

THE IMPACT OF THE HAMLET LAND PAWN AGREEMENT ON THE ECONOMIC LEVEL OF INDIGENOUS PEOPLES IN NEGERI PILIANA, MALUKU TENGAH REGENCY

Jenny. K. Matuankotta, Mahrita Aprilya Lakburlawal, Pieter Radjawane

Universitas Pattimura

Jl. Ir. M. Putuhena, Poka, Kec. Tlk. Ambon, Kota Ambon, Maluku 97233

Safrin Salam*

Universitas Muhammadiyah Buton

Jl. Betoambari No.36, Lanto, Kota Bau-Bau, Sulawesi Tenggara 93724

*email : safrinjuju@gmail.com

Kayode Muhammed Ibrahim

University of Ibadan

Oduduwa Road, 200132, Ibadan, Nigeria

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Abstract: This study aims to identify and analyze the hamlet land pawn agreement practice and its impact on the economic level of indigenous peoples in Negeri Piliana, Maluku Tengah Regency. The method used is sociological juridical research which emphasizes research aimed at obtaining legal knowledge empirically by going directly to the object. The chosen research location was Negeri Piliana, Tehoru District, Maluku Tengah Regency. The research was conducted using primary and secondary data. The sample selection method used a purposive sampling method. The results of this study indicate that the pawn sales transaction practice in Negeri Piliana, Tehoru District, Maluku Tengah Regency, has a different concept from the concept according to customary law in general. The pawn sales practice, in this case, is an agreement to give a hamlet (land that has been planted with certain long-lived crops such as coconut, cloves, nutmeg or cocoa) to obtain an amount of money with a mutually agreed repayment period as long as the pawn giver can cover the amount owed along with interest. So that if it is not agreed upon, it can cause the pawn giver as the owner to lose access to the pawned object for an unlimited time, which can impact the economic level of the surrounding community.

Keywords: Pawn Agreement, Indigenous People, Economic Impact.

Abstrak : Tujuan penelitian ini adalah Untuk mengetahui dan menganalisis tentang praktek perjanjian *gadai dusun* serta dampaknya terhadap tingkat ekonomi masyarakat hukum adat di Negeri Piliana Kabupaten Maluku Tengah. Metode yang digunakan yakni penelitian yuridis sosiologis adalah menekankan penelitian yang

bertujuan memperoleh pengetahuan hukum secara empiris dengan jalan terjun langsung ke objeknya. Lokasi yang dipilih sebagai lokasi penelitian adalah Negeri Piliana Kecamatan Tehoru Kabupaten Maluku Tengah, dengan menggunakan data primer dan data sekunder, metode pemilihan sampel menggunakan metode *purposive sampling*. Hasil penelitian ini menunjukkan bahwa jual gadai dalam praktek di Negeri Piliana Kecamatan Tehoru Kabupaten Maluku Tengah Propinsi Maluku memiliki konsep yang berbeda dengan konsep jual gadai menurut hukum adat pada umumnya yaitu jual gadai merupakan perjanjian pemberian *dusun* (tanah yang telah ditanami tanaman umur panjang tertentu seperti kelapa, cengkeh, pala atau coklat) untuk memperoleh sejumlah uang dengan jangka waktu pelunasan disepakati bersama selama penerima gadai dapat menutupi jumlah hutang beserta bunga, sehingga apabila tidak diperjanjikan dapat menyebabkan pemberi gadai selaku pemilik dapat kehilangan akses pada objek gadai dalam waktu yang tidak terbatas sehingga dapat berdampak pada tingkat ekonomi masyarakat.

Kata Kunci : Perjanjian Gadai Dusun, Masyarakat Adat, Dampak Ekonomi

Introduction

Land pawning has frequently become an immediate solution for people, especially in rural communities, when they need funds to meet their urgent needs.¹ However, this land pawning practice is also often associated with "poverty." This is very natural, considering that pawning or what is also known as the pawn sales practice (*odolsende*, Javanese; *ngajual akad*; or *gade*, Sundanese)² based on customary law is an agreement that causes a person to hand over a plot of land to be able to receive a certain amount of money with an agreement that he can get back his land if he repays his debt in the same amount. Thus, the land will remain in the control of the person who lent the money (pawn receiver), who then takes the land proceeds as the interest on the loan if the debt has not been paid off. This definition indicates that pawn sales practice is an independent transaction in which a landowner pawns his land because he needs a

certain amount of money. This is different from a land pawn (*grond verponding*) which is additional in nature, or there must be a principal agreement, namely debts (*accessoir*).³

Specific regulations regarding pawning in Indonesia can be found in Law Number 56 Prp of 1960 concerning the Determination of Agricultural Land Areas which also serves as implementing regulation of the Basic Agrarian Law. The provision of Article 7 paragraph (1) has stipulated the time limit for the pawn agreement, which cannot exceed more than 7 (seven) years, and if it has exceeded seven years, the pawn receiver must return the land object of this pawn agreement to the owner (pawn giver) without any ransom. Meanwhile, in the explanation of Law Number 56 Prp of 1960, it is stated that the meaning of pawning is a person's relationship with land belonging to another person who has debt to him. As long as the debt has not been fully settled, the land remains in possession of the person who lent the money (pawn receiver). During that

¹ Andriyani Nehemia, "Keabsahan Jual Beli Hak Atas Tanah Berdasarkan Hukum Adat Di Kecamatan Baktiraja Kabupaten Humbang Hasundutan Provinsi Sumatera Utara," 2020.

² Esti Ningrum, "Jaminan Kepastian Dan Perlindungan Hukum Terhadap Perjanjian Gadai Tanah Menurut Hukum Adat," 2013.

³ Iskandar and Addiarrahman, "Sejarah Sosial Perkembangan Hukum Gadai Dan Rahn (Gadai Syariah) Di Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 17, no. 02 (July 3, 2018): 4-5. <https://doi.org/10.30631/alrisalah.v17i02.62>.

time, the land proceeds entirely became the right of the pawn receiver, which thus constituted the interest of the debt.⁴

The agreement terms of this agricultural land pawning practice require the return of the land object if the pawn period has reached more than 7 (seven) years, even though the full repayment has not been made. This is to provide protection for both parties from detrimental actions, especially those with indications of extortion. But in reality, until now, these pawning practices tend to be carried out based on customary law provisions, which cause more losses to the pawn giver.

This form of pawn sales practice is also conducted by the indigenous peoples in Negeri Piliana. The Negeri Piliana community is indigenous peoples located in Eastern Indonesia, namely in the Maluku Tengah Regency of Maluku Province. The location of Negeri Piliana, which is in the mountainous area at the foot of Mount Binaya, Seram Island, means that the people can only depend on the produce of their fields, agricultural lands, forests and hamlets.

The term hamlet in Maluku Tengah society generally refers to the land of indigenous peoples on which various long-lived plants with high economic value have been planted, which is located relatively far from the settlements. In other words, land that has been planted with these kinds of long-lived crops is called a hamlet, or "Dusun/Dusong" in the local language. This hamlet land is mainly planted with clove, nutmeg, coconut, durian, langsung and other long-lived trees. Hamlet is a land that is part of the *Petuanan* territory (*Ulayat*) of the local indigenous peoples. This *Ulayat* or customary territory of Maluku Tengah, generally includes land and coastal

areas. The areas on land include forests, land, lakes, rivers, and everything on it. Thus, the hamlet in this study is not in an administrative sense but a plot of land that has been planted with productive crops. This hamlet land often becomes the object of pawn transactions.

At first glance, the hamlet land pawning practiced by the indigenous peoples of Negeri Piliana seems to be mutually beneficial. Because the pawn giver, as the hamlet owner, can get financial assistance to meet their needs instantly, and for the pawn receiver, it can be a more profitable means of investing money. However, this practice, on the other hand, can cause losses to the pawn giver as hamlet owner because as long as the pawned object is in possession of the pawn receiver during the time period, the hamlet owner cannot enjoy the crops or land proceeds from his hamlet. The problem is when the pawn period is not specified in the agreement, so oftentimes, it can last more than seven years and even up to tens of years. Eventually, the profit obtained by the pawn receiver multiplies, while the pawn giver, as the hamlet owner, suffers a loss because he has not been able to enjoy the hamlet land proceeds for many years. Therefore, there is injustice experienced by the pawn giver as the hamlet owner.

The existence of Negeri Piliana community is still classified as a community with a low economic level. Moreover, the location of this village is far from banking access and causes the community to be more inclined to do the hamlet pawn transactions to meet their urgent needs. The reasons for these pawning practices also vary, although in general, they are due to urgent needs such as children's education, health costs, house build/renovation costs, or other consumptive needs. In addition, pawn transactions which can be conducted easily and instantly, are another reason when compared to transactions at banking institutions.

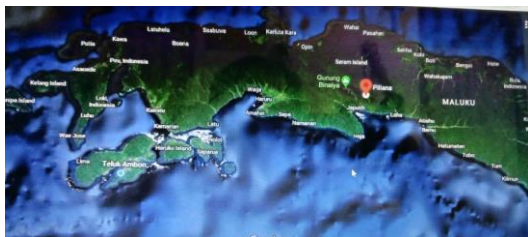
⁴ R.N.A.B.D.D.S. Febry Syarif Hidayatulah, "Kajian Yuridis Gadai Tanah Pertanian Menurut Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan-Peraturan Dasar Pokok Agraria," n.d.

The crop production from the hamlet is the only life support for the indigenous peoples of Negeri Piliana. Hence, losing the opportunity to enjoy the proceeds is tantamount to losing the opportunity to meet their daily needs. This, of course, will impact the community's economic level, and the economy's low level will also impact the community's welfare. Whilst it cannot be denied that one of the goals of human life is to obtain welfare.

The Hamlet Land Pawning Practice According to the Applicable Customary Law in Negeri Piliana, Tehoru District, Maluku Tengah Regency

a. General Description of Negeri Piliana

Negeri Piliana is an alliance of indigenous peoples which is located in Tehoru District, Maluku Tengah Regency, Maluku Province in Eastern Indonesia. Negeri Piliana is located at the foot of Mount Binaya at an altitude of 1200 meters above sea level. It is directly adjacent to Manusela National Park in the north, Negeri Hatumete in the East, Negeri Yaputi in the South, and Negeri Saunolu in the West. With a distance of 3 (three) hours' drive from Masohi, a regency city.



Map of Negeri Piliana

The location of Negeri Piliana at the foot of Mount Binaya influences the potential of existing natural resources to be dominated by forest potential, namely timber trees, including resin and agarwood, as well as cloves, nutmeg, durian, jackfruit, sago, coconut, and others. This also affects people's livelihoods, namely farming and gathering. Besides that, the location of Negeri Piliana is also the entry point for climbing Mount Binaya from the

South route, which contributes income to the people of Negeri Piliana from the tourism sector, as well as Lake Binaya or "Ninivala" tourism.

Table 1. Data on Population and Level of Education in Negeri Piliana

Parameter	Criteria	Total
Number of Household Heads	-	154
	-	663
Gender	Male	358
	Female	305
Education	Elementary School	189
	Junior High School	25
	Senior High School	36
	Diploma	-
	Bachelor	7

Data source: Negeri Piliana government data

The total population of Negeri Piliana is 663 people, with a male population of 358 and 305 females with 154 household heads. It shows that Negeri Piliana is a rather small village with more male population than female. In general, the education level of the people in Negeri Piliana is very low. The average resident of Piliana only completed their education at the elementary school level, 25 junior high school graduates, 36 senior high school graduates, and only 7 bachelor graduates. The factor that affects the low level of education in Negeri Piliana is that only 1 (one) elementary school is available. Moreover, to continue their junior and senior high school education, Piliana residents have to cover a distance of 8 km daily.

Socio-culturally, the indigenous peoples of Negeri Piliana live in two major clans (*mata rumah*), namely the *Mata Rumah Ilelapotoa* and *Latumuani*. The people are led by a head of government who acts at the same time as the village elder with the title of king and is assisted by the state government apparatus and *Saniri Negeri* as the legislative body at the

village level. Customarily, the people of Negeri Piliana live in old habits that depend on nature for life, guided by traditional values that are still maintained. The word Piliana itself comes from the local language and is composed of the word “*Pili-yaa-nika*” which means “already bright”.

b. Land Tenure According to the Customary Law of the Indigenous Peoples in Negeri Piliana

One of the important elements that underlie the entire agrarian system in a country or certain groups is the element of land tenure, in addition to the elements of ownership, use and utilization. However, the element of land tenure is the most important in the agrarian system because it is the starting point for the formation of agrarian forms.⁵

Land tenure in customary law is better known as *Ulayat* rights (customary rights). The term *Ulayat* rights or *Beschikingsrecht* by Van Vollenhoven is only a term that is used formally, but the tenure rights in customary law are actually known by different terms throughout Indonesia, for example, *Petuanan* in Maluku, *Panyampeto* in Kalimantan, *Wewengkong* in Java, *Prabumian* in Bali, *Ulayat* in Minangkabau, and so on.⁶

Maria Sumardjono argues that *Ulayat* rights, as a technical juridical term, are the rights that are inherent as a distinctive authority in indigenous peoples. This includes the authority/power to administer and regulate

the land and all its contents with the power that applies externally and internally.⁷

Land tenure, according to customary law in Maluku, especially Ambon Lease Island, including Seram Island, is referred to as *Petuanan* rights. The *Petuanan* rights cover both land, coastal and sea areas. The land area of *Petuanan* rights does not only cover land but also includes forest areas, rivers, lakes and coastal areas. This control does not mean only to be controlled but also to regulate its exploitation so that it remains orderly and not destructive. Because, in principle, the land, sea, forest and everything in them are a place for humans to make a living or serve as a kind of granary where food reserves are stored.⁸

Similar to other areas on Seram Island and Ambon Island, the indigenous peoples of Negeri Piliana also have rights over *Petuanan* areas, including forest areas, land, lakes, rivers, and everything in it. Land tenure, according to the people of Negeri Piliana, as stated by the Head of Government, consists of three types of land tenure, namely:

1. Land of *Negeri*

In principle, the Land of *Negeri* is the customary land of the *Ilelapotoa* and *Latumuani* Clans as clans that form Negeri Piliana. This land is mainly located in places with historical traces or where they first lived before settling in the current location of the village. These places were then used as sacred places and became places to “eat together” between the two clans so that they eventually became the Land of *Negeri*/Village Land. Generally, the Land of *Negeri* includes forest areas. In addition, there is also a dining area with other villages, such as Hatu and Hatumente known as “Laso”. This place is where they once lived

⁵ NFN Syahyuti, “Nilai-Nilai Kearifan Pada Konsep Penguasaan Tanah Menurut Hukum Adat Di Indonesia,” *Forum Penelitian Agro Ekonomi* 24, no. 1 (August 18, 2016): 14. <https://doi.org/10.21082/fae.v24n1.2006.14-27>.

⁶ Tolib Setiady, “Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)” (Bandung: Alfa Bandung, 2009).

⁷ Jenni Kristiana Matuankotta, “Peran Aktif Masyarakat Hukum Adat Dalam Pembangunan Ekonomi,” *SASI* 24, no. 2 (February 28, 2019): 101. <https://doi.org/10.47268/sasi.v24i2.125>.

⁸ Ziwar Effendi, *Hukum Adat Ambon Lease*, 1st ed. (Jakarta: Pradnya Paramitha, 1987).

together after leaving their original village, Manusela-Maraina.

2. Land of the Clans/*Mata Rumah*

The land of the clans/*Mata Rumah* is the inherited land of each clan, namely the *Ilelapotoa* and *Latumuani* clans, in the form of forests or hamlets, which can be shared with members of the clan. A hamlet/ *dusun/dusong* is land planted with long-lived crops such as cloves, nutmeg, coconut, cocoa and so on, and it is located far from settlements. This land is a joint inheritance from generation to generation of the clan/*mata rumah*. The hamlet's appearance also looks like a forest because it is planted with long-lived plants with a relatively high economic value. Therefore, the hamlet is often referred to as a nearby forest.

3. Individual Land

Individual land is land that is cultivated by each individual. This land was obtained by clearing forest land and initially planted with short-lived crops such as tubers or vegetables, then later planted with long-lived crops. The act of land clearing will then give individual tenure rights and can be inherited or transacted.

The Land tenure that came from these original rights then gives rights over control, ownership, regulation and utilization of areas with authority to regulate, manage and utilize their *Petuanan* areas. This authority is in the hands of the head of government/village elders, together with the *Saniri Negeri* apparatus and clan heads. This is conducted to guarantee the lives of community members.

c. *Pawning Practice of the Indigenous Peoples in Negeri Piliانا*

In customary land law, in addition to collective or communal ownership of land, there is also land that belongs to individuals obtained from land clearing. This individual land tenure gives the owner authority to act on the land, including the transfer of control and

ownership for outright sale or pawn sales to meet his personal and family needs.

According to customary law, land transactions are transfers of objects, in this case, land, in exchange for cash payments. In general, transactions among indigenous peoples in Indonesia are known as *jual* (selling), but some people use the term "*ado*" or "*sade*". There are four forms of land transactions: outright sales, pawn sales, annual sales and *gangsur* sales.⁹ This means pawn sales, or more commonly known as just pawning as referred to in this study, is a form of land transaction (hamlet) conducted by the indigenous peoples.

The term pawning, according to the Indonesian Dictionary, can be interpreted in three meanings: *first*, a pawn is defined as borrowing money for a certain time by handing over goods as collateral so that if they are not redeemed at the time, the goods will become the right of the lender; *secondly*, it is goods delivered as collateral for debt; and *thirdly*, it is short-term loans with collateral that are valid for three months and can be extended at any time if not terminated by one of the parties concerned.¹⁰

In general, pawning practice, according to the Civil Code is an additional agreement (*accessoir*) in which the main agreement (principal) is an agreement on the debt of money with objects in the form of movable objects transacted by the pawn giver or another person acting on his behalf, as collateral for the debt. Therefore, the pawn receiver has the power to obtain repayment of the object in advance from the pawn giver.¹¹ This is certainly different when compared to the concept of pawning according to customary law. According to customary law,

⁹ Setiady, "Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)."

¹⁰ Ifan Noor Adham, *Perbandingan Hukum Gadai Di Indonesia* (Tatanusa, 2009).

¹¹ Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Jakarta: Citra Aditya Bakti, 2014).

land pawning is a land transaction that occurs independently with the object, namely land and not money, based on the spirit of kinship and mutual cooperation.¹²

Customary law is a law that is born, lives, and becomes a guideline in the social life of indigenous peoples. This includes those relating to land as well as regarding the pawn institution, known as the land pawn. Pawn has different names or terms in each region in Indonesia. The Minangkabau people refer to the pawn as “*magadai*”; the Javanese call it “*adol*” or “*sende*”; in Sundanese, the term pawn is referred to as “*ngajual akad*” or “*ngajual gade*”, while Batak people call it “*dondon*” or “*sindor*”, whereas the people of Riau and Jambi call it as “*menjual gadai*” or simply translated as selling pawns.¹³

According to Van Vollenhoven, these practices are called land pawning. Meanwhile, according to Ter Haar, land pawning is an agreement that results in the handing over of land in order to get some money, with an agreement that the person will be able to get his land back if he pays the same amount of money he borrowed.¹⁴

Based on these terms and definitions, it can be interpreted from the pawn sales that it is an agreement by the pawn giver/pawn seller as the land owner to hand over the land with a cash payment of an amount of money to the pawn receiver as the capital owner provided that the land owner has the right to take back his land by paying an amount of money in accordance with the agreed amount. With the land pawning acts, the pawn receiver has the right to harvest the proceeds of the land from

holding the pawn. The proceeds of the land are considered the interest of the debt from the pawn giver. In the case of pawn redemption, it depends on the ability and willingness of the pawn giver. Sometimes the pawn agreement lasts for decades, even to the heirs of the pawn giver due to the inability to repay the pawn.¹⁵ Principally, this provision is based on mutual cooperation with a sense of mutual trust and kinship, and according to customary law, land pawning is not included in the contract law but in land property law. Therefore, the pawn is never preceded by agreement, although it can be followed by agreement.¹⁶ However, In reality, the pawning practised by indigenous peoples of Negeri Piliana is different compared to the concept of customary law in general. From the results of the study, it can be described that:

1. Pawn object

In the practice of hamlet pawning in the indigenous people of Negeri Piliana, the pawned object is not only (empty) land but also hamlet/*dusun/dusong* (land with long-lived plants). Hamlet land with plants often used as pawn objects, namely long-lived plants such as cloves, nutmeg, coconut or cocoa.¹⁷ This is similar to what was stated by the government of Negeri Piliana, that in general, people pawn their longevity plants in the form of cloves or nutmeg. In the beginning, cloves were the only plant often used as the pawned object, but because now the clove trees no longer bear fruit or are even dry, people switch to pawning nutmeg trees.¹⁸ This is different from the pawning practice in

¹² Dominikus Rato, *Hukum Adat Tentang Tanah Dan Perhutangan (Customary Law Concerning Land and Debt)* (Yogyakarta: LaksBang PRESSindo Yogyakarta, 2022).

¹³ Ayub Wirasaputra, “Pagang Gadai Tanah Ulayat Di Minangkabau Dalam Kacamata Hukum Nasional,” *Jurnal of Law and Policy Transformation* 2, no. 2 (2017).

¹⁴ Mr. B. Ter Haar Bzn., *Asas-Asas Dan Susunan Hukum Adat*, XIV (Jakarta: Pradnya Paramita, 1994).

¹⁵ Ningrum, “Jaminan Kepastian Dan Perlindungan Hukum Terhadap Perjanjian Gadai Tanah Menurut Hukum Adat.”

¹⁶ A Wirasaputra, “Pagang Gadai Tanah Ulayat Di Minangkabau Dalam Kacamata Hukum Nasional,” n.d.

¹⁷ Interview with Mrs. E. Elwarin as Pawn Receiver on August 4, 2022.

¹⁸ Interview with Mr. Agustinus Ilelapotoa as the Head of Government (King) on August 4, 2022.

general, where the object is mainly land/houses or land and houses.

The pawned object is closely related to the amount of money desired by the pawn giver and the repayment period. As explained by one of the pawn receivers, one clove or nutmeg tree is valued at Rp 100.000- by the pawn receiver. Thus, the number of trees and the term of the pawn will adjust to the amount of the loan. For example. If person A borrows Rp 1.000.000- the minimum number of nutmeg trees guaranteed must be 10 (ten) trees with a minimum term of 2 (two) years. This calculation will also be different if the pawned object is a coconut tree; the provision should be that one hamlet must contain 30 trees.¹⁹

2. The authority of the pawn giver and pawn receiver during the pawn period

In the pawn sales practice in Negeri Piliana, as long as the pawned object is in possession of the pawn receiver and it is in the form of long-lived plants, the pawn giver can still carry out activities on his hamlet land but cannot take the produce from the trees being pawned. However, in practice, the pawn receiver can also employ the pawn giver to harvest the hamlet land with a profit-sharing agreement. There is also a case where the pawn receiver gives the opportunity to the pawn giver as the owner of the land to take the proceeds if it turns out that in that year, trees of the hamlet land only produce a little (the Negeri Piliana community term is "paruru" fruit, if it is estimated that the fruit from 1 tree can only produce 1 or 2 kg).

This means that the relationship that occurs in the pawn sales event between the pawn giver and the pawn receiver in Negeri Piliana is based on mutual cooperation and mutual trust.

3. Reasons to conduct pawn sales

Reasons for the indigenous peoples of Negeri Piliana to conduct pawn sales also vary. It can be seen from the following table:

Table 2. Reasons to Conduct Pawn Sales

Reasons to Pawn	Total	Percentage (%)
Child Education Costs	7	70
House Renovation	1	10
Health	1	10
Consumptive	1	10
Total	10	100

Data Source: Primary Data

From table 2, the data obtained from 10 respondents shows that generally, the indigenous peoples of Negeri Piliana, namely 70% of the 10 (ten) respondents, conduct pawn sales for reasons of child education costs. It can be understood that the school's location in another village, which is approximately 8 km away, can only be reached by two-wheeled motorized vehicles or even on foot, which causes higher costs for education. Another factor is that, in general, the people of Negeri Piliana work as traditional farmers, which affects the income of the population.

4. Pawn agreement

Initiating a pawn sale transaction between the pawn giver and pawn receiver normally starts with an agreement relating to the amount of money borrowed, what is used as collateral or the pawned object, and how long is the repayment period. If there is an agreement, the pawn giver will receive a certain amount of loan money, and the pawn receiver will enjoy the pawned object when the harvest season arrives. This agreement normally has never been made before the head of government in the village and the *Saniri Negeri* apparatus as the authorized party based on the inherent authority of the head of

¹⁹ Mrs. E. Elwarin

government in accordance with the mandate of *Ulayat* rights/*Petuanan* rights.²⁰

Several conditions in the hamlet land pawn must be fulfilled by the pawn giver and pawn receiver, namely:

- a) The pawn is only legal if it is approved by all the heirs. If one person does not agree to the pawn, then the pawn agreement becomes null and void by law;
- b) The pawn has no expiration date, and the pawn receiver has the right to work on the pawned land unless he wants to hand over the land to be worked on by someone else;
- c) The pawn receiver is prohibited from pawning the land he holds to another person without the land owner's permission. Now, due to the influence of western law, the pawn receiver may pawn it again (*herverpanding*) to another party;
- d) As long as the pawn is still running, the owner of the pawn land may ask for additional money from the pawn receiver, but the redemption payment must be all at once.²¹

5. The redemption opportunity

The redemption opportunity practiced by the people of Negeri Piliana is not about the opportunity to return/give back the same amount of money as the first agreement to get the land tenure rights back. What is meant by the redemption opportunity is a period of time the pawned object will be in possession of the pawn receiver adjusted to the amount of the loan. Where during this period of time, the pawn receiver will enjoy the land proceeds

without any obligation for the pawn giver to redeem the debt in the same amount. Therefore, the pawn giver no longer has to return the money as debt settlement because the settlement is already included in the period of possession of the collateral object.

The pawn term period depends on the amount of the loan and the number of trees guaranteed. Therefore, the period may vary, whether 1 (one) year, 2 (two) years, or 7 (seven) years, and there is also a case where a pawn receiver holds the pawn for up to 15 years. If the pawn period is not agreed upon, it will be very detrimental to the pawn giver because the pawn receiver will enjoy the benefits of the pawned object without a time limit. Thus, in the pawn sale agreement with hamlet as the object, what is counted is not the same amount of money but the harvest from the trees, which is calculated for a certain period of time (depending on the number of harvests per year). This calculation should also be able to repay the debt, and the pawn giver can take the hamlet back without returning (redeeming) the money borrowed.

Based on these findings, it can be seen that the pawn sale practiced by the people of Negeri Piliana is different from the general pawn sale according to customary law. In customary law, the land pawn agreement is in exchange for the cash payment, where there is a stipulation that the pawn giver has the right to take back the land with the same amount of payment he borrowed.

The Impact of the Hamlet Land Pawning Agreement on the Economic Level of the Indigenous Peoples in Negeri Piliana, Maluku Tengah Regency

The economic level is the addition of prosperity and welfare, including strengthening the economy in a region. This means that there is a development of an economic activity that can increase income at a

²⁰ Interview with Mr. Julianus Ilepasota as the Head of *Saniri Negeri* on August 4, 2022.

²¹ Gadai Tanah Ulayat et al., "Analisis Dikabulkannya Permohonan Peninjauan Kembali Setelah Pelaksanaan Putusan Sengketa Gadai Tanah Ulayat," 2019, 243-63, <https://doi.org/10.3376/jch.v4i2.101>.

certain time. In other words, the economy in a region will increase if people's current income has also increased from the previous years.²²

The location of Negeri Piliana, which is far from the economic accesses, coupled with the people's low level of education, which mostly only completes elementary school, causes low income for the people despite having abundant natural resources. In other words, the abundance of natural resources is not followed by the ability and knowledge to manage nature and access to marketing, thus causing low incomes for the community.

The people's low income is not proportional to the increasing needs of life. This causes the pawn sales practice to be an option to meet life's necessities, especially those that are urgent. Essentially, a pawn sale is a land transaction in customary law based on the principle of mutual cooperation and mutual trust in a strong family bond. The objective is to help the pawn giver to fulfil his needs instantly and, at the same time, also become an easier way for the pawn receiver to invest money.

The reality in Negeri Piliana is that pawn sales also eventually leave problems, especially if the time period for returning the pawned object (hamlet) is not agreed upon. The community's lack of understanding about agreements, both written and verbal agreements. Moreover, this agreement is, in fact, mostly carried out without the knowledge of the head of the state and the *Saniri Negeri*, causing the pawn period to last for years and even more than seven years.

The study's results found that several tree owners pawned their nutmeg trees because of the need to pay for their children's education costs. However, because there was no agreement regarding the term of the pawn beforehand, even though there were only two trees and the loan was only Rp 100.000-, the

pawn receiver controlled the tree for up to eight years.²³ There is also another case in which the period term was not agreed upon in the pawn agreement, causing the pawn period to last up to 15 years and creating a conflict because the pawn receiver refused to return the pawned object. During that time, the pawn receiver had enjoyed the multiple benefits of the pawned object from the loan amount, which was only Rp 2.500.000-.²⁴

These facts show that the pawn sales practice will cause huge losses to the pawn giver and even lead to injustice if it is not clearly agreed upon beforehand. The pawn period that is not agreed upon causes the pawn receiver to enjoy the pawned object proceeds indefinitely on the one hand, while on the other hand, the pawn giver will lose access to their main source of income. This will certainly impact the people's low income. The pawn giver will lose the ability to meet his needs for an unlimited time, which will further worsen the poverty of people in Negeri Piliana. The condition of poverty and ignorance of the law due to their low levels of education causes them to only be able to accept any arrangement from the pawn receiver without realizing the losses they are actually bearing.

To guarantee people's rights to justice and prosperity, the law must be able to provide protection. However, even though legally, the terms of pawn have been regulated in Law Number 56 Prp of 1960, because the lien rights cannot be removed and are of a temporary nature, Article 7 of Law Number 56 of 1960 confirms that:²⁵

1. Whoever controls agricultural land using liens which before the enactment of this

²³ Interview with Mr. Steven Ilalapotoa, one of the Pawn Giver on August 4, 2022

²⁴ Interview with Mrs. Geovany Latumuani, on August 5, 2022

²⁵ Febry Syarif Hidayatulah, "Kajian Yuridis Gadai Tanah Pertanian..."

²² Hawani Hendra, *Ekonomi Internasional Dan Globalisasi Ekonomi* (Jakarta: Ghalia Indonesia, 2005).

rule has lasted for 7 (seven) years or more, is obliged to return the land to the owner within one month after the completion of the existing plants can be harvested, with no right to demand payment of ransom.

2. In the case of a lien, which has not lasted for 7 (seven) years at the time this regulation takes effect, the landowner has the right to request it again at any time when the plants on the land have been harvested by calculating the ransom payment using the formula (seven plus half minus the duration of the right multiplied by an amount of pawn money) provided that when the lien has lasted 7 (seven) years, the pawn receiver is obliged to return the land without any ransom payment, exactly one month after the plants have been harvested.

In its implementation, Article 7 still requires implementation guidelines. Therefore, the Regulation of the Minister of Agriculture and Agrarian Number 20 of 1963 concerning Guidelines for Settlement of Pawn Problems. However, in reality, this regulation is ineffective and does not protect the community, especially people in remote areas.

Conclusion

In pawn sales practice by indigenous peoples in Negeri Piliiana, Tehoru District, Maluku Tengah Regency, Maluku Province, the pawn sales agreement concept is a pawn agreement on hamlet land of longevity plants where the payment of the pawn is not money in the same amount, but rather the proceeds of the land/plants agreed verbally to be taken into account in repaying the debts. Therefore, the pawn giver can take the hamlet back within a certain period of time without repayment. This concept is different from the pawn sales concept in general, which is an agreement to give land/hamlet/long-lived plants to obtain an amount of money with a mutually agreed repayment period as long as the pawn giver can pay the same amount of debt along with

interest. Pawn sales practice by indigenous peoples in Negeri Piliiana, Tehoru District, Maluku Tengah Regency, if it is not clearly agreed, especially with regard to the pawn period, can have an impact on the loss of access of the pawn giver/landowner to the only source of livelihood for an unlimited time. Thus, it will impact the loss of ability to meet the necessities of life and will maintain poverty.

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