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LEGAL CERTAINTY OF NOTARY COVER NOTES IN THE REGISTRATION OF LAND RIGHTS TRANSFER

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ABSTRACT

This study aims to analyze the legal basis of a notary's authority in issuing cover notes, their evidentiary legal force within the civil procedural law system, and their legal implications for legal certainty in the registration of land rights transfer. This research is normative legal research employing statutory, conceptual, and case approaches. Legal materials were analyzed qualitatively using a descriptive-analytical method. The results indicate that, first, notaries have the authority to issue cover notes as administrative statements related to the execution of their official duties. Second, a cover note functions as documentary evidence that does not possess perfect evidentiary force like an authentic deed, meaning its evidentiary value depends on the judge's assessment. Third, the use of cover notes has implications for legal certainty in the registration of land rights transfers; they provide temporary informational certainty and support the smooth administrative process, yet they do not establish formal legal certainty regarding the status of land rights. Legal certainty remains determined through the land registration process in accordance with statutory regulations. Therefore, cover notes should only be used according to their function as administrative information letters and cannot serve as the basis for the creation of land rights or security rights (hak tanggungan).

Keywords: *cover note; evidentiary legal force; land rights transfer; legal certainty; notary.*

1. INTRODUCTION

The implementation of land law in Indonesia essentially aims to achieve administrative order, protection of rights, and legal certainty regarding the control and utilization of land as a primary source of livelihood for the community. Land holds a highly strategic position because it not only possesses economic value but also embodies social, political, and juridical dimensions closely intertwined with public life. Therefore, through agrarian policies, the state holds the authority to regulate and manage the utilization of land so that it can be used to the greatest extent for the prosperity of the people.[1]

The state's role in the implementation of land law is manifested through a land registration system aimed at providing legal certainty regarding the status of land

[1]Urip Santoso, *Hukum Agraria dan Hak-Hak Atas Tanah* (Jakarta: Kencana Prenada Media Group, 2005), pp. 2–4.

rights. This land registration system ensures that every parcel of land has clarity concerning the subject holding the rights, the object of the land, and the specific types of rights attached to it. Through this system, any transfer, encumbrance, or termination of land rights can be openly recognized by the public, thereby fostering orderly land administration.[2]

The normative foundation for the implementation of land law in Indonesia originates from Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). Article 2, paragraph (1) of the UUPA affirms that the earth, water, and airspace, including the natural resources contained therein, are controlled by the state as an organization of power representing the entire people.[3] Based on this state-control right, the state has the authority to regulate the allocation, utilization, supply, and maintenance of land to achieve the greatest prosperity for the people. One form of exercising this authority is the implementation of land registration as mandated in Article 19 of the UUPA to guarantee legal certainty of land rights. This provision is further elaborated in Government Regulation Number 24 of 1997 concerning Land Registration, which affirms that land registration aims to provide legal certainty and legal protection to holders of land rights.[4]

Through the land registration process, the state issues a certificate as a legally recognized proof of rights that serves as strong evidence regarding the physical and juridical data inscribed within it. A certificate functions not only as proof of land ownership but also as an instrument providing legal certainty and protection to the rights holder. Consequently, the existence of a certificate is a vital component in realizing land administrative order and preventing disputes regarding land status and control.[5]

In the process of acquiring, transferring, or encumbering land rights which are subsequently registered to secure legal certainty notaries and Land Deed Officials (*Pejabat Pembuat Akta Tanah* or PPAT) play a crucial role as public officials granted the authority by the state to draw up authentic deeds in accordance with statutory regulations. An authentic deed is written evidence drawn up by or before authorized officials in a form prescribed by law, thereby possessing perfect evidentiary force concerning its contents. Hence, authentic deeds hold a critical function in providing legal certainty and protection for parties engaging in legal actions.[6]

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[2]Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksa-naannya* (Jakarta: Universitas Trisakti, 2019), pp. 472–475.

[3]Law Number 5 of 1960 concerning Basic Agrarian Principles (*Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria*), Article 2, paragraphs (1) and (2).

[4]Government Regulation Number 24 of 1997 concerning Land Registration (*Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah*), Article 3.

[5]Boedi Harsono, *Op. Cit.*, p. 478.

[6]Salim Hs, Lalu Parman, Dan Nathania Permata S, *Kedudukan Akta Ppat Sebagai Alat Bukti dalam Perkara Pidana (Studi Putusan Nomor 1231/Pid.B/2012/PN.MKS). Vol. 32 No.3, November 2017.* 578

However, in economic transaction practices, particularly banking financing secured by land rights, a time gap frequently occurs between the signing of the credit agreement and the completion of the collateral binding process and the registration of security rights (*hak tanggungan*). This process requires time as it must go through examination and administrative completion stages by authorized land agencies. Conversely, banks require credit disbursement within a relatively short period to meet borrowers' financing needs. With the assurance that the cover note issued by a notary is accountable, creditors use it as temporary collateral evidence until the certificate issuance process is finalized, rather than as definitive collateral in the credit application itself. This condition has driven the widespread practice of issuing cover notes by notaries or PPATs as explanatory letters indicating that the process of collateral binding and the registration of land rights or security rights are still ongoing.[7]

In its development, a cover note functions not merely as information regarding the ongoing process of collateral binding, but is also utilized by banking institutions as a basis for credit disbursement before the registration of security rights is fully executed. The presence of a cover note fundamentally arises from practical necessities, primarily to bridge the banking sector's need for prompt credit disbursement with land administration processes that demand longer completion times.[8]

Although widely used in practice, cover notes do not receive explicit regulation either in the Law on the Position of Notaries (*Undang-Undang Jabatan Notaris*) or in land-related legislation. Furthermore, cover notes do not fulfill the elements of an authentic deed because they do not contain statements of intent from the parties that generate legal consequences, nor are they structured in the form prescribed by law. Their legal standing is more accurately understood as administrative statements explaining the status of an ongoing legal process. Therefore, the evidentiary force of a cover note cannot be equated with an authentic deed possessing perfect evidentiary force.[9]

Legal issues arise when cover notes are used as a basis of trust in banking financing transactions, particularly if the collateral binding process cannot be completed within the agreed timeframe. In Indonesia's security law system, security rights (*hak tanggungan*) only come into existence from the date of their recording in the land book at the land office. Prior to such recording, the creditor has not attained the status of a preferred creditor holding preferential rights over the collateral object.

[7]I Made Ari Nurjaya, I Nyoman Sumardhika, and Ida Ayu Putu Widiati, "Kewenangan Notaris Terhadap Pembuatan Covernote," Jurnal Konstruksi Hukum, Vol. 2, No. 2 (Denpasar: Universitas Warmadewa, 2020), p. 422.

[8] Anisa Nurrachmasari and Siti Malikhatun Badriyah, "Kedudukan Hukum terhadap Covernote Notaris dalam Pencairan Kredit," *Jurnal Ilmiah Ilmu Pendidikan*, Vol. 6, No. 8 (2023), p. 5548.

[9]Law Number 4 of 1996 concerning Security Rights over Land and Objects Related to Land (*Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah*), Article 13, paragraphs (4) and (5).

This circumstance demonstrates that the existence of a cover note cannot replace the constitutive function of security rights registration as a prerequisite for the birth of real security rights.

The continuous use of cover notes in banking practice reveals a gap between transactional needs and available legal regulations. On one hand, cover notes are considered capable of providing temporary informational certainty regarding the status of land document processing. On the other hand, the absence of strict regulations regarding their legal status, the limits of the authority to issue them, and their evidentiary force gives rise to divergent interpretations. This divergence is evident in banking practices that frequently rely on cover notes as a basis for credit disbursement, whereas normatively, cover notes hold neither the status of authentic deeds nor documents that create real rights. Such a situation potentially creates legal uncertainty for notaries, banking institutions, and interested parties utilizing cover notes as a legal basis.

Issues concerning cover notes are no longer limited to administrative aspects; rather, they have evolved into legal matters involving notary authority, the evidentiary force of a document, and the guarantee of legal certainty in the registration of land rights transfers. This complexity renders the study of a notary's legal authority to issue cover notes, their evidentiary force within the civil procedural law system, and their implications for legal certainty in the registration of land rights transfers essential for normative analysis. Based on the foregoing description, the primary research problems addressed in this study are: what is the legal basis of a notary's authority to issue cover notes under Indonesian statutory regulations, what is the evidentiary force of a notary's cover note within the civil procedural law system, and what are the legal implications of using a notary's cover note on legal certainty in the registration of land rights transfers?

2. RESEARCH METHOD

The type of research employed by the author is normative legal research. Normative research conceptualizes law as what is written in statutory regulations (*law in books*) or as rules and norms serving as benchmarks for human behavior deemed appropriate.[10] Normative legal research is an approach conducted based on primary raw materials, examining theoretical aspects concerning legal principles, legal concepts, legal views and doctrines, regulations, and legal systems by utilizing secondary data, including principles, norms, and legal rules contained in legislation and other regulations, through the study of books, laws, and other documents closely related to the research.[11]

[10]Amirudin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 9th edn. (Depok: PT Rajagrafindo Persada, 2016), p. 118.
[11]Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: PT RajaGrafindo Persada, 2006), p. 24.

As normative legal research, this study falls under the category of descriptive-prescriptive legal research, which aims to find problem solutions (*problem-solution*).[12] The approach methods utilized in this research are:

a) Statute Approach: The statute approach is conducted by examining all statutory regulations related to land registration, the authority of notaries/PPATs, and evidentiary law. This approach aims to identify the conformity, consistency, and synchronization between legal norms, both vertically and horizontally. The analysis focuses on the provisions of Law Number 5 of 1960, Government Regulation Number 24 of 1997 concerning Land Registration, Law Number 2 of 2014, Government Regulation Number 37 of 1998, and the provisions of evidentiary law in the Civil Code (*Kitab Undang-Undang Hukum Perdata*). Through this approach, the juridical legitimacy basis and the boundaries of legal authority concerning the use of a notary's cover note can be determined.

b) Conceptual Approach: The conceptual approach moves from legal views and doctrines developed within the science of law. By studying these views and doctrines, researchers can discover legal concepts, legal principles, and legal doctrines relevant to the issues being investigated, thereby serving as a framework for analyzing the legal position and evidentiary force of a cover note.

c) Case Approach: The case approach is conducted by analyzing court decisions relevant to the use of a notary's cover note, namely the Makassar High Court Decision Number 49/PID.SUS.TPK/2018/PT.MKS. This decision was selected because it directly addresses the use of a cover note issued by a notary in relation to credit disbursement and the legal accountability of the notary. Through the analysis of the judges' legal considerations, this study aims to determine how the court assesses the legal position of a cover note, the limits of a notary's liability, and the relationship between the contents of the cover note and the resulting losses. The analysis of this decision is also utilized to test the consistency between prevailing legal norms and their application in judicial practice.

The technique for acquiring legal materials in this normative study is conducted through document studies via library research tracing, reading, studying, and reviewing various literature sources in the form of legislation, books, and opinions of legal experts related to the researched problem.

The processing of legal materials in normative legal research is carried out by systematizing them through the selection of legal materials, classifying them according to material categories, and compiling the legal materials to obtain systematic and logical research results. The analysis used is qualitative analysis, which involves interpreting the processed legal materials.[13] The nature of the analysis in normative legal research is

[12]Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2008), pp. 50–51.
[13]Muhaimin, *Metode Penelitian Hukum*, 1st edn. (Mataram: UPT Mataram University Press, 2020), p. 67.

prescriptive, meaning it provides arguments for the results of the research conducted which may involve opposing, criticizing, supporting, supplementing, or commenting, and formulating conclusions with the assistance of the theories employed.

3. DISCUSSION

3.1. The Legal Basis of a Notary's Authority in Issuing Cover Notes

The discussion regarding cover notes cannot be separated from the issue of authority because such documents are issued by a notary in their capacity as a public official. In state administrative law, authority is the element that determines whether an action by a public official is valid or void. An action can be considered to possess legal legitimacy if it is performed based on authority granted by statutory regulations. Conversely, actions performed without a basis of authority have the potential to raise legal issues because they lack a sufficient foundation to be attributed to the office held by the official concerned.[14]

Philipus M. Hadjon explains that "authority is legal power (*rechtsmacht*) granted by statutory regulations to an organ or official to take certain actions in the fields of governance or public service." Authority does not stem from custom or practical necessity alone; rather, it must possess a basis that can be traced normatively. This understanding is crucial because the office of a notary is a public office whose entire sphere of activity is determined by law. Consequently, the use of a cover note cannot be justified solely on the ground that it has long been practiced, but it must also be tested as to whether its issuance is related to the authority granted to a notary based on statutory regulations.

In the theory of authority, three sources of authority are recognized: attribution, delegation, and mandate. Attribution is the granting of authority originating directly from a statute to an office or institution. Delegation is the transfer of authority from an organ that already possesses authority to another organ, which subsequently assumes responsibility for the exercise of that authority. Meanwhile, mandate is the delegation of the execution of authority to another party without transferring responsibility from the mandator. These three concepts are significant because they can be used to trace whether the issuance of a cover note has a clear basis of authority within the Indonesian legal system.

The absence of explicit regulation is frequently used as a basis for asserting that cover notes fall outside a notary's authority. However, such an approach cannot always be accepted outright. In notarial practice, there are various forms of statements, legalizations, and administrative documents that are not entirely detailed one by one in the statute. Therefore, the analysis cannot stop solely at the presence or absence of

[14]Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2011), p. 133.

the term "cover note" in the Law on the Position of Notaries. What is more important is to assess whether the substance of the document still maintains a connection with the functions and authority granted to a notary as a public official. This question becomes relevant because the law governing public offices speaks not only to the nomenclature of a document but also to the legal purpose and function of the actions taken by the official concerned.[15]

This debate demonstrates that the primary issue regarding cover notes lies not in their existence as a recognized document in practice, but in the basis of legitimacy underlying their issuance. At this point, the theory of authority provides a framework for distinguishing between actions performed within the scope of the office and those performed outside the scope of official authority.

This framework is essential because a notary's official authority is fundamentally inseparable from the principle of legality serving as the foundation for the administration of public office. As a public official, a notary does not acquire authority merely due to community needs, but through the granting of authority via statutory regulations. This principle positions the law as the primary source of legitimacy for every official act, ensuring that every activity carried out by a notary must be linked to the functions granted by statute. In this context, the discussion of cover notes is insufficient if it merely asks whether the document is needed in practice, but must also examine whether its issuance remains connected to the official functions bestowed upon a notary as a public official.[16]

When linked to the concept of attribution, a notary's authority stems directly from the Law on the Position of Notaries, which grants the power to draw up authentic deeds and exercise other powers specified by statutory regulations. This attribution character indicates that a notary's sphere of activity is fundamentally bounded by powers defined by law. Nevertheless, such limitation does not always imply that every administrative action must be explicitly mentioned in detail in the statute. In the practice of government administration and public service, actions that act as supports for the execution of primary authority are recognized, provided such actions maintain a functional relationship with the official duties assigned by law.[17]

This approach subsequently gives rise to a debate regarding whether the issuance of cover notes can be understood as an action having a functional relationship with a notary's authority or, conversely, as an action falling outside the scope of the office. The group that rejects cover notes as part of a notary's authority bases its argument on the absence of explicit regulation in the Law on the Position of Notaries. Conversely, the group that accepts cover notes argues that the document is an administrative tool

[15]Junaidi Abdullah, *Pertanggungjawaban Notaris Pada Penerbitan Covernote* (*Op. Cit.*), pp. 220–223.
[16]Johannes Triestanto, *Pengantar Hukum Kenotariatan* (Jakarta: PT Becreative Media Talenta, 2026), p. 76.
[17] Remaja and I Nyoman Gede, *Hukum Administrasi Negara*, Teaching Book (Fakultas Hukum Universitas Panji Sakti, 2017), p. 15.

used to explain processes currently being handled by a notary and is not intended to create new legal consequences. This divergence in perspective reveals that the issue of cover notes is not only related to the existence or absence of written legal grounds, but also to how one understands the relationship between primary authority and the administrative actions supporting the execution of that authority.

The function of a notary is no longer narrowly understood merely as a drafter of authentic deeds. Notaries are also positioned as providers of legal services who assist the public in obtaining certainty regarding legal actions and documents currently being processed. This perspective does not alter the limits of authority granted by statute, but demonstrates that the execution of official functions frequently requires specific administrative actions of a supportive nature. At this exact junction, the debate over cover notes becomes intriguing because it reconciles two simultaneous interests: the evolving practical needs of society and the demands of legality that must attach to every action of a public official.[18]

This debate demonstrates that the analysis of cover notes cannot be resolved solely by examining the presence or absence of the term's mention in statutory regulations. More importantly, it requires tracing the character of the actions taken by a notary when issuing a cover note whether such actions remain within the corridor of legal service functions inherent to their office or have shifted into actions bearing no connection to the authority granted by law. From this starting point, the discussion shifts to a more specific issue: the legal standing of cover notes within the Indonesian legal system and how such documents are understood within the prevailing legal construction.

3.2. Analysis of the Evidentiary Force and Legal Implications of a Notary's Cover Note in the Registration of Land Rights Transfer

In the doctrine of civil evidentiary law, the evidentiary force of a document is generally analyzed through three interrelated dimensions: outer evidentiary force, formal evidentiary force, and material evidentiary force. M. Yahya Harahap explains that these three dimensions collectively determine the extent to which a document can influence a judge's conviction during the evidentiary process.[19]

a. Outer Evidentiary Force

Outer evidentiary force relates to a document's capacity to demonstrate that it genuinely originates from the party stated as its maker. In the context of an authentic deed, outer evidentiary force possesses the character of *praesumptio iuris et de iure*, meaning the document is presumed to be genuinely made by the official who drew it up until rebutting evidence proves otherwise. The burden of proof to challenge the authenticity of an authentic deed rests upon the party denying it.

For a cover note as an ordinary letter issued by a public official, outer evidentiary force must be proven through the physical verification of the document's elements, such as the official letterhead of the notary's office, the reference number, date, the

[18]Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (*Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional*), "Transformasi Digital Layanan Pertanahan," accessed June 10, 2026, at 22.15 WITA.

[19]M. Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan* (*Op. Cit.*), pp. 574–575.

notary's original signature, and the official seal. As long as the authenticity of the document is not challenged by the opposing party, the judge may accept that the cover note genuinely originates from the notary who signed it.

If the authenticity of a cover note is disputed, the party submitting the cover note as evidence must prove the authenticity of the document. Such proof can be conducted by matching the signature with the notary's signature specimen, inspecting the notary's protocol, obtaining direct confirmation from the notary concerned, or utilizing other relevant evidence. Eddy O.S. Hiariej explains that "the burden of proof regarding the authenticity of an ordinary letter lies with the party submitting it, unlike an authentic deed which possesses a legal assumption of authenticity."[20]

b. Formal Evidentiary Force

Formal evidentiary force relates to a document's capacity to prove that the statements contained therein were truly made by the party listed as the maker, on the date and at the place stated, and under the conditions described. Achmad Ali and Wiwie Heryani explain that the formal evidentiary force of an authentic deed possesses *praesumptio iuris*, obligating judges and parties to accept the formal truth of the statements contained therein unless valid rebutting evidence is presented.

The formal evidentiary force of a cover note is limited yet cannot be entirely disregarded. If a cover note states that a notary has received an original land rights certificate on a specific date, or that a Deed of Sale and Purchase (*Akta Jual Beli*) has been signed before the notary on the stated date, such a statement formally indicates that the notary conveyed this information. The judge is not bound absolutely to accept the truth of such a statement, but may weigh it alongside other evidence.[21]

This formal aspect is highly relevant in lawsuits concerning a notary's accountability for the information provided. Through a cover note, it can be formally proven that on a certain date, the notary stated the matters contained in the letter to the recipient. This formal fact can serve as a basis for assessing whether the notary fulfilled their obligation to provide truthful information or, conversely, provided inaccurate information that subsequently harmed the recipient.[22]

c. Material Evidentiary Force

Material evidentiary force is the most crucial aspect in determining the evidentiary value of a cover note. This dimension relates to the extent to which the substance or content of a document can be accepted as truth regarding the facts described. Unlike an authentic deed whose material evidentiary force is complete regarding the notary's statements concerning acts witnessed directly a cover note, as an ordinary letter, does not possess complete material evidentiary force.

[20]Eddy O.S. Hiariej, *Teori dan Hukum Pembuktian* (*Op. Cit.*), p. 89.
[21]Achmad Ali and Wiwie Heryani, *Asas-Asas Hukum Pembuktian Perdata* (Jakarta: Kencana Prenada Media Group, 2012), p. 100.
[22]Efa Laela Fakhriah, *Bukti Elektronik dalam Sistem Pembuktian Perdata* (Bandung: Refika Aditama, 2009), p. 47.

Subekti explains that the material evidentiary force of an ordinary letter depends heavily on the relationship between the letter's contents and objective facts, as well as its consistency with other evidence presented in court. An ordinary letter does not prove the truth of its substance absolutely; rather, it merely provides an indication of a circumstance that must subsequently be confirmed through other evidence.[23] A similar perspective has developed in contemporary evidentiary law studies, which position informational reliability as a primary factor in evaluating written evidence. Research on evidentiary assessment within the civil law system demonstrates that a document's evidentiary value is determined not only by its formal shape but also by its capacity to be verified through objective facts and other relevant evidence. This approach shows that the material evidentiary force of a cover note depends heavily on the alignment between the information provided by the notary and the actual legal reality.

In practice, the material evidentiary force of a cover note is determined by several important factors. First, the accuracy of the information listed in the cover note compared to verifiable objective facts, such as administrative documents from the notary's office, file receipts, tax payment proofs, or Land Office records. Second, the consistency of the cover note's contents with other supporting documents submitted in court. Third, the alignment between the cover note's contents and witness testimonies or other evidence related to the same facts.[24]

Efa Laela Fakhriah explains that "the evidentiary value of documents drawn up by public officials within their official capacity is generally higher than similar documents made by private parties, due to the binding legal obligation compelling such officials to act based on true facts." A notary's obligation to act conscientiously and meticulously as regulated in Article 16, paragraph (1), letter a of the Law on the Position of Notaries provides additional weight to the material evidentiary value of a cover note.[25]

3.2.1. The Legal Implications of Using a Notary's Cover Note on Legal Certainty in the Registration of Land Rights Transfer

The analysis of the implications of cover notes on legal certainty cannot be separated from the question of who obtains or loses legal protection when such documents are used in land rights transfer transactions. Legal protection in this context is not solely related to the ability of the parties to claim rights in court, but also to the fulfillment of certainty regarding the legal position of each party in a transaction involving high-value assets and lengthy administrative processes.

[23]R. Subekti, *Hukum Pembuktian* (*Op. Cit.*), p. 25.
[24]M. Natsir Asnawi, *Hukum Pembuktian Perkara Perdata di Indonesia: Kajian Kontekstual Mengenai Sistem, Asas, Prinsip, Pembebanan, dan Standar Pembuktian* (Yogyakarta: UII Press, 2013), p. 110.
[25]Efa Laela Fakhriah, *Bukti Elektronik dalam Sistem Pembuktian Perdata* (*Op. Cit.*), p. 50.

The theory of legal protection developed by Satjipto Rahardjo distinguishes between preventive legal protection, which aims to prevent disputes from occurring, and repressive legal protection, which aims to resolve disputes that have already arisen.[26] In the context of a cover note, both dimensions of protection are equally relevant: on one hand, a cover note has the potential to provide preventive protection by supplying accurate information to the parties before decisions are made; on the other hand, it also risks becoming the object of dispute requiring repressive resolution if the information contained is inaccurate or misunderstood.

a. Legal Protection for Banking Creditors

Banking creditors are practically the parties that interact most frequently with cover notes in land rights collateral transaction practices. Before realizing a credit facility, banks require certainty regarding the status of the offered collateral. Under normal conditions, such certainty is obtained through the issuance of a Certificate of Security Rights (*Sertipikat Hak Tanggungan* or SHT) by the Land Office, which marks the birth of the creditor's real security right over the collateral object as stipulated in Article 13 of Law Number 4 of 1996 concerning Security Rights. This provision explicitly states that a security right comes into existence on the date the security rights land book is filled out by the head of the land office.[27] This formal-constitutive construction means that a creditor's real right does not arise from a deed, an agreement, or a cover note, but solely from its recording in the land book.

Issues arise when, in practice, credit disbursement is frequently executed before the security rights registration process is completed. Banks disburse credit based on a cover note stating that the collateral binding process is underway. During the interim period between credit disbursement and the completion of security rights registration, the bank occupies the position of a concurrent creditor rather than a preferred creditor. Consequently, if the debtor experiences bankruptcy or defaults during this period, the bank lacks priority rights to settle its receivables from the collateral object ahead of other creditors. A cover note, regardless of how complete its information is, cannot alter the bank's legal position into a preferred creditor before registration is finalized.

This condition demonstrates that the legal protection provided by a cover note to a creditor is informational rather than constitutive. The bank obtains information regarding the progress of the collateral binding process, but does not acquire actual real security rights. Bank decision-makers who understand this distinction will treat a cover note as a factor to be considered in credit risk analysis rather than as a substitute for legal certainty over collateral. Conversely, if a bank makes a disbursement decision

[26]Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2018), p. 74.

27Law Number 4 of 1996 concerning Security Rights over Land and Objects Related to Land (*Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah*, State Gazette of the Republic of Indonesia Year 1996 Number 42), Article 13, paragraph (4).

solely based on a cover note without accounting for the risks arising from incomplete registration, the bank assumes risks far greater than it realizes.

The prudential principle stipulated in Article 2 of Law Number 7 of 1992 concerning Banking, as amended by Law Number 10 of 1998, requires banks to thoroughly analyze credit risks before distributing financing facilities.[28] This principle cannot be waived merely because a notary has issued a cover note. A cover note does not eliminate a bank's obligation to conduct due diligence on the collateral object, nor does it transfer the responsibility of risk analysis from the bank to the notary. If a bank chooses to disburse credit before security rights registration is completed solely based on a cover note, the bank is effectively bearing risks that are entirely the consequence of its own business decisions.

Muhammad Sjaiful's research on a notary's responsibility in banking practice indicates that the most frequent issue arises when banks treat a cover note as a substitute for a valid collateral document, rather than as a complementary document providing information on an ongoing process.[29] Such misuse of a cover note's function not only harms the bank which subsequently bears risks without adequate legal protection—but also potentially expands the notary's liability disproportionately for losses that actually stem from the bank's own business decisions.

Thus, optimal legal protection for creditors in transactions utilizing cover notes can only materialize if banks understand and consistently apply the limits of a cover note's function as an informative instrument. Credit realization conducted before security rights registration is completed constitutes a business choice carrying specific legal risks, and such risks cannot be shifted to a notary simply because a cover note has been issued. True legal protection for creditors arises solely from the completion of the security rights registration process and the issuance of a Security Rights Certificate as mandated by law.

b. Legal Protection for Sellers/Grantors of Rights

Parties transferring land rights—whether as sellers in a sale and purchase transaction or as grantors of rights in other transactions—possess different interests regarding cover notes compared to creditors. For these parties, the primary interest is ensuring that the rights transfer process proceeds as intended and that their liability regarding the land object ends in accordance with the agreement. In this context, cover notes are typically not addressed to the seller, making the legal protection associated with them indirect.

Nevertheless, there is a scenario where a cover note can directly affect a seller's legal protection: when a transaction initially promised to another party fails to complete due to

[28]Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 (*Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan sebagaimana telah diubah dengan Undang-Undang Nomor 10 Tahun 1998*, State Gazette of the Republic of Indonesia Year 1998 Number 182), Article 2.

[29]Muhammad Sjaiful, "Tanggung Jawab Notaris atas Covernote dalam Perjanjian Kredit Perbankan," *Jurnal Akta*, Vol. 9, No. 2 (2022), pp. 115–116.

reasons related to the administrative process described in the cover note. In such cases, the accuracy of the cover note becomes crucial because the seller may have made specific decisions based on the assumption that the process was proceeding according to the schedule described by the notary. If the information in the cover note is inaccurate and the process encounters unforeseen obstacles, the seller may suffer losses that were not fully anticipated.

c. Legal Protection for Buyers/Transferees of Rights

For parties receiving a transfer of rights, true legal certainty is only obtained after a certificate is issued in their name. Before that process is completed, the transferee remains vulnerable to various risks: the land object may be encumbered by another party whose rights have not yet been fully discharged, disputes may arise from previously unknown third parties, or the administrative process may be stalled by technical issues beyond the control of the parties.[30]

A cover note does not provide substantive legal protection for the transferee against these risks. What a cover note provides is information that the administrative process is underway, and even then, only if the information is accurate. An important implication of this condition is that transferees should not assume they have secured adequate legal protection simply because a notary has issued a cover note. Awareness of the limits of protection provided by a cover note is precisely the information a notary should convey to the parties as part of their official duties.[31]

d. Legal Protection for Notaries

From the perspective of a notary's office, the issuance of a cover note must be understood as part of the execution of a notary's authority to provide information regarding administrative processes currently under their handling. A cover note fundamentally functions to convey information concerning the stages of completing a legal or administrative process based on facts known to the notary at the time the letter is issued. Therefore, the content of a cover note must be drafted meticulously and contain only accountable statements reflecting true circumstances.[32]

In its execution, notaries are required to apply the principle of prudence so that the information listed in the cover note does not mislead the parties. The use of clear, objective wording that does not create the impression that a legal process has concluded when it is still ongoing constitutes the execution of a notary's professional obligations. Consequently, a cover note remains within the bounds of its function as an administrative statement and does not evolve into a document that seemingly provides legal guarantees over an uncertain situation.

Legal protection for notaries depends entirely on the quality and accuracy of the cover note issued. A notary who issues a cover note based on true facts, employs

[30]Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah* (*Op. Cit.*).

[31]Henny Pratiwi Pinatih, "Kekuatan Hukum Covernote Melalui Pemberian Kredit Bank dengan Jaminan Hak Tanggungan Apabila Terjadi Kredit Macet," *Acta Comitas: Jurnal Hukum Kenotariatan*, Vol. 4, No. 3 (December 2019), pp. 498–507.

[32]Dino Rafly Priatna, "Dasar Kewenangan Notaris dalam Membuat Covernote," *Jurnal Hukum*, Vol. 1, No. 4 (July 2024), p. 73.

proportional wording without guaranteeing matters beyond their control, and clearly explains that the cover note is merely a temporary administrative statement enjoys relatively strong legal protection. Conversely, a notary who issues a cover note with ambiguous wording, statements exceeding their knowledge, or implications that an administrative process is completed when it is not, places themselves in a position vulnerable to liability claims.[33]

Article 16, paragraph (1), letter a of the Law on the Position of Notaries obligates notaries to act trustworthily, honestly, meticulously, independently, impartially, and to safeguard the interests of parties involved in legal actions. This obligation is directly relevant to the issuance of cover notes: notaries may only state true and verifiable facts, must not exaggerate or diminish actual facts, and must ensure that the wording used does not cause misunderstandings regarding the legal status of an ongoing process.[34] Compliance with this obligation serves not only as legal protection for the parties served, but simultaneously as legal protection for the notary themselves.

3.2.2. Implications of Cover Note Usage on the Land Registration System and Orderly Land Administration

The use of cover notes in land practice not only impacts the legal relations among parties involved in a transaction, but also carries broader implications for the land registration system as an administrative system organized by the state. This implication must be critically examined because the land registration system fulfills a function that transcends the individual interests of the parties; it serves as a state instrument to realize orderly land administration, which forms the foundation for national legal certainty in the land sector.[35]

Indonesia's land registration system, as regulated in Government Regulation Number 24 of 1997 and supplemented by Government Regulation Number 18 of 2021, is built upon three core principles: simplicity, security, and affordability. Among these three principles, the principle of security has a direct relevance to the issue of cover notes because it requires that land registration be executed carefully and meticulously so that its outcomes provide genuine legal certainty. The disproportionate use of cover notes—meaning their employment as a substitute for or equivalent to official registration documents threatens to undermine this principle of security by creating an illusion of certainty unsupported by recording within the actual land system.

[33]Hanum Nindy, "Tanggung Jawab Dan Perlindungan Hukum Notaris Sebagai Pejabat Umum Dalam Penerbitan Covernote Ditinjau Dari Perspektif Hukum Jaminan" (*Op. Cit.*).

[34]Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Position of Notaries (*Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, State Gazette of the Republic of Indonesia Year 2014 Number 3), Article 16, paragraph (1), letter a.

[35]Government Regulation Number 24 of 1997 concerning Land Registration (*Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah*).

Urip Santoso, in his study on land registration and the transfer of land rights, explains that the legal certainty constructed through the land registration system requires consistency between the data recorded in the land registry and the actual circumstances occurring in the field.[36] Such consistency can only materialize if every change in rights status is promptly registered and every interested party understands that valid information regarding land rights status originates solely from official data recorded at the Land Office. If other instruments, such as cover notes, are used in practice as references to assess land legal status, and if such instruments are not always consistent with data recorded in the registry, it potentially disrupts the consistency that serves as the foundation of the land registration system.

Bernhard Limbong's research on Indonesian agrarian law indicates that one of the greatest challenges in achieving orderly land administration is the persistence of transactions relying heavily on documents outside the official recording system.[37] The use of cover notes beyond their informational function is a manifestation of this challenge. When parties treat cover notes as the basis for legal certainty regarding the status of land rights, they are effectively building a parallel certainty system that is unintegrated with the official land registration system. Over the long term, such a parallel certainty system can weaken the authority of the land registration system by reducing the parties' incentives to complete the registration process in a timely manner.

This phenomenon also possesses a dimension related to public trust in the land system. One of the objectives of the land registration system, as stated in Article 3 of Government Regulation Number 24 of 1997, is to provide information to interested parties, including the government, so that they can easily obtain the data necessary to execute legal actions concerning registered parcels of land and flat units (*satuan rumah susun*).[38] This objective can only be achieved if the public trusts the official information system namely the land registry as the most authoritative source of data. If cover notes are consistently regarded as equivalent to, or even faster and more practical than, official land data, trust in the official land information system may gradually erode.

On the other hand, it must also be acknowledged that cover notes make a specific contribution to orderly land administration in a more limited context. As documents recording the chronological progress of an administrative process, cover notes can help trace the stages traversed if issues subsequently arise regarding the execution of a transaction. In this regard, cover notes function as a component of administrative documentation supporting the orderly and traceable conduct of land processes. Adrian Sutedi, in his study on land registration systems, identifies that the ability to

[36]Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah* (Jakarta: Kencana Prenada Media Group, 2019), p. 56.
[37]Bernhard Limbong, *Hukum Agraria Nasional* (Jakarta: Margaretha Pustaka, 2012), p. 188.
[38]Government Regulation Number 24 of 1997 concerning Land Registration, Article 3, letter (b).

trace back every stage of a land process is an essential element in realizing genuinely effective administrative order.[39]

Within a broader framework, the implications of cover note usage on the land registration system depend on how the document is positioned within the context of the overall administrative process. If a cover note is used as a complementary instrument strengthening communication among parties while an administrative process is underway without diminishing the urgency to complete registration in a timely manner it can provide a positive contribution to system effectiveness. However, if a cover note is used as an excuse or justification to delay or ignore the completion of the registration process, it risks becoming an obstacle to achieving the orderly land administration mandated by law.

The assessment of a cover note's impact on the land registration system cannot be separated from the context of its usage. In the proper context as an informative instrument during a transitional phase that does not discharge the parties' obligation to complete the registration process, a cover note does not disrupt the land registration system and may even support administrative order. In the wrong context when used as a substitute for formal legal certainty a cover note has the potential to weaken the land system designed to provide genuine legal certainty to the community.

4. CLOSING

4.1 CONCLUSION

Based on the discussion regarding the legal certainty of a notary's cover note in the registration of land rights transfers, several comprehensive conclusions can be drawn as follows, Legal Basis of a Notary's Authority: The issuance of a cover note finds its legitimacy within the framework of a notary's authority as a public official to provide administrative statements and information regarding processes currently under their handling. Although not explicitly regulated as an authentic deed in the Law on the Position of Notaries (*Undang-Undang Jabatan Notaris*), the issuance of a cover note is justifiable as a supportive administrative action linked to the primary duties of the office, provided it is executed meticulously and reflects true, verifiable facts. Evidentiary Force in Civil Law: In civil evidentiary law, a cover note functions as an ordinary letter rather than an authentic deed, meaning it does not possess complete formal and material evidentiary force (*praesumptio iuris et de iure*). Its outer and formal evidentiary force is limited to verifying that the notary made the stated assertions on a specific date, while its material evidentiary value depends heavily on its consistency with objective facts, supporting documents, and judicial assessment. Therefore, a cover note cannot serve as a substantive document that establishes property rights

[39]Adrian Sutedi, *Sertifikat Hak Atas Tanah* (Jakarta: Sinar Grafika, 2021), p. 112.

or security rights (*hak tanggungan*). Legal Implications on Protection and the Land Registration System: For Banking Creditors: A cover note provides informational certainty rather than constitutive security. Credit disbursement executed prior to the registration of security rights leaves the bank in the position of a concurrent creditor rather than a preferred creditor, meaning business risks cannot be shifted to the notary. For Parties to Transactions: Cover notes offer temporary informational support during the transitional phase of a transaction, but they do not substitute for formal legal certainty, which is achieved only through official certificate issuance. For Notaries: Prudence is mandatory; a cover note must be drafted accurately to avoid creating a false impression of completed legal processes, thereby protecting the notary from unwarranted liability claims. For the Land System: When used strictly as a transitional informational tool without delaying formal registration, cover notes support administrative order. However, treating them as a substitute for official registration threatens to undermine the core principles of security and public trust in Indonesia's land registration system.

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