



## The Implementation of Prudential Principles in Liquidating Credit Using Covernote Notary

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### **Abstract**

The problems that often occur when using a notary Covernote in this credit agreement, until during the process of Proprietary certificates issuance and binding of the rights of liabilities has not been completed. In contrast, the credit has been disbursed to the customer debtor and the credit was stuck, or the debtor customer has tort. This condition certainly causes the bank not to execute the credit guarantee that could result in losses from the bank. The purpose of this research is to analyze the implementation of prudence principles in the process of disbursement of credit conducted by PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch by using notary Covernote and analyzing the legal consequences of application of prudence principle in the use of notary cover note in the process of disbursement of credit conducted by PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch. The study used an empirical and sociological juridical approach. The data sources in this study through Library Research and field research and the data used are primary data and secondary data. The sample in this study is all employees of PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch Office. The results of this study showed that the constraints encountered in the application of prudence principles on the use of notary Covernote as the basis of disbursement of credit, among others: in terms of juridical, the arrangement on covernotes used as a condition of disbursement of financing has not existed either in the law, government regulations, Bank Indonesia regulation, and in the form of a memorandum of understanding. Covernote is arising based on the habit so that the bank that determines the use of covernote can be a factor that affects the implementation of the principle of banking prudence if each party does not understand clearly about the existence of the related covernote binding collateral. In terms of Non-juridical, the constraints encountered are influenced by the factors of law enforcement, facilities and facility, and socio-economic factors of society and culture.

**Keywords:** *Covernote; Notary; Credit*

## Introduction

### 1. Background of the Problem

The role and function of a notary are significant in helping the government and other parties who need it to provide certainty, order, and legal protection regarding the making of an authentic deed. Notaries in providing assistance or services to banks in practice can neglect, which can result in bank losses. Negligence committed by a notary may include the binding of guarantees in a credit agreement. The notary does not carefully examine the collateral provided by the prospective debtor customer, which causes the binding of imperfect mortgage guarantees resulting in non-issuance of the mortgage certificate. The notary referred to is the notary, who is also domiciled as a Land Deed Making Officer (PPAT)<sup>1</sup>.

Cases that often occur in the practice of providing guarantees with mortgage rights in the credit agreement occur due to collateral in the form of a piece of land whose ownership is still in the form of a *segel*, *girik*, or *petok* on behalf of the prospective debtor customer. The notary stated that he was able to assist the bank and prospective debtor customers in the process of registering land rights until the issuance of the Certificate of Property Rights (SHM) and binding guarantees with mortgage rights until the issuance of the mortgage certificate. As proof of this ability, the notary usually issues governance for effective conditions for credit disbursement in the credit agreement.

Problems that often occur when using notary covernote in this credit agreement until the issuance of the SHM and binding Mortgage rights have not yet been completed while the credit has been disbursed to the debtor customer and it turns out the credit is bad or the debtor customer has defaulted. This condition certainly causes the bank not to be able to execute the credit guarantee, which can result in bank losses<sup>2</sup>. Some work units in state-owned banks that operate in the micro sector often neglect this case because credit is still seen in nominal terms on a micro-scale. More specifically, at PT. Bank Rakyat Indonesia (Persero) Tbk. The Bojonegoro branch, almost every work unit, there are still cases of bad credit or the outstanding payment. Finally, such a matter is borne by the bank, settled in a system as a Black List (DH) and bookkeeping on the balance sheet becomes a loss and reduces interest income. If such tradition is continued, it is not a solution that is guided by the principle of prudence, but more and more cases of course banks will increasingly bear significant losses.

Based on the description above, this study discusses the implementation of the application of the precautionary principle in the use of covernote in credit agreements as well as legal protection for banks in credit agreements related to the use of notary covernote reviewed based on guarantee law in Indonesia. So, according to the opinion of the author that in disbursing credit should always be examined on the principle of caution. Where such matters cannot leave concepts in the law of collateral. Where the guarantee law is a collection of a number of legal regulations governing collateral receivables from a creditor to a debtor contained in positive legal provisions in Indonesia<sup>3</sup>.

The application of the precautionary principle in all banking activities is one way to create sound banking, which will have a positive impact on the economy. Non-performing loans at PT Bank Rakyat Indonesia (Persero), Tbk may arise due to family relations between the bank and customers receiving facilities due to the lack of supervision and assessment of customers. In addition, problematic financing can also be caused by the desire of banks to expand widely in efforts to develop the banking business so that banks are sometimes less careful in binding collateral.

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<sup>1</sup> I Dewa Made Dwi Sanjaya, Tanggung Jawab Hukum Notaris Terhadap Penerbitan Covernote Dalam Pemberian Kredit, Riau Law Journal Vol. 1 No.2, November 2017

<sup>2</sup> Singgih Budiyo dan Gunarto, Akibat Hukum Covernote Yang Dijadikan Dasar Perjanjian Kredit Di Perbankan, Jurnal Akta, Vol 4, No 4, Desember 2017

<sup>3</sup> Zaeni Asyhadie & Rahmawati Kusuma, Hukum Jaminan di Indonesia, Rajawali Press, Jakarta, 2011.

These factors can increase the potential for the occurrence of irregularities in the use of credit which can increase problem loans as well as customer difficulties in repaying loans<sup>4</sup>. Non-performing loans will hamper the bank's business activities, i.e. funds given to problem customers are late returning or not returned to the bank so that the funds cannot be played back to other customers who need them. In connection with research on the application of the precautionary principle along with juridical and non-juridical consequences of the use of Notary covernote in the implementation of credit disbursements in the Bank, the purpose of this study is to analyze the implementation of the principle of prudence in the process of credit disbursement carried out by PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro branch by using a Notary Public and analyzing the legal consequences of applying the precautionary principle in the use of a Notary cover note in the credit disbursement process carried out by PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch.

## **2. Research Methods**

This study uses an empirical and sociological juridical approach that aims to examine the implementation of the precautionary principle in the use of governance as the basis for credit disbursement at PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch. Sources of data in this study through library research (Field Research) and field research (field research) and the data used are primary data that is obtained through semi-structured interviews with samples from PT. Bank Rakyat Indonesia Branch Office Bojonegoro by using a list of questions that have been compiled and secondary data that is obtained by reading/studying literature books, legislation relating to writing.

The population and sample in this study were all employees of PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch Office with specific considerations. The samples in this study were from PT. Bank Rakyat Indonesia (Persero) Tbk. The Bojonegoro Branch is a Marketing Officer, namely 1 (one) Account Officer (AO), 1 (one) Marketing Manager, and 1 (one) Credit Administration Officer (ADK). For other related parties, there are 2 (two) Notaries who are domiciled in Bojonegoro and are partners of banking. Data analysis techniques using descriptive qualitative, namely research that gets the data in a way that matches the facts and what it is, more focused on the results and their meaning.

## **3. Discussion**

### **3.1 Implementation of the principle of prudence in the process of credit disbursement carried out by PT. Bank Rakyat Indonesia (Persero) Tbk. The Bojonegoro branch by using a Notary Government**

In order to follow the development of the banking business, especially business activities and risk management of financial disbursement, PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch Office has operational provisions as a credit SOP that meets the prudential principle in channeling financing. The prudential principles implemented by banks can be explained as follows:

#### **3.1.1. Implementation of the precautionary principle in the loan application procedure**

- a. The officer has competence, the bank officer who handles the loan application process knows the terms and credit data that must be met by the prospective debtor.

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<sup>4</sup> Desy Amelia Rosyidah, Tanggung Jawab Notaris Dalam Mengelurkan Covernote Dalam Perjanjian Pembiayaan Di Perbankan Syariah, Jurnal Hukum Dan Kenotariatan, Volume 3 Nomor 2 Agustus 2019

- b. OJK SLIK procedure that is fast and precise, OJK SLIK is a checking process carried out by financial institutions both banks and non-banks, through a system called Financial Information Services System (SLIK) which is managed by the Financial Services Authority (OJK). OJK SLIK contains debtor data from all its members consisting of Commercial Banks, Rural Credit Banks and several finance companies.
- c. Good documents and records, every new loan application, extension of credit period, changes in credit amount, change in credit types, types and conditions of credit based on a written credit application from a prospective customer or customer by filling out credit application forms in accordance with applicable standards and signed by the applicant accompanied by documents for the completion of the credit application. At this stage of the loan application, the officer also controls and checks the completeness of the loan application requirements submitted by the prospective customer. Prospective customers must also provide a map of their area of residence to facilitate the next process.

### **3.1.2. Implementation of the precautionary principle in the credit analysis procedure**

- a. The officer has competence and can be trusted, namely:
  - 1) Credit officers who will conduct credit analysis and evaluation at banks
  - 2) The bank loan officer that has the awareness in analyzing and evaluating credit
  - 3) Bank officers who analyze and evaluate credit applications are required to have an objective, honest, careful, and thorough attitude.
- b. Good documents and records include:
  - 1) Data used as a basis for information, analysis, evaluation and decision of bank loans are guaranteed accuracy, correctness and completeness by bank officers so that the results of the assessment can be taken into consideration in deciding credit.
  - 2) Administrative documents and records are sufficient to carry out the management of prospective customers' credit applications.
  - 3) The Bank provides the facilities or means needed to store credit documents securely and in an orderly manner.
- c. Field survey  
The field survey is closely related to the implementation of 6C (Character, Capacity, Collateral, Cashflow, Capital, and Condition) properly and correctly by bank officers. The main purpose of this 6C analysis is to gain confidence that prospective customers have the will and ability to fulfill their obligations to the bank in an orderly manner. In granting credit to conventional banks, it is carried out on the basis of the principle consideration of 6C of economy.
- d. Relation to the Maximum Fund Distribution (BMPD) limit set by Bank Indonesia for PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch Office. The existence of BMPD provisions will make banks limit the lending ceiling to customers.

### **3.1.3. Implementation of the precautionary principle in the procedure for credit disbursement**

- a. Trustworthy officer  
Credit Administration Officer (ADK) / Customer Service has a high awareness that the professionalism of banking is a demand for bank officers. Bank officials must have an attitude of independence in acting.
- b. Proper authorization procedure  
Credit disbursement is carried out after the documents related to disbursement are signed by the direct supervisor of the officer. Bank officials ensure that customers can be sure to appear before a Notary / PPAT when signing and reading the Debt Agreement (SPH) and the engagement is made.
- c. Good documents and notes

At the time of disbursement of credit, aspects concerned with documentation and records of bank administration are well considered by bank officers.

### 3.1.4. Implementation of the precautionary principle after credit disbursement

Credit is a process starting from credit worthiness analysis up to its realization. But the realization of credit is not the last stage of the credit process. After the credit is realized, the bank also continues to oversee the business being financed to guarantee its interest in repaying its obligations and to ensure that the credit is used according to the loan application plan. Following are the stages of PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch Office in conducting supervision to customers is <sup>5</sup>:

#### a. Customer monitoring and visits

The monitoring activities carried out by the bank include the customer's account, the quality of the customer's payment and the collateral provided to the bank. The purpose of monitoring is to secure bank funds channeled to customers and risk loss. After monitoring it continues with a visit. The visit is intended for all customers who experience problems and the bank must make a rescue of the credit.

#### b. Guiding customers

This guidance is not only done to customers who are delaying their obligations, but also to all customers so that credit marketing consists of Account Officers (*Kanca*), *Mantri* (Units) can find out the customer's problems as early as possible.

Provisions governing the principles of guarantee law, binding of guarantees, guarantee institutions, execution, sale of collateral and others are mandatory and should be followed by banks. Bank as a business entity that must be managed based on the principle of prudence is inseparable from the applicable provisions in order to protect its interests and collateral is one of the objects related to the interests of banks <sup>6</sup>.

As an anticipatory step in withdrawing funds that have been distributed to debtors, guarantees should consider the following two factors <sup>7</sup>:

- a. **Secured**, meaning that credit guarantees can be held formally and legally binding, in accordance with legal and statutory provisions. If in the future there will be an achievement from the debtor, the bank will have the juridical power to carry out the execution.
- b. **Marketable**, which means that if the guarantee is to be executed, it can be immediately sold or cashed to pay off all debtors' obligations.

Based on an interview with Hafidz <sup>8</sup> for covernotes used as conditions for disbursement of credit by binding fiduciary collateral, the notary may complete the Fiducia Guarantee Deed on time. But for collateral that is bound with Mortgage Rights (HT), Notaries / PPAT bank partners have never been timely / delayed in fulfilling their obligations to submit HT Certificates. This will be detrimental to the bank because, the Debt Recognition Letter (SPH) that has been implemented is not accompanied by binding collateral that is good and right.

<sup>5</sup> Wawancara dengan M Arizal, Kaunit PT. Bank Rakyat Indonesia (Persero) Tbk. Kantor Cabang Bojonegoro, tanggal 16 April 2020

<sup>6</sup> M, Bahsan, Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia, Rajagrafindo Persada, Jakarta, 2012

<sup>7</sup> Johannes Ibrahim Kosasih, Akses Perkreditan dan Ragam Fasilitas Kredit dalam Perjanjian Bank, Sinar Grafika, Bandung, 2019

<sup>8</sup> Wawancara dengan Hafidz Petugas ADK, tanggal 17 April 2020

Through HT certificate, the bank will have a strong position<sup>9</sup>. Mortgage is a strong land rights guarantee institution based on the Mortgage Rights Act (UUHT). So, the bank needs to always supervise the credit guarantee, so that its existence remains safe and has no problems.

Failure of the notary / PPAT to settle the Mortgage Right in accordance with the time period specified in the covernote will also harm the notary / PPAT concerned. The credibility and professionalism of the notary / PPAT will be questioned by the bank and the customer. According to Eny Zubaidah, the Notary / PPAT would not dare to issue a covernote before first checking the physical certificate of land rights to the local land office<sup>10</sup>. After checking the certificate of land rights, the notary can prepare for filing the signing of the Debt Recognition Letter (SPH) following the signing of the binding of the collateral. That's when the covernote was issued by Notary / PPAT as a bank guarantee for a while, until the issuance of the Mortgage Certificate (HT).

### **3.2 Analysis from the perspective of community legal culture regarding the use of Notary covernote as the basis for credit disbursement from Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch**

Registration of fiduciary deed and deed of mortgage which must pass a registration process results in the completion of a fiduciary deed and deed of mortgage requiring time that cannot be resolved immediately. The registration process, which cannot be completed immediately, can have a significant impact. Where the expectation of the debtor to immediately get money from the credit facility is delayed. Though it is certain that of all the debtors who need credit facilities, of course they have financial needs that must be met immediately.

While the bank itself is obliged to apply the precautionary principle in disbursing credit. This is done in order to realize the certainty that collateral objects can be executed in the future if the debtor cannot repay the debt. Based on this, in practice, covernote is a breakthrough that greatly helps debtors to immediately be able to enjoy credit disbursement. Covernote in practice in the banking world can be used as confidence by banks to disburse credit facility money because banks have confidence in collateral objects that are in the process of being registered by a notary public can provide certainty that the object will be registered in the future.

Banks, in practice, have the confidence that the notary is a professional official and is considered the most knowledgeable in checking the requirements in the process of making a guarantee certificate and the registration process<sup>11</sup>. Notary is a position of trust (*vertrouwens ambt*)<sup>12</sup>. Notary is a position of trust that has expertise in making an agreement including a guarantee agreement. Based on this, it can be concluded that the trust and expertise of the notary make the bank give confidence that the covernote made by the notary who explained that it has made the guarantee deed and then it will be registered already gives certainty to the bank that the object of the guarantee can be directly executed in the future if the debtor does not pay off the debt to the bank.

Covernote is a solution to the problem for debtors with debtor backgrounds to require a loan to fulfill interests that must be fulfilled immediately, thus requiring the bank to seek credit facilities as soon as possible. Based on this, it can be understood that the urgency of covernote is very much needed by the community, especially debtors. Without covernote, the process of registering collateral really provides a barrier to people who are in a state of urgency in need of credit facilities.

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<sup>9</sup> Urip Santoso, Pendaftaran dan Peralihan Hak Atas Tanah, Kencana, Jakarta, 2010 hal 410

<sup>10</sup> Wawancara dengan Eny Zubaidah, Notaris/PPAT Bojonegoro, 20 April 2020

<sup>11</sup> Wawancara dengan Eny Zubaidah, Notaris/PPAT Bojonegoro, 20 April 2020

<sup>12</sup> Sjaifurrachman dan Habib Adjie, Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta, Mandar Madju, Bandung, 2011, h. 253.

Covernote can be a solution to banks in applying the precautionary principle of disbursement of credit facilities to debtors because it can be a basis for the belief that the guarantee can be registered and not problematic so that guarantees can be executed if the debtor defaults.

Covernote for the notary can provide benefits to him in order to explain or explain formally the statements as officials who are trusted by the banks. Banks can be known to need formal information from a notary as documents that will be kept by the bank as documents that form the basis for reports in carrying out credit business activities. The importance of governance can be understood to provide benefits or solutions not only to debtors but also to banks and notaries. Covernote can be known to expedite the obstacles encountered in banking credit activities.

Based on a number of interviews conducted by the author both to several Debtors, Banks and Notaries, that the existence of this Covernote is a bridge of various interests between them. So, Covernote instruments are very common and have long existed as a basis for credit disbursement in banks. This repetitive habit is what makes Covernote a valid law in society. And the absence of rules that are violated and the many interests that can be bridged, ultimately Covernote can become a culture in the banking world that continues to evolve according to its era.

As a law that arises out of habit, which will gradually develop into a culture this is of course many things that are the weakness of Covernote. In the next discussion we will examine some of the obstacles that arise from this Governorship, both juridical and non-juridical. And as the output of this paper, further efforts must be made on these obstacles.

### **3.3 Efforts by PT. Bank Rakyat Indonesia (Persero) Tbk. Bojonegoro Branch Office in overcoming legal and non-juridical obstacles in applying the principle of prudence in the use of Notary covernote as the basis for credit disbursement by debtors**

The discussion on the prudential principle of Notary / PPAT in the practice of issuing covernote aims to find out the extent of prudence of the Notary / PPAT in issuing covernote and the constraints of Notary / PPAT in being careful to issue a covernote. This should be done so that the implementation of the precautionary principle in issuing governance for the Notary / PPAT can be sustainable and minimize credit risk for the bank. This is because the bank / creditor makes the notary / PPAT covernote as a closing condition in the realization of the credit and becomes a guideline that the credit provided has been guaranteed even though formally the imposition of collateral has not been implemented or is still in the process. Constraints encountered in practice often occur in the form of inaccuracy, inaccuracy and unprofessional notary / PPAT in handling the credit process. This is inseparable from the strong feeling of pressure from the bank / creditor to immediately issue a governance, which has an impact on the rush to provide services to the bank / creditor. Another thing can also be caused by feelings of fear of losing clients. So, the pressure of this feeling affects the Notary / PPAT using the logic of independence that its existence is needed by the bank / creditor. However, consideration must also be given to the consequences of not exercising caution in issuing a governance that could be detrimental to the bank / creditor which would have consequences for legal liability, whether criminal, civil or organizational sanctions.

#### **3.3.1. Juridical and non-juridical constraints in applying the precautionary principle in the use of Notary covernote as the basis for credit disbursement by the debtor**

Based on interviews with a number of Notaries in Bojonegoro, in practice all banks received a covernote as information to be able to become one of the bases for credit disbursement. Covernote in the practice of credit in addition to banks is also accepted in disbursing credit to cooperatives. Covernote is a notary statement that is not only known in banks but several business activities that provide credit facilities. Covernote only binds the time period for the completion of the documents relating to credit

guarantees and sanctions provided. In this case if there are obstacles, the bank only provides a sanction in the form of a bad image of the notary service so that in the future the notary service will no longer be used by the bank concerned because covernote is a bank's request and upon the request the bank will not sanction if the information is not completed in accordance with the contents of the information covernote. the original governor is given to the party requesting information while the copy of the governor is kept by a notary public. Covernote is also given a letter number. The letter number is entered into the list of letters issued by the notary.

As a legal instrument that arises out of habit, many things must be observed in the implementation of governance as the basis for credit disbursement. This was done because there were still many obstacles encountered both juridical and non-juridical. In practice, covernotes may be requested by any party, both the bank and the debtor, but in reality, it is the banks that are more likely to ask for covernote. Based on this, it can be understood that those who ask to make information on governance as a basis for credit disbursement are the banks themselves, not the parties who wish to receive credit facilities. From this, if the government has a statement that is detrimental to the bank as a creditor, it is not at the request of the debtor. Debtors are more likely to be passive and wait for the banking party<sup>13</sup>.

For the constraints on the implementation of the banking precautionary principle for credit disbursement using Notary / PPAT covernote, the authors will describe, among others:

### **1. In terms of juridical**

When we talk about the juridical aspect, the first thing that will come to our mind is about the Law including the Law. Law / law is one of the factors that influence the effectiveness of law enforcement. Various legal instruments that require banking prudential principles have been regulated in legislation, namely Law Number 10 of 1998 concerning Amendment to Law Number 3 of 2004 concerning Banking. This principle is also found in Article 29 paragraph (2) of the Banking Act and also in the application of the precautionary principle is also regulated in Article 35 paragraph 1 of Law Number 21 Year 2008 concerning Sharia Banking, namely:

The regulation of the principle of prudence as a principle adhered to by the banking system in Indonesia is indispensable to be used as a legal basis for implementing a sound banking system.

The component of the law related to the precautionary principle of banking on financing based on research results is not a hindering factor in the implementation of the banking precautionary principle because the government has provided regulations regarding the precautionary principle of banking both in the form of laws and regulations. issued by Bank Indonesia and the Financial Services Authority. PT. Bank Rakyat Indonesia, Persero (Tbk) in its BPO (Operational Guidance Book) in the field of credit has detailed technical instructions that must be used as guidelines for officers related to credit, which contains banking prudential principles related to financing.

The practice of banking will certainly require the services of a notary public as PPAT as general officials, each of whom has duties and authorities as mandated in the Law of Notary Position and Government Regulation Number 37 of 2008 concerning the Position Act of the Land Deed Officials that govern it. Based on the results of the study it was concluded that the covernote which is a habit in business as a condition of disbursement there is no regulation in the legislation.

Based on the results of interviews from the bank and notary / PPAT shows that covernote is a habit that is common and has been around for a long time. Covernote is used as one of the conditions for

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<sup>13</sup> Wawancara dengan Notaris Eny Zubaidah , 22 April 2020



funding disbursement. Regulations regarding the governing used as a condition for the disbursement of funding do not yet exist either in laws, government regulations, Bank Indonesia regulations, or in the form of memorandum of agreement. Covernote arises based on habits so that the bank that determines the use of covernote can be a factor that influences the implementation of the precautionary principle of banking if each party does not clearly understand the existence of covernote related to binding collateral. Notary / PPAT or banks who are not careful in applying the law on governance can cause losses for the parties, especially for banks. Trust to the notary / PPAT concerned will also be reduced.

2. In terms of Non-Juridical, which include:

a. In terms of law enforcement

What is meant by law enforcers are those who are appointed by laws or regulations as regulated in the Banking Law, Notary Position Act, or Government Regulation regarding PPAT positions. The success of a regulation of the main indicator is the implementation of policies in the implementation of laws and regulations actually carried out by policymakers, including notaries as public officials who are the only authorities. Its authority is spelled out in Act No. 2 of 2014 Article Notary Position (15).

The law enforcement factor can be measured by the ability of the law enforcement officers to understand. Based on the Banking Act Number 10 of 1998, the party responsible for implementing the precautionary principle for banking is the bank itself. Where this principle must continue to be implemented as a bank management guideline that must be adhered to in order to create sound, strong and efficient banking.

Based on the Notary Position Act, it can be understood that the notary public is the only official who is authorized to make an authentic deed regarding all deeds, agreements and stipulations required by a general regulation or by interested parties to be stated in an authentic deed, guaranteeing the certainty of the date, keep the deed and provide gross, copies and citations, all during the making of the deed by an official or other person. Meanwhile, the Official Land Deed Making Official regarding certain legal actions regarding land rights or Ownership Rights in Flats.

Based on the research, the results show that the precautionary principle of banking related to channeling of funds has been implemented by banks as contained in the Credit Operations Manual (BPO). The credit BPO in it has sufficiently regulated the provisions related to credit from the application submitted until the customer pays the credit.

b. Facilities Factor

Law enforcement will run smoothly if it is supported by facilities or facilities whose effectiveness includes organizational resources including human resources and financial resources. What is meant by human resources is the competence of workers of PT Bank Rakyat Indonesia (Persero), Tbk who are well educated and skilled as well as good organizations. Where the officers on the credit line are expected to have a good understanding of the law, especially regarding banking law and guarantee law. And banking organizations, in this case banks are required to implement the precautionary principle in carrying out their business activities based on the provisions in banking laws. This is a form of legal protection from banks for customers because the funds channeled are funds collected from the public. Based on research lack of understanding of the legal consequences of the bank against credit with governance as a condition for disbursement, is one of the obstacles in enforcing the principle of banking prudence.

The precautionary principle is one of the most important principles that must be implemented by banks in carrying out their business activities based on the provisions in banking laws. Credit provided by

banks must be closely monitored. This is a form of legal protection provided by banks to customers because the funds channeled are funds collected from the public.

### c. Community and Cultural Factors

The effectiveness of the law in implementing a law and regulation can be seen from the socio-economic conditions of the community and culture. The better the community's economy, the more effective the law will be. Public legal awareness will also relate to the implementation of law in society. Public legal awareness is important in determining the application of a law in society. If the community's legal awareness is high in implementing the provisions stipulated in the law, obeyed by the community, the law can be said to have been effective, but if the legal provisions are ignored by the community, then the rule of law is ineffective.

Credit BPO in PT. Bank Rakyat Indonesia, (Persero), Tbk as a whole has actually implemented the precautionary principle. In practice, the loans disbursed by the terms of government issued by the notary / PPAT have not been fully applied by the parties. Some of these obstacles include:

#### 1) The level of competition between banks is very competitive

Based on statistics from the Bank Indonesia Financial Services Authority (OJK), as of January 2019 the number of commercial banks in Indonesia was 115. The number consisted of 4 State-Owned Banks, 42 Foreign Exchange Private Commercial Banks (BUSN) and 21 Non-Foreign BUSN. Then 27 Regional Development Banks, 12 Mixed Foreign Banks and 9 Foreign Banks. From these figures you can imagine the intense competition in this business. So that banks will find ways to facilitate the disbursement of credit to customers. So that is what makes banks in general use governance as a condition for disbursement of funding<sup>14</sup>.

2) In addition to the constraints originating from the banking sector, in the case of governance that is used as a condition for disbursing financing for collateral in the form of land bound with Mortgage Rights, constraints are also found from the notary public / PPAT which results in the process of installing Mortgage Rights being hampered so as to be detrimental to the bank, between other:

a) Administrative requirements that are lacking or late to complete. If credit disbursement is made in a hurry especially towards the end of the month there is a deficiency in attaching administrative requirements. The bank then did not immediately make up the lack of administrative requirements to the notary public / PPAT and resulted in mutual waiting for administrative completeness. This will waste time to immediately finish installing Mortgage Rights. Registration of Mortgage right to the land office is not only a certificate but also must enclose the other documents.

b) The management process at the National Land Agency Office which requires time. Delays that become obstacles to the installation of Mortgage Right after credit disbursement are not entirely caused by banks or notaries / PPAT. The delay can come from the parties directly or indirectly related to the implementation of the installation of the Mortgage. Activities relating to land are never separated from its management with the land office, in terms of carrying out the encumbrance there is a connection with the land office namely the BPN. Based on the Underwriting Rights Act it is clearly stated that the granting of Underwriting Rights must be registered at the land office no later than 7 (seven) working days after the signing of APHT. After the file is submitted to the land office, this matter is the full authority of BPN. But the things that must be taken care of and it takes time. For example, the Mortgage object is the result

<sup>14</sup> Wawancara dengan M Arizal, Kaunit PT. Bank Rakyat Indonesia (Persero) Tbk. Kantor Cabang Bojonegoro, tanggal 16 April 2020

of buying and selling and the original land certificate has not been reversed by the owner's name, then it must go through the process of renaming it first. Usually the reverse process can take more than 7 (seven) working days.

c) Other problems beyond the capability of notary / PPAT. Problems can occur if the prospective customer is not honest in providing preliminary information to the bank officer in providing information or can also be caused due to customer ignorance about the law. Examples of cases that have been found at PT Bank Rakyat Indonesia, (Persero), Tbk Bojonegoro Branch Office that a mortgage right cannot be installed because the certificate from a prospective customer is blocked by the land office.

### **3.3.2. The efforts of PT. Bank Rakyat Indonesia (Persero) Tbk. The Bojonegoro Branch Office in overcoming judicial and non-judicial obstacles in applying the precautionary principle in the use of Notary covernote as the basis for credit disbursement by the debtor**

From the results of the study it can be concluded that actually governance arises because of habits and needs in the banking business. Used to meet the credit disbursement requirements so that it can further accelerate the service. This rule is not contained in legislation, government regulations, Bank Indonesia regulations, or in the form of memorandum of agreement. Besides arising out of habit, Covernote is also a factor for implementing the precautionary principle of banking related to collateral binding. So that the Notary / PPAT and the careful banking in the application of the law on governance can cause losses for the parties, especially for banks. Trust in the Notary / PPAT concerned will also be reduced. In the world of banking, especially credit, there are juridical elements of a credit that we should look at together, for further input can be used in the discussion.

After the discussion about juridical and non-judicial constraints above, the following author tries to parse about the efforts that can be implemented to minimize these obstacles, among others:

1. Improving the quality of workers' resources in the midst of intense competition between banks. PT. Bank Rakyat Indonesia (Persero), Tbk Bojonegoro Branch Office conducts education and training or courses for bank workers in providing credit analysis and in terms of credit realization. The education and training are carried out independently by the bank or involve in the training conducted by Bank Indonesia. This training and education is aimed at ensuring that human resources understand the banking concept properly, are able to provide products that are in accordance with the banking concept and are able to run the banking industry and financial services industry that provides value to customers' satisfaction. In addition, the bank also provides certain policies in the form of rewards and increases in welfare for bank workers if the loan and savings targets reach the target. This is expected to encourage the enthusiasm of the workers. The assessment is a form of appreciation for workers who have worked hard in efforts to advance the company. The government has made legal regulations in the banking sector through laws to technical regulations. Therefore, bank officers who handle credit must truly understand the rules relating to banking law, guarantee law, or related to financing. Banks in an effort to achieve financing targets must firmly apply the precautionary principle to financing so that targets can be met, expected profits achieved, banks are safe and legally protected.

2. Simplification of banking products in the midst of rapid competition. The emergence of various banks has brought progress to the banking business in Indonesia. Curiosity and doubt from the public about the presence of banking institutions and financial services have caused banking and financial service providers to try to provide their products as close as possible to customers and prospective customers. This effort will make banking more attractive to all levels of society. This has been done by PT. Bank Rakyat Indonesia (Persero), Tbk Bojonegoro Branch Office that simplifies bank products by making it easier for prospective customers to choose what financing they want according to the brochure provided by banks in a language that is easily understood and understood.

3. Establish effective communication between bank officers and notary / PPAT who issue covernote Related to the duties and authority of a notary in carrying out his position in accordance with the Notary Position Law and in order to provide legal services, attain high legal awareness so that members of the public are aware of their rights and obligations, the bank can contact the notary who is also a PPAT to seek legal advice related to financing will be disbursed and the bank should also follow the legal advice given by the notary public. The notary / PPAT is always demanded to be careful in carrying out the work of the bank, especially related to the making of governance which is then used as a condition for disbursing financing by the bank. The task of the notary / PPAT must also be supported by the bank so that there is no tendency for the bank to only think about achieving targets and gain profits by relying on notary / PPAT covernote because basically the covernote is only morally binding between the bank and the notary / PPAT concerned. The notary has the right to decide to accept or reject the bank's request to process the installation of mortgage if administrative requirements have not been met. However, if indeed the notary accepts the bank's request to sign the contract and the binding of the collateral with a record of shortcomings accompanied by shortages, the bank must have full responsibility to immediately complete the administrative shortcomings as soon as possible so that registration of the Mortgage Rights installation can be carried out immediately to the land office. Based on the Standard Operating Procedures issued by the land office for the sale and purchase process of *roya*, as well as the installation of Mortgage Rights, it does not require a long time as long as there is the ability of the will and the parties so that the covernote does not need to be extended.

The precautionary principle of banking can be carried out properly and correctly if the bank in carrying out its business is more aware of it properly and correctly if the bank in conducting its business is more aware that the funds channeled in the form of financing are funds entrusted by the public to be kept by the bank both in the form of savings or deposits.

Related to Underwriting Rights, the Underwriting Right is an access as stated in Article 10 paragraph (1) of the Underwriting Right Act. The purpose of the nature of this *accessoir* is that each debt guarantee agreement is the aftermath of the principal agreement, the credit agreement. The juridical consequence of the application of the accessory principle is that there is no debt guarantee agreement if for any reason the credit agreement does not exist. However, the existence of the credit agreement itself is not affected by the validity of the debt guarantee agreement. If the legal principles are applied in relation to the relationship between the financing agreement and the existence of mortgage rights, the binding of mortgage rights arises from the existence of a financing agreement. So, if by reason of the financing agreement is deleted (for example due to the repayment) then also delete the binding agreement on Mortgage. But does not apply otherwise.

## **Conclusion**

- 4.1. Covernote, in practice, in the banking world, can be used as confidence by banks to disburse credit facility money. It is because banks have confidence in collateral objects that are in the process of being registered by a notary public can provide certainty that the object will be registered in the future. Banks, in practice, have the confidence that the notary is a professional official and is considered the most knowledgeable in checking the requirements in the process of making a guarantee certificate and the registration process.
- 4.2. The obstacles encountered in applying the precautionary principle in the use of Notary Covernote as the basis for credit disbursement include:

- a. From a juridical point of view, the regulation regarding the governance used as a condition for the disbursement of such funding does not yet exist either in laws, government regulations, Bank Indonesia regulations, or in the form of memorandum of agreement. Covernote arises based on habits so that the bank that determines the use of covernote can be a factor that influences the implementation of the precautionary principle of banking if each party does not clearly understand the existence of covernote related to binding collateral.
- b. In terms of Non-Juridical, which include:
  - a) In terms of law enforcement. The law enforcement factor can be measured by the ability of the law enforcement officers to understand.
  - b) Facilities Factors. Law enforcement will run smoothly if it is supported by facilities or facilities whose effectiveness includes organizational resources including human resources and financial resources.
  - c) Community and Cultural Factors. The effectiveness of the law in implementing a law and regulation can be seen from the socio-economic conditions of the community and culture. The better the community's economy, the more effective the law will be. Public legal awareness will also relate to the implementation of law in society.

## **References**

### **Books**

Johannes Ibrahim Kosasih, *Akses Perkreditan dan Ragam Fasilitas Kredit dalam Perjanjian Bank*, Sinar Grafika, Bandung, 2019.

M, Bahsan, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Rajagrafindo Persada, Jakarta, 2012.

Munir Fuady, *Pengantar Hukum Bisnis*, Citra Aditya Bakti, Bandung, 2013, h. 95-96.

Sjaifurrachman dan Habib Adjie, *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta*, Mandar Madju, Bandung, 2011, h. 253.

Sugiyono, *Metode Penelitian Kebijakan: Pendekatan Kuantitatif, Kualitatif, Kombinasi, R&D dan Penelitian Evaluasi*, Alfabeta, 2017.

Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah*, Kencana, Jakarta, 2010 hal 410.

Zaeni Asyhadie & Rahmawati Kusuma, *Hukum Jaminan di Indonesia*, Rajawali Press, Jakarta, 2011.

Zainuddin Ali, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, cetakan keempat, 2013.

### **Laws and regulations**

Undang-Undang Nomor 10 tahun 1998 tentang Perbankan, Fokus Media, 2017

Undang-Undang Jabatan Notaris, Citra Umbara, Bandung, 2017

### **Journals and Articles**

Desy Amelia Rosyidah, Tanggung Jawab Notaris Dalam Mengelurkan Covernote Dalam Perjanjian Pembiayaan Di Perbankan Syariah, *Jurnal Hukum Dan Kenotariatan*, Volume 3 Nomor 2 Agustus 2019

I Dewa Made Dwi Sanjaya, Tanggung Jawab Hukum Notaris Terhadap Penerbitan Covernote Dalam Pemberian Kredit, *Riau Law Journal*, Vol. 1 No.2, November 2017

Singgih Budiyo dan Gunarto, Akibat Hukum Covernote Yang Dijadikan Dasar Perjanjian Kredit Di Perbankan, *Jurnal Akta*, Vol 4, No 4, Desember 2017

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