

Animus Principle and Legal Protection of the Gold Pawning Agreement

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The animus principle refers to a principle stating that the legal relationship of an action must be a legitimate will. This animus principle was mentioned in article 1977 (1) stating that the possessor of a movable object was considered as the rightful owner of the object. The article was used in providing legal protection for pawnshops during their operations in receiving collateral from customers. However, the article was not applicable when a sentence No 66/Pid.B/2018/PN.Skt was established. The sentence stated that the pawnshop was requested to return all pawned items from their customers in the form of gold which was the result of crime, as in the regulation stated in the article 1977 (2). This article aimed to view the legal protection that can be provided by the law for pawnshops if their operations of receiving the pawned items already adhered to the SOP, but in fact the items were the result of crime. This research employed literature data and empirical data. The obtained results were that although there exists the animus principle that provided protection for pawnshops, further sections that limited their application were mentioned. Therefore, the legal protection provided for pawnshops was considered less maximised.

Key words: *Pawn collateral, Animus principle, Legal settlement.*

Introduction

The pattern of Indonesian people's lifestyles nowadays causes the lower-middle class society to have higher shopping desires than they can afford. Therefore, in order to appear wealthy, the underprivileged have an impulse to shop exceeding their financial abilities. This condition causes pawning to be an alternative to solve the existing problems (2012) because people can

borrow money in the short-term by providing collateral in the form of movable objects to pawnshops.

Pawning is a solution offered by State-Owned Enterprises (SOEs) for the welfare of the Indonesian people in the effort of dealing with economic problems. In general, the pawn business (Shabbir, 2019) is “the activity of pawning valuable items to certain parties, aiming to obtain a sum of money and the pawned items will be redeemed in accordance with the agreement (Skully, 2015) between the customer and the pawnshop” (Cashmere, 2012).

Therefore, in the pawning system (Noar and Ahmad, 2015), the debtor must leave valuable items to be used as collateral to obtain money which later will be redeemed according to the agreement (Reiner & Seder, 1999) between the debtor and the pawnshop. (Nicolini and Cude, 2019). The items that can be pawned (Rahman and Hafizi, 2015) are valuable items whose value then will be estimated; the amount of the collateral obtained is 80 to 90 percent of the estimated value (Robert & Katherine, 2011).

The pawn business applied animus principle on the pawned items. The animus principle is a form of legal protection for PT. pawnshop in carrying out its operations. This principle refers to an agreement that between the objects concerned and PT. Pegadaian, the possessor must have a will that must be based on a legitimate will. A legitimate will is one without coercion and not from an insane person or a child.

Legal protection for pawned items in pawnshops is regulated in the Civil Code. Arrangements regarding pawned items in pawnshops are regulated in the law regarding Bezit in which it is a state of birth, meaning a person possesses an object as if it is his own, which is protected by law by not questioning the ownership rights over the object (Article 529 of Civil Code).

Bezit is regulated in Article 529-569 of book II Civil Code. In western civil law, Bezit is defined as material rights. To be Bezit two elements are required:

1. The existence of real possession over an object (*Feitelijk heershappij*) so that there is not necessarily any authority to possess (*Beschikings bevoegdheid*).
2. Willingness to own the object.

Bezit must be distinguished from holding (*detentie*), in which someone possesses an object based on a legal relationship with another person, the owner (*Bezitter*) of that object. Regarding a holder (*detentor*), for example, the tenant is considered as not having the willingness to own the possessed object.

According to Article 529 of the Civil Code, bezit rights is the position of someone who possesses a material, both by themselves, or with intermediaries of others, and who maintains or enjoys it as the person who owns the material. Bezit is related to the real/physical relationship between the holder and the object regardless of the ownership relationship. In short, a bezitter (possessor of an object) only possesses the object materially, whereas formally and juridically, the object belongs to someone else. The basic differentiation of possession is how the ownership of objects is obtained, as explained in the following:

- a. Bezit has a good intention, meaning that the object holder obtains the object unknowingly whether the object in his possession is obtained in an appropriate way or not, concerning the means to obtain ownership rights.
- b. Bezit has a bad intention, meaning that the object holder is aware that the object is obtained in contradicted ways to obtain ownership rights.

Regarding the possession of movable objects, the provisions used is Article 1977 Section (1) of the Civil Code ‘with regards to movable objects which do not comprise interest or debts that are not payable to the bearer (*aan toonder*), the possession of such shall constitute absolute ownership’. According to Article 1977 Section (1) of the Civil Code, Bezit acts as a perfect title. This means that according to the Legitimatie theory from Mr. Paul Scholten, because ownership rights in general can only be transferred legally if obtained from the person entitled to transfer it, i.e. the owner. However, it will disrupt the operation of the Law. Therefore, Article 1977 Section (1) of the Civil Code stipulates the movable objects of Bezitter eigenaar, meaning that the person who possesses an object (movable) is as if considered as the owner.

Article 1977 (1) applies Eigendomstheorie stated by Meijers who grammatically interprets Article 1977 Section (1) of the Civil Code. The possession of movable objects with the perfect title (eigendom) is ownership rights. Thus, the person who possesses the movable objects honestly (*te goeder trouw*) is the owner of the object regardless of whether there is title or not and whether it comes from an authorized person to possess the object or not.

The regulation of the animus principle stated in Article 1977 Section (1), is already a form of legal protection owned by PT. Pawnshop, but it is unable to fully protect them against losses suffered by PT. Pawnshop.

This condition is proven by the emergence of a case that has a permanent legal force, with the Decree of the District Court Number 66/Pid.B/2018/PN.Skt, in which it is stated that the pawnshop is stated as the injured party upon the issuance of the decree. The decree began with an incident in which the defendant had used the opportunity as an employee at a Gold Shop to deliberately take golden jewelry in the display window and then used the jewelry without the owner's permission. The defendant pawned the gold at PT. Pegadaian Purwotomo

Surakarta, Pegadaian Cokronegaran Surakarta, Pegadaian Pasar Kembang Surakarta, Pegadaian Pajang Surakarta, and Pegadaian Gentan Sukoharjo.

There was a case of fraud in which a customer who pawned a huge amount of gold at PT. Pawnshop. In this case, PT. Pawnshop lost billions of rupiah because the gold pawned by the customer was the result of crime. The PT. Pawnshop in it's agreement carried out the process according to the established standards and law. However, later, the PT. Pawnshop received a visit from the police department (investigator) to be questioned because it was alleged to have assisted the customer in committing embezzlement.

By using the animus principle in which the possessors of movable property are considered as the owner of the object, the pawnshop with good intention considers the possessor of the object as the owner and accepts the object in the form of pawned gold until later there was a subpoena stating that the object was legitimately proven loot. After that, the pawnshop was sued and requested to return all the pawned gold worth billions.

This article aims to observe whether the animus principle in article 1977 (1) of the Civil Code has provided legal protection to pawnshops for compensation claims.

Research Method

The research used the empirical juridical method. This method was an approach method used to find out the existing law in the community and applied in the community by using field data and literature data.

This research was descriptive research in nature because the research provided a coherent and systematic description and explanation. There were two stages carried out in this research. The first stage was a literature review by investigating the regulation. The second stage was interviews with informants (Soemitro, 2001) by relating to the existing data in the field to provide responses concerning the imposition of compensation suffered by PT. Pegadaian.

Law of Pawn

Article 1150:

"A pawn is a right obtained by a creditor in a movable asset, which has been provided to him by the debtor or his representative, to secure a debt, and which entitles the creditor priority over the other creditors with regard to the settlement of the debt; with the exception of the costs incurred in the sale of the asset and the costs incurred, after the pledge, for the maintenance of the asset, which shall have priority."

However, if the goods are lost, or taken from his possession, then he has the rights to reclaim them according to Article 1977 Section 2, and if the pawn has been returned, then the pawn is considered never lost. The fact that there is no authority of the pawnbroker to act freely on the goods cannot be accounted to the creditor, without prejudice to the rights of the person who has lost or is suspicious of the object to reclaim it.

Article 1153:

" Pawn right to intangible movable assets, except for a letter of appointment and a letter of birth, shall be established by notification of the pawn to the individual, against whom the pawn right shall be implemented. He may claim written proof of the notification and the consent of the pawn."

Legal Protection for Pawn Creditors from Third Party Claims

Goods that have been pawned by the pawn debtor on occasion have problems regarding the ownership of the object. Because the pawn debtor has the title to be a bezitter/possessor of an object whose position is protected by the law, the pawnbroker does not question who has the authority over the object being used as collateral. If the object is in the hands of the pawn debtor, the animus principle is applied, meaning the impression that someone who possesses it without questioning who the original owner, is because the object is wanted.

This will be natural if the possession of the object to be pawned is legal. Problems arise when the pawn debtor is an unauthorized person, thus who the person given the protection for the pawned object is; the pawnbroker with good intention or the true owner who has full rights to the object, i.e. the rights to transfer the object and maintain the position of the object in his possession (Hasbullah, 2012; Drozdovskyi & Chernyshova, 2019).

In the Civil Code, there are two indicators to determine who will be protected. The first indicator is the good intention from the pawnbroker, whether the pawnbroker has a good intention in the possession of the object. The second indicator is the principle mentioned in Article 1977 Section (1) BW (Civil Code), stating that possession must have power as a legal title. In Article 1977 paragraph (1) BW it is stated as the following:

"with regards to movable objects which do not comprise interest or debts that are not payable to the bearer, the possession of such shall constitute absolute ownership."

This can be concluded from the BW Article that an unauthorized pawnbroker on movable objects still have legal rights, if the pawnbroker has good intention when the object of possession is transferred.

In the principle stated in Article 1977 BW, it can be concluded that the pawnbroker is considered as the rightful owner of the object, although in the future it may be the opposite. Pawning goods is categorised in ownership acts (acts of *beschikking*) and is a legal action that brings or can bring great consequences. Therefore, it is not surprising that pawning requires a special authority to act; it is not enough to only act on the person concerned (Badruzaman, 1987).

According to the provisions of Article 1152 Section (4) Civil Code which among others states,

"The absence of authority of the pawn debtor to act freely with his pawns cannot be held liable to those who have received the pawned items in the pawning".

Therefore, those are the ones who have the authority or are authorised to carry out legal actions against the movable goods that will be pawned. On the contrary, based on the provisions of Article 1152 Section (4) of the Civil Code, even though the person who pawns is an unauthorised person, this condition will not make the contract agreement invalid, because the provision that can determine the agreement null and void is Article 1320 BW.

In the pawning agreement, in the elements of Article 1320 BW that if the pawn debtor is unauthorised, then it only violates the element of pawning ability. The unauthorised pawn debtor is incapable of transferring the objects. However, the pawn agreement that has been agreed upon by the pawn debtor and pawnbroker is not null and void. But it can be cancelled or demanded to be cancelled.

Provisions in Article 1152 Section (4) of BW regulate the exemption on the principle of the authorised person to pawn items, stating that the pawn broker cannot be held responsible for the pawn goods received from the pawn debtor who is unauthorised to pawn the pawn goods.

Therefore, the unawareness of pawn broker over the pawn goods pawned by the unauthorised person or the person who has no rights over the goods does not make the agreement invalid. In this case, the pawnbroker remains protected by law if he has good intentions and the original owner cannot claim the pawned items back (Usman, 2018). However, if the pawnbroker has bad intentions, he does not receive legal protection.

The pawnshop in its operation, is occasionally less careful in assessing whether the items pawned by the pawn debtors are theirs or not. This condition becomes a problem in determining whether the pawnshop has good intentions or not. Good intentions mean not knowing that the goods pawned by the pawn debtor are objects beyond his authority to procure or transfer.



In its practice, the pawnshop generally selects what objects will be put as collateral, that not all movable objects can be put as collateral even though they have adequate economic value.

If the pawned item is gold, the pawnshop accepts the object as a pawn object. The pawnshop as the pawnbroker does not question from where the object is obtained and the ownership status of the object. The pawnshop only provides forms that must be filled out by pawn debtors containing standard clauses. This form is called the Debt Agreement.

Debt with Collateral Number 2 states that:

"Goods that are put as collateral are the property of the customer and/or ownership as stipulated in Article 1977 of the Civil Code and guaranteed that they are not a result of crime, not in the object of dispute and/or confiscation of collateral."

The mentioned provisions are only intended to protect the interests of pawnbrokers. The pawnshop then estimated the value of the items, and inform the amount of money that can be loaned by pawn debtors. Furthermore, the loan can be given directly to the pawn debtor.

From this practice, the pawnshop only wants to make a profit from the rent given by the pawn debtor. The pawnbroker does not want to bear the risk of the pawned object, so the pawnbroker selects objects that are easily executed or resold if the pawn debtor cannot return the lease.

Regarding the collateral, the pawnbroker does not question the identity of the pawned object in terms of ownership status. In this case, the problem is how to determine whether the pawnbroker has good intentions. Good intentions are not realised through a cautious attitude or the principle of prudence in accepting the object of collateral. By not ensuring the status of the pawned objects, the pawnbroker's action is considered as unawareness or unwillingness to find information regarding the status of the object used as collateral.

If the person who pawned the item is a thief, wouldn't the pawnshop create opportunities for the unauthorised pawn debtors? An unauthorised person pawns the goods, then the pawnbroker with good intentions is protected by the law. Whereas the position of the true owner is defeated by the pawnbroker with good intentions, even though the real owner does not want the stolen items to be released from his authority. In other words, in this case, the true owner is not considered in the terms of good intentions. The true owner with good intentions does not receive legal protection and is hindered by the position of the pawnbroker with good intentions.

On the other hand, pawnbrokers occasionally do not question the origin of the object, but by law is certainly protected because they receive the goods with good intentions. In the regulation, the claim for a pawning object only occurs if the pawnbroker has bad intentions. Legal protection is not provided for the true owner if the pawnbroker has good intentions, even though good intentions are not conducted by the pawnbroker, for example by being cautious.

Results and Discussion

Legal Protection of PT. Pawnshop with Applicable Animus Principle

Article 1977 Section (1) of the Indonesian Criminal Code also protects the interests of the owner of the goods, as stated in the Article, that the person who possesses a movable object is considered as the owner. Legal protection of the PT. Pawnshop according to Article 1977 Section (1) concerning the existence of the animus principle is something that helps the PT. Pawnshop. This is also one of the Standard Operating Procedures (SOPs) conducted by the PT. Pawnshop.

With the existence of this Article, the Pawnshop should have received legal protection (Amuda, Siti Nurul Shuhada Deraman, 2017), because the Article states that the PT. Pawnshop does not make mistakes or already follows a Standard Operating Procedure (SOP).

But the existence of legal protection did not help the PT. Pawnshop with a court decision Number 66/Pid.B/2018/PN.Skt, which stated that the evidence must be given to the real owner, then with the court's decision, the legal protection for the PT. Pawnshop cannot be fully enforced. This decision adheres to Article 1977 (2) stating that:

"Nevertheless, the individual who has lost something, or from whom something has been taken, may, during a period of three years effective as of the date that the loss or theft took place, claim the lost or stolen item as his property from the individual with whom he finds the items, without prejudice to the right of the latter mentioned to demand indemnification from the individual who delivered the items to him, also without prejudice to the stipulations in Article 582."

That was what was used by the court to decide that the Pawnshop must return all evidence of the results of a crime pawned in that place. However, Article 1977 (2) then states that if the pawned item is the result of crime then the item must be returned to its true owner.

There was an inconsistency in the court decision in the implementation of legal protection for the PT. Pawnshop. However, the PT. Pawnshop must be protected in accordance with the

animus principle and given that the PT. Pawnshop did not violate the SOP that had been stipulated from the beginning, on how the implementation of pawning movable objects should be. Because the person who possesses the movable property is considered as the owner. This is also reflected in the procedure for receiving movable property, in which the PT. Pawnshop is not required to question whether the item is really his or not. If the item is in the form of gold, the PT. Pawnshop is not required to ask for the gold certificates. However, it turned out that in the next Section, the protection that the PT. Pawnshop should have received cannot be enforced because the pawn object is the result of a crime.

The customer data verification process carried out by the PT. Pawnshop initially encountered no obstacles, even though the conditions stipulated by the PT. Pawnshop had all been fulfilled by the customer. However, there was a breach of contract committed by the customer which did not pay regular contributions to the gold pawn loan, so the PT. Pawnshop had given notice to the customer, but the customer did not have good intentions so that the PT. Pawnshop conducted an auction of gold pawned by the customer. The PT. Pawnshop as the creditor, asked for compensation to the customer for the losses he caused. The PT. Pawnshop took legal steps for fraud committed by the customer in the form of a judicial process.

In an agreement both the creditor and the debtor both have an obligation to fulfill the achievement. Achievement according to civil law as stipulated in Article 1234 of the Civil Code, is to give something, to do something or not to do something.

Like an agreement in general, a pawn agreement made between the customer and the PT. Pawnshop also acts as a law for those who make it. This is regulated in Article 1338 of the Civil Code. Therefore, it can be stated that the involved parties are obliged to fulfill the agreed conditions along with the risks. In other words, if one of the parties, the creditor or the debtor, does not fulfill the obligation to perform the achievement, then the party who does not perform the obligation to fulfill the achievement is in default. This is in accordance with the provisions in Article 1238 of the Civil Code: in the law of agreement, if a debtor does not fulfill the conditions of the agreement or does not do the things promised, the debtor has defaulted with all legal consequences.

According to the provisions in Article 1246 of the Civil Code, there are three types of compensation that can be applied by the plaintiff, including costs, losses, and interest. Costs are all costs that in fact have already been incurred by the plaintiff, and loss is damage to the plaintiff's property.

Article 1367 Section (1) of the Civil Code states that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are

under his responsibility or due to the goods which are under his supervision (vicarious liability) (Fuady, 2002).

Compensation (Putra, et al., 2019) as a result of Acts Against the Law (*Perbuatan Melawan Hukum/PMH*), according to the Civil Code, can be divided into 2 (two) types, including general compensation, and special compensation. General compensation, in this case, is compensation that is in force and relates to all cases, both for default cases and those relating to other agreements including PMH. Provisions regarding general compensation in the Civil Code are regulated in Article 1243 until Article 1252, in which it is stated the compensation including costs, losses, and interest.

Object possession is originated from the Dutch “*bezit*”. To understand that *bezit* can be translated with the term "object possession", it is necessary to study the elements contained in the Civil Code Article. According to the Article, *bezit* is the state of holding or enjoying an object by the person who possesses it, either by himself or through the intercession of others, as if it were his own (Muhammad, 2011).

The Process of giving compensation to the PT. Pawnshop after the *animus* principle, is based on District Court Decree Number 66/Pid.B/2018/PN.Skt, because the customer's actions by committing acts against the law are contrary to the legal obligations of the offender. Legal obligation, which is based on the law, both written and unwritten, including in this sense is a criminal act of theft, embezzlement, or fraud in a gold pawning, with a court decision Number 66/Pid.B/2018/PN.Skt, stating that the evidence must be given to the actual owner. This causes legal protection obtained by the PT. Pawnshop was partially implemented and resulted in material losses.

Pawn Agreement as a Title of the Implementation of Pawn

In a conventional pawnshop, the mechanisms of a pawn are as follows:

- a. First is the loan (money) agreement with the promise or statement that the debtor is able to put his movable property as collateral. This agreement is consensual and obligatory. This agreement is the title of the pawn agreement.
- b. Second is the transfer of pawned goods or collateral to the pawnshop.

The pawned items are movable objects. Therefore, the items must be released from the authority of the debtor. The transfer must be clear and real. It is not allowed based solely on the statement of the debtor, while the goods are under the authority of the debtor.

Thus, the transfer in the possession of the pawning holder is an essential condition, then it is not valid, if the goods remain in the possession of the pawnbroker or because of the will of the pawned creditors is in the possession of the debtor or the debtor simply declares the pawning to be the pawn holder, whereas in reality it is still with debtor/pawn debtor.

Regarding the rights or the complete subjective rights, it concerns the authority or even a group of authorities, which is a unity and that authority is the authority to do or not to do anything, in which the most important point includes the authority to take ownership actions such as selling and pawning all within the limits given by law.

When a creditor and a debtor create an agreement and so that the creditor has a better position than his concurrent creditors, the creditor can pledge collateral rights, both individual collateral rights or pledge collateral rights. In order for creditors to get the right to take precedence in taking repayments, creditors usually pledge material security rights.

Article 1152 Section (4) of the Civil Code states that if it turns out that the pawn debtor does not have the right to alienate the goods, for example he is only a tenant or a borrower of the goods, then the pawn from the pawn holder cannot be cancelled. However, it should be ensured that the pawn holder must be honest (*te goeder trouw*), i.e. he must really think, that the pawn debtor is entitled to give the pawn. If there are things that should be able to make the pawnbroker aware of the event that makes the pawn debtor have no right to pawn, then the pawn holder has no protection and the pawn must be cancelled.

Regarding Article 1152 Section (4) of the Civil Code, it can be concluded that because pawn rights come from an agreement between the creditor and the debtor, then based on the subjective conditions of the agreement, it is formally valid. Article 1320 Section (2) of the Civil Code states that in a pawn agreement the debtor and the creditor must have the authority to act. The authority to act includes the capacity of individuals to act according to the law (subjective capacity) and has the right to take legal actions (objective capacity). Because if it is not regulated in such a way, this can provide opportunities for irresponsible people for taking actions against the law by using other people's goods to be put as collateral in the pawnshop, and this can have an impact on the creditors, i.e. the pawnshops (Syahrini, 2009).

At the PT. Pawnshop (Yunita, et.al, 2009) there had been a problem that was the incident in which the collateral items were the result of the debtor's crime of theft or embezzlement of goods as collateral. Therefore, the true owner of the goods sued the PT. Pawnshop as stated in Article 1977 Section (2) of the Civil Code.

With this Article, it can be concluded that goods pawned by the person who committed illegal acts become legitimate if there is no claim from the party who lost the goods, whereas if the goods have been reported by the owner less than three years from the day the goods are declared lost, the goods are become null and void and are no longer collateral and are to be returned to the owner of the actual goods (Anggraeny, 2018) in accordance with the Judge's Decree. This causes the PT. Pawnshop to have the risk to suffer losses due to the loans

(Sharif, 2002), loans that have not been returned but the collateral items have been returned and are not collateral anymore, but this is already in accordance with the procedures of the Pawnshop (Carter & Skiba, 2011).

In an agreement both the creditor and the debtor have an obligation to fulfill the achievement. Achievement according to the Civil Law as regulated in Article 1234 of the Civil Code is to give something, to do something, or not to do something.

Like an agreement in general, a pawn agreement made between the customer and the PT. Pawnshop also acts as a law for those who make it. This is regulated in Article 1338 of the Civil Code. Therefore, it can be stated that the involved parties are obliged to fulfill the agreed conditions along with the risks. In other words, if one of the parties, the creditor or the debtor does not fulfill the obligation to perform the achievement, then the party who does not perform the obligation to fulfill the achievement is in default. This is in accordance with the provisions in Article 1238 of the Civil Code: in the law of agreement, if a debtor does not fulfill the conditions of the agreement or does not do the things promised, the debtor has defaulted with all legal consequences.

The act of the customer violates the provisions of Article 1365 of the Civil Code: " A party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor." An act can be qualified as against the law with four conditions: a) contrary to the legal obligations of the offender; b) contrary to the subjective rights of others; c) contrary to decency; d) contrary to propriety, thoroughness and caution.

Acts against the law committed by the customer means the actions of the perpetrators violates against the law. Notions of violating the law are not only limited to the law (written law) but also to the unwritten law, as follows:

- a. Violating the Law, meaning that the actions are clearly against the law.
- b. Violating the subjective rights of others, meaning that the actions committed violate the rights of others guaranteed by law (including but not limited to personal rights, freedoms, material rights, honour, reputation or other individual rights.
- c. Contradicting the legal obligations of the offender, meaning both written and unwritten legal obligations, including public law.
- d. Contradicting decency, i.e. moral code (Article 1335 Jo Article 1337 of the Civil Code).
- e. Contradicting the proper precaution in society. This criterion is based on an unwritten (relative) law, meaning the actions carried out are contrary to good attitude/propriety in society to consider the interests of others.

According to the provisions in Article 1246 of the Civil Code, there are three types of compensation that can be submitted by the plaintiff, including costs, losses and interest. Cost is all costs that have already been incurred by the plaintiff, loss is damage to the plaintiff's property, for example because he buys a diskette from the defendant and the diskette is contaminated with a virus so that the entire system and equipment of the defendant's computer are damaged, while the notion of interest can be distinguished from expected loss of profits (windsterving/expectation damages) and moratoria interest.

Article 1367 Section (1) of the Civil Code states that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are under his responsibility or due to the goods which are under his supervision (vicarious liability) (Fuady, 2002).

Compensation (Putra, et.al, 2019) as a result of Acts Against the Law (*Perbuatan Melawan Hukum/PMH*) according to the Civil Code can be divided into 2 (two) types, including general compensation, and special compensation. General compensation, in this case, is compensation that is in force and relates to all cases, both for default cases and those relating to other agreements including PMH. Provisions regarding general compensation in the Civil Code are regulated in Article 1243 until Article 1252, in which it is stated the compensation including costs, losses, and interest.

In the decision Number 66/Pid.B/2018/PN.Skt, it is stated that the PT. Pawnshop did not receive full legal protection because the contents of the decision stated that the evidence in the form of 755 pieces of gold were to be returned to the real owner, i.e. the victim witness, causing the PT. Pawnshop to suffer a loss.

Article 98 Section (1) of the Civil Code states:

"If an act is the source of an indictment in an examination of a criminal case by a district court and causes harm to another person, the presiding judge may at the request of that person determine to merge the case for the compensation suit to the criminal case."

Therefore, the application for merging compensation cases based on the provisions of Article 98 Section (2) of the Criminal Procedure Code is submitted no later than before the public prosecutor submits the criminal charge. If the public prosecutor is not present, the request is submitted no later than before the judge makes the decision.

When the victim of a criminal offense requests for a merging of the case for compensation, the court is obliged to weigh it's authority to arbitrate the claim, regarding the basic truth of the claim and the penalty for reimbursement of costs incurred by the victim, as explained in:

Article 99 Section (1) KUHAP

"If the injured party requests a merger of the lawsuit in the criminal case as referred to in Article 98, the district court considers its authority to adjudicate the claim, about the truth of the claim and the penalty for reimbursement of costs incurred by the injured party."

The decision regarding compensation will automatically obtain permanent legal force if the conviction is also given permanent legal force, as explained in Article 99 Section (3) of the Criminal Procedure Code:

"The decision regarding compensation will automatically have permanent force if the criminal decision also has permanent legal force."

At the time the verdict was read by the judge to completion, the PT. Pawnshop did not do this, so that criminal case did not apply criminal compensation.

However, the PT. Pawnshop filed a lawsuit against the debtor who pawned goods resulting from the crime. In the decision Number 170/Pdt.G/2018 /PN Skt, the debtor was sentenced to make compensation to the PT. Pawnshop worth the goods pawned with interest and was punished by paying the court fee.

Object possession originated from Dutch "bezit". To understand that bezit can be translated with the term "object possession", it is necessary to study the elements contained in the Civil Code Article. According to the Article, bezit is the state of holding or enjoying an object by the person who possesses it, either by himself or through the intercession of others, as if it were his own (Muhammad, 2011).

Possessing objects as the people who enjoy, means taking material benefits, for example in the right to collect the results, the right to use and inhabit, and the right to rent. The possessors of objects do not only hold, but enjoy and that is the right they have over an object.

Animus means that the relationship must be wanted by the person who possesses the object. The person must be an adult, with free will, not coerced, sane, and not under amnesty (onder curatele) (Tutik, 2015).

Decision Number 66/Pid.B/2018/PN.Skt, explained that the defendant based on the animus principle had an object in the form of gold which was pawned at the PT. Pawnshop and it complied with the applied terms and conditions. Among them was that the defendant was an adult, and could show proof of ownership of gold to the PT. Pawnshop.

The PT. Pawnshop as the injured party in the gold pawning agreement can take legal action. Compensation for victims of crime can be conducted in three ways:

- a. through the Merger of Indemnification Cases,
- b. through a Lawsuit Against the Law, and
- c. through the Application for Restitution.

In Regulation Number 8 of 1999 concerning Consumer Protection in Article 6, it is stated the rights of business actors, in which those rights consist of the right to receive payments in accordance with the agreement on the conditions and exchange rates of traded goods or services, the right to obtain legal protection from bad intentions from consumers, the right to defend themselves in the resolution of consumer dispute law, the right to regain their reputation if legally proven that the loss suffered by consumers is not caused by the traded goods or services, and the rights set forth in terms of other laws and regulations.

If a customer has violated a law that has clearly violated the agreement, the consumer has violated the right of the business actor to receive payment in accordance with the agreement regarding the conditions and exchange rates of the traded goods and services, as described in Article 6 of Law Number 8 of 1999 regarding Consumer Protection. The consumer has also violated Article 5 of Law Number 8 of 1999 concerning Consumer Protection, in which this article explains that customers must have good intentions in making purchases of goods or services and customers are also obliged to pay according to the agreed exchange rates.

Conclusion

The Process of giving compensation to the PT. Pawnshop after the animus principle is based on District Court Decree Number 66/Pid.B/2018/PN.Skt, because the customer's actions by committing acts against the law are contrary to the legal obligations of the offender. Legal obligation, which is based on the law, both written and unwritten, including in this sense is a criminal act of theft, embezzlement or fraud in gold pawning, with a court decision Number 66/Pid.B/2018/PN.Skt, stating that the evidence must be given to the actual owner. This caused legal protection obtained by the PT. Pawnshop and was partially implemented and resulted in material losses. With this decision, it was evident that the activities in the pawnshop had not been fully protected. Although it had been proven that the pawnshop carried out its activities with good intentions and were in accordance with the SOP.

However, the Pawnshop did not remain passive on the decision because the Pawnshop was a party at a disadvantage when it must return all the pawn objects. Then, according to Article 6 of Law Number 8 of 1999 concerning Consumer Protection, stating the rights of business actors, including the right to receive payments in accordance with the agreement regarding



the conditions and exchange rates of traded goods and services, and the right to obtain legal protection from consumer actions with bad intentions, the PT. Pawnshop made a lawsuit for the debtor who caused losses to the PT. Pawnshop that had been stated in decision Number 170/Pdt.G/2018/PN Skt, stating that the debtor was sentenced to make compensation to the PT. Pawnshop worth the goods pawned with interest and was punished by paying the court fee.



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