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Land Pawning in The Archipelago: A Study of Legal Anthropology

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Abstracts

Land pawning in archipelago was regulated by plural laws which can caused conflict which effecting the elite economy to solving the disputed. The research question for this research is how does existence of land pawning under colonial and national legal system view? Researcher will use normative juridical and empiric, where the researcher will use historical, statute, and also comparative and anthropology legal approach method which is a field that study law behaviours as a realistically law. This research shows the land pawning position from colonial era until now will be view from law anthropology that the existence land pawning regulation during colonial era with cultivation slavery was more focusing to elite companies and Chinese. The existence of the pawn law referred to a national legal system based on indigenous law that protected the interests of lower class worker by limiting the period of pawning for seven years.

Keyword

land pawning, indigenous law, lower class worker

1. Introduction

Land pawning is an economic activity that has been going on since long ago and even more than one hundred years ago coloured the country economic development since colonial era until now. This problem is important to be remember because land is a symbol of society existence and disaster source and also the most valuable economic resource that determined identity of its people. The relation between land and human has a strong bound not only as an everyday foundation but also as a human existence status, so the limit of land capacity can cause horizontal and also vertical conflicts which reduced the wholeness of one nation.

Pawning existence in Indonesia aged almost 120 years old in serving the needs of society on improving their life and increasing Indonesia economic, wherever consumptive and productive needs- through the fulfilment of business capital-, especially on lower middle class people and MSMEs – through a loan loan-based funds based on movable material as a guarantee which regulated in the Civil Code Article 1150-1160, pawning also regulated under the Section 7 of Law PRP 56 of 1960 about the Determination of Agricultural Land Areas and also implementing regulations in No. 20 of 1963 about the Settlement of Land Pawn disputes (Feder & Noronha, 1987), is still become a foundation in land pawning the regulation in Indonesia without much change. Pawning does not seem effected in the middle institution guarantee development such as banking institutions and other non-bank guarantee institutions. The survival of the pawning so far cannot be separated from its "*inbezitstelling*" pattern (Elliott et al., 2015).

The term of Pawning can be found in indigenous law as a land pawning transaction which already reformed under the No. 5 legislations in 1960 about the main agrarian. Where according to indigenous law of land pawning is a law action that cause the owner must leave their land for temporary, where the pawn seller released the land belonging under the policy to reclaim it back in time to time. So, pawning in indigenous law is main agreement, which is land pawning transaction (Abubakar & Handayani, 2017).

Because there are lot of law problems in land pawning and lands in society because the existing pluralism law cannot yet create harmonisation and law synchronization, where the problem solving on dispute inside society based on two different law systems but existence of both laws still not recognized as an official law system in the society. Indigenous law system is an indigenous rule that lasting from generation to generation, on the other side national law is a law product of nation that created by the authorities (UUPA).

Emirzon referred in Nurul stated that one of the pawning by using indigenous law is called "*Sanra Galung*" – agriculture pawning (the term of pawning in Makassar)- where the practice done by verbally and without written proof and witnesses, if the dispute happened this law cannot be used as a protection and the person can use the advantage from this law to committed a crime. For example, if

there is oath breaker (*Wanprestasi*) the owner of the land must pay their due (loan), although the time for paying is already expired which maximal seven years for land pawning that stated in regulation (1960 UUPA), however the fact if society cannot afford to pay the loan, they usually used "*Sanra Putta*"- the pawnbroker along with pawnbroker make an agreement to do a transaction. This dispute problem solving of land pawning in Makassar usually through the mufakat deliberation (non-litigation) or litigation through District Court (PN) (Naim, 2021).

Hasyim Wahid referred in Iskandar and Addiarrahman stated that how the history of Dutch East Indies law affected on the crisis justice during the development in Indonesia. On March 20, 1602, Dutch government was built trade share company "*Vereeniging Oost Indische Compagnie*" (VOC), to avoid competition between Dutch sellers, rivalry other countries seller and also to forged position to monopolize spices trading, so it helped Dutch economic. VOC monopoly is a marked the downfall in archipelago economically and politically into the hand of colonialism imperialism. W.F Wertheim referred in Iskandar and Abdurrahman stated the effect from this monopoly, said Wertheim, is an independent farmer with household consumption, but must search for extra payment. Due to that, they must involve themselves in the situation of fluctuated market controlled by Dutch monopoly. During this condition, the needs for higher life created some trading activities, pawning, credit with high interest etc (Iskandar & Addiarrahman, 2019).

To reduce the problem, the colonial government hold control in Pawning business, especially to solved the problem of agriculture debt (Nurdin & Tegnan, 2019). The colonial government try to change the live of local people for example by expand the credit access into village or in other word micro credit- the cause from ethical politic, 1901- local people in the early 20th century gaining more attention after research done by "*Pangreh Praja*", it is known that people in the village were having debt with moneylender with high interest- so the farmer who own the land became farm workers in their own land (Bouman & Houtman, 1988). Moneylender practice-especially that done by Chinese- causing a lot adding payment debt and other practice which disadvantaging Indonesia people.

The Condition above make the colonial government to erased the pawning activity in 1900, and in 1904 take over opium trading monopolistically. As a trading service (Pandhuisdienst) other credit source that created was rice barn bank which leading to Village regulation in 1906- loan of rice or cash loan for farmers which being pay during the next harvest, where the amount of loan was between twenty until twenty-five dollar (Iskandar & Addiarrahman, 2019).

Pierre van der Eng, Pieter Creutzberg dan J.T.M. van Laanen dalam A. Abubakar, R. Krisdiana, R. Hudyanto et.al stated that in order to give prospect live of local people the Indies Dutch built People's Credit Office (Dienst voor het Volkscredietwezen) under the Ministry of Home Affairs (Department van Binnenlands Bestuur), which includes barn, bank village, and also district bank (afdeeling bank) to give purpose that soft conditional credit institutional exist to

increase productive activities in local people through the processing potential product which declined before (Abubakar & Handayani, 2017).

During the liberation of Dutch East Indies plantation after set free from cultivation slavery that being done by banking institution, however the funding only focused on European businessmen and some of Chinese entrepreneurs. And as for local people only focused on "*ambteenar local*" class (priyayi) (Abubakar & Handayani, 2017).

Burger referred in Handayani (2019) stated that the policy of Political Ethic government is a turning point on policy and economic politic which turn their point focusing only to the European and Chinese bourgeois become more supporting the importance of local society especially the villager. This Political Ethic is purpose to increase the life rate and also adaptation as well as creativity of local society in economically participated and independent, social culture, and politic. Many policies that declared by government in economic and politic sector to maximalise potential profit to support the prosperity of colonial country (Handayani, 2019).

Phoa Liong Gie referred in Mulyadi (2008) stated that the China financial system is a system that united with Dutch Indies colonial government where the institution is very influential to help the mass needs of consumer and credit system in Indonesia. The Chinese group give a lot of advantage into colonial government because they have a lot financial skill in trading, where their role become a commercial transaction between Dutch East Indies and Indonesia people. Therefore, the colonial government utilise the existence of Chinese in economic-tax collection, moneylender and trading, connection building and form commercial organization across the country. Beside the activity from Chinese is to monopolise opium trading, pawning also source of gambling as well as wholesale and retail import, collecting crops and loan, retail credit and distribution (Mulyadi, 2008).

The economic liberation during colonial government began by creating Agrarian Legislation in 1870 where since then the country authority in economic management was taken over by private companies as an individual freedom period to invest. Booth, Furnival referred in Handayani stated that the economic liberalism along with European control market share in Asia for all Europeans products, but liberalism only benefits to the rich Europeans, whereas the local people become left behind and eliminated from economic activity, beside lost in global competition and also overload of import products- especially Europe and China products- which erasing the local product, due to that the local people remains in marginalise state and being eliminated (Handayani, 2019).

According to introduction above, the researcher analysed how does existence of land pawning under colonial and national legal system view?

2. Method

This research is using and empirical juridical and normative juridical, with antropology legal approach, Nyana Wangsa and Kristian referred in Isharyanto stated the based purpose and function, discipline law of anthropology is part of

empiric juridical along with sociology, psychology, and comparative laws (Iskandar & Addiarrahman, 2019). Lilik Mulyadi also stated that socio-legal and anthropo-legal is a field that studied the law behaviour as a realistic law (*Taatschachen Wissenschaft*) where the behaviour and law applying is normative in nature (Mulyadi, 2008). The characteristics of the rule of law appear in the presence of legitimacy and punishment.

The researcher using the method of statute and historical method- Socio Historical (Socio Legal) method through primary law source analysis and the and seeing law enforcement in a complex constellation that connected with power relations in society, a doctrinal study method as well as doing empirical studies (Iskandar & Addiarrahman, 2019). through legal system comparison laws during colonial after the independence period. Researcher in collecting, law resources classification to be analyse with the descriptive analysing by using quantitative method and make a conclusion. The law is very related with culture, even give a definition of law just based on a legislation is an unrealistic thing, because law is a living anthropological document.

3. Discussion

Based on the Dutch colonial law of pawnshops and pawnshops using a pluralistic national legal system - there is more than one legal system in effect - Dutch inheritance law, National Law and Customary Law. The legal pluralism in Indonesia was formed based on the consensus that the law applied in Java was colonial law and religious and local legal traditions, where separate courts and laws existed for different population groups (Ravensbergen) - the author finds indications that the pawnshop system in principle there is no significant change in terms of institutional form and also in the application of the legal system, as well as with regard to land pawning, it can be seen that during the plantation liberalization era in 1870 - Agrarian wet - that at that time the land rental system often used violence to perpetuate the accumulation of primitive capital - liberalism - which undermine the indigenous economic order where land tenure is sometimes through intimidation, violence, and property theft using violent acts. This incident still often happened during the New Order era and the author assumes that it is not impossible that the exploitation of people's land will continue to take place under the pretext of improving the economy but eliminating social justice. It is clear in the ideological basis of Pancasila and the basis of the state constitution - the 1945 Constitution - that the state aims to prosper the people both physically and mentally so that all production factors that involve the vital life of society must be controlled by the state for the welfare of the people, the meaning of mastering above is not the right to own but as the right to regulate its management in accordance with state goals.

Agrarian conflicts that happened in plantations area during Sukarno government was compressed by "*land-reform*" movement which shunted by government in early 1960's. And as for the continuous agrarian conflicts and having

impact on national scale happened because the "land-reform" program and from the conflict between the ruling elite regarding Indonesia's political-economic strategy which in the end the New Order regime with an authoritarian government and a liberal economic strategy (note on pseudo-capitalism), strengthening state power over natural resources for the benefit of large capital as was done by the Colombian government but in different contexts. (Naim, 2021).

During that time, the domination centralisation paradigm of resources at least partly a reflection from nationalism spirit, an attempt to destroy "feudal" forms and provide an instrument for the state to mobilize resources for the national economy. The "UUPA" is quite promising to drive changes in the agrarian structure in Java. It is different for farmers and indigenous peoples outside Java. Although the "UUPA" provides recognition of the rights to natural resources of indigenous society, but the accompanying requirements can be said to easily negate the rights of indigenous peoples (Naim, 2021).

Setiawan referred in O'Connor (1993) stated that based on the law of primitive asset accumulation that investors will continue to try to increase profits that will be added to the previous asset and will continue so that this view will damage the economic order which is non-capitalist. Primitive Accumulation is a first process from capitalism development where nature resources will transform into productive asset and farmer become farm worker, which this transformation process through intimidation, brutal force, and stealing property using violence act so creating commodity productive economy. This mass transformation creating some of a process in private company development which dominated by conglomerate and creating mass of worker that given tasked to fulfil society economic organization needs. The development of accumulation assets in agrarian sector, land is the most vital whereas land become a production tool so as human for capitalist production organization.

Primitive asset accumulation in the New Order era through invitation from foreign investment which being facilitated by country through infrastructure development, the purpose of the country is to making a profit or getting distribution surplus through tax and non-tax (illegal rent). This profit to running an organization and nation resource, mutualism between businessmen and nation involve the nation to facilitated the land needs for capitalist companies and their infrastructure development. The wide of land still the same but consumption need and production start to increase because the number of people that more increasing which is a It is inevitable that a problem of interest will result in agrarian conflicts, which are mostly detrimental to the farmers who have productively controlled these lands for years without guaranteeing legal certainty (O'Connor, 1993).

Purwahid Patrik, Kashadi referred in Handayani (2019) stated that the pawning assurance institution as part of contributor to economy development which has very important position in creating the prosperous Indonesian society based on the ideology and state constitution - Pancasila and the 1945 Constitution. Miftah and Raihani referred in Ngainun Naim, Mujamil Qomar stated that cultural varieties

in Indonesia is a challenge in order to become a form of shared awareness through "*Bhineka Tunggal Ika*" (diversity in unity). Cultural differences related to ethnicity and race, culture and society, and religion, Different in meanings but still related and mutually reinforcing interactions - evidence of Indonesia's cultural diversity is evident in the geographical expanse which consists of thirteen thousand islands with three hundred ethnic groups and has regional languages more than two hundred pieces as well as customary law as well as plural religions and beliefs. Misrawi stated that multiculturalism is the nation's most valuable asset if it can be preserved, studied, fought for, preserved and developed throughout the nation's journey (Naim, 2021).

Grabe (2010) stated that the relation between land and human as a connection ideology, where each human profile having some ideologies and different importance perspective toward soil which affected by space and time. In the traditional society group (For example indigenous people) is having a concept that soil as a symbol of everyday life, and for the others group as a money resource and production factor (Grabe, 2010).

The static nature of land has an impact on increasing the land values along with the increase in population and the production process often creates disputes. Although the form of dispute is varied, many of them are a large fund between landlord and infrastructure development belonged to government against people who has land. David Ricardo referred in Noer Fauzi stated the relation production process and increasing number of people that followed the demand law where the demand of resource production such as fertile limited land- to maintain everyday life until reaching maximal satisfaction. Next, the limit of land kept decreasing and can only give minimum needs- which will decide the payment of workers. Whoever have or rule the good land (land on the margin or marginal land) then they will get many advantages from it.

The advantages will positively correlate with larger, better the value of the land. On contrary, the more not having the better land then the more struggle living the life. Sediono MP Tjondronegoro, Setiawan referred in Noer Fauzi stated that the based "mashab' ideas above caused the land disputed based on the number of people on the fertile land began to increasing, and economic social organization are different with the increasing demand of the people. Whereas according to "Radical Development Theories" theory stated that the people order in pre-capitalist were defective or destroyed because the development of capital power (McGee, 1980).

Abubakar and Handayani (2017); Iskandar and Addiarrahman (2019) stated that pawning is a farming economic activity- local farmer (farmer) that rent land, and paid the rent using the corps. Farming is an institution that served in the field of economic activity, including gambling, opium, alcohol and also pawning. These activities also can be found in Indonesia and Philippine. However, because full of gambling, opium, and alcohol, makes the local people become disinterest with it. Moreover, the local people in many regions are having "pawning" tradition which

become the part of their life. The next discussion is to see how institutionalized pawning tradition in many regions in Indonesia.

Iskandar and Addiarrahman (2019) stated that pawning is product of assimilated acculturation, also dialogue and culture conflict- Chinese, Indian, Arab, and Portuguese, Spanish, British, Dutch- Abdul Munir Mul Khan referred in Iskandar and Abduarrahman stated that acculturation of culture between Islam and people in Indonesia created through four patterns, such as 1) Islamization; 2) Localization; 3) Negotiation; 4) Conflict and co-existence. One of pawning form is "*paging gadai*" in Minangkabau- since the Hindu kingdom- similar with the pawning in Ayuthia and Malaysia which still exist until now although is it not economically institution but as a media for emergency need- "*izin mamak*" (tradition elder) - for example for mourning ceremony, tradition house renovation, fund for marriage, and the appointment of customary tradition chief.

The land pawning for people is still being done in Minangkabau Indigenous Law Society because its fast and easy. The problematic goes back to the owner without ransom to this farm land pawning in West Sumatra which the majority obey to Minangkabau Indigenous Law turn out having its own problem (Suryani et al., 2019).

Iskandar and Addiarrahman (2019) stated the odd of pawning in Minangkabau indigenous law because philosophically they confess that land beside belonging is also a socio politic symbol and cultural identity of their people. Pawning- "*Adol sande*" (Javanese), "*Jual akad, Sande*" (Sundanese)- the land of the most valuable inheritance property owned by indigenous peoples and closely related to cultural identity. The form of pawning is considered contrary to Islamic law because the recipient of the pawn will not release the pawn until the payment occurs, so the customary chiefs are not willing if the inability to pay their debts has an impact on high inheritance land loss and causing poverty (Iskandar & Addiarrahman, 2019).

When the researcher doing analysing by using the court decision, then the most cased dealt was pawning and land pawning, then stock and gold pawning in the 2015-2020 period, there are some data that collected by the researcher from the Supreme Court website such as: Decision of the Supreme Court of the Republic of Indonesia Number 0304/Pdt.G/2015/MS-Tkn concerning Cancellation of Land Grants, 2015; Decision of the Supreme Court of the Republic of Indonesia Number 385 PK/Pdt/2016 concerning Pawning of Paddy Land, 2016; Supreme Court Decision Number 189/Pdt/2017/PT. PDG on Pagang Pagang Pusako Tinggi, 2017; Supreme Court Decision Number 63/Pdt/2018/PN.PDG Regarding Land Pawning, 2018; Supreme Court Decision Number 338/Pdt/2018/PTMDN Regarding Land Pawn, 2018; High Court Decision Number 11/PDT/2018/PT. BDG Pawning of Sawah Land, 2018; Decision Number 4/Pdt.G/2020/PN Pnm Gadai Sawah, 2020; Decision Number 4/Pdt.G/2020/PN Tka Gadai Sawah, 2020; Decision Number 7/Pdt.G/2020/PN Tka Pawn Tanah Inheritance, 2020; Decision Number 2/Pdt.G/2020/PN.Liw Land Pawn, 2020; Decision Number 2/Pdt.G/2020/PN Pol

Pawn Land, 2020; Supreme Court Decision Number 66/Pdt/2017/PT. TJK Concerning Pawning of Garden Land, 2017; Supreme Court Decision Number 63/Pdt/2018/PN.PDG Regarding Land Pawning, 2018.

The existence of the "UUPA" which is based on Indigenous Law is contrast with the Civil Code where the UUPA does not recognize the principle of "accessie" or attachment – where objects are only known as land and not land (land is horizontal) often creates many problems and illegal things. Also, the existence of "UUPA" has revoked the provisions of Article 506-508 of the Civil Code because basically everything related to earth and water and things containing natural resources follows the provisions of the "UUPA" so that groups of immovable objects in the Civil Code relate to land. So, the existence of the "UUPA" which is administrative in nature, while the Civil Code is more likely to support the business world in material right transactions term. So that the self-registered provisions for unfinished land ownership rights cannot be the object of transactions, so that sometimes people in the domestic environment still use the provisions in the Civil Code to make land as an object of transactions even though they face great risks and complicated problems and have an impact on legal certainty during investment, Moh. Isnaeni stated the reform is needed to support the development of national economic growth (Mulyadi, 2008).

The UUPA as an official authority expression from Indonesian so it required determination to modernisation indigenous law, and to make it more suitable for the needs for the new Indonesia Republic as one of independent nations in the world. The renewal of law on land objects and related land objects - earth and water and natural resources - replaces the provisions in Agrarische Wet (S. 1870 55), Domeinverklaring, Algemene Domeinverklaring, Koninklijk Besluit and Book II of the Civil Code – except for the Hypotheek provisions. The UUPA putting some new values which are the main bases for the elaboration of Article 33 paragraph 2 of the 1945 Constitution. The UUPA as a source and primary of the highest law, short and limited legislations and they need supportive or as executor regulations which is to complement or explain the requirements of UUPA articles (Penders, 1968).

Nursjanti et al. (2021) stated more further that carefulness and alertness are most needed during developing right on land related to the international world business needs which one of it related to the presence of Pre-project Selling related to vertical residence (apartment) or other business place that still normless, the presence of regulation related to pawning rights as the implementation of the "UUPA" which replaces the pawning provisions in the Civil Code, if you think about it that the existence of "UUHT" carries the provisions of customary law which only recognizes communal rights – it does not recognize individual rights and material rights. However, the fact that "UUHT" adopted many policies or characteristics of mortgage as a material right, this thing historically shows the law that still valid and long-lasting in the society cannot be abandon so mortgage property rights related to land (Nursjanti et al., 2021).

3.1 Land Pawning in Colonial Agrarian System

Since there are many protested for cultivation slaveries since 1830, then colonial General Governor establish "*Agrarische Wet*" in 1870 which gave freedom to Indonesia people for having and using their own land because with this rule the Indonesian granted protection for their right. This regulation is a starting point for economic liberation society in Dutch East Indies (Penders, 1968).

Peluso (2005) stated that modern agrarian dispute in Indonesia started from intervention of colonial nation in 19th century into domination system of resources and local people production system in order to intensified colonial exploitation through cultivation slavery practice. The strategy that chose by Dutch is more directly exploitation in establishing slavery cultivation system, where colonial nation themselves that exploited the main role. This colonial strategy is the first radical intervention into domination institutional resources and local farmer system and only established in Java and other regions outside it because the range limit of colonial staff. The second radical intervention which having more wider implication is the establishment of *Agrarische Wet* in 1870.

Land regulation through 1870 Agrarian Legislation was a new innovation for private company to participated in farm business in Dutch East Indies through "*Erfpacht Right*" (business right) for seventy-five years according authority that gave eigendom right- (ownership), also can be inherited it and turn into building, Boedi Harsono referred in Alhidayath Parinduri stated that erfpacht right is having three or other forms (Parinduri, 2021): 1. Large plantations and farms, a maximum of 500 squires meters with a maximum rental price of five florints per squires meters (1 squires meters = 1 "*Tumbak*" = 1 "*Bata*" = 14.0625 m²). 2. Erfpacht rights for plantations and small farms for those intended for "*poor*" European or social groups in the Dutch East Indies can only rent a maximum of 25 squares meters at a rental price of one florint per squires-meters and since 1908 it is allowed to rent a maximum of 500 squires meters; 3. The right to rent for the rest house and the yard (estate) with a maximum area of 50 squires meters.

Wertheim referred in Peluso (2005) stated that one point of the legislation, "*Domein Verklaring*", is a first radically step in centralisation strive of land domination and other resources factually into other nations. Dutch economy at that time ready to expand their fund independently, not on behalf of colonial country like before, in colonial region. The area that considered as free of ownership, especially at high ground areas, are defined as a land nation and can be rent to the private companies for seventy-five years, while in the lowlands the private companies can rented a land from residents. Boeke referred in Shohibuddin stated that the colonial government's radical intervention in the control and production of the community through the practice of forced cultivation caused poverty for the villagers due to the reduction of land for farmers and gradually shifting ownership to private hands.

Regering Reglement Agrarische Wet in 1870 is a politic regulation system and land policies, after cultivation slavery which was the form of liberation farm in East Dutch Indies through investment in the form of farm, so it ended Dutch colonial monopoly system with the declaration of "Agrarische Wet in 1870 (Agrarian Legislation), which make an easier way for foreign investor to doing investment in Indonesia. The large profit only can be felt by foreign investor and as for local people, their life was miserable (Masyrullahushomad & Sudrajat, 2020).

Masyrullahushomad and Sudrajat (2020) stated that the profits obtained by foreign investors in the Dutch East Indies were very large due to the result of capital accumulation from foreign investment and benefited from cheap labor wages with longer working hours and obtaining infrastructure development facilities - transportation and communication by the Dutch Colonial Government - which was financed by the government's tax levy on the people of colonized country. The Dutch East Indies economy was dominated by investment in plantations, especially on the islands of Java and Sumatra, where these investors were granted 75-year erfpachtrecht rights by the government based on Agrarische Wet 1870. Agricultural products were sugar, coffee, tobacco, tea, rubber, quinine, and coconut. Meanwhile, outside Java, rubber, palm oil and tobacco are the main products.

The cultivation slavery system (Cultuurstelsel) began in 1830 as an effect from the downfall of Dutch economy because their war with Napoleon and civil war between Dutch and Belgium (back into one nation once more in 1815). Impletation from cultivation slavery by General Government Johannes van den Bosch who served from 1830-1834 believe this system can bring a great profit for Dutch, as well as marked the increasing of consumption from Indonesia elite people, enriching the European businessmen and Chinese intermediaries, but not the Javanese - where they were forced to participate in growing export crops to raise funds. sufficient to meet their land tax commitments, which are based on rice production. The most profitable export crops--coffee, sugar, indigo, tea, pepper, cinnamon, tobacco, cotton, silk, and cochineal--are sold to the government at fixed prices.

In the implementation of van den Bosch's theory, it cannot work perfectly where there is no collaboration between local and regional residents, even what has happened has actually led to colonial exploitation which forced the people to plant crops that can be exported and the profit will be sent to the Netherland by the Dutch Trading Company (Nederlandsche Handel). Maaschappij) - which held a monopoly on the Cultivation System trade from 1824-1872 - in which this forced cultivation restored the Dutch position as the main market for trading in tropical products represented by the city of Amsterdam. The Netherlands gained a sizable advantage in the implementation of the forced cultivation system which could contribute up to thirty-two percent of the Dutch GDP between the 1830s and 1860s, where these benefits were able to cover the deficit of the colonial government. The Dutch colonial financial deficits included the derivative of the old VOC debt, the construction of the Dutch state railway, funding the compensation of slave owners

after the abolition of slavery in the Suriname colony and paying for the Dutch expansion to Sumatra and the eastern islands (Widodo, 2006).

The plantation system in Indonesia during Dutch East Indies was influenced by existence and politic economy dynamic in Netherland, between 1830-1870 the economy development in Netherland was disappointing, so the government applied slavery in their colonialize region- because the applying system at that time was nation monopoly through the authorities applying (high authority)- to fulfil commodity needs from farm and plantation to restored Dutch economy. The dynamical politic makes the private companies being involve in plantation development in colonize region which encouraged the establishment of "*liberal*" private plantation companies that established since 1865, however it more liberal after 1870, more exact after the regulation declaration of Agrarian Wet (Masyrullahushomad & Sudrajat, 2020).

Gordon referred in Masyrullahushomad and Sudrajat (2020) stated that the participation from foreign private investor in East Dutch Indies were huge so placing Dutch in third place as the most hospitality nation in world for investor and this this is inseparable from the symbiotic relationship of mutualism and interdependence between plantations and metropolitan centre and their capital markets. This liberalization of plantations cannot be separated from the demands of the owners of plantation capital, where this happens because the Netherlands is very dependent on plantations - the main source of foreign exchange - so that demands from investors have caused the Dutch government to privatize their plantations through the plantation privatization in the Dutch East Indies (Masyrullahushomad).

Masyrullahushomad and Sudrajat (2020) stated that Agrarisches Besluit 1870 was became an important foundation for plantation privatization in the Dutch East Indies. The Agrarian Law which was created on April 9, 1870 which became article 51 of the Wet op de Indische Staatsregeling, the contents of which were related to the prohibition on selling land, except small area land for widening towns and villages as well as for establishing companies and buildings; It is prohibited to interfere with customary land rights and take land that has been cleared by Indonesians except for the public interest and must issue appropriate compensation, in addition for prohibition, this Law gives the Governor General the authority to rented the land to private persons with use rights for seven years. twenty-five consecutive years; The Governor General has the right to grant Eigedom rights which must include all the requirements related to rights and obligations that are adjusted in the law, one of which is related to the payment of land tax; Indonesian people can rent their land to foreigners with new land rights changes, such as erfpacht rights to forest land and customary land rights (Masyrullahushomad & Sudrajat, 2020).

The right that given to Indonesian people for renting their land to the foreign for the purposes such as: first, to put foreign asset in farm and plantation sectors to gave a second change to high asset in particular for getting land guarantee and protection of its development: second is to protect the right of local people as a

weaker class because the renting provision that mentioned above: giving a little bit strong right status such as egedom agrarian right so the land from local people cannot be occupied by foreign. Tauchid referred in Masyrullahushomad stated that the foreign rent right provision that being given is very contrast and causing dilemma for Indonesia people.

Domein Verklaring is a first radical step to insure the land centralisation domination and other resources in to other nation, factually. Dutch economy at that time already being prepared to expand their asset, privately, and doesn't need to being behalf to the colonial nation as before. The regions which consider to be free of ownership especially in high land regions, define as nation land and can be rent to private company according to the provisions of the law and the state can rent a land in the low land to the private company in addition to being able to rent land from local people. Privatization of cultivation slavery areas (such as sugarcane areas) gradually to private groups (Masyrullahushomad & Sudrajat, 2020).

The radical intervention from (colonial) country into land domination system and society production from the beginning was causing great impact to the villager and village institution government where Boeke, Geertz referred in Masyrullahushomad stated that the above policies indicated the jamming of people economy that causing poverty for farmer because the decrease of the occupation land. The reaching power and technology at that time didn't allow the colonial country and investor to make a faster expand into all of Indonesia region including several enclaves, such as West Sumatra/Deli, witnessing the capital expansion in the form of tobacco plantations and causing of eviction land of people which orchestrated by local people ruler who having the same importance with foreign plantations (Masyrullahushomad & Sudrajat, 2020).

Masyrullahushomad and Sudrajat (2020) stated that the privatization expansion had an impact on the direct government system needs, especially in Java, village government developed to become an integral part of the central government (colonial), serving and loyal to the interests of the central government (colonial) and large capital. The essence of the Agrarian Wet then issued the descending rules, namely Agrarisch Besluit described in Staatsblad 1870 No. 118 which applies to Java and Madura. For areas outside Java and Madura in general, domeinverklaring is stated in Staatsblad 1875 No. 199a. And for special areas, such as s: Sumatra: Staatsblad 1874 No. 94f Manado: Staatsblad 1877 No. 55 Kalimantan Staatsblad 1888 No. 58 South/East.

Masyrullahushomad and Sudrajat (2020) stated that with the declaration of Agrarische Besluit in 1870 was causing on all owner-less land domination or vacant land dominate by the nation - all land that cannot be proven by its eigendom rights is the nation domain - so the nation acts as dominum (the highest ruler of land owner) then sells right of the land to the private company (het hoogste eigenar). The based idea was because the occupation areas has already been conquered militarily so that it became a 'conquered area' (gekongcuesteert gebied) then the land became 'conquered land' (agri limitati-Lat.) (Masyrullahushomad & Sudrajat,

2020). The agrarian regulation will causing some conflicts considering before the colonial era, Indonesia people according to indigenous law already ruled that land so the Colonial Government declaring concept about the land that belong to nation and differs between nation-owned land that unoccupied (*vrii landsdomein*)- the land right cannot be liberal (*onvrii landsdomein*)- nation-owned land which occupied and ruled by Indonesia people according to their indigenous law, so there is still indigenous law within the nation-owned land.

The Political law of Dutch colonial government that has a great impact to customary land existence is the declaration of Agrarisch Wet 1870 (Stb. 1870 No. 155), with the implementing regulations Agrarisch Besluit 1870, which force the "*domein*" principle in the land domination system where land ownership can only be proven by eigendom rights other than that it is nation land. The existence of Domein Verklaring which carried by the Dutch capitalist to deviate the Civil code regulation- only the owners (*eigenaar*) can get their land rights for giving them to other parties- so that they can easily get *erfpacht* and *postal*. The position of nation is not as land owner based on Agrarisch Wet because the ownership must be proven by eigendom and agrarische eigendom. Sembiring referred in Masyrullahushomad stated that the Domein Verklaring policy had an impact on understanding the status of land ownership, where eigendom and agrarisch eigendom are private property rights, including customary rights which are equivalent to ownership, but do not include customary rights.

Shohibuddin, Padmo, Oudejans referred in Masyrullahushomad stated that the existence of Agrarische Wet 1870 is to accelerate privatization and farmer land domination by particular businessmen through renting contract to farmer and recruit them as a plantation worker through rent contract to the owner farmers and recruit them as a plantation worker through payment system because the independency and protection guarantee to the investor so the land liberalisation pushed great expansion of farm and trading plantation companies in Dutch East Indie that happened between 1870 and 1920, especially sugar and sugarcane, tea, quinine and cassava in Java. And in Sumatra, there are a lot of rubber and oil palm and sugarcane plantations, cocoa, and tobacco were planted in low land areas. Plantation liberalisation in Dutch East began to focus on increasing the development of sugar industry beside there are many land expansion and advantage technique of productions.

Poesponegoro, Leirissa, Daliman referred in Masyrullahushomad and Sudrajat (2020) stated during the period from 1870 to 1900, there was an increase in the area of sugarcane plantations by more than 230% where the previous land area was fifty four thousand one hundred and seventy six BAU (1 HA = 700 BAU, 1 BAU = 500 RU, 1 RU = 1 BATA, 1 BATA = 14.28 M²) in 1870 to one hundred and twenty eight thousand three hundred and one BAU with an increase in production approaching five hundred percent (494% in 1870) from two million four hundred forty thousand Pikul or as much as (40, 67 Tons) (1 Pikul = 60 Kg) to twelve million fifty thousand five hundred and forty four Pikul (200, 842 Ton). This development

is supported by a very good irrigation pattern in the main sugar-producing areas on the island of Java, namely on the north coast of Java - the residency of Cirebon to Semarang, then in the south of Mount Muria to Juwana, the Sultanate (varstenlanden) including good sugar producers, residency Madiun, Kediri, and Basuki in East Java. In addition, the areas of Probolinggo, Pasuruan, Malang, and Surabaya to Jombang (Masyrullahushomad & Sudrajat, 2020).

Beside sugar production that increase rapidly there is tea in Assam region, and tobacco and Yogyakarta, Surakarta and Basuki and Deli Serdang, beside the quinine production, and as for coffee productivity are not much during the practice of cultivation slavery (Masyrullahushomad & Sudrajat, 2020).

However, after the crisis happened in 1885, the price of sugar and coffee in international market became drop due to substitution product (beet sugar) in Europe, so causing plantation financial institution (culture banken) began to dropped automatically. In the late of 21st century, the social-economic life in Dutch East Indies changed from liberalism system into directed economy especially in Java began to controlled by financial and industrial importance in Dutch. Many policies are no longer given to the ruler of big plantations that located in Java (Masyrullahushomad & Sudrajat, 2020).

3.2 Land Pawning in Indonesia Legal System

The developing of law conception that following a society and make laws as a renewal media for society with enabling law as a regulation of pluralism and many cultures society in Indonesia is a great asset in order to create prosperity life for the society. The law of pluralism that belong to Indonesia as an acculturation and emergency adaption during the early of independence, so the rule of law is a legacy from colonial era and also law regulations that created from lawing system that develop from the acceptable habit in the society (the living law) or known as indigenous, social laws which is a nation law product also Islamic law as a majority religion as a law system that still being used until now. Indigenous law as one of the important sources in obtaining materials for the national law development that reflects the elements of the soul and personality of the Indonesian nation so that it is hoped that Indonesia will get a legal system that meets the needs of people in various lives in the era of globalization (Ningrum, 2013).

Boedi Harsono, Urip Santoso, Sudikno Mertokusumo referred in Nurdin and Tegnan (2019) stated that pawning right is a right of pawnbroker to use land that belong to another person (the seller of the pawn) who have debt for a certain period of time or as long as the debt has not been paid in full (redeemed) by the pawn seller, because the pawn in indigenous law that having some characteristics such as: 1. The right to redeem does not expire; 2. The pawning holder is always entitled to repeat the land pawning; 3. The pawnbroker cannot demand that the land be immediately redeemed; 4. Pawned land cannot automatically become the property of the pawnbroker if it is not being redeem.

The law renewal is an inevitability for all countries including Indonesia to always perfecting the national law system by focusing the applicable law in society which is religion and indigenous law, and try to reform all law either colonial legacy or invalid laws. Pawning institution in the indigenous law tend being chose by society because there are many easy procedures within it compare to the other exist guarantee institution that using complicated procedure. However, this doesn't mean it free from some lack-ness, this is because the law that organize indigenous pawning problems are informal and unwritten, where the pawning agreement inside it held only based on the habits that happened in society. Thus, one of the problems is an guaranteeing legal certainty of pawning agreement that uses indigenous law without any written, formal and legal evidence (Naim, 2021).

In land pawning, there is an assumption that it is a form of exploitation or oppression or extortion because if it is the debt is not redeemed by the pawn seller, then the pawned land will still be controlled by the pawnbroker, and to anticipate that then the nation will give protection for the owner who has weak economy so it will happen some sort of extortion by using pawning right through agrarian reformation with the declaration of Government Regulation in Lieu of Law Number 56 of 1960 concerning Determination of Agricultural Land Area, where inside Article 7 regulates the maximum period of validity of the debt for seven years. When the pawn seller cannot redeem the pawned land, the pawned land will be controlled by the pawn seller for seven years and must be returned to the pawnbroker or seller without any ransom because it is assumed that for seven years the debt has been paid off.

Suryani et al. (2019) stated that the background of agrarian disputes according to sectoral, regional and vertical-structural categories, such as (Shohibuddin): 1. Criteria for conflicts that happened due to a combination of justice and temporary political pressure, changes the political direction of the elite group that controlled the country, examples of cases of disputes between farmers working on ex-colonial plantation lands that were evicted by the government in order to implement the agreement with the Dutch which led to the recognition of Indonesian independence. 2. The category of conflict that triggered by power oppression followed by uncertainty about people's land rights and a dysfunctional judicial system. This category is cases where the government or big companies force farmers to sell their land, at a price that is determined unilaterally and is very detrimental to farmers. In cases like this, big companies don't care about the rights of local people to the resources that they have managed or used for a long time. 3. The agrarian category disputes triggered by the unilateral definition of forest and nation lands areas by the nations accompanied by the neglect of the indigenous rights of local communities. Along with the neglect of these resource rights, comes the neglect of local knowledge and local forms of natural resource management. These disputes arose when the government since the 1970s defined State Controlling Rights (HMN) over natural resources, and used its authority to

concession land and state forests to large companies for large-scale exploitation (Peluso, 2005).

This can be concluded that the effective of "UUPA" does not support farmer rights for their own land. The government policies instead give an easy way for themselves and hug fund for getting footprints for their industry, during the period of 1990 there were land farm conversion that became industry in Java as many as nine hundred thousand hectares. Aditjondro referred in Noer Fauzi stated that the land conflicts not only an ordinary dimension of land but also involved between economic system; The disputed between majority with minority; The disputed between people against nation; and the disputed between ecology system. Therefore, it can be concluded that the land disputed is one of main character in structural change that happened durin New Order era.

Widodo (2006) stated that in Indonesia history on September 24, 1960, is a historical event for Indonesia farmer- the declaration of Primary Agrarian legislation (UUPA)- The birth of UUPA became pillar of history of agrarian that changed agrarian politic during colonial era, where the practices in foreign capitalist era of agrarian, and the Feudal to obtain treasure and power in an easy way and as for farmer only get a suffer life. The validity of "UUPA" try to solved dualism in colonial agrarian law and indigenous law of Indonesia.

With "UUPA", government and society after colonial era will doing reconstruction of political agrarian structure to give some fulfilment purposes of nation establishment- as written in documents of nation principles: "Pancasila" and the 1945 Constitution. The "UUPA" along with the regulations, want a realistic change that developed during colonial era. Which is, ensure the farmer right for agrarian resources (soil, water, spaces and natural resources) and organize the acquisition results so that the people will have prospect life. This effort also known as agrarian reform. This reform by any mean is "*land reform*"- the reform in ownership field, domination and land utilization.

Pawning bank in Europe is less in demand because the people who come to pawnshop is a disgrace and shameful and doing it because there are no other choices, compare to land pawning in Dutch East Indies, where all it people wherever European or local people already get used to by using this pawning service to fulfil their needs or even only to keep their important belongings safe.

The regulations that related to pawnshop written in Staatsblad No. 490 of 1905 stated that all pawnshops were gradually managed independently by the nation (Monopoly) and revoked private pawnshops because there are many violations from the pacht system pawning applicable in Java and Mandura, and whoever do a pawning business after the enactment of this provision will be subject to criminal sanctions, in Article 1 paragraph (1) of the Ordinance on December 4, 1903 (Staatsblad No. accepting a pledge or buying and selling land or selling land with a promise to repurchase it, if it persists, it will be subject to a prison sentence of 15 days to 3 months and a fine of fifty Rupiah to one thousand Rupiah (Sunny, 2010).

Inside the policies of neoliberalism land, the land legislated through program certification is fundamental. The certification is one of tools to forged the individual right of ownership to creating safe feeling for each individual that having a land. With legislation, it is assumed that land rights are getting stronger and more efficient. At this point, neoliberalism and populist land programs, as described in the 1960 "UUPA", are not much different. The difference is, in neoliberal land policies, legalization is used as the first process for the continuation of the agenda to create an ideal climate for land transactions (Joni, 2019). Differ from substance that written in "UUPA", where confirmed that land is a production tool for farmer and become obligation for the owner to maximalise its working and producing. Hernando de Soto referred in Achmad Sodik stated that (Dirkareshza et al., 2021): *"What the poor lack is easy access to the property mechanism that could legally fix the economic potential of their assets so that they could be used to produce, secure or guarantee greater value in he expanded market"*. The meaning from quote above is the easy way to accessing land mechanism (Property) which will be increasing the productivity and also guarantee value and security in wider market but unfortunately the access is not easy for the lower working class. And also, Hernando de Soto argued that the land that has been certified or legal can be transformed into capital or other assets or other property through market mechanisms, so that it can provide productivity and benefits for the owner, including through pawn transactions (Soto 2000:45).

4. Conclusion

Pawning bank in European is less in demand because people who come to the pawnshop will be considered as disgraced and shameless and done only when obligated, compared to land pawning in Dutch East Indies, whereas people wherever European or Indonesian already using the pawning service to fulfil their needs even only just to make sure the valuable material safe, Beside that, since the liberation era of plantation in 1870, pawning done by nation monopoly and whoever doing violation will be give prison and fine punishment. According to experience that private pawning companies are forbid to open business pawn because usually it can be misused by the companies who apply paying debt with high interest and people can lose their asset- This causing a lot of exploitation and confiscation of assets from the society. Historically, the description of pawnshops since the agrarian reform era of 1870 until now shows that pawnshops are one of the pillars of the government's economy because the management of pawnshops is a state monopoly right.

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