

Legal Counseling About the Problems of the Misuse of Pawned Goods

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Abstract

Guaranteeing goods in pawn guarantees often creates legal problems. One of the problems that arise is that creditors misuse pawn goods. Legal counseling on pawning to the community will first be carried out by exploring and identifying problems with pawn law that occur in the community. After the counseling, an evaluation will be given through question-and-answer interaction so that the level of success of the legal counseling that has been given can be known. In addition, the evaluation was carried out by distributing questionnaires to participants. Based on some of these evaluations, the results show that there has been an increase in public understanding regarding pawn law, the problems of abuse of pawn goods, and legal settlements when pawn law problems occur.

Abstrak

Penyuluhan Hukum Tentang Problematika Penyalahgunaan Barang Gadai. Penjaminan barang dalam penjaminan gadai seringkali menimbulkan permasalahan hukum. Salah satu permasalahan yang timbul yaitu kreditur melakukan penyalahgunaan barang gadai. Penyuluhan hukum tentang gadai terhadap masyarakat ini terlebih dahulu akan dilakukan penggalan dan pengidentifikasian permasalahan hukum gadai yang terjadi di masyarakat. Setelah penyuluhan akan diberikan evaluasi melalui interaksi tanya-jawab sehingga dapat diketahui tingkat keberhasilan penyuluhan hukum yang telah diberikan. Selain itu, evaluasi dilakukan dengan cara penyebaran kuisioner kepada peserta. Berdasarkan beberapa evaluasi tersebut maka didapatkan hasil bahwa terjadi peningkatan pemahaman masyarakat terkait hukum gadai, problematika penyalahgunaan barang gadai, dan penyelesaian hukum. Ketika terjadi permasalahan hukum gadai.



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INTRODUCTION

The middle to lower economic community often has difficulty meeting their daily needs because their economy is often limited. Undoubtedly, this can be achieved through the practice of money-lending, which then requires the role of a guarantee institution. Pawn is one of the collateral institutions that appear to support money lending agreements. Due to the ease of providing loan funds compared to the banking industry in Indonesia, pawn guarantees are similar to those of the middle economic class (Kusairi, 2013).

Book II Chapter XX Articles 1150–1161 of the Indonesian Civil Code (hereinafter abbreviated as the Civil Code) contains provisions originating from colonial law relating to pawning. Because the procedures and requirements were easy, simple, and straightforward, it became a trend in society, and people immediately got money. Because of this, it was not uncommon for people to borrow their goods from black pawnbrokers. The considered process does not take a long time, which can be considered as a different interpretation for each society (Anggraeny & Ayu, 2020). However, because there are many deficiencies and fraudulent practices in illegal pawning transactions, the government established an agency that handles pawn transactions to reduce the number of parties involved.

Government Regulation Number 103 of 2000 concerning Pegadaian Public Companies (Perum), which has now been changed to Pegadaian Limited Liability Companies (Persero), sets the following objectives: (1) to improve the welfare of the community, especially the lower middle class, through the provision of funds on a legal basis pawning and other financial services by the applicable laws and regulations; (2) protect the public from illegal pawnshops, namely the practice of usury which is detrimental, which (Government Regulation Number 103 of 2000, Article 7)

People who received a black pawn for their goods often suffered losses; at least, the rights of the pawnbroker are often not fulfilled and the obligations of the pawnbroker are often not fulfilled, or vice versa (Tongat & Anggraeny, 2018). The illegal pawn business can generate profits in unauthorized pawn transactions, which results in usury practices being experienced.

In this case, the government establishes a Pegadaian Limited Company to prevent fraud. Many people still use black pawnshops to guarantee their goods. Therefore, the author will discuss a little about illegal pawning or pawning that is done outside the Pegadaian Persero Company. It is undeniable that problems related to pawning in Indonesia can cover the fields of civil law as well as criminal law. Initially, pawn transactions were only civil matters. The type of pawn object, namely a movable object, is the source of various problems that arise in the practice of this law related to pawning. Moving objects can move quickly and easily. Due to its movable nature, it is difficult to know who is the rightful owner of the object. This is also by the principle of bezit, which is stated in Article 1977 of the Civil Code, which refers to the control of movable objects (Isnaeni, 2014).

Development of national law consists of legal counseling and development of national law consists of legal counseling. Therefore, legal counseling depends on a big plan on how human life (WNI) wants to be built to improve its quality and encourage key individuals to behave and act according to what has been regulated in the mortgage. In connection with Article 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M-01.PR.08.10 of 2007 concerning Amendments to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M-01.PR.08.10 of 2006 concerning Patterns of Legal Counseling, it is stated that Legal counseling is an effort to increase public legal awareness and increase legal awareness.

Based on the things above, the purpose of legal counseling is to increase a person's legal awareness so that they know, understand, understand, and apply the applicable legal principles related to the concept of pawn law, pawn problems, and their resolution. Due to the complicated causative factors, which not only stem from the public's lack of understanding of the concept of pawning legally, but are also associated with various social problems such as problems of tradition and customs, changing social status, economic demands, people's lifestyles, and so on, it is very important to provide legal counseling related to the concept of pawn and its problems to prevent social problems arising from it.

IMPLEMENTATION METHOD

This pawn law examination is carried out through several stages. The first stage is to request information. At this point, information related to local knowledge and pawn issues is investigated. Second, the stage of identifying problems that often occur in society to provide the right direction for legal settlement. Third, the legal counseling stage is related to the concept of pawning to inform the public about the law and its problems so that people can understand the law and its solutions. Fourth, the process of evaluating legal counseling is carried out to find out how well the community understands question-and-answer interactions.

RESULTS AND DISCUSSION

The pledge is a method of debt in which a person or another person hands over the movable property to the creditor, which allows the creditor to pay off the movable object before the other creditor, except for auctioning the item and the costs required to save the item after being pawned, which costs which will take precedence (Sulisteni, 1987). The pledge is ownership of movable property which is given to the pawn holder with the intention that the debtor cannot change the mortgaged item.

The target of this community service program is the community in Greater Malang through counseling via radio and television, as well as legal counseling in Arjosari Village, Malang District. To achieve this goal, legal counseling in all areas of Malang City is



provided through radio and television broadcasts as well as direct (private) legal counseling by the community in the Malang City area.

Pawning is a popular way to earn money by guaranteeing moving items. This is because the procedures offered by pawnshops do not take long to complete. However, habits that have existed for generations have caused people to choose pawnshops as a way to deal with their financial problems. because society believes that pawning meets easier requirements than other types of collateral companies.

Based on current laws and regulations, people who choose pawnshops still don't understand the proper concept of pawning. As a result of this ignorance, individuals who choose pawns simply follow the customs that surround them without gaining an accurate understanding of those habits. This causes social problems such as debtors who do not fulfill promises and even creditors who do not fulfill mortgage promises.

Due to this lack of knowledge, the community needs legal counseling through information gathering, problem identification, counseling, and evaluating the implementation of counseling. The following are the results of each of these activities:

1. Extracting information on public knowledge and pawn issues

Pawnshops can be used by people who want to get funds. There are several pawnshops in Malang City, such as Pawnshops and unofficial pawnshops. Asking directly to the community at the pawn shop, both official and unofficial, will show how far their knowledge is.

To find out how well the people of Malang City understand pawn, especially about the meaning of pawn, the parties in the pawn, the object of pawn, and the actions that must be done during the pawn agreement. The results of discussions with the people of Malang City show that some people do not understand the basic pawn concept. As it turns out, the people of Malang City use pawnshops to make ends meet and to start their businesses. The people of Malang City choose to pawn because their property can be mortgaged. They also received information from those closest to them that by using a pawnshop it would be easy to get money to meet their urgent needs.

The people of Malang City often choose to pawn at the Pawnshop Office, even at pawnshops that are not legally authorized. The people of Malang City feel confused when they are rejected at the Pawnshop Office for inappropriate reasons because they choose pawnshops to solve their economic problems without clear knowledge.

2. Identification of Pawn Problems

The people of Malang City often use mortgages as collateral to get loans because they are considered the easiest to use. However, due to the existence of a pawn agreement, there are problems in its implementation. In addition, the Pledge Guarantee is a legal action taken by the Pledge Giver and the Pledge Recipient to

form a civil law relationship with each other (Sipatuhar 2021). That is, pawning is a civil matter. This, however, is not limited to civil matters limited to agreements (Anggraeny, Tongat, & Rahmadanti, 2020). In practice, various pawn issues eventually turn into criminal matters because they have entered the realm of crime for the benefit of individuals or the general public. Therefore, pawning problems are divided into two categories: civil law problems and criminal law problems (Tongat & Anggraeny, 2018). In addition, the pawn system that still uses colonial law (KUHPerdara) can no longer handle the increasing development of pawnshop services (Abubakar, 2012). According to community findings, the following problems are related to pawn transactions in Malang City:

- a. People who owe default
- b. Misuse of pawned goods by the party receiving the pawn
- c. The pawnee defaults on the pawned goods that he keeps which causes the goods to be of less value.

3. Legal Counseling

One type of action known as legal counseling is an effort to disseminate information and increase public understanding of the rule of law and legislation (Sudjana, 2017; Anggraeny, Lutfia, Ratna, Rachmaudina, & Author, 2021). Legal counseling does preventive, corrective, maintenance, and development (Sudjana, 2017). Therefore, legal counseling is needed when it is found with the community that the community does not have a basic understanding of pawning, which causes the problems previously mentioned. Counseling is carried out via radio and directly with the community. One of the sub-districts in Malang City, Arjosari, received legal counseling. So that people no longer choose the wrong pawnshop to get a loan, counseling discusses important matters about pawnshops. This is educational material.



Figure 1. Material Submission Activities on Pawn Law Counseling



The legal basis for pawning can be seen in the Civil Code. Pawn has been regulated in the Civil Code, namely Articles 1150 to 1160 (Article 1150 of the Civil Code). Articles relating to the lien have been regulated about the definition, the form of the lien agreement, the lien, the form of the lien, the consequences if one of the partie defaults, the rights and obligations of the parties, and the nature of the lien. A mortgage can appear when the following elements have been met:

a. There is a pawn subject

An agreement will arise if there is a legal relationship in the form of an agreement between two or more people who bind themselves to make achievements. So it can be seen that the parties to the agreement are creditors and debtors (Syahrini, 2004). The party, namely the creditor a party that has the right to achievement, and the debtor is obliged to fulfill the performance implementation.

So that in pawning it can be explained in more detail that the party giving the pledge is called the pawn giver, while the party receiving the guarantee is called the pawn receiver. The giver and the pawnbroker are parties to a pawn agreement. However, a third party can be present in the pledge agreement because it relates to the ownership of the pawned item(Usanti, 2012).

Related to the ownership of movable property to be pawned, it will determine the position of the mortgagee. If the collateral is owned by the pawnbroker himself, then the pawnbroker is the real pawnbroker. But if the object that is pledged does not belong to the pawnbroker but to someone else, a third party will appear as the pawnbroker (Satrio, 1996). The third party of the pawn giver is only responsible for the goods he gives and other things besides that remain the responsibility of the pawn giver.

b. Pawn object

A pledge object in principle is a movable object, and the physical object must be handed over to the pawn recipient. Movable objects are divided into two, namely tangible and intangible. Tangible movable objects are objects that can be moved or moved easily(Cinthy et al., 2020). Examples of tangible movable objects are gold, motorized vehicles, watches, and others. While intangible movable objects such as receivables are under the hand, receivables at the point of view, have the right to collect results on objects and receivables.

Based on the form of the object that is pledged as collateral in pawning, the legal principle contained in Article 1977 paragraph (1) of the Civil Code applies to movable objects that are not in the form of interest, or receivables that do not have to be paid to the bearer, then whoever controls them is considered as the owner. Based on this understanding, it can be concluded that the law protects someone who controls an object (as if it were his own) without questioning who the real owner of the object is.

The conditions for the pawning of movable objects consist of two conditions, namely: the item being pawned must be released from the Pledge Giver to the Pledge Recipient and there must be an agreement to grant this lien which can be made in writing or verbally (Sofwan, 1974). The pawn agreement is complementary (Syafuri, 2014) to the main agreement, namely the loan and borrowing agreement guaranteed by movable objects. The pawn guarantee agreement was made to improve the position of creditors' receivables so that they occupy the position of special receivables that have preference characteristics, namely that the repayment of these receivables will take precedence over other creditors (Isnaeni, 2014).

c. The authority of the pawnbroker

The pawnbroker can carry out an auction for the pawn giver's goods which are his authority when the pawnbroker does not carry out his achievements following the contents of the agreement made between the pawnbroker and the pawnbroker even though the pawnbroker has been given a subpoena by the pawnbroker.

The rights and obligations of the parties to the pledge arise when the two parties have agreed on a pledge agreement . Arrangements related to these rights and obligations can be seen in Articles 1155 to 1157 of the Civil Code, namely:

a. The rights of the pawnbroker

- 1) The pawnbroker can carry out the execution, namely selling under his authority the pawn giver's objects if the pawn giver is negligent or defaults
- 2) The mortgagee has the right to sell movable property belonging to the mortgagor through a judge
- 3) The creditor has the right to get reimbursement from the pawnbroker for all useful costs incurred by the pawnbroker for the safety of the different pledges
- 4) The pawnbroker is entitled to interest on the mortgaged receivables.
- 5) The pawnbroker has the right of retention, namely the right of the pawnbroker to hold the pawned object until the pawnbroker fully pays the principal debt plus interest and other costs.

b. Liability of the pawnbroker

- 1) Only mastering objects, not owning objects, and maintaining the safety of these objects.
- 2) It is obligatory to notify the pawnbroker if the pawned object will be sold at the latest.
- 3) Responsible for lost or decreased value of mortgaged objects.
- 4) It is mandatory to return the pawned goods when the pawnbroker has paid off his debt.

c. The rights of the mortgagor

- 1) Receiving pawn money from the pawnbroker



- 2) Entitled to pawn goods, if the principal debt, interest, and other costs have not been paid
 - 3) Has the right to sue the court so that the mortgaged goods are sold to pay off the debt.
- d. Liability of the mortgagee
- 1) Hand over the pawned goods to the pawnee
 - 2) Pay principal and capital rent to the mortgagee
 - 3) Paid the costs incurred to salvage the pawned items.

The rights and obligations of the parties in the pawn agreement must be obeyed by both parties. When one of the parties does not fulfill his achievements, he has committed a default. If the pawnbroker has defaulted, the pawnbroker can subpoena him before the execution of the pawned object.

4. Evaluation of the Implementation of Legal Counseling

At the time the legal counseling was conducted, either via radio or directly to the public, the enthusiasm of the community was large enough to understand the basic concept of pawning. This can be seen from the questions that arose during the training. The questions given in general can be described as follows:

- a. What if I (the debtor) cannot pay my debt to the pawnshop? Can the item I gave be taken again?
- b. Is it permissible if I come to the Pawnshop just to store my things because I want to go out of town?
- c. What is the responsibility of the creditor if the item that I pawned turns out to be damaged? Will compensation be given?
- d. What items can be pawned at a pawnshop?

In addition, a post-test was given to counseling participants so that they could evaluate the course of the activity and find out an increase in understanding regarding pawn law which is legal according to law and the level of legal problems is minimal.

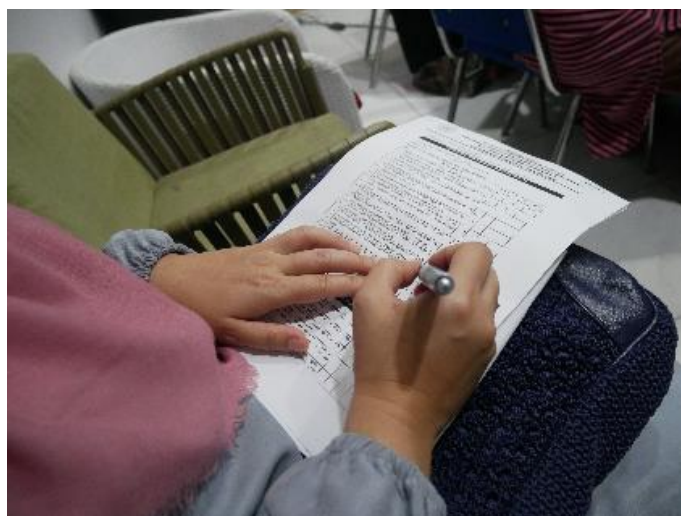
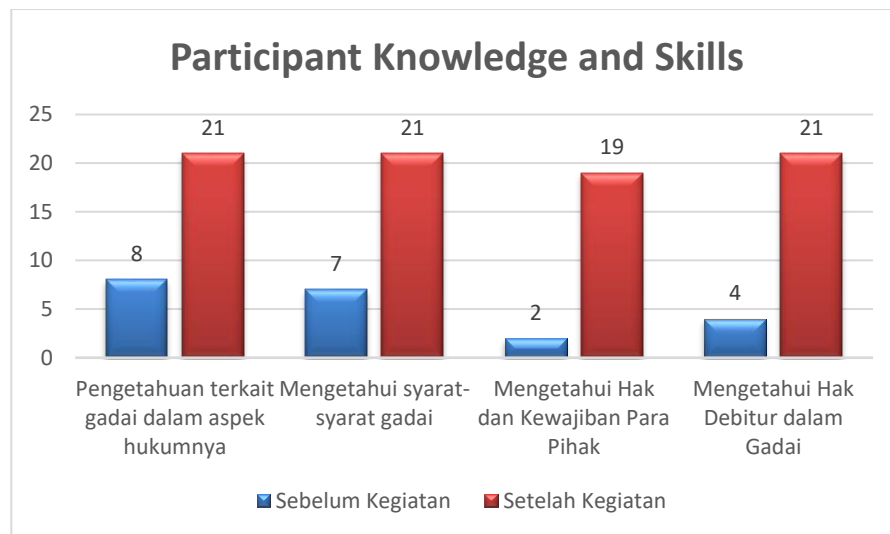


Figure 2. Filling out a questionnaire by one of the participants

Based on the results of the Post-Test, it can be concluded that there is an increase in knowledge (Graph 1).



Graph 1. Increase in Participant knowledge and skills

Furthermore, it is also known that the positive responses of participants in the pawning law counseling activities.

After legal counseling is carried out, it is hoped that the community will be able to understand basic pawning so that the mistakes made by the parties, especially the debtor, namely the community itself, can reduce and no longer use illegal pawning.

CONCLUSION

The people of Malang City, Arjosari Kelurahan, often contact pawnshops to get funds. The people of Malang City choose to pawn because they believe that the administration is easier than other types of collateral. To find out more about the community's understanding of pawning, it is known that they do not understand pawning fundamentally. As a result, people often misunderstand the rights and obligations of the parties, as well as the creditor's position in pawning. Based on this description, it is clear that the public does not yet understand the ins and outs of pawning. As a result, problems associated with the execution of pawns often occur. Creditors and debtors can be held responsible for this matter. The creditor determines that the debtor is in default because the debtor forgets to pay some debts. Problems arise due to the creditor's actions: the creditor abuses and does not store the pawned goods properly, which reduces the value of the pawned goods. If the people of Malang City want to earn money by guaranteeing their goods through pawning, they must first learn about the ins and outs of pawning. However, the creditor must be responsible for the goods stored so that the goods remain valuable when the debtor pays off the debt.

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