



Imposition of Mortgage Rights on Land with Customary Property Rights in Suter Traditional Village, Kintamani District, Bangli Regency

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Abstract

The right to use state land, which must be registered according to applicable regulations and is inherently transferable, can also be pledged through a mortgage. In Bangli Regency, indigenous communities practice using customary land as collateral for mortgages. This study aims to examine the mechanisms and legalities involved in encumbering mortgage rights on customary land within Bangli Regency. The research employs a normative legal approach combined with empirical analysis, utilizing both legislative and conceptual frameworks. Data has been gathered from both secondary and primary sources. The conclusion is that mortgage rights on customary land can be secured with the permission of the customary village head, and this process is by existing laws. Based on these findings, it is recommended that traditional community customs establish structured management for traditional institutions. Additionally, the government should develop relevant regulations and legislation concerning customary land rights or land owned by indigenous communities.

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Introduction

In communities governed by customary law, land plays a vital role as it is where these communities live and earn their livelihoods. For customary law communities, customary land holds profound significance, reflecting both identity and social life. It serves not just as a place to reside and cultivate crops, but also as a repository for traditional culture, knowledge, and ancestral heritage. Consequently, the connection to land extends beyond mere private ownership; it encompasses an emotional bond between individuals or communal groups and the land they inhabit.

Indigenous communities are often victims of human economic activities, especially in developing countries like Indonesia. Indonesia, as a pluralistic nation inhabited by many ethnic groups, in its constitution attempts to accommodate the interests of indigenous communities through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states: "The state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law." What is stated in the constitution seems to open the gate to realizing concrete and contextual legal protection for the existence of customary law communities, including control and ownership of customary land^[1].

Furthermore, the recognition and regulation of customary rights are also regulated in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

¹Cahyaningrum, D., Customary Land Management Rights of Indigenous Communities for Investment Interests. State of Law: Building Law for Justice and Prosperity, 12(1), 2022. Pp. 21-39

UUPA emphasizes that the implementation of customary rights and similar rights of indigenous legal communities, as long as they actually exist, must be in such a way that they are in accordance with the National and State interests, which are based on national unity and must not conflict with other higher laws and regulations. The existence of customary land rights spread across various regions in Indonesia risks creating horizontal and vertical conflicts along with the encouragement of increased investment and development in a region. The potential for conflict arises because indigenous communities often experience conflicts of interest with other parties who try to forcibly seize their customary land. Therefore, granting recognition to the customary land of indigenous communities is very important to do ^[2].

Certainty of land rights recognition within customary law communities is crucial because their lives remain deeply connected, culturally and religiously, to the land they inhabit. Therefore, customary law communities have the right to acquire and utilize the land they already control continuously. The rights of customary law communities to land are called mastery rights or customary rights (*beschikkingsrecht*). Most recently, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN) issued Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights (*Permen ATR/KBPN 18/2021*). Through this regulation, customary land belonging to customary law communities can now be granted management rights. This regulation seems to provide hope for customary law communities to obtain legal certainty regarding ownership of their customary land. The granting of Management Rights on customary land is an interesting breakthrough in order to prevent the emergence of conflict and of course in line with efforts to improve the community's economy by creating an investment climate with legal certainty. By allowing the granting of management rights to customary land, customary law communities are expected to be able to develop and manage the potential that exists in their area ^[3].

Article 52 of Law Number 5 of 1960 concerning Agrarian Principles regulates the imposition of sanctions for violations of Article 15 of the Law, which states: "Maintaining land, including increasing its fertility and preventing its damage, is the obligation of every person, legal entity or agency that has a legal relationship with the land, with attention to economically weak parties."

Furthermore, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Kementerian ATR/BPN) issued Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights (*Permen ATR/KBPN 18/2021*). Through this regulation, customary land owned by indigenous communities can now be granted management rights. Article 4 paragraph 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land explains that land rights that can be burdened with mortgage rights are; Ownership Rights, Building Use Rights,

and Cultivation Use Rights, further in paragraph 2 it is explained that;

" In addition to the land rights as referred to in paragraph (1), the Right to Use of State land which according to the applicable provisions must be registered and which by its nature can be transferred can also be burdened with a Mortgage Right. As is practiced by the indigenous people in Bangli district, where the indigenous people in the area make customary land the object of the Mortgage Right."

Based on the background description above, the author formulates two main problems, as follows: 1) What is the mechanism for imposing mortgage rights on customary land in Bangli Regency? and 2) What are the legal consequences of imposing mortgage rights on customary land in Bangli Regency?

Research Methods

This article presents the results of normative-empirical research. Normative-empirical legal research (applied law research) examines how normative legal provisions—such as codifications, statutes, or contracts—are enforced or implemented in specific legal events within society. This implementation in practice is an empirical fact and serves to achieve predetermined goals. The implementation is expected to be flawless when the formulation of the normative legal provisions is clear, precise, and comprehensive.

The method used in the study includes: a) Statute Approach; this approach involves examining all laws and regulations related to the legal issue at hand, in this case, the imposition of mortgage rights on customary rights. Using the statute approach, the author analyzes whether there are conflicts between statutory regulations, ambiguities in norms, or the absence of norms related to the problems studied. b) Conceptual Approach; the researcher employs a conceptual approach, which involves studying views and doctrines developed in legal science that have led to legal concepts, legal ideas, and legal principles relevant to the research problem. c) Sociological Approach; this method focuses on examining social life within society. It provides different perspectives on social phenomena, ensuring that the research is not confined to a single viewpoint or claim of truth. The sociological approach to law analyzes how reactions and interactions occur when the norm system operates within society.

The data collection technique involved interviewing parties involved in the imposition of mortgage rights on customary land, as well as assessing the legality of these mortgages on land, specifically among Central Lombok residents who served as informants. Subsequently, a literature review was conducted to gather legal materials related to the mechanism of imposing mortgage rights on customary land and the legality of such actions. After collecting the data, the author organized it systematically, logically, and by legal standards. The author then conducted a normative legal analysis, beginning with an examination of primary, secondary, and tertiary legal materials, employing both a statutory regulation approach and a conceptual approach. Next, the author carried out a qualitative analysis based on the primary data obtained

²Ibid

³Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. (2021). Regulation of the Minister of Agrarian

Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights.

through direct interviews with respondents and informants. This analysis aimed to find answers and draw conclusions regarding the problems presented.

Discussion

Mechanism for Assigning Mortgage Rights on Customary Land in Suter Traditional Village, Kintamani District, Bangli Regency

Article 1 Number 1 of Law Number 4 of 1996 concerning Mortgage Rights defines mortgage rights as security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, with or without other objects that are an integral part of the land, for the repayment of certain debts, which give priority to certain creditors over other creditors^[4].

Before independence and until the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, known as UUPA, the land law that applied to Indonesia was customary land law; even today, customary land law remains in effect. In customary land law, there is no such thing as a land rights guarantee institution or what is currently known as Mortgage Rights for Land and the Objects on it. It only recognizes transactions involving land rights, both temporary and permanent, such as buying and selling, exchanging, renting, lending and borrowing, pawning, boarding rights, and sharing the results of agricultural land.

Customary land is the authority, according to customary law, held by a customary law community over a specific area that constitutes the environment of its citizens. This authority allows the community to utilize natural resources, including land, within the area for its survival. The community and the resources have a physical and spiritual relationship that has been passed down through generations and remains unbroken between the community and the area^[5].

General Overview of Suter Traditional Village, Kintamani District, Bangli Regency

Bangli Regency is a regency located in the eastern and northern part of the island of Bali. Its capital is in Bangli District. The population of Bangli Regency is 258,721 people, with a growth rate of 1.79% from 2010 to 2020. The area of Bangli Regency is 520.81 km², accounting for 9.25% of the total area of Bali Province. When viewed from the use of land, of the existing area of approximately 2,890 Ha is rice fields, 29,087 Ha is dry land, 9,341 Ha is state forest, 7,719 Ha is plantation land and the remaining 3,044 Ha is other land (roads, rivers, and others)^[6]. Kintamani is a sub-district in Bangli Regency, Bali Province, Indonesia. It is also a natural tourist destination in Bali, Indonesia. Kintamani is largely inhabited by the indigenous Balinese people, the Bali Aga, who mostly live around Mount Batur. The Bali Aga people speak the Bali Aga language. Kintamani sub-district has a population of 112,313. Suter is a village in the Kintamani

sub-district, Bangli Regency, Bali province. Administratively, Suter Village consists of five administrative hamlets (banjar dinas). At the village level, the village head is the village head, while the hamlet and customary hamlet are the village heads (kelian dinas) and customary hamlets (kelian adat)^[7].

a. General Overview of Customary Land in Suter Traditional Village, Kintamani District, Bangli Regency.

Rights are a series of authorities and obligations of a customary law community, related to land located within its territory. As previously described, customary land is the main supporter of the livelihood and life of the community concerned throughout time. These authorities and obligations fall under the realm of civil law, and some fall under the realm of public law. The authorities and obligations in the realm of civil law relate to the joint ownership rights to the land. Meanwhile, in public law, the task of managing, regulating, and leading the allocation, control, use, and maintenance of the land lies with the Customary Head/Customary Elder^[8].

Customary land is the authority, according to customary law, held by a customary law community over a specific area that constitutes the environment of its citizens, where this authority allows the community to take advantage of natural resources, including land, within the area for its survival. The community and the resources in question have a physical and spiritual relationship that has been passed down from generation to generation and is unbroken between the customary law community and the area in question^[9].

In Customary Land Law there are various kinds of land rights, namely ownership rights, group rights, customary rights, and individual land rights^[10]. As the results of research conducted by the author that in the Suter traditional village there is customary land ownership whose certificate is in the form of a certificate of ownership in the name of an individual with the right number 1240 covering an area of 5130 square meters with the measurement letter number 01145/2025 dated January 9, 2025 which is registered in the name of I NENGAH SURATNATA but on the certificate pointer it is explained that the land is jointly owned land of the Suter traditional village, or is the village's father's land. In customary land law there are various kinds of land rights, namely ownership rights, group rights, customary rights, and individual rights to land^[11].

As the results of research conducted by the author, in the Suter Traditional Village there is customary land ownership whose certificate is in the form of a land ownership certificate in the name of an individual with title number 1240 covering an area of 5130 square meters with a measurement letter number 01145/2025 dated January 9, 2025 which is registered in the name of I NENGAH SURATNATA, but on the certificate it is explained that the land is jointly owned by

⁴Purwahid Patrik and Kashadi, *Guarantee Law Revised Edition with Law Number 4 of 1996 concerning Mortgage Rights*, Faculty of Law, Diponegoro University, Semarang, 2006, p. 52.

⁵Homsah, Ali Achmad., *Land Law (Grantors of Rights to State Land) Cerakan I*, Prestasi Pustaka, Yogyakarta, 2002 p. 7

⁶Bangli Regency Government, <https://www.banglikab.go.id/>, accessed on March 14, 2025

⁷Suter Village, <https://suter.desa.id/>, accessed on March 14, 2025

⁸A. Setiady, *Land Law, Guarantee of Basic Agrarian Law for Successful Land Utilization*, Jakarta: Bina Aksara, 1985, p. 88

⁹ H omsah, Ali Achmad, *Land Law (Grantors of Rights to State Land) Cerakan I*, Prestasi Pustaka, Yogyakarta, 2002 p. 7

¹⁰Ridwan, *Land with Former Customary Rights that has not been registered as a collateral object according to the Mortgage Law (UUHT)*, Thesis, Airlangga University, 2006, p. 19

¹¹Ridwan, *Land with Former Customary Rights that has not been registered as a collateral object according to the Mortgage Law (UUHT)*, Thesis, Airlangga University, 2006, p. 19

the Suter Traditional Village, or is the village's father's land. Recognition of customary land as private property is possible. This is because village land, which is controlled individually, 1) is hereditary through inheritance, creating a link between individual and collective ownership. This means that if individual rights are strong, collective rights will weaken, and 2) if individual rights weaken, collective rights will strengthen. The relationship between customary law communities and individual rights is flexible and dynamic. This is what Ter Haar refers to as the Balloon Theory. When it comes to claiming customary land as private land, it often happens 3) because stronger personal rights diminish the position of customary law. As a result, customary community rights may vanish, and the land assumes the status of private ownership. The rights of customary law communities and individual 4) rights must influence each other due to the ongoing cycle of shrinking and expanding, known as *mulurmungkret*. Village land is land given by the traditional village to community members to be managed and utilized for family b. interests and activities in the traditional village. Home yard land or often called *karang paumahan*, is land designated for the construction of residential houses and the construction of *sangah* (family sacred place). Village land managed by the community, in addition to having individual functions, also has a social function as mandated by Agrarian Law No. 5 of 1960. The individual function of village land in traditional villages is seen from its management which is given to community members independently as well as its use is given independent authority to the owner. Its social function, the results of village land are also used to pay contributions that will be used for the interests of traditional ceremonial c. activities. In addition, if the public interest requires the use of village land for roads, cemeteries, hospitals, schools and other public interests, the community is obliged to provide it by receiving compensation from the traditional village in accordance with the land managed^[12].

Based on the results of interviews conducted with the community, there are several rights that the community has in controlling the village land that they manage, namely^[13]:

1. The right to manage village land for agricultural, 1) livestock or plantation purposes.
2. The right to utilize the results obtained from agricultural, livestock or plantation activities carried out on village land that they manage. 2)
3. The right to mortgage village land managed by the village head with the approval of the Suter customary village head. The maximum amount of land that can be mortgaged is half the area of the village land managed by the village head.
4. The right to lease village land managed by the village head with the approval of the Suter customary village head. The maximum amount of land that can be leased is the same as the maximum amount of land that can be mortgaged, namely half the area of the village land managed by the village head.

Apart from the rights given to every member of the community who manages the village father's land, they must also carry out obligations for the continuity and integrity of

the Suter traditional village. The obligations that must be borne by every *krama* who owns village fatherland are^[14]:

Paying contributions for traditional ceremonies, temple construction and other interests carried out by the traditional village.

Carrying out mutual cooperation (*tedun*) which is carried out for the benefit of the traditional village, including participating in *seke* activities created by the traditional village (*seke gong*, *pecalang*, *baris*, *pruguh ebat* and other *seke*).

Paying taxes to the government on the land they manage. This village landholding, like other land, has a tax rate that must be paid by each village land manager, based on the area of land they own.

Comply with the customary law rules that apply in the Suter traditional village, including land laws made by the Suter community through the *sangkepan* process.

Conditions for Assigning Mortgage Rights to Customary Land in Suter Traditional Village

Following are the conditions:

1. Land used as collateral must comply with applicable provisions and be registered in the general register.
2. Land used as collateral must be transferable
3. Land used as collateral must meet the requirements for registration.
4. The encumbrance of mortgage rights must be registered at the Land Office no later than 7 working days after signing the APHT.

Power of attorney imposes mortgage rights on land

Power of Attorney to Charge Mortgage Rights (SKMHT) is letter power used for charge right liability on land. SKMHT is made by a notary or PPAT.

SKMHT Function

1. Charge right liability on undeveloped land certified
2. Represent giver guarantee for carry out loading right liability

Condition Making SKMHT

Own document ownership property, such as IMB, SHM, and PBB

Not loading power for do actions other laws, such as sell, rent, or extend right on land

Not loading power substitution

Mechanism for Assigning Mortgage Rights to Customary Land in Suter Traditional Village

Article 10 Paragraph 3 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land explains that Mortgage Rights on land and objects related to land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, including or not including other objects that are an integral part of the land, for the repayment of certain debts, which give a priority position to certain creditors over other creditors where the Creditor is the party who is in debt in a certain debt-

¹²Ratna Artha Windari, Legal Dilemma of Village Land Certification in Bali (Case Study of Customary Conflict of Village Land in Panglipuran Traditional Village), 2019, p. 212

¹³ AA Wife Ratna Eka Handayani, Interview, March 7, 2025

¹⁴Ratna Artha Windari, Legal Dilemma of Village Land Certification in Bali (Case Study of Customary Conflict of Village Land in Panglipuran Traditional Village), 2019, p. 212

receivable relationship^[15].

The imposition of mortgage rights is preceded by an agreement that gives rise to a debt and receivable legal relationship, which is guaranteed for repayment; this is the main agreement. This is as stated in Article 10 paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights (UUHT) which states that the granting of Mortgage Rights is preceded by a promise to provide Mortgage Rights as a guarantee for the repayment of certain debts, which is stated in and is an integral part of the debt agreement in question. According to the provisions of Article 10 paragraph (2) of the UUHT, the granting of Mortgage Rights must be attended by the Mortgage Right grantor, the Mortgage Right holder and two witnesses, carried out by making a Deed of Granting of Mortgage Rights (APHT) made by the Land Deed Making Officer (PPAT) by applicable laws and regulations. The APHT made by the PPAT is an authentic deed (General Explanation number 7 UUHT).

Article 11 paragraph (1) of the UUHT states the things that must be included in the APHT, namely: a. Name and identity of the grantor and holder of the Mortgage Right; b. The domicile of the parties as referred to in number 1, and if any of them are domiciled outside Indonesia, a preferred domicile in Indonesia must also be stated for them. Clear designation of the debt or debts whose payment is guaranteed by the Mortgage Right and including the name and identity of the debtor concerned; c. The value of the mortgage; d. A clear description of the object of the Mortgage Right. Furthermore, the APHT and the application form for granting the Mortgage Right are registered with the National Land Agency (BPN) through the land registration section for the issuance of the Mortgage Right certificate by the BPN.

Based on the results of research conducted by the author, the imposition of mortgage rights on land customary ownership rights of Suter Traditional Village carried out at the Notary/PPAT Office AA Istri Ratna Eka Handayani, SH, M. Kn, who then explained that the legal action was carried out based on the approval of the Suter Traditional Village Head which was given through Certificate Number 46/DSA.STR/2024^[16], the use of this certificate of approval is a rule that is required in the Suter Village customary rules for the reason of continuing to preserve the existence of the traditional village with the lands it owns according to the obligations (ayathan) attached.

Based on an interview conducted by the author, Notary/PPAT AA Istri Ratna Eka Handayani, SH, M. Kn explained that the mechanism for registering mortgage rights for the land mentioned above is the same as the mechanism for registering mortgage rights in general, which is carried out through several stages, namely^[17]:

aking a Mortgage Deed which is preceded by making a debt and receivables agreement with collateral carried out by the Land Deed Making Officer (PPAT)

urthermore, before being registered with the Land Agency (BPN), the Land Deed Making Officer (PPAT) will first

check the certificate via the website provided by BPN, where the check is carried out with the aim of ensuring that the certificate for the land is not being used as collateral, is not blocked, is not in the process of being confiscated, or there are no disputes related to the land.

he registration process by the Land Office, where in this process the mortgage rights that are imposed will be born.

Legal Consequences of Imposing Mortgage Rights on Customary Land in Bangli Regency

The existence of law in society essentially serves to protect human interests^[18]. Legislation is an effort to provide greater legal certainty within the framework of balanced legal protection for all parties in a legal relationship. This aligns with the concept of the principles of economic law, which encompasses values intended to protect various aspects of human life within broad economic activities, as proposed by Sri Redjeki Hartono^[19]. These principles include the principle of balance of interests, the principle of public oversight, and the principle of state intervention in economic activities.

The regulation of this Mortgage Right is certainly intended to provide legal protection and legal certainty for both the creditor holder of the Mortgage Right and the debtor and the grantor of the Mortgage Right. The importance of the guarantee institution, including this Mortgage Right, is to guarantee the repayment of certain debts. Thus, the creditor will have confidence that the debtor will perform according to the agreement made by the parties. In this regard, it is in line with the opinion of Hasanudin Rahman who stated that the guarantee is a guarantee given by the debtor or a third party to the creditor, because the creditor has an interest in the debtor having to fulfill its obligations in a contract.

In this regard, Kashadi stated that a guarantee is something given to a creditor to create confidence that the debtor will fulfill obligations that can be valued in money that arise from an agreement^[20].

Due to the importance of guarantees in supporting economic development in particular, it is very necessary to have clear regulations so that there is certainty and balanced legal protection. Likewise, in terms of providing guarantees with land rights objects, it has been expressly regulated in the UUHT. In Article 1 number 1 of the UUHT it is stated that Mortgage Rights on Land and Objects Related to Land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, including or not including other objects that are an integral part of the land, for the repayment of certain debts that provide a priority position to certain creditors over other creditors.

From these provisions it can be seen that the Object of Mortgage Rights is the right to land as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, including or not including other objects that are an integral part of the land. From the words "following or not following" it can be seen that in this case the principle of horizontal

¹⁵ Law Number 4 of 1996 Concerning Mortgage Rights on Land and Objects Related to Land

¹⁶ AA Wife Ratna Eka Handayani, Interview, March 7, 2025

¹⁷ AA Wife Ratna Eka Handayani, Interview, March 7, 2025

¹⁸ Abdurrahman in Rahmadi Usman, Civil Guarantee Law, Second Edition, Jakarta: Sinar Grafika, 2009, p. 407.

¹⁹ Ibid

²⁰ Maria SW Sumardjono, Land Policy between Regulation and Implementation, Jakarta, Kompas Book, 2001, p. 126.

separation is adopted. This is in accordance with Agrarian Law in Indonesia which adheres to the principle of customary law which in this case adheres to the principle of horizontal separation, which means that legal actions against land do not automatically include legal actions against other objects on the land that are an integral part of the land. In the case of legal actions being carried out against land and other objects on the land that are an integral part of the land, it must be expressly agreed upon.

Debt guarantee is the belief or trust given by the debtor in the form of objects that are guaranteed to the creditor for the payment of debts that have been given by the creditor to the debtor that the repayment of these debts must be carried out in accordance with what has been agreed in the debt agreement made. This occurs because the agreement is 1) accessory to the main agreement ^[21].

Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land or also called the Law concerning Mortgage Rights on Land and Objects Related to Land, and can also be called the Mortgage Rights Law defines that Mortgage Rights on land and objects related to land (Mortgage Rights) are security rights imposed on land rights as referred to in Law No. 5 of 1960 concerning Basic 2) Agrarian Principles, including or not including other objects that are an integral part of the land, for the repayment of certain debts, which give priority to certain creditors over other creditors.

Law no. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land regulates the implementation of the Basic Agrarian Law which is adjusted to developments in the situation and regulates various new matters relating to the Mortgage Rights institution as described above, the scope of which includes ^[22]:

- 1) Mortgage Object;
- 2) Grantors and holders of mortgage right;
- 3) Procedures granting, registration, transfer and cancellation of Mortgage Right;
- 4) Execution of Mortgage Right;
- 5) Deletion of Mortgage Rights; and
- 6) Sanctions administrative.

The subject of Mortgage Rights is regulated in Articles 8 to 9 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to land or can be referred to as UUHT, in both articles it is determined that those who can be legal subjects in the burden of mortgage rights are the mortgage grantor and mortgage holder. The mortgage grantor can be an individual or legal entity, which has the authority to carry out legal actions against the mortgage object. The mortgage holder consists of individuals or legal entities who are in the position of the creditor ^[23].

In Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law (UUPA), land rights that can be used as collateral for debt are burdened with Mortgage Rights.

Referring to Article 25, Article 33, and Article 39 of the Basic Agrarian Law, Ownership Rights, Cultivation Rights, and Building Rights can be used as collateral for debt by burdening with Mortgage Rights. Regulations regarding Mortgage Rights are regulated in the UUHT. Based on Article 4 paragraph (1) of the UUHT, land rights that can be burdened with Mortgage Rights are divided into 3 (three), including:

- a) Right of ownership
- b) Cultivation Rights
- c) Building rights

The absolute elements of land rights that can be used as objects of mortgage rights are:

According to applicable provisions, these rights must be registered in the general register, in this case at the Land Office. This element relates to the preferred position granted to the creditor holding the Mortgage Right over other creditors. Therefore, there must be a record of the Mortgage Right in the land register and the land title certificate it is encumbered with, so that everyone can know about it (principle of publicity).

These rights must by their nature be transferable, so that if necessary they can be immediately realized to pay the debt whose repayment is guaranteed.

In addition to the land rights as referred to above, Article 4 paragraph (2) of the UUHT states that the Right to Use of State land which according to the applicable provisions must be registered and which by its nature can be transferred can also be burdened with a Mortgage. The Right to Use of State land which can be transferred includes the Right to Use granted to an individual or legal entity for a certain period of time as stipulated in the decision to grant it. The Mortgage can also be burdened with the right to land including buildings, plants, and works of art which already exist or will exist which are an integral part of the land, and which are the property of the holder of the land rights whose burden is expressly stated in the Deed of Granting of Mortgage Rights (APHT). The granting of Mortgage Rights is carried out by making an APHT by a Land Deed Making Officer (PPAT) in accordance with applicable laws and regulations. The APHT made by the PPAT must be registered with the National Land Agency (BPN) in the district, city, or other administrative area of the same level no later than 7 (seven) working days after signing the APHT. In the registration process, the National Land Agency makes a land book for Mortgage Rights and records it in the land rights book which is the object of the Mortgage Rights, then copies the record on the land rights certificate in question ^[24].

Based on the results of research conducted by the author as described in the previous chapter II, the process of imposing mortgage rights on land with ownership rights on certificate number 1240 registered in the name of I NENGAH SURATNATA, which is land originating from joint

²¹Munir Fuady, Debt Guarantee Law, 1st Edition, Jakarta, Erlangga, 2013, p. 8.

²²I Komang Gede Triandhi Mayuda Putra, *et al.*, Legal Review of the Authority of Village Credit Institutions in Imposing Mortgage Rights on Land Rights According to Law Number 4 of 1996 Concerning Mortgage Rights, e-Journal of the Yustisia Community, Ganesha University of Education, Legal Studies Program, Vol. 4, No. 2 of 2021, p. 297

²³I Komang Gede Triandhi Mayuda Putra, *et al.*, Legal Review of the Authority of Village Credit Institutions in Imposing Mortgage Rights on Land Rights According to Law Number 4 of 1996 Concerning Mortgage Rights, e-Journal of the Yustisia Community, Ganesha University of Education, Legal Studies Program, Vol. 4, No. 2 of 2021, p. 293

²⁴Bayu Setiawan Hendri Putra, The Position of Land Title Certificates as Security for Objects Based on the Law on Mortgage Rights on Land and Objects Related to Land, Journal of Private Law, Vol. VIII No. 1 of 2020, p. 59

ownership land or village father land, Suter Traditional Village is in accordance with and does not conflict with the provisions as described above, namely those based on Law Number 5 of 1960 concerning Agrarian Principles (UUPA) and Law Number 4 of 1966 concerning mortgage rights on land and objects related to land.

The process of executing collateral with customary land ownership status does not yet have a strong legal umbrella, making it very difficult to execute because the creditor or collateral holder does not have preferential rights and does not have expropriatory rights such as those attached to mortgage rights^[25].

customary land ownership rights guarantee can be executed as credit collateral of course it is mandatory to first improve the status of land ownership or convert it into freehold land, this can be done at the beginning of the credit granting process by the financial institution with the credit agreement process together with the conversion process from customary land ownership rights to freehold land accompanied by a Power of Attorney to Encumber Mortgage Rights with the aim that after the completion of the Conversion process can be directly processed Mortgage Rights. If the creditor already has a mortgage certificate as contained in the data description in chapter III, namely the conversion of customary land into freehold land, of course it will be easy in the execution process, namely through the State Assets and Auction Service Office (KPKNL) according to the Regulation of the Minister of Finance Number 170 / PMK.01 / 2012 concerning the Organization and Work Procedures of Vertical Agencies of the Directorate General of State Assets, that KPKNL has the task of carrying out services in the field of state assets, assessments, state receivables and auctions^[26].

Conclusion

The process of imposing mortgage rights on customary land in Suter Village is similar to the general procedure, but it also requires approval from the Suter Traditional Village Head. The imposition of mortgage rights on customary land in Suter Village has legal binding authority because it follows the procedures outlined in Law Number 4 of 1966 concerning Mortgage Rights on Land and Related Objects, as well as Law Number 5 of 1960 concerning Agrarian Principles (UUPA).

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²⁵Daniel Budi Hardwianto, "The Process of Executing Customary Land Ownership Guarantees That Are Still in the Process of Applying for Rights Used as Credit Collateral," *Jurnal Akta*, Vol. 4 No. 4 of 2017, p. 652

²⁶ *ibid*