

# Private Pawnshop Registration as an Effort to Develop Small and Medium Enterprises in Indonesia

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This study aims to reveal the facts of the development of private pawnshop businesses in Indonesia and provide an analysis of the pawnshop business model as an effort to develop small and medium industries. At first, the main purpose of holding a pawnshop was to help small and medium-sized communities. At present, the pawnshop has experienced rapid development, not only reaching the middle to lower class, but also having become a necessity for the whole community. Pawn is also directed at providing capital in business development, especially small and medium enterprises. The mortgage business includes pawns managed by pawnshops and private pawns. In the past, private pawns had no regulation and supervision, so there were frequent irregularities in the principles of pawning and an imbalance in legal relations. This has the potential to cause losses for the parties. Since the Regulation of the Financial Services Authority concerning the Mortgage Business, private mortgages have been regulated. One of them is the obligation to do business registration and permission. The research method used is a mixed method that combines qualitative and quantitative research. The research approach uses legal pluralism which integrates normative, sociological and philosophical research. Data testing uses triangulation techniques. The results of the study show that registration of private pawnshops is still not widely carried out. This resulted in difficulties in supervision. This lack of registration is due to various factors, including the provision of minimum capital that cannot be met by micro, small and medium enterprises, whereas in practice many private mortgage businesses are included in these criteria. This has the potential for the emergence of constraints in the development of small and medium enterprises, the number of illegal private mortgages that have the potential to cause irregularities and imbalances. In addition, it will be difficult for the government to supervise the implementation of private pawnshops.

**Key words:** *Private Pawnshop, Small and Medium Enterprises, Business Development, Capital, Guarantee, Registration, Supervision, Legality.*

## Introduction

The existence of pawnshops in people's lives is not new. The pawnshop is always developing. At present the pawnshops are no longer only for the middle to lower classes, but serve the needs of all levels of society. A pawnshop is also not only to provide financing for consumer needs but also for business financing including small and medium enterprises. Business actors in starting a business or developing their business always need financing. This financing can come from self-financing and financing from other parties, both from banks and non-bank institutions (Crosettoa and Regnerb, 2018). In the case of financing originating from another party, the fund provider as a creditor will have receivables. The legal relationship between the funding donor and the recipients is based on agreement. In the agreement there is a possibility that the debtor will not fulfil his obligations. Therefore, collateral is an important factor. One guarantee that is often used is pawnshops. Pawn as a material guarantee institution has the main function to ensure the security of creditors' receivables to be returned according to agreement. According to Norman Mugarura (2016), this is an important guarantee for companies to operate efficiently. The use of this guarantee in practice has broad implications for various stakeholders such as banks, business, economics, government and people, especially in anticipation of the contract not being implemented. The size of the guarantee value affects the size of the receivables that can be distributed by the funder. According to Bengui and Phan (2018), Busro et al. (2018), collateral guarantees affect the down payment in asset financing. When the pledge-ability is high, the down payment is low, making it easier for people to get assets (Mulyawan, 2018). Agarwal et al. (2015), Abubakar and Handayani (2018) state that the initial guarantee is an important factor for predicting credit defaults. In particular, individuals who have higher collateral have a lower risk. Guarantees are used to help mitigate the risk of asymmetric information between creditors and debtors (Wang and Chou, 2018).

As one of the guarantees, the existence of a mortgage is always an accessory. This means that pawning is an additional agreement from the principal agreement (Badriyah, 2015). Pawn includes pawnshops and private pawns. As one of the pawnshop businesses, private pawning has actually done a lot. In the past, private pawns had no regulation and supervision, so that they often caused losses to the parties because of various deviations from the pawning principles. Since the issuance of the Financial Services Authority Regulation Number 31/POJK.05/2016 concerning Pawnbrokers, private liens are legalised. The government's consideration is to facilitate supervision, so that it can provide legal protection for the parties. The regulation of the pawnshop business affects the development of guarantee law in

Indonesia. During this time the positive law governing the mortgage as collateral with movable objects is regulated in Article 1150-1160 of the Civil Code. The mortgage will give more credence to the creditor that the debtor will carry out the achievement in accordance with the principal agreement. There are various kinds of agreements that can be guaranteed by pledges, one of which is the loan agreement. Article 1150 of the Civil Code states that a pawning is a right obtained by a pawning creditor to get repayment of receivables prior to other creditors (preferential position).

Pawn provides convenience in execution, but creditors cannot have a mortgage object directly in the event of a default debtor. This is to provide legal protection to the pledge, because in general the object value of the pledge is much higher than that of the debtor. This is so in the case of private pawns that there is no regulation, there are many irregularities that are very detrimental to the pledge. Often because of the need, someone then owes creditors a very high interest rate by handing over certain items as collateral. This makes it difficult for the debtor to repay the debt and then the object of the guarantee is directly owned by the pawning creditor. This is certainly very detrimental to the debtor who is at the same time the pledge and creates injustice for the parties. The registration of a private pawnshop business is intended to provide oversight of the implementation of pawning in order to provide legal protection to the parties, both pledges and pawns. Based on Financial Services Authority (*Otoritas Jasa Keuangan/OJK*) data until May 2018, the Financial Services Authority has only granted business licenses to 24 private mortgage companies from 462. Thus, there are still many practices of private pawnshops that have not been registered. This risks the occurrence of various irregularities in the implementation, causing losses to one or both parties. Therefore, research on the registration of private pawn shops as an effort to develop small and medium enterprises is very urgent. Based on the description in the background, several problems were raised in this study. The first was concerning the implementation of private pawnshop business registration in the lives of Indonesian people. The second problem deals with the legal consequences of unregistered private pawn shops.

## **Research Methods**

This study uses a mixed-method research method, which combines quantitative and qualitative research. In this case, the study uses a legal pluralism approach (Menski, 2006), which combines the (1) normative approach (state law) by looking at the rule of law relating to private pawnshops, (2) sociological (living law) which reveals and analyses the implementation private pawnshop practices in the community, especially registration for private pawnshop business legality and (3) philosophical (religion, morality, ethics) by expressing and analysing values, principles that exist in society, namely private pawnbrokers. Furthermore, it will provide an alternative model for regulating private pawnshops in accordance with the development of society. In this case research is carried out with literature

study techniques, as well as field research with interview techniques. This interview was conducted by in-depth interviews with informants, namely private pawnbrokers with snowball sampling techniques. In addition, in-depth interviews were also conducted with resource persons with purposive sampling technique. Primary data analysis is carried out since the researcher is in the field by conducting an analysis of all juridical, philosophical or sociological facts. Furthermore, the researchers provide recommendations on models of private pawnshops for the development of small and medium enterprises. Secondary data analysis was carried out through deductive and inductive logic. Data validity was tested using source and method triangulation techniques.

### **Concepts of Pawn and Small and Medium Enterprises**

Pawn is a right obtained by a creditor on a movable item that is surrendered to him by the debtor or another person in his name, who gives creditors the power to take repayment of the item, taking precedence over other creditors; except for the cost of auctioning the item and the costs incurred to save it after the item has been pawned, which costs must take precedence. A pawn is one of the material guarantees that has great benefits for the parties in the agreement, including the loan agreement. The main function of the mortgage is to guarantee the security of creditors' receivables or guarantee the implementation of debtor's obligations to creditors. Therefore, the mortgage is an additional agreement (accessory) from the principal agreement. Thus, the existence of a mortgage depends on the principal agreement that is guaranteed. If the receivables are paid in full, the liens are deleted. If the loan is transferred to another party (new creditor), the liens will automatically switch to the new creditor.

In various activities, especially business activities, there is always an agreement as a legal basis for the parties in the activity (Ghafar Ismail & Zakiah Ahmad, 1997). Among other things is a financing agreement for small and medium businesses to procure capital from other parties. This capital is one of the keys to the success of small and medium enterprises in developing their businesses. Capital can be obtained from themselves or from other parties through financial institutions, both banks and non-banks. If capital is obtained from other parties, an agreement is needed as a legal basis, one of which is a loan agreement. Article 1721 states that lending and borrowing is an agreement; in this case the one party gives a certain amount of goods and consumables to other parties on condition that they will return the same amount and conditions. Accounts receivable agreements can pose a risk that the debtor may not pay debts in accordance with the agreement (default). Therefore, collateral is an important factor to guarantee the security of creditors' receivables. One guarantee that is widely used by the public is a mortgage.

Pawn objects are movable objects. Pawn raises preferential rights to creditors, namely the right to take precedence over the repayment of the receivables. Pawn is a strong and easy guarantee right of confiscation. Liability is a strong guarantee right because the pawning position is higher than privilege (privileges obtained by creditors because of the law) unless otherwise specified by law. Creditors of pawning holders include separatist creditors, so that the debtor's bankruptcy is not affected. Pawn is an easy guarantee for seizure. This is because the seizure program through the bailiff, according to the provisions of the civil procedure law, does not apply to pledges. So, if the debtor does default, the pawning creditor can easily sell pledged items by way of auction without the mediation of a court judge. The parties may not make agreement clauses such as, "if the debtor defaults on a pledged object it belongs to the pawning holder." The existence of such clauses makes the agreement deemed null and void. The subject of the pawn consists of two parties, namely the pawnshop and the pawn recipient. The mortgage recipient is the party that receives the movable object as a guarantee for the loan of the money he gives to the pledge. The pledge giver is the party who surrenders the guarantee in the form of movable objects in the pawning to the recipient of the pledge to borrow money given to him or a third party. The pledge or pawn holder is a person or legal entity. Thus the business actors involved in this pawnshop can be individuals or business entities including small and medium enterprises. Small business is a productive economic enterprise that is independent, carried out by an individual or business entity that is not a subsidiary or not a branch of a company that is owned, controlled, or becomes a direct or indirect part of the Medium Business or Large Business that meets the Business criteria Small (Article 1 number 2 Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, hereinafter referred to as the UMKM Law).

The criteria for small businesses mentioned in the regulations are as follows (a) having a net worth of more than Rp 50,000,000 (fifty million rupiahs) equal to 3,420 USD up to a maximum of Rp 500,000,000 (five hundred million rupiahs) equal to 34,200 USD excluding land and building business; or (b) has annual sales results of more than Rp. 300,000,000 (three hundred million rupiahs) equal to 20,550 USD up to a maximum of Rp. 2,500,000,000 (two billion five hundred million rupiahs) or equal to 171,220 USD. (Article 6 paragraph (2) of the Law on Micro, Small and Medium Enterprises).

Medium Business is a productive economic enterprise that is independent, carried out by individuals or business entities that are not subsidiaries or branches of companies owned, controlled, or become part of either directly or indirectly with Small Businesses or Large Enterprises with a net amount of wealth. Medium Business Criteria are (a) having net assets of more than Rp. 500,000,000 (five hundred million rupiahs) equal to 34,200 USD up to a maximum of Rp. 10,000,000,000 (ten billion rupiahs) equal to 68,400 USD not including land and building of business premises; or (b) have annual sales results of more than Rp. 2,500,000,000 (two billion five hundred million rupiahs) or equal to 171,220 USD up to a

maximum of Rp. 50,000,000,000 (fifty billion rupiahs) equal to 342,440 USD (Article 6 paragraph (3) of the Law UMKM).

### **Private Pawnshop Registration**

Pawnshops continue to concentrate on community services to meet funding needs quickly. On the other hand, the practice of pawnshops has attracted the interest of other business actors (private) to conduct similar businesses. This was driven by the fact that the pawnshop business is able to bring significant profits, especially in the era of crises, so that small and medium businesses were able to survive. Therefore, a variety of pawnshop businesses appeared alongside government pawnshops as well as private pawnshops. In other countries, this pawnshop business is very much needed in financing the community, especially micro, small and medium enterprises. For example, in Malaysia, in various reports on poverty alleviation efforts, it was revealed that for the development of micro-enterprises it is recommended that financing by small-scale and low-risk mortgage loans is one that is popular among marginalised groups. This has become an effective instrument for financing this micro business.

At first, there was no regulation of private pawnshops, so there were often various irregularities in pawning principles that caused consumer losses. In the current development, there are arrangements regarding private pawnshops, namely in the regulations of the Financial Services Authority Number: 31/POJK.05/2016 concerning Pawnshop Enterprises (Lathif & Habibaty, 2019). This regulation is intended to increase financial inclusion for the lower middle class and micro, small and medium enterprises. One way is to expand financial services through the holding of a pawnshop business. This arrangement is also a legal basis for the Financial Services Authority in overseeing pawnshop businesses in Indonesia to create a healthy pawnshop business, provide legal certainty for pawnbrokers, and protect consumers. The Pawnshop Business is related to providing loans with collateral for movable goods, safekeeping services, estimated services, and/or other services, including those held based on sharia principles. Pawnshops include private pawnshops and state-owned pawnshops that are regulated and supervised by the Financial Services Authority. The Private pawnshop is a legal entity that carries out pawn business. The state-owned pawnshop is PT Pegadaian (Persero), as referred to in the Staatsblad of 1928 Number 81 concerning Pandhuis Reglement and Government Regulation Number 51 Year 2011 concerning Changes in the Form of Pegadaian Public Company (Perum) Legal Entity into a Company.

## **Implementation of Private Pawnshop Registration in the Development of Small and Medium Enterprises**

There are various guarantees that can be used to guarantee the security of the creditors (Bidabad, 2017). One of them is a mortgage, which is one of the guarantees of material that is strong and easy to implement. Pawn in Indonesia has long been used in people's lives and always develops. Initially the main purpose of the mortgage was to help the lower middle class people obtain loans. However, currently the pawn does not only reach the middle to lower classes, but has become a necessity for all levels of society and not only for consumer needs but also for productive, especially to help provide capital for small and medium businesses. In its development, in addition to the pawns managed by the pawnshop, it has been rampant in the implementation of private pledges. In the past, private pawns had no regulation and supervision, so that they often caused losses to the parties because of various deviations from the pawning principles.

During this time, the positive law governing pledges as collateral with movable objects is regulated in Article 1150-1160 of the Civil Code. In addition to the Pawn regulations stipulated in the Civil Code, the term Pawn is also found in Customary law as one type of land transaction. Unlike the pawn as a guarantee of movable objects, pawning land according to customary law is a legal act of temporarily releasing ownership of land, where the seller of the pawning releases ownership of the land on condition that he can redeem it at any time. Thus, selling pawning in customary law is the principal agreement, namely the sale of land. This is different from the meaning of pawning as a material guarantee in the Civil Code which is an accessory that was born and its eradication depends on the principal agreement, namely the loan and lending agreement.

Since the issuance of the Financial Services Authority Regulation Number 31/POJK.05/2016 concerning Pawnbrokers, private liens are legalised. The government's consideration is to facilitate supervision, so that it can provide legal protection for the parties. Thus, currently the pawnshops that are regulated and supervised by OJK are government pawnshops, namely PT Pegadaian (Persero) and private pawnshops.

Pursuant to Article 1 Number 1 POJK Pegadaian Business, the scope of the pawnshop business is broader than the meaning of pawning as stipulated in the Civil Code, because it also includes safekeeping services, estimated services, and/or other services including those carried out based on sharia principles. Prior to the issuance of the Financial Services Authority Regulation, pawning practices developed without adequate supervision and regulation. The rise of private pledges and online pledges as well as the development of mortgage objects, has the potential to create legal uncertainty for pawnbrokers and consumers. This pawnshop business arrangement is expected to increase financial inclusion

for the lower middle class and ease of access to loans for the lower middle class and micro, small and medium enterprises. Registered private pawnshops also ensure consumer protection, certainty and fair competition between business people. Therefore, private pawnbrokers are required to register their businesses and have business licenses from OJK. From the results of the study it can be seen that the registration of private pawnshops is still very lacking. The development of private pawn business registration can be seen in Table 1.

**Table 1:** Number of Registered Private Pawnshops with Business Permits

Year	July 2017	January 2018	May 2018
Number of Private Pawnshops	462	585	585
Number of Private Pawnshops with official license	9	18 (11 registered, 7 having business license)	24

**Source:** Financial Services Authority, 2018

The table shows that the private pawnshop businesses that have been registered with OJK are still very few compared to those that have not been registered, even though the registration obligation started in 2016. Thus, there are still many pawnshops which are not legal. This illegal private mortgage business has the potential to cause various irregularities and imbalances in the legal relations of the parties. As a result, it can cause disputes and provide less legal protection for pledges (consumers) who have submitted objects as collateral or the recipient of pledges (private pawnbrokers). The lack of registered private pawnshops is caused by various factors, including that the business entity must be in the form of a legal entity, and the pawn business must have adequate capital capacity. Those operating in the Regency/City area must have a minimum capital of IDR 500 million, while those operating in the province are IDR 2.5 billion.

The minimum capital provisions are related to the Law of the Republic of Indonesia Number 20 of 2008 concerning Micro, Small and Medium Enterprises. The implication is that a business that can apply for a business license and register a private pawnshop business is a middle to upper business, not a micro, small or medium enterprise. In the implementation of private pawnshops today, most private pawnbrokers are micro, small and medium enterprises. Therefore, these micro, small and medium enterprises have difficulty meeting the minimum capital requirements to register and obtain a pawnshop business license.

### **Legal Consequences of Not Registering Private Pawnshops**

The registration of private pawn shops is intended so that private pawnshops get legality as a business entity. With this legality, it is intended that the community, including small and medium businesses, can obtain easy access to funds in developing their businesses. In addition, the registration will also make it easier for OJK to oversee pawnshop businesses and

provide legal protection to the parties. In this context, Djuhaendah Hasan (1996), Trisadini Prasastinah Usanti (2014) stated that granting guarantees is a preventive measure to protect human interests in people's lives, securing debtor debts that have been given by creditors, namely by guaranteeing the debtor's wealth so that the debtor fulfils the obligation to repay or engages with third parties to fulfil the debtor's obligations.

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In the implementation of this private mortgage, legal protection can be seen from the following two aspects.

#### 1. Preventive Legal Protection

Preventive legal protection is to protect business actors and consumers before the implementation of legal relations. This legal protection can be carried out with the existence of legislation that provides a legal basis. The results of the study show that there are no specific rules regarding pawn agreements on private pawnshops. Therefore, to date the agreement between pawnshop companies and consumers uses the general rules contained in Article 1150-1160 Civil Code, though the implementation of private pawnshops is very much present, and there are many irregularities to the principles of pawning. One of them is the principle in which pawnbroking creditors may not automatically possess liens in the event of debtor defaults. However, in its implementation, this is mostly done by private pawnshops, causing injustice to consumers. Since the Financial Services Authority Regulation Number 31/POJK.05/2016 concerning pawnshop Businesses was enacted, private pawnbrokers must register and obtain a business license from the Financial Services Authority. This is an effort by the government to conduct supervision in the implementation of private pawnshop businesses. However, the implementation of private pawnshop businesses that have been registered is still very minimal. Therefore, there are still many unregistered private pawnbrokers. As a result, the potential for deviations from pawnshop principles is still large, which results in a lack of legal protection for the parties.

#### 2. Repressive Legal Protection

Where legal protection in the event of a dispute is concerned, efforts to resolve disputes between parties can be carried out through litigation and non-litigation channels. The results of the study show that in the event of a dispute in the implementation of private pawnshops, the parties generally resolve matters by deliberation. Private pawnshop businesses that are not registered have the effect that the business is illegal, which makes it difficult for the



government to supervise the private sector. As a result, there is the potential for irregularities in the principles of pawnbroking and the imbalance of legal relations between the parties.

## **Conclusion**

In Indonesia, the registered private pawnshop business is still very small. This is due to various factors, including the lack of information obtained by the community, the provision of minimum capital that cannot be met by micro, small and medium enterprises, whereas in practice many private business actors are included in these criteria. This has the potential to lead to irregularities in the principles of pawnbroking and an imbalance in legal relations. The legal consequences of not registering a private pawnshop business are illegal, making it difficult for the government to supervise the private sector. As a result, there is the potential for irregularities in the principles of pawnbroking and the imbalance of legal relations between the parties.

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