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The Problem of Notary Covernote As The Basis of A Bank In A Means of Financing or Credit In The Field of Banking

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Abstract: The notary's covernote itself is issued because the authentic deed relating to the bank credit disbursement process has not been completely completed by the notary, so the covernote is issued as a temporary legal umbrella while the process of making the authentic deed is completed by the notary. So the aim of this research is to find out the legal position of notary covernotes which are used as the basis for credit disbursement if they cause problems in the future and what the responsibilities of notaries are in issuing covernotes that are not regulated in statutory regulations. This research uses normative juridical research methods. The results of this research show that the practice of making covernotes by notaries is a habit carried out by notaries because creditors or banks want credit disbursement to be carried out so they need a basis for this so that making covernotes by notaries is not regulated by law and is not is a legal product from a notary which results in the absence of legal certainty in the covernote.

Keywords: Credit Bank, Notary, Legal Position

1. Introduction

Banking is an institution that has a crucial position in the field of development and in its role in supporting economic stability through collecting funds which will later be channeled effectively and efficiently. Based on Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) Article 1 number 2 states that a bank is a business entity that collects funds from the public in the form of deposits. These funds are then distributed back to the community in the form of loans or credit or other forms of money distribution as a manifestation of the role of these financial institutions in improving the quality of life of the community. Credit is one of the activities carried out by banking institutions. In order to ensure credit repayment from borrowers, banking institutions always require special collateral or guarantees to guarantee the security of loan payments for customers who owe money.[3]

Notary and Land Deed Making Official (PPAT) is a government official who is authorized by the state to provide public services in the civil law sector, especially in terms of administering land legalization, executing contracts, and all matters related to making notarial deeds that create a authentic deed.[4] The systematics related to the position of Notary are contained in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter abbreviated to the Law on the Position of Notary). Meanwhile, the systematics related to PPAT are contained in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Makers.

A notary is a public official with the authority to make an authentic deed within certain limits which is not given to other public officials and has the responsibility to provide legal services and consultations to people who need it and the entire community with the aim of creating certainty, order and protection. law as contained in Article 15 paragraph (1) of Law Number 2 of 2014 regarding Amendments to Law Number 30 of 2004 concerning the Position of Notaries which is based on the author's interpretation that the authority of the notary himself is to prepare a valid authentic deed in connection with the action, agreements, and decisions that have been regulated by law or desired by the parties involved and shown in the authentic deed provided that the making of the deed is not given or prohibited to other officials or individuals as required by law.

According to Article 1868 of the Civil Code, it is stated that an authentic deed is made in accordance with the format and other provisions stipulated in the law and its preparation is carried out in the presence of a public official who has authority and power at the place where the deed is issued. Where, through the deed he makes using his services, the Notary must be able to create legal certainty for the community.[5] Meanwhile, PPAT's authority is solely in making authentic deeds regarding legal actions related to land rights or ownership of apartment units located in its work area.

Along with the progress of the times, society's need to meet economic needs is also experiencing increase and development. In order to fulfill these needs, we as individuals often borrow credit from banking institutions. In this regard, banks have a role as business entities which act to collect funds from the community in the form of savings and channel them to the community in the form of loans and/or other forms to improve the quality of life of many people. Related to this, it is possible to provide external capital loans in

[3] Gusti Ayu Putu Wulan Pradnyasari, Kedudukan Hukum Covernote Notaris Terhadap Perlindungan Hukum Bank dalam Perjanjian Kredit. Acta Comitas Jurnal Hukum Kenotariatan. Vol. 3 No. 3, Desember 2018, hlm. 447

[4] G.H.S Lumban Tobing, Peraturan Jabatan Notaris, Jakarta: Erlangga, 2001, hlm. 2

[5] H. Salim HS dan H. Abdullah, Perancangan Kontrak dan MOU, Jakarta: Sinar Grafika, 2007, hlm. 101-102

installments or through offering multi-purpose credit facilities, which also supports this. For this reason, banks must provide optimal service to customers so that the bank itself can compete and achieve its desired goals. One of the services offered by banks is by offering credit limits to their customers quickly, safely and accurately, so customers can obtain loans with time-efficient calculations.

2. Method

The type of research used in this research is normative juridical research, which is research in the field of law based on literature study.[6] And the approach used is a legislative approach, namely by carrying out an in-depth study of various laws and other regulations that are related to the issues raised.

3. Discussion

Legal Position of Certificates (Covernotes) Made by Notaries in Bank Credit Disbursement

Banks are institutions that require Notary services to provide loans to the public. Credit according to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) is "the provision of money or bills that can be equivalent to it, based on an agreement or loan agreement between the bank and the party others that require the borrower to pay off the debt after a certain period of time with interest." Banks themselves have special rules which have been established by Bank Indonesia (BI) and the Financial Services Authority (OJK) regarding the distribution of credit loan funds and these must be obeyed and implemented by the Bank. The role of a notary is very important in the banking sector, one of which is in making authentic deeds because a notary as a public official must act professionally, namely credibly in uniting the interests of creditors and debtors in making the deed. So you don't need to worry about all forms of deeds or actions in the deed because of the help of a notary in making the deed. This is strengthened because of the strength inherent in an authentic deed, namely Perfect (vollendig bewijskracht) and Binding (bindende bewijskracht), meaning that if evidence of an authentic deed is presented to fulfill formal and material requirements and the evidence submitted by the opposing party does not reduce its existence, then the evidence has perfect and binding evidentiary power, so that the truth of the contents and statements contained therein is perfect and binding for the parties regarding the matters stated in the deed. Complete and binding for the judge, therefore the judge must state a complete and sufficient factual basis for deciding on the resolution of the disputed case.[7]

[6] Soekanto, Soejono. Penelitian Hukum Normatif (Suatu Tinjauan Singkat).Jakarta: Raja Grafindo Persada, 2013, hlm.23

[7] M. Yahya Harahap, Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan, (Jakarta: Sinar Grafika, 2008), hlm. 545.

For example, in terms of credit loan arrangements, the notary loan agreement/PPAT is a binding tool between the creditor and the debtor. When both parties have signed the loan agreement, the creditor or bank will usually ask the notary/PPAT to attach a notification if the notary/PPAT has not completed the deed but the bank wants the loan to be disbursed immediately.

A statement letter (covernote) is a statement made by a notary/PPAT when a loan agreement is made, the purpose of which is to make the agreement a binding guarantee for the loan agreement issued by the bank.[8] This covernote is also often referred to as a closing note issued by a Notary/PPAT. The issuance of this certificate is because the notary has not been able to complete his work completely in relation to his duties and authority to issue authentic deeds.[9]

The problem that often occurs is that notaries usually state that they are willing to provide assistance to banks as creditors and prospective customers as debtors, starting from registering property rights to issuing a Certificate of Ownership (SHM) and binding collateral with mortgage rights to issuing a certificate of mortgage rights. As proof of this ability, the notary generally issues a covernote as a condition for efficient loan disbursement in the credit loan agreement.[10]

The notary will issue an attached covernote to be used as temporary legal protection until all PPAT office processes are completed and the deed is handed over to the creditor. The issuance of a Covernote by a Notary/PPAT is included in the land rights guarantee law. Banking institutions prioritize providing loans with land property as collateral which is then tied to mortgage rights, to accommodate the ever-increasing land prices. Therefore, collateral in the form of mortgage rights requires documents as temporary legal protection for the lender. This is due to the fact that mortgage rights still have to go through an examination process, change names, are still valid as customary rights, or are still in the process of registering the land at the local Land Agency and this takes quite a long time.

In the activities of banking institutions, a notary/PPAT covernote is considered a valid and strong legal evidence and contains a notary/PPAT statement that the legal documents requested by the bank are signed by the debtor and the bank. In this case, the Notary/PPAT also gives a promise or commitment to immediately complete the deed legally or according to the agreed deed schedule. The presence of the covernote itself is also seen as the basis and proof that the signing of a deed or agreement has been carried

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[8] Bayu Ilham Cahyono. Analisis Sistem Dan Prosedur Pembiayaan Kredit Pemilikan Rumah Syariah (KPRS) Murabahah Untuk Mendukung Pengendalian Intern (Studi Pada PT. BTN Syariah Cabang Jombang). Jurnal Administrasi Bisnis, Vol. 25. No. 1, Agustus 2015.

[9] Muhaymiyah Tan Kamelo, Pemberian Kredit dengan Jaminan Tanah Surat Keterangan (SK) Camat Pada PT. Bank Rakyat Indonesia (Persero) Tbk. Cabang Medan Sisingamangaraja, USU Law Journal, Vol. 5 No. 1, Januari 2017, hlm. 59.

[10] Rachmayani & Suwandono, Covernote Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan. Acta Diurnal Jurnal Ilmu Hukum Kenotariatan. Vol. 1, No. 1, Desember 2017, hlm. 75

out, where this legal action is closely related to the procedures for installing mortgage rights and disbursing credit loans by the banking sector.[11] However, the notary/PPAT must ensure that the mortgage is not burdened by mortgage rights before making the covernote. The thing that will be done first by the notary/PPAT is to inspect the certificate at the National Defense Agency or BPN Office to determine the condition of the land and to determine whether the certificate is clean (not burdened with mortgage rights), not in dispute, and not blocked.

Legal Consequences of Certificates (Covernotes) Issued by Notaries

Based on the duties and authority of a notary, in the UUJN itself there is no article which confirms that a notary can make a covernote whose purpose is to state that the deed that will be made later is in progress. For example, when an explanation is needed regarding the statement that a certificate is a condition of a loan agreement regarding the disbursement of a credit loan by a banking institution, the new financial institution can carry out the disbursement. Thus, regarding the duties and authority of the PPAT as regulated in Government Regulation Number 37 of 1998 concerning Regulations on the Position of Officials Making Land Deeds, there is not a single provision that regulates the authority of the PPAT to make closing letters in the procedures for imposing collateral in bank credit agreements. The action of a Notary/PPAT in issuing a covernote like this is only a habit carried out in daily life by notaries in notarial practice. Covernotes themselves can be classified as a source of formal law which is based on the existence of customs, when these habits are carried out regularly, repeatedly and consistently over a certain period of time.

Even though the use of this covernote has occurred repeatedly over a long time and has an important role in granting bank credit, unfortunately this covernote is not regulated specifically and concretely in positive law in Indonesia, whether in Law Number 10 of 1998 concerning Banking, Law -Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public, Government Regulation Number 37 of 1998 concerning the Position of Land Deed Maker, Law Number 4 of 1996 concerning Mortgage Rights and the Civil Code.

Even though it is used in banking practice as a basis for payment and proof of binding, it is also a generally accepted standard for banking parties and has become customary law where notary/PPAT covernotes can be relied upon. This will be accessed and used as a temporary guide/guarantee for disbursing funds to prospective customers who meet the requirements for credit or financing arrangements.[12]

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[11] Rachmayani & Suwandono, Covernote Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan. Acta Diurnal Jurnal Ilmu Hukum Kenotariatan. Vol. 1, No. 1, Desember 2017, hlm. 75

[12] Rina Shahriyani Shahrullah dan Welly Abusono Djufri, Tinjauan Yuridis Covernote Notaris/PPAT terkait Pemasangan Hak Tanggungan Agunan Bank, Journal of Law And Policy Transformation, Vol. 2, No. 2, Desember 2017

In the end, this covernote plays an important and significant role, even though it does not have binding legal effects. The covernote is only valid as supporting evidence at the beginning of the contract disbursement examination process and is not proof of contract disbursement. The role of this covernote is only as a means of informing the truth about ongoing transactions and legal actions carried out by the Notary/PPAT and when all transaction procedures and legal actions have been completed, the Notary/PPAT will transfer them to parties who have an interest in them.

Each notary/PPAT can issue a covernote with different content and format. Although there are no definite regulations governing covernotes, in the field covernotes have been accepted by many parties and are used as a basis for legal processes. The actions of the notary/PPAT in publishing this covernote exceed the intended authority, because the existence of this covernote is not legally binding, but only binds the notary/PPAT personally, so that all contents of the covernote are the personal responsibility of the notary/PPAT.

This provision creates a legal vacuum and can create vulnerabilities in terms of protection and prosecution for the parties involved. In practice, in banking, the bank will only accept financing fees based on the covernote provided by the Notary/PPAT. What causes the legal status of this covernote to be questioned is because it can be used as a basis for carrying out legal actions before the duly authentic deed is issued. For example, if a customer wishes to apply for credit to a bank for a loan, the bank requires collateral. Customers can request that a Power of Attorney to Charge Mortgage Rights (SKMHT) be made at a Notary/PPAT. If the debtor/client wants credit as soon as possible, the notary/PPAT will prepare a covernote stating that the issuance of the Guarantee certificate is still in progress.

After submitting the complete documents to issue a mortgage certificate to the bank as creditor, it takes approximately ± 7 days, so because of the efficiency of the notary's time which is used as collateral, the notary issues a covernote to serve as a basis for the bank as creditor to immediately transfer the loan to the debtor. Then, you no longer have to wait for all the document preparation and registration processes to complete for loan disbursement, but simply receive the covernote prepared by the notary.

Providing a covernote certainly has legal consequences, for example there are problems in issuing mortgage certificates that take a long time to resolve, obstacles in receiving the deed, name transfers or other obstacles that occur in several processes of issuing mortgage certificates. Which this can cause problems in the future.

4. Conclusion

In the activities of banking institutions, a notary/PPAT covernote is considered a valid and strong legal evidence and contains a notary/PPAT statement that the legal documents requested by the bank are signed by the debtor and the bank. In this case, the Notary/PPAT also gives a promise or commitment to immediately complete the deed legally or according to the agreed deed schedule. The presence of the covernote itself is also seen as the basis and proof that the signing of a deed or agreement has been carried out, where this legal action is closely related to the procedures for installing mortgage rights and disbursing credit loans by the banking sector.

Even though the use of this covernote has occurred repeatedly over a long time and has an important role in providing bank credit, unfortunately this covernote is not regulated specifically and concretely in positive law in Indonesia. This provision creates a legal vacuum and can create vulnerabilities in terms of protection and prosecution for the parties involved. In practice, in banking, the bank will only accept financing fees based on the covernote provided by the Notary/PPAT. What causes the legal status of this covernote to be questioned is because it can be used as a basis for carrying out legal actions before the duly authentic deed is issued.

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