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# Juridical Implications of the Issuance of Covernotes by A Notary as Basis of Disbursing Credit of Banking

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*ABSTRACT*

*Notaries have the authority to make authentic deeds, apart from that notaries can also sometimes issue certificates or commonly known as covernotes. The legal consequences and limitations of liability for publishing a covernote in this case are examined. On what basis is the covernote used as the basis for credit disbursement? Because in this case it could have implications for the notary who will be involved in a legal case involving the covernote he published. The aim of writing this article is to find out, reveal and find out the notary's impression regarding the covernote he publishes. This writing uses a normative juridical approach, using primary and secondary legal sources. Primary legal materials are obtained from statutory regulations and secondary legal materials are obtained from library materials, archives and documents related to the research object. The results of the discussion show that the juridical application of covernotes is not a notarial legal product as regulated in the Law on the Position of Notaries, but is only a certificate issued at the request of the parties so that it does not give rise to rights and obligations for the parties. The covernote is a pure form of trust and moral bond from the creditor towards the notary as a public official who is neutral, independent and impartial in helping the public to support business relations transactions in the era of competitive economic development. Responsibility for the information in the covernote is the personal responsibility of the notary.*

***KEYWORDS**: Notary, Covernote, Legal Consequences.*



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## I. INTRODUCTION

Notaries have the authority to make authentic deeds, apart from that notaries can also sometimes issue certificates or commonly known as covernotes. The phenomenon of several notaries being involved in legal problems recently, such as legal cases involving notary covernotes, has resulted in notaries being involved in legal cases. This shows that it is still

unclear what the actual position of covernotes is and what the limits of the notary's responsibilities are regarding the covernotes they publish. This will cause further concern for the notary in carrying out his duties because at any time the notary can be sued by the parties, there is even the possibility of being criminally prosecuted.

Makassar District Court Decision Number 112/Pid.Sus.TPK/2017/PN Mks is an example of a Notary being criminally prosecuted. This case involved the name of Notary HJ as the notary who issued the covernote in the case of bad credit at Bank BNI Pare-pare Branch with PT. GMG. Notary HJ was criminally charged because he was declared to have committed a criminal act of corruption, namely because he had published a covernote, where according to the banking sector, the presence of a covernote in disbursing credit was in accordance with the SOP so that the credit could be disbursed. So then, Notary HJ was assessed by the panel of judges as not having carefully examined the documents, data and letters submitted to him and made the covernote requested by the parties.

In the verdict, the notary was not found guilty of committing a Corruption Crime as in the Primary Indictment, however in the Subsidiary Indictment Notary HJ was declared to have been legally and convincingly proven guilty of committing a Corruption Crime jointly and was sentenced to imprisonment for 2 ( two) years and a fine of Rp. 50,000,000.- (Fifty Million Rupiah) with the provisions that if the fine is not paid it will be replaced by imprisonment for 1 (one) month and the HJ Notary must pay a court fee of Rp. 5,000,- (five thousand rupiah).

There were also notaries who were sued for unlawful acts because of the covernotes they published. In the case of Banyuwangi District Court Decision Number 253/Pdt.G/2020/PN Byw, the lawsuit against the law against the Notary/PPAT was related to the processing of collateral for land rights by the person concerned. It is known that in connection with the credit guarantee registration process, in the process the Notary/PPAT SK is asked to issue a covernote. Then the bank disburses the credit first by holding on to the covernote. However, here there is credit arrears by the debtor, while the existence of the object of collateral is still unclear. One of the contents of the decision is that the Notary/PPAT SK was decided by the Panel of Judges to have committed an unlawful act which was detrimental to the plaintiff and was punished jointly and severally.

Based on the description of the case above, the issuance of a covernote by a notary is considered to have its own consequences and consequences, where usually it is to carry out a legal action so that if there is a problem, sometimes involving a notary, they can be sued or sued for the covernote they made. So here the covernote created and issued by the notary creates legal uncertainty regarding the legality and limitations of the notary's responsibilities because there is a vacuum of norms relating to the issuance of the covernote by the notary.

Based on the problems described above, the authors formulate the problems in this article, namely: 1). What are the Juridical Implications of publishing a covernote by a notary?; 2). What are the responsibilities of a notary publishing a covernote?

## II. METHODOLOGY

The research method in this article is normative juridical, carried out by analyzing formal legal materials such as statutory regulations, theoretical references related to the legal issues discussed and then relating them to the legal issues of this research.[1] This type of normative juridical research includes legal principles, namely research on written positive law or research on living legal principles so that it can analyze the issues being discussed, namely the disclosure of the covernote by a notary. This writing uses a regulatory-legislative approach and a contextual approach. The legal materials used come from regulations, books related to the problems in this writing, articles and other legal research.

## III. JURIDICAL IMPLICATIONS OF INSSUANCE COVERNOTE BY NOTARY

A notary is a public official who has the authority to make authentic deeds and has authority. [2] Otherwise in accordance with what is contained in the Law on Positions. Notary, or in other laws, this definition is formulated in Article 1 number (1) of the Law on the Position of Notaries. This definition is in accordance with Article 1 number (4) of the Code. Notary Ethics reaffirms that. A notary is a person who carries out and carries out official duties as an official as contained in the Law on the Position of Notaries. According to Habib Adjie as quoted in Ida Bagus[3], Indonesian notarial regulations are accommodated in the Position Law. Notary Public. So that when carrying out their official duties, the Notary provides services to the community. To the best of your ability and must behave professionally according to the standard corridors of the position Position Law Notary Public.

Based on the general explanation of the Law on the Position of Notaries, it is stated that to guarantee legal certainty, order and protection, authentic written evidence is needed regarding deeds, agreements, determinations and legal events made before or by authorized officials.[4] Where the authorized official is a notary as a public official who carries out his profession to provide legal services to the public.[5]

A notary has special authority, namely to confirm the wishes of the parties present before him and to put it in written form in the form of an authentic deed as a valid and absolute means of proof before the law. The authority of a notary is obtained and formulated in law Position Notary (attribution authority). This authority is as stated in Article 15 paragraph (1) of the Law Position Notary Public.

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1 Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), p. 194.

2 H. Salim HS., *Peraturan Jabatan Notaris* (Jakarta: Sinar Grafika, 2018), p. 14.

3 Ida Bagus Paramaningrat Manuaba, I Wayan Parsa, & I Gusti Ketut Ariawan, *Prinsip Kehati-Hatian Notaris Dalam Membuat Akta Autentik*, Acta Comitas: Journal of Notarial Law, Vol. 3, No. 1, (2018), p. 66.

4 Bayu Indra Permana, et.al., *Legal Certainty of Income Tax Exemption on the Transfer of Rights to Land in the Sharing of Collective Integration Rights*, International Journal of Social Science and Education Research Studies, Vol. 2. No. 11, (2022), p.13.

5 Septian Putri Nindiasari, Dominikus Rato, & Moh. Ali, *Peran Notaris dalam Perlindungan Hukum Terhadap Pihak Ketiga atas Pembuatan Perjanjian Perkawinan setelah Perkawinan Berlangsung,* Mimbar Yustitia, Vol. 6, No. 2, (2022), p. 97.

The notary is given the authority to make the relevant authentic deed, agreement as well as provisions which are required by statutory regulations and/or which are desired by the party concerned to be confirmed by the Notary in the form of an authentic deed, ensuring certainty of the date of preparation of the deed, storing the deed, providing a copy and quotation of the deed, and providing a grosse, all of which are as long as the issuance These deeds do not delegate their authority to other officials as mandated by law.

Notaries have the authority to make authentic deeds, apart from that notaries can also sometimes issue certificates or commonly known as covernotes. Based on the language dictionary English covernote comes from two syllables, namely cover and note, where cover means closed while note means note, so it can be interpreted that covernote is a sign of closing notes. In general, the Cambridge Dictionary Online states that a covernote is a closing note that is used "temporarily" as proof that someone is guaranteed what has been done before him, until it is finished, so that when the matter is finished then this covernote has no meaning, that's why it is called "temporary".[6]

The definition of covernote in the world of notary law has the meaning of a statement made by a notary who is relied on and trusted for his signature, seal and seal to guarantee the statement he has prepared at the request of the parties appearing before him.[7] Meanwhile, according to the Dictionary of the Central Bank of the Republic of Indonesia in the banking sector, a covernote is referred to as a statement note, namely a statement letter stating a situation based on a certain agreement: for example, in a credit agreement (conventional bank), financing (syariah bank), land certificate belonging to the debtor controlled by notary in the context of the name change process, if the bank agrees, a covernote certificate can be made.

Making a covernote by a notary is "as if" attached to the notary's position[8], even before the Notary Position Law was born, when Indonesian notaries were still based on:

1. *Reglement op Het Notarisambt in* Indonesia (Stb. 1860:3) as last amended in the 1945 State Gazette Number 101;
2. *Ordonantie*16 September 1931 concerning Notary Honorarium;
3. Law Number 33 of 1954 concerning Deputy Notaries and Temporary Deputy Notaries (State Gazette of 1954 Number 101, Supplement to State Gazette Number 700);
4. Article 54 of Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts (State Gazette of the Republic of Indonesia of 2004 Number 34, Supplement to State Gazette of the Republic of Indonesia Number 4379); And
5. Government Regulation Number 11 of 1949 concerning Notary Oaths/Promises.

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[6] Habib Adjie, *Memahami dan Menerapkan Covernote, Legalisasi, Waarmerking Dalam Pelaksanaan Tugas Jabatan Notari*, (Bandung: Refika Aditama, 2022), p. 3.

[7] Syafran Sofyan. *Majalah Berita Bulanan Notaris, PPAT, Pertanahan & Hukum, RENVOI, Jembatan Informasi Rekan*, RENVOI, Pekan Information Bridge (South Jakarta: Jurnal Renvoi Mediatama, 2021), p.76.

[8] In the judge's consideration of Decision Number 112/Pid.Sus.TPK/2017/PN/Mks, it is stated that as a Notary/Public Official of course he has a position or position along with the authority or facilities attached to that position or position, namely that the Defendant can issue a Deed or cover note referred to in the Public Prosecutor's indictment, namely the Covernote.

Indonesian notaries are used to making covernotes.[9] There are requirements for a notary to make a covernote[10]:

1. If the request is from the appearers, it is related to legal actions carried out before the relevant notary.
2. All data or documents from the parties or presenters are shown to the notary as complete for legal action to be taken.

That the making of a covernote by a notary is facultative, meaning that not all actions of the presenter which are made or carried out in the presence of a notary after completion must be made into a covernote. Notaries can make covernotes, among other things:[11]

1. There are requests from the presenters themselves who have taken legal action before a notary.
2. As stated by the notary at the request of the applicants, there are documents that are still in the process of being completed.

*Covernote* notary is the basis for the parties' trust in the notary's ability to process all documents, deeds, and the like. There are various examples of the use of notary certificates/covernotes, for example:[12]

1. If the debtor wants to take out credit at the bank and the item to be pledged as collateral is still in the fiduciary roya process, whereas the bank will only disburse the credit if the collateral has been completed in fiduciary roya first, then one solution is for the credit to be disbursed by the bank, namely a notary asked to issue a covernote containing information that the ownership documents for the goods are in the process of being renovated and when they have been completed they will be handed over to the bank later.
2. If a Limited Liability Company is waiting for a letter of validation as a legal entity from the Minister of Law and Human Rights of the Republic of Indonesia and the processing process is delegated to the notary's office, the notary will issue a covernote explaining that the documents are being processed at the authorized agency and when they have been completed The management will be handed over to the interested parties.

The use of notary covernotes, especially in the banking industry, is considered best practice and has been going on for a long time so it has become part of a habit.[13] Notarial covernotes are a form of custom carried out in the world of practice where their existence has not been regulated in statutory regulations and is not a legal product of notaries so that there is a legal vacuum here.[14] As a result, in making covernotes, notaries do not yet have definite guidelines on how to publish a covernote properly and correctly.

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9 Habib Adjie, Op.cit, p. 2.

10 Habib Adjie, *Kompilasi Persoalan Hukum dalam Praktek Notaris dan PPAT* (Kapita Selekta Notaris & PPAT) (1), (Bandung: Indonesia Notary Community (INC), 2016), p. 40.

11 *Ibid*.

12 Santia Dewi & RM Fauwas Diradja, *Panduan Teori &Praktik Notaris*, (Yogyakarta: Pustaka Yustisia Sleman, 2011), p. 86-87.

13 Rina Shahriyani Shahrullah & Welly Abusono Djufri, *Tinjauan Yuridis Covernote notaris/Ppat Terkait Pemasangan Hak Tanggungan Agunan Bank*, Journal of Law and Policy Transformation, Vol. 2, No. 2, (2017), p.156.

14 Misbah Imam Soleh Hadi & Bayu Indra Permana, *Konstruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris*, Jurnal Ilmu Kenotariatan, Vol. 3, No. 1, (2022), p.15.

The results of research conducted by Dwi Wahyu Juliyanto show that the problem with covernotes is that "there is not a single article in the Law on the Position of Notaries which can be interpreted as a notary's authority to issue a certificate referred to as a covernote which is problematic in itself."[15] The issue of covernotes is not regulated by law, so in this case it creates confusion regarding the legal certainty of covernotes which are usually used by banks for lending and also causes confusion regarding the legal consequences that will arise in the issuance of covernotes.

The presence of a notary is very important in people's lives. Notaries are held to provide guarantees of certainty, order and legal protection to the community regarding authentic deeds. Its existence is required by legal regulations with the aim of serving and helping people who need authentic certificates. In carrying out their professional duties, notaries must truly serve the community well so that no one will be harmed later. This is done by issuing an authentic deed which can guarantee legal certainty in society and guarantee the formal correctness of the contents of the deed which can be understood and accepted by all parties.

Recently, there have been many phenomena of notaries being involved in legal matters, such as summons by the police regarding the implementation of their official duties.[16]In this case, it can occur due to an imbalance that occurs between legal regulations or governing rules (das sollen) regarding covernotes as with the position of notary which has been regulated in the Notary Position Law, notaries are given the authority as in Article 15, and the obligations of Article 16 along with The prohibition in Article 17 does not explain that there is certainty for notaries in making covernotes. And in reality (das sein) when a notary makes a statement (covernote), there is confusion regarding the substance that will be stated in the covernote, so that it is not uncommon for some notaries to include a statement, which in principle, the content of the statement exceeds their authority as a notary.

This can trigger legal problems in the future, an example of a case involving a notary in a legal problem caused by the covernote he issued, can be seen in the legal problem in Makassar District Court Decision Number 112/Pid.Sus.TPK/2017/PN Mks is one example of a case where a notary was criminally prosecuted. This case involved the name of Notary HJ as the notary who issued the covernote in the case of bad credit at Bank BNI Pare-pare Branch with PT. GMG. Notary HJ was criminally charged because he was declared to have committed a criminal act of corruption, namely because he had published a covernote, where according to the banking sector, the presence of a covernote in disbursing credit was in accordance with the SOP so that the credit could be disbursed. While on the other hand, Notary HJ was assessed by the panel of judges as not having carefully examined the documents, data and letters submitted, and immediately agreed to make a covernote, there by failing to carry out one of his responsibilities in the contents of the covernote, namely the extension of SHGB No. 235 which is the object of collateral in this case.

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[15] Dwi Wahyu Juliyanto & Moch Najib Imanullah, *Problematika Covernote Notaris Sebagai Pegangan Bank Untuk Media Realisasi Pembiayaan / Kredit Dalam Dunia Perbankan*, Jurnal Repertorium, Vol. 5, No. 2, (2018), p. 61.

[16] Bima Yudhakusuma Putra Munandar, *Kedudukan Hukum Covernote Notaris Dalam Pembuatan Akta Kredit Perbankan Yang Mengakibatkan Terjadinya Tindak Pidana Korupsi*, Jurnal Ilmu Sosial dan Pendidikan (JISIP), Vol. 7, No. 1, (2023), p. 336.

There is no extension of the SHGB which is used as collateral for PT. GMG, then PT. BNI (Persero) Tbk SKC Parepare as a BUMN lost its rights to the guarantee and suffered a loss of Rp. 34,690,655,139.00. In the Decision, the Notary was not found guilty of committing a Corruption Crime as in the Primary Indictment, but in the Subsidiary Indictment Notary HJ was stated to have been legally and convincingly proven guilty of committing a Corruption Crime collectively and was sentenced to imprisonment for 2 ( two) years and a fine of Rp. 50,000,000.- (Fifty Million Rupiah) with the provisions that if the fine is not paid it will be replaced by imprisonment for 1 (one) month and the HJ Notary must pay a court fee of Rp. 5,000,- (five thousand rupiah).

In the case of the Makassar District Court DecisionNumber 112/Pid.Sus.TPK/2017/PN Mks credit occurred which caused losses to the state estimated at IDR.34,690,655,139.00,- so that Notary HJ was charged with a criminal act of corruption because the covernote he made was deemed to have failed in its implementation. However, in fact the covernote made by Notary HJ only explains that regarding the binding of collateral, namely in the form of SHGB which will later be tied to mortgage rights and credit binding between the debtor, namely PT GMG, and the creditor, namely PT. BNI (Persero) Tbk SKC Parepare. Apart from that, the covernote made by Notary HJ did not contain an order for the bank to disburse credit to the debtor. This is in accordance with the obligations of notaries who must act in a trustworthy, honest, thorough, independent, impartial manner and safeguard the interests of parties involved in legal actions as stated in Article 16 paragraph (1) letter a of the Law on the Position of Notaries.

Banks should not disburse credit to debtors because covernotes are not an absolute requirement for banks to disburse credit. Banks should continue to pay attention to the principles of providing credit as stated in Article 8 of the Banking Law, banks are required to have confidence based on an in-depth analysis of the debtor whether to repay the credit provided by the bank in accordance with what was agreed and the bank must still be based on the principles of providing credit.

Furthermore, in the case of Makassar District Court Decision Number 112/Pid.Sus.TPK/2017/PN Mks, Notary HJ was sentenced to subsidiary charges, namely Article 3 jo. Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes jo. Article 55 paragraph (1) of the Criminal Code, which states that Notary HJ has been legally and convincingly proven guilty of committing the crime of "Corruption" jointly and has been sentenced to imprisonment for 2 (two) years and a fine of Rp. 50,000,000.00 (fifty million rupiah) with the provision that if the defendant does not pay the fine, it will be replaced by imprisonment for 1 (one) month.

The judge's decision in the Makassar District Court Decision Number 112/Pid.Sus.TPK/2017/PN Mks which stated that Notary HJ was guilty was considered inappropriate, because Notary HJ did have the authority based on the Law on Notary Positions, including making deeds relating to agreement, in this case a credit agreement. Therefore, the debtor and creditor enter into a legal relationship of borrowing and borrowing by asking Notary HJ to complete the necessary matters relating to the credit application (making a credit agreement and arranging the binding of collateral) from the debtor (PT.

GMG) which has been approved in accordance with the disposition of the Management PT BNI Makassar area. However, it needs to be emphasized that in essence the covernote at issue here does not constitute the authority of a notary based on the Law on Notary Positions. So that it does not have the legal force of an authentic deed, and its existence cannot replace an authentic deed which can be used as a basis for following up other legal actions, in this case credit disbursement. The notary only issues a covernote because of administrative requirements requested by the bank in implementing the credit agreement deed.

Moreover, the content of the covernote created and published by Notary HJ explains that Notary HJ in his position has not been able to complete his duties due to matters or conditions that are still in the process of being resolved, not declaring or approving funds or credit disbursement which is entirely the authority of PT Bank Negara Indonesia (Persero) Tbk. SKC Pare-Pare as creditor. This is not an abuse of authority as alleged in the decision, notaries do not have the authority to issue covernotes according to the Law on Notary Positions or other regulations. The abuse of authority referred to is regarding approval for the disbursement of funds and debiting the debtor's account to pay the debtor's obligations,

One of the contents of Notary HJ's covernote that could not be implemented was related to the processing of the SHGB extension which was used as credit collateral by PT. GMG. HJ Notaries should not have the authority to extend the SHGB, but this is the authority of the National Land Agency (hereinafter abbreviated as BPN). Notary HJ has tried to process it at BPN, but there has been no follow-up by the debtor. This does not constitute negligence or lack of attention from Notary HJ in examining the collateral documents. But because BPN could not extend the SHGB because the Debtor (PT.GMG) did not pay the obligation to pay the land rent in the SHGB. So this is purely the fault of the debtor (PT.GMG) who was reluctant to fulfill the requirements for extending the SHGB which was used as collateral.

Based on this description, it can be related to the authority of a notary in carrying out his authority and the responsibilities of a notary. In this case, the covernote issued by HJ as Notary/PPAT does not abuse his authority or violate the provisions of the Law. As explained above regarding the authority and form of responsibility of notaries, there are no prohibitions regarding the creation or publication of covernotes. The covernote issued by Notary HJ does not contain an order to disburse the credit facility provided by the creditor to the debtor, but only regarding credit commitments and guarantees provided by the debtor.

Apart from that, there were also notaries who were dragged into civil lawsuits because of the covernotes they issued. In the case of Banyuwangi District Court decision Number 253/Pdt.G/2020/PN Byw, the Plaintiff is PT Bank Tabungan Negara (Persero) Tbk. (hereinafter abbreviated as BTN) sued Notary/PPAT SK (Defendant I) on the basis of an unlawful act. This case began with a Credit Agreement made by and between BTN and PT AW (Defendant II), before Notary/PPAT SK, where BTN through the Jember Branch Office agreed to provide construction credit to PT AW worth IDR 7,500,000,000.00 ( seven billion five hundred million rupiah). In connection with this credit, what is used as principal collateral is an asset in the form of land which will be renamed, merged,

So Notary/PPAT SK was asked to make covernote Number 119/SK/NOT-PPAT/V/2012 dated 31 May 2012, the contents of which explained that: "when the process of changing the name

has been completed, the certificates will be handed over to the BTN Banyuwangi Branch no later than -no later than 3 months from the date this Certificate is made." However, around March 2015, credit arrears arose and BTN had not yet received the certificate which was the object of collateral. As of April 21 2016, BTN sent a letter to the Banyuwangi Regency Land Office, regarding the Request for Withdrawal of Credit Guarantee on behalf of PT. AW and obtained the fact that the process has been completed with a total of 125 (one hundred and twenty five) Certificates of Ownership Rights and have been handed over to PT AW, which PT AW has handed over to the Notary/PPAT SK, However, Notary/PPAT SK only handed over 26 (twenty six) certificates to BTN, while the remaining 99 (ninety nine) certificates were handed back to PT AW via NH. The Panel of Judges stated that Notary/PPAT SK (Defendant I) had committed an unlawful act which was detrimental to the Plaintiff, namely not handing over the results of the split land certificates at Garuda Regency Housing, Boyolangu Village, Giri District, Banyuwangi Regency, totaling 72 fractional Ownership Certificates which constitute legal collateral for the Plaintiff.

So here it needs to be emphasized regarding the essence of the covernote which should not be used as a basis for banks to be able to disburse credit by paying attention to the principle of publicity of the guarantee. Because the covernote should not be a collateral deed that has perfect legal force, and its existence cannot replace the authentic deed itself. Because it is only a certificate. Furthermore, the covernote made by Notary SK only explains the process of changing the name, not explaining the process of imposing mortgage rights.

Banks should not disburse credit to debtors because covernotes are not an absolute requirement for banks to disburse credit. Banks should continue to pay attention to the principles of providing credit as stated in Article 8 of the Banking Law, one of which is that they must have confidence based on an in-depth analysis of the collateral object agreed upon. However, here the fact is discovered that the Mortgage Rights for 125 (one hundred and twenty five) Certificates of Ownership Rights with BTN as the recipient of the Mortgage Rights have not yet been born. In this case, there has not been any Mortgage Rights issued on the 125 (one hundred and twenty five) Ownership Certificates and BTN has not received any guarantee from PT AW. So here BTN provides credit to PT.

Problems that arise with the issuance of a covernote by a notary can occur due to various things, such as in the example of legal problems above, so that it can involve the notary concerned as if the notary were also at fault. Although covernotes should not have legal force as a legal product from a notary, because there is nothing in the legislation that states that notaries have the authority to make covernotes. Moreover, in the Notary Position Law there is not a single article that indicates a covernote as an authentic deed,

*Covernote* issued by a notary is not proof of collateral, but only a form of information that appears based on the customs of society which is then used by the bank as an introduction to be able to disburse credit, at least a trust is built between the bank as the holder of the mortgage right in the future when the mortgage right certificate is ready rise. Even in every credit application at the bank, the covernote is not an imperative requirement for credit applications.[17]That the authority to disburse credit or not disburse credit is not based on a

[17] Habib Adjie, Op.cit, p. 16.

cover note from a notary so it is absolutely the authority and responsibility of the bank itself to disburse or not disburse credit.

Bank Indonesia as the Central Bank of the Republic of Indonesia as stated in Article 4 paragraph (1) of Law of the Republic of Indonesia Number 3 of 2004 concerning Amendments to Law Number 23 of 1999 concerning Bank Indonesia, in the Bank Indonesia dictionary which can be accessed by the general public states covernote is a memorandum of information made by a notary if the bank requests that the covernote be issued.

Banks must understand that the covernote is only temporary information for the bank until all deeds and guarantees registered through a notary are submitted. The law states that banks must conduct a thorough assessment before extending credit. This is because the source of the credit funds distributed is not funds from the bank itself, but funds that come from the community. Therefore, the application of prudential banking principles through accurate and in-depth analysis, appropriate distribution, good supervision and monitoring is very necessary. The banking principle of prudence applies to ensure that credit disbursed can be returned on time in accordance with the agreement.

The legal consequence if the bank uses a notary's covernote as the basis for disbursing credit is that if the mortgage rights processing process cannot be completed in accordance with the covernote made by the notary it will only result in the collateral object in the mortgage agreement not being able to be executed immediately or the mortgage rights agreement being null and void by law while the credit agreement has not yet been completed end. An unregistered mortgage agreement only results in the collateral object in the mortgage agreement not being able to be executed directly because based on Article 13 and Article 14 of the Mortgage Rights Law, the mortgage right has the power of execution if the mortgage right has been registered. Based on this, it can be understood that the legal consequences of not completing the registration of mortgage rights only affect its execution. So you have to go through a court decision to get a decree for execution. Because in this case the notary's covernote does not have legal force to provide legal protection for the bank as the creditor in the credit agreement if a default occurs while the collateral imposition process is still being processed.

In essence, the juridical consequence regarding the publication of a covernote is that the covernote is not an authentic deed because it does not refer to certain forms, conditions and formalities regulated in the Law, namely it does not comply with the provisions of Article 1868 of the Civil Code. However, it is a certificate issued by a notary so it does not have perfect evidentiary power if used as evidence in court, it is only an ordinary letter. If its creation is not denied by the notary who made it, then the covernote still has the power of proof as a certificate.

Consequences for the notary if the statement is published in the covernote but it turns out there was a failure in installing the mortgage, so the notary is actually not responsible for all these failures. Because a notary should only act as an administrator who helps in granting mortgage rights. The sanctions received by notaries are usually moral sanctions in the form of reduced feelings of trust from the bank which can end in the transfer of trust to another notary because they are deemed unable to complete the contents of the covernote.

It can also be emphasized that the notary is not responsible as long as the notary has provided education to the parties regarding the covernote. If this happens, at least the bank can obtain legal protection through mediation with the debtor to replace collateral that cannot be encumbered with mortgage rights with other collateral. Or with a lawsuit in court by making the debtor the defendant. In this case, the creditor will spend a lot of money, time and energy to claim his right to get a refund from the debtor.

*Covernote* appeared due to practical needs, published due to requests from certain parties who needed a covernote. Covernotes are purely a form of moral bond and trust based on customs between creditors and notaries as public officials who are neutral, impartial and independent in serving the needs of society to support business relations transactions amidst the development of the current highly competitive economic era.

## IV. NOTARY'S RESPONSIBILITY FOR PUBLISHING COVERNOTES

As a public official, a notary must be independent. In everyday terms, the term independent is often confused with independent. This independence questions the independence of public officials from intervention or influence from other parties or being assigned tasks by other agencies. Therefore, this independent concept must be balanced with the concept of accountability. This accountability questions openness (transparency), accepting criticism and supervision (controlled) from outside as well as responsibility to outside parties for the results of their work or the implementation of their job duties.

There are 3 (three) forms of this independence, namely[18]:

1. *Independent Structural*,namely institutionally independent (institutional) which in the structure chart (organigram) is clearly separated from other institutions. In this case, even though the notary is appointed and dismissed by the Minister of Justice, institutionally it does not mean that he is subordinate to the Minister of Justice or within the structure of the Department of Law and Human Rights of the Republic of Indonesia.
2. *Independent Functional*,that is, it is independent of its function which is adjusted to the statutory regulations which strictly regulate it, the authority and position of the notary.
3. *Independent Financial*,namely independent in the financial sector who never receives a budget from any party.

As explained above, the independent concept is also related to the concept of accountability, which consists of:[19]

1. Spiritual accountability. This is related to belief directly – vertically in God Almighty and is personal. This kind of accountability can be seen from the sentences contained in the Notary's oath/promise. Therefore, how this spiritual accountability is implemented will depend on the notary concerned. This means that in every action in carrying out his official duties, the notary is not only accountable to the community, but also to God Almighty.

[18] Habib Adjie, Op.cit, p. 31.
[19] *Ibid*.

2. Moral accountability to the public. The presence of a notary is to serve the interests of the public who need authentic deeds or other documents under the authority of the notary. Therefore, the public has the right to control the "work results" of the notary. For example, the public can sue a notary if it turns out that the results of their work are detrimental to members of the public. Or there are actions that can "injure" society, causing a lot of material and immaterial losses to society.
3. Legal accountability. A notary is not a person or position who is "immune" from the law. If there are actions or actions of a notary which according to the applicable legal provisions can be categorized as violating the law (criminal, civil, administrative).
4. Professional accountability. A notary can be said to be professional if he is equipped with a variety of advanced knowledge that can be applied in practice. In terms of how to process abstract values or provisions into a written deed as desired by the parties.
5. Administrative accountability. Before a notary takes up his position, he certainly has a letter of appointment, so there is no need to question its legality, however, in terms of administrative appointment of employees, it still needs to be questioned. There are still many notaries who appoint employees because of "friendship" or "brotherhood". In fact, whatever the background, there still needs to be administrative improvements.
6. Financial accountability. A form of accountability in this field is that we carry out our obligation to pay taxes. Or pay other obligations to the organization, such as monthly fees for example.

Accountability is an attitude of accepting all the consequences of all actions arising from actions that have been carried out. The responsibility that every individual has is the attitude of accepting all the consequences of every action that has been taken, including the notary profession which requires a notary to be responsible for the authority he or she has.[20]

In the construction of notarial law, one of the duties of a notary is to formulate the wishes or actions of the person in the form of an authentic deed taking into account the applicable legal regulations. In accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number: 702 K/Sip/1973 dated 5 September 1973, namely:

> "The function of a notary is only to record/write down what is desired and stated by the parties who appear before the notary. There is no obligation for the notary to investigate materially anything (things) put forward by the person appearing before the notary."

The existence of the Jurisprudence of the Supreme Court of the Republic of Indonesia does not mean that notaries are free from prosecution. In practice, lawsuits in court against notaries are not only civil lawsuits but also criminal lawsuits. Notaries are often drawn and involved as parties who participate in committing or assisting in committing a criminal act, namely making or giving false statements. Therefore, it is necessary to prove the notary's motive so that he or she is suspected of committing a criminal act whether the notary forgot or was

[20] Bhim Prakoso, I Gede Widhiana Suarda, & Dendik Surya Wardana, *Legal Certainty on PPAT Authority in Making Deed Outside of His Location*, Budapest International Research and Critics Institute-Journal, Vol. 5, No. 4, (2022), p. 31374.

negligent or together with the presenter or party to make a deed with the intention from the start to commit a criminal act.[21]

In carrying out his official duties, notaries are given sanctions that can minimize the occurrence of notary errors in carrying out their office so that they can carry out their position in accordance with the corridors regulated in the Law on the Position of Notaries. In essence, sanctions are given as a form of coercion based on law to provide awareness to the party who violates them and to restore the notary's actions in carrying out his or her position in an orderly manner in accordance with the Notary's Office Law.[22] The form of legal sanctions given to notaries is a form of responsibility in carrying out their position as a public official who is entrusted with making authentic deeds as regulated in the provisions of the Notary Position.

The phenomenon of several notaries being involved in legal issues because of the covernotes they publish, as explained in the previous sub-chapter, shows that the actual legal position of covernotes is still unclear and what the limits of liability are for the publication of covernotes by notaries. For this reason, fellow notaries must pay special attention, it is possible to be sued civilly if the contents of the covernote are incorrect. Apart from that, criminal charges can be prosecuted if it can be proven that the notary concerned consciously and intentionally, together with the party requesting the covernote, provided false information in order to commit an act or act which essentially constitutes a crime. This will cause further concern.

A notary is a public official who is entrusted with the duties of his office and has taken an oath of office, so the notary must provide correct information in carrying out his office duties. Notarial practice and often carried out by notaries, namely making covernotes. However, a covernote does not have perfect legal force like an authentic deed, because in essence a covernote is just a statement. There is not a single article in the Law on the Position of Notaries which states that notaries have the authority to issue covernotes. However, notaries have the authority to issue covernotes because in practice making covernotes is an administrative requirement in implementing credit agreement deeds. So basically it does not have binding legal force between the notary and the creditor.

If a problem arises related to the covernote and there are parties who feel disadvantaged by the covernote, general legal provisions apply both civilly and criminally. There are 3 (three) aspects of a notary's responsibilities, as follows:[23]

1. Administrative responsibility
   The administrative aspect of a notary's responsibility is emphasized in the Law on Notary Positions, where if a notary violates statutory regulations, the Notary will be given administrative sanctions by the INI Supervisory Council. There are 5 (five) types of administrative sanctions, namely:
   a. Verbal warning;
   b. Written warning;
   c. Temporary suspension;
   d. Dismissal with honor; or

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[21] Slamet Sumardi, *Prinsip Kehati-hatian Notaris/PPAT dalam Praktik Penerbitan Covernote pada Saat Realisasi Kredit*, Thesis, (Yogyakarta: Gadjah Mada University, 2011), p. 83.

[22] Indyravastha RVPS, Bayu Dwi Anggono, & Moh. Ali, *Sanksi Administratif Terhadap Notaris yang Menolak Protokol Notaris*, Syntax Transformation Journal, Vol. 2, No. 8, (2021), p. 1097.

[23] Bima Yudhakusuma Putra Munandar, Op.cit, p. 340.

e. Dishonorable discharge;

Notaries may also be subject to other sanctions as stipulated in the Notary Code of Ethics, as follows:

a. Reprimand;
b. Warning;
c. Temporary suspension of Association membership;
d. Honorable dismissal from membership of the Association;
e. Dishonorable dismissal from membership of the Association.

2. Civil liability
   Sanctions imposed for errors that occur due to breach of contract or unlawful acts. These sanctions in the form of reimbursement of costs, compensation and interest are the consequences that the notary will receive from the lawsuit of the injured victims. To discuss the responsibility of a notary in the civil sphere, it is necessary to first question the form of error on the part of the notary because the covernote he or she made fulfills the elements of an act of breach of contract or an unlawful act.
3. Criminal liability
   The Law on Notary Positions does not regulate criminal sanctions, but notaries can also be held liable under criminal law if the notary commits legal acts that are prohibited by law or commits a mistake or commits an unlawful act intentionally or negligently which causes harm to another party.

Notaries carry out their responsibilities in making covernotes by checking and verifying them first and ensuring the completeness of the required documents so as to minimize the potential for errors that could cause losses to the parties. Therefore, notaries also need to be careful in issuing covernotes, notaries must convey correct information to related parties regarding the document process they are processing. Likewise, the bank should not consider the covernote as proof of credit collateral, so that it can easily realize the credit application. Should *covernote.* It must be tested by the bank for its correctness and should be supported by other formal data as needed. The bank can refuse if the covernote turns out to be incorrect.

The notary provides information in written form regarding the process outlined in the covernote, so that the notary is directly responsible for the content and information conveyed in the covernote. A notary who deliberately conveys incorrect information in a covernote so that it does not correspond to the existing facts, thereby causing loss to a party, the notary can be held legally responsible for his statement. Therefore, notaries also need to be careful in issuing covernotes, notaries must convey correct information to related parties regarding the document process they are processing.

The notary's failure to publish a covernote which contains incorrect statements or information causes the notary to bear legal responsibility for his actions. If there is a discrepancy between the statement in the covernote and the reality in the field, the notary must be responsible, whether administratively, civilly, criminally or even morally responsible.

In this case, because the covernote is not a deed under the authority of a notary, the notary's form of responsibility for a covernote is personal responsibility. In relation to the creation and publication of the covernote, the notary guarantees that the contents of the covernote are correct in accordance with the facts that occurred and do not contain promises that cannot be fulfilled by the notary.

The notary's responsibility for the covernote he makes can be categorized as personal responsibility. According to Kranenburg and Vegtig, there are two theories that underlie the issue of official responsibility, namely the fautes personnalles theory and the fautes de service theory.[24] The theory of fautes personnalles will be used to answer the problem of the notary's responsibility for the covernotes he issues, because the burden of responsibility for the covernotes issued by the notary is aimed at humans as individuals, not office responsibilities. So if an official carries out an action outside his authority, it is said to be an unlawful act.

Acts that violate the law are acts that cause harm, and normatively these acts are subject to the provisions of Article 1365 of the Civil Code. Article 1365 of the Civil Code states that "every unlawful act that causes loss to another person requires that the person who wrongly caused the loss must compensate for the loss." The form of responsibility adopted by Article 1365 of the Civil Code is responsibility based on fault. When issuing a covernote, a notary is fully responsible for the contents of the covernote, namely the facts or truth regarding what he or she is doing and is obliged to complete what has been explained in the covernote.

The juridical fact is that covernotes are not yet able to provide clear legal certainty because there are still no statutory regulations that regulate them. This can cause the covernote made by the notary to backfire on the notary himself if the notary is not careful in making it, it can cause problems involving the notary because it is used by the bank as a basis for disbursing credit. Therefore,Because the position of notary is a personal position, the notary is obliged to protect himself.[25]

Notaries in carrying out their official duties properly and correctly according to the Law on Notary Positions and other laws and regulations, are a form of the precautionary principle to protect themselves. Then, in the case of making a covernote, the notary can provide protection for himself by including a self-protection clause in the covernote he makes.

Notaries can include protection clauses in making covernotes, for example stating that regarding the deeds they are processing, the notary has received information regarding their validity from the authorized agency (in this case BPN), so that here the notary does not guarantee the validity of a document, but purely based on validation statement that has been issued from the agency. The inclusion of this self-protection clause serves to[26]:

1. As a form of precautionary action from the notary;
2. As a form of legal protection that can be carried out by the notary himself;
3. For information to other parties, so that it is not too easy to label the notary as the party that must be fully responsible, if there is no strong evidence;
4. As a way of educating the presenters, if a mistake or lie occurs by the presenter, the presenter himself must be responsible.

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[24] Ridwan HR, *Hukum Administrasi Negara*, (Jakarta: Raja Grafindo Persada, 2006), p. 335-337. According to Kranenburg and Vegting, there are two theories of responsibility, namely: First, the theory of fautes personnalles, namely the theory which states that losses to third parties are borne by the official whose actions have caused the loss. In this theory the burden of responsibility is directed at humans as individuals. Second, the theory of fautes de services, namely the theory which states that losses to third parties are borne by the agency of the official concerned. According to this theory, responsibility is assigned to positions. In its application, the losses incurred are also adjusted to whether the error committed is a serious error or a minor error.

[25] Habib Adjie, Op.cit, p. 25.

[26] Habib Adjie, Op.cit, p. 29 – 30.

In the author's opinion, it is important for covernote notaries to be able to protect themselves from misuse of the covernotes they publish, because banks can dictate or determine the form of covernotes unilaterally. This is a form of protection for the notary because it does not rule out the possibility that the notary will be involved in legal issues which could lead to him being questioned in court regarding the covernote he publishes.

## V. CONCLUSION

That the juridical implication of the covernote is that it is not a notarial legal product as regulated in the Law on the Position of Notaries, but is only a certificate issued at the request of the parties so that it does not give rise to rights and obligations for the parties. *Covernote*is a pure form of trust and moral bond from creditors towards notaries as public officials who are neutral, independent and impartial in helping the public to support business relations transactions in an era of competitive economic development. Responsibility for the information in the covernote is the personal responsibility of the notary.

That the notary should provide counseling or information to the parties regarding the essence and legal position of the covernote, so as to minimize misuse of the function of the covernote. This action is also an effort by the notary to prevent disputes that could harm one of the parties. Apart from that, the notary can include a self-protection clause in the covernote as a form of caution for the notary to protect himself.

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