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The Role of Notary and Land Deed Official in Providing Legal Protection Based on Banking Prudential Principles: A Case Study in Bali

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Abstract

The issue regarding a bad credit dispute resulted in a lawsuit for unlawful acts against the bank and the notary, even though the collateral had been transferred through the foreclosed collateral mechanism and a legitimate sale and purchase transaction. This article aims to analyze the role of Notaries and Land Deed Officials in supporting the implementation of bank prudential principles in credit agreements and the binding of Mortgage Rights over land at the Rural Credit Bank of Saraswati Ekabumi Corporation, Badung Regency, Bali. The method used is an empirical legal method with a sociological approach, through in-depth interviews and analysis of two foreclosed collateral cases and court decisions. The results show that Notaries and Land Deed Officials carry out six procedural stages of binding Mortgage Rights that are consistent with the normative role according to the Mortgage Law, Notarial Law, and the Government Regulation on Land Deed Officials. The Deed of Grant of Mortgage Rights and the Deed of Sale and Purchase that were made were proven to have executorial power and perfect proof, allowing the bank to win the case at two levels of court. Finally, the article concludes that the role of Notaries and Land Deed Officials is determinative, not merely administrative, because it serves as an instrument of preventive and repressive legal protection in mitigating credit risk.

Keywords: Banking prudential, foreclosed collateral, land deed official, notary.

Introduction

Credit distribution is the main activity of banking, but it is also the source of the greatest risk to the health of financial institutions. To control this risk, Article 2 and Article 8 paragraph (1) of Law Number 10 of 1998 concerning Banking require banks to apply the prudential banking principle in every credit provision. This principle is operationalized through a 5C analysis, namely character, capacity, capital, collateral, and condition of the economy, which places material collateral as an instrument for securing credit repayment (Sembiring, 2012). This collateral aspect

is what directly intersects with the authority of Notaries and Land Deed Officials (LDO), as public officials authorized to make authentic deeds.

Rural Credit Banks, as medium-sized financial institutions, face particular challenges in maintaining the quality of their credit collateral. When a debtor is in default, the bank's legal standing is largely determined by the quality of the collateral binding that has been established before the agreement was made. A mortgage right

over land is only valid if it is stipulated in a Deed of Grant of Mortgage Rights drawn up by a Land Deed Official (LDO) and registered with the Land Office (Usman, 2008). Within this framework, the role of a Notary and LDO is not merely an administrative complement, but rather an institutional supporter of the bank's prudential principles (Muldiyah et al., 2026).

From the case that has been presented above, there is an urgency to analyze a certain case that has happened in society. The case was reinforced by a societal phenomenon at the Rural Credit Bank of Saraswati Ekabumi Corporation, thus making it worth analyzing. This bank once faced a lawsuit for unlawful acts from a debtor who faced a bad credit situation, even though the collateral had been transferred through the foreclosed collateral mechanism and a sale and purchase agreement before the notaries and LDO. The foreclosed collateral mechanism is designed to bring resolution for loan issues and reduce the Non-Performing Loan ratio. However, in practice, it often creates loopholes for lawsuits if the legal instruments are weak (Wulandari, 2024; Prabandari et al., 2021). The crucial question to be answered is to what extent the quality of the deed prepared by the Notary and LDO is able to maintain the bank's legal position when a dispute actually arises.

Previous research that has been done relating to the role of notaries and LDO in the binding of Mortgage Rights uses a normative approach that focuses on textual authority and procedures (Parinduri, 2022; Anggraeni & Marwanto, 2020). However, this approach makes it difficult to measure the correspondence between written law and law in practice. This research fills this gap with an empirical basis in the form of two concrete foreclosed collateral mechanism cases validated by court decisions, thus enabling a verified examination of the actual role of notaries and LDO. The novelty of this study lies in the use of two cases with fundamentally different outcomes as comparative material: one case resulting in a litigation dispute won by the bank, and the other case ending in amicable settlement without a lawsuit. This type of comparison is rare in the literature, which generally addresses only one type of scenario. Through this comparison, the study can clearly separate the notary's role from the debtor's response, allowing for a more precise identification of the notary and LDO's actual contribution to legal certainty and protection (Komala & Kasih, 2020).

Based on the background of research presented above, this article aims to analyze the role of notaries and LDO in the application of the bank prudential principle in credit agreements and the binding of Mortgage Rights on land by referring to the case that happened at the Rural Credit Bank of Saraswati Ekabumi Corporation, Badung Regency, Bali. In addition, this research also aims to analyze the normative and actual roles of notaries and LDO along with their contribution to the effectiveness of the principle of bank prudence, while also identifying the added legal value of procedural collateral binding.

Research Method

This article employs an empirical legal method, which aims to see the practice of law in society as it is. The approach used within this article is a juridical-sociological approach, which combines analysis of legal norms with empirical conditions in the field to assess the suitability between ideal norms and the practice of law in society (Adiyanta, 2019). The research was conducted in the Rural Credit Bank of Saraswati Ekabumi Corporation, located in Badung Regency, Bali. Primary data was obtained through in-

depth interviews with the President Director, Head of Legal Affairs, and credit officers. In addition, the interview was also conducted with Dr. I Nyoman Alit Puspadma, acting as Notary and Land Titles Registrar, as the primary informant, along with Imam Mashuri, who is also a Notary. Observations regarding the credit administration flow and collateral binding mechanisms were also made to gain in-depth information. Secondary data included prevailing laws and regulations, deed documents and the bank's Standard Operating Procedures, as well as Denpasar District Court decisions No. 512/Pdt.G/2021/PN Dps and Denpasar High Court No. 25/PDT/2022/PT DPS. Data analysis was conducted qualitatively through data reduction, data presentation, and drawing conclusions by linking field findings to Role Theory and Legal Protection Theory.

The interviews undertaken for this study have gained permission and been approved by the university in accordance with applicable regulations. The entire data collection process was carried out with the knowledge and support of the relevant institutions, in accordance with research ethics, information confidentiality, and participant rights. As a result, this study does not create any conflicts of interest that could compromise the impartiality, integrity, or outcomes of the study.

Results and Discussion

1. Theoretical Framework and Legal Position of Notaries and Land Deed Official

This article's theoretical analysis is based on two complementary theories. First, this article is based on the theoretical framework of an Indonesian legal scholar, Philipus M. Hadjon. Hadjon's Legal Protection Theory distinguishes between preventative legal protection, provided before a dispute arises, and repressive legal protection, enforced through judicial mechanisms after a violation has occurred (Hadjon, 1987). In the context of credit, the creation of a valid mortgage deed constitutes preventative protection, while the executive power of the mortgage certificate becomes an instrument of repressive protection when a bad loan results in a dispute.

The second theory used for analysis in this article is Role Theory, developed by Biddle and Thomas, as a theory to analyze job behavior. A role is defined as a set of expectations, norms, rights, and obligations inherent in a particular social position (Biddle & Thomas, 1966). This theory distinguishes between normative roles (standards of behavior established by norms), role performance (actual roles), and role expectations (expectations of others). Soerjono Soekanto, an Indonesian scholar, asserts that roles encompass norms related to a person's position in society as well as behaviors that are important to the social structure (Soekanto, 2009). In the act of creating a mortgage deed, a notary simultaneously plays a role towards the bank, debtor, state, and third parties.

These two theories operate sequentially in three analytical stages: (1) Identifying normative roles based on the Mortgage Law and Notarial Law, describing actual roles based on interview data and field documents, and evaluating their suitability based on judicial validation by the courts. Thus, the theories serve not only as a conceptual framework but also as a measuring tool connecting legal norms with the reality of notarial practices in rural bank credit (Pratama et al., 2022).

The legal standing of the official mentioned in this article serves as the starting point for the analysis. Dr. I Nyoman Alit Puspadma holds dual positions as a notary and as a Land Deed Official, with a jurisdiction in Badung Regency, Bali. These dual positions are valid and complementary: as a notary, he has the authority to make authentic deeds in general, while as a Land Deed Official, he has the exclusive authority to make deeds relating to land rights (Adjie, 2008). The LDO's authority is territorial; therefore, deeds that are made outside the jurisdiction are legally null. Fulfilling this territorial requirement is the first element to make sure that the deed is legally valid (Rasda et al., 2021). Since the collateral objects in the two research cases are located in Badung Regency and its surrounding areas, this requirement is met.

Understanding the territorial nature of LDO is also reflected in the bank's collaborative structure. Rural Credit Bank of Saraswati Ekabumi Corporation collaborates with five Notaries and LDOs spread across five different jurisdictions: Badung, Denpasar, Gianyar, Bangli, and Buleleng, all of which are located in Bali. This configuration represents a healthy institutional role set, as the bank does not rely on a single role holder but instead builds a network of role holders within the territorial boundaries of the LDO position (Pangesti & Yovieta, 2024).

2. The Normative Role of Notaries and Land Deed Officials in Binding Mortgage Rights

The normative role is a standard of behavior determined by written legal norms as a mandatory reference for office holders. Article 10, paragraph (2) of the Mortgage Law constitutively stipulates that the granting of Mortgage Rights must be carried out by making a mortgage deed by the LDO. This obligation is absolute: without a deed made by an authorized LDO, the Mortgage Right does not arise as a property right, and the bank loses its preferential rights as well as executorial rights over the guarantee (Sjahdeini, 1999). The results of the interview show that binding the Mortgage Right is mandatory for credit with a value equal to or more than IDR 50,000,000.00 (fifty million rupiah), as a reflection of the principle of proportionality in the guarantee system.

This normative role can be broken down into five sequential obligations. First, verifying the legal status of the collateral object by checking the certificate at the Land Office. Second, verifying the identity and legal capacity of the parties, including the marital status of the person granting the Mortgage. Third, preparing a mortgage deed in accordance with the format of the Head of Land Office Regulation Number 8 of 2012. Fourth, reading and explaining the deed in the presence of the parties and two witnesses in accordance with Article 16 paragraph (1) letter (a) of the Notarial Law. Fifth, registering the deed with the Land Office as a constitutive requirement to issue the Mortgage Right based on Article 13 of the Mortgage Law (Silviana, 2020). This standard is substantive because each obligation has direct legal consequences for the validity of the deed (Wibowo et al., 2022).

In the credit process of Rural Credit Bank, which consists of marketing, pre-committee, field visits, 5C analysis, committee decisions, and implementation, a notary is only involved at the implementation stage after the credit has been approved and the mortgage value has been determined. This position places the notary at a critical moment, connecting financial decisions with legal instruments, ensuring the overall functioning of the credit guarantee system.

3. Six Stages of Mortgage Deed Creation and Data Triangulation

The role performance of the notary and LDO in the collaborative practice with Rural Credit Bank of Saraswati Ekabumi Corporation consists of six stages that are carried out consistently. The first stage is the collection and examination of documents, including original certificates, ID cards, family cards, marriage certificates, and copies of credit agreements. If the mortgage holder is a husband and wife without a separation of assets agreement, both are required to sign a mortgage deed to protect their joint rights in accordance with Articles 35 and 36 of Law Number 1 of 1974 concerning Marriage.

The second stage is to check the certificate at the Land Office to ensure the land is not in dispute, has not been burdened with other mortgages, is still in the name of the owner, and is not in confiscation or blocking status. This checking mechanism serves as a gatekeeper mechanism that ensures the collateral object is free from legal defects before the deed is made (Komala & Kasih, 2020).

The third stage is the preparation of the mortgage deed according to the format of the Head of Land Office Regulation Number 8 of 2012, which contains the identities of the parties, the debt value and the mortgage value, a description of the object, and a clause prohibiting transfer without the consent of the mortgage holder.

The fourth stage is the signing of the mortgage deed in the presence of the parties and two witnesses, accompanied by the reading of the deed as an implementation of the requirements for an authentic deed according to Article 1868 of the Civil Code.

The fifth stage is the making of a copy of the mortgage deed, which has the power of proof equivalent to any other authentic deed.

The sixth, and the last, stage is the registration of the mortgage deed to the Land Office, which can be done electronically through a system based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of 2020. This stage is the most crucial because the Mortgage Right only emerge on the date the Mortgage Right land deed is issued, while also fulfilling the principle of publicity, which is an absolute condition for the validity of property rights (Santoso, 2009; Parinduri, 2022).

To ensure the six-step procedure was not an individual practice, the study triangulated by interviewing Imam Mashuri, a notary from Gianyar. The results of the interview showed complete compliance: certificate verification, deed preparation according to bank orders, signing, copying, and registration with the Land Office were carried out identically. Mashuri also emphasized that there is no difference in mortgage deed procedures for rural credit bank loans compared to commercial banks, thus making professional standards apply uniformly regardless of the scale of the financial institution. This cross-regional consistency demonstrates that the role of the rural credit bank that makes a partner with notaries is institutionalized (Angraeni & Marwanto, 2020).

4. Normative and Practical Roles of Notaries and Land Deed Officials in Two Foreclosed Collateral Mechanism Cases

The core of the Role Theory is the idea that there is a distinction between role expectations and their actual performance. From the

bank's perspective, the President Director stated that the notary in the partner had met expectations by exercising his authority in accordance with regulations, and this expectation had been institutionalized in the bank's standard operational procedure (SOP) and Articles of Association. From a judicial evaluation perspective, as the most authoritative form of role evaluation, the Denpasar District Court, through Decision Number 512/Pdt.G/2021/PN Dps, declared all deeds made by Dr. Alit Puspadma valid and binding, and this decision was upheld by the Denpasar High Court Number 25/PDT/2022/PT DPS (Cahyono, 2022).

The first case involved debtors I Made Puja and Ni Wayan Mirawati with a total credit of IDR 1,170,000,000.00 (one billion one hundred seventy million rupiah) and collateral Ownership Certificate No. 706 in Tumbak Bayuh Village, Mengwi, Badung. After being in a default position since September 2019, the debtors voluntarily signed a Foreclosed Collateral Agreement, a Statement of Collateral Transfer, and a Power of Attorney to Sell, and then the collateral was sold through Deed of Sale and Purchase Number 06 of 2021. The debtors then filed a lawsuit alleging fraudulent proceedings, but the lawsuit was rejected at two levels of court because the Notary deeds were not successfully demolished. This case demonstrates the realization of repressive legal protection: legal instruments that were originally preventive have shifted their function to become the bank's main weapon in maintaining its position (Khalimi & Alam, 2022).

The second case involved debtor Wayan Purwanta Suta, who had an obligation of Rp1,396,219,359 (one billion three hundred ninety six million rupiah) and was guaranteed by two plots of land, Ownership Certificate No. 4823 and 4824, in Pedungan, South Denpasar. Unlike the first case, the debtor was cooperative, signing a Deed of Foreclosed Assets Agreement and a Deed of Power of Attorney to Sell, and the assets were sold on schedule without any lawsuits. This case demonstrates the success of preventative legal protection because disputes were prevented early through strong legal instruments (Permana, 2023).

A comparison of the two cases shows an important academic finding. Notaries follow the same procedures, with the same deed standards, in the same jurisdiction; the only difference is the debtor's response after the deed is signed. This demonstrates that the notary's role performance is consistent and unaffected by the debtor's characteristics, an indicator of professionalism that is placed above situational considerations. This finding also confirms that the success of legal protection depends not only on the notary but also on the debtor's understanding and acceptance of the legal consequences of the deed they signed (Manuring et al., 2023).

Furthermore, both cases demonstrate that the foreclosed collateral mechanism is only effective if supported by a series of procedurally and correctly executed deeds. In the first case, the debtor's allegation that the foreclosed collateral and sale-purchase process were conducted fraudulently was disproven precisely because each stage of the collateral transfer and transfer of rights was outlined in an authentic, accountable deed. In the second case, the complete absence of any lawsuits indicates that the legal certainty generated by the authentic deed was able to mitigate potential conflicts early on. Thus, these two empirically distinct scenarios ultimately prove the same thesis: the quality of the collateral binding determines the resilience of a bank's legal position, both in litigation and non-litigation (Wulandari, 2024; Prabandari et al., 2021).

5. The Legal Paradox between Private Agreements and Notarial Mortgage Deed

The most significant empirical finding is the dichotomy in the quality of legal instruments at the Rural Credit Bank of Saraswati Ekabumi Corporation. Credit agreements are considered private deeds by the bank itself, while mortgage deeds are considered authentic deeds by a notary and LDO. This dichotomy creates a paradox: *accessoir* agreements (mortgage deeds) have fundamentally higher evidentiary power than the principal agreement (credit agreements).

Based on Article 1866 of the Civil Code, written evidence is divided into authentic deeds and private deeds. Article 1875 of the Civil Code stipulates that private deeds only have full evidentiary force if the signer acknowledges their signature. This provision creates a dependency on the validity of evidence, which becomes a weak point when the signer denies it. Conversely, authentic deeds have full evidentiary force as long as the requirements are met, without requiring an acknowledgement (Budiono, 2007; Gangga & Putra, 2023; Salmah et al., 2026).

Notaries directly involved in the dispute recommended that credit agreements should be done before notaries to prevent similar situations, while notaries who had not experienced disputes considered private deeds sufficient from a cost-effective perspective. Banks acknowledged that the primary reason for using private agreements was cost considerations, which is understandable given the operational limitations of rural banks. Although in the two concrete cases, this risk did not materialize into losses, this paradox remains a legal gap that requires academic and regulatory attention (Aribowo, 2020; Pratama et al., 2022).

6. The Contribution of the Role of Notaries and Land Deed Officials to Banking Prudential Principles

The prudential principle mandated by Article 8, paragraph (1) of the Banking Law should be executed through a 5C analysis, and the collateral aspect is the area directly related to the role of a notary and LDO. Collateral analysis encompasses not only the economic value of the collateral object but also the legal validity of its binding nature, which falls within the exclusive authority of the notary and LDO (Ardiansyah et al., 2021).

The legal significance of a valid Mortgage Right is confirmed by the bank's Standard Operating Procedure (SOP), which refers to the Financial Services Authority Regulation on Rural Credit Banks' Asset Quality. Certified land collateral encumbered with a Mortgage Right is recognized at 80% of its market value in the calculation of the Asset Quality Assessment Allowance, while unencumbered land is only recognized at 60%. This 20% difference directly impacts the provisioning requirement: the higher the recognized collateral value, the more efficient the bank's capital. Therefore, a valid mortgage right not only provides protection in any dispute scenarios but also impacts capital efficiency under normal operating conditions (Kurniawaty et al., 2022).

In the two cases of Rural Credit Bank of Saraswati, the contribution of the notary's role can be considered as clear evidence. In the first case, the power of the mortgage right became the bank's primary weapon in winning the dispute; in the second case, the foreclosed collateral deed and the Deed of Power of Attorney to Sell enabled the smooth marketing of the assets. Both cases demonstrate that the role of the notary and LDO is determinative in the effectiveness of the prudential principle. The

LDO's authority in preparing the mortgage deed ensures that the binding of collateral is carried out according to legal procedures, thus maximally protecting the creditor's rights (Harsono, 2008). Thus, the Role Theory and the Legal Protection Theory complement each other in explaining that the notary and LDO is an instrument of preventive and repressive legal protection in the credit system of Rural Credit Bank.

These findings reinforce the argument that the prudential principle cannot be reduced to a mere economic assessment of collateral value. The legal validity of collateral binding is an equally important dimension, as high-value collateral that is not legally binding will not confer preferential or executorial rights to the bank in the event of default by the debtor. The configuration of preventive protection established by the role of a notary includes three mutually reinforcing elements: a procedural mortgage deed that binds the collateral object as a property right, a Mortgage Certificate with executorial rights pursuant to Articles 6 and 14 of the Mortgage Law, and the perfect evidentiary power of an authentic deed. These three elements make the role of a notary and LDO a structural support to the implementation of the prudential principle in banks (Sjahdeini, 1999; Ardiansyah et al., 2021).

Conclusion

Based on empirical and theoretical analysis, the role of notaries and LDO in supporting the implementation of banking prudential principles at the Rural Credit Bank of Saraswati Ekabumi Corporation can be summarized through four main findings: (1) There is a correspondence between normative and actual roles: Notaries and LDO carry out six procedural stages in accordance with the Mortgage Law, Notarial Law, and the Government Regulation on Land Deed Official. This consistency is confirmed through triangulation, thus proving to be a general pattern, not an individual practice; (2) The notary and LDO act as a gatekeeper of the prudential principle that operationalizes collateral aspects, verifies the validity of collateral objects, and has a direct impact on the recognition of collateral value in calculating bank asset quality; (3) The notary's role performance is consistent across two different foreclosed collateral mechanism scenarios and is not affected by debtor characteristics, as an indicator of professionalism; (4) There is a legal paradox where *accessoir notariil* agreements are stronger in terms of evidence than private principal agreements, thus opening a legal gap that requires regulatory attention. Thus, the role of a notary and LDO is not merely an administrative formality, but rather a preventive and repressive legal protection instrument that is decisive for mitigating credit risk. It is recommended that rural banks consider notarizing credit agreements for large loans to close the evidentiary gap and strengthen debtor education regarding the legal consequences of the deeds they sign in order to mitigate potential disputes early on.

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