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## Legal Power and Liability of Notary Towards The Content of Cover Note That is not Implemented In BTN Balikpapan

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**Abstract:** This article is titled Legal Power and Notary's Responsibility on the Content of Unexecuted Cover Note in BTN Balikpapan. Legal research method with Normative research type, using *statute* approach and *conceptual approach* as well as secondary data source which is using primary legal materials in the form of regulations relevant to legal issues, and secondary legal materials which are opinions and legal theories relevant to legal issues in this writing. So with this analysis, it is concluded that the cover note does not have absolute evidentiary power and only functions as additional evidence depending on the judge's judgment. The use of a cover note as the basis for the exercise of rights and obligations in a credit agreement is considered invalid because it cannot replace a notarial deed. The notary's responsibility related to the issuance of a cover note for bank credit disbursement is that the notary is fully responsible for the contents of the cover note he issued. If there is a discrepancy between the contents of the cover note and the actual conditions in the field, the notary must bear his responsibility, both administratively, criminally and civilly, and even *morally*.

**Keyword:** Credit Agreement, Cover Note, Notary Liability.

### INTRODUCTION

The role of Notary becomes crucial in ensuring legal certainty related to various legal actions in various dimensions of social life, ranging from family law issues to very important aspects in supporting business transactions. (Devi, 2021). So it is not an exaggeration to describe the role of Notary as a vital core in the formal legal system, especially in the context of written law, because the contribution of Notary can help facilitate business transactions carried out by business actors who need notary services, in order to have legal certainty for the parties involved. For example, the role of a Notary in the procedure of financing home ownership loans (hereinafter referred to as KPR) in banking begins with an agreement and/or agreement of the parties, such as an agreement on the price of the house between the seller and the buyer, then an agreement between the credit customer (debtor) with the bank (creditor) and the seller regarding credit collateral in the form of original certificates that are still under the name of the developer (seller company). The seller company and prospective

buyers when implementing a house sale and purchase agreement by means of credit financing through a bank certainly need a Notary to help make a written agreement in order to have legal certainty for the parties.

It becomes an obstacle if the mortgage facility that is immediately carried out is constrained because the original master certificate has not yet been processed by the seller company. Therefore, the Notary or PPAT performs its role to take care of splitting the master certificate as well as the process of changing the name on behalf of the credit debtor and all the legalities needed so that the mortgage can be carried out. (Yustica et al., 2019). So, the selling company submits the original master certificate to a Notary or PPAT for further processing, then the bank will ask for certainty through a Notary or PPAT regarding the processing of the original master certificate split and all legalities. Usually, what happens so that the mortgage procedure is carried out immediately, then to speed up the process, a certificate is made by a notary known as a *Cover note*, which is a statement from a Notary.

*The cover note* made by the Notary as temporary evidence until the notary completes all the required legalities including the making of the land ownership deed which is in process. However, what if it turns out that the statement from the notary in the form of a *cover note* is not carried out while the home ownership credit financing procedure has taken place and the debtor has carried out his obligation to pay installments for more than 12 (twelve) months? (Damayanti et al., 2020).

The procedure of selling and buying a house through mortgage installment, in this research is found using a *cover note* made by a notary at PT Bank Tabungan Negara (Persero) Tbk Balikpapan branch, hereinafter referred to as "BTN Balikpapan". The sale and purchase of a house with installment system (credit) at BTN Balikpapan involves seller, buyer (debtor) and BTN Balikpapan (creditor). The procedure for signing the Credit Agreement at BTN Balikpapan is that the Selling Company submits copies of Building Rights Title certificates to BTN Balikpapan with an explanation that the certificates have no record of encumbrance by other banks. Furthermore, the signing of the Purchase Agreement and the Credit Agreement is done in the presence of Notary and Land Deed Official (PPAT). At the same time, the Notary and PPAT also issue or make a *cover note* which serves as a guarantee that the documents that have been made for the KPR collateral are still in the process of being processed. The entire document is submitted to the bank after the entire process of encumbering the original certificate is completed.

The practice of disbursement of mortgage loan by using photocopy of certificate wrapped with *cover note* from Notary or PPAT at BTN Balikpapan occurred since November 27, 2014 until October 29, 2018 for approximately 4 (four) years, has resulted in 22 (twenty two) certificates of mortgage rights are not located or kept by BTN Balikpapan as mortgage collateral. After investigation, it turns out that the certificates which should be used as loan collateral at BTN Balikpapan have been pledged by the selling company, namely the Director of PT AGP, hereinafter referred to as "developer", to Bank Bukopin Balikpapan branch (hereinafter referred to as "other bank") and have been subject to Mortgage Rights. That between the other bank and the developer there is a debt and credit relationship, made in Deed of Credit Agreement with collateral No.89 and Deed of Debt Acknowledgement No.90 dated November 26, 2014, both of which are made before a Notary or PPAT in Balikpapan, where the other bank provides Credit Facility for Working Capital of Housing Construction to the developer.

The Developer has provided collateral to other banks in the form of 111 (one hundred and eleven) land plots of Building Rights Title Certificates (SHGB) in the name of the Developer Company "Credit Agreement" Jo. Certificate of Notary Dwi Suhartini, SH No. 1229/PPAT/XI/2014 dated November 26, 2014, with the provision of the original certificate as collateral, it gives other banks the right and power to obtain repayment by

selling or auctioning these goods if the developer cannot repay the debt or default. Legally, the holder of First Rank Mortgage Rights on 29 (twenty-nine) land parcels of Building Rights Title Certificates (SHGB) which are the object of the Lawsuit have been registered and are in other banks.

This condition puts BTN Balikpapan in a weak and disadvantaged position. According to BTN Balikpapan's statement, the actions of the Notary or PPAT who did not fulfill their promises in accordance with the contents of the cover note they made resulted in losses to the bank and credit debtors, while according to the opinion of the credit debtor initials AS who was given power of attorney by other victims as evidenced by the signatures of the aggrieved housing residents, has made a police report to the East Kalimantan Regional Police on January 14, 2020 for alleged banking crimes committed by the bank and three (3) Notaries, It is briefly stated that the Notary and BTN Balikpapan have deliberately processed the credit contract and sale and purchase agreement (PPJB) for the purchase of the house while it is known that the original certificate is in another bank and is bound by Mortgage Rights on behalf of the developer, so that the BTN Balikpapan credit debtor feels very disadvantaged because he still has to pay credit installments to BTN Balikpapan while his house is threatened to be confiscated by another bank due to bad credit made by the developer on the original certificate collateral in another bank. From the above problems, all parties feel aggrieved and have done nothing wrong, starting from the developer, creditor, debtor and Notary or PPAT.

It is well known that the party who does not keep his promise can be said to be in default. Referring to this research, a Notary or PPAT who does not keep his promise according to the contents of the cover note can be said to be in default, and it can also be examined from the above case that the actions of the Notary or PPAT violate the provisions of the principle of good faith, the principle of morality and the alleged element of fraud because on November 26, 2014 the Notary or PPAT has carried out an engagement between the developer and another bank as evidenced by the "Credit Agreement" Jo. Certificate No. 1229/PPAT/XI/2014, then on November 27, 2014 executed the first engagement by using the cover note basis for mortgage facility with the aggrieved credit debtor at BTN Balikpapan because the original certificate was at another bank.

The original certificates as mortgage collateral that should be in BTN Balikpapan, but are in another bank, is one of the forms of the bank's failure to implement the prudential principle thoroughly in the banking sector, where the prudential principle has a wide scope. Therefore, it is actually very necessary to have continuous supervision from the bank to the Notary or PPAT related to the cover note regarding the procedure of registration, transfer, and granting of Mortgage Rights. This supervision must be considered based on the time information conveyed in the contents of the cover note until all legal procedures and security certificates are completed. However, in fact, the mortgage disbursement procedure has been running for approximately 4 (four) years from November 27, 2014 to October 29, 2018 which has resulted in 22 (twenty-two) certificates of mortgage rights being in other banks or not kept by BTN Balikpapan as mortgage collateral. If the mortgage procedure is implemented in accordance with what was promised at the beginning, then the original Mortgage Rights certificate is submitted by the developer through Notary or PPAT to BTN Balikpapan to be kept, and later returned to the debtor after the debtor pays off the mortgage installment.

The disbursement of funds for KPR facilities using the cover note basis through this incident is proven to be very risky for the parties involved if not done carefully, often KPR problems using covernotes made by Notaries at the request of the bank as a result are detrimental to creditors and debtors because they are not completely resolved. However, when the cover note practice carried out with the developer, Notary and / or PPAT and the bank for approximately 4 (four) years is revealed, what happens is that the bank as the

creditor feels the most disadvantaged by this problem. In fact, if examined from the problems described in the lawsuit, the bank as a creditor has the power to request a cover note to be made by a Notary or PPAT and the bank has the power to disburse or not disburse the mortgage funds if imperfect legality is found to be protracted and not resolved. For this problem, the debtor seems to be trapped in a situation of having to continue to pay credit installments until it is paid off but has no guarantee of ownership and / or title, namely the original certificate will be returned to the debtor because it has been used as a Mortgage by the developer and is in another bank.

Of course, the practice of this mortgage procedure cannot be ignored so as not to keep repeating the same events, because in fact debtors, creditors need legal certainty in every implementation of credit agreements at banks by using the services of Notaries or PPATs who make all agreements through authentic deeds. Basically, every task and authority has a responsibility that must be obeyed and there are legal consequences if it is not done. Therefore, the legal issues in this writing are (1) Is the Covernote made by Notary legally valid to be used as the basis for granting Home Ownership Credit facility at the Bank? (2) How is the Responsibility of Notary Related to the promise of Cover Note content that is not fulfilled at BTN in Balikpapan ?

## METHOD

The research method used in writing this article is normative juridical research. In addition, it also uses a research approach using statutory regulations and uses a theoretical or conceptual approach. as for other supporting data, namely by using primary data obtained from field sources, and secondary data using primary, secondary and tertiary legal materials as, each of which is a data source to be used in analyzing legal issues in writing this article.

## RESULTS AND DISCUSSION

### **The Legal Power of Covernote made by Notary for the basis of granting Home Ownership Credit facilities at the Bank**

Notary is a public official who has a very vital position and role in the structure of the life of the nation and state, because it is given significant authority (*autohority*). The source of authority obtained in an office is certainly determined by State Administration Law, which indicates that authority can come from attribution, delegation, and mandate. The authority possessed by a Notary as a public official is obtained through attribution, which is expressly granted by a statutory regulation, namely Law No. 2 of 2014 on the Office of Notary ("UUJN"). (Sakinah & Setyono, 2022). Therefore, actions taken by a Notary outside the limits of his/her authority can be considered a violation of the law. Elements and/or elements in the concept of Notary authority include the existence of power, regulated by law, and the object involved. Power is interpreted as the Notary's ability to carry out his/her duties, so that the Notary's authority to serve the public can be classified into two types, namely the authority to make authentic deeds and other authorities. Other powers include powers granted to Notaries based on other laws and regulations, in addition to those regulated and/or beyond the provisions in the UUJN. For example, such as the authority to perform legal acts in making an authentic letter in the form of a deed of corporation, so that it can be described that the authority of the public official of Notary is to perform legal acts in making authentic letters such as agreements and other types that have been authorized by the Law as stated in the statutory regulations, every making of an authentic letter must be recorded by a Notary, and to set the time as it exists, to store authentic letters, and all that is authorized by law for Notaries to be able to do based on the authority.

Other authorities possessed by Notary are: (a) to make waarmedking of letters under

the hand, (b) to legalize letters under the hand, (c) to duplicate or copy of each letter under the hand that is done waarmedking or legalization at the Notary, (d) to legalize the suitability between the original file and the copy of the original file, (e) to carry out socialization related to providing education to the public about the urgency of authentic letters, (f) to perform legal acts to make authentic letters about land, (g) to prepare auction minutes or auction records. (Profession, 2016). Notaries in carrying out their role in providing services to the community, can only be carried out in accordance with the authority given to them by the Law. So that the Notary cannot perform duties and functions or legal acts that are the authority of PPAT. If, a notary is also a PPAT, then he must carry out his duties and functions in accordance with their respective authorities according to the duties and functions that have been outlined in the law. Such as Notaries are authorized to make various kinds of authentic letters, waarmedking, legalization except in the field of land. (Rachmayani & Suwandono, 2017).

Cases that often occur in the practice of granting mortgages in credit agreements often arise because there is collateral in the form of land whose ownership is still in the form of seals, girik, petok, or master certificates that cannot be processed in the name of the debtor, so that to expedite the credit agreement procedure, a Cover Note is made. Cover note is a certificate made by a Notary, issued when a credit agreement occurs with the aim of binding the collateral in the credit agreement issued by the bank as a creditor and / or credit provider. "In the activity of organizing loan agreements, banks must determine the standard stages in order to obtain certainty: the adequacy and validity of the files that are used as conditions for the implementation of loan agreements; the existence of a legal statement document (cover note) by a Notary that provides information if all original collateral documents that have not been submitted and while at the administration stage by the competent government agency are later given to banks within the agreed period after the administration stage ends." Furthermore, it is explained again about the covernote, namely if the AJB or deed of granting the burden of mortgage rights, or SKMHT still does not exist, the provision of the loan ceiling can be carried out after the bank gets a report on the submission and acceptance and cover note by the Notary or PPAT. The related cover note contains data on the progress of the formation of AJB and the deed of granting the burden of mortgage rights, and SKMHT, as well as the willingness of the Notary or PPAT to provide these documents: That is, the signing of a credit agreement between the creditor and the debtor using collateral, the procedure is that all agreements are bound by a Notary deed, which is then processed for the encumbrance of Mortgage Rights as collateral. However, if the process of encumbering collateral cannot be carried out immediately, generally the Notary will issue a cover note to the bank (creditor) as a temporary substitute if there is a lack of collateral evidence in the procedure for disbursing credit funds by the bank. Thus, it can be interpreted that when there is insufficient collateral evidence in the bank loan disbursement process, the covernote is a certificate from the notary in relation to the duties and authority that the process of issuing the original deed has not been completed.

The procedure for issuing a Covernote for the sale and purchase of a house through a mortgage and/or credit agreement itself, there are no provisions that specifically regulate in the laws and regulations (UUHT, UUJN, PP PJPAT), does not discuss the making of a Cover note by a Notary or PPAT related to its implementation. (Karma Resen, 2023). Covernotes issued by Notaries often cover matters outside of their authority, relating more to the duties of other agencies. The covernote can give the impression that the Notary "guarantees" the implementation of an activity by another agency, which results in many problems in the field. Notaries are often held responsible for the completion of tasks that are actually the authority of other agencies. This practice is common among Notaries, especially in making deeds related to credit. Banks often use Covernote as a basis for

disbursing credit, as if Covernote is a magic letter for such disbursement. The Creditor (Bank) in carrying out the disbursement of credit funds must be responsible for the supervision and management of funds provided by the public, therefore banks must follow the prudential principle to maintain public trust. The principle of prudence in Indonesian Banking is emphasized that in conducting business based on economic democracy using the principle of prudence. Therefore, the cover note cannot be used as the basis for granting and / or disbursing credit facility funds for the implementation of rights and obligations in the credit agreement because the Cover Note is not legally valid and cannot replace the strength of the authentic deed made by a Notary and the Bank should fully implement the prudential principle, as well as the Notary who makes the cover note must have integrity in carrying out their duties and authority because every duty and authority has responsibility and legal consequences.

### **Responsibility of Notary Related to Unfulfilled Promise of Cover Note Content at BTN in Balikpapan**

Juridically, regulations on cover notes have not been specifically regulated in legislation, either those governing Notaries or PPATs regarding the interpretation of cover notes or the authority of Notaries or PPATs in the issuance of such certificates. There are no laws and regulations that can be interpreted as the authority of a Notary or PPAT to issue a certificate called a Cover Note for the basis of credit disbursement at a bank. The Cover Note does not have legal force as an "*ambtelijke acte*", so it does not have absolute evidentiary power, but is only a clue in proof or may be additional evidence, depending on the judge's judgment. The use of Cover Note as a basis for the exercise of rights and obligations in a credit agreement is invalid because it cannot replace a notarial deed. (Pratama et al., 2021). Liability comes from the concepts of responsibility and responsibility, which indicate the obligation to bear the consequences of something. In the legal dictionary, there are terms of *Responsibility*, namely *Liability* and *Responsibility*, *Liability* is a broad legal term with a definite nature of duties and responsibilities, similar to the rights and obligations that must be enforced in accordance with the law, while *Responsibility* refers to individual responsibility in action, including the ability and obligation to comply with applicable regulations. According to conventional theory, there are two types of liability: fault-based liability and strict liability. According to Hans Kelsen's view, any individual who commits a wrong must be legally responsible for his or her actions, which means that the individual will bear the consequences of his or her wrongdoing in accordance with the applicable law. (Kartika & Laitupa, 2022)..

These consequences can be in the form of sanctions imposed by law. The Practice of the Implementation of the Office of Notary and the Laws and Regulations relating to the Office of Notary, Civil Law, Commercial Law, Land Law and the Code of Ethics of Notaries, Recommendations and Unity of Attitude of the Indonesian Notary Association (INI) state the following during the process of making Covernote: Does not contain matters that are outside the authority and duties of a notary; covernotes can only be made after the deed is fully signed and meets the requirements and procedures stipulated by law; Explains to the Bank that the bank's prudential principles will still be prioritized when granting credit; and Does not make covernotes that promise or guarantee that a transaction will be carried out without the permission of a notary. (Hartono & Raisah, 2023).

The wrongful act committed by the Notary to the provisions as intended in the UJUN which causes a deed to only have the ability to prove as an unofficial deed or an invalid deed and is the cause of the side that suffered the loss to prosecute to replace the payment, compensation, and interest against the Notary. If "all PMH that causes loss to a person, requires the person whose negligence caused the loss, to compensate for the related

loss." Then it is emphasized that "all individuals are liable not only for losses caused by their actions, but also for losses caused by fault or lack of care". Due to this reason, the process of responsibility carried out by the party who is the subject of law can be said to be legal responsibility. (Fatimah et al., 2020). Based on the relationship between responsibility, necessity, and punishment based on Hans Kelsen's concept, legal responsibility can be divided into three types, namely administrative, civil, and criminal. Administrative responsibility for Notary is in the form of written or oral reprimand, term termination, honorable termination, termination by dishonorable means (Kadir et al., 2019). Related punishments are carried out in stages starting with verbal reprimands to dishonorable termination. The imposition of related penalties is carried out when the Notary has been proven to have violated the provisions of the relevant laws as stated in the UUJN.

Civil liability includes civil sanctions imposed for wrongdoing due to default or tort, tortious acts of negligence are different from intentional tortious acts. Intentional tort occurs when the perpetrator deliberately seeks to cause harm to the victim, or is at least aware that his actions will cause such harm. Notaries can be sued civilly if the contents of the Covernote are incorrect, based on Article 1365 of the Civil Code on Unlawful Acts, and can be subject to compensation if they cause harm to other parties. The sanctions received are in the form of reimbursement of costs, compensation, and interest, which is a consequence of the lawsuit of the victims, namely the aggrieved KPR debtors. To discuss Notary's responsibility in the civil sphere, it is necessary to first determine whether the mistake is a default or a tort. From the case example that the author examines above, it is proven that the practice of mortgage disbursement by using photocopy of certificate wrapped with *cover note* from notary or PPAT at BTN Balikpapan occurred since November 27, 2014 until October 29, 2018 for approximately 4 (four) years, which has resulted in 22 (twenty-two) certificates of mortgage rights not being located or kept by BTN Balikpapan as mortgage collateral, but the certificates that should be used as loan collateral at BTN Balikpapan have been pledged by the developer to other banks and have been subject to Mortgage Rights.

Criminal responsibility, in criminal law there is an important principle stipulated that "an act can only be considered a criminal offense if it has previously been regulated in statutory provisions." The principle of criminal responsibility states that "the provisions of Indonesian criminal law apply to anyone who commits a crime in Indonesia." Thus, a person can only be criminally prosecuted if his or her actions have been regulated as a criminal offense in the law and are subject to criminal penalties. Criminal law consists of two main parts: material criminal law which is regulated in the Criminal Code and formal criminal law or criminal procedure law. Criminal liability involves two main elements: norms (in the form of prohibitions or orders) and sanctions (in the form of threats of criminal punishment as a consequence of violating these norms). In Indonesia, the criminal punishment system consists of: Primary punishment: death penalty, imprisonment, confinement, fine, and imprisonment. Additional punishment: deprivation of certain rights, confiscation of certain goods, and announcement of the judge's decision.

A person who is legally responsible for an act is a person who can be subject to punishment for the unlawful act. In the UUJN it is regulated that when a Notary in carrying out his duties and positions is proven to have committed a violation, the Notary can be subject to or sanctioned in the form of civil and administrative sanctions, but the UUJN does not regulate criminal sanctions. However, if a criminal offense occurs or the criminal elements are fulfilled, the Notary can also be criminally prosecuted if it is proven that he is consciously and intentionally together with the party requesting the Covernote to provide false information to commit an act that constitutes a criminal offense. Notaries can be subject to criminal sanctions stipulated in the Criminal Code. In addition, Notaries can also be held criminally liable if they commit acts prohibited by law, or commit errors or

unlawful acts intentionally or due to negligence that cause losses to other parties and/or losses to the State, such as for example the misuse of the Notary profession by being directly or indirectly involved in the Crime of Money Laundering (TPPU).

Notaries have the responsibility to act with integrity, honesty, care, independence, impartiality, and attention to the interests of all parties involved in legal transactions. This shows the magnitude of the responsibility carried by a Notary in carrying out his duties. In addition, Notaries also have a significant moral responsibility in exercising their authority in accordance with applicable law. If a Notary commits a criminal act or inappropriate behavior, it can damage the reputation of the office of notary as a whole. Therefore, when there is negligence from a Notary in issuing a cover note that contains inaccurate information, it must be legally responsible for its actions, including administrative liability, civil liability, and criminal liability. Even in this case, the Notary also bears moral responsibility for his/her position. Notary negligence in this case, for example in issuing cover notes for the purpose of realizing bank loans, is a violation of applicable legal provisions. This action can reduce public trust in the role of the Notary, in other words, the actions taken by the Notary in this case can damage the reputation and dignity of the Notary office.

The legal consequence for a Notary who fails to implement the contents of the cover note is that the Notary can be held responsible for immediately completing it according to the agreement between the two parties. The Notary can request an extension of time to complete the contents of the cover note. In situations where there are problems related to the issuance and implementation of the cover note, usually the sanction given to the Notary is a moral sanction in the form of loss of trust from the bank towards the Notary because the Notary cannot fulfill the contents of the cover note as expected. The actions of the Notary are considered as negligence and errors in carrying out their duties, authority, and implementing the contents of the cover note, as stipulated in Article 1366 of the Civil Code.

Notary is a public official who has a very vital position and role in the structure of the life of the nation and state, because it is given significant authority (*autohority*). The source of authority obtained in an office is certainly determined by State Administration Law, which indicates that authority can come from attribution, delegation, and mandate. The authority possessed by a Notary as a public official is obtained through attribution, which is expressly granted by a statutory regulation, namely Law No. 2 of 2014 on the Office of Notary ("UUJN"). (Sakinah & Setyono, 2022). Therefore, actions taken by a Notary outside the limits of his/her authority can be considered a violation of the law. Elements and/or elements in the concept of Notary authority include the existence of power, regulated by law, and the object involved. Power is interpreted as the Notary's ability to carry out his/her duties, so that the Notary's authority to serve the public can be classified into two types, namely the authority to make authentic deeds and other authorities. Other powers include powers granted to Notaries based on other laws and regulations, in addition to those regulated and/or beyond the provisions in the UUJN. For example, such as the authority to perform legal acts in making an authentic letter in the form of a deed of corporation, so that it can be described that the authority of the public official of Notary is to perform legal acts in making authentic letters such as agreements and other types that have been authorized by the Law as stated in the statutory regulations, every making of an authentic letter must be recorded by a Notary, and to set the time as it exists, to store authentic letters, and all that is authorized by law for Notaries to be able to do based on the authority.

Other authorities possessed by Notary are: (a) to make waarmedking of letters under the hand, (b) to legalize letters under the hand, (c) to duplicate or copy of each letter under the hand that is done waarmedking or legalization at the Notary, (d) to legalize the suitability



between the original file and the copy of the original file, (e) to carry out socialization related to providing education to the public about the urgency of authentic letters, (f) to perform legal acts to make authentic letters about land, (g) to prepare auction minutes or auction records. (Profession, 2016). Notaries in carrying out their role in providing services to the community, can only be carried out in accordance with the authority given to them by the Law. So that the Notary cannot perform duties and functions or legal acts that are the authority of PPAT. If, a notary is also a PPAT, then he must carry out his duties and functions in accordance with their respective authorities according to the duties and functions that have been outlined in the law. Such as Notaries are authorized to make various kinds of authentic letters, waarmeding, legalization except in the field of land. (Rachmayani & Suwandono, 2017).

Cases that often occur in the practice of granting mortgages in credit agreements often arise because there is collateral in the form of land whose ownership is still in the form of seals, girik, petok, or master certificates that cannot be processed in the name of the debtor, so that to expedite the credit agreement procedure, a Cover Note is made. Cover note is a certificate made by a Notary, issued when a credit agreement occurs with the aim of binding the collateral in the credit agreement issued by the bank as a creditor and / or credit provider. "In the activity of organizing loan agreements, banks must determine the standard stages in order to obtain certainty: the adequacy and validity of the files that are used as conditions for the implementation of loan agreements; the existence of a legal statement document (cover note) by a Notary that provides information if all original collateral documents that have not been submitted and while at the administration stage by the competent government agency are later given to banks within the agreed period after the administration stage ends." Furthermore, it is explained again about the covernote, namely if the AJB or deed of granting the burden of mortgage rights, or SKMHT still does not exist, the provision of the loan ceiling can be carried out after the bank gets a report on the submission and acceptance and cover note by the Notary or PPAT. The related cover note contains data on the progress of the formation of AJB and the deed of granting the burden of mortgage rights, and SKMHT, as well as the willingness of the Notary or PPAT to provide these documents: That is, the signing of a credit agreement between the creditor and the debtor using collateral, the procedure is that all agreements are bound by a Notary deed, which is then processed for the encumbrance of Mortgage Rights as collateral. However, if the process of encumbering collateral cannot be carried out immediately, generally the Notary will issue a cover note to the bank (creditor) as a temporary substitute if there is a lack of collateral evidence in the procedure for disbursing credit funds by the bank. Thus, it can be interpreted that when there is insufficient collateral evidence in the bank loan disbursement process, the covernote is a certificate from the notary in relation to the duties and authority that the process of issuing the original deed has not been completed.

The procedure for issuing a Covernote for the sale and purchase of a house through a mortgage and/or credit agreement itself, there are no provisions that specifically regulate in the laws and regulations (UUHT, UUJN, PP PJPAT), does not discuss the making of a Cover note by a Notary or PPAT related to its implementation. (Karma Resen, 2023). Covernotes issued by Notaries often cover matters outside of their authority, relating more to the duties of other agencies. The covernote can give the impression that the Notary "guarantees" the implementation of an activity by another agency, which results in many problems in the field. Notaries are often held responsible for the completion of tasks that are actually the authority of other agencies. This practice is common among Notaries, especially in making deeds related to credit. Banks often use Covernote as a basis for disbursing credit, as if Covernote is a magic letter for such disbursement. The Creditor (Bank) in carrying out the disbursement of credit funds must be responsible for the

supervision and management of funds provided by the public, therefore banks must follow the prudential principle to maintain public trust. The principle of prudence in Indonesian Banking is emphasized that in conducting business based on economic democracy using the principle of prudence. Therefore, the cover note cannot be used as the basis for granting and / or disbursing credit facility funds for the implementation of rights and obligations in the credit agreement because the Cover Note is not legally valid and cannot replace the strength of the authentic deed made by a Notary and the Bank should fully implement the prudential principle, as well as the Notary who makes the cover note must have integrity in carrying out their duties and authority because every duty and authority has responsibility and legal consequences.

### **Responsibility of Notary Related to Unfulfilled Promise of Cover Note Content at BTN in Balikpapan**

Juridically, regulations on cover notes have not been specifically regulated in legislation, either those governing Notaries or PPATs regarding the interpretation of cover notes or the authority of Notaries or PPATs in the issuance of such certificates. There are no laws and regulations that can be interpreted as the authority of a Notary or PPAT to issue a certificate called a Cover Note for the basis of credit disbursement at a bank. The Cover Note does not have legal force as an "*ambtelijke acte*", so it does not have absolute evidentiary power, but is only a clue in proof or may be additional evidence, depending on the judge's judgment. The use of Cover Note as a basis for the exercise of rights and obligations in a credit agreement is invalid because it cannot replace a notarial deed. (Pratama et al., 2021). Liability comes from the concepts of responsibility and responsibility, which indicate the obligation to bear the consequences of something. In the legal dictionary, there are terms of *Responsibility*, namely *Liability* and *Responsibility*, *Liability* is a broad legal term with a definite nature of duties and responsibilities, similar to the rights and obligations that must be enforced in accordance with the law, while *Responsibility* refers to individual responsibility in action, including the ability and obligation to comply with applicable regulations. According to conventional theory, there are two types of liability: fault-based liability and strict liability. According to Hans Kelsen's view, any individual who commits a wrong must be legally responsible for his or her actions, which means that the individual will bear the consequences of his or her wrongdoing in accordance with the applicable law. (Kartika & Laitupa, 2022)..

These consequences can be in the form of sanctions imposed by law. The Practice of the Implementation of the Office of Notary and the Laws and Regulations relating to the Office of Notary, Civil Law, Commercial Law, Land Law and the Code of Ethics of Notaries, Recommendations and Unity of Attitude of the Indonesian Notary Association (INI) state the following during the process of making Covernote: Does not contain matters that are outside the authority and duties of a notary; covernotes can only be made after the deed is fully signed and meets the requirements and procedures stipulated by law; Explains to the Bank that the bank's prudential principles will still be prioritized when granting credit; and Does not make covernotes that promise or guarantee that a transaction will be carried out without the permission of a notary. (Hartono & Raisah, 2023).

The wrongful act committed by the Notary to the provisions as intended in the UUJN which causes a deed to only have the ability to prove as an unofficial deed or an invalid deed and is the cause of the side that suffered the loss to prosecute to replace the payment, compensation, and interest against the Notary. If "all PMH that causes loss to a person, requires the person whose negligence caused the loss, to compensate for the related loss." Then it is emphasized that "all individuals are liable not only for losses caused by their actions, but also for losses caused by fault or lack of care". Due to this reason, the

process of responsibility carried out by the party who is the subject of law can be said to be legal responsibility. (Fatimah et al., 2020). Based on the relationship between responsibility, necessity, and punishment based on Hans Kelsen's concept, legal responsibility can be divided into three types, namely administrative, civil, and criminal. Administrative responsibility for Notary is in the form of written or oral reprimand, term termination, honorable termination, termination by dishonorable means (Kadir et al., 2019). Related punishments are carried out in stages starting with verbal reprimands to dishonorable termination. The imposition of related penalties is carried out when the Notary has been proven to have violated the provisions of the relevant laws as stated in the UUJN.

Civil liability includes civil sanctions imposed for wrongdoing due to default or tort, tortious acts of negligence are different from intentional tortious acts. Intentional tort occurs when the perpetrator deliberately seeks to cause harm to the victim, or is at least aware that his actions will cause such harm. Notaries can be sued civilly if the contents of the Covernote are incorrect, based on Article 1365 of the Civil Code on Unlawful Acts, and can be subject to compensation if they cause harm to other parties. The sanctions received are in the form of reimbursement of costs, compensation, and interest, which is a consequence of the lawsuit of the victims, namely the aggrieved KPR debtors. To discuss Notary's responsibility in the civil sphere, it is necessary to first determine whether the mistake is a default or a tort. From the case example that the author examines above, it is proven that the practice of mortgage disbursement by using photocopy of certificate wrapped with *cover note* from notary or PPAT at BTN Balikpapan occurred since November 27, 2014 until October 29, 2018 for approximately 4 (four) years, which has resulted in 22 (twenty-two) certificates of mortgage rights not being located or kept by BTN Balikpapan as mortgage collateral, but the certificates that should be used as loan collateral at BTN Balikpapan have been pledged by the developer to other banks and have been subject to Mortgage Rights.

Criminal responsibility, in criminal law there is an important principle stipulated that "an act can only be considered a criminal offense if it has previously been regulated in statutory provisions." The principle of criminal responsibility states that "the provisions of Indonesian criminal law apply to anyone who commits a crime in Indonesia." Thus, a person can only be criminally prosecuted if his or her actions have been regulated as a criminal offense in the law and are subject to criminal penalties. Criminal law consists of two main parts: material criminal law which is regulated in the Criminal Code and formal criminal law or criminal procedure law. Criminal liability involves two main elements: norms (in the form of prohibitions or orders) and sanctions (in the form of threats of criminal punishment as a consequence of violating these norms). In Indonesia, the criminal punishment system consists of: Primary punishment: death penalty, imprisonment, confinement, fine, and imprisonment. Additional punishment: deprivation of certain rights, confiscation of certain goods, and announcement of the judge's decision.

A person who is legally responsible for an act is a person who can be subject to punishment for the unlawful act. In the UUJN it is regulated that when a Notary in carrying out his duties and positions is proven to have committed a violation, the Notary can be subject to or sanctioned in the form of civil and administrative sanctions, but the UUJN does not regulate criminal sanctions. However, if a criminal offense occurs or the criminal elements are fulfilled, the Notary can also be criminally prosecuted if it is proven that he is consciously and intentionally together with the party requesting the Covernote to provide false information to commit an act that constitutes a criminal offense. Notaries can be subject to criminal sanctions stipulated in the Criminal Code. In addition, Notaries can also be held criminally liable if they commit acts prohibited by law, or commit errors or unlawful acts intentionally or due to negligence that cause losses to other parties and/or losses to the State, such as for example the misuse of the Notary profession by being

directly or indirectly involved in the Crime of Money Laundering (TPPU).

Notaries have the responsibility to act with integrity, honesty, care, independence, impartiality, and attention to the interests of all parties involved in legal transactions. This shows the magnitude of the responsibility carried by a Notary in carrying out his duties. In addition, Notaries also have a significant moral responsibility in exercising their authority in accordance with applicable law. If a Notary commits a criminal act or inappropriate behavior, it can damage the reputation of the office of notary as a whole. Therefore, when there is negligence from a Notary in issuing a cover note that contains inaccurate information, it must be legally responsible for its actions, including administrative liability, civil liability, and criminal liability. Even in this case, the Notary also bears moral responsibility for his/her position. Notary negligence in this case, for example in issuing cover notes for the purpose of realizing bank loans, is a violation of applicable legal provisions. This action can reduce public trust in the role of the Notary, in other words, the actions taken by the Notary in this case can damage the reputation and dignity of the Notary office.

The legal consequence for a Notary who fails to implement the contents of the cover note is that the Notary can be held responsible for immediately completing it according to the agreement between the two parties. The Notary can request an extension of time to complete the contents of the cover note. In situations where there are problems related to the issuance and implementation of the cover note, usually the sanction given to the Notary is a moral sanction in the form of loss of trust from the bank towards the Notary because the Notary cannot fulfill the contents of the cover note as expected. The actions of the Notary are considered as negligence and errors in carrying out their duties, authority, and implementing the contents of the cover note, as stipulated in Article 1366 of the Civil Code.

## CONCLUSION

Cover note is invalid and does not have the same power as an authentic deed made by a notary public. In addition, there are no laws and regulations governing the use of cover note specifically, so that the cover note issued by a notary public cannot be a reference and guarantee for creditors for the implementation of credit facilities related to the rights and obligations associated with the credit agreement. The bank has the power, authority to execute or not execute the credit disbursement on the basis of the cover note, moreover it was found that the procedure of using cover note was not completed for approximately 4 (four) years in BTN Balikpapan. The cover note does not have absolute evidentiary power and only serves as additional evidence depending on the judge's judgment. The use of cover note as a basis for the implementation of rights and obligations in a credit agreement is considered invalid because it cannot replace a notarial deed. The notary's responsibility related to the issuance of a cover note for bank loan disbursement is that the notary is fully responsible for the contents of the cover note he issued. If there is a discrepancy between the contents of the cover note and the actual conditions in the field, the notary must bear his responsibility, both administratively, criminal and civil law, and even *morally*.

## REFERENCE

- Damayanti, V., Zuhir, M. A., & Mansyur, A. (2020). Tanggung jawab notaris dalam membuat cover note sebagai jaminan hutang atas sertifikat hak atas tanah. *Jurnal Ilmiah Hukum Kenotariatan*, 9(1), 11–22. <https://doi.org/10.28946/rpt.v9i1.570>
- Devi, P. E. (2021). Tanggung Jawab Notaris Dan Kekuatan Hukum Dalam Pembuatan Akta Konsen Roya. *Jurnal Officium Notarium*, 1(2), 335–343. <https://doi.org/10.20885/jon.vol1.iss2.art13>

- Fatimah, P. T., Wiryomartani, W., & Fitriasih, S. (2020). Tanggung Jawab Notaris dan PPAT Yang Melakukan Pemalsuan Akta Autentik (Studi Kasus Putusan Mahkamah Agung Republik Indonesia Nomor 451/K. Pid/2018). *Indonesian Notary*, 2, 541–558. [http://download.garuda.kemdikbud.go.id/article.php?article=2984208&val=26769&title=Tanggung Jawab Notaris Dan Ppat Yang Melakukan Pemalsuan Akta Autentik Studi Kasus Putusan Mahkamah Agung Republik Indonesia Nomor 451KPid2018](http://download.garuda.kemdikbud.go.id/article.php?article=2984208&val=26769&title=Tanggung%20Jawab%20Notaris%20Dan%20Ppat%20Yang%20Melakukan%20Pemalsuan%20Akta%20Autentik%20Studi%20Kasus%20Putusan%20Mahkamah%20Agung%20Republik%20Indonesia%20Nomor%20451KPid2018)
- Hartono, N. M., & Raisah, K. (2023). Pertanggungjawaban Notaris Dalam Pembuatan Akta Berkaitan Dengan Pertanahan. *Notarius*, 16(1), 141–149. <https://doi.org/10.14710/nts.v16i1.38986>
- Kadir, R., Patittingi, F., Said, N., & Arisaputra, M. I. (2019). Pertanggungjawaban Notaris Pada Penerbitan Covernote. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 31(2), 191. <https://doi.org/10.22146/jmh.35274>
- Karma Resen, M. G. S. (2023). Surat Keterangan Notaris Dalam Konteks Labeling Cover Note. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 12(2), 330. <https://doi.org/10.24843/jmhu.2023.v12.i02.p08>
- Kartika, E. D., & Laitupa, S. (2022). Government Responsibilities in Fulfilling Victims' Rights During the Rehabilitation and Reconstruction Phase After the Earthquake in Sulai Village, Ulumanda District, Majene Regency. *Musamus Law Review*, 5(1), 61–71. <https://doi.org/10.35724/mularev.v5i1.4593>
- Pratama, I. P., Wisnaeni, F., & Cahyaningtyas, I. (2021). Tanggung Jawab Notaris Terhadap Kewajibannya Dalam Hal Pembacaan Akta. *Notarius*, 14(2), 809–817. <https://doi.org/10.14710/nts.v14i2.43806>
- Profesinya, T. (2016). *Elviana Sagala*. 04(01), 25–33.
- Rachmayani, D., & Suwandono, A. (2017). Covernote Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan. *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An*, 1(1), 73. <https://doi.org/10.24198/acta.v1i1.67>
- Sakinah, S., & Setyono, Y. A. (2022). Tanggung Jawab Perdata Profesi Notaris Dalam Penerapan Asas Kerahasiaan. *Kertha Semaya: Journal Ilmu Hukum*, 10(5), 1193. <https://doi.org/10.24843/ks.2022.v10.i05.p18>
- Yustica, A., Ngadino, N., & Maharani Sukma, N. (2019). Peran Etika Profesi Notaris Sebagai Upaya Penegakan Hukum. *Notarius*, 13(1), 60–71. <https://doi.org/10.14710/nts.v13i1.29162>