

Completing legal regulations on state management of pawnshop business activities

Hoàn thiện quy định pháp luật về quản lý nhà nước đối với hoạt động kinh doanh dịch vụ cầm đồ

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Tóm tắt: Tại Việt Nam, không khó tìm thấy các cửa hàng, tiệm kinh doanh dịch vụ cầm đồ trên khắp các con phố, ngõ hẻm từ đô thị đến nông thôn. Trong vài năm trở lại đây, nhiều doanh nghiệp kinh doanh dịch vụ này còn mở rộng chi nhánh, địa điểm kinh doanh có tính hệ thống, bao phủ các tỉnh thành. Đầu năm 2023, xã hội đặc biệt quan tâm và đặt ra nhiều vấn đề pháp lý về quản lý nhà nước đối với hoạt động kinh doanh này, khi một số doanh nghiệp hoạt động trong lĩnh vực kinh doanh dịch vụ cầm đồ và công ty tài chính bị thanh kiểm tra xuất phát từ các nguồn tin báo về hành vi cưỡng đoạt tài sản thông qua việc đòi nợ có tính uy hiếp tinh thần, khủng bố khách hàng. Ngay sau đó, nhiều cá nhân là nhân viên của doanh nghiệp này đã bị khởi tố để điều tra về tội Cưỡng đoạt tài sản quy định tại Điều 170 Bộ luật hình sự 2015, sửa đổi bổ sung năm 2017. Nội dung bài viết luận giải các quy định pháp lý hiện hành, nội dung quản lý nhà nước đối với hoạt động kinh doanh dịch vụ cầm đồ. Trên cơ sở thực trạng hoạt động kinh doanh này trên thực tế, tác giả đưa ra một số kiến nghị nhằm hoàn thiện các quy định về quản lý nhà nước đối với hoạt động kinh doanh này.

Từ khóa: *Dịch vụ cầm đồ; điều kiện kinh doanh; quản lý nhà nước*

Abstract: Pawnshops are easily found on every street and alley in Vietnam, from urban to rural areas. In recent years, many businesses in this service sector have expanded their branches, establishing a system that covers various provinces and cities. At the beginning of 2023, society was particularly concerned about and raised many legal issues regarding state management of this business activity when some companies engaged in the pawnshop business and financial companies were subject to inspections stemming from news reports about the act of forcefully taking property by means of debt collection through mental coercion, terrorizing customers. Immediately after that, many employees of these companies were indicted for investigation of the crime of property appropriation as prescribed in Article 170 of the Criminal Code 2015, as amended and supplemented in 2017. This article provides an interpretation of current legal regulations and state management content for pawnshop business activities. Based on the practical reality of these business activities, the author proposes some recommendations to complete regulations on state management of this business activity

Keywords: *business conditions ; state management; pawnshop business*

1. Concept of pawnshop business activities all stages of the process from investment and production to product consumption or

Based on Article 21 of the Law on Enterprise 2020, "business" means the continuous performance of one, some, or service supply on the market to seek profit. Thus, pawnshop business activities are primarily understood as profit-seeking

business activities. Pawnshop business activities are classified as a sectoral investment and business field subject to conditions according to Appendix 4 of the Law on Investment 2020. Investment and business conditions are individual or organizational conditions that must be met when carrying out investment and business activities [1]. At the same time, according to Article 4 of Decree 96/2016/ND-CP (providing for security and order conditions for some investment and business sectors subject to conditions), the content of pawnshop business activities is defined as follows: Providing loan services in which borrowers must have legal assets that can be used as collateral.

In the Civil Code of 2015, "pledge" is not defined independently but is identified through the term "asset pledge". This is consistent with the essence of the pawnshop business, which is outlined in Decree 96/2016/NĐ-CP. Asset pledge is one of the nine measures to secure the performance of obligations, alongside mortgage, deposit, betting, depositing, guarantee, lien, and asset retention [3]. According to Article 309 of the Civil Code of 2015, "Asset pledge is when the pledger transfers their property, which is their own ownership, to the pledgee to secure the performance of obligations." The Civil Code also specifies that assets can include goods, money, valuable papers, and property rights. The property includes real estate and personal property, which can be current assets or assets to be formed in the future [1]. However, in the pawnshop business, an asset pledge differs from an asset pledge in the Civil Code in that the pledger must own the pledged asset in the Civil Code, while the

pledged asset in the pawnshop business only needs to be legal, meaning it may not belong to the borrower, but rather to a third party who has validly authorized the borrower.

A pawnshop business is a service business that provides loans. However, this "lending" activity is not a form of credit granting that falls within the banking operations with requirements and conditions tightly bound by the legal framework [2]. Therefore, the pawnshop business must be understood as not falling within the scope of regulation of the Law on Credit Institutions. In other words, the pawnshop business is not a credit institution (not a bank, non-banking credit institution such as financial companies, microfinance organizations, and people's credit funds).

Therefore, based on the Law on Investment 2020, the Civil Code 2015, and the Law on Enterprise 2020, the business of pawnbroking services is considered a lending service, with the following requirements: (i) This type of lending is not a banking operation within the scope of the Law on Credit Institutions; (ii) The subject that carries out this business activity must be a business establishment that meets the business conditions prescribed by the Law on Investment; (iii) The scope and manner of implementation shall be applied in accordance with the provisions of the Law on Investment and the Civil Code 2015 regarding collateralized assets.

2. State management content for pawnbroking services business activities

2.1. Management of conditions for the subject carrying out pawnbroking services business activities

Pawnbroking services are carried out by "pawnbroking service business establishments". Currently, there is no official concept of business establishments that includes which entities whether they need to register for business and establish under which form or not. However, the Law on Occupational Safety and Health 2015 mentions and provides a concept of "production and business establishments" as enterprises, cooperatives, households, and organizations engaged in production and business activities. Therefore, it can be understood that pawnbroking service business establishments are enterprises, cooperatives, households, and organizations engaged in pawnbroking service business activities.

The legally binding requirements for the establishment and operation of business establishments include the following:

Firstly, the business establishment must be registered, licensed, or established in accordance with the law. Individuals, households, and organizations registering for pawnbroking services business activities must meet the requirements of the law on business registration through the establishment of a household business with the conditions prescribed in Chapter VIII of Decree No. 01/2021/ND-CP on business registration or the establishment of a business entity (limited liability company, joint-stock company, private enterprise, partnership) according to the provisions of the Law on Enterprise 2020. For the establishment of a household

business, the person who establishes it must be Vietnamese.

Secondly, the person responsible for the security and order of the pawnshop business must be a person who has been a permanent resident of the ward, commune, or town where the business is registered and has been for at least 05 years prior to the registration of the business location. Additionally, during the 05 years preceding the registration, this person should not have been fined by competent authorities for administrative violations related to acts such as obstructing officials in the performance of their duties, disturbing public order, intentionally causing injury, lending money at exorbitant interest rates, gambling, organizing gambling or illegal betting, theft, fraudulently appropriating property, or unlawfully withholding property.

The law does not limit the subject of Vietnamese nationals who have settled abroad and hold foreign passports or foreigners who, in cases where they are granted permission to reside and conduct business in conditional business sectors by the competent authorities of Vietnam. However, the requirement for the person responsible for the security and order of the pawnshop business to be a person with a permanent resident registration in Vietnam, as mentioned above, implies the exclusion of these subjects from participating in pawnshop business activities.

Thirdly, the person responsible for the security and order of the business, in the case of a Vietnamese national, must not fall into the category of being under investigation, prosecution, trial, or sentencing for criminal offenses; have no

criminal record for national security violations or other intentional offenses that have been sentenced to over three years in prison without the sentence being expunged; currently or awaiting the implementation of administrative handling measures; addicted to drugs; or have been subject to administrative handling measures but have not yet reached the required time limit to be considered as not having been subject to administrative handling measures.

2.2. Management of the conditions for conducting pawnshop business services

Based on Decree No. 96/2016/NĐ-CP, which regulates the conditions for security and order in particular investment and business sectors, pawnshop business services are considered a business sector that must meet the conditions for security and order, specifically: the business must meet the requirements for fire safety as prescribed by the law on fire prevention and fighting. At the same time, it must maintain regular and continuous conditions for security and order throughout the business operation. Security and order requirements are the only conditions that pawnshop businesses must meet. However, pawnshop business activities are essentially lending activities but are not subject to capital requirements like credit institutions under the Law on Credit Institutions.

2.3. Management of business content and responsibility regime of pawnshop businesses

Firstly, pawnshop businesses are responsible for establishing collateral contracts per the law. Currently, there are no regulations on standard contracts for pawnshop business operations, nor are

there separate legal provisions for pawnshop activities. Therefore, the rights and obligations of pawnshop businesses (the collateral recipient) and borrowers are applied in accordance with the provisions of the 2015 Civil Code and Decree No. 21/2021/NĐ-CP on the enforcement of the Civil Code in ensuring the fulfillment of obligations.

The collateralized asset contract is a type of civil transaction that must meet the adequate conditions of civil transactions: capacity of subjects, intention, purpose, and content that does not violate the prohibited provisions of the law / against social morality. The collateralized asset contract is not mandatory to be notarized or authenticated.

Secondly, for documents certifying ownership rights to collateralized assets as prescribed by law, pawnshops must keep the original copy of the certificate of ownership during the time of collateralized assets. A valid authorization document from the owner is required for collateralized assets belonging to third-party ownership. Collateral cannot be received for assets with unclear origins or obtained through illegal acts.

Thirdly, regarding interest rates: The interest rate for lending money when receiving collateralized assets cannot exceed the interest rate prescribed by the Civil Code. Accordingly, Article 468 of the 2015 Civil Code regulates the interest rate for borrowing agreed upon by the parties but not exceeding 20% per year of the loan amount. In cases where the agreed interest rate exceeds the limit set out in this article, the excess interest rate is invalid. In cases where the parties agree

to repay interest but do not clearly define the interest rate and have disputes about the interest rate, the interest rate is determined by 50% of the limit interest rate as prescribed above at the time of debt repayment.

Fourthly, provisions on the responsibilities of pawnshop business service providers: Not to use the business premises to carry out activities that violate laws affecting the security, order, morality, cultural traditions, and customs of the nation. The pawnshop business service provider is responsible for detecting and promptly notifying the police of suspicious signs or incidents related to security and order at the business premises.

Fifthly, regarding the reporting regime and compliance with supervisory obligations from competent authorities. The business establishment shall implement regular quarterly or ad hoc reporting on the security and order situation as instructed by the Ministry of Public Security; comply with inspection, examination, and handling of violations by the police and authorized state management agencies.

3. The current situation and some recommendations for improving the legal regulations on state management of pawnshop business activities

According to the statistics of the Criminal Police Department, and Ministry of Public Security, there are more than 26,900 pawnshop business service providers nationwide [4]. However, this figure is based on business premises that have been officially registered. Currently, many individuals and organizations carry out similar business activities without registering to avoid supervision by

competent authorities. Pawnshop business, essentially lending, is aimed at providing urgent financial assistance to entities with small amounts of money. At the same time, these entities may not meet the borrowing conditions at credit institutions operating under legal regulations on credit organizations, such as banks, non-bank credit institutions, financial companies, microfinance organizations, and people's credit funds.

Along with a relatively simple and lax legal framework for state management of pawnshop business activities, the loan conditions do not have to prove the purpose, and the disbursement is quick and suitable for social needs. Therefore, pawnshop business service providers are suitable for the mainstream social demand. It is urgent to supplement the legal framework to enhance the effectiveness of state management of this business model. Based on the study of legal regulations and practice, the author identifies some drawbacks and corresponding solutions as follows:

Firstly, regarding the registration and operation conditions of pawnshop service businesses. As mentioned, in addition to the requirements for the establishment entity, the operation of a pawnshop service business must meet the condition of fire prevention and fighting and the financial capacity to ensure that the business is not exploited for other illegal activities. Therefore, it is necessary to regulate the minimum capital requirements for operating this lending service, similar to the regulations on capital requirements for financial companies and microfinance organizations.

Secondly, civil transactions related to lending with collateral and interest rates exceeding the legal limit (over 20% per year of the loan amount) are pretty standard, especially when the pawnshop service provider is an individual or an unregistered organization. For this lending activity with collateral, the current regulations at point d, clause 4, Article 12 of Decree No. 144/2021/ND-CP provide administrative fines in the field of security and order ranging from 10,000,000 VND to 20,000,000 VND for individuals. As these pawnshop providers are not registered businesses, the relevant state agencies struggle to manage and regulate their activities. Detection and punishment can only be carried out when a verified report exists. However, receiving and verifying such reports is limited due to the parties' explanations that such transactions are based on the borrower's needs and that interest rates are agreed upon. In addition, parties may acknowledge and include in the contract an interest rate that complies with legal provisions and consider other fees or expenses instead of interest rates or may legalize this transaction in another way.

Therefore, it is necessary to disseminate and promote legal regulations on pawnshop and lending activities to the public and to avoid conducting pawn transactions and borrowing money from individuals or organizations without lending functions, to protect their legitimate rights and interests.

Thirdly, assets are considered the collateral object at pawnshop business establishments. As analyzed in Section 1, the assets used as collateral at pawnshop business establishments are expanded compared to those used as collateral under

the Civil Code to ensure the fulfillment of obligations. Collateral assets at pawnshop business establishments are not just assets owned by the borrower, and the borrower can use collateral assets that belong to others but have been authorized legally. Assets (especially movable property) that are not registered as property rights, such as personal computers and mobile phones, even though they are valuable assets, are not registered as property rights, so pawnshop businesses are not required to ask borrowers to prove ownership or request verification of legal authorization for the assets. Additionally, many collateral assets are believed to be stolen or seized [5]. Pawnshop business establishments have become a hidden ground for criminals, which is not considered a crime of mortgage or property consumption committed by others (Article 323 of the Criminal Code of 2015, amended and supplemented in 2017).

Moreover, there are still cases where pawnshop business establishments lend money against certificates of land use rights, ownership of houses, and other assets attached to the land, which does not comply with the law. Therefore, there need to be tighter regulations for collateral assets. Suppose the collateral asset is not registered as property rights. In that case, the borrower must prove that the collateral asset belongs to them or someone else but has been legally authorized. Pawnshop businesses are responsible for verifying collateral assets within the necessary limits and for their pawnshop activities. At the same time, it is necessary to clearly define that certificates of land use rights, ownership

of houses, and other assets attached to land are not collateral assets.

Fourthly, regarding the issue of interest rates, interest rates are a concern for parties involved in pawn transactions and loans and are also an important aspect when state management agencies check for compliance with security and order conditions. Currently, pawn service businesses comply with legal regulations that set the ceiling interest rate at no more than 20% per year on loans. However, in reality, borrowers have to bear additional loan costs, such as appraisal and asset management fees. The total cost of these fees is much higher than the loan interest rate [6]. Currently, the law on pawnshops only stipulates a limit on the interest rate for loans, without any restrictions on fees. Therefore, many pawn service businesses do not comply with legal regulations regarding interest rates.

To ensure transparent operations in pawn service businesses with reasonable interest rates and costs, it is necessary to add regulations on limits for fees applied to the total loan amount and the maximum interest rate. Alternatively, the total interest rate ratio and maximum fees for the loan should be regulated to avoid negative consequences arising from debt collection activities and difficulties in fulfilling loan contracts and collateral when pawnbrokers are unable to pay additional fees beyond the interest rate.

Fifthly, in terms of debt collection activities based on collateral contracts and lending, pawnshop service businesses' debt reminder and collection activities currently have many gaps leading to arbitrary actions by these businesses during debt reminders and collections. Decree 144/2021/ND-CP only regulates

finances (administrative penalties) ranging from 20,000,000 to 40,000,000 VND [7] for using violence, threatening to use violence, or using other measures not permitted by law to carry out debt collection. Thus, pawnshop service businesses' debt reminder and collection activities are limited in content and have not yet established binding regulations regarding time limits, frequency of reminders/debt collection, and debtors/reminder targets. This leads to cases where borrowers and their guarantors are constantly harassed, seriously affecting their privacy and personal work. Currently, many individuals and organizations still use personal images of borrowers and their relatives, label them as fraud, misappropriate assets, and publicly post them on social media channels without the consent of the rightful owners, thereby threatening the borrower's spirit and seriously affecting their reputation and honor. Preventing, verifying, and handling violations in the telecommunications and information technology sector currently faces many difficulties.

Therefore, it is necessary to supplement binding regulations on reminders/debt collection and implement collateral contracts properly. This can refer to similar provisions of the law in Circular 18/2019/TT-NHNN (amending and supplementing Circular 43/2016/TT-NHNN of the Governor of the State Bank of Vietnam on consumer lending of financial companies): "Appropriate debt collection measures should be in line with the characteristics of customers, legal regulations, and should not include threatening measures against customers,

including a maximum of 5 reminders per day, the form and time of reminders to be agreed upon in the consumer lending contract, but must be within the period from 7:00 to 21:00; not reminding or collecting debts, sending information about debt collection for customers who have no obligation to repay debts to financial companies, except in cases where there is a request from state agencies with jurisdiction under the provisions of the law; maintaining the confidentiality of customer information in accordance with legal regulations.

4. Conclusion

In a practical situation where the demand for financial services through pawnshops is increasing, it is increasingly necessary to complete regulations in order to achieve effective state management of pawnshop business activities. Through the completion of regulations in the pawnshop business, state management in this field has a legal basis, gradually limiting the operations of individuals and organizations engaging in high-interest loans and black credit without business registration. In addition, requirements for regular and surprise inspections by competent state agencies must be thorough and practical, contributing to protecting the legitimate rights and interests of all parties and ensuring social security, order, and safety.

References

- [1] Law on Investment 2020 (Article 3, Section 9), 2020
- [2] Law on Credit Institutions 2010, amended and supplemented in 2017 (Article 16, Section 4 of the Law on Credit Institutions 2010, amended and supplemented in 2017, provides that lending is a form of credit provision within the banking operation, subject to regulation

by the Law on Credit Institutions: Lending is a form of credit provision, whereby the lender delivers or commits to deliver a sum of money to the customer for a defined purpose for a specified period, with the principle of repayment of both principal and interest), 2010.

- [3] Civil Code 2015 (Article 292), 2015.
- [4] Nguyen Ngan, Duc Thang, "Pawnshop service with "throat-cutting" interest rate", 2023. Available online at: <https://vtv.vn/phap-luat/dich-vu-cam-do-bien-tuong-20230331111528319.htm#:~:text=Th%E1%BB%91ng%20k%C3%AA%20c%E1%B%A7a%20C%E1%BB%A5c%20C%E1%BA%A3nh,kh%C3%B4ng%20qu%C3%A1%2020%25%2Fn%C4%83m>. [Accessed April 3, 2023].
- [5] S.Binh, Ai Nhan, D. Thanh, "Many pawnshops are the backyard of crime", 2016. Available online at: <https://tuoitre.vn/nhieu-tiem-cam-do-la-san-sau-toi-pham-1101055.html>. [Accessed April 3, 2023].
- [6] Thai Phuong, "Interest rates for cash loans from F88 and The Gioi Di Dong too high?", 2022, <https://nld.com.vn/kinh-te/lai-suat-cho-vay-tien-mat-cua-f88-va-the-gioi-di-dong-qua-cao-20211218165203914.html>. [Accessed April 2, 2023].
- [7] Decree 144/2021/ND-CP regulating administrative sanctions in the field of security and order (Article 12).

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