THE NOTARY ROLE IN THE IMPLEMENTATION OF A PAWN PAYMENT AGREEMENT ACCORDING TO HABITS OR TRADITION (*GA'DE DAE*) IN PUKDALE VILLAGE, KUPANG REGENCY, NTT

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Abstract

The implementation of traditional pawn agreements is usually carried out by indigenous groups in several remote areas in Indonesia. An example of the traditional pawn that still exists today is the traditional pawn carried out by the community in Pukdale Village, East Kupang District, Kupang Regency. The community or the parties who make this pawn agreement, should have started to involve a notary in the pawn agreement process, so that it can provide legal certainty guarantees and have perfect power of proof in accordance with the mandate of the law. The research problems in this study are regarding the Urgency of the Role of the Notary in the Pawn Agreement Process according to habit or tradition (*Ga'de Dae*) in Pukdale Village, Kupang Regency, NTT and the Implementation of the Notary Deed in the Pawn Agreement. The research typology used is exploratory design, and the form of research is Juridical Empirical. While the data analysis method used is a qualitative approach method. The results of the study indicate that the role of the Notary in a Pawn Agreement is indeed very necessary to ensure the strength of the Proof of the Pawn. One of the factors for the occurrence of conflicts or defaults carried out by the parties in the pawn is due to the absence of an authentic deed that can provide separate protection for the parties. The implementation of the Notary Deed in the Pawn Agreement must continue to pay attention to the provisions of the existing legislation, so that the authenticity of the deed is guaranteed. A notary as a public official who makes an authentic deed is responsible for his actions in connection with his work in making the deed.

Keyword: Customary Pawn, Notary Deed, Land

INTRODUCTION

The implementation of traditional pawn agreements is usually carried out by indigenous groups in several remote areas in Indonesia. One example of the traditional pawn that still exists today is the traditional pawn carried out by the community in Pukdale Village, East Kupang District, Kupang Regency. The community or the parties who make this pawn agreement, should have started to involve a notary in the pawn agreement process, so that it can provide legal certainty guarantees and have perfect power of proof in accordance with the mandate of the law.

According to Subekti, Pawn or Pandrecht is "a material right to a movable object belonging to another person, which is solely agreed to deliver assets on a movable object, aiming to take payment of an item from the income from the sale of the object first from other collectors.". Pawn is one of the material rights that provide guarantees which are regulated in book II of the Civil Code. According to Article 1150 of the Civil Code, pawning is a right that is obtained by a debtor on a movable property, which is handed over to him by a debtor or by another person on his behalf and which gives satisfaction to the debtor to take payment of the goods first from the other person.[1]

In contrast to the meaning of Pawn according to the Civil Code above, Pawn according to habit or tradition has a different meaning. Pawn according to tradition law is a contract that causes a person's land to be handed over to receive a certain amount of cash, with an agreement that the person who handed over the land has the right to take his land back by paying an amount equal to the amount owed. As long as the debt has not been paid off, the land will become the rights of the pawnbroker. In the tradition of customary law in Indonesia, the term pawn is known by different names, such as *Adol Sende* (Java), *Nganjual Akad* or *Gande* (Sunda), *Pagang* (Minangkabau), and so on.[2] In Kupang Regency, East Nusa Tenggara itself, the local community calls it *Ga'de Dae* which means Land Pawn.

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Constitution[3]

Soerjono Soekanto argues that customary law communities according to their basic structure are divided into two groups, namely based on genealogical ties and based on territory (territorial). Then from the perspective of its form, there are tradition law communities that stand alone, become part of a higher tradition law or consist of several lower tradition law communities, and are an association of several equal tradition law communities. Furthermore, it can be said that each of these forms of tradition law communities can be referred to as tradition law communities that live, are stratified, and in series.[4]

This land pawn arrangement has specifically been regulated in Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Areas as the implementing regulation of the Basic Agrarian Law. In the provisions of article 7 paragraph (1) it has been explained that the time limit for this land pawn agreement is that the term of the land pawn agreement cannot be more than 7 years, and if it has been more than 7 years, the pawn buyer must return the land object of this pawn agreement to the owner (the pawn seller) without any ransom.[5]

In addition to Law Number 56 Prp of 1960, other provisions governing land pawning are also mentioned in the Basic Agrarian Law (UUPA) number 5 of 1960. Article 16 paragraph (2) and Article 53 of the UUPA which explains that land pawning is one of a temporary land right. Other laws and regulations governing land pawning can also be found in the Joint Instruction of the Minister of Home Affairs and Regional Autonomy with the Minister of Agrarian Affairs No. Sekra 9/1/2 concerning the Implementation of Perpu No. 56 Prp/1960. Furthermore, there is the Decree of the Minister of Agriculture and Agrarian Decree SK. 10/Ka/1963 concerning the affirmation of the enactment of Article 7 of Law Number 56 Prp of 1960 for Pawning of Perennial Plants. And there are also

[1] R. Subekti, *Pokok-pokok Hukum Perdata*, (Jakarta: Intermasa, 1997), hlm. 65

[2] Pujiono, *Hukum Islam dalam Dinamika Perkembangan Masyarakat*, (Jember: Mitra Pustaka, 2012), hlm. 175.

[3] Indonesia, *Undang-Undang Dasar Negara Republik Indonesia*, Ps. 18B ayat (2).

[4] Soerjono Soekanto, *Hukum Adat Indonesia*, (Jakarta: Raja Grafindo Persada, 1983), hlm. 27.

[5] Maria S.W. Sumardjono, Martin Samosir, *Hukum Pertanahan Dalam Berbagai Aspek*, (Medan: Bina Media, 2000) hlm. 60.

provisions of the Regulation of the Minister of Agriculture and Agrarian No. 20 of 1963 concerning guidelines for solving the Pawn Problem.[6]

Land pawning is another way to get money with land collateral objects other than mortgage rights, but between land pawning and mortgage rights there is a very basic difference, namely in the control of land objects where land objects in mortgage rights do not change their control and in pawning land objects the control transfer to the debtor.[7]

The definition of land pawning can be seen in the opinion of scholars, including the following:

a. According to Ter Haar Pawning of land is an agreement that causes that the land is handed over to receive cash in the amount of money with an agreement that the surrenderer will be entitled to return the land to himself by paying the same amount of money.[8]
b. According to Iman Sudiyat Pawning of land is "Giving of land to receive payment of a sum of money in cash provided that the seller remains entitled to the return of his land by redeeming it again".[9]

Land lien rights in the legislation in Indonesia have been regulated in Article 16 paragraph (1) letter h of Law Number 5 of 1960 concerning Basic Agrarian Regulations, where land lien rights are categorized as temporary rights, then related to land pawning reaffirmed in Article 53 it is stated that the rights of a temporary nature as referred to in Article 16 paragraph (1) letter (h), namely the right of lien, the right of profit sharing, the right of riding and the right of renting agricultural land are regulated to limit their inherent characteristics. Contrary to this Law and the rights are sought to be abolished in a short period of time. The provisions of the article have seen that the Pledge of agricultural land on the communal land has been regulated in the Basic Agrarian Law, from this provision it was later reaffirmed in Law No. 56 Prp 1960, namely Article 7 related to Pawning agricultural land.[10]

Article 1868 of the Civil Code states that an authentic deed is a deed in the form determined by law, made by public officials who have power for that at the place where the deed was made.[11] Article 1870 of the Civil Code also says that a deed provides between the parties and their heirs or persons who have rights from them, a perfect proof of what is contained therein. Meanwhile, Article 1 point 7 UUJN states that a Notary Deed is an authentic deed made by or before a Notary according to the form and procedure stipulated in this Law.[12]

The development of education in Indonesia has caused people to begin to realize that written evidence is an important means of proof in legal traffic. Certainty, order, and legal protection demand that legal traffic in people's lives requires legal evidence, so that people get legal certainty over their ownership. A notary who in his profession is actually the party authorized to make an authentic deed. The authority of the Notary in providing this Legal Evidence is regulated in an Invitation Regulation at the level of the Law.[13]

Provisions regarding the position of a Notary are currently regulated in Law 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, hereinafter referred to as UUJN. The authority of a Notary is regulated in CHAPTER III, Part One concerning Authorities. Article 15 paragraph (1) of the UUJN states that a Notary has the authority to make an authentic deed regarding all acts, agreements, and provisions required by laws and/or desired by the interested parties to be stated in an authentic deed, guarantees the certainty of the date of making the deed, keeps the deed, providing grosse, copies and quotations of the deed, all of which is as long as the making of the deeds is not assigned or excluded to other officials or other people stipulated by law. Article 15 paragraph (1) UUJN intends to confirm the position of a Notary as a public official authorized to make an authentic deed. Arrangements regarding authentic deeds made by authorized

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[6] *Ibid.* hlm. 62.
[7] Efendi Perangin, *Praktek Penggunaan Tanah Sebagai Jaminan Kredit*, (Jakarta: Rajawali Pers, 1991), hlm. 9.
[8] *Ibid*
[9] Iman Sadiat, *Hukum Adat Sketsa Asas*, (Yogyakarta: Liberty, 2012), hlm. 28.
[10] *Ibid*
[11] Indonesia, *Kitab Undang-Undang Hukum Perdata*, Pasal 1868.
[12] Indonesia, *Undang-Undang Jabatan Notaris*, UU No. 30 Tahun 2014, LN Nomor 3, TLN No. 5491, Ps. 1 ayat (7).
[13] Putri Ayub Rukiah, *Perlindungan Hukum Terhadap Notaris (Indikator Tugas-Tugas Jabatan Notaris yang Berimplikasi Perbuatan Pidana*, (Jakarta: PT. Softmedia, 2011), hal. 43.

officials are regulated in Article 1868, Article 1870 of the Civil Code, and Article 1 paragraph (7) of the UUJN.[14]

Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions explains that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in the Law on Notary Positions (UUJN) or under other laws. Notaries as public officials are people who carry out some of the public functions of the State, especially in the field of civil law. Making an authentic deed is required by laws and regulations in order to create certainty, order and legal protection.[15]

The implementation of land pawning in the village uses more traditional or customary procedures. Village communities mostly use customary law because basically most of the rural communities are still bound in an alliance of customary law communities, so they still uphold the customary law that has existed for generations. The law on land pawning, especially agricultural land, already has its own regulation in national law, but for people whose customary system is still strong, the customary law that exists in that community will be used more because they are more accustomed to using existing tradition law.[16]

In the process of this pawn agreement, conflicts often occur between the parties, both the giver and the recipient of the pawn, the conflict that occurs is usually triggered by the inability to repay the loan money so that the recipient of the pawn intentionally gives the management of the pawned land to another party. Another example of conflict is the tenure of land that is guaranteed for decades until the party giving the pawn dies, this is the forerunner of conflict between the recipient of the pawn and the heirs of the party giving the pawn who died. Whereas in the provisions of Article 7 of Law No. 56 Prp 1960 on the Determination of Agricultural Land Areas, it is explained that the control of the pawned land by the pawnee is a maximum of 7 years.[17]

In addition, there are also defaults committed during the process of the pawn agreement. The large number of lands that do not have certificates of proof of land ownership rights, causing defaults committed by the parties. For example, a pawnbroker who guarantees land belonging to another heir or his brother's secretly to the recipient of the pawn, because at the time of making the agreement there is no proof of ownership of land rights that can be attached as evidence of the pledge agreement. Defaults are also sometimes carried out by the recipient of the pawn, where the recipient of the pawn destroys the collateral land by planting plants that are not supposed to be planted on the land, for example land that is supposed to be secondary crops, instead planted with long-lived plants such as cashew and coconut which results in land becomes hard and requires more capital to change the function of the land to the beginning of being mortgaged.

The making of the deed in the agreement is expected to be a solution to reduce land disputes related to this pawn agreement. In Indonesia alone, there are quite a number of problems regarding land pledges that end up in the Court, both at the first level, at the appeal level in the High Court, and at the Cassation level in the Supreme Court. In the decision by the Panel of Judges, Law No. 56 Prp of 1960 on Determination of Agricultural Land Areas was widely used as the basis for legal considerations to decide the case for the Land pawn. For example, Decision Number 36/Pdt.G/2018 which in that decision, the Supreme Court confirmed the previous decision at the Appellate level at the High Court that basically the Control of the Pawn Land Object which had been controlled for more than 25 years should have been returned to the Pledger. in this case is the plaintiff who is the child or heir of the deceased party giving the pawn who has died.[18]

Another example is the decision number 3001 K/Pdt/2012 where the plaintiff finally got back the land rights he had pawned, after decades the management rights were in the control of the defendant because it became a guarantee in the pawn agreement made.

In its legal considerations, the Panel of Judges again used Law No. 56 Prp of 1960 as the basis for their considerations which ultimately granted the petition from the plaintiff to regain control of all rights of the object of the pawned land in dispute. Here a simple conclusion can be drawn that in disputes

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[14] Indonesia, *Undang-Undang Jabatan Notaris*, UU No. 30 Tahun 2014, LN Nomor 3, TLN No. 5491, Ps. 15 ayat (1).

[15] Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*, (Yogyakarta: UII Press, 2010), hlm. 16.

[16] Suardi Mahyudin, *Dinamika Hukum Adat Minangkabau dalam Yurisprudensi Mahkamah Agung*, (Jakarta: Candi Cipta Paramuda, 2009) hlm. 226.

[17] Indonesia, *Undang-Undang Tentang Penetapan Luas Tanah Pertanian*, UU No 56 Prp Tahun 1960, LN No 174, TLN No. 2117, Ps. 7 ayat (1).

[18] Mahkamah Agung, *Putusan Mahkamah Agung Nomor 36 Tahun 2018.*

that occur related to this land pawn, judges will always use the above laws as the legal basis for their considerations.[19]

If the pawn agreement is made by making a notary deed, then of course the standard clauses of the applicable laws and regulations will be contained so that the potential for disputes that may arise in the future will be minimized. A Notary also basically has deeper knowledge to analyze an agreement he made, because the Notary profession is also one of the professions in the legal field that has a fairly broad knowledge of Law. This is what makes the land pawn agreement no longer violates other legal provisions, for example civil provisions governing the legal terms of an agreement, which are sometimes not fulfilled when the agreement is made by the parties themselves, without involving a notary.

The role of the Notary in providing an understanding of the law regarding pawning is also expected to be able to assist parties in the process of pawning agreements according to custom or custom in Kupang Regency, NTT. Where in the provisions of the UUJN article 15 paragraph 2 letter (e) it is stated that the notary is obliged to provide legal counseling in connection with the making of the deed. This can provide more understanding of the agreement to be made for the parties so that later it is hoped that there will be no more irregularities that occur.[20]

RESEARCH METHOD

a. Research Design

The form of research used in this research is Juridical Empirical. The use of empirical juridical research is intended to identify the role of a notary in making a deed regarding a pawn agreement to be used as a basis for authentic evidence so that the parties can avoid defaults which can often arise and harm the parties in the pawn agreement.

b. Research Typology

The typology of research can be seen from various perspectives, when viewed from the point of view of its form, this research is exploratory research. Exploratory research aims to obtain information, explanations, and data about things that are not yet known in order to deepen certain information. This is because the data regarding the things studied do not exist or are lacking.[21]

c. Data Instrument

In conducting research, there are three types of data collection tools, namely document studies, observations, and interviews. The three can be used individually, or together.[22] The author conducted a document study to obtain principles, theories, laws and regulations and reading materials in the library. In addition, the data collection tool used was an interview using a list of open-ended questions. The respondent selection technique was carried out by purposive sampling, namely the respondent determination technique for a particular purpose. Interviews were conducted directly and were open, namely basic open-ended questions, probing questions, and clarifying questions.[23]

d. Data Analysis

In completing this paper, the author uses qualitative research, which requires information in the form of a description and prefers the meaning behind the description of the data. Research with this qualitative analysis technique will later manage the overall data collected well and analyzed by arranging the data systematically, classified into patterns and themes, categorized and classified, linked to one another, interpreted to understand the meaning of the data, and carried out interpretation from the perspective and knowledge of the researcher after understanding the overall quality of the data.[24]

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[19] Mahkamah Agung, *Putusan Mahkamah Agung Nomor 3001 Tahun 2012.*

[20] Indonesia, *Undang-Undang Jabatan Notaris*, UU No. 30 Tahun 2014, LN Nomor 3, TLN No. 5491, Ps. 15 ayat (2).

[21] Sri Mamudji, *Metode Penelitian dan Penulisan Hukum.* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), hlm. 4.

[22] *Ibid.*

[23] *Ibid.*

[24] Bambang Sunggono, *Metode Penelitian Hukum,* (Jakarta: PT Raja Grafindo Persada, 2001), hlm. 134.

RESULTS AND DISCUSSION

The Urgency of the Role of Notaries in the Pawn Agreement Process according to custom or custom (Ga'de Dae) in Pukdale Village, Kupang Regency, NTT

The implementation of the Pawn Agreement in Pukdale Village, Kupang Regency, NTT is still exist and is very easy to find in the area. This habit that has existed since time immemorial is still maintained and becomes the main alternative in meeting the urgent financial needs of the local community. In addition to a fast and uncomplicated process, the parties can easily determine for themselves how long the Term of the Pawn, the Nominal Amount of the Pawn Agreement, and the area of Agricultural Land that will be used as the Object of the Pawn Guarantee.

This is different from the loan process that is usually carried out by the community in lending institutions such as in a bank, cooperative, or conventional pawnshop. Where in the lending institution above, there are many things that must be prepared by a debtor who wants to apply for a loan. Starting from documents regarding the object of guarantee and other documents related to the debtor such as ID cards, family cards, and others. Not to mention the length of the process in applying for a Loan Credit because usually a survey must be carried out first from the creditor directly at the location of the Collateral object and also the Feasibility Assessment of the loan Credit Agreement that you want to submit.

But behind the convenience of the Pawn Agreement according to custom or custom (Ga'de Dae) in Pukdale Village, Kupang Regency, NTT. There are many problems that arise from the agreement made by the parties. In the process of this pawn agreement, conflicts often occur between the parties, both the giver and the recipient of the pawn, the conflict that occurs is usually triggered by the inability to repay the loan money so that the recipient of the pawn intentionally gives the management of the pawned land to another party. Another example of conflict is the tenure of land that is guaranteed for decades until the party giving the pawn dies, this is the forerunner of conflict between the recipient of the pawn and the heirs of the party giving the pawn who died. Whereas in the provisions of Article 7 of Law No. 56 Prp 1960 on the Determination of Agricultural Land Areas, it is explained that the control of the pawned land by the pawnee is a maximum of 7 years.[25]

In addition, there are also defaults committed during the process of the pawn agreement. The large number of lands that do not have certificates of proof of land ownership rights, causing defaults committed by the parties. For example, a pawnbroker who guarantees land belonging to another heir or his brother's secretly to the recipient of the pawn, because at the time of making the agreement there is no proof of ownership of land rights that can be attached as evidence of the pledge agreement.

Default is also sometimes carried out by the recipient of the pawn, where the recipient of the pawn destroys the collateral land by planting plants that are not supposed to be planted on the land, for example land that should be secondary crops, instead planted with long-lived plants such as cashew and coconut which results in the land being lost. becomes hard and requires more capital to change the function of the land to the beginning of being mortgaged.

The making of a Notary deed in the Agreement is expected to be a solution to reduce land disputes related to the Pawn agreement, especially in the Kupang area of NTT. In Indonesia itself, there are quite a lot of problems regarding land pawns that end up in the Court, both at the first level, at the appeal level at the high court, and at the Cassation level in the Supreme Court. In the decision by the Panel of Judges, Law No. 56 Prp of 1960 on Determination of Agricultural Land Areas was widely used as the basis for legal considerations to decide the case for the Land pawn. For example, Decision Number 36/Pdt.G/2018 which in that decision, the Supreme Court confirmed the previous decision at the Appellate level at the High Court that basically the Control of the Pawn Land Object which had been controlled for more than 25 years should have been returned to the Pledger. in this case it is the plaintiff who is the child or heir of the deceased pawning party who has died.[26]

The regulations governing the land pledge are UUPA (Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles), Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Area, Decree of the Minister of Agriculture and Agrarian Affairs No. Sk. 10/Ka/1963 concerning Affirmation of the Applicability of Article 7 of Law no. 56/Prp/1960 For Pawning of Perennials, Joint Instruction of the Minister of Home Affairs and Regional Autonomy with the Minister of Agrarian Affairs No. 56/Prp/1960. Secretariat 9/1/2 concerning Implementation of Perpu No. 56/1960 on Determination of Agricultural Land Area, Decree of the Minister of Agriculture and

[25] Indonesia, *Undang-Undang Tentang Penetapan Luas Tanah Pertanian*, UU No 56 Prp Tahun 1960, LN No 174, TLN No. 2117, Ps. 7 ayat (1).

[26] Mahkamah Agung, *Putusan Mahkamah Agung Nomor 36 Tahun 2018*

Agrarian Affairs No. Sk. 10/Ka/1963 concerning Affirmation of the Applicability of Article 7 of Law no. 56/Prp/1960 For Pawning of Perennials, Regulation of the Minister of Agriculture and Agrarian No. 20 of 1963 concerning Guidelines for Settlement of Pawn Problems. The regulations governing the existence of agricultural land pawns indicate that the existence of agricultural land pawns exists and is recognized.

The role of a Notary in the Community is as a legal service to the community independently and impartially in the Notary field. That the role of the Notary is an extension of the State where he fulfills part of the state's duties in the field of civil law in order to provide legal protection in the field of private law to citizens who have delegated part of their authority to the Notary.

In providing legal services, notaries are required to be professional and responsible for their actions as stipulated in the law so that they can guarantee legal certainty and protection to people who need the services of a notary. In Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, it is explained that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. Article 1 In the Regulation of the Minister of Law and Human Rights Number 9 of 2017 concerning the Application of the Principles of Knowing Service Users for Notaries, namely:

"Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in the Notary Position Act or based on other laws".

The role of a Notary in relation to its functions, duties and authorities based on the UUJN is to serve the community (the parties) who need authentic written evidence regarding the desired legal events and/or actions based on the laws and regulations that certain legal actions must be made in the form of a deed. authentic. In line with the statement from Mr. Albert Wilson Riwukoreh, S.H. The Notary in Kupang City (Chairman of the INI NTT Pengwil) when met at his office, explained that the Notary as an Authentic Deed Maker based on the UUJN is an institution that exists in the community and arises because of the need for community members who carry out their duties and authorities for a legal act that requires the existence of a legal act. written evidence if there is a dispute or problem so that it can be used as the strongest evidence in court.

A Notary Deed basically has three powers of proof, namely the power of outward proof, the power of formal proof and the power of material proof. The explanation of the strength of the evidence is as follows:

a. The Power of Outward Proof

The power of outward proof means the ability of the deed itself to prove itself as an authentic deed. According to Article 1875 of the Civil Code, the power of outward evidence does not exist in a private deed. An underhand deed is only valid for whom the deed is used, if the party mentioned in the deed acknowledges the truth of his signature.

An authentic deed proves its validity. This means that a deed that meets the requirements and has a form like an authentic deed, then the deed is valid and considered as original (acta publica probant seseipsa) until there is evidence to the contrary. With the strength of the outward proof of an authentic deed, the problem of proving it is only about the authenticity of the official's signature in the deed. According to Article 148 of the Civil Code, proof to the contrary by the opposing party is only allowed by using letters, witnesses and experts.

b. The Power of Formal Evidence

An authentic deed that has the power of formal proof means guaranteeing the truth and certainty of the date of the deed, the truth of the signature contained in the deed, the identity of the people presents (comparaten) and also the place where the deed was made. By not reducing the evidence to the contrary, the formal proof of the authentic deed is complete evidence, where the strength of the proof of the official deed and the deed of the parties is the same, meaning that the official statement contained in both classes of deed and the statements of the parties in the deed has the power of formal proof and applies to everyone.

c. The Power of Material Proving

The strength of proof of authentic deed material is a certainty that the parties do not only appear and explain to the notary but also prove that they have also done what is stated in the deed material. The power of proof of a notarial deed according to Articles 1870, 1871 and Article 1875 of the Civil Code provides perfect and binding proof of the truth contained in the deed for the parties concerned, heirs and recipients of rights, with exceptions if what is stated in the deed is merely a narrative or not. have a direct relationship with the deed.

From the descriptions above, it can be concluded that the Notary Deed as an Authentic Deed has the nature and power of outward proof, the power of formal proof and the power of material proof. A notary deed has perfect proving power, unless it can be proven that the deed is fake. Therefore, if it is used as evidence in court, the judge must accept the notarial deed as perfect evidence. With the

Notarial Deed made in the Pawn agreement by the parties, the possibility of a conflict or default in the future in the Pawn Agreement will be minimized.

According to the author, at this time the community, especially the Pukdale Village, Kupang Regency and all East Nusa Tenggara communities, should involve a notary in the pawn agreement that the parties want to implement. The obligation to involve a Notary in the Pawn Agreement is very helpful for the Parties concerned, so that they can obtain written evidence that has perfect Authenticity in the form of a Notary Deed. A deed that has Authenticity Value can minimize risks that can occur in the future. Apart from the existence of a number of costs that must be incurred in making a Notary Deed, but this will be comparable if later there is a conflict between the parties, the Deed becomes very meaningful and looks very expensive in value.

Implementation of the Notary Deed in the Implementation of the Pawn Agreement according to custom or custom (Ga'de Dae) in Pukdale Village, Kupang Regency, NTT

According to the provisions of the legislation, "Authentic deed is a deed in the form determined by law or before public officials in power for that at the place where the deed was made", as explained in Article 1868 of the Civil Code. There are 3 (three) essential elements in order to fulfill the formal requirements of an authentic deed, as follows:

a) In the form determined by law;

b) Made by and in the presence of a public official;

c) Deed made by or in the presence of a public official who is authorized to do so and at the place where the deed was made.

A notary as a public official who makes an authentic deed is responsible for his actions in connection with his work in making the deed. The scope of the Notary's responsibility includes the formal truth of the deed he made, both civil and criminal as described in the previous chapter. made in the presence of an appellant and attended by at least two witnesses, or attended by four special witnesses for the making of a will deed, so that in other words only a notary can read the contents of the deed before an appellant in accordance with what is stated in the UUJN.

It is important for a Notary to always pay attention to the provisions above if in the future he wants to make a Deed regarding the implementation of the Pawn Agreement according to custom or custom (Ga'de Dae) in Kupang Regency, NTT for Parties who need an Authenticity for the Agreement, so it is hoped that there will be no This creates new problems again, because basically the pledge agreement made with the Notary Deed aims to avoid a conflict or default that may arise in the future. The many problems that arise in the Pawn Agreement have made several people in the Kupang Regency begin to think about putting their Agreement into a Notary Deed. This was conveyed by Mr. Yakobus Ndoki, one of the community members met in the interview said that for now it is better to involve a Notary in the Pawn agreement even though the parties will have to pay more for the deed made, but it will provide a sense of security and comfort. during the Pawn process.

In civil law, an authentic deed that does not have perfect proof will have an impact on the legal terms of the deed. The conditions for cancellation (nietieg) regulated in the Civil Code can be divided into four, namely as follows:

1. Violating the provisions of Article 1230 paragraph 1 of the Civil Code (agree on those who bind themselves). Article 1320 paragraph 1 of the Civil Code states that an agreement is valid if the parties agree to bind themselves. There is no valid agreement (defect of will). In the Civil Code, there are three things that invalidate an agreement based on a defect of will, namely oversight, coercion and fraud (Bedrog).
2. Violating the subjective conditions for the validity of the agreement, namely violating Article 1320 paragraph 2 of the Civil Code (the ability to make agreements). Violating Article 1320 paragraph 2 of the Civil Code (capable of acting according to the law), this article determines that an agreement is valid if the parties are capable of making an agreement.
3. Violating the provisions of Article 1320 paragraph 3 of the Civil Code (a certain matter). A certain thing that is meant is that the object of the agreement must be

certain, can be determined, namely an item that can be traded and the type can be determined clearly and not vaguely.

4. Violating the provisions of Article 1320 paragraph 4 of the Civil Code (a lawful cause). A lawful cause, if the agreement is made based on a valid cause and is justified by law and does not violate the provisions regarding the contents of the agreement.

In addition to the legal conditions of the agreement based on Article 1320 of the Civil Code, according to Mr. Albert Riwu Koreh, there are elements of the agreement that must be fulfilled by the parties in the Pawn agreement to be stated in a Notary Deed, namely:

1. Essential Elements

Essential elements are elements that absolutely must exist in the agreement. These essential elements must be present so that the agreement can be said to be valid. So it can be concluded that the essential element of the agreement is the nature that determines the agreement is created (constructieve oordeel). Article 1320 of the Civil Code is an essential element, if one of the elements is not present then the agreement becomes lame and is considered to have never existed and has no legal consequences.

2. Natural elements

The Naturalia element is an element that has been regulated in the laws and regulations applicable to every agreement, if the parties do not regulate it. This element of naturalia must exist in an agreement, after the essential element has been known. For example, in the case of an agreement that has an essential element of buying and selling, there will definitely be an element of naturalia in the form of an obligation from the seller to bear the object being sold from hidden defects.

3. Accidental Elements

The accidental element is an event that is set forth in an agreement which later there will be or no event will bind the parties. This accidental element is also an important element in an agreement, because whether or not an event occurs in the future which is considered an accidental element can cause the agreement to be implemented according to the agreement or in other ways. For example, in the sale and purchase agreement of goods, by giving a down payment, if the buyer cancels the purchase of the goods, the down payment will be forfeited.

There are no standard provisions in the pawn agreement between the parties in Kupang Regency, NTT. The agreement is based on the agreement of the parties involved. For example, in determining the nominal amount in the agreement, each of them will look for each other for the nominal amount that is deemed appropriate and in accordance with the object that is the collateral for the Pawn. For the area of the object of the pawn there is also no limit on the size of a certain area that is the benchmark in the pawn, for this area varies according to what is agreed upon, there is an area of 1 hectare to tens of hectares. In terms of determining the period of the pledge, according to Mr. Oktavianus Lesiang, each of the parties will agree on how long the Pawn agreement will last.

Regarding this period of time, it has actually been regulated in the provisions of Number 56 Prp of 1960 Article 7 paragraph (1) that "Whoever controls agricultural land with a lien which at the time this regulation comes into force has lasted 7 years or more is obliged to return the land to its owner within a certain period of time. a month after the existing crops have been harvested, with no right to demand a ransom payment". However, from the search results at the research site. Many pawn agreements are found that have passed the 7 (seven) year period as stipulated in the provisions of Number 56 Prp of 1960 Article 7 paragraph (1). According to Mr. Oktavianus, this is indeed based on the ability of the pawnbroker who is considered less capable to be able to return the Pawn money within a period of seven years. For some of these Pawn transactions, there is indeed a nominal amount that is considered quite large and it becomes difficult for the pawnbroker to be able to return the Pawn money, so that in the end it will be agreed that the Pawn agreement will last for more than 7 (seven) years. Even the pawn recipient parties sometimes want to agree on an agreement that is more than seven years old because according to the pawn recipient

parties the nominal money in the agreement given is large enough so that the maximum benefit must be taken from the object of the pawned land.

Another factor felt by the recipients of this pawn wishing for a longer period of time for this pawn is because the processing time for the pawned land is only one harvest period if it is managed by him. This is due to the low rainfall in the Kupang area of NTT which is very minimal so that the availability of water for land management is limited so that it can only be managed during the rainy season between December and March and means that it can only be harvested once a year in one season. In conclusion, the pawning parties feel that if the amount of the pawn money given is large enough, then the period of the pawn should also be longer. In this case, like it or not, it must also be agreed by the pawnbroker who is in a condition of wanting a certain amount of money for his needs.

According to Mr. Albert Riwu Koreh as a Notary, when interviewed on Friday 29 April 2022 said that it could indeed be stated in a Notary Deed. Because the Parties have indeed agreed to make a Pawn with the terms that have been agreed by each party. This is in accordance with the principle of Freedom of Contract and Pacta Sunt Servanda as we know it so far, where the parties may agree on other terms agreed upon by them outside of the existing provisions. He gave an example of the Marriage Agreement that we often encounter, where in fact the Marriage Agreement was made to deviate from the existing rules in the provisions of the Marriage Law number 1 of 1974 where it has been regulated that as long as the marriage bond is still ongoing, the property obtained will become property. together or there will be a union of marital property. The marriage agreement made by the husband and wife is to prevent the union of property as mentioned in the provisions of the marriage law, so they agree that there must be a separation of assets by each party so that a deed must be made that deviates from the provisions of the law. marriage law number 1 of 1974.

Furthermore, regarding the length of this pawn agreement, the parties may actually agree on more than 7 years if indeed they agree to the term of the pawn. Although the provisions of Law Number 56 Prp of 1960 Article 7 paragraph 1 clearly regulates the maximum amount of the Pawn agreement, but if the parties agree that they want to make the agreement more than 7 years, the Notary should not question it. Because according to Mr. Albert as a Notary, the Notaries are actually just expressing the wishes of the parties who want the agreement to be contained in an Authentic deed, which has perfect Proving Power as stated in the provisions of the applicable legislation.

Another factor that must be considered when a notary wants to make a deed regarding a land pawn agreement is the status of the land rights. It is known that there are many land disputes that have occurred in various regions to date. One of the causes of land disputes is the status of land ownership by someone who is not clear, so that it is sued by other parties. In an agreement concerning land, it is necessary to look again at the status and also the transfer of land rights. It can be seen whether the name of the owner of the land who wants to pawn the land is in accordance with what is stated in the land certificate or not.

If the object of land that you want to pawn does not yet have a certificate as proof of land ownership, it must be observed the origin of the land, because according to Mr. Albert, the land may be an inherited property that has not previously been distributed by the heirs, so that it has the potential to cause a conflict in the future. Day. For this problem, the Notary can suggest that a certificate of inheritance at the Lurah and Camat be made in advance, or it can also be made by a Notary to be used as an attachment as Proof of Ownership of the land rights in question.

CONCLUSION

The role of the Notary in a Pawn Agreement is indeed very necessary to ensure the strength of the Proof of the Pawn. One of the factors for the occurrence of conflicts or defaults carried out by the parties in the pawn is due to the absence of an authentic deed that can provide separate protection for the parties. Even today, in Kupang Regency, there are still pawn agreements made orally even though there are not many pawn agreements. A Notary Deed as an Authentic Deed has the nature and Power of Outward Evidence, the

Power of Formal Evidence and the Power of Material Evidence. A notary deed has perfect proving power, unless it can be proven that the deed is fake. Therefore, if it is used as evidence in court, the judge must accept the notarial deed as perfect evidence. With the Notarial Deed made in the Pawn agreement by the parties, the possibility of a conflict or default in the future in the Pawn Agreement will be minimized.

Implementation of the Notary Deed in the Pawn Agreement must continue to pay attention to the provisions of the existing legislation, so that the authenticity of the deed is guaranteed. A notary as a public official who makes an authentic deed is responsible for his actions in connection with his work in making the deed. The scope of the Notary's responsibility includes the formal truth of the deed he made, both civil and criminal as explained in the previous chapter.

It is important for a Notary to always pay attention to the provisions above if in the future he wants to make a Deed regarding the implementation of the Pawn Agreement according to custom or custom (Ga'de Dae) in Kupang Regency, NTT for Parties who need an Authenticity for the Agreement, so it is hoped that there will be no This creates new problems again, because basically the pledge agreement made with the Notary Deed aims to avoid a conflict or default that may arise in the future. The many problems that arise in the Pawn Agreement have made several people in the Kupang Regency begin to think about putting their Agreement into a Notary Deed.

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