

The Responsibility by PT Pegadaian for the Guarantee of Damaged and Lost Goods

Nurdiyana Tadjuddin,¹ Yohanis Yabes Tjiaman²

ARTICLE INFO

Keywords:

Responsibility, Guarantee of Goods, PT Pegadaian.

How to cite:

Tadjuddin, Nurdiyana., dan Tjiaman, Yohanis Yabes. (2020). The Responsibility by PT Pegadaian for the Guarantee of Damaged and Lost Goods. *Amsir Law Journal*, 2(1), 31-37.

DOI:

10.36746/alj.v2i1.32

ABSTRACT

The practice of pawning in a PT Pegadaian is certainly inseparable from the various problems faced by the PT Pegadaian itself, especially the problem of collateral during storage. Collateral is stored at the PT Pegadaian, not a few that have an impact on damage or loss of the collateral. Damage and loss can occur due to negligence because it is stored for a long time. What is the form of responsibility by PT Pegadaian, if there is a guarantee for damaged and lost goods?

People are starting to pay attention to trusted institutions such as PT Pegadaian so that this research seeks to study further if people choose to become customers at a PT Pegadaian, and suffer unwanted losses, then there is a loss such as loss or damage to collateral, the PT Pegadaian must be responsible and provide compensation by the applicable laws and regulations.

Copyright © 2020 ALJ. All rights reserved.

1. Introduction

Economic growth is one of the indicators of the success of national development. National development is inseparable from economic development that will have an impact on the welfare of the people in a country. So, people live in prosperity and sufficient, due to the country's economic development that has been distributed.³

This economic equality can only be realized by increasing economic activity by business actors, both from the State-Owned Enterprises and Private-Owned Enterprises sectors, as well as from cooperatives, and of course with the support from the government as the authority to set monetary policy.

In Indonesia, financial institutions consist of banks and non-bank financial institutions. Non-bank financial institutions are all agencies carrying out activities in the

¹ Faculty of Law, Sintuwu Maroso University, Poso, Indonesia. Email: diyana.nd.nd@gmail.com

² Faculty of Law, Sintuwu Maroso University, Poso, Indonesia.

³ Oktavianto, Joni., Suharto, R., dan Triyono. (2016). Tanggung Jawab PT Pegadaian (Persero) Atas Kerusakan dan Kehilangan Barang Gadaai di PT Pegadaian (Persero) Kota Semarang. *Diponegoro Law Journal*, 5(3), p. 2.

financial sector, that directly or indirectly collecting funds, especially by issuing valuable paper and distributing it to the public, to finance investment companies.⁴

PT Pegadaian is a non-bank financial institution appointed to receive and distribute credit under the lien law, originally a PT Pegadaian in the form of a Service Company, which later turned into a State-Owned Enterprises with the status of a Public Company in charge of channeling loan money based on pawning law, and other efforts related to the purpose of PT Pegadaian on a material basis.

The legal basis for a PT Pegadaian as a Non-Bank Financial Institution before becoming a Persero, it can be seen in Law Number 19 of 2003 concerning State-Owned Enterprises, and after changing to a Persero, the regulation can be seen in Law Number 40 of 2007 concerning Limited Liability Companies. As well as Government Regulation of the Republic of Indonesia Number 51 of 2011 Regarding the Change in the Form of Public Company Legal Entities, PT Pegadaian becomes a Limited Liability Company.

PT Pegadaian Public Company is one of the State-Owned Enterprises which is engaged in the non-banking financial services sector, which has the motto “Overcoming Problems without Problems” offering loan services based on pawning law. In general, the financing period or loans offered by PT Pegadaian vary widely with options of 4, 6, 8, or 12 months renewable, depending on the borrower's agreement and needs, but actually, the loan offered by PT Pegadaian is a loan that is short term (no more than 12 months).⁵

Think of pawn activities carried out by PT Pegadaian creates a legal relationship that was born because of an agreement between the pawn recipient and the pawnbroker so that the Pegadaian's activities cannot be separated from the Civil Code, which still refers to *Burgelijke Wetboek* (BW) with regulates the agreement in Indonesia.⁶

In Article 1150 BW, what is meant by a pledge is a right obtained by a person who is indebted for movable property, submitted to him by a debtor or by another on his behalf, and who gives power to the debtor to take full payment of the goods, taking precedence over other indebted persons, except for costs to auction off the goods and costs incurred to save them after they have been pawned, which costs should take precedence.

The existence of PT Pegadaian is a financial institution that facilitates the public to obtain money loans based on pawning law practically and easily so that people are very helpful in solving their financial problems. In addition to easy and practical reasons, the community is also very helpful in paying installments every month because the Pegadaian's interest rate is relatively small when compared to the interest charged by banking financial institutions.⁷

In the practice of pawning at the PT Pegadaian, of course, it is inseparable from the various problems faced by the PT Pegadaian, especially the problem of collateral while in storage. Collateral goods stored in the PT Pegadaian are not a few, which have an impact on damage or loss of collateral. Damage and loss can occur due to negligence because they are stored for some time, apart from negligence, collateral can also be lost due to theft or damage due to natural disasters.

⁴ Kansil, C.S.T., dan Kansil, Christine S.T. (2008). *Pokok-Pokok Pengetahuan Hukum Dagang Indonesia*, Jakarta: Sinar Grafika, p. 432.

⁵ Hendro, Tri., dan Rahardja, Conny Tjandra. (2014), *Bank & Institusi Keuangan Non Bank di Indonesia*, Yogyakarta: UPP STIM YKPN, p. 414.

⁶ Saherodji, Hapi. (1980). *Pokok-Pokok Hukum Perdata*, Jakarta: Aksara Baru, p. 90.

⁷ Triandaru, Sigit., dan Santoso, Totok Budi. (2006). *Bank dan Lembaga Keuangan Lain*, Yogyakarta: Salemba Empat, p. 25.

Increasing the public linkages in an institution called a PT Pegadaian, so the authors see the urgency of the above problems to be studied further so that people who choose to become customers at PT Pegadaian do not have to experience unwanted losses. And when there is loss or damage to collateral, then the PT Pegadaian must be responsible and provide compensation according to the prevailing laws and regulations.

From this description, the authors formulate a problem related to the responsibility of a PT Pegadaian for the guarantee of the damaged goods or lost, which one is given as follows: what is the form of Pegadaian's responsibility for the damaged and lost goods?

2. Method

The research method uses normative research, which means that this method serves to emphasize legal theories and legal rules related to the problem under study, then applied with the responsibility of PT Pegadaian for damage and loss of pawned goods at PT Pegadaian.

Data collection techniques include literature, such as primary legal materials, namely laws and regulations on banking affairs, and also with secondary legal materials, consisting of literature and literature related to the agreement.

The data analysis method used in this research is qualitative analysis. The qualitative approach is a research method that produces prescriptive-analytical data that is, stated in writing is researched and studied as something intact.⁸

3. Responsibility by PT Pegadaian for the Guarantee of Damaged and Lost Goods

The appearance of responsibility in the civil field is caused by legal subjects not carrying out achievements and/or take legal actions. Achievements of legal subjects in the form of doing something, there is nothing and nothing, if the legal subject does not carry out his achievements, then he can be sued or asked for civil liability, namely carrying out achievements and paying compensation for the legal subject who have suffered losses from the coordinates offered in Article 1346 BW, namely:

- 1) The losses he has suffered, that are reimbursement and losses; and
- 2) The benefits that will be obtained.

In BW, several articles regulate civil liability if it harms other people due to “acts of violating the law”, among others are regulated in Article 1365 to Article 1367 BW. Furthermore, Article 1365 BW states, that “every act violates the law, which brings harm to another person, obliging the person who due to his fault published the loss, compensate for these losses.” Regarding the provisions of Article 1365, then an act violating the law must contain the following elements:⁹

- 1) The existence of an act;
- 2) The act violates the law;
- 3) There is a loss on the part of the victim; and
- 4) There is a causal relationship between actions and losses.

Furthermore, it is argued that the act committed must violate the law. Since 1919, this element of breaking the law is broadly defined which includes the following:¹⁰

⁸ Soekanto, Soerjono. (1984). *Pengantar Penelitian Hukum*, Jakarta: UI Press, Jakarta, p. 21.

⁹ Fuady, Munir. (2002). *Pengantar Hukum Bisnis, Menata Bisnis Modern di Era Global*, Bandung: Citra Aditya Bakti, p. 10.

¹⁰ *Ibid.*, p. 11.

- 1) Actions that violate applicable laws who violated the rights of others guaranteed by law;
- 2) Actions contrary to the legal obligations of the perpetrator;
- 3) Actions contrary to decency; and
- 4) Actions contrary to good attitudes in society to pay attention to the interest (*Indruist tegen de zorgvuldigheid, welke in het maatschappelijkverkeer betaamt ten aanzien van anders persoon of goed*).

According to Nurhayati Abbas, if consumers will base themselves on acts of breaking the law, then according to the applicable law in Indonesia (Article 1365 BW) the main obligation of the consumer is that he has to prove that there is an illegal act and the fault of the producer. So to determine the existence of the perpetrator's obligations, then these two things must be proven, while this mistake is difficult to prove because consumers are generally weaker in position than producers, have no skills, time, and costs for proving that mistake.¹¹

Actions that violate the law, can be imposed Article 1365 BW, which implies that the perpetrator must contain an element of error (*schuldelement*) in carrying out the act. The mistakes that are implied by the law in violating the law, both mistakes in the sense of legal errors and social errors.¹²

The same thing was stated by Shidarta, that what is meant by error is an element that is against the law. The definition of "law" is not only contrary to law, but also decency and morality in society. In this case, the law interprets mistakes as a person's failure to live with an ideal attitude, namely the usual and normal attitude in a community activity.¹³

In addition to the element of error, the element of loss (*schade*) for the victim is also a requirement for a lawsuit based on Article 1365 BW can be used, in contrast to the loss of default which only recognizes material loss, losses due to illegal acts in addition to material losses, jurisprudence also recognizes the concept of immaterial loss, which would also be valued in money.¹⁴

Another opinion expressed by Chatamarrasjid, that in violation of the law (*onrechtmatige daad* or *tort*) there must always be an element of a violation of the obligations that must be fulfilled by the prosecutor/plaintiff, and the violation arises because of a legal obligation, not because of the agreement of the parties. If an act violates the law which fulfills the elements of who should be responsible, in the sense that who should be sued or accept the lawsuit, only the perpetrator of the violation of the law itself occurs, but it could also be due to the result of an unlawful act committed by another person who is responsible for it, the meaning is not only the perpetrator himself who must be sued in court and responsible for paying compensation according to the court decision but for other dependent people.

This is regulated in Article 1367 BW, that a person is not only responsible for losses caused by his/her actions, but also for losses caused by the actions of those who are dependent or caused by goods under his control.

About that, known as the *aansprakelijkheid* theory or commonly known as the theory of liability or theory to determine who should accept the lawsuit (who should be sued)

¹¹ Abbas, Nurhayati. (2002). *Tanggung Jawab Produk Konsumen dan Implementasinya pada Produk Pangan*. Disertasi, Universitas Hasanuddin: Makassar, p. 70.

¹² Fuady, Munir. (2013). *Hukum Jaminan Utang*, Jakarta: Erlangga, p. 156-157.

¹³ Gautama, S. (1993), *Essays In Indonesian Law*, Jakarta: PT. Citra Aditya Bakti, p. 72.

¹⁴ *Ibid.*, p. 12-13.

because of an illegal act. BW specifies several parties who must accept accountability and illegal acts committed by other parties, namely as follows:¹⁵

- 1) Parents or a guardian is responsible for actions committed by children under their responsibility or guardianship. (Article 1376 BW);
- 2) The employers are legally responsible for the actions of its employees (Article 1367 BW);
- 3) School teachers are responsible for the actions of their students (Article 1367 BW);
- 4) The chief craftsmen are responsible for the actions taken by the craftsmen (Article 1367 BW);
- 5) The owner of the animal is responsible for the actions taken by his pet (Article 1368 BW);
- 6) The owner of a building is responsible for collapsing the building because:
 - a. Negligence in maintenance; or
 - b. Due to defects in the construction and the structure (Article 1369 BW).

Besides, civil liability is due to “illegal acts” which result in losses for others. BW also regulates civil liability if it harms others due to “default” in Chapter III BW (Article 1338 BW) which provides very broad freedom to enter into agreements. Thus everyone can make an agreement with anyone and about anything in good faith. It is from this agreement that the obligation to the opponent who is injured because of the agreement arises.

In this case, if someone feels aggrieved, then he must prove that there is a contractual relationship with the perpetrator, also proves that the losses suffered arose from the negligence of the competitor in fulfilling his contractual obligations.¹⁶

Civil liability if it is detrimental to others due to “default” as regulated, among others, in Article 1239 BW, which states that each agreement to do, something or not to do something, if the debtor does not fulfill his obligations, gets settlement in the obligation to provide compensation for expenses, losses, and interest.

Furthermore, in Article 1243 BW, stipulates that compensation for fees, losses and interest due to failure to fulfill an agreement will then begin to be obliged if the person in debt, after being declared negligent in fulfilling the contract, continues to neglect it, or if it is something that must be given or made, it can only be given or made within a grace period that has passed.

If the debtor does not do what he promised, then it is said that he has defaulted. He is “negligent” or “negligent”, or “broken promises”. Or also he broke the agreement, if he did or did something he was not allowed to do.¹⁷ Thus, it is very clear the rules regarding compensation that must be made by the party that causes harm to the other party, both losses arising from illegal acts and losses due to default. Losses in this case are losses arising due to default. The Pegadaian’s must be responsible for any damaged or lost collateral that has been submitted by the customer as collateral for the loan it receives.

Money agreement with a pledge guarantee at PT Pegadaian creates the rights and obligations of the parties who agreed. So, during the course of the pawning, the pawning holder has several rights and obligations that must be fulfilled, both on the pawning of movable objects and at pawning on receivables (Immovable objects).¹⁸

¹⁵ Fuady, Munir. (2013). *Op. Cit.*, p. 17.

¹⁶ Abbas, Nurhayati. *Loc. Cit.*, p. 69.

¹⁷ Subekti. (1982). *Pokok-Pokok Hukum Perdata*, Bandung: Intermasa, p. 45.

¹⁸ Patrik, Purwahid., dan Kashadi. (2009). *Hukum Jaminan*. Semarang: Fakultas Hukum Universitas Diponegoro, p. 44.

The right of the pledge holder is to receive the remaining payment from the pawner for the pledged goods, while the pledge holder should provide compensation for damage and loss of the pledged goods. While the right of the pledge provider is to pay off the remaining debt to the recipient of the pledge for the pledged goods, while the pledge provider should receive compensation for damages and loss of pawn item.

From the agreement carried out by the parties giving agreement that has legal consequences, namely the fulfillment of the rights and obligations of each party. The obligation, in this case, is to fulfill the achievements agreed upon by the customer and the PT Pegadaian, in which the customer is obliged to pay the loan along with the interest, while the PT Pegadaian is obliged to safeguard the collateral and return it when the loan money has been repaid by the customer.

In this study, it focuses on the responsibility of the PT Pegadaian for damage or loss of collateral. Then the form of PT Pegadaian responsibility for damage to the pawned property is to repair the pawned item. Meanwhile, the responsibility of a PT Pegadaian for lost pawning goods is to replace the pawned goods according to the estimated value multiplied by 125%.

4. Conclusion

The form of PT Pegadaian responsibility for damage to pawned goods is to repair the pawned goods. Meanwhile, the responsibility of the PT Pegadaian for lost pawning goods is to replace the pawned goods according to the estimated value multiplied by 125%.

Acknowledgments

We thank the editorial team of Amsir Law Jurnal for publishing our article in volume 2 (1), October 2020.

References

Books with an author:

Abbas, Nurhayati. (2002). *Tanggung Jawab Produk Konsumen dan Implementasinya pada Produk Pangan*. Disertasi, Universitas Hasanuddin: Makassar.

Fuady, Munir. (2013). *Hukum Jaminan Utang*, Jakarta: Erlangga.

_____. (2002). *Pengantar Hukum Bisnis, Menata Bisnis Modern di Era Global*, Bandung: Citra Aditya Bakti.

Gautama, S. (1993), *Essays In Indonesian Law*, Jakarta: PT. Citra Aditya Bakti.

Hendro, Tri., dan Rahardja, Conny Tjandra. (2014), *Bank & Institusi Keuangan Non Bank di Indonesia*, Yogyakarta: UPP STIM YKPN.

Kansil, C.S.T., dan Kansil, Christine S.T. (2008). *Pokok-Pokok Pengetahuan Hukum Dagang Indonesia*, Jakarta: Sinar Grafika.

Patrik, Purwahid., dan Kashadi. (2009). *Hukum Jaminan*. Semarang: Fakultas Hukum Universitas Diponegoro.

Saherodji, Hapi. (1980). *Pokok-Pokok Hukum Perdata*, Jakarta: Aksara Baru.

Soekanto, Soerjono. (1984). *Pengantar Penelitian Hukum*, Jakarta: UI Press, Jakarta.

Subekti. (1982). *Pokok-Pokok Hukum Perdata*, Bandung: Intermasa.

Triandaru, Sigit., dan Santoso, Totok Budi. (2006). *Bank dan Lembaga Keuangan Lain*, Yogyakarta: Salemba Empat.

Journal articles:

Oktavianto, Joni., Suharto, R., dan Triyono. (2016). Tanggung Jawab PT Pegadaian (Persero) Atas Kerusakan dan Kehilangan Barang Gadaai di PT Pegadaian (Persero) Kota Semarang. *Diponegoro Law Journal*, 5(3), p. 2.

Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Copyright © 2020 ALJ. All rights reserved.