p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Legal Protection of Franchisee in Franchise Contract Which Franchisor Unilaterally Terminates

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Abstract:
The Franchisor and the Franchisee's engagement tends to be based on the value of business profits alone. The document that becomes evidence (franchise agreement) tends to be poorly understood by the Franchisee, which can cause legal problems for him. One of the legal issues that can occur is the unilateral termination of the Franchisor to the Franchisee. Franchise agreements tend to be standardized, which comes from the Franchisor. These conditions make the Franchisee obliged to understand the agreement's contents well so that the franchise agreement is not terminated unilaterally by the Franchisor. This study aims to find out and analyze how legal protection for franchisee is based on franchise agreement. This research method is a normative legal research approach. The result of this study is unilateral termination of the franchise agreement will undoubtedly cause various legal problems for the parties bound in the franchise agreement.
Keywords: *Termination; Agreement; Franchise.*

Article's History:
Received:
February 16, 2021;
Peer-Reviewed:
February 24, 2021;
Accepted:
February 27, 2021;
Published:
March 5, 2021.
DOI:
10.30742/nlj.v18i1.1288

INTRODUCTION

The increasing globalization era has opened the broadest possible opportunity for the trading system, both from the country and abroad. One form of cooperation system that is increasing in Indonesia is a form of cooperation in a franchise business. This is because Franchising is the most profitable business to develop the business world. Besides, Franchising is an improvement of the business development system that uses direct investment. With this franchise system, there will be savings in investment costs required to establish and maintain an extensive distribution network. This savings is due to the distribution network that will occur independently of the increasing number of franchisees and franchisors.

Franchising is described as a mix of "big" and "small" businesses, namely a combination of energy and individual commitment with a large company's resources and strengths. Franchising is a business arrangement in which a company (Franchisor) gives the right to an independent party (Franchisee) to sell its products or services with the Franchisor's rules. Franchisees use the name, goodwill, products and services,

marketing procedures, expertise, operational procedure systems, and the franchisor company's supporting facilities. In return, the Franchisee pays an initial fee and royalties (management service fee) to the franchisor company as stipulated in the franchise contract.

The franchise contract is an aspect of legal protection for parties from actions that harm other parties. If one party violates the franchise contract's contents, the other party can sue the violating party following applicable law. Currently, the franchise business sector is very diverse. It is dominated by the food sector and the education, salon, retail, laundry, fitness, car wash, and vehicle accessories sectors that have been franchised.

The law that first contained the word Franchise was Law Number 9 of 1995 concerning Small Business, namely in Article 27 letter d. This law has been repealed and replaced by Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, where the word Franchise in this law is contained in Article 26 letter C, which states: "the partnership is carried out with the pattern:

a. Nucleus-plasma;
b. Subcontract;
c. Franchise;
d. General trading;
d. Distribution and agency;
e. Other forms of partnerships, such as profit sharing, operational cooperation, joint ventures, and outsourcing.

Law Number 5, the Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition also mentions explicitly "Agreements relating to Franchising," namely Article 50 letter b.

The two laws above do not formulate/contain the definition of Franchising, only in Government Regulation Number 16 of 1997 concerning "Franchising" (from now on written PP. No. 16/1997), the definition of Franchising is formulated in Article 1 point 1, as follows: "Franchising is an agreement in which one of the parties is given the right to utilize and/or use intellectual property rights or inventions or business characteristics owned by the other party for a fee based on the conditions set by the other party, in the framework of providing and or sale of goods and or services."

PP No. 16/1997 was later replaced by Government Regulation No. 42 of 2007 (from now on, written PP No. 42/2007) concerning "Franchising." It should be noted the definition of Franchising in PP. 16/1997 and the Regulation of the Minister of Trade Number 12/M-DAG/PER/3/2006 concerning the Provisions and Procedures for the Issuance of Franchise Business Registration Certificates (STPUW) changed again with the issuance of PP No. 42/2007, Article 1 point 1 states as follows: "Franchising is a special right owned by an individual or a business entity against a business

system with business characteristics to market goods and/or services that have been proven successful and can be utilized and/or used by other parties based on a franchise agreement." From the definition of Franchise according to PP. 42/2007 above, there are 2 (two) things become key points or concerns, namely: special rights and characteristics of the business. PP No. 42/2007 itself does not explain what is meant by these individual rights. In the author's opinion, this special right is closely related to registered intellectual property rights owned by the Franchisor and then given to the Franchisee to be "used and/or used" limited to a contractual relationship in the franchise agreement. While the business's characteristics in the explanation of Article 3 PP No. 42/2007 explain a company that has advantages or differences that are not easily imitated compared to other similar businesses, and makes consumers always look for those characteristics. For example, the management system, the way of sales and service, or the arrangement or distribution method is a particular characteristic of the Franchisor.

From the definition of Franchising above, then a franchise contract contains a set of terms, conditions, and commitments made and desired by the Franchisor for the franchisees. The franchise contract includes provisions relating to the rights and obligations of the Franchisor and the recipient of the Franchise, for example, the territorial rights of the Franchisee, location requirements, training provisions, fees that the Franchisee must pay to the Franchisor, provisions relating to the length of the franchise agreement and its extension and other conditions governing the relationship between them.

Franchise agreements always vary. From an arrangement point of view, there is a variety of creativity and personal styles.[1] The preparation of a franchise agreement must begin with an understanding of both parties. After that review of competing franchise agreements, an awareness of the various approaches and the need for the relationship between law and Franchising will go a long way in preparing a franchise agreement. In other words, a clear and logical writing style and lots of reviews for improvement. Franchise agreement drafting is the creation of a contract drawn up by the Franchisor and the client. Although the Franchise has been so developed in Indonesia, this business's ins and outs, including legal protection, especially for the franchise buyer are still minimal. Knowledge and education are also even minimal; this is all because franchise business players prioritize the element of business profit.

RESEARCH METHOD

This research is a normative study, which means that this research examines the legislation's side, not reading social symptoms due to existing legislation. This

1 Kim Lambert & Todd Leff Pitegoff Thomas, Drafting Effective Franchise Agreements (New York: ABA, 2000) 5.

research's approach method is a statutory approach (statute approach) and conceptual approach. This approach is used because the discussion in this study will refer to the Law and the concept related to the issue.

DISCUSSION

Franchising was popularized in the United States, but Franchise's origin came from Europe, namely France and England. The word Franchise or Franchise itself means "freedom" (Freedom). At that time, the nobility was given authority by the king to become landlords in certain areas. In this area, the aristocrat can take advantage of the land he controls in exchange for taxes/tribute returned to the kingdom. The system resembles royalty, much like the Franchising it is today. Another formula says the franchise agreement is an agreement in which the Franchisor sells products or services following the Franchisor's methods and procedures, which helps through advertising, promotions, and other advisory services.[2]

According to the perspective of Burgerlijk Wetboek (from now on referred to as BW) contained in Book III, Franchising is included in an innominate agreement or anonymous agreement that is not explicitly regulated in BW. Franchising, like a license, is a form of understanding, the contents of which give special rights and authorities to the Franchisee, which can be in the form of:[3]

a. The right to sell products in the form of goods and or services using specific trade names or trademarks;
b. The right to carry out business activities with or based on a business format determined by the Franchisor. According to the concept of civil law, it is explicitly said because the franchise agreement is a special agreement because it is not found in the Burgerlijk Wetboek (BW). The franchise agreement is accepted and recognized as an agreement based on the principle of freedom of contract as stated in the provisions of Article 1338 BW.

The franchise agreement is generally in a standardized format by the Franchisor, which creates an unbalanced position for the Franchisee, but that does not mean reducing the meaning of the freedom of contract itself. This standardized contract form is often referred to as a standard contract or standard contract, namely an agreement whose contents have been predetermined in writing in the form of an unlimited number of duplicated documents to be offered to consumers regardless of differences in the conditions of the consumers. Therefore, consumers must understand the agreement's contents to avoid legal problems, one of which is the contract's unilateral termination.

Unilateral termination of the Franchisor's agreement or contract is undoubtedly

[2] Johannes Ibrahim, Hukum Bisnis Dalam Persepsi Manusia Modern (Bandung: Rafika Aditama, 2004) 134.

[3] Amir Karamoy, Waralaba - Jalur Bebas Hambatan Menjadi Pengusaha Sukses (Jakarta: Raja Grafindo Persada, 2013) 40.

very detrimental to the Franchisee, so it does not rule out the Franchisee to claim compensation for the losses he has suffered. If the Franchisee demands payment, then the Franchisor must pay the loss if it is proven that the Franchisor is guilty of making a unilateral termination. Conversely, if the Franchisee causes the default or negligence, the Franchisor can also claim compensation. Before stating that one of the parties is in default, either by the Franchisor or the Franchisee, the parties resolve the dispute by deliberation first by giving a warning. [4]

Furthermore, the aggrieved party can sue in one of the ways mentioned in Article 1267 BW if the summons is ignored, among others, by fulfilling the engagement, fulfilling the agreement with compensation, claiming compensation, canceling the mutual understanding, and canceling the payment.[5]

Based on the facts in several franchise agreements, there are many disputes between the Franchisor and the Franchisee in many cases, even on "trivial" matters, for example, the Franchisee's obligation to buy certain ingredients or seasonings from the region/country. The Franchisor, even though the ingredients/spices also exist in Indonesia or the franchise recipient area. This is a separate burden for the Franchisee, especially regarding other costs that must be incurred and royalty fees, and so on, including the time of service.

Another problem, namely, the Franchisor's training and development to the Franchisee, is not optimal, often resulting in the sale of the franchise product purchased. This also results in obstruction of the payment of royalties to the Franchisor. This happens specially to franchise businesses that are already well known globally (well-known trademarks), such as McDonald's, Kentucky Fried Chicken, Pizza Hut, etc. If there is a business dispute between them, it is very rarely brought into the realm of litigation (court). They tend to take their disputes to the realm of Arbitration.

Dispute resolution through Arbitration is an alternative. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that Arbitration is "settlement of civil disputes outside the court of law based on an arbitration agreement made in writing by the disputing parties."[6] Arbitration as an alternative to dispute resolution has several advantages, including:

a. The trial process is closed to the public; this is solely for the sake of maintaining the confidentiality of business matters between the disputing parties;
b. The trial process is relatively short, in which the processing period from the start of the examination to the verdict is 30 (thirty) days; and
c. The Arbitration Award is final and binding; there is no further legal remedy for the arbitration award.

[4] R Setiawan, Pokok-Pokok Hukum Perikatan (Bandung: Bina Cipta, 1999) 21.
[5] Ibid., 25.
[6] Gunawan Widjaja and Kartini Muljadi, Seri Hukum Bisnis: Alternatif Penyelesaian Sengketa (Jakarta: Raja Grafindo Persada, 2001) 55.

As a comparison, one example of terminating a franchise agreement in Indonesia is the dispute between Beauty Salon De Grace (the Franchisor) and the Beauty and Slimming Salon "Yemember" (the Franchisee). The dispute termination of this agreement is included in the domain of Arbitration through the case register number: No.31/ARB/BANI-SBY/l/2012, where the Beauty and Slimming Salon "Yemember" (Thio Inge Catherine's mother as the Franchisee) cannot fulfill the agreement has been mutually agreed (default).

The decision of the Arbitrator Council of the Indonesian National Arbitration Board for the city of Surabaya on decision No.31/ARB/BANI-SBY/l/2012 on cases filed by parties in good standing by Thio Inge Catherine (Franchisee) and Naniek Soetrisno (Franchisor), the ruling stated that:

a. To partially grant the petition submitted by the Petitioner;
b. Declare that the Franchise Cooperation Agreement contained in the Deed No. 34 drawn up before the Notary Natalya Yahya Puteri Wijaya, SH dated 31 August 2010 ended and no longer bound the Petitioner and the Respondent;
c. To punish the Petitioner and the Respondent to pay half of the case fees and because the Petitioner has paid the court fees, which are the responsibility of the Respondent, the Respondent is punished for returning the cost of this case to the Petitioner, which is Rp. 13,555,000, - (thirteen million five hundred and fifty-five thousand rupiahs);
d. Ordered the Secretary of the Assembly to officially register the decision at the Registrar's Office of the Surabaya District Court at the Petitioner and Respondent's expense, within the grace period as stipulated in the law.

The arbitrator panel concluded that the Respondent (Franchisee) has defaulted through its legal considerations, it is appropriate to accept the legal consequences. In this case, the legal matters if one of the parties has defaulted, namely referring to Article 1266 BW, which regulates that "If one of the parties is not fulfilling its obligations/ default, the agreement can be canceled, "and Article 1267 BW states:" The party to which the engagement is not fulfilled, can choose whether if it can still be done, will force the other party to comply with the agreement, or will demand cancellation of the deal, accompanied by reimbursement of fees, losses, and interest. One important legal principles is the privity of contract, where the agreement must provide legal protection to those bound in it.[7]

The Government has been very concerned about various phenomena and different business models in society, especially this franchise business. Therefore, multiple regulations of the minister of trade as part of the implementing rules of Government Regulation Number 42 of 2007 have been published, including:

[7] Agus Yudha Hernoko, Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersil (Jakarta: Prenada Media Group, 2011) 33.

a. Minister of Trade Regulation No. 12/M-DAG/PER/3/2006 concerning Provisions and Procedures for Issuance of Franchise Business Registration Certificate;
b. Minister of Trade Regulation No. 68/M-DAG/PER/10/2012 concerning Franchising for Modern Store Business Types;
c. Minister of Trade Regulation No. 07/M-DAG/PER/2/2013 concerning Development of Partnerships in Franchising for Food and Drinking Service Business Types;
d. Minister of Trade Regulation No. 56/M-DAG/PER/9/2014 concerning Amendments to the Regulation of the Minister of Trade No. 70/M-DAG/PER/12/2013 concerning Guidelines for the Arrangement and Development of Traditional Markets, Shopping Centers and Modern Stores;
e. Minister of Trade Regulation No. 57/M-DAG/PER/9/2014 concerning Amendments to the Regulation of the Minister of Trade No. 53/M-DAG/PER/8/2012 concerning Franchising; and
f. Minister of Trade Regulation No. 60/M-DAG/PER/9/2013 regarding Franchise Logo.

This is an attempt by the Government to provide legal protection externally for "business players" in this field. The essential obligations up to the procedures for treating the franchise business that must be fulfilled both for the Franchisor and the Franchisee have been regulated in detail, even if there are restrictions on outlets (branches) in the franchise business (maximum 250 outlets) have also been regulated. It can also be used to protect new franchisors so that they are motivated to develop new franchise business models, also to avoid unfair business competition.

Article 6 Permendagri No. 56/M-DAG/PER/9/2014 has confirmed that in implementing the franchise agreement that has been made, both the Franchisor and the Franchisee must comply with the provisions of laws and regulations related to their business activities, including laws and regulations in the field of consumer protection. Health, education, environment, spatial planning and labor, intellectual property rights following the prevailing laws and regulations.

Based on this, in the end, we will understand that a good agreement is an agreement that can provide legal protection to all parties who make and sign the deal and can maintain trust so that in the end, they can minimize the occurrence of disputes in the future. A well-laid-out agreement will provide legal protection internally for the franchise business.

CLOSING

Conclusion

Unilateral termination of the franchise agreement will undoubtedly cause various legal problems for the parties bound in the franchise agreement. There are

also several dispute resolutions options between them, both in litigation (through the court's realm) and non-litigation, including mediation, negotiation, and Arbitration. A good agreement can also provide good internal legal protection to the parties who make it because it can prevent the parties from disputes that occur at a later date. Furthermore, external protection is obtained from the laws and regulations governing the terms of the Franchise itself.

Recommendation

Good legal protection starts early, meaning from the pre-contractual stage to pouring an agreement on the parties' rights and obligations (the Franchisee and recipient) in a franchise agreement really must be based on good spirit and good faith. Furthermore, from the foundation of good faith and consistency of the parties' compliance with the implementation of the rights and obligations of the franchise agreement, it is hoped that it will prevent the parties from arising business disputes or disputes between them. Only with this, trust will continue to be built and maintained; therefore, business contracts, especially franchise agreements, must be well and meticulously arranged. The possibilities that occur in the business contract to minimize the risk of his clients.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Flats for Foreigner After the Issuance of the Omnibus Law in Indonesia

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Abstract:
This research is normative juridical research that uses a statutory approach. The government has issued its latest policy, namely, Law number 11, the year 2020, concerning omnibus law, which regulates foreigner property rights regarding flats. Based on this regulation, a foreigner can have ownership rights over the flats. However, it results in problems because a nationality principle is regulated in Indonesian Land Law, prohibiting foreigners from having ownership rights. In Minister of agricultural regulation held that foreigners can only own flats unit based on usage rights. The result of this study, a foreigner, can have an apartment through the transfer of ownership such as buying and selling, grants, auctions, and so on, but it is only a right to use, not an ownership right. Foreigners who wish to own an apartment unit must meet the requirements and restrictions to maintain and prioritize Indonesian citizens' interests.
Keywords: *Flats; Foreigner; Omnibus Law.*

Article's History:
Received:
February 16, 2021;
Peer-Reviewed:
February 24, 2021;
Accepted:
February 27, 2021;
Published:
March 5, 2021.
DOI:
10.30742/nlj.v18i1.1289

INTRODUCTION

The increasing population in urban areas has consequences for the government to provide decent and healthy housing or shelter. In line with the development of the national economy, the development of the Flats is increasing; this is one of the characteristics of the improving and increasing national economy. With a relatively affordable price and close to the main road, this is perfect for busy community activities. This also eliminates society's perception that apartments are owned by middle and upper-class people and flats for low-income people.[1]

According to Law Number 2 of 2011 concerning Flats (from now on referred to as UURS), a flat is a multi-storey building built in an environment divided into functionally structured sections. Each can be owned and used separately, especially for dwellings equipped with standard parts, everyday objects, and common land. [2]

[1] M Shafiyuddin Wafi and R Suharto, "Perolehan Sertipikat Hak Milik Atas Satuan Rumah Susun (Studi Di Star Apartemen)" Diponegoro Law Journal. 5.3 (2016): 3.

[2] Anggit Atma Yuwita, "Legal Action for Pre-Project Selling Based Buyers Whose Apartment Specification Have Changed Without Prior Approval" Norma. 17.3 (2021): 70.

Regarding ownership of a flat unit, the form of ownership known is a Certificate of Ownership on the Flats (from now on referred to as SHMRS). SHMRS is a form of ownership granted to the right holder of the Flats. The structure of ownership rights to flats must be distinguished from ownership rights to houses and land in general. According to Article 46 of the UURS, the flat unit's right of ownership is the flat unit's right of ownership, separate with joint rights over ordinary shares, everyday objects, and common land. The definitions of some of the terms mentioned in Article 46 UURS above can be found in the UURS explanation, namely:

a. Communal land is a plot of land with rights or leasehold land for buildings used based on joint ownership. Separately on which an flat stands and the boundaries are determined in the building construction permit requirements;
b. A joint part is part of a flat owned separately for shared use in a unitary function with flat units. These include foundations, columns, beams, walls, floors, roofs, gutters, stairs, elevators, hallways, channels, pipes, electricity, gas, and telecommunications networks;
c. Everyday objects are not part of a flat but pieces that are not separately owned for sharing. Among other things are meeting rooms, plants, gardening buildings, social facilities buildings, places of worship, playgrounds, and parking lots that are separate or integrated into the flat building structure.

The national land law is known as the principle of nationality, regulated in Law No. 5/1960 on Agrarian Principles (referred to as UUPA). Foreign citizens (WNA) and foreign legal entities are not allowed to have rights over certain land as regulated in Article 9 paragraph (1) of the UUPA, especially land ownership rights and Building Use Rights.[3] Land rights that foreigners may own are usage rights and/or lease rights for buildings.[4]

In the UURS, ownership of flat units can be seen in Article 1, number 16, and number 17, which states that each person is an individual or a legal entity. Legal entities are those established by Indonesian citizens whose activities are in managing housing and residential areas. This is different from Law Number 11 of 2020 concerning Job Creation (from now on referred to as the Job Creation Law); Article 144 paragraph (1) stipulates that ownership of flat units can be given to:

a. Indonesian citizens;
b. Indonesian legal entities;
c. Foreign citizens who have a license following the provisions of laws and regulations;

[3] Farah Herliani, Ida Nurlinda, and Betty Rubiati, "Peralihan Hak Milik Menjadi Hak Pakai Atas Sarusun di Atas Tanah HGB Kepada Orang Asing Dihubungkan Dengan PP No. 103 Tahun 2015/Kepala BPN No. 29 Tahun 2016" ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan. 2.1 (2018): 70.

[4] Siti Mutiah, "Hak Kepemilikan atas Satuan Rumah Susun di atas Tanah Hak Guna Bangunan yang Berdiri di atas Tanah Hak Milik" Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam. 21.1 (2018): 150.

d. Foreign legal entities that have representatives in Indonesia; or
e. Representatives of foreign countries and international institutions that are located or have representatives in Indonesia.

This regulation creates a legal contradiction with the existing principle of nationality. So, it is necessary to have rules regarding the requirements for ownership of flat units for the five groups. In the Job Creation Law, or what is commonly called the Omnibus Law, no rules regulate what land rights a foreigner can have.

RESEARCH METHOD

This research is a normative legal research, with a statutory approach (statute approach) and conceptual approach. This approach is used because the discussion in this study will refer to the Law and the concept related to the issue.

DISCUSSION

To support programs to increase Indonesian cooperation with other countries and increase the property industry in Indonesia, which will impact the number of foreign citizens working and building businesses in Indonesia, indirectly growing demand for housing, the government's role as an organ is needed. Those who have the right to issue policies that can support business actors (domestic or foreign) by creating social conditions facilitating licensing and requirements by speeding up the process.[5] With these aims and objectives, the government issued a Job Creation Law. There is a regulation regarding ownership rights of flat units in Indonesia, as stated in Article 144 paragraph (1) that the ownership rights to flat units can be given to:

a. Indonesian citizens;
b. Indonesian legal entities;
c. Foreign citizens who have a license following the provisions of the legislation;
d. Foreign legal entities that have representatives in Indonesia; or;
e. Representatives of foreign countries and international agencies that are located or have representatives in Indonesia.

From the provisions mentioned earlier, it can be explained that ownership rights to flat units can be given to foreign citizens who have a permit under the laws and regulations' conditions. The property rights of these flat units can be transferred, and/or guaranteed. This provision does not explain what land rights a foreign citizen can own, considering that there is a mention of ownership rights over flat units, meaning that foreign citizens can have ownership rights over flat units over rights to land in the form of property rights or ownership rights. Building rights. Based on Article 145 of the Omnibus Law, it is stated that the flats are built on building use rights so that it is

[5] Listyowati Sumanto, "Kepemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berdomisili Di Indonesia" Jurnal Legislasi Indonesia. 14.04 (2017): 460.

as if foreign citizens can have ownership rights over the flat units above the Building Use Rights. The provisions of the law on Job Creation can be a problem considering that it overlaps with the Basic Agrarian Law (UUPA) number 5 of 1960 and other laws and regulations relating to property rights to flat units.

Before discussing the land rights of flat units for foreign citizens, foreign nationals' concept of a house with homeownership will be explained, namely, a building. This can be likened to the use of dwellings for Indonesian citizens.[6] Residence can be in the form of a house or flats, for a place to live in the state of a home, it is already attached to our memory how its structure and use is, while for flats not everyone knows it. A flat is a multi-stored building where the building contains a private ownership system, and there is joint ownership between the flat residents. Given that flats have a shared aspect, the existence of flats as an alternative to housing feels very efficient; there are three aspects, namely as follows:[7]

a. The flat is a multi-stored building with a development direction vertically or horizontally, where each part can be owned and used separately;
b. A flat is building ownership which consists of several units; and
c. The condominium is a joint property with both buildings and shared facilities.

Referred to as shared building and facilities is a shared part of a flat that is not separated for shared use in one functional unit with the flat unit. Some examples of this shared section consist of lobbies, corridors, stairs, power lines, elevators, etc.[8]

This shared facility is a shared right for its residents, both Indonesian citizens and foreign citizens. A foreign citizen is defined as a person who lives in a country and is not a citizen of that country.[9] The definition of foreigners can also be seen from Article 1 of Law Number 24 of 2015 concerning Amendments to Law Number 23 of 2006 concerning population administration, emphasizing that foreigners are not Indonesian citizens. The same thing is also mentioned in Law Number 6 of 2011 concerning Immigration. Foreigner who is domiciled in Indonesia is a foreigner who in Indonesia carries out economic activities and which he regularly does or at any time, he will need a house to live in or occupy during his work. Such circumstances make them need a place to live as. [10]

Foreign nationals who need a place to live in Indonesia can obtain a place to live where their land rights must meet material and formal requirements in obtaining the residence. Material requirements must pay attention to legal subjects' legal conditions,

[6] Sri Endang and Rumingtyas, "Analisis Hukum Terhadap Kepemilikan Rumah Tempat Tinggal/ Hunian oleh Orang Asing yang Berkedudukan di Indonesia" Jurnal de Jure. 10.Ii (2018): 64..

[7] Ibid.

[8] Taufik Jan Latamu, "Kedudukan Hak Milik Atas Satuan Rumah Susun Sebagai Jaminan Kredit Perbankan" Lex Privatum. 3.2 (2015): 190.

[9] R Subekti Tjitrosoedibio, Kamus Hukum (Pradnya Paramita, 2012) 45.

[10] Adrian Sutedi, Tinjauan Hukum Pertanahan (Jakarta: Pradnya Paramita, 2009) 268.

which can receive land rights or property rights over flat units to take legal actions.[11] The issue of ownership rights to a flat unit is a subject that meets the requirements as the holder of land rights, while the object, in this case, is a flat unit.[12] Formal requirements are conditions held in the context of registering a transfer of rights, which is to obtain a certificate as proof of rights. Standard requirements are related to the procedural transfer of ownership rights over the syringe, while the material conditions are offenses contained in the statutory regulations that must be fulfilled. The formal requirements also include the process of transferring and registering land rights, either for the first time or for data maintenance.[13]

Ownership rights to sarusun are objects of land registration as stated in Article 9 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. Ownership of land and building that foreign nationals can obtain is limited to usage rights and lease rights; this is based on Article 42 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UPPA), one of them who can have usufructuary rights is a foreigner who is domiciled in Indonesia. Based on Article 2 of Government Regulation Number 103 of 2015 concerning Ownership of Residential or Occupancy by Foreigners Domiciled in Indonesia, it states that:

a. A foreigner can own a house to live or occupy with the Right to Use;
b. A foreigner who can own a residential or residential house as referred to in paragraph (1) is a Foreigner who holds a residence permit in Indonesia following the provisions of statutory regulations;
c. If the foreigner dies, the house or dwelling as referred to in paragraph (2) can be inherited;
d. If the heir, as referred to in paragraph (3), is a foreigner, the heir must have a residence permit in Indonesia following laws and regulations.

The government regulation also emphasizes that foreign citizens who are allowed to own a house or occupancy do provide benefits, do business, work or invest in Indonesia.[14]

Based on this, foreign citizens can only have ownership rights to flat units on land use rights.[15] Given that Law Number 11 of 2020 concerning Omnibus Law does not explain what land foreign citizens can own. Foreign nationals can't have ownership rights over land or building use rights; this is contrary to the provisions contained

[11] Urip Santoso, Hukum Perumahan (Jakarta: Kencana Media, 2016) 355.

[12] Rizky Ayu Nataria El Chidtian, "Hak Milik Atas Satuan Rumah Susun untuk Pertokoan yang Berasal dari Perjanjian Bangun Guna Serah Atas Tanah Hak Pengelolaan" Yuridika. 28.1 (2013): 60.

[13] Rondonuwu and Giovanni, "Kepastian Hukum Peralihan Hak Atas Tanah Melalui Jual Beli Berdasarkan PP Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah" Lex Privatum. 5.4 (2017): 55.

[14] Mira Novana Ardani, "Kepemilikan Hak Atas Tanah Bagi Orang Asing Di Indonesia" Law Reform. 13.2 (2017): 204.

[15] Indah Jacinda, Jason Jusuf, and Verlin Ferdina, "Penguasaan Tanah Di Indonesia Oleh Warga Negara Asing Melalui Perkawinan Campuran Dalam Falsafah Hukum" ADIL: Jurnal Hukum. 9.2 (2019): 61.

in the UUPA and the principles contained therein. The Principle of Nationality, determines that only Indonesian citizens can have rights to land-based on ownership rights without differentiating between male and female. In contrast, foreign citizens are prohibited from having property rights; this is emphasized in Article 26 paragraph (2) UUPA.[16]

Based on the intent and purpose of issuing the omnibus law, it attracts investors and facilitates licensing in Indonesia; however, loosening the property ownership rules for foreign citizens will harm the country's property business. Due to the loosening of regulations regarding ownership of flat units, the lousy impact will cause property prices to rise due to increased demand. When foreign nationals are free to own property in Indonesia, it causes small developers to go out of business because it causes land prices to rise.

The Ministry of Agrarian Affairs and Spatial Planning and the National Land Agency issued residential ownership rules for foreigners. The regulation is the Regulation of the Minister of ATR / Head of BPN number 13 of 2016 concerning Procedures for Granting, Releasing or Transfer of Rights to Residential or Residential House Ownership by Foreigners Domiciled in Indonesia. This rule is a follow-up to Government Regulation Number 103 of 2015 concerning Ownership of Residential or Residential Homes by foreigners domiciled in Indonesia. Article 3 number 1 Regulation of the Minister of Agrarian Affairs Number 29 of 2016 concerning the procedures for Granting, Releasing, or Transfer of Rights to Ownership of Residential Homes or Occupations of Foreigners Domiciled in Indonesia affirms that "Foreigners who hold a residence permit in Indonesia are following the provisions of laws invitation, can have a house for residence or occupancy with Right to Use."

If detailed in outline based on Government Regulation Number 103 of 2015 are as follows:

a. Foreign citizens can own one house or residence; it can be in the form of a flat unit or the form of a house built on land use rights;
b. The right to use on state land or the right to use over the land of ownership rights granted by the holder of the right of ownership with the deed of the official who makes the land deed can be used as a base for the right to an independent house;
c. It must be recorded in the land book and certificate if the agreement grants usufructuary rights over the ownership rights. 25 (twenty-five) years is the maximum period for granting usufructuary rights over ownership rights, which cannot be extended but can be renewed within 20 (twenty) years. This must be following the agreement of the parties, and which becomes a note that the foreign citizen is still domiciled in Indonesia;

[16] Sri Hajati, Politik Hukum Pertanahan (Surabaya: Airlangga University Press, 2017) 13.

d. If the house or condominium is established on use rights over state land or based on an agreement with a right holder not domiciled in Indonesia, then within 1 (one) year, the foreign citizen is obliged to transfer or relinquish his land and house rights to another party have qualified;
e. If within 1 (one) year it is not released or transferred to another party, the right to use the state land will be auctioned off, while the right to use over the land that is right of ownership will again become the owner of the right to the said land.

Foreign citizens can own flat units built on land use rights. In terms of their presence in Indonesia, these foreigners can be divided into 2 (two) groups, namely foreign citizens who reside in Indonesia permanently proven by a residence permit and foreigners who are in Indonesia at any time; it must be verified with a visit permit. or immigration permit.

The omnibus law also regulates the rights to ownership of units, houses, and structures that can also be given to foreign legal entities with representatives in Indonesia. Based on land law, foreign legal entities are contained in UUPA article 42 letter d, which states that foreign legal entities with representatives in Indonesia can hold rights to land, namely usage rights. This distinguishes the right to use from other land rights that do not allow foreign legal entities to have ownership over lands such as property rights, HGU, or HGB. Likewise, representatives of foreign countries and "international institutions" located or have representatives in Indonesia can obtain use rights based on Government Regulation Number 40 of 1996. [17]

No regulations govern the ownership of flat units designated for foreign legal entities and state representative bodies, and international agencies that do have representatives and are domiciled in Indonesia. When viewed from the regulations that have been mentioned above, public and private legal entities can have use rights, while for flat units, in the Government Regulation concerning "flat" and "Government" regulations regarding "House Ownership" a place "dwelling" by foreigners, does not regulate these public and private legal entities. In this regard, foreign legal entities and state representative bodies can own land-use rights as foreign citizens. The legal entity and the representative body can have a flat unit with the condition that the flat structure stands on land use rights.

CLOSING

Conclusion

Based on Omnibus Law, which regulates property rights to flat units, this regulation still does not provide clarity regarding the basis of land rights that foreigner

[17] Iwan Permadi, "Kedudukan Badan Hukum Asing Dalam Pemilikan Tanah Di Indonesia" Jurnal Wacana. 15.4 (2012): 41.

can own for flat units. The arrangement regarding the ownership of flat units refers to Government Regulation Number 103 of 2015 concerning Ownership of Residential or Residential Houses by Foreigners who are domiciled in Indonesia. Based on this regulation, the status of land rights of flat units that foreign nationals can own is the right to use. Foreign nationals who wish to own a flat unit must meet the requirements and restrictions that must be obeyed to maintain and prioritize Indonesian citizens' interests. Government regulations have provided limits on ownership of land and residential houses by foreign nationals domiciled in Indonesia and ensure that land ownership is utilized correctly.

Recommendation

Law Number 11 of 2020 should require implementing regulations regarding ownership of property rights to flat units by foreigner; these regulations must be issued by the Minister of Agrarian Affairs and Spatial Planning/National Land Agency. In controlling foreigner, foreigner should be provided with rules regarding the limits for purchasing flat units and the minimum limit for the land price in a particular area.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Restraint of Overseas Personal Shopper as a Form of Legal Protection for Authorized Stores in Indonesia

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Abstract:
Nowadays, many business people use personal shopper because they also provide benefits in addition to being more effective and efficient. After all, the activities of designated personal shoppers are carried out without face to face. This also creates many problems related to both parties' agreements in conduct buying and selling activities and how the validity of the deal that occurs between the two parties. The research method used is normative research method, and is carried out with a statutory approach. Based on the study, it can be concluded that the agreement made between the two parties is only based on understanding. The agreement contained is generally anonymous, and the deal is obligatory. Second: The Government's way to control personal shopper services is based on the Consumer Protection Act if a violation of law is committed by one of the parties. Control efforts that the government can do are limited to guidance and supervision.
Keywords: *Personal Shopper; Agreements; Overseas.*

Article's History:
Received:
February 23, 2021;
Peer-Reviewed:
February 24, 2021;
Accepted:
February 27, 2021;
Published:
March 5, 2021.
DOI:
10.30742/nlj.v18i1.1318

INTRODUCTION

The interactions between human group members aim to meet each party's needs who want to be achieved or materialized. Therefore, it is necessary to consider whether the interactions between groups of people produce benefits or will cause harm to the parties of each human group. An activity that relies on the calculation of profit and loss shows that what this group of people does is a business activity where they must get profits both on a small and large scale.[1]

Indonesia is currently developing its business in a personal shopper, where this is a business opportunity that attracts a lot of attention from the Indonesian people. It is easy to get the items needed without interacting directly by visiting the store or outlet now. At first, the emergence of this personal shopper originated from someone who made purchases of products in order only to fulfil orders from their friends or relatives when they were abroad on vacation or travelling. However, along with the times and technology, many people then open services to purchase goods desired by

[1] Moch. Isnaeni, Perjanjian Jual Beli (Surabaya: Revka Petra, 2016) 2.

other people; in this case, they can be called consumers. With a smartphone, internet connection, and social media, many people carry out this personal shopper business to generate profits and attract consumers.

The emergence of this personal shopper business is also due to the unequal development of each region in Indonesia, resulting in an imbalance of welfare and equality between one area and another in Indonesia. This uneven development of public facilities also delays creating a prosperous society. The distribution of growth from one location to another or from one island to another is much disrupted.

The still few companies engaged in the distribution process resulted in a quite striking price difference that personal shopper used because they saw opportunities that could be exploited for profit. One of the business people who see this opportunity is online business people. Online business people, in this case, are business people who use online media as the intermediary medium.

The development of online shops in Indonesia is relatively rapid. This happens because online stores have several advantages over conventional stores, especially in providing initial capital. The equipment and supplies needed to manage an online store are relatively small in terms of cost. The high operational costs of conventional stores, such as employee salaries, social benefits funds, overtime costs, electricity costs, and other operating costs, will not be found when opening an online shop. The online shop is open 24 (twenty-four) hours and can be visited or accessed anywhere. Unlike conventional stores, which are closed, visitors can access the online store whenever and wherever they want. However, online stores also have various disadvantages behind multiple conveniences and advantages compared to conventional stores. One of the shortcomings is that there are shipping costs that consumers must bear, and the consumers cannot physically see the goods they are going to buy.

The emergence of online stores also impact the increasing number of personal shopper services. A symbiotic mutualism relationship between online sellers and shipping service companies in economic terms has resulted in the emergence of many new shipping service companies, both state-run, private, and overseas shipping service companies. Through service with a buy-in concept, these online sellers offer themselves to buy goods that consumers want by getting a wage that has been agreed in advance. Electronic payment support is also growing; the main target is the market for hobbyists or specific communities who want to collect some items that are already rare for sale in Indonesia. This online personal shopper system's convenience can disrupt the official registered distributor's business traffic, especially in Indonesia.

RESEARCH METHOD

This research is normative legal research, and since it discussion is based on law regulation, therefore this research done with statutory approach.

DISCUSSION

In general, personal shopper service agreements are rules and regulations made unilaterally by business actors personal shopper; this often happens not to harm specially assigned service business actors unilaterally. Arrangements on commissioned services are not made in writing in different places. Other times, deals on charged services are based on a sense of understanding and trust without an authentic deed or underhanded deed as evidence. In online buying and selling transactions through designated goods services related parties include:

a. Personal shopper service actors, namely, those who offer a product through social media as a business actor;
b. Buyers or consumers, namely any person who is not prohibited by law, receive an offer from a seller or business actor and wishes to carry out the sale and purchase of products offered by the seller/business actor.
c. Banks or e-commerce as the channelling party of funds from buyers or consumers to sellers or business actors, because in online buying and selling transactions, sellers and buyers do not face each other, because they are in various locations so that payments can be made through intermediaries in this case bank or e-commerce
d. Social media such as Instagram is a sales and promotion medium.

The agreement's essence is to realize the exchange of rights and obligations in detail (fairness). Thus, the imbalance of results can be accepted as something fair if exchanging rights and obligations occurs proportionally. In the event of a failure to perform the contract, the level of error must be measured based on the principle of proportionality so that minor errors (minor critical) do not necessarily result in contract termination or the imposition of compensation to other parties. This is not proportional and, therefore, must be rejected based on the principle of proportionality.[2] In principle, an agreement that has been made can be cancelled if the deal in its implementation will be detrimental to certain parties. These parties are the parties to the understanding and third parties outside the parties who agreed.[3]

In the personal shopper service agreement, the personal shopper business actor has several clauses, including disciplining consumers and assigned service users in making agreements with business actors when they want to buy or order goods. These clauses include:

a Consumers order goods from those offered by personal shopper by providing the format of the provisions for the color, size, and image of the goods to be collected;

[2] Agus Yudha Hernoko, Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersil (Jakarta: Prenada Media Group, 2011) 33.

[3] Gunawan Widjaja and Kartini Muljadi, Perikatan yang Lahir dari Undang-Undang (Jakarta: Raja Grafindo Persada, 2003) 46.

b. After ordering and providing the complete format to the personal shopper provider, the consumer will transfer the money for a predetermined amount within the given time limit;
c. After making the stipulated money transfer, the consumer must show proof of transfer along with information in the form of an exact name and address to the personal shopper provider;
d. After the money that has been determined is transferred, the goods will be spent or purchased by the personal shopper provider;
e. After the item has been spent, the item cannot be refunded;
f. Goods will be sent 1 (one) day after;
g. Goods that have been determined will arrive at the time stipulated by the delivery service.

Based on the description above, it is clear that in the personal shopper agreement, both parties are equally burdened with obligations. Like buying and selling in general, the seller must provide goods to the buyer paid beforehand. Still, in the case of goods entrusting services, the seller is also required to deliver the goods according to the specifications and orders that have been ultimately agreed upon and also given at the arranged time as well before. Meanwhile, the buyer's responsibility is to pay the price of goods that have been previously agreed with the seller and with a grace period agreed by both parties; if the buyer does not reimburse the arranged time, the goods that have been ordered previously will not be bought.

Based on the reality of the personal shopper agreement in vogue and is significantly developing today, the personal shopper service agreement is an unknown type of understanding. This kind of arrangement is allowed in BW, namely Article 1319 BW, as long as the agreement must be valid according to Article 1320 BW.

Considering that in the personal shopper service agreement as described above, there are obligations on both parties. Regarding the anonymous agreement regulated in Book III BW, it can be interpreted that the contract for the safekeeping of goods is an obligatory agreement. This means that the service agreement for a personal shopper is an agreement that gives birth to an engagement. There are achievements from the parties, be it the achievement of providing something (giving money, giving goods) and doing something (buying goods), also the accomplishment of not doing something (not asking for a refund).

Due to these parties' achievements, the agreement for the entrusting of goods creates an agreement between the parties, which means that legal assistance can be requested to fulfil their achievements. An engagement that is born in a service agreement for the safekeeping of goods, as with the types of employment previously described, can be classified as a direct engagement. In service transactions, interests, personal shoppers have been determined to obey rules before ordering goods. Empowering

services for goods will also provide goods after consumers fulfil their obligations first. However, it is necessary to pay close attention to a legality requirement which is the cause that is allowed or does not violate the law—considering that the personal shopper agreement is related to the procurement of goods originating outside the Indonesian jurisdiction.

The phenomenon of personal shopper that is increasingly widespread and developing has the potential for violations even to the import aspect; this is an urgency for government attention and control. The hope is that there will be an order to control the entry of goods from abroad into Indonesia and so that there will be no smuggling of goods from abroad which will cause losses to the state. The most important thing is the effort to prevent tenants or official outlets in Indonesia from developing because their income became lower due to buyers preferring to use personal shopper for lower prices.

Following the provisions in Article 1365 BW, an act violating the law must contain the following elements:

a. The existence of an act. An act of breaking the law always begins with an action on the part of the perpetrator. It is generally accepted that with effort, either doing something or not doing something, for example, not doing something even though one of the parties has a legal obligation to fulfil it because an act violates the law does not contain an element of agreement and also does not include permissible causal factors as contained in standard terms of the contract;
b. The act is against the law. A show that violates the law includes the following matters, an act that violates the applicable law; which infringes the rights of others guaranteed by law; acts that are contrary to the legal obligations of the perpetrator; acts contrary to decency; Actions contrary to good social attitudes to pay attention to the interests of others;
c. There was an error on the part of the perpetrator. Article 1365 BW so that it can be said to have committed an act violating the law requires that the perpetrator violate the law must contain an element of error in carrying out an act violating the law. This is because the responsibility without error is not included in Article 1365 BW because BW requires an element of error so that it can be legally accountable;
d. There is a loss for the victim. Losses due to illegal acts in addition to material losses and immaterial losses which are valued in money are different from defaults which only recognize material losses;
e. There is a causal relationship between actions and losses. There are 2 (two) types of causal relationships: the theory of genuine relationships and approximate causes. The genuine relationship is only a matter of fact or what has factually

happened. Every reason that causes a loss can be a definite cause, as long as the loss will never exist without its cause.

In general, it can be concluded that breaking the law is not only because it violates the law but also violates the obligations of one of the parties, morality, and the rules that must be obeyed in society. Based on the classic theory, it distinguishes between a default lawsuit and a lawsuit against the law. The purpose of the default lawsuit is to place the plaintiff in a position if the agreement is fulfilled; thus, the compensation is in the form of a loss of expected profit. Meanwhile, the purpose of a lawsuit against the law is to place the plaintiff's position in its original state before the occurrence of the illegal act so that the compensation given is an actual loss.[4]

Based on the description above, the types of legal violations that can occur in a personal shopper's service are default or illegal acts. The culture of buying and selling in the current era has changed along with the development of technology and the internet. Buying and selling today is not only in stores or markets but can also be done on social media and is commonly called buying and selling online. Business people prefer to buy and sell online based on several factors. The cost of promotion on the internet is much cheaper and more comfortable than using printed media. The development of business models and the use of technological sophistication has the potential to result in defaults occurring more frequently than using conventional methods, given that the seller and the buyer do not meet face to face when binding the agreement. Some of the potential violations that result in losses are:

a. The goods do not match what is displayed. Buying and selling online through personal shopper today is not new because the world is developing rapidly, one of which is in the electronics sector. Shopping through commissioned services has many advantages and disadvantages, one of which is that the goods displayed or offered through cyberspace sometimes do not match the original. This often happens because sometimes consumers are not careful in reading the information on these items, another reason that consumers are often deceived by goods that do not match the appearance because many buyers attracted by prices of goods that are much cheaper with descriptions of quality goods brands adorable;
b. The estimated arrival of goods does not comply with the agreement. Goods entrusting services are currently booming at this time, often sending goods at times that are not following the deal; this usually happens not only because of the mistakes of personal shopper actors who take too long to pack goods and pile up the goods to be sent, the reason other things that may make the goods entrusted to the hands of consumers or service users are commissioned because

[4] Suharnoko, Hukum Perjanjian, Teori dan Analisa Kasus (Jakarta: Prenada Media Group, 2005) 166.

consumers do not provide an exact address or information about the recipient of the goods. Another thing that causes delays in the arrival of the goods is the limited access to the destination areas for the goods to be sent;

c. Prices Are Not Following Market Sales. The goods offered at personal shopper services are often items that are rare in the market. Consumers and service users are empowered to buy goods or authorized to purchase personal shopper actors. This sometimes makes these goods prices not following the actual market prices because personal shopper business actors take too much profit from these goods, not to mention adding a deposit service that has been charged and has been previously agreed. Another thing that makes the price of goods more expensive than the market is the added cost of shipping costs; usually, the shipping cost is charged if the delivery destination areas are remote and challenging to reach; another reason for consumers' postage is several reasons. A personal shopper is applied a minimum amount of the purchase price of goods;
d. Clauses Made Unilaterally by The Service Actors. Based on Article 1, number 10 of Law Number 8 of 1999 concerning Consumer Protection, the Standard Clause states is any rules or conditions and conditions prepared and determined unilaterally by the business actor as outlined in a document and/or binding agreement. And must be fulfilled by consumers. Business actors make clauses drawn up unilaterally, but business actors are limited in making clauses in the Consumer Protection Law. However, in practice, many business actors, especially those who entrust goods, make clauses that violate the rules stipulated, especially in Article 18 paragraph (1) letters b, c, and g of Law Number 8 of 1999 concerning Consumer Protection, this is often done and occurs because personal shopper actors and business actors do not want to experience losses;
e. Damage to Tenants or Official Outlets of Foreign Brands in Indonesia. Through personal shopper service, it can be recognized that one of the advantages is the lower price compared to buying branded and original products in official shops in Indonesia. The spread of businesses like this, of course, will slowly fade away the income from these official outlets.

However, in reality, it is not only business actors who entrust goods to goods that often commit violations, but consumers also. Violations that consumers often commit to buying and selling online through personal shopper, namely:[5]

a. Consumers who are late in making money transfers according to the agreed price so that sometimes business actors also have to go 2 (two) times to the same place to buy goods ordered by consumers and make service actors entrust a loss of time and energy;

[5] I Ketu Okta Setiawan, Hukum Perikatan (Jakarta: Sinar Grafika, 2015) 105.

b. Consumers who have agreed on the goods to be purchased at the agreed price also often do not make the transfer and do not tell the personal shopper actor not to order them.

Violations that often occur because there are no clear rules to regulate services for personal shopper through online buying and selling, which make personal shopper actors and consumers often commit violations.

CLOSING

Conclusion

Services for a personal shopper are one form of business that is currently being developed. There are obligations from both parties in the personal shopper service agreement, which means that this agreement is obligatory. The personal shopper service agreement is anonymous; this kind of deal is allowed in BW, namely Article 1319 BW. Due to these parties' achievements, the contract for the entrusting of goods creates an agreement between the parties, which means that legal assistance can be requested to fulfil their achievements. A deal that is born in a service agreement for a personal shopper can be classified as a primary engagement because, in a service transaction for goods commissioning, it has been determined in advance what consumers must obey rules before ordering goods, and in this personal shopper will also provide goods after the consumer fulfils his obligations first ;

Recommendation

There needs to be a firm written agreement, not only with capital on social media or other advertising methods. Considering the aspect of proof that will be significantly helped by a written agreement and special regulations regarding authorized business are necessary.

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Widjaja, Gunawan, and Kartini Muljadi. *Perikatan yang Lahir dari Undang-Undang*. Jakarta: Raja Grafindo Persada, 2003.

p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Implications of Unregistered Marriage for Women: Profitable or Detrimental

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Abstract:
In Islam, marriage is a form of worship recommended by the Prophet Muhammad, so that the law is Sunnah. Marriage is something very sacred where a man and woman are united by a marriage bond and become a couple as husband and wife. Marriage is declared valid if it is carried out following religious law. In Indonesia, exist the term unregistered marriage. An unregistered marriage is a marriage carried out based on their religious beliefs, but there is no state registration. However, Indonesia's law considers marriage invalid if the related registrar institution does not register the marriage, even though it has carried out a marriage procession according to its religious law. This certainly has implications, both positive and negative, for couples, especially women. This is a normative legal research. The result of this study is it can be concluded that unregistered marriage is very detrimental to women.
Keywords: *Unregistered Marriage; Law; Detrimental.*

Article's History:
Received:
January 16, 2021;
Peer-Reviewed:
February 24, 2021;
Accepted:
February 27, 2021;
Published:
March 5, 2021.
DOI:
10.30742/nlj.v18i1.1198

INTRODUCTION

In fact, in Indonesia, it is not uncommon for couples to carry out unregistered marriages. An unregistered marriage is a marriage carried out based on their religious beliefs, but there is no state registration, so they do not get a marriage book. This creates a big question about the implications or consequences of an unregistered marriage. Therefore, this article will discuss the factors behind or the motive of a person choosing to carry out an unregistered marriage, then discuss the fundamentals of an unregistered marriage from a religious perspective and from a legal perspective that applies in Indonesia to its implications, especially for women.

Marriage is not a strange thing to hear in Indonesian society. Marriage is something sacred, where a man and woman create a strong bond to produce a lot of good for each partner, relatives, children and grandchildren, and even the community.[1] The bond that is created is a physical and mental bond with an inner emotional bond. Most couples

[1] Choiruddin, "Analisis Yuridis Terhadap Kebijakan Kepala Desa Yang Menambah Usia Nikah Kepada Calon Suami Istri Yang Belum Cukup Umur di Desa Bareng Kecamatan Sekar Kabupaten Djojonegoro"UIN Sunan Ampel Surabaya, 2013 80.

marry based on mutual love and perform the sunnah worship recommended by the Prophet. In a marriage, it is hoped that the presence of the baby. Besides, couples are also expected to become happy families that achieve physical and spiritual prosperity with God Almighty's blessing.

In etymology, marriage derived from the language Arabic that has the same meaning as zawaj that later in Indonesian language called by mating. When viewed from an intrinsic or proper perspective, marriage means pressing, gathering, or combining. Meanwhile, when viewed from a metaphoric or figurative sense, marriage means having intercourse with a contract. In terminology, marriage is a physical and mental bond between a man and a woman in a household-based on religious guidance or the status of an agreement or contract between a man and a woman to legalize bodily relations as a legal husband and wife partner and contains terms and conditions which has been determined by Islamic law. Meanwhile, Law no. 16 of 2019 concerning marriage states that marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Godhead.

Meanwhile, in terms of fiqh science, Unregistered marriage is based on the husband's message; the witnesses keep it a secret for his wife or congregation, even if the local family. Based on the above understanding, it can be concluded that unregistered marriage is a marriage that is carried out secretly or hiddenly without being known or recorded in state institutions. Thus, an unregistered marriage is a marriage between a female and a man and witnessed by two witnesses but not reported or recorded at the Office of Religious Affairs (KUA).

RESEARCH METHOD

This is normative legal research with a statutory approach, because the discussion in this study will refer to the Law in Indonesia, especially Law and Government Regulation about marriage

DISCUSSION

In a marriage that is carried out unregistered, there are surely factors behind it. Such as: **Economic Factors**. Lower middle-class people who are unable to meet the cost of registration of marriage. Sometimes the cost of registering for a marriage can be double the actual cost. This happened because there was an irresponsible KUA party.

Age Factor. Based on Law no. 16 the Year 2019 on the Amendment of Law no. 1 of 1974 regarding Marriage, Article 7 paragraph (1) and (2), reads as follows: Marriage is only permitted if the couple have reached 19 (nineteen) years old. In the event of deviation from the age requirement, as stipulated in paragraph (1), the male and/or the woman's parents may request dispensation to the Court because they are very

urgent accompanied by sufficient supporting evidence. Related provisions age above encourages unregistered marriage since the bride and groom do not have enough period and do not want to bother taking care of it on the Court. In this case, there is an influence from economic factors. Sometimes families with daughters marry off their children at an early age to reduce the family burden.

Work Bonding Factors. Some companies or service agencies enforce regulations not to marry within a certain period. It is this work or service association that encourages people to carry out marriages independently.

Free Promiscuity Factors. Over time, cultural influences from the west began to enter Indonesia. As a result, many societies between men and women ignore religious norms and prohibitions, who dare to have sexual relations outside of marriage, resulting in pregnancy outside of marriage. Pregnancy outside of marriage is a family disgrace that can damage the family's image. Sometimes a man already has a wife but has sex with another woman who is not his wife, and the woman becomes pregnant. So as a form of male responsibility, they done the unregistered marriage without the wife's prior knowledge. If the first wife finds out, it is suspected that it will cause a dispute that will complicate matters. So that the marriage becomes an alternative to polygamy to 'secure' the household with the previous wife

Social Factors. Sometimes in a specific society, there is a negative stigma against polygamous men so that a man who has a desire for polygamy decides to do an unregistered marriage. [2]

Lack of Understanding of the Importance of Formal Marriage. Their contention that the unregistered marriage is declared invalid will not bother them to register because such marriage is done at the Prophet's time. People who underestimate marriage registration by the KUA do not know the consequences of unregistered marriage. This lack of public awareness is what causes unregistered marriages to exist increasingly in Indonesia. Whereas in the Al-Quran, it has been emphasized that a couple wishing to marry is obliged to record their marriage. The principle of registering an announcing marriage means that marriage secretly or unregistered marriage is not allowed.[3]

Unregistered Marriage in Islamic Perspective

The term unregistered marriage has been known among scholars since the priest Malik bin Anas; it's just that an unregistered marriage carried out in the past has a different meaning from an unregistered marriage present. In the past, unregistered marriage was defined as a marriage that still fulfils the pillars of marriage and its

[2] Rihlatul Khoiriyah, "Aspek Hukum Perlindungan Perempuan dan Anak dalam Nikah Siri" Sawwa: Jurnal Studi Gender. 12.3 (2018): 397.

[3] Budiono, "Nikah Siri dan Keadilan Sosial" Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam. 17.2 (2014): 328.

requirements according to the Shari'a.[4] However, those involved in the marriage and the witnesses agreed to keep it a secret or not notify the public about this intention. So, there is no walimatul 'ursy event. Unregistered marriage is understood as a marriage that is carried out according to the conditions of marriage in Islamic law but does not record the marriage on the institution that deals with marriages in Indonesia.[5]

Unregistered Marriage in Indonesian Law Perspective

States that the Compilation of Islamic Law (KHI), as a positive state legal institution for Muslims in Indonesia, does not recognize the term unregistered marriage. KHI only recognizes marriages that are registered and marriages that are not registered. Based on Law No. 2 of 1946 concerning the Registration of Marriage, Divorce, and Referral, which reads as follows:

a. A Marriage Registration Officer supervises marriage;
b. A spouse who performs a marriage without the supervision of a marriage. registration employee is subject to punishment because it constitutes an offence.

Marriage registration aims to provide legal certainty and, of course, legal protection, especially for women. From the above statement, it can be concluded that unregistered marriage is considered illegal because the Marriage Registration Officer does not record it. There is also a law that states that unregistered marriage is an unlawful act. Even though it is declared valid according to fiqh science, it is still not valid according to state law.

Positive Impact of Unregistered Marriage

With an unregistered marriage, the parties' interests behind an unregistered marriage can be covered; for example, because of pregnancy outside of marriage, the unregistered marriage is carried out, the disgrace in the family can be covered. Likewise, for example, due to an official bond or work bond, a person can do his / her wish to get married even though he is in the period of an official bond or work bond.[6]

Even though unregistered marriage can supposedly impact women, it turns out the women also had a positive effect. The positive impact is the reduced burden on women earning a living, fulfilling their daily needs, or as their family's backbone. Third, this marriage can also eliminate the worry of adultery, given that promiscuity is increasingly rampant in the present. That's what becomes one's background, both men are already married and women who are still underage, so do not fall into a black circle of adultery. The best solution for them at that time is to carry out unregistered

[4] Happy Susanto, Nikah Siri Apa Untungnya (Jakarta: Visimedia, 2005) 77.

[5] Arsal, "Nikah Siri dalam Tinjauan Demografi" Sodality :: Jurnal Sosiologi Pedesaan. 6.2 (2012): 60.

[6] Siti Ummu Adillah, "Analisis Hukum Terhadap Faktor-Faktor Yang Melatarbelakangi Terjadinya Nikah Sirri Dan Dampaknya Terhadap Perempuan (Istri) Dan Anak-Anak" Jurnal Dinamika Hukum. 11.Edsus (2011): 104.

marriages. This follows the hadith narrated by Bukhari and Muslims, which explains that the union aims to protect oneself from adultery. There is no worry about sin that can be obtained from infidelity; not only that, unregistered marriage can also make someone fulfil their desires, where it turns out that intimate relationships between husband and wife can create health in several human organs.

Negative Impact of Unregistered Marriage

An unregistered marriage's implication affects all those involved in the union, namely men, women, and children. Although there are positive implications, there are negative implications also of unmarried marriages, especially for women. Negative Implication such as:

1. A woman whose marriage is Unregistered tends not recognized as a wife because, by the law of nations, marriages were made invalid, and no marriage certificate as proof. Suppose he married an irresponsible man. In that case, the woman will be easily dumped or not regarded as a wife, and the absence of proof of authenticity makes women unable to do anything;
2. When a man is married in unregistered, especially when he already has a legally married wife, the woman is threatened that her rights will be neglected. Sometimes, a man who have unregistered married without his wife's knowledge, when within a certain period he will tend to return to his official wife. So that women as unregistered wives will be neglected. Based on the science of fiqh, herein lies the haram caused by the existence of an unregistered marriage when a husband persecutes his wife;
3. When the husband dies, then as an unregistered wife, the woman does not have the right to inheritance and share the assets. However, regarding a husband who dies, if the man is a responsible husband, he will make and administer a statement beforehand so that his wife will get a share of the assets he has, after the husband died;
4. The woman or the unregistered wife can not claim her husband's share of the property when he divorces. It is happening because marriage was not considered in Indonesian law. KHI has set about treasures in the house of stairs composed of property and treasure default. When a divorce occurs, the wife has the right to receive joint property legally. The situation will be more complicated for the woman if she is pregnant or already has a child at her marriage. Then he will bear the cost of living his child alone because he can not sue his man to pay for his child's education. As a mother, a woman who is married in an unregistered must show her great affection for the child from the unregistered marriage that she does because the child will also be mentally affected when he finds out that he is the child of an illegitimate marriage;

5. The presence of anxiety or fear when travelling far away or out of the environment because they do not have a marriage certificate. Without the marriage certificate, they will have difficulty proving that they had legitimate religion as husband and wife;
6. Nowadays, people are very fond of looking for loopholes in someone's ugliness and making them a sensitive topic to slander. Women who are married and the marriage is unregistered must have a strong mentality to face and listen to the people in their environment who gossip about them. If you do not have a strong mentality, then the woman will experience mental health problems.

CLOSING

Conclusion

There are various factors behind an unregistered marriage that supports many people who carry out these marriages. So it is not surprising that unregistered marriages have a high enough existence in Indonesia. If viewed from a perspective science religion of Islam, unregistered marriage does not lead to sin, but the impact sequel may pose a sin for the man. If viewed from a legal perspective in Indonesia, unregistered marriages are considered invalid, so they do not have legal protection. This is what causes many negative implications that women must bear. Even though there are implications in the form of a positive impact from the marriage, the negative repercussions taken are more significant than the positive ones. So it can be concluded that unregistered marriage is very detrimental to women.

Recommendation

Various and massive socializations are needed from the government regarding the advantages and disadvantages of unregistered marriage, especially for those who are still immature. Socialization and education must also be carried out widely in villages and cities to reduce the unregistered marriage rate, and give one important knowledge about the protection of women and children who desire to be borne by the unregistered marriage couple. The socialization adn education also important to reduce the high ammount of local community stigma, or gossip for those whose marriage is unregistered.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

The Ambiguity of Resi Gudang (Warehouse Receipt) Guarantee Institution Legal Standing

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Abstract:

Farmers usually use warehouse receipts to obtain debt with commodity objects stored in the warehouse as a debt security. Warehouse receipts as valuable objects, of course, have the potential to be tied up in a debt bond that serves as a security for these debts. For objects to be used as collateral in a credit agreement, they must meet certain conditions, namely, economic value and transferability. Therefore, it is necessary to conduct a study of warehouse receipts to be used as collateral objects, given the characteristics of warehouse receipts as valuable objects and the property rights attached to the warehouse receipts. This research is normative research with a statutory approach. The result of this research is that warehouse receipts can be used as collateral objects but with some adjustments. And based on the existing regulations, it is understood that the warehouse receipt arrangement does not create a warehouse receipt guarantee institution.

Keywords: *Warehouse Receipt; Debt; Collateral.*

Article's History:

Received:
February 16, 2021;

Peer-Reviewed:
February 24, 2021;

Accepted:
February 27, 2021;

Published:
March 5, 2021.

DOI:
10.30742/nlj.v18i1.1292

INTRODUCTION

The times and the era of globalization will continue to advance along with human growth. Humans themselves are zoon politicon and homo economicus, which means that humans will not be able to live alone without the help of interaction with other people. The interaction model always pays attention to profits and losses. The calculation of gains and losses is not still related to matter but not associated with the matter, such as ego. Human activities that calculate profit and loss related to the material are known as business, while business must always have a legal umbrella.[1]

The high level of community needs at this time sometimes causes people to have urgent needs. In urban and rural communities, sometimes, their income is not necessarily sufficient to meet the community's needs. Apart from working, sometimes people choose to invest, sell some of their assets, or pledge their assets temporarily until they go into debt. Accounts receivable is an easy and strategic shortcut.[2]

[1] Gatot Supramono, *Perjanjian Utang Piutang* (Jakarta: Kencana Media, 2013) 1.
[2] Suwandi Suwandi, "Kedudukan Jaminan Antara Utang-Piutang Dan Rahn" *Jurisdictie: Jurnal Hukum dan Syariah*. 7.2 (2016): 103.

Accounts receivable connotes money and objects borrowed to pay back what has been received with the same.[3] With this debt system, the public can get a loan where the conditions are with a guarantee. The importance of collateral as protection for creditors so that debtors pay off debts from the guaranteed object. If in the relationship between the debtor does not fulfill the achievement voluntarily, the creditor has the right to demand fulfillment of his debt when the debt is collectible, namely against the debtor's assets which are used as collateral.[4]

In the process of debt and credit, what can be guaranteed is not the origin of all objects because it is not certain that every item is always a valuable object and does not necessarily have an economic value. What can be guaranteed is every object which is a valuable object owned by anyone who wants to be in debt because valuable items are considered to have economic value. Examples of valuable items such as houses, gold, vehicles, land certificates, or securities are warehouse receipts.

Warehouse receipts are securities in documents as proof of ownership of a commodity item stored in a warehouse. Currently, many people use warehouse receipts to be used as collateral to obtain financing. Financing is one of the problems that business actors often face, especially farmers and small and medium enterprises.[5] So usually, people who have businesses such as in the field of commodities, especially farmers, use warehouse receipts as securities they own to be guaranteed, in contrast to urban communities who may secure their property in the form of gold or vehicles. When the harvest is high, the farmers experience difficulties due to the sharp decline in their crops' market price, and there is no place to store their produce. So it requires a place that can be used to keep the crops, so they don't get damaged. Another problem faced by farmers in Indonesia with the abundance of agricultural commodity crops is that poor warehousing conditions are an obstacle for farmers in saving their crops. To maintain the state of the harvest is still good while waiting for the desired price. With the warehouse system, the farmer's commodity goods can be stored in the warehouse, where the farmers will get a warehouse receipt as proof of ownership. So this warehouse receipt is usually used by farmers to obtain financing with a guarantee of commodity objects stored in the warehouse.[6]

Warehouse receipts as valuable objects, of course, have the potential to be tied up in a debt bond that serves as a security for these debts, which are known as collateral objects. However, for an item of guarantee, the legal aspects are quite diverse. For things

[3] Yuswalina, "Hutang-Piutang dalam Prespektif Fiqh Muamalah di Desa Ujung Tanjung Kecamatan Banyuasin III Kabupaten Banyuasin" *Intizar*. 19.2 (2016): 396.

[4] Fani Martiawan Kumara Putra, "Konstruksi Lembaga Jaminan Untuk Saham Sebagai Bentuk Dukungan Perkembangan Bisnis" *Perspektif*. 23.2 (2018): 67.

[5] Pusat Kebijakan Perdagangan Dalam Negeri, *Analisis Efektifitas Sistem Resi Gudang Melalui Pasar Lelang Forward Komoditi* (Jakarta: Kementerian Perdagangan Republik Indonesia, 2015) 1.

[6] Fitria Olivia, "Tanggung Jawab Pengelola Gudang Mengenai Resi Gudang Terhadap Kelalaian yang Mengakibatkan Kerugian" *Jurnal Lex Jurnalica*. 10.3 (2013): 162.

to be secured as collateral in a credit agreement, they must meet certain conditions, namely, economic value and transferability. This is to make it easier in the execution process later.[7]

Warehouse receipts are objects with economic value, but some aspects can hinder the transfer of ownership rights to the warehouse receipts. Warehouse receipts are objects that can be used as objects of collateral. Therefore, it is necessary to conduct a study of warehouse receipts to be used as collateral objects, given the characteristics of warehouse receipts as valuable objects and how the property rights' nature is attached to the warehouse receipts.

RESEARCH METHOD

This research is a normative research, which means that this research examines the legislation's side, not reading social symptoms due to existing legislation. This research's approach method is a statutory approach (statute approach) and conceptual approach. This approach is used because the discussion in this study will refer to the Law and the concept related to the issue.

DISCUSSION

One example of the development of types of business activities in Indonesia is in the world of agriculture. Business activities that farmers can carry today are not just selling their crops to meet their daily needs, such as renting out their agricultural land with a production sharing agreement and guaranteeing their harvested objects to get money. However, in carrying out these business activities to meet needs, sometimes it can cause problems. For example, a common problem with agribusiness in Indonesia is the fall in crops' selling price during the primary harvest season.[8] This is because farmers usually tend to have a uniform planting schedule so that all rice plantations receive sufficient irrigation, minimize pest attacks, and pursue optimal planting seasons. When the harvest is simultaneous, rice farmers cannot store their harvest for longer because they have run out of costs and do not have adequate storage warehouses. Then it causes the selling price of the crop to fall. Therefore, if farmers sell their produce directly, they will often suffer losses. The government then solves the classic problem of falling agribusiness commodity prices during the primary harvest season with the Warehouse Receipt System.[9]

The definition of warehouse receipt according to Law no. 9 of 2011 regarding the Warehouse Receipt System (from now on referred to as the Warehouse Receipt

[7] Gentur Cahyo Setiono, "Jaminan Kebendaan dalam Proses Perjanjian Kredit Perbankan (Tinjauan Yuridis Terhadap Jaminan Benda Bergerak Tidak Berwujud)" *Transparansi Hukum*. 1.1 (2018): 4, Available: http://ojs.unik-kediri.ac.id/index.php/transparansihukum/article/view/159.

[8] Iswi Hariyani and R Serfianto, *Resi Gudang Sebagai Jaminan Kredit&Alat Perdagangan* (Jakarta: Sinar Grafika, 2010) 1.

[9] Ibid., 3.

Law), Article 1 states, "Warehouse Receipt is a document of proof of ownership of goods stored in the warehouse issued by the Warehouse Manager." Meanwhile, the Warehouse Receipt System is an activity related to the issuance, transfer, and settlement of warehouse receipt transactions.

Warehouse receipts are essential, effective, and negotiable instruments and swapped in a country's trade financing system. Besides, warehouse receipts can also be used as collateral or received as proof of delivery of goods in the context of fulfilling a maturing derivative contract, as occurs in a futures contract.[10]

Based on the explanation of the Warehouse Receipt Act, warehouse receipts are a document of title for goods that can be used as collateral because warehouse receipts are guaranteed with certain commodities under the supervision of an accredited warehouse manager. In other words, a warehouse receipt is a receipt in the form of a letter issued by the warehouse owner, which is given as proof of ownership of the object deposited/placed in the warehouse to the owner of the item. Every owner of an entity who keeps an object in the warehouse is entitled to receive a warehouse receipt. Warehouse receipts will be issued after the owner submits the items. Lost or damaged warehouse receipts, warehouse managers are required to issue replacement warehouse receipts at the request of warehouse receipt holders. Replacement warehouse receipts have the same legal force as warehouse receipts that have been replaced.

The Warehouse Receipt System is the result of the further development of the Fiduciary Guarantee System, especially those specifically related to the object of collateral for movable objects in the form of stocks of agricultural products, plantations, non-bank financial institutions, as well as from investors who are interested in buying warehouse receipt derivative products through the stock exchange.

Warehouse receipts as a system, relying on the warehouse as storage media and receipts as proof of storage. Warehouse Receipt System is listed on:

1. Law of the Republic of Indonesia Number 9 of 2011 concerning Amendments to Law Number 9 of 2006 concerning Warehouse Receipt System;
2. Government Regulation Number 36 of 2007 concerning Implementation of Law Number 9 of 2006 concerning Warehouse Receipt System;
3. Government Regulation Number 70 of 2013 Amendment to Government Regulation Number 36 of 2007 concerning Implementation of Law Number 9 of 2006 concerning Warehouse Receipt System;
4. Government Regulation Number 1 the Year 2016 Implementing Agency for Guarantee System for Warehouse Receipt;
5. Regulation of the Minister of Trade of the Republic of Indonesia Number 33 of 2018 concerning the Third Amendment to the Regulation of the Minister of

[10] Olivia, "Tanggung Jawab Pengelola Gudang Mengenai Resi Gudang Terhadap Kelalaian yang Mengakibatkan Kerugian" 165.

Trade Number 37 / M-Dag / Per / 11/2011 concerning Goods that can be stored in a warehouse in the implementation of a warehouse receipt system;

6. Several Regulations of the Commodity Futures Trading Supervisory Agency of the Republic of Indonesia.

Currently, the Warehouse Receipt System is useful in the agricultural sector to increase the selling price. For example, as in the current warehousing sector, the Warehouse Receipt System supports employment growth in cooperation with services related to goods in warehouses on warehouse receipts, agriculture, plantation and fisheries, warehousing. In essence, it is also very beneficial for business actors who are in the commodity ecosystem. Examples are the necessity of having a warehouse manager, commodity processing tools such as processing grain into rice, packaging commodities stored for sale, procurement of vehicles, banking, insurance, and Some of the benefits of the warehouse receipt system include:[11]

a. This warehouse receipt system can strengthen the bargaining power of farmers and create efficiency in the world of agribusiness, where farmers can delay the sale of commodities after harvest while waiting for prices to improve again, by storing their crops in specific warehouses that meet the requirements;
b. Farmers can use this warehouse receipt to finance the land planting process and also for manufacturers to fund supplies of raw materials;
c. Mobilizing credit to the agricultural sector. The certainty of guarantees from certain warehouse parties that certain institutions have approved gives confidence for the bank to provide a loan for the warehouse receipt collateral to farmers or traders who store their goods in the warehouse;
d. Minimizing price fluctuations, where farmers do not need to sell their goods immediately after harvest, is usually very low (forced sale). By holding the goods for a while, it is expected that the price will get better;
e. Reducing risks in agricultural product markets, improving food security systems, and opening up access to credit for rural areas;
f. Encourage improving quality and transparency for the warehousing industry because it must comply with specific regulations and carry out supervision.

The core regulations are contained in Law No. 9 of 2006 concerning the Warehouse Receipt System, as amended by Law No. 9 of 2011 concerning the Warehouse Receipt System (from now on referred to as the Warehouse Receipt System Law). Warehouse Receipt's definition is based on Article 1 point (2) of the Warehouse Receipt System Law, a document of proof of ownership of goods stored in the warehouse. According to Article 1 point (4) of the Warehouse Receipt System Law, Warehouses are all immovable rooms for not being visited by the public, but for particular use as storage area, goods that can be traded must meet requirements determined by the Minister.

[11] Zaroni, *Sistem Resi Gudang* (Bandung: Artikel Supply Chain Indonesia, 2017) 3.

Meanwhile, according to Article 1 point (5) of the Warehouse Receipt System Law, what is meant by goods is any movable object that can be stored for a certain period and traded in general. Following Article 1, number (8) of the Warehouse Receipt System Law, the Warehouse Manager has the right to issue Warehouse Receipts. Warehouse Manager is a party that carries out a warehousing business, both owned and owned by others, which carries out storage, maintenance, and control of goods stored by the owner of the goods.[12] Some examples of warehouse managers in Indonesia include PT. Bhanda Ghara Reksa (Persero), PT. Petani (Persero), PT. Pos Indonesia, Kospermindo Makassar, Pasar Maju Bersama Cooperative, and others.[13]

As proof of ownership, warehouse receipts are issued, securities representing goods stored in the warehouse.[14] Warehouse receipts is a document of proof of ownership of goods stored in a specially registered warehouse issued by the warehouse manager.[15] In this context, "warehouse" has various meanings.[16] The warehouse referred to in this Warehouse Receipt is a warehouse that is only used to store certain commodity items which have been specifically regulated in the Regulation of the Minister of Trade of the Republic of Indonesia Number 33 of 2018 concerning the Third Amendment to the Regulation of the Minister of Trade Number 37 / M-Dag / Per / 11 / 2011 Regarding Items That Can Be Stored in a Warehouse in Implementing a Warehouse Receipt System (from now on referred to as Permendag No.33 of 2018)

Certain goods are categorized as goods that can be stored in a warehouse based on Article 4 of the Minister of Trade Regulation No. 33 of 2018 are: Grain; Rice; Corn; Coffee; Cocoa; Pepper; Rubber; Seaweed; Rattan; Salt; Gambir; Tea; Copra; Lead; Red onion; Fish; and Nutmeg. Requirements for goods stored in a warehouse for issuing warehouse receipts include:[17]

a. Has a shelf life of at least 3 (three) months;
b. Meet specific quality standards;
c. The minimum number of items that can be stored.

Goods in the Warehouse Receipt System include movable goods stored for a certain period and are generally agricultural/plantation/fishery harvested goods. This type of goods has unique characteristics, including:[18]

a. The storage period is relatively shorter than non-agricultural goods;
b. It is perishable or perishable;
c. Is overflow;

[12] Hariyani and Serfianto, *Resi Gudang Sebagai Jaminan Kredit&Alat Perdagangan* 6.
[13] Zaroni, *Sistem Resi Gudang* 2.
[14] Hariyani and Serfianto, *Resi Gudang Sebagai Jaminan Kredit&Alat Perdagangan* 12.
[15] Zaroni, *Sistem Resi Gudang* 2.
[16] NFN Ashari, "Potensi dan Kendala Sistem Resi Gudang (SRG) untuk Mendukung Pembiayaan Usaha Pertanian di Indonesia" *Forum Penelitian Agro Ekonomi*. 29.2 (2016): 131.
[17] Trisadini Prasastinah Usanti and Leonora Bakarbessy, *Referensi Hukum Perbankan: Hukum Jaminan*, (Surabaya: Revka Petra Media, 2016) 152.
[18] Hariyani and Serfianto, *Resi Gudang Sebagai Jaminan Kredit&Alat Perdagangan* 15.

d. The storage process in the warehouse must be controlled more tightly because it is susceptible to pests;
e. The quality of goods is strongly influenced by the post-harvest processing process, especially the drying process and the grading-sorting process, and
f. Prices of agricultural harvested goods tend to fluctuate and are strongly influenced by seasons.

According to Article 1 point (7) of the Warehouse Receipt System Law, the good owner is said to be a Warehouse Receipt Holder, namely the party who receives the goods owner's transfer.

The Warehouse Receipt Law also regulates the various types and forms of Warehouse Receipt. There are 2 (two) types of Warehouse Receipt, namely: [19]

1. Warehouse Receipt on Name is a Warehouse Receipt that states the name of the party entitled to receive delivery of goods;
2. On Order, Warehouse Receipt is a Warehouse Receipt that states the party's order is entitled to receive goods.

While the form consists of:

1. Warehouse Receipt with Clearing Items are securities whose ownership is in the form of a certificate either on behalf of or order;
2. Scriptless Warehouse Receipts are securities whose ownership is recorded electronically.

Warehouse receipt implementation begins with parties such as farmers or business actors who wish to reserve their commodity goods to visit the designated warehouse. Then the commodity goods to be inspected are tested by a particular institution, namely the Conformity Assessment Agency, which is in charge of trying the quality of the commodity and making certificates for goods containing information about the commodity goods such as how the number of goods, class of goods, a period of quality of goods, to the signature of the authorized party.[20] With this test's existence, it is intended that whether the commodity goods to be warehoused have met the predetermined requirements. Then the Warehouse Manager will create a Goods Management Agreement, which contains a description of the goods and insurance. After receiving the registration code, the Warehouse Manager will issue a Warehouse Receipt which includes information about the title of the Warehouse Receipt of the goods of the parties being reserved, the name of the owner of the item, which warehouse location will be used to store the commodities of the parties, date and issue number, number registration, maturity date, description of goods, cost of storage, the value of goods to market prices. Then the Warehouse Manager submits all information and data that has been received to the Supervisory Agency. After all, procedures have been

[19] Usanti and Bakarbessy, *Referensi Hukum Perbankan: Hukum Jaminan* 150.

[20] Ninis Nugraheni, "The Movable Goods As A Collateral Object In Warehouse Receipt System" *Hang Tuah Law Journal*. 2.1 (2018): 97.

carried out; Warehouse Receipt can be issued and immediately used by the parties concerned, whether cashed, stored as an asset, or even traded or traded.[21]

Based on the explanation above, it can be understood that warehouse receipts are part of the warehouse receipt system, a "receipt" representing whatever is stored in the warehouse. Because the warehouse cannot be used to store goods that are not stated in the Minister of Home Affairs Regulation, the goods stored in the warehouse have high economic value, especially for some social elements. The existence of a Warehouse Receipt System in the business world is currently being used as an alternative in dealing with financing problems in the business sector. Regarding the field of financing, the warehouse receipt as a form of evidence of goods in the warehouse, it is necessary to conduct further study, whether it is also an object that has economic value, or is it just a description of a list of items that have a monetary value

Based on the detailed classification of object types in Book II BW, objects can be objects of transactions. Like the Warehouse Receipt in the Warehouse Receipt System. A warehouse Receipt is an object that is tangible and movable and gives birth to material rights, namely material rights that provide enjoyment. Warehouse Receipt as an object, then it should be used as the object of the transaction; however, this must be reviewed first, considering that the item of the trade is at least following Article 1131 BW, which has economic value and is transferable, it is necessary to examine whether Warehouse Receipt has 2 (two) characteristics, considering that warehouse receipts are only a description of goods stored in the warehouse.

Based on the description above, it can be examined that a Warehouse Receipt, which is a certificate of goods stored in the warehouse, also has the character of representing the said objects based on the detailed information provided. This is as stated in Article 4 of Government Regulation Number 36 of 2007 concerning Implementation of Law Number 9 of 2006 concerning the Warehouse Receipt System, which confirms that Warehouse Receipt Documents are valid if they contain:

1. Title of Warehouse Receipt;
2. Types of Warehouse Receipt;
3. Name and address of the owner of the goods;
4. Location of the warehouse where goods are stored;
5. The date of issue;
6. Issuance number;
7. Time due;
8. Description of goods;
9. Storage costs;

[21] Bappepti, *Panduan Pelaksanaan Sistem Resi Gudang* (Jakarta: Kementerian Perdagangan Republik Indonesia, 2017) 18.

10. Value of goods based on the market price at the time the goods are entered into the warehouse;
11. Security code;
12. Warehouse Manager letterhead; and
13. Signature of the owner of the goods and signature of the Warehouse Manager.

This means that the warehouse receipt has economic value. Therefore, the Warehouse Receipt can also be transferred, although it does not automatically transfer ownership only by actual delivery like the conditions for transferring movable objects. Still, for a perfect transfer of ownership rights, the Warehouse Receipt's name must be reversed.

Indonesia has several rules governing guarantee institutions both in BW and in-laws outside BW. The rules that exist in BW and which are specifically issued by the government regarding material guarantees are:

a. The Pledge regulated in Article 1150-1160 BW;
b. The mortgage is regulated in Articles 1162-1232 BW;
c. Law No. 4 of 1996 concerning Hak Tanggungan (from now on referred to as UUHT);
d. Law No. 42 of 1999 concerning Fiduciary Guarantee (from now on referred to as UUJF).

The material guarantee institution as above, considering that the rules are in positive law in Indonesia, then gives birth to the right to material security. The characteristics of the material guarantee rights contained in each guarantee institution in Indonesia include: [22]

1. The Absolute Principle;
2. Droit De Suite Principles;
3. The Droit De Preference Principle;
4. The Droit De Priority Principle;
5. Material Claims;
6. Principle of totality;
7. The Principle of Specialization;
8. Principles of Publicity.

Because Warehouse Receipt is an object, therefore the form of guarantee is the material guarantee. There are no laws and regulations that mandate the imposition of warehouse receipts as collateral objects. One of the rules regarding Warehouse Receipt which contains the guarantee of Warehouse Receipt itself, is Government Regulation No. 36 of 2007, namely concerning the Implementation of Law no. 9 of 2006 as amended by Law no. 9 of 2011 concerning Warehouse Receipt System (from now on referred to as PP Warehouse Receipt). In the PP, it is stated about the imposition of

[22] Fani Martiawan Kumara Putra, "Karakteristik Pembebanan Jaminan Fidusia Pada Benda Persediaan Dan Penyelesaian Sengketa Saat Debitor Wanprestasi" *Perspektif*. 21.1 (2016): 39.

guarantee rights on Warehouse Receipts contained in Chapter IV Article 16 paragraph 1 that Warehouse Receipts can be burdened with Security Rights for debt repayment. However, it is necessary to examine whether the PP. 36 of 2007, there are principles in the guarantee law, namely the nature of the property security right.

In the PP Warehouse Receipt, several principles of material security rights are found, including the principle of Droit de preference (Article 16 paragraph 2; regarding the position of the recipient of the guaranteed right as the preferred creditor), the principle of publicity (Article 18 paragraph 1; regarding the recording of the imposition of receipt guarantee rights. warehouse), the principle of specialty (Article 23 paragraph 2; regarding notification of the sale of the warehouse receipt object, precise data must be included), and the principle of execution (Article 21; which states that the creditor has the right to sell the item of the Warehouse Receipt guarantee right on his power without assistance court (parate execution)).

Warehouse Receipt Guarantee in PP Warehouse Receipt process is described in the Attachment to the Regulation of the Head of Commodity Futures Trading Supervisory Agency (BAPPEBTI) No. 09/BAPPEBTI/PER-SRG/7/2008 Attachment of the Head of Bappebti No. 9 of 2008 contains about how the procedure mechanism or procedures for imposition of guarantee rights and notification of guarantee rights, the removal of the object of guarantee, and the sale of the item of guarantee. The procedure or mechanism for assigning Guarantee Rights on Warehouse Receipts is explained as follows:

a. After the agreement is made between the owner of the Warehouse Receipt and the prospective recipient of Guarantee Rights, the prospective recipient of the Guarantee Rights submits a verification application for Warehouse Receipt which will be subject to Security Rights through the Online Warehouse Receipt System to the Registration Center;
b. The Registration Center verifies the application containing the validity of the Warehouse Receipt, the validity of the Giver of Guarantee Rights, the period of the Warehouse Receipt, the value of the Warehouse Receipt at the time of issuance, and a statement regarding whether or not the Security Right has been charged;
c. The Registration Center will provide the Registration Center for confirmation of whether or not it can be imposed by submitting Confirmation Evidence through the Online Warehouse Receipt System;
d. The Giver of Guarantee Rights and Guarantee Rights Recipients sign the Collateral Right Imposition Agreement on Warehouse Receipt, a follow-up agreement from the main deal, namely the credit agreement. The signing of the Collateral Right Imposition Agreement on Warehouse Receipt can be done under the hand or in front of a notary. Where in the agreement, additions, and

adjustments can be made based on needs as long as it does not conflict with the provisions of the Warehouse Receipt Law and its implementing regulations;[23]

e. The Collateral Right Recipient notifies the Imposition of Guarantee Rights through the Online Warehouse Receipt System to the Registration Center and Warehouse Management and submits the notification by attaching data in the form of Confirmation Proof of Warehouse Receipt Can Be Burdened With Security Rights from the Registration Center, a photocopy of the Collateral Right Imposition Agreement on Receipt Warehouse and a photocopy of Warehouse Receipt, no later than the next day after the signing of the Collateral Right Assurance Agreement on Warehouse Receipt. Risks that arise due to negligence or deliberately of the Guarantee Rights Recipient in the event of a delay or not notifying the Imposition of Guarantee Rights are entirely the responsibility of the Guarantee Rights Recipient;
f. The Registration Center updates the status of Warehouse Receipt and records Collateral Rights Assignment into the Collateral Rights Assignment List;
g. Registration Center sends proof of confirmation that it has been received and that notification of the imposition of Guarantee Rights through SRG-Online has been recorded to the recipient of Guarantee Rights, Guarantee Rights giver, and Warehouse Manager, no later than the following day after the notification of the imposition of Guarantee Rights has been received ultimately.

The Attachment of the Head of Bappebti No. 9 of 2008 also found several principles of material security rights, namely the principle of publicity regarding the mechanism for charging warehouse receipt guarantees that must be registered. The specialty regarding data relating to the warehouse receipt collateral object must be clear to facilitate the execution process. In essence, the principle of property security rights in the Attachment of the Head of Commodity Futures Trading Supervisory Agency No. 9 of 2008 does not deviate from the PP Warehouse Receipt Guarantee, which is, is a follow-up to the PP Warehouse Receipt Guarantee.

However, one principle of material security rights that is not contained in the two regulations, namely the Droit de suite principle, is not found. There is no explanation that the warehouse receipt guarantee rights will always follow wherever the object is. As it is known, for material rights and material security rights, these three principles are interrelated, namely absolute, droit de suite, and material claim. There will be no material suitability (for example, in the execution framework) if there is no droit de suite characteristic. Nor can the absolute principle apply where there is no droit de suite property. When the receipt is transferred in bad faith, the creditor will not be able to ask for it back because the property security rights attached to it are eventually lost.

[23] Fani Martiawan Kumara Putra, "Characteristics of Notary Deeds for Transactions Through Electronic Media" *NORMA*. 17.3 (2021): 3.

It should also be borne in mind that the above rules, which mention warehouse receipt guarantee agencies, are in regulations that are not at the level of law. It is appropriate that the rules regarding the guarantee institution are put in the law; this is as the guarantee institution for Pledge, Fiduciary, Mortgage, Hak Tanggungan, comprehensive rules are all contained in the law. It is proper to use a hierarchical regulation under the law but limited to the implementation. This is different from the Warehouse Receipt as described above; the Warehouse Receipt Law does not emphasize the existence of a Warehouse Receipt guarantee agency; it only states that warehouse receipts can be used as collateral objects, meaning that in the Warehouse Receipt Law there is no new guarantee institution born, no warehouse receipt guarantee institution is born.

The description above, of course, is an explanation from a theoretical and academic perspective, considering that a principle or principle must be realized in the form of a norm, including Droit de Suite in guaranteeing warehouse receipts cannot be regarded as existing, considering that it is not normalized. However, practitioners perceive it; differently, practitioners, be they legal practitioners, actors, or observers of the people's economy (especially farmers), including banks (especially those in villages), acknowledge the existence of warehouse receipt guarantee institutions. This is reasonable, considering that even though it is not according to the norms, this warehouse receipt guarantee institution is instrumental in farmers' environment (villages) to revive the economy and continue its business. When there is a dispute of opinion, we must move on to existing theories and norms. Therefore, in the Warehouse Receipt Law, no new guarantee institution was born, no warehouse receipt guarantee institution was born, and even though it is considered to exist, it still cannot implement the nature of the guaranteed right. The material in the form of Droit de suite means that the debtor's protection will be weak.

As described above, in its use, warehouse receipts can indeed be the object of transactions by being traded; one of the conditions is a change of name. Based on the description above, warehouse receipts should not be used as collateral. Given its character as an object of economic value and transferable property rights, warehouse receipts can be used as legal objects for the engagement, especially in the event of debt and credit, by utilizing the Fiduciary Guarantee Agency, considering that this guarantee institution is specifically for movable objects, and there is no inbezitstelling principle. As in Pledge, it is, therefore, suitable for Warehouse Receipt. However, in the Fiduciary Guarantee, a Fiduciary Security Deed is required by a Notary, considering that the debtor's subject is generally rural farmers, so it will be quite burdensome when you have to pay for notary services, and also the distance to the Notary's office which is relatively far from rural areas.

CLOSING

Conclusion

Warehouse receipts are the main items in the warehouse receipt system. As the name implies, as a receipt, which contains a description of the goods stored in the warehouse, the types of goods and the storage mechanism are regulated in separate regulations. Warehouse receipt as an object can be classified as a moving object. Given the substance and character of the warehouse receipt itself, it can be understood that warehouse receipts are objects that have economic value. As objects that have monetary value, it means that warehouse receipts have the potential to be transferred. The character of warehouse receipts, which are economically valuable and their property rights, can be transferred, making warehouse receipts the object of a legal relationship, one of which is the civil law relationship in the form of debts. The practitioners acknowledge the existence of a warehouse receipt guarantee agency. However, there is no affirmation that when the warehouse receipt is guaranteed in this arrangement, there will be droit de suite characteristics; therefore, there is also no material suitability and absolute nature. Thus, the guarantee parties cannot get comprehensive protection. Apart from that, it needs to be understood that the guarantee institution was born from the law. At the same time, the Warehouse Receipt Law does not emphasize the existence of a Warehouse Receipt guarantee agency; it only states that warehouse receipts can be used as objects of guarantee.

Recommendation

Warehouse Receipt arrangements need to be continuously considered and developed, considering that this institution can significantly assist the farmer's economy, particularly by developing warehouse specifications to store more types of objects. The government needs to make rules to guarantee institutions with warehouse receipts as its objects.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Legal Protection of Apartment Buyers Whose Land is Actually Being Secured with Hak Tanggungan

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Abstract:

The study, entitled legal protection of apartment buyers whose land is actually being secured with Hak Tanggungan, first aims to find out and analyze how disputes are resolved for apartment buyers who experience law execution of their future Apartment units because the land rights are secured with Hak Tanggungan. This is normative legal research that will explore the contents of statutory regulations. The results of this research are that several instruments exist as a unit in purchasing an apartment/flats, one of which is PPJB, the status of the buyer is as a buyer, not bezitter, eignar, or non-litigation channels with specific steps prioritize detentor, the dispute settlement mechanism according to the Agreement in the PPJB. Following statutory regulations, however, the buyer can still take the litigation route as a mechanism for settling the dispute, with compensation claims and suit for default based on the existing PPJB.

Keywords: *PPJB; Apartment; Hak Tanggungan.*

Article's History:

Received:
February 16, 2021;

Peer-Reviewed:
February 24, 2021;

Accepted:
February 27, 2021;

Published:
March 5, 2021.

DOI:
10.30742/nlj.v18i1.1287

INTRODUCTION

The construction of apartment is an alternative solution to housing especially in urban areas where the population increases. Apartments' structure can reduce land use, making open urban spaces more spacious and optimally used as places. Terraced living that can accommodate as many people as possible. The construction of land-use optimization vertically to several levels will be more effective than horizontal.[1]

In an apartment building, some room can be owned individually and separately, which are called apartment units, and some features are joint rights of the apartment's unit owner. This common right includes common shares, everyday objects, and common land. Initially, the policy for building apartments in big cities in Indonesia was stated in various laws and regulations, including Law Number 16 of 1985 concerning Flats (from now on referred to as UURS), implemented by Government Regulation Number 4 1988 concerning Flats (from now on referred to as PPRS).[2]

[1] Urip Santoso, *Hukum Perumahan* (Jakarta: Kencana Media, 2016) 401.

[2] Anggit Atma Yuwita, "Legal Action for Pre-Project Selling Based Buyers Whose Apartment Specification Have Changed Without Prior Approval" *Norma*. 17.3 (2021): 69.

Developers as the party that can carry out apartments' structure require a lot of money to support the building's implementation. Therefore, developers usually apply for credit with guarantees to the bank. To increase the ability to build a apartment to the developer, a construction loan can be provided with the imposition of a Hak Tanggungan on the land to be used for the construction of apartments, which the credit has been approved can be paid in stages according to the value and results of these development developments, following the rules of Law Number 4 of 1996 concerning Hak Tanggungan (from now on referred to as UUHT).[3]

In terms of marketing carried out before the apartment's construction is carried out, everything promised by the developer and/or marketing agent is binding as a Sale and Purchase Agreement (from now on referred to as PPJB) for the parties. The process of buying and selling apartments before the construction of the apartments is completed can be done through PPJB, which is made in the presence of a notary.[4] The sale and purchase of apartment units are carried out by pre-ordering the company to be purchased, outlined in the preliminary Agreement or deal and purchase Agreement, better known as PPJB. To secure the interests of sellers/developers and prospective buyers of apartment units.[5] The PPJB function is as a preliminary agreement that aims to bind or bond the parties which contain provisions regarding the terms agreed upon in the main Agreement, namely the Sale and Purchase Deed (from now on referred to as AJB), which will later be drawn up in the presence of the Land Deed Making Official (from now on referred to as PPAT).[6]

When the building is in the process of completing the construction of the apartments and several units of apartments have been sold with proof of PPJB ownership, in a situation where the developer does not pay the debt to the bank until it is due, the developer is considered to be in default because it cannot pay off the debt until it is due has been promised. The UUHT makes it easy for creditors to execute Hak Tanggungan rights if the debtor is in default, as regulated in Article 6 and Article 20 of the UUHT, that the bank as a creditor has the right to execute the object of the security right by selling it through a public auction according to the procedure specified in the regulation laws and regulations and collect the receivables from the sales proceeds.[7]

In conducting a public auction, a bank certainly cannot just carry it out; there must be clarity about the fate of the apartment unit buyers, especially for those who

[3] J. Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*, 1st ed. (Bandung: Citra Aditya Bakti, 2002) 136.

[4] Fani Martiawan Kumara Putra, "Characteristics of Notary Deeds for Transactions Through Electronic Media" NORMA. 17.3 (2021): 2.

[5] Tim Penulis Leks & Co, *Hukum Real Estate Bagian I Hukum Pertanahan, Perumahan dan Rumah Susun* (Bandung: Citra Aditya Bakti, 2017) 41.

[6] Suriansyah Murhaini, *Hukum Rumah Susun Eksistensi, Karakteristik, dan Pengaturan* (Surabaya: Laksbang Grafika, 2015) 86.

[7] Trisadini Prasastinah Usanti and Leonora Bakarbessy, *Hukum Jaminan* (Surabaya: Revka Petra, 2016) 105.

have made repayments for the sale and purchase of apartment units even though temporarily they only have PPJB as proof of legal ownership. Of course, this is a complicated problem related to the consequences of developer defaults on the buyers' fate and the efforts that buyers can make to execute the object of the Hak Tanggungan.

RESEARCH METHOD

This research is a normative legal research, which means that this research examines the legislation's side, not reading social symptoms due to existing legislation. This research's approach method is a statutory approach (statute approach) and conceptual approach. This approach is used because the discussion in this study will refer to the Law and the concept related to the issue..

DISCUSSION

Security rights over land are rights that reside with the creditor, which authorizes the creditor to sell land designated explicitly as collateral and collect the receivables from the sales proceeds if the debtor defaults or defaults. This authority is also accompanied by the right to repayment precedence over other creditors. In addition to granting Droit de preference, the security right to land will also burden the land used as collateral even though it is in whose hands the land is located (droit de suite).[8]

Article 4 of the UUHT states what things can be used as objects of insurance rights, namely:

a. Right of ownership;
b Cultivation Rights;
c. Building Use Rights over state land and land management rights;
d. According to the applicable provisions, use rights over State land must be registered and, according to its transferable nature, can also be burdened with security rights and land.
e. Ownership rights to apartment units standing on freehold land, building use rights over state land and land management rights, as well as usage rights over state land and land management rights;
f. Rights to land along with buildings, plants, and existing or future works that are an integral part of the land, and which are the property of the land rights holder whose imposition is expressly stated in the Deed of Granting Hak Tanggungan concerned, such as temples, statues, gate, relief that is one unit with the ground.[9]

As an accessory right, the birth of the Hak Tanggungan is based on the existence of a principal agreement, namely a debt-receivable agreement.[10] Granting of Hak

[8] Boedi Harsono, *Hukum Agraria Indonesia (Sejarah Pembentukan Undang–Undang Pokok Agraria, Isi dan Pelaksanaannya)* (Jakarta: Djambatan, 1997) 328.
[9] Syahrani Riduan, *Seluk Beluk dan Asas-Asas Hukum Perdata* (Bandung: Alumni, 1992) 166.
[10] Kartini Muljadi, *Hak Tanggungan* (Jakarta: Kencana Media, 2005) 13.

Tanggungan Rights is preceded by the debtor's promise to provide Hak Tanggungan Rights to creditors as collateral for debt repayment.[11] This promise is set forth and is an integral part of the accounts payable Agreement. the relationship of the Agreement (privity of contract) between business actors (goods or services) and consumers, then the responsibility of business actors is based on Contractual Liability, namely civil liability based on agreements or contracts from business actors, for losses suffered by consumers as a result of consuming the goods it produces or utilizing the services it provides. The rights and obligations of the parties, especially the seller or developer, have been normatively regulated in several regulations, including in Articles 42, 43, and 44 of the UURS, which confirms: [12]

a. Developers can carry out marketing before the construction of the flat.
b. If the marketing is carried out before the construction of the apartment is carried out as referred to in paragraph (1), the construction actor must at least have:
    1. The certainty of space allocation;
    2. The certainty of land rights;
    3. Confirmation of the tenure status of the apartment;
    4. Flat construction permit; and
    5. Guarantee for the construction of a flat from a guarantor institution.
c. Suppose marketing is carried out before the flat's construction, as referred to in paragraph (2). In that case, everything promised by the construction actor and/or the marketing agent is binding as a sale and purchase binding Agreement (PPJB) for the parties.

Related to the PPJB implementation requirements:

a. The process of buying and selling apartment units before the construction is completed can be carried out through PPJB made in the presence of a notary.
b. PPJB, as referred to in paragraph (1), shall be conducted after meeting the certainty requirements:
    1. Land ownership status;
    2. IMB ownership;
    3. Availability of infrastructure, facilities, public utilities;
    4. Construction of at least 20% (twenty percent); and
    5. The thing that was promised.

Related to the sale and purchase implementation:

a. The process of buying and selling carried out after the construction of a apartment is completed through AJB;
b. The construction of a apartment in the paragraph is complete as referred to in paragraph (1) if it has been published;

[11] Fani Martiawan Kumara Putra, "Tanggung Gugat Debitor Terhadap Hilangnya Hak Atas Tanah Dalam Obyek Jaminan Hak Tangggungan" *Yuridika*. 28.2 (2015): 130.

[12] Riduan, *Seluk Beluk dan Asas-Asas Hukum Perdata* 20.

c. Certificate of eligibility to function;
d. SHM for a apartment unit or SKBG for a flat unit.

Requests for apartment units still in planning can occur at this time; the sale and purchase of apartment units when the apartment is still in the planning stage are carried out by pre-ordering the unit to be purchased, then stated in the PPJB.[13] The binding of sale and purchase of apartment units may occur due to consumer demand to buy apartments that the developer has not completed. The Government explicitly regulates this in Kepmenpera No. 11 / KPTS / 1994; this regulation's legal consequence is that every sale and purchase Agreement on a apartment should follow Kepmenpera No. 11 / KPTS / 1994. The PPJB was made here due to several reasons, among others:

a. The certificate has not been issued on behalf of the seller and is still being processed at the Land Office;
b. The certificate has not been in the seller's name and is still in the process of turning over the name of the seller's name;
c. The certificate already exists and is in the name of the seller, but the buyer has not fully paid the sale and purchase price that has been agreed upon to the seller;
d. The certificate already exists, is in the name of the seller, and the price has been paid in full by the buyer to the seller, but the requirements are not yet complete;
e. The certificate was used as collateral at the bank.[14]

PPJB also contains the following:

1. **The object to be traded**
   Apartments as objects to be bought and sold must have the necessary permits, such as location permits, proof of control and payment of land, and building permits.;
2. **Management and Maintenance of Common Parts, Common Objects, and Common Land, which is the Obligation of All Residents**
   Prospective buyers of apartment units must be willing to become members of the Association of Owners and Occupants of Apartment Units (from now on referred to as PPPRS). The formation of PPPSRS has been regulated in Article 74 UURS and Article 54 PPRS;
3. **Developer Obligations**
   Before carrying out the initial marketing, the developer is required to report initial marketing matters to the Mayor of the Level II Region with a copy to the State Minister for Public Housing If within a period of no later than 30 (thirty) calendar days as from the date stated in the receipt of the report there is no response from the relevant agency, the initial offering may be carried out.

[13] Eman Ramelan, *Perlindungan Hukum Bagi Konsumen Pembeli Satuan Rumah Susun/Strata Title/ Apartemen* (Yogyakarta: Aswaja Pressindo, 2015) 23.
[14] Ibid.

4. Obligations of the Orderer

The subscriber is obliged to carry out all its obligations, both in the order letter and in the PPJB, and is subject to the terms and conditions of the PPPSRS articles of association and other related documents. After becoming a apartment buyer, every customer must pay a management fee and utility charge.[15]

Some experts say that PPJB holders are bezitters, but it is necessary to study further the existence of bezitter and eigenaar. Bezit controls or enjoys an object in a person's power personally or as an intermediary for another person as if the property belonged to him. Bezit which a person controls an object as if it were his own, protected by Law by not questioning whose actual ownership of the item is. Thus, for the existence of bezit, there must be two elements, namely power over an object and the willingness to own the item. If he meets the requirements as determined, he will get legal protection as a ruler (bezitter) without proving his rights. In the field of bezit, this principle does not apply to the control of immovable objects.[16]

In this case, bezit must be distinguished from "detentie," where a person controls an object based on a specific legal relationship with another person (the owner of the item). So, a "detentor" does not have the will to own the thing for himself. The definition of bezit is close to or almost the same as the definition of property rights (eigendom). The difference in eigendom shows more of a legal relationship between the owner and the object, whereas in bezit it shows a fundamental relationship between the owner and the item. Besides, in eigendom, a person can act as the owner (eigenaar) of an object because he is the owner.

The difference between eigendom rights and land rights is that eigendom rights are subject to BW originating from western Law. In contrast, land rights are subject to UUPA, which is derived from customary Law. Eigendom rights are broadly regulated in BW for all objects, both tangible and intangible. In contrast, ownership rights to land and other property rights over immovable objects regulated in the UUPA.[17]

So, it can be analyzed that the apartment unit buyer with PPJB ownership is deemed not to fulfill the characteristics of being a bezitter or eignaar. This is because to become a bezitter must meet several elements as regulated in Article 529 in conjunction with Article 1977 BW, and eignaar regulated in Article 570 BW. So, it can be concluded that the buyer's legal position is as a buyer as evidenced by a PPJB deed or can also be mentioned as a buyer in good faith.

Suppose there is an action that is detrimental to consumers. In that case, Article 21 UURS contains criminal sanctions for developers who violate Article 18 UURS (concerning the habitable permit and the building has been completed). So that

[15] Ibid., 42.

[16] Moch Isnaeni, *Pengantar Hukum Jaminan Kebendaan* (Surabaya: Revka Petra, 2016) 44.

[17] Tan Thong Kie, *Studi Notariat Dan Serba-Serbi Praktek Notaris* (Jakarta: Ichtiar Baru Van Hoeve, 2013) 168.

consumers can take criminal action against developers, but criminal sanctions are not what consumers expect. Consumers expect compensation for losses they have suffered if consumers can file claims for compensation based on default or illegal acts.

Suppose the buyer is going to file a suit for default. In that case, it is enough that he shows the Agreement that was violated through the PPJB made between the developer and the seller, and the developer will be burdened with evidence to state that there is no default. However, when going to file a lawsuit against the Law, the buyer must be ready to prove and demonstrate that not only is an act contrary to others' rights or contrary to his legal obligations, but there is also an element of error the developer. Regarding the claim for compensation requested, for default, the amount can indeed be estimated because it is in the Agreement. As for acts against the Law, it is up to the judge to assess the compensation amount.

In PPJB apartment units, the buyer does not yet have full rights to the sale object, a apartment unit. The buyer has full rights over the apartment unit if the sale and purchase deed has been signed so that consumers who have made installment payments on the object of sale and purchase can get legal certainty. The Agreement that the parties often carry out is currently a standard agreement; that is, the Agreement or clause cannot and cannot be negotiated or offered by other parties.[18] This definitive Agreement tends to harm the less dominant party. In simple terms, a standard agreement has the following characteristics:

a. The Agreement is made unilaterally by producers whose position is relatively stronger than consumers;
b. Consumers are not at all involved in determining the contents of the Agreement;
c. Made in writing and bulk;
d. Consumers are forced to accept the contents of the Agreement because they are driven by necessity.[19]

PPJB implementation of apartment units must have legal protection for both the apartment unit buyer and the developer. Concerning the standard Agreement on the definitive Agreement, it can be seen that the business actor and the consumer have a legal agreement relationship, which by Law occurs when the sale and purchase transaction is carried out.

In the act of default, if the parties (both the developer and the buyer) interpret, then the parties who feel they have suffered a loss must prove the loss suffered. The occurrence of default in an agreement has consequences for the parties who do it. If the developer defaults, then the developer must compensate for the loss, the object which is the object of the engagement, since the default is the developer's responsibility, if the Agreement arises from a reciprocal arrangement, the buyer can request cancellation of

[18] Sutan Remy Sjahdeni, *Kebebasan Berkontrak dan Perlindungan yang Seimbang Bagi Para PIhak dalam Perjanjian Kredit Bank di Indonesia*, vols. (Jakarta: IBI, 1993).

[19] Ibid.

the Agreement. Bankruptcy claims can be in the form of cancellation of the Agreement, the Agreement's fulfillment, payment of compensation, cancellation of the Agreement with bonus, the fulfillment of the Agreement with bonus, adjusted to the statutory regulations that govern the provisions.[20]

Legal protection and dispute resolution that has been regulated in the UURS, some of these provisions impose an obligation on the seller to meet technical, administrative, and civil requirements, with the threat of both administrative, civil and criminal sanctions.[21] The legal protections provided by the PPJB as a manifestation of the Law which was formed by the buyer and the developer is stated in the provisions concerning Development and Delivery as contained in the PPJB, which generally confirms that the developer will physically and gradually hand over the apartment unit to the buyer no later than - by no later than 6 (six) months. Suppose the time limit has passed, but the developer is still unable to deliver the apartment unit. In that case, the developer will pay the buyer a fine of 1% (one percent) per day of the buying and selling price (before Value Added Tax), calculated from the first day after the period's expiration. In Article 5 paragraph (2), for the next 3 (three) months. [22]

Suppose 3 (three) months after the time limit has passed, and the developer is still unable to deliver the apartment unit. In that case, the buyer can cancel the Agreement, and the developer will return the sale and purchase price which the developer has received from the buyer provided that the buyer is required to provide all original receipts and notification letters regarding the cancellation to the developer at least 30 (thirty) days before the cancellation. Then the developer will return the money along with fines that must be paid by the developer on the day and date the buyer signs the cancellation document for the purchase of an apartment by the buyer.

The settlement of disputes regarding apartments is regulated in Article 105 UURS, namely:

1. The settlement of disputes in the apartment sector shall first be attempted based on deliberation to reach a consensus;
2. If a dispute settlement through deliberation to reach a consensus cannot be reached, the injured party may sue through a court that is within the public court or outside the court based on an option agreed by the parties to the dispute through alternative dispute resolution;
3. The settlement of disputes outside the court as referred to in paragraph (2) shall be carried out through arbitration, consultation, negotiation, mediation,

[20] Fani Martiawan Kumara Putra, "Eksistensi Kreditor Separatis Sebagai Pemohon Dalam Perkara Kepailitan" *Perspektif*. 19.1 (2014): 2.

[21] Andi Hamzah, I Wayan Suandara, and B.A. Manalu, *Dasar-Dasar Hukum Perumahan* (Jakarta: Rineka Cipta, 2006) 52.

[22] Ramelan, *Perlindungan Hukum Bagi Konsumen Pembeli Satuan Rumah Susun/Strata Title/Apartemen* 180.

conciliation, and/or expert judgment following the provisions of laws and regulations;

4. As referred to in paragraph (3), disputes outside the court do not eliminate criminal responsibility.

In connection with this consumer dispute resolution, resolving disputes outside the court can be in the form of arbitration, consultation, negotiation, mediation, conciliation, and/or expert judgment. By this means, consumer disputes are resolved first by direct meetings between consumers and business actors or through third parties' assistance.[23] A bargaining process occurs to resolve consumer disputes between business actors and consumers with consultation or negotiation.[24]

Third parties help the disputing parties find a settlement between them by utilizing arbitration, consultation, negotiation, mediation, conciliation, and/or experts. The third-party referred here is a neutral party, not taking sides with one of the dispute parties. The third party helps the parties find a solution. It is hoped that this deliberative settlement of disputes is intended to settle disputes between the parties, without using a legal attorney, so that answers to the problem can be found by peaceful means.[25]

As is well known, the model of civil dispute resolution in court or settlement through litigation is generally based on two basic patterns, namely:

a. The existence of default or broken promise of one of the parties, where for this lawsuit must be based on the presence of a contractual relationship (privity of contract) between the parties (plaintiff and defendant);
b. There is an act that violates the Law, wherein a lawsuit based on an unlawful act, there is no need to precede a contractual relationship between the parties. Still, the most elementary is that there is an act that harms the other party, and there is a causal relationship between the action and the losses incurred as a result of his mistake.[26]

If a claim is filed in court, the process or stages in examining the compensation claim will be questioned concerning the business actor's accountability. According to Article 48 of the UUPK, consumer dispute resolution through the courts refers to the general court's provisions.

CLOSING

Conclusion

Relying on PPJB, the apartment unit buyer is not yet the owner, as long as the property rights transfer has not been fulfilled. Buyers also cannot be classified as

[23] Yusuf Shofie, *Penyelesaian Sengketa Konsumen Menurut Undang-Undang Perlindungan Konsumen (UUPK)*, Ed. Citra Aditya Bakti (Bandung, 2002) 35.

[24] Ibid., 37.

[25] Jimmy J Sihombing, *Cara Menyelesaikan Sengketa Di Luar Pengadilan* (Jakarta: Visimedia, 2011) 67.

[26] M. Abdul kadir, *Hukum Acara Perdata Indonesia* (Bandung: Citra Aditya Bakti, 1990) 28.

bezitter, detenter, and eignaar. The dispute resolution mechanism can be carried out utilizing litigation and non-litigation by referring to existing regulations and referring to the agreed PPJB. Settlement through non-litigation channels is prioritized, with specific mechanisms agreed in the PPJB. The lawsuit filed by the buyer is a lawsuit for default because there is already an agreement between the developer and the buyer.

Recommendation

There is a need for increased supervision by the Government and related institutions concerning advertisements, standard agreement clauses, building quality standards, the importance of issuing certificates of legality standard for sale, and/or certificates of acceptance of function or the like as well as limiting the developer's authority in buying and selling apartment units if there is an opportunity for a violation. There must also be strict law enforcement for developer with bad faith.

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p-ISSN: 1693-0657 | e-ISSN: 2746-1963
NORMA
https://journal.uwks.ac.id/index.php/norma

Limitations of Public Interest Clause in Land Acquisition So That Land Rights Holders Can Retain Their Rights

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Abstract:

This research aims to see and analyze legal protection for land rights holders who lost their land rights due to public interest clause, whether for the benefit of the state or the private sector. Based on the 1945 Constitution, it can be seen that the use of the earth (land), water, and natural resources contained therein by the state is required to be used for the greatest prosperity of the people, and not for certain elites from government agencies who need land. Limitations must be applied to this clause so that the use is not arbitrary because even though the land rights are ownership rights, it can lose since the Government carries it out. The public interest clause is always the way and the Government answer for those who refuse their land to be acquired. Research results are that public interests, which are the needs of many people or broad goals, must pay attention to social, political, psychological, vindication and security aspects based on the National development principle.

Keywords: *Land; Public Interest; Acquisition.*

Article's History:

Received:
February 16, 2021;

Peer-Reviewed:
February 24, 2021;

Accepted:
February 27, 2021;

Published:
March 5, 2021.

DOI:
10.30742/nlj.v18i1.1291

INTRODUCTION

The Republic of Indonesia aims to promote the general welfare and achieve social justice. Development carried out by the Indonesian people as an effort to achieve a prosperous and prosperous life as determined normatively in Article 33 paragraph (3) of the 1945 Constitution (from now on written the 1945 Constitution) which determines that the earth and water and natural resources which are contained therein shall be controlled by the state and used for the greatest prosperity of the people. From the provisions of Article 33 paragraph (3) of the 1945 Constitution, it can be seen that the use of the earth (land), water, and natural resources contained therein by the state is required to be used for the greatest prosperity of the people, not for the prosperity and welfare of certain groups, especially for certain elites from government agencies who need land. State control rights as stated in Article 33 paragraph (3) of the 1945 Constitution have implications for: first, the state controls the earth, water, and natural resources contained therein; second, the earth, water, and natural resources contained therein (mining materials) used for the greatest prosperity of the people. The state's

right to control or the right to control the state is a concept based on the people's power organization and for the people. The right to control the state and cover the authority to regulate, administer, and supervise management also contains the obligation to use it for the people's greatest prosperity.[1]

One of the development activities for the public interest through Land Acquisition is Infrastructure Development. One crucial aspect of development is in the physical and social fields. This can be realized by improving existing infrastructure facilities where infrastructure is one of the driving forces for economic growth. Infrastructure, like road facilities, is the modernization of the nation, the provision of which is an essential aspect to increase the smooth productivity of the production sector and last but not least, this road infrastructure can also play a supporting role in creating and increasing access to transportation for people in their activities. Adequate physical infrastructure such as roads and bridges is often associated as a trigger for development developments in various areas. We can quickly assess the differences in the welfare of an area only by looking at the infrastructure gaps that occur within it. In connection with the preceding, for that in the future, the acceleration of infrastructure development is increasingly important to pay more attention to; however, it is inseparable that land rights holders must also pay close attention to their welfare to benefit from the existence of infrastructure such as roads, which can act as a means of opening the isolation of an area from the outside world so that it is expected to have an impact on improving the welfare of the community both in the economic, social and cultural fields.

However, there is a problem in society when land acquisition is not carried out appropriately for development purposes. It does not provide legal certainty and protection for land rights holders; other than that, land rights holders cannot take legal action when their land interests are designated for their interests.

RESEARCH METHOD

This research is a normative legal research. This research's approach method is a statutory approach. This approach is used because the discussion in this study will refer to the Law and the concept related to the issue.

DISCUSSION

To create a prosperous and society based on Pancasila and the 1945 Constitution, the Government needs to carry out development. One of the development efforts within the framework of national development that organized by the Government, is development for the Public Interest. Development for the Public Interest requires land that the procurement is carried out by prioritizing the principles contained in the

[1] Umar Said Suratman and Noorhudha Muchsin, *Hukum Pengadaan Tanah* (Malang: Setara Press, 2015) 7.

1945 Constitution of the Republic of Indonesia and national land law, including the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony following the values of the nation and state.

Article 6 UUPA states that "All land rights have a social function." This explains that whatever land rights a person has, it cannot be justified that his land will be used or not used solely for his interests, especially if it causes harm to the broader community, in the sense that land functions not only for the holders of land rights but also for the Indonesian nation as a whole, the consequence that the use of rights to a plot of land must also take into account the community's interests. Land use must be adjusted to the circumstances and nature of its rights to be beneficial both for the welfare and happiness of those who have it and for the community and the state. However, this does not mean that a person's interests are constrained by the interests of the community or the state, and between the two interests must be balanced.[2]

Activities involving public interests sacrificing individual interests, then these activities must continue to guarantee the maintenance of fundamental human rights and guarantees, namely the safety of religious beliefs, the safety of soul, the safety of reason, safety of family and descent, and safety of property rights. Activities for the public benefit must be genuinely for the public interest: haqiqiyyah (real) and not wahniah (hypothetical) must not be against the law. They must not sacrifice other public interests equal or more significant.[3]

In the case of land acquisition for public purposes, it always creates excesses that have a large enough impact on the community's stability. Various tensions arise in the community due to disagreements between landowners or land rights holders whose land will be taken for development projects and the authorities tasked with doing this. Besides, problems arise because of unclear rights status.

In practice, legal regulations regarding the release of land rights for government and private purposes do not work following the content and spirit of the provisions so that on the one hand, the impression appears as if the rights and interests of the people who own the land do not receive legal protection. Meanwhile, the Government or parties requiring land also experience difficulties in obtaining land to build their projects. The implementation of land rights release for public interests, come with nuances of the conflict, both from the standpoint of the different legal paradigms between the community and the authorities or the Government, as well as the law enforcement of judges who have a very positivist nuance who ignore other social principles and living law and morals in society.

In Article 19 Paragraph (2) of the UUPA, controlling and using land individually is possible and permitted, this is emphasized in Article 4 Paragraph (1), and Articles

[2] Boedi Harsono, *Hukum Agraria Indonesia (Sejarah Pembentukan Undang–Undang Pokok Agraria, Isi dan Pelaksanaannya)* (Jakarta: Djambatan, 1997) 575.

[3] Achmad Sodikin, *Politik Hukum Agraria* (Jakarta: Konstitusi Press, 2013) 163.

21, 29, 36, 42, and 45 of the UUPA, which contain the requirements for land rights holders. It also shows the principles of individual land tenure and use. However, the individual and private land rights in the UUPA contain an element of togetherness. This togetherness element exists in every right to the land because all land rights directly or indirectly derive from the nation's collective rights. The personal nature of land rights that simultaneously contains elements of togetherness in Article 6 of the UUPA has been confirmed, in which all land rights have a social function. However, one of the problems that are still faced in connection with public interest is determining the balance point between public interest and private interest in development.[4]

Community landowners as individuals or groups who have to give up their rights to their land for public interest or public activities, their socio-economic welfare must be guaranteed by the Government, in other words, landowners after releasing their rights to their land for the public interest, cannot be worse than its original state, at least must be equivalent to the state before the land was released. However, there are often clashes between the Government and the community in practice, owners of land rights who feel the development of this infrastructure has disadvantaged them.

The national land law provides legal protection to land rights holders that the use and control of land by anyone and for anything must be based on land rights provided by the national land law. The control and use of land are legally protected against disturbances from any party, fellow community members, and even the authorities if the disturbance is not based on the applicable legal basis. In other words, if the right holder legally controls the land, if there is a need for land for development, it must be preceded by prior deliberation with the legal owner.

Legal protection in land acquisition for public interest can be broadly interpreted as respect for individual land rights. This is related to the consequences of State recognition of a person's land or a customary law community; the state is obliged to guarantee legal certainty for the land rights so that it is easier for someone to defend their rights against interference from other parties.

For more than half a century, land acquisition for development was only regulated by regulations and/or Presidential Decrees which were inadequate and unattractive. In 2012, Law no. 2 of 2012 concerning Land Acquisition for Development for Public Interest. Aside from the issuance of the Law on Compensation, the UUPA has not yet been revised. The law must reflect the values of living money in society, and the law must be able to answer the demands of society's needs.[5]

In-Law No. 2 of 2012, legal remedies that holders of land rights can take include legal measures in the context of land acquisition and legal remedies in calculating the

[4] A. A. Oka Mahendra, *Menguak Masalah Hukum Demokrasi Dan Pertanahan* (Jakarta: Sinar Harapan, 1996) 256.

[5] Rasjidi Lili and Ira Thania Rasjidi, *Dasar-dasar Filsafat dan Teori Hukum* (Bandung: Citra Aditya Bakti, 2004) 130.

amount of compensation. Law No. 2 of 2012 is an appreciation of the human rights of citizens as stipulated in the 1945 Constitution. It is listed as follows: Legal Remedies for Rightsholders in the Context of Land Acquisition in Article 23:

1. After the determination of the construction location as referred to in Article 19 Paragraph (6) and Article 22 Paragraph (1), there are still objections, the party entitled to the location determination can file a lawsuit at the local PTUN no later than 30 working days from the issuance of the location determination.
2. PTUN decides whether to accept or reject the lawsuit as referred to in Article 23 Paragraph (1) within 30 working days from the lawsuit's receipt.
3. Parties who object to the PTUN decision as referred to in Article 23 Paragraph (2) within 14 working days can file an appeal to the Supreme Court of the Republic of Indonesia.
4. The Supreme Court is obliged to issue a decision within 30 working days from the time the appeal is received.

Giving boundaries regarding the public interest is not easy, considering that the judgment is very subjective and too abstract to understand.[6] Besides, the term public interest is a concept that is so general, and there is no more specific and detailed explanation for its operation following the meaning contained in the term.

However, in taking community lands, the affirmation of the public interest will be the basis. The criteria need to be determined so that the land acquisition is following the applicable legal basis.[7] If the criteria are not formulated or given explicitly, it is feared that this can lead to various interpretations.

The land acquisition mechanism for infrastructure development, which states that it is in the public interest, is regulated by Law no. 2 of 2012. In connection with the implementation of Toll Road construction, it is carried out based on the Regulation of the Head of BPN RI Number 5 of 2012 Jo. Head of BPN Regulation Number 6 of 2015 and Presidential Decree Number 71 of 2012 Jo. Perpres Number 40 of 2014 Jo. Perpres Number 99 of 2014 Jo. Perpres Number 30 of 2015 in conjunction with Presidential Decree Number 148 of 2015 as follows:

Land for development using the arguments of public interest is regulated in Article 10 of the Law. No. 2 of 2012 includes:

a. National defense and security;
b. Public roads, toll roads, tunnels, railways, train stations, and railway operating facilities;
c. Reservoirs, dams, weirs, irrigation, drinking water channels, sewerage and sanitation, and other irrigation structures;
d. Ports, airports, and terminals;

[6] Mahendra, *Menguak Masalah Hukum Demokrasi Dan Pertanahan* 297.

[7] Abdurrahman, *Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum* (Bandung: Citra Aditya Bakti, 1994) 36.

e. Oil, gas, and geothermal infrastructure;
f. Electricity generation, transmission, substation, network, and distribution;
g. Government telecommunications and informatics networks;
h. Waste disposal and processing sites;
i. Government / Regional Government hospitals;
j. Public safety facilities;
k. Government / Regional Government public burial places;
l. Social facilities, public facilities, and public green open spaces;
m. a nature reserve and cultural heritage;
n. Government / regional / village government offices;
o. Arrangement of urban slum settlements and/or land consolidation, as well as housing for low-income people with rental status;
p. Government / regional government educational infrastructure or schools;
q. Government / Regional Government sports infrastructure; and
r. Public markets and public parking lots.

The Government must carry out land acquisition types for the public interest, and the Central Government or Regional Government subsequently owns the land. For agencies requiring land which later belongs to the land, BUMN, except as stated in letters b to r, the Government can cooperate with BUMN, BUMD, or private business entities. Then specifically for point, the construction is carried out following statutory regulations. Prohibition regarding the product itself, which does not meet the requirements and standards suitable for use or use or exploitation by consumers;

There are 3 (three) principles that can be drawn so that an activity is genuinely for the public interest:

1. The Government owns these activities: it contains a limitation that individuals or the private sector do not own public interest activities. In other words, the private sector and individuals cannot have the types of public interest activities that require the acquisition of land rights or the state;
2. The Government carries out related development activities: providing a limitation that the Government can only play the process of implementing and managing activity for the public interest;
3. Not seeking profit: limiting the function of activity for the public interest. It is entirely different from the private interest that aims to seek profit, thus qualifying that the public interest activities must not seek profit.[8]

Land acquisition for the implementation of development for the public interest can only be carried out if the development plan's stipulation for the public interest is following and is based on the previously determined Regional Spatial Planning

[8] Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum dalam Pengadaan Tanah untuk Pembangunan* (Jakarta: Sinar Grafika, 2008) 75.

General Plan. Acquisition of land rights is carried out by taking into account the role of land in human life and respecting legal land rights.

CLOSING

Conclusion

Land rights holders' legal protection in land acquisition for public purposes can be broadly interpreted as respect for individual land rights. Regarding the legal protection provided, in general, the 1945 Constitution has protected land rights as regulated in Article 28 letter h paragraph 4. Other arrangements are regulated in several statutory regulations, namely regulated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 38 paragraph (2) UUPA, TAP-MPR RI Number IX Year 2001 points b and j, Law Number 39 the Year 1999 concerning Human Rights. Law No. 2 of 2012 has provided legal protection to landowners. Three principles can be said that a toll road infrastructure work activity is genuinely for the public interest: The Government owns the activity; Related development activities carried out by the Government; Not Seeking profit. Public interest is the need or interest of the public or broad goals by taking into account social, political, psychological, and defense aspects based on the principles of National development, and the principle of the public interest is to prioritize the public interest itself without neglecting personal interests. or group, including land acquisition for the development of public interests, must pay attention to two elements of interest, namely private and public interests. It cannot be just one interest.

Recommendation

To provide maximum legal protection to land rights holders in land acquisition by the Government in toll road infrastructure work for the public interest, the Government should play an active role and pay more attention to implementation in the field and supervise those who need land. The existence of the Government, in this case, is essential so that in the implementation of land acquisition carried out by agencies that require land, it is not carried out arbitrarily by taking rights to land belonging to the community without providing fair and appropriate compensation. The land acquisition team at the time of carrying out the socialization must explain what is meant by the future steps of infrastructure development activities so that the reasonable objectives of Law no. 2 of 2012 is not polluted by irresponsible parties so that land rights holders feel that the Government considers their rights.

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