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Resolution of Non-Performing Loans in Credit Agreements without Mortgage Deed at the Customary Village Credit Institution (LPD) of Padonan Tibubeneng, North Kuta, Badung

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ABSTRACT

The enactment of Law No. 4/1996 on Mortgage Rights mandates that any action establishing land rights under Law No. 5/1960 on Agrarian Principles must involve the granting of mortgage rights via APHT as debt repayment security, with the Mortgage Rights Deed being a crucial part of the debt agreement. Despite this, some financial institutions like LPD Padonan Tibubeneng Customary Village extend credit without APHT. Researchers are interested in LPD Padonan's response to defaulted agreements, which pose a legal discrepancy. Similar cases arise in various LPDs in Bali, where credit is granted with collateral but lacks a mortgage deed, leading to legal issues upon default. LPD Padonan faces the same challenge, hindering collateral execution upon default. Empirical legal research, using legal concepts and theories, is conducted, supplemented by data from LPD Padonan. Steps taken upon default, before non-performing loan status, involve warning letters and subpoenas. If unsuccessful, credit settlement by Padonan LPD occurs through two channels: non-litigation avenues such as deliberations and credit restructuring, particularly for Padonan residents, and customary settlement through paruman.

Keywords: *LPD of Padonan Customary Village, Mortgage Rights, Non-Performing Loans*

INTRODUCTION

LPD is a customary Village Credit Institution that operates a savings and loan business in every village in Bali aimed at improving the economy of the villagers. LPD was formed as a form of mutual cooperation among the indigenous villagers in Bali.¹ The definition of Village Credit Institution based on Article 1 Paragraph 9 of the Regional Regulation of Bali Province No. 3/2017 is the Village Credit Institution (LPD) is a financial institution owned by Pakraman Village. In addition, it has been explained previously that to establish an LPD, a village must first have *awig-awig*. This is because the LPD is a financial institution of Pakraman Village that is subject to the provisions of an *awig-awig* of the customary village in addition to other laws and regulations. Some of the provisions that are subject to *awig-awig* include the issue of customary paruman to resolve bad credit problems, provisions regarding village residents, provisions regarding customary processions in establishing Village Credit Institutions.²

The factual existence of LPD in Bali is a communal rural economic-financial institution in Balinese customary law society, because it is established and managed by, from, and for the Village Karma, and operates under the authority of the Pakraman Village (*wewidengan*).³ In other words, the existence of LPD in Bali is an economic-financial institution of the Pakraman Village community that is not only socio-economic but also has a socio-religious character, because it is closely related to the *sekala* and *niskala* (something that is visible and invisible) of society (village karma) in the dynamics of Pakraman Village as stated in *awig-awig* (written customary law in Bali) which is believed in Hinduism. In the perspective of Indonesian national law, the existence of LPD is officially recognized based on Article 18B Paragraph (2) of the 1945 Constitution of Indonesia, which states that the state recognizes the unity of customary law communities. This means that the state recognizes LPD as part of the Balinese Customary Law community (Pakraman Village).⁴ In addition, Article 39 Paragraph (3) of the MFI Law (Microfinance Institution) also states that LPD is recognized as a financial business entity owned by Pakraman Village and is not under the regulation of MFIs.

Although the terms used are different, both bank loans and LPD loans have similarities. Both are agreed upon through an agreement and involve the borrower

¹ Mia Hadiati et al., "Peran Desa Adat Dalam Tata Kelola Lembaga Perkreditan (LPD) Di Bali," *Jurnal Muara Ilmu Sosial Humaniora dan Seni* 5, no. 2 (2021).

² I Nyoman Agus Saputra, I Nyoman Putu Budiarta, and Ni Gusti Ketut Sri Astiti, "Pembebanan Hak Tanggungan Dalam Pemberian Kredit Pada Lembaga Perkreditan Desa (LPD)," *Jurnal Konstruksi Hukum* 2, no. 1 (2021).

³ I Nyoman Sukandia, *Lembaga Perkreditan Desa: Berbasis Masyarakat Hukum Adat Di Bali* (Nuswantara, 2019).

⁴ I Nyoman Sukandia and Anak Agung Istri Agung, "Legal Certainty for Village Credit Institutions and Indigenous Village Communities on the Management of Village Credit Institutions," in *3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)* (Atlantis Press, 2023), 396–404.

(debtor) and the lender (creditor). The creditor is the person who provides the loan to the debtor, while the debtor is the person or legal entity that receives the loan.⁵ Collateral is needed to provide legal certainty for creditors that their debts will be paid by the debtor.⁶ Collateral regulated in Article 1131 of the Civil Code is commonly referred to as general collateral.⁷ The exception in Article 1132 Paragraph (2) of the Civil Code refers to the parties who agree that for certain money debt agreements, it is guaranteed by certain property owned by the debtor, usually called special collateral.⁸ The existence of collateral is a requirement to minimize the risk in providing loans or credit.⁹

The enactment of Law No. 4/1996 on Mortgage Rights means that every action that imposes land rights in accordance with Law No. 5/1960 on Agrarian Principles must be conducted with a promise to grant Mortgage Rights through APHT (Deed of Granting Mortgage Rights) as a guarantee of debt repayment from the debtor, which is an integral part of the ignored debt agreement. There is a financial institution called LPD of Padonan Customary Village that provides loans to its customers without asking for collateral (APHT). Researchers are also interested in determining the measures taken by LPD of Padonan Customary Village if the agreement has difficulties, as this creates a discrepancy between things that should be done (*das sollen*) and things that actually happen (*das sein*).

In general, these cases occur in several LPDs in Bali, where the LPD provides credit with collateral without a mortgage deed and when the debtor defaults, legal problems occur regarding the credit. LPD of Padonan Customary Village also has the same problem where the granting of loans at LPD of Padonan Customary Village is only a deed of credit agreement without a deed of Mortgage Rights, causing legal problems when the debtor defaults and cannot be executed on the collateral. Because of these problems, many LPDs lose a lot because they are unable to execute collateral because they are constrained by not being attached to the Mortgage Rights on the guarantee, so according to the background description, this research was conducted to determine the position of the LPD of Padonan Tibubeneng Customary Village as a creditor in a credit agreement without a mortgage; and to analyze the form of credit settlement without collateral for a mortgage deed against non-performing loans at the LPD of Padonan Tibubeneng Customary Village.

⁵ Bayu Seto Hardjowahono and Denny Lesmana, *Perancangan Kontrak Bisnis* (Bandung: Citra Aditya Bakti, 2019).

⁶ Ika Atikah, "Hak Cipta Sebagai Collateral Dalam Jaminan Fidusia," *Al-Ahkam* 15, no. 1 (June 30, 2019): 52, <http://jurnal.uinbanten.ac.id/index.php/ahkm/article/view/1894>.

⁷ Muhammad Sabir and Rifka Tunnisa, "Jaminan Fidusia Dalam Transaksi Perbankan (Studi Komparatif Hukum Positif Dan Hukum Islam)," *Mazahibuna: Jurnal Perbandingan Mazhab* 2, no. 1 (2020): 80–97.

⁸ Atikah, "Hak Cipta Sebagai Collateral Dalam Jaminan Fidusia."

⁹ M Bahsan, *Hukum Jaminan Dan Jaminan Kredit Perbankan Indonesia*, 1st ed. (Jakarta: Rajawali Pers, 2020).

RESEARCH METHODOLOGY

This type of research is empirical legal research. Empirical legal research is a methodological approach used by legal scholars and experts to investigate legal phenomena through empirical observation and analysis. On the other hand, empirical legal research involves the collection and analysis of real-time data to understand the rules, institutions and legal processes that operate in practice and their impact on society, as opposed to traditional legal research that relies primarily on legal doctrines and theories.¹⁰ The purpose of empirical legal research in this research is to analyze legal problems, which are the gap between *das sollen* and *das sein*, the imbalance between policy arrangements and the actual field, to discuss this research the researcher uses a sociological approach, a legislative approach and a conceptual approach.

Primary data in this research is obtained directly from field situations, such as the results of interviews on the settlement of non-performing loans at LPD of Padonan Tibubeneng Customary Village. While secondary data is information obtained from other sources such as books, theses, dissertations, journals, and statutory regulations. Both types of data are then analyzed qualitatively and associated with legal theories and opinions of experts to obtain clear conclusions. The results of this research are presented in descriptive form to answer the research problem statements.

RESULT AND DISCUSSION

The Position of LPD of Padonan Tibubeneng Customary Village as a Creditor in a Credit Agreement without Mortgage Rights

Village Credit Institution (LPD) is a part of Balinese society that organizes the economic system in the village. The Bali provincial government has introduced an LPD policy to improve finance. LPD is an economic institution owned by Pakraman Village and it serves the business activities in the village and its citizens. There are 65 LPDs regulated by Bali Province Regional Regulation No. 3/2017. According to the regulation, Pakraman Village is a group of indigenous people in Bali with distinctive traditions and its own property, and has the responsibility to manage its own household.

The practice of LPD social responsibility towards the Padonan Tibubeneng Customary Village, village development funds are obtained from 20% of LPD profits. The funds are used for activities in the Customary Village, distributed initially to each *Banjar* (hamlet) in the village. The funds are received from the *kelian* (leader or head) of each *Banjar* and then channeled to the 13 *Banjar Adat* in Padonan Tibubeneng Village. LPD provides great benefits to the village community by improving village infrastructure, maintaining sacred places such as

¹⁰ P. Ishwara Bhat, "Empirical Legal Research," in *Idea and Methods of Legal Research* (Oxford University Press, 2020), 303–325, <https://academic.oup.com/book/41749/chapter/354160168>.

temples, and protecting the environment. The Head of LPD of Padonan Tibubeneng Customary Village, I Made Arimbawa, stated that LPD provides more benefits to the community, especially in maintaining sacred places (temples) and protecting the environment.¹¹ The interview indicated that 20% of the LPD's profit is used to maintain the shrine and protect the environment. The funds provided by LPD are perceived by the community through the *banjars* to improve the quality of Padonan Tibubeneng Customary Village. He stated that this social fund is divided into two, 50% is managed by the LPD which is reported in the LPD annual report and the other 50% we submit to the Customary Village.

Table 1. Savings Fund Collection Data during 2019-2023

No.	Years	Number of Depositors	Number of Savings	Number of Improvements	%
1	2019	9.101	Rp.51.394.622.982	+5.353.616.918	11.7%
2	2020	8.214	Rp.44.451.132.404	-6.943.490.578	13.55%
3	2021	8.629	Rp.48.531.779.150	+4.080.646.746	9.2%
4	2022	9.123	Rp.51.550.678.000	+4.109.240.200	9.4%
5	2023	9.629	Rp.56.700.000.000	+6.250.678.000	13.32%

Source: LPD of Padonan Customary Village

In the data on savings fund collection, it can be seen that in the last five years from 2019-2023, the number of savers at LPD of Padonan Customary Village reached 9,629 savers, in 2019 the number of depositors was high at 9,101 savers. However, there was a decrease in 2020 of 6,943,490,578 from the previous year, a decrease that occurred during 2020 due to the Covid-19 outbreak. Currently, LPD of Padonan Customary Village has increased the number of savers in a stable and continuously increase. The form of bank credit agreement that refers to this standard agreement is prepared in 2 (two) ways, such following below:

1. A credit agreement that is in the form of a private deed is an agreement to grant credit by a bank to its customers that is made between them without a notary. In fact, it is common to sign an agreement without a witness participating in affixing his/her signature. However, witnesses are one of the evidentiary instruments in civil cases.
2. A credit agreement with an authentic deed is an agreement to grant credit by a bank to its customers that is only made by or before a

¹¹ Ni Kadek Marantina Dewi, *Hasil Wawancara Dengan Bapak I Made Arimbawa* (Badung, 2024).

notary. Regarding the definition of an authentic deed, it can be seen in the provisions of Article 1886 of the Civil Code.

Therefore, the granting of credit must be outlined in a written credit agreement, either by private deed or authentic deed. The credit agreement serves to provide guidance to the bank on planning, implementation and supervision in granting credit by the bank, so that the bank is not harmed and the customer will feel safe that his funds are well secured. Hence, before providing credit to prospective debtors, the bank will assess all juridical aspects of the debtor so that the bank feels protected in a default in the future.

In the interview with the head of the Padonan Customary Village Credit Institution, Mr. I Made Arimbawa, there are 2 forms of agreements made at the LPD of Padonan Customary Village, which are in notarial form and handwritten, which must comply with the conditions determined by the LPD, such following below:

1. Form of credit agreement under the hand where the conditions for doing this are if the credit requested by the debtor is under IDR 50,000,000 (Fifty Million Rupiah) and the collateral is not in the form of land.
2. Form of Credit Agreement with an authentic deed made by or before a notary where the conditions for doing this are that the credit requested by the debtor is more than IDR 50,000,000 (Fifty Million Rupiah) and the collateral is in the form of land so that it can bind strongly.¹²

The credit agreement made between LPD of Padonan Tibubeneng Customary Village as the creditor and I Nyoman Sudarsana as the debtor, creates a debt and credit relationship with a private deed. The private deed which is a form of credit agreement in practice has several weaknesses because it is not accompanied by APHT, weakening the position of LPD of Padonan Tibubeneng Customary Village as a creditor if it is litigated in court.

The researchers suggest that to provide better legal protection, an authentic deed should be made in the form of a Notarial Credit Agreement accompanied by a Deed of Granting Mortgage Rights. This deed contains promises that aim to protect the rights of creditors. Thus, it will be clearer and stronger in guaranteeing the creditor's rights when it has been registered at the Land Office. In proving the existence of the Mortgage Right, the Land Office will issue a Mortgage Right Certificate that has the statement "For the Sake of Justice Based on God Almighty." This certificate has the same executorial power as a judge's verdict that has been legally enforceable. The main function of this certificate is as a basis for execution if at any time the debtor does not fulfill his obligations or violates his promise to pay his debt.

¹² Ibid.

Credit Settlement Forms without Collateral of Mortgage Deed against Non-Performing Loans at LPD of Padonan Tibubeneng Customary Village

Lending by banks has risks even though various thorough analyses have been conducted. A credit analyst cannot predict that credit will always proceed well, many contributing factors including credit user error, bad management and economic conditions have a major impact on the financial welfare of the debtor and on bank credit losses. The main problem with non-performing loans is the debtor's unwillingness to repay or the inability to obtain sufficient income to repay the loan as agreed.

The execution of bad credit settlement can be conducted by using parate execution after the bank has taken the stages or steps of credit negotiation and was unsuccessful. Execution as the last effort of the bank in an effort to save non-performing loans through credit rescue steps or stages. Execution can also be conducted through flat execution in accordance with the mortgage rights law, which is through PUPN (State Receivables Committee) and execution by banks through court decisions to follow up on debtors who do not comply with their obligations in credit agreements so that non-performing loans occur.

Execution through the court occurs after the litigation process or case settlement process when the LPD is the plaintiff against the defaulting debtor. The provisions regarding default are regulated in Article 1234 of the Civil Code (KUHPperdata) which stipulates as follows below:

“Compensation of expenses, damages and interest for non-fulfillment of an obligation shall only become obligatory if the debtor, after being declared negligent in his/her obligation, remains negligent or if something that must be supplied or produced within a period that has been exceeded.”

The lawsuit of banks is based on the debtor's inability to resist the execution and the bank's good faith to resolve its default. If the litigation process in court has been completed with a decision that the debtor is in default and the collateral can be auctioned, then the auction agency has the legal power to conduct the auction. The provision in Number 4 of the general explanation of the Mortgage Rights Law states that:

“A mortgage is a collateral right over land for the repayment of certain debts, which privileges certain creditors over other creditors.”

If the debtor does not fulfill his/her promise, the person holding the property as collateral can sell it through a public auction in accordance with applicable laws, giving priority to other creditors.

Creditors that want to execute a mortgage can do it directly without recourse to the court, provided that the security document states that the mortgage holder has the right to sell the property without the consent of other parties. If the debtor

fails to fulfill its promise, the creditor can directly sell the property through the State Auction Office. The legal basis for execution under the Mortgage Rights Law is conducted through PUPN as a legal measure for handling non-performing loans. Execution of mortgage rights through PUPN. General auction requirement documents for execution auctions under Article 6 of the Mortgage Rights Law, including the following:

1. Copy/photocopy of Seller Appointment Decree;
2. List of assets to be auctioned;
3. Additional auction requirements from the seller as referred to in PMK Number: 40/MK.70/2006 concerning Guidelines for Auction Implementation (as applicable).

Specific documents for execution auctions under Article 6 of the Mortgage Law, are as follows:

1. Copy/photocopy of Credit Agreement;
2. Copy/photocopy of the Mortgage Rights Certificate;
3. Copy/photocopy of Debt Breakdown/amount of debtor's obligation that must be fulfilled;

Based on Article 20 of the Mortgage Rights Law, it is stated that the object of the Mortgage Rights is sold through a public auction or according to the procedures stipulated in the laws and regulations for the repayment of the receivables of the holder of the Mortgage Rights.¹³ This is as stated in Paragraph (7) of Article 200 HIR that the giver of the Mortgage Rights, namely the debtor, is no longer allowed to prevent the auction and pay all his debts. The execution of collateral auction of Mortgage debt, conducted by the State Receivables Committee (PUPN) and the State Auction Receivables Service Office (KP2LN) is within the juridical framework of Law No. 49 Prp of 1960 which still refers to Law No. 4/1996. Therefore, an assessment of the execution of Mortgage Rights auctions based on the PUPN Law, solutions that can be done by PUPN/KP2LN, and forms of legal protection for the auction holder of the collateral that is bound.

The resolution of customary issues, whether it is a legal violation or a dispute, is usually more effectively accomplished through customary institutions using the awig-awig mechanism rather than through formal legal processes, as this allows all parties the opportunity to reach an amicable agreement. Settlement through deliberation and consensus, which is the characteristic of customary settlements, can incorporate the interests of all parties in accordance with the principles of justice proposed by John Rawls. This principle is reflected in the efforts to provide the residents of Tibubeneng Customary Village with the opportunity in settling their debts with collateral in the form of a Letter of

¹³ Charisma Megawati and Dr. Sugiharto, "Legal Implications of Unlawful Acts of Building on Freehold Land as Debt Collateral," *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 2, no. 4 (2023).

Authorization to Impose Mortgage Rights (SKMHT) and a Deed of Granting Mortgage Rights (APHT) adjusted to the amount of loan received by the debtor. The importance of consistency from the Village Credit Institution (LPD) of Padonan Tibubeneng Customary Village is needed so that this customary financial institution can continue to compete with other financial institutions and reduce the amount of non-performing loans and their resolution. In addition, the principle of equal opportunity for all relates to the opportunity to resolve defaults, which is initially offered without going through a formal legal process. However, if the debtor does not fulfill their obligations, the settlement method must still be fair to both parties, both the creditors of LPD of Padonan Tibubeneng Customary Village and the debtor, who is basically a villager. If the settlement process has the potential to cause detriment to the majority of society, then a formal legal process must be undertaken.

Due to bad credit problems, the LPD always makes it easy if the community is in a financially poor economic condition by providing an extension of the time period. The role of *Bendesa Adat* is very important to prevent this problem from reaching the court. The role of *Bendesa Adat* as a mediator in handling bad credit, where the debtor is a native of Tibubeneng. Based on Regional Regulation No. 3/2017 on LPD, *Bendesa Adat* acts as an LPD supervisor, in handling bad credit, the mechanism is as follows:

1. Listening and trying to find out the obstacles faced by debtors who in fact must behave is *krama ngarep* (an attitude that can look upwards).
2. *Bendesa Adat* will make maximum efforts to provide an understanding of *Krama Adat* in implementing its obligations in the LPD.
3. *Bendesa Adat* provides solutions in its role as a mediator in the Village Paruman for problems that occur to its citizens, by providing settlement options that can ease the burden on debtors as much as possible.
4. The Village Credit Institution as a creditor functions to help the residents of Tibubeneng Customary Village and is not solely looking for profit. For those customers as well as debtors at the LPD of Padonan Tibubenengan Customary Village who come from outside the Tibubeneng Customary Village residents will take resolution of default cases through legal channels at the local court.

The traditional Paruman was held in the spirit of family. However, considering the legal certainty, the risk is too risky to be taken. Most of the *paruman prajuru desa* (meetings of village heads or leaders) that have been conducted have succeeded in resulting in the repayment of the defaults by the debtors. One of the positive sides of this customary settlement of default cases is the high sense of kinship.

CONCLUSION AND SUGGESTION

Conclusion

According to the previous discussions, some conclusions of this research are summarized, such as (1) credit agreements between LPD of Padonan Tibubeneng Customary Village and debtors regulate the rights and obligations of both parties and are often complemented by collateral agreements such as mortgage deeds, which provide creditors with a privileged position in the resolution of non-performing loans. However, when credit agreements without a mortgage deed are implemented at LPD of Padonan Customary Village, it undermines the LPD's position as a creditor as there is no legal certainty in accordance with Article 6 of the Mortgage Rights Law. However, the customary community of Tibubeneng Village tends to comply with customary sanctions, thus ensuring the orderly implementation of obligations; (2) non-performing loans settlement at LPD of Padonan Tibubeneng Customary Village involved various steps. First, Warning Letters I, II, III are sent to defaulting debtors. If unsuccessful, a subpoena is issued by LPD of Jimbaran Customary Village. If the loan is completely defaulted, settlement is made through two ways, these are non-litigation with deliberation, mediation, and restructuring, and the customary way with a special customary *paruman* for residents of Padonan Tibubeneng Customary Village. Customary settlements are often successful due to their highly family-oriented character. If the non-litigation settlement fails, the litigation process is conducted through a civil lawsuit based on Civil Code Articles 1131 and 1132.

Suggestion

LPD of Padonan Tibubeneng Customary Village suggested that when the credit is provided, official documents such as a notarial credit agreement and mortgage deed should be made. It aims to protect the rights of creditors and ensure that the procedures are followed. Mortgage rights provide guarantees to creditors in the future if there is default on the loan. For the indigenous people of Tibubeneng Village who want to guarantee credit at the LPD of Padonan Tibubeneng Indigenous Village, it is expected to implement the credit agreement in good faith so as not to cause credit problems at the LPD.

Although bad debts can be resolved non-litigatively through the participation of *Bendesa Adat* (the leader of the customary village), it is recommended that the mortgage rights be exercised by LPD of Padonan Customary Village, to anticipate the resolution of bad debts through the execution process at the local district court.

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