
Legal Protection for Village Credit Institutions as a Financial Business Entity Exploited to Resolve the Bad Credits in the Customary Village of Kerobokan

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Abstract

The existence of customary rule sanctions in the resolution of the issues of bad credits within village credit institutions in the customary village of Kerobokan has been included as one of banking laws that is legally entitled to receive legal. This research aimed to the positioning of customary law sanctions in resolving bad loans at VCI Kerobokan Customary Village and to know the forms of legal protection for VCI and how are the bad loans of customers from outside the traditional villages in Kerobokan. The method used in this research is normative legal research, namely to conduct library research by reviewing literature and analyzing statutory regulations relating to applicable provisions on VCI. This research found the settlement of the bad credit at the customary village of Kerobokan is manifested into ways. The first through preventive legal efforts, that is to say, the very moment of signing the contracts, the customers are sure to have all their incumbencies. The second is through repressive efforts that must be made on the basis of good faith. The implementation of the civil law is that the form of retribution and customary law from the customary village.

Keywords: Bad Credits; Legal Protection; Village Credit Institutions; Village-Owned Enterprises

I. INTRODUCTION

Bali is one of the provinces that run the wheels of the economy not with the strength of natural resources, but with cultural resources. Like natural resources, culture as an economic resource also requires maintenance. The preservation of Balinese culture as a financial resource is currently entirely borne by the people of Pakraman village. Balinese culture is the spirit and primary capital of its tourism (Putra, 2011). Based on the provisions of Bali Province Regional Regulation No. 4 of 2012, in Article 7 paragraph 1 letter b in the Regional Regulation concerning Village Credit Institutions (from now on referred to as VCI), a VCI provides loans only to village officials, which in other words just to the indigenous inhabitants of Pakraman village. The VCI has emerged as a microfinance institution of superior efficiency. It has almost entirely replaced the former indigenous savings and credit groups that operated at the Banjar level (Seibel, 2010). According to Astawa (2016), Village Credit Institution has the specific characteristic in management which used to customary rules; there are norms, social sanction and rural leader involvement in the selection process and agreement maintenance (Astawa, Sukawati, Triyuni, & Abdi, 2016).

What happened in the real world is with the rapid development of VCI, the credit is not only given to the residents of Pakraman village, but also to the members of other village communities outside Pakraman village. Thus, inconsistencies between the provisions stipulated in the regional regulations and the implementation of credit distribution by VCI emerged. Therefore, a new form of problem arises, namely the absence of sanctions that can be applied to VCI customers from outside the Pakraman village. This is clear because of the *awig-awig* applicability, customary rules governing the lifestyle of

the people of *Pakraman* village, are local in nature; it only has a binding legal force that is limited since the field where it applies limited to the people of *Pakraman* village. In addition, the existence of the application of customary sanctions in urban areas is slowly being displaced and only rural communities still maintain them. As a result, *awig-awig* of customary villages is no longer able to solve problems, such as when bad credits occur to the customers from outside the *Pakraman* village.

The previous research about the sanction of Village Credit Institution has been done by [Arsyad \(2006\)](#), he found that the Balinese social custom, including social values, norms, and sanctions have an essential influence on sustaining the high repayment rate of the VCI. This finding conforms to the revealing that the high repayment rate of the VCI in Gianyar (His object of research) district is influenced by their institutional arrangement that based on custom regulation which includes social norms, sanctions, and involvement of custom village leader in screening process, contractual enforcement of loan (informal institutions) by regulations set up by the Central Bank (formal institutions) and the mechanism of collecting loan repayments applied by the VCI management ([Arsyad, 2006](#)). [Kartika \(2017\)](#) in her research conducted by interviewing LPD managers in Tembuku Subdistrict showed several types of cases that occurred in the LPD of *Pekraman Village* in Tembuku Subdistrict. These causes include the following ([Kartika & Jember, 2017](#)):

- 1) Already do not have a source of income. It is known that the cause of bad credit is that it has no source of income. There are many causes if someone does not have a source of income, among others because of business bankruptcy or not getting a job because there is no order or project.
- 2) Have character problems. The main problem with bad credit at VCI level is the character of the debtor who is indeed undisciplined or indeed does not want to pay his credit.
- 3) Economic impact. Economic impact is a factor which causes a debtor at The VCI cannot afford to repay the loan so it becomes stuck.
- 4) Debtor dies. Death is a problem that often occurs so that the credit becomes bogged down. So this needs to be addressed with life insurance.

[Adigorim](#) in his research found the occurrence of bad credit in *Pekraman Jungut Village LPD* is caused by information caused by adverse selection models and moral hazard models. The existence of hidden information is caused by *awig-awig* or the rules of the game in lending which are not by the rules of other formal financial institutions. *Awig-awig* weaknesses or the rules of the game process from lending in the form of non-obligatory prospective debtors to report the amount of income, the amount of savings, the amount of credit in other financial institutions, and the number of assets needed ([Adigorim, n.d.](#)). Research by [Sudarianingsih in Pekutatan Village \(2014\)](#) found Smooth payment of installments and interest rates that are in the form of credit. The results of interviews were obtained regarding the late payment of installments were only 5 (18.52%) of respondents who were late in paying installments, the remaining 22 (81.48%) never. The respondent will add more credit. This is the way to show that the people who have never been paid off their installments immediately ([Sundarianingsih, 2014](#)).

II. METHOD

The method used in this research is normative legal research, namely to conduct library research by reviewing literature and analyzing statutory regulations relating to applicable provisions on VCI, such as the Republic of Indonesia Law Number 8 of 1999 concerning consumer protection, Bali Province Regional Regulation Number 4 of 2012 concerning Village Credit Institutions (VCI). The approaches to the problem used are the conceptual approach and the legal approach, which require to have a look at the form of applicable legal rules and the extent to which the rule of law applies, especially for legal protection against VCI as a village-owned enterprise in dealing with bad credits.

III. RESULTS AND DISCUSSION

Customary sanctions in the effort to resolve bad credit at the Credit Institution of the Traditional Village of Kerobokan are one type of banking law that is legally obliged to obtain legal protection so that clear legal certainty can be given to VCI customers. To overcome the problems that occur in VCI in the form of bad loans due to high arrears, VCI elder members try to find solutions with certain steps. The solutions can be to provide recommendations to VCI to take procedures for solving problems in loans, to

send warning letters up to three times, to contact the customers personally through administrators and clan leaders. For every customer who does not heed the rules in the procedure of the Customary Village rules, the indigenous peoples' associations hold meetings. They shall invite all the Team of Trustees in the *sangkepan* 'congregation', declare confirmation of the contents of *awig-awig*, recite Prima Loan Note from VCI to all customers, and give sanctions through *Paruman Desa* (Customary Village community deliberation) for the sake of full VCI.

In applying the customary "sanction," the firmness and objectivity of the traditional village instructor (Bendesa) is very necessary, because the application of customary "sanctions" based on the element of nepotism will lead to a crisis in the members' trust in the existence of clan leaders and their applicable *awig-awig* who have been respected and obeyed so far. In line with that, based on the results of the interview on August 1, 2018 with the clan leaders of Kerobokan customary villages, the application of customary sanctions is social sanctions that make the deterrent effect embarrassing for the customers both morally and psychologically because the offenses carried out are broadcast in *paruman* or meetings of all village members.

In addition, in an interview with the head of the credit section dated August 1, 2018, there was obtained that an *LPLPD* (Institution for Empowering the Rural Credit Institutions) as an institution under the *BPD* (Village Development Bank) of Badung, carries out duties and authority as supervisors of VCI activities in each district. These include overseeing the VCI performance every 6 months, fostering the VCI customers in general, and receiving financial reports and activity reports every month.

Talking about the law of guarantee is not free from the attention of the fiduciary guarantee institution or known as *Fiducia Eigendom Overdracht*. *Fiducia Eigendom Overdracht* is the surrender of property rights with trust, which is a guarantee institution that arises from the development of society (Widjaja & Yani, 2001). This fiduciary guarantee institution is regulated in one statutory provision, namely the Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantee and Government Regulation of the Republic of Indonesia Number 86 of 2000 concerning Procedures for Fiduciary Registration and Costs for Making Fiduciary Guarantee Deed. In this case, VCI does not override regulations regarding guarantee law in Indonesia, as stated in Law Number 10 of 1998 concerning Banking. The provision is that VCI in providing credit must have confidence based on an in-depth analysis of the good faith of the customer with the ability to pay to pay off the debt in accordance with what has been agreed upon in the credit agreement. Based on the results of an interview with the head of the Adat Kerobokan VCI credit section on August 1, 2018, each credit agreement that has fulfilled the credit requirements and has been approved by the VCI head must be approved by the clan leaders. Giving credit in small amounts or in large quantities must be accompanied by a guarantee. Therefore, a mandatory guarantee for customers originating inside and outside the Kerobokan traditional village is required if the guarantee given is in the form of immovable objects. Therefore, customers must comply with the provisions of Law Number 4 of 1996 concerning Mortgage Rights. If the collateral used is in the form of moving objects, the customers and VCI must comply with the provisions of Law No. 42 of 1999 concerning Fiduciary Guarantees (Usman, 2009).

Grounded by the efforts of traditional villages in repeating bad credit at the Village Credit Institution with the imposition of customary "sanctions", it would be wise if before traditional "sanctions" are given, an understanding of the reasons for the occurrence of bad credit must be given. This is because the emergence of bad loans is not only caused by negligence and ignorance of customers but also because of negligence of the management, which has an impact on the emergence of a crisis of public trust in the Village Credit Institution. Therefore, bad credit will be handled well if it starts by eliminating the cause. For this reason, honesty and cleanliness in providing services to Village Credit Institutions administrators determine the customer's concern. In addition, the provision of customary "sanctions" also needs to be based on a truly objective conceptual approach to the objectives in accordance with the mission of the Village Credit Institution. It is intended that customary sanctions are the last solution, which acts as the last effective remedy (*ultimum remedium*). To show consistency in the imposition of customary "sanctions", the clan leaders must be clear and open. Therefore, the creation of a legal culture in the sense of legal obedience should start from the top. Another thing that cannot be released is the support of all components of society, so that the indifferent attitude of community members needs to be eliminated by cultivating a sense of belonging and sense of responsibility towards the Village Credit

Institution as one of the village's assets. Personal attitude of incompatibility should not be brought about in solving problems in traditional villages. The consistency of customary "sanctions" in their implementation must also be considered so as not to cause confusion to community members. Therefore, socialization and clarification is needed if there are found irregularities and protests from residents. The imposition of customary sanctions should be carried out proportionally so as not to give the appearance of human rights violations.

Given the alignment between the customary "sanctions" function and the purpose of punishment in the 1993 Criminal Code Draft, the implementation of multiple sanctions against the same case should be avoided so that fragmentation does not arise in the Criminal Justice System process. In addition, integrated cooperation between formal law enforcement officers and informal law enforcement in traditional villages is deemed necessary to be developed. It is noted that the occurrence of violations of customary law has the consequence of the need for customary "sanctions", regardless of whether the violation of customary law is comparable or not in the Criminal Code. However the role of traditional preachers cannot be ignored in seeking clarity. This scrutiny needs to be carried out through formal justice channels to ensure the fulfillment of a sense of justice for the community where the decision will be enforced. In addition, the renewal of criminal law that will be carried out is expected to empower traditional villages in Bali. Thus, Balinese customary law can really get a place in the criminal law system that will be formed in an effort to meet the demands for a sense of certainty and justice for the Balinese people.

In an effort to provide protection for victims with substitute criminal penalties as referred to in Article 89 *jo*. Article 90 of the 1993 Criminal Code Draft, it seems that the criminal provisions to replace fines for compensation (category I) which are determined in a limited manner in Article 73 cannot be said to have protected victims as in the case of bad credit Village Credit Institutions. Therefore, these rules need to be reviewed.

IV. CONCLUSION

VCI is a Village Credit Institution which is a savings and loan business entity owned by a traditional village. Therefore, at the beginning of the credit agreement, the rules that bind both parties, the creditors and customers, must be made and determined according to the *awig-awig* applicable in the traditional village. In addition, the agreement making must be based on recommendations from the clan leaders and their consents. If bad credit occurs, the problem can be solved in the *paruman* of the village by imposing customary "sanctions" as happened in the Kerobokan Traditional Village. The provision of customary "sanctions" is part of the power in resolving any violations or disputes in its territory, because of its original autonomy, namely in an effort to provide legal protection for one of its assets, namely VCI as a victim. Thus the "sanctions" that are stipulated in *awig-awig* basically have the potential to overcome VCI bad credits in the Kerobokan traditional village. Unfortunately, in reality VCI customers have not responded to this potential in full. With the provision of multiple sanctions in the case of bad credit in VCI, customary "sanctions" are social sanctions in the form of broadcasting in the village *paruman*. In addition, other sanctions are in the form of dismissal from membership in traditional village community groups (*krama*). Then, civil sanctions are also given. If an offense occurs related to criminal acts, imprisonment sanctions are given through formal justice channels to create deterrent effects. Every VCI customer who comes from outside the Kerobokan traditional village and who experiences bad credit but does not carry out obligations as stated in the credit agreement, sanctions in the form of confiscation of collateral must be applied. The guarantee in question is a guarantee that is bound by a fiduciary guarantee for movable objects and the imposition of mortgages for immovable property.

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