

# Legal Certainty in the Pawn Guarantee System in Indonesia in Anticipation of Opportunities and Challenges of Global Economic Competition

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## Abstract

The Credit system with guarantee pledge long has its roots in public life in Indonesia based on settings in the KUH Perdata article 1150. Advantages of the credit system with the pawn lies in a simple procedure and based on the principle of inbezet stelling who controlled goods are considered as owner. In the development system pawn shops especially with modern business, trends start in doubt because of suspicions about pawn shops as holding "barang tada" (stolen). This weakness appears due to legal certainty in the pawn guarantee system in Indonesia is related to the responsibility of PT Pegadaian Indonesia, against the pawn shops and the dispute resolution system. It became the focused of the problem in this research by using the methods of normative legal research found that interest in system pawn shops quite high in Indonesia. The fundamental weakness of the system has not been applied to pawn shops customer recognition system it must be addressed in improving public confidence towards the pawn shops to be able to compete with other financial institutions in globalization.

**Keywords:** pawn, guarantee, legal certainty

## INTRODUCTION

Economic development required the existence of a State of settings on the management of economic resources available for directional and integrated as well as underutilized for the improvement of people's welfare. Article 33 paragraph (4) of the Constitution of the Republic of Indonesia in 1945 asserts "the national economy was held based upon the economic democracy with the principle of mutuality, fairness, efficiency, environmentally sustainable, independence, as well as by maintaining a balance of economic progress and national unity". That is the basis of constitutional Indonesia economic development that is focused on improving people's welfare as the Supreme sovereignty of the holder. One of the aspects of people's economy, which is already deeply rooted in the life of the nation of Indonesia namely pawns guarantee system.

The pawn is a nonbank financial institutions where these institutions are means of people's economic growth because these institutions guarantee system is easier than a bank guarantee system in General. One form of the right material to guarantee the debts the object moving objects is a pawn. Basic settings of the pawn that is KUH Perdata book II Chapter XX, article 1150 to 1160 with article, article 1150 KUH Perdata sense: "a fiduciary is a person's acquired rights to 2 of a chattels, which are submitted to it by a debtor or another on his behalf and that gives power to the 2 that was to take the payment of such items in precedence than the other 2 guys with the exception of those items to auction fees and expenses that have been incurred to save the goods It's pawned the costs of which should be looked at ". The pawn guarantee system is simple and cash where parties pledge given only submit stuff that guarantees and pledges your recipient will conduct assessments and provide credit pledge. Implementation of the system of guarantee and pledge in Indonesia organized by PT. Pawnshops Persero. Juridical problematic PT. Pegadaian (Persero) i.e. There is still suspicion that society PT. Pegadaian (Persero) are the shelter stolen goods (goods catchment). The urgency of the problem lies in the certainty of legal system guarantee optimum guarantee yet that pledge public confidence. Increasing customer confidence against PT. Pegadaian Indonesia (Persero) will occur when the legal certainty which became the cornerstone of juridical operationalises PT. Pegadaian Indonesia (Persero) is clear. Still the high suspicion of society against the juridical existence and the existence of PT (Persero) pawn shops into the challenge in realizing optimality of PT. Pegdaian (Persero) are the good role and its function as a financial institution and the grantee institutions in Indonesia. Based on these studies, dissertations focussed on legal certainty pawn guarantee system in Indonesia.

## RESULTS AND DISCUSSION

### A. Functions of P.T. Pegadaian Indonesia (Persero) As The Institution Of

Pawn shops as of institutions that provide money loans with the guarantee of the goods have long been known in Indonesia. It's development until the present Pawnshops has experienced pet's progress rapidly. History of pawn shops begins at the time of the colonial Government of the Netherlands (VOC) established a Bank Van Leening, namely financial institutions that provide credit system with a pledge, the institution was first established in Batavia on 20 August of the year 1746. By the time the United Kingdom took over the reign (1811-1816), a Government-owned Bank Lenin was dissolved, and the public is given the discretion to establish the origin of

the pawn shops businesses got a license from the local Government. At the moment, the Netherlands ruled re-issued Staatsblad (Stb) No. 131 in 1901 that govern pawn shops effort based on the system settings of the Netherlands Government. The function of in the form of lending continues to grow and is attached to the mortgaging system in 1901 established the first State Pawn Shops in Sukabumi, West Java, that every tongue 1 April is celebrated as the birthday of pawn shops.

The Interest of the pawn system continued to rise in Indonesia and contribute directly towards profit increasing Perum mortgaging. Along with the changing times and demands the need for change to improve the quality of its performance and development management, management of Government improves the status of pawn shops of the company Service (Agreement) became a Public Company (public corporation) that poured in PP No. 10 of 1990 on 10 April 1990, which is an important milestone in its development. In accordance with the basic tasks of PT. Pegadaian Indonesia a lender in the community, then the procedures used for PT. Pegadaian Indonesian an order granting credit are very simple. Anyone may request the credit on the P.T. pawn shops. Based on PP No. 10 of 1990 article 5 paragraph (1) and (2) stated that the nature and purpose of PT. Pegadaian Indonesia are providing a service to the general public and at the same time fostering advantages based on the principle of a healthy company management. Regulations regarding PT. Pegadaian Indonesia first held on 12 March 1941 with the Stb No. 131 in 1901, respectively held in Stb No. 490 of 1905, the Stb No. 64 in 1928, the Stb No. 81 in 1928, the Stb No. 266 in the 1930s the Institute got the status as Office, PP No. 178 in 1961 the Bureau of State enterprises into pawn shops, Kepres No. 180 in 1965, PP No. 7, 1969, PP No. 10 of 1990 Public Company dirobah pawn shops (Perum), REGULATION No. 13 of 1998 of Public Company (public corporation) and updated the PP No. 103 in 2000 about the Public Company (public corporation). In 2011, the Government changes the status of a legal entity of public companies (public corporation) pawn shops into the company Refines (PP No. 51 in 2011 about the change of the form of legal entity Company Perum pawn shops into a Persero) and signed by the President on December 13, 2011. Change of the form of legal entity is aware of the efforts to enhance the capabilities and capacity of pawn shops in order to be better in the future.

The increase in the assets of pawn shops as listed in the annual report of the year 2011-2012, PT. Pegadaian Indonesia(Persero) has a strategic position in the economic development of the community's small and medium enterprises through the channeling of credit on the basis of the law of pledge, and saddled a double duty, i.e. The Public Service Obligation (PSO) and Profit-Oriented. Change the status of a public corporation becomes the pawn shops of PT (Persero) is regulated in the regulations the Government 51 Years. This refers to article 92 of the Act state-owned enterprises SOES are regulated with a government regulation. This research aims to know and explains the need for the changes done perm is PT. Pegadaian IndonesiaPersero and the legal consequences of such changes.

The results showed that in the change form of the law was appropriate procedures and do not deviate from the laws and other regulations. PT (Persero) pawn shops have been doing various innovative steps in order to increase the company's assets. Change the status of a public corporation is a form of business privatization Pawnshops pawnshops to optimize business functions in anticipation of the market and of competition. With the onset of competition between financial institutions banks or non-banks and another private financial business, sector requires P.T. optimal running pawn shops to be able to compete. Changing the status to PT, the principles in running a business should refer to prinip PT as set forth in Act No. 40 in 2007. In carrying out its business, especially in the field of credit or channeling funds to the community, P.T. Pawnshops have advantages associated with the simplicity of credit procedures. Loaning credit mortgage procedures in very practical, because it does not require lengthy bureaucracy. Pawn shops in the loaning procedure are principally focused on goods or gold pawned, where the goods or gold that pawned will be appraised by section penaksir for determining the value of goods digadaikan associated with credit to be awarded, because in loaning credit implemented by PT. Pegadaian Indonesia and other establishments that do not involve, as with credit loaning by using the construction rights to dependents and fiduciary guarantee. Loaning construction loans with a pledge this institution involve only pawn shops.

On the imposition of dependent rights, agencies involved in the imposition of the lender (banking institution), a notary, land deed official, and the national land agency. As for loaning in construction loans with a pledge of not requiring a long bureaucracy and the cost is small, even considered there is no cost. Based on the terms of the credit with interest pawn system continues to grow and develop in the life of the community especially those who need money fast without the convoluted procedure. The market share advantage credit pawn shops continue to rise every year because of the great numbers of the customer and the community against this system is very large.

Economic development required the existence of a State of settings on the management of economic resources available for directional and integrated as well as underutilized for the improvement of people's welfare. Article 33 paragraph (4) of the Constitution of the Republic of Indonesia in 1945 asserts "the national economy was held based upon the economic democracy with the principle of mutuality, fairness, efficiency, environmentally sustainable, independence, as well as by maintaining a balance of economic progress and

national unity". That is the basis of constitutional Indonesia economic development that is focused on improving people's welfare as the Supreme sovereignty of the holder. One of the aspects of people's economy, which is already deeply rooted in the life of the nation of Indonesia namely pawns guarantee system. The pawn is a nonbank financial institutions where these institutions are means of people's economic growth because these institutions guarantee system is easier than a bank guarantee system in General. One form of the right material to guarantee the debts the object moving objects is a pawn. Basic settings of the pawn that is KUHPerdata book II Chapter XX, article 1150 to 1160 with article, article 1150 KUHPerdata sense: "a fiduciary is a person's acquired rights to 2 of a chattels, which are submitted to it by a debtor or another on his behalf and that gives power to the 2 that was to take the payment of such items in precedence than the other 2 guys with the exception of those items to auction fees and expenses that have been incurred to save the goods It's pawned the costs of which should be looked at ". The pawn guarantee system is simple and cash where parties pledge given only submit stuff that guarantees and pledges your recipient will conduct assessments and provide credit pledge. Implementation of the system of guarantee and pledge in Indonesia organized by PT. Pawnshops Persero. Juridical problematic PT. Pawn shops i.e. There is still suspicion that society PT. Pawn shops are the shelter stolen goods (goods catchment). The urgency of the problem lies in the certainty of legal system guarantee optimum guarantee yet that pledge public confidence. Increasing customer confidence against P.T. Pawn Shops (Persero) will occur when the legal certainty which became the cornerstone of juridical operationalises P.T. Pawn shops (Persero) is clear. Still the high suspicion of society against the juridical existence and the existence of PT (Persero) pawn shops into the challenge in realizing optimality of PT (Persero) pawn shops are the good role and its function as a financial institution and the grantee institutions in Indonesia. Based on these studies, dissertations focussed on legal certainty pawn guarantee system in Indonesia.

In a business perspective, PT. Pegadaian Indonesiacontinue to evolve both the turnover coverage of market share is no longer resting on the lower layers of society, but extends to reach upper middle class. In addition, pawn shops offering products that are increasingly diverse services, including investment services, buy and sell precious metals, sending and receiving money and valuables storage, outside of its main services namely the granting of credit (loan) and a pawn guarantee. Can I be P.T. Pawnshops currently transformed from the financing institution towards financing institution and order to invest, and reach almost all walks of life, ranging from students, housewives, farmers, and now embraces the businessmen and professional. Verified this highly diverse product, expected to make pawn shops as a strong financing institutions to encourage the productive efforts, particularly for SMALL MEDIUM ENTERPRISES.

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P.T. pawn shops. Procedure loaning pledges at PT. Pegadaian Indonesia not us us loaning complex procedures through banking institutions. Compared with the loaning procedure through banking institutions. Then the pawn loaning procedure at pawn shops is much more simple, easy, fast, and not in charge. For the pawn shops in pentingkan, that every borrower's (money) must be accompanied by guarantees of material move belongs to the debtor or someone else. Granting credit pledge although not complicated but stick to the principle of trust from the clients of PT. Pegadaian Indonesia are considered capable of carrying out obligations of u.s. credit principle in General. Credit is etymologically derived from the latin credere, meaning trust. For example, a customer of the debtor to obtain credit from banks is certainly someone who won the trust of the bank. This indicates that the granting of credit by the bank to the customer the debtor is trust. In the concept of business held by PT. Pegadaian Indonesia carrying the motto "to resolve the issue without any problems". PT. Pegadaian Indonesia is on the leading edge guard for short-term financing for small and micro enterprises society to the Fund's fulfillment needs quickly and easily. However, it still has to be recognized that the current institution pledge still used to finance consumption. The percentage of a consumerist pawn is still high compared with pawn productive. BRI Syariah posted range, for example, only 11 percent for the portion of the financing pledge efforts on productive.

Since 25 May 2004 based on the development of the number of functions and the number of financial institutions then emerged Islamic Pawn Service Unit (ULGS). According to the managers of both the Islamic Pawn Service Unit (ULGS), Islamic Pawn Service Unit (ULGS) Kusumanegara indeed highly more developed than Islamic Pawn Service Unit (ULGS) Budget. This is because among other things the Unit layout Service Pledge the Sharia (ULGS) Kusumanegara closer to a college campus than a pawn Service Unit layout Sharia (ULGS) Budget. When a pawn of Sharia is still often associated with Islam and Islamic religion thus run() awareness usually starts from the students. The students generally with their motto "the easy be syariah" which later became the motor driving the application of religious teachings. The senior generation often more set themselves as the referrer or the driving course, us Ki Hajar Dewantara teach ing ngarso sung tu ludo, ing madyo mangun karso, tut wuri handayani (that was before giving a direction, in the middle of constructing karsa, and behind the encouragement).

From the above description of pawnshops system through changing patterns of pawn shops of P.T. services associated with warranty service pattern change on pawn PT. Pegadaian Indonesia was heavily influenced by the banking legislation especially since 1998 with the discharge of the Banking Act No. 10 of 1998 have implemented a system of bank guarantee in passing sharia principles. This principle knows no interest in accordance with the Bank's conventional in General but implementing systems for results in accordance with Islamic law. Influential Islamic banking system against financial institutions non-banks such as pengadaian who have implemented Sharia system of pawn shops. The practice of the development of the concept of Sharia since the pawn shops in the world of banking and financial institutions banks and non-bank it conjures up two systems of either conventional or Islamic. The use of dual system along with the enactment of legal dualism in economic activity i.e. conventional and Syariah. This can be seen from the rise of Islamic gold pawn (rahn) deviated from the purposes identified. These concerns arise because the Islamic pawn should be based on sharia principles that its essence is helping people to get funds quickly and to venture capital. In practice, this Islamic gold pawn begins to leave its essence and more are used to bring in profit through the practice of repeated a pledge that is speculative.

The era of globalization causing interbank competition occurs as well as non-bank financial institutions such as pawn shops. If a pawn is not deregulated banking gold are good, it's not unlikely the intermediary function of banking will be weakened. This could potentially slow down economic growth and movement. Bermunculnya offender services pawn shops illegally solely profit oriented, particularly gold pawn again became the object of venture P.T. pawn shops, so there arose concerns that this would cause business of P.T. Pawnshops dropped or reduced and, in turn, would reduce the ability of PT pawn shops to its social service mission. The openness of the market with the introduction of the free market certainly affect people's interest to do business includes pawn shops either individually or groups. In the life of society, the practice of illegal pawn is mainly associated with the guarantee of the goods to get quick money continues to mushrooming in society. A proliferation of these activities in the form of the practice loaning money fasts with a highly high interest with repayments that model certainly very detrimental and accelerate the process of poverty. It is also a rival of the illegal practice of a proliferation of pawn shops especially in the field of pengadaian.

The practice of illegal services are potentially detrimental to society considering the mechanism is not subject to conditions of such a pledge, execution is not through the mechanism of the auction, the absence of appraiser which resulted in the price of goods is assessed, and the unavailability of a storage area that can ensure the safety and value of the goods. PT. Pegadaian Indonesia are not capable of serving the needs of the community, so that the amount of perceived need to expand offender services pawn shops is to the private sector and cooperatives. The emergence of cooperative practices with saving loan will certainly become a rival to pawn shops especially captured the market share of the community's economic medium to the bottom.

The absence of comprehensive rules which are able to accommodate the development of pawn shops in public life are related to its function as non-bank financial institutions, ought to be recognized in setting about financial services banking and credit granting system requirement should also be a guideline for the implementation of credit pledge. Act No. 10 of 1998 about changes in the law No. 7 in 1992 about Banking; Act No. 19 of 2003 about State-owned enterprises; Act No. 9 of 2011 about the changes to the Act No. 9 of 2006 about the Warehouse Receipt; Government Regulation Number 51 in 2011 about the change of the form of legal entity Company Perum pawn shops into a Persero, Minister of cooperatives and small and medium enterprises number 01/Per/m. KUKMII/2010; Shariah Board fatwa National number 25/DSN-MUI/III/2002 about Rahn (Pawn Shariah); the National Council of Sharia and Fatwa number 25/DSN-MUI/III/2002 About Rahn (Pawn Shariah) and the National Islamic Council of Fatwa Number 68/DSN-MUI/III/2002 about Rahn Tasjily. Can not be denied, providers of funds that existed in Indonesia still dominated by banking institutions as the intermediary who bring together the owner of funds with the user.

Referring to the principle of prudential banking (prudential banking principle) in granting credit, it can be estimated that the majority of banking funds occurs. absorbed by the debtor is able to satisfy the conditions in granting credit, including the terms of availability guarantee (collateral) that actually is not mandatory, unless a guarantee of principal in the form of objects that are financed by the credit itself. Based on the position of the given loans rupiah bank common and BPR according to the field of business, then the field trading business, hotels and restaurants to absorb the largest lending Bank Persero, either from the Bank's local government, the national private Banks, as well as BPR, i.e. between 2397 to 111.978 billion rupiah per month August 2010 refers to the statistics issued by bank Indonesia may be inferred that the an of the largest portions of banking credit rather than on the level of micro enterprises small.

During this time, the activities of pawnshops more based on the agreement of the parties in its very simple and raw. In addition to the agreement of the parties, a practice pledge refers to the conditions of the pledge in article 1150 to 1160 KUHPdata who have not been able to reach out and accommodate the development object of the pledge of shares without the clearance document listed on the Indonesia stock exchange and intellectual property rights. From the juridical point of view is the incidence of legal dualism in the field with pawn shops offer Islamic pawn (rahn). Legal dualism in real economic activities of the traditionally marks with the promulgation of Act No. 21 of 2008 about Islamic banking. Problems in this legal dualism are not located in the function kelebagaannya, but rather on the principle that underlies the economic activity such as conventional banking is based on the principle that debts can be categorized as the practice of usury. In addition to banking, other financing institution offering Islamic products, such as the Islamic capital market, insurance, and financing of the Sharia, and pawn shops. A pawn in the agreement, conversing and not qualified not size because the principles of pawn shops, namely someone who mastered is considered the owner of the goods. Principles inbitsteeling that promoting in principle that the focus of consideration of the pawn not on ability or capacity of a person but in the mastery of the goods carried. Thus conceptually, the basic consideration in granting credit pledge focused on the value of the goods was estimated. This is a fundamental difference in granting credit banking system and pawn shops. The customer simply brings goods to be deposited to the pawn shops. The cost is very cheap and affordable items, security will be a priority. In the banking world, the service is known as a safe deposit box. If getting difficulty in securing valuable items at home, because it will be out of town/Department of Foreign Affairs and others, entrust only its saved to pawn shops. A period of custody two weeks up to one year and can be extended.

#### 1. The service Estimates

Is a form of service to the public who want to know the karatase and treasures quality gold jewelry, diamonds, and precious stones, either for investment or business purposes. With relatively light cost the public can find out about the quality and karatase of his stuff after a first inspected and appraised by an appraiser experienced. Procedure: the customer brings the goods that will be tested to the Pawnshops counters then appraiser pawn shops will test and provide certification of goods that are to be tested. So that people will know the quality of the goods that are to be tested, and with the expectation of the quality of indecision over which have valuable items would not be protracted.

#### 2. KTJG (Credit Delay Selling Gadah)

Give loans/fast Fund bailouts to farmers at harvest time the Kingdom with the assurance of dry milled grain (GKG) used to cover the cost of living in the capital of capital provision of cultivation the cultivation of flowers and cheap. It is expected the farmers can obtain capital more quickly for agricultural businesses in the period of the next planting season. Further with the business which are hedging their grain is expected to be able to gain competitiveness in the domestic market so as to provide additional income opportunities and at the same time providing education for farmers to produce results as a commodity business.

#### 3. Building Rentals

Is the form of the services provided to the community in the form of Conference Hall rental to do event activities weddings, reunions, meetings, seminars etc. The building is equipped with adequate facilities and infrastructure

with rents and relatively affordable. For seminars, conferences, meetings and seminars, we also provide a versatile building representative. A strategic location in the city center, as well as a spacious parking area, is an added value to the smooth running of the event.

#### 4. RANH (Ar RANH)

Serving skim loans to meet the needs of funds for the community with the appropriate pledge system. Procedure: bring enough collateral in the form of Rahin gold, diamonds, electronics, vehicle or other movable goods. Without the interest only burdened costs ijarah (services) with the quantity of loans starting from Rp. 20 thousand to Rp. 200 million (SBR).

Purpose: to improve and strengthen the economy with Islamic Sharia system (because the majority Muslim Indonesia community).

#### 5. CREATIVE (Credit Installment with the Fiduciary System)

Is credit installments every month with the fiduciary system, granted to Micro small and Medium Business (UMKM) to develop its business procedures:-the guarantee is very simple, as well as his efforts decent BPKP;

- within 3 days of the cast credits can be liquid;
- loan term is flexible, ranging from 18 months, 24 months, or 36 months;
- Capital Lease (lender interest) are relatively inexpensive, just 0.9% per month, the flat;
- motor vehicle REGISTRATION, Collateral (yellow/black plate car and motorcycle) so that the vehicle can still be used for business operations;
- loans from 1 million to 100 million;
- credit Repayment is done by fixed installments every month;
- Payment at once can be done at any time with the granting of discounts for rentals of capital.

#### 6. KRASIDA (Credit Installment with a pawn System)

This pledge of the credit system is a system where a credit customers pay in installments borrow as a loan credit in the bank. This type of credit is a credit installments every month with a pawn system, granted to Micro small and Medium Business (UMKM) to develop business

Advantages:

- easy credit and filing Process can be melted in a relatively fast;
- Flexible in determining the loan term, ranging from 12 months, 24 months or 36 months;
- a relatively inexpensive Capital Lease just 0.9% per month, flat;
- loans ranging from 20 million to 100 million;
- Collateral gold and cars;
- loans can reach 95% of the estimated value of the collateral;
- credit Repayment is done by means of mengangsur of each month with the number of installments;
- Payment at once can be done by granting a discount rent capital.

#### 7. KRISTA (Household Business Credit)

Credit is given to the woman attempt to develop his business hero who are members of the group with a liability system renteng:

- pengajuannya Procedure is very easy;
- Collateral in the form of household appliance (TV, refrigerator, desk chair, bed, etc), merchandise, the means of production with the binding fiduciary system (only with the certificate);
- easy fast and secure Services;
- the process of just 3 days;
- loans ranging from 100 thousand rupiah up to Rp. 5 million;
- the number of members of the group consists of a minimum of 5 persons and a maximum of 10 persons;
- loan can diangsur up to 24 months with the number of installments fixed.

#### 8. KREMADA (Housing Credit).

Is a loan (credit) software provided by Pawnshops to low-income communities (MBR) who are members of the group.

About KREMADA:

- the purpose of the credit to help low-income communities for construction of new homes and renovation;
- Time of 12 to 24 months;
- ways of payment through monthly installments;
- the magnitude of the loans of Rp 5 million and Rp 10 million;
- 3 days service Time;
- Cost management of 8% (direct cut in advance);
- administrative expenses 1% of money lending;
- other costs there is no prospective customer who belongs to the MBR (earnings in a month is not more than 2 million) and incorporated in the Group submits a credit to pawn shops for the renovation or construction of a new home. Upon submission of the Pawnshops do survey credit to domicile potential borrowers, as well as

submit to local pokja for approval. Description: for a while Kremada just melted on the branches of the paths (East Java).

9. INVESTA (Invested precious treasures belong to you).

Is a loan (credit) on the basis of the law of pledge in a particular term that is given to the customer with the assurance of shaped stock listed and traded on the Indonesia stock exchange (IDX).

Financing provided:

-a maximum of 60% of the basic values of the collateral;

\* Basic collateral refers to the price of the stock market.

\* price closing market price the previous day.

-maximum payment of Rp 10 million to Rp 50 billion-per-transaction. Credit period of 90 calendar days;

-extendable (roll over);

B. Responsibility systems in pawn shops

Responsibility system of pawnshops which applied appropriate research findings i.e. responsibility based on good corporate governance and responsibility of. And the third aspect of the current be related the responsibility of handling complaints and dispute resolution. A spark first corporate responsibility related to the Organization and corporate governance yng good PT.Pawnshops have divided the principal tasks and functions on any part that is associated with the customer's peayanan. Tanggug responsibility system of organizing pawn shops focused on customer service and management responsibilities associated with a complaint from a third party who feels aggrieved. The organizational structure of the company is an elaboration of the Division of tasks, authority, and responsibility in the achievement of the goals, an organizational structure can provide information about the development of the company and may also provide an explanation of the Administration and functions of each of the existing personnel.

Regarding the preparation and selection of the organizational structure, of course, adapted to the needs of the company in question, as each company has different areas of activity each other in operations. Therefore, not all companies have the same organizational structure but always apply the chart that corresponds to the condition of the company. Basically, the benefits derived from the use of the organizational structure is so that any personnel can carry out the duties and obligations in terkoordinir and controlled, a Manager will be easy to know the difference in the company's operations that occur at a specific part so that it could be held as soon as possible with improvements.

To explain the roles and responsibilities of PT. Pegadaian Indonesia the author has conducted research in P.T. Pawnshops Tomohon Branch about the existence of the P.T. Pawnshops as Non-bank financial institutions which are examined are the following elements:

1. The responsibility of the organizing system in P.T. pawn shops,
2. procedure of granting credit responsibility pledge in pawn shops, P.T.
3. The responsibilities involved in dispute resolution

As for the components examined is very important to get an idea of the existence of the PT. Pegadaian Indonesia as well financial institutions of the system, how it works and the procedure for the handling of the case. The system of organizing in PT. Pegadaian Indonesia uses the Organization Line Organization where the Government line of leadership led to the Organization of the executor while the flow of information from the ground/implementers to Chairman/Manager shaped the proposal and responsibility. Each piece is handled by a staff who are considered experts in the field of work and helped by some other staff personnel. The Division of tasks within an organization should be clear, so there happen confusion in practice, it is expressed so that a mutual cooperation between subordinates and superiors as well as between the part-level to achieve the objectives of the company. The Division of tasks, authority and responsibility are balanced within an organization can help lighten the load on the helm.

The second aspect concerns the responsibility of P.T. Pawnshops as non-bank financial institutions i.e. the channelling of funds or credit in the form of granting credit. In Act No. 10 of 1998 one of the financial institutions i.e. the channelling of funds to the community. It is indeed a doing by P.T. pawn shops. The procedure of granting credit in PT. Pegadaian Indonesia is actually somewhat different from practices in financial institutions bank, in particular in getting credit facilities of the customer are not confronted in the convoluted procedure like a credit application at the bank. The ease and simplicity of the procedures which lead to pawn shops to become a prima donna for the people of the lower classes, where in the face of economic difficulties need cash in the form of fresh money. The ease of the procedure is specifications and Pawnshops in providing an advantage Pt credit facility against the customer. But there are drawbacks, namely the customer cannot be identified in detail the goods warranted nor the person who guarantees the item.

The early stages in the mechanism of pawnshops are usually customer mortgaged goods contact the penaksir with carry and hand over the goods pawned in order for the collateral value estimates are known items which will be pawned. Next section penaksir will examine the quality of the goods that will be digadaikan and estimating and assigning the value of the goods that will be digadaikan in accordance with the rule book estimate

(BPM) and applicable circulars. Section penaksir will set the value of the appraiser of merchandise that will be the digadaikan as the basis for determining the value of the loan plus the rent money capital (interest). If a prospective customer agreed, then immediately contact the cashier to receive the money of the loan, which was then tied with a letter of credit.

Usually to minimize losses resulting from an event which is uncertain in order to guarantee a profit and the security of the goods the customer shall create any warranty, then the customer bears the costs and premiums paid by borrowers pledge, which according to the magnitude of the money a loan or pawn goods type. Money lending with the capital lease (interest) is to be paid or repaid at maturity or before, the next item gadainya stored in pawn shops is returned again to him.

The items to be digadaikan first assessed by way of a warehouse for goods, i.e. goods pawn in addition to gold and precious stones, is assessed by looking at the local market price (HPS) the pledge of goods, determine the percentage of assessment, calculation and continued lending on the basis of his Division. To stuff the pockets in the form of gold is assessed by looking at market prices Center (HPP) and standard metal estimates (STL), perform a test karatase and measure weight, determine the percentage of the valuation, and continued lending based on the calculations. With regard to the goods in the form of bags of gems, by looking at the standard estimates of gems (STP), perform testing with needle testers, measuring a magnitude of diamonds and the determination of the quality of the diamond, determine the percentage of assessments, and continued lending based on the calculations.

The third aspect concerns the concept of and the responsibility of the customer complaints related to pawn shops and pawn shops, as well as how the omission of dispute resolution, this is related to the model and the form that is applied. The responsibility of the pawn shops is always related to the issue of goods that pawned or any warranty and liability that must be done by the company to the customer. Waiver of liability by PT. Pegadaian Indonesia will certainly has an impact on the customer's puas, this is an early occurrence of dispute. Teoritik approach to examine the responsibilities of P.T. Pawnshops is certainly related to the legal theory approach based on specification models of responsibility demanded by the customer against the pawn shops.

In fact, the various problems that arise from the activities of pawnshops like the vagueness of the identity of the goods and the customer and also a case involving two sides from both the customer complain or pawn shops demanding customers to fulfill their obligations as credit granting. Many syt communities who say that pawn shops as placeholders items were stolen "artisan catchment". Indeed, the guarantee institution based on the pledge of customary law which is a product of the nation of Indonesia, but dealing with the demands of globalization. Standardization of financial institutions must take precedence.both of them. The principle of the debtor knew (know your customer) by the lender is also one of the principles espoused in the law of and financing. This principle also requires that certain boundaries until the lender oversee the use of funds by debtors. Certain boundaries that are based on legal theories to a number of creditors ' responsibilities as follows:

1). The theory of Instrumentality

Agency Theory 2).

3). The theory of a De Facto Partnership

4). Theory of Tort Law

5). The theory of good faith.

1. The theory of instrumentalities

According to this theory, the borrower is requested must be paced relaxing legally if there are losses while the creditor intervene into such debtor companies far that debtor is merely like tools (instruments) only for the lender.

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According to this theory, the borrower is requested must be legally responsible if any harm while on the lender contained elements against the law, such as the existence of an element of deliberate action or omission that can harm others. This principle in Indonesia is regulated by section 1365 KUH Perdata with article known in tort law (onrecht matigedaad) this article requires the fulfillment of the elements to make an act of violating the law can be sued in damages, namely: 1). The existence of the tort law of the defendants.

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According to the author that the injured party can prove that the goods which made the assurance in P.T. Pawnshops are stolen then the lender, in this case, should be responsible Pawnshops Pt.

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According to this theory, the borrower is requested must be legally responsible if any losses when the lender did not act in good faith. According to the author that the pawn shops as P.T. creditors receive the goods the guarantee, must determine whether the goods which that guarantee the origin from where. If goods that guarantee in the form of gold is stolen/robbery should be PT. Pegadaian Indonesia could do not receive a guarantee that, because if the guarantee that pawn shops receive Pt, Pt pawn shops should be responsible.

In the legal agreement is the responsibility of the parties in theory be legal proceedings to be enforced in the implementation of the agreement. The two sides have agreed to implement the agreement with marked wrapping with a signature. The signature is one of the evidence that the parties had been aware of and willing to implement the content of the agreement (achievements) in accordance with the rights and obligations of the parties with full responsibility. In the Letter of credit Agreement (SBPK) PT. Pegadaian Indonesia with customer agreed to become the standard requirements as a reference implementation of the agreement. The contents of the Covenant in it includes a number of standard terms, in fact, more make room (power) to P.T. Pawnshops, in principle, all the contents of the agreement contain the responsibility.

A. legal certainty in the system of guarantee of Pawn

The results of the research of the existence of PT. Pegadaian Indonesia's non-bank financial institutions found that an a clear picture that the factors that influence of the optimality system of P.T. pawn shops, namely legal certainty is primary to uncover any suspicious transactions (suspicious transaction). In the activities of a financial institution or a financial institution focused on 4 things: a. Financial assets, Stock, b. c. Claims (bills-bills), d. Providing credit loans.

The existence of P.T. Pawnshops as non-bank financial institutions should be based on the components with definite rules especially relating to the institutional system of the pawn shops as an institution engaged in the field of finance. Function Pt Pawn shops in modern society, this is no longer a social institution or institution of custom save loan but this agency is a financial institution. Two important indicators that must be examined, namely the Agency disbursed funds for the needs of the community and the institutions it had assets in the form of goods if it is redeemable then this institution function like a bank but does it matter if the bank's assets in cash while its assets are pawn shops in the form of objects. When viewed from its function and its business activity, pawn shops are one of the financial institutions is not a bank that is the focus of its activities is to provide financing. In General, the ideal destination PT. Pegadaian Indonesia is the provision of funds for the simple procedure to publics extensive especially among medium-sized down for a variety of purposes, such as production and consumption etc. The existence of P.T. Pawnshops is also expected to suppress the emergence of formal financial institutions tend to be detrimental to society as a pawn, in practices dark, dark bank, loan sharks, and others.

The importance of legal certainty is the demands of the community especially the clarity and firmness of the rules about P.T. Pawnshops to exist as a financial institution with a wide range of activities and its implications. PT. Pegadaian Indonesia as the obvious existence of the guarantee institutions and arrangements since it used to be, but in the further development of the pawn shops are no longer just focused on the issue of a guarantee, but it is a financial institution.

Talking about the basic law then the certainty of his starts with a look at the purpose of the law itself specifically optimality PT. Pegadaian Indonesia and the application of the principle of the introduction of the customer, because without goals and clear legal functions then tough chick optimality certainty in PT. Pegadaian Indonesia especially the sector of non-bank financial institutions because in principle the efforts of P.T. optimality pawn shops should match with the objectives of the law. The fundamental question is whether the served as the basis and purpose of P.T. optimality Pawn shops sector of non-bank financial institutions, requires a careful review of the legal theory approach with regard to the purpose of the law as expressed by Roscoe Pound with the famous theory of the law as a tool to change society (law as a tool of social engineering). Whereas the purpose of the law the law according to Roscoe Pound in his Task of law, is to order in order to achieve justice and as a means of renewing society. Starting from dotted thought Roscoe Pound, then Mochtar Kusumaatmadja developed a legal thinking of development judged most appropriately applied in Indonesia. Therefore, the influence of Social Engineering in the development of laws in Indonesia is very necessary and may do.

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human society that regularly.

In addition to another legal purpose of the order is the achievement of a different justice, measuring the contents and according to society and his time. In spite of all that is the purpose of the law is an objective fact that applies in human society in all its forms. When we remember that no man may represent life without community, then man, society and the law is the notion that cannot be separated-move.

To achieve order in the society labored legal certainty in the association between human beings in the society. That is important not only to people's lives but rather is an absolute requirement for an organization of life that goes beyond the limits of the present moment. Without the certainty of law and order society that incarnated by him are not likely to develop talent and God-given ability to him, optimally within the communities where he lives. The law is something that pleased with man, the man with his relationship with other human beings in a relationship alive. Without the disconnection of life (the public), there will be no law (ubi ius ibi societies, zoon political).

#### CONCLUSIONS AND SUGGESTIONS

1. The functions of the PT. Pegadaian Indonesia(Persero) as the institutional lender that is to achieve justice and social welfare. In running his efforts particularly in the field of credit or distribution to the public of PT (Persero) pawn shops have an advantage because of the simplicity of the procedure credit. Channeling money lending is done in a way that is easy, fast, secure, efficient and not burdensome for the people that do the borrowing. It is in accordance with the motto of pawnshops, "tackle the problem without any problems". Loaning credit mortgage procedures in very practical, because it does not require lengthy bureaucracy. With the simplicity of the procedure of granting credit PT. Pegadaian Indonesia(Persero) grabbed a turnover is so great that is already about 4230 trillion, the number of branch offices number of any fruit 690 bails 20.0300.949 pieces. The increase in the assets of pawn shops listed in the annual report of the year 2011-2012 P.T. Pawnshops (Persero) has a strategic position in economic development.

2. The borrower (pawn shops (Persero) Pt) responsible legally if there are losses while at the lender contained elements against the law as an element of deliberate action or omission that can be detrimental to the other parties, in this case, the debtor. For example the problem of fraud, a borrower (PT. Pegadaian Indonesia(Persero)) legally responsible if any harm while the action is not in good faith, i.e. receive a guarantee that his identity is not clear for example goods stolen from reassurance. The borrower is responsible for the loss of any third party who claims goods warranty pawned.

The responsibility of the debtor (client) on the P.T. Pawnshops seen from raw agreement containing the terms:

-responsibility towards tort;

responsibility to the force-major situations;

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#### 5.2. ANY SUGGESTIONS

1. to reaffirm the functions of Pt (Persero) pawn shops on the realization of Justice and improving the welfare system had to be done to revitalize, securing system and dispute resolution system in order to make the trust's market share has increased compared to non-bank financial institutions etc.

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3. in the system of guaranteeing legal certainty must adjust to the rules of BI (know your customer). To reach a broader market share, then there should be a re-reformulating pawn guarantee system rooted in the 1977 article KUHPerdata with the introduction of the system of the customer. One of the excellence in P.T. Pawnshops is simple. To support excellence, P.T. Pawnshops have to change patterns and disclaims any warranty that suspicious so that society believes in PT. Pegadaian Indonesia with the motto "overcoming problems without problems". There should be the legal certainty by making special rules that are published to the community to support good companies.

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