



Legal Consequences of Making a Notary's Cover Note in the Implementation of Notary's Duties

Ikhsan Lubis^{1*}, Tarsisius Murwadji², Sunarmi³, Detania Sukarja⁴

¹ Postgraduate Doctoral Program in Law Sumatra Utara University, Medan, Indonesia.

² Faculty of Law Padjajaran University, Bandung, Indonesia

^{3,4} Faculty of Law Sumatra Utara University, Medan, Indonesia

 : ikhsanlubis@students.usu.ac.id

Corresponding Author*



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Abstract

Introduction: One of the legal goods provided by a notary is a cover note, which is a statement in the management of a deed or a notarial document stating that the deed is in progress and can be finished within the time set by the cover note.

Purposes of the Research: A notary certificate is referred to as a cover note, as a substitute for the process of obtaining a certificate from a notary public, land title guarantees can be replaced temporarily depending on needs and developments. Notaries can make issue cover notes, which have legal consequences and make legal norms null and void. The legal basis for making and issuing cover notes is not yet known. This paper discusses two matters: What legal authority does a notary have to issue a cover note? What are the legal consequences of publishing a cover note by a notary?

Methods of the Research: This is typical of legal writings that take a legal approach and examine legal concepts. In socio legal research, research begins with a hypothesis. After formulating the hypotheses, the hypotheses are tested. Data collection techniques in socio legal research are carried out through interviews, observation, questionnaires and document analysis.

Results of the Research: However, notaries are allowed to issue and make cover notes because it is a form of agreement. This paper concludes that there is no legal basis for regulating cover notes. If the duties and authorities do not comply with the contents of the cover note, the law will result in a violation of Article 1366 of the Criminal Code.

1. INTRODUCTION

The pattern of people's behavior is in accordance with customs or laws that regulate certain social classes because law plays a role in maintaining order in people's lives and security. Law always grows and changes with society, following patterns and rules that develop in people's lives towards a global society.¹ In order to maintain the application of law based on accuracy, fairness and efficiency for the benefit of society, legal development requires legal certainty. The realization of justice and legal order is questioned in terms of legal certainty. According to Harahap, legal uncertainty tends to lead to anarchic actions

¹ Daniel Martin Katz et al., "Complex Societies and the Growth of the Law," *Scientific Reports* 10, no. 1 (2020): 18737, <https://doi.org/10.1038/s41598-020-73623-x>.

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because it creates chaos in the order of people's lives. As a result, there are no boundaries or guidelines for any community activities.² To guarantee rights and obligations as well as carry out aspects of justice, legal certainty requires objective and reliable services.

Cover notes are one of the legal doubts that can apply to banking businesses or at the time the deed is drawn up.³ A statement given by a notary as proof of the processing of a land deed or other deed that has been perfected, changed its name to become a land right, or split into two deeds, is known as a deed issued by a notary or notary public⁴. The client, in this case the owner of the deed or deed, wants it to be used as collateral for a credit loan to the bank by being bound using a mortgage right, but the notary has not been able to complete it because of the notary's processing process.⁵ Notary as a guarantee that the deed will be completed in accordance with the contents of the notary within the specified time.⁶ Because of a necessity, the cover note is used as a substitute for collateral as temporary evidence until the notary signs the deed of land ownership which is currently being processed by the bank. According to Simanjuntak⁷, statutory instruments do not regulate the function or position of the cover note, especially Law Number 2 of 2014, which amended Law Number 30 of 2004 regarding the position of notary public.

One of the financial institutions such as banks, plays an important role in the economy of a country.⁸ The main role played by banks as intermediaries is to collect funds from the general public and distribute them to the real sector in an effective and efficient manner to promote economic growth and stability. This is in accordance with the bank as a legal entity that distributes money to the public in the form of credit or other forms in order to improve people's living standards.⁹ According to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law).

In accordance with Article 8 paragraph 1 of the Banking Law, commercial banks are required to have confidence based on in-depth analysis or confidence in terms of providing credit or in the form of financing based on sharia principles. The ability and ability of the debtor customer to pay off his debt or repay the financing debt is referred to as promised. Before credit is distributed, the results of the credit application assessment provide this level of confidence. Banks can evaluate credit applications in various ways, including by

² M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2007).

³ Zaini Hafiz Hasibuan, "Legal Aspects Of Deposits As Credits Guarantee To Bank (Study At PT. Bank Danamon, Tbk)," *Journal of Law Science* 3, no. 1 (2021): 7-14, <https://doi.org/10.35335/jls.v3i1.1649>.

⁴ Gembongseto Hendro Soedagoeng, Gunarto, and Habib Adjie, "Limitation Period Responsibility of the Notary Based on Justice Values," *International Journal of Business, Economics and Law* 14, no. 4 (2017): 202-9, <https://www.ijbel.com/wp-content/uploads/2018/04/LAW-Hendro.pdf>.

⁵ Dewi Rachmayani and Agus Suwandono, "Covernote Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 1, no. 1 (2017): 73, <https://doi.org/10.24198/acta.v1i1.67>.

⁶ Irfan Iskhak and Aryani Witasari, "Roles and Responsibilities of Notary in Deed Making Agreement on Sale and Purchase Agreement When the Parties Dispute," *Jurnal Akta* 6, no. 2 (2019): 247, <https://doi.org/10.30659/akta.v6i2.5017>.

⁷ P.N.H. Simanjuntak, *Hukum Perdata Indonesia* (Jakarta: Kencana, 2017).

⁸ Hendrik Van den Berg, "The Role of Finance in Economic Development," in *Economic Growth and Development* (World Scientific, 2016), 481-540, https://doi.org/10.1142/9789814733342_0011.

⁹ Desak Ayu Sriary Bhegawati and Made Suyana Utama, "The Role of Banking in Indonesia in Increasing Economic Growth and Community Welfare," *South East Asia Journal of Contemporary Business, Economics and Law* 22, no. 1 (2020): 83-91, https://seajbel.com/wp-content/uploads/2020/10/SEAJBEL22_227.pdf.

analyzing (character, capacity, capital, economic conditions, and collateral)¹⁰. Notary and Land Deed Making Officer (PPAT) are representatives of the state who are empowered to provide civil law services to the public, especially those related to arranging land certificates, making agreements, and other matters related to making notarial deeds which are original deeds. The position is regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, sometimes known as the Law on the Position of a Notary.

The position of a notary in determining a personnel matter related to staffing.¹¹ In terms of obtaining consultation and legal assistance regarding the management of authentic deeds, the notary gains public trust. As part of the legal process that produces a legal product, namely an authentic deed made by a notary, all kinds of arrangements regarding the establishment of an authentic deed that are costar or confirmed are the truth about the maker of the deed.¹²

Deeds are documents and letters affixed with signatures which contain information about an event or thing that forms the basis of a right or agreement that can be considered as a legal action. Through its authentic deed, the notary guarantees legal certainty.¹³ A notarial deed is an authentic deed that can be proven in writing (*volledig bewijs*) and does not require additional evidence to have legal force and legal certainty. In contrast to a private deed, an authentic deed drawn up by a notary has complete evidentiary power. If there is assistance from a public official, it is known as a fraudulent act.¹⁴

A cover note, which is a statement in the management of a deed or a notarial document explaining that the deed is in progress and can be completed within the time specified by the cover note, is one of the legal products issued by a notary.¹⁵ When a banking institution accepts a credit application, a cover note is usually used. Cover notes are usually issued by a notary as a legal requirement for disbursement of credit in a credit agreement as proof of this capability.¹⁶ An article confirms that a notary can make a cover note to explain that the deed that will be made later is being processed, observing the duties and powers of a notary in *Undang Undang Jabatan Notaris* (UUJN, Notary Office Act) and UUJN without the slightest change.¹⁷ For example, disbursement of credit by a bank can only be carried out if a statement is required that a title certificate is a prerequisite for the existence of a bond guarantee agreement from a company agreement.

¹⁰ Rachmat Firdaus and Maya Ariyanti, *Manajemen Perkreditan Bank Umum: Teori, Masalah, Kebijakan Dan Aplikasinya Lengkap Dengan Analisis Kredit* (Bandung: Alfabeta, 2004).

¹¹ Hatta Isnaini and Wahyu Utomo, "The Existence of the Notary and Notarial Deeds within Private Procedural Law in the Industrial Revolution Era 4.0," *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 128–39, https://www.ijicc.net/images/vol10iss3/10314_Isnaini_2019_E_R.pdf.

¹² Tan Thong Kie, *Studi Notariat Dan Serba-Serbi Praktek Notaris* (Jakarta: Ichtiar Baru Van Hoeve, 2013).

¹³ Hustam Husain, Kahar Lahae, and Marwah, "Making A Notary Deed That Provides Legal Certainty," *Awang Long Law Review* 5, no. 1 (2022): 180–88, <https://doi.org/10.56301/awl.v5i1.548>.

¹⁴ Moh. Taufik Makarao, *Pokok-Pokok Hukum Acara Perdata* (Jakarta: Rineka Cipta, 2004).

¹⁵ I Made Ari Nurjaya, I Nyoman Sumardhika, and Ida Ayu Putu Widiati, "Kewenangan Notaris Terhadap Pembuatan Covernote," *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 421–25, <https://doi.org/10.22225/jkh.2.1.2535.421-425>.

¹⁶ I Made Pria Dharasana, Indrasari Kresnadjaja, and I Putu Lingga Dhananjaya, "The Status of the Covernote and the Role of the Notary in Banking," *Law Doctoral Community Service Journal* 2, no. 1 (2023): 20–27, <https://doi.org/https://doi.org/10.55637/ldcsj.2.1.6236.20-27>.

¹⁷ Vina Akfa Dyani, "Pertanggungjawaban Hukum Dan Perlindungan Hukum Bagi Notaris Dalam Membuat Party Acte," *Jurnal Lex Renaissance* 2, no. 1 (2017): 162–76, <https://doi.org/10.20885/JLR.vol2.iss1.art11>.

Likewise, there is not a single regulation regarding position, and there is not even a provision in the land certificate governing the ability of a *Pejabat Pembuat Akta Tanah (PPAT, Land Titles Registrar)* to issue a Cover Letter detailing the procedure for imposing a guarantee at the bank.¹⁸ As required by Government Regulation No. 37 of 1998, credit arrangements. The purpose of the cover note is to serve as a guideline for the bank until all deeds, guarantees or guarantees are recorded and submitted. The cover letter signed by a notary is based on the provisions of Article 1338 paragraph 1 of the Criminal Code. Civil law says that all contracts (agreement) are valid. In the event that Article 1338 paragraph 1 is one of the principles in contract law, it is called the principle of freedom of contract. Parties authorized to issue cover notes including promises and commitments by a notary to the bank that requires the note.

The cover note issued by the Notary is not used as proof of collateral, but only as an introduction to the Bank that will issue the credit, a cover note for agencies that require it does not also mean as a complete file. However, as a guarantee that it is true that the files needed by the agency or client are actually in the process, at least there is trust that is built between the notary and bank, between notaries and agencies, and also between notaries and clients. A cover note is a type of custom or customary law in the banking industry which is considered to have binding legal force on the parties.¹⁹ When applying for credit, a cover note is required as a condition. However, it is only used as a temporary guarantee as long as the authentic deed is completed by a notary. The authentic deed referred to in this case is the procedure for changing the name on the property ownership certificate, the royalty process, dividing the land certificate into two certificates, or other arrangements. Meanwhile, a notary usually prepares and issues a cover note as a statement to ensure legal clarity regarding the ongoing process of making a document or deed.

Collateral is required when applying for credit at a financial institution. The debtor's certificate of title to a plot of land must be bound by a fiduciary guarantee when the debtor applies for credit. But if the bank, acting as a creditor, requests that the debtor submit closing notes as proof that the certificate of land rights supervises the binding of the fiduciary guarantee or is being confirmed by a notary, then the certificate must be bound by the fiduciary guarantee. To speed up credit disbursement, banks include a cover note as one of the requirements for applying for credit. Due to a requirement, the cover note is used as a substitute for collateral as temporary evidence until the notary signs the deed of land ownership which is being processed by the bank. The statutory instrument does not specify the function or position of the cover note, especially Law Number 2 of 2014, which amended Law Number 30 of 2004 concerning the Office of a Notary. So that there are no legal requirements that must be followed by a Notary in making and issuing cover notes.

2. METHOD

This research seeks to answer two questions, namely, what legal authority does a notary have to issue a cover note? What are the legal consequences of issuing a cover note by a notary? Therefore, normative legal research is used. Normative juridical (library

¹⁸ Ida Ayu Wulan Rismayanthi, "Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Terhadap Pendaftaran Peralihan Hak Atas Tanah Yang Menjadi Objek Sengketa," *Acta Comitatus* 1, no. 1 (2016): 77-93, <https://doi.org/10.24843/AC.2016.v01.i01.p07>.

¹⁹ Niels Petersen, "Customary Law Without Custom? Rules, Principles, and the Role of State Practice in International Norm Creation," *American University International Law Review* 23, no. 2 (2007): 275-310, <https://digitalcommons.wcl.american.edu/auilr/vol23/iss2/2/>.

research) is a type of problem approach that is carried out based on the main law²⁰, which is carried out based on the main legal material, as well as reviewing some theoretical matters relating to legal principles, legal doctrine, regulations and the legal system related to the problem²¹, what is being discussed using secondary data includes principles, rules, norms, and legal rules contained in laws and regulations and other regulations.²² Because it discusses the absence of legal norms in statutory regulations, especially in Laws, this text is referred to as normative legal writing because it expresses a notary's view of the legal basis, as well as his rights and authorities in terms of adding cover notes. This scientific study was written using legal methodology and legal concept analysis techniques. Books and journal articles on the topics covered in this research, laws and regulations, essays, and other legal studies are the sources of legal materials used.

3. RESULTS AND DISCUSSION

A notarized cover note is a declaration outlining a condition under a specific contract, such as a credit agreement. Replace the name with buying and selling, and roya, while verifying with the National Land Agency, whether the bank approves, the notary can make an introductory note regarding this matter. This definition can be found in the general Indonesian dictionary. Indrayeni²³ asserts that the English word "covernote" is made up of two different words: "note" and "cover," where "note" refers to "note mark". The definition of a notary is a "certificate" notary, namely a certificate issued by a notary who is in good standing and is based on a signature, stamp, and guarantor's stamp as strong evidence. Notary legal products include authentic deeds made by a notary. A bona fide deed is a deed that is made and the game plan is not rigid according to the Legal Officer Regulations, as well as Article 1868 of the Civil Code, the proof and strength of the legitimacy of a valid deed is very clear and cannot be violated or it is impossible for the credible deed to be canceled because regulations on the grounds that the valid confirmation of a deed has been ensured by regulations.

According to Nasution, a private deed is a deed signed by the parties themselves without the assistance of a public official.²⁴ The closing note is actually a statement signed by a notary who is a Deed Making Officer (PPAT) because this does not fulfill the requirements and the components of a valid deed are prepared in accordance with legal requirements and before a notary. Cover notes are not prohibited and are included in the engagement instrument or agreement if they are made in accordance with custom by considering the legal aspects of the engagement and the agreement and do not harm the parties. However, notary use of covernotes is not permitted by law. Therefore, the implementation of the cover note must pay attention to the terms of the agreement and the

²⁰ I Ketut Rai Setiabudhi and I Putu Rasmadi Arsha Putra, "Surveillance Urgency to Prevent Village Fund Corruption," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 3 (2020): 464, <https://doi.org/10.24843/JMHU.2020.v09.i03.p01>.

²¹ Mike McConville and Wing Hong Chui, eds., *Research Methods for Law* (Edinburgh University Press, 2017), <http://www.jstor.org/stable/10.3366/j.ctt1g0b16n>.

²² Tom R. Tyler, "Methodology in Legal Research," *Utrecht Law Review* 13, no. 3 (2017): 130, <https://doi.org/10.18352/ulr.410>.

²³ Indrayeni (2012). *Op. Cit*

²⁴ Saddam Syahbani Nasution, "Peranan Notaris Terhadap Kepastian Hukum Perjanjian Di Bawah Tangan Sebagai Alat Bukti Perdata Di Pengadilan," *DE JURE Critical Laws Journal* 2, no. 1 (2021): 1-8, <https://myjournal.id/index.php/jwh/article/download/25/12/47>.

validity of the agreement from the law.²⁵ That is, according to Article 1233 of the Civil Code, every engagement is the result of an agreement or a law. As a result, only the parties listed in the cover note are legally obligated to apply for a debtor's loan with a land guarantee certificate. And requests for proof of guarantee signed by the bank that forms the notarial deed and the notary acting as executor of the unfinished deed.

Customary and material law, especially contract law, is the basis for records. If acceptable custom is a source of formal law. So it is not against the law and is done repeatedly, making the act considered right and not against the law that is currently in force. What is meant by "covernote" is an agreement and not an actual or private deed. A notary's cover note can have a different form because there is no standard arrangement regarding the form, procedure, and requirements that must be met when making a cover note. In most cases, the cover note bears the notary's letterhead and is approved by the notary with a stamp and signature.

Article 1868 of the General Law Code regulates the original deed which is a deed which is not entirely settled by statutory regulations, made before an open authority who has the ability to do so where the deed was made. The deed itself is divided into two parts: 1) Deeds that contain information (or contain) what is desired by interested parties is referred to as "*Partij deed*". For example, if the parties agree to sell or buy, the notary signs a deed stating his will; 2) A deed containing an official statement from an authorized official is referred to as an official deed (*Ambtelijke deed* or *Relas Deed*). Therefore, the information in this deed comes only from the official who made it. Like a birth certificate, this document is considered to have the power to prove something against anyone. Therefore, the *Relas Deed* or *Ambtelijk Deed* is: The official takes the initiative, and the deed contains a written statement from the official (*ambtenaar*) announcing the act.

Article 1868 of the General Law Code regulates the original deed which is a deed which is not entirely settled by statutory regulations, made before an open authority who has the ability to do so where the deed was made. The deed itself is divided into two parts, namely: 1) The deed which contains information (or contains) what is desired by interested parties is referred to as "*Partij deed*". For example, if the parties agree to sell or buy, the notary signs a deed stating his will; 2) A deed containing an official statement from an authorized official is referred to as an official deed (*Ambtelijke deed* or *Relas Deed*). Therefore, the information in this deed comes only from the official who made it. Like a birth certificate, this document is considered to have the power to prove something against anyone. Therefore, the *Relas Deed* or *Ambtelijk Deed* is: The official takes the initiative, and the deed contains a written statement from the official (*ambtenaar*) announcing the act.

A private deed is a deed signed by the parties themselves without the assistance of a public official and is intended as evidence. Given the importance and types of credible deeds and secret deeds, cover notes are excluded from these two things. Cover letters made by legal officials are remembered for their meaning as a power of attorney, but the guidelines do not state that the cover letter is a valid deed. The cover note focuses more on the form of the agreement and less on the private deed because the notary himself issues the cover letter, making it difficult to make a cover note in front of the official for the statement he made himself.

²⁵ Alban Mchopa, "Integrating Contract Management Practices into the Achievement of Value for Money in Tanzania Public Procurement: Evidence from Selected Procuring Entities in Moshi Municipality," *Journal of Public Procurement* 15, no. 2 (2015): 129–49, <https://doi.org/10.1108/JOPP-15-02-2015-B001>.

The notary office law regulates the power of a notary to sign an official deed which will then be set forth in a Notary legal product. An authentic deed cannot be terminated or declared null and void, and the force of law and evidence is guaranteed and protected by law.²⁶ Private deeds are deeds signed by the parties themselves without the help of a public official such as a notary, other than authentic deeds. The legal consequences of a forged deed and a handwritten deed are clearly different, as is the strength of proof for each.²⁷ Not all notarial deeds are authentic deeds. Cover note is a statement made and issued by a notary. The cover note includes everything from the notary's signature and stamp of approval to the letterhead and header of the notary's office in question although some aspects of the actual deed exist. Because it is written by a public official known as a notary, a cover note does not count as an act against the law.

The validity of the cover note, because it is excluded from the original deed and private deed, is questionable and can be considered as an illegal product issued by a notary. Indonesian laws and legal documents do not mention a cover note.²⁸ Notary procedures for making and issuing cover notes are not regulated in one legal section. Cover notes made and issued according to custom and governed by the legal features of engagements and agreements that do not affect the parties are not prohibited by laws or regulations. The cover note focuses more on the structure of the agreement between the parties and the notary.

Customary and material laws, especially engagement law, form the basis for cover notes. If the source of law is habit, the action is legal, not prohibited, and it can be done repeatedly, then the action is considered right and does not violate the law. Notary covers can take various forms because there are no standard forms, procedures and requirements that must be met in making a cover letter. The terms of the validity of the agreement and the legal aspects of the engagement must be considered when issuing and preparing cover notes. Cover notes can be categorized as an agreement that was born from an agreement rather than an order in the Criminal Code. The following is stated in the Criminal Code Article 1233: Whether regulated by law or not, every engagement begins with an agreement. Banks as creditors, debtors requesting credit, and notaries processing debtor deeds are the parties referred to in this document. The cover note only binds the parties listed and mentioned therein.

As creditors and debtors whose deed is in the process of becoming a deed, the bank feels it is urgent to issue a cover note. The bank must ask the notary for proof of collateral in the form of a cover note. This is an agreement that the notary must be able to process the debtor's deed within the time period specified in the agreement. Because no proof of collateral is needed during the credit application process.²⁹

Cover note issued by a notary requires the notary to be able to justify its contents.³⁰ Creditors use the notary's cover note as a guarantee that they can be accounted for, not as

²⁶ Habib Adjie, *Bernas - Bernas Pemikiran Di Bidang Notaris Dan PPAT* (Bandung: CV. Mandar Maju, 2012).

²⁷ Teguh Eko Saputro, Ira Alia Maerani, and Taufan Fajar Riyanto, "Implications of Falsifying Authentic Data in Deed of Sale & Purchase on Certificate of Building Use Rights (SHGB)," *Sultan Agung Notary Law Review* 3, no. 3 (2021): 893, <https://doi.org/10.30659/sanlar.3.3.893-931>.

²⁸ Hartanti Sulihandari and Nisya Rifiani, *Prinsip-Prinsip Dasar Profesi Notaris* (Jakarta: Dunia Cerdas, 2013).

²⁹ Wuriannya Maria Novenyanty, "The Legal Aspect Of Credit Without Collateral In Indonesia (Aspek Hukum Kredit Tanpa Agunan Di Indonesia)," *Veritas et Justitia* 4, no. 1 (2018): 111-30, <https://doi.org/10.25123/vej.2838>.

³⁰ Puspita Putri Ramadhani, Hasbir Paserangi, and Wiwie Heryani, "Legal Certainty Of The Deed Of Agreement Made By A Notary Based On The Power To Sell (Case Study Case Number:

collateral in a credit application, until the process of making the deed is complete. Because cover notes are not stipulated in law, according to the Law on Notary Status, notaries are exempt from administrative penalties because they are required to immediately complete the land deed if the requirements for a cover note cannot be met. The burden caused by their failure to carry out their duties properly, which reduces public trust in notaries.³¹

The notary requests an extension of time to complete the cover note if the notary has not been able to carry out the contents as expected.³² In connection with the problems arising from the cover note, if the notary has repeatedly failed to carry out the contents of the cover note as intended, in this case the sanction is usually in the form of a moral sanction in the form of bank trust, which begins to erode and eventually is transferred to another notary.³³

If the notary neglects to carry out the contents of the cover note, they are required to always be responsible. Because the Notary is willing to do what is required by the Bank when carrying out or carrying out legal actions, such as binding a guarantee certificate, making a deed of credit agreement, or making a deed of granting mortgage rights, the birth of a cover note is basically the result of an agreement or agreement between the bank and the notary.

The legal consequences for a notary if he does not carry out the cover note include being held accountable immediately. The notary may ask for an extension of time in preparing the contents of the cover note based on the agreement of the parties. Issuance and implementation of cover notes, the notary will usually get a moral sanction in the form of distrust of the bank because the notary cannot complete the contents accurately. Cover note, the notary is considered to have violated Article 1366 of the Criminal Code.

As creditors and debtors whose deeds are in the process of becoming deeds, banks really need a cover note. The bank must ask for proof of guarantee from the notary because no guarantee is required during the credit application process. This proof is in the form of an agreement that the notary must be able to take care of the debtor's deed within the time specified in the agreement, which is more commonly referred to as a cover note. The notary's responsibility for the contents of the cover note must lie with the notary. Creditors will use the cover note as proof of temporary collateral until the process of making the deed is complete and not as collateral for a credit application with an accountable guarantee. Because cover notes are not regulated in law, notaries cannot be subject to administrative sanctions in accordance with the Notary Office Law. Because the notary must immediately complete the land certificate if the contents of the cover letter are not fulfilled.

However, notaries face public pressure because they are considered negligent in carrying out their responsibilities, which reduces public trust in notaries. The notary requests an extension of time to complete the cover note if the notary cannot carry out the contents as expected. If the notary repeatedly cannot carry out the contents of the cover

41/PDT.G/2016/PN.PA),” *Indonesia Private Law Review* 2, no. 2 (2021): 95–108, <https://doi.org/10.25041/iplr.v2i2.2319>.

³¹ Deviana Yuanitasari, “The Role of Public Notary in Providing Legal Protection on Standard Contracts for Indonesian Consumers,” *Sriwijaya Law Review* 1, no. 2 (2017): 179, <https://doi.org/10.28946/slrev.Vol1.Iss2.43.pp179-190>.

³² Ardhiya Ega Pramono et al., “Responsibility of Notary for Unlawful Action in Annulment of Selling Authority,” *International Journal of Business, Economics and Law* 24, no. 3 (2021): 201–5, <https://www.ijbel.com/wp-content/uploads/2021/08/IJBEL24-635.pdf>.

³³ Sjaifurrachman and Habib Adjie, *Aspek Pertanggung Jawaban Notaris Dalam Pembuatan Akta* (Bandung: CV. Mandar Maju, 2011).

letter as expected, the sanctions imposed are usually in the form of moral sanctions in the form of decreased trust from the bank, which ultimately leads to the transfer of trust to a different notary. This is related to the problems that have arisen due to the existence of cover notes. If a notary is negligent in carrying out the contents of the cover note, he is required to always be held accountable. Due to the willingness of the notary to carry out the bank's request in carrying out or carrying out legal actions, including making a credit agreement deed, deed of granting mortgage rights, or binding collateral for a certificate of ownership, the birth of a cover note is basically the result of an agreement or agreement between the bank and the notary.

The notary's failure to carry out the cover note can have legal consequences, and the notary may be held liable if he does not do so immediately.³⁴ The notary may request an extension of time to complete the contents of the cover note based on the agreement of the parties. If there are problems in the issuance and implementation of the cover note, usually the notary will receive a moral sanction in the form of the bank's suspicion of the notary because using the notary cannot complete the contents correctly.³⁵ The notary is considered not following the rules in Article 1366 of the Civil Code.³⁶ If the notary's mistake in carrying out and carrying out the contents of cover note is the source of negligence.

The cover note issued by a notary has an inherent legal standing. The legal position of a cover note is a private deed preceded by an agreement. In formal legal sources, the position of the cover note lies in custom, and the cover note is used as temporary collateral for credit at a bank. A cover note as evidence in a trial can be a strong piece of evidence as long as its position is not denied by stronger evidence above it, such as an authentic deed. Cover notes do not have the force of law attached to them until they are used in legal actions or used as evidence in court. By using a cover note in a legal act, the legal consequences that arise are that the cover note has legal status and the cover note can be prosecuted if its contents are no longer appropriate.

Making a notary cover note is a customary practice made by a notary at the request of a creditor and the form and requirements are not regulated in UUJN and other laws and regulations.³⁷ Making a notary's cover note in practice has had a negative impact which consequently occurs a lot as a basis for disbursing credit or a basis for justifying legal action that ensnares the notary's involvement in legal issues. The legal consequences of making a notary cover note cannot be used as a basis for seeking legal accountability. With the reason that the notary is not the party in making the deed and also the implementation of the notary's cover note is dependent on other agencies beyond the ability or authority of the notary's duties. And it is proven that there are other requirements such as fees and administration administrative documents that must be met by creditors.

³⁴ Dian Melinda Oktavia, "The Role And Responsibility of Notaries In The Making of Authentic Deed For Electronic Registration of Fiduciary Assurance (Online System)," *International Journal of Latin Notary* 2, no. 1 (2021): 40-52, <https://i-latinnotary.notariat.unpas.ac.id/index.php/jurnal/article/view/17>.

³⁵ David Tan, "Controversial Issues on the Making of Notarial Deed Containing Chained Promise (Beding Berantai) on the Freedom of Contract Principle," *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 315-38, <https://doi.org/10.15294/jils.v4i2.31091>.

³⁶ Hamzeh Esfandiari Bayat, Mehrzad Razmi, and Bahram Mahmoodi, "Civil Liability of Notaries in Iran's Law," *Review of European Studies* 8, no. 3 (2016): 10, <https://doi.org/10.5539/res.v8n3p10>.

³⁷ Devi Alincia and Tundjung Herning Sitabuana, "Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary," *Law Reform* 17, no. 2 (2021): 214-31, <https://ejournal.undip.ac.id/index.php/lawreform/article/view/41749>.

4. CONCLUSION

In Indonesia there are no laws or positive laws governing cover notes. There is no legal basis for the issuance and preparation of cover notes by a notary. Cover note is considered a legally binding product because it is based on accepted customs, laws and regulations have not been regulated, but are regulated based on indicators of the validity of the agreement. Because cover notes are classified as a form of agreement which is actually binding on the parties involved, the notary has the authority to issue and make cover notes. The notary can be held responsible for immediately completing the cover note if he fails to carry it out in accordance with legal requirements, he can ask for an extension of some time to complete the contents of the cover note based on the agreement of the parties. If there are problems in the issuance and implementation of the cover note, usually the notary will receive a moral sanction or punishment in the form of distrust or a decrease in the quality of the bank because the notary cannot complete the contents accurately. Because it is not regulated by means of legislation and does not meet the requirements to make an authentic deed or private deed, the cover note is not an authentic deed. Based on the law and based on custom, cover notes are categorized as having a material legal source based on the validity of the agreement and having a formal legal source based on custom. If the notary is negligent in preparing the cover note, he or she may face legal consequences and be responsible for finding an immediate solution. The notary can request an extension of some time to complete the contents of the cover note based on the agreement of the parties. If there is a problem with the issuance and implementation of the cover note, the notary will usually receive a moral sanction in the form of distrust of the bank because the notary has not been able to complete the contents accurately.

REFERENCES

Journal Article

- lincia, Devi, and Tundjung Herning Sitabuana. "Urgency of Law Amendment as Foundation of The Implementation of Cyber Notary." *Law Reform* 17, no. 2 (2021): 214–31. <https://ejournal.undip.ac.id/index.php/lawreform/article/view/41749>.
- Bayat, Hamzeh Esfandiari, Mehrzad Razmi, and Bahram Mahmoodi. "Civil Liability of Notaries in Iran's Law." *Review of European Studies* 8, no. 3 (2016): 10. <https://doi.org/10.5539/res.v8n3p10>.
- Berg, Hendrik Van den. "The Role of Finance in Economic Development." In *Economic Growth and Development*, 481–540. World Scientific, 2016. https://doi.org/10.1142/9789814733342_0011.
- Bhegawati, Desak Ayu Sriary, and Made Suyana Utama. "The Role of Banking in Indonesia in Increasing Economic Growth and Community Welfare." *South East Asia Journal of Contemporary Business, Economics and Law* 22, no. 1 (2020): 83–91. https://seajbel.com/wp-content/uploads/2020/10/SEAJBEL22_227.pdf.
- Dharasana, I Made Pria, Indrasari Kresnadjaja, and I Putu Lingga Dhananjaya. "The Status of the Covernote and the Role of the Notary in Banking." *Law Doctoral Community Service Journal* 2, no. 1 (2023): 20–27. <https://doi.org/https://doi.org/10.55637/ldcsj.2.1.6236.20-27>.
- Dyani, Vina Akfa. "Pertanggungjawaban Hukum Dan Perlindungan Hukum Bagi Notaris Dalam Membuat Party Acte." *Jurnal Lex Renaissance* 2, no. 1 (2017): 162–76.

<https://doi.org/10.20885/JLR.vol2.iss1.art11>.

- Hasibuan, Zaini Hafiz. "Legal Aspects Of Deposits As Credits Guarantee To Bank (Study At PT. Bank Danamon, Tbk)." *Journal of Law Science* 3, no. 1 (2021): 7-14. <https://doi.org/10.35335/jls.v3i1.1649>.
- Husain, Hustam, Kahar Lahae, and Marwah. "Making A Notary Deed That Provides Legal Certainty." *Awang Long Law Review* 5, no. 1 (2022): 180-88. <https://doi.org/10.56301/awl.v5i1.548>.
- Iskhak, Irfan, and Aryani Witasari. "Roles and Responsibilities of Notary in Deed Making Agreement on Sale and Purchase Agreement When the Parties Dispute." *Jurnal Akta* 6, no. 2 (2019): 247. <https://doi.org/10.30659/akta.v6i2.5017>.
- Isnaini, Hatta, and Wahyu Utomo. "The Existence of the Notary and Notarial Deeds within Private Procedural Law in the Industrial Revolution Era 4.0." *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 128-39. https://www.ijicc.net/images/vol10iss3/10314_Isnaini_2019_E_R.pdf.
- Katz, Daniel Martin, Corinna Coupette, Janis Beckedorf, and Dirk Hartung. "Complex Societies and the Growth of the Law." *Scientific Reports* 10, no. 1 (2020): 18737. <https://doi.org/10.1038/s41598-020-73623-x>.
- Mchopa, Alban. "Integrating Contract Management Practices into the Achievement of Value for Money in Tanzania Public Procurement: Evidence from Selected Procuring Entities in Moshi Municipality." *Journal of Public Procurement* 15, no. 2 (2015): 129-49. <https://doi.org/10.1108/JOPP-15-02-2015-B001>.
- Nasution, Saddam Syahbani. "Peranan Notaris Terhadap Kepastian Hukum Perjanjian Di Bawah Tangan Sebagai Alat Bukti Perdata Di Pengadilan." *DE JURE Critical Laws Journal* 2, no. 1 (2021): 1-8. <https://myjournal.id/index.php/jwh/article/download/25/12/47>.
- Novenanty, Wurianalya Maria. "The Legal Aspect of Credit Without Collateral In Indonesia (Aspek Hukum Kredit Tanpa Agunan Di Indonesia)." *Veritas et Justitia* 4, no. 1 (June 28, 2018): 111-30. <https://doi.org/10.25123/vej.2838>.
- Nurjaya, I Made Ari, I Nyoman Sumardhika, and Ida Ayu Putu Widiati. "Kewenangan Notaris Terhadap Pembuatan Covernote." *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 421-25. <https://doi.org/10.22225/jkh.2.1.2535.421-425>.
- Oktavia, Dian Melinda. "The Role And Responsibility of Notaries In The Making of Authentic Deed For Electronic Registration of Fiduciary Assurance (Online System)." *International Journal of Latin Notary* 2, no. 1 (2021): 40-52. <https://i-latinnotary.notariat.unpas.ac.id/index.php/jurnal/article/view/17>.
- Petersen, Niels. "Customary Law Without Custom ? Rules , Principles , and the Role of State Practice in International Norm Creation." *American University International Law Review* 23, no. 2 (2007): 275-310. <https://digitalcommons.wcl.american.edu/auilr/vol23/iss2/2/>.
- Pramono, Ardhiya Ega, Azharuddin, Heriyanti, Willy Tanjaya, and Elvira Fitriyani Pakpahan. "Responsibility of Notary for Unlawful Action in Annulment of Selling Authority." *International Journal of Business, Economics and Law* 24, no. 3 (2021): 201-5. <https://www.ijbel.com/wp-content/uploads/2021/08/IJBEL24-635.pdf>.

- Rachmayani, Dewi, and Agus Suwandono. "Covernote Notaris Dalam Perjanjian Kredit Dalam Perspektif Hukum Jaminan." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 1, no. 1 (2017): 73. <https://doi.org/10.24198/acta.v1i1.67>.
- Ramadhani, Puspita Putri, Hasbir Paserangi, and Wiwie Heryani. "Legal Certainty Of The Deed Of Agreement Made By A Notary Based On The Power To Sell (Case Study Case Number: 41/PDT.G/2016/PN.PA)." *Indonesia Private Law Review* 2, no. 2 (2021): 95-108. <https://doi.org/10.25041/iplr.v2i2.2319>.
- Rismayanthi, Ida Ayu Wulan. "Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Terhadap Pendaftaran Peralihan Hak Atas Tanah Yang Menjadi Objek Sengketa." *Acta Comitas* 1, no. 1 (2016): 77-93. <https://doi.org/10.24843/AC.2016.v01.i01.p07>.
- Saputro, Teguh Eko, Ira Alia Maerani, and Taufan Fajar Riyanto. "Implications of Falsifying Authentic Data in Deed of Sale & Purchase on Certificate of Building Use Rights (SHGB)." *Sultan Agung Notary Law Review* 3, no. 3 (2021): 893. <https://doi.org/10.30659/sanlar.3.3.893-931>.
- Setiabudhi, I Ketut Rai, and I Putu Rasmadi Arsha Putra. "Surveillance Urgency to Prevent Village Fund Corruption." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 3 (2020): 464. <https://doi.org/10.24843/JMHU.2020.v09.i03.p01>.
- Soedagoeng, Gembongseto Hendro, Gunarto, and Habib Adjie. "Limitation Period Responsibility of the Notary Based on Justice Values." *International Journal of Business, Economics and Law* 14, no. 4 (2017): 202-9. <https://www.ijbel.com/wp-content/uploads/2018/04/LAW-Hendro.pdf>.
- Sulihandari, Hartanti, and Nisya Rifiani. *Prinsip-Prinsip Dasar Profesi Notaris*. Jakarta: Dunia Cerdas, 2013.
- Tan, David. "Controversial Issues on the Making of Notarial Deed Containing Chained Promise (Beding Berantai) on the Freedom of Contract Principle." *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 315-38. <https://doi.org/10.15294/jils.v4i2.31091>.
- Tyler, Tom R. "Methodology in Legal Research." *Utrecht Law Review* 13, no. 3 (2017): 130. <https://doi.org/10.18352/ulr.410>.
- Yuanitasari, Deviana. "The Role of Public Notary in Providing Legal Protection on Standard Contracts for Indonesian Consumers." *Sriwijaya Law Review* 1, no. 2 (2017): 179. <https://doi.org/10.28946/slrev.Vol1.Iss2.43.pp179-190>.

Book

- Adjie, Habib. *Bernas - Bernas Pemikiran Di Bidang Notaris Dan PPAT*. Bandung: CV. Mandar Maju, 2012.
- Firdaus, Rachmat, and Maya Ariyanti. *Manajemen Perkreditan Bank Umum: Teori, Masalah, Kebijakan Dan Aplikasinya Lengkap Dengan Analisis Kredit*. Bandung: Alfabeta, 2004.
- Harahap, M. Yahya. *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan*. Jakarta: Sinar Grafika, 2007.
- Kie, Tan Thong. *Studi Notariat Dan Serba-Serbi Praktek Notaris*. Jakarta: Ichtar Baru Van Hoeve, 2013.
- Makara, Moh. Taufik. *Pokok-Pokok Hukum Acara Perdata*. Jakarta: Rineka Cipta, 2004.

McConville, Mike, and Wing Hong Chui, eds. *Research Methods for Law*. Edinburgh University Press, 2017. <http://www.jstor.org/stable/10.3366/j.ctt1g0b16n>.

Simanjuntak, P.N.H. *Hukum Perdata Indonesia*. Jakarta: Kencana, 2017.

Sjaifurrachman, and Habib Adjie. *Aspek Pertanggung Jawaban Notaris Dalam Pembuatan Akta*. Bandung: CV. Mandar Maju, 2011.

Thesis, Web Page, and Others

iEduNote. "Steps in Legal Research." www.iedunote.com, 2023. <https://www.iedunote.com/legal-research-steps>.

Indrayeni, Widya. "Akibat Hukum Diterbitkannya Cover Note Oleh Notaris Terhadap Pihak-Pihak Yang Berkepentingan Dalam Transaksi Kredit Perbankan." Universitas Indonesia, 2012. [https://lib.ui.ac.id/file?file=digital/20302531-T30388-Akibat hukum.pdf](https://lib.ui.ac.id/file?file=digital/20302531-T30388-Akibat%20hukum.pdf).