

Establishing fair agricultural land mortgage regulations

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Abstract

A mortgage is defined as a person's relationship with the land possessed by another person who has debt from that lender. As long as the debt has not been paid in full, the land remains in possession of the money lender (pledgor). During this temporary possession period, the total land yields are the right of the pawnbroker which forms the debt interest. The land redemption depends on the willingness and ability of the pledgee. A large number of mortgages last for years, decades, and even some are passed onto the heirs of the pledgee and the pledgor as the pledgee is unable to redeem his land.

Keywords: Agricultural land mortgage, debts, Customary Law, establishing fair regulations.

Introduction

Article 53 paragraph (1) of Law no. 5 of 1960 on Basic Regulations on Agrarian Principles of 1960 of State Gazette of the Republic of Indonesia No. 104. Supplement to the State Gazette of the Republic of Indonesia No. 2034 (hereinafter referred to as BAL No. 5 of 1960) states: temporary rights as referred to in Article 16 paragraph (1) letter h, including the right of mortgage, right of profit sharing, right of lodging and right of agricultural land lease are set to limit their provisions conflicting to this law and those rights shall be abolished within a short period of time. From the contents of Article 16 paragraph (1) letter h, the right to be studied is the right of mortgage, where the object is agricultural land mortgage. This study is to elaborate on how to establish a model of fair agricultural land mortgage regulations and not conflicting to laws and unenforcing. A mortgage is "a social institution in a village, where a person needs money for work by pawning out his land until he can redeem it". The definition of agricultural land mortgage is legally regulated in the General Elucidation of Law no. 56 Prp of 1960 on Determination of Agricultural Land Area by the President of the Republic of Indonesia (hereinafter referred to as Law No. 56 Prp of 1960) number 9 letter a, namely: This regulation also regulates agricultural land mortgage. A mortgage is defined as a person's relationship with the land possessed by another person who has debt from that lender. As long as the debt has not been paid in full, the land remains in possession of the money lender (pawnbroker). During this temporary possession period, the total land yields is the right of the pawnbroker which forms the debt interest. . The redemption of the land depends on the willingness and ability of the mortgaging. A large number of mortgages last for years, decades, and even some are passed onto the heirs of the pledgee and the pledgor as the pledgee is unable to redeem his land. In the meantime, in several regions, the term is also known as pledge where the land does not only yield interest, but also installment. This type of mortgage is called "installment sales". Unlike the usual mortgage, in the installment sale after

some time the land returns to the pledgee without paying ransom. Furthermore, in the General Elucidation of Law no. 56 Prp of 1960 number 9 letter a, it is further stated that : The amount of mortgage fees does not only depend on the soil fertility, but especially based on the pledgee's needs for loans. Therefore, it is not uncommon that the land under mortgage is valued low. Typically, a person who pawns out his land is facing an urgent state. If it is not urgent, then usually people prefer to rent the land. Based on these phenomenons, most of the mortgage inflicts a great financial loss to the pledgee and generates great profits to the party who receives the mortgage (pledgor). This clearly indicates that a mortgage demonstrates extortion practices, which are conflicting to Indonesian socialism. Therefore, in the BAL No. 5 of 1960, right of mortgage was included in the temporary rights that had to applicable by the time it is abolished. While it has not been abolished, the right of mortgage must be regulated in order to remove its extortionate elements (Article). 53). the right of mortgage can be abolished (prohibited) if sufficient credit is already available for farmers. Initially, the term land mortgage (*grondverpanding*) was introduced by Van Vollenhoven. The naming of mortgage (*gadai*) amongst indigenous peoples in Indonesia is popularly diverse. For example, in Minangkabau, the locals call it *Manggadai*, in Java it is known as *AdolSende*, in Sunda it is called *Selling Sende*, in Pariangan, Bogor, Purwokerto Selatan and Kuningan the locals name it *Akad*, *Gade*, *JualAkad*, *JualGade* or *Tandon*, while in Jakarta, Cirebon it is known as *Gade*, in Riau and Jambi known as *MenjualGade*, in Medan it is known as *Mada*, in several regions in East Nusa Tenggara such as Kupang/Teunbaun Village it is called as *Tarun* and in Ermera it is called *Pinor*.

Definitions of Agricultural Land

The definition of agricultural land is not elaborated in Law no. 56 Prp of 1960. Yet in the Joint Instruction between the Minister of Home Affairs and Regional Autonomy and the Minister of Agrarian Affairs on January 5, 1961 No.Sekra 9 / I / 12, it states that: "Agricultural land is all cultivated land, fishery ponds, farmland, ex-farmland and forests that make livelihoods for those entitled". Budi Harsono argues that: "Generally, agricultural land is all the land that are owned by people, in addition to land for building housings and companies. If on a large piece of land stands a house where a person lives, then it is what determines the size of a surface area considered as home yard and the size of the agricultural land". From the General Elucidation of Law No. 56 Prp of 1960 number 9 letter a, it is clear that the agricultural land mortgage is undertaken under customary law. The practice of land mortgage under customary law where the mortgaged land fell to the creditors is not in accordance with the legal system adopted by BAL, since by giving the mortgaged land to the creditor, the debtor will lose his livelihood. It is highly unlikely that a debtor can pay off his debt as his asset is being detained by another party. Land mortgage under customary law that takes place among rural communities clearly shows the element of extortion. Despite that, the communities (farmers) are still practicing/performing land mortgage. Amongst indigenous peoples, the objects that can be used as a debt guarantee include land and non land. There are also objects that can be equated with

land such as fish ponds, houses and yards, trees and fruits and gardens.

Land mortgage is as a means of mutual assistance

The plus point within the rural community is its nature of assisting each other, that is, under a principle of "Many hands make light work." This mutual assistance nature has been ingrained in the community. As we all know that a land is an invaluable asset where when a person needs money in an urgent circumstance, he will not sell his land as it is. Land is a life's asset. By possessing a plot of land one can easily obtain funds/money immediately, by giving the land to relatives/siblings as a debt guarantee. On the contrary, for those who are willing to lend funds/money, will soon give the loan for he has received collateral, in addition to the nature of mutual assistance that they have and the closeness of kinship and closeness of brotherhood makes this land mortgage institutions sustain and survive amongst rural communities' life.

Mortgaging a plot of land provides the best solution to obtain funds/money expected

Mortgaging land is the easiest way to obtain funds/money if the circumstances are urgent. "For indigenous peoples, the easiest form to earn money in urgent circumstances is to mortgage a land." Mortgage amongst the community is commonly popular as one of the transactions that is associated with land" The implementation of land mortgage has been institutionalized among rural communities and it seems that these communities are unaware of the risk it has once the land is under mortgage. To these communities, the important thing is that they can easily get the money in urgent circumstances. The repayment of loans and redeeming land in the pledgor's hands will highly hinge on the willingness and capability of the parties. The amount of loan the pledgor wants is received in full as expected without any administrative fees and interest on the loan or anything else. What is meant by urgent circumstances is the cost of marriage or tuition fees instead of commercial purposes or commercial capitals.

Maintaining the dignity of the extended family

There is a presumption that a person's or a family's self-esteem will drop if he sells off his land. Because the act of selling the land is an embarrassing act, ruining and dropping the dignity of a person or family. That person or family is deemed to have fallen into poverty and no longer gains respect in the social intercourse or in clans intercourse thus a person/family will lose their honor and position and sometimes are excluded from the customary organizational structure due to the fact that they have no land. Changes in the rural people's view on those whom they consider to be poor for having no land is common, unlike the views of urban community where one's dignity is seen from his position and the assets possessed are not only land.

Credit facilities are not found in rural community as there is no bank

Banks only exist in urban areas and can not be found in rural areas since the distance between rural areas and the city center is very far away, then the easiest, quickest and most method of getting money is to borrow money by mortgaging the land when it comes to an urgent state. The practice of land mortgage according to customary law which has been done amongst rural society applies no interest rate and the public have the view that borrowing money in a Bank will require them to pay interest, and subsequently to borrow money with interest is forbidden by islamic law for there is usury element. Some disadvantages to borrowing money in a conventional Bank include it is more expensive and must meet complicated and convoluted requirements, and one must show authentic evidence of the land to be guaranteed, and the conditions to be met. This condition is different if someone borrows money by mortgaging his land. In addition, rural community hold themselves to borrow money in a Bank as they do not want to be exposed to a lot of people. Where possible they prefer borrowing money to be kept in secret so as to avoid embarrassment.

Having no authentic land title

The lands owned by most indigenous peoples are mostly not accompanied by land rights title as regulated under BAL no. 5 In 1960. Most of these people only had land certificates issued by tribal chiefs or their lands had no certificate of ownership at all since these lands are inherited from their ancestors or the land has been on their ownership since they started living in the area. Having no authentic land title constitutes a barrier to borrowing money from the Bank. One of the reasons of the ownership of agricultural land is proven by a certificate issued by tribal chiefs or lands with no land certificates at all is due to the absence/lack of legal counseling from the local government to introduce regulations which was established by the Government, especially the regulations on land, particularly on agricultural land mortgage.

Traditional Customary Law on Agricultural Land Mortgage

As explained in the General Elucidation that many mortgages last for years, decades, and some are passed onto the heirs of the pledgee and the pledgor as the pledgee is unable to redeem his land. Such a thing is common in indigenous peoples life. As BAL. 5 of 1960 was established and enacted as the elaboration of Article 33 Paragraph (3) of the 1945 Constitution, the land law which was previously of a legal pluralism in land affairs was unified here including customary land law. Indonesia adopts customary law as its original law, instead of foreign laws, as set forth in Article 5 BAL No. of 1960, stating that the regulations within customary law applicable in Indonesia is the source for the establishment of BAL. A.P. Parlindungan puts forth: "enforcing customary laws with their omitted regional characteristics and augmented with national characteristics". The status of land is of high importance for indigenous peoples: The principle is that the land is a fixed asset and sometimes brings more profits; The facts have it that

the land;Is the dwelling place for community (family);Provides livelihood to the community;is a place where the passed away community members must be buried;It is the dwelling place for ladies in waiting of the community and the soul of the community' ancestors

Problem Solving for Agricultural Land Mortgage

In this mortgage relationship, when the pledgor demands cash and no longer wants to control the land, then he can talk to the landowner, whether the owner is willing to redeem the land or not. Otherwise, the pledgor will find someone else who can help him provide the cash. If there are others who are willing to provide the cash, there are two ways that the pledgor can take. Firstly, mortgaging the land back to a third party by handing over the land and receiving some cash with the agreement that at any time he retains the right to redeem the land again from the new pledgor. Secondly, passing the rights to a third party which means that he also hands over the land to a third party and receives some cash from that third party, under the condition that the pledgor withdraws himself from the legal relationship with the land. If this is the case, it is appropriate that the landowner participates in the agreement so that he knows that he is no longer in a legal relationship with the former pledgor, but with the third party as a new pledgor. In some regions in Indonesia, for example in Java, the locals are familiar with agricultural land mortgage yet the implementation of the land mortgage is different from that of according to the customary law, which can take years or decades and some are even passed onto the heirs of the pledgee or pledgor as the pledgee is unable to redeem their land. The implementation of land mortgage in this particular region is called as "*jualgangsur* (sale by installment)", which has a number of similarities with that of land mortgage under customary law but with differences in its implementation in that if someone needs urgent funds, he can borrow money to someone (close relatives or friends) which will eventually make his economy stronger, by guaranteeing his agricultural land, the amount of money that can be borrowed (mortgage loan) depends not only on the fertility of the soil but also on the amount of money (credit) needed at that time.

The agricultural land as a guarantee will be handed over to the land pledgor. Then the land will be cultivated or fertilized by the land pledgor, the proceeds obtained from the agricultural land cultivation are not only in the form of interest, but also installments on the money borrowed. After a certain period of time, if the mortgaged land yields is sufficient and in accordance with the money borrowed by the pledgee, the land may be returned to the land owner (pledgee) as a sign of redemption or land redemption. The implementation of *jualngangsur* provides a solution to the problem of land mortgage which is far from the practice of extortion/justice and can be categorized as not conflicting with the principles of Indonesian socialism. However, the practice of *jualgangsur* that has been taking place amongst the community is not accompanied by regulations established by the Government.

Results and Discussions

Prior to expansion, the area was formerly known as LabuhanBatu regency as one of the regencies in the Northern Sumatera province in Indonesia with its capital city

of RantauPrapat, located 275 Km off Medan City. After expansion, LabuhanBatu Regency is divided into three regencies, namely: *One* Labuhan Batu Regency with its capital of RantauPrapat, *Two* LabuhanBatu Selatan Regency (*Labusel*) with its capital city of Kota Pinang, *Three* LabuhanBatu Utara Regency (*Labura*) with its capital of AekKanopan. This study was conducted in LabuhanBatu Utara (*Labura*) which is the newly expanded regency of LabuhanBatu Regency. In accordance with Law no. 23 of 2008 dated 24 June 2008 on the Formation of LabuhanBatu Utara Regency, during the administration of President SusiloBambangYudoyono, its capital is located in AekKanopan with 8 Subdistricts, 8 Sub-districts and 82 villages. Those 8 districts include: AekKuo District, AekNatas District, KualuhHilir District, KualuhHulu District, KualuhLeidong District, Kualuh Selatan District, Marbau District, Na IX-X District. From the 8 districts in LabuhanBatu Utara District, we examine the agricultural land in several districts as the samples to represent other districts, such as some villages in KualuhHilir District, KualuhHulu District and KualuhLeidong District. From the interview with some of the locals in the region, it can be concluded that the land mortgage under customary law system is still widely practiced amongst local community, despite Bank Rakyat Indonesia (BRI) has long existed in that area. There are several reasons why they are reluctant to go to the Bank, that is because their land certificates are only acknowledged by the village head which mentions that the land belongs to indigenous people. The proof of ownership or land title they have fails to meet eligibility criteria for getting loans from the Bank. Another reason is that the locals tend to feel ashamed if people find out they are borrowing money by mortgaging the land either to relatives or friends not to mention to the Bank, despite some communities have already possessed land title certificates issued by the State Land Agency (BPN), when they urgently need money in urgent circumstances they will opt for mortgaging their land rather than borrowing money from the Bank, which they believe that dealing with a Bank will have to meet excessive number of requirements and the process will take a long time. But when those who have land title certificates need money for non-urgent needs such as for trading capital or for the maintenance / expansion of plantations (palm / rubber), they will borrow money from the Bank.

The purpose of mortgaging the land is not for the long term rather for meeting urgent needs of the pledgee. Typically, land mortgaging is done to close relatives/friends with the intention of trying to redeem the loan at their earliest convenience. The land redemption depends on the willingness and ability of the pledgee. From the results of research and field observation at the villages in the Districts of KualuhHilir, KualuhHulu and KualuhLeidong, it was discovered that there are still a number of mortgaged lands lasting for years, decades, and some are even passed onto the heirs of the pledgee and pledgor, since the pledgee is unable to redeem his land. The occurrence of land mortgage is always associated with the parties involved, voluntarily establishing legal relationship amongst indigenous peoples. The consent of mortgage agreement is done by two parties namely the pledgor and the pledgee. A pledgee is the party who hands over his land by expecting some money, while the pledgor is the party who gives the money/loans and will control, benefit from and take advantage of the land as a mortgage object that has been received from the

pledgee. The legal relationship that occurs as a result of the mortgage agreement is a familial legal relationship based on the principle of mutual assistance and socialism between members of the community. Based on the results of research in the villages in the Districts of KualuhHilir, KualuhHulu and KualuhLeidong, it was discovered that people who perform land mortgage are those who have family relationships and amongst the villagers in the area. This agricultural land relationship is hardly done by people outside the village in order to avoid shame and fear of being considered poor. If a villager urgently needs money and is about to mortgage his land, the first step he should take is to seek for help from his relatives, if nobody is willing to receive his mortgage, then he shall seek help from his clan, if his clan can not provide help, then the last effort is to visit the people where he lives, and that mortgaging one's farmland to people outside the village is strongly discouraged. If during the course of the mortgage there arises/ occurs a dispute or conflict between the pledgee and the pledgor, it might be resolved through deliberation, which will be mediated by the village head (if the mortgage agreement is acknowledged by the village head), or Chief of the Tribal Council in order to settle the mortgage dispute. It is rare that any dispute to this mortgage is proceeded to court. This might be to avoid shame known by the community once the mortgage leads to dispute and also aimed at avoiding family relations (clan) break up.

Discussions

The government has issued Law No. 56 Prp of 1960 and Regulation of the Minister of Agriculture and Agrarian Affairs No. 20 of 1963. There are still a large number of people who are unfamiliar with the regulation or some people who are already familiar with this regulation will not comply with it as this Government Regulation will be detrimental to the pledgor and the Government has failed to widely publicize this regulation to the larger community. Agricultural land mortgage under customary law is usually done according to local customs where a person is mortgaging his land to the pledgor, the mortgaged land should be handed over as collateral and the farmland shall be returned to the landowner if the borrowed money is returned to the money owner or the pledgor, albeit there is an agreement between the owner of the money and the owner of the mortgaged land. But the question is when is the period for redemption of the agricultural land under customary law until the land is returned to the landowner? If the agricultural land mortgage is done under customary law then the answer to that question would be there is no definite limit of the execution period of the mortgaged land, because the certainty of the limitations of the mortgaged land lies at the time when it is redeemed. Thus, it is the limit when the mortgage contract ends according to customary law. The period of returning the mortgaged land is entirely determined by the ability and willingness of the landowner to pay the ransom with the amount equal to the money he borrowed. In the Consideration of Regulation of the Minister of Agriculture and Agrarian Affairs No. 20 of 1963 states: that the settlement of mortgage issue, as the provisions contained in Article 7 of Law No. 56 Prp in 1960 still needs directives, which can be used as a reference, both by the concerned parties and the agencies concerned. The government established and

passed Law No. 4 of 1996 where the object is land rights title as stipulated by the law on land affairs. The object in this regulation is land but it governs a guarantee in debts, as in the content of Article 1 paragraph 1 of Law No. 4 of 1996 namely: the mortgage right which is the security interest imposed on the land right. In the implementation of this law, the idea of giving or getting loans with land is not the basic principle, rather the land serves only as collateral because there is lending and borrowing transactions between a debtor and a creditor, while land tenure remains under the control of the debtor. Under customary law, the agricultural land mortgage does not serve as a security but the pledgor or the right holder over the mortgaged land retains the right to control, use, benefit from and take advantage of the land, during the mortgage is in effect or until the repayment of borrowed money is made. The agricultural land used as collateral is handed over to the pledgor who is assumed to have stronger economic status. This agricultural land is sometimes cultivated by the pledgor, or the pledgors have someone else to do the cultivation. If the agricultural land is cultivated by the pledgor then all agricultural produces will be controlled by the pledgor, nonetheless if the farmland is cultivated by another person or the owner of the agricultural land then in this case a profit sharing agreement shall prevail.

Implication of Agricultural Land Mortgage

a. Law

The regulations on agricultural land mortgage established by the Government are poorly publicized, which has resulted in rural communities' unawareness on the fact that the Government has established/issued a new regulation on land mortgage, which thus can at least resolve the issues on agricultural land mortgage under customary law. All this time, they only know and are guided by the customary law regulation of land mortgage. Quite a number of land mortgages lasts for so many years, decades and even some are passed onto the heirs of pledgee and pledgor as the pledgee is unable to redeem their land and this brings risks to the pledgee's life. Until today, it has been discovered that there are people who have not been able to redeem the farmland they are mortgaging.

b. Economy

It is certain that the mortgaged land will reduce the amount of land plots owned by a person. This will be a big problem for the pledgee as their reduced agricultural land size will affect their daily income. Their burden will increase, in addition to fulfilling their daily needs, they also need to save up to redeem the farmland under mortgage, and it often occurs in the community that where they mortgage all their farmland or a plot of land when they need urgent money. They seem to have problems with redeeming the farmland they are mortgaging which triggers the occurrence of mortgage lasting for decades and even passed onto their children and great grandchildren.

c. Social

Some researchers discovered that agricultural land mortgage is done between relatives/families, because there is the assumption that if someone mortgaged his agricultural land, it will degrade his social status or shame will be on him. It is common that people mortgage his land only when he is in a very urgent situation.

However, it is undeniable that a person has to mortgage his farmland once he really needs money in order to fulfill his everyday life needs. If it is not urgent, people would usually rent the land. The implementation of land mortgage is mostly held with some disadvantages between the pledgee and the pledgor. Thus it is clear that land mortgage depicts extortion practices, which are extremely against the principles of Indonesian socialism. Besides, it is rest assured that due to agricultural land mortgage, poverty develops amongst the community, daily necessities will be threatened, education is left behind and crime will emerge, peace of life amidst society will be disrupted.

d. Politic

Local government officers such as RW-RT, Sub-District Head/Village Head, District Head or Regency Head seem to be ignorant of the implementation of agricultural land mortgage run by their citizens under customary law principles. They do not seem to know that the Government Regulation on agricultural Land Mortgage is not effective in the midst of society. There is the absence of serious efforts to stop the practice of agricultural land mortgage under customary law which is detrimental to the pledgee and beneficial to the pledgor.

e. Culture/Legal Culture

There is a lack of legal counseling to the community either from the Government or from the local village apparatus to introduce/socialize the new regulations on on farmland mortgage and a fair mortgage settlement established by the Government that aim to regulate the community. It is still found that a lot of agricultural land sales amongst rural society is done or guided by customary law. Although some people have been aware of the Government Regulation on the mortgage/settlement of agricultural land plots, they do not want to accept and comply with the Government Regulation. This is because the traditional agricultural mortgage culture has long been practiced and has been "ingrained" from their ancestors and guided by customary law. In addition, the process of land mortgage under customary law is quick as it is usually done between close relatives or families (may also be done between friends or close friends). The legal basis for this traditional practice is mutual trust between both parties, or there is a agricultural land mortgage agreement under customary law. If someone wants to borrow money or need funds for a very urgent need, then the person will resort to borrowing money as regulated by Law No. 4 of 1996. As such, he feels that he will find a way or a very long process, with very difficult conditions which are sometimes not reached by the level of education or also because the rights of the land is not eligible to borrow money to the Bank for example the land has not been certified and the land is the base of its rights still according to the provisions of customary law or land rights because of sale under the hands and others and so forth. By way of agricultural land used as a guarantee was submitted to the holder of a mortgage that ensured stronger economic status This agricultural land is sometimes cultivated by the pledgor, or the pledgor have someone else to do the cultivation. If the agricultural land is cultivated by the pledgor then all agricultural produces will be controlled by the pledgor, nonetheless if the farmland is cultivated by another person or the owner of the agricultural land then in this case a profit sharing agreement shall prevail.

Establish Fair Agricultural Land Mortgage Regulations

Article 53 paragraph (1) BAL No. 5 of 1960) states: temporary rights as referred to in Article 16 paragraph (1) letter h, including the right of mortgage, right of profit sharing, right of lodging and right of agricultural land lease are set to limit their provisions conflicting to this law and those rights shall be abolished within a short period of time. The right of mortgage on agricultural land under customary law is against the law. The implementation of land mortgage under customary law in which the mortgaged land is transferred to the pledgor, is not in accordance with the regulations system based on BAL, as by handing over the mortgaged land to the pledgor, the pledgee will lose his livelihood. How a pledgee could repay his debt if his (land) capital to earn a living is already transferred to another party. The purpose of government to establish the regulation is to protect the poor community (farmers) who are forced to mortgage their farmlands for urgent needs for money. However, in reality, in people's life, the regulation on the agricultural land mortgage, especially the regulation concerning the period of returning the mortgage is not implemented as expected. The government had previously issued Law No. 56 Prp of 1960 in Article 7 paragraph (1 and 2) which governs the return of agricultural land mortgage, the mortgage referred to in this article is the agricultural land mortgage that refers to institutionalized customary law in the midst of society, especially amongst rural communities. Mortgaged land according to customary law can take decades to redeem and it is clear that the practice contains an element of extortion. The contents of Article 7 paragraph (1 and 2) of Law No. 56 Prp of 1960, then the Government issued Regulation of the Minister of Agriculture and Agrarian Affairs No. 20 of 1963, this regulation did not go as the Government expected. This is due to: Because the pledgor will not accept the mortgaged land if there are no guarantees provided; It is a lot quicker for the pledgee to mortgage his agricultural land under customary law than to borrow money from the Bank; The land plots mortgage according to customary law takes place between families/relatives in order to avoid social embarrassment; Lack of legal socialization/counseling efforts and introduction of regulations on mortgage and regulations on returning/settlement of the mortgage amongst rural community;. As the Supreme Court declared in its Decision dated March 6 1971 No. 180/K/SIP/1970, it is stated that: Whereas the provision of Article 7 paragraph (1) of Law No. 56 Prp of 1960 is forcing in nature and can not be alleviated by the agreement made by both parties, as it is conflicting to the principles of the right of mortgage. The power of both sides agreement under customary law that has long been implemented amidst society can not be abolished despite its contrariness to the law.

Yet in reality, amidst community, regulations on agricultural land mortgage especially concerning the period of returning the mortgage is not implemented as expected. This is because the agricultural land mortgage is usually done by those who still have family relationships. The pledgor is reluctant to return the land without ransom and the pledgee is reluctant to ask for the land return which may result in family disputes. In the Consideration of Regulation of the Minister of Agriculture and Agrarian

Affairs No. 20 of 1963, it is stated that: the settlement of the problem of mortgage, as the provisions contained in Article 7 of Law No. 56 Prp of 1960 still needs directives, which can be used as a reference, both by the concerned parties and the agencies concerned. If this phenomenon is associated to the effectiveness of the law, then the established law will be effective if its material juridical substance is in accordance with the legal value held amongst the concerned society. On the contrary, the enactment of such legal products will only bring negative legal impact such as the tendency of the community to ignore the prevailing law, which denotes the law should be changed. The statement referred to in the Consideration of Regulation of the Minister of Agriculture and Agrarian Affairs No. 20 of 1963 "still requires a guideline, which can be used as a reference, both by the concerned parties and relevant agencies", the statement by no other means is aimed at establishing Fair Agricultural Land Mortgage Regulations. It takes more than a concrete and decisive regulation and imposition of severe both civil and criminal penalties to those who fail to comply with this rule. The law is expected to serve as a guideline that can be used in the implementation of agricultural land mortgage. In the future, the Government efforts must be in the form of creating/establishing a regulation or amendment in existing regulations on land mortgage with principles of fairness and prosperity in the agricultural land mortgage regulation and provides protection to the community, eliminating or avoiding poverty and no elements of extortion. In an effort to establish a regulation on agricultural land mortgage, the government is suggested to mix between the implementation of *jualgangsur* (sale by installment) and land mortgage under Islamic law. These two laws have similarities, including: Governing mortgaging issues; There is lending and borrowing elements; Institutionalized and takes place in the community;. Provides a solution to the problem of land mortgage with no extortion practices; Fair and can be categorized as not conflicting to the principles of Indonesian socialism; There is guaranteed asset handed over; There is factor or element of mutual trust and holding faith; Making profits is not the priority; Mutual Assistance. The conception of regulation of agricultural land mortgage implemented in the society in the future is aimed solely at creating an unurgent-needs based financing institution. Rather, it aims to drive economy in addition to eliminating the nature of the customary law, with the understanding that agricultural Land Mortgage is open to everyone without exception and does not occur between families/relatives.

Conclusions

Some villages in the Districts of Kualuh Hilir, Kualuh Hulu and Kualuh Leidong revealed that the land mortgage under customary law system is still mostly done by the local community, although in fact there has long existed Bank Rakyat Indonesia (BRI) in that area. There are several reasons why they are reluctant to go to the Bank, that is because their land certificates are only acknowledged by the village head which mentions that the land belongs to indigenous people. The proof of ownership or land title they have fails to meet eligibility criteria for getting loans from the Bank. The implementation of land mortgage under customary law in which the mortgaged land is transferred to the pledgor is not in accordance with

the regulations system based on BAL, as by handing over the mortgaged land to the pledgor, the pledgee will lose his livelihood. The fact is that in people's life, the regulation on agricultural land mortgage, especially regarding the mortgage period, fails to be implemented. This is because the land mortgage is usually done by people who still have family relationships. The pledgor refuses to return the land without ransom and the pledgee is reluctant to ask for the land returns which potentially lead to family disputes. Law No. 56 Prp of 1960 in Article 7 paragraphs (1 and 2) regulating the return of agricultural land mortgage has failed to be implemented as expected, agricultural Land Mortgage based on institutionalized customary law amidst society, especially rural communities, can last for years and until the birth of their children and grandchildren which obviously showcased an extortion element. The period of returning the mortgaged land is entirely determined by the ability and willingness of the landowner to pay the ransom with the amount equal to the money he borrowed.

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