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Legal Implications of Unilateral Collateral Takeover by Village Credit Institutions on Debtors' Legal Protection

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Abstract

Introduction: *Village Credit Institutions are community-based financial institutions with unique legal status in Bali, operating outside the jurisdiction of microfinance institutions. Village Credit Institutions when disbursing loans, often face bad loans, which are usually handled through the Blocking Mechanism (Taken Over Collateral). However, Taken Over Collateral is often carried out by the Village Credit Institution itself without the debtor's voluntary consent, which raises serious questions about the validity of the procedure and legal protection for the debtor.*
Purposes of the Research: *This study discusses legal protection for debtors when Taken Over Collateral is applied unilaterally, judging from the principle of good faith, and also examines the legal consequences of such practices on the debtor's legal position.*
Methods of the Research: *This research uses a normative approach with a legislative review, concepts, and historical approaches through the examination of primary, secondary, and tertiary legal materials.*
Results Main Findings of the Research: *The results show that the Collateral Taken Over unilaterally is a violation of the principle of good faith because it was carried out without a valid voluntary surrender deed. The legal consequence is that the takeover has the potential to be null and void from the outset and can be canceled, as well as open up the possibility of lawsuits for unlawful acts. The debtor remains the legal owner of the guarantee until the execution is carried out procedurally and legally valid.*

Keywords: Taken Over Collateral; Village Credit Institution; Principle of Good Faith; Debtor Protection.

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INTRODUCTION

The economy in Indonesia has changed from time to time, so people urgently need financial institutions to help them in economic development while moving the wheels of the economy to meet their needs. Financial institutions are trusted by the public in taking credit facilities in order to meet needs. Article 1 number 1 "Law Number 7 of 1992 concerning Banking jo. Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking jo. Law Number 4 of 2023 concerning the Development and Strengthening of the Financial System ("Banking Law")", explains the definition of banking, namely "everything related to banks, including institutions, business activities, and ways and processes in carrying out their business activities". Article 1 number 2 again defines "as a business entity that collects funds from the community in the form of deposits and distributes them to the community in the form of credit or financing and/or other forms in order to improve the standard of living of the people". That Article 1 number 23 "Collateral is an additional collateral submitted by the Debtor Customer to the bank in the context of providing credit or financing facilities based on Sharia Principles". This provision emphasizes that collateral is not just an administrative formality, but an integral part of the credit security mechanism, with collateral if the debtor defaults, the bank as a creditor has several mechanisms to fulfill the obligations of young debtors, namely by carrying out the execution of the guarantee through an auction process or through sale under the hand with the approval of the guarantor owner.[1]

Building trust on the part of financial institutions to provide credit, the need for guarantees as a risk mitigation instrument is reaffirmed in Article 2 paragraph (1) "Bank Indonesia Decree Number 23/69/Kep/Dir dated February 28, 1991 concerning Credit Guarantee" also emphasizes that banks are not allowed to distribute unsecured loans. The bank's trust in the debtor is not only based on good faith, but also on the existence of legal certainty regarding the debtor's ability to pay off his obligations. Article 1 letter b, which defines collateral as the trust that the bank has in the ability of the debtor to fulfill the obligation to repay the credit in accordance with the provisions that have been agreed upon, was reaffirmed. The bank in providing credit facilities must make a Credit Agreement which contains the[2] regarding "The amount of credit, term, interest on the guarantee, the state of default, the restriction of action (negative covenant), the guarantee insurance; dispute resolution, force majeure; notices and communications, as well as diversions." Taken Collateral is regulated normatively in Bank Indonesia Regulation Number 14/15/PBI/2012) explaining the meaning of Taken Over Collateral which is almost the same, namely, "Taken Over Collateral hereinafter referred to as Taken Over Collateral, is an asset acquired by the Bank, either through auction or outside auction based on voluntary surrender by the collateral owner or based on the power to sell outside the auction of the collateral owner in the event that the debtor does not fulfilling its obligations to the Bank." Conceptually, the construction shows that the Taken Over Collateral as a credit recovery mechanism.[3]

The Collateral process in practice, which is taken over generally begins with the signing of a voluntary collateral delivery agreement by the debtor and/or the owner of the collateral with the bank, so that formally the takeover is based on the principle of freedom of contract. However, the principle of freedom of contract is not an absolute principle, but is subject to the restrictions contained in Article 1320 of the Civil Code regarding the conditions for the validity of the agreement, namely the existence of an agreement, the competence of the parties, certain objects, and halal causes.[4] The juridical legitimacy of the Transferred Collateral is determined not only by the existence of a formal agreement, but also by the fulfilment of the conditions of the validity of the agreement as well as the principles of balance and good faith.

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[1] Siregar, Nur Rizki, and Mohamad Fajri Mekka Putra. "Tinjauan Hukum Kekuatan Eksekutorial Terhadap Permohonan Lelang Eksekusi Hak Tanggungan Atas Debitur Wanprestasi." *Jurnal USM Law Review* 5, no. 1 (2022): 130, https://doi.org/10.26623/julr.v5i1.4872.

[2] Arif Wibowo, "Pertimbangan Hakim atas Adanya Surat Kuasa Jual Menjual Agunan Kredit dalam Perkara Kredit Macet Perkara No. 38/Pdt.G/2019/PN.Skt di Pengadilan Negeri Surakarta", (Skripsi, Universitas Muhammadiyah Surakarta, 2020), 3.

[3] Problematika Agunan Yang Diambil Alih (Agunan Yang Diambil Alih) Bank dan Kontradiksi dalam Pengaturannya, Mahkamah Agung, https://share.google/YlXrNJtGoUaw7LeFs.

[4] Wulandari, and Fitria Ajeng. "Juridical Consequences of Bad Credit Settlement with Foreclosure Collateral Process (Foreclosed Collateral) by Banks Based on the Law on Dependent's Rights." Officium Notary 4, no. 2 (2024): p. 310, https://doi.org/10.20885/JON.vol4.iss2.art7

This problem is becoming increasingly relevant in the context of non-bank financial institutions, especially (Village Credit Institutions) in Bali. Article 1 number 7 "Bali Provincial Regulation Number 3 of 2017 concerning Village Credit Institutions" defines "Village Credit Institutions hereinafter referred to as Village Credit Institutions are financial institutions belonging to Pakraman Village domiciled in the area of Pakraman Village". As an institution born from the Balinese customary law community, all of its business activities are under the guidance of the Customary Village (Pakraman Village). Village Credit Institutions were established for the first time in 1984 which was initiated by the Governor of Bali at that time, which was then formalized juridically for the first time in "Regional Regulation Number 2 of 1988 concerning Village Credit Institutions". The legality of the establishment of Village Credit Institutions in Bali Province began with the "Decree of the Governor of Bali Number 972 of 1984 on November 1, 1984". The dynamics of the regulation then experienced a strengthening of legal status through codification in the "Bali Provincial Regulation Number 8 of 2002 concerning Village Credit Institutions", which was officially promulgated on September 16, 2002 through the Regional Gazette.[5] The dynamics of strengthening the legal status of Village Credit Institutions reached its peak with the issuance of Bali Provincial Regional Regulation Number 3 of 2017 as an effort to provide more comprehensive legal certainty.

Village Credit Institutions as financial institutions under the auspices of Customary Villages, have a crucial function in shaping and managing village financial turnover in an effort to improve the welfare of Customary Villages. Initially, Village Credit Institutions in their position there was still uncertainty whether they were included in the scope of Microfinance Institutions or not, until in 2013 when "Law Number 1 of 2013 concerning Microfinance Institutions" was promulgated, the status of Village Credit Institutions was then specifically separated from Microfinance Institutions as stated in the provisions of Article 39 paragraph (3).[6] Therefore, the Village Credit Institution then has a special status which is an institution that only belongs to the Customary Village by submitting to all rules determined by the Customary Village itself. Village Credit Institutions in the implementation of their main functions, one of the main instruments is credit distribution, where the credit distributed is specifically for the villagers (Krama Desa Adat) itself. In line with the principle of banking prudence, the distribution of credit is always accompanied by the binding of collateral in the form of collateral by following the provisions of the applicable law in Indonesia that regulate collateral.[7]

Village Credit Institutions in providing credit distribution, must be guaranteed to mitigate the existence of bad loans that result in default. An alternative to accelerate the settlement of non-performing loans and restore asset quality is done with Taken Over Collateral. Although the mechanism is seen as a pragmatic step in risk control, its implementation must still be within a legal corridor that ensures certainty, balance, and protection of the rights of debtors so as not to give rise to unilateral takeover practices. The

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[5] Made Eka Agustini, "Peran Lembaga Perkreditan Desa (Lembaga Perkreditan Desa) Dalam Memberikan Pelayanan Pada Masyarakat Desa Legian", *Jurnal Ilmiah Dinamika Sosial* 3, no. 2 (2019): 281, https://doi.org/10.38043/jids.v3i2.2212

[6] Made Dilla Nitya Nirmala & Ni Putu Purwanti, "Status Lembaga Perkreditan Desa Sebagai Institusi Keuangan Desa Adat", *Kertha Semaya: Journal Ilmu Hukum* 6, no. 5 (2018): 3, https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/54065

[7] Ni Made Devi Jayanthi, I Gusti Ngurah Wairocana & I Wayan Wiryawan, "Status Dan Kedudukan Lembaga Perkreditan Desa (Lembaga Perkreditan Desa) Terkait Pengikatan Jaminan Dengan Berlakunya Undang-Undang Nomor 1 Tahun 2013 Tentang Lembaga Keuangan Mikro", *Acta Comitas: Jurnal Hukum Kenotariatan* 2, no. 2, (2017): 202, https://doi.org/10.24843/AC.2017.v02.i02.p04

execution of the collateral object with the Collateral Taken Over scheme in its application strongly emphasizes the principle of voluntariness on the part of the debtor which is a normative derivation of Article 20 paragraph (3) of the Law on the Rights of Dependents and affirmed in Article 1 number 15 of POJK Number 40/POJK.03/2019. However, in practice, there are often problems where creditors unilaterally take over collateral without a valid voluntary surrender deed, thus injuring the principle of good faith in contracting. The practice of unilateral Collateral Takeover is a crucial issue considering the large-scale of the economic distribution of Village Credit Institutions in Bali Province. Based on the 2023 data recording, the distribution of institutions has reached 1,439 units of Village Credit Institutions operating in all Customary Villages with total assets of IDR 33.7 trillion as of December 2024.[8] The overall size of the assets and the breadth of the reach of this institution indicate that the potential loss of debtors due to non-procedural execution of collateral can have an impact on the protection of civil rights of village krama at large. Therefore, the harmonization between the authority of Village Credit Institutions in carrying out Collateral Taken Over based on Article 17 paragraph (1) of Bali Governor's Regulation Number 44 of 2017 and the legal protection of debtors is an urgency that must be examined more deeply to prevent arbitrary actions in settling bad loans.

There are several papers from the preparation of this paper, of course, starting with the search for this writing with a theme that is not much different from the one the author raises. Then the author uses writings from "Fitria Ajeng Wulandari" in 2025 which raises the title "Juridical Consequences of Bad Credit Settlement with the Collateral Process Taken Over (Collateral Taken Over by Banks Based on the Law on Dependent Rights" and written works by "Ni Putu Kompiang Ratna Dewi and A.A. Istri Eka Krisna Yanti" in 2024 which raises the title "The Authority of Village Credit Institutions in the Takeover of Collateral Taken Over through Rights Dependents". Briefly, this writing discusses the takeover of collateral carried out by the Village Credit Institution, especially unilateral takeover without notice to the debtor. In this paper, the focus and differentiator point is the author's discussion related to In this paper, the focal point and differentiator is about the procedural validity and legal protection of the debtor against the execution of Taken Over Collateral carried out unilaterally by the Village Credit Institution.

METHODS OF THE RESEARCH

This study uses a type of normative legal research that examines the synchronization between written legal norms and the practice of collateral takeover by Village Credit Institutions based on the provisions of applicable laws and regulations. The author applies a legislative approach to examine the consistency of the internal rules of the Village Credit Institution, as well as a conceptual approach to dissect the doctrine of debtor protection and the principle of legal certainty in the execution of guarantees. In particular, this research also uses a historical approach to explore the historical values and philosophy of the formation of Village Credit Institutions, in order to understand the background of the birth of the authority of Village Credit Institutions in the customary village order and its relevance to the practice of collateral takeover.

[8] Satu Data Indonesia Provinsi Bali, https://balisatudata.baliprov.go.id

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RESULTS AND DISCUSSION

A. Legal Protection Against Debtors On Unilateral Collateral Acquisition Using The Basis Of Good Faith

Lending is one of the main business areas of Village Credit Institutions. The target of providing loans (credit) by Village Credit Institutions, in accordance with the purpose of its establishment, is given to the village krama and the village institution itself. However, the rules do not limit the provision of loans only limited to *the village krama*, the Village Credit Institution is also given permission to provide loans for other *village krama* but with the provision that there must be cooperation between the Village Credit Institution and the other *Customary Village*. There are many types of credit offered at each Village Credit Institution itself, ranging from business capital loans, investments, to consumptive loans and many more.[9] The types of credit disbursed by each Village Credit Institution are very diverse, depending on the policy of each customary village.

Given the various credit categories provided by Village Credit Institutions in each *Customary Village*, a protection mechanism for non-performing loans is urgently needed. Therefore, every credit application must be accompanied by the inclusion of adequate collateral, which serves as a security instrument to ensure the repayment of debtors' debts, so that in the event of a non-collateral loan, the collateral can be a solution for the Village Credit Institution so that its receivables can be repaid.[10] The mechanism for the execution of collateral regulated in the Governor of Bali Regulation Number 44 of 2017 is the Collateral mechanism that is taken over.

The classification of loans/credits at Village Credit Institutions itself has been regulated in Governor's Regulation Number 44 of 2017 concerning the Implementation Regulation of the Bali Regional Regulation Number 3 of 2017 where the provisions of Article 13 explain that the credit classification is divided into 4 categories, namely: 1) Current, credit is classified as current if there are no arrears in installments, or even if there are arrears but do not exceed 3 periods and have not matured; 2) Less current, credit is determined to be less smooth when there is a payment arrears that have lasted more than 3 periods to a maximum of 6 periods, and have not passed the maturity period; 3) Doubtful, credit is classified as doubtful if the installment arrears occur for 6 periods and/or have reached the maturity period but have not exceeded 6 months; and 4) Bad credit is classified as bad credit if it has exceeded the maturity period of more than 6 (six) months.

The settlement of non-performing loans at Village Credit Institutions generally prioritizes deliberative efforts and customary law approaches, based on the autonomy regulated in the *awig-awig* and *pararem* of their respective customary villages.[11] The provisions of Article 17 paragraph (1) of Governor's Regulation 44 of 2017, the execution of credit guarantees that can be used by Village Credit Institutions is by taking over collateral through the Collateral Taken Over mechanism. Taken Over Collateral is an asset obtained by a financial institution, either from auction procedures or outside the auction, as a consequence of the debtor's

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[9] Agustini, "Peran Lembaga Perkreditan Desa (Lembaga Perkreditan Desa)," 286.

[10] I Wayan Sastrawan, et al., "Peranan Lembaga Pemberdayaan Lembaga Perkreditan Desa (Lembaga Perkreditan Desa) Dalam Penyelesaian Kredit Macet" *Jurnal Preferensi Hukum* 1, no. 2 (2020): 171, https://doi.org/10.22225/jph.1.2.2355.169-174

[11] Ni Made Rat Suratmini, and Ni Kadek Ayu Trisnadewi, "Prosedur Penyelesaian Kredit Macet Pada Lembaga Perkreditan Desa di Desa Bulian, Kecamatan Kubutambahan, Kabupaten Buleleng", *INNOVATIVE: Journal Of Social Science Research* 4, no. 4 (2024): 6, https://doi.org/10.31004/innovative.v4i4.17425

default in fulfilling its obligations.[12] The guarantee execution system with the Taken Over Collateral mechanism takes effect when the credit has been determined in the classification of bad loans, as stipulated in the loan classification based on Governor's Regulation Number 44 of 2017. The implementation of collateral execution with the Taken Over Collateral mechanism is positioned as the ultimum remedium or last resort if credit rescue measures do not yield results. Based on the criteria in Governor's Regulation Number 44 of 2017, this action is taken as an effort to save the institution's assets for failure to fulfill the debtor's obligations that have exceeded the maturity period of more than 6 (six) months. This Taken Over Collateral mechanism does not solely make creditors can directly take over the collateral, between the debtor and the creditor there must first be an agreement to voluntarily surrender the collateral that he pledges. The obligation of a voluntary agreement is a form of honesty of the intention of the parties in exercising their rights and obligations which reflects the principle of good faith.

Good faith based on *Black's Law Dictionary* Described as: "*Honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. An honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.*"[13] From this definition, it can be seen what is meant by good faith, namely: 1) Honest intention, which is an honest goal in every legal action without a hidden motive; 2) Free from suspicious information, ensure and believe that every action taken is free from elements that may cause harm or injustice to other parties; 3) Not taking advantage of oneself, i.e. not taking advantage of legal loopholes for personal gain or taking actions contrary to the principles of justice and conscience of others; 4) Lack of knowledge of legal defects, which is a situation in which a person is clearly unaware of the existence of an element of legal defect in a legal act.

Provisions related to the Principle of Good Faith in the legal system of agreements are regulated in Article 1338 paragraph (1) of the Civil Code "Agreements must be carried out in good faith". The principle of good faith serves as a standard of moral behavior in each stage of the engagement, which in its implementation requires mutual honesty to ensure that the achievements of an agreement do not deviate from the original intentions and objectives of the parties.[14] The implementation of the principle of good faith in settling non-performing loans at Village Credit Institutions is manifested from the absolute obligation that the Collateral Taken Over can only be enforced if there is an agreement from the debtor. The goodwill principle in the Taken Over Collateral mechanism requires creditors to balance the repayment of receivables with the protection of the debtor's rights against the collateralized collateral.[15]

Therefore, in this regard, the principle of absolute voluntariness is necessary as a fulfillment of the free will (vrije wil) of the parties who make the commitment. This principle requires that the consent given by the debtor in submitting the collateral must be pure and

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[12] Riska Fibrianti, "Kedudukan Hukum Objek Jaminan Sertipikat Hak Milik Yang Diambil Alih Kreditor (Agunan Yang Diambil Alih) Sebagai Badan Hukum Dengan Akta De Command" *AKTUALITA* 3, no. 1 (2020): 43. https://doi.org/10.29313/shjih.v18i1.6365

[13] Henry Campbell Black, M. A., *Black's Law Dictionary, 4th Edition*, (West Publishing CO., 1951): 822.

[14] Leilani Alysia Hapsari, and Anang Setiyawan, "Penerapan Asas Itikad Baik dalam Penyelesaian Sengketa Perdata", *Zaaken: Journal of civil and business law* 4, no. 3 (2023): 443-444, https://doi.org/10.22437/zaaken.v4i3.31365

[15] Eliakim Tinambunan, et al., "Perlindungan Hukum Debitur atas Agunan yang Diambil Alih BPR Berdasarkan Asas Kepastian Hukum dan Itikad Baik" *Jurnal Ilmu Hukum* 15, no. 1 (2026): 119. https://doi.org/10.30652/srr3cv72

free from the element of defect in will, so that the agreement must be independent of the element of coercion, both physical and psychological, error, and deception committed by the creditor in order to obtain unilateral profit. The principle of voluntariness in the Taken Over Collateral is a form of real implementation of the principle of good faith in treaty law. This voluntary agreement must be stated in writing in the form of an authentic deed in the form of a Deed of Voluntary Collateral Surrender Agreement with a legally valid mechanism so that legal certainty for the debtor is properly fulfilled without causing losses.[16] In making this deed, the application of the principle of good faith is crucial to ensure that the debtor's agreement is pure. This means that in the context of debtor protection, the delivery of collateral must be carried out objectively and cleanly from elements of coercion, trickery, or the use of mistakes designed to unfairly benefit other parties.[17] Taking over collateral carried out unilaterally with an unclear legal mechanism by the Collateral Taken Over without an agreement with the debtor is a form of denial on the principle of good faith. The absence of free will from the debtor in the process of Taken Over Collateral not only injures the integrity of an agreement, but also has the potential to cancel the validity of the execution of the Taken Over Collateral because it has lost the element of voluntariness that is its main prerequisite.[18]

The Taken Over Collateral Action can not only be requested for cancellation of the Taken Collateral procedure, but can also be classified as an Unlawful Act in accordance with the provisions of Article 1365 of the Civil Code, so that the enforcement of the Taken Over Collateral like this can be requested for the recovery of rights by the debtor through judicial channels. In addition, this also risks resulting in a loss of trust from the customary law community which is the main pillar of the sustainability of the Village Credit Institution's operations.

B. Legal Consequences of Collateral Practices Unilaterally Taken Over by Village Credit Institutions in Bali on the Legal Standing of Debtors

Taken Over Collateral is a legal mechanism carried out by the Bank if the customer experiences bad credit and the customer is unable to repay the loan on time, in the event that the customer is unable to fulfill his obligations according to what has been agreed so that the Bank will take action in the form of executing its guarantee rights with the Taken Over Collateral.[19] The law stipulates the conditions that must be met to carry out this Taken Over Collateral mechanism, namely by announcing in 2 (two) local newspapers and the sale must be made one month after the announcement, and no party denies or feels objection. The transfer process is as stipulated in Article 20 of the Law on Dependent Rights, namely with 2 (two) mechanisms, namely: 1) Auction, or 2) Sale under hand with the approval of the collateral owner.

The implementation of Taken Over Collateral is a mechanism in the final effort to rescue bad loans, there are 2 stages, namely the stage of obtaining Taken Over Collateral and the

[16] Munir Fuady, *Hukum Jaminan Kredit* (Bandung: Citra Aditya Bakti, 2017), 142.
[17] Lusi Intan Puspita, et al., "Peran Notaris Dalam Mekanisme Agunan Yang Diambil Alih (Agunan yang Diambil Alih) Sebagai Alternatif Penyelesaian Kredit Macet" *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 14, no. 1 (2025): 57, https://doi.org/10.28946/rpt.v14i1.4757
[18] Tinambunan, et al., *Op. Cit.* 119.
[19] Muhamad Kevin. "Peran Notaris Terhadap Pengambilalihan Aset Nasabah (Agunan yang Diambil Alih) Dalam Putusan Pengadilan Tinggi Daerah Khusus Ibukota Jakarta Nomor 258/PDT/2020/PT. DKI." *Indonesian Notary* 3, no. 4 (2021): 315, https://scholarhub.ui.ac.id/notary/vol3/iss4/15

stage of settling Taken Collateral. The stage of obtaining the Taken Over Collateral is when the Village Credit Institution and the bad credit debtor enter into agreements that agree that the Village Credit Institution can obtain the Taken Over Collateral so that the Taken Over Collateral can be carried out.[20] The agreements in terms of fulfilling the requirements for the acquisition of Taken Over Collateral are: 1) Voluntary Surrender Agreement: An agreement that agrees that the settlement of bad loans is carried out by handing over collateral from bad credit debtors to the Village Credit Institution voluntarily. In making this deed, the application of the principle of good faith is crucial to ensure that the debtor's agreement is pure. This means that the delivery of collateral must be independent of all forms of physical and psychological coercion, trickery of other parties, and mistakes to obtain unilateral benefits that can harm the debtor. 2) Deed of Power of Attorney: This power of attorney is given to the Village Credit Institution in terms of guaranteeing legal certainty for the Village Credit Institution to directly execute the collateral pledged by the debtor in the event of bad credit, this deed is important for the next process, namely at the stage of settling the Collateral Taken Away. After being given power of attorney by the debtor, the Village Credit Institution can act as a party to make, complete and sign, transfer of rights both due to sale and purchase or relinquishment.[21]

The policy carried out by Village Credit Institutions is indeed slightly different from Bank Institutions in general, settlement for customers, is carried out with full authority from the Customary Village itself, where the authority is contained in the Customary Village itself, whose authority is regulated in Article 24 of Regional Regulation Number 4 of 2019 concerning Bali Customary Villages formulating customary authority including to manage the Village Credit Institution as a form of institution that manages the wealth of the Customary Village itself. In line with the purpose of establishing a Village Credit Institution to empower the economy, especially for the traditional village community. Basically, the settlement of bad loans is by means of sanctions enforcement through village *paruman* to enforce the *awig-awig*.

In line with this description, the practice of collateral takeover by Village Credit Institutions as based on Article 17 of the Bali Governor's Regulation Number 44 of 2017 shows that there is continuity as well as tension between customary authority and national civil law principles. On the one hand, the existence of internal policies that are passed through village villages and supervised by *panureksa* strengthens the social legitimacy of the Taken Over Collateral as an instrument for resolving customary-based bad loans. Based on the provisions of Article 17 of the Bali Governor's Regulation Number 44 of 2017, it is explained that Village Credit Institutions can take over collateral only if the credit is already stuck, so the action is limited and not the first step. After the takeover, the Village Credit Institution is obliged to settle the Collateral Taken Over within a maximum of 6 months, for example by selling the collateral.[22] If it is not completed within that period, then all costs incurred are the responsibility of the Village Credit Institution. The mechanism further emphasizes the provision that Village Credit Institutions are obliged to provide provisions regarding written policies and procedures related to Taken Over Collateral, book write-off,

[20] *Ibid.*
[21] *Ibid.*
[22] Ni Putu Kompiang Ratna Dewi and A.A. Istri Eka Krisna Yanti, "Kewenangan Lembaga Perkreditan Desa dalam Pengambilalihan Agunan yang Diambil Alih melalui Hak Tanggungan," *Jurnal Kertha Semaya* 12, (2024): 2352-2355. https://scholar.google.com/citations?user=FWkSWZYAAAAJ&hl=id

and bill cancellation must obtain approval through the Village *Paruman* and obtain approval from the *Panureksa* who must also be active in terms of supervision, so that every action has a formal basis and customary legitimacy.[23]

Regarding the provisions regarding the procedure for settling Collateral Taken Over by Village Credit Institutions, the regional regulation and the governor's regulation do not regulate in detail about this. However, Article 19 of Bali Governor's Regulation Number 44 of 2017 mandates that provisions related to policies and procedures for Collateral Taken Over are further regulated by the Village Credit Institution and have been approved by *the Village Paruman* and ratified *by Panureksa.* However, in order to create a clear legal basis in the legal system, the preparation *of awig-awig* or *pararem* related to the mechanism of Collateral Taken Over at Village Credit Institutions must be aligned with positive laws that regulate provisions regarding Collateral Taken Away, so that the customary rules are not overruled or declared invalid in the event of a legal dispute in the future.[24] The problem resolution mechanism that uses the traditional village *paruman* actually opens up space for unilateral takeover that does not fully meet the standards of due process of law, especially when the debtor's consent is obtained in economically and socially depressed situations, in this context, the mechanism of Collateral Taken Over that does not go through the execution procedures that have been determined in the Law, such as auctions or executory titles, potentially contrary to the principles of consensuality and protection of weak parties, so that it can be qualified as a form of abuse of circumstances if it is proven that there is an exploitation of the debtor's condition by the Village Credit Institution.[25] Therefore, even though the Collateral Taken Over within the framework of the Village Credit Institution has a normative basis and customary legitimacy, its implementation must still be limited by the principles of justice, balance, and legal certainty so that it does not shift into a practice of collateral takeover that is detrimental to the debtor and has the potential to be legally canceled.

The practice of collateral taken over unilaterally by the Village Credit Institution ultimately shows that the debtor is in a structurally weaker position, because in addition to being bound by a contractual relationship, the debtor is also part of the village customs that are subject to social and customary norms, so that these relationships create *a real* inequality of position (inequality of bargaining power).[26] In such a condition, various fundamental rights of the debtor have the potential to be violated, including the right to a valid execution procedure where the debtor should obtain protection through an auction mechanism or court decision as per the principle of due process of law in the Law on the Rights of Dependents, but in the practice of unilateral Collateral Transfer, the process is often ignored; In addition, the debtor also loses the right to the economic value of the collateral because the assessment and management are carried out unilaterally by the Village Credit Institution without transparency, so that it has the potential to cause losses, no less

[23] I Made Suwitra, I Ketut Selamet, dan Luh Kade Datrini, "Penguatan Kapasitas Lembaga Perkreditan Desa Desa Adat di Bali Melalui Penyuratan Awig-Awig," *Jurnal Hukum Pembangunan* 50, no. 3 (2020): 685–687. https://doi.org/10.21143/jhp.vol50.no3.2585

[24] Dewi and Yanti, "Kewenangan Lembaga Perkreditan Desa Dalam," 2355.

[25] Dewa Putu Adnyana, and I Ketut Sudantra, "Kepastian Hukum mengenai Penjamin Simpanan bagi Nasabah pada Lembaga Perkreditan Desa di Bali," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 4, (2020): 875, https://doi.org/10.24843/JMHU.2020.v09.i04.p14

[26] Fatahillah, and Hasmah Fadhilah, "Perlindungan Hukum Lembaga Perkreditan Desa di Bali Ditinjau dari Undang-Undang Nomor 1 Tahun 2013 Tentang Lembaga Keuangan Mikro," *Jurnal Hukum, Sosial dan Humaniora* 1, no. 3 (2023): 216-217, https://doi.org/10.70193/cendekia.v1i3.28

important, the right to approval as the core of the agreement law is also injured, because the takeover is carried out without a free agreement, which can juridically qualify as an unlawful act.[27] That this condition is increasingly complex due to the existence of legal pluralism between state law and customary law, where Village Credit Institutions tend to prioritize customary-based decisions rather than formal legal certainty, so that the protection of debtors becomes blurred, because the enforcement is different depending on what is agreed upon by the community, even though juridically the position of the debtor remains as the legal owner of the collateral object as long as no legal execution has been carried out, so that the debtor has the right to file a lawsuit with the court based on Article 1365 of the Civil Code and claim compensation if proven to have suffered losses due to the illegal takeover.[28]

CONCLUSION

The practice of collateral taken over unilaterally by the Village Credit Institution is a clear violation of the principle of good faith because it is carried out without a valid voluntary surrender act. The Transferred Collateral Mechanism requires the voluntary consent of the debtor as stated in the authentic deed, free from the social-customary relationship between the village krama and the institution creating an inequality of bargaining position that has the potential to be the debtor's approval does not reflect true free will, so that the agreement can be qualified as defective will. In addition, Taken Over Collateral exercised without the fulfillment of legal procedures results in layered legal consequences: potentially null and void or irreversible seizures; the debtor remains the legal owner of the collateral object until the execution is carried out procedurally; and the debtor has the right to sue for unlawful acts to demand the restoration of rights and compensation for the losses incurred.

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