JURNAL KONSTATERING
published by
Master of Notary Law, Faculty of Law
Sultan Agung Islamic University
ISSN:2828-4836

Legal Certainty of Execution of Pledged Objects Against Marital Assets as Collateral for Debt Without Spouse's Consent

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Abstract. *Marriage creates legal relationships, one of which concerns joint property. Article 36 Paragraph 1 of Law Number 16 of 2019 concerning Marriage mandates that husband and wife have equal rights regarding joint property. Furthermore, any legal action related to joint property must be based on the agreement of both parties. In this regard, pawnshops are one of the non-bank financial institutions that provide a quick solution for the community to meet immediate funding needs, with gold jewelry as collateral. This study aims to find out: How is the execution of pawned objects in the form of gold jewelry which is joint property from a marriage bond that is used as collateral for debt without the consent of the case study partner at PT. Pegadaian Cabang Teluk Betung?, and How is the legal certainty of the execution of the pawned object against marital assets in the form of gold jewelry that is used as collateral for debt without the consent of the spouse (Study at PT. Pegadaian Teluk Betung Branch)? This research uses an empirical approach, using secondary and primary data, obtained from literature studies and field studies by means of interviews. Based on the research, it is concluded: the legal certainty of the regulation of pawned objects whose goods are joint assets in marriage which are used as collateral for debt without the consent of the husband or wife is contained in Article 36 paragraph (1) of Law No. 16 of 2019 concerning Marriage which has provided a legal corridor, that the action to pawn joint assets must be based on the agreement of both parties between husband and wife. As with Gustav Radbruch's theory of legal certainty that legal certainty is one of the objectives of the law itself, the process of executing pawned objects in the form of marital assets which are used as collateral for debt without the consent of the spouse at the Pawnshop is null and void. Suggestion: There needs to be strict regulation from the institutional structure that oversees financial institutions and financial services in Indonesia, such as Bank Indonesia and the Financial Services Authority of the Republic of Indonesia, because there is already a legal umbrella based on Article 36 paragraph (1) of Law No. 16 of 2019 concerning Marriage and the Need to provide* *strong legal protection to both husband and wife, it is best to make a prenuptial agreement regarding the property they own.*

Keywords: *Certainty; Execution; Legal; Object; Property.*

1. Introduction

Marriage is a sacred and holy bond that creates a legal relationship between the two. The purpose of marriage itself is to have children, in addition to being able to live together in a society within a family bond. One of the issues in marriage is about wealth, namely regarding joint property between husband and wife, namely joint property and personal property or property brought. Joint property is property acquired during the marriage, regardless of whether it is registered in anyone's name.1 In terms of debt responsibility, both husband and wife's debts can be charged to their respective assets. Then for debts incurred for the benefit of the family, it is charged to joint assets. However, if the joint assets are insufficient, then it is charged to the husband's assets, if the husband's assets are insufficient, then it is charged to the wife's assets. 2 To fulfill the needs of life, both primary, secondary and tertiary needs such as the need to have a place to live, the need to have a vehicle, whether a motorbike or a car, investment needs, both savings and jewelry, we need financial institutions, both banks and non-banks, as well as financing institutions. In various terms originating from each respective customary environment, there are different meanings of the joint assets, according to the diversity of customary communities, such as in Acehnese society, the term "seharkat assets" is used, in Malay society it is known as "sayarekat assets", in Javanese society it is known as "gono-gini assets". Many more terms are used, such as "rich king assets" and so on. All of these terms and terms contain the same meaning, namely regarding "joint property" in marriage between husband and wife.3 According to Islamic sharia, a contract has both worldly and afterlife consequences. In a sharia economic business contract, the essence of the concept of rationality in a sharia economic business contract must be understood, in addition to aiming to obtain mashlahah or falah, but also must adhere to the axiom of life after death, so that there is an effort to harmonize provisions for life in this world and provisions in the afterlife. There is a belief in life after death, and the afterlife is the end of revenge for life in this world. And must be convinced that the only perfect sources of information are the Qur'an and Sunnah. institutions that provide borrowing facilitiesPawnshops and mortgage lending institutions have mushroomed, both under state-owned and private ownership. PT Permodalan Nasional Madani (PNM) and PT Pegadaian became subsidiaries of PT Bank Rakyat Indonesia (Persero) Tbk (BBR) as part of the Ultra Micro Holding (UMi) formation, with BRI as the parent company. The two state-owned enterprises became subsidiaries of BRI after the government officially transferred Series B shares in PNM and Pegadaian to BRI, leaving the government with only Series A shares in PNM and Pegadaian.

Pawn products from PT Pegadaian are quite commonly known in the community as a non-bank financial institution that distributes loans with certain collateral. Pawn is a right obtained by a pawn company over a movable item, which is handed over to it by the customer or by his attorney, as collateral for his loan, and which authorizes the pawn company to take repayment of the loan from the item in advance of other creditors, with the exception of costs for auctioning or selling the item and costs for saving the item incurred after the item is handed over as a pawn, which costs must take priority.

Based on the definition given by Subekti in the book by Purwahid Patrik and Kashadi, basically a pawn is a gift in the form of movable property.to be used as collateral for debt and if the debtor cannot pay off his debt, then the object used as collateral can be sold to cover the debtor's debt, and it should be noted that if the debtor or pawnbroker does not fulfill his obligations, the creditor is not permitted to transfer the pawned goods to his property, and all terms of the agreement that conflict with this provision are void. The creditor has the right to take payment from the pawned goods before other creditors.

The object of the pawn is movable goods, so the thing that needs to be remembered is the provision on bezit which is contained in the legality of the norms of Article 529 of the Civil Code which in essence is a movable object that can be pawned by a person who controls, namely enjoying an item that is in the power of a person personally or through another person, as if the item were his own. Then Subekti reiterated that bezit is a natural condition, where a person controls an object as if it were his own, which is protected by law, without questioning who actually owns the object. In the case of a creditor experiencing obstacles when executing the collateral object due to the debtor's default to pay off his debt and one of the obstacles that occurs because the collateral object is in the form of joint property in marriage.

Pawn products have two types of contracts: conventional and sharia. Sharia-compliant business contracts must be oriented towards the principles of justice, partnership, and transparency and must not involve gharar (fraud), maysir (gambling), riba (usury), zhulum (abuse), or riswah (bribery)., forbidden and sinful goods.

Regarding the binding of joint assets in marriage as collateral for debt repayment, it often triggers legal problems and ultimately leads to litigation in court, because to enter into a credit agreement with collateral Joint property must be approved by both husband and wife. A person who is in control of movable property can be considered the owner of the movable property, and if he intends to borrow from a pawnbroker, the movable property he controls can

ISSN: 2828-4836 Volume 5 No. 1, January 2026: 145-155

be used as collateral for the repayment of the debt. Tami Rusli in the legal journal Pranata Hukum about the main purpose of marriage states that marriage is not merely the fulfillment of biological needs, but more than that, with marriage, it is hoped that the goals of marriage can be achieved as regulated in laws or legal regulations and also in accordance with the teachings of the religion adhered to.

The next problem is related to the situation that the movable property being controlled is joint property in marriage, because based on Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage it is determined that regarding joint property, the husband or wife can act with the agreement of both parties. Meanwhile, based on paragraph (2) regarding the property brought by each, the husband and wife have full rights to carry out legal actions regarding their property. The same provision can also be seen in Article 51 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which determines that a wife during the marriage bond has the same rights and responsibilities as her husband for all matters relating to her married life, relations with her children, and ownership rights, as well as management of assets. The existence of provisions such as this, means that those who have the right to manage joint assets in marriage are husband and wife, so that one party cannot leave the other party to carry out legal actions on joint assets in marriage, because their positions are equal, namely as "joint owners" of "joint assets".

In practice, it is very ironic related to the practice of pawning whose object is joint property, where the consent of both parties, husband and wife, is never requested. So this is interesting to be studied and analyzed, the aim of which is to determine the legal certainty of the implementation of pawning whose object is joint property, but the pawning in question is carried out without the permission of one of the partners in the husband or wife marriage which will be a case study at PT Pegadaian Teluk Betung Branch.

This study aims to determine the legal certainty of pawned objects in the form of gold jewelry which is joint property from a marriage bond that is used as collateral for debt without the consent of the spouse in the case study at PT. Pegadaian Tanjung Karang Timur Branch.

2. Research Methods

The research method consists of: an empirical research method with a qualitative approach, using interview techniques and using secondary data.

3. Results and Discussion

3.1. Implementation of the Execution of the Pawned Object in the Form of Gold Jewelry Which is Joint Property Used as Collateral for Debt Without the Spouse's Consent

The responsibility of one of the parties, either husband or wife, who does not know the actions of the debtor who carries out the pawn is basically in the absence of a marriage agreement, the assets obtained in the marriage become joint assets as per Article 35 of Law Number 1 of 1974 concerning Marriage regarding the joint assets, the husband or wife can act with the consent of both parties as per Article 36 of Law Number 1 of 1974 concerning Marriage. Based on the description of the norms in Law Number 1 of 1974 concerning marriage, the consent of the spouse is required to guarantee the movable object to the pawn institution, as well as in the debt agreement between the customer and the financing company, the consent of the spouse must also be obtained, if the intention is to make the debt from the financing agreement a joint debt and can be taken from the joint assets.

If the financing agreement is not known to and approved by both spouses, the debt from the financing becomes the personal debt of one of the parties, the husband or wife. This actually opens up the opportunity for one party to mortgage joint marital assets in the form of movable property because the object is the object. Pawning is movable property therefore things that need to be considered are: The provisions regarding possession, contained in Article 529 of the Civil Code, are the position of control, namely enjoying an item that is in the power as if the item controlled is the personal property of the person holding the item. Based on the description above, the agreement itself is not legally flawed, only that it cannot be requested for repayment from joint assets because it is only a personal debt, but the guarantee agreement itself is void due to the lack of consent from the spouse for joint assets in the form of movable goods pawned at the pawnshop. Because what is void is only the guarantee agreement, based on this, the debt agreement or agreement on the goods pawned by one of the parties is still valid and the debt can still be collected, but in this case if the customer cannot fulfill his obligations, then the consequence is that the financing company does not have any collateral from the debtor to be executed to pay off the debt. Furthermore, if the customer does not pay the debt, of course, a default-based execution can be carried out by first issuing a warning to the customer.

Based on the facts that occur, legal actions against joint assets are carried out without the permission of the spouse, especially guarantees against collateral in the form of joint marital assets due to a credit agreement, usually the creditor will ask for the consent of the spouse, but specifically in the form of collateral in the form of a pledge against joint assets because this kind of consent is usually not requested. In fact, considering that in practice, in the implementation of a pledge whose object is movable property as joint assets, often ignores the provisions regarding permission from the husband and wife, there needs to be clear regulations that determine that a pledge against joint assets must be preceded by the permission of the spouse. Actions that occur in the field in the process of pawning joint marital assets are contrary to the provisions of legal norms contained in Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage which states that a husband or wife can act with the agreement of both parties, whereas based on paragraph (2) regarding their respective assets, the husband and wife have full rights to carry out legal actions regarding their assets and this is strengthened in Article 51 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which determines that a wife during the marriage bond has the same rights and responsibilities as her husband regarding all matters relating to her married life, relations with her children, and ownership rights, as well as management of assets.

3.2. Legal Certainty of Pawned Objects in the Form of Gold Jewelry Which is Joint Property Without the Spouse's Consent

The theory of legal certainty contains 2 (two) meanings, namely first the existence of general rules that make individuals know what actions may or may not be done, and second in the form of legal security for individuals from government arbitrariness because with the existence of general legal rules individuals can know what the state may impose or do to individuals. Legal certainty is not only in the form of articles in the law but also the consistency in the decisions of judges from one to another for similar cases that have been decided. According to Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, joint property between husband and wife only includes assets obtained by husband and wife throughout the marriage so that it is concluded that joint property includes the results and income of the husband, the results and income of the wife. Marriage carried out between husband and wife has 3 (three) legal consequences, namely: First, the consequences of the husband and wife relationship; Second, the consequences for marital property; and Third, the consequences for children born.

According to Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, joint assets of husband and wife only include assets acquired byhusband and wife throughout the marriage, so it is concluded that joint assets include the husband's earnings and income, and the wife's earnings and income. The issue of assets in marriage is very important because one of the significant factors in determining whether or not a household is happy and prosperous lies in assets. Assets are a crucial point in married life. Although social reality shows that there are still rifts in married life not caused by assets, but by other factors. Assets are the pillar of that prosperity. According to Indah Nurulia, legal certainty is that the items that are the object of pawning will be auctioned if the time limit of 120 (one hundred and twenty) days has passed. This means that if the time limit has passed, the items that are the object of pawning will be auctioned using a process determined by PT. Pengadaian Persero.

In fact, legal certainty is part of the purpose of the law that exists and is made (positive), because if justice and benefit are not certain, the law will be in vain. Although in fact, justice is one of the most discussed legal objectives throughout the history of legal philosophy. Then in the context of legal science, the concept of legal protection is often interpreted as a form of service that must be carried out by law enforcement officers to provide a sense of security, both physical and mental, to victims and sanctions from threats, disturbances, terror, and violence from any party given in the litigation and/or non-litigation process. Furthermore, related to this joint property, the legal norm that cannot be set aside is that contained in Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage which explains that a husband or wife can act with the consent of both parties, while based on. Furthermore, related to this joint property, the legal norm that cannot be set aside is that contained in Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage explains that a husband or wife can act with the consent of both parties, while based on paragraph (2), regarding their respective assets, the husband and wife have full rights to carry out legal actions regarding their assets. Then the problem is that there is a pawn with the pawn object which is in the status of joint property without the consent of the spouse in this case the customer who has married status.

In terms of maintaining legal certainty regarding joint assets, it is also regulated in other laws as can be seen in Article 51 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which determines that a wife during the marriage bond has the same rights and responsibilities as her husband for all matters relating to her married life, relations with her children, and ownership rights, as well as management of assets. Furthermore, the existence of legal norms as described above means that those who have the right to manage joint assets in marriage are husband and wife, so that one party cannot leave the other party to carry out legal actions on joint assets in marriage, because their positions are equal, namely as joint owners of joint assets. As Hans Kelsen's theory of legal certainty that coercion or use of violence (coercion) is an important characteristic of the law, in this case a pawn transaction where the position of the goods is joint property and the joint property is required, forced or the use of violence (coercion) which requires the fulfillment of the condition of the consent of the spouse (husband or wife) and if the condition is not fulfilled then the pawn transaction is null and void and the auction execution process on the pawn transaction that has matured on the collateral whose position is as joint property is also null and void. The actions of the creditor or PT. Pegadaian in the phase of not requiring collateral whose position is joint property as the object of the pawn are actions that contradict the norms contained in Law Number 1 of 1974 concerning Marriage. And this opinion is strengthened by several jurisprudence in matters related to this issue. Such as hira-hira in the Supreme Court Decision Number 1851 K / PDT / 1996, dated February 23, 1998. related to debt collateral in the form of joint property. Furthermore, in this decision it is stated that the Regional Development Bank (BPD) of North Sumatra was negligent in applying the principle of prudence which requires management to examine the status of the land that will be used as collateral for debt, because the defendant's wife did not sign the collateral letter. The burden of the joint property land must be declared legally void. Regarding the debt guarantee in the form of joint property and it is stated that the debt guarantee agreement in the form of joint property is null and void because a lawful cause is not fulfilled as regulated in Article 1320 of the Civil Code that if it is to be guaranteed or transferred to another party, it must obtain the consent of the spouse as the entitled party in accordance with the provisions of Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage, thus an agreement that violates these provisions is null and void.The reason it can be said to be null and void is because it is in accordance with the provisions contained in Article 36 of Law No. 1 of 1974 concerning Marriage Jo. Article 51 of Law No. 39 of 1999 concerning Human Rights states that joint assets are jointly owned, which means that its management or legal actions regarding the joint assets must also be carried out jointly. Furthermore, Article 1320 of the Civil Code also stipulates that the valid conditions for an agreement must meet a lawful cause, meaning it must meet the provisions of the law, and if such conditions are not met, then such agreement is null and void (has no legal force). Considering the practice that has occurred so far that in the implementation of pawns whose objects are movable goods as joint assets, often ignores the provisions regarding permission from the husband and wife, there needs to be a clear provision (regulation) that determines that pawns against joint assets must be preceded by permission from the husband and wife and the legal principle related to "the party who controls (bezit) the movable goods (bezitter) is considered the owner", must be set aside in the implementation of the pawn. As per the legal norm of Article 1131 of the Civil Code, guarantees are defined as all the debtor's property, both movable and immovable, both existing and new ones that will be in the future, which are collateral for all obligations. Legal certainty regarding joint assets as pawn objects that are unknown to either husband or wife, is linked to a sense of justice, so it must run according to applicable legal norms, in the sense that the elements of the legal system (legal structure, legal substance and legal culture) must run in tandem. Based on this description, it is actually necessary to have strict regulations from the institutional structure that oversees financial institutions and financial services in Indonesia, such as Bank Indonesia and the Financial Services Authority of the Republic of Indonesia, because there is already a legal umbrella based on Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage and Article 51 paragraph (1) of Law No.

39 of 1999 concerning Human Rights so that legal certainty is guaranteed. Considering the current practice that in the implementation of pawning whose object is movable property as joint property, often ignores the provisions regarding permission from the husband and wife, there needs to be a clear provision (regulation) that determines that pawning of joint property must be preceded by permission from the husband and wife and the legal principle related to "the party who controls (bezit) the movable property (bezitter) is considered the owner", must be set aside in the implementation of the pawn. As the legal norm of Article 1131 of the Civil Code explains regarding collateral, namely all the debtor's property, both movable and immovable, both existing and new ones that will be in the future, become collateral for all obligations. Legal certainty regarding joint property as an object of pawning that is unknown to either husband or wife, is linked to a sense of justice so it must run according to applicable legal norms, in the sense that the elements of the legal system (legal structure, legal substance and legal culture) must run in tandem. Based on this description, there is actually a need for firm regulations from the institutional structure that oversees financial institutions and financial services in Indonesia, such as Bank Indonesia and the Financial Services Authority of the Republic of Indonesia, because there is already a legal umbrella based on Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage and Article 51 paragraph (1) of Law No. 39 of 1999 concerning Human Rights so that legal certainty is guaranteed. Considering the current practice that in the implementation of pawning whose object is movable property as joint property, often ignores the provisions regarding permission from the husband and wife, there needs to be a clear provision (regulation) that determines that pawning of joint property must be preceded by permission from the husband and wife and the legal principle related to "the party who controls (bezit) the movable property (bezitter) is considered the owner", must be set aside in the implementation of the pawn. As the legal norm of Article 1131 of the Civil Code explains regarding collateral, namely all the debtor's property, both movable and immovable, both existing and new ones that will be in the future, become collateral for all obligations. Legal certainty regarding joint property as an object of pawning that is unknown to either husband or wife, is linked to a sense of justice so it must run according to applicable legal norms, in the sense that the elements of the legal system (legal structure, legal substance and legal culture) must run in tandem. Based on this description, there is actually a need for firm regulations from the institutional structure that oversees financial institutions and financial services in Indonesia, such as Bank Indonesia and the Financial Services Authority of the Republic of Indonesia, because there is already a legal umbrella based on Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage and Article 51 paragraph (1) of Law No. 39 of 1999 concerning Human Rights so that legal certainty is guaranteed.

ISSN: 2828-4836 *Volume 5 No. 1, January 2026: 145-155*

4. Conclusion

The legal process of execution opawned object at PT Pegadaian which is the position of the goods The guarantee is as joint property from a marriage bond, implemented according to the provisions of PT Pegadaian where there is no difference in the process of completing the execution of the collateral between the collateral items. its position as joint property with collateral which is not property together. The process of executing the mortgage guarantee still prioritizes settlement of mortgage debt and auction execution process as a last resort process, where the customer will be given additional time after the credit is due to complete his/her obligations as per the mortgage agreement that has been agreed and signed by the customer when making the mortgage agreement. Meanwhile, the legal certainty of execution of joint assets as the object of the mortgage that is not known to either husband or wife in this case that the action to pledging the form of joint property acquired during the marriage The property that is classified as joint property must be based on the agreement of both parties, namely husband and wife. As Hans Kelsen views that coercion or the use of force (coercion) is an important characteristic of law, so that the process of executing an auction on a mortgage loan whose collateral is joint property without the consent of the spouse (husband or wife) is null and void by law. That there is a need for firm regulations from the institutional structure that oversees financial institutions and financial services in Indonesia, such as Bank Indonesia and the Financial Services Authority of the Republic of Indonesia, because there is already a legal umbrella based on Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage and Article 51 paragraph (1) of Law No. 39 of 1999 concerning Human Rights regarding both husband and wife must agree on both parties in carrying out legal actions related to assets. A written statement from the customer is required when making a pawn transaction stating that the collateral is not joint property. To provide strong legal protection for both husband and wife, a prenuptial agreement regarding their property is also necessary.

5. References

Journals:

Tami Rusli. “Pembatalan Perkawinan Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*”,* Dalam *Jurnal Pranata Hukum*, Volume 8 Nomor 2 July 2013 url:https://jurnalpranata.ubl.ac.id/index.php/pranatahukum/article/view/140.

Trubus Wahyudi. “Rekontruksi Ideal Pembuatan Wasiat di Hadapan Notaris Dalam Perpektif Hukum Islam”. Disertasi. Dipertahankan dalam ujian terbuka accessed on 5 April 2016 untuk memperoleh gelar Doktor Ilmu Hukum di PDIH FH Unissula Semarang.

Trubus Wahyudi. “Hakikat Konsep Rasionalitas dalam Mengontrak Bisnis Ekonomi Islam”. Dalam *Jurnal Akta* Volume 9, No 4 December 2022 url: http://jurnal.unissula.ac.id/index.php/PH/article/view/21007.

Trubus Wahyudi. “Legal Qonsequences of Agreement in Islamic Economic Business”. Dalam *Jurnal Pembaruan Hukum*, Volume 7, Number 1, April 2020 url: http://jurnal.unissula.ac.id/index.php/PH/article/view.

Books:

Abdul Manan. (2006). *Aneka Masalah Hukum Perdata Islam di Indonasia.* Jakarta: Kencana.

M. Yahya Harahap. (2005). Kedudukan Kewenangan dan Acara Peradilan Agama. Jakarta: Sinar Grafika.

Slamet Abidin Aminuddin. (1999). *Fiqh Munakahat I. Bandung:* CV Pustaka Setia.

Subekti. (2003). *Pokok-pokok Hukum Perdata.* Jakarta: Intermasa Cetakan XXXI.

Usman, Rachmadi. (2008). Hukum Jaminan Keperdataan. Jakarta: Sinar Grafika.

Regulation:

Financial Services Authority Regulation Number 31 of 2016 concerning Pawnshop Business.