

Criminal Liability of Notaries in the Making of Covernotes (Study of Supreme Court Decision Number: 5710K/Pid.Sus/2023)

Alexs Alfa Dinata, Elwi Danil, Nani Mulyati

Fakultas Hukum, Universitas Andalas, Padang, Indonesia

alexalfadinata10@gmail.com

ABSTRACT

A notary is a public official with special authority to make authentic deeds under the Notary Law (UUJN). One product commonly issued by notaries in banking practice is the covernote, even though it is not explicitly regulated under the UUJN. This study departs from the case of Notary Elviera, who was charged with participating in a corruption offense related to the issuance of a covernote in the credit disbursement process of PT. KAYA at Bank BTN Medan Branch worth IDR 39,500,000,000. The covernote stated that 93 SHGBs had been received as credit collateral, while in reality only 5 SHGBs were transferred and encumbered with mortgage rights. This study examines: (1) the legal certainty of covernotes made by notaries in banking credit transactions, and (2) the judge's considerations in imposing criminal sanctions on notaries who issue covernotes. A normative legal research method was employed using a case approach and a statutory approach. The results indicate that covernotes lack legal certainty as no provision in the UUJN explicitly regulates their issuance. Furthermore, the judge's considerations in the Elviera case should have addressed non-juridical aspects, particularly the defendant's social background and motives.

Keywords: Notary Liability, Covernote, Loan Disbursement.

INTRODUCTION

Notaries play a strategic role in the Indonesian legal system, primarily as officials authorized to issue authentic deeds. This authority stems from Article 1868 of the Civil Code and is further elaborated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notaries (UUJN). One of the primary purposes of issuing authentic deeds is to provide legal certainty and protection to the public.

Beyond authentic deeds, in banking practice, notaries also frequently issue documents known as covernotes. A covernote is essentially a notary's statement stating that the deed preparation process or processing of documents related to credit collateral is still in the

final stages. Although common practice, the existence of covernotes lacks a clear legal basis in the UUJN, thus raising issues of legal certainty.

The problem becomes even more serious when notaries are involved in legal cases due to the issuance of covernotes that do not correspond to reality. One case that emerged was the case of Notary Elviera, who was found guilty of participating in a criminal act of corruption based on Supreme Court Decision Number 5710K/Pid.Sus/2023. In this case, Elviera issued a covernote stating that she had received 93 Building Use Rights Certificates (SHGB) as collateral for PT. KAYA's credit at Bank BTN Medan Branch. However, in reality, only 5 SHGBs were transferred to the name and burdened with Mortgage Rights, while the rest were not implemented because the debtor refused to pay BPHTB and PPh.

Based on this background, this study formulates two main problems: (1) How is the legal certainty of covernotes made by notaries in banking credit transactions? (2) How are judges' considerations in sentencing notaries who make covernotes in credit cases (Study of Supreme Court Decision Number: 5710K/Pid.Sus/2023)?

RESEARCH METHOD

This research employs a normative legal research method, which examines law as a norm or applicable rule. The approaches employed are the case approach and the statute approach. The legal materials used consist of primary legal materials in the form of laws and court decisions, secondary legal materials in the form of literature, journals, and relevant research results, and tertiary legal materials in the form of legal dictionaries and encyclopedias. The analysis was conducted qualitatively, based on the theories of legal responsibility, legal certainty, and legal protection.

RESULTS AND DISCUSSION

Legal Certainty of Notary Covernotes in Banking Credit Transactions

A covernote is a certificate issued by a notary to a creditor (bank) stating that the credit deed and collateral binding process is still ongoing. In banking practice, a covernote is commonly used as a basis for banks to disburse loans before all collateral documents have been processed. However, from a legal perspective, a covernote is not a notarial legal product as defined in the UUJN.

Article 15 of the UUJN, which regulates the authority of notaries, does not mention covernotes as one of the products that can be issued by notaries. There is not a single article or paragraph in the UUJN that explicitly regulates the authority of notaries to issue covernotes. Therefore, from a legal certainty perspective, covernotes exist in a legal vacuum (*rechtsvacuum*).

According to Utrecht, legal certainty has two meanings: first, the existence of general rules that enable a person to know what actions are permitted or prohibited; and second, the protection of individuals from arbitrary actions by others. When linked to covernotes, the absence of clear regulations prevents covernotes from fulfilling the principle of legal certainty.

In practice, covernotes have evolved into customary law, dating back to the Dutch colonial era and continuing to be enforced today. However, the lack of specific regulations leaves room for abuse by notaries and interested parties. Therefore, it is crucial to establish covernotes as part of the *ius constituendum* (the law of the law) to ensure procedural certainty and clear boundaries of responsibility.

In short, a covernote is neither an authentic deed nor a private deed. It is merely an administrative act containing a notary's statement or commitment regarding an ongoing process. Consequently, if losses occur due to inaccurate covernote content, the notary can be held liable, both civilly and criminally.

The Judge's Considerations in Sentencing Notary Elviera

1. The facts of the case

Notary Elviera entered into a Cooperation Agreement with Bank BTN Medan Branch and issued a covernote in the credit disbursement process of PT. KAYA led by Canakya Suman. The disbursed credit reached Rp39,500,000,000.00. In the covernote, Elviera stated that she had received 93 SHGB in the name of PT. Agung Cemara Realty as collateral. However, in reality, only 5 SHGB were transferred to PT. KAYA and burdened with Mortgage Rights, because the debtor refused to pay BPHTB and PPh as a condition for the transfer of rights. The process of changing the name and burdening the Mortgage Rights is Elviera's obligation as a Notary/PPAT based on her work contract with Bank BTN.

2. Legal Aspects

The panel of judges used the provisions of Article 3 in conjunction with Article 18 paragraph (1) letter b of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. The indictment used an alternative form of subsidiarity. In providing evidence, the judge considered the statements of six witnesses, evidence in the form of 93 photocopies of the SHGB that had been legalized, as well as credit agreement deeds made by Elviera.

The verdicts at three levels of justice show a significant escalation in sentencing. The Medan District Court (Decision No. 42/Pid.Sus-TPK/2022/PN Mdn) sentenced the defendant to 1 year and 6 months in prison and a fine of Rp100,000,000, subsidiary to 1 month in prison. The Medan High Court (Decision No. 9/Pid.Sus-TPK/2023/PT MDN) increased the sentence to 2 years in prison with a fixed fine of Rp100,000,000. The Supreme Court (Decision No. 5710K/Pid.Sus/2023) sentenced the defendant to 8 years in prison and a fine of Rp400,000,000, subsidiary to 3 months in prison.

3. Non-Legal Aspects

In addition to the legal aspects, the judge's considerations should also encompass philosophical and sociological aspects. The philosophical aspect relates to justice for both the defendant and the victim, for example, by considering aggravating and mitigating factors. The sociological aspect is useful for examining the defendant's social background, including education, residential environment, and motivation for committing the act.

In the context of Elviera's case, it's important to note that Elviera's role was actually limited to providing information through a cover note, not as a decision-maker regarding loan disbursement. The decision to disburse loans rests entirely with Bank BTN. Elviera also did not derive any direct financial benefit from her actions. The true root of the problem was debtor Canakya Suman's reluctance to pay the taxes required to secure the mortgage.

The Supreme Court deemed the eight-year sentence disproportionate to Elviera's actual role in the case. Furthermore, the lack of adequate legal protection for notaries could lead to their reluctance to carry out their duties, ultimately counterproductive to their role as public officials providing document authentication services to the public.

CONCLUSION

Covernotes lack legal certainty because they are not regulated in any article of the UUJN, particularly Article 15, which governs the authority of notaries. In practice, covernotes are merely a common practice within the notarial world without an explicit legal basis, making them vulnerable to abuse and harm to third parties. The need for covernote regulation as a *ius constituendum* is urgent to provide procedural certainty and limit notary liability.

The judge's considerations in the Notary Elviera case need to encompass non-judicial aspects more comprehensively, including examining the defendant's actual role, social background, and lack of direct benefit. A balance between the juridical, philosophical, and sociological aspects in the judge's considerations will result in a fairer and more proportional decision, while also providing certainty and adequate legal protection for notaries in carrying out their duties.

BIBLIOGRAPHY

Book

- Adjie, Habib. (2022). *Understanding and Implementing Covernotes, Legalization, and Waarmerking in the Implementation of Notary Duties*. Bandung: Refika Aditama.
- Djumhana, Muhamad. (2002). *Banking Law in Indonesia*. Bandung: Citra Aditya Bakti.
- Mulyadi, Lilik. (2012). *Indonesian Criminal Procedure Law*. Bandung: Citra Aditya Bakti.
- Rato, Dominikus. (2010). *Philosophy of Law: Seeking: Understanding and Understanding Law*. Yogyakarta: Laksbang Pressindo.
- Salim. (2022). *Notary Code of Ethics*. Bandung: Reka Cipta.
- Salim. (2023). *Contract Design & Memorandum of Understanding (MoU)*. Jakarta: Sinar Grafika.

Legislation

- Criminal Code (KUHP).
- Law Number 2 of 2014 concerning the Position of Notary.
- Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.
- Regulation of the Minister of Law and Human Rights Number 25 of 2020 concerning the Notary Honorary Council.

Medan District Court Decision Number 42/Pid.Sus-TPK/2022/PN Mdn.

Medan High Court Decision Number 9/Pid.Sus-TPK/2023/PT MDN.

Supreme Court Decision Number 5710 K/Pid.Sus/2023.

Journal / Article

Daud, Vania Meliantha & Deni, Fitra. (2024). Legal Certainty and Notary Accountability for Promises in Covernotes to Parties in Banking Credit Transactions. UNPAK Journal, 10(4).

Kadir, Rahmiah, et al. (2019). Notary's Responsibilities in Issuing Covernotes. Jurnal Mimbar Hukum, 31(2).

Nurfajri. (2019). MKNW Approval in Taking Minutes of Deeds in the Judicial Process. Melayunesia Law, 3(2).

Putri, Libryawati Eka & Pujiono. (2019). The Role of the Notary Honorary Council in Summoning Notaries in Criminal Case Examination. Notarius, 12(2).

Rachmayani, Dewi & Suwandono, Agus. (2017). Notary Covernote in Credit Agreements from the Perspective of Collateral Law. Acta Diurnal Journal of Notary Law Science, 1.

Thesis

Kadir, Rahmiah. (2018). Notary Accountability in Covernote Issuance. Thesis. Makassar: Hasanuddin University.

Novista, Siska. (2018). Responsibilities of Notaries/PPAT in Issuing Covernotes. Thesis. Yogyakarta: Islamic University of Indonesia.