

Legal Safeguards for Consumer Collateral Protection at Pawnshops in Indonesia

Neha Aswin Maysura^{1*}, Lu Sudirman²,
Xavier Nugraha³, Go Chin Tjwan⁴, Winda Fitri⁵

*Corresponding Author

ABSTRACT

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PT. Pegadaian is a public service provider that, in general, engages in pawn transactions to secure outstanding debts. In the pawn process, consumers have a right acquired by the party holding a claim on a movable property, which is provided to PT by the debtor. As a civil right, customers need to assert their rights independently through various legal channels and civil law institutions established by the state. This research is conducted to understand the legal protection of consumer collateral at PT. Pegadaian. The research method applied is a type of normative legal research that relatively projects the image of law as a prescriptive field that merely assesses law through its normative perspectives, which, of course, have a prescriptive nature. The approach used is the statute approach. The research results show that in cases of loss or damage to pawn collateral, the Financial Services Authority (OJK) issued POJK Number 31/POJK.05/2016 concerning Pawn Business in 2016. According to this regulation, all items that can be pledged are insurable under pawn law to ensure the availability of the collateral. According to Article 25 of Financial Services Regulation No. 31/POJK.05/2016, PT. Pegadaian will compensate for the damage or loss of consumer collateral caused by the negligence of PT. Pegadaian, whether in the form of goods or money.

Keywords: Legal Safeguards, Collateral Assets, Pledges

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¹ Faculty of Law, Universitas Internasional Batam, Indonesia, 2051035.neha@uib.ac.id

² Faculty of Law, Universitas Internasional Batam, Indonesia

³ Faculty of Law, Universitas Airlangga, Indonesia

⁴ National Taipei University of Business, Taiwan

⁵ Faculty of Law, Universitas Internasional Batam, Indonesia

INTRODUCTION

The current economic development is becoming an increasingly crucial issue. This signifies that, in order to fill the gaps, various facilitations and simplifications are being implemented, whether in terms of execution or regulation, particularly in relation to capital. Therefore, the functions of financial institutions, both banking and non-banking, as well as credit institutions, are highly essential in supporting the public's active participation in economic development (Islami, Iman & Zubaedah, 2021). The roles and functions of financial institutions, whether banks or non-banks, along with credit institutions, should be enhanced to better accommodate and channel public aspirations, encouraging active participation in the development process. These institutions should be more capable of playing their roles as effective channels and organizers of public funds, providing intelligent funding for productive activities. Consequently, the service networks of these institutions need to be constantly improved and expanded, along with increased efficiency, productivity, and reliability, to encompass every part of the country and all segments of the public, thus supporting, inspiring, and fostering public motivation to play a role in development. To meet the necessities of life, money is always required for making purchases and payments for various needs (Siregar, 2020). This often becomes a problem for individuals who lack the financial capacity to meet these needs using their own funds. Consequently, they are forced to borrow from various financing sources through the utilization of various financial services. One of these financial services that provides credit facilities to the public through quick and efficient credit provision is the pawn principle at PT. Pegadaian. This involves the debtor providing a pawn to PT. Pegadaian, transferring ownership of the pledged item to the creditor (Rubiyanti, 2019). Control over the pawned item is maintained until the consumer (debtor) repays their debt. However, the authority over the pledged item does not include the right to use, utilize, or claim any benefits from the item used as collateral, and it does not involve complex bureaucracy with minimal funds, specifically at PT. Pegadaian.

PT. Pegadaian (Persero) serves as a non-banking financial institution with the crucial role of facilitating government-managed capital investment through State-Owned Enterprises (BUMN). Formerly known as Perum Pegadaian (Perusahaan Umum Pegadaian), its

transformation into PT. Pegadaian (Persero) was mandated by Government Regulation No. 10 of 1990 on the Transformation of State Service Companies (Perjan) Pegadaian into a State Company (Perum) Pegadaian. This transition was further modified by Government Regulation No. 103 of 2000 concerning State Companies (Perum) Pegadaian, and most recently revised by Government Regulation No. 51 of 2011 on Changes in Corporate Form. Legally, PT. Pegadaian (Persero) operates as a State-Owned Enterprise (Persero). This legal restructuring aims to enhance efficiency and effectiveness in the disbursement of credit, particularly targeting the lower and middle-income groups, micro-enterprises, small businesses, and medium-sized enterprises (Suwarni, 2011). The shift from Perum to PT is envisioned to stimulate Pegadaian's performance, making it more complex, and fortifying its capital strength. This, in turn, enables Pegadaian to provide even more robust services to its consumers. The decision to undergo legal transformation is primarily motivated by the high demand for micro-finance business in Indonesia. Pegadaian recognizes the need to embrace this business opportunity by elevating its capacities and capabilities. Additionally, Pegadaian's reputable standing among consumers has been steadily improving, fostering loyalty and trust. The shift to a Persero status is anticipated to further enhance Pegadaian's credibility in the eyes of consumers, encouraging them to remain steadfast and increasingly loyal to Pegadaian (Narasanti, 2016).

Legal protection is the provision of safeguards for individuals who feel aggrieved due to the actions or conduct of others (Disemadi, & Regent, 2021). This protection extends to the public, allowing them to enjoy all the rights afforded by the law. In essence, legal protection encompasses all legal measures undertaken by law enforcement authorities to ensure security, both physically and mentally, against threats and various disturbances from any party (Partahi, Nasution, Sunarmi & Siregar, 2021). As a civil right, customers must independently assert their rights through various legal channels and civil law institutions established by the state. The term "public," commonly referred to as customers, transcends personal usage of goods. It has a broad definition, particularly in relation to the utilization of services, as outlined in Article 1, Paragraph (5) of Law Number 8 of 1999, which defines services as "any form of work or performance provided to the public for consumer use." One manifestation of such services in society, falling under consumer protection, is PT. Pegadaian. PT. Pegadaian is a public service institution primarily engaged in pawnbroking to secure a debt. Pawnbroking is described as the right acquired by an individual to a movable item delivered to them by a debtor or another person in their name. This

right empowers the creditor, excluding the costs of auctioning the pawned item and the expenses incurred in safeguarding it after pawning, which must take precedence. In light of this, it is evident that pawnbroking is an integral part of consumer protection, where each individual seeking the services of PT. Pegadaian plays a role in this legal framework (Manopo, 2017).

METHOD

The applied research method involves the normative legal research method, which tends to depict law as a prescriptive field that merely assesses law through the perspective of its norms, inherently possessing a prescriptive nature. In normative research, a statutory approach is essential because the focus of the study revolves around various legal rules (Disemadi, 2022). The data utilized consists of secondary data obtained indirectly, encompassing primary, secondary, and tertiary legal materials. The primary legal source employed in this study involves the examination of theories, concepts, and legal principles. Additionally, an analysis of relevant regulations and laws related to the issue is conducted. The primary legal sources include binding legal regulations such as the Criminal Procedure Code (KHUP), Government Regulation Number 103 of 2000 concerning State-Owned Enterprises (SOEs) Pegadaian, Law Number 19 of 2003 concerning State-Owned Enterprises, Government Regulation Number 7 of 1969 concerning Pegadaian State Enterprise, and Government Regulation Number 10 of 1970 concerning Amendments to Government Regulation Number 7 of 1969 concerning Pegadaian State Enterprise. This is supplemented by secondary legal materials, including legal opinions, doctrines, and theories derived from legal literature. The author also incorporates tertiary legal materials obtained from dictionaries, including the Kamus Besar Bahasa Indonesia, English-language dictionaries, and others.

DISCUSSION AND ANALYSIS

The General Framework of Pawning in Civil Code: A Viable Alternative for Credit Access

The realm of credit acquisition is diversifying, with pawnbroking emerging as a noteworthy player within the broader spectrum of credit-providing entities. The pawn industry offers a pragmatic avenue for individuals facing difficulties in obtaining credit through traditional financial institutions, such as banks. This industry, characterized by its accessibility and flexibility, serves as a viable alternative for the public navigating financial challenges (Hanifah, Santoso & Novianto, 2018). Embraced by society, the practice of pawning, or collateral-based lending, has become an integral component of economic processes designed to facilitate the fulfillment of urgent life necessities without the apprehension of offering personal assets as security (Qatrunnada, Choiriyah & Fitriani, 2018). The legal foundation for such transactions is encapsulated in Book II, Chapter 20, Articles 1150 to 1161 of the Civil Code. Article 1150 of the Civil Code delineates the essence of pawning as “a right acquired by a creditor over a movable asset, delivered to them by a debtor or on behalf of the debtor. This right empowers the creditor to recover repayment from the said asset in priority to other creditors, excluding the expenses incurred for auctioning the pledged asset and costs expended for its preservation after the pledge has been made, both of which take precedence.”

Pawn, as a contractual agreement, involves not only verbal consensus but also necessitates a tangible act— the transfer of the pledged object to the creditor. The pawn process unfolds through a series of stages, commencing with the credit application, progressing to disbursement, and culminating in repayment. In the event of a maturity date approaching without the borrower fulfilling the payment, pawnbrokers extend an opportunity for the borrower to renew the credit, thereby preventing the auctioning of the collateral. Continuous communication is maintained by pawnshops, employing methods such as letters or phone calls, to prompt borrowers to settle their debts promptly before the deadline (Yunita, 2019). Pawn, fundamentally, represents a proprietary interest in specific movable assets owned by the debtor or another party on behalf of the debtor, serving as collateral for a designated debt. This right grants priority (preference rights) to the pawnholder over other creditors, both in terms of auction proceeds and the funds safeguarding all pawned items acquired through public auctions. The recognition of pawn rights materializes or is deemed fulfilled upon the physical transfer of authority over the pawned object to the pawn recipient (Putri, 2020).

In academic terms, the pledge is generally stipulated in Article 1150 of the Civil Code. Based on the formulation of Article 1150 of the Civil Code, it can be discerned that a “pledge” is a proprietary security right over specific movable property owned by the debtor or another party on behalf of the debtor, intended to serve as collateral for the settlement of a specific debt. This grants a preferential right to the pledge holder over other creditors, following the prioritization of auction and salvage expenses incurred from the public auction of the pledged items. A pledge represents a right acquired by a party holding a claim against a movable asset. The movable property is handed over by the party in debt or by another individual on behalf of the debtor to the party holding the claim. The party with the debt entrusts the authority to the creditor to utilize the pledged movable property for debt repayment if the debtor fails to meet their obligations when due. The pledge agreement is an additional agreement, and its occurrence is contingent upon the consensus of all parties involved. In this context, Moch. Isnaeni asserts that, “Property security rights such as a pledge must arise from an agreement between the parties, wherein they undertake the pledge as a settlement for the debtor's debt.” According to M. Isnaeni, a “pledge agreement” is an ancillary agreement designed to specifically support a previously agreed-upon agreement, possessing a relative nature (Adjie & Saputro, 2015).

The provision outlined in Article 1313 of the Civil Code specifies that a pledge agreement involves the mutual consent of both parties, namely the pledgor (debtor) and the pledgee (creditor), binding them to the terms of the agreement. The execution of a pledge agreement between a debtor and a creditor gives rise to rights and obligations for each party. These rights and obligations are grounded in the existence of a legal relationship. The legal relationship may have legal implications for the agreements made (Suari, 2019).

The Financial Services Authority (OJK) carries out supervisory and regulatory functions, including those related to financial services activities in insurance, pension funds, funding institutions, and other financial service entities. Pawn companies are among the various financial service entities, and OJK plays a role in overseeing and regulating them. The Financial Services Authority Regulation (POJK) of 2016 contains provisions that offer legal protection for customers. Starting with the establishment of private pawn companies, where Article 2 of POJK 2016 stipulates the legal entity structure, either in the form of a limited liability company (PT) or a cooperative. Additionally, there is a prohibition that pawn companies are owned directly or

indirectly by foreigners and/or business entities wholly or partially owned by foreigners or foreign entities, except when the direct or indirect ownership is conducted through the stock exchange. Another crucial aspect is the capital, where the total capital deposited by the pawn company is required to be at least IDR 500,000,000 (five hundred million Indonesian Rupiah) for district/city business areas or IDR 2,500,000,000 (two billion Indonesian Rupiah) for provincial business areas. The deposited capital must be paid in cash and in full in the name of the pawn company to one of the commercial banks or Islamic commercial banks in Indonesia (Mottoh, Lontoh & Tambajong, 2023).

Legal Protection for Consumer Collateral

When a creditor, in good faith, receives collateral, they are entitled to legal protection against debtors who lack authority over the pledged assets. The good faith concept implies that the creditor is the rightful owner, and the debtor's rights are not compromised. As the collateral holder, the creditor is safeguarded concerning the satisfaction of various rights related to their claims, providing a form of assurance. Like any legal dispute, consumer disputes must be resolved to foster positive relationships between businesses and consumers. Each party should regain their respective rights. The resolution of disputes based on these legal principles aims to offer solutions ensuring the fulfillment of the rights of both disputing parties. Thus, justice can be upheld, and the law executed as intended.

Referring to Article 19, paragraphs (1) and (3) of the Consumer Protection Law, “consumers who feel aggrieved can directly demand compensation from the manufacturer, and the manufacturer must respond and/or resolve the matter within seven days after the transaction takes place.” For instance, an individual purchases a neatly packaged item only to discover defects or damage upon unpacking it at home. Another example involves an individual using a movable item (such as gold) as collateral for a loan from a state-owned company. When the agreed-upon loan period expires, the customer retrieves the collateral, only to find it damaged, unlike its condition when initially handed over. The customer has the right to demand replacement or a refund within seven days of the transaction. Perum Pegadaian, as a state-owned enterprise (BUMN), holds the authority to provide credit to the public. Functioning with a mission to serve the public while generating profits based on sound corporate management principles, Perum

Pegadaian extends credit to the public grounded in the principles of collateral law (Puspita & Djaroem, 2004).

In the process of obtaining a loan from Pegadaian, there are several requirements and stages that need to be followed. Customers can directly visit Pegadaian, providing the items to be pawned. These collateral items undergo a quality inspection for appraisal and valuation. After the appraisal, the cashier extends credit equivalent to the appraised value of the collateral, with no deductions except for insurance premium cuts (Hapsari, 2016). The role of collateral is pivotal in the overall economic process, as the disbursement of capital credit by financial institutions (whether banks or non-banks) necessitates the presence of collateral. This requirement must be met by every capital seeker if they intend to obtain credit or additional capital, whether for long-term or short-term purposes (Kusumaningtyas, 2016). Collateral objects play a crucial role as an addition to the underlying debt agreement. The collateral serves to protect the needs of the creditor who provides the loan to the debtor pledging an object, allowing the pledged item to be controlled by the pledgee as long as the obligations of the pledger are not fully met. The pledged object is an essential element added to the principal debt agreement (Winarno, 2013).

In the context of collateral, the principle of *inbezitstelling* is applicable. This principle requires the transfer of authority over the collateral to the creditor, as stipulated in Article 1152 of the Civil Code. This poses a significant challenge for various tangible movable assets under pawn, as debtors cannot utilize these items for their own needs. This challenge becomes more pronounced when the pledged asset is essential for daily livelihoods, such as buses or trucks in the transportation industry, various tools in restaurants, bicycles for account collectors, or milk delivery personnel, and so forth (Muhtar, 2013).

The execution of collateral can be discerned through two articles, namely Article 1155 and Article 1156 of the Civil Code. Article 1155 of the Civil Code states: "If the parties have not agreed otherwise, the creditor has the right, if the debtor breaches the promise after the specified period has elapsed, or if no specific period has been set, after a warning to pay has been issued, to instruct the public sale of the pledged goods according to local customs and under the usual conditions, with the intention of recovering the outstanding amount along with interest and costs from the proceeds of the sale. If the pledged goods consist of trade goods or tradable securities in the market or stock exchange, the sale can be conducted in those places, provided it is through the

intervention of two brokers skilled in the trade of those goods.” Article 1156 of the Civil Code declares: “However, if the debtor breaches the promise, the creditor may demand before a judge that the pledged goods be sold in a manner determined by the judge to settle the debt along with interest and costs, or the judge, upon the creditor's request, may grant that the pledged goods remain with the creditor for an amount to be determined in the judgment up to the amount of the debt along with interest and costs. Regarding the sale of pledged goods in the cases mentioned in this article and the preceding article, the creditor is obliged to notify the debtor, no later than the following day by regular mail or telegraph, or failing that, by the first departing mail. Notification by telegraph or registered mail is considered a valid notification.”

Both provisions outlined in Article 1155 and Article 1156 of the Civil Code regulate the execution of collateral. Under Article 1155, the creditor is granted the right to sell the pledged property if the debtor breaches the promise. In such cases, before instructing the sale of the pledged property, the relevant party must first notify the pledgor or debtor of their intention. This notification is deemed valid if a specific deadline has been agreed upon in the main agreement and the collateral agreement, and this deadline has passed while the debtor has failed to fulfill their responsibilities.

Legal protection involves safeguarding the dignity and rights of individuals, as well as acknowledging various human rights possessed by legal subjects according to legal regulations or a set of principles that can shield one entity from another. In the context of customers, this means that the law provides protection for each customer's rights against anything that may compromise those rights (Zein, 2020). In the realm of Indonesian contract law, it safeguards the fundamental human rights of life, freedom, and ownership. The rationale for contract nullification generally aims to protect an individual's sovereignty, while absolute nullification safeguards individual needs and public interests (Zulfirman, 2017). Contracts play a crucial role in initiating business collaboration activities. Legal protection in contracts involves restoring the rights of each party that feels aggrieved, where each contract has its own context and varying impacts. Examples include concepts such as wrongful act, breach of contract, force majeure, various principles of obligation, and others (Sutiyoso, 2013)

According to Article 1313 of the Civil Code, an agreement is defined as “an act in which one or more individuals bind themselves to one or more others.” R. Wirjono Prodjodikoro provides a

more detailed explanation, stating that an agreement is a legal relationship concerning property between two parties, where one party promises or is deemed to promise to do something or refrain from doing something, while the other party has the right to demand the fulfillment of that agreement. Furthermore, an agreement is a legal relationship between legal subjects initiated by the existence of an agreement, where one legal subject has a right to a performance, and the other legal subject is obligated to fulfill that performance (Wisudawan & Agung, 2013).

The current issue of consumer protection law is crucial as it pertains to various regulations aimed at the prosperity of society. This protection is not limited to the public as consumers only; businesses also have equal rights to protection, each with its own rights and responsibilities. The government plays a role in regulating, supervising, and controlling to achieve an effective and interrelated system. This ensures the complex and comprehensive goal of promoting public welfare is achieved (Ghozali, 2018)

The establishment of consumer protection law systems is generally not intended to stifle business activities but rather to encourage a healthy business climate and raise awareness among business entities about the importance of consumer protection. This, in turn, helps create robust companies capable of facing competition while providing certainty regarding consumer protection. Empowering consumers can be achieved through the implementation of adequate consumer protection laws, which are relevant at three stages of consumer transactions: pre-purchase, during purchase, and post-purchase (Rusli, 2014). Empowering consumers is not an easy task but must be pursued to prevent their conditions from deteriorating further. Efforts should be made to balance the consumer's position with that of the producer, considering that both parties are mutually dependent. Consumers have the potential to occupy a balanced position with producers, especially if they unite to elevate their position to one that can compete with or even surpass producers, given that the progress of producers' businesses depends significantly on consumers.

In the execution of a pawn agreement, it is crucial to identify the involved parties, namely the first party (the public pawn company) and the second party (consumer or individual). The first party, or the public pawn company, acts as the debtor or creditor providing credit to the consumer who pledges items to them. On the other hand, the second party, the consumer, is the

party with debt or installment obligations for the pawned items to the first party or public pawn company (Wasita, 2020).

The specific legal protection for debtors is outlined in the Consumer Protection Law (Law No. 8 of 1999). Article 1, paragraph (1) of the Consumer Protection Law defines consumer protection as “all efforts that ensure legal certainty to provide protection to consumers.” Legal protection essentially involves fulfilling the rights of consumers that should be granted to them. Any efforts made to ensure legal certainty indicate that consumer protection is not only oriented towards compensation and sanctions but also towards empowering consumers and increasing business awareness of the importance of consumer protection (Diya, 2020).

The Consumer Protection Law serves as a detailed *lex specialis*, explaining Articles 1337 and 1339 of the Civil Code, which regulate the fundamental aspects of implementing the content of standard contracts (Irawati & Hutagalung, 2023). These regulations include prohibitions on transferring business obligations, the right of businesses to refuse the return of purchased goods, the right to reject the return of money given for goods or services, granting authority to consumers for unilateral actions related to purchased goods, regulations on proving the reduction in the benefits of goods or services, empowering businesses to reduce the use or trim assets of consumers who are the subject of buying and selling services, stating consumer submission to new rules during the use of goods and services, authorizing consumers to release encumbrances, pledges, and guarantees for items purchased in installments, and prohibiting the inclusion of standard clauses that are difficult to see, unclear, or incomprehensible (Article 18, paragraphs (1) and (2) of the Consumer Protection Law) (Poernomo, 2019).

In the event that the rights and obligations of pawnshop consumers are not fulfilled by all parties, including consumers and PT. Pegadaian (Persero), it can be considered that both parties have committed a breach of contract and actions that violate regulations, namely actions that constitute a legal offense due to negligence and negligence in carrying out related pawn agreements, obliging each party to be responsible for such actions (Irawan, 2021). The legal protection provided for consumers in pawn agreements based on the internal regulations of PT. Pegadaian (Persero) is Regulation of the Director 41/DIR I/2017, which states that “Every item serving as collateral at PT. Pegadaian (Persero) will be insured to ensure the existence of the collateral item.” In providing insurance for collateral items, PT. Pegadaian (Persero) Branch Ulak

Karang Padang collaborates with PT. Asuransi Jasa Indonesia (Persero) regarding Insurance for Loss of Pledged Goods and PT. Pegadaian (Persero) Assets. Furthermore, stipulated in the internal provisions of PT. Pegadaian (Persero), consumer protection in the form of collateral item insurance is also regulated in external regulations, namely Article 22 paragraph (3) of the Financial Services Authority Regulation No. 31/POJK.05/2016, which states that “Pawn Companies must insure collateral items based on pawn and entrusted goods laws to mitigate risks.”

PT. Pegadaian (Persero) is required to return collateral items to consumers in the exact physical condition as when the items were delivered, as stated in Article 25 paragraph (1) of the Financial Services Authority Regulation No. 31/POJK.05/2016, which states: “In the event that the consumer has fully repaid the credit money along with credit interest or service fee/return on investment for the Pawn Company conducting business activities based on Islamic principles, the company must return the collateral items to the consumer in the same physical condition as when the collateral items were delivered.” The legal protection provided to consumers in pawn agreements according to PT. Pegadaian's internal regulations is based on REGDIR 41/DIR I/2017, which stipulates that all items used as collateral at PT. Pegadaian can be insured to ensure the condition of those collateral items. In applying for insurance for collateral items, PT. Pegadaian collaborates with Sarana Janesia Utama as the insurance entity for collateral items under Quick Safe Credit (KCA). However, in addition to being regulated in internal regulations, consumer protection in the form of collateral item insurance is also regulated in Article 22 paragraph (3) of the Financial Services Authority Regulation No. 31/POJK.05/2016, which states: “Pawn Companies are required to insure collateral items based on pawn and entrusted goods laws to mitigate risks.”

The mandatory return of pledged items in a condition identical to when they were initially delivered is a fundamental obligation imposed on pawnshops, as stipulated in Article 25, paragraph (1) of Regulation No. 31/PJOK.05/2016. This legal provision underscores the necessity for pawnshops to ensure the physical integrity of the collateral upon return to the consumer. However, should the pawnshop, acting as the creditor, engage in acts of default by either reducing or causing damage to the pledged item, thereby diminishing its value, compensation becomes imperative. The obligation to indemnify is clearly delineated in Article 25, paragraph (2), which

specifies, “In the event that the pledged item, as referred to in paragraph (1), is lost or damaged, the pawnshop must replace it with cash or an item of equal value or equivalent to the value of the collateral at the time of loss or damage, for collateral in the form of jewelry; or with cash or an item of equal value or equivalent to the value of the collateral at the time it was pawned, for collateral other than jewelry.” This legal framework not only safeguards the rights of consumers but also establishes a framework for redress in cases of breach of contractual obligations by pawnshops.

Legal protection provided by Conventional Pawnshops for consumer collateral returned in damaged or defective condition emphasizes the primary priority of compensating around 125% based on the predicted value of the related pledged item. For diamonds, international standards are applied, resulting in a reimbursement of approximately 300% of the predicted value. The second option for legal protection allows for full replacement with a similar or nearly identical item, equivalent to the consumer's collateral value. This option becomes applicable if the customer rejects and objects to the first choice. Furthermore, if the repair option is chosen, and the outcome does not align with expectations, the Conventional Pawnshop compensates fully with a similar or equivalent item. These legal protections are categorized based on pledged item types, compensation amounts, and claim mechanisms, ensuring fairness to all parties involved. Calculations consider the storage location and insurance provided by the Conventional Pawnshop, with insurance being a separate agreement between the pawnshop and either General or Conventional Insurance (Shobroni, 2020).

In contrast, Sharia Pawnshops offer legal protection for consumer collateral, or Rahn, returned in damaged or defective condition. The primary emphasis is on compensating with a full replacement using a similar or nearly identical item of equal value. However, for gold and gold jewelry, an additional 25% of the predicted value is included in the compensation. For electronic items and vehicles, Sharia Pawnshops implement a recovery option with an added 25% of the predicted value. Another legal protection option is a compensation of 125% of the predicted value for consumer collateral or Rahn. Similar to Conventional Pawnshops, international standards apply to diamonds, resulting in a reimbursement of 300% of the predicted value. The second option becomes applicable for relatively minor damages, as per Sharia Pawnshop standards. These legal protections are also classified based on pledged item types, compensation amounts, and claim mechanisms, ensuring fairness in all aspects. Calculations consider storage locations and

insurance, with Sharia Pawnshops engaging in a separate agreement with Sharia Insurance (Tampubolon, 2016).

Legal protection is a mandatory aspect for consumers engaging in pawn credit agreements with PT. Pegadaian (Persero). The effectiveness of legal implementation within the public sphere closely relates to public legal awareness. The realization of a credit agreement is determined by the approval of both parties, evidenced by a written document known as the Credit Evidence Letter (SBK) in PT. Pegadaian (Persero). The creation of legal protection relies on the effectiveness of legal usage within the public sphere, which is closely tied to public legal awareness. According to Soerjono Soekanto, the application of a legal enforcement system depends on various factors, including the legal aspect itself, law enforcement factors, public factors, facilities or tools assisting law enforcement, and cultural factors representing human creativity and intellect in society.

CONCLUSION

Based on the findings of the conducted research, it can be concluded that the first responsibility of PT. Pegadaian (Persero) regarding the loss or damage of pawned collateral is addressed through compensating consumers for the loss or damage to their pledged items. The compensation amount is determined in accordance with the regulations set by PT. Pegadaian (Persero), where the institution can provide compensation up to 125% of the predicted value of the collateral as assessed by the consumer in case of loss. Secondly, dispute resolution at PT. Pegadaian (Persero) in cases of damage or loss of pawned collateral involves both litigation and non-litigation avenues. The non-litigation route includes Article 1 paragraph 1 of Law Number 30 of 1999 regarding Arbitration and Alternative Dispute Resolution, defining arbitration as “a method of settling a civil dispute outside the general court based on a written arbitration agreement made by the disputing parties.” However, the litigation route has not been widely utilized, mainly due to the complexity and cost associated with legal proceedings, making it less accessible for small customers and micro-businesses. Thirdly, legal protection for debtors (consumers) in the event of defects and loss of pawned collateral is established by the Financial Services Authority (OJK). In 2016, OJK issued Regulation No. 31/POJK.05/2016 regarding Pawnshop Businesses, which mandates that all items intended as collateral can be insured under

pawn law to ensure the availability of related collateral items. According to Article 25 of Regulation No. 31/POJK.05/2016, PT. Pegadaian (Persero) is obliged to compensate for the loss or damage of collateral items owned by consumers caused by mistakes on the part of PT. Pegadaian (Persero), whether in the form of goods or money.

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REFERENCES

- Adjie, H., & Saputro, E. H. (2015). Perlindungan Hukum Bagi Pemilik Objek Gadai Atas Pelelangan Objek Gadai. *Jurnal Hukum Bisnis*, 1(1). <https://doi.org/10.33121/hukumbisnis.v1i1.57>
- Disemadi, H. S. (2022). Lenses of legal research: A descriptive essay on legal research methodologies. *Journal of Judicial Review*, 24(2), 289-304. <https://doi.org/10.37253/jjr.v24i2.7280>
- Disemadi, H. S., & Regent, R. (2021). Urgensi Suatu Regulasi yang Komprehensif Tentang Fintech Berbasis Pinjaman Online Sebagai Upaya Perlindungan Konsumen di Indonesia. *Jurnal Komunikasi Hukum (JKH)*, 7(2), 605-618, <https://doi.org/10.23887/jkh.v7i2.37991>
- Diya, H. (2020). Perlindungan Hukum Terhadap Nasabah Atas Kerusakan Atau Kehilangan Barang Jaminan (Studi Pada PT. Pegadaian (PERSERO) Cabang Ulak Karang Kota Padang). *Unes Journal of Swara Justisia*, 4(2), 139-146. <https://doi.org/10.31933/ujsj.v4i2.160>
- Hanifah, A., Santoso, B. S., & Navianto, I. (2018). Urgensi Pengaturan Perusahaan Gadai Swasta Dengan Sistem Online. *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah*, 3(1), 30-41. <http://dx.doi.org/10.24235/jm.v3i1.2935>
- Hapsari, R. S. (2016). *Perlindungan Hukum terhadap Nasabah dalam Hal Terjadi Kerusakan atau Kehilangan Barang Jaminan di PT. Pegadaian (Persero) Kota Madiun* (Doctoral dissertation, Sebelas Maret University). <https://www.neliti.com/publications/213230/perlindungan-hukum-terhadap-nasabah-dalam-hal-terjadi-kerusakan-atau-kehilangan>
- Islami, M., Iman, C. H., & Zubaedah, R. (2021). Aspek Hukum atas Rusaknya Barang Jaminan di PT. Pegadaian (Persero) dan Perlindungan Hukumnya. *Humani (Hukum dan Masyarakat Madani)*, 11, 193-206.
- Irawati, J., & Hutagalung, K. G. K. (2023). Standard clauses in vehicle purchase credit agreements in Indonesia: An examination of consumer protection and legal enforcement. *Journal of Judicial Review*, 25(2), 255-272. <https://doi.org/10.37253/jjr.v25i2.8589>

- Irawan, R. S. (2021). Tinjauan Yuridis Hak-Hak Nasabah Pegadaian Dalam Hal Terjadi Pelelangan Terhadap Barang Jaminan. *Journal of Law (Jurnal Ilmu Hukum)*, 7(2), 512-526. <http://ejournal.untag-smd.ac.id/index.php/DD/article/view/5646>
- Gozali, A. R. (2018). *Eksekusi Objek Jaminan Gadai Yang Melibatkan Badan Penyelesaian Sengketa Konsumen (Study Kasus Putusan Mahkamah Agung Nomor 480 K/Pdt. Sus/2012)* (Doctoral dissertation, Universitas 17 Agustus 1945). <http://repository.untag-sby.ac.id/id/eprint/812>
- Kusumaningtyas, R. F. (2016). Perkembangan Hukum Jaminan Fidusia Berkaitan dengan Hak Cipta Sebagai Objek Jaminan Fidusia. *Pandecta Research Law Journal*, 11(1), 96-112. <https://doi.org/10.15294/pandecta.v11i1.6465>
- Manopo, R. T. (2017). "Perlindungan Hukum Terhadap Keamanan Barang Jaminan Milik Konsumen PT. Pegadaian". *Lex Administratum*, 5(7), 1-14: 36. <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/17538>
- Mottoh, K. A., Lontoh, R. L., & Tambajong, H. B. (2023). Penyelesaian Sengketa Pegadaian Terhadap Konsumen Atas Rusaknya Objek Jaminan Gadai. *UNES Law Review*, 6(2), 7007-7012. <https://doi.org/10.31933/unesrev.v6i2.1591>
- Muhtar, M. M. (2013). Perlindungan Hukum Bagi Kreditur Pada Perjanjian Fidusia Dalam Praktek. *Lex Privatum*, 1(2). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/1699>
- Narasanti, I. (2016). Perlindungan Hukum Terhadap Pt. Pegadaian (Persero) Dalam Hal Barang Jaminan Gadai Bukan Milik Debitur. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 5(1), 69 - 82. doi:10.24843/JMHU.2016.v05.i01.p07
- Putri, A. O. (2020). Perlindungan Hukum Terhadap Hak Pemegang Jaminan Gadai Saham. *Lex Renaissance*, 5(1), 108-123. <https://doi.org/10.20885/JLR.vol5.iss1.art7>
- Puspita, J., & Djaroem, R. (2004). Perusahaan Umum (Perum) Pegadaian sebagai Sarana Pemberian Kredit. *Lex Jurnalica*, 1(3), 17938. <https://www.neliti.com/publications/17938/perusahaan-umum-perum-pegadaian-sebagai-sarana-pemberian-kredit>
- Partahi, F. E. F., Nasution, B., Sunarmi, S., & Siregar, M. (2021). Perlindungan Hukum Investor Terhadap Produk Investasi Emas Di Pegadaian (Studi Pada PT. Pegadaian (Persero) Cabang Kisaran). *Iuris Studia: Jurnal Kajian Hukum*, 2(3), 522-528, <https://doi.org/10.55357/is.v2i3.169>
- Poernomo, S. L. (2019). Standar Kontrak Dalam Perspektif Hukum Perlindungan Konsumen. *Jurnal Penelitian Hukum De Jure*, 19(1), 109-120. https://www.researchgate.net/publication/332507121_Standar_Kontrak_dalam_Perspektif_Hukum_Perlindungan_Konsumen
- Qatrunnada, H. M., Choiriyah, L., & Fitriani, N. (2018). Gadai Dalam Perspektif KuhPerdata Dan Hukum Islam. *Maliyah: Jurnal Hukum Bisnis Islam*, 8(2), 175-197. <https://doi.org/10.15642/maliyah.2018.8.2.27-49>

- Rubiyanti, T. (2019). Analisis Pengaruh Jumlah Nasabah, Pendapatan dan Harga Emas terhadap Tingkat Penyaluran Gadai Syariah (RAHN) pada PT Pegadaian (Persero) Per Tahun 2012-2017. *Jurnal Ekonomi Syariah, Akuntansi, dan Perbankan*, 3(1), 31-55.
- Rusli, T. (2014). Keterbatasan badan penyelesaian sengketa konsumen dalam penyelesaian sengketa konsumen. *Masalah-Masalah Hukum*, 43(2), 233-239. DOI: 10.14710/mmh.43.2.2014.233-239
- Shobroni, S. (2020). Implementasi Penerapan Perlindungan Konsumen Dalam Gadai Syariah Dan Gadai Konvensional. *1(6)*, 773-788. <http://journalsyntaxadmiration.com/index.php/jurnal/article/download/112/172>
- Sutiyoso, B. (2013). Penafsiran Kontrak Menurut Kitab Undang-Undang Hukum Perdata dan Maknanya Bagi Para Pihak yang Bersangkutan. *Jurnal Hukum Ius Quia Iustum*, 20(2), 207-233. <https://doi.org/10.20885/iustum.vol20.iss2.art3>
- Suwarni, E. S. (2011). *Perlindungan Hukum Terhadap Hak-Hak Nasabah Pegadaian Dalam Hal Terjadi Pelelangan Terhadap Barang Jaminan (Studi Kasus di Perum Pegadaian Cabang Surakarta)* (Doctoral dissertation, Universitas Muhammadiyah Surakarta).
- Siregar, P. A. (2020). Akibat Hukum Pelelangan Objek Jaminan Gadai Oleh Kreditur Tanpa Adanya Peringatan Terhadap Nasabah Oleh Perum Pegadaian. *Iuris Studia: Jurnal Kajian Hukum*, 1(1), 21-30, <https://doi.org/10.55357/is.v1i1.17>
- Suari, N. P. W. M. S. (2019). Perluasan Pengaturan Gadai Setelah Dikeluarkannya Peraturan Otoritas Jasa Keuangan Tentang Usaha Pergadaian. *Acta Comitatus: Jurnal Hukum Kenotariatan*, 4(1), 11-21. <https://ojs.unud.ac.id/index.php/actacomitatus/article/view/48952/29161>
- Tampubolon, W. S. (2016). Upaya Perlindungan Hukum Bagi Konsumen Ditinjau Dari Undang-Undang Perlindungan Konsumen. *Jurnal Ilmiah Advokasi*, 4(1), 53-61. DOI: <https://doi.org/10.36987/jiad.v4i1.356>
- Wasita, A. (2020). Perlindungan Hukum Terhadap Pemegang Polis Asuransi Jiwa. *Business Economic, Communication, and Social Sciences Journal (BECOSS)*, 2(1), 105-113. DOI: <https://doi.org/10.21512/becossjournal.v2i1.6131>
- Winarno, J. (2013). Perlindungan Hukum Bagi Kreditur Pada Perjanjian Jaminan Fidusia. *Jurnal Independent*, 1(1), 44-55. <https://doi.org/10.30736/ji.v1i1.5>
- Wisudawan, I., & Agung, G. (2013). Bentuk Kepastian Perlindungan Hukum Dalam Perjanjian Pembiayaan Konsumen. *GaneÇ Swara*, 7(1). <http://unmasmataram.ac.id/wp/wp-content/uploads/1.-Gusti-Agung-Wisudawan.pdf>
- Yunita, A. (2019). Eksekusi Gadai Terhadap Objek Jaminan Yang Bukan Milik Sipiemberi Gadai Pada PT. Pegadaian. *Lex Librum: Jurnal Ilmu Hukum*, 6(1), 11-22. <http://dx.doi.org/10.46839/ljih.v6i1.147>

- Zein Alydrus, S. M. (2020). Perlindungan Hukum Terhadap Konsumen Pt. Pln (Persero) Balikpapan Terkait Adanya Pemadaman Listrik. *Lex Suprema: Jurnal Ilmu hukum*, 2(1). <https://jurnal.law.uniba-bpn.ac.id/index.php/lexsuprema/article/view/255>
- Zulfirman, Z. (2017). Hak Dasar Manusia Dalam Hukum Kontrak Indonesia: Analisis Kritis Syarat Kontrak. *Jurnal Penelitian Hukum De Jure*, 17(2), 155-176. https://www.researchgate.net/publication/338366521_Hak_Dasar_Manusia_Dalam_Hukum_Kontrak_Indonesia_Analisis_Kritis_Syarat_Kontrak