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Legal Protection of Pawn Companies Against Transactions Involving Criminal Collateral: Critical Analysis of East Jakarta District Court Decision No. 332/Pid.B/2023/PN.Jkt.Tim

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Abstract: This study addresses the critical legal conflict arising when collateral accepted by a *bona fide* pawn company is later identified as criminal proceeds. The background highlights the inherent clash between the creditor's preferential right (*droit de suite*), which aims to secure debt repayment under civil law, and the victim's absolute right to restitution (revindication) under criminal law enforcement. The purpose is to critically analyze the recent East Jakarta District Court Decision No. 332/Pid.B/2023/PN.Jkt.Tim, which ordered the return of the collateral to the victim without providing any compensation to the compliant pawn institution, severely undermining legal certainty. The research utilized a rigorous normative juridical method, employing both case and conceptual approaches to analyze primary legal instruments, including the Civil Code, the Criminal Procedure Code, and the strict CDD/KYC requirements detailed in OJK Regulation No. 8 of 2023. The results indicate that the court's singular focus on criminal restitution effectively extinguished the pawn company's property rights. The failure to award compensation signifies that objective good faith, even when rigorously evidenced by regulatory compliance, was deemed insufficient to secure financial protection, directly contradicting the doctrine of the valid pledge agreement under Article 1152(4) of the Civil Code. The study concludes that the Supreme Court must issue mandatory guidance (SEMA) to enforce compensation for the principal loan to compliant *bona fide* creditors prior to collateral restitution, which is necessary for achieving judicial harmonization and strengthening the stability and integrity of the financial services sector.

Keywords: Pawn Company, Bona Fide Creditor, Droit de Suite, Criminal Collateral, Legal Certainty

INTRODUCTION

The Indonesian pawn institution plays a strategic role in the financial services ecosystem as a provider of quick credit secured by movable property (Muharamah, 2024). A pledge right (*hak gadai*) is a property right granting the creditor a preferential claim to repayment from the proceeds of the collateral's execution. While movable collateral is widely utilized, the risk that the pawned object originates from a crime, such as embezzlement or theft, is substantial (Muharamah, 2024). When the collateral is definitively proven to be the proceeds of a crime, the necessity for robust legal protection for pawn companies acting in *bona fide* (good faith) becomes critical. Legal certainty is paramount to maintaining the stability of the financial services sector and preventing compliant pawn companies from absorbing significant losses caused by criminal actions of their customers (Analisis Perlindungan Hukum Perusahaan Gadai, 2023).

The primary legal challenge investigated in this study centers on the clash of interests among three central pillars: the financial interests of the bona fide creditor, the restitution rights of the victim/original owner (revindication), and the goals of criminal law enforcement (seizure of evidence). Doctrinally, a pledge agreement executed in good faith should remain valid, thereby allowing the creditor to pursue compensation from the defaulting debtor (Muharamah, 2024; Akibat Hukum Terhadap Perjanjian Gadai, 2023).

Background and Significance of the Research

Legal protection for pawn companies operating under the supervision of the Financial Services Authority (OJK) is anchored in their strict adherence to objective prudential principles, specifically the implementation of Know Your Customer (KYC) and Customer Due Diligence (CDD) procedures required by OJK Regulation (POJK) Number 8 of 2023 concerning the Application of Anti-Money Laundering and Counter-Terrorism Financing Programs (POJK No. 8 Tahun 2023, 2023). Compliance with this regulation should serve as the primary legal defense against potential criminal charges of receiving stolen goods (Pasal 480 KUHP) (Pertanggungjawaban Pidana Perusahaan Pergadaian, 2024; Hafiza & Rizal, 2023).

However, this research identifies a critical implementation gap in judicial practice. East Jakarta District Court Decision Number: 332/Pid.B/2023/PN.Jkt.Tim serves as an essential case study, highlighting the failure of judicial harmonization. In this decision, the presiding judge ordered the return of the seized gold collateral to the victim/original owner but failed to establish a compensation mechanism for PT Gadai MAS DKI, the Rawamangun unit (Kedudukan Hukum PT Gadai MAS DKI, 2025). This ruling effectively nullifies the *droit de suite* (right to follow the asset) inherent to the pawn company's right, despite the company having established its good faith and adhered to regulatory procedures (Kedudukan Hukum PT Gadai MAS DKI, 2025; Akibat Hukum Terhadap Perjanjian Gadai, 2023).

Novelty and Research Contribution

The high urgency of this study stems from the fact that Decision No. 332/Pid.B/2023 establishes a legal precedent that undermines legal certainty for the entire pawn sector. By prioritizing criminal restitution over private property rights, the decision shifts the full financial risk of criminal activity onto the compliant financial institution (Kedudukan Hukum PT Gadai MAS DKI, 2025).

The novelty of this article lies in its rigorous critical analysis of this recent 2023 court decision against the backdrop of the latest regulatory framework (POJK No. 8 Tahun 2023, 2023) and established civil law doctrines (specifically Article 1152 paragraph 4 of the Civil Code). This research aims to answer the question: Why did the legal protection for the bona fide pawn company fail to be effectively implemented in East Jakarta District Court Decision

No. 332/Pid.B/2023, and how should judges balance the victim's right to restitution with the creditor's preferential right, particularly when the creditor has met OJK's mandatory CDD standards?

The contribution of this research is its argument for legislative and judicial reform (through Supreme Court Circulars or OJK guidelines). The findings support the need to formally recognize compliance with POJK No. 8 Tahun 2023 as a strong basis for financial protection, ensuring that bona fide pawn companies receive effective compensation (for the principal loan) before the criminal proceeds are returned to the original owner (Mekanisme Ganti Rugi Bagi Pemegang Gadai, 2024; Proposal Reformasi Hukum, 2024). This provides a necessary bridge between criminal justice outcomes and the protection of civil property rights.

METHOD

This research employs a normative juridical method (*yuridis normatif*), relying on a comprehensive literature review and analysis of positive legal norms, including statutes, regulations, and judicial decisions (Muharamah, 2024). The data utilized is secondary data, consisting of:

1. Primary Legal Materials: The Indonesian Civil Code (KUHPerdata), particularly Articles 1152 and 1977, the Criminal Procedure Code (KUHAP), and the Financial Services Authority Regulation Number 8 of 2023 (POJK No. 8 Tahun 2023, 2023).
2. Secondary Legal Materials: Academic journals (e.g., Ichsandi & Rasji, 2024; Muharamah, 2024; Kedudukan Hukum PT Gadai MAS DKI, 2025), theses, and legal literature concerning the doctrines of *bona fide*, *droit de suite*, and *revindication* (Perlindungan Hukum Kreditur Bona Fide, 2023; Tinjauan Komparatif Perlindungan Hukum, 2025).
3. Tertiary Legal Materials: Legal dictionaries and publications from regulatory bodies (OJK) and governmental agencies (Peran Jaksa Pengacara Negara, 2025).

The analytical approach combines a case approach, focusing on the critical elements of East Jakarta District Court Decision No. 332/Pid.B/2023/PN.Jkt.Tim, with a conceptual approach to examine doctrines related to property rights and collateral. This study specifically evaluates whether the legal protection methodology currently available—namely, good faith supported by APU PPT compliance (Upaya Preventif Perusahaan Gadai, 2024)—yields credible and equitable results in the criminal court setting. The scope of the methodology is strictly confined to the conflict of ownership involving movable property officially pawned and subsequently proven to be the proceeds of a crime.

RESULT AND DISCUSSION

The Legal Standing of *Bona Fide* Creditors and Regulatory Compliance

Pawn companies, such as the institution involved in this case, operate under the presumption of good faith articulated in Article 1977 paragraph (1) of the Civil Code, which stipulates that the possessor of a movable object is presumed to be the owner (Kedudukan Hukum PT Gadai MAS DKI, 2025; Akibat Hukum Terhadap Perjanjian Gadai, 2023; Kedudukan Hukum Pemegang Gadai, 2023). This assumption must be objectively substantiated through internal due diligence, particularly the stringent CDD and KYC procedures mandated by POJK No. 8 Tahun 2023 (POJK No. 8 Tahun 2023, 2023; Implikasi POJK 8 Tahun 2023, 2023). Despite the company's efforts to interview customers and verify the collateral's ownership, they remain susceptible to deceptive and misleading unilateral statements from criminal debtors (Kedudukan Hukum PT Gadai MAS DKI, 2025; Kajian Yuridis Terhadap Implementasi, 2024).

Doctrinally, when collateral is later identified as criminal proceeds, a crucial legal debate arises. While one viewpoint asserts the contract is void *ab initio* for lacking a lawful cause (Article 1320 Civil Code) (Implikasi Pasal 1320 KUHPerdara, 2025; Akibat Hukum Terhadap Perjanjian Gadai, 2023), the more protective position, based on Article 1152 paragraph (4) of the Civil Code, holds that the pledge agreement remains valid (Muharamah, 2024; Konflik Hak Kebendaan, 2024). The preservation of the agreement's validity is vital because it grants the creditor the right to seek compensation from the criminal debtor (Muharamah, 2024).

Critical Analysis of East Jakarta District Court Decision No. 332/Pid.B/2023

Decision No. 332/Pid.B/2023/PN.Jkt.Tim vividly demonstrates the dominance of criminal law (victim restoration) over private property rights (the pledge lien) (Kedudukan Hukum PT Gadai MAS DKI, 2025; Penerapan Asas Droit de Suite, 2025). The judge's order to return the gold collateral to the original owner immediately extinguished the creditor's *droit de suite*, the property right that ensures the lien follows the object regardless of its possessor (Hak Preferen Kreditur Gadai, 2024; Kedudukan Hukum PT Gadai MAS DKI, 2025).

The critical flaw in this judgment lies in the absence of a ruling for compensation benefiting the pawn company (PT Gadai MAS DKI) (Kedudukan Hukum PT Gadai MAS DKI, 2025). By neglecting to address compensation, the court effectively denied the legal standing of the pawn company as a creditor entitled to the repayment of the principal loan, despite proof of its *bona fide* actions (Perlindungan Hukum Terhadap PT. Pegadaian, 2023). This implies that good faith, even when backed by mandatory OJK compliance (POJK No. 8 Tahun 2023), is not recognized as a sufficient mitigating factor to establish financial rights within the criminal court context (Kedudukan Hukum PT Gadai MAS DKI, 2025; Analisis Perlindungan Konsumen dan Kreditur, 2023).

The consequence is the full financial loss being transferred to the pawn company. When the state, through a court order, extinguishes the property rights of a compliant creditor, the legal system should provide a clear and effective mechanism for restitution, rather than penalizing the institution that acted diligently. This imbalance violates the principle of legal certainty (Kedudukan Hukum PT Gadai MAS DKI, 2025).

CONCLUSION

In conclusion, the analysis of East Jakarta District Court Decision No. 332/Pid.B/2023/PN.Jkt.Tim reveals a fundamental conflict where the victim's right of revindication is prioritized over the *bona fide* pawn creditor's *droit de suite*. Despite pawn companies meeting the objective standard of good faith through strict adherence to POJK No. 8 Tahun 2023 (POJK No. 8 Tahun 2023, 2023), the criminal court decision failed to provide an effective compensation mechanism, resulting in the creditor bearing the full financial loss (Kedudukan Hukum PT Gadai MAS DKI, 2025). This outcome contradicts the civil law doctrine that maintains the validity of the pledge agreement and the creditor's right to seek compensation (Muharamah, 2024).

To resolve this imbalance, a clear judicial and legislative reform is required. The Supreme Court must issue a circular (SEMA) instructing criminal courts to explicitly consider the rights of the pawn creditor (including the principle under Article 1152 paragraph 4 of the Civil Code) when determining the status of criminal evidence (Proposal Reformasi Hukum, 2024; Telaah Kritis Putusan Pengadilan, 2025). This mandate must ensure that compensation for the principal loan is secured for any pawn holder proven to be compliant with APU PPT regulations before the collateral is returned to the original owner.

Such a measure is essential to harmonize victim restitution with the protection of the property rights of compliant financial institutions, thus upholding legal certainty in the financial sector.

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