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THE CONCEPT OF POWER OVER MOVEABLE PROPERTY (*BEZIT*) IN CIVIL AND CRIMINAL LAW PERSPECTIVE

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Abstract

The issue of the position of power over movable property often raises the question of whether the party in control is the owner. This is very important in the realm of law, especially if an object that is controlled by one party will be made the object of a transaction with another person. Therefore, it is necessary to carry out further legal identification and analysis related to the concept of the position of control of the movable property, both in the perspective of civil law and criminal law so that in the end it can find differences and similarities in the concept of the position of control of the movable property so that it can create legal certainty and protection for the public parties involved in an engagement or legal relationship. Therefore, the implementation of control of objects in civil law cannot be separated from the provisions in criminal law which ultimately require pawnshops to apply the principle of prudence in control of objects.

Key words: *Bezit*, Material Control, Moving Objects, Legal Comparison

INTRODUCTION

Humans are motivated to seek wealth to maintain their existence and to increase material and religious enjoyment. The desire to fulfill the needs of every member of the community often encounters a conflict of interest. Therefore, this is where the role of law is in regulating the conflicts of interest of each member of society so that they can be fulfilled in an orderly and safe manner. The measure of the success of the law in national development is that the law can create welfare, justice, and happiness for the community. (Sulaiman, 2013) Law comes from the norms that exist in society. Accordingly, the law is the most important system

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in the implementation of meeting the needs of each human being in various ways and acts, as the main intermediary in social relations between society and legal certainty over assets and material.

To more easily regulate the binding of objects in legal norms, the creators of the Civil Code (hereinafter referred to as the Civil Code) provide a limitation and division into several groups. This is regulated in the second book of the Civil Code regarding the Law of Property. The law of objects regulates material rights which are absolute in nature, meaning that people are obliged to respect the rights over these objects. Material rights are absolute rights over a legal object (object) that gives direct power to said object and can be defended against other parties. (Usanti, 2012). This is in line with what J. Satrio conveyed that material rights are property rights that have absolute characteristics (can be shown to all people in general) and those who are born first have a higher place and are attached to certain objects. (J.Satrio, 1999) Therefore, a material right is a right that can be sued against any person related to an object that someone wants because of the independent property rights which these rights follow wherever the object is (*droit de suite*).

Regarding the control of objects, it is regulated in Article 529 of the Civil Code concerning the Position of Power which explicitly states: "The position of power is the position of a person who controls an object, either individually or through other people, and who maintains or enjoys it as a person. who has the material". Based on this understanding, it can be concluded that the law protects someone who controls an object (as if it were his own) without questioning who the real owner of the item is.

The concept of the position of power in this movement often becomes a legal problem in society. For example, in the pawn issue. In Article 1150 of Civil Code, which explicitly states: "Pawning is a right obtained by a person owed for a movable property, which is handed over to him by a debtor or by another person on his behalf and which gives power to the debtor to take repayment of the goods. the said goods take precedence over other indebted persons; except for costs to auction off the goods and costs that have been incurred to save the goods after being

pawned, which costs should take precedence. Thus, Pawn according to the Civil Code does not question the ownership of movable property that is guaranteed to the creditor. This returns to its relevance to article 529 of the Civil Code.

On the other hand, Indonesian law which also does not escape from other legal provisions in community regulation is criminal law. Criminal law is a rule in law that can control all actions that have been prohibited by law and will result in the imposition of penalties for those who have done them and have fulfilled all the elements of the acts that have been mentioned in The Criminal Code. In connection with the criminal law, the position of power of movable property which has been regulated in the Civil Code needs special attention that not always the person in charge of movable property is considered the owner and is protected by law. If the above pawning problem is related to Article 480, the Criminal Procedure Code determines that everyone who knows or should reasonably suspect that the goods he received as the object of the pledge were obtained from a crime.

Based on this description, it can be concluded that the issue of the position of power often raises the question of whether the real controlling party is the owner. This is very important in the realm of law, especially if an object that is controlled by one party will be made the object of a transaction with another person. Therefore, it is necessary to carry out further legal identification and analysis related to the concept of the position of control over movable property, both in the perspective of civil law and criminal law so that in the end it can find the essence of the concept of the position of control of the movable property so that it can create legal certainty and protection for the parties. involved in an engagement or legal relationship.

In connection with the idea of this study, it is known that previous research discusses the following: issues *Bezit's* concept in virtual property sale and purchase transactions (Usanti, 2012), collateral property rights (Mopeng, 2017), and legal aspects of immovable property under fiduciary collateral (Siwi, Katolik, & Karya, 2017). Based on previous studies which have been described above, there have been no studies that addressed the subject of comparison

concept mastery position moving objects in the perspective of civil law and criminal law. This research will identify and analyze various things related to the concept of domination of movable objects (*bezit*) with several problem formulations as follows: 1) How is the concept of control of the movable property in the perspective of civil law? 2) How is the concept of control of movable property from the perspective of criminal law? And 3) Comparison of the concept of control of the movable property in the perspective of civil law and criminal law?. This comparative study of the concept of the position of control over movable objects aims to find the differences and similarities in the concept of domination of movable objects (*bezit*) in the perspective of civil and criminal law which normatively distinguishes their treatment in predicting control of the movable property as previously described.

METHODOLOGY

This research belongs to the tradition of qualitative research. The research aims to find the correct knowledge to answer and/or solve a problem (Wignjosoebroto, 2007), because it requires a paradigm as a point of view, values, methods, and basic principles. , or how to solve a problem, adopted by a scientific community at a certain time.(Satori & Komariah, 2009). This research is normative (legal research) with several approaches at once. Each of them is a statutory approach (statute approach), analytical approach (analytical approach), and a philosophical approach (philosophical approach) (Ibrahim, 2007). This research will depart from a textual study, namely statutory regulations and judges' decisions. This study will examine the legal norms contained in regulatory texts (regulatory language). This study will use secondary data as the main data, which is obtained from literature studies. Secondary data in this study will be presented systematically and then analyzed descriptively and analytically using deductive logic.(Suteki, 2008)

RESULT AND DISCUSSION

1. The Concept of Mastery of Movable Property in Civil Law Perspective

Control of goods or also known as the position of power or *bezit* in Civil law has been regulated in Book II, Article 529 - Article 569 of the Civil Code. The definition of the position of power is regulated in Article 529 of the Civil Code. The definition of *bezit* in the Civil Code can be seen in the provisions of Article 529 of the Civil Code, which Article 529 of the Civil Code states that "What is meant by *bezit* is the position of controlling or enjoying an item that is in someone's power personally or using another person as if the thing is his own ". Meanwhile, according to Prof. Subekti, what is meant by *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 the property rights of the object belong to. The party who carries out *bezit* is a legal subject who has the right to power, so it is the real power over an object so that the object belongs to it truly. (E. Utrecht, 1989) Control of objects or positions of power must meet the following requirements, namely:(Sofwan, 1981)

- a. Corpus, meaning that there must be a relationship between the person concerned and the object. The person who is in control of an object has a legal relationship with the object in his control. In other words, a legal relationship arises between a legal subject and a legal object that gives birth to material rights. As a result of this legal relationship, the person who holds the power of a material right to defend against everyone and to enjoy, utilize and use it for the person in power himself.(Muljadi & Widjaya, 2004)
- b. Animus, meaning that the relationship between people and objects must be desired by that person. The will in question is perfect, meaning that it is carried out by a person capable of law. This provision is following Article 539 of the Civil Code, which can be identified by persons unable to obtain a position of power, namely insane persons. Meanwhile, a person who is not yet an adult can do this activity with a representative of a person who is capable of law.

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The position of power in civil law has two functions, namely the police function and the function *zakenrechtelijk*. The police function rather than *bezit*, namely the control of these objects to get legal protection. This function is attached to every *bezit*. The law takes into account the actual situation without questioning property rights over the object. So that when an object is controlled by someone even though it is the result of theft, the law still protects that person until he is proven that he does not have rights over the object. So, someone who is aggrieved must ask for a settlement through legal channels.

The second function is the function *zakenrechtelijk*, meaning that if there is no protest from the previous owner for some time in the possession of the object, then the condition will only become the right of the power holder as long as time has not passed or has expired. This function does not exist in every *bezit* only for moving objects. Control over movable objects applies the principles stipulated in Article 1977 paragraph (1) of the Civil Code. According to Article 1977 paragraph (1) of the Civil Code, it can be seen that a person who controls a movable property is considered the owner without paying attention to how to obtain the movable object under his control. In other words, to become the owner or to obtain property rights over a movable object is sufficient to prove that there is a position of power over the ownership of the said object. Article 1977 paragraph (1) of the Civil Code regulates expiration which frees stomachs with a grace period of zero years. So, someone who controls a moving object immediately controls the object and is free from the owner's guidance, unless it can be proven otherwise. However, there are exceptions to the provisions of Article 1977 paragraph (1) of the Civil Code. Control over the said object is not automatically controlled by the Carrier if the item is lost or the result of theft. This is following the provisions of Article 1977 paragraph (2) of the Civil Code.

Based on Article 1977 paragraph (2) of the Civil Code, it can be concluded that the carrier of the goods can be sued by the owner of the item who has lost his item or is stolen by another person no later than three years after the item is lost. Article 1977 paragraph (2) of the Civil Code also relates to Article 582 of the Civil Code. The provisions in Article 582 of the Civil

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Code stipulate that the Owner of the goods is not obliged to give an amount of money which is considered purchase to the Carrier unless the movable object controlled by the Carrier is obtained at a market, public auction, or from a wholesaler who is used to selling goods. one of a kind. If within three years the time has passed then the person who controls the movable object becomes the owner and cannot be asked back by the owner. This is because the missing items have the same status as unregistered items that are owned through control.

The provisions stipulated in Article 1977 paragraph (2) in conjunction with Article 582 of the Civil Code, it can be seen that the owner of a movable object must be protected from a holder of a powerful position who is not entitled even though the person who controls the object obtains it employing a purchase. The person who last controls it is not entitled to claim compensation from the owner of the goods but from the person from whom he obtained the goods. In addition to protecting the Owner, the provisions of Article 1977 paragraph (2) in conjunction with Article 582 of the Civil Code also protect Third Parties who obtain movable objects from a person holding a position of power who is not entitled. This protection only applies to third parties when the owner buys the goods in the annual market or other markets, at a public auction, or from a trader who is known as someone who usually sells similar goods. The form of protection is the replacement of money that has been paid as a purchase from the owner of the actual movable object to a third party.

Based on the articles in the Civil Code which regulate the control of movable objects, it can be seen that control of movable objects does not require an agreement. A person who controls a moving object can control the object with or without assistance from the owner. Managing movable objects can be done without proof because it is not registered and can be done honestly or dishonestly which is protected by law.(Muhammad, 1994) Control over movable objects is easier than control over immovable objects because the use of written agreements is not obligatory. Therefore, it is necessary to have good faith from each party in controlling moving objects. Article 530 of the Civil Code states that "In such a position there are those with good

intentions, some with bad intentions." So, the position of power is possible because of good faith or bad faith. So that the Civil Code has distinguished the legal consequences of these two things.

Articles that regulate the good or bad faith of a person holding power over movable objects can be seen in Articles 531 and 532 Paragraph (1) of the Civil Code. Article 531 of the Civil Code regulates the acquisition of a position of power in good faith if it is obtained with property rights and does not know the disability of the object. Control over movable objects is further regulated in Article 1977 paragraph (1) of the Civil Code which states that the person holding the power is declared the owner of the movable object. The right to own a movable object is following Article 570 of the Civil Code regarding property rights. Based on Article 570 of the Civil Code, it can be seen that the right to property includes the right to control freely, the right to fully enjoy, and is not against the law.

A person wishing to prove that the holder of possession has exercised possession in bad faith may submit to the Court to prove this. This is following Article 532 paragraph (2) of the Civil Code which explains that if the holder of a position is issued because of his position before a judge and he loses the case, then he is considered to have bad intentions since the case was brought forward. So that the intention of a Holder in power can change from good to bad when he has been proven guilty in court.

2. The Concept of Mastery of Movable Property in The Criminal Law Perspective

Mastery of movable property in criminal law must be carefully understood and must be based on the principle of prudence. This is because if the item under control turns out to be an act against the law, then the person who controls the object can be subject to criminal detention. Based on Article 480 (1) of the Criminal Code, it can be seen that the subjective element of the criminal act of detention is what he knows and must properly suspect. While the objective elements are buying, renting, exchanging, pawning, receiving as gifts or as gifts,

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driven by the intention of making a profit, selling, renting, pawning, transporting, deviating, and hiding. If the objective elements of a criminal act are related to the position of power of a movable object, it can be seen that any person who controls an object can be subject to the criminal act of detention if the person in control knows and should suspect that the object under his control has originated from a criminal act.

The first subjective element of the criminal act of detention is what he knows. The meaning of what he knows means that the control of the object is done deliberately (P.A.F Lamintang, 1989). So, when someone who is given control of an object already knows that the method of obtaining the item is against the law. When these elements are fulfilled, there will be no more problems in criminalizing a person with the criminal act of detention. This is because there is an intentional element that is the subject of an action that can be subject to a criminal act. To know a form of detention is carried out deliberately, it is necessary to have a court decision.

The second subjective element of the criminal act of detention stipulated in Article 480 (1) of the Criminal Code is an element which he should properly suspect or that he should reasonably be able to suspect. In this case, it can be interpreted that the control of an object in the form of support can be done accidentally. In this case, it is necessary to have elements of caution from the party receiving the moving object for its control because of an element of the accident. However, accidental punishment in criminal law has the same provisions as an act that is committed deliberately (P.A.F Lamintang, 1989).

Based on this description, it can be seen that the concept of control of the movable property in criminal law is that a person carrying a moving object is not considered the owner but someone who temporarily controls an object. For example, in the case of leasing or pawning, it is not his property but he only controls it for a certain period. The position of controlling movable property that has been regulated in the Criminal Code is not always assessed as the owner. This is as stipulated in Article 480 of the Criminal Code which determines that

everyone who knows or should reasonably suspect that the goods he received as the object of a pledge were obtained from crime. Therefore, in the context of criminal law, each party can slip into the article of a criminal act if they are not careful in controlling movable objects. However, in practice, even if a person who controls a moving object is prudent in obtaining said object, he can still be charged with criminal detention until he is proven not to know the origin of the item.

3. Comparison of the mastery of control of the movable property in the perspective of civil law and criminal law

The control of movable property in criminal law is different from the concept of mastery in civil law. The concept of power in civil law explains that someone who controls an object is considered the owner and the person who receives the item from the party who controls it cannot be blamed for receiving the item. Whereas in criminal law, the person who has power over a movable property is not necessarily the owner, so that the person who receives the item can then be subjected to a criminal detention when the item he gives turns out to be obtained through a crime.

The difference in the concept of control of movable property between criminal law and civil law creates confusion if there is a legal problem. One of the cases that can arise is related to the provision of a mortgage. Pledge Guarantee is a legal action taken by Pledge Pledge and Pledge Recipient to bind themselves to one another which creates a civil law relationship. This means that the implementation of pawning is essentially a civil issue. However, it can turn into a criminal law issue when it turns out that the goods received by the party receiving the pledge have been obtained from a crime. This allows pawnshop employees to be charged with a criminal act of detention that could have been avoided.

Civil law considers that everyone who controls movable property is the owner and in criminal law it states that a person who controls movable property is not necessarily the owner

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so that the person who subsequently controls the object can then be charged with a criminal detention if it is proven that the object originated from a crime. In principle, these two concepts have their own reasons so that they will have the truth from their respective points of view. However, this difference in concept is more often detrimental to third parties in controlling a movable property.

Therefore, the difference in principles in the Civil Code and the Criminal Code regarding the position of power of movable property can be mediated by an ideal concept. This concept can make the parties involved in a position of power avoid acts against the law. This concept can be divided into two parties, namely the party who is in control of a movable property and the party who receives movable property from a person who has a position of power.

The person who controls movable property must have good faith in controlling an object. Good faith is essential in implementing the agreement. The principle of good faith is stated in Article 1338 paragraph (3) of the Civil Code which states that, "All agreements must be carried out in good faith". This principle implies that every party that has bound itself in an agreement must carry out the substance of the agreement based on the trust or goodwill of the parties. Good faith must arise from each party, especially the party that will relinquish its rights.

This good faith can be manifested by the willingness to fill out a statement that the party controlling the movable property is really the owner of the movable property under control. Apart from that, he also needs to state that the item he is in control of is not the result of a crime. When these two things are able to be accomplished by the party who is in control of movable property, then he has good faith.

Another thing that needs to be observed comes from the party receiving goods from people who have positions of power. The recipient must have the character of caution and confidence in the goods to be received. This is very important in order to avoid unwanted things in the future, such as the possibility of being charged with a criminal act of detention. A prudent attitude can be realized by the existence of a written agreement between the two parties and it is best to avoid an oral agreement. The agreement contains that the party receiving the goods

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is not responsible for the origin of the goods they receive. With good faith and prudence from the parties, legal certainty regarding the position of power can be achieved. After the legal certainty of the position of power of movable property has been achieved, there will be no loss for parties as a result of possession of the property. So that the position of power according to the Civil Code and the Criminal Code can go hand in hand.

CONCLUSION

The position of power in civil law explains that someone who controls a moving object is considered the owner of the item. For goods that are immediately controlled, there is no period for control so that the person who has a position of power over the moving object immediately becomes the owner. Except for moving objects that come from lost goods or theft, someone in power can become the owner after three years have passed. So that people who receive goods from people who have a position of power cannot be punished if they receive goods from the person who controls them.

The control of the movable property in criminal law must be known or reasonably suspected of being the proceeds of crime. So that someone who controls movable property is not necessarily the owner. This causes the possibility that the person receiving the object from the person who is in control of the movable object can be charged with a criminal act of detention. As a result, someone who will receive an item must be aware of the goods he will receive.

Control of movable property in civil law and criminal law has fundamental differences in terms of receiving goods in third persons. Therefore, there is a need for a middle ground in regulating the position of power in civil law and criminal law. This can be done with the awareness of everyone to have good faith in carrying out their position and the person who will receive the item must make a written agreement to provide legal protection in the future if a problem occurs in the case of the position of power. When it has been carried out, it will create legal certainty and no party will be harmed.

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