

The Implementation of Power of Attorney in the Sale of Non-Notarized Collateral in the Form of Freehold Land for KUPEDES BRI Credit Agreements below 200 Million IDR

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Abstract

This study is motivated by Bank BRI's policy, as declared in Circular Letter Number: SE 29-DIR/KRD/05/2019, regarding KUPEDES, specifically in section VIII concerning collateral. According to the policy, the collateral in the form of freehold land, which should ideally be secured through a Deed of Mortgage, is instead secured using a non-notarized power of attorney to sell the collateral in credit agreements with a limit below 200 million IDR. It raises concerns as it contradicts Article 20 paragraph 2 of the Mortgage Law, which stipulates that the issuance of a non-notarized power of attorney to sell collateral should not be simultaneous with the credit agreement. Hence, this study aims to examine the implementation of non-notarized collateral sale agreements for freehold land in KUPEDES credit agreements below 200 million. This study employs an empirical legal research method with a socio-legal approach. The study location was chosen at Bank BRI Unit in Mataram city, as credit agreements with collateral secured through a power of attorney to sell were found specifically in this bank. The discussion in this study focuses on BRI's considerations for issuing the policy of utilizing a non-notarized power of attorney to sell collateral. One of the principal considerations is that borrowers who borrow below 200 million IDR are predominantly small business owners and clients of Bank BRI. The policy aims to decrease the financial burden on the borrowers and the community as a whole by avoiding the costs associated with the establishment of a Deed of Mortgage. The execution of collateral bound by a non-notarized power of attorney to sell cannot be conducted in accordance with Article 20, paragraph 2 of the Mortgage Law, as the issuance of the attorney power to sell is simultaneous with the credit agreement. In this regard, Bank BRI adopts a more conciliatory approach towards borrowers who are unable to repay their loan. If an amicable settlement cannot be reached, Bank BRI, based on the provisions of the credit agreement, has the option to initiate a simplified legal proceeding before the court.

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1. Introduction

Credit in banking activities is the primary business activity because the largest source of banks' income comes from revenue generated by lending activities, such as interest and fees (Suyatno, 2016). The provision of credit by banks is in line with their specialization in the financial services sector. Based on Article 6 and Article 17 of the Banking Law, banks engage in specific activities, as stated by Suyatno (2016), which include 1). The mobilizing funds from the public in the form of deposits, such as checking accounts, time deposits, savings accounts, or other equivalent forms, 2). Providing credit, and 3). Conducting foreign exchange activities in accordance with the regulations set by the Central Bank.

Furthermore, the credit elements, as defined by Law No. 10 of 1998 on banking, are based on trust, time frame, degree of risk, and performance. The concept of credit also encompasses additional elements within a broader scope, such as organizational and credit management, loan agreement documents, credit administration, collateral, etc., (Djumhana, 2006). In addition to the mentioned elements in a loan agreement, there is also a security factor attached to the credit provided, which comes in the form of collateral. Collateral refers to assets that can be pledged as security to ensure repayment in case the borrower fails to fulfill their obligations. The estimated value of the collateral is typically higher than the amount of credit granted (Badrulzaman, 1983).

According to Article 8, paragraph (1), collateral for granting credit is based on confidence in the ability and capacity of the debtor customer to fulfill their obligations as agreed. To gain such confidence, the bank must conduct a thorough assessment of the debtor customer's integrity, capacity, capital, collateral, and business prospects before granting credit (Rahman, 2010). As for the collateral elements, defined in Article 1, number 23 of Law No. 10 of 1998, Rahman (2010) stated that they include acting as additional security, delivered by the debtor customer to the bank/creditor, and obtaining credit/financing facilities based on *Syariah* principles.

It can be concluded that another definition of collateral, or what is typically known as *Agunan*, is the debtor's owned property that is tied as a means of payment in the event of default by the debtor. Therefore, in Islamic banking, collateral is an additional security delivered by the debtor customer to the bank in the context of providing credit or financing facilities based on *Syariah* principles. According to Ali (2013), collateral in financing serves two functions. First, it serves as a means of debt repayment when there is a default by the debtor, either by deducting or selling the collateral. According to Supriyono (2011), the bank executing the collateral is the last resort if the debtor fails to repay the loan within a specified period. Second, as a result of the first function, collateral also serves as an indicator for determining the amount of financing to be provided to the debtor.

Ownership is the inherent, strongest, and most comprehensive right belongs to individuals over land. Ownership can be used as collateral for debts through the establishment of a mortgage. According to Article 51 of Law No. 5 of 1960 on the Basic Agrarian Principles, a robust institution for securing land rights, known as the mortgage right, has been established. The mortgage right is established to ensure the repayment of the debtor's debts, as by establishing the mortgage right, the bank obtains the right to prioritize the repayment of its receivables over other creditors if the property encumbered by the mortgage right is sold (Sutedi, 2012). The Mortgage Deed is signed after the execution of the principal agreement, which involves the creation of the debt or credit. Its nature as an accessory agreement is heavily reliant on the presence of the principal agreement. Once the debt secured by the mortgage has been fully satisfied, the mortgage right is extinguished (Muljadi and Widjaja, 2005).

Kupedes is one of the flagship credit schemes offered by the BRI Unit to meet community needs. It has proven to be highly beneficial for micro-segment debtors in expanding their businesses and has become a significant source of BRI's credit revenue. Considering the evolving business dynamics and the need to codify the provisions of Kupedes into a single reference for easier understanding and implementation by BRI units, the management has deemed it necessary to reissue comprehensive regulations for Kupedes through Circular Letter No: SE 29-DIR/KRD/05/2019 regarding Kupedes, which encompasses all service provisions related to Kupedes. In this case, Kupedes is a credit agreement issued by BRI. Like any credit agreement, it includes provisions that ensure the debtor's ability and willingness to fulfill their obligations as stipulated. The concept of collateral, also known as "*Agunan*" in Indonesian, is an integral part of the agreement. Collateral refers to the debtor's assets that are pledged as a form of payment in case of default by the debtor. In other words, it is a

guarantee to secure the repayment of the loan. This understanding is emphasized in Circular Letter No: SE 29-DIR/KRD/05/2019 regarding Kupedes, specifically in Chapter VIII, which addresses the topic of collateral. Based on Circular Letter No: SE 29-DIR/KRD/05/2019 regarding Kupedes, there are two types of credit limits, which are above 200 million and limit of 200 million or below 200 million.

In the case of Kupedes credit agreements with a loan amount above 200 million, the collateral is bound by a perfected mortgage deed as stated in the underlying credit agreement. The collateral, in this case, is land ownership rights used as security for debt repayment. It is important to note that when ownership rights are encumbered by a mortgage, an executory certificate of mortgage is issued, which holds enforceability. On the other hand, for Kupedes credit agreements with loan amounts below 200 million, the collateral is not subjected to the same perfected mortgage arrangement as in the agreements with loan amounts above 200 million. In this case, the collateral is not bound by a perfected mortgage deed but rather by a power of attorney in the form of a non-notarial collateral sale agreement. This document serves as the binding instrument for the collateral, which is land ownership rights, replacing the need for a Mortgage Deed for debt repayment purposes.

Referring to Bank Indonesia Regulation No. 14/15/PBI/2012 on the Assessment of the Quality of Commercial Bank Assets, Article 2, paragraph 1 of Bank Indonesia Regulation No. 14/15/PBI/2012 states that the provision of funds by banks must be conducted based on the principle of prudence. Indeed, this will have an impact on the execution of the collateral in the form of land ownership rights in the Kupedes credit agreement below 200 million, which is only documented by a non-notarized power of attorney for selling collateral, instead of a deed of mortgage as an accessory agreement. In this case, for Kupedes credit agreements above 200 million, where the collateral is land ownership rights, it is bound by a Deed of Mortgage as an accessory agreement, which subsequently results in the issuance of a mortgage certificate by the land office.

Hence, the creation of a non-notarized power of attorney for selling collateral, which is equated with an informal sale, should not be made simultaneously with the credit agreement because there must be default or non-performance by the debtor before such an informal sale can be made. It is crucial to note that this contradicts Article 20, Paragraph 2 of the Mortgage Law and may be considered legally invalid or void. Based on the explanation, Bank BRI must bind the collateral, in the form of land ownership rights, using the Deed of Mortgage Grant. By doing so, Bank BRI can adhere to the principle of prudence as stated in Article 2, Paragraph 1 of Bank Indonesia Regulation No. 14/15/PBI/2012 regarding the Assessment of General Banking Asset Quality, which emphasizes the cautious provision of funds through credit agreements to the public. However, in this case, Bank BRI is utilizing a non-notarized power of attorney for selling collateral, which does not hold the same legal weight as the Deed of Mortgage Grant. Consequently, the usage of a non-notarized power of attorney for selling collateral poses risks in the execution process, as its provisions cannot be equated with the collateral that is bound by the Deed of Mortgage Grant, as stipulated in Article 20, Paragraph 1 of the Mortgage Law. Regarding the aforementioned points, the author is interested in proposing the title "Notarized Collateral in the Form of Freehold Land for KUPEDES BRI Credit Agreements below 200 million IDR."

2. Theoretical Framework

2.1 Theory of Legal Certainty

According to Hans Kelsen, the law is a system of norms that impose particular "ought" or "should" aspects by providing rules on what should be done. Norms, whether deliberative or non-free, are the deliberate statements and actions of human beings. Laws, which consist of general rules, serve as guidelines for individuals to interact with others and society. These rules establish boundaries for societal behavior and provide a framework for imposing obligations or taking actions against individuals. The existence of these rules and their enforcement guarantees legal certainty within a society.

According to the Theory of Legal Certainty by Marzuki, it has two meanings. Firstly, it refers to the presence of public rules that aim to drive individuals to understand what actions are permissible and are prohibited. Secondly, it emphasizes the protection provided to individuals concerning the authority of the government, guaranteeing that every individual understands the obligations imposed by the government upon them. This theory strives to establish clarity and predictability in the legal framework, enabling individuals to navigate their rights and responsibilities within society.

Based on the above explanation, this study employed the Theory of Legal Certainty by Marzuki as an analytical instrument in addressing the investigation query. The Theory of Legal Certainty is employed to analyze the underlying reasons for BRI's use of Non-Notarial Power of Attorney as a substitute for the mortgage deed in Kupedes BRI agreements below 200 million.

2.2 Theory of Effectiveness

The concept of legal effectiveness revolves around the capacity of law to regulate and induce compliance within a society. As expounded by Soekanto (2014), legal effectiveness entails a comprehensive analysis of legal norms, assuring they meet the criteria of legal validity, sociological relevance, and philosophical coherence. Moreover, Ali (2013) highlights that law enforcement goes beyond the mere execution of legislation, as it is influenced by five pivotal factors, including the nature of legal principles, the efficacy of law enforcement institutions, the availability of resources and facilities, the responsiveness of the community, and the consequence of cultural values. These interrelated factors collectively determine the efficacy and gauge the authentic effectiveness of law enforcement within a given society.

3. Research Method

This research adopts an empirical legal approach employing the socio-legal research method, focusing on BRI (Bank Rakyat Indonesia) branches in Mataram City. Specifically, the study centers on Airlangga BRI Unit and Cakranegara BRI Unit. The preference of these branches is driven by the prevalence of Kupedes (Kredit Usaha Rakyat) agreements below 200 million rupiahs, where non-notarized Power of Attorney for Selling Collateral is commonly utilized. The significance of this investigation stems from the substantial presence of such agreements within the BRI branches in the city of Mataram, given the significant growth in micro-enterprises facilitated by Kupedes loans from BRI. The data collection employed in conducting this research were interview and literature study as the secondary data. These usage techniques are aimed at gaining the data to answer the research problem. Analysis of the research data employed inductive analysis for its easier to describe. What is meant by inductive data analysis according to the qualitative paradigm is the analysis of specific data from the data sources into units followed by categorization. This method is carried out by concluding that it starts from a specific understanding of cases in the form of a general conclusion.

4. Result and Discussion

This part is particularly focusing on the considerations behind BRI's usage of the non-notarized power of attorney for selling collateral in Kupedes agreements below 200 million. In the banking industry, the extension of credit is a vital process that necessitates a thorough assessment of the debtor's capacity and willingness to repay the loan. This assessment is guided by the principles of prudent credit practices and attentive consideration to safeguard the interests of the bank, debtor clients, and the broader community of depositors. Consequently, formalizing credit provisions through well-structured credit agreements becomes paramount. The provision of credit is a fundamental service offered by banks, serving as a crucial driver of individual prosperity and overall economic progress.

In this regard, BRI, as the credit provider, must adhere to the fundamental principles of banking, with one of the foremost being the principle of prudence when extending credit through the Credit Agreement to debtors. The provision of credit is carried out by an institution known as a Bank, as explicitly stated in Article 1, Number 2 of Law Number 10 of 1998 concerning the Amendment to Law Number 7 of 1992 regarding Banking. The article defines a Bank as a business entity that gathers funds from the public in the deposits form and channels them back into the credit form and other related mechanisms, with the ultimate objective of enhancing the overall well-being of the general populace. However, providing credit to the public entails inherent risks. Therefore, to minimize the potential risks, the bank must assure the debtor's capability to repay the credit as agreed upon before extending the credit. Regarding the confidence in the debtor's capacity, Article 8 paragraph (1) of Law Number 10 of 1998 concerning Banking stipulates: "In providing credit or financing based on Syariah principles, Commercial Banks are obliged to have confidence based on in-depth analysis of the debtor's good faith, capacity, and ability to repay the debt or return the financing as approved."

By the mentioned article, the bank's assurance regarding the debtor's repayment capability serves as a substantial foundation of trust. This concept is further elaborated in the Explanation of Article 8 paragraph (1), emphasizing that before extending credit, the bank must conduct a thorough evaluation of the debtor's integrity, financial capacity, collateral, and business prospects to gain such conviction.

Indeed, adhering to the principle of prudence to mitigate credit risks, it is necessary to guarantee the existence of adequate and secure collateral. However, it's important to note that collateral cannot stand alone as an independent agreement; instead, it functions as an accessory agreement. Therefore, prior to establishing a collateral agreement, a primary contract must be in place, which, in this context, refers to the credit agreement. Although collateral may not always be a mandatory prerequisite for credit provision, it is necessary to minimize risks in the event of debtor default. By proposing collateral, the bank acquires an additional layer of security, functioning as a safeguard against potential risks that may arise if the debtor fails to fulfill their obligations.

Collateral can be categorized into two forms: tangible collateral, which possesses the characteristic of providing priority rights over specific assets and remains attached to the related asset, and personal collateral, which does not grant priority rights over specific assets but is secured by the wealth of an individual through a guarantor. Some types of collateral that are still in practice include Pawn (*Gadai*), Mortgage (*Hak Tanggungan*), Fiduciary Security (*Jaminan Fidusia*), Mortgage on ships and aircraft (*Hipotek atas Kapal laut dan Pesawat Udara*), Guarantee (*Borg*), Indemnity (*Tanggung Menanggung*), and Warranty Agreement (*Perjanjian Garansi*).

For debtors, having collateral permits them to access credit facilities from the bank and provides a confident sense in expanding their businesses. The capital security concept ensures that the credit or capital extended by the creditor to the debtor is received without apprehension or concern regarding repayment. Delivering legal certainty entails providing assurance to the debtor and creditor that their rights and obligations are well-defined and protected under the law. One of the forms of collateral involves land, particularly "Tanah Hak Milik" which represents full ownership rights. To guarantee debts, this type of land

ownership is subjected to a "Hak Tanggungan" or mortgage. Under Article 51 of Law Number 5 of 1960 concerning the Fundamental Agrarian Principles, the concept of a mortgage is established as a robust institutional framework, allowing it to be imposed on land rights. Mortgage serves as a safeguard for specific debt repayments and grants a privileged position to a designated creditor over others. This provision enables banks to have priority in receiving debt repayments compared to other creditors in the event the encumbered property is sold (Sutedi, 2012).

The party granting the mortgage is the property owner who agrees to encumber it with a mortgage for a specific amount to secure a particular obligation or debt. According to Article 8(1) of Law Number 4 of 1996, the grantor of the mortgage can be an individual or a legal entity with the authority to perform legal actions concerning the related mortgaged property. The grantor must possess the legal authority to act regarding the mortgaged property at the time of the mortgage registration. The subject matter of mortgage right regulated in Article 4(1) of the Law on Land Mortgage includes various land rights that can be encumbered with a mortgage, such as *Hak Milik* (Ownership Rights), *Hak Guna Usaha* (Right to Cultivate), *Hak Guna Bangunan* (Right to Build), and *Hak Pakai Atas Tanah Negara* (Right to Use State Land). These rights must be registered as required by the applicable regulations, and they are transferable in nature. The rights not only cover the land itself but also extend to any buildings, plants, and other permanent fixtures associated with the land, becoming the property of the respective land rights holder. The encumbrance of these rights should be explicitly stated in the relevant Land Deed (APHT) (Sutedi, 2012).

Kupedes stands as a prominent credit scheme offered by BRI Units to cater to community needs, effectively assisting micro-segment borrowers in their business expansion and becoming a primary revenue source for BRI's credit operations. Given the dynamic nature of the business landscape and to consolidate Kupedes regulations into a standardized framework for better comprehension and marketing by BRI Units, the management has decided to reissue comprehensive guidelines for Kupedes through Circular Letter Number: SE 29-DIR/KRD/05/2019 concerning Kupedes.

The BRI Kupedes Credit Agreement comprises two credit schemes. The first scheme applies to loan amounts exceeding 200 million, while the second scheme is below 200 million to 200 million, as regulated in Circular Letter Number: SE 29-DIR/KRD/05/2019 concerning Kupedes. In the case of the BRI Kupedes Credit Agreement with loans above 200 million, perfect collateralization has been established through the Deed of Granting Collateral, serving as a guarantee for loan repayment with executory power. However, for BRI Kupedes Credit Agreement with loans below 200 million, perfect collateralization is not required through the Deed of Granting Collateral. Instead, it is substituted with a non-notarial letter of authorization to sell the collateral, acting as an alternative guarantee to the Deed of Granting Collateral for loan repayment.

In the context of the BRI Kupedes Credit Agreement above 200 million, where the agreement serves as the primary deal and includes collateral, it is restrained by the Deed of Granting Mortgage under Article 20, paragraph 2 of the UUHT. This provision allows for the execution of the collateral through a private sale, provided that the collateral object has been previously tied to the mortgage right and both parties mutually acquiesce to proceed with the private sale. However, a further approach is observed in the BRI Kupedes credit below 200 million, where the collateral object is not subjected to the mortgage right but directly involves a non-notarial power of attorney for selling the collateral. This arrangement arises to oppose Article 20, paragraph 2 of the UUHT, which necessitates that, before issuing the non-notarial power of attorney, the collateral object should have been bound by the Deed of Granting Mortgage if the intention is to execute or privately sell the collateral. The agreement for private sale is executed after producing the credit agreement and the Deed of Granting Mortgage, yet, in the case of BRI Kupedes credit below 200 million, both the credit agreement and the non-notarial power of attorney for selling the collateral are established simultaneously.

According to Hans Kelsen's theory of legal certainty, the non-notarial power of attorney for selling collateral, which is formed and signed by the creditor and debtor at the time of credit disbursement or credit agreement signing, conflicts with Article 20, paragraph 2 of the Mortgage Law. It conveys that the non-

notarial power of attorney does not have a legal status or legal certainty based on the Mortgage Law. In this case, the legally recognized power of attorney for selling the collateral, in accordance with the provisions of Article 20, paragraph 2 of the Mortgage Law, is an agreement agreed upon by the creditor and debtor as a means to resolve potential credit defaults by the debtor.

The prevalent issue concerning the non-notarial power of attorney for selling collateral has been observed in various BRI Units. This situation arises due to the nature of Kupedes, a credit product designed for general, individual, and selective purposes, offering reasonable interest rates to foster the development of viable micro-enterprises. Kupedes is exclusively available at BRI Units and denominated in IDR. This research is conducted in Cakranegara BRI Unit and Airlangga BRI Unit based on their significant number of Kupedes loans, as indicated by business development reports within the BRI branch in Mataram City. Additionally, Cakranegara BRI Unit is located in prominent districts of Mataram, known for business activities, resulting in numerous Kupedes credit agreements with collateral using the non-notarial power of attorney. Airlangga BRI, categorized as the highest-Class BRI branch, relishes a central location in Mataram City, which serves as the primary economic hub within the Mataram City BRI branch. The researcher's decision to include Cakranegara BRI Unit and Airlangga BRI Unit is rooted in their extensive client reach beyond the Cakranegara and Mataram regions. Besides, the strategic locations in the city center attract customers who seek credit facilities for their businesses. As such, this research delves into the intricacies and implications of utilizing the non-notarial power of attorney for selling collateral in Kupedes credit agreements at Cakranegara BRI Unit and Airlangga BRI Unit. The goal is to gain comprehensive insights into this prevalent practice and its impact on various parties involved in credit arrangements.

However, there are three departments within the BRI Unit involved in the Kupedes Credit Agreement issuance. Firstly, the credit analysis team is responsible for analyzing on-field facts related to the feasibility of granting Kupedes credit loans. Subsequently, the credit analysts propose their findings to the Head of the BRI Unit, who holds the authority to make decisions regarding BRI Kupedes credit loans and serves as the BRI representative signing the Kupedes Credit Agreement between the debtor and BRI. Following that, the Head of the BRI Unit instructs the Supervisor to execute the Kupedes Credit Agreement. Based on the information delivered above, the following table represents the total BRI Kupedes credit loan amounts:

Table 1. Commercial Loans (Kupedes)

NO.	BRI UNIT	KLAS UNIT	December	April	May
			2019	2020	2020
			IDR	IDR	IDR
1	PEMENANG		52.103.111.625	52.239.349.093	51.969.053.403
2	AIRLANGGA		37.136.609.255	38.554.861.584	38.300.481.671
3	KEBON ROEK		4.895.382.904	42.249.302.273	41.923.153.568
4	KEDIRI		49.431.290.594	53.306.811.824	53.735.286.845
5	PAGESANGAN		39.054.087.908	41.219.001.281	40.907.361.581
6	BAGIK POLAK		34.965.220.675	35.866.947.656	35.987.720.725
AMBM 1			257.585.702.961	263.436.273.711	262.823.057.793
1	SWETA		24.100.708.991	26.116.875.890	26.515.900.002
2	CAKRA		52.876.463.320	56.006.234.791	56.185.966.106
3	TANJUNG		60.673.236.112	62.580.231.422	62.253.671.816
4	AMPENAN		24.605.749.360	28.549.219.672	28.251.805.591
5	SAYANG SAYANG		38.332.975.001	39.734.358.339	39.565.579.831
AMBM 2			200.589.132.784	212.986.920.114	212.772.923.346
1	MANDALIKA		44.291.421.836	43.272.499.652	43.337.466.172
2	BUNG KARNO		28.777.968.600	29.160.882.934	28.898.304.257
3	NARMADA		61.578.718.011	61.714.770.076	61.056.467.945

4	GERUNG	58.734.638.427	59.842.450.855	59.370.942.575
5	GUNUNG SARI	49.203.519.861	48.716.503.307	48.909.396.964
AMBM 3		242.586.266.735	242.707.106.824	241.572.577.912
JUMLAH TOTAL		700.761.102.480	719.130.300.649	717.168.559.051

Data Source: Micro Book of May 2020 Mataram branch office semester 1

Mr. I GST LN Manuangsa, Head of Airlangga BRI Unit, stated in the interview on June 26, 2020, that 80% of the Kupedes loans are below 200 million rupiahs. Consequently, the dominant of 80% of Kupedes loans below 200 million rupiahs are bound to utilize non-notarial power of attorney for collateral, while the remaining 20% of the Kupedes loans are secured with the deed of mortgage.

Given the inherent risks associated with land, it is paramount to ensure its legal strength by being bound through the Deed of Mortgage. According to the result of the interview, BRI's consideration in providing credit loans up to 200 million and below using a non-notarial power of attorney for selling collateral is due to the issuance of the policy in the form of Circular Number: SE 29-DIR/KRD/05/2019 regarding Kupedes. It purposively assists the public as a government bank that supports and provides funding to small businesses without burdening the community. The issuance of this policy is also based on BRI's vast experience in the microbusiness sector. Based on the information provided, the table below displays the number of debtors who borrowed Kupedes credit from BRI:

Table 2. Debtors Kupedes

NO.	BRI UNIT	KLAS UNIT	December	April	May
			2019	2020	2020
			IDR	IDR	IDR
1	PEMENANG	1.010		1.058	1.056
2	AIRLANGGA	716		753	755
3	KEBON ROEK	896		849	849
4	KEDIRI	1.473		1.563	1.572
5	PAGESANGAN	695		720	719
6	BAGIK POLAK	880		895	890
AMBM 1			5.670	5.838	5.841
1	SWETA	606		626	632
2	CAKRA	745		754	756
3	TANJUNG	1.091		1.102	1.097
4	AMPENAN	322		427	423
5	SAYANG SAYANG	967		997	991
AMBM 2			3.731	3.90	3899
1	MANDALIKA	965		949	949
2	BUNG KARNO	545		543	541
3	NARMADA	1.399		1.398	1.389
4	GERUNG	1.509		1.535	1.533
5	GUNUNG SARI	1.007		1.025	1.031
AMBM 3			5.425	5.450	5.443
JUMLAH TOTAL			14.826	15.194	15.183

Data Source: Micro Book of May 2020 Mataram branch office semester 1

Based on the insights acquired from the interview with the BRI Credit Analyst at Airlangga BRI Unit and the data raised in the above table, it is evident that 80% of the Kupedes BRI borrowers secure loans below 200 million rupiahs through the use of non-notarized power of attorney (*Surat Kuasa Menjual Agunan Non-notarial*) as collateral. It indicates that a significant portion of the borrowers prefers Kupedes credit with amounts below 200 million rupiahs, and they find the non-notarized power of attorney as an effective means to secure their loans.

BRI's decision to adopt this approach is driven by the intention to support and ease the financial burden for the community. By employing non-notarized power of attorney, BRI aims to reduce the expenses associated with creating credit agreements and securing collateral. It is worth noting that using a mortgage granting deed might entail higher costs for borrowers, and thus, the adoption of the use of non-notarized power of attorney aligns with BRI's commitment to providing accessible financial solutions for the community, particularly for loans with amounts below 200 million rupiahs. Customers who have loans employing power of attorney to sell non-notarized collateral have previously been fostered by BRI and mostly from small business actors, where BRI also provides education related to coaching on how to do business and how to manage the business to reduce the risk of default. According to BRI's opinion, based on the interview result, BRI has carried out the principle of prudence by fostering customers from a young age so that BRI dares to give customers loans where the collateral object is only bound by employing the attorney power to sell the collateral.

The basis for BRI's decision to provide loans up to 200 million rupiahs or below 200 million rupiahs with land as collateral lies in the credit agreement, which serves as the contract for the debtor-creditor relationship. For loans below 200 million rupiahs, the collateral is secured through a non-notarized power of attorney for selling the collateral, accompanied by a precise authorization to debit the customer's account, granting BRI the authority to make periodic deductions from the customer's account at BRI. This authorization specifies the installment amount to be deducted monthly and remains valid until the loan is fully repaid. Furthermore, BRI requires customers to sign a particular power of attorney, granting Bank Rakyat Indonesia, specifically Airlangga BRI Unit, the right to freeze the customer's savings account throughout the loan term. This measure ensures that the funds in the account are reserved exclusively for fulfilling the loan obligations until the loan is completely settled.

Furthermore, according to the interview with the supervisor from Airlangga BRI Unit, who is authorized to execute the Kupedes BRI loans with collateral secured through a power of attorney for selling the collateral, it was explained that customers are required to sign a statement of submitting the collateral. This statement signifies an agreement to hand over the collateral, which, in this case, is the land under their ownership, to Airlangga BRI Unit as a guarantee for repaying their loan. This process provides the bank with evidence of the collateral's surrender. The acknowledgment of the collateral submission includes a declaration stating that the undersigned representative of Bank Rakyat Indonesia, represented by the head of Airlangga BRI Unit, acknowledges the collateral, as approved by the customer, as a guarantee for the repayment of the loan.

Furthermore, BRI considers both the creditor and debtor in signing the attorney power. In this document, the first party, the debtor, known as the grantor, grants the authority to Airlangga BRI Unit, the lending unit, to conduct necessary investigations and obtain references from reliable sources concerning the identity and business eligibility of the grantor. The bank may also access online information about the debtor or potential debtor's creditworthiness based on attached copies of the electronic ID card. Additionally, the grantor releases any claims, whether civil or criminal, arising from granting this authority and the outcome of the information obtained during the loan application process. Furthermore, the debtor declares that they are solely applying for the loan with the second party (Airlangga BRI Unit) as the preferred lending institution. This process assures transparency and security for both parties involved in the loan transaction.

Therefore, BRI's consideration in using a non-notarized power of attorney for selling the collateral as a binding document for collateral in the form of land ownership is based on Article 20 Paragraph 2 of Law Number 4 of 1996 concerning mortgage rights. According to this provision, a non-notarized power of attorney for selling the collateral does not have legal certainty and legal standing if made concurrently with the Kupedes credit BRI below 200 million. The legally recognized power of attorney to sell, as stated in Law Number 4 of 1996 concerning Mortgage rights, is issued only after a debtor's default, leading to an

agreement between the creditor and debtor to carry out a private sale. Hence, BRI's decision to use a non-notarized power of attorney to sell the collateral as a binding document is based on juridical and non-juridical considerations.

a. Juridical Consideration

From the perspective of juridical considerations, BRI provides loans up to 200 million and below using only a non-notarized power of attorney for selling collateral, as follows:

- 1) The issuance of BRI's policy in the form of Circular Letter Number: SE 29-DIR/KRD/05/2019 concerning Kupedes is the basis for the collateral binding of land with ownership rights using a non-notarized power of attorney for selling the collateral.
- 2) The customers are required to sign a declaration letter stating their agreement to surrender the collateral, which in this case is the ownership rights of the land, to Airlangga BRI Unit, where the collateral serves as security for the repayment of the customer's loan. In this process, the bank also obtains proof of the collateral submission, and the acknowledgment of the collateral receipt states that the undersigned is the representative of Bank Rakyat Indonesia, represented by the head of the Airlangga BRI Unit.
- 3) The power of attorney for debiting the account grants authorization to BRI to debit the customer's account held. This particular power of attorney also specifies the amount that requires to be debited or withdrawn monthly until the loan is fully paid off. The validity of this power of attorney remains in effect until the loan is completely settled.
- 4) The final juridical consideration is the Credit Agreement itself, which is a debt acknowledgment document mutually agreed upon by both parties at the time of signing the Credit Agreement for Kupedes loans below 200 million. This Credit Agreement serves as the basis for issuing the power of attorney for the sale of non-notarized collateral.

b. Non-juridically Consideration

In addition to the juridical considerations, there are non-juridical considerations that BRI, particularly Airlangga BRI Unit, takes into account when issuing the power of attorney for the sale of non-notarized collateral as a means to guarantee the collateral of land rights in Kupedes credit agreements below 200 million. These non-juridical considerations include:

- 1) By utilizing the deed of granting mortgage rights, customers would incur higher costs, prompting BRI to adopt the policy of using the power of attorney for the sale of collateral to reduce the burden on borrowers. BRI's objective is to alleviate the financial burden on the community when taking out credit, as this is a flagship program of BRI's central office. BRI's mission is to serve all segments of society and help alleviate financial burdens. BRI aims to gain a competitive edge in the banking industry by offering low borrowing costs.
- 2) Customers who opt for loans secured by a non-notarized power of attorney for the sale of collateral have usually been nurtured by BRI, with a significant portion consisting of small business owners. BRI provides them with business development and management education to mitigate the risk of default. In case of default, BRI relies on its negotiation expertise and does not rush to execute the collateral; instead, it initiates negotiation proceedings first.
- 3) The issuance of this policy is also based on BRI's extensive experience in the micro-business sector. As a microfinance bank deeply ingrained in the community, BRI's customers originate from small loans that have become a core part of its operations. BRI boasts significant expertise in microcredit compared to other banks, allowing it to confidently introduce the policy on non-notarized powers of attorney for the sale of collateral. Consequently, BRI's customers are less likely to be lured away by other banks due to BRI's strong track record in the micro-business domain.

5. Conclusion

BRI's decision to use non-notarized powers of attorney for selling collateral in Kupedes credit agreements below 200 million is based on several juridical considerations. Firstly, the issuance of BRI's policy in the form of Circular Letter Number: SE 29-DIR/KRD/05/2019 concerning Kupedes serves as the foundation for binding collateral in the form of land with ownership rights using a non-notarized power of attorney for selling the collateral. To proceed with the loan, customers are required to sign a declaration letter confirming their agreement to surrender the collateral, which, in this case, refers to the ownership rights of the land, to BRI's Airlangga Unit. This collateral acts as security for the repayment of the customer's loan. During this process, the bank obtains evidence of the collateral submission, and the acknowledgment of the collateral receipt states that the undersigned is the representative of Bank Rakyat Indonesia, represented by the head of the Airlangga BRI Unit. Furthermore, customers grant BRI the authority to debit their accounts through a power of attorney for debiting the account. This power of attorney specifies the monthly debiting or withdrawal amount until the loan is fully repaid, and its validity remains in effect until the loan is settled. Lastly, the Credit Agreement itself plays a crucial role in this juridical context. The Credit Agreement is a debt acknowledgment document that both parties mutually agree upon at the time of signing the Kupedes Credit Agreement for loans below 200 million. This Credit Agreement serves as the basis for issuing the power of attorney for the sale of non-notarized collateral.

The non-juridical factors influencing BRI's utilization of a non-notarized power of attorney for selling collateral in Kupedes loans below 200 million are grounded in cost-efficiency for customers, a dedicated focus on fostering small business growth through comprehensive guidance, and BRI's extensive experience in the microbusiness sector. These considerations lead to BRI's adoption of this approach, which ultimately benefits both borrowers and the bank by supporting micro businesses and alleviating loan burdens.

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