

Settlement of Agricultural Land Mortgage Disputes with Agreements Under Hand in North Sumatra Province

Imman Yusuf Sitinjak¹, Surya Perdana², Farid Wajdi³
immanjoes@gmail.com¹, suryaperdana@umsu.ac.id², faridwajdi@umsu.ac.id³

Universitas Muhammadiyah Sumatera Utara, Indonesia

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Abstract

This study aims to find out why it is necessary to resolve agricultural land mortgage disputes with agreements under hand in North Sumatra Province. The need for dispute resolution is a protection effort for the parties, namely in agricultural land mortgage disputes, when resolving problems and is also a solution to problems if they occur again like today in the future. The research method used is a qualitative research method, with a normative type of research. The research approach is a legislative approach, and a conceptual approach. The sources of research data based on secondary data are laws and regulations, book publications, research, journals and research supporting documents. Literature and documentation data collection tools. The need to resolve agricultural land mortgage disputes with an agreement under hand is due to the legal protection of the interests of the parties which must be prioritized to terminate the legal relationship between the parties in the underhand lien agreement that has been made.

I. Introduction

Indonesia is a big country, which has a fertile motherland. Regarding land regulated in the Law as the greatest source of prosperity for the people, it is also affirmed in Article 33 paragraph (3) of the 1945 Constitution (1945 Constitution); "The earth and water and the natural resources contained in it are controlled by the state and used for the greatest prosperity of the people." In addition, as a manifestation of the constitutional order of Article 33 paragraph (3) of the 1945 Constitution, Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (LNRI of 1960 No. 104-TLN No. 2043) was enacted, also known as the Basic Law on Agrarian Affairs (Law No. 5 of 1960).

Fertile soil is a natural resource that can be managed by humans for daily life. Land is a creation of God Almighty that is given to mankind to be used, especially as a land for the continuation of life, where humans use land as agricultural land for a source of life and also a place to build buildings and places of business that they want.

Land is an inseparable part of humans, where land is used and utilized by humans from birth to death. According to the opinion of Abdul Mujib (2020) who stated that the land in the Qur'an is mentioned as *mustaqar*, the place where human beings live during their lives in the world. The land is where man comes from, where man stands on his feet, and where man returns in his death. The soil is also a place where plants live and a number of animals breed. It can be said that soil is very important for human life, not only because some food comes from, but also soil can be used as a tool for purification for the purpose of worship and a source of water coming out.

Land has developed into a very important economic asset. According to Ridwan (Arba, 2015). Land and its contents and functions for humanity are the most important factors of production, as beings of Allah are mandated to manage the earth and its contents in their capacity as *khalifatullah fi alardl*. the earth with all its potential by Allah is given to humans as a facility for life.

Land is very important for the survival of human beings on a daily basis, where humans cannot live without land, because the land is a foothold and also a place for plants to live which are a source of food for humans and other living things. The many land problems that have emerged are the result of the increasing need for land and land use. (Ramadhani, 2019)

For rural communities, land is used in addition to being a place to live as well as a place to grow crops and also a place of business and for their survival. Land is very important for the survival of village communities. In addition to the use of agricultural land, land is also an object of transaction for the village community such as buying and selling land, land renting, agricultural land pawn system, profit sharing system from the use of land for annual land objects, and also land pawns, and even many lands that should be intended for agriculture have changed their function into a collection of housing. This is a reason why humans today are very dependent on land because it is the object of daily

economic life. So that the land owned by the community today is not only to become a wealth asset, but also has been used as a commercial item where the land can be traded and mortgaged to other people to get money or buy the needs they like in order to live their survival and needs. As a result of this need, people often pawn their land rather than sell it, this is done because the community hopes that one day they can redeem it again according to the agreement of the parties.

Regarding land pawn agreements, rural communities do so with a deed agreement under their hands without involving the local government such as the hamlet head or village head, therefore the village community makes a pledge based on personal trust which in the end occurs to pawn to a party with an agreed value but cannot be transferred to another party. The implementation of the traditional pawn is poured on stamp paper and there is also paper affixed with a stamp. This explains about the pawn letter made by the village community as valid proof that the agreement made exists, in addition to being proof of tax payment for the existence of documents made by the community to the state. We know the implementation of pawns like this as the implementation of pawns that are made as an agreement under the hand. In line with the opinion expressed by Ter Haar that giving up land to receive payment in such a way, and the person who handed it over still has the right to return the land to him by paying back the same amount with the value of the payment is called pawn. (Bzn, 1960)

Land pawn that occurs in the village is a legal act that has been carried out since a long time ago so that land pawns that are decades old are still found, where the objects of pawn are agricultural land and farmland. The land pawn binding was made on a stamp letter a long time ago and there was also a stamped letter made by the pawnbrokers with witnesses being local elders/customary elders. For the people of the village, the implementation of this pawn is said to be a land pawn that is carried out customarily, which is currently often called a deed under hand.

The implementation of the agricultural land mortgage agreement, in carrying out the agreement, the rural community does it with an agreement that does not involve the local government such as the hamlet head or village head, therefore the village community makes a mortgage based on the trust of individuals which in the end occurs to mortgage the land to the party with the value agreed upon by the parties but cannot be transferred to another party.

Cornelis Van Vollenhoven argued that in addition to customary rights, transactions that are considered to be heavy in nature, such as selling and pawning, require the intervention of customary law communities and are sometimes only allowed to apply within customary law communities themselves. (Vollenhoven, 2013)

When pawning agricultural land, the creation of a pawn is almost the same as making a regular agreement, with the names of several witnesses attached to the pawn agreement with the legal state seal, where they are elders or commonly called local customs/community leaders. These traditional leaders always intervene as mediators if there is a deficiency or there is a problem in the local customary law, as well as in the

process of pawning agricultural land. Regarding the ability and duration and content of the land mortgage agreement under the hand, it is inseparable from the intervention of the elders to mediate the parties who carry out the pawn.

In line with Ter Haar's opinion that according to customary law, the land mortgage when the land is handed over must be done in front of the community elders and also with the knowledge of the heirs and the owners of the adjacent land (the owners of the neighbors of the land to be mortgaged). (Bzn, 1960)

There is a background so that the researcher really wants to discuss the issue of pawning agricultural land in a customary way, where in the process of implementing the land pawn, the pawnbroker defaults and does not redeem the land even though the pawn time has expired or has expired, this often happens among the village community who finally receive the land pawn, pawn it again to another party and so on, Finally, the pawned land is also available for decades that can be up to three generations of descendants not redeemed. Meanwhile, the pawnbroker cannot mortgage the land or transfer the pawned land to another party without the knowledge of the pawnbroker. Even though it is clear that in the agreement there is a regulation about the time period for the land pawn. And this is also contrary to Government Regulation in Lieu of Law No. 56 of 1960 (hereinafter abbreviated as Law No.56/PRP/1960) concerning the determination of agricultural land area, it is said in article 7 paragraph 1 that whoever controls agricultural land with a lien that at the time of the entry into force of this regulation has lasted 7 years or more is obliged to return the land to its owner within a month after the completion of the harvest, with no right to demand the payment of the ransom.

The thing that causes customary pawns cannot be transferred by the pawnholder to other parties is because pawn according to local customary law means selling pawns, where selling pawns is the transfer of land to be controlled by others with payment, but as a seller has the right to redeem the land from the pawnholder. This is meant that it does not mean that the time to be redeemed is unclear so that it results in harm to the pawnbroker. (Aini, 2020)

Therefore, it is important to discuss the legal perspective of the occurrence of agricultural land pawn deeds under customary hands, where the problem being studied is why it is necessary to settle agricultural land mortgage disputes with agreements under hand in North Sumatra Province.

2. Research Method

This study analyzed the data qualitatively. The method of approaching research with normative juris which will systematically examine the object based on legislation to provide an opinion or legal argument in the form of legal rules that apply to certain legal events (Muhaimin, 2020). The data source used is secondary data. Data collection tools used with documentation studies. The location of the research was carried out in North Sumatra Province.

3. Results and Discussion

The existence of people's lives that mostly depends on agriculture. This is the background for the occurrence of agricultural land pawns in the area. The implementation of agricultural land pawns in the village is also carried out customarily but still adopts the applicable form of agreement. However, the involvement of village officials or officials was not present in the implementation of the agricultural land pawn. For the village community, the existence of customary elders/elders is sufficient in compiling and as a witness in making customary agricultural land mortgage deeds.

The following is the arrangement of the contents of the agricultural land mortgage agreement, namely:

- a. Names of the pawnbroker and the pawnbroker
- b. Boundaries of pawned land
- c. The amount of land is mortgaged (in this case, it is calculated in the form of clean and dry rice grain cans)
- d. The pawn period lasts
- e. Recognition of the pawnbroker of the right of the pawnbroker to be able to control agricultural land
- f. Acknowledgment that the agreement was made knowingly by the parties to the pawn agreement.
- g. Signed by the customary elder as a witness, the pawnbroker (husband and wife) and also the pawnbroker (husband and wife)

If you look at the arrangement of the contents of the pawn agreement mentioned above, it is clear that it adopts the form of the deed of agreement under the hand in general. In the content of the agreement, there are several things that need to be explained, one of which is about the amount of the pawn. For the village community, clean and dry grain is a medium of exchange in terms of agriculture, which can be considered the same value as money. If the value of money cannot change, but the value of clean and dry rice grain adjusts to the prevailing price when the grain will be converted to the currency value at the time when it is redeemed. For example, if the price of net dry grain is Rp. 50,000 rupiah per can in 1998, then when there is a redemption of the pawn land in 2009, it follows the price of clean and dry grain in 2009 or as much as the agreed amount of dry clean grain. So, if in 2009 the price of net dry grain rises to Rp. 70,000 rupiah per can, then if it is converted into money, the contents of the package must follow the price that applies at the time or day when redeemed in 2009, if not in the form of money can also be returned in the form of the agreed amount of clean dry grain.

The legal rules regarding land mortgage agreements that occur in the community must follow the rules of customary law. In customary law, pawn is the process of handing over the land owned by the pawnbroker to the pawnbroker for a while and at the same time followed by making a payment of a certain amount of money in cash, where the pawn money with the provision that the landowner can get his land back if he redeems it with the same amount of money. (Umar et al., 2022)

The reason for using the amount of clean and dry rice grain cans is to declare to the pawnbroker that the agricultural land is still fertile, which when the pawn farmer still produces clean and dry rice in as many cans. It is also the same as doing business, where the attraction of the pawned goods becomes the calculation value of the pawn agreement will occur.

Regarding the period of time the pawn lasts, the words that are poured out are so that I can redeem from the date the pawn agreement is made. If it is mentioned three years, then it should be redeemed by the pawnbroker from the pawnbroker according to the redemption value. However, what happened in the village at the time of the redemption did not mean that after three or before three years it could be redeemed by the pawnbroker. If it is in accordance with this, then there are no problems that occur in terms of pawning the agricultural land. What happens is that the pawn agreement has passed the time, some have even not been redeemed by the pawnbrokers for decades.

For the local indigenous people, the pawn that has been carried out must be redeemed by the pawnbroker, because for the local community it is guided by the principle that the debt must be paid. Even if the pawnbrokers and pawnbrokers have died, the heirs must accept what is agreed upon by the pawnbrokers as a form of inheritance from their parents. For indigenous peoples, disputes over agricultural land pawns are mostly discussed in a familial manner that results in an agreement.

The occurrence of a dispute over the mortgage of agricultural land with an agreement under hand is caused by the default of the pawnshop who does not timely return the cost of the land pawn given by the pawnshop in accordance with the contents of the land mortgage letter that has been made by the parties with the agreement under hand (Sitinjak, Perdana, et al., 2024).

There are several efforts made by the local community, namely, being paid according to the content of the agreement, being paid off with the results of family negotiations, being left until the heirs are able to pay, transfer from the pawnbroker to the pawnbroker at the price, and transferring the pawn to a third party who wants to continue the mortgage of agricultural land (Sitinjak, Perdana, et al., 2024).

Regulations on the pawn of agricultural land according to the applicable law according to civil law are made in the form of agreements and comply with the rules of law article 1338 of the Civil Code. In customary law itself, the occurrence of land pawn is made based on the agreement of the parties known to the customary leader and poured in a sealed or stamped land pawn agreement.

Regarding the occurrence of disputes over the pawn of agricultural land according to the applicable law Against article 7 of Law No. 56 of 1960 if the pawn is extended or a new agreement on the value of the pawn and the new time, then article 7 does not apply, because in the Regulation of the Minister of Agriculture and Agrarian Affairs (PMPA) No. 20 of 1963 concerning Guidelines for Solving Pawn Problems in article 2. If there is a dispute over the agricultural pawn, which is regulated in article 4 of PMPA No. 20 of 1963, that if there is a dispute over the agreement, if it cannot be resolved through mediation, it will be resolved by filing a civil lawsuit with the judge's decision in court.

The need to resolve agricultural land mortgage disputes with an agreement under hand is due to the legal protection of the interests of the parties which must be prioritized to terminate the legal relationship between the parties in the underhand lien agreement that has been made.

As a result of the non-termination of the legal relationship of the agricultural land pawn agreement, there is a pawn agreement that is still valid until now that has exceeded the time limit specified in the agreement. There is no administrative penalty or provision in the agreement to decide on the agreement, so there is a need for a legal protection effort for the parties in the dispute over the agricultural land mortgage agreement under hand.

According to Fitzgerald Rahardjo, (2014), the emergence of this theory of legal protection comes from the theory of natural law or the flow of natural law. states that the law comes from God who is universal and eternal, and that law and morality should not be separated as well as internal and external reflections and rules of human life that are manifested through law and morality. Fitzgerald quoted and explained Salmond's theory of legal protection that law aims to integrate and coordinate various interests in society because in a traffic of interests, the protection of certain interests can only be done by limiting various interests on the other side. Legal interests are to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate the behavioral relationship between community members and between individuals and the government which is considered to represent the interests of the

community.

The existence of the theory of legal protection is an effort to protect the rights of the parties who bind themselves in the agricultural land pawn agreement under their hands, as well as an alternative effort to resolve disputes over the issue of agricultural land pawn.

It has been regulated in the Regulation of the Minister of Agriculture and Agrarian Affairs (PMPA) No.20 of 1963 concerning Guidelines for Solving Pawn Problems to solve the problem of pawn agricultural land. In line with the regulation that to solve problems through alternative dispute resolution, it can be done with several efforts, namely:

- a. Increase pawn time
- b. Addition of pawn money by increasing the pawn period
- c. Allowing the transfer or transfer of the pawnbroker to another party
- d. Transfer can be made to the pawnbroker with a buying and selling system in accordance with the agreement of the parties

For these efforts to be implemented, it is necessary to issue a new pawn letter as a binding agreement on the agricultural land pawn. The importance of the details of the content of the agreement made so that the implementation of agricultural land pawns that are still being carried out by village communities in North Sumatra Province no longer causes problems in the future and can be resolved familially or through mediation as an alternative to resolving agricultural land pawn disputes.

The points of settlement of agricultural pawn disputes must be stated in the agreement and can also be emphasized to the parties when the agricultural land pawn agreement period has ended. For problems that have been running, the parties can refer to the settlement of the existing agricultural land pawn problem based on the Regulation of the Minister of Agriculture and Agrarian Affairs (PMPA) No. 20 of 1963, so that the problem can be solved in accordance with the efforts specified in the regulation.

4. Conclusion

The need to resolve agricultural land mortgage disputes with an agreement under hand is due to the legal protection of the interests of the parties which must be prioritized to terminate the legal relationship between the parties in the underhand lien agreement that has been made. To solve the problem through alternative dispute resolution, it can be done with several efforts, namely: increasing the pawn time, adding the pawn money by increasing the pawn period, allowing the transfer or transfer of the pawnbroker to another party, and can be transferred to the pawnbroker with a buying and selling system according to the agreement of the parties.

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