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Legal Provisions On Breach Of Contract In The Execution Of House Lease-Pawn Agreements In The Perspective Of Article 1238 Of The Indonesian Civil Code

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Abstract: The practice of house lease-pawn agreements in rural communities is frequently employed as an alternative means of meeting economic needs, often without adherence to formal legal provisions. This study aims to analyze the legal framework governing house lease-pawn agreements under Article 1338 of the Indonesian Civil Code, which embodies the principle of freedom of contract, as well as to examine the legal implications of breach of contract in such agreements pursuant to Article 1238 of the Civil Code. Employing a normative juridical approach, this research incorporates a case study conducted in Kampung Cijambe, Sukabumi City. The findings indicate that house lease-pawn agreements constitute innominate contracts, which are legally valid provided they satisfy the requirements stipulated in Article 1320 of the Civil Code. In instances of breach of contract, the aggrieved party is entitled to seek contract annulment, compensation, and legal recourse through judicial mechanisms. The study underscores the necessity of drafting written agreements that ensure legal certainty and advocates for regulatory reinforcement regarding the practice of house lease-pawn agreements.

Keyword: House Lease Pawn Agreement, Breach of Contract, Freedom of Contract, Indonesian Civil Code.

INTRODUCTION

In rural communities, house lease pawn agreements are commonly practiced informally as a solution to urgent economic needs. These agreements are generally made privately, without the involvement of a notary, which may lead to legal conflicts if one of the parties commits a breach of contract. The agreement typically involves a debtor-creditor relationship, in which the right to lease a house is pledged as collateral and subsequently re-leased to the pawnbroker. Although such practices are not explicitly regulated under the Indonesian Civil Code, they can be analyzed through general principles of contract law and secured transaction law.

This study focuses on the following issues:

1. The legal provisions governing house lease-pawn agreements in accordance with Article 1338 of the Indonesian Civil Code concerning the principle of freedom of contract;

2. The legal consequences of breach of contract in the execution of house lease-pawn agreements, as related to Article 1238 of the Indonesian Civil Cod

METHOD

This study uses a normative legal method with a regulatory legislation approach and case studies. Data were obtained from literature studies, house mortgage contract agreement documents in Kampung Cijambe, and interviews with the parties involved. Data analysis was carried out descriptively qualitatively to interpret applicable legal norms and their application in concrete cases.

RESULTS AND DISCUSSION

Legal Provisions of House Lease pawn Agreements (Article 1338 of the Civil Code)

Article 1338 of the Civil Code states that all agreements made legally are binding as a law for the parties. House contract mortgages are included in the category of anonymous agreements that are legally valid as long as they meet the requirements for a valid agreement according to Article 1320 of the Civil Code, namely: agreement, capacity, certain objects, and legal causes.

In practice in Kampung Cijambe, agreements are made in writing under hand and contain eight articles, including the value of the mortgage, rights and obligations, and the settlement mechanism. The principle of freedom of contract allows the parties to determine the contents of the agreement freely, but must be done in good faith. If there is a discrepancy or element of coercion, the agreement can be legally cancelled.

Legal Consequences of Breach of Contract (Article 1238 of the Indonesian Civil Code)

Article 1238 of the Indonesian Civil Code states that a debtor is deemed to be in default (breach of contract) if they fail to fulfill their obligations after the expiration of a deadline or upon formal notice (summons). In the case that occurred in Kampung Cijambe, the pledgor failed to pay the monthly rent for several months after re-renting the house that had previously been pledged, despite retaining possession of the property. This act satisfies the elements of breach of contract as classified by R. Subekti: failure to fulfill obligations and unlawful possession of the object.

The legal consequences of such a breach include:

1. Annulment of the agreement through court proceedings,
2. Claims for material and immaterial damages (Article 1243 of the Civil Code),
3. Execution of the collateral through legal channels, rather than by unilateral action,
4. Potential tort claims for unlawful possession.

CONCLUSION

The house lease pawn agreement in Kampung Cijambe is a form of anonymous agreement that is valid according to civil law, as long as it meets the requirements of Article 1320 of the Civil Code. The agreement is bound by the principle of freedom of contract as stated in Article 1338 of the Civil Code. In the event of a breach of contract as regulated in Article 1238 of the Civil Code, the injured party has a legal basis to claim their rights, including cancellation of the agreement, compensation, and execution of collateral through an authorized institution.

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