

**LEGAL PROTECTION OF COMPANIES
HOLDING LIMITATION RIGHTS AGAINST LEGAL
DEFECTIVE CREDIT AGREEMENTS ON AUCTIONED ASSETS**

(Case study at PT. Bank Pembangunan Daerah Papua abbreviated as PT. Bank Papua)

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Abstract

This study examines legal protection for companies holding mortgage rights against legally defective credit agreements on auctioned assets, with a case study at PT. Bank Pembangunan Daerah Papua (PT. Bank Papua). The research adopts a normative approach with qualitative descriptive data analysis. The findings indicate that credit agreements failing to meet the validity requirements outlined in Article 1320 of the Civil Code can be declared null and void or annulled. This affects the validity of auctions involving assets pledged as mortgage rights. Furthermore, legal protection for companies holding mortgage rights involves mediation mechanisms and the application of legal principles such as "droit de preferent" and "droit de suite" to secure creditors' rights in the auction process. This study highlights the importance of compliance with legal provisions regarding the creation of authentic deeds and stricter supervision of credit agreement implementations to prevent future legal disputes.

Keywords: legal protection, mortgage rights, credit agreements, asset auctions

Abstrak

Penelitian ini membahas perlindungan hukum bagi perusahaan pemegang hak tanggungan terhadap perjanjian kredit yang cacat hukum pada aset yang dilelang, dengan studi kasus di PT. Bank Pembangunan Daerah Papua (PT. Bank Papua). Metode penelitian yang digunakan adalah pendekatan normatif dengan analisis data deskriptif kualitatif. Hasil penelitian menunjukkan bahwa perjanjian kredit yang tidak memenuhi syarat sahnya perjanjian berdasarkan Pasal 1320 KUHPerdara dapat dinyatakan batal demi hukum atau dapat dibatalkan. Hal ini memengaruhi keabsahan lelang atas aset yang menjadi objek jaminan hak tanggungan. Selain itu, perlindungan hukum terhadap perusahaan pemegang hak tanggungan melibatkan mekanisme mediasi dan penerapan asas hukum seperti "droit de preferent" dan "droit de suite" untuk memastikan hak-hak kreditur dalam pelaksanaan lelang. Penelitian ini merekomendasikan pentingnya pemenuhan ketentuan hukum terkait pembuatan akta otentik serta pengawasan lebih ketat terhadap pelaksanaan perjanjian kredit untuk mencegah sengketa hukum di masa depan.

Kata kunci: perlindungan hukum, hak tanggungan, perjanjian kredit, lelang aset

INTRODUCTION

Humans (persons) as supporters of rights and obligations means that they have authority and obligations in legal relations, are called legal subjects and it turns out that humans are not the only legal subjects, because with the provisions of the law everything can have rights and obligations, a body consisting of a group of humans agrees to become one body so that it has a personality as if it were one human being who has rights and obligations in law is called a Legal Entity (rechtspersoon). According to Utrecht, a legal entity is a body which, according to law, has the power to support rights without a soul as a symptom of society, the fact that it exists in legal relationships, has assets and rights that are separate from the rights and assets of its members.¹ Society is a collection of humans who have rights and obligations to their individual members.

General conditions that must be fulfilled by an agreement (contract) according to fiqh scholars include that the parties entering into the contract are competent to act legally, the object of the contract must be clear and not prohibited by law, and the purpose of the contract must be clear,² This is the same as the provisions in Article 1320 of the Civil Code. Notaries/PPATs are closely related to banking work which involves agreements and PPAT Notaries are also officials who guarantee certainty, order and legal protection which is needed as authentic written evidence regarding circumstances, events or legal actions carried out through certain positions.

Disputes can arise between parties who have agreed in an agreement (contract) and interestingly an agreement is accompanied by a guarantee where the guarantee is sometimes included in the bankruptcy estate due to the bankruptcy condition of the parties causing the execution of the guarantee to become a problem so an authentic agreement is needed which can be in the form a deed of transfer or a deed of agreement made by and before a Notary/PPAT, if the collateral is

¹ Chidir Ali, Badan Hukum, 2014, p18

² <http://ini-ippt-solaraya>

land rights, then the collateral agreement is called Mortgage Rights which are additional in nature. The bankruptcy boedel's assets are related to the Curator as the holder/managing the bankrupt boedel's assets.³

The function of law in contractual relationships shows two things: first, law is a reflection of society as an idea of maintaining social order, second, the function of law, understanding this idea, was coined by Donal Black, who said that *culture is the symbolic aspek of sosial life, including expression of what istrue good beautiful it includes idea about the nature of realty theoretical anda practical, supernatural, metaphysical, conceptions of what ought to be.*⁴ The collateral for mortgage rights is executed through auction, the land which is used as the object of collateral for mortgage rights is then used as a sample in this writing, namely the legal relationship between debt and receivables (credit) as described in the Decision of the Supreme Court of the Republic of Indonesia Number 21/Pdt/2016/PT.JAP between the Reconvention Plaintiffs (PT. Bank Pembangunan Daerah Papua) with Defendant II Reconvention (Yusfin De Haan) is a Debts and Receivables Agreement Principal Agreement in the form of a Credit Agreement Number 04/KI-SRI/X/2014 dated 24 October 2014 and an additional Agreement (accesoir) in the form of a Deed of Gift Mortgage Rights (APHT) Number 343/2014 dated 24 October 2014 and registered or ratified Mortgage Rights Certificate (SHT) Number 190/HT/2014 dated 04 November 2014.

PROBLEMS

1. What are the legal consequences for the company holding the mortgage rights to the legally defective credit agreement for the assets being auctioned (Case Study at PT Bank Pembangunan Daerah Papua, abbreviated as PT Bank Papua)?

³ Sutan Remy Sjahdeini, *Sejarah, Asas, Dan Teori Hukum Kepailitan*, Pustaka (Jakarta: Utama Grafiti, 2012), hlm.50

⁴ Donal Black, *The Behaviour of law*, Academic Press, New York, 1976, p.61

2. What is the legal protection for companies holding mortgage rights against legally flawed credit agreements for assets being auctioned (Case Study at PT Bank Pembangunan Daerah Papua, abbreviated as PT Bank Papua)?

RESEARCH METHODS

Normative legal research is legal research that places law as a building system of norms. The norm system in question is about principles, norms, rules of legislation, court decisions, agreements and doctrines (teachings).⁵ Normative Legal Research is legal research carried out by examining library materials or secondary data.⁶

Case Approach Case Approach is an approach in normative legal research where researchers try to build legal arguments from the perspective of concrete cases that occur in the field, of course these cases are closely related to legal cases or events that occur in the field. For this reason, usually the aim of this type of approach is to find the truth value and the best solution to legal events that occur in accordance with the principles of justice. This research data was analyzed using qualitative analytical descriptive analysis, which is a data analysis method by presenting all data, both in the form of primary data and secondary data that has been obtained, then analyzed based on applicable theories and regulations and finally a conclusion is formed.⁷

DISCUSSION

A. Legal Consequences for Legal Companies Holding Mortgage Rights for Legally Defective Credit Agreements for Auctioned Assets (Case Study at PT. Bank Pembangunan Daerah Papua Abbreviated as PT. Bank Papua)

⁵ Mukti Fajar ND. Yulianto Achmad, MH, *Dualisme Penelitian Hukum Normatif & Empiris*, (Yogyakarta, Pustaka Pelajar, 2010), p.34

⁶ Soerjono Soekamto & Sri Mamuji, *Penelitian Hukum Normative Suatu Tinjauan Singkat*, (Jakarta, Raja Grafindo Persada, 1985)

⁷ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, (Jakarta, Sinar Grafika, 2002), p. 34

Human life in carrying out social interactions is always based on the norms of the legal order and specifically the legal profession, one of which is that the Notary carries out his position as a civil law enforcer in society in order to avoid deviations. A norm is formed which must be obeyed by people who join a profession called with professional ethics in the hope of realizing professionalism.

Legal entity is given the term from the translation of legal personality according to Purnadi Purbacaraka and Soejono Soekamto. For Bothingk, legal entity is only a juridical description of a non-human identity that can carry out actions, whereas according to R. Subekti, a legal entity is a body or association like humans have wealth can be sued before a judge, then according to R. Sri Soedewi Maschum Sofywan explained further that a human being is a personal body, a single human being, apart from a single human being, the law can also be given the position of a personal body to another entity called a legal entity, namely a collection of people who jointly establish an entity (association) and a collection of assets which consist of themselves for certain purposes (foundations) are both legal entities.⁸

For a Notary who is also a debtor who has been declared bankrupt, the consequence of losing the right to manage his assets will result in the law being that he is temporarily dismissed from his position and regarding the management of bankruptcy assets includes efforts to increase the value of the bankruptcy assets so that enough money can be collected to pay concurrent creditors whose bills are not paid. guaranteed by material rights and concurrent claims can of course only be paid from the sale of bankruptcy assets which are free or do not have the status of collateral which is the right of separatist creditors.

Judicial power that is independent and impartial can decide conflicts that exist in a society experiencing disputes, judges are obliged to appoint and determine, apply statutory regulations in every decision based on one rule, judges can use the theories of justice that are available and can be found to justify the solution is then selected. According to Satjipto Rahardjo, legal regulations are the embodiment of legal norms, the most complete means of expressing what is desired by legal norms so that they can be captured by society, which are composed of a series of words to form sentences that

⁸ *Ibid*

formulate the meaning to be conveyed in an exact way. Legal understanding is a particular category in individual cases that provide legal certainty, creating justice.⁹

Specifically, Notaries who degrade the honor and dignity of Notaries and/or are declared bankrupt based on a court decision that has permanent legal force will be dishonorably dismissed from their position by the Minister or a proposal from the Central Supervisory Council. The aim of the bankruptcy law is also to protect parties who cannot protect themselves by providing freedom for debtors to improve their performance, for this reason, postponement of debt payment obligations must be given for a wide period of time so that they can be improved optimally so that the appointment of new professional administrators must be carried out by the commercial court if the debtor is unable to carry out the management of his business.

Individual bankruptcy law is designed to remind individual debtors to fulfill their contractual obligations and determine a period for carrying out rehabilitation after the debtor has paid his obligations which is usually carried out within 10 years, the reason is to uphold the integrity of the contractual obligations *pacta sunt servanda* with the existence of a promise then a willingness arises for the parties to perform mutually and contractual obligations become a source for the parties to freely determine the contents of the contract with all its legal consequences.¹⁰

The legal consequences for the legal company holding the mortgage rights to the legally defective credit agreement for the assets being auctioned (Case Study at PT. Bank Pembangunan Daerah Papua Abbreviated as Pt. Bank Papua) become invalid and null and void, because the conditions for the Validity of the Agreement are not fulfilled, both subjective requirements and objective requirements, as referred to in the provisions of article 1320 of the Criminal Code, Formal Defects in form or violating the provisions of article 16 paragraph (1) letters a, m, and paragraph (7) and article 38 paragraph (2) letter c, paragraph (4) letters a, b Law of the Republic of Indonesia Number: 2 of 2014 concerning Amendments to Law Number: 30 of 2004 concerning the Position of Notary Public, making an authentic agreement a deed into evidence as a private deed

⁹ *Ibid*, p.42-43

¹⁰ Siti Anisah, *Perlindungan Kepentingan Kreditor Dan Debitor Dalam Hukum Kepailitan Di Indonesia*, (Yogyakarta, Total Media, 2008), P.483-484

So that the auction is 2 (two) certificates each in the name of Drs. Yosep De Haan, Certificate of Ownership Rights number: M.134 / SK with an area of 1,950 M2 located on Jalan KPR Serui, and Certificate of Building Use Rights in the name of Drs. Yosep De Haan Number: 402/ SK with an area of 525 M2 located on Jalan Gajah Mada Serui, based on Auction Minutes Number: 018/2014 dated 09 September 2014 on the basis of Notary Deed Number: Number: 35/2004, and Number: 76/2004 which is Legally Defective by Therefore, it is also null and void, including the Credit Agreement No. 04/KI-SRI/

B. Legal protection for companies holding mortgage rights against legally defective credit agreements for assets being auctioned (Case Study at PT. Bank Pembangunan Daerah Papua, abbreviated as PT. Bank Papua)

Basic rights The basic rights inherent in humans from birth are a gift from God Almighty, respected, upheld and protected by the state, law, government and for every person. Still, according to Satjito Rahardjo, legal protection is an effort to protect a person's interests by allocating a Human Rights authority to him to act in the context of his interests.¹¹

Mortgage Rights provide convenience to both creditors and debtors, this can be seen from the characteristics inherent in Mortgage Rights, namely:¹²

1. 1. Give priority or priority position to the holder (*Droit De Preferent*).

The definition of mortgage rights as stated above, it is known that mortgage rights give a creditor a preferred position over other creditors and what is meant by a particular creditor has a preferred position over other creditors can be found in the General Explanation number 4 of Law Number 4 1996 concerning Mortgage Rights on Land and Objects Related to Land

“... ”That if the debtor defaults, the creditor holding the mortgage right has the right to sell the land used as collateral through a public auction, in accordance with the provisions of the relevant laws and regulations, with the right to precede other creditors...”

¹¹ Satjipro Rahardjo, *Sisi-Sisi Lain dari Hukum di Indonesia*, (Jakarta: Kompas, 2003), p. 121.

¹² Boedi Harsono, *Hukum Agraria Indonesia*, Djambatan, Jakarta, 2005. hal. 416

2. 2. Always follow the mortgage object which is guaranteed in the hands of whoever the object is in (*Droit De Suite*).

The provisions of Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects state that the mortgage right remains with the object in the hands of whoever the object is in, so that the mortgage right will not end even if the object of the mortgage right is transferred to another party for whatever reason.¹³

The *Droit De Suite* principle provides certainty to creditors regarding their rights to obtain repayment from the proceeds from the sale of physical land ownership or juridical land rights, which are the object of the mortgage right if the debtor defaults, even if the land or land rights that are the object of the mortgage right are sold by the owner or grantor of mortgage rights to a third party.¹⁴

3. Fulfill the principles of specialization and publicity so that it can bind third parties and provide legal certainty to interested parties.

The principle of specialization is applied by making a Deed of Granting Mortgage Rights by the Land Deed Official. Meanwhile, the principle of publicity is applied when registering the grant of mortgage rights at the Land Office. This registration is an absolute requirement for the birth of the mortgage right and the binding of the mortgage right to third parties as explained in Article 13 paragraph (1).

4. Easy and sure execution.

Another feature of mortgage rights is that mortgage rights are security rights over land that are easy and certain to execute. If the debtor is in default, there is no need to take the normal civil lawsuit method which takes time and money and for creditors holding mortgage rights, special methods are provided, as regulated in article 20 of Law Number 4 of 1996 concerning Mortgage Rights for Land and Objects relating to Land.

¹³ Ibid.,Pasal 7.

¹⁴ Sutan Remy Sjahdeini, *Hak Tangungan Azas-Azaz Ketentuan-Ketentuan Pokok dan Masalah yang Dihadapi oleh Perbankan, Suatu Kajian Mengenai Undang-Undang Hak Tangungan*, Bandung : Alumni, 1999. hal.8.

Arie S. Hutagalung with the above characteristics, it is hoped that the banking sector which has the largest credit share can be protected in channeling funds to the public and can indirectly create a conducive and healthier climate for economic growth and development.¹⁵ The object of mortgage rights in Article 4 of Law Number 4 of 1996 concerning mortgage rights over land and objects related to land is¹⁶ Ownership Rights, Business Use Rights, Building Use Rights, Use Rights on State land which according to applicable provisions must be registered and according to their nature can be transferred may also be subject to mortgage rights.

Mortgage rights are security rights imposed on land rights.¹⁷ As in Article 1 number 1 UUHT, the definition of mortgage rights is:

Mortgage rights over land and objects related to land, hereinafter referred to as Mortgage Rights, are collateral rights imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), whether or not included other objects which are an integral part of the land for the repayment of certain debts, which give certain creditors a preferred position over other creditors.

Objects that can be imposed on Mortgage Rights are explained in Article 4 UUHT that those that can be imposed on Mortgage Rights are Ownership Rights, Business Use Rights, Building Use Rights. , Building use rights that have time restrictions that can be extended again.¹⁸ Legal protection, including the purpose of land registration, is contained in Article 3 and Article 4 of Government Regulation Number 24 of 1997, including:

1. To provide legal certainty and legal protection to holders of rights to a plot of land, the objectives of land registration include:⁽²⁾
 - a. Certainty of the status of registered rights means that land registration can determine for sure the status of registered rights, whether they are

¹⁵ Arie. S. Hutagalung, *Serba Aneka Masalah Tanah Dalam Kegiatan ekonomi, Suatu Kumpulan Karangan*, Cetakan Kedua, Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok, 2002).hal. 255.

¹⁶ Munir Fuady, *Pengantar Hukum Bisnis Menata Bisnis Modern di Era Global*, Citra Aditya Bakti, Bandung, 2002, hlm .146

¹⁷ Sentosa Sembiring, *Hukum Perbankan edisi Revisi*, (Bandung:MandarMaju, 2000), p.214

¹⁸ *Ibid*, p.213-216

Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, Management Rights, Mortgage Rights, Ownership Rights over Flat Units or Waqf Land.

- b. Certainty regarding the subject of rights means knowing who holds the rights as an individual (Indonesian citizen or foreigner domiciled in Indonesia), a group of people together, or a legal entity (private legal entity or public legal entity).
 - c. Certainty of the object of rights means that land registration can determine the certainty of the location of the land, the boundaries of the land, and the size (area) of the land, whether the land is located on which road, sub-district/village, sub-district, district/city, and province. Land boundaries include the north, south, east and west, bordering whose land or what land. The size (area) of land in square meters. In order to guarantee legal certainty and legal protection in land registration, the holder concerned is given a certificate as proof of his rights (evidence of right), and it is not absolute.
2. To provide information, especially to interested parties, including the Government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units. Information on physical data and juridical data that needs to be known when carrying out legal actions regarding plots of land and apartment units that have been registered, such as buying and selling, auctions, imposition of mortgage rights, procurement of land for the benefit of the government or private companies.
 3. Orderly land administration such as orderly Land Law, orderly Land Administration, orderly Land Use and orderly Land Maintenance and Environmental Sustainability, the benefits of holding land registration, for right holders it provides a sense of security, knowing clearly the physical data and juridical data, easy implementation transfer of rights, the price of land becomes high, it can be used as collateral for debt with the burden of Mortgage Rights so that Land and Building Tax (PBB) determinations are not easily mistaken.

4. Benefits for the Government are realized in orderly land administration as one of the Catur Orderly Land programs, facilitating Government activities related to land in development, reducing disputes in the land sector, for example land boundary disputes, illegal land occupation, and even beneficial for candidates buyers or creditors.

The legal protection of companies holding mortgage rights against legally defective credit agreements for auctioned assets (Case Study at PT. Bank Pembangunan Daerah Papua Abbreviated as PT. Bank Papua) is connected to the cause and effect of legal rules consisting of events and the consequences of these legal rules are connected to events as a legal event and the consequences arising from the event as a legal consequence¹⁹

The provisions stipulated in Government Regulation No. 24 of 1997 are the implementation of land registration aimed at providing legal certainty and legal protection to holders of certificates, including Mortgage Rights can be the final evidence of the land registration process with Collateral bound by Mortgage Rights in the form of Land Books and land certificates consisting of a copy of the Land Book and Survey Certificate (Cadastral Map).²⁰

According to R. Soeroso, a legal act is every action of a legal subject (human or legal entity) whose consequences are regulated by law and because these consequences can be considered the will of the person carrying out the law.²¹ A legal event is an occurrence in society that sets in motion a certain legal regulation so that the provisions therein are realized in detail, such as if an event occurs in society and the event is in accordance with what is described in the legal regulations, the regulations are applied to the event.²²

Land registration does not guarantee that the names registered in the land book cannot be disputed if the registered name is not the actual owner.²³ Land registration activities produce certificates of land rights, have a function for

¹⁹ Soeroso, *Pengantar Ilmu Hukum*, (Jakarta: Sinar Grafika, 2011), p.191.

²⁰ Arie S. Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, (Jakarta, Lembaga Pemberdayaan Hukum Indonesia, 2005), p.81.

²¹ Yunasril Ali, *Dasar-Dasar Ilmu Hukum*, (Jakarta: Sinar Grafika, 2009), p.55

²² Soeroso, *Pengantar Ilmu Hukum, Op.Cit*

²³ Bachtiar Effendi, *Pendaftaran Tanah di Indonesia*, (Bandung : Alumni, 1983), p.32

the owner and cannot be replaced.²⁴ One of the functions of a certificate is as a strong means of proof.²⁵ Legal protection for companies holding mortgage rights against legally defective credit agreements for auctioned assets (Case Study at PT. Bank Pembangunan Daerah Papua Abbreviated as PT. Bank Papua) can be achieved by PT Bank through a process

The mediation process and even mediation litigation can be carried out considering that legal responsibility states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a conflicting act."²⁶ According to Hans Kelsen, legal responsibility is related to:²⁷

1. Individual responsibility, that is, an individual is responsible for his or her own violations
2. Collective liability means that an individual is responsible for an offense committed by another person
3. Liability based on fault, which means that an individual is responsible for an offense committed intentionally and with the aim of causing harm
4. Absolute liability, which means that an individual is responsible for violations committed because they were unintentional and unexpected.

CONCLUSION

Authentic Mortgage Deeds made by a PPAT are valid as long as they fulfill mandatory provisions, the conditions for the validity of an agreement are determined in Article 1320 of the Civil Code, a legal act is binding on the parties and the deed made regarding the legal act also remains valid, then the parties must carry out these legal acts in good faith. The Deed of Mortgage Rights as an additional agreement is based on the

²⁴ Adrian Sutedi, *Sertipikat Hak Atas Tanah*, (Jakarta: Sinar Grafika, 2011), p.57

²⁵ Sudjito, *Prona Pensertipikatan tanah secara massal dan penyelesaian sengketa tanah yang bersifat strategis*, Edisi Pertama, Cetakan Pertama, (Yogyakarta: Liberty, 1987), p.72

²⁶ Hans Kelsen, diterjemahkan Somardi, *General Theory Of law and State , Teori Umum Hukum dan Negara, Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Deskriptif Empirik*, (Jakarta: BEE Media Indonesia, 2007), p. 81

²⁷ Hans Kelsen diterjemahkan oleh Raisul Mutaqien, *Teori Hukum Murni*, (Bandung: Nuansa & Nusa Media, 2006), p. 140

credit agreement as the main agreement and the legal conditions of a deed refer to the provisions in Article 1320 of the Civil Code regarding the conditions for the validity of an agreement relating to subjective conditions, if a violation occurs then it can be cancelled, not null and void or legally defective, null and void. law if it violates objective requirements.

As long as this is done, the Agreement that has been made by those who are incompetent still has legal consequences (Article 1331 paragraph (1) of the Civil Code. As long as it is not otherwise determined by law, every person (natuurlijke person) is considered competent to take legal action, as stated in stated in Article 1329 of the Civil Code. As a result, the PPAT Liability Rights Deed stipulates the object of land registration, the object of land registration in Government Regulation Number 24 of 1997 except that state land is recorded in the Land Book and a certificate is issued as proof of land registration if it is linked to the registration system Land land uses a land registration system (registration of titles) rather than a deed registration system (registration of deeds). The title registration system is visible in the presence of a Land Book as a document containing juridical data and physical data collected and presented as well as the issuance of a certificate as a certificate of proof of registered rights.²⁸ So that the agreement can protect a corporate legal entity holding mortgage rights if the credit agreement is not legally defective regarding the assets being auctioned (Case Study at PT. Bank Pembangunan Daerah Papua, abbreviated as PT. Bank Papua).

SUGGESTION

Suggestions to the Government to actively create a check and balance mechanism for the justice of others that upholds moral principles as well as the value of professionalism in the practice of the Notary and PPAT professions and to legal entities as well as individuals here. Individual communities or stakeholders pay more attention to the legal rules that exist around them so that Even though you are entering into an engagement, you must be careful because it relates to whether or not a legal interest is valid or not, according to civil law.

²⁸ *Ibid* p.283-290

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