



## Legal Sustainability Of Object Gadai Execution By A Porrietary Assets That Are Debt Guaranteed Without Agreement Of Husband Or Wife (Study At PT. Pegadaian in Medan City)

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> <i>Execution; Object of Pawn; Marriage Property</i></p> <p><b>How to cite:</b> Efendi, Yose Rizal., Et., Al. (2022). Legal certainty for the execution of the object of the mortgage by the pawnshop on marital assets that are used as collateral for debt without the consent of the husband or wife (study at pawnshop, medan). <i>Veteran Law Review</i>. 5(1). 40 – 54.</p> <p><b>Received:</b> 2021-04-01 <b>Revised:</b> 2022-04-16 <b>Accepted:</b> 2022-05-17</p>	<p>As a marriage bond progresses, there will certainly be tests or trials that come, especially economic problems, in this day and age one of the ways that is often taken in solving problems economy is by using bank facilities as referred to in Article 1 point 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which states that a bank is a business entity that collects funds from the public in the form of savings and distributes it to the public in the form of credit. and or other forms in order to improve the lives of many people. The type of research used in this research is normative legal research. This type of research was chosen because the study in this study is a study of legal science, therefore it must be studied from its legal aspects. Normative legal research is research on library materials (secondary data) that are relevant to the problems to be analyzed, both in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Legal certainty for the legal arrangement of the object of a pledge which is a joint asset in a marriage which is used as a debt guarantee without the consent of the husband or wife is contained in Article 1 of Law Number 1 Year 1974 concerning Marriage and Article 119 of the Civil Code Kemdian Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage has actually provided a legal corridor, that the action to carry out a pledge in the form of joint assets obtained during the marriage period must be based on an agreement between the two parties between the husband and wife. The process of executing the object of the pledge in the form of marital assets which is used as collateral for debt without the consent of the husband or wife at PT. Pegadaian Medan City, first PT. Pegadaian Medan City conveyed that the debtor is due for payment which will be sent via an official letter from PT. Mortgage of Medan City, then starting 7 (seven) days after the official notification to the debtor, there is also no good faith of the debtor in paying the</p>

## 1. Introduction

Marriage will give rise to problems regarding assets, namely regarding joint property with husband and wife as well as personal assets and / or assets. If traced further, one of the goals of marriage is to obtain offspring, apart from of course to be able to live together in a community in one kinship bond. In order to live together, worldly wealth is needed which can be used by husband and wife to fulfill their daily needs. This worldly wealth is known as marital property or joint property".<sup>1</sup> Abdul Manan in his book said that joint property is property that is obtained during the marriage bond, without question being registered under anyone's name.<sup>2</sup> Based on Abdul Manan's opinion, we have got an understanding of joint assets, namely assets that can be collected or collected by both the wife and husband during the marriage period.

As a marriage bond progresses, there will certainly be tests or trials that come, especially economic problems, of course the husband as the head of the household is the burden of responsibility in providing for his wife both physically and mentally, in this day and age one of the ways that is often taken in solving problems economy is by using bank facilities as referred to in Article 1 point 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which states that a bank is a business entity that collects funds from the public in the form of savings and distributes it to the public in the form of credit. and or other forms in order to improve the lives of many people. Then in the vulnerability of the past few years, many institutions have provided money lending facilities or pawnshops, both in the form of State-Owned Enterprises (BUMN) and private entities that are covered by the Financial Services Authority (OJK). The way to provide goods, both moving and immovable, or in everyday language, guarantees goods to get a material loan. Then if we trace the legal term guarantee comes from the word "recht" in its series as "zekerheidsrechten", which means right, so zekerheidsrechten is a guarantee right.

As the definition of guarantee above, of course there must be a guarantor whose purpose is that the money borrowed is guaranteed to be returned, of course in that case there must be an item being pawned as collateral. What is a pawn all about? Subekti in the book Purwahid Patrik and Kashadi says that with reference to pandrecht or liens are what is called an accessoir right, meaning that the right depends on the existence of a basic agreement, namely

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<sup>1</sup> Soerodjo Wignjodipoero. (1995). *Pengantar dan Asas-asas Hukum Adat*. (PP. 149). Jakarta. Gunung Agung.

<sup>2</sup> Abdul Manan. (2006). *Aneka Masalah Hukum Perdata Islam di Indonesia*. (PP. 108-109). Jakarta. Kencana.

a debt agreement guaranteed by this right, and which can be used as the object of *pandrecht*. is any moving object that does not belong to the debtor himself. On the other hand, it is not necessary that the object belongs to the person in debt, although usually the person in debt is also the one who provides the dependents, but is not required.<sup>3</sup>

In fact, from an economic point of view, currently guarantee institutions are very much needed for the development of the world of investment and trade in Indonesia. This investment and trade requires huge funds. The funds are obtained through bank credit, the provision of credit by the bank requires a guarantee to guarantee the repayment of debtor's debt, so that this guarantee is an anticipatory step against the possibility of risk arising in credit repayment. Actually, the arrangement of guarantee institutions both contained in the Civil Code and outside the Civil Code basically aims to ensure that the party who is obliged in an agreement as a debtor does not easily deny the agreement that has been stated in the agreement or in other words it aims to guarantee that the debtor's debt will be paid in full. as a guarantee for the fulfillment of the principal agreement, because the guarantee can be interpreted as something that is given to the creditor to create confidence that the debtor will fulfill his obligations which can be valued in money as a result of the agreement.

In connection with this, because the object of the pawn is movable property, some provisions that need to be remembered are the provisions regarding *bezit* which are contained in the legality of the norm of Article 529 of the Civil Code, which in essence is a movable object that can be pawned by the person in control, namely enjoying an item that is in it. power of a person personally or by means of other people, as if the goods were his own. Subekti then reiterated that *bezit* is a state of birth, in which a person controls an object as if it were his own, which is protected by law, without questioning who owns the property.

Regarding creditors experiencing obstacles when executing the object of collateral due to the debtor's default to pay off his debt and one of the obstacles that occurs because the object of guarantee is in the form of joint assets in marriage. Towards the binding of joint assets in marriage as a guarantee for repayment of debt, often triggers legal problems and eventually goes to court, because to enter into a credit agreement with joint property guarantees, both husband and wife must obtain approval from both parties. Based on the explanation above, if a person is in control of movable property, he can be considered as the owner of the movable property and if he intends to be indebted to a pawning institution, the movable property under control can be used as collateral for repayment of his debt. The next problem is related to the condition that movable property that is being controlled is joint property in

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<sup>3</sup> Purwahid Patrik dan Kashadi. (2003). *Hukum Jaminan*. (PP. 13). Semarang: Fakultas Hukum Universitas Diponegoro.

marriage, so based on Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is determined that regarding joint property a husband or wife can act with the consent of both parties.

This means that if the husband wants to pawn an object or joint property to a pawnshop, it must be known by his wife and vice versa. Because it is related to joint property in Article 36 paragraph (1) Law Number 1 of 1974 concerning Marriage, it is stated that "the husband or wife can act on the consent of both parties, whereas based on paragraph (2), the husband and wife have the right to the inheritance of each husband and wife. fully to take legal action regarding his property. The same provision can also be seen in Article 51 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which stipulates that a wife, while in the marriage bond, has the same rights and responsibilities as her husband for all matters relating to her marital life. relationship with their children and the right to own and manage assets. The existence of a provision like this implies that the husband and wife have the right to manage joint assets in a marriage, so that one party cannot leave the other party to take legal action on joint assets in marriage, because their position is equal, namely as "joint owner" of " joint property ".

Regarding the provision of Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it provides a limit on actions if a husband or wife intends to commit a legal act whose object is related to the existence of joint assets, whether in the form of movable property or movable property, then the legal act is must be based on the agreement of both husband and wife. Even so, in practice it is very ironic regarding the practice of pawnshops where the object is collective property, so the agreement of both parties simultaneously husband and wife is never asked for. It is different if the collateral for debt is immovable property such as land which is joint property which we know as mortgage rights, then the creditor always asks for the aPProval of both husband and wife.

Then the fact is that it is currently juridically interesting to research and analyze, the aim of which is to find out the legal certainty of the implementation of a pawn whose object is joint property, but the pawnshop is carried out without the permission of one of the spouses in the husband or wife marriage to be conducted a case study at PT . Pawnshop Medan City, therefore the researcher is interested in reviewing the thesis with the title "Legal Certainty of Execution of Pawn Objects by Pegadaian Against Marriage Assets which are used as debt security without the consent of husband or wife (Study at PT. Pegadaian Medan City).

Based on the description above, the main problem can be drawn, namely How is the legal certainty in the legal arrangement of the object of the pledge which is a joint asset in a marriage which is used as a debt guarantee without the consent of the husband or wife? How is the process of executing a pawning object in the form of marital assets which is used as collateral for debt without

the consent of husband or wife at PT. Medan City Pegadaian? How is the validity of the execution of the object of the mortgage by PT. Medan City Pegadaian without a Court decision?

## **2. Method**

The method aPPLIED in a study is the main key to assessing the merits of a study.<sup>4</sup> The method that determines the flow of activities, starting from data hunting to concluding a truth obtained in the research. This writing uses a normative juridical legal research method (normative research).<sup>5</sup> This type of research was chosen because the study in this study is a study of legal science, therefore it must be studied from its legal aspects. Normative legal research namely legal research that examines written law from various aspects, ranging from aspects of theory, history, philosophy, comparative structure and composition, environment and material, consistency, general explanation, and article by article, formality and binding power of a law and legal materials used, but does not examine the aPPLIED and implementation aspects.<sup>6</sup> Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion.<sup>7</sup>

## **3. Result & Analysis**

### **3.1 Legal Certainty Legal Arrangements for Pawning Objects Which Are As Joint Assets In Marriage That Are Used As Collateral For Debt Without The Consent Of Husband Or Wife**

Legal certainty is very closely related to legal arrangements, because every statutory regulation creates a written legal certainty, so that it becomes a benchmark in carrying out the law enforcement process in Indonesia. Not only that, legal certainty is one of the objectives of the law as it can be enforced by the community. Law Number 1 of 1974 concerning Marriage came into effect in Indonesia since January 2, 1974. This legal product is a manifestation of the

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<sup>4</sup> Ismail Koto. (2021). Hate Speech Dan Hoax Ditinjau Dari Undang-Undang Ite Dan Hukum Islam. SOSEK: Jurnal Sosial dan Ekonomi Volume 2 Issue 1 PP. 178

<sup>5</sup> Padian Adi Selamat Siregar, Ismail Koto. (2019). Syarat Objektivitas Dan Subjektivitas Penangguhan Penahanan. DE LEGA LATA Jurnal Ilmu Hukum Fakultas Hukum Umsu. Volume 4 Nomor 2 PP. 50

<sup>6</sup> Ismail Koto. (2021). Peran Badan Usaha Milik Negara Dalam Penyelenggaraan Perekonomian Nasional Guna Mewujudkan Kesejahteraan Masyarakat. Seminar Nasional Teknologi Edukasi dan Humaniora 2021, ke-1. PP. 461

<sup>7</sup> Ismail Koto & Faisal. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. Journal of Education, Humaniora and Social Sciences (JEHSS). Vol 4, No. 2. PP. 777



aspirations of the Indonesian people to create their own national marriage law in the sense that it was made by the Indonesian people, and applies to all Indonesian territory. Talking about joint property in marriage is property that is obtained during marriage. Then regarding the rights and obligations, both husband and wife have the same rights and obligations over the joint property. This opinion is reinforced by the view of Sayuti Thalib in his book family law in Indonesia, saying that "joint property is property obtained during marriage outside of gifts or inheritance". The meaning is property obtained through their business or on their own during the marriage period. In the jurisprudence of the Religious Courts it is also explained that joint assets are assets obtained during the marriage period in connection with the law of marriage, both through the intermediary of the wife and through the intermediary of the husband. This property is obtained as a result of the works of the husband and wife in relation to marriage.<sup>8</sup>

Then, one of the meanings of joint property in marriage is joint property of husband and wife which is obtained by both of them during marriage, such as if someone gives money, or a motorbike, or other things to the husband and wife, or property purchased by the husband. the wife from their money together, or savings from the husband's salary and the wife's salary combined, all of which can be categorized as joint assets. This definition is in accordance with the meaning of joint assets as stated in Law No. 1 of 1974 concerning Marriage, namely "property obtained during marriage becomes joint property. In Law Number 1 of 1974 it is stated that property obtained during marriage becomes joint property. So joint property according to Law Number 1 of 1974 Article 35 to Article 37 are property obtained during marriage. Meanwhile, the inheritance of each husband and wife and property that is obtained by each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise.

Furthermore, neither husband or wife without the consent of one of the parties is allowed to sell or transfer the joint property, in this case, both husband and wife have the responsibility to safeguard the joint property. Due to debt responsibility, both husband and wife debt, can be borne by their respective assets. Then the debt made for the benefit of the family is charged to joint assets. However, if the joint assets are insufficient, then it is borne by the husband's assets, if the husband's assets are insufficient, then it is borne by the wife's assets.<sup>9</sup>

Then in everyday life, property has an important meaning for someone because by owning assets we can fulfill the necessities of life and obtain a good social status in society, the various terms that come from each of the customary environments concerned differ in interpreting the shared assets, according to

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<sup>8</sup> Abdul Manan. ( 2006). *Aneka Masalah Hukum Perdata Islam Di Indonesia*. (PP. 108). Jakarta: Kencana.

<sup>9</sup> Slamet Abidin Aminuddin. (1999). *Fiqh Munakahat 1*. (PP. 183). Bandung: CV Pustaka Setia.

With the diversity of the environment of indigenous peoples such as in Acehese society, the term "property of the spirit" is used, in the Malay ethnic community it is known as "treasure sayarekat", in Javanese society it is known as "treasure gono-gini". Many more terms are used, such as "wealth of a rich king" and so on. All of these terms and terms carry the same meaning, namely regarding "common property" in a marriage between husband and wife.<sup>10</sup>

In accordance with the provisions of the norms as referred to in Article 35 above, Article 85 Complications of Islamic Law and Article 97 Complications of Islamic Law, it is stated that marital assets can be divided into five parts, namely first, the husband's inheritance, namely the assets that the husband carries before the marriage. Second, the wife's inheritance, namely the assets that she carries from before the marriage. Third, joint assets of husband and wife, namely assets acquired during marriage become joint assets of husband and wife. Fourth, assets resulting from gifts, grants, inheritance, and shadaqah from husbands, namely assets that are obtained as gifts or inheritance and finally assets resulting from gifts, grants, inheritance, and wife's shadaqah, namely assets obtained as gifts or inheritance.

The Civil Code is a reference for certain groups in legal matters relating to joint assets, long before the existence of Law Number 1 of 1974 concerning Marriage, the Civil Code has regulated the law of joint assets. The provisions in the Civil Code governing marriage assets are regulated in titles VI, VII, and VIII. In Article 119 paragraph (1) of the Civil Code, it is stated that from the moment the marriage takes place, by law there is a unanimous union between the assets of the husband and wife. This means that by marriage between husband and wife, the husband and wife's assets are merged into one. Thus, in principle, in one family, there is one common property. The Civil Code in the case of assets obtained in a marriage bond or what we call joint assets also gives a husband or wife a position to carry out actions related to their joint assets. Article 122 of the Civil Code, indicates that the benefits obtained at the time of the marriage bond are mutual benefits, as well as in the case of debts incurred at the time of the marriage bond, it becomes joint debt.

Based on Article 1150 to Article 1160 of the Civil Code, we can take the meaning of pledge, which is a right obtained by a creditor for a movable property, which is handed over to him by the debtor or by another person on his behalf, and which gives the creditor power to take the payment of the said goods before other creditors, with the exception of the costs for auctioning the goods and the costs incurred to save them after the goods are pawned, which costs must take precedence. The definition of pawning as above, based on the provisions of Article 1150 of the Civil Code, Zainuddin Ali argues that pawning (*rahn*) is holding material collateral belonging to the borrower (*rahin*) as collateral for the loan he receives and the goods received is of

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<sup>10</sup> M. Yahya Harahap. (2005). *Kedudukan Kewenangan dan Acara Peradilan Agama*. (PP. 272). Jakarta: Sinar Grafika.

economic value, so that the party who is holding (murtahin) is guaranteed to take back all or part of the debt from the said goods, if the party who is pawning cannot pay the debt at the specified time. Therefore, it appears that a shari'ah pawn is an agreement between someone to hand over property in the form of gold, jewelry, vehicles and or other assets as a guarantee or grandeur to a person or sharia pawnshop based on sharia pawning law.<sup>11</sup>

Based on the description of norms in Law Number 1 of 1974 concerning Marriage, approval from the husband or wife is required to guarantee the movable property to the pawning institution. In addition, the debt agreement between the wife and the finance company must also obtain the consent of the husband, if the wife intends to turn the debt from the financing agreement into joint debt and the repayment can be taken from the joint assets. If the financing agreement is unknown and not approved by the husband, then the debt from the financing becomes the personal debt of the wife or one of the parties between the husband or wife. Legal certainty of joint property as a pledge object carried out by one of the parties, both a wife and a husband, based on Article 35 of Law No.1 of 1974 concerning Marriage, we can initiate the basic foundation of legal certainty, which explains that joint property is property obtained during marriage. Regarding the argumentation that joint property is used or transferred, it must be with the knowledge or willingness of the husband or wife in accordance with the provisions of Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which is a provision regarding the authority of husband and wife over joint assets, affirming that regarding joint assets of husband and wife can act on the agreement of both parties.

Based on the description above, the position of joint assets as a result of marriage, both husband and wife, are entitled to joint assets because of the equal position of husband and wife in the household as well as in the community. As emphasized in Article 31 Paragraph (1) of Law Number 1 of 1974 concerning Marriage regarding the rights and obligations of husband and wife, namely the rights and obligations of the wife are balanced with the rights and positions of the husband in the household and the association of living together in society. As a result of the balanced position of husband and wife, authority over common objects is also balanced. Furthermore, it is regulated in Article 31 Paragraph (2) Law Number 1 of 1974 concerning Marriage, each party has the right to take legal actions".

### **3.2. The Execution Process Of Pawn Objects In The Form Of Marriage Assets Used As Collateral For Debt Without The Approval Of Husband Or Wife At Pt. Medan City Pegadaian**

Based on the results of the interview, the items most often used as objects for pawning are as follows:

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<sup>11</sup> Zainuddin Ali. (2008). *Hukum Gadai Syariah*. Cet. I. (PP. 1). Jakarta: Sinar Grafika.



- a. Jewelry (gold and diamonds).
- b. Vehicles (cars, motorbikes)
- c. Electronic goods (laptops, cellphones, tv, radio) and others
- d. Other valuable items such as watches, bicycles.

Based on the results of the interview above, a conclusion can be drawn on movable property as mentioned above, if there is no question about the origin of the goods being pawned by the debtor to the pawning institution, then it is possible that the movable property is the result of a crime. It is traced by the authorities, so it is possible that the creditor is interested in a public legal issue. Based on the results of the interview, the pawning process with the object of pawning for movable property at PT. Pengaduan Persero as follows:

- a. Prospective customers who want to pawn movable assets come to the pawnshop outlet and bring their movable assets, BPKB, along with their original KTP.
- b. Fill out the Credit Application Form (FPK).
- c. After the credit application form is filled in, then the prospective customer provides a Credit Application Form, BPKB, and KTP to the appraiser as a pawnshop officer.
- d. Then the estimator as the pawnshop officer verifies the customer data, verifies the frame number, the machine number in the BPKB with the vehicle.
- e. Then after everything is in accordance with the pawnshop officer, they begin to estimate the value of the movable property to be pawned and then convey the nominal value of the loan money that the customer can accept.
- f. After an opportunity occurs by the customer and pawnshop officer for loan money, then the pawnshop officer makes input in the system for the customer's pawn credit.

In principle, execution as an act of compulsion to carry out a court decision that has permanent legal force, it is only an option if the losing party does not want to carry out or fulfill the contents of the decision voluntarily. Discussing executions, actually because the legal system in Indonesia which adopts a continental European system where one of the objectives is legal certainty related to the act of execution, is always linked to execution based on a court decision that has legal force, but there is still an execution by an authorized institution. Execution based on a court decision, of course, there has been a panel of judges who examined, considered and decided on the matter with a sense of justice by the judge in carrying out their duties as law enforcers. Then we also find that the meaning of execution in general is the implementation of a judge's decision or carrying out a judge's decision, as contained in Article 195 to Article 200 HIR / Rbg. Furthermore, M. Yahya Harhap in his book gives the definition of execution as a legal action carried out by the court against the party who loses in a case, which are the rules and procedures for the continuation of the case examination process. Therefore, execution is nothing

but a continuous act of the entire civil procedural law process. Execution is an integral part of the procedural rules contained in the HIR or RBG. Everyone who wants to know the guidelines for the execution rules must refer to the statutory rules in the HIR or RBG.

Furthermore, in this revision, the intended execution is not what has been described by the experts as above or is not an execution based on a legal decision that has legal force but the discussion is focused on the legal process of executing a pledge object in the form of marital assets which is used as collateral for debt without husband or wife approval by a pledge institution in this case PT. Medan City Pegadaian. Based on the above explanation, it can be seen that the notion of execution does not only carry out the judge's decision but execution also includes the creditors' efforts to realize their rights by force because the debtor does not voluntarily fulfill his obligations. So the problem arises in this discussion regarding the execution of the object of the mortgage in the form of joint assets that is not known by either the wife or the husband.

Previously we discussed, regarding the legal loophole in the occurrence of a pawning agreement between debtors and creditors (PT. Pegadaian Persero) so that they can provide loan funds for collateral in the form of joint assets, namely the legal loophole because there is no question process for the position of movable property that wants to be used as goods the object of the pledge, or if there is no question, is asked about the position of the object of the pledge, whether the property is owned alone or is a joint asset. Then according to Irwansyah as Assistant Manager Area Medan 2 PT. Pegadaian Persero the process of executing the debtor's pawning object by means of auction which is carried out to the auction buyer by prior notification to the debtor via SMS, telephone and delivery of due letters. Furthermore, the intended maturity is within more than 7 (seven) days, then by itself, the creditor can auction off the goods or objects of pledge in the form of joint assets. The act is actually in accordance with the provisions of Article 1156 of the Civil Code states that if the debtor or pledge provider of pledge of pledge, the creditor can carry out the execution of the object which is the object of the pledge guarantee to order the sale of the pledged object.

After a sale of pledged property by a creditor based on a court order, the creditor is obliged to immediately notify the pledge giver. a pledge recipient has control over the pledged object, but does not have the right to own the pledged object. In the case of a debtor in default, to sell at his own power (parate execution), so that the right to sell the pledged object is not required to have an executorial title. The pledge recipient / pawn holder can carry out the sale without a court order, without the need for a bailiff or preceding confiscation. Selling the pledged object through a judge, where the creditor can request the judge to determine how to sell the pledged object. Receive compensation in the form of necessary and useful costs that have been spent for the safety of pawned goods and have retention (withholding) the pawned object, if as long as the principal debt, interest and expenses that are borne

have not been paid, the debtor / debtor has no power to sue the return of the pawned object.

Therefore the creditor under the pawn can be withdrawn as a separatist creditor. A separatist creditor is a creditor holding a property security right who authorizes other creditors to sell by auction of the guaranteed property to obtain repayment compared to other creditors. Separatist creditors are creditors who have prioritized positions such as pawning, fiduciary, mortgage, mortgage. Then in principle, separatist creditors consist of creditors holding liens, mortgages, mortgages, and fiduciary guarantees. The pawn holder as regulated in Article 1150 to Article 1160 Book III Chapter XX of the Civil Code which applies to movable objects. Normatively with the pawning, the pawner (debtor) is obliged to relinquish control over an object that is guaranteed to the pawning recipient (creditor).

### **3.3. The Legality of Pawn Object Execution by Perseroan terbatas. Medan City Pegadaian Without Court Decision**

Legal certainty provides a measure and measure of a problem that arises on the basis of statutory regulations and a court decision will give birth to certainty. It is interesting to discuss the actions of creditors who carry out executions without a court decision that has permanent legal force, because there are several laws and regulations which according to the author's opinion are slightly contradictory to one another plus the human foundation contained in the 1945 Constitution of the Unitary State of the Republic of Indonesia. A pledge is agreed with the intention of providing a guarantee for a certain performance obligation, which is generally not always a debt and credit agreement and therefore it can be seen that the pawning agreement serves the principal agreement or that the pawning agreement is an accessory agreement. In principle (goods) pawning can be used to guarantee certain performance obligations. Based on the provisions of Article 1150 of the Civil Code, which reads "pledge is a right obtained by a creditor for a movable property, which is handed over to him by the creditor, or by his proxy, as collateral for the debt, and which gives the creditor the authority to collect the debt. and said goods before other creditors; with the exception of selling costs as the implementation of a decision on claims regarding ownership or control, and costs of salvaging said goods, which are incurred after the goods are pledged and which must take precedence.<sup>12</sup>

The institution appointed to receive and distribute credit under the pawning law is a pawnshop institution. The legal basis for the pawn business in Indonesia can be seen from the provisions stipulated in Government Regulation Number 51 of 2011 concerning Changes in the Form of a Pawnshop

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<sup>12</sup> Mariam Darus Badruzaman. (1999). *Bab-Bab Tentang Credietverband, Gadai dan Fidusia*. (PP. 72). Bandung: Alumni.

Legal Entity to a Corporate Company. According to the provisions stipulated in Article 2 paragraph (1) Government Regulation No. 51 of 2011 regulates "the aims and objectives of a limited liability company (persero) are to conduct business in the field of pawning and fiduciary both conventionally and sharia and other services in the financial sector in accordance with statutory regulations, especially for lower middle income people, micro businesses, businesses. small and medium enterprises, as well as optimizing the use of company resources by applying the principle of a limited liability company. The most prominent business undertaken by PT. Pegadaian (Persero) is distributing credit based on the law of pawning, which means that the goods being pawned must be handed over by the pawner to the recipient of the pledge so that the goods are under the power of the pawner. This principle is called in bezit steling.

Since the existence of a pawning agreement between the pledge provider and the pledge recipient, the parties' rights and obligations have arisen since then. The obligation of the pledge provider is to pay the principal of the loan and dispose of it as determined by the pledge recipient. In the proof of credit, the credit start date and the due date or the credit return date have been determined. In addition, in the proof of credit the conditions have been determined, namely "if until the due date the loan is not repaid / extended, the collateral will be auctioned off on a predetermined date. Furthermore, the due date with the date of auction of collateral is different. The grace period between the due date and the date of handling of collateral is 20 (twenty) days. For example, the due date is January 1, 2020, then the auction date of the collateral is January 21, 2020. This is intended to give the pawner an opportunity to pay off the principal and loan interest. If on the auction date, the pledge provider does not fulfill his obligation, the collateral will be auctioned off by the pledge recipient.

Talking about jurisprudence, of course you must first understand what the definition is, in order to discuss further, among the various definitions of jurisprudence, one of the definitions commonly understood from the definition of jurisprudence is the definition used by Soebekti which states the notion of jurisprudence as the decisions of a permanent judge or court justified by the Supreme Court as a court of cassation, or by the decisions of the Supreme Court itself which are permanent. In other words, so far in general the notion of jurisprudence is a decision of the Supreme Court which contains legal breakthroughs so that it is continuously followed by courts under the Supreme Court hierarchy even normatively there are provisions regulating that the collection of jurisprudence is the exclusive authority of the Supreme Court, but in recent developments it turns out that the term jurisprudence is also used to refer to the attachment of the Constitutional Court decisions in certain legal issues. for example, recently Oly Viana Agustine stated in her article that jurisprudence is one of the sources of law in judicial review in the

Constitutional Court. Jurisprudence applies when the panel of judges believes that the previous decision is still relevant to current constitutional issues.<sup>13</sup>

#### **4. Conclusion**

The legal certainty of the regulation of pawned objects which are joint assets in a marriage that is used as collateral for debt without the consent of the husband or wife is contained in Article 1 of Law Number 1 of 1974 concerning Marriage and Article 119 of the Civil Code. Then Article 36 paragraph (1) of Law Number 1 1974 concerning Marriage has actually provided a legal corridor, that the action to carry out a pledge in the form of joint assets obtained during the marriage period must be based on an agreement between the two parties between the husband and wife. The process of executing the object of the pledge in the form of marital assets which is used as collateral for debt without the consent of the husband or wife at PT. Pegadaian Medan City, first PT. Pegadaian Medan City conveyed that the debtor is due for payment which will be sent via an official letter from PT. Mortgage of Medan City, then starting 7 (seven) days after the official notification to the debtor, there is also no good faith of the debtor in paying the debt bill, so PT. Medan City Pegadaian conducts an auction for the object of the pawn in the form of joint assets of the marriage bond. The validity of the execution of the mortgage object by PT. Medan City Pegadaian without a Court decision based on Article 1150 of the Civil Code to Article 1160 Book II of the Civil Code, Government Regulation Number 7 of 1969 concerning Pawnshop Companies, Government Regulation Number 10 of 1970 concerning Amendments to Government Regulation Number 7 of 1969 concerning Pegadaian Service Companies, Regulations Government Number 103 of 2000 concerning Public Pawnshop Companies and Government Regulation Number 51 of 2011 concerning Company Companies.

#### **Acknowledgements**

It is necessary to maintain legal certainty in the legal arrangement of the object of the pledge which is a joint asset in a marriage which is used as a debt guarantee without the consent of the husband or wife of PT. Pegadaian Persero makes a company regulation that refers to the provisions contained in the Civil Code, Law Number 1 of 1974 concerning Marriage and Law Number 39 of 1999 concerning Human Rights so that all actions related to collective property must be in accordance with the rules. current regulation. There needs to be strict regulation of the structure of the institutions that handle financial institutions and financial services in Indonesia, such as Bank Indonesia and the Financial Services Authority of the Republic of Indonesia based on Article 36 paragraph (1) of Law No. 1 of 1974 concerning Marriage and Article 51

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<sup>13</sup> Oly Viana Agustine. (2018). *Keberlakuan Yurisprudensi pada Kewenangan Pengujian Undang-Undang dalam Putusan Mahkamah Konstitusi*. Jurnal Konstitusi. 15 (3). PP. 643.



paragraph (1) of Law Number 39 of 1999 concerning Human Rights provides that firm actions against financial institutions in carrying out acts of execution must go through judicial channels.

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