The position of the covernote in fulfilling the requirements of the credit agreement in banking becomes a complement if there is a process that has not been completed on the credit guarantee, the creditor (bank) asks the Notary-PPAT to make and issue a covernote, although the covernote is not part of the process for making a deed of encumbrance of rights. The covernote is proof of the binding of the guarantee and/or temporary hold for the bank in disbursing the credit. At the request of the bank, the Notary-PPAT makes and issues a covernote because the administration of the binding of the guarantee at the land office by the Notary-PPAT has not been completed.

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