



The Role of Notaries in Binding Credit Guarantee Objects Village Credit Institution

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ARTICLE INFO	ABSTRACT
<p>Keywords: Notary Public Binding of Village Credit Institution Guarantee Objects</p>	<p>The existence of a Notary in terms of making a credit agreement deed in this LPD, is of course very helpful for the indigenous people in Bali as the customer of the LPD to guarantee legal certainty for the guarantee given to the LPD until the credit provided can be repaid by the customer. The purpose of this research is to analyze the Position of Rights and Obligations of Village Credit Institutions (LPD) in the System of Microfinance Institutions (Non- Bank), and to discuss the role of the Notary in the Implementation of the Credit Agreement and the Binding of Collateral Objects at the Village Credit Institution (LPD). This research uses normative method by using statue approach and conceptual approach. this research consists of primary and secondary source materials. The data collection technique uses the technique of noting, citing, reading, or summarizing the literature related to the research. Thus, the results of this study explain that if there is already a governance arrangement based on customary law that has legal certainty, then all forms of credit transactions in the LPD, including those related to the binding of credit guarantees, should follow the applicable mechanism as long as it does not conflict with applicable law in the territory of the Unitary State of the Republic of Indonesia. For this reason, it is important to create a customary court to accommodate changes in LPD governance if they have been changed in accordance with customary law. Basically, LPD grants credit to anyone who has the ability to repay.</p>
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1. INTRODUCTION

With the promulgation of Law no. 1 of 2013 concerning Microfinance Institutions (UU LKM) gives a "special" position to the Village Credit Institution (LPD). In the MFI Law, the existence of the LPD is recognized as a special financial institution so that its regulation is excluded from the MFI Law. This is confirmed in Chapter XIII of Transitional Provisions article 39 paragraph 3 which reads: "Village Credit Institutions and Lumbung Pitih Nagari as well as similar institutions that existed before this Law came into effect, are declared to be recognized for their existence based on customary law and are not subject to this Law." in relation with pecialty this turned out

to be a source of debate, especially the phrase that said LPDs were "not subject to the law" on MFIs. The life of the Balinese people is typical and does not follow too much structure political Indonesia, own tendency to follow the culture and traditions of their ancestors. The life of the Pakraman Village community runs according to Hinduism and customs which are the main foundation for maintaining and maintaining unique ethics, morals, traditions and culture. Control indigenous peoples in Bali is carried out by a number of leaders or community leaders (customary prajuru) in the Pakraman Village which are elements of the institutions that run all provisions and policies of the institution, by comprehensive needed To use both written and

unwritten. Imitating the concept of *sekaa* that has grown in Balinese people, Prof. Dr. Ida Bagus Mantra had the idea of establishing a financial organization based on *adat*. The Village Credit Institution was established with such a concept as a traditional community financial institution that has the goal of providing assistance to traditional villages in fulfilling their cultural functions (Budiarta, 2020). LPD is a financial institution owned by Pakraman Village, which carries out financial functions and manages financial resources that belong to Pakraman Village in the form of savings and loans. Providers of living financing needs for members of the Pakraman Village community, either individually or together, in order to develop the socio-cultural and religious functions of the Pakraman Village community (Nurjaya, 2011). Referring to the history of its regulation, the existence of the LPD as an entity is very clear in its position as a traditional institution in Pakraman Village which has a special function to support the community's finances and economy. As an institution that carries out the financial function of Pakraman Village.

LPD is also required to exist to ensure the realization of the welfare of the customary law community which is the *Krama* of Pakraman Village. The rationality of the existence of the LPD, of course, has special objectives, this is the rationality of the LPD being given a special position by the LKM Law, in addition to obtaining constitutional guarantees as stipulated in article 18 B. If you look at the legal point of view, special arrangements are needed for LPDs in the form of legislation and regional regulations, of course you must also consider the legal function itself, setting up LPDs through *Perda* does not necessarily weaken the LPD's position as an entity belonging to Pakraman Village, the law here is here to carry out a protection function, functions of maintaining the public interest in society, safeguarding human rights, carrying out function shelter, empowerment, development, guarantee, order and regularity, as well as dispute or dispute resolution. So that the regulatory context cannot be concluded that the intervention tends to weaken, for that community participation dispel doubts and suspicions.

This statement of acknowledgment of the existence of LPDs based on customary law means that the Government must hand over all matters of LPD regulation to its Pakraman

Village each. And the affirmation that the LPD being recognized based on customary law clearly shows that LPDs are indeed excluded precisely because LPDs are couple (belongs to) the village of Pakraman which should be regulated under Balinese customary law. Not rules outside customary law and customary law of Bali (Sumartha, 2014). In fact, since its inception, the LPD has been based on customary law. The proof is that the initiative to form an LPD is based on a decision Paruman Pakraman villages and Pakraman villages that want to have an LPD must first have *awigawig*. In the Balinese customary law system, decisions Paruman Pakraman village is an inseparable part of Balinese customary law. Not only that, *de facto*, a number of traditional villages also include the LPD as *duwe desa pakraman* (owned by village pakraman).

From an economic point of view, the existence of the Village Credit Institution provides its function and role in the form of village communities having a place to store funds and also for rural communities who are in need of loan funds, they can borrow at the Village Credit Institution or provide credit facilities. LPD savings and loans are only allowed to customary village members. The number of deposits, both savings and time deposits, is not limited, but usually the loan amount is adjusted to the LPD's liquidity and availability Collateral or Guarantee. Funds collected by the LPD may come from other financial institutions but the amount is limited (Ramartha, 2006). However, in its development, the provision of savings and loan facilities can also be used for people from outside the local village. From the function of the LPD, especially in providing credit facilities to ensure legal certainty and protection for the LPD itself and also the village community as customers, every legal action through the credit is made an agreement, either made under the hand or in a notarial deed. And here is the important role of a notary as a public official to accommodate such legal actions in a Credit Agreement and its Collateral. The purpose of this research is to analyze the Position of Rights and Obligations of Village Credit Institutions (LPD) in the System of Microfinance Institutions (Non-Bank), and to discuss the role of the Notary in the Implementation of the Credit Agreement and the Binding of Collateral Objects at the Village Credit Institution (LPD).

Based on the purpose above, the

formulation of the problem in this research, namely:

- a. What is the Position of Rights and Obligations of Village Credit Institutions (LPD) in the System of Microfinance Institutions (Non- Bank)?
- b. What is the role of the Notary in the Implementation of the Credit Agreement and the Binding of Collateral Objects at the Village Credit Institution (LPD)?

2. RESEARCH METHOD

This research uses a normative legal research method that focuses on discussing written law which consists of various primary legal materials consisting of laws, government regulations, as well as secondary legal sources, namely journals, literature, books, and other scientific papers. Furthermore, after the legal materials related to the subject matter in this research were analyzed by methods of legal interpretation, legal argumentation, and legal construction. The data collection technique uses the technique of noting, citing, reading, or summarizing the literature related to the research.

3. DISCUSSION

3.1 Rights and Obligations of LPD

Since its inception, the LPD was based on the Bali Governor's Decree and was later confirmed through a Regional Regulation, however, this Regional Regulation does not necessarily give the government the right to intervene. Regional regulations are a reflection of the implementation of the protection and protection function of customary law community units. Government regulations are not customary regulators. Talking about the rights and obligations of the LPD, it turns out to be more complex and comprehensive, integrated and inseparable. Not only about welfare issues, but also related to Hinduism with the law of cause and effect. In terms of rights and obligations, Pakraman village has at least three rights and obligations, namely management rights and obligations, supervisory rights and obligations, and rights and obligations to obtain results from LPD management. And the sanctions that exist in the Pakraman village community are also different from the sanctions if someone is negligent in managing the Pakraman village.

The sanctions do not only apply to

themselves, but also have a negative effect on their offspring in the future. The results of the consultation of the Main Assembly of the Bali Pakraman Village regarding the LKM Law with the Chairperson of the House of Representatives of the Republic of Indonesia and the Ministry of Internal Affairs Negeri 2013 also obtained the following results: The Regional Regulation and the Governor of Bali Regulation regarding LPD are not customary law, so they automatically fall after the MFI Law comes into effect, because they are technical in nature, thus this is certainly contrary to the MFI Law; All legal products under the Act (in this case the Regional Regulation and the Bali Governor Regulation concerning LPD) that are contrary to the Law (in this case the MFI Law) above are automatically invalidated in accordance with the principle "lex superiori derogate legi inferiori" legislation.

This principle is a consequence of the hierarchy in the legislation. The hierarchy that carries legal consequences is as follows: Laws made by a higher authority have higher position, A lower law may not conflict with a higher-level law, A higher law cannot be changed/ abolished by a lower-status law, LPD must be returned fully regulated by customary law; If the Pakraman Village Council as the sole forum for Pakraman villages in Bali wants to adopt the contents of the Regional Regulations, Bali Governor Regulations, and Regent Regulations which are deemed to be in accordance with Balinese traditional values, they are allowed, but must be determined by a decision of the Customary Institution so that it becomes Balinese customary law. LPD does not seem appropriate if it is equated with BPR, Cooperatives, or Village-Owned Enterprises in accordance with the Joint Decree (SKB) of the Three Ministers, namely the Minister of Finance, the State Minister for Cooperatives and Small and Medium Enterprises (UKM), and the Governor of Bank Indonesia: Number 351.1/KMK.010/2009; Number 900 -636 A Year 2009; Number it should be related to the needs of 01/SKB/M.KUMK/IX/2009; Number Pakraman Village Krama, and the scope of 11/43A/KEP.GBI/2009 dated 7 September 2009 regarding the Strategy for Development of Microfinance Institutions (MFIs). However, it must be admitted that this kind of understanding was not yet strong at the beginning of the establishment of LPDs, so that Regional Regulation Number 2 of 1988 concerning LPDs

went too far to regulate the management of LPDs to technical matters like what is currently happening.

The affirmation of the LPD as *duwe Desa Pakraman* can also be seen from the rights and obligations that arise between the LPD and *Desa Pakraman* in Bali that do not exist in other villages in Indonesia. These rights and obligations are very different from the rights and obligations between Village-Owned Enterprises and the community The LPD, which is referred to as a village-owned financial enterprise, in accordance with the Bali Provincial Regulation Number 4 of 2012 concerning the Second Amendment to the Bali Provincial Regulation Number 8 of 2002 concerning Village Credit Institutions is also still being debated. This also creates confusion because even though it has characteristics and business fields similar to financial institutions in Indonesia, especially in carrying out the intermediation function (collecting funds and distributing credit to village manners). In the choice of motifs, of course, the existence of the LPD has special motives. However, the LPD's motive is not the same as that of economic institutions in general, or other forms of business.

LPDs are not the same as profit-oriented private businesses, and LPDs are not the same as Village-Owned Enterprises (BUMDES) and Regional-Owned Enterprises (BUMD). Although the existence of BUMDES and BUMD is not only profit oriented, but also emphasizes on public utility. Thus, of course, LPD is not the same as a Bank's business, although there are similarities in collecting and distributing funds. its business area is within the *Pakraman Village* area, that is why the Financial Services Authority has no authority over the existence of LPDs. What if the LPD before the enactment of the MFI Law, its business activities and scope of business were included in the category of business activities carried out by Microfinance Institutions or even Banks? For this reason, it is necessary to regulate adjustments as well as mechanisms and provide time for adjustment to LPDs, so that the business activities and coverage of LPD areas do not fall under the supervision area of the financial services authority, otherwise the LPDs are categorized as carrying out MFI activities or illegal Bank business activities. It takes parties such as the Regional Government, OJK, BI and Taxation as well as other related parties to resolve this issue.

In terms of choice, the way of managing the LPD must be responsive to the best practices of good business management, not closing itself to a better direction of change. However, the LPD's business cannot be separated from risks, which can hinder performance, and even threaten the existence of the LPD, so that the precautionary principle is a necessary principle to ensure healthy LPD management, consistent with the values and motives of the LPD carried. LPD in operate operational also permanent heed laws and regulations. These rational choices, as an illustration of the formulation of a rational arrangement for the existence of LPD in Bali. A legal product that is able to accommodate the choice of values, the choice of motives and the choice of methods, means that the legal product is a progressive legal product, effective (implementation can be enforced), efficient (functioning according to its purpose) solutional (providing a solution, its implementation for the welfare of the people). These differences give their own which to strengthen this, LPD in current characteristics to the motives carried by the LPD, because they have the motive of prospering the *Krama of Pakraman Village*. Ensure the realization of the welfare of the customary law community which is the *Krama Desa Pakraman*. so that the choice of this motif also affects the business activities and the scope of the business area of the LPD. LPD business activities practice does not have any rights (be it property rights, use rights, use rights, building rights, and other rights that are commonly owned by a legal entity). If a case or dispute occurs, an LPD debtor (*krama Desa Pakraman*) is in default (in this case, he cannot or cannot paying credit) and taking the collateral through the auction process and the LPD decides to buy the collateral itself through the auction process, then the one who is listed as the auction buyer is the chairman of the LPD concerned.

3.2 The role of the Notary in the Implementation of the Credit Agreement and the Binding of Collateral Objects at the Village Credit Institution (LPD)

If the status of the LPD has been confirmed as a *duwe desa pakraman* and a transitional regulation has been made that gives the authority to regulate the LPD to the *adat* authority, then all components concerning the LPD, including those related to the binding of guarantees, must also be adapted to the *adat*

concept. If the binding guarantee is also changed, the contractual agreements must also be adjusted. When a krama desa pakraman will apply for credit, then the contract agreements must be based on custom by referring to Balinese customary law with the necessary adjustments to comply with Balinese customary law applicable in the local Pakraman village. The research of contracts in Balinese customary law, one of which can refer to debt law in adat. Role of Notaries in Binding Credit Guarantee Objects at Village Credit Institutions The regulatory authority of the LPD lies in customary law, but it is undeniable that as part of the Unitary State of the Republic of Indonesia, krama desa pakraman and LPD must follow the rules that apply in Indonesia. Movable or immovable objects that will be used as collateral if it is necessary to bind collateral goods and need to be registered, a Notary-PPAT who has the right to register is a Notary-PPAT who has competence as a Notary-PPAT LPD with a recommendation from the Pakraman Village Main Assembly.

This credit agreement is actually not explicitly stated in the laws and regulations, but seen from the letter of Bank Indonesia No.03/1093/UPK/ KPD dated December 29, 1970 which was addressed to all foreign exchange banks in the past, The granting of credit is stated to be made by attaching a letter of credit agreement which makes a credit agreement until now referred to as a Credit Agreement. The elements in credit consist of an element of trust while the other elements have nature Consideration which each other help. When looking at the creditor's side, the most important thing in credit activities is to seek profit from their capital by expecting counter-achievements, while for debtors to get help because the creditor covers all his needs in the form of achievements provided by the creditor. The existence of a Notary in the matter of making a deed is a mandate from Article 15 paragraph (1) of Law no. 2 of 2014 concerning the Position of a Notary, which explains that the authority of a Notary plays an important role for the community to make an Authentic Deed of Legal Acts for the parties. This is also the realization of the article in the credit agreement in this LPD, of course, very helpful for the indigenous people in Bali as the customer of the LPD to guarantee legal certainty for the guarantee given to the LPD until the credit provided can be repaid by the customer.

If there is already a governance arrangement based on customary law that has legal certainty, for this reason, it is important to create a customary court to accommodate changes in LPD governance if they have been changed in accordance with customary law. Basically, lending by the LPD is given to anyone who has the ability to repay on condition that it is through a credit agreement between the LPD and krama desa pakraman. Loans at LPD follow generally accepted credit procedures with a number of adjustments which emphasizes its existence as belonging to the village of Pakraman. Besides that, generally a binding agreement or the imposition of collateral is also made as an additional agreement that follows the main agreement (the credit agreement). The credit agreement made by the LPD to the krama desa pakraman who wants to borrow money is one very important aspect in providing credit. The credit agreement is a bond between the LPD and the village customs of Pakraman whose contents determine and regulate the rights and obligations of the ban both parties in connection with the granting of credit.

While the guarantee binding agreement is an agreement between the LPD and krama desa pakraman regarding objects belonging to krama desa pakraman or a third party that is charged or tied up as debt guarantee. In the empirical practice of providing credit at the LPD, the form of a guarantee binding deed for providing credit at the LPD is made in the form of an underhand deed intended for credit applicants who are customary village krama, while the guarantee binding deed is intended for residents who are not members / outside members of village krama made with Notary Deed in accordance with the procedures or procedures established by the Fiduciary Law and the Mortgage Law. And in fact, both in the practice of providing credit by banks and LPDs, collateral (collateral) has been the most decisive factor for granting credit applications from the village customs of Pakraman. Credit given to LPD must be secured, in the sense that it must be guaranteed a return or repayment. Furthermore, in order to provide security and certainty in returning the credit, the LPD needs to ask for collateral (collateral) to then make a binding agreement. Objects that are commonly used as collateral for credit in LPD are movable objects in the form of motorized vehicles (cars or motorbikes) and immovable objects in the form of land. If

movable objects are used as credit guarantees, the binding currently uses a fiduciary guarantee institution as regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees.

This means, in other words, if movable objects are used as credit guarantees, then the binding is subject to the provisions of Law Number 42 of 1999 concerning Fiduciary Guarantees. In providing credit to the village community, such as banks, LPD applies the principle of The Five "C". LPD is required to have confidence based on an in-depth analysis of the intention and ability and ability of the community (debtor) that the person concerned will be able to pay off his debt in accordance with the agreement. In order to gain confidence in the on careful assessment of the character (character), ability (capacity), capital (capital), economic situation (condition of economic), and collateral (collateral). The points regarding the binding of guarantees in the LPD must be carried out based on awig-awig (customary law) in order to comply with the mandate of the Law on Microfinance Institutions. The biggest obstacle is that many Pakraman villages do not yet have awig-awig that regulates LPD in writing.

Although it has been written, it only states that the LPD is the duwe of the Pakraman village. As for important points regarding further governance, including those relating to collateral, it is not regulated at all. Some Pakraman villages that do not yet have written awig-awig reasoned that unwritten awig-awig have a more flexible nature, so they are relatively easier to adapt to local situations and conditions and easier to approach the sense of justice of the community where the awig-awig applies. Even though not writing down awig-awig, of course, it cannot guarantee legal certainty and is difficult to use as a reference in the future. The view of the need to regulate LPD must also use a rational choice approach, so as not to cause a prolonged debate. In order to find the rationality of the LPD arrangement, several approaches of rational choices are needed, namely, the choice of values, the choice of motives and the choice of methods.

In the choice of values, the existence of the LPD is based on the cultural and religious values of the people in Bali, so that the values carried by the LPD purely reflect the duwe character of Pakraman Village. So that the LPD arrangement must bring up distinctive characters, concepts, definitions, meanings that

are in accordance with the uniqueness of Balinese customs. Awigawig is made or special pararem is made to regulate the existence of LPD in Pakraman Village. In the choice of values, the existence of LPD cannot only be emphasized on the principle of efficiency, but the principle of service, protection and empowerment. So that other related "institutions" are needed that support these values to be maintained, such as supervisors, supervisors and guarantees. It is hoped that the regulatory authority ability and ability of the debtor to pay off his debt, the LPD is obliged to carry out of the LPD is in customary law, but it is undeniable that it is part of the unitary state The Republic of Indonesia, the manners of the Pakraman village and the LPD must follow the rules that apply in Indonesia. Movable or immovable objects that will be used as collateral if it is necessary to bind collateral goods and need to be registered, a Notary/ PPAT who has the right to register is a Notary- PPAT who has competence as a Notary - PPAT LPD with a recommendation from the Pakraman Village Main Assembly. If there is already a governance arrangement based on customary law that has legal certainty, then all forms of credit transactions in the LPD, including those related to the binding of credit guarantees, should follow the applicable mechanism as long as it does not conflict with applicable law in the territory of the Unitary State of the Republic of Indonesia. For this reason, it is important to create a customary court to accommodate changes in LPD governance if it has been changed in accordance with customary law.

4. CONCLUSION

The presence and role of the Notary in exercising the authority to make authentic deeds related to the actions of the parties is very much needed in the mechanism of legal relations that occur between the LPD and the community / village manners as customers to ensure legal certainty and protection for each party. And also related to the LPD's role in providing Savings and Loans facilities, especially in the provision of Loan facilities (Credit), collateral/collateral has always been the most decisive factor of consideration in order to be able to grant credit applications from krama Desa Pakraman. And all of that, both the making of the Credit Agreement to the Binding of the Guaranteed Object, should follow the applicable mechanism as long as it does not conflict with the law.

REFERENCES

- Budiartha, I. N. P. (2020). Position Law of Village Credit Institutions (LPD) in the Microfinance Institution System. *Journal of Legal Analogy*.
- Fuady, M. (2013). *Great Theories (Grand Theory) In Law*. Prenada Media Group, Jakarta.
- Nurjaya I.N. (2021). *Theoretical Foundation Arrangement of LPD (As a Financial Institution for the Balinese Customary Law Community)*. Udayana University Press, Denpasar.
- Ramartha, I. W. (2006). Towards a Healthy LPD. *Bulletin of Economic Studies*, Vol.11(1).
- Sumartha, I. K. (2014). Institutional Pararem Village Credit (LPD) Bali. *Majelis Desa Pakraman Bali*. Denpasar.