

# ACTUALIZATION OF PAWN OF AGRICULTURAL LAND TO ENSURE JUSTICE IN ACHIEVING FOOD SECURITY

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## ABSTRACT

*The purpose of this study was to determine the actuality of the pawning of just agricultural land in the community to achieve food security. As we all know land pawning is a right to land whose existence will be removed, but in reality, pawning of agricultural land is still used by the community to meet the needs of life that is easy, fast, and straightforward and does not pay interest. The research method used is empirical, with a descriptive approach. The results of the research are that pawning agricultural land which was originally intended to meet the needs of life has changed, namely to meet economic needs, among others, to expand agricultural land, for the cost of looking for work etc. The absence of comprehensive regulations regarding the pawning of agricultural land means that the community still uses customary law and is based on belief, although there are also those who use the written form to anticipate conflicts in the future. It is necessary to carry out a comprehensive reformulation of the pawning of agricultural land so that legal objectives will be realized, namely legal certainty, justice and benefit.*

**Keywords:** Pawn, Regulatory Arrangement, Reformulation, Land Pawning, Agriculture, Indonesia.

## INTRODUCTION

Land pawning is one of the temporary land rights contained in the Basic Agrarian Law (BAL), namely Article 53 of the BAL, these rights are temporary because these rights contain characteristics that are contrary to the BAL, namely they contain elements of extortion and are contrary to Article 10 BAL, namely agricultural land in principle must be done by the owner (Sihombing, 2019). Temporary rights are rights that give authority to the owner to control and exploit land belonging to other people. In the pledge there is a legal relationship between a person and land belonging to another person who has received the pledge thereof, as long as the pledge has not been returned, the land is controlled by the party who gave the money to which party is called the pawn holder (Istiqomah, 1982). The abolition of these rights in a short period of time has not been able to be carried out because their elimination must be preceded and accompanied by various efforts which at this time can still be carried out only a small part, because abolishing these rights without prior and accompanied by these efforts only This will

add to the problems for society and the state, such efforts, for example: Provision of sufficient credit, opening of new agricultural lands accompanied by transmigration, channeling people who do not have cultivated land to other business fields, for example, industry, trade, transport (Bumi & Indrawati, 2013).

According to Sudiyat (1981), land pawning based on customary law has a social objective, namely to help people who need money. Land owners will not lose their title to their land, the need for money is met and the owner can still redeem his land according to his ability and will without any coercion. Although it is temporary and will be removed, in fact land pawning is still being used by the community aimed at helping the economy for landowners. This is a practical way to get cash to make ends meet but the land is still owned. Although the land is under the control of the pawning holder. Besides that, there are also those who mortgage agricultural land not only to meet their daily needs but also for various purposes, namely to find work, school fees, for secondary and tertiary needs.

Likewise, land pawning is still being implemented by the community, for various reasons, either economic motives, namely to meet economic needs or for other reasons. The implementation of pawning is carried out based on customary law, which is only based on trust between the parties so that it is carried out orally and there are also those who have implemented it through a written agreement, which is intended for legal certainty in the event of a dispute, it can be used as evidence. The arrangement of pawning for agricultural land in its implementation is only regulated in Article 7 of Law No. 56 of 1960, in relation to redemption. Since the enactment of this provision, namely by the enactment of this Law, then whoever controls agricultural land with a lien for seven years or more is obliged to return the land to the owner within a month after the existing plants have been harvested with no ransom. Based on Article 7 of the Law, the pledge of agricultural land can be canceled after 7 years and there is no ransom. The pawn arrangement is only related to the redemption of pawning for agricultural land, this arrangement is used to protect the land owner, or the party who pawns the land. Some studies have examined the pawn arrangement of agricultural land in Indonesia in relation with the existing laws (Rangkuti & Lubis, 2020; Maria et al., 2020; Amriwan et al., 2020; Santoso, 2020). This study aims to determine justice in the arrangement of pawning on agricultural land, considering that land pawning is still needed in the community, and based on Article 53 of the BAL is temporary and will be abolished at any time. The method used in this research is empirical legal research and descriptive in nature.

## LITERATURE REVIEW

A lien is a legal relationship between a person and land owned by another person who has received the pledge thereof, as long as the pledge has not been returned, then the land is controlled by the party who gave the money, which party is called the pawn holder, while according to Boedi (2008) pawning is a legal relationship between a person and land belonging to another person who has received a mortgage thereof (Istiqomah, 1982). As long as the pledge money has not been returned, the land is controlled by the pawning holder. During that time the entire land yield becomes the right of the lien holder. The repayment of the pawn or redemption

depends on the willingness and ability of the land owner who pawned the mortgage (Ismaya, 2011). In general, pawn givers come from low-income groups of society; on the other hand, pawn recipients (pawnholders) come from wealthy (Santoso, 2012). Land pawning, which is when someone hands over a certain amount of money to the land owner (pawner) then he will get a lien on the land. The land lien will end in redemption; the ransom money is as much as the money that the pawn holder has submitted, and thus it is clear that the land owner actually receives a certain amount of money from other people, so that the lien is not a guarantee or security right (Aermadepa, 2016; Agustina, 2018). The rights and obligations of the parties are after receiving the pledge, the pawned land is immediately handed over to the party who gave the money or known as the pawn holder. The pawner can at any time redeem his land provided that the pawnshop holder has already reaped the yield/harvested at least once. If the land that is being pawned is destroyed, the pledge giver cannot be sued to return the pledge that has been received, and if there is a difference in the value of money at the time of pawning and redeeming, then it must be shared with the pawn holder.

For pawn holder, after paying the pledge, the pawning holder controls the pawning land, to be maintained and has the right to use and collect the proceeds. If at any time this pawn holder needs money, then he has the right to deepen the pawn with the permission of the land owner or give the pawn if it is without the land owner's permission and if the pawning land is destroyed due to a natural disaster, such as a flood, then the pawn holder may not claim the pawn back. It is obliged to return the pledged land, after being controlled for 7 years, or if it is not controlled for 7 years. In a pledge agreement accompanied by an agreement, if within the stipulated time the pledge giver cannot redeem his land, then with the intermediary of the District Court, then the pawning holder can own the land according to the agreement; if necessary, by adding more money according to the price of the land if it is sold off.

In Indonesia, justice is described in Pancasila as the basis of the state, namely social justice for all Indonesian people. The five precepts contain values which are the goals in living together. Justice is based on and is imbued with the essence of human justice, namely justice in human relations with oneself, human beings with other humans, humans with society, nation and state, and human relations with God (Santoso, 2012). Law is very closely related to justice, there is even an opinion that law must be combined with justice, in order to truly be meaningful as law, because the goal of law is to achieve a sense of justice in society. A legal and judicial system cannot just be formed without paying attention to justice, because fairness includes the essential meaning of a legal and judicial system, therefore it must be guided by certain general principles. These principles are related to the interests of a nation and a state, namely a belief that lives in society about a just life, because the goal of the state and law is to achieve the greatest happiness for everyone (Santoso, 2012). In Pancasila, the word fair is found in the second and fifth precepts. Fair human values and social justice contain a meaning that the essence of humans as cultured and nurtured creatures must have a fair nature, namely fair in relation to oneself, fair to other humans, fair to the people of the nation and state, fair to their environment.

## RESULTS

Land tenure in a juridical sense is control based on rights, protected by law in general, giving the right holder the authority to physically control the land that is held, for example the land owner uses or takes advantage of the land that is held, not handed over to other parties. There is juridical control, which even if it gives the authority to control the land that is physically held; in fact physical control is exercised by another party (Santoso, 2012). The juridical assignment mentioned above is that physical control is carried out by other people, including, among others, land rent, pawning of agricultural land. For example, someone pawns agricultural land, then the use and control of the land rests with the pawning recipient, even though legally the agricultural land belongs to the pawner.

Land pledge is a legal relationship between a person and land belonging to another person, who has received a pledge from him. As long as the pawning money has not been returned, the land is controlled by the pawn holder. During that time, all the land products are entitled to the lien holder. Likewise, it is explained in point 9a in the explanation of Law No. 56 of 1960 concerning the Determination of Agricultural Land Areas that pawning agricultural land is a person's relationship with land owned by other people, who have money debts to him. If the debt has not been paid in full, then control of the land remains with the person who lent the pawn (the pawn recipient) (Supriadi, 2007). The Basic Agrarian Law (BAL) does not provide an understanding of what is meant by lien (land lien). According to Boedi (2008), land pawning is a legal relationship between a person and land belonging to another person, who has received the mortgage thereof. The return of the pawning money, or commonly known as redemption depends on the willingness and ability of the land owner who is pawning holder) pawn (Santoso, 2012).

Pawn of land according to customary law has the nature of a transaction, namely a land transaction with its object and has the right to redeem the land. Control over the object of the pawn is that the pawning recipient is allowed to use, work on, and reap the yield of the object, namely land. Mastery of the object of the pledge: the pledge recipient must not force the land owner to redeem the object of the pledge. The object of the pawn can only be redeemed according to the owner's will. So, at any time the land owner can redeem the object of the pledge and the recipient of the pledge must give the object of the pledge (Sudiyat, 1981).

Nationally, the return of pawning on agricultural land and perennials is regulated in Article 7 of Law no. 56 of 1960 concerning the Determination of the Area of Agricultural Land which contains provisions regarding the return of pawned agricultural land. Due to the aforementioned matters, most pawns are held in a balance that is very detrimental to the pledge and greatly benefits the moneylender. Therefore, in the Basic Agrarian Law, pledge rights are included in the category of rights that are temporary in nature, which must be endeavored so that on time they are eliminated. Due to the implementation of the provisions of Article 7 of Law No. 56 of 1960 still needed guidelines, so the Minister of Agriculture and Agrarian Regulation No. 20 of 1963 concerning Guidelines for Solving Pawn Problems.

Thus, it can be argued that the rules of lien on agricultural land are contained in customary law that the arrangement of lien on agricultural land is contained in customary law, as

well as the right to lien on building land is also regulated by customary law, except that the return and redemption of the land is regulated by Article 7 of Law No. 56 of 1960. The community in Ponorogo Regency carries out pawning transactions for agricultural land, carried out with the aim of various things, namely: to make ends meet, for the cost of looking for work, to expand the business in the sense that the pawning received is used to buy more agricultural land. People still like pawning agricultural land compared to others (sacrificed) because the process is fast, not complicated, there is no deduction, it is not too formal, and the amount of pawning for pawn redemption is the same. The form of pawning for agricultural land is carried out in both oral and written forms. The oral form is based on trust only, because it is done between relatives or close neighbors, while what is done through a written agreement, this is done for legal certainty, and if one day or later a dispute occurs it can be used as a means of proof. There is no arrangement for the amount of money related to the area of land being pawned, only based on the agreement of the parties. There are times when the nominal amount of money is large but they get land that is just a medium size, but some with little money they get a large pledge of agricultural land.

The agreement is one of the legal conditions in the agreement. This is in accordance with the terms of the validity of the agreement in Article 1320 of the Civil Code which states four conditions for the validity of an agreement, namely: agreement between those who bind themselves, the ability to make an engagement, a certain matter, and a lawful cause. Agree and ability is subjective requirements, while certain things and causes that are lawful are objective requirements. The difference between the two requirements is also related to the problem of null and void and cancellation an agreement. If the objective conditions in the agreement are not fulfilled, then the Agreement is null and void or the agreement has been canceled since the beginning, the law considers the agreement never existed. If the subjective conditions are not fulfilled, the agreement may be canceled or as long as the agreement has not been canceled or has not been canceled by the court, the agreement concerned will continue to be valid.

The value of pawning money will change from year to year. One of the causes is due to inflation. Inflation is a process of increasing prices in general and continuously related to market mechanisms which can be caused by various factors, among others, increased public consumption, excess liquidity in the market that triggers consumption or even speculation, including also due to the distribution of goods not smooth. In order to deal with changes in the value of pawning money, it has been regulated in a Supreme Court decision that the risk from changes in the value of the rupiah currency is borne in half by both parties (land owner and pawn buyer). This is in accordance with the decision of the Indonesian Supreme Court dated May 22, 1957 regarding the valuation of pawning in land liens according to customary law (Isfardiyana, 2017). The provisions are that in the event that there is a large difference in the value of money in circulation at the time a plot of land is pawned and at the time it is to be redeemed, it is in accordance with a sense of justice if both parties bear half the risk of possible changes in the value of the rupiah, measured by the difference. The price of gold at the time of pawning and at the time to redeem the land. This is contained in the Supreme Court decision dated January 15, 1958, Supreme Court Decree No. 11 K/Sip/1957. The ransom is determined by assessing the price of money at the time of giving a mortgage with the price of gold as a measure and risk

sharing for changes in the price of fifty-fifty money between the two parties. The provisions in Article 1 of the Regulation of the Minister of Agriculture and Agrarian Affairs No. 20 of 1963 concerning Guidelines for Settling Pawn Problems explain that what is meant by pawning in reality can not only be in the form of money, but also goods or services, which can be valued in money. In this case, if there is an addition to the pledge money, automatically the period for implementing the pawning for agricultural land will also increase. However, if there is no additional pawning, there will also be no additional time in implementing pawning for agricultural land (Santoso, 2012).

Based on these rights and obligations, there is no time limit for redemption of agricultural pawns, only that it can be redeemed after 2 years and in reality, in the field, usually between 3-4 years, redemption is usually carried out. With the existence of legal rules governing land mortgages, people not only receive collateral but also receive security deposits for goods that have been guaranteed, and this implementation has been regulated in legal regulations, namely BAL and Law No. 56 of 1960 concerning Determination of the area of agricultural land to protect the possibility of disputes over mortgaged land (Rahardjo & Nugroho, 2012). The arrangement of pawning for agricultural land based on Article 7 of Law No. 56 of 1960 provides more protection to the pawner but has not provided justice to the pawning holder, because in that Article the equalization of agricultural land, between agricultural land which is technically irrigated, and which is rainfed, even though the costs or production costs used are not the same. This is because irrigation does not require water production costs for different production facilities, and the nominal money does not pay attention to the size of the pawn. By not distinguishing the type of agricultural land, it will be detrimental for the pawnshop holder, because the profit is reduced after deducting the price of fertilizers, medicines for pests which are now expensive, if previously used was manure. If this was implemented at that time, it would not be a problem or there would be justice because the benefits of working on irrigated agricultural land were adequate and even excessive, and ancient mortgages were also very little nominal.

## CONCLUSION

In actualizing agricultural land pawning is still needed by the community to achieve food security, but the current regulation is incomplete because it only regulates the amount of ransom money. Pawning for agricultural land used by the community is customary law, so the provisions regarding the amount of ransom which is regulated in Article 7 of Law No. 56 of 1960 was not effective in implementing pawning in society. As suggestion, the government should undertake a more comprehensive and equitable reformulation of agricultural land pawning arrangements to protect the interests of the parties who pawn agricultural land.

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