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## Notary's Accountability for Non-Compliance with Covernote Issuance in Corruption Cases

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### Abstract

The absence of specific legal provisions regarding the issuance of covernotes in Indonesia has created legal uncertainty and opened opportunities for misuse of notarial authority in issuing covernotes. This study aims to examine the authority of notaries in issuing covernotes based on the attributive authority granted by the state as stipulated in Article 16 paragraph 1 letter a of the Notary Law (UUJN), as well as to analyze the forms of notary liability concerning the irregularities in the issuance of covernotes in a corruption case under Decision Number 51/Pid.Sus-TPK/2022/Pn.Pbr. The results of the study indicate that the authority of notaries in issuing covernotes is still based on customary practice (living law) in the law of obligations and lacks a strong legal foundation. The liability that may be imposed on notaries for covernote irregularities can take the form of criminal, civil, and administrative liability. This research is expected to contribute by proposing a revision of the Notary Law (UUJN) to include specific provisions on covernotes and to clarify the mechanism of notary liability in issuing covernotes. Thus, it is expected that the legal regulation of covernotes will become more transparent and emphasize the principle of accountability.

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## INTRODUCTION

In banking practice, covernotes have evolved into a recognized customary law with legally binding force, governing the relationship between the parties.<sup>1</sup> As a requirement to expedite disbursement of funds, banks often require notaries to issue covernotes as a guarantee that the land certificate used as collateral will be completed within a certain timeframe as stated in the covernote.<sup>2</sup> However, with the widespread use of covernotes, there is a high potential for

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<sup>1</sup> Nurjaya, I. Made Ari, I. Nyoman Sumardhika, and Ida Ayu Putu Widiati. "Kewenangan Notaris terhadap Pembuatan Covernote." *Jurnal Konstruksi Hukum* 1, no. 2 (2020): 421-425.

<sup>2</sup> Untono, Auryn Drake. "Kekuatan Hukum Covernote Oleh Notaris Sebagai Syarat Pencairan Kredit Bank." *Jurnal Education and Development* 11, no. 1 (2023): 1-5.

abuse, primarily due to the lack of clear regulations regarding the issuance process. This ambiguity is exacerbated by the lack of legal certainty regarding their function as an administrative requirement for bank credit disbursement, which opens up opportunities for manipulation of the land title guarantees stated in the covernote attached by the notary.

As a result, in some situations, various serious issues arise regarding the status of the covernote, especially regarding the notary's responsibility if there is a discrepancy between the information in the covernote and the actual legal status of the collateral object to be pledged to the bank. This discrepancy has the potential to cause losses for the bank as the creditor, especially if it turns out that the promised collateral and the covernote have administrative or legal defects that prevent the execution of the guarantee. If such a discrepancy occurs, the notary who issued the covernote can be held civilly liable. This principle emphasizes that any negligence or abuse of authority by a notary gives rise to the notary's obligation to provide compensation to the affected party.<sup>3</sup>

Legal uncertainty regarding the status of covernotes has given rise to various concrete cases that demonstrate the vulnerability of notaries' covernote issuance practices. For example, research conducted by Yulinda Amin in 2024 demonstrated that the implementation of the precautionary principle by notaries is crucial to ensuring that every covernote issued is based on thorough verification of the collateral's legal status and compliance with applicable regulations. Furthermore, research conducted by Ginta Rikar Perdana and Iyah Faniyah uncovered a case where a notary employee was involved in the crime of covernote forgery, which is subject to criminal sanctions.<sup>4</sup>

The issue of covernotes is also clearly stated in decision number 51/Pid.Sus-TPK/2022/PN.Pbr, when a notary issued several covernotes stating that the process of upgrading the land status from a Land Certificate (SKT) to a Freehold Certificate (SHM) was underway and would be completed within eight months, when in fact such an upgrade was impossible because several witnesses stated that the land used as collateral could not be upgraded because it was part of a forest area. This contradicts the covernote submitted to the bank, which seemed to state that there were no specific obstacles in the land certification

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<sup>3</sup> Trisna, Iqbal Satria, Iyah Faniyah, and Laurensius Arliman. "Pertanggungjawaban Hukum Notaris Atas Penerbitan Covernote." *Jurnal Sakato Ekasakti Law Review* 3, no. 3 (2024): 110-122.

<sup>4</sup> Perdana, Ginta Rikar, and Iyah Faniyah. "Pembuktian Tindak Pidana Pemalsuan Penerbitan Covernote Oleh Pegawai Kantor Notaris Dalam Percepatan Pencairan Kredit Perbankan." *Ekasakti Legal Science Journal* 2, no. 1 (2025): 71-79.

process. The covernote was used as legitimacy to convince PT BNI SKC Pekanbaru to approve the disbursement of an additional loan of 23 billion rupiah to PT Barito Riau Jaya. The result of the issuance of covernotes that did not comply with the actual legal conditions was the disbursement of collateral credit that did not meet legal requirements, resulting in state losses and dragging the notary into the realm of corruption.

The Indonesian legal system mandates that notaries carry out their duties and assume moral and ethical responsibilities, as stipulated in the Notary Law.<sup>5</sup> When carrying out their duties and authorities, a notary is not only required to have a comprehensive grasp of legal provisions, but also to uphold the principles of integrity and objectivity. Integrity reflects the internalization of moral values and conscience within a notary, which fosters a firm stance in carrying out their duties and responsibilities as a public official.<sup>6</sup> Objectivity, meanwhile, is a fundamental principle that notaries must uphold in carrying out their duties. These two principles are essential, considering that deeds prepared by a notary have high legal force and serve as valid evidence in court. If integrity is not maintained, notaries risk abusing their power for personal or group interests, resulting in losses for the public and a decline in trust in the notarial institution.

Decision number 51/Pid.Sus-TPK/2022/PM.Pbr itself has reached the cassation stage where notary Dewi Farni Dja'far has been charged with committing a criminal act of corruption in the form of participating in issuing covernotes and assisting in the disbursement of additional Refinancing Investment Credit (KIR) at PT BNI in 2008, resulting in losses to state finances and entering into a corruption case according to the Audit Result Report in the context of calculating state losses from the BPKP representative of Riau Province Number SR-836/PQ04/5/2013 amounting to Rp. 22,650,0000,0000. In her defense, she stated that her actions were limited to carrying out her official functions as a notary based on the interests of the parties without any intention to commit a crime. However, the Panel of Judges determined that notary Dewi Farni Dja'far was legally proven to have "Assisted in Criminal Acts of Corruption" and violated Article 3 in conjunction with Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended

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<sup>5</sup> Yani, Ahmad. "The Authority of the Honorary Council of the Indonesian Notary Association in Imposing Sanctions for Violation of the Notary's Code of Ethics." *Veteran Law Review* 4, no. 1 (2021): 1-13.

<sup>6</sup> Wibowo, Wahyu Satya, Johni Najwan, and Firdaus Abu Bakar. "Integritas Notaris Sebagai Pejabat Pembuat Akta Autentik dalam Undang-Undang Jabatan Notaris." *Recital Review* 4, no. 2 (2022): 323-352.

by the Republic of Indonesia Law Number 20 of 2001 in conjunction with Article 56 Paragraph 1 of the Criminal Code.

In addition to criminal penalties, Notary Dewi Farni Dja'far may be subject to violations of Article 16 letter 1 of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notary, where Notaries in carrying out their positions must act honestly, carefully, independently, impartially and protect the interests of the parties involved. The failure of a notary to meet these ethical standards, although not directly prosecuted through the provisions of the Notary Position Law, is still considered as part of the construction of an error that strengthens evidence of involvement in a criminal act of corruption. In addition, the actions of notary Dewi Farni Dja'far in issuing a covernote that does not comply with the actual legal situation can be qualified as an unlawful act (Onrechtmatige Daad) as regulated in Article 1365 of the Civil Code as well as an act of default by breaking the promise contained in the covernote that he issued. Accountability in the form of administrative sanctions in the form of dismissal of the notary can also be imposed on the defendant.

The existence of covernotes relies more on general principles of agreements and internal banking provisions than on more specific positive legal regulations. This regulatory gap creates normative ambiguity, with covernotes often used in practice without adequate substantive verification procedures, thus increasing the potential for abuse. One important aspect that banks, as creditors, must also consider in mitigating potential lending risks is the existence of collateral.<sup>7</sup> In this case, banks also play a crucial role in maintaining the security and legal validity of the collateral used as the basis for providing credit facilities. The case of Notary Dewi Farni Dja'far illustrates how a notary's negligence in maintaining the objectivity and accuracy of the information in a covernote can result in criminal liability, given the state losses arising from credit disbursements based on information inconsistent with the actual legal situation. Thus, the lack of clarity in regulations regarding covernotes opens up opportunities for violations of the principle of prudence in notarial and banking practices in Indonesia.

This case highlights the need to strengthen ethical systems, professionalism, and accountability within the notary profession. Therefore, closer collaboration between notary supervisory bodies such as the Notary Supervisory Board and law enforcement officials is

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<sup>7</sup> Azura, Audilia Hany, and Taupiqqurrahman Taupiqqurrahman. "Penyelesaian Kredit Macet Melalui Eksekusi Jaminan Hak Tanggungan Pada Lembaga Perbankan Berdasarkan Pasal 6 UUHT." *Jurnal Hukum dan Kenotariatan* 5, no. 4 (2021): 654-667.

needed to identify and firmly prosecute any irregularities committed by public officials, including notaries. Consistent and firm law enforcement is crucial to uphold the dignity of the notary profession and ensure the protection of public and state interests. To date, research on covernotes has focused on their status as administrative documents and the lack of a legal basis in Indonesia. Research conducted by Syabana & Ratna in 2023 examined the use of covernotes in credit disbursement, but did not address the legal consequences when the contents of the covernotes do not align with the legal facts.<sup>8</sup> Research conducted by Trisna and colleagues (2024) only highlights the civil and administrative aspects of responsibility, without linking them to the dimensions of criminal acts of corruption.<sup>9</sup>

To date, no study has been found that comprehensively discusses the responsibility of notaries in the criminal, civil, or administrative realms related to the issuance of covernotes that serve as the basis for credit disbursement and result in state losses, as reflected in Decision No. 51/Pid.Sus-TPK/2022/PN.Pbr. cover. Starting from this problem, the author wants to conduct a journal article research with the title "*Notary's Accountability for Non-Compliance in Issuance of Covernote in Corruption Cases (Case Study of Decision Number 51/Pid.Sus TPK/2022/PN.Pbr)*". The type of research used by the author is normative legal research, where this research aims to study legal principles, such as studies of norms that apply in society.<sup>10</sup> The approach used is the legislative approach.(statue approach) namely an approach taken by examining all laws and regulations related to the problem the law that is the focus of the research. In addition, this research also uses a case study approach (case approach) by analyzing it in case study No. 51/Pid.Sus-Tpk/2022/Pn.Pbr. The data analysis technique used in this study is descriptive analysis. Therefore, the author examines the data obtained and then formulates conclusions regarding the legal issues that are the focus of the research.<sup>11</sup>

## DISCUSSION

### **Notary's Authority in Issuing Covernotes in Indonesia**

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<sup>8</sup> Syahbana, Muhammad Arman Dzaka, and Edith Ratna. "Proses Penyelesaian Penerbitan Covernote yang Dilakukan oleh Notaris pada Perjanjian Kredit." Notarius 18, no. 2: 461-479.

<sup>9</sup> Trisna, Iqbal Satria, Iyah Faniyah, and Laurensius Arliman. "Pertanggungjawaban Hukum Notaris Atas Penerbitan Covernote." Jurnal Sakato Ekasakti Law Review 3, no. 3 (2024): 110-122.

<sup>10</sup> Waluyo, B. 2008. Penelitian Hukum dalam Praktek. Sinar Grafika, Jakarta, Hlm 13.

<sup>11</sup> Hilman Hadikusuma, Metode Pembuatan Kertas Kerja atau Skripsi Ilmu Hukum (Bandung: Mandar Maju), hlm 65.

The term "notary" has been used since the fifth to sixth centuries. It is believed to originate from the word "nota liberia," meaning a word. Another theory suggests that the word "notary" derives from the singular "notarius" and the plural "notarii." At that time, "notary" referred to officials whose duties served the government, not the general public. They served the public, known as "Taboliones," who were officials tasked with writing for the general public (serve public) who needed their expertise. This makes it relevant to the role and responsibilities of notaries today.<sup>12</sup>

Regulations regarding the Notary Position in Indonesia are regulated in the Notary Position Law where Article 1 paragraph 1 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN) provides a definition of a Notary: "A Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws." So that a notary can be interpreted as a citizen who obtains attribution authority from the state through the Notary Position Law (UUJN) as a public official who acts on behalf of the state representative in the civil realm, especially in making authentic deeds to ensure certainty, maintain order, and provide legal protection regarding the creation and legal events in the civil sphere.<sup>13</sup>

Normatively, the obligations of a notary are regulated in Article 16 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary. These obligations can be divided into three types, namely:

- a. Integrity: relating to Article 16 paragraph 1 letter a which regulates the principles that must be upheld by a notary in carrying out his/her professional position.
- b. Profession: regarding duties and positions, this is stated in Article 16 paragraph 1 letters b to i.
- c. Administration: related to office management and administration, as stated in Article 16 paragraph 1 letters j to n.<sup>14</sup>

Although not mentioned in Article 16 paragraph 1 letters j to n, one form of administrative obligation carried out by a notary is the issuance of a cover note, especially in

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<sup>12</sup> Shidwi Noer Salsa, Hukum Pengawas Notaris, (Jakarta:Kencana,2020), hlm. 6

<sup>13</sup> H. Bachrudin, Hukum Kenotariatan : Perlindungan Hukum dan Jaminan Bagi Notaris Sebagai Pejabat Umum dan Warga Negara, (Yogyakarta:Thema Publishing), hlm 28.

<sup>14</sup> H. Salim HS, Pengantar Kode Etik Notaris : Indonesia, Amerika Serikat, Italia, dan Kanada,(Bandung:Penerbit Reka Cipta), hlm 16-20.

relation to banking.<sup>15</sup> A cover note is a statement requested from a bank to a notary to provide information regarding the status of collateral that is still in process or has not been legally completed.<sup>16</sup> According to Habib Adjie, a notary and presented as a witness in decision Number 51/PID.SUS-TPK/2022/PN.PBR, a cover note is defined as a final or closing note of an event or legal act. Therefore, the purpose of creating this cover note can also be considered a form of conclusion or closing note of a legal action carried out by the parties before a notary. In his testimony as a witness, Habib Adjie argued that a cover note must contain three aspects or elements, namely:

- a. Formal: related to the formalities that must be carried out by a notary, including the use of notary letterhead, letter number, inclusion of the date, signature on the covernote.
- b. Material: regarding the substance stated in the covernote, which must be in line with the legal acts carried out by the parties in full before or by a notary, for example, containing the type of legal act of the parties appearing or parties, and also stating the number and date of the deed.
- c. External: In this case, the covernote must be seen as it is, so that it does not need to be interpreted further.

The contents of the covernote itself at the practical level include, among other things:<sup>17</sup>

- 1) identity of the notary/PPAT and his/her work area;
- 2) information regarding the type, date and number of the deed issued;
- 3) information related to the processing of deeds, certificates, name changes or other similar matters which are still in the legal process;
- 4) information regarding the time period for completing the process;
- 5) information regarding the party entitled to receive it when the process has been completed;
- 6) place and date of creation of the Covernote, accompanied by the notary's signature and stamp.

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<sup>15</sup> Kadir, Rahmiah. "Pertanggungjawaban Notaris pada Penerbitan Covernote." PhD diss., Universitas Hasanuddin, 2018.

<sup>16</sup> Rani, Buana Shyntia. "Legalitas Covernote yang Dikeluarkan oleh Notaris dalam Putusan Mahkamah Agung Nomor 4242 K/PID. SUS/2023." Jurnal Hukum Lex Generalis 6, no. 4 (2025).

<sup>17</sup> Kadir, Rahmiah. "Pertanggungjawaban Notaris pada Penerbitan Covernote." PhD diss., Universitas Hasanuddin, 2018.

In Indonesia, there are no specific regulations governing the procedures for creating and issuing covernotes by notaries. Therefore, covernotes are created and issued based on customary practices that refer to the principles of contract law and agreements. As long as they do not harm the parties involved, the issuance of covernotes is not prohibited.<sup>18</sup> Covernotes in Indonesia are still regulated under living law or customary law, where the basis for their creation is an agreement that arises from an agreement between the parties based on customary law, thus becoming a regulation.<sup>19</sup>

Although not explained in Indonesian regulations, in the banking context, the procedures and provisions related to the issuance of covernotes are usually regulated in more detail in implementing regulations issued by the central bank or banking sector supervisory authority.<sup>20</sup> Article 16 paragraph (2) letter d in the Explanation of Bank Indonesia Regulation Number 20/8/PBI/2018 concerning the Loan to Value Ratio for Property Credit, Financing to Value Ratio for Property Financing, and Down Payment or Motor Vehicle Financing, the provision states that if the deed of sale and purchase, deed of encumbrance of mortgage rights, or power of attorney to encumbrance of mortgage rights are not yet available, then the credit ceiling disbursement can still be carried out after the bank receives the minutes or covernote issued by the notary.<sup>21</sup> The trust given by the bank to the notary to make a covernote has become a habit in banking practice. To issue a covernote, a notary is required to be a bank partner, where one example of the requirements given by PT Bank BNI, for example, for notary partners is that they must have at least 5 years of experience and have a good record of integrity and track record.

The responsibilities and obligations of a notary in issuing a covernote are not only limited to technical aspects, but also to moral and professional aspects. The legal principles underlying the notary's obligations in making a covernote are reflected in the provisions of the Notary Public Law, Article 16 paragraph 1 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Notary Public (UUJN), which contains the

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<sup>18</sup> Widianara, Pande Nyoman Putra, and AA Sagung Wiratni Darmadi. "*Akibat Hukum Covernote Yang Dibuat Oleh Notaris Dan Pejabat Pembuat Akta Tanah Oleh.*"

<sup>19</sup> Malini, Malini, Dijan Widijowati, and Yurisa Martanti. "Kepastian Hukum isi Surat Keterangan (Covernote) Terhadap Objek yang diproses Berdasarkan Akta yang dibuat oleh Notaris." *Jurnal Multidisiplin Indonesia* 2, no. 2 (2023): 337-355.

<sup>20</sup> Syahbana, Muhammad Arman Dzaka, and Edith Ratna. "Proses Penyelesaian Penerbitan Covernote yang Dilakukan oleh Notaris pada Perjanjian Kredit." *Notarius* 18, no. 2: 461-479.

<sup>21</sup> Kadir, Rahmiah. "Pertanggungjawaban Notaris pada Penerbitan Covernote." PhD diss., Universitas Hasanuddin, 2018

obligations of a notary in carrying out his professional duties to act in a trustworthy, honest, thorough, independent, impartial manner, and to protect the interests of the parties involved in legal acts. The notary is obliged to act in a trustworthy manner, namely maintaining the confidentiality of all information related to the making of the deed or information received from the process, this is in accordance with the oath or promise of office that has been held and is regulated in legislation.<sup>22</sup> The aspect of honesty upholds the integrity of the notary in carrying out his duties, where the notary must ensure that the information in the deed he makes has been compiled accurately in accordance with legal facts, can be accounted for and does not mislead the parties. A careful attitude is reflected in the actions of the notary who must be careful in understanding the parties and understanding the rights and obligations of each party.<sup>23</sup>

Independence is an essential aspect of a notary's profession, requiring them not to rely on others in carrying out their duties.<sup>24</sup> For example, a notary is not permitted to be influenced or intervened by others in carrying out their duties to prevent any form of abuse. Furthermore, an objective or impartial attitude is a fundamental principle that must be upheld by a notary as a public official, where the notary's role is to facilitate a fair agreement between the parties involved, which is then outlined in a legally valid deed. In this case, the notary does not bring any personal interests or desires regarding the contents of the agreement, but rather acts only as a party managing and witnessing the process.<sup>25</sup> The notary's obligation to protect the interests of the parties involved includes implementing due diligence, which means ensuring that all information obtained is accurate so as not to mislead or cause errors. In addition, the notary also plays a legal consultant, providing assistance to the parties in understanding the legal consequences of the deeds they create.

The doctrine of authority in law states that the authority held by a position or authority can not only be sourced from written law but can also come from existing customs in legal practice, the application of this doctrine is known as the ultra vires doctrine where one of the cases that emerged came from English society and unwritten rules tended to dominate written

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<sup>22</sup>Kusumandari, Ganis Noer Fadha. "Implementasi Kewajiban Ingkar Notaris dalam Pelaksanaan Tugas Jabatan Berdasarkan UUJN." *Officium Notarium* 3, no. 2 (2023): 109-119.

<sup>23</sup> Ratnasari, Tamara, and I. Dharsana. "Perbedaan Tanggung Jawab antara Cyber Notary dan Notaris Atas Pembuatan Akta yang Didasari Identitas Palsu." *Indonesian Notary* 5, no. 2 (2023): 5.

<sup>24</sup> *Ibid*, hlm 19.

<sup>25</sup> Kuntadi, Arnaz Adiguna, and Flora Dianti. "Analisis Mengenai Keabsahan Akta Otentik Yang Dibuat Tidak Berdasarkan Kehendak Pihak Didalamnya (Studi Putusan No. 621/Pdt. G/2019/PN. Sgr)." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 2 (2023): 2455-2470.

rules.<sup>26</sup> Authority (*gezakt*) refers to the power granted by public law regulations, which includes authority (*bevoegdheden*) in carrying out public duties and functions.<sup>27</sup> The authority granted based on the provisions of this positive law is a form of attribution, delegation, and mandate authority. The authority of a notary in carrying out his/her position emphasizes attribution authority which is the authority granted directly by the Law to the notary in carrying out his/her duties. In its implementation where the authority granted is not only sourced from written law but can also come from unwritten law such as living law or customary law, the morality of the notary holds high importance.

Although there is no statutory regulation regarding the authority of notaries regarding the issuance of covernotes, notaries in carrying out their profession as bank partners must be guided by Article 16 paragraph 1 letter a of the Notary Law. This article provides provisions regarding the responsibilities and principles of notaries in issuing valid and binding deeds and documents. As previously explained, although there are no regulations that explicitly regulate the issuance of covernotes, the attributive authority granted by the state should provide moral emphasis for notaries to issue covernotes that are complete, accurate, and not misleading the parties listed in the covernote.

### **Legal Liability of Notaries for Non-Compliance with Covernote Issuance in Decision Number 51/Pid.Sus-Tpk/2022/Pn.Pbr**

The court ruling in case No. 51/Pid.Sus-TPK/2022.Pn.Pbr highlighted the status of the covernote issued by Dewi Farni Dja'far, a notary in the Pekan Baru city jurisdiction. From the first instance to the cassation level, the panel of judges concluded that the notary's deed serves not merely as a certificate but as a legal instrument with authentic force to prove certain circumstances. Therefore, the notary's covernote serves as authentic evidence that reflects the formal truth of the statements made. This case began with a debtor named Esron Napitupulu, who was also the Director of PT Barito Riau Jaya, where on July 9, 2008, he submitted an additional Internance Refinancing Credit (KIR) to PT Bank BNI SKC Pekanbaru branch amounting to 23 billion with the principal collateral in the form of 1004 ha of oil palm plantation land in the form of 157 plots of Land Certificates (SKT) covering an area of 314 ha located in

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<sup>26</sup> Ibrahim, Johnny. "DOKTRIN ultra vires dan KONSEKUENSI PENERAPANNYA TERHADAP badan hukum privat." *Jurnal Dinamika Hukum* 11, no. 2 (2011): 243-257.

<sup>27</sup> Herman, Herman, and Hendry Julian Noor. "Doktrin tindakan hukum administrasi negara membuat keputusan (beschikking)." *Jurnal Komunikasi Hukum (JKH)* 3, no. 1 (2017): 82-95.

Batu Langka Village and 146 plots of Land Certificates (SKT) covering an area of 292 ha located in Pasir Mas Village. For the principal collateral, PT BNI SKC Pekanbaru provided information to Esron Napitulu to increase the collateral value from the initial 30% to 75% by increasing the status of the collateralized land from the Land Certificate (SKT) to the Building Use Rights Certificate (SHGB) or Ownership Rights Certificate (SHM).

Esron Napitupulu, as the director of PT Barito Riau Jaya, approached Notary Dewi Farni Dja'far around July 2008 with the aim of improving the status of land located in the two areas, namely Batu Langka Village and Pasir Mas Village. Notary Dewi Farni Dja'far also handled the land improvement process by handing it over to Tengku Darmizon and Junifer, who worked at the National Land Agency in the area where the status would be improved. In August 2008, Tengku Darmizon informed Notary Dewi Farni Dja'far that the land status improvement could not be carried out because it was oil palm land and part of a forest area. However, Notary Dewi Farni Dja'far still issued two covernotes, namely on September 18, 2008 with Number 01/Not-SK/09/2008, and covernote Number 02/SK.Not/IX/2008 issued on September 23, 2008, which explained as follows:

**Table 1. Covernote Case**

| No | Covernote Number  | Description in Covernote  | Analysis of Non-Conformity with Legal Facts   |
|----|---|---|---|
| 1  | Covernote Number 01/Not-SK/09/2008 dated September 18, 2008 | That the processing of the Land Ownership Certificate (SHM) for the PT Barito Riau Jaya plantation with 2 different locations based on information from the National Land Agency (BPN) office will be completed in the fourth week of December. | <ul style="list-style-type: none"> <li>- The upgrading of land status from Land Certificate (SKT) to Ownership Certificate (SHM) was never carried out because the land included oil palm plantations and was part of a forest area.</li> <li>- Inconsistencies and delays in the promises in the covernote which explain that the Certificate of Ownership (SHM) indicates that it will</li> </ul> |

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|   |   |   | be completed at a certain time while the administration process has not been completed or has never been carried out.  |
| 2 | Covernote Number 02/SK.Not/IX/2008 dated September 23, 2008 | <ul style="list-style-type: none"> <li>- That on September 23, 2008, the Guarantee and Power of Attorney Agreement No. 2008.2015 was processed in the name of Esron Napitupulu, Director of PT Barito Riau Jaya in Pekanbaru, for land in two different locations totaling 303 Land Certificates (SKT) whose status will be upgraded to a Freehold Certificate (SHM).</li> <li>- That the Deed of Sale and Purchase (AJB) and Deed of Granting of Mortgage Rights (APHT) have been signed by the legal owner.</li> <li>- That all collateral has been checked and there are no obstacles or problems.</li> <li>- The maximum time period for processing the certificate is 8 months and if the process of processing the</li> </ul> | <ul style="list-style-type: none"> <li>-Inconsistencies in the statements in the covernote where in reality no check was ever carried out on the collateral pledged.</li> <li>- The administration was never carried out so that the Mortgage Certificate (SHT) and Ownership Certificate (SHM) were never submitted to PT Bank BNI.</li> <li>- There was an act of default committed on the promise given in the contents of the covernote with no real proof.</li> </ul> |

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|  | installation of mortgage rights at the BPN is complete, the Ownership Certificate (SHM) and Mortgage Certificate (SHT) will be submitted to PT Bank BNI. |  |
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Due to the issuance of the covernote, PT BNI SKC Pekanbaru finally disbursed funds with a total of five disbursements in the period of September 2008 to August 2009. However, on April 30, 2010, the credit was declared bad by PT BNI SKC Pekanbaru and the collateral could not be executed because there was never a process of managing land improvements to the BPN. This case is included in the corruption case because it has harmed state finances based on the Audit Report in the context of calculating state losses of the BPKP Representative of Riau Province Number SR-836 / PQ04 / 5/2013 dated December 30, 2013. With regard to the object collateralized by PT Barito Riau Jaya which is still in the form of a Land Certificate (SKT) itself, there are still problems in the use of the Land Certificate (SKT) as proof of ownership. Article 76A of the Minister of Agrarian Affairs and Land Regulation Number 16 of 2021 explains that written evidence of former customary land is no longer valid after 5 years of the enactment of Government Regulation Number 18 of 2021 concerning management rights, land rights, apartment units and land registration.<sup>28</sup> Therefore, if the period expires, the Land Certificate (SKT) cannot be used as legal proof of ownership. Contrary to this statement, Busyra Azheri, Professor in the field of civil law, specifically Banking Law and Corporate Law, as one of the witnesses presented at this trial, argued that the Land Certificate (SKT) can be used as collateral provided that the basis of the right is upgraded to ownership rights, business use rights or building use rights.

From an agrarian perspective, the Land Certificate (SKT) in this case, as stated by witness Tengku Darmizon, is a palm oil plantation and falls within a forest area, where Article 2 of the Basic Agrarian Law (UUPA) affirms the state's right to control the land, water, and airspace contained therein. Therefore, land in a forest area cannot be transferred to ownership

<sup>28</sup> Atikah, Noor. "Kedudukan Surat Keterangan Tanah sebagai Bukti Kepemilikan Hak Atas Tanah dalam Sistem Hukum Pertanahan Indonesia." Notary Law Journal 1, no. 3 (2022): 263-289.

because it is part of the state's control rights.<sup>29</sup> The notary's liability arising from his negligence in issuing the covernote, which then resulted in losses for the related parties, is as follows:

#### **A. Criminal Liability**

The first responsibility for the discrepancy in the issuance of the covernote imposed on notary Dewi Farni Dja'far is a criminal offense in which the first level, appeal and cassation court processes have taken place. The article imposed on notary Dewi Farni Dja'far at all three levels of court is the same, namely 2 paragraph 1 in conjunction with Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 56 paragraph 1 of the Criminal Code. The following is an analysis of the levels of justice that ensnared Dewi Farni Dja'far:

| <b>Stages of the Trial</b>                                  | <b>Verdict</b>   |
|---|--|
| First Level<br>Verdict<br>No. 51/Pid.Sus-TPK/2022/Pn.Pbr.   | <ul style="list-style-type: none"><li>- The defendant was declared legally and convincingly proven guilty of committing the crime of "assisting a criminal act of corruption" because he issued a cover note that did not reflect the actual situation, where the issuance of the cover note ultimately resulted in PT Bank BNI disbursing funds.</li><li>- The judge sentenced him to 1 year and 2 months imprisonment and a fine of IDR 50 million, with the provision that if the fine is not replaced, he can serve 2 months imprisonment.</li></ul> |
| <b>Second Level (Appeal) No. 6/Pid.Sus-TPK/2023/Pn.Pbr.</b> | <ul style="list-style-type: none"><li>- Agree with the panel of judges at first instance that the length of the sentence imposed on the defendant was appropriate and fair considering that the defendant's actions had caused losses to the state and PT Bank BNI.</li><li>- So that the judge decides to reject the</li></ul>  |

<sup>29</sup> Safitri, Myrna A. "Hak menguasai negara di kawasan hutan: Beberapa indikator menilai pelaksanaannya." Jurnal Hukum Lingkungan Indonesia 1, no. 2 (2014): 1-21.

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|--|---|
|  | appeal request and uphold the decision of the first instance court.   |
| Third Level (Cassation) No. 6/Pid.Sus-TPK/2023/Pn.Pbr. | <p>-The judge accepted the cassation application and annulled the appeal decision.</p> <p>-Declares that the defendant has been legally and convincingly proven guilty of committing a crime, namely assisting in a criminal act of corruption, so that the judge imposes a fine of 200 million Rupiah which, if not paid, can be replaced with 6 months imprisonment and determines that the length of detention that has been served is deducted from the sentence imposed.</p> |

In criminal law, the principle of legality requires that a person be subject to legal sanctions for actions defined as crimes by law.<sup>30</sup> Based on the court's findings, although Dewi Farni Dja'far did not commit corruption, her actions still fall into the category of aiding and facilitating a crime. The punishment imposed is commensurate with the level of culpability of the crime, as the impact is considered substantial due to the financial losses to the state.

## B. Civil Liability

In this case, there has been no civil liability claim against notary Dewi Farni Dja'far. However, based on the criminal act committed, it is highly likely that notary Dewi Farni Dja'far will be held civilly liable. Notary responsibilities can be divided into two: first, the notary's responsibility to the client, which opens up errors and violations of legal acts such as breach of contract; second, the notary's professional responsibility, which opens up opportunities for errors and violations, namely unlawful acts.

Notary Dewi Farni Dja'far for her actions, namely issuing a cover note which does not reflect the actual legal facts can be subject to breach of contract or unlawful acts. The breach of contract committed by Dewi Farni Dja'far relates to the promise stated in the

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<sup>30</sup> Moejaltno, *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta), 1993, hlm. 25.

covernote but not implemented where in her statement the collateral certificate which is still in the process of managing the increase in rights will be handed over to PT BNI SKC Pekanbaru in the form of a Certificate of Ownership (SHM) or a Mortgage Certificate (SHT). The actions of notary Dewi Farni Dja'far are also classified as unlawful acts regulated in Article 1365 of the Civil Code which reads: *"Every act that violates the law and causes loss to another person, requires the person who caused the loss due to his fault to compensate for the loss."* Based on the formulation of Article 1365 of the Civil Code, it can be said that an act is declared unlawful if it fulfills the following four elements:<sup>31</sup>

- a. The action must be against the law (onrechtmatig)
- b. The action must result in harm
- c. Action must be taken in the presence of error or negligence
- d. There must be a causal relationship between the action and the loss caused.

Considering that in this case, notary Dewi Farni Dja'far has been proven to have issued a covernote that is contrary to the legal situation which is actually considered as part of an unlawful act. The inconsistency of the actions taken by notary Dewi Farni Dja'far with the Notary Law (UUJN) which mandates notaries to maintain order in the civil law field shows the potential for broader violations. Notaries in carrying out their duties, have a prohibition on coercion. Coercion itself can be divided into two types, namely, first, physical coercion, and second, abuse of circumstances.<sup>32</sup> Although there is no physical coercion, the actions of notary Dewi Farni Dja'far can be classified as part of the abuse of circumstances, it is based on actions that take advantage of the ignorance or powerlessness of the parties involved in the transaction.

The actions of notary Dewi Farni Dja'far have certainly caused losses which fulfill Article 1365 of the Civil Code. The losses experienced by PT BNI SKC Pekanbaru can be seen from the financial losses from the failed execution of the guarantee provided by Esron Napitupulu as Director of PT Barito Riau Jaya caused by the covernote issued by notary Dewi Farni Dja'far. This hampers the credit settlement process and prevents the bank from obtaining its rights to the agreed collateral. The bank risks experiencing further losses if the debtor cannot fulfill its obligations, while there is no valid guarantee as a basis for continuing the execution or claim. On the other hand, the State also bears the losses,

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<sup>31</sup> Abdulkadir Muhammad, Hukum Perdata Indonesia, (Bandung: Penerbit PT Citra Aditya Bakti), hlm 83.

<sup>32</sup> *Ibid*, hlm 44.

because the notary's actions that are not in accordance with the law have the potential to cause legal uncertainty, which can ultimately disrupt the stability of the legal system and the economy more broadly.

### C. Accountability for Administrative Sanctions

The Notary Law resulted in the birth of a new institution, which also impacted structural changes and the oversight mechanism for notaries. Previously, notary supervision was carried out by the Minister of Justice, but after the Notary Law was issued, the Supervisory Board, consisting of the Regional Supervisory Board, the Regional Supervisory Board, and the Central Supervisory Board, was authorized to fully supervise notaries.<sup>33</sup> Notaries, in carrying out their duties, are guided by a set of ethics, known as the notary code of ethics. The notary code of ethics is defined as a moral guideline established by a notary professional organization through congressional decisions or applicable laws and regulations, which is binding on everyone who carries out their duties and position as a notary.<sup>34</sup> Judging from the definition of sanctions outlined in the Indonesian Notary Association Code of Ethics, sanctions are "*A punishment intended as a means, effort, and coercive nature of obedience and discipline of members of the association and other individuals who hold and carry out the office of notary in enforcing the organization's code of ethics and discipline.*". Thus, there is a distinction between the Notary Office Act and the Notary Code of Ethics. The Notary Office Act regulates the position, duties, responsibilities, and obligations of a Notary. Meanwhile, the Notary Code of Ethics contains a set of rules applicable to members of the profession, providing ethical guidelines and standards of conduct that Notaries must adhere to in carrying out their duties. Thus, there is a distinction between the Notary Office Act and the Notary Code of Ethics. The Notary Office Act regulates the position, duties, responsibilities, and obligations of a Notary. Meanwhile, the Notary Code of Ethics contains a set of rules applicable to members of the profession, providing ethical guidelines and standards of conduct that Notaries must adhere to in carrying out their duties.<sup>35</sup>

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<sup>33</sup> *Ibid*, hlm. 46.

<sup>34</sup> Yani, Ahmad. "The Authority of the Honorary Council of the Indonesian Notary Association in Imposing Sanctions for Violation of the Notary's Code of Ethics." *Veteran Law Review* 4, no. 1 (2021): 1-13.

<sup>35</sup> Notaris, Covernote. "Penyalahgunaan Keadaan Oleh Notaris Dalam Pembuatan Covernote Sebagai Condition Precedence Pemecahan Kredit Bank."

Sanctions based on Article 6 which are regulated in the notary's code of ethics regarding sanctions for violations of the code of ethics which can be in the form of:

- a. Reprimand;
- b. Warning;
- c. Temporary suspension from membership of the association;
- d. Honorable dismissal from association membership;
- e. Dishonorable dismissal from association membership.

Examination conducted by the Notary Supervisory Board on notaries who Violation involves several stages, namely:<sup>36</sup>

- a. Complaint reports from parties who feel they have been harmed, must be submitted in writing. equipped with supporting evidence.
- b. Complaint received, MPD reviews to determine the eligibility of the complaint; If appropriate, the MPD will provide notification to the reported notary regarding the schedule. examination and details of the complaint so that the notary can prepare himself.
- c. MPD conducts inspections and collects information, notaries and reporters will called to give evidence.
- d. The results of the inspection will be evaluated at a plenary meeting, if there are indications of violations. Will be submitted to the Regional Supervisory Council (MPW) Administrative sanctions that given by the Assembly.

Judging by the criminal sentence imposed on notary Dewi Farni Dja'far, a dishonorable discharge sanction can be imposed on her if she fails to uphold the mandates stipulated in the Notary Law and the Notary Code of Ethics in carrying out her duties. This dishonorable discharge sanction can have a deterrent effect and maintain the integrity of the notary profession.

The consequences of the issuance of a covernote that does not fulfill the three aspects, namely formal, material and external, and not being carried out by Article 16 paragraph 1 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) are firstly, the covernote becomes a materially flawed information document so that it not only weakens the evidentiary power of the

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<sup>36</sup> Marbun, Monalisa, Wira Franciska, and Refki Ridwan. "Kewenangan dan Sanksi Majelis Pengawas terhadap Pelanggaran Jabatan Notaris." Themis: Jurnal Ilmu Hukum 2, no. 1 (2024): 31-39.

document, but also has implications for causing the covernote not to be recognized as valid evidence in law. In practice, this can make it difficult for banks or financial institutions to execute guarantees if the debtor is proven to have committed default or an unlawful act.

Second, if the covernote fails to reflect the actual situation or fails to meet the material and external requirements, the notary may be held legally accountable for the discrepancy. This is in line with the principle that notaries should uphold, namely Article 16 paragraph 1 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), where a notary not only prepares or issues a deed but also includes information that must be verifiable. If there is a claim for damages, the notary may face legal action with sanctions that can be imposed, namely civil, criminal, and administrative.

Third, issuing an inappropriate cover note can lead to a loss of public trust in notaries as a profession that should act responsibly, independently, and impartially. This reputational damage is dangerous because it can influence the wider public's perception of the notary profession. Fourth, if the issued cover note does not align with the legal facts, this can lead to protracted legal cases in the form of court litigation between the bank, the debtor, and the notary. This can be detrimental to the parties involved in terms of finances and time efficiency.

## CONCLUSION

The authority of a notary to issue a covernote is still based on customary law or living law, so there are no regulations in Indonesia that specifically regulate covernotes. Although a covernote is not an authentic deed and is not subject to legal obligations stipulated by law for notaries to issue covernotes, there are limitations that must be carried out by notaries, namely by adhering to the principle of Article 16 paragraph 1 letter a of the Notary Law, which states that as a notary in carrying out their profession and position, they must be trustworthy, honest, thorough, independent, impartial, and protect the interests of the parties involved in legal acts. In addition, the attributive authority granted by the state to notaries should provide moral emphasis for notaries to issue covernotes that are complete, accurate, and not misleading the parties listed in the covernote. The case of the covernote's discrepancy with the actual legal facts was carried out by Notary Dewi Farni Dja'far, who was involved in the corruption case Number 51/Pid.Sus-Tpk/2022/Pn.Pbr. Due to this involvement, Notary Dewi Farni Dja'far was

subject to criminal liability in the form of the imposition of Article 2 paragraph 1 in conjunction with Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 56 paragraph 1 of the Criminal Code. Civil liability in the form of default and unlawful acts can also be imposed on Notary Dewi Farni Dja'far for the publication of the covernote she made. As well as administrative sanctions in the form of dishonorable dismissal by the Notary Supervisory Board (MPN) can provide a deterrent effect so that similar cases do not occur.

In this regard, the need for additional regulations and transparent oversight in the Notary Law regarding covernotes is crucial to ensure that they cannot be misused, as they serve as one of the requirements for the disbursement of bank funds by creditors to debtors. More detailed regulations regarding strict guidelines for notaries regarding the procedures, content, and responsibilities in issuing covernotes should be issued to mitigate the risk of misuse. Furthermore, strict and transparent oversight by the Notary Supervisory Board can strengthen the accountability and integrity of the notary profession, thereby increasing public trust. Support from banking institutions is also needed to conduct comprehensive oversight of every document received from notaries to minimize potential losses due to stalled execution of collateral.

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