

## LEGAL REFORM IN INDONESIAN PAWNSHOP

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### Abstract

This study aims to examine regulations related to the development of pawning in Indonesia from time to time. Basic Rules of Pawnshops (Pandhuis Reglement) in 1928. Pawning has been known to the Indonesian people since the colonial era and its existence until now. The absence of new regulations related to pawning will harm consumers because many private pawnshops operate under their own rules. In this study the author presents the formulation of the problem: How to Arrange Pawns and Pawning Institutions in the Future? The formulation of the problem above is the *Ius Constituendum* – the expected regulation – related to the mortgage guarantee institution. This type of normative legal research is descriptive quantitatively with an analytical approach, a statutory approach, a historical approach. Analysis and construction are carried out in a quantitatively manner, emphasizing legal aspects (*rechtbeginselen*), especially law relating to pawning. The author applies an interdisciplinary method that combines law and economics. The results of this study showed that Indonesia does not yet have a pawn regulation at the level of the law. The urgency of the pawn regulation, in this case the Bill of Moving Materials, can fulfill the sociological basis of the community for the rule to ensure legal certainty, regulation and consumer protection. so there is a need for legal reform related to pawning.

**Keywords:** Guarantee Institution; Pawnshop; Position

### A. Introduction

This study aims to examine regulations related to the development of pawning in Indonesia from time to time. Where this pawn in Indonesia is an institution that is familiar to both the common people and state officials, this is evidenced by the fact that the practice of pawning does not only occur in the small and medium class but also among the Sundanese nobility, where they pawn to finance their glamorous lives, as in the following description (Lubis, 1998): "These indigenous *ambtenars* –officer, the nobles are under the regent - exhibited jewels to indigenous *ambtenars* in the countryside to buy them by signing an affidavit.

The lack of comprehensive pawning rules can provide legal uncertainty, where pawning is according to national law - customary law, Western law - civil law - and Islamic law. These different arrangements lead to disharmony in arrangements related to pawning and sometimes the practice is in accordance with the wishes of the pawn business which is very detrimental to the community, besides setting high interest rates and controlling collateral items if the

community fails to pay off their debts, Traditional pawnshops in Bali and Lombok still refer to the interests of people who have strong capital, which has the potential to harm the community due to differences in bargaining positions (Aditi, 2020).

Whereas the practice of mortgaging land has been regulated through the Basic Agrarian Law (UUPA) Number 60 of 1960 and PERPU of Agricultural Land Number 56 of 1960 concerning Limits on Agricultural Land Areas. Pawn arrangements are also regulated through the Ulama Fatwa for the practice of pawning gold based on sharia law, but in practice it is not in accordance with sharia and even exceeds the objectives and functions of sharia due to weak regulations. - top up practices (re-pawning), gold purchases in installments, joint contracts and the imposition of administrative costs, maintenance costs and premiums. non-transparent insurance. Apart from that, the supervisory function of the Islamic gold pawning practice has not been maximally followed by strict sanctions for Islamic banks and financial institutions (Abubakar & Handayani, 2017).

If improvements are not made through legal reform, the above conditions will have an impact on the principle of moral hazard which in the end more and more people are trapped in the practice of new-style moneylenders which in the end is very detrimental to the community and becomes a burden for development. Therefore, in this paper, the author views that harmonization and synchronization in pawn law is a very urgent matter.

Therefore, this article explores the following research questions; How to Arrange Pawns and Pawning Institutions in the Future? The formulation of the problem above is an *Ius Constituendum* - an expected regulation - related to the Pawn. Pawn and pawnshop guarantee institutions, which are still needed in the Indonesian economy. Weather Does the urgency of reforming the legal system related to pawning in Indonesia?

## **B. METHOD**

The author in this study uses a normative juridical method with a descriptive analytical approach, a statutory approach, examines and examines laws and regulations related to pawning, a historical approach, namely a historical approach in the context of tracing the history of certain laws from time to time in this case is history of mortgage law (Efendi & Ibrahim, 2016). The form of this research is directed as a comparative and historical approach research, namely research that aims to trace the history of the law and the comparison between laws related to material security (Efendi & Ibrahim, 2016) with material in the legislation related to pawning. In the form of the above research, the author uses primary and secondary and tertiary legal sources. In terms of applied science and methods, the author uses an interdisciplinary approach that combines law and economics.

## **C. DISCUSSION**

### **1. Regulation of Pawnshop in Indonesia**

A financial institution with a pawn system by Bank Van Leening founded by Vereenigde Oost Indische Compagnie (VOC) in Batavia on August 20, 1746. Then on December 31, 1799, the

VOC was officially dissolved and the Dutch government (at that time Republic of Bataaf) revoked the rights of the VOC. In 1806, there were political changes in Europe until the Bataaf Republic was dissolved and the Kingdom of the Netherlands was established which was ruled by King Louis Napoleon (Agustina, 2011).

Then the Dutch East Indies Government, on April 1, 1901 took over the bank and on March 12, 1901 issued Staatsblaad No. 131 dated March 12, 1901, which essentially stated that pawnshops were monopoly and therefore run by the government. Bank Van Leening was later converted into a state pawnshop, the first time in the city of Sukabumi, West Java. And in 1928 turned into a company "Jawatan"(Pegadaian, 2018).

Based on Article 1150 of the Civil Code, it is stated that Pawn is a material right on movable objects belonging to other people and the aim is not to give enjoyment to the object but to guarantee the repayment of debt. Where the lien arises because of the principal of the agreement. With regard to rights, it is related to material rights -zakelijk recht (Subekti, 1954). Meanwhile, the right to obtain prepayment or the right to obtain payment of debt from the income from the sale of the pawned goods is regulated in Articles 1154-1160 of the Civil Code. In Article 1154 of the Civil Code (Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek Voor Indonesie) Staatblad Tahun 1847 Nomor 23, 1847), states that the existence of the collateral is still in the hands of the pawnbroker even though the debt from the pawnshop has not been repaid, and if there is another agreement that states otherwise, the agreement is void (nietig) – except that it only takes into account the return of the loan money with the proceeds from the sale of the pawn. The legal system of objects is closed, meaning that people cannot hold new material rights that have been stipulated by law. To guarantee legal certainty, the legal provisions are dwingend recht (Habib Adjie & Saputro, 2015).

The law of material security is focused on material rights as collateral, in the aspect of material security in Indonesia it is divided into several laws and regulations - Mortgage, on land and objects related to land (immovable objects), Fiduciary Guarantees, relating to objects move – which was born from Book II which is dwingend recht, coercive law, the Civil Code – with the aim of strengthening and synchronizing and legal certainty. Rules and Book II and Book III regulate Property Law, which differ in character but have substantial similarities, from the characteristics of material rights, their character shows that material rights are the center of human life that is always needed. Materials are needed because they have value to support the needs of human life - economic value - because humans are homo economicus, therefore humans will try to get ownership rights to these objects - how to get property rights is regulated in article 584 of the Civil Code (Isnaeni, 2016b).

Isnaeni added that in addition to immovable movable objects, the classification of objects develops into registered and unregistered objects, capital and non-capital objects as objects of fiduciary guarantees - collateral objects are used by fiduciary guarantee providers to turn the wheels of their economy, either directly or indirectly and as long as they are not encumbered with mortgages and mortgages – because the control of the object of collateral lies with the debtor. This is different from a pawn where the object of the guarantee transfers its material

rights to the creditor but does not transfer ownership – this is against the principle of *inbezitstelling* (Isnaeni, 2016b).

Pawnshop as an institution (company) that provides money loans with collateral for movable goods has long been known in Indonesia. The history of this institution that has existed since the VOC era is derived from the Basic Rules of Pawnshops (*Pandhuis Reglement*) in 1928 until now it is more than half a century old. The condition of the monopoly of the pawn business continued until the Japanese occupation in 1943 (Files, 2018).

During the Japanese colonial period, the Head Office Building of the Pawnshop Bureau, which was located at Jalan Kramat Raya 162, was once used as a place for prisoners of war, so that the Head Office of the Pawnshop Bureau was moved to Jalan Kramat Raya 132. During the Japanese rule, not many changes have occurred, both in terms of the policy and organizational structure of the Pawnshop Bureau or in Japanese it is called *Sitji Eigeikyuku*. At that time, the leadership of the department was held by Ohno-San who was a Japanese national and his representative was an indigenous person, M. Saubari, and in the era of independence, at the beginning of the government of the Indonesia Republic, the Office of the Pawnshop Office had moved out of Jakarta, namely to Karanganyar, Kebumen, Central Java due to the increasingly heated war situation. The second Dutch military aggression forced the Pawnshop Office to move again, namely to Magelang, Central Java. After the war, the Pawnshop Office was again headquartered in Jakarta and managed by the Government of the Republic of Indonesia (Chandra, 2020).

Pawnshop underwent several changes to its legal entity form, so that in 1990 it became a public company. In 1960 the Pawnshop Service changed to a State Company (PN) Pawnshop from its initial position as a "Jawatan" company, in 1969 the PN was changed to a Pawnshop Bureau (Perjan) Company and in 1990 the Pawnshop Bureau Company was changed to a Pawnshop Public Company (Perum) through Government Regulation (PP) Number 10 of 1990. The head office of Perum is domiciled in Jakarta and is assisted by regional offices and branch offices. Since being managed by the Government of the Republic of Indonesia, pawnshop has changed its status several times are as follows (Aermadepa, 2016): a. State Company (PN) based on PERPU No. 19 of 1960 and PP Number 178 of 1961; b. Company Service (Perjan) based on PP Number 7 of 1969.

Pawning implementation arrangements are also regulated according to custom and the provisions of PERPU Number 56 of 1960, but it still creates legal uncertainty because it raises issues related to the constitutional rights of indigenous peoples, especially in this case the Pawn Holders. The existence UUPA Number 5 of 1960 - revoked the rules for objects in the Civil Code as long as it concerns the earth - water and the natural resources contained therein. The classification of non-land objects still refers to the Civil Code, creating confusion and disturbing the legal system because the UUPA and the Civil Code use different systems (Isnaeni, 2016a).

The law of pawning is regulated in the Civil Code from articles 1150-1160, UUPA Number 5 of 1960, PERPU Number 56 of 1960. The meaning of pawn based on Article 1150 of the Civil

Code is a material right that arises because of the guarantee of repayment of debt in the form of control over a movable property (Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek Voor Indonesie) Staatblad Tahun 1847 Nomor 23, 1847).

A lien is a lien right is a rental right that is temporary in nature and is written off in a short time – without a set time limit (Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, Lembaran Negara RI Tahun 1960 Nomor 104 , Tambahan Lembaran Negara RI Nomor 2043, 1960).

Meanwhile, pawning agricultural land has a maximum time limit of seven years, and must be registered (Peraturan Pemerintah Pengganti Undang-Undang Nomor 56 Tahun 1960 Tentang Penetapan Luas Tanah Pertanian, Lembaran Negara RI Tahun 1960 Nomor 174, Tambahan Lembaran Negara RI Nomor 2117, 1960).

Another weakness regarding land pawning is that it is often done verbally and the form of the agreement is not regulated in the legislation and the sanctions rules are not implemented in Article 10 paragraph 2 of PERPU Number 56 of 1960 did not have a deterrent effect, so there was often "land grabbing" of pawnshops who could not redeem their land back.

The ownership of the pawned land has been determined based on the Decree of the Supreme Court No. 810 K/Sip/1970 dated March 6, 1971 that the PERPU is coercive and cannot be weakened even though it has been agreed by both parties, the purpose of the PERPU is to protect the economically weak party – the owner farmers are holding it because they need money, they are forced to mortgage their land – then after seven In the year of ownership of the pawnshop land, the recipient of the pawn felt that he had enjoyed the pawned field enough so that he had received a refund of his farming results (Hasbullah, 2002).

Ownership of pawns is also determined based on the decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 2343/K Pdt/2004, one of the AMAR decisions which states that the time limit for pawning land is seven years, if it exceeds that time limit, the recipient of the pawn must return the land and pay compensation from since the end of the seven-year period of the pledge. This is legal protection for pawnshops (Srinastiti, 2013).

Pawnshop Public Company was transformed into a company on April 1, 2012, based on PP Number 10 of 1990 which was updated by PP Number 103 of 2000 so that it became a Limited Liability Company (PT Pegadaian (Persero)) based on PP Number 51 of 2011. Pawnshop has now grown rapidly to become the largest government-owned pawn company in Indonesia, and is a legal business entity according to law in the pawn business in Indonesia. Pawnshops are needed by the small people. The credit or loan granted is based on the value of the collateral submitted. The purpose of this institution is to prevent poor people in need from falling into the hands of moneylenders who in providing loans charge very high interest rates. The pawnshop industry is currently experiencing a very high development, this is evidenced by the number of private pawns that appear like mushrooms in the rainy season, almost every place has private pawnshops – which it is feared that consumer protection will be neglected considering that there are no regulations governing these private pawnshops.

The proliferation of private pawnshops provides many options in seeking loan funds, but most of the pawn business entities have not been registered and have their licenses processed at the OJK. In fact, since 2016, the financial services supervisory agency has issued OJK Regulation Number 31 of 2016 concerning Pawnshops. The development of this private pawn business despite the high interest rates, private pawnshops 'side the road' do not hesitate to set high prices for the goods pawned by their customers. In addition, the class and brand of goods that can be guaranteed are claimed to be at the same level as the goods belonging to the lower middle class, many people label the pawnshops as 'bogus' without permission as a new style of loan shark.

Regulations in the economic sector provide legal certainty in supporting the transactions of goods and services as a guide for economic actors, but create economic disparities for the majority of the community. This gap is influenced by political and legal factors that mutually determine the legal system which results in the attraction of the interests of entrepreneurs (the market), the interests of the authorities, and the interests of the people. So that this fact requires a realignment of the actual role of the law. John Gilissen and Frits Gorlé in Mubyarto argue that law and economics influence each other and cohesion in economic and legal development. otherwise (Maryanto, 2015).

legal developments are in line with the development of human life and needs, so that legal changes will always occur - a necessity - following the socio-cultural and economic developments of the community so that they can continue to support legal consistency and certainty, as well as the existence of pawns in the Civil Code - more than 119 years old - requires a change considering the rapid development of the business world and also the limitations of the Civil Code. In contrast to other material guarantee institutions which have been regulated through special regulations - Law Number 4 of 1996 concerning Mortgage Rights, Fiduciary Guarantee Law Number 42 of 1999. The existence of collateral is very important in anticipating the potential for default due to default by the debtor - the main and additional agreements (accessoir) with material guarantees (Pledge, Mortgage, Mortgage or Fiduciary) which gives the position of the financial institution as a preferred creditor, which has the right to pay off other creditors in advance (Isnaeni, 2016c).

## **2. Pawnshop Tariff**

In the current global economic development, pawn transactions have also offered information technology-based services via the internet, to protect consumers from irregularities in these transactions, the OJK issued regulations related to internet-based financial industry services, POJK Number 13 of 2016 concerning Digital Financial Innovation in Financial Services Sector, and POJK 77 of 2018 concerning Information Technology-Based Lending and Borrowing Services. Digital Financial Innovation plays an important role in supporting faster, cheaper, easier and wider financial services so that they can reach remote areas in order to narrow high economic disparities between regions. The presence of other technologies also supports the creation of financial services that are more efficient and in accordance with community needs. The role of financial services with low operating costs and on a small scale is very appropriate to serve the micro, small and medium segments. Innovation has two sides, namely the side that provides benefits or the side that has the potential to disrupt traditional

financial services. The disruptive effect that will occur can lead to instability in the financial sector and unfair competition (Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 77 /POJK.01/2016 Tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi, Lembaran Negara Tahun 2016 Nomor 324, 2016).

The absence of a special law on pawning is suspected to have caused problems in consumer protection, especially after the rise of private pawnshops. The existence of private pawnshops is detrimental to consumers and the absence of strict sanctions, resulting in legal uncertainty and neglect of consumer protection, this is considering that most of the private pawning businesses - more than thousands of pawnshops throughout Indonesia, on the streets, especially around Jabodetabek residency private pawnshops began to appear. Usually, the location of the private pawnshop is close to community settlements, traditional markets, and other public places without any supervision from the authorities – OJK (Januar, 2017).

In the practice of pawning, one of the most crucial is the determination of tariffs or yields because with the provisions of the tariffs that are set, it can guarantee that consumers are not harmed and there is no usurpation of property rights from the pawnbroker. As a non-bank financial institution that has been in great demand by the public for a long time, the existence of this tariff is a means to ensure that the pawn business achieves efficiency – avoiding the high-cost economy.

In the Pawning Law for Priangan Residency, Pandhuizen Reglementen Preager-Regentschappen, Staatsblad Van Nederlandsch-Indie Number 131 of 1901 was stipulated based on the Ordonatie dated January 22, 1880 (Staatsblad - State Gazette - Number 17), as amended, supplemented and explained by decree May 14, 1886 (Staatsblad Number 91), July 1, 1891 (Staatsblad Number 168), April 14, 1894 (Staatsblad Number 90), October 18, 1896 (Staatsblad Number 207), April 6, 1899 (Staatsblad Number 131) and August 9, 1900. The determination of the mortgage rate is set at a maximum of five percent for loans between twenty-five guilders and fifty guilders for six months, while the lowest rate is one cent for loans of under fifty cents for ninety days of the loan, while the maximum loan is amounting to one hundred guilders with a maximum loan term of twelve months at a rate of one and a half percent (Staatsblad 217) De Pandhuis-Regie, Inlandshe Bestuursambtenaren Op Java En Madoera No. 38/F, Ordonnantie van 4 December 1903 (Staatsblad No. 402 Aangevuld En Gewijzigd Bij Staatsblad 1910 No. 482, En 1917 N . 640) Betreffende Geleidelijke Invoering Op Java En Madoera Van (Buitenzorrg, Nederlandsch-Indie: Derpartement van Binnenlandsch Bestuur - Departemen Pemerintahan Dalam Negeri, 1919), p. 82.

As the legal basis for Indonesian pawning - is a law inherited from the Netherlands, it does not reflect the philosophy of Pancasila law - because the colonial legal system is liberal and individual - so the regulation places more emphasis on monopoly practices of the state and the state as the executor of pawns - this can see in article 9 paragraph (1) states that the nameplate of the pawnshop must be in front, on a wide plain, inscribed with the letters: "government pawnshop", in Dutch, Native, Malay and Chinese (Peraturan Pemerintah Tahun 1928 Tentang Pegadaian Pemerintah (Pandhuis Reglement Tahun 1928 Staatsblads Nomor 81), 1928).

And Article 13 paragraph (2) “The Dutch East Indies government is responsible for all damage that may be suffered by the premises, any time due to fire or causes within the range of the usual precautions, unless the depreciation is a result of lack of routine maintenance does not provide a claim for damages. And Article 23 “This regulation can be cited under the title "Pawning Regulations". Owned by the Government Ordinance March 29, 1928. The Standard Pawn Rates in 1928 are as follow: Loans are a maximum of twelve months with a loan of between fifty to one hundred guilders with a rate of between one percent and four percent, while for loans between twenty-five guilders to fifty guilders a tariff of five percent is imposed with a maximum loan period of six months, while for loans of ten cents to twenty-five guilders are subject to a rate of two cents per one hundred and thirty-five days.

And for building depreciation arrangements, it is regulated through Staatblad Regulation No. 266 of 1930, where for 1928 up to and including 1932, the following asset groups are regulated, and the following depreciation rates are applied: Buildings made of stone 3%; Buildings with 5% plastered bamboo walls; 25% semi-permanent building; 5% inventory. An amount of NLG 250000 (Two hundred and fifty thousand guilders) was charged to the operating account, starting in 1930 (Undang-Undang Perusahaan, Landsbedrijven Pandhuizen (Lembaran Negara Van Nederlandsch-Indie Tentang Tahun 1930 Nomor . 266) Bedrijvenwet, Landsbedrijven Pandhuizen (Staatsblad Van Nederlandsch-Indie Over Het Jaar 1930 Nomor . 266), 1930).

Recognition of the sovereignty of the republic of Indonesia occurred after the end of the Round Table Conference in 1949, so since then all Dutch-owned companies were nationalized – the nationalization program began in 1951 – one of which was the Pegadaian Bureau which was managed by the Indonesian government and all operational costs were determined through the State Budget, this can be seen in Law Number 50 of 1957 concerning the Determination of IBW Part I of the 1954 State Budget, likewise with the mortgage guarantee institution, it is necessary to reform the law in order to protect the rights of the pawnshop. valley – small and medium community – in terms of the pawn guarantee institution, there is still the potential to be neglected due to the absence of legal protection from illegal pawning practices that are mushrooming and cannot be supervised by the relevant authorities and cannot be acted upon or sanctioned because the rules are not yet maximized. The development of this private pawn business - even though the interest is high, and does not have an estimator of collateral goods - or the private pawnshop's edge is in demand by the lower middle class because the community's need for this pawn service is quite high and has not been served by pawnshops, many people brand it a house. Unlicensed 'bogus' pawns are the new style of loan sharks.

Private pawns disburse money that customers want to borrow without a standard estimate of the goods guaranteed. The interest rate is certainly higher, the repayment scheme is also different, without state supervision. The pawnshop industry has undergone very drastic changes. It is not only marked by the presence of private pawn companies, but also the presence of financial technology (Fintech) companies and substitution services offered by banks and finance companies (Chandra, 2020).

Based on the latest OJK records per August 2018, of the 585 registered pawn companies, Dumoly F. Pardede in Tobing said that Pawnshop companies regulated and supervised by OJK



are government pawn companies - namely PT Pegadaian (Persero) and private pawnshops. Some of them have business pawning gold, electronics, household appliances to vehicles. However, OJK does not have exact data on the value of private pawn assets and the identity of private pawns with assets valued at trillions – but with the legalization of private pawning, consumer protection can be protected. The reasons for OJK to legalize private pawning business are as follows: 1. customer protection related to goods pawned in private pawnshops; 2. interest rates at private mortgage rates can be cheaper; 3. increase the penetration of public access to financial institutions (Tobing, 2020) – Indonesia's Financial Inclusion is still around seventy five percent as of September 2019 and as of November 2019 it reaches seventy six point nineteen percent (Rina Ayu Larasati, 2019).

The government pawnshop is the oldest pawn business entity and the only pawn business that is permitted to carry out pawning business in Indonesia until 2016 – with the issuance of Financial Services Authority Regulation Number 31 of 2016, private pawnshops began to be given space and received permits to operate in providing non-bank financial services to the public based on the law of pawning. So far, there has been no standard application of private mortgage rates which are suspected to be detrimental to consumers, for this reason it is necessary to have rules regarding the limits of reference interest rates so that the public is not harmed. PT Pegadaian (Persero) still maintains the mortgage interest rate. The company has no plans to raise interest rates even though operating expenses are starting to get higher. Riswinandi in Mona Tobing said that the mortgage interest rate for pawn loans ranges from 18% to 27% for one year. Firdaus Djaelani in Mona Tobing said that the standardization of mortgage interest is to protect consumers, however, the calculation of interest is still calculated by the OJK, besides that the mandatory private mortgage capital in sub-districts and urban villages is relaxed (Mona Tobing, 2015).

The fundamental difference from the imposition of the mortgage interest rate is influenced by many factors, one of which is the cost of capital and the cost of maintaining collateral. The tenor set by PT Pegadaian for the KCA pawn product is a maximum of four months. If the customer does not redeem the pawned goods within that period, the goods will be auctioned. However, the tenor can be extended after confirmation from the customer to the branch office. The new tenor can be extended if the customer pays interest or capital lease during the four months, where the capital lease is 1.15 percent per 15 days or two point three percent for one month or nine point two percent for a four months. Meanwhile, the interest rate at private pawnshops sets a higher interest rate than PT Pegadaian. Aji Ridwan Pitoko that the pawnshop in Kampung Utan, Ciputat, the interest charged to consumers is ten percent with a tenor of only one month, where if redemption is less than 15 days from the date of pawning the interest is five percent. If it is redeemed for 16 days up to 30 days, it will be subject to ten percent interest. The private pawnshop has an option to extend the tenor for one month, but with a note that an additional ten percent is charged for the extension of the pawn period. However, when for two months the goods are not redeemed and not reconfirmed, the goods will be entered in the auction data, but the collateral is other than gold - electronic devices such as TVs, laptops, cellphones, and DSLR cameras as well as motorized vehicles such as cars and motorcycles (Ridwan Aji Pitoko, 2018)

### 3. Renewal of the National Legal System Regarding Pawning in Indonesia

The Pawn Industry during the Independence Period was still in the form of a monopoly run by a state company which was a mandate from Article 33 of the 1945 Constitution, where the monopoly according to Article 33 of the 1945 Constitution was basically an obligation of the State towards its people and nation or the public interest. Some people argue that the biggest problem in our business world is the magnitude of government intervention in business activities, be it state-owned enterprises or private companies which have an effect on company efficiency, so that both state-owned and private companies are difficult to operate - this opinion is not entirely true - as stated Winnie Goh and Charles Sampford in Kurnia Toha said that one of the biggest production increases – for example in Malaysia - occurred in container companies which remained state-owned, while postal companies which had been completely privatized had a sharp decline in performance, given that the goal of from BUMN and Private are different, where the public sector or State Enterprises have many social and economic goals (providing employment, maintaining national interest in important industries, local business continuity, developing national technology, providing applied education and in the high-tech industry, and industrial decentralization, while the private sector is purely aimed at maximizing profit (Toha, 2017).

The liberal economic system emphasizes individual freedom, as well as collectivities in the western world which emphasizes individual prosperity. Recognition of individual rights in Indonesia is stated in Article 28A of the 1945 Constitution that everyone has the right to live and has the right to maintain a decent life and life, but in the ideals of Pancasila law shows that development that places more emphasis on prosperity as much as possible for the people at large, as stated in Article 33 of the 1945 Constitution (Herlina, 2018).

The basis for consideration of the change in the form of state business is based on the philosophical reason that State Enterprises as an economic unit that is inseparable from the Indonesian economic system need to be immediately adjusted and developed according to the content and spirit of Provisional People's Consultative Assembly Decree No. XXIII/MPRS/1966, the sociological reason for the change is that the existing form of business is no longer efficient Undang-Undang Republik Indonesia Nomor 9 Tahun 1969 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 1969 (Lembaran Negara Tahun 1969 No. 16, Tambahan Lembaran Negara No. 2890) Tentang Bentuk-Bentuk Usahan Negara Menjadi Undang.

The role of the state in paying attention to the pawn business process is to develop more aggressively in accordance with market demands and support the development of MSME businesses through regulations at the level of the law considering that the pawn guarantee institution has not yet been regulated through separate regulations, besides that on the sociological basis of the community's needs and also the demands of the financial market, especially non-bank financial institutions, in addition to supporting the ease of doing business for business actors, both cooperatives and other business entities, because the pawn business is now a business that is of interest to the private sector, so that the law is expected to provide convenience for cooperative business entities to create social welfare quickly realized.

Misbakhun – Member of Commission XI DPR – stated that there were no draft laws and academic documents related to pawning that were submitted in the 2019 National Legislation Program (Prolegnas, NLP) (Das Sein) (“Inilah Alasan Sebenarnya Bisnis Gadai Perlu Undang Undang Pegadaian,” 2020). I Gusti Agung Rai Wirajaya - Member of the Indonesian House of Representatives Commission XI, that the existence of a law can solve problems of illegal investment, dimly lit pawnshops - hidden moneylenders - or fraudulent financial technology (Fintech) because it can guarantee the interests of funds for the community, potential regional income from tax sector as well as legal certainty and consumer protection – through intense supervision (Wibisono, 2019)

In 2011, the Pawnshop Bill was submitted in 2011, Rosa Agustina as the author of the 2011 Pawnshop Bill Academic Paper, but did not continue to become NLP 2011 and also did not carry over to the next period. The discussion of the bill which in the previous period had not been completed, can be carried over after the laws governing it (Undang-Undang Republik Indonesia Nomor 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 183. Dan Tambahan Lembaran Negara Republik, 2019).

The role of legislators and the government in relation to the formation of laws gives authority to the DPR, DPD and the Government, and the National Legislative Body to monitor and review laws that will be made on a medium-term priority scale through regulations for the formation of laws and regulations. The DPR and the President as regulators are authorized to propose draft laws (RUUs) outside the National Legislation Program in extraordinary circumstances, conflicts or natural disasters, as well as certain other circumstances that guarantee the national urgency of a bill that can be jointly approved by the Legislative Body of the DPR and the Government.

Represented by the Minister or the head of the institution that carries out government affairs in the field of Formation of Legislative Regulations (P3) as well as through the determination of NLP annual priorities prior to the enactment of the APBN Bill (Undang-Undang Republik Indonesia Nomor 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 183. Dan Tambahan Lembaran Negara Republik, 2019).

The National Legislation Program for the National Legislation Program 2020-2024, as many as 248, of which 230 are registered in the NLP, 3 drafts, 7 harmonization, 1 discussion and 1 piece that has been completed. The National Legislation Program for the National Legislation Program 2020-2024, as many as 248, of which 230 are registered in the NLP, 3 drafts, 7 harmonization, 1 discussion and 1 piece that has been completed. And based on the Decree of the House of Representatives of the Republic of Indonesia Number 8/DPR RI/II/2021-2022 concerning the National Legislation Program for the Priority Law Draft for 2022 and the National Legislation Program for the Third Amendment Law for 2020-2024, where material guarantees are included in the NLP 2022.

The role of MSMEs in improving the national economy is undeniable, but the small number of financial institutions in supporting their business development is still minimal, so there is a need for innovation and creation of pawning institution financing to support MSMEs who are limited in access to formal financial institutions. In this case, the pawnshop, through its breakthrough in supporting the development of MSMEs, issued a product in the form of a guarantee letter for performance (in this case an invoice and also a purchase order (PO)) owned by MSMEs that could be financed through a pawn guarantee with a tenor of four months to one year through a discount. PO submission and funding for business actors who have invoices but do not have funds to run their business, where the invoice and PO value can meet the business actor's funding needs with an estimated 80% of the PO value and low interest rates. Based on the above considerations and also the prospect of pawning in the future, a regulation at the level of the Law is needed to support the development of the pawn business and ease of doing business for pawnbrokers as well as legal certainty.

For this reason, based on the DPR Decree Number 8 of 2021, the government approved the establishment of a bill for guaranteeing movable objects as a law that regulates the business of pawning and movable property guarantee institutions (Keputusan Dewan Perwakilan Rakyat Republik Indonesia Nomor 8/DPR RI/II/2021-2022 Tentang Program Legislasi Nasional Rancangan Undang-Undang Prioritas Tahun 2022 Dan Program Legislasi Nasional Rancangan Undang-Undang Perubahan Ketiga Tahun 2020-2024, 2021).

The absence of a special law on pawning is suspected to have caused problems in consumer protection, especially after the rise of private pawnshops. The existence of private pawnshops is detrimental to consumers and the absence of strict sanctions, resulting in legal uncertainty and neglect of consumer protection, this is considering that most of the private pawning businesses - more than thousands of pawnshops throughout Indonesia, on the streets, especially around Jabodetabek residency private pawnshops began to appear. Usually, the location of the private pawnshop is close to community settlements, traditional markets, and other public places without any supervision from the authorities – OJK (Januar, 2017).

Legal reform of the guarantee institution for movable objects is very much needed to perfect the rules of the guarantee institution because it takes into account the age and relevance of the latest development needs. Besides that, there is disharmony of regulations because guarantee institutions such as pawns, fiduciaries, and warehouse receipts are still regulated separately. Benny Riyanto said that in the movable property guarantee institution that applies in Indonesia, there are several weaknesses, so that it is necessary to reform by forming an integrated regulation with the establishment of a Draft Law (RUU) concerning Movable Property Guarantee.

The Bill on Movable Property Guarantee is needed because of the imbalance of rules regulated by existing regulations so that in practice it has the potential to cause problems, there are problems related to object guarantees. The Bill on Movable Property Guarantees needs to be followed up - through renewal and improvement of the movable property guarantee law in keeping with the developments and dynamics of society - while still following the requirements stipulated in Law of concerning the Establishment of Legislation, Among other things, the bill

must be accompanied by an academic text as a reference in the preparation and discussion of the bill (Humas Protokol BPHN, 2021).

Raymond said that broadly speaking, these things have caused obstacles to Indonesia's economic opportunities to benefit from the current globalization of the economy, especially the business sector that requires financial support to be able to develop, as a result, assets with a definite value (guarantee / mortgage) which can be easily utilized.

Therefore, the law on property security, especially movable property in Indonesia, must be improved so that it is pro-economic benefits that can be generated from the legal system for improving the economy (Raymond, 2020). So BPHN proposed the establishment of a Movable Property Guarantee Bill as *ius condituendum*. However, the author argues that the superior characteristics possessed by pawns compared to other material guarantee institutions require a separate pawn law, including regulations regarding the expansion of the object of collateral, one of which is the guarantee of intangible movable objects such as certificates - securities and also securities.

Along with the times and the improvement of people's welfare, as well as high profits in the pawning industry encourage people to open a pawn business - in accordance with the state constitution, the state guarantees a decent life for its citizens. The state constitution guarantees the right to decent work and participation in the economy (Articles 27 and 33 Paragraph (4) of the 1945 Constitution)) (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945):

Therefore, the state is also obliged to provide freedom and ease of doing business for its citizens, for that the state must guarantee and carry out legal reforms related to the pawn business. The Indonesian constitution, which is based on Pancasila, has a wedge that supports each other with Friedman's neoliberal principles, this shows that the Indonesian state is neither a state of socialism nor is it a pure capitalist state, but is a mixture of the two schools of thought. The individual things that Friedman wears are also recognized in the Indonesian constitution. where the State designs public policies for specific needs that facilitate the creation of businesses by opening up entrepreneurial opportunities and specifying parts of the national land to be exploited (Perucich, 2017).

The development of the private pawning industry as a logical consequence of the development of freedom in improving the economy and healthy competition in the non-bank financial institution industry, where the development of the private pawning industry must be able to provide security and protection for consumers, so that the role of the government - the authorized official - is needed to issue regulations related to the mortgage.

The existence of the Pawn Act to guarantee legal certainty of this pawn business is highly expected soon, although the Pawn Bill is not included in the 2019-2024 National Program list, but it is further proposed in the 2021 NLP because it has not been approved, the Movable Property Bill is re-submitted in the 2022 NLP. Based on the DPR RI Decree Number 8 of 2021 concerning the five-year medium-term NLP, there are 40 NLP 2022, 254 NLP of the Second Amendment Bill 2020-2024 and 5 Most Popular Cumulative Programs.

Based on the data above, the author is of the opinion that the regulation regarding national property and/or arrangements regarding the material guarantee institution, in this case the pawn– as the only material guarantee institution in the future to receive protection at the level of law – has received the attention of legislators to immediately promulgate these arrangements as soon as possible.

The government in this regard – through the Menkumham – agrees with BPHN regarding the proposal for the Draft Law (RUU) regarding the Guarantee of Movable Objects to be included in the 2020-2024 National Legislation Program (Prolegnas). This bill will combine guarantees for movable objects (fiduciary / pawning, warehouse receipts, and mortgages) into one regulation so that the Law on Movable Property Guarantees can later become a supporting element in the ease of doing business as well as providing legal certainty to debtors and creditors for the realization of conducive investment climate in Indonesia (Fajar, 2020).

With the seriousness of the regulator in forming the Bill on Materials, although it will not be discussed in 2022, there is hope that it will be carried over in the following year so that the urgency of the pawn regulation, in this case the Bill of Moving Materials, can fulfill the sociological basis of the community for the rule to ensure legal certainty. regulation and consumer protection. Because what needs the rules is the community, while the regulator as the authorized party can bridge it in accordance with the regulator's function but must still prioritize the sociological, juridical and philosophical basis so that it provides coercive power and binding power.

#### **D. CONCLUSION**

The results of this study indicate that Indonesia does not yet have a special regulation on pawning at the statutory level. So far, the regulation of pawns is spread in various different regulations. The urgency of the pawn regulation, in this case the Movable Goods Bill, can fulfill the sociological basis of society for the rules to ensure legal certainty. regulation and consumer protection. so there is a need for legal reform related to pawning.

The urgency of the pawn regulation, in this case the Bill of Moving Materials, can fulfill the sociological basis of the community for the rule to ensure legal certainty regulation and consumer protection. Because what needs the rules is the community, while the regulator as the authorized party can bridge it in accordance with the regulator's function but must still prioritize the sociological, juridical and philosophical basis so that it provides coercive power and binding power.

The importance of this pawn law in addition to legal certainty and also consumer protection can also provide ease of doing business for pawnbrokers, because nowadays pawns no longer need to be monopolized by the state, because the purpose of a state monopoly is to ensure the availability of goods and services for the general public. However, this field of business is not much in demand by the public. But now the pawn business is a business field that is in demand by the community so that based on this sociological aspect the regulator can absorb the inspiration of the community to make legal changes related to pawning.

## REFERENCES

- 1) Abubakar, L., & Handayani, T. (2017). Legal Issues in Sharia Pawn Gold Practice in Indonesia. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 11(1), 1. <https://doi.org/10.25041/fiatjustisia.v11no1.618>
- 2) Aditi, I. G. A. (2020). Legalization of land pawning at Balinese community customs in North Lombok. *International Journal of Life Sciences*, 4(2), 52–58. <https://doi.org/10.29332/ijls.v4n2.439>
- 3) Aermadepa. (2016). Perlindungan Hak Konstitusional Masyarakat Hukum Adat Minangkabau dalam Pelaksanaan Gadai Tanah Pertanian. *Jurnal Konstitusi*, 13(3), 597. <https://doi.org/https://doi.org/10.31078/jk1336>
- 4) Agustina, R. (2011). Naskah Akademik RUU Pegadaian. BHMN.
- 5) Chandra, M. (2020, August 1). 119 Tahun Pegadaian: Semakin Digital. *Upperline.Id*, 1 Accessed August 1, 2020. <https://upperline.id/post/119-tahun-pegadaian-semakin-digital>
- 6) De Pandhuis-Regie, Inlandshe Bestuursambtenaren op Java en Madoera No. 38/F, Ordonnantie van 4 December 1903 (Staatsblad No. 402 aangevuld en gewijzigd bij Staatsblad 1910 No. 482, en 1917 N . 640) betreffende geleidelijke invoering op Java en Madoera van, 82 (1919).
- 7) Efendi, J., & Ibrahim, J. (2016). *Metode Penelitian Hukum: Normatif dan Empiris (Pertama)*. Prenadamedia Group.
- 8) Fajar, B. (2020, December 11). Menkumham Yasona Laoly Jelaskan Arah Kebijakan Pemerintah dalam Mendukung Kemudahan Berusaha. *Fajartimur.Com*, 1 Di Akses 29 Desember 2020. <https://beritafajartimur.com/2020/12/11/menkumham-yasona-laoly-jelaskan-arrah-kebijakan-pemerintah-dalam-mendukung-kemudahan-berusaha/>
- 9) Files, M. (2018, October 23). Napak Tilas Praktik Gadai :Gadai Liar Enggan Legal. *Medcom.Co.Id*. <https://www.medcom.id/telusur/medcom-files/Wb7jGoaN-napak-tilas-praktik-gadai>
- 10) Habib Adjie, & Saputro, E. H. (2015). Perlindungan Hukum Bagi Pemilik Objek Gadai Atas Pelelangan Objek Gadai. *Jurnal Hukum Bisnis*, 1(1), 52–65. <https://doi.org/https://doi.org/10.30996/dih.v0i0.1590>
- 11) Hasbullah, F. H. (2002). *Hukum Kebendaan Perdata – Hak Yang Memberi Jaminan – Jilid 2 (Pertama)*. Ind-Hill Co.
- 12) Herlina, N. (2018). Cita Hukum Pancasila Dapat Berkembang dalam Batang Tubuh Undang-Undang Dasar Republik Indonesia 1945. *Lex Librum: Jurnal Ilmu Hukum*, 4(2), 673–679.
- 13) Humas Protokol BPHN. (2021, September 8). Regulasi Jaminan Kebendaan Terpencar, BPHN Usul Dibentuk RUU Jaminan Benda Bergerak | Badan Pembinaan Hukum Nasional. BPHN. <https://www.bphn.go.id/index.php/pubs/news/read/2020090903190811/regulasi-jaminan-kebendaan-terpencar-bphn-usul-dibentuk-ruu-jaminan-benda-bergerak>
- 14) Inilah Alasan Sebenarnya Bisnis Gadai Perlu Undang Undang Pegadaian. (2020, February 20). *Angkaberita.Id*, 1 Diakses tanggal 15 Desember 2020. <https://angkaberita.id/2019/02/20/inilah-alasan-sebenarnya-bisnis-gadai-perlu-undang-undang-pegadaian/>
- 15) Isnaeni, M. (2016a). *Hukum Benda Dalam Burgerlijk Wetboek (Cetakan Pe)*. PT. Revka Petra Media.
- 16) Isnaeni, M. (2016b). *Pengantar Hukum Jaminan Kebendaan*. PT. Revka Petra Media.
- 17) Isnaeni, M. (2016c). *Pijar Pendar Hukum Perdata*. PT. Revka Petra Media.
- 18) Januar. (2017, June 5). Rahasia PT Pegadaian (Persero) Tetap Bertahan di Tengah Persaingan. *Warta Ekonomi*, 1 Di Akses Tanggal 15 Desember 2020.

- 19) Keputusan Dewan Perwakilan Rakyat Republik Indonesia Nomor 8/DPR RI/II/2021-2022 Tentang Program Legislasi Nasional Rancangan Undang-Undang Prioritas Tahun 2022 dan Proglram Legislasi Nasional Rancangan Undang-Undang Perubahan Ketiga Tahun 2020-2024, 33 (2021).
- 20) Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek voor Indonesie) Staatsblad Tahun 1847 Nomor 23, Pub. L. No. KITAB UNDANG-UNDANG HUKUM PERDATA (Burgerlijk Wetboek voor Indonesie) (1847).
- 21) Lubis, N. H. (1998). Kehidupan Kaum Menak Priangan 1800-1942. In Pusat Informasi Kebudayaan Sunda (Cet.1). Pusat Informasi Kebudayaan Sunda.
- 22) Maryanto. (2015). Urgensi Pembaharuan Sistem Hukum Ekonomi Indonesia Berdasarkan Nilai-Nilai Pancasila. *Yustisia*, 4(1), 220–234. <https://doi.org/https://doi.org/10.20961/yustisia.v9i1i0.2868>
- 23) Mona Tobing. (2015, November 29). Pegadaian pertahankan suku bunga. *Kontan.Co.Id*. <https://keuangan.kontan.co.id/news/pegadaian-pertahankan-suku-bunga>
- 24) Pegadaian. (2018). Pegadaian 2018: Menuju P ( Era )n Baru. In *Laporang Tahunan*.
- 25) Peraturan Otoritas Jasa Keuangan Republik Indonesia Nomor 77 /POJK.01/2016 Tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi, Lembaran Negara Tahun 2016 Nomor 324, (2016).
- 26) Peraturan Pemerintah Pengganti Undang-Undang Nomor 56 Tahun 1960 Tentang Penetapan Luas Tanah Pertanian, Lembaran Negara RI Tahun 1960 Nomor 174, Tambahan Lembaran Negara RI Nomor 2117, (1960).
- 27) Peraturan Pemerintah Tahun 1928 Tentang Pegadaian Pemerintah (Pandhuis Reglement Tahun 1928 Staatsblads Nomor 81), Pub. L. No. (Pandhuis Reglement Tahun 1928 Staatsblads Nomor 81) (1928).
- 28) Perucich, F. V. (2017). The Neoliberal Urban Utopia of Milton Friedman: The Case Of Santiago. *ResearchGate*, August 2017. <https://www.researchgate.net/publication/329646177%0AThe>
- 29) Raymond. (2020). Urgensi Pembentukan RUU Jaminan Kebendaan Bergerak Pertumbuhan. 6 Di akses 28 Desember 2020.
- 30) Ridwan Aji Pitoko. (2018, May 30). Perbedaan Bunga di PT Pegadaian dan Rumah Gadai. *Kontan.Co.Id*. <https://ekonomi.kompas.com/read/2018/05/30/121100626/perbedaan-bunga-di-pt-pegadaian-dan-rumah-gadai>
- 31) Rina Ayu Larasati. (2019, November 8). Inklusi Keuangan Indonesia Naik Jadi 76,19 Persen. *Kompas.Com*, 1 diakses 8 Nopemberr 2020. <https://money.kompas.com/read/2019/11/08/062100726/inklusi-keuangan-indonesia-naik-jadi-76-19-persen>
- 32) Srinastiti, B. (2013). Penguasaan gadai tanah dalam lingkup penetapan maksimum luas tanah pertanian. *Airlangga, Universitas*.
- 33) Subekti. (1954). Pokok-Pokok Hukum Perdata. In *Journal of Chemical Information and Modeling* (Cetakan I, Vol. 53, Issue 9). *Intermasa*.
- 34) Tobing, M. (2020). Alasan OJK legalkan gadai swasta. *Kontan*. <https://keuangan.kontan.co.id/news/alasan-ojk-legalkan-gadai-swasta>
- 35) Toha, K. (2017). Masa Depan Monopoli Badan Usaha Milik Negara Di Indonesia. *Jurnal Hukum & Pembangunan*, 34(2), 110–170. <https://doi.org/https://doi.org/10.21143/jhp.vol34.no2.1432>
- 36) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 18 (1945).
- 37) Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, Lembaran Negara RI Tahun 1960 Nomor 104 , Tambahan Lembaran Negara RI Nomor 2043, Pub. L. No. Lembaran Negara 1960-104 , Tambahan Lembaran Negara Nomor 2043 (1960).



- 38) Undang-undang Perusahaan, Landsbedrijven Pandhuizen (Lembaran Negara Van Nederlandsch-Indie Tentang Tahun 1930 Nomor . 266) Bedrijvenwet, Landsbedrijven Pandhuizen (Staatsblad Van Nederlandsch-Indie Over Het Jaar 1930 Nomor . 266), 950 (1930).
- 39) Undang-Undang Republik Indonesia Nomor 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 183. dan Tambahan Lembaran Negara Republik, (2019).
- 40) Undang-Undang Republik Indonesia Nomor 9 Tahun 1969 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 1969 (Lembaran Negara Tahun 1969 No. 16, Tambahan Lembaran Negara No. 2890) Tentang Bentuk-Bentuk Usahan Negara Menjadi Undang, Pub. L. No. Lembaran Negara dan Tambahan Lembaran Negara tahun 1969 (1969).
- 41) Wibisono, A. (2019, May 22). Komisi XI Dorong Usulan Pembahasan UU Fintech Segera Direalisasikan. Bali Tribune, 1 Di akses 25 Desember 2020.