

Legal Certainty of Article 1977 BurgerlijkWetboek Implementation Related to Credit Distribution Based on Mortgage Law in Pergadaian Industry

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ABSTRACT - *The nature of moving objects that are easily transferred make material's mastery difficult to ascertain whether the person who controls the object was the owner or just a holder. In response to the problematic, the legislator has established a principle of "bezigteltalsvolcomentitel" as stipulated in Article 1977 paragraph (1) of the BurgerlijkWetboek. It encourages the authors to analyze how the implementation of Article 1977 of the BurgerlijkWetboek in the credit distribution based on mortgage law, and constraints faced in implementing the article. The research result shows that if the debtor obtains the object of the owner is made consciously and voluntarily, then the guarantee object was returned to the creditor, whereas if the debtor obtains the goods from the owner was done unlawfully, then the guarantee object is returned to the the goods actual owner.*

Keywords: legal certainty, pawn, PEGADAIAN, credit

I. INTRODUCTION

Credit distribution business activities with mortgage pledge are carried out by government pawnshop companies, PT PEGADAIAN (Persero) and the private sector. Debt agreements between mortgage companies and debtors are made in written form containing the agreement of the parties in the form of rights and obligations. Although the agreement gives birth to rights and obligations for both, it does not rule out the possibility that the debtor does not carry out his obligations to pay off the debt in accordance with the agreed time period. In order to provide legal protection and in order to create legal certainty for pawnshop companies as creditors if debtors default, then another alternative is needed as a source of repayment. So that the rights and obligations of the parties can work in harmony and balance, the debtor guarantees his property in the form of movable property. If the debtor does not pay off the debt, the collateral is executed through an auction and the money obtained from the auction is used to pay off the debtor's debt.

Because juridically movable objects do not all have proof of ownership documents, lending with a pawn guarantee has the potential to be used by irresponsible parties by pawning goods that do not belong to them. In order to anticipate this, pawnshop companies, especially PT PEGADAIAN (Persero), require debtors to state that the goods surrendered as collateral are the property of the debtor or the property of others authorized to be pawned, as outlined in clause number 2 of the agreement.

Juridically, clause number 2 of the agreement is relevant to the norm of Article 1977 paragraph (1) of the Civil Code which basically regulates that: "everyone who controls a movable object is considered to be the owner of the object regardless of whether the state of possession is in accordance with his jurisdiction".

Observing the norms of Article 574 of the Civil Code which basically regulates that: "The owner of the goods has the right to sue anyone who controls the goods to be returned to the owner", then anyone who loses or is stolen has the right to claim his movable property from anyone's hands. In accordance with Article 374 and Article 362 of the Criminal Code, the owner of the goods can report the perpetrators of crime to law enforcement, and request that the lost items be confiscated and returned to the complainant as the owner of the goods.

With the legal remedies made by the owner of the goods, the pawnshop can suffer losses because the collateral must be submitted to the owner of the goods. So that the legal protection and legal certainty for the creditor are lost as regulated in Article 1152 paragraph (4) of the Civil Code which basically regulates that: "the unworthiness of the debtor providing the lien, cannot be held responsible to the creditor".

Referring to the provisions of Article 1977 paragraph (1) of the Civil Code, connected with clause number 2 of the agreement between PT PEGADAIAN (Persero) as the creditor and the debtor, Article 574 of the Civil Code is connected. Whereas it can be seen that in a credit agreement with a pledge of collateral, there is a conflict of norms or at least there is a blurring of norms about who is the legal subject that must be protected, if there are transactions carried out by debtors who do not have the authority to pawn the goods..

Based on this background, the authors are interested in studying and analyzing further about the application of Article 1977 Civil Code in lending on the basis of a pawning law to pawnshops, especially in PT PEGADAIAN (Persero).

II. RESEARCH METHODS

This research is intended to explore the implementation of Article 1977 Civil Code in lending based on liens. To achieve this goal, this study was conducted within a normative juridical research framework [1]. Supported by empirical juridical, with statutory approach and conceptual approach which is

carried out through literature study on various relevant legal materials and court decisions. Legal material analysis techniques used are descriptive techniques, interpretations and arguments that are creative and show characteristics that are full of authenticity.

III. DISCUSSION

1. *Implementation of Article 1977 Civil Code in Credit Distribution based on Pawn Laws*

Based on the norms of Article 1168 in conjunction with Article 570 of the Civil Code, it can be taken a general principle that the authority to guarantee a material is only the material owner. By relying on the norms contained in the two articles, it can be understood that the person in charge of mortgaging movable objects as regulated in Article 1150 juncto Article 1152 paragraph (1) of the Civil Code, is also the owner of the movable property.

The nature of movable material which is basically relatively easy to move, making the level of mobility is very high. So that the mastery of material things moves by someone, sometimes it is difficult to ascertain whether the person who controls the material as well as the owner or just a mere holder.

In an effort to ensure the debtor has the authority to guarantee the goods or at least including the debtor in good faith, so that PT PEGADAIAN (Persero) obtains and controls the pledged collateral is done legally. Then lending with a pledge must meet the following requirements: the validity of the agreement; conducted by a legitimate institution; apply good faith principles; the leveraging of goods is carried out legally; conducted during Operational Work Time; reasonable value / price; and the creditor has made a sacrifice, with the following explanation:

a. *Eligible Terms of Agreement*

- 1). Agree those who bind themselves. The agreement which is a statement of the will of the parties is formed by two elements, namely: the element of offer and acceptance. De facto prospective borrowers fill out the Credit Request Form (FPK) and sign it. By filling in the FPK, judicially, the debtor candidate is deemed to have stated his intention to submit the debt, and then poured in a Pawn Certificate signed by the parties as a form of his approval.
- 2). The ability to make an engagement; the adult age standard (ability to perform legal actions) used by PT PEGADAIAN (Persero) refers to Law Number 1 of 1974 concerning Marriage, which is the age of 18 years. This relies on the a-contrario interpretation of the formulation of Article 47 juncto Article 50 of Law Number 1 of 1974 concerning Marriage and in accordance with the legal principle of "lex posteriori derogate legi priori", then the determination of adult age should be based on the norms of Article 330 juncto Article 1330 The Civil Code becomes absurd and violates the intended legal principles.
- 3). A certain thing; in accordance with Article 1332 of the Civil Code in conjunction with Article 1334 paragraph (1)

of the Civil Code, which in essence regulates that "the object of the agreement must be in the form of goods". In principle, the types of goods that can be accepted as collateral include moving goods that have economic value [2].

- 4). Causa is permitted; in a loan agreement with a pledge, what is meant by causa is a promise between the creditor and the debtor as outlined in the Proof of Pawn.
- b. **Conducted by a legitimate institution.** In principle, lending must be guaranteed by a pawn guarantee by a company that is given the authority by the legislation. Juridically, PT PEGADAIAN (Persero) is a company that is given the mandate to carry out these business activities [3], so that it includes a legal / official / legal institution (not a black market).
 - c. **Implement Good Intentions.** To be able to say whether there is good faith in the preparation of the agreement between the parties can be examined from the clauses in the agreement. With regard to the essence of good faith in the loan disbursement agreement based on the pledge law, it is not only interpreted grammatically that good faith appears only at the stage of contract implementation. Good faith must be interpreted throughout the contractual process.
 - d. **Delivery (Levering) of Goods is done legally.** A pawn guarantee agreement is one legal relationship that results in surrender. As such, the requirements for having a valid title have been fulfilled. With regard to conditions, it must be done by someone who has the authority or has the right to act freely on an object. Juridically, this requirement is an implementation of the principle of nemoplus, which basically states that a person cannot transfer rights beyond what is his right. Because according to the norms of Article 1977 paragraph (1) of the Civil Code, every person who controls movable property by law is considered as an eigenaar of the relevant movable material, then in the case of someone who intends to carry out pawning transactions by carrying collateral in the form of movable objects, especially movable objects named, the person is considered to have the authority or the right to act freely (beschikkingsbevoegdheid) of the object to be mortgaged.
 - e. **Done during Operational Work Time.** Lending with a pledge of credit, carried out during working hours of service operations openly / openly. So that the transaction is legally valid and protected by law.
 - f. **Fair Value / Price.** Determination of the value (estimated) of collateral in the distribution of credit carried out by PT PEGADAIAN (Persero) to the debtor, has been carried out in accordance with the provisions [4] and fairly in accordance with the prices prevailing in the market in general.
 - g. **Creditors Have Made Sacrifices.** In order to carry out one of its obligations, PT PEGADAIAN (Persero) has

issued a sacrifice in the form of: providing a loan amount to the debtor, and all costs incurred for the smooth transaction process.

Even though lending guarantees have met these requirements, creditors may not necessarily get legal protection. Based on several court decisions that have permanent legal force (*incracht van gewijsde*), creditors obtain protection and legal certainty if the collateral is obtained by the debtor from the owner consciously and voluntarily [5]. This is in line with the results of the civil chamber meeting of the Supreme Court of the Republic of Indonesia on March 14 to 16, 2012, which has been circulated through the Supreme Court Circular Letter Number 7 of 2012 dated September 12, 2012, which among them states that: "Holders in good faith it must be protected even if it is later discovered that the person giving the mortgage is an unauthorized person".

Because legally the legal institution guarantees not only Mortgage, but also Liens and Mortgages and Fiduciary guarantees, the provisions must be interpreted as follows: "guarantee holders in good faith must be protected even though they are known to be guaranteed (Mortgage, Mortgage, Mortgages, Mortgages, and Fiduciary Security) are those who are not entitled". The *legis ratio* of the meaning of the contents of the Supreme Court Circular is identical to the rule of law regarding the sale and purchase not to decide on the leases as regulated in Article 1576 of the Civil Code. Article 1576 The Civil Code is deliberately created to protect the tenant from the new owner, if the goods being leased are transferred to another party. Because according to the provisions of Article 584 of the Civil Code, the process of transfer of ownership can not only be done by way of buying and selling, but can also be done in other ways. So the word "for sale" in Article 1576 of the Civil Code is not only limited to legal buying and selling events, but also includes other ways of transfer of ownership, such as exchange, inheritance, etc.

Because based on a criminal decision the collateral is returned to the creditor, the norm of Article 574 of the Civil Code cannot be used as a legal basis for returning objects (ownership rights) from the control of others [6]. This is in line with Decision Number: 608 / Pdt.G / 2015 / PN.Bks, Which in essence rejects the revindication lawsuit filed by the owner of the goods.

If the collateral is obtained by the debtor from the owner against the law, then the owner of the item gets the protection and legal certainty [7]. Because based on the criminal decision, the collateral is returned to the real owner, then civilly the right of revitalization as set out in Article 574 of the Civil Code can be used as a legal basis for returning objects (ownership) from the control of others [8].

2. *Obstacles in the Implementation of Article 1977 Civil Code in Credit Distribution based on Pawn Laws*

a. The legal factor itself (the law). There are indications that non-compliance with the *bezite* principle for moving material acts as a perfect title.

- b. Law enforcement factors. It should be suspected that law enforcement officers who handle cases act less professionally.
- c. Facilities and infrastructure factors. Limited human resource competencies, especially those handling such cases, so that law enforcement is running less than the maximum.
- d. Community factors. Full trust given by Ms. Heny Anwari as the shop owner to Bro. Ibrahim PerdanaCunda, who was abused by Br. Ibrahim PerdanaCunda for personal interests and needs, is a reflection of people who are less aware of the law.
- e. Cultural factors. Full trust given by Ms. Heny Anwari as the shop owner to Bro. Ibrahim PerdanaCunda, who was abused by Br. Ibrahim PerdanaCunda for his personal interests and needs, is also an indication of the degradation of good values in society, especially with regard to spiritual values (morality).

To anticipate these obstacles, PT PEGADAIAN (Persero) made efforts to continue to get protection and legal certainty, namely: Collaboration with Law Enforcement Institutions, Filing Applications for Examination, Filing Civil Lawsuit, and Merging Lawsuit for Compensation.

IV. CONCLUSION

1. In the context of anticipating the existence of pawned collateral receipts made by debtors who are not entitled to guarantee, lending with pawn collateral must meet certain cumulative requirements. If the collateral is obtained by the debtor from the owner consciously and voluntarily, then if the owner of the goods makes a legal effort to return his property, the court rejects the request. However, if the collateral is obtained by the debtor from the owner against the law, then if the owner of the goods makes a legal effort to return his property, the court granted the request.
2. The implementation of Article 1977 of the Civil Code in channeling loans with a pledge of mortgage has several obstacles, which include several factors, namely: law, law enforcement, facilities and infrastructure, the community, and culture. To anticipate these obstacles, PT PEGADAIAN (Persero) has made efforts to continue to get protection and legal certainty.

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