



PRIMARY RESEARCH

Juridical review of motor vehicles part of the object paid as security under Indonesian law

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Abstract

A Motorcycle is a type of motor vehicle that has two or three wheels, without a roof or cabin, with or without sidecars (in accordance with PP No. 44 of the year 1993). Motorcycles are the largest component contributing to mobility and traffic on public roads. There is confusion regarding the collateral object in pawn, whether it is the object itself or only the ownership rights handed over to the pawn receiver. This confusion is evident when comparing a pawn with its object, where the object involved is a motorcycle, but what is handed over is the Vehicle Registration Certificate (BPKB), not the motorcycle itself. This research uses a normative juridical research method, which is a method of research by examining problems based on literary materials covering research on legal principles, legal systematic, vertical and horizontal synchronization level, and legal history. This approach refers to existing literature studies and secondary data. In practice, the collateral object for a motor vehicle pawn allows the debtor to hand over only the ownership rights or what is commonly called BPKB. Clearly, this violates Article 1150 of the BW, as what should be handed over as collateral by the pawnor to the pawn receiver is the motor vehicle itself, not just its ownership rights.

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BACKGROUND OF STUDY

One of the main factors causing the rise of pawning in Indonesia is the unstable economic condition of society. Many individuals or families face financial difficulties due to low income levels, high costs of living, and limited access to traditional banking facilities. As a result, many people are looking for alternatives to obtain emergency funds or quick financing, and pawning has become one of the more accessible options.

One of the main factors causing the rise of pawning in Indonesia is the unstable economic condition of society. Many individuals or families face financial difficulties due to low income levels, high costs of living, and limited access to traditional banking facilities. As a result, many people are looking for alternatives to obtain emergency funds or quick financing, and pawning has become one of the more accessible options (Brietzke, 2000). Most Indonesians do not have access to formal credit from financial institutions such as banks or cooperatives for several reasons, such as low lev-

els of financial literacy, lack of adequate collateral, or other administrative problems. In this context, pawning becomes an easier, faster, and less complicated option to obtain funds by providing valuable items as collateral (Van Vollenhoven, Holleman, Sonius, et al., 2013).

The rise of pawning can also be linked to the development of the pawn industry in Indonesia. Many pawn institutions or companies are starting to emerge, offering pawn services for various types of goods, including jewelry, electronics, vehicles, and so on. Competition between pawn companies contributes to easy access for the public to utilize this service.

Several financial institutions, both large and small, have expanded their business networks and offer various conveniences in the mortgage process. With an aggressive marketing approach, they try to convince the public about the benefits and advantages of pawn services. In some cases, offering low-interest rates or a simpler application process is an attraction for people.

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Changes in consumption patterns and lifestyles of Indonesian people have also contributed to the rise of pawning. Demand for consumer goods such as gadgets, jewelry, and vehicles increases with economic growth and technological advances. However, not everyone can afford to buy these items in cash, so pawning becomes an alternative to get money quickly to meet these needs (Kamal, 2009).

The low level of financial literacy among the public also plays an important role in the rise of pawning in Indonesia. Many people do not fully understand the implications and risks of the mortgage process, including the interest that must be paid and the consequences of failing to repay the loan (Munawarman, 2023). This lack of understanding can result in the possibility of being trapped in a debt cycle that is difficult to overcome.

The most prominent effort carried out by the Pegadaian Institution is to provide a source of funds (credit) based on pawn law. This means that the pledgor must hand over the pawned item to the pledgee so that the item is under the pawnee's control; this principle is known as the principle of *inbezitzeteling* (Salim, 2008). This institution aims to prevent small people in need from falling into the hands of loan sharks who charge very high interest when providing loans. Pawnshop institutions usually operate and are spread across urban and rural areas. Its role will remain important in the future, especially due to economic and financial needs in society, which require urgent cash funds for low-income groups, and pawnshop institutions provide easy lending procedures (Imaniyati, 2008).

A pawn is a derivative of a guarantee, so its position is a form of accessory agreement, namely an agreement that is additional and always related to the main agreement. As an accessory agreement, a pledge always follows the conditions of the main agreement. There is confusion regarding the object of collateral in the pledge, whether it is the object itself or only the ownership rights handed over to the pawnee (creditor). This confusion can be seen when comparing a pawn with the object, where what is handed over is the object, with a pawn agreement involving a motorbike object, where what is handed over is the Motor Vehicle Owner's Book (BPKB), not the motorbike. This is what results in a misunderstanding between the principles of fiduciary and pledge.

Pawns and fiduciaries are two different forms of collateral in civil law, especially in the context of financing and validating debts. The main difference between a pledge and a fiduciary is in the ownership and use of collateral, as well as the level of control possessed by the creditor (DCL, 2014). The choice between a pledge and a fiduciary will depend on

the needs of the borrower, the legal requirements in the particular jurisdiction, and the requirements of the creditor.

A fiduciary is a form of collateral agreement involving three parties: the lender (creditor), the borrower (debtor), and a third party who acts as a fiduciary. In a fiduciary, the debtor provides certain assets as collateral to the fiduciary. These assets may be property, equipment, vehicles, or other valuable assets (Mahmoud & Karaki, 2019). Although the assets remain registered in the debtor's name, physical and legal control over them passes to the fiduciary. Fiduciaries act as collateral holders and usually have the right to sell or take over assets if the debtor fails to fulfill its obligations to creditors.

Fiduciaries are often used in various banking transactions, business financing, investments, and asset-based financing. This provides lenders (creditors) with a greater degree of security on their loans. Fiduciary registration is usually carried out through authorized institutions, such as the Fiduciary Registration Agency (BPF) in Indonesia (Chang, 2018). This ensures that fiduciary agreements comply with the law and are legally enforceable.

Therefore, motorized vehicles are collateral that can be mortgaged. Judging from the background that the author has written, it should have been the motor vehicle that was pawned, not the documents. That's why the author wants to research whether the Motor Vehicle Owner's Book is used as a pawn object for non-motorized vehicles based on Indonesian law.

Formulation of the Problem

Looking at the problem based on the introduction that the author has written regarding the object of pawning, in this research, the author wants to find out what is the position of the Motor Vehicle Owner's Book, which is used as the object of pawning instead of the motorized vehicle based on the legal arrangements for pawn collateral in Indonesia?

Research Methods

The writing method used in this research is normative juridical, which discusses legal issues based on literature sources related to this matter. This approach technique refers to the study of existing literature or secondary data. Normative Juridical Research is a method of research that uses the same law as a doctrine or a set of normative rules. Books are the main sources for conducting this research.

LITERATURE REVIEW

Definition of Motorized Vehicles

A motorbike is a type of motorized vehicle that has two or three wheels, without a house or cabin, with or without side

carriages (ICG, 1993). Motorcycles are the largest component that contributes to mobility and traffic on public roads. This is because motorbikes are a type of vehicle that is affordable for the economically weak and have wide availability.

Apart from the advantages mentioned above, motorbikes also have weaknesses, namely, their design is less stable and increases the risk of accidents (Soekanto, 2008). With their relatively small size, motorbikes can maneuver nimbly, so they can move between other vehicles, including cars. However, because motorbikes are designed openly without physical protection, the risk of accidents with fatal injuries to the rider is higher compared to cars.

Definition of Pawn

The provisions regarding pawning are regulated in the Civil Code Chapter XX Book II Articles 1150 to Article 1160. The meaning of pawning itself is explained in article 1150 of the BW: a pledge is a right obtained by a debtor over a movable item, which is handed over to him by a debtor or by another person on his behalf, and which gives the authority to the party who is receivable to take payment for the goods in advance of other people who are receivable (Tongat & Anggraeny, 2018).

The definition of the pledge as stated in Article 1150 of the Civil Code is very broad, not only regulating the imposition of collateral for movable goods but also regulating the creditor's authority to take repayment and regulate the execution of the pledged goods if the debtor is negligent in carrying out his obligations.

Prodjodikoro (1981) defines a pawn as a right obtained by a debtor over a movable object, which is handed over to him by the debtor or someone else on his behalf, to guarantee payment of the debt, and which gives the other debtor the right to take the money from the income of that item.

Salim (2008) states that what is meant by pawning is an agreement made between a creditor and a debtor where the debtor hands over a movable object to the creditor to guarantee the repayment of a pawned debt when the debtor fails to carry out his performance. In this definition, a pawn is constructed as an accessory (additional) agreement, while the main agreement is an agreement to borrow and borrow money with collateral.

The Elements of a Mortgage

- Pawns are granted only on movable objects.
- Pawn collateral must be removed from the control of the Pawnbroker (Debtor) upon physical delivery of the pawned object (levering).

- Pawning gives the creditor the right to obtain prior repayment of the creditor's receivables (Droit de preference).
- Pawning gives the creditor the authority to take pre-emptive repayment themselves.

Subject and Object of Pledge

Pawn objects are tangible, bodied movable objects (*lichamelijk*) and intangible/corporeal movable objects (*onlichamelijk*). Movable objects, due to their nature, according to Article 509 of the BW, are objects that can be moved, for example, tables, and those that can move, for example, livestock. Movable objects due to the provisions of the Law, according to Article 511 of the BW are rights to movable objects, for example, the right to collect profits (*Uruchtgebruik*) on movable objects, use rights (*Gebruik*) on movable objects, and shares in limited liability companies. Objects do not move because of their nature, namely land and everything attached to it, for example, trees, plants, areas, and statues. Objects do not move because their purpose is factory machines (Subasinghe, 2016). Objects do not move because the provisions of the Law take the form of rights. Over immovable objects, for example, the right to collect proceeds from immovable objects, use rights over immovable objects, and mortgages. Intangible movable objects in the form of various rights to obtain various debts, namely in the form of letters of receivable to the bearer (*aan toonder*) for appointment (*aan order*) and in the name (*op naam*), as well as patent rights.

Meanwhile, the subject is not specified, meaning anyone, so every human being as an individual (*natuurlijke person*) and every legal entity (*rechts person*) has the right to pawn their objects; the important thing is that they are a person or bearer of rights who is capable of acting, or a person who has the right to act freely with an object (Nugroho & Suryanegara, 2016).

According to Salim (2008), the subject of a pawn consists of two parties, namely the pledger (*pandgever*) and the pawn recipient (*pandnemer*). *Pandgever* is a person or legal entity that provides collateral in the form of movable objects as a pledge to the pawnee recipient for a loan given to him or a third party. Meanwhile, the pawn recipient is a person or legal entity that accepts the pawn as collateral for the loan he provides. to the pawnbroker.

Pawnee's Rights

A creditor can carry out *para te execution* (*eigenmachtige verkoop*), namely selling under his authority the debtor's objects if the debtor is negligent or defaults. This is stated

in Article 1155 paragraph (1) of the BW, which reads: "If the parties have not agreed otherwise, then the debtor has the right, if the debtor or the pledgor breaks his promise, after the specified time limit has passed or if it has not been a time limit, is determined, after a warning to pay, to order the pawned goods to be sold in public according to local customs and on generally applicable conditions, to take repayment of the amount of the receivables together with interest and costs from the proceeds of the sale."

The creditor has the right to sell movable objects through the intermediary of the Judge and is called a real executive. Regarding this matter, Article 1156 of the BW is formulated as follows: "However, if the debtor or the pledgor breaks his contract, the debtor can sue him before a judge so that the pawned goods are sold in the manner determined by the Judge. Based on the claim of the debtor, he can grant that the pawned goods will remain with the person receivable for an amount that will be determined in settlement up to the amount of the debt, including interest and costs."

By Article 1157 paragraph (2) of the BW, the creditor has the right to receive compensation from the debtor for all useful costs that the creditor has incurred for the safety of the pawned object. Then, Article 1158 of the BW that if a receivable is mortgaged and the receivable generates interest, the creditor has the right to calculate the interest on the receivable to be paid to him.

The creditor has retentive rights, namely, the creditor's right to retain the debtor's objects until the debtor pays the principal debt in full, plus interest and other costs that have been incurred by the creditor to maintain the safety of the pawned object. This is by the provisions of Article 1159 of the BW.

Legal Basis for Pawnshops

The legal basis for pawning is found in Book Two, Chapter XX, Articles 1150 to 1160 of the BW. The word pawn in the BW has two meanings. Firstly, it refers to the object (the pawned object as contained in Article 1152 of the BW). Secondly, it shows the right (the right to pledge as contained in Article 1150 of the BW).

Article 1150 BW

"Pawn is a right obtained by a creditor over a movable item, which is handed over to him by the debtor, or by his proxy, as security for his debt, and which authorizes the creditor to take payment of his receivables and the item before other creditors; except sales costs as implementation of a decision regarding a claim regarding ownership or control, and costs of salvaging the item, which are incurred after the item is pledged and which must take priority."

Article 1151 BW

"The pawn agreement must be proven by means that are permitted to prove the main agreement."

Article 1152 BW

"The right of lien on tangible movable property and carry-over receivables arises by handing over the lien to the authority of the creditor or the person giving the pledge or which is returned at the initiative of the creditor. Lien rights are extinguished if the pawn is separated from the power of the pawnholder. However, if the item is lost or taken out of his control, then he has the right to claim it back according to Article 1977, second paragraph, and if the pledge has been returned, then the right to pledge is deemed to have never been lost."

"The lack of authority of the pledgor to act freely over the item cannot be held accountable to the creditor, without reducing the right of the person who has lost or is suspicious of the item to claim it back."

Article 1152 bis BW

"To give birth to a lien on a letter of appointment, apart from submitting the endorsement, it is also required to submit the letter."

Article 1153 BW

"The right to pawn over intangible movable property, except for letters of appointment and letters of birth with delivery of the pledge to the person on whom the right of pledge must be exercised. This person can demand written proof regarding the delivery and regarding the permission and granting of the pledge."

Article 1154 BW

"If the debtor or pledgor does not fulfill his obligations, the creditor is not permitted to transfer the pawned item into his possession. Any agreement terms that conflict with these provisions are void."

Article 1155 BW

"If the parties to the promise do not agree otherwise, then if the debtor or pledgor does not fulfill his obligations, after the specified period has passed, or after a warning has been given to fulfill the agreement if there is no provision regarding a fixed period, the creditor has the right to sell the pawned goods in public according to local customs and with generally applicable conditions, with the aim that the amount of the debt with interest and costs can be repaid with the proceeds of the sale. "If the pawn consists of merchandise or securities that can be traded on the stock exchange, then the sale can be made at that place, as long as it is done through two brokers who are experts in that field."

Article 1156 BW

"In all aspects, if the debtor or pledgor fails to carry out his

obligations, then the debtor can demand through the court that the pawned item be sold to pay off the debt along with interest and costs, in a manner to be determined by the Judge, or that the judge allow the pawned item to remain "It is up to the creditor to cover an amount that will be determined by the judge in a decision, up to the amount of the debt including interest and costs."

"Regarding the transfer of pawned goods as intended in this article and the previous article, the creditor is obliged to convey it to the pledgor no later than the following day if there is a postal or telegram connection every day, or if that is not the case, with the first post. News by telegram or by registered letter is considered appropriate news."

Article 1157 BW

"The creditor is responsible for the loss or loss of the pawned item as long as this occurs as a result of his negligence. On the other hand, the debtor is obliged to reimburse the creditor for costs that are useful and necessary for the creditor to save the pawned goods."

Article 1158 BW

"If a receivable is mortgaged, and this receivable generates interest, the creditor may take that interest into account with the interest owed to him." "If the debt secured by the mortgaged receivable does not produce interest, then the interest received by the pawn holder is deducted from the principal amount of the debt."

Article 1159 BW

"As long as the pawn holder does not misuse the goods handed over to him as a pawn, the debtor is not authorized to demand the goods back before he has paid in full, both the principal amount and the interest and costs of the debt secured by the pawn, along with the costs incurred to rescue the pawned goods. That."

"If a second debt arises between the creditor and the debtor, which is held between the two of them after the pledge is granted and can be collected before payment of the first debt or on the day of payment itself, then the creditor is not obliged to release the pawned item before he receives full payment of both debts. That, even though no agreement was entered into to bind the pawned item for payment of the second debt."

Article 1160 BW

"The pledge cannot be divided, even though the debt can be divided between the debtor's heirs or the creditor's heirs. The debtor's heirs who have paid their share cannot claim back their share in the pawned goods until the debt is paid in full (Butt, 2014).

On the other hand, the creditor's heirs who have received their share and receivables may not return the pawned

goods at the expense of their fellow heirs who have not received payment."

Rights and Obligations of the Parties in Pawn Transactions

A right is obtained by a person who has a claim from a pledged item, which is transferred to him from a person who has a debt or from another person using his name, together with who surrenders his authority to the party who has a claim to get it paid off from the pledged item that is prioritized from the people have other receivables, accompanied by the exclusion of disbursements for the auction of pawned goods as well as funds that have been allocated for salvage after the pawned goods are pledged, the disbursements of which must be prioritized (Butt & Lindsey, 2018). In conventional pawning, it can also be explained that both the pledger and the pledgee have rights and obligations related to the following pawning matters, for the pledger has the responsibility or burden to hand over the movable property or the pawned item that he has transferred from his authority to the party pawnbroker or pawnee. The pawned goods can be his own or belong to a third party who wants to guarantee the repayment of the debts of the customer or the mortgagor (Wulansari & Aziz, 2023). The process of handing over the pawned goods is a mandatory or absolute requirement, as explained above. If the handover process does not occur, it is declared "void for the sake of law."

The pawnshop has the following rights:

- Rejecting the pledge because it is not allowed to be accepted as a pledge or for reasons that are not listed in the rules of Article 6, paragraph 2 (Pawning Basic Rules).
- Determine the maximum amount of funds that can be loaned to customers.
- The pawnbroker's office suspects that the pawned item is not good enough to refuse to continue the pawning process. In connection with this, the Pawnshop Policy Rules pay attention to the authority (beschikkings bevoegdheid) of the customer (Badrulzaman, 2005).

While the obligations of the pawnbroker are:

Carrying out the storage of the pawned goods as best as possible so that they are not deformed, damaged, or their value does not decrease; in other words, obliged to bear the loss or deterioration of the pawned goods in the event of negligence (Article 1157 paragraph 1 of the BW). In reality, there are several legal institutions for guarantees for movable objects that are disguised (quasi-guarantee law) (Marzuki, 2011). These institutions include lease agree-

ments, hire purchase agreements, and sale and purchase agreements with the right to repurchase. This agreement has not been regulated materially but is very widely used in the credit environment. Therefore, in this field, there is a legal vacuum that gives rise to legal certainty, so it would be better if the guarantee institution for movable objects needs to be regulated in a set of laws (Badrulzaman, 1999).

Guarantees are basically to give creditors a better position in their efforts to obtain fulfillment (payment) of their receivables from debtors compared to creditors who do not have collateral rights; in other words, the fulfillment of their receivables is more guaranteed, but that does not mean it is guaranteed (Prayudi, 2003).

ANALYSIS

According to Article 1131 of the BW, "All movable and immovable assets belonging to the debtor, both existing and future, become collateral for the debtor's individual obligations."

According to Article 1132 of the BW, "The goods become joint collateral for all creditors against whom the proceeds from the sale of the goods are divided according to the proportion of their respective receivables unless there are valid reasons for priority among the creditors (Suprobawati, Apriliana, & Hutami, 2021)."

In the Pawn Policy (ADP), set the size of the items that can be pawned. All movable goods can be accepted as pawn goods if, for that purpose, a loan of at least Rp.50,000 can be given (article 6 of the Pawn Rules). Except for the items as follows:

- State property
- Debt letters, active letters, effect letters, and other securities.
- Living animals and plants
- All food and perishable things
- Dirty things
- Things that need permission to control and move from one place to another.
- Items that, due to their large size, cannot be kept in the pawn shop.
- Items have an unpleasant smell and can easily damage other items when stored together.
- Items whose prices are temporary or whose prices fluctuate quickly, so it is difficult to assess the pawnshop appraiser.
- Things pawned by drunk people, people with memory loss, or people who can't give an adequate explanation about the pawned goods they want to pawn (Prayudi, 2003).

Based on article 1150 of the BW, the meaning of pawn is:

"A right obtained by a creditor over a movable item which is handed over to him by the debtor or by his proxy, as collateral for his debt, and which authorizes the creditor to collect his debt from that item before other creditors; except sales costs as implementation of decisions regarding claims regarding ownership or control, and costs of salvaging the item, which are incurred after the item is handed over as a pawn and which must take priority."

Based on the provisions of article 1150 of the BW, it is clear that in a pledge, there is an obligation for a debtor to hand over the movable property he owns as collateral for debt repayment, not proof of ownership. In terms of motor vehicle collateral that is used as collateral, it is usually the ownership right or what is usually called the Motor Vehicle Owner's Book (BPKB) along with the motorbike, and the one who handles this process is the Central Pawnshop Institution office, where the interpretation process until the approved funds are disbursed usually takes a long time. Quite long (3 days - 1 week).

Pawnshop institutions usually only accept BPKB, while the motorbike/object of the pawn can still be controlled by the debtor; this is emphasized at the entrance to the pawnshop there is a slogan that reads "Accepting BPKB Guarantee with Terms and Conditions Applicable" (Veza et al., 2022).

The object of motor vehicle collateral, in reality on the ground, is that in the case of a mortgage collateral for the object of a motor vehicle, the debtor is only permitted to hand over ownership rights or what is usually called BPKB; this clearly violates Article 1150 of the Civil Code. Because what should be handed over as collateral by the pledgor to the pawnee is the item itself, namely the motorbike, not just the ownership rights. Many people have confused the principles of pledge and fiduciary.

In pawning, valuable items such as jewelry, vehicles, or other property are used as collateral or collateral to obtain loans or credit. The owner of the item (the party providing collateral) usually has to hand over the collateral during the loan period. Meanwhile, in fiduciary, the actual ownership of the goods used as collateral is handed over to the creditor (the party providing the loan) as collateral. The original owner of the item retains ownership rights but gives the creditor the right to sell the item if the borrower does not fulfill his obligations.

The difference in terms of pawning is that the owner of the collateral (pawn) can usually still use or own the item being pawned during the loan period, assuming that he complies with the loan agreement and payments. Meanwhile, a fiduciary is the original owner of the item being pledged as collateral (the debtor) who loses control of the item and

usually cannot use it during the loan period. The goods belong to the creditor until the debt is paid.

In terms of legality, in Indonesia itself, pawning is usually simpler in terms of legality, and the borrower's risk is lower. If the borrower fails to pay, the creditor usually only has the right to sell the collateral to recover the money borrowed. Meanwhile, fiduciaries are more legally complex, and creditors have greater control over collateral. If the debtor fails to pay, the creditor can sell the item to pay off the debt, and if there is anything left over, give it to the debtor. However, if the sale proceeds are insufficient to pay off the debt, the creditor still has the right to pursue the debtor for the difference.

In pawning, there is the principle of *inbezitstelling*. This principle requires that power over the object must be transferred to the pawn holder, as regulated in Article 1152 of the Civil Code. The pawned object must be handed over by the pledgor to the pawn holder. Even though the pledge agreement or agreement (*pand-overeenkomst*) has been executed, the pawn right has not been formed automatically. Lien rights can occur if the pawned item has been handed over to the pawnholder.

Article 1152 Paragraph (2) of the BW determines that:

"Invalid is the right to lien on any object that is left in the control of the debtor." These provisions emphasize the debtor's obligation to hand over the pledged object to the creditor. The purpose of handing over the pledge is only to guarantee the creditor's receivables against the debtor's actions in transferring the collateral because the creditor controls the collateral (ICL, n.d.).

Article 1152 Paragraph (4) of the BW states that:

"The fact that the pledgor does not have the power to act freely with the pawned item cannot be held accountable to the creditor who has received the item in pawn, without prejudice to the right of the person who has lost or stolen the item to demand it back."

This is a serious obstacle for pledging tangible movable objects because the pledgor cannot use these objects for his needs. Especially if the dependent object happens to be an important tool for daily livelihood, for example, a motorbike for an account drawer or milk lover and so on (Salim, 2008).

CONCLUSION

Based on the background and description above, several things can be concluded according to the problem formulation in the research, including, Firstly, the emergence of the rise of pawning in Indonesia is due to unstable economic conditions, limited access to formal credit, and the need for emergency funds or fast financing has become the trigger of the widespread practice of pawning in Indonesia. Many people are looking for alternatives to obtain funds easily. Second, the development and rise of the pawn industry in Indonesia, including various types of goods that can be pawned, has provided wider access for the public to utilize this service. Competition between pawn companies and various conveniences in the pawn process also contributes to its popularity. Third, the difference between a pledge and a fiduciary is that a pledge and a fiduciary are two different forms of collateral in civil law.

Pawning is simpler, where the collateral can remain under the debtor's ownership, while in fiduciary, actual ownership of the collateral is handed over to the creditor. The choice between the two depends on the borrower's needs and the applicable legal requirements. Fourth, the *Inbezitstelling* Principle in pawning. This principle requires that power over the collateral must be transferred to the pawnholder so that the right to pledge can be formed. This emphasizes the importance of physically handing over the pawned goods to the creditor.

As regulated in Article 1152 of the Civil Code. The pawned object must be handed over by the pledgor to the pawn holder. Even though the pledge agreement or agreement (*pand-overeenkomst*) has been executed, the pawn right has not been formed automatically. Lien rights can occur if the pawned item has been handed over to the pawnholder. The object of motor vehicle collateral, in reality in the field, is that in the case of collateral collateral for a motor vehicle, the debtor is only permitted to hand over ownership rights or what is usually called BPKB; this violates articles 1150 of the Civil Code - 1160 of the Civil Code. Because what should be handed over as collateral by the pledgor to the pawnee is the item itself, namely the motorbike, not just the ownership rights. Thus, a good understanding of warranty law and motor vehicle pawn agreements will help avoid legal problems in the future.

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