

JURIDICAL STUDY OF THE IMPLEMENTATION OF PAWNING OF AGRICULTURAL LAND SEEN FROM THE PERSPECTIVE OF CUSTOMARY LAW IN PARBULUAN DISTRICT, DAIRI REGENCY

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Abstract

Objectives study this is Juridical Studies Implementation of Agricultural Land Pawning Viewed from the Perspective of Customary Law in the District Parbuluan. Pawn land agriculture in Sigalingging Village, District Parbuluan, Regency Dairy Still considered as local wisdom society that has accomplished in a way hereditary in a way custom. So that form its implementation Still done in a way custom and considered as form attitude each other Help when in circumstances pressed. Legal society custom in Sigalingging Village, District Parbuluan, Regency Dairy Already used to with pawn process land agriculture there, and considered the process more makes it easier than rule law national. Process implementation pawn land agriculture in matter This redemption pawn Agricultural land still contains elements of extortion due to the implementation of mortgaging agricultural land for the people of Sigalingging Village, District Parbuluan, Regency Dairi practices customary law as binding law. Implementation of agricultural land pawning based on Law no. 56 Prp of 1960 concerning Determination of Agricultural Land Area in Sigalingging Village, District Parbuluan, Regency Dairi goes through several stages including the division of territory, the contents of the agreement, the rights and obligations of the pawnee recipient. Implementation of agricultural land pawning based on Law no. 56 Prp of 1960 concerning Determination of Agricultural Land Area in Sigalingging Village, District Parbuluan, and Regency Dairi has obstacles in carrying out agricultural land pawning transactions. These obstacles come from the first, the party giving the pledge, the second, the party receiving the pledge, while the third is custom as the holder of agrarian law customs.

Keywords: Agriculture, Land Pawning, Customary Law, Agrarian Law no. 5 of 1960.

INTRODUCTION

The ground is very tight connection with life human and is a very important factor for the Indonesian people, especially the people of Parbuluan District, where the majority of the population depends on land for their life and livelihood. Land also has high economic value because its value is always increasing. The existence of land is often used as an investment for the future by owning or cultivating it. The existence of land is so important for humans that it gives rise to many problems that arise because of it. Starting from the existence of a plot of land in an area or which is then followed by the granting of land rights by the authorities to the community.

Deep ground context economy is one of property type has value, even land is a factor of production. Because land is part of an asset, the ownership process also needs to be regulated within the corridors of customary law within the framework of solid land distribution surrounded by Muslims without prejudice, Ridwan (2010). Basically, the solid foundation that contains characteristic wealth is the wealth of government contained by a sovereign state. The Effectiveness of a sovereign state on a solid foundation is supported by the administration of

government as a universal establishment to regulate the collective progress of its people. The meaning of sovereign state control rights is the implementation to influence all important procedures in the context of regulating, administering and supervising the use and use of land. The material meaning of remaining on the throne of a sovereign state on solid ground is the responsibility and responsibility of the sovereign state to implement and manipulate solid processes for the welfare of the people. This deed of agreement together means that a sovereign state has an administration in the form of unlimited restrictions accompanying the use and use of land.

In terms of conditions Constitution has arranged about right owned by is a hereditary right, the strongest and most fulfilled is that the buoy is owned by the general public on solid land so that the ownership rights to the buoy are transferred and transferred to the social gathering which is freely sold Sudaryo Soimin (1994). The sovereign state of Indonesia is an agrarian sovereign state whose solid foundation is very strong for the survival of the people. This buoy can be seen in article 33 paragraph (3) of the 1945 Constitution which reads: "Earth, inundation and expansion as well as the nature of the processes contained therein are accommodated by a sovereign and conscious state for the greatest prosperity of the people." The verse mentioned in the sky was the basis for the publication of Collection Number 5 of 1960 concerning the Introduction of Agricultural Modifications.

Pawn land is something the agreement that caused it matter the land is bimanual above to obtain a reliable share from the ordering officer with a will granting a will to collect solid land for himself in return for a suitable amount of money. Meanwhile, in the interpretation of figures from the 56 Prp group of 1960 which refers to the environmental constancy of agricultural land, the pawn boundary is communication between an individual and the relationship between solid land and another individual who has almighty money for him, Daud Muhammad Kata (2015). Pawning over land is a temporary land right, meaning that the pledge ends when redemption has been made by the land owner (pledger), the pawn right has lasted for 7 years or more, there is a court decision, the land is destroyed and/or the land is revoked for public interest, Urip Santoso (2012).

According to regulated provisions _ exercise law custom, pawn land is one of form transaction land which can equalized with sell take it off and sell it annual. With thereby can said that pawn according to law custom is is agreement principal who is standing alone and not is addition from agreement borrowing money like case pawn according to the Law_ Civil.

Pawn land is something deed transition right on land, to another party (namely an individual) which is done clearly and in cash in such a way that the party transferring the rights has the right to redeem the land. Thus, the transfer of land rights in a mortgage is temporary, although sometimes there is no definite standard regarding this temporary nature, Soerjono Soekanto (2015). Only freehold land can be mortgaged. Lien rights are not collateral rights or encumbrance rights as is the case in mortgages/credit verbands, because in a mortgage the mortgaged land changes in power, the delegated transfer passes to the pawnshop for a period of time before the land is fully redeemed, whereas in a mortgage the land remains enjoyed by the original owner. Practice selling buy very diverse. Diversity used community to fulfill their

needs in the field of buying and selling, one of which is land buying and selling carried out by indigenous peoples in Parbuluan District.

A phenomenon that is currently developing in a sovereign state is a mortgage transaction deed for agricultural land with basic legal authority, so that the deed refers more to the attention of the general public who can afford it. Bodied Majuscule. The practice of land pawning which violates National Law is still common in Indonesia. For example, pawnshops are carried out in Parbuluan District. This deviation can be seen in the return period for land mortgages. The return depends on the pawnshop's ability to buy back the land. The people of Parbuluan District assess that the pawning they have carried out fulfills the elements of justice and is in accordance with the customary law rules that develop in the community.

Now in the District Parbuluan, researcher observe exists prohibitive provisions _ owner land for own land not to sell their land to immigrants. There is no freedom for people to carry out buying and selling transactions. Meanwhile they have proof of land ownership. Freedom in terms of ownership has no restrictions as discussed above, that is, ownership is still individual with proof of ownership and freedom in transferring ownership rights is also permitted, one of which is by buying and selling. So in Parbuluan District, land ownership is only limited to regulations or transactions carried out by the government. This means that based on facts and theory it is as if the community does not have ownership of land, there is no freedom for the community to buy and sell land and it is contrary to the above rules and the need for ownership provisions for the community.

In connection with all of the above, actually mortgages the held with very detrimental symmetry creditor and very economical. With so, it's clear that mortgage the show practice blackmail, which is harsh head to custom customs Asian socialism. Therefore _ that, deep Constitution Introduction Agriculture, rights pawn including in group "temporary" rights , which are mandatory For held endeavors to be eliminated in due course. Even though it cannot be abolished, the right of lien must be regulated so that elements of extortion can be eliminated (article 53). Lien rights can only be removed (meaning prohibited) if the credit provided is sufficient to meet the farmer's needs, Boedi Harsono (2014).

THEORETICAL STUDY

1. Definition of Pawn

Pawn is means of mutual cooperation to help Muslim community, without compensation for services, Nasrun Haroen (2007). Until Then agreement this pawn is categorized as a charity contract (tabarru), this is because what the rahin gives to the murtahin is not exchanged for anything. Meanwhile, what murtahin gives to rahin is a debt, not an exchange for pawned goods (marhun). Apart from that, rahn is also included in the ainiyah contract, which is a perfect contract after the delivery of the contracted goods. So then it is explained that all charity contracts are said to be perfect after they are made (al-qabdu), perfect tabarru, except after they are done), Rahmat Syafi'i (2001).

2. Agricultural Pawn

Suroyo Wignyodipuro (1973) stated that, law customary law differentiates land transactions into two groups, namely land transactions which are unilateral legal acts and land transactions which are legal acts of two parties. Land transactions which are unilateral legal acts can be cited as an example of establishing a village and clearing land by a member of the community. A land transaction which is a legal act between two parties/reciprocity is a form of cash act which has a land object. The essence of this transaction is the transfer or delivery accompanied by cash payment from the other party at that time.

3. UU NO. 5 OF 1960

This law in effect official named Law Number 5 of 1960 concerning Regulation The main points Agrarian management right on stagnant ground water and air. This also includes regulation introduction and refresher for control, ownership, implementation or use of agricultural processes government in Indonesia, registration strong soil, poor refreshment and provisions transition. Collection Number 5 of 1960 is something stated provisions that control and use land congested standing water and atmosphere need done elsewhere with __ supported by custom customs constitutionality and success exploitation society that doesn't impartial and profitable. This is appropriate with Article 33 paragraph 3 of the 1945 Constitution which reads "Earth and standing water and the properties of the processes contained therein accommodated by a sovereign state and refined moreover first for the sake of big prosperity of the people."

APPROACH METHOD

1. Types of research

Based on the problem studied writer, then method writing this use law normative. Writing method law normative or disposition evaluation literary collections constitute disposition or disposition euphemism that has previously in allowable assessments to be carried out with method examine ingredients existing collection. _evaluation is permitted in a way prescriptive furthermore called permitted research in away doctrinal. In the allowable assessment according to matter This is a collection always conceptualized as what 's behind __ regulations and modifications (law in book) or collection conceptualized as regulation or the average that becomes yardstick measuring behavior anthropoid suggested by the person concerned, Peter Mahmud Marzuki, (2013).

2. Research Approach

Approach problems used _ in preparation study this is approach legislation (statute approach), approach this is approach taken with examine every regulations and related changes with continuation permitted emanations _ handled. Approach this used for parse preparation bullet points existing dispute _ with refers to principles substantial permitted. _Application approach this aim for make it easier psychoanalysis and seeing regulation as well as other accompanying modifications preparation the difficulties that accompany it, Peter Mahmud Marzuki, (2010).

3. Data source

Primary legal materials are material legal nature _ binding and consisting above: norm or rule basics, rules basics, regulations legislation, substance law the main thing is that it doesn't codified, and jurisprudence. The permissible and influential substance practiced by the communicator is The 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Regulation The main points Agrarian.

Legal materials secondary that is permitted substances that are not bandaged in other words , interpret permitted influential substances that is decision process corner look or experts ' thoughts or experts weigh in something environment specifically, especially those with wills accommodate instructions about where the investigator is lead will. What is meant is with substance not enough important here by the communicator is fill instructions contained in books, magazines collections, and cyberspace.

4. Research Data Analysis

Data analysis is semantics cognitive systematic from intelligent and organized transliteration _ from notation environment conference press and substances sold freely collected Alone For increase compassion _ love to substances this and for possible demonstration about what has _ happen to others, Emzir (2014).

RESULTS AND DISCUSSION

1. Agricultural Land Liens According to Law Number 5 of 1960 concerning Regulation The main points Agrarian (UUPA)

Before the UUPA was formed, rights pawn on land agriculture already exists and is used by society based on law No written that is law custom. Therefore no easy for delete custom customs that and do it right pawn on land in accordance with UUPA. UUPA abolishes difference between native Indonesian citizens and hereditary citizens _ foreign in obtain right on land, so perhaps right this pawn can also be done owned by Indonesian citizens of descent foreign. Because, foreigners and legal entities No allowed own land with right pawn.

In the implementation of pawn Solid farming isn't it phenomenon that occurs is race proletarian or plants, but rather land. Because of the phenomenon the is solid ground so need resolved with awareness imagination cooperation or imagination village. This is moderate done for reach more certainty _ strong. Pawns - pawns that are circumstances or circumstances his backhand No tense on burden consideration will for holder spleen, blessing lifebuoy pawnshop convey right on the solid ground continues _ or pawn it return to congregation third before continuation in letter write end or giver pawn Not yet pay elsewhere dollars _ _ maha power that has promised to carrier spleen. Apart from that, it also gives rise to difficulty for giver pawn because forever time pawn land agriculture and its ransom has agreed by both split party.

Period time right pawn what you can owned and available land _ mastered determined in Article 7 Law Number 56 Prp 1960 about Determination of Agricultural Land Areas.

Amplitude highest word of honor land congested is 7 seconds of childhood If spleen above _ land congested agriculture has endure for 7 seconds of child hood business man spleen will value For displays land congested to give pawn without liberation anything inside period time individual next thing there is plant chalk has harvested Because correspondence has held . The hawthorn pawn shop controls, monitors and confiscates right owned by from land mortgaged by pawnshops, especially despite the continuity limit letter write has finished, because pawnshop Not yet save land mortgaged land. _

2. Legal Regulations Concerning Agricultural Land Pawn System in the District Parbuluan

In the implementation of pawn land agriculture the people of Sigalingging Village, District Parbuluan, and Regency Dairy tend affected by the provisions existing provisions become habit in the environment. The custom referred to by the people of Sigalingging Village, District Parbuluan, Regency Dairy is the act carried out in a way over and over again followed by and accepted by society in a way open No accompanying habits with confidence will obligation law and existence penalty to violation obligation law the. That matter make public No know will its implementation law national ones arrange problem pawn land agriculture like Perppu Number 56 Prp 1960.

Sigalingging Village Community, District Parbuluan, Regency Dairi considers that the provisions of Article 7 paragraph (2) of Perppu Number 56 Prp of 1960 are not in accordance with existing habits in the community, the community considers that these provisions cause losses for the recipients of the pledge, this arises because they are not aware of the aims and objectives of If we examine the provisions of Article 7 paragraph (2) of Perppu Number 56 Prp of 1960, these provisions are actually intended to reduce the elements of extortion contained in agricultural land pawning transactions. For them, customary law is a rule that provides convenience and helps the implementation of mortgages on agricultural land. It is clear that this reason shows an existing understanding inherent, meaning that customary law is a law that helps the process of implementing agricultural land mortgages.

For them, this situation has been traditional and has been carried out for generations. So that is how the process of pledging agricultural land is carried out in accordance with the laws in force in the area. Therefore, here it is clear that the reason for not implementing government law in the process of pawning agricultural land is that the people of Sigalingging Village, District Parbuluan, and Regency Dairi still practices customary law as an autonomous law that regulates the implementation of agricultural land pawning.

Apart from that, the people of Sigalingging Village, District Parbuluan, Regency Dairi considers that this is local wisdom, namely a tradition or community custom that has been going on for a long time, which has been preserved and has been attached to that tribe or community. So the local wisdom here is the custom of the people of Sigalingging Village, District Parbuluan, and Regency Dairi in connection with the mortgage of agricultural land. The people there use agricultural land as the quickest solution when a family is pressed with family economic problems.

When we look further at this community understanding, it becomes clear that the law governing the pawning of agricultural land in Sigalingging Village , District Parbuluan , Regency Dairi, namely customary law. Because there is a habit that has been well preserved and guarded by the people there. They are referred to as customary law communities. So the process of mortgaging agricultural land and implementing regulations have been maintained and are considered a custom that must be preserved. This habit is one of the reasons for not implementing the government law regulating agricultural land pawning, namely Article 7 paragraph (2) Perppu Number 56 Prp of 1960 in Sigalingging Village, District Parbuluan, Regency Dairy.

3. Lack of Understanding and Knowledge __ Public _ Subdistrict Parbuluan to Rule of law NATIONALi, Kesp Rule About Gadai Land Existing Agriculture Perppu Number56 Prp 1960 _

Lack of understanding the people of Sigalingging Village, District Parbuluan , Regency Dairy to purpose and objectives from provision Article 7 paragraph (2) Perppu Number 56 Prp The year 1960 is because in general public traditional have limitations access For obtain all information , included too information about provision rule law national , as well experienced by the people of Sigalingging Village , District Parbuluan , Regency Dairi , because in a way general public there tend is public traditional .

On average, research subjects who are pawns of agricultural land are facing economic difficulties, so it does not occur to them to seek and increase information or knowledge, especially those relating to national laws, especially laws relating to the issue of pledging agricultural land. They tend to think about making a lot of money to be able to redeem their mortgaged farmland. Likewise, recipients of agricultural land pledges are generally the same as those who pawn agricultural land. The recipient of the agricultural land pledge does not think about opening up legal insight, but rather thinks and tries to work on the pawned land optimally in order to get a lot of results from the agricultural land pawn.

Low legal awareness of the people of Sigalingging Village, District Parbuluan, Regency Dairiin the implementation of agricultural land pawning is proven by the possession of the agricultural land which is mortgaged to the pawnee recipient even though it has been morethan7 (seven) years as well as the redemption of the agricultural land pawn by the pawnbroker or land owner which does not comply with the formula in Article 7 paragraph (2) of Perppu Number 56 Prp of 1960. Low legal knowledge of the people of Sigalingging Village, District iParbuluan, Regency Dairi is also reflected in the low level of education of the research subjects, most of the research subjects only have elementary, middle school and some other high school graduates, so their knowledge of the laws or regulations for pawning agricultural land is still very low. This can be clearly seen from the statements of the research subjects, all research subjects, in between answering questions regarding the applicability of Perppu Number 56 of 1960 which regulates time limits and methods for redemption of agricultural land mortgages, stated that they did not know anything about the Law. This is in connection with irregularities in land liens agriculture at a time limit of 7 (seven) years and the amount of the redemption of the agricultural land pawn they made.

4. Implementation of Agricultural Land Pawning in Subdistrict Parbuluan

Post exit and enactment Constitution Tree Agrarian as law on September 24 1960, then Indonesia has have law agrarian national as one of the tool For make it happen Indonesian people _ fair and prosperous . Since there were many at that time there is misinterpretation of_ the country's newly implemented laws , as it were new law come For throw away and set aside law traditions that have been established meat in society .

Implementation of agricultural land pawning based on Law no. 56 Prp of 1960 concerning Determination of Agricultural Land Area in Sigalingging Village , District Parbuluan , Regency Dairi goes through several stages including the division of territory, the contents of the agreement, the rights and obligations of the pawnee recipient. Based on the results of interviews regarding the involvement of traditional institutions, local traditional institutions are not obliged to know about pawning transactions for agricultural land for low heritage, except for high heritage because the money owed in pawning must be clearly intended for the people because the land being pawned has belonged to the people for generations but is inheritance. Which are controlled by the community personally do not have to be known by customary institutions. And the land that is the object of this research in the Parbuluan sub-district is low inheritance, which means that the land belongs to an individual or individual and does not belong to a group.

Pawn transactions are carried out in cash and clear. Cash means that the delivery of payment from the pawn holder (pawn buyer) is carried out in full, at the same time or simultaneously with the delivery of the land owned by the pawnbroker. In order for the pawn transaction to be carried out clearly, that is, guaranteed/protected in legal traffic, especially against the possibility of resistance/lawsuits from third parties, the transaction is carried out with the assistance/testimony of the head of the customary law association, such as the headman, village head and so on.

5. Factors Inhibiting the Implementation of Agricultural Land Pawning Based on Law No. 56 Prp of 1960 concerning Determination of Agricultural Land Area in Sigalingging Village, District Parbuluan , Regency Dairy

On implementation agreement mastery land agriculture with right pawn own obstacle in do transaction pawn land agriculture. Obstacle the originate from the first party giver second pawn _ party recipient pawn whereas third that is custom as holder legal custom agrarian. Knowledge of the Parties Regarding the Application of Article 7 of the Law Number 56 Prp of 1960. Knowledge of the community in the research area regarding the implementation of Article 7 of Law Number 56 Prp of 1960 will be an important factor in the ability of community members to comply with the regulations in force. From the results of this research, it can be seen that none of the respondents in this research were aware of the provisions of Article 7 of Law Number 56 Prp of 1960 concerning Determining the Area of Agricultural Land. Based on this, the researcher got answers from interviews with pawn givers from 3 (three) pawn giver respondents So far, I have never known about the rules in Article 7 of Law Number 56 Prp of 1960 concerning Determining the Size of Agricultural Land, which states the maximum time

limit for Pawning of Agricultural Land.

In the research conducted by the researcher, one of the pawnbrokers agreed with the interview question regarding the attitude of the pawnbroker towards the agreement that had been made, with 3 respondents who gave the pledge answering with the same answer to the pawn agreement, both parties entered into the agreement voluntarily without any coercion, because the pledgor aims to ask for help because the pawnbroker needs money because of an urgent need, and that's when the pawnee helps by making an agreement to use the pledgor's land as collateral until redemption is made, and we should comply with that agreement.

In research conducted by researchers, one of the pawn recipients regarding the reasons why the pledge is still valid today, according to the pawn recipient's answer, which is the answer, all respondents who received the pledge gave the same answer, namely the value of the land object being pawned was the same as the selling value at that time. .

6. How to Overcome Inhibiting Factors Implementation of Agricultural Land Pawning Based on Law No. 56 Prp 1960 About Determination Agricultural Land Area in Sigalingging Village, District Parbuluan, Regency Dairy

In the implementation of pawning in Sigalingging Village, District Parbuluan, Regency Dairy will be very difficult to implement because of the community's strong belief that customary law is more acceptable to society than state law. Most people pawn land for the reason that they do not know Law no. 56 of 1960 concerning Determining the Size of Agricultural Land. Many people still think that existing customary law is sufficient for this implementation.

For some people who understand the law, they think that the basic principle of customary law regarding land is that no land is owned by individuals, all land is owned by people, whereas in state law, especially in the basic Agrarian law, land is owned by individuals, the aim is good, namely so that land ownership for people guarantees their life and prosperity.

Implementation of Agricultural Land Pawning Based on Law No. 56 Prp of 1960 concerning Determination of Agricultural Land Area in Sigalingging Village, District Parbuluan, Regency Dairy In order for Dairy to be implemented as mandated by law, the socialization of this law in society must be further intensified. For pawn givers, they think that the government has not provided enough outreach regarding the existence of this law, so that givers Pawnbroker assumes that a written or oral agreement is sufficiently strong as long as it is accompanied by witnesses by both parties. Therefore, pawnbrokers expect intensive socialization by the government regarding the existence of this law.

Pawn recipients of agricultural land still think that apart from getting money from this land pawn transaction, they also think that this transaction brings benefits to the pawnbroker because they try to help the pawnbroker in solving their financial or economic problems. Pawn recipients do not fully know that Law no. 56 Prp of 1960 concerning Determining the Size of Agricultural Land is at risk of losing their money if within 7 years the pledgor is unable to pay off, then the land that is pledged as collateral can return to the pledgor.

CONCLUSION

Based on results research and discussion in chapter before, then can concluded as following:

1. Pawn land agriculture in Sigalingging Village , District Parbuluan , Regency Dairy Still considered as local wisdom society that has accomplished in a way hereditary in a way custom . So that form its implementation Still done in a way custom and considered as form attitude each other Help help when in circumstances pressed . Legal society custom in Sigalingging Village, District Parbuluan , Regency Dairy Already used to with pawn process land agriculture there , and considered the process more makes it easier than rule law national .
2. Apart from that, it 's lacking level education in Sigalingging Village , District Parbuluan , Regency Dairy from school basic , advanced , until to college tall make public there No own sufficient education For understand A provision law. Process implementation pawn land agriculture in it is redemptive pawn Agricultural land still contains elements of extortion due to the implementation of mortgaging agricultural land for the people of Sigalingging Village , District Parbuluan , Regency Dairi practices customary law as binding law.
3. Implementation of agricultural land pawning based on Law no. 56 Prp of 1960 concerning Determination of Agricultural Land Area in Sigalingging Village , District Parbuluan , Regency Dairi goes through several stages including the division of territory, the contents of the agreement, the rights and obligations of the pawnee recipient.
4. Implementation of agricultural land pawning based on Law no. 56 Prp of 1960 concerning Determination of Agricultural Land Area in Sigalingging Village , District Parbuluan , Regency Dairi has obstacles in carrying out agricultural land pawning transactions. These obstacles come from the first, the party giving the pledge, the second, the party receiving the pledge, while the third is custom as the holder of agrarian law customs.

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