

Regulation of Covernotes by Notaries, Land Deed Making Officials (PPAT) Against Parties in Bank Credit Agreements

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This study aims to analyze the legal consequences of the issuance of Covernote by Notary / PPAT on the parties to a banking credit agreement, identify potential legal problems due to delays or discrepancies in the documents promised in Covernote, and provide an understanding of the role and limitations of Covernote in banking practice as a supporting document for credit guarantees. The method used in this research is empirical juridical with a qualitative descriptive approach, where data is obtained through interviews with Notary / PPAT, banks, and debtors related to the issuance of Covernote, as well as through document studies and relevant laws and regulations. The results show that Covernote does not have binding legal force as a credit guarantee, but is often a reference in the process of disbursing funds by banks. The legal consequences can be in the form of default risk for the debtor if the documents promised in the Covernote cannot be fulfilled, as well as the potential legal responsibility for Notary / PPAT if there is negligence in its issuance. The implications of this research emphasize the need for caution in the issuance of Covernote so as not to cause legal problems for the parties. In addition, banks as creditors need to understand the limitations of Covernote in guaranteeing legal certainty over mortgage rights. The recommendations of this research emphasize the need for clearer regulations related to the issuance of Covernote by Notary/PPAT in order to provide legal protection for all parties involved in banking credit agreements.

INTRODUCTION

Notary services and Land Deed Officials (PPAT) play an important role in various aspects of civil law in Indonesia, such as agreements, inheritance, and land certificates. [1] Notaries are appointed by the Ministry of Law and Human Rights, while PPATs are appointed by the National Land Agency (BPN). [2] Notaries are authorized to make authentic deeds that have perfect evidentiary force, while PPATs make deeds related to land rights. The Notary Law (Law No. 2 of 2014) regulates the role of notaries in providing legal services. [3] Authentic deeds made by notaries have stronger legal force than private deeds. [4] Notaries must meet the requirements of authority in substance, subject, territory, and time in carrying out their duties. One of the documents issued by a notary is a Covernote, which is used in the process of managing certificates or bank credit. In the banking world, credit is a main activity that involves various risks, including liquidity and legal risks, so credit agreements must be made with caution. [5]

In banking, the principle of prudence as stipulated in Law Number 10 of 1998 concerning Banking aims to ensure credit security, one of which is by requesting collateral from the debtor. [6] This collateral must be registered in accordance with Law Number 4 of 1996 concerning Mortgage Rights and Law Number 42 of 1999 concerning Fiduciary Guarantees. [6] In practice, debtors often ask notaries or PPATs to issue a Covernote stating that the collateral has been registered, even though the process has not been completed. [7] The Covernote is used as the basis for credit disbursement by the bank, even though it is not an authentic deed and is not explicitly regulated in banking regulations or notary law. [8] This has the potential to pose a risk to the bank, especially

regarding legal certainty over collateral that has not been fully registered.

METHOD

Study This use method descriptive empirical with approach legal empirical For analyze implementation credit at BNI Bank through studies case at the Notary's Office Elpa Santira in Gowa . [9] Population study covers parties involved in giving credit , with selected samples by purposive sampling, including notaries , customers and bank employees . Primary data was obtained through interviews , while secondary data from literature and documents related . Data collection techniques include interviews and studies documentation , which is analyzed in a way descriptive qualitative For understand application of legal norms in practice credit . [10]

RESULTS

Legal Review of Covernote Issuance by Notary/PPAT in Bank Credit Agreements

The issuance of Covernote by Notary Public Land Deed Making Official (PPAT) in banking credit agreements has an important role in ensuring the validity and security of legal transactions involving related parties. Covernote is a temporary statement or document confirming that the process of making the deed required in a credit transaction, especially one involving land title guarantees, is ongoing or has been completed. [11] In banking practice, Covernote is often used as a supporting document to disburse credit before the land title certificate or mortgage is completed. [12] However, this study found that Covernote does not have binding legal force like an authentic deed. This document is only administrative in nature and cannot be used as a valid legal basis to guarantee the certainty of land rights or mortgage rights, so it has the potential to cause legal risks if there is a delay or dispute in the completion of credit guarantee documents. From a legal perspective, there are no regulations that specifically regulate the issuance of Covernote by Notary/PPAT. [13]

However, this practice can be associated with Law Number 30 of 2004 concerning the Position of Notary which has been amended by Law Number 2 of 2014, as well as Government Regulation Number 24 of 1997 concerning Land Registration which regulates the authority of PPAT in managing land rights registration and making land deeds as the basis for issuing mortgage rights in banking credit agreements. In addition, Law Number 10 of 1998 concerning Banking emphasizes that banks are required to apply the principle of prudence in providing credit. Although often used by banks as a supporting document for credit disbursement, Covernote does not have legal force like an authentic deed or mortgage certificate. [14]

This poses a legal risk for banks if there are obstacles in completing the collateral documents. The issuance of Covernotes has an impact on various parties in banking credit agreements. For banks, Covernotes are the administrative basis for disbursing credit before the mortgage certificate is completed. However, because they do not have binding legal force, banks can face risks if there are obstacles in completing the collateral documents, which have the potential to violate the risk management principles in accordance with Article 29 paragraph (4) of the Banking Law. For debtors, Covernotes allow for faster credit disbursement, but if the completion of the mortgage certificate is hampered or there is a dispute over the land used as collateral, the debtor may face difficulties in fulfilling his obligations. For Notaries/PPATs, the issuance of Covernotes must be carried out with great care because if it contains inaccurate information, it can be considered negligence or a violation of the code of ethics. In addition, Article 49 paragraph (2) letter b of the Banking Law states that parties who intentionally cause banks to fail to implement the principle of prudence can be subject to criminal sanctions. Therefore, Notaries/PPATs must ensure that the Covernotes issued do not provide excessive legal certainty for credit collateral documents that are

still in process. This study found several legal problems in the issuance of Covernotes by Notaries/PPAT. [1] Legal uncertainty due to the absence of specific regulations gives rise to different interpretations regarding their legal force in banking transactions. In addition, there is the potential for misuse of Covernotes to guarantee credit disbursement even though the collateral documents are still in an uncertain process. [5]

The risk of delays in document completion is also a problem, especially if the issuance of the mortgage certificate is hampered or there is a dispute over ownership of the land used as collateral. If this happens, the bank may have difficulty executing the mortgage if the debtor fails to pay his credit. For example, in practice at Bank Negara Indonesia (BNI), the role of a Notary is very important in issuing Covernotes for collateral submitted by debtors. In this context, mortgages must be registered with the land office in accordance with Article 15 of Law No. 4 of 1996 in order to obtain executorial power that can be used by creditors if the debtor defaults. Based on an interview with Notary Elpa Santira, SH, M.Kn., it was explained that Covernotes function as supporting documents in banking credit agreements used by banks and debtors. This process begins with the creation of a credit agreement between the bank and the debtor, which is then followed by the signing of various documents related to credit guarantees. Notaries have an important role in ensuring that the entire process runs in accordance with applicable regulations, including the registration of mortgages. However, because Covernote is not a binding legal document, banks and related parties must be more careful in using it so as not to create legal risks in the future. [15]

Legal Consequences of the Issuance of Covernotes by Notaries as Land Deed Making Officials (PPAT) for Parties in Bank Credit Agreements

The issuance of a Covernote by a Notary who also acts as a Land Deed Official (PPAT) in a banking credit agreement has various legal consequences that can affect the parties involved, namely the bank, the debtor, and the Notary/PPAT itself. Covernotes are often used as administrative guarantees that the collateral document processing process is ongoing, thus allowing credit to be disbursed before the settlement of the mortgage rights. However, because the Covernote is not an authentic document and does not have binding legal force, its use can give rise to legal problems that need to be analyzed in more depth. For banks, the issuance of a Covernote is often used as an administrative basis for providing credit disbursement before the mortgage certificate is completed. Although this speeds up the financing process, banks face legal risks if the collateral documents experience obstacles in their completion. [16]

Law Number 10 of 1998 concerning Banking, which is an amendment to Law Number 7 of 1992, in Article 8 stipulates that banks are required to apply the principle of prudence in providing credit, including ensuring that the credit provided has sufficient collateral and meets applicable legal requirements. The use of Covernote without legal certainty regarding collateral rights can potentially violate this principle of prudence, especially if there is a default by the debtor and the bank has difficulty executing the collateral due to the unfinished processing of collateral rights. In addition, Article 29 paragraph (4) of the Banking Law states that banks are required to apply the principle of risk management in order to maintain the security of managed funds. The use of Covernote as a basis for disbursing credit without clear legal certainty can increase the risk for banks, especially in terms of resolving problematic credit. If the collateral documents are not yet complete or there are legal problems related to the ownership of the land used as collateral, the bank may experience difficulties in executing the collateral rights. For debtors, the issuance of Covernote provides benefits in the form of easy access to credit without having to wait for the completion of collateral documents. [17]

However, on the other hand, debtors may face risks if the mortgage settlement process experiences obstacles, especially in terms of land certification or if there is a lawsuit over the land used as collateral. In certain situations, banks can delay or cancel credit disbursement if there are legal

problems in the issuance of the mortgage certificate or deed. This can create uncertainty for debtors who have relied on credit disbursement for business interests or other purposes. For Notaries/PPAT, the issuance of Covernotes must be carried out with great care because it can have legal consequences, especially if this document contains inaccurate or misleading information. Article 49 paragraph (2) letter b of the Banking Law states that parties who intentionally cause banks to fail to implement the principle of prudence can be subject to criminal sanctions. If the Covernote is used to convince the bank to disburse credit without any legal certainty regarding the collateral submitted, the Notary/PPAT can be considered legally responsible if problems occur in the settlement of the collateral documents. In addition, based on Law Number 30 of 2004 concerning the Position of Notary, which has been amended by Law Number 2 of 2014, Notaries have an obligation to act professionally and must not provide misleading information in carrying out their duties. If the Covernote issued by the Notary gives the impression that the mortgage has been processed when in fact it is still in the administrative stage, this can give rise to the potential for a lawsuit from the injured party. [1]

In practice, the legal consequences of the issuance of Covernote can also occur if there is misuse of this document. There are cases where Covernote is used as a basis for credit disbursement, but it turns out that the collateral document has problems or cannot even be completed. In conditions like this, the bank may face difficulties in collecting the credit that has been given, while the Notary/PPAT who issued the Covernote can also be investigated if there are elements of negligence or violations of the law in its issuance. Therefore, the issuance of Covernote must be carried out by paying attention to the principle of prudence and in accordance with applicable legal provisions. Banks must ensure that the use of Covernote does not conflict with the principle of prudence stipulated in the Banking Law, while the Notary/PPAT must ensure that the Covernote issued does not provide legal guarantees that exceed their authority. Debtors also need to understand that Covernote is not a guarantee of legal certainty for mortgage rights, so there are still legal risks that must be taken into account in banking credit agreements. To reduce the risks caused by the use of Covernote, this study recommends that laws and regulations regulate more clearly the legal status of Covernote and the responsibilities of the parties involved in its issuance. Banks should only use Covernotes as administrative documents and not as the main basis for credit disbursement, while Notaries/PPATs must ensure that the Covernotes issued do not provide excessive legal certainty regarding the process of managing collateral documents. Thus, the use of Covernotes can be more controlled and does not cause legal problems for banks, debtors, or Notaries/PPATs. [18]

CONCLUSION

Covernote plays an important role in banking credit agreements as a temporary guarantee that accelerates credit disbursement before the collateral documents are completed, although legally it does not have binding force like an authentic deed or mortgage certificate. Although its use is associated with several laws and regulations such as the Notary Law, the Banking Law, and the Government Regulation on Land Registration, there is no specific regulation that explicitly regulates Covernote. This poses a risk to banks if there are obstacles in the collateral documents, while for debtors, Covernote makes it easier to disburse credit but has the potential to cause problems if the mortgage certificate is problematic. Notaries/PPATs must be careful in issuing it to avoid lawsuits or violations of the code of ethics, considering that legal uncertainty, potential misuse, and delays in completing collateral documents are the main problems. Therefore, clearer regulations and caution are needed in issuing Covernotes to reduce risks for all parties. Banks and related parties are advised to ensure the completeness of the documents that form the basis for issuing Covernotes in accordance with legal provisions, while PPATs must ensure that Covernotes are only used as a temporary measure before completing more complete formalities.

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