

THE LEGAL POWER OF THE NOTARY'S COVERNOTE IN CREDIT AGREEMENTS GUARANTEE LEGAL PERSPECTIVE

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ABSTRACT

The notary's covernote is a document typically made by a notary to provide assurance for a transaction or credit. This covernote is commonly used to secure credit provided by a bank or other financial institution to the borrower. The existence and legal strength of the notarial covernote in credit agreements are influenced by the laws applicable in the country where the transaction takes place. However, generally, the notarial covernote can have several functions and legal strengths in the context of credit agreements, especially from the perspective of security law. The results of this study indicate that the authority and responsibility of the notary in credit agreements serve to bridge the interests of creditors and debtors in the preparation of deeds in credit agreements. Legal protection for creditors in credit agreements through the use of notarial covernotes is basically not prohibited and is permissible according to Law Number 10 of 1998 concerning Banking and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions. However, the notary issuing the cover note as the basis for bank credit disbursement must be careful and thorough in checking the documents of the collateral object and verifying the involved parties to prevent issues in the land registration process and granting mortgage rights to the land office.

Keywords: *guarantee legal, legal strength, notary covernote*

1. INTRODUCTION

One of the requirements imposed by banks in granting credit is that the debtor must have protection or collateral, to be provided by the debtor to the creditor as a guarantee that the debtor will repay their debt for security and legal certainty, especially in the event of debtor default. To examine the collateral, the bank requests the Land Deed Official (PPAT) for the verification process. Article 1 number (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (hereinafter referred to as the Notary Law), stipulates that a notary is a public official authorized to create authentic deeds and has other authorities as referred to in this law or based on other laws. The role and function of a notary are crucial in assisting the government and other parties in need to provide legal certainty, order, and protection in the creation of authentic deeds (Ghansham Anand, 2018: 12). As evidence of this capability, the notary issues a covernote as a prerequisite for the effective disbursement of credit in the credit agreement.

This article aims to explore the use of covernotes in credit agreements and the legal protection for banks in credit agreements concerning the utilization of notarial covernotes, examined based on guarantee legal in Indonesia. This research will be beneficial for the community and government in providing answers regarding credit agreements using Notarial Covernotes.

In this article, the author will discuss the authority and accountability of notaries in credit agreements from the perspective of security law, and the legal protection for creditors in credit agreements regarding the use of notarial covernotes.

2. RESEARCH METODOLOGY

This research falls under the category of normative legal research. The research approach to be used in this study includes statutory approach and conceptual approach. The type of data that the author will use in this research is secondary data, obtained through a review of existing literature, where secondary legal materials include journals, books, and doctrines by experts regarding an analysis, as well as Primary Legal Materials as legally binding and fundamental legal sources. The legal research data collection technique to be used in this study is document study or library study.

3. RESULTS AND DISCUSSION

A covernote is a certificate or often referred to as a closing note issued by a notary. It is issued by the notary because the notary has not yet completed their duties in relation to the task and authority to issue authentic deeds. The cover note is merely in the form of a certificate used as a basis for the bank to disburse credit funds to the debtor, aiming to avoid prolonged waiting until all processes are completed.

A covernote is a document containing information created by a notary, where the covernote is issued by the Notary at the time of the credit agreement to make the agreement binding on the collateral of a credit agreement issued by the bank. The bank acts as the creditor or loan provider in this case. The reason for issuing the covernote is because a notary has not been able to complete the work related to their authority and duties regarding the issuance of an authentic deed. The existence of this cover note is considered crucial regarding the granting of credit by the bank, but the fact is that, from a juridical perspective, the regulation concerning this covernote has not been explicitly stipulated in the legislation, neither in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary nor in Law Number 4 of 1996 concerning Mortgage Rights Over Land and Related Assets.

Cases that often occur in the practice of providing collateral with mortgage rights in credit agreements arise due to the existence of collateral in the form of a piece of land whose ownership is still in the form of a seal, certificate of land rights (girik), or certificate of land status (petok) under the name of the prospective borrower. The notary declares willingness to assist the bank and prospective borrowers in the process of registering land rights until the issuance of the Certificate of Ownership (SHM) and the binding of collateral with mortgage rights until the issuance of the mortgage certificate. As evidence of this capability, the notary usually issues a Cover note as a prerequisite for the effective disbursement of credit in the credit agreement. Considering the duties and authority of Notaries in the Notary Law, there is no provision that clearly states that a notary can issue a cover note to explain that the deed to be made is currently being processed.

Disbursement of credit with a deed made before a notary, creditors, and the bank will deal with the notary who generally becomes the bank's partner to then proceed with the notarized binding as evidence of the validity of the credit agreement that has taken place. The use of a cover note is also often used for other purposes, and the issuance of a covernote as a certificate does not only occur in security law in the form of a mortgage certificate. Credit that uses a certificate as collateral usually requires the granting and encumbrance of mortgage rights to be preceded by a promise to provide mortgage rights as debt settlement in a separate agreement from the debt agreement, the granting of mortgage rights should be done with a deed of granting mortgage rights made before a notary who also acts as a Land Deed Official (PPAT). The issuance of a cover note, which is a regular certificate

issued by a notary who is also a PPAT, is due to their unfinished work or the inability to issue the mortgage rights. A covernote is a certificate signed by a notary/PPAT made by a notary where the covernote contains promises.

A. Authority and Accountability of Notaries in Credit Agreements from the Perspective of Guarantee Legal

Collateral is wealth in the form of assets owned by the debtor that will be used as collateral in the event of the debtor's inability to repay the debt owed based on the existing credit agreement. The use of Notary services is now very common among the public in matters pertaining to civil law. The legal basis for the authority of a notary as a public official empowered to create authentic deeds can be seen from the provisions of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (hereinafter referred to as UUJN). Article 1 number 1 of UUJN stipulates that the public official authorized to create authentic deeds and have other authorities as referred to in this law or based on other laws is a notary. The role and function of a notary are crucial in assisting the government and other parties in need to provide legal certainty, order, and protection in creating authentic deeds.

The role of a notary is to provide the best and fairest service to the public in need of notarial services, and the notary must adhere to obligations according to the law and professional code of ethics. With legislation and also in accordance with the Notary Law, which must be in line with Article 15 Paragraph (1) of the Notary Law, stating that a Notary is a public official authorized to create authentic deeds regarding all agreements or contracts, acts, and determinations required by general regulations. A notary is fully responsible in the event of issues related to the deeds they make, whether civil, criminal, or ethical.

In legal theory, it is also necessary to provide an explanation between the responsibility of a notary and the duties or authority of a notary based on notary position laws. That a notary, as a public official, is regulated by legal rules aimed at providing services to the public in need of their services in creating authentic written instruments related to events or actions related to the law.

To bind the debtor so they do not default on their obligations to the bank or creditor, the bank or creditor collaborates with a notary public to create a credit agreement deed, as stated in Article 15 Paragraph (1) of the Notary Law, which grants notaries the authority to create authentic deeds such as agreements or contracts.

B. Legal Protection for Creditors in Credit Agreements Regarding the Use of Notarial Cover Notes.

The presence of law in society serves as a means to create tranquility and orderliness, ensuring that the interests of individuals within the community are preserved in their interactions with one another. Law, in essence, is the protection of human interests in the form of norms or principles. Law, as a collection of rules or principles, contains content that is both general and normative: general because it applies to everyone, and normative because it determines what can and cannot be done, as well as how to comply with the applicable principles.

A Notary Public is an official entrusted with providing legal services to the public to ensure legal certainty and legal protection. In order to provide legal certainty and legal protection, the notary creates authentic deeds concerning a situation or an event.

Notarial cover notes in credit agreements are not fundamentally prohibited but must still exercise caution and diligence in verifying the truth and validity of the

documents that will serve as collateral. Article 1 Paragraph 2 Letter C of Law Number 10 of 1998 Regarding Banking states that one of the parties that can have a relationship or is related is a party that provides services to the bank. The role of the cover note in credit agreements is essential, where creditors or banks, in practice, may have specific reasons, such as business competition, to prevent customers or debtors from switching to other parties due to delays in document verification. Hence, the issuance of a cover note as a notarial certificate. Apart from restraining debtors or customers from going elsewhere, creditors or banks can also exercise caution because, fundamentally, the credit issued will not be problematic. Article 29 Paragraph 3 of the Banking Law states that in providing credit or financing based on principles and conducting other business activities, banks have an obligation to take various measures that do not harm the bank and the interests of customers who entrust their funds to the bank. In credit disbursement, the cover note plays a crucial role where its function as evidence binds the collateral or serves as temporary security for the bank.

Legal protection for creditors in cases where the collateral binding is imperfect, resulting in the non-issuance of the mortgage certificate, essentially still receives protection from Articles 1131 and 1132 of the Civil Code. However, the protection provided by Articles 1131 and 1132 of the Civil Code only grants the bank the position of a concurrent creditor. This certainly provides insufficient protection for the bank, considering that as a concurrent creditor, the bank must proportionally share with other creditors in the settlement of its claims from the proceeds of the sale of the entire debtor's assets. In this case, it is highly possible that the credit granted to the debtor may not be fully recovered, especially if the debtor's assets are insufficient to settle its debts proportionally to its creditors. Additionally, the efforts that can be undertaken by the bank as a creditor generally can still be pursued through litigation or non-litigation processes. However, these efforts require time-consuming and costly processes, which are certainly not desirable for the bank.

Legal protection for banks in credit agreements with land collateral has been regulated in the Mortgage Law. The Mortgage Law has provided protection to creditors with the position of preferred creditors for mortgage holders, so that if the customer/debtor defaults, the bank can easily execute the collateral according to the provisions in the Mortgage Law. Furthermore, the bank can recover its debts from the proceeds of the sale or auction of the collateral. The credit agreement as the principal agreement, followed by the agreement to encumber collateral with mortgage rights as an additional agreement, is actually a form of protection for both the bank and the customer/debtor. The existence of this credit agreement provides legal certainty for the bank to determine its rights as a creditor to the customer/debtor in the implementation of the credit agreement. Additionally, with the credit agreement tied to the mortgage rights, it can also protect the customer/debtor.

Security plays a crucial role in a credit agreement, providing assurance to the creditor regarding the return of funds disbursed to customers/debtors. In addition to protecting the creditor, providing security in accordance with applicable regulations can also offer protection to the debtor. The law should provide equal protection to all parties. In ensuring protection for both the bank and the debtor in credit agreements, the process of granting mortgage rights should be carried out in accordance with applicable procedures or according to the law.

4. CONCLUSION

The authority and responsibility of a notary in credit agreements are to bridge the interests of creditors and debtors in drafting deeds for credit agreements. Borrowing agreements are also regulated by the Civil Code from Article 1754 to

Article 1769, which states that credit agreements are identical to borrowing agreements, thus the notary is also responsible as a public official regulated by legal rules aimed at providing services.

Legal protection for creditors in credit agreements regarding the use of Notarial Cover Notes is not fundamentally prohibited and is permitted according to banking regulations and mortgage laws. However, the notary, in issuing a cover note as the basis for bank credit disbursement, must exercise caution and diligence in checking the documents related to the collateral object and verifying the involved parties to avoid issues in the land rights registration process and granting of mortgage rights to the land office. Legal protection for banks in credit agreements related to the use of notarial cover notes, in the event of default before the issuance of mortgage rights, positions the bank only as a concurrent creditor. Legal protection for banks is based on Articles 1131 and 1132 of the Civil Code.

5. SUGGESTION

The bank should apply the principle of prudence in using notarial cover notes for credit disbursement to customers to avoid causing losses to the bank. Additionally, the notary public should be firm in carrying out the credit agreement process so that the notary's accountability in the credit agreement can be upheld. For the government, it is advisable to make amendments to the Notary Law to ensure legal certainty regarding the use of cover notes.

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