



Property rights according to the civil code in Indonesia

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ABSTRACT

This study discusses the basic concept of property rights in the legal system civil law in Indonesia which refers to the Indonesian Civil Code (Civil Code). This study examines the fundamental concept of property rights in Indonesia's civil law system, referencing the Indonesian Civil Code (KUHPerdata). Property rights constitute a legal relationship between legal subjects and objects, granting owners direct authority to control, utilize and benefit from the property.

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1. Introduction

Legal issues often arise regarding property ownership due to unclear ownership, regustration failures, hidden property encumbrances, right infringement, and overlapping claims additionally, problems emerge with collateral usage, such as pledges, mortgages, and fiduciary rights, particularly during bankruptcy proceedings incorrect classification of goods and non compliance with mandatory legal provisions further complicate dispute resolution. One crucial concept in civil law, particularly in Indonesia's legal system, which still refers to the Civil Code (KUHPerdata), is property rights. These rights reflect the legal relationship between legal subjects and objects, granting holders direct control, use and benefit from specific objects (Mumek 2017).

Soebekti said that what is meant by objects in the context of civil law is everything that can be given or placed a right on it, especially in the form of ownership rights. Thus, the one who can have something of that right is the legal subject while something that is burdened with that right is the legal object. (Soebekti 2001) While the definition of objects in a broad sense is referred to in article 509 of the Civil Code, namely objects are: "every item and right that can be controlled with ownership rights or in other words objects in the context of civil law are everything that can be given/placed a right on it, especially in the form of ownership rights. (Undang-undang KUHPerdata Pasal 509 Tentang pengertian benda n.d.) In this context

objects can include everything that can be burdened with rights, especially ownership rights, legal subjects can have rights to the object, while the object itself is a legal object that can be given rights, according to its meaning.

Furthermore, in civil law, the term object is anything tangible or can be touched by the five senses, but also includes the concept of intangible objects, such as a person's wealth, especially including bills or receivables or other rights, for example interest on deposits, although the definition (*zaak*) of objects in the Civil Code does not only include tangible objects, it can mean other things, such as "Legal Acts" in Article 1792 of the Civil Code, or interests in Article 1354 of the Civil Code and also means legal reality in Article 1263 of the Civil Code.

In civil law, property rights will provide the holder with the authority to control, use, or utilize certain objects. Of course, the birth of property rights that are in the nature of providing enjoyment has various ways of obtaining them, depending on the type or kind of object. Meanwhile, the birth of property rights in property rights that are in the nature of providing guarantees depends on the principle of publicity, namely by registering with the Registration Office. Meanwhile, the birth of property rights in pawn guarantee institutions has no provisions regarding registration and property rights in pawn guarantee institutions are born when the object is handed over to a third party. (Usanti 2012) Therefore, property rights are regulated in detail in the Civil Code (KUHPerdara) to provide legal certainty for the parties who have the right to the objects.

2. Method

The research method used is normative legal research, which involves citing various reliable sources such as scholarly journals, books, and legal statutes, as well as principles found in relevant regulations pertaining to the topic being studied. This analysis is conducted to identify the regulations and legal interpretations present in these sources in order to provide a deeper understanding of the research topic.

3. Analysis and Results

Legal Classification of Goods: Legal classification of good is a system used to group things based on their nature and related rights. Some common categories in the legal classification of good include movable goods (example money, vehicles), immovable goods (example. land, buildings), consumer goods (example., clothing, household appliances), investment goods (example., stocks, bonds), and intellectual goods (example., copyrights, trademarks). This classification helps identify the rights and obligations associated with each type of good. (Siregar 2023) In Indonesian civil law, the classification of the two goods above is regulated in Article 499 of the Civil Code (KUHPerdara). This division or classification is important for determining the rights and obligations of the owner of the good in civil law, as well as for regulating the methods of transfer or assignment of rights to the good. (Pasal 499 Kitab Undang-Undang Hukum Perdata n.d.)

Regulations relating to property law or property rights are contained in the book II Civil Code: Using or utilizing a closed system, which means that the regulation or activities of property rights can be implemented based on the provisions contained in the laws and regulations in force in Indonesia. The law of property is coercive (*dwingend recht*), which means that this law of property forces a person to obey it and must not deviate from the law (Kheista, Rhemrev, anChristie2024).

If studied more deeply, the content of this material legal material which is regulated in Book II of the Civil Code can be linked to the enactment of Law Number 5 of 1960, these property rights can be divided into several parts: Property rights are property rights that provide guarantees to their holders, such as pawns to guarantee goods or movable objects, mortgages to guarantee ships and airplanes, mortgage rights to guarantee land, or fiduciaries to guarantee movable objects that cannot be mortgaged or to guarantee land objects that cannot be burdened with mortgage rights, Because it has been regulated in the Basic Agrarian Law, property rights included in this category are the right to possess, ownership rights (*eigendom*), rights to collect proceeds, rights to use and rights to inhabit. Property rights that provide enjoyment or *zakelijk genotsrecht* to the owner, both to his own property and to property owned by others other than *lan*, Guarantee rights, but not an institution of material guarantee rights, which have material characteristics such as privilege, retention and *cassie* rights (Simatupang 2021).

Zakelijk genotsrecht is a property right that grants the owner the enjoyment of an object to the fullest extent, whether it is their own property or someone else's. This right falls under the category of property rights governed by law, such as the right to cultivate (Right of use and enjoyment) and the right to lease (Lease agreement) (Perspektif and Perdata 2023). In the context of civil law, *zakelijk genotsrecht* functions to protect the interests of an owner in using and taking advantage of the object (Mahmudiyah n.d.).

3.1 Various types of property rights

a. Privelege

J. Satrio said that privilege rights or special rights are certain receivables mentioned in the law, automatically have a priority position, the parties cannot agree to a privilege which means agreeing that the bills that arise and the agreements they close contain privileges..(Satrio 2002) While in Article 1134 of the Civil Code, namely: "Something that is given by law to a person who has a credit so that his level is higher than other people who have a credit, solely based on the nature of his credit"(Pasal 1134 Kitab Undang-undang Perdata Tentang Privelege n.d.)

In civil law, privilege rights or special rights can be divided into 2, namely: Special privileges, which according to the provisions of Article 1139 of the Civil Code There are 9 types of civil law: Court costs, Arrears in land or building rent, costs to repair it according to law it is borne by the tenant, Unpaid purchase price of movable goods Cost of saving goods, this cost is incurred to ensure that they are not lost a certain item is destroyed, Wages for workers to work on something, such as a tailor, etcother, Receivables from a hotel and food entrepreneur from a guest who stayed overnight, Transportation wages, The costs or wages of a bricklayer, carpenter, etc. who builds, add or repair buildings, State receivables from employees who cause losses to the government due to negligence, errors or violations in carrying out their duties. (Devi 2020).

General privileges, of which according to Article 1149 of the Civil Code there are 7 types namely: Court costs, Burial costs, Final medical expenses of a deceased debtor, Workers' bills for wages for one year in the current working year Bankruptcy is a general seizure of all the assets of a bankrupt debtor whose management and expansion is carried out by a curator under the supervision of a judge. The bankruptcy statement must go through a court examination process after fulfilling the requirements for filing an application.¹⁷ This supervision is regulated in Article 1 Paragraph 1 of the Law concerning Bankruptcy. 4. Ownership Rights (*Eigendom*)

walk, Money for purchasing goods to buy food for daily living, Boarding school bills for the last year. (Martiawan et al. 2013)

b. Retention Rights

The right of retention is the right to retain an object until a debt related to the object is paid off. (Kusumaatmadja 2016) The right of retention is regulated in Articles 1792 to 1897. 1. Court costs. Article 1819 of the Civil Code in Article 1812 states that: "The recipient of the power of attorney has the right to hold the property of the power of attorney in his hands until he is paid in full everything he can claim as a result of the granting of power of attorney. The right of retention itself is usually owned by an Advocate. In using his retention right, the advocate must also make an agreement with the client, such as how much the Advocate's honorarium will be received and costs other than the Advocate's honorarium or free fees. (Hukum, Islam, and Malang n.d.)

c. Advertising rights

Advertisement rights are the seller's right to ask for the return of goods that have been sold in cash if the buyer has not paid off, as long as the goods are still in the buyer's control. This claim can be made within a maximum period of thirty days after the transaction. (Subekti 1995) Article 1513 of the Civil Code states that a buyer's obligation is to pay the purchase price, at the time and place as determined by the agreement, (Pasal 1513 Kitab Undang-undang Hukum Perdata n.d.) Articles 1145 and 1146 of the Civil Code, namely advertising rights outside of Bankruptcy, Article 230 and Article 239 of the Commercial Code (KUHD) namely advertising in bankruptcy..

Bankruptcy is a general seizure of all the assets of a bankrupt debtor whose management and expansion is carried out by a curator under the supervision of a judge. The bankruptcy statement must go through a court examination process after fulfilling the requirements for filing an application. (Hartono 2020) This supervision is regulated in Article 1 Paragraph 1 of the Law concerning Bankruptcy.

d. Eigendom

Ownership of a thing confers full and exclusive possession: "Rights which are used to freely enjoy the use of an object and to do something freedom from those objects with complete sovereignty as long as they do not conflict with the law or general regulations established by the authorities and do not interfere with the rights of other people.

There are 2 rights that the owner of an object has, namely: For objects in the form of land, the right to use the land vertically, namely to obtain rights to plants or buildings on it and to obtain treasures located under the land, The right to maintain his position as owner in the event that the object is released from his control (right of revindicatie). (Djaja and Meliala n.d.)

e. Right to a position of authority (Bezit)

Article 529 of the Civil Code states that "the desire to own the object" is "a bezitter is someone who assumes ownership or authority over an object, behaving as if they have legal ownership of the object, they have the potential to obtain legal rights to the property they occupy or are inhabited by (Syaloomita et al. 2024).

In order for possession of an object to be called *Bezit*, it must fulfill the following two conditions, namely; *Corpus*, namely the existence of a real power relationship between people and objects, *Animus*, namely the existence of an element of perfect will (the will of a legally competent person) from the person in question to possess the object in question (Hutagalung 2012)

3.2 Property Rights that Provide Guarantee

a. Pawn.

Article 1150 of the Civil Code states that a pledge is "a right obtained by a creditor over a movable object, which is handed over to him by a debtor or another person on his behalf and which gives the creditor satisfaction to take payment of the object in priority over the person". Wiyono Prodjodikoro stated that "A pawn is a right that a person who has a debt has to a movable object handed over to him by the debtor or by another person or Its name is to guarantee the payment of money and which gives the debtor the right to be paid before other creditors, which is taken from the proceeds from the sale of the goods (Prodjodikoro 1994).

The obligations of the pawn holder are as follows: Notification obligation: Informing the pawnor upon sale of pledged goods, ustodial duty: Safeguarding pledged assets, Accounting obligation: Providing settlement statements on pawned goods sales to pawnors, eturn obligation: Returning pledged goods when: Creditor misuses pledged assets, Debtor fully repays debt, Interest settlement obligation: Paying correct interest on pawned debt to debtors, Refund obligation: returning excess proceeds from pawned debt recovery to pawnors (Oktavianto2016).

b. Mortgage

Mortgage in Dutch is called *Onderzetting* while in Indonesian it is called *pembebanan*.(Salindeho n.d.) Article 1162 explains that Mortgage is "A property right over an immovable object, aimed at taking payment of a debt from (the sale income) of the object". Various laws, including the Civil Code, Law no. 4 of 1996 concerning Mortgage Rights, and Law no. 17 of 2008 concerning Shipping, regulates the legal basis for hypothetical guarantees. Formally, the old provisions, namely the KUHD, are applied, but in substance they refer more to the Commercial Law Law and Law no. 17 of 2008 concerning Shipping.(Tinangon and Kasenda 2024) The abolition of mortgages means that mortgages imposed on ships are no longer valid. Article 1209 of the Civil Code regulates the abolition of mortgages. The elimination of mortgages due to 3 things, namely: the elimination of the principal obligation, the release of the mortgage by the creditor, and the arrangement of the order of levels by the court. When a ship is no longer used as collateral for a debt with a mortgage burden, the mortgage on the ship will be removed through a write-off (*roya*) process.(Smd and Putra 2023) The legal basis for Mortgage guarantees is regulated in various laws and regulations, including the Civil Code, the Commercial Code, Law No. 4 of 1996 concerning Mortgage Rights, and in particular the legal basis for Mortgages for Sea Ships only based on the Commercial Code and Law No. 17 of 2008 concerning Shipping, that formally, the old provisions, namely the Commercial Code, are enforced, but materially, they refer more to provisions of Law No. 17 of 2008 (Kanou 2016).

c. Mortgage right

"According to Article 1(1) of Law No. 4/1996 on Land-Related Mortgage Rights, 'Mortgage Rights' are defined as 'security rights granted over land, as regulated under Law No. 5/1960 on Basic Provisions of Agrarian Law, which includes land and/or attached objects, serving as collateral for specific debt repayment, granting priority to designated creditors over others.

According to J. Satrio, the characteristics of mortgage rights can be seen in Article 1 sub 1 of the Mortgage Rights Law, an article which seeks to provide a formulation regarding mortgage rights dependents which include, among other things, the following characteristics: Right of guarantee, on land with or without other objects which are part of the land in question, to settle debt, give priority position (Satrio 2016).

d. Fiduciary

The definition of fiduciary is explained in Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees as follows "The transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are held remains in the possession of the owner of the object." With the condition that the object that is the object remains in the hands of the fiduciary provider (debtor), the transfer rights from the fiduciary provider to the fiduciary recipient are known as the term "transfer of ownership rights". The contents of the promise made by the debtor with his creditor are that the debtor will transfer ownership of an object as collateral for his debt with the agreement that the debtor will continue to physically control the object and the creditor will transfer ownership back to the debtor when the debt has been paid in full (Fuady n.d.).

e. Warehouse Receipt.

Law Number 9 of 2006 concerning the Warehouse Receipt System, amended and updated by Law Number 9 of 2011 concerning Amendments to Law Number 9 of 2006 concerning the Warehouse Receipt System. In Article 1 of Law Number 9 of 2006 juncto Law No. 9 of 2011 concerning the Warehouse Receipt System, it is stated that what is meant by the Warehouse Receipt System is activities related to the issuance, transfer guarantee, and settlement of Warehouse Receipt transactions. Warehouse receipts have a position that is present in the sector of efforts to improve the welfare of business actors in the agricultural sector, because the level of goods is one form of delayed sale in increasing the exchange rate of farmers. The warehouse receipt system can overcome price declines in agricultural commodity trading so that farmers can get an increase in the selling price of commodities. In addition to farmers, the existence of a warehouse receipt system is also beneficial for the banking world, business actors and the government.

4. Conclusion

Property law in Indonesian civil law, as regulated in the Civil Code, is a direct legal relationship between legal subjects and objects, Kanou, Sulfandi. "Legal Review of Mortgage Guarantee of Ships and Its Legal Consequences" 6 granting the right to control, use and exploit certain objects. These rights are divided into two, namely: Rights that provide enjoyment (such as the right to cultivate) and rights that provide guarantees (such as pledges, mortgages, and

fiduciaries). Property rights regulations based on the principle of publicity ensure legal certainty, especially in rights that require official registration. This journal emphasizes the importance of legal classification of objects, including movable, immovable, and intellectual objects, to provide fair legal protection for all parties. The research findings can be utilized to refine regulations and legal practices in property rights through more detailed regulatory frameworks, enhanced legal certainty, and effective dispute resolution.

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