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Legal Protection for Customers in Electronic Goods Pawn-Deposit Agreements at PT Sarara Gadai Indonesia in Palu City

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ABSTRACT

Pawnshops play a strategic role in meeting the need for quick financing, especially for the general public and MSMEs that have limited access to formal banking services. Pawnshops in Indonesia that play a particularly strategic role are private pawnshops, which are regulated by OJK Regulation No. 31/POJK.05/2016 on the pawnshop business. One of the private pawnshops currently operating in Palu is PT. Sarara Gadai Indonesia; however, the pawn practices currently carried out by Sarara Gadai do not align with applicable laws, and the standard clauses in the agreements drafted by PT. Sarara Gadai Indonesia appears to be biased against the interests of consumers (customers). This study aims to examine how the pawn agreement for electronic goods is implemented at PT. Sarara Gadai Indonesia in Palu City, and to assess the compliance of the standard clauses in the pawn agreement for electronic goods at PT. Sarara Gadai Indonesia in Palu City, with the provisions of the Civil Code and OJK Regulation No. 31/POJK.05/2016. The research design employed is empirical legal research. The study was conducted at the PT. Sarara Gadai Indonesia branch is located at I Gusti Ngurah Rai. The results indicate that the implementation of electronic goods pawn agreements at PT. Sarara Gadai Indonesia constitutes a supplementary agreement to a debt-credit agreement, serving as collateral for debt repayment. In practice, the implementation of the agreement is supported by straightforward requirements, flexible payment terms, and a fast disbursement process. In terms of compliance, the clauses of the pawn agreement meet some of the legal requirements for pawn agreements, including the conditions for a valid agreement; however, they are not fully compliant because there are still several clauses that deviate from the legal provisions outlined in the Civil Code and the OJK Regulation.

KEYWORDS

Electronic Goods; Agreements; PT. Sarara Gadai Indonesia; Pawnbroking Services





INTRODUCTION

Developments in the era of globalization across all aspects of life have driven rapid economic growth. This has led to an increase in trade in goods and services in tandem with economic growth. This includes pawn transactions in which movable property is used as collateral.¹ Every security agreement, including a pledge agreement, contains two types of interrelated agreements. First, the principal agreement, which covers the creditor-debtor relationship between the two parties. The second agreement is the security agreement, which is accessory or supplementary in nature. An accessory agreement is one that arises, terminates, and is transferred depending on the principal agreement.² In other words, if the debt obligation is valid, then the pledge agreement, as a supplementary agreement, is also valid. Conversely, if the debt obligation is invalid, then the pledge agreement cannot be enforced.

As a lending institution that accepts movable property as collateral, pawnshops play a strategic role in serving people from all walks of life—from the lower to the upper classes—and are increasingly becoming an integral part of Indonesian culture.³ In Indonesia, there is a fundamental difference between state-owned and private pawnshops, which can be observed in various aspects. In terms of procedures, state-owned pawnshops have very detailed procedures to prevent potential customer defaults, whereas private pawnshops tend to have simpler procedures to attract customers. The items accepted as collateral also differ: state-owned pawnshops typically accept jewelry as collateral, while private pawnshops more often accept electronic goods.

The Financial Services Authority (OJK) has issued regulations governing pawnshop businesses, particularly private pawnshops. In OJK Regulation No. 31/POJK.05/2016 on Pawnshops, the OJK not only authorizes private pawnshop business licenses but also regulates their operations. Article 22 of POJK No. 31/POJK.05/2016 stipulates that pawnbroking companies are required to provide storage facilities for collateral in accordance with pawnbroking laws and for deposited items that meet security and safety standards, as well as to insure pawn collateral and deposited items to mitigate risks.

This regulation also emphasizes consumer protection obligations that must be observed and enforced by private pawnshops. Private pawnshops are prohibited from using customers' collateral for personal or business purposes and are required to store such collateral in a secure location, not at the customer's premises. In a pawn agreement, the creditor is obligated to care for the customer's collateral. Article 1157 of the Civil Code (KUHPerdata) states that: "The creditor is liable for any loss or depreciation of the pledged item, to the extent that such loss or depreciation results from the creditor's negligence. On the other hand, the debtor is

¹ Marini Citra Dewi, Sitti Fatimah Maddisila & Ratu Ratna Korompot, "Peran Merek dan Indikasi Geografis dalam Mendukung Industri Produk Kopi untuk Mendukung Ekonomi Daerah yang Berkelanjutan" (2024) 12:2 Suloh J Fak Huk Univ Malikussaleh 481–495, online: <<https://ojs.unimal.ac.id/suloh/article/view/18119>>.

² Suwandi, "Kedudukan Jaminan Antara Utang-Piutang dan Rahn" (2021) 7:2 Jurisdictie J Huk dan Syariah.

³ Winta Hayati, "Analisis Yuridis Akibat Hukum Wanprestasi Nasabah terhadap Barang Jaminan dalam Perjanjian Gadai" (2024) 6:3 J Ilm Metadata 122–136.



obligated to reimburse the creditor for any reasonable and necessary expenses incurred by the creditor to preserve the pledged property.” This requires the pledgee (creditor) to care for the pledged property under their control. The pledgee may not treat the pledged property as if it were their own, because the transfer of the pledge does not transfer ownership. Ownership remains with the owner of the property (the pledgor).⁴

Although Article 1157 of the Civil Code does not explicitly prohibit the pledgee from using the pledged property, it can be inferred from the text of Article 1157 that, to protect the pledged property from depreciation, the pledgee is not permitted to use it, as such use is likely to cause the pledged property to lose its value. If this occurs, the pledgee must be held liable for it.

Over time, pawnbroking practices have become more limited to the conventional model based on the concept of “titip gadai” (pawn deposit). The concept of “titip gadai” is merely a term used to describe such pawnbroking companies and is not an official term listed in the law. In terms of its mechanisms and operations, it continues to use the same concept as state-owned pawnshops, namely the existence of a pawn recipient (creditor) and a pawn provider (debtor) who agree. One example of the pawnbroking concept is found at PT. Sarara Gadai Indonesia in Palu. As a private pawnbroking company, this business adopts a unique approach whose characteristics must be understood, particularly regarding operations and the agreements binding all parties involved.

This pawnshop has been operating since September 1, 2020, in the city of Palu and has several branches. One of the pawnshop’s branch locations that the author intends to use as a research site is PT. Sarara Gadai Indonesia, located at Jalan I Gusti Ngurah Rai, Palu. The provisions in a pawn agreement are intended to provide legal certainty, fairness, balance, and security for both parties. Every agreement, including a pawn agreement, essentially involves a set of rights and obligations that must be fulfilled by both parties, namely the debtor (the pawnner) and the creditor (the pawnbroker).

The contracts drawn up by pawnshops contain standard clauses, although the pawnshop itself naturally has its own rules that apply to debtors (borrowers) before a pawn agreement is entered into. Customers are targeted by companies seeking to maximize profits through promotional tactics, sales methods, and the use of standard contracts that may be detrimental to customers.⁵ These standard clauses, or the rules applied by the pawnshop itself, must, of course, comply with applicable laws.⁶ The definition of a standard clause in Article 1(1) of Law No. 8 of 1999 on Consumer Protection states that: “Any rules, provisions, or terms that have been prepared and unilaterally established in advance by a business entity and

⁴ Trisandini Prasastinah Usanti, “Bolehkah Penerima Gadai Menggunakan Barang Gadai?”, (2021), online: *Huk Online* <<https://www.hukumonline.com/klinik/a/bolehkah-penerima-gadai-menggunakan-barang-gadai-lt5e6cd571381af/>>.

⁵ Mohammad Ikbal, “Aspek Hukum Perlindungan Konsumen Dalam Transaksi Elektronik (E-commerce) Menghadapi Masyarakat Ekonomi ASEAN 2015” (2015) 7:14 *Al-Adl J Huk*, online: <<https://www.neliti.com/publications/225117/aspek-hukum-perlindungan-konsumen-dalam-transaksi-elektronik-e-commerce-menghadai>>.

⁶ Sri Budi Purwaningsih, *Hukum Jaminan dan Agunan Kredit dalam Praktek Perbankan di Indonesia* (Sidoarjo: Universitas Muhammadiyah Sidoarjo, 2019).



incorporated into a binding agreement that consumers are required to comply with”.

Standard clauses in agreements are expected not only to benefit the pawnshop but also to protect the rights of customers. Standard clauses are intended to be mutually beneficial to the parties; however, the author found in the field that the content of the standard clauses drafted by PT. Sarara Gadai Indonesia is not mutually beneficial. Customers’ rights in pawn agreements must be accommodated in the provisions of standard clauses. However, in reality, the content of the pawn agreements included in the standard clauses of PT. Sarara Gadai Indonesia actually places greater emphasis on the debtor (the pawnbroker).

PT. Sarara Gadai Indonesia in Palu also addresses cases of breach of contract by borrowers (pledge providers). At that time, there was a customer who had pledged electronic goods (a cell phone) as collateral. The agreement was drafted by PT. Sarara Gadai Indonesia in Palu stipulated that the principal loan amount and interest must be paid 21 (twenty-one) days before the specified due date. During this specified period, the customer also received a concession from the pawnshop in the form of the principal being payable in installments, so that when redeeming the collateral later, the principal debt would have been reduced.

PT. Sarara Gadai Indonesia will contact the customer regarding the collateralized items within 3 (three) days before the due date; if there is no further confirmation from the customer regarding a loan extension or repayment of the principal debt, PT. Sarara Gadai Indonesia will auction the items that have been pledged as collateral. However, the business operator may also be in default as stated in the agreement drafted by PT. Sarara Gadai Indonesia, namely “Declaring that they will not hold the pawnbroker, in this case Sarara Gadai, liable if the pledged item is an electronic device or a vehicle, and if the item is damaged during the pawn period due to prolonged storage without use.”

The terms of the pawn agreement described above do not comply with applicable laws and regulations. The pawnshop is obligated to compensate for any loss or damage to the collateral and to fulfill its obligation to insure the collateral. Financial Services Authority Regulation (POJK) No. 31/POJK.05/2016 on Pawnbroking Businesses includes the phrase “must insure” in its provisions; this obligation to compensate for losses encourages pawnbroking companies to continue managing such risks, one of which is by implementing an insurance scheme.⁷

Certainly, issues related to the content of the clauses in the agreement drafted by PT. Sarara Gadai Indonesia in Palu has come under scrutiny, particularly regarding the legal aspects and the company’s legitimacy; as of the time of this study, the company had not yet obtained a license from the OJK and remained an illegal pawnshop. Currently, the OJK task force is still processing PT. Sarara Gadai Indonesia’s application for an official license for its pawnbroking business. This situation serves as a crucial starting point for analyzing whether the pawnbroking agreements it has entered into comply with applicable laws.

⁷ Rohmawati Putri Aprilia & Mas Anienda Tien Fitria, “Kedudukan Hukum Surat Bukti Gadai dalam Menjamin Kepastian Hukum Kepada Pemberi Gadai” (2022) 6:2 J Pendidik Tambusai 10596–10604.



METHOD

The type of research the author employed in this study is empirical legal research. Empirical legal research—known in English as “empirical legal research” and in Dutch as “empirisch juridisch onderzoek”—is a type of legal research that analyzes and examines how the law functions in society.⁸ The research location is the place or area where the author conducted the study. The research location for this study is PT. Sarara Gadai Indonesia, which has a branch located at Jalan I Gusti Ngurah Rai, Palu City. The types and sources of data used in this study are as follows:

1. Primary data is data obtained from primary sources. In this study, primary data were obtained from interviews with the owner of PT. Sarara Gadai Indonesia in Palu, representatives of the Central Sulawesi Office of the Financial Services Authority (OJK), and customers.
2. Secondary data is data collected from various existing sources. This study utilizes secondary data, specifically legal materials. The legal materials used by the author are as follows: 1) Primary Legal Materials, which are legally binding. The primary legal materials used are: the Civil Code, and Financial Services Authority Regulation (POJK) No. 31/POJK.05/2016 on Pawnbroking Businesses and Law No. 8 of 1999 on Consumer Protection. 2) Secondary Legal Materials, which are legal materials that provide explanations regarding primary legal materials. Secondary legal materials include: legal journals, articles, books, and scholarly works that discuss related issues. 3) Tertiary Legal Materials, which are materials that provide useful guidance or explanations regarding primary and secondary legal materials, such as Indonesian dictionaries, encyclopedias, and other sources.

According to Irwansyah, data collection techniques are part of the scientific research process aimed at obtaining objective, relevant, and valid evidence and information. This process is conducted in a systematic, measurable, and continuous manner to address legal issues through:⁹

1. Interviews, which are used to collect primary data through the application of interview techniques. An interview is a method of collecting primary data directly from sources in the field (at the location). Interviews are conducted through a question-and-answer session with sources related to the research conducted by the author.
2. Literature Review: This involves gathering secondary data through the collection of literature such as books, journals, and laws and regulations relevant to the research topic.

⁸ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

⁹ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, Ahsan Yunus, ed (Yogyakarta: Mirra Buana Media, 2024).



RESULT & DISCUSSION

I. Compliance with the Terms of the Electronic Goods Pawn Agreement: An Analysis of Legal Protection for Customers at PT. Sarara Gadai Indonesia in Palu

A pawn can be considered a strong form of collateral because the creditor holds a preferential position—that is, the right of priority in the repayment of the debt from the proceeds of the sale of the pledged item compared to other creditors. The right of pledge over movable property is stipulated in the Civil Code, specifically Articles 1150–1160. In addition, there is a legal basis governing the pawnbroking business, namely Financial Services Authority Regulation No. 31/POJK.05/2016 on the pawnbroking business, which influences the legal rules on security, particularly regulations on pawnbroking as a form of collateral in Indonesia.

A pledge can be defined as collateral for an obligation to perform a specific act and is always linked to a debt agreement. Therefore, a pledge agreement can be considered a supplementary or accessory agreement that depends on the principal agreement, namely, the debt agreement. In principle, the pledged item is used to secure the obligation to perform, meaning that a pledge agreement exists only if there is already a principal agreement—namely, a debt agreement whose repayment is secured by movable property, whether tangible or intangible.

In an interview conducted by the author with one of the employees, the employee stated that “PT. Sarara Gadai Indonesia has complied with the regulations established in accordance with existing provisions.”¹⁰ The company also ensures that the pawn agreements executed by PT. Sarara Gadai Indonesia meets the legal requirements for such agreements, which involve a formal agreement between the customer and PT. Sarara Gadai Indonesia, whereby the customer pledges collateral. The validity of an agreement is achieved when its legal requirements are met. Therefore, for an agreement to be considered valid and binding on both parties, it must meet the legal requirements for an agreement as stipulated in Article 1320 of the Civil Code (KUHPerdata), which lists four main requirements:

1. The agreement they have entered into.
2. The capacity to enter into a contract;
3. A specific thing;
4. A lawful reason.

The validity of an agreement entered into by PT. Sarara Gadai Indonesia, with a customer who intends to pledge their goods, is deemed to be a valid and binding agreement that meets the requirements for a valid agreement as outlined in Article 1320 of the Civil Code, namely as follows:

1. The agreement they have entered into

To assess whether the first requirement for the validity of a pawn agreement has been met, it is evident that the pawner (customer) has agreed to pledge their collateral to the pawnbroker without coercion from any party. After reading and signing the pawn agreement, the customer is deemed to have agreed to its contents, which were drafted by PT. Sarara Gadai Indonesia. Based on this explanation, the first requirement has been met because there is an agreement

¹⁰ *Employee Interview at PT. Sarara Gadai Indonesia*, by Rifki Farlid (2026).



between both parties to execute the agreement regarding the collateral. This is reinforced by the existence of the pawnbroker's signature—in this case, the customer's.

2. The capacity to enter into a contract

To determine whether the second requirement for a valid agreement has been met in a pawn agreement, PT. Sarara Gadai Indonesia reviews identification documents, such as an ID card or driver's license, to verify that the person pawning the item is of legal age—specifically, that the party agreeing is an adult who understands the law and is not under legal incapacity, such as being mentally incompetent. This is an important consideration for PT. Sarara Gadai Indonesia is proceeding with the pawn process because if the agreement is made by a customer who is underage or legally incompetent, the agreement may be voided.

3. A specific thing

The third requirement for the validity of a pawn agreement has been met, namely, the existence of the subject matter of the agreement. The subject matter of the agreement is the consideration that forms the core of the agreement that has been made. In this case, the debtor has surrendered collateral to PT. Sarara Gadai Indonesia as consideration. For example, when a customer comes to enter into a pawn agreement, the subject matter of the collateral must be clearly defined so that it can be processed by PT. Sarara Gadai Indonesia. For instance, if a customer wishes to pawn electronic goods, those items must be described in detail—including the brand, model, and accompanying accessories such as the phone case and box—so that the third valid requirement of this agreement is fulfilled by the debtor and recognized by PT. Sarara Gadai Indonesia as collateral.

4. A lawful reason

The content of the agreement, which sets forth the parties' objectives, constitutes a valid (lawful) cause. The provisions of the agreement must not conflict with the law, public morality, or public order.¹¹ Therefore, in this case, the collateral subject to the pawn transaction must not have been obtained through unlawful acts, particularly theft. PT. Sarara Gadai Indonesia has previously inquired with the customer when intending to pawn the collateral and ensured that the collateral is not stolen property; in this case, the pawned item must be the customer's own property, so that the contents of the pawn agreement drafted by PT. Sarara Gadai Indonesia meets the fourth requirement and can be considered fulfilled.

Based on the above discussion, it can be concluded that the company has ensured that the validity requirements of the agreement comply with applicable laws, particularly the Civil Code; however, the content of the agreement was drafted by PT. Sarara Gadai Indonesia, which includes the following provisions, warrants further review:

1. "I agree that my items will be sold if I do not redeem or renew them before the due date".¹²

¹¹ Wulan Cahya Ningrum, Yuniar Rahmatiar & Muhamad Abas, "Akibat Hukum Terhadap Perjanjian Gadai Yang Objek Gadai Bukan Hak Milik Debitur (Studi Putusan Nomor 170/Pdt.G/2018/Pn Skt)" (2023) 5:1 UNES Law Rev 4219–4227.

¹² *Pawn Agreement Letter from PT. Sarara Gadai Indonesia*, 2026.



The point of the above question, which the author asked during an interview with an employee of PT. Sarara Gadai Indonesia is that if a customer fails to redeem the debt by the due date, the collateralized items will be auctioned off.¹³

2. "I acknowledge that the items I have pledged are indeed my personal property, not the property of my office or company, and I declare that these items are not involved in any criminal or civil cases".¹⁴

Based on the author's interviews with employees of PT. Sarara Gadai Indonesia, the requirement is that items to be pawned must be personal property. Therefore, the branch manager must verify whether the item is personal property or not; if it is not, the collateral will be immediately rejected by the branch manager to prevent undesirable situations, such as if the item is stolen or belongs to a company.

3. "Releasing the pawnbroker, in this case Sarara Gadai, from any liability".¹⁵

The intent of the question is based on the author's interview with employees of PT. Sarara Gadai Indonesia is to release the company from any liability; in other words, customers may not hold Sarara Gadai liable for any damage that occurs to the item during the pawn period if the item is damaged by the time the debt is redeemed.¹⁶

4. "I hereby acknowledge that I will no longer have any claim to ownership of the pledged item if, as the pledgor, I fail to redeem or extend the pledge by the agreed deadline, and I hereby transfer ownership of the pledged item to the pledgee, in this case, Sarara Gadai."¹⁷

According to the results of the author's interviews with employees of PT. Sarara Gadai Indonesia, the point of the question is that once a pawned item has been auctioned off, it automatically ceases to be the property of the customer who pawned it.¹⁸

5. "I hereby declare that I will not hold the pawnbroker, in this case Sarara Gadai, liable if the items I have pawned—whether electronic devices or vehicles—are damaged during the pawn period due to prolonged storage without use."¹⁹

According to the author's interviews with employees of PT. Sarara Gadai Indonesia, the point of the question is that pawnbrokers do not hold employees or the company liable if pawned items are damaged due to prolonged disuse.²⁰

According to the author's analysis, of the five points listed in the pawn agreement drafted by PT. Sarara Gadai Indonesia, there are still several points that do not comply with the formal legal provisions outlined in the Civil Code and OJK Regulation No. 31/POJK.05/2016 on Pawnbroking Businesses. First, the third point clearly states that, in practice, PT. Sarara Gadai Indonesia waives all liability, meaning that customers cannot sue employees or the company if the pledged item is damaged during the pawn period. This is clearly contrary to the provision outlined

¹³ Farlid, *supra* note 10.

¹⁴ *Pawn Agreement Letter from PT. Sarara Gadai Indonesia*, *supra* note 11.

¹⁵ *Ibid.*

¹⁶ Farlid, *supra* note 10.

¹⁷ *Surat Persetujuan Gadai PT. Sarara Gadai Indonesia*, *supra* note 12.

¹⁸ Farlid, *supra* note 10.

¹⁹ *Pawn Agreement Letter from PT. Sarara Gadai Indonesia*, *supra* note 11.

²⁰ Farlid, *supra* note 10.



in Article 1157 of the Civil Code, which states that: “The creditor is liable for the loss or deterioration of the item to the extent that it occurred due to his negligence.”

Conversely, the debtor is obligated to reimburse the creditor for all reasonable and necessary expenses incurred by the latter for the safekeeping of the pledged property.” The explanation of the above Article states that the pawnbroker is liable for the loss of the pledged item or if the item is damaged, if this is caused by the pawnbroker’s negligence. Nevertheless, if an item is damaged during the pawn period due to prolonged storage by PT. Sarara Gadai Indonesia, the company must still be held liable for the collateral, as it has also been explained that one of the obligations of the pawnbroker is to maintain the pledged item.

Maintaining these pledged items means that the pawnbroker does not use or own them, but simply takes care of them; for example, electronic devices such as cell phones must be charged to prevent them from deteriorating. In an interview, an employee of PT. Sarara Gadai Indonesia stated that “There is no specific maintenance required for pledged items; instead, these items are stored in a storage facility according to the type and brand of the pledged electronic devices, ensuring their safety during storage.”²¹ Therefore, there needs to be a follow-up regarding the terms of the agreement entered into by PT. Sarara Gadai Indonesia so that people who pawn their belongings with the company can also have confidence that their pledged items will be safeguarded, as the company can be held accountable.

Second, point four clearly states that, in practice, the clause is enforced by PT. Sarara Gadai Indonesia—which provides for the automatic transfer of ownership of pledged goods to the pledgee (in this case, Sarara Gadai) in the event of the debtor’s default—reveals a significant discrepancy between actual field practices and the formal legal norms established in the Civil Code. Ownership of the goods remains with the pledgor; the pledgee only has limited property rights, namely the right to sell the goods through auction if the debt is not repaid, as stipulated in Article 1155 of the Civil Code.

The author identifies the clause contained in the agreement drafted by PT. Sarara Gadai Indonesia, as a form of Pactum Commissorium, is expressly prohibited under Article 1154 of the Civil Code, which states that “If the debtor or the pledgor fails to fulfill their obligations, the creditor is not permitted to take possession of the pledged property. Any agreement contrary to this is void.” Fundamentally, in Civil Law, the principle of Pactum Commissorium aims to ensure legal protection for the debtor against the possibility of abuse of authority that may be committed by the creditor. Therefore, the law expressly prohibits any clause in a pledge agreement that grants the creditor automatic ownership of the collateral in the event of default. If the agreement provides for the automatic transfer of the collateral to the creditor as a result of the debtor’s default, then the agreement is null and void.²²

The prohibition regarding clauses established by PT. Sarara Gadai Indonesia is mandatory, meaning that any clause contrary to it is deemed null and void by law, even if the customer has voluntarily agreed to it. The legal implication of the principle that the pawnbroker’s right is a security interest in property rather than a

²¹ *Ibid.*

²² Rudi Hermanto, “Perjanjian Utang Piutang dapat Mengalihkan Hak Atas Jaminan kepada Kreditur?”, (2025), online: <<https://rhp-lawfirm.com/2025/05/02/perjanjian-utang-piutang-dapat-mengalihkan-hak-atas-jaminan-kepada-kreditur/>>.



right of ownership is that the enforcement of the collateral can only be carried out through a public auction mechanism as provided for in Article 1156 of the Civil Code. The auction mechanism ensures transparency and protects the debtor from the seizure of assets whose value far exceeds the remaining debt.

The clause authorizing Sarara Gadai to directly take possession of the pledged goods violates valid enforcement procedures and has the potential to cause disproportionate financial loss to consumers, as the value of the goods often exceeds the principal debt and interest. In the auction enforcement process, the creditor—in this case, PT. Sarara Gadai is only entitled to receive an amount corresponding to the total obligations owed by the customer, as the purpose of the auction itself is to settle the customer's outstanding debt, including the loan principal, interest, and late payment penalties (if any). If the proceeds from the sale of the collateral exceed the debt, the excess must be returned to the customer as the owner of the goods, as this is their right.

The pawnbroker is obligated to return the proceeds from the pawn auction to the customer. The remaining auction proceeds are the difference between the auction sale price and all applicable charges. Provisions regarding the surplus from auction proceeds are also outlined in Article 27 of the POJK. However, there are some challenges in practice, where private pawnbrokers sometimes fail to return the remaining auction proceeds from the sale of collateral to the customer. This should be prohibited because the remaining auction proceeds are the customer's right.

Some common reasons why the remaining balance from the sale of collateral is not returned to the customer include the customer's lack of interest in the collateral—where the customer no longer needs the pledged item or has no further interest in it—as well as the customer forgetting or being unable to repay their debt. If a customer fails to redeem the collateral and defaults, the pawnshop is still obligated to return the remaining proceeds from the auction to the customer. This is because the collateral remains the property of the customer, and the pawnshop has no right to claim ownership of it.²³

In this regard, an employee of PT. Sarara Gadai Indonesia stated in an interview that another team is involved in the auction process and, essentially, the company has established partnerships with several sellers in Palu.²⁴ It can be said that pawnshop companies do not carry out enforcement through formal auctions, but rather through the transfer of ownership without an auction transaction. In this case, the collateral belonging to the customer is taken over by the pawnshop to be sold. However, this process must comply with applicable legal standards regarding the enforcement of collateral on pawned items. In practice, however, PT. Sarara Gadai Indonesia does not comply with applicable legal standards, particularly regarding the return of remaining auction proceeds, as confirmed by an employee of Sarara Gadai, who stated that auction proceeds are automatically deposited directly into the company's cash account. This practice is inconsistent with the legal provisions of the Civil Code and applicable OJK regulations concerning the enforcement of pawn collateral.

²³ Satria Ilham Ramdhan & Ana Silviana, "Pelaksanaan Eksekusi Jaminan Gadai Swasta Menurut Hukum Positif di Indonesia" (2025) 18:1 J NOTARIUS 1-18.

²⁴ Farlid, *supra* note 10.



Third, the fifth point clearly states that, in practice, the clause is enforced by PT. Sarara Gadai Indonesia explicitly exempts the pawnbroker from liability for damage to electronic goods caused by prolonged storage without use. The clause “prolonged storage without use” normatively indicates a lack of substantive alignment with the legal framework of pawnbroking under the Civil Code, particularly regarding the burden of liability on the pawnbroker. Article 1156 of the Civil Code establishes the pawnbroker’s obligation to safeguard the collateral with a reasonable degree of care, whereby any damage or depreciation resulting from negligence falls under the pawnbroker’s liability.

The meaning of the liability disclaimer clause, based on the duration of storage, actually blurs the line between the inherent risks of storage and negligence in maintenance, and could potentially be used as a mechanism to avoid the legal obligations inherent in the pawnbroker’s position as the custodian of collateral. This renders the clause regarding the phrase “the duration of storage without use” ambiguous and allows PT. Sarara Gadai Indonesia to unilaterally use it to avoid providing adequate maintenance—such as periodically inspecting the condition of electronic goods—and instead shift the risk of damage to the consumer by citing the length of storage as justification. In this context, customers often fail to recognize the legal implications of such deviant clauses in standard agreements because they prioritize their immediate financial needs over the potential legal consequences that may arise in the future.

PT. Sarara Gadai Indonesia, in assuring its customers regarding the storage of goods, particularly electronics, only explains the sealing of electronic items containing a barcode with the customer’s signature and guarantees that such items are stored securely during the storage period. However, the company states that if the item is damaged, Sarara Gadai will not bear full responsibility for this, as Sarara Gadai considers that the customer has agreed to the clauses in the signed agreement. Regarding this matter, OJK Regulation No. 31/POJK.05/2016 on Pawnbroking, in Article 22, explicitly states that pawnbroking companies are required to insure collateral items in accordance with pawnbroking law, as well as deposited items to mitigate risks, although it is not explicitly stated in any article that all items must be insured. Private pawnbroking companies—in this case, PT. Sarara Gadai Indonesia is required to have sound risk management to ensure the security of collateral.

To comply with the obligation to compensate for damage to or loss of collateral, companies generally insure their customers’ valuable items; however, in this case, PT. Sarara Gadai Indonesia has failed to do so in accordance with the applicable regulations. The clause in the pawn agreement stating “the customer shall not hold the pawnbroker, in this case Sarara Gadai, liable” also creates a discrepancy between practice and formal law. In this regard, if the collateral is damaged for reasons other than force majeure, the customer has the right to hold the company, PT. Sarara Gadai Indonesia, liable.

Compensation claims are governed by Article 1152(3) of the Civil Code, which states that a lien is extinguished if the pledged property is removed from the possession of the pledgee. If the property is lost or stolen from the pledgee, compensation may be claimed in accordance with Article 1977(2). Meanwhile, if the pledged item is recovered, the right of pledge is deemed never to have been lost. Thus, this provision intends to emphasize that physical possession of the pledged



item is crucial for the continuation of the right of pledge. However, the law protects if the pledgee loses possession of the item through no fault of their own, ensuring they can still recover their security; consequently, the pledgee is entitled to seek compensation if the pledged item is lost.²⁵

When it comes to the principles of contracts, there are five principles of civil law that are recognized in contracts.²⁶ These five principles are outlined as follows:

1. The Principle of Freedom of Contract

The principle of freedom of contract is one of the fundamental principles of contract law, as it allows everyone to freely enter into any agreement with anyone. This principle is enshrined in Article 1338(1) of the Civil Code, which states that “All contracts validly entered into are binding as law upon the parties who enter into them.” This principle is commonly referred to as the principle of freedom of contract.

Freedom of contract guarantees a person’s freedom to act independently in certain matters related to agreements, as stated by Ahmadi Miru, including:

- a. free to decide whether or not to agree;
- b. free to choose whom to ask to make a promise;
- c. free to determine the content or terms of the agreement;
- d. freedom to determine the form of the agreement; and
- e. other freedoms that do not conflict with laws and regulations.

2. The Principle of Consent

The principle of consensualism derives from the Latin word *consensus*, meaning agreement. The principle of consensualism is also the core of any contract. However, in certain situations, a contract may not reflect a genuine agreement due to defects in consent resulting from mistake (*dwaling*), fraud (*bedrog*), or coercion (*dwang*) that influenced its formation.

3. The Principle of *Pacta Sunt Servanda*

The term “*pacta sunt servanda*” refers to an agreement validly entered into by the parties, thereby fully binding them to its terms. “Fully binding” means that the agreement is equivalent to a law; thus, if one party fails to fulfill an agreed-upon obligation, the law provides mechanisms for compensation or specific performance.

This principle concerns the consequences of a contract and is expressed in the phrase “shall be binding on the parties as a law” at the end of Article 1338(1) of the Civil Code. Thus, a validly entered into contract is binding on the parties as a law.

4. The Principle of Good Faith

The principle of good faith is enshrined in Article 1338 of the Civil Code, which states that contracts must be performed in good faith. This principle pertains to the performance of contracts and applies to both debtors and creditors. This principle states that “Agreements must be performed in good faith.” This means that agreements must be performed in accordance with

²⁵ Ana Fauzia, Deva Gama Rizky Octavia & Fathul Hamdani, “The Conflict of the Norms in the Execution of Secured Objects Which are Enforced by Liability Rights When the Debtor is Bankrupt” (2022) 4:1 *Progress Law Rev* 1–9.

²⁶ Muhammad Yustino Aribawa et al, “Unraveling the Ratio Legis of the HKPD Law on Local Taxes and its Implications for the Community” (2025) 1:1 *Soetomo Justice* 32–41.



propriety and humanity. Good faith encompasses all stages of the contractual relationship, namely the pre-contractual phase, the contract itself, and the post-contractual phase.

5. The Principle of Personality

This principle of personality essentially clarifies which parties are bound by a contract. This principle is outlined in Articles 1315 and 1340 of the Civil Code. Article 1315 of the Civil Code states that: “Generally, a person cannot enter into a binding agreement or contract except on their own behalf.” Article 1340 of the Civil Code states that: “An agreement is binding only between the parties who enter into it. An agreement cannot be detrimental to a third party; an agreement cannot confer a benefit on a third party except in the cases provided for in Article 1317.” Since the agreement imposes obligations only on the parties who entered into it and cannot impose obligations on other parties, this principle can be described as the principle of personality.

According to the author’s analysis, of the five principles above, the pawnbroking agreement entered into by PT. Sarara Gadai Indonesia has fulfilled four principles, namely: First, the principle of freedom of contract. The principle of freedom of contract can be analyzed based on Article 1338(1) of the Civil Code, which states that “All agreements made lawfully are binding as law upon those who make them.” Based on the content of this article and in conjunction with the author’s research findings, the pawnbroking agreement entered into is valid and binding on both parties, even though in practice at PT. Sarara Gadai Indonesia standard clauses are used, so that customers retain the freedom to accept or reject the agreement in its entirety, rather than freely determining the contents of the agreement. This principle also determines the contracting parties and the negotiation of key clauses such as the loan amount, interest rate, term, and type of goods to be pledged.

Second, the principle of consensualism. The principle of consensualism is evident in Article 1320(1) of the Civil Code, which stipulates that one of the requirements for the validity of a contract is the mutual agreement of both parties. Based on the author’s research, it is evident that the pawnbroking agreement between PT. Sarara Gadai Indonesia and the customer meet these requirements. The pawn agreement came into existence when the parties reached an agreement regarding the subject matter of the pawn and the essential terms of the agreement. It is important to note that the aspect of the delivery of goods in a pawn transaction is not a requirement for the validity of the agreement, but rather a condition for the creation of a security interest that grants priority rights to the pawnbroker. Without delivery, the agreement remains valid as an obligatory agreement (an agreement that creates a performance obligation for the parties), but the security right itself has not yet arisen. Thus, an agreement alone is sufficient to form the contract.

Third, the principle of *pacta sunt servanda*. The principle of *pacta sunt servanda* can be formulated as follows: based on the author’s research regarding pawn agreements, the requirements for a valid pawn agreement have been met; that is, once the pawn agreement is valid—in this case, where there is mutual consent and all other conditions are fulfilled—the agreement is legally binding and has the force of law for the parties involved. This binding force gives rise to several consequences: the pledgee is obligated to disburse the loan amount; the pledgee is obligated to safeguard the pledged property to the best of their ability; the pledgor



is obligated to repay the principal debt and interest by the specified due date; and the pledgee may not unilaterally use or transfer the pledged property, as they hold only a security interest, not a right of ownership. The application of the principle of *pacta sunt servanda* is most evident in the right of execution regarding the pledged property. The right to retain and sell the pledged property at auction constitutes the mechanism for enforcing this principle within the context of a security agreement.

Fourth, the principle of personality. The principle of personality stipulates that a person may only enter into a contract for their own benefit, and that such a contract is binding only on the parties who entered into it. Based on the author's research, Article 1340 of the Civil Code states: "A contract is binding only between the parties who entered into it." This means that a contract entered into by the parties is binding only on those who entered into it. A pawn agreement between the pawnbroker and the customer applies only to them; no other party is bound by the agreement. This means that both parties must fulfill their obligations as agreed upon in the contract. However, this principle of personal nature is not fully and absolutely fulfilled in a pawn agreement, but rather in a modified form. This principle remains in effect, but the legal effects of the property rights it creates extend beyond the personal relationship. The core of the pawn agreement—the obligation to provide a loan and the obligation to safeguard the item—binds only the two parties who signed it. Additionally, the pawn right is an accessory right tied to the principal debt obligation; if the principal obligation is extinguished—for example, due to payment—the pawn right is also extinguished. This accessory relationship is of a personal nature between a specific creditor and a specific debtor.

A contract may be entered into by anyone, whether between individuals or between an individual and a legal entity. This is because contracts are based on the principle of freedom of contract. A contract is a promise made by two or more parties involved in the agreement, so there is a possibility that those promises may not be fulfilled.²⁷ The principle that PT. Sarara Gadai Indonesia has failed to uphold the principle of good faith. Based on the author's research, it is concluded that good faith is not merely a matter of notification. Drafting clauses that intentionally benefit oneself and harm the other party (such as liability waivers) constitutes a violation of good faith during the drafting phase of a contract. Unbalanced standard clauses already reflect bad faith from the outset. However, from the customer's perspective at the very beginning of the agreement, both parties are obligated to demonstrate the principle of good faith by providing accurate information regarding the collateral. The pledgor must disclose if the pledged item—particularly electronic goods—has hidden defects, such as a cracked smartphone LCD screen, or confirm that the pledged item is indeed the customer's personal property. The pawnbroker must also transparently explain the terms and risks involved. Additionally, PT. Sarara Gadai Indonesia notifies customers when the term of their pawn agreement is about to expire; the company contacts the customer three days before the due date to confirm whether the agreement will be extended or the principal loan amount redeemed. Upon repayment, the borrower is required to return the item in its original condition; this demonstrates to the company that the borrower has acted

²⁷ Andi Bustamin Dg Kunu et al, "Penyuluhan Hukum tentang Pemahaman Perjanjian Kerja di SMKN 7 Palu" (2023) 3:6 J Abdi Masy Indones 1707-1712, online: <<https://jamsi.jurnal-id.com/index.php/jamsi/article/view/986>>.



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in good faith and responsibly. However, if the borrower fails to respond appropriately or lacks the good faith to redeem or extend the loan, the pawnshop will immediately repossess the item, as the borrower is deemed to have defaulted on the agreement.

Based on the research conducted, it has been found that PT. Sarara Gadai Indonesia has, to date, implemented the terms of the pawn agreement in accordance with pawn laws, although only a portion of those legal provisions have been followed; and the company has also explained that its primary objective is to provide a solution for obtaining loans quickly and flexibly, so as not to burden customers during the pawn process. Furthermore, to date, no disputes have escalated to legal proceedings because of the customers of PT. Sarara Gadai Indonesia has consistently met their obligations on time; only a few customers have visited the outlet to complain about their pledged items being auctioned off, even though this occurred due to the customers' own errors and negligence. Furthermore, from the very beginning—before agreeing to the contract—Sarara Gadai did not coerce customers into pledging their items at this location.

CONCLUSION

The execution of the pawn agreement for electronic goods at PT. Sarara Gadai follows the initial debt agreement between the customer (debtor) and PT. Sarara Gadai Indonesia (creditor). This pawn agreement serves as a supplementary agreement, intended to ensure the repayment of the debtor's debt to the creditor in the event the debtor is unable to pay their debt to the creditor. In practice, PT. Sarara Gadai Indonesia currently still operates as an unlicensed pawnshop; however, in its operations, it offers convenience through flexible terms, installment plans during the pawn period, and negotiable appraised values—particularly for electronic goods—thereby increasing public interest due to the relatively quick and simple disbursement process.

The provisions of the Electronic Goods Pawn Agreement at PT. Sarara Gadai Indonesia in Palu generally complies with the Civil Code and OJK Regulation No. 31/POJK.05/2016, including the requirements for a valid agreement and the application of certain principles within the agreement. Regarding dispute resolution and auction enforcement as regulated by PT. Sarara Gadai Indonesia, these currently do not comply with valid formal legal rules. In practice, there are still several contractual clauses drafted by PT. Sarara Gadai Indonesia does not fully comply with the legal provisions of the Civil Code and the OJK Regulation, and the content of the agreement remains biased toward the interests of the pawnshop and detrimental to the customers, even though the business has been operating and functioning fairly well in practice.

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