

## THE OCCURRENCE OF A DISPUTE OVER THE MORTGAGE OF AGRICULTURAL LAND WITH AN AGREEMENT UNDER HAND IN NORTH SUMATRA PROVINCE

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**Abstract:** This study aims to find out about the occurrence of agricultural land mortgage disputes with agreements under hand in North Sumatra Province.

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 occurrence of a dispute over the pawn of agricultural land with an agreement under hand is caused by the default of the pawnbroker by not punctually returning the land pawn fee given by the pawnbroker in accordance with the contents of the land pawn letter that the parties have made with the agreement under hand.

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### INTRODUCTION

Land cannot be separated from humans, because soil is very useful and is often used by humans themselves from birth to death (Abdul Mujib, 2022). Currently, land is very useful and has developed into a very important economic asset (Arba, 2015). The increasing need for land and land use has given rise to many land problems (Rahmat Ramadhani, 2019).

As a property asset, land can be used as a commercial item, either sold or mortgaged to other parties to meet their needs in order to live their survival and needs. There are many needs that must be met, people are more likely to mortgage their land than to sell it, this is done because they can redeem it back.

Land pawn is an institution that arises from the realization of social life that contains legal values and is in the lives of humans who use it (Muhammad Yamin, 2004). Land mortgage includes an agreement that makes land an object that can be exchanged for money accompanied by consent, the landowner also has the right to take back his

land by returning the money with the same nominal amount as agreed (Yultiar Rahmat Yunus, et al., 2023).

In some areas in Indonesia, there are often problems with agricultural land pawns. The issue of land pawn was written in Sigit Sapto Nugroho in 2019 Legal Construction of Land Pawn Dispute Resolution Based on Customary Law in Ngawi Regency which discusses the issue of land pawn and H. Syamsul Bakhri's dissertation research in 2001 on the existence, function, and reality as well as the future of agricultural land pawn rights after the enactment of Law No. 5 of 1960.

The implementation of agricultural land pawn is a legal act that has often been carried out since the past, where the implementation is also due to the village community who are still difficult in terms of the economy. The implementation of the land mortgage binding has been made on a stamp letter since a long time ago where the parties are the pawnbrokers and the recipients of the pawn with the witnesses of local customary elders, commonly referred to as the agreement under hand. For the local community, the agreement is said to be a customary land pawn.

In general, the village community pawns land that is only known by a few witnesses listed in the pawn agreement. The content of the agreement is determined by the elders or commonly called customary leaders/local communities, because these traditional leaders play an active role if there is a lack or problem in customary law in the local community as well as in the process of land pawn.

A land mortgage agreement is a pawn based on trust and agreement with the village elders which ultimately occurs a land mortgage of the parties with an agreed value but cannot be transferred to another party. Land pawn is an element of mutual help in land pawn and the existence of a family relationship between the pawnbroker and the pawnbroker. The pawn has a social function, namely familial and helpful, so that there is no element of extortion and is always redeemed without being tied to a certain period of time (Sriwahyuni & Mustaring, 2014).

The pawn letter is only made on one sheet of paper and is only held by the land pawnbroker, such a binding is contrary to the laws and regulations that stipulate that the agricultural land pawn agreement must be made in writing as authentic evidence, as

stipulated in Government Regulation No. 24 of 1997 which regulates the Implementation of Land Registration in Indonesia, that the pawn must be registered in order to receive legal protection (Rita Faura, 2021).

In the process of implementing land mortgages, there are often pawns that have matured and finally the pawned land is up to decades that can be up to three generations of descendants not redeemed. In some villages because the pawn of the agricultural land held has fallen into disrepair, it is not uncommon for the heirs who do not know and pawn the pawn land to other parties, even though the pawnbroker should not be able to mortgage the land or transfer the pawn land to another party without the knowledge of the pawnbroker made in the content of the land pawn agreement.

In the Civil Code article 772 concerning pawnshops, it is stated that the user of the proceeds can enjoy the right to use the results, rent or pawn them, and may even sell them, repair them or serve them. However, whether in enjoying it himself or in renting, pawning or granting it, he must act according to the local customs and the habits of the owners, without changing the purpose of the goods to the detriment of the owner.

Regarding the time of rental and pawnshop, he must pay attention to the nature and purpose of the goods concerned, as well as act according to local customs and the habits of the owners. In the absence of such customs and customs, the house should not be rented for longer and four years, while the land should not be longer and four years.

The problem of agricultural land pawn in several areas of North Sumatra, in the process of implementing the agricultural land pawn, the pawnbroker does not have to redeem the land even though the agreement has expired or has expired, which finally the land pawn recipient can enjoy and use the pawn land for decades which can be up to three generations of descendants not redeemed. Disputes (Takdir Rahmadi, 2010) over the occurrence of agricultural land pawns often occur because of the problems mentioned above because the pawnbroker states that the debt must be paid.

The existence of debts that must be paid is part of one of the principles of the agreement, namely "pacta sunt servanda". The principle of pacta sunt servanda is the sacralization of an agreement. The focal point of treaty law is freedom of contract, which means that by observing the proper legal limits, people can enter into any agreement

according to their will, and if they have decided to make an agreement, they are bound by that agreement.

The customary pawn cannot be transferred by the pawnholder to another party because according to local customary law, it means that the pawn is the transfer of land to be controlled by another person with payment, but as the pawnbroker has the right to redeem the land from the pawnbroker. Rural communities carry out deed agreements under their hands without involving the local government. The land mortgage is carried out and agreed upon by the parties, after the expiration of the time and repayment has been made, the land should be allowed to return to the land owner. This statement is in line with the opinion of Cornelis Van Vollenhoven (2013) on the sixth of customary rights where transactions that are considered heavy in nature, such as selling and pawning, require the intervention of the customary law community and are sometimes only allowed to apply within the customary law community itself.

The rules on land pawn clearly state that land is to be returned to the land pawnbroker in accordance with the mandate of article 7 paragraph 1 of Law No. 56 of 1960. The local indigenous community stated that the habit of pawning land is a social trait that is expected to be carried out to help customarily, so that land pawn is implemented. To solve the problem of land pawn, the pawnbroker must return it in accordance with the previously agreed pawn land.

The problem in this study is why there is a dispute over the mortgage of agricultural land with an agreement under hand in the province of North Sumatra. The importance of this research is to be able to provide input and solutions to problems that occur in North Sumatra Province regarding agricultural land mortgages.

The theory of legal certainty to analyze the problem of agricultural land mortgage disputes with agreements under hand. The theory used is the theory of legal certainty from Gustav Radbruch, namely (Satjipto Rahardjo, 2012) states 4 (four) basic things related to the meaning of legal certainty, namely: First, that the law is positive, meaning that the positive law is legislation. Second, that the law is based on facts, that is, it is based on reality. Third, that facts must be formulated in a clear way so as to avoid mistakes in meaning, in addition to being easy to implement. Fourth, positive laws must not be easily changed.

Legal certainty is one of the products of law or more specifically a product of legislation and is supported by Maria S.W. Sumardjono's theory of legal certainty that (Bagir Manan & Kuntanan Magnar, 2017) about the concept of legal certainty, namely that "normatively, legal certainty requires the availability of a set of laws and regulations that operationally and support its implementation. Empirically, the existence of laws and regulations needs to be implemented consistently and consequentially by their supporting human resources" where it is used to analyze the problems in research on the value of legal certainty contained in the settlement of agricultural land mortgage disputes, which first, concretely analyzes that the applicable rules must be enforced to obtain legal certainty. Second, legal certainty is also an order in an agreement where article 1338 of the Civil Code states that all legally made agreements apply as law for those who make them, so that the legal act is legal certainty for the parties.

## **RESEARCH METHODS**

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.

## **RESULTS AND DISCUSSION**

### **Aspects of the Philosophy of Economic Value of Land in Human Life**

The philosophical aspect of land economic value is related to how land value is utilized as an economic resource and its use determines the welfare of the community.

Land as a resource with economic value is because land is one of the objects of immovable goods that are very easy to trade and which is one of the collateral objects that can certainly be accepted by banks as collateral.

Humans philosophically really need soil as the most important part of life. It is clear that it can be studied from a religious point of view that human beings are born and will die and be buried in the ground. Studied from an economic point of view, soil is part of human life to be able to survive, where soil produces crops such as rice and vegetables that become living consumption and soil is also used as a base to erect

buildings for shelter and rest for humans. When viewed by producing plants, humans can sell plant products to buy necessities, while buildings such as houses can be traded and make money for humans.

It can be concluded that land has a high economic value as part of human life itself. It is very natural in the present and future that land will have a very high price value and it will be difficult to own it.

### **Factors Causing Agricultural Land Pawn Disputes in North Sumatra Province**

Nowadays, the economic value of land is very high, so everyone makes land a dream that must be owned. Land can be sold, rented, and even mortgaged for money.

Pawn is one of the ways that people have used to use land to get money. Many regions in Indonesia have pledged land in search of money and even the pawn has been done for a long time, as evidenced by the many previous studies that raised the pawn of agricultural land in the respective areas of researchers, one of which is North Sumatra.

The existence of agricultural land pawns is currently a problem that has often occurred, where the problem concerns:

1. land tenure without rights;
2. boundary disputes;
3. Inheritance disputes;
4. Sell many times;
5. Double certificates;
6. Replacement certificate;
7. Fraudulent sale and purchase deeds;
8. Confusion in the designation of boundaries;
9. overlap;
10. Default;
11. Court Decision.

These problems are a factor in the occurrence of agricultural land mortgage disputes that often occur. Of these problems, what often occurs are defaults and inheritance disputes. The default was due to the pawnbroker who did not fulfill the wrong content of the agreement of the agricultural land pawn. Pawnbrokers are very

often found not to redeem the land they have mortgaged. Many mortgaged agricultural lands are now part of inheritance disputes. This happens because the land has been mortgaged for many years and even decades, where the parties to the agricultural land mortgage agreement have died and do not even remember that they have mortgaged their land. Agricultural land pawn agreements found in several districts in North Sumatra, are considered to be a habit carried out by rural communities, some even consider it to be a customary pawn of agricultural land because to carry it out must be witnessed by local traditional leaders. The existence of the agricultural land pawn is still considered important and feels that it needs to be carried out, on the grounds that the rules needed to reach an agreement are not difficult. However, it is felt that a solution is needed as an effort to solve the problem of possible factors for agricultural land mortgage disputes in North Sumatra Province.

### **Agricultural Land Pawn Dispute with an Agreement Under Hand in North Sumatra Province in the View of Legal Certainty Theory**

The mortgage of agricultural land occurs with an agreement made under the hand. The agreement was made simply on a piece of paper, which was signed by the parties and witnesses of local indigenous leaders. The content of the agreement is in accordance with the wishes of the parties regarding the length of the pawn period, the price of the land pawn, and the boundaries of the land to be mortgaged.

The pawn period that has been completed is a dispute that is often found in the agreement to pawn agricultural land under hand. The pawnbroker is not willing to pay the pledge that has been agreed for many years. The problem is even more developed when the pawnbroker has died and his children have to share the inheritance, thus making the parties feel that they do not want to be harmed because they have made an agreement with the previous pawnbroker. The importance of legal certainty as part of an agreement in resolving the problem of agricultural land mortgage disputes.

The value of legal certainty contained in the settlement of agricultural land pawn disputes, which first, concretely analyzes that the applicable rules must be enforced to obtain legal certainty. Second, legal certainty is also an order in an agreement where article 1338 of the Civil Code states that all legally made agreements apply as law for those who make them, so that the legal act is legal certainty for the parties.

Legal certainty itself must also be contained in the agreement even if the agreement is under hand. The agreement must also provide legal certainty with a settlement that if there are problems as a result of the agricultural land mortgage agreement in the future. For example, if the land cannot be redeemed, the pawnbroker can compensate the land with the value agreed upon with the provisions of the mortgage debt in full and can also be with other provisions as long as it can be agreed upon by the parties in the agreement to mortgage the agricultural land under the hand.

## CONCLUSION

The occurrence of a dispute over the pawn of agricultural land with an agreement under hand is caused by the default of the pawnbroker by not punctually returning the land pawn fee given by the pawnbroker in accordance with the contents of the land pawn letter that the parties have made with the agreement under hand.

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