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Agricultural Land Punching Problems Under The Hands Customically (Cinta Maju Village Study, Samosir Regency)

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ABSTRACT

This study aims to find out about the customary pawning of agricultural land in the village of Cinta Maju, Samosir Regency.The pawning of land that occurred in the village was a legal act long ago, so land pawning that is tens of years old is still found, with the object of pawning agricultural land and agricultural land. The binding of the land pledge was made on a stamp letter a long time ago and there is a letter affixed with a stamp made by the pawning parties with witnesses being local elders/traditional elders. The legal rules regarding land pawn agreements that occur in the community must follow the rules of customary law. This study analyzes data qualitatively. The method of approach to this research is normative. Source of data used secondary data. Data collection tools used with documentation studies. Location in Samosir Regency, Sitiotio sub-district, Cinta Maju Village. The village's customary rules still demand repayment of new debts to release their lien rights, because of the importance of awareness from the community itself about debts that must be paid, in the law it is termed "Pacta Sun Servanda". The indigenous people of the village of Cinta Maju are still pawning agricultural land in a customary way, and the old mortgage on agricultural land that has not been repaid is still valid, excluding the provisions of Article 7 paragraph 1 of UU Prp No. 56 of 1960.

ABSTRAK

Penelitian ini bertujuan untuk mengetahui tentang terjadinya gadai tanah pertanian secara adat yang dilakukan di desa cinta maju Kabupaten Samosir. Gadai tanah yang terjadi di desa tersebut merupakan perbuatan hukum sejak dahulu sehingga masih ditemukan gadai tanah yang berumur puluhan tahun, dengan objek gadai tanah pertanian maupun tanah ladang. Pengikatan gadai tanah tersebut dibuat pada surat materai sejak dulu dan ada surat yang dibubuhi materai yang diperbuat oleh para pihak penggadai dengan saksi adalah penatua-penatua/ tetua adat setempat. Aturan hukum mengenai perjanjian gadai tanah yang terjadi di masyarakat wajib mengikuti aturan hukum adat. Penelitian ini menganalisis data secara kualitatif. Metode pendekatan terhadap penelitian ini secara normatif . Sumber data yang digunakan data sekunder. Alat pengumpulan data yang digunakan dengan studi dokumentasi. Lokasi di Kabupaten Samosir kecamatan Sitiotio Desa Cinta Maju. Aturan adat desa tersebut tetap menuntut pelunasan atas hutang baru melepaskan hak gadainya, sebab pentingnya kesadaran dari masyarakat itu sendiri tentang hutang harus dibayar, didalam hukum diistilahkan “Pacta Sun Servanda”. Masyarakat adat desa cinta maju masih melakukan gadai tanah pertanian secara adat, serta terhadap gadai tanah pertanian lama yang belum dilunasi tetap berlaku dengan mengesampingkan aturan Pasal 7 ayat 1 UU Prp No. 56 Tahun 1960..

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I. INTRODUCTION

Fertile land is a natural resource that can be managed by humans for everyday life, where land is a creation of God Almighty which is given to be utilized especially as land for survival, where humans use land as agricultural land for a source of life and also place to build a building and place of business that he wants.

Currently land can be said to be very important for the survival of everyday humans, where humans cannot live without land, because land is a foothold and also a place for plants to live which are a source of food for humans and other living things.

For the community, especially in rural communities themselves, land is used not only as a place to live, but also as land for farming and also a place of business and for their survival. Land is very important for the survival of village communities.

Apart from being used for agricultural land, land is also the object of transactions for rural communities such as land buying and selling, land leasing, profit sharing systems from annual land use land objects, and also land pawning, and even a lot of land that should be allocated for agriculture is shifting function as a housing complex. This is one reason why humans are currently very dependent on land because land is the object of everyday economic life.

Land that is owned by the community today is not only used to become assets, but has also been used as a commercial item where the land can be traded and mortgaged to other people to get money or buy the necessities they like for the sake of survival and their needs. As a result of this need, the community more often mortgages their land than sells it, this is done because the community hopes that one day they can redeem it back according to the agreement of the parties.

In line with the opinion put forward by Ter Haar that handing over 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 an amount equal to the value of the payment, it is called pawning.(Ter Haar Bzn., 1960)

Regarding the land pawn agreement, rural communities do it with private deed agreements that do not involve the local government such as the head of the hamlet or the village head, therefore the village community pawns based on the trust of individuals which in the end results in pawning to parties with agreed value but cannot be transferred to other parties. Pawning according to custom is stated on stamp paper and there is also stamped paper. This explains the pawn note made by the village community as valid proof that the agreement made exists, apart from being proof of depositing taxes on documents made by the community to the state.

This research was conducted in Cinta Maju Village, Sitiotio District, Samosir Regency. The village has a population of around 851 people, of which nearly 70% work as farmers in both rice fields and plantations (such as corn, coffee and vegetables). The pawning of land that occurred in the village was a legal act that had been carried out long ago so land pawning that is tens of years old is still found, where the object of pawning is agricultural land or farm land. The binding of the land pledge was made on a stamp letter a long time ago and there is a letter affixed with a stamp made by the pawning parties with witnesses being local elders/traditional elders. For the village community, the implementation of this pawn is said to be a land pawn that is carried out according to custom,

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 pawning based on the trust of individuals which in the end occurs pawning land to a party at a value agreed upon by the parties but cannot be transferred to another party.

This statement is in line with Cornelis Van Vollenhoven's sixth opinion about customary rights where transactions that are considered to be serious in nature such as selling and mortgage require the intervention of the customary law community and are sometimes only permitted to apply within the customary law community itself.(Cornelis Van Vollenhoven, 2013)

The village community, when pawning agricultural land, attached the names of several witnesses who were listed on a valid state-stamped mortgage agreement, in which they were elders or commonly called local customary/community leaders. These traditional leaders always intervene as intermediaries if there is something lacking or there is a problem with local customary law, the same is true in the process of pawning agricultural land. Regarding the ability and time period as well as the content of the underhanded land mortgage agreement, it cannot be separated from the intervention of the elders there to mediate between the parties carrying out the pawn.

This is in line with Ter Haar's opinion that according to customary law the pawning of land when handing over land must be done before the community elders and also with the knowledge of the heirs and adjacent land owners (neighboring owners of the land to be mortgaged).(Ter Haar Bzn., 1960)

There is something behind this that makes the researcher really want to discuss the problem of pawning agricultural land according to custom, where in the process of implementing the mortgage the landlord does not have to redeem the land even though the mortgage time has expired or is due, this often happens among the surrounding community which eventually the person who received the pawned land repaid it to the other party and so did the next, in the end some of the pawned land lasted for decades and up to three generations of their descendants were not redeemed. Meanwhile, the party receiving the pawn cannot pawn the land or transfer the mortgaged land to another party without the knowledge of the pawnbroker. Even though it was clear in the agreement that it was regulated about the time period for the pawn of the land.

The thing that causes customary pawning to not be transferred by the pawn holder to another party is because pawning according to customary law means selling a pawn where selling pawn is the surrender of land to be controlled by another person with payment, but as the seller has the right to redeem the land from the pawn holder. What is meant by this does not mean that it is not clear how long it will be redeemed so that it will be detrimental to the pawnbroker.(Aini, 2020)

Therefore, it is important to discuss the legal perspective of the occurrence of the mortgage deed of agricultural land under the customary custom, in which the problem under study is how to pawn agricultural land under the customary custom according to positive law and customary law.

II. RESEARCH METHOD

This study analyzes data qualitatively. The method of approach to this research is normative which will examine the object systematically based on legislation to provide an opinion or legal argument in the form of legal rules that apply to certain legal events.(Muhaimin, 2020). Source of data used secondary data. Data collection tools used with documentation studies. The location of the research implementation was in Samosir Regency, precisely in the Sitiotio sub-district, Cinta Maju Village.

In implementing the agricultural land mortgage agreement adopted the consensual principle and the principle of freedom of contract which is regulated in Article 1338 of the Civil Code. Pawning is an agreement in the form of a loan in which the item is handed over as collateral.(Annisa Reski Syamsuri, Sohrah, 2020)Pledge of agricultural land is an agreement between the pawnbroker and the pawnbroker to carry out a good loan with a certain amount of money, in which the object of collateral is land, then as long as the pledge has not been paid, the use and control of the land is still in the possession of the pawnbroker.(Purnama et al., 2020)

Regarding the minimum term of the mortgage agreement on agricultural land, there is no definite regulation in the law. But Law No. 56 Prp of 1960 discusses the maximum limit of an agricultural land mortgage agreement, which is for 7 years, which means the return of the agreement on the object of pawning agricultural land after a time limit of 7 years after the pawn agreement took place. This law also states that the pawn giver does not need to pay any ransom to the lien holder, which means that after the expiration of 7 years, the pawnbroker must return the pledged land voluntarily.(Putra et al., 2022).

III. RESULTS AND DISCUSSIONS

The village of Cinta Maju in Samosir Regency can be said to be a remote village, in which most of the people in the research area have income from agriculture. A small portion earn from fishing in the lake and also work as employees or small entrepreneurs.

The existence of people's lives, which mostly depend on agriculture, has become a big scourge for the local community, since this location has rarely been touched by the local government. This happened because indeed the location could be visited via a ferry using a ferry to get to the village. Since a long time ago, it was because of the difficulty of visiting the village that the cost of living in that area was felt to be very high.

This is what lies behind the pawning of agricultural land in the area. The implementation of pawning agricultural land in the village is also carried out according to custom but still adopts the form of the agreement that applies. However, there was no involvement of village apparatus or officials in the implementation of the agricultural land mortgage. For the village community, the presence of traditional elders/elders is sufficient in compiling and as a witness in making the deed of pawning agricultural land according to custom. The following is the composition of the contents of the agricultural land mortgage agreement, namely: The name of the pawn giver and the pawn receiver, The boundaries of mortgaged land, The amount of the land is mortgaged (in this case it is calculated in the form of cans of clean and dry rice grain), The period of time the pawn lasts, Acknowledgment from the pawnbroker of the right of the pawnbroker to be able to control agricultural land, An acknowledgment that the agreement was made consciously by the parties making the pawn agreement. Signed by the traditional elders as witnesses, the pawn giver (husband and wife) and also the pawn recipient (husband and wife)

If you look at the composition of the contents of the pawn agreement mentioned above, it is clear that it adopts the form of an underhand agreement deed in general. In the contents of the agreement there are several things that need to be explained, one of which is about the amount of the mortgage. For the village community, clean and dry grain is a medium of exchange in terms of agriculture, where the value can be considered the same as money. If the value of money cannot change, but the value of clean and dry paddy rice adjusts to the price prevailing at the time the grain will be converted to the currency value at the time when it is redeemed. For example, if the price of dry unhusked rice is Rp. 50,000 rupiah per tin in 2000, so when the 2005 pawn land was redeemed, it followed the 2005 net and dry grain prices or as much as the agreed amount of net dry unhulled rice. So, if in 2005 the net price of dry unhusked rice rose to Rp. 70,000 rupiah per can, so if it is converted into money, the contents of the agreement must follow the price that was in effect at the time or day when it was redeemed in 2005, if you don't want it in the form of money you can also return it in the amount of cans of clean dry unhusked rice that was agreed upon.

The legal rules regarding land pawn agreements that occur in the community must follow the rules of customary law. In customary law, a lien is the process of handing over land owned by a pawnbroker to a pawnbroker for a while and at the same time is followed by making a payment of an amount of money in cash, which is a lien on the condition that the land owner can get his land back if he makes redemption with the same amount of money. .(Umar et al., 2022)

The reason for using the amount of cans of clean and dry rice is to declare to the pawn recipient that his agricultural land is still fertile, which when the pawnbroker was still producing so many cans of clean and dry rice. It is also the same as doing business, where the attractiveness of the pawned goods becomes the calculation value of the pawn agreement that will occur.

Regarding the period of time the pawning took place, the words that were stated were so that I could redeem them from the date the pledge agreement was made. If it says three years, then three years later it should be redeemed by the pawnbroker from the pawned recipient in accordance with 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 fits like this, then there are no problems that occur in terms of pawning the agricultural land. What happened was that the pawn agreement had passed the time, and some even had not been redeemed by the pawnbrokers for decades.

If reviewed according to legislation, then based on Article 7 paragraph 1 of Law Prp No. 56 of 1960 concerning Determination of Agricultural Land Areas stated:(Umar et al., 2022). "Anyone who controls agricultural land with a lien that has lasted 7 years or more must return the land to the owner within a month after the existing crops have been harvested, with no right to demand ransom payments."

Referring to the applicable legal regulations, the pawn recipient no longer has the right to hold back the rights of the pawn giver or it can be said to erase according to the law the rights of the pawn recipient after seven years of the implementation of the pawned agricultural land mentioned above.

Against the view of debts where indigenous peoples still demand repayment of new debts, releasing their lien rights to the pawn giver is an understanding that the awareness of the community itself about every debt must be paid and in law is often known the term "Pacta Sun Servanda" which means honoring the agreement.(Septarina Budiwati, 2019).

The indigenous people of the village of Cinta Maju are still pawning agricultural land in a customary way, as well as pawning old agricultural land that has not been paid off is still considered valid and overrides the legal provisions of Article 7 paragraph 1 of Law Prp No. 56 of 1960 concerning Determination of Agricultural Land Areas. So it is not uncommon to find mortgaged agricultural land which is still in effect today even though the pawnbrokers and witnesses to the customary pawning of agricultural land have died and the lien rights go down to the heirs of the pawn holder until the pawn giver pays it without being transferred unless it is agreed and with the knowledge of the giver mortgagee or his heirs.

IV. CONCLUSION

The implementation of pawning agricultural land in the village is also carried out according to custom but still adopts the form of the agreement that applies. However, there was no involvement of village apparatus or officials in the implementation of the agricultural land mortgage. For the village community, the presence of traditional elders/elders is sufficient in compiling and as a witness in making the deed of pawning agricultural land according to custom. The legal rules regarding land pawn agreements that occur in the community must follow the rules of customary law. For the village community, clean and dry unhusked rice is a medium of exchange in terms of agriculture, where the value can be considered the same as money. If the value of money cannot change, however, the value of the net and dry rice grains adjusts to the prevailing price when the grain is converted to the currency value at the time it is redeemed. Indigenous people still demand repayment of new debts, releasing their liens to the pawn giver is an understanding that the awareness of the community itself about every debt must be paid and in law is often known the term "Pacta Sun Servanda" which means honoring the agreement. the indigenous people of the village of Cinta Maju are still pawning agricultural land in a customary manner, as well as pawning old agricultural land that has not been paid off is still considered valid and overrides the legal provisions of Article 7 paragraph 1 of Law Prp No. 56 of 1960 concerning Determination of Agricultural Land Areas.

Reference

Aini, I. (2020). Analysis of the Implementation of Agricultural Land Pawn Based on Law no. 56 Prp of 1960 Concerning Determination of Agricultural Land Area (Case Study in Simpang Tonang District, Dua Koto District, Pasaman). Yurisprudentia: Journal of Economic Law, 6(1), 97. https://unars.ac.id/ojs/index.php/fenomena/article/view/863

Annisa Reski Syamsuri, Sohrah, N. (2020). Pawning Agricultural Land According to Government Regulations in Lieu of Law Concerning Determination of Agricultural Land Areas. Iqtishaduna, 1(3), 156–164.

Cornelis Van Vollenhoven. (2013). Indonesians and their Land (Upik Djalins and Anna Mariana (ed.)). Sajogyo Institute, HuMa Association, STPN Press, Beta Motherland. https://www.ptonline.com/articles/how-to-get-better-mfi-results

Mr B. Ter Haar Bzn. (1960). The Principles and Structure of Customary Law (K. N g Soebakti Poesponoto (ed.)). Pradnja Paramita. https://www.ptonline.com/articles/how-to-get-better-mfi-results

Muhaimin. (2020). Legal Research Methods (Team of Mataram University Press (ed.)). Mataram UniversityPress. https://www.ptonline.com/articles/how-to-get-better-mfi-results

Purnama, AS, Makkawaru, Z., & Tira, A. (2020). Juridical Analysis of Land Pawn Agreement According to Law Number. 56/PRP/1960 in Parasangang Beru Village, Turatea District, Jeneponto Regency. Clavia: Journal of Law, 18(1), 67–74.

Putra, AA, Rahayu Subekti, & Purwono Sungkowo Raharjo. (2022). Analysis of the Implementation of Agricultural Land Pawn According to Law Number 56 Prp of 1960 (Study in Ponorogo Regency). Journal of Legal Communications, Vol. 8(2), 243–250.

Septarina Budiwati. (2019). The Principles of Pacta Sunt Servanda And Their Binding Power In A Transcendent Perspective Business Contract. Proceedings of the National Seminar on Transcendental Law, 41.

Umar, M., Sutiarnoto, & Leviza, J. (2022). Juridical Analysis of the Elimination of Land Pawn Debt Based on PERPPU Number 56 of 1960 concerning Pawning of Agricultural Land. Journal of Law and Society Al-Hikmah, 3(1), 1–26.

Santoso. Urip., (2007) Agrarian Law and Land Rights. Jakarta: Pranada Media in Umar, M., Sutiarnoto, & Leviza, J. (2022). Juridical Analysis of the Elimination of Land Pawn Debt Based on PERPPU Number 56 of 1960 concerning Pawning of Agricultural Land. Journal of Law and Society Al-Hikmah, 3(1), 1–26.