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Legal Liability of Notaries in Bad Credit Disputes through the Foreclosed Collateral Mechanism

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Abstract.

This study examines the legal responsibilities of Notaries in disputes arising from the settlement of non-performing loans (NPLs) through voluntary Foreclosed Collateral mechanisms within Rural Credit Banks (RCBs) in Indonesia. This article employs an empirical legal method by using qualitative data obtained through structured interviews with key practitioners, namely a senior executive in RCBs and a practicing Notary/Land Deed Official, to analyse the statutory framework and judicial reasoning in the civil and criminal disputes arising from the case of *I Made Puja v. RCBs Saraswati Ekabumi* in Denpasar District Court Verdict No. 512/Pdt.G/2021/PN Dps. The findings demonstrate that the ratification of voluntary collateral transfer deeds and subsequent sale and purchase deeds by a Notary plays a decisive role in judicial assessments of legal certainty, consensual intent, and the absence of coercion. The study finds that courts attribute substantial evidentiary value to authentic deeds prepared by Notaries, particularly in determining the voluntariness and legality of Foreclosed Collateral transactions, thereby undermining debtor claims of procedural irregularities. Although Notaries are formally required to maintain neutrality, their institutional position as public officials places them at the center of legitimizing creditor asset recovery processes conducted through voluntary foreclosure. The legal certainty generated by notarial acts effectively protects both financial institutions and Notaries from post-execution disputes, provided that the applicable procedural requirements are fulfilled. This study underscores the need for more straightforward regulatory guidelines to strengthen notarial impartiality in practice and ensure balanced legal protection for both creditors and debtors in voluntary foreclosure mechanisms.

Keywords: Bad Credit, Foreclosed Collateral, Legal Certainty, Notary.

1 Introduction

The banking sector plays a crucial intermediary role in supporting national economic development. However, this role inherently exposes financial institutions to the risk of non-performing loans (NPLs). For rural banks, NPLs pose a serious threat to institutional stability and financial performance, particularly given their much more limited capital structure compared to commercial banks (Fairuz et al., 2023). Indonesian banking regulations require the application of the principle of prudence through an assessment of five aspects (5Cs): character, capacity, capital, condition of the economy, and collateral. However, if credit quality deteriorates and the loan falls into the "non-performing" category, the rural bank is required to implement credit-saving measures in accordance with applicable law (Hamonangan, 2020).

One of the settlement mechanisms is Foreclosed Collateral, which involves the bank taking over collateral through an auction or the debtor's voluntary surrender to expedite the settlement of NPLs and improve the bank's health indicators. The implementation of the Foreclosed Collateral mechanism requires strict compliance with the Financial Services Authority (FSA) provisions. It must be formalized by an authentic deed drawn up by a Notary or a Land Deed Official (LDO). Through instruments such as voluntary surrender deeds, power



of attorney to sell, and sale and purchase deeds, Notaries provide legal certainty and evidentiary support for the transfer of rights to collateral (Puspita, 2025).

However, even though foreclosed collateral is designed as a mechanism for expeditious loan settlement and provides legal certainty, disputes often arise after the process has been formalized by a notary. One prominent example is the case of *I Made Puja v. Rural Bank of Saraswati Ekabumi* in the Denpasar District Court Verdict No. 512/Pdt.G/2021/PN Dps, where the foreclosed collateral, which was voluntarily entered into and evidenced by an authentic deed, was then challenged by the debtor in a civil suit alleging an unlawful act. The court ultimately upheld the validity of the foreclosed collateral. It dismissed the lawsuit, while the debtor was subsequently convicted of unlawfully occupying the collateral after it was transferred to a third party. This case demonstrates that post-foreclosed collateral disputes can persist even when the entire process has been documented in an authentic document intended to provide legal certainty.

The recurrence of such disputes raises important issues regarding the limits of a Notary's professional liability. If the Foreclosed Collateral process that has been legalized by a Notary results in a civil or criminal dispute, the Notary's liability becomes crucial to determine. Several previous studies generally discuss the collateral execution mechanism and the Notary's procedural role. However, there has been limited research on how the Notary's legalization of Foreclosed Collateral affects the attribution of legal responsibility in disputes that arise after execution. Therefore, this study aims to fill this gap by analyzing the Notary's role in voluntarily formalizing Foreclosed Collateral and assessing how this action impacts creditor protection and potential legal liability in post-execution disputes.

2 Method

This study employs an empirical socio-legal research method by examining the role and legal responsibilities of Notaries in the implementation of voluntary foreclosed collateral mechanisms through the process of interviews with key practitioners, namely a senior executive in RCBs and a practicing Notary/Land Deed Official's responsibility for drafting the voluntary collateral transfer deeds and related legal instruments. These interviews are designed to capture the practical implementation of the foreclosed collateral mechanism. All collected data are analyzed using qualitative legal analysis. This approach enables a comprehensive examination of how legal responsibility is allocated among debtors, creditors, and Notary/Land Deed Official within the framework of voluntary foreclosed collateral mechanisms.

3 Result and Discussion

The resolution of problem loans through the Foreclosed Collateral mechanism lies at the intersection of banking risk management principles and the professional responsibilities of Notaries. This section outlines research findings based on normative analysis and empirical support from the voluntary implementation of the Foreclosed Collateral mechanism in the case of *I Made Puja v. Rural Bank of Saraswati Ekabumi*, as has been written in Judge's Verdict No.512/Pdt.G/2021/PN Dps. The discussion focuses on the role of Notaries, the legal issues that arise, and their relevance to the theoretical framework used.



3.1 Judicial Recognition of Voluntary Foreclosed Collateral Mechanism and the Evidentiary Value of Notarial Deeds

In the case of *I Made Puja v. RCBs Saraswati Ekabumi*, the court placed decisive reliance on authentic deeds prepared by the Notary in determining the legality of the voluntary foreclosed collateral mechanism. The court emphasized that the Voluntary Collateral Transfer Deed and the Power of Attorney to Sell, both executed before a Notary, constituted authentic instruments with full evidentiary force under Indonesian civil law. As such, these deeds were presumed to accurately reflect the will and consent of the parties, unless proven otherwise by legally valid counter-evidence, as provided in Article 1868 of the Indonesian Civil Code (*Burgerlijk Wetboek*).

The court explicitly rejected the debtor's claim that the foreclosed collateral process was conducted without consent or involved coercion. In its reasoning, the court underlined that the debtor's signature before a Notary, accompanied by the formal reading and explanation of the deed, fulfilled the requirements of consent and legal awareness. This finding aligns with the doctrinal position that authentic deeds possess perfect evidentiary value (*volledig bewijskracht*), encompassing formal, material, and outward evidentiary strength (Subekti, 2008).

In practice, the Notary plays a role from the initial stage through the preparation of credit agreements and Deeds of Granting Mortgage Rights, which provide preferential status and executorial rights to the bank (Asya et al., 2021). In the voluntary implementation of the Foreclosed Collateral mechanism, the Notary then validates the Deed of Voluntary Transfer of Collateral and issues a Power of Attorney to sell when the sale is conducted outside of the auction mechanism. When the collateral is sold to a third party, the Notary issues the Deed of Sale and Purchase so that the transfer of land rights obtains complete legitimacy in accordance with land regulations. In addition to ensuring that formal and material aspects are met, the Notary is also required to provide adequate explanations to the parties, especially the debtor. In the Foreclosed Collateral mechanism, these explanations include the meaning of voluntary transfer, the legal consequences of losing rights to collateral, and the understanding that the bank is authorized to sell assets without going through protection procedures, as in a public auction (Hasibuan, 2020). The obligation to provide legal advice is part of the principle of caution and protection for the parties to prevent misperceptions that could potentially become disputes in the future.

Notaries are also responsible for ensuring that all provisions regarding the form and procedures for the issuance of authentic deeds are complied with, as stipulated in Article 1868 of the Civil Code and Article 16 of Law Number 30 of 2004 concerning the Position of Notary. In the case of *I Made Puja*, the court emphasized that the validity of the Foreclosed Collateral process depends on the fulfillment of these formal aspects, including recording the debtor's approval, signing the Power of Attorney to Sell, and issuing a certificate of settlement. The notary's procedural compliance was a key factor in recognizing the Foreclosed Collateral in this case as valid and having full evidentiary power, so that the court rejected the debtor's lawsuit against the process.

From an empirical standpoint, the interview with the Notary confirmed that the voluntary nature of the foreclosed collateral transaction was ensured through procedural safeguards, including verification of the parties' identities, clarification of legal consequences, and explicit confirmation of consent prior to execution. These practices reinforce the judicial assumption



that notarial acts serve as a key mechanism for transforming private agreements into legally enforceable instruments.

3.2 Judicial Interpretation of Notarial Neutrality and Legal Responsibility

A significant finding of this study concerns the court's interpretation of the principle of notarial neutrality. Based on the Denpasar District Court Verdict No. 512/Pdt.G/2021/PN Dps, although the debtor alleged collusion between the bank, the purchaser, and the Notary, the court found no evidence indicating that the Notary exceeded his statutory authority or acted in bad faith. The court reaffirmed that a Notary's legal responsibility is primarily limited to ensuring the formal and material validity of the deed, rather than guaranteeing the economic fairness of the transaction.

This judicial position reflects the statutory framework of the Notary Office Act, which mandates that Notaries act impartially while recognizing that the substantive truth of statements made by appearing parties remains their own responsibility. The empirical findings corroborate this interpretation. The interviewed Notary stated that neutrality is operationalized through equal procedural treatment of all parties, rather than through substantive intervention in contractual negotiations or valuation of collateral.

The findings thus indicate that, in practice, notarial neutrality does not imply passive detachment but rather procedural objectivity. This interpretation was implicitly endorsed by the court, which refused to extend notarial liability to the subsequent consequences of the foreclosed collateral transaction once formal legality had been satisfied.

3.3 Foreclosed Collateral Mechanism as a Consensual Mechanism Distinct from Mandatory Execution

Another important finding concerns the court's distinction between the voluntary foreclosure mechanism and the mandatory collateral execution under the mortgage law. The debtor argued that the absence of public auction announcements rendered the transaction unlawful. However, the court rejected this argument by distinguishing voluntary collateral surrender from compulsory execution procedures. According to the court, foreclosed collateral obtained through a voluntary agreement and supported by a valid power of attorney does not require compliance with the auction formalities applicable to forced execution.

This interpretation was reinforced by empirical data from an interview with a senior executive of RCBs, Saraswati Ekabumi, which revealed that foreclosed collateral is implemented as a last-resort, consensual mechanism following unsuccessful restructuring efforts. The bank emphasized that the voluntary foreclosure collateral mechanism is designed to minimize conflict and litigation risk, provided that the debtor's consent is clearly documented through notarial instruments.

The convergence between judicial reasoning and empirical practice illustrates how the foreclosed collateral mechanism functions as a hybrid mechanism formally grounded in private agreement yet carrying significant public legal consequences through notarial authentication.

3.4 Protection of Good Faith Purchasers and Post-Execution Legal Certainty

The findings further show that the court afforded strong protection to the subsequent purchaser of the collateral, classifying the buyer as a good-faith purchaser entitled to legal protection. This protection was directly linked to the validity of the notarial deeds underlying



the transaction. Once the court affirmed the legality of the foreclosed collateral mechanism and the Power of Attorney to Sell, the subsequent Sale and Purchase Deed executed before the Notary/Land Deed Official was deemed lawful and binding.

The court's reliance on notarial acts to establish legal certainty demonstrates the central role of Notaries in stabilizing post-execution property relations. Empirical findings confirm that both banks and Notaries perceive authentic deeds as a critical shield against future disputes, particularly when debtors later challenge the transaction after defaulting on their obligations.

3.5 Empirical Synthesis: Distribution of Legal Responsibility

Analysis based on the theory of legal certainty shows that authentic deeds prepared by notaries are the primary instrument in realizing predictability and consistency in the application of law. The Civil Code treats authentic deeds as perfect evidence (Taliwongso, 2022), making the existence of the voluntary transfer deed and the Power of Attorney to Sell the determining factors in the *I Made Puja* case. The court relied on the authenticity of the deed to reject the debtor's procedural irregularity argument, thereby demonstrating that the involvement of a Notary is a key element in establishing legal certainty in the Foreclosed Collateral mechanism.

From the perspective of legal liability theory, a Notary can only be held liable if he neglects the obligations legally imposed on him. The notary's responsibilities are procedural, namely ensuring the legality of the document, the competence of the parties, and the existence of a valid agreement, free of flaws in the will (Putri, 2022). In the case of *I Made Puja*, the subsequent dispute regarding the criminal violation of land encroachment shifted to the new owner, not the notary or the rural bank. This aligns with the principle that a notary is not responsible for the substance of the civil relationship between the parties, so long as they carry out their duties in accordance with procedure. This responsibility arises only if the notary commits an ethical violation or acts that render the deed inauthentic (Anwar, 2021), as seen in the precedent of *Sahat Tumanggor*.

Based on the theory of professional ethics, there is an inherent tension between the demands of bank operational efficiency and the notary's obligation to remain neutral (Irhamma et al., 2025). The use of standard bank agreements requires notaries to exercise independent judgment rather than simply following the creditor's instructions. Professional ethics requires notaries to maintain professional distance, reject unlawful instructions, and ensure informed consent, especially in high-value transactions such as the Foreclosed Collateral mechanism. Thus, these three theories collectively demonstrate that legal certainty, ethical independence, and the implementation of professional responsibility are the primary foundations for determining the validity and minimizing the risk of disputes in the Foreclosed Collateral mechanism.

4 Conclusion

By referring to the case of *I Made Puja v. RCBs Saraswati Ekabumi* in Denpasar District Court Verdict No. 512/Pdt.G/2021/PN Dps, the research concludes that notarial acts function as a decisive bridge between private contractual arrangements and their public legal consequences. Judicial assessments of notarial responsibility remain firmly anchored in a procedural conception of neutrality. Courts do not extend notarial liability to the substantive economic aspects of foreclosed collateral transactions, such as collateral valuation or post-transfer consequences, so long as formal and material requirements are satisfied.



From the interview with RCB's senior executives, including Saraswati Ekabumi, the study reveals a convergence between judicial reasoning and professional practice. Both the banking institution and the Notary involved in the foreclosed collateral process emphasized the importance of consent, documentation, and procedural safeguards in mitigating post-execution disputes. This convergence explains why courts tend to uphold foreclosed collateral transactions supported by authentic deeds, even when debtors subsequently allege coercion or procedural irregularities. Legal certainty, once generated through notarial authentication, is treated as a stabilizing principle that courts are reluctant to unsettle. Although Notaries are formally neutral public officials, their institutional role places them at the center of creditor-led asset recovery processes. The findings suggest that disputes involving Notaries are less about formal illegality and more about expectations of substantive protection that exceed the scope of notarial authority under existing law.

Thus, strengthening regulatory clarity regarding the scope and limits of notarial responsibility is essential. More straightforward guidelines on the extent of explanatory duties, documentation standards for voluntary consent, and procedural safeguards in foreclosed collateral transactions would not only reinforce notarial impartiality in practice but also reduce the likelihood of post-execution litigation. Such regulatory refinement would contribute to a more balanced system of legal protection, ensuring that legal certainty operates not merely as a shield for creditors and Notaries but also as a transparent and comprehensible framework for debtors.

References

- Anwar, D. (2021). Tanggung Jawab Hukum Notaris Rekanan Perbankan yang Tidak Menyelesaikan Akta yang Telah Dibuatnya. *Jurnal Ilmu Hukum Prima*, 4(1), 1–17. <https://doi.org/10.34012/jihap.v4i1.1633>
- Asya, A. S., Badriyah, S., & Prananda, R. (2021). Pelaksanaan Perjanjian Kredit dengan Jaminan Tanah dan Bangunan Diikat APHT di PT Bank Sinarmas BSD. *Diponegoro Law Journal*, 10(2), 288-303. <https://doi.org/10.14710/dlj.2021.30472>
- Fairuz, A., Wibowo, H., Setyadi, E., & Mudjiyanti, R. (2023). Pengaruh Non-Performing Loans, Keputusan Investasi, dan Umur Perusahaan terhadap Tobin's Q pada Perusahaan SubSektor Perbankan Konvensional. *Ekonika: Jurnal Ekonomi Universitas Kadiri*, 8(1), 163-179.
- Hamonangan. (2020). Analisis Penerapan Prinsip 5C dalam Penyaluran Pembiayaan pada Bank Muamalat KCU Padangsidempuan. *JIMEA: Jurnal Ilmiah MEA (Manajemen, Ekonomi, Akuntansi)*, 4(2), 454–466. <https://doi.org/10.31955/mea.v4i2.518>
- Hasibuan, M. (2020). Pembuatan Kuasa Menjual dalam Penyelesaian Kredit Macet oleh Bank dengan Proses Aset yang Diambil Alih (AYDA). *Recital Review*, 2(1), 117–127.
- Irhamma, S., Syifa, A., & Zaini, F. (2025). Etika dan Kode Etik Jabatan Notaris dalam Pasal 16 Ayat 1 Huruf F di Indonesia. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(2), 1832-1836. <https://doi.org/10.62976/ijjel.v3i2.1180>
- Puspita, L., Emirzon, J., & Elmadiantini. (2025). Peran Notaris dalam Mekanisme Agunan Yang Diambil Alih (AYDA) sebagai Alternatif Penyelesaian Kredit Macet. *Repertorium: Jurnal Magister Ilmu Kenotariatan Fakultas Hukum Universitas Sriwijaya*, 14(1), 53-63. <https://doi.org/10.28946/rpt.v14i1.4757>



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<https://jurnal.unmer.ac.id/index.php/icgss>

- Putri, K., Anwary, I., Haiti, D. (2022). Kewajiban Notaris Melakukan Pembacaan dan Penandatanganan Akta di Depan Semua Pihak secara Bersama-sama. *Notary Law Journal*, 1(2), 157–175.
- Subekti. (2008). *Hukum Pembuktian*, Pradnya Paramita, Jakarta.
- Taliwongso, C. (2022). Kedudukan Akta Otentik Sebagai Alat Bukti dalam Persidangan Perdata Ditinjau dari Pasal 1870 KUHPerdara (Studi Kasus Putusan Nomor 347/Pdt.G/2012/PN.Mdn). *Lex Administratum*, 10(2), 1–15.