



## Objects and How to Get Them Based on Indonesian Law

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### **Keywords**

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### **Abstract**

In civil law, problems related to objects are regulated in the Second Book of the Civil Code Articles 499 to 1232, although there are articles that have been revoked by new laws such as Mortgage Rights which make mortgages for land. Objects for humans have important meanings, such as fulfillment and human welfare. Therefore, objects must be properly regulated to use objects for welfare. For this reason, legal experts make important principles about objects, among others, material rights are absolute rights, namely. This right can be defended against anyone. This is different from individual rights which can only be defended by certain parties. Another important principle is that material rights have a Droit de suit (right to follow), The system of regulating the law of matter is closed. This means that people cannot or cannot establish new material rights other than those already stipulated in the law. The principle of coercive law (dewingenrecht) Coercive law means that the enactment of the rules cannot be deviated by the parties. These material rights will not provide any other authority than what has been determined by law. Objects are also very important in providing credit or financing, namely as collateral for the provision of credit or financing profitably and profitably. Each object has procedures and procedures for obtaining it. Thus, it is appropriate to raise a legal issue on how to obtain an object based on Indonesian law. The research used in this law is normative legal research, which is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced to find legal norms that should be formed.

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### **1. Introduction**

The entire universe is matter, including humans. Objects are every item and every right that can be controlled by property rights. What can be the object of property rights can be in the form of goods and can also be in the form of rights, such as copyrights, patents, and others. Objects can be divided into living and inanimate objects. Living things are things animate things inanimate things are things inanimate ingestion to objects that are in the form of humans, objects are divided into various categories, namely objects which because of their fixed nature are called fixed objects, and objects that have defecation are called movable objects. Objects movable objects ships weighing 8 tons or more, ships and during 20 cubic meters or more are referred to as fixed or immovable objects. Debts or receivables are given status by humans as objects. In the e Criminal Code, objects can be divided into two types, namely, tangible objects are objects that can be seen and touched with the five senses such as land, houses, animals, and others, while objects that cannot be touched are the result of someone's thoughts, such as the author's rights, octroi rights, billing rights (receivables) and so on

The Law of Objects is the law that regulates the relationship between legal subjects and objects, while the Law of Engagement regulates objects and legal subjects who give birth to objects. Indonesia n property law has been thoroughly regulated in the second book of the Civil Code with several provisions that have been removed and specifically regulated by new laws and regulations. In civ. law, the matter of objects is regulated in Book II of the Criminal Code. Since

September 24, 1960, there has been a significant change in the law of objects, especially fixed objects (land). Because the Second Book of the Criminal Code mostly discusses rights to objects, in reality, these RI, rights can only be thought about.

The law of objects is the whole normative rule of law that regulates legal relations between fellow legal subjects relating to objects and material rights. Objects are tangible and tangible goods, do not have a life, and do not have their own will, so they can only be used by humans in the pursuit of pleasure.

This subject must be useful and beneficial for a human life. Then, there is also another concept about objects, namely, objects are a translation of the original language, Dutch, *zaak*. The legislators formulate objects (*zaak*) in Article 499 of the Criminal Code, namely all objects and rights. Rights are also called "part of assets" (*vermogens bestand deel*), assets include objects, rights, and legal relations regarding objects and rights as regulated in Book II and Book III of the Criminal Code, while *zaak* includes objects and rights regulated in Book II of the Criminal Code.

Characteristics of Objects Material rights are absolute rights, meaning that they can be defended by anyone. Material rights have *zaaksgesvolg* (rights that follow) and material rights apply the principle of priority, where the birth of material rights that first plays an important role will be prioritized.

Law Number 5 of 1960 states in Article 27 that property rights are nullified if: a. the land falls to the state, 1. due to the revocation of rights based on Article 18; 2. due to voluntary surrender by the owner; 3. because of neglect; 4. because of the provisions of Article 21 paragraph (3) and 26 paragraph (2). b. the land is destroyed If in civil law, property law is part of property law (*vermogensrecht*). In comparison in Islamic law, objects manual deposits. This is regulated in the Compilation of Sharia Economic Law, namely the Regulation of the Supreme Court of the Republic of Indonesia Number: 02 of 2008 concerning the Compilation of Sharia Economic Law Article 17 as follows:

- a. Amanah, that the ownership of Amwayal (objects) is a deposit from Allah Subhanahu wata'ala to be utilized for the benefit of life.
- b. *infradiyah*, that ownership of objects by an individual and the unification of objects can be done in the form of a business entity or corporation.
- c. *itemti Aaliyahah*, that ownership of objects does not only have the function of fulfilling the needs of the owner's life but at the same time, there are community rights.
- d. *benefits*, that ownership of objects is directed at increasing the benefits and narrowing the harm.

Based on the description above, the object deserves to be stated How to obtain an object based on Indonesian law.

## 2 Materials and Methods

As an effort to obtain optimal results, the research used on the legal issues raised is normative legal research, namely the process of finding the rule of law, legal principles, and legal doctrine to answer the legal issues. The legal issue or problem in this research is how to obtain an object based on Indonesian. Thus, this research goes through a process to find legal norms that should be formed, which includes the rule of law, legal principles, and legal doctrine.

Bambang Sunggono quotes Pollack's opinion that the main purpose of legal research is to test whether a certain normative postulate can or not be used to solve a certain legal problem in concrete. Next normative legal research in legal research is carried out to solve the proposed legal issues and the result to be achieved is to provide a thesis about what should be.

## 3 Results and Discussions

Judging from the scope of the law that regulates material rights, material law is a field of civil law. The Civil Code regulates the law of objects in the second book on Materials, which consists of 21 chapters and starts from Article 499 to Article 1232.

Not all chapters and articles contained in the Second Book of the Civil Code apply because there are chapters that have been revoked by law, for example by the existence of Law no. 4 of 1996 concerning Mortgage on Land and Objects Related to Land, the provisions regarding mortgages as mentioned in book II of the Civil Code as long as regarding the imposition of Mortgage on land rights and objects related to land are declared no longer valid. In this case, the mortgage

related to the ship remains valid, because what is revoked is only matters relating to mortgages for land and the objects on it.

In legal science, material rights adhere to a closed system, meaning that material rights are limited, where people cannot hold material rights other than those stipulated in laws and regulations, and the object can be defended by everyone. This is different from individual law which adheres to the open principle, where a person can enter into any agreement as long as it does not conflict with public order, morality, and legislation and this right can only be defended against a certain person or a party.

The definition of objects is regulated in Article 499 of the Civil Code which states that according to the understanding of the law what is called material is "every item and every right that can be controlled by property rights". Article 500 of the Civil Code states "Everything due to the law of attachment is included in an object, as well as all the results of that object, whether it is the result of nature, or the result of people's work, as long as the latter is attached to the object like branches and roots attached to the soil, all of which are part of the material.

Article 502 of the Civil Code states that "The so-called results because of nature are everything that grows from the soil itself; everything that is the result of or born of animals. The results due to the work of people who are pulled from the ground are everything that is obtained because of planting on it, what is called civil proceeds are rent, tribute money, installment, tax, and interest money.

#### A. Division of Objects

In civil law, there are types and kinds of distribution of objects, namely movable objects and immovable objects, tangible objects (lichamelijk) and intangible objects (onlichamelijk), objects that can be used up (vebruikbaar) and objects that cannot be used up (onvebruikbaar), goods that already exist and goods that will still exist, goods that are in trade and goods outside of trade, goods that can be divided and goods that cannot be divided and so on. However, in the various divisions regarding these objects, the main and bad impact related to the binding of collateral is the division of objects, namely movable objects and immovable objects.

In general, objects are divided into bodily or immovable objects and movable and immovable objects

1. Based on Article 506 of the Civil Code, immovable objects are divided into:
  - a. Yards and what is built on them.
  - b. Milling, except as regulated in Article 510 of the Civil Code (in this case ships).

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- c. Trees and field crops, with their roots embedded in the ground, fruit trees that have not been picked, as well as mining goods such as: Coal, coalwaste, and so on as long as these objects have not been separated and excavated from the ground.
- d. Logged wood from the forest and wood from trees with tall trunks, as long as the wood has not been cut.
- e. Pipes and sewers intended to channel water from the house or yard and generally anything stuck in the yard or glued to the building.
2. Based on Article 507 of the Civil Code, immovable objects are included because of their designation:
  - a. In a factory company: Manufactured goods themselves, milling, galvanizing, iron and similar immovable goods, iron clamps, steaming quality, fire extinguishers, symbols, bells and other tools which are included in the factory principle, even if the items are not stuck or glued.
  - b. In housing: Mirror paintings and other adornments, only if they are attached to boards or masonry which are part of the wall, ceiling or plastering of the room, even if they are not glued.
  - c. In land ownership: Lungkang or fat heap is intended for plowing the ground. Pigeons are included in flocks, bird nests that can be eaten, as long as they have been picked and fish in the pond.
  - d. Building construction materials come from building renovations. If it is intended to rebuild the building.
3. Immovable objects related to land rights, water rights, and space rights have been unified and codified in Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, which will be discussed in more detail in CHAPTER V regarding Land Rights and Acquisitions the Chapter which discusses Mortgage Rights, especially about the object of Mortgage Rights. Movable objects, it is regulated in the Civil Code book II which divides various kinds of movable objects and can be broadly stated as follows.
  - a. Article 209 of the Civil Code explains that movable objects are objects that can move or be moved.
  - b. Article 511 of the Civil Code states that "Must be considered a movable object because of the provisions of the law:

- a. The usufructuary rights and usufructuary rights over movable objects;
- b. The right to the agreed interest, both perpetuated interest and live forked interest;
- c. Engagements and claims regarding the amount of money that can be collected or concerning movable objects.
- d. Sero-sero or share in a money trading partners trade partnership, Ipp, or company partnership, even if the assets of the partnership are immovable. The holdings or shares are considered to be movable objects, but only to the participants as long as the partnership is running”.

As a record of the usufructuary rights over state lands as referred to in Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles are still included as immovable objects and thus different from the meaning stipulated in Article 511 paragraph 1 of the Civil Code above, because what is meant by Right to Use in Article 511 of the Civil Code is the right to use movable objects.

Knowledge of the distribution of the various types of objects is very important, especially so that we can bind appropriately and correctly through procedures and procedures that apply to each of these objects. This is because each of these objects has a different acquisition procedure and also a different binding procedure.

### B. Object Acquisition

Civil law is regulated regarding the position of power (bezt) that gives rise to the rights that arise because of it. Article 529 of the Civil Code states "The so-called position of power (bezt) is the position of a person who controls an object either by himself or by the intercession of another person and who maintains or enjoys it as the person who owns the object". Such bezt is a state of birth where a person controls an object, which is protected by law. In law, such protection is only granted to honest "good faith" holder. Article 534 of the Civil Code stipulates that each holder of a position, as long as it is not proven that it was for someone else that the position he began to hold, must be deemed to have held it for himself.

In this case there is a bezt that acts as a perfect title, which is regulated in Article 1977 of the Civil Code which states "About movable objects that are not in the form of interest, nor receivables that do not have to be paid to the bearer, then whoever controls them is considered the owner". However, whoever loses or is stolen something, within a period of three years, starting from the day the item is lost or stolen can claim back his lost or stolen item as his property from whom in his hand he found the item, without reducing the

right of the latter to ask for compensation from the person from whom he obtained the goods, moreover by not reducing the provisions in Article 582 of the Civil Code".

In addition to bezt, the Civil Code also stipulates the definition of Property Rights contained in Article 570 of the Civil Code which states "Ownership is the right to enjoy the use of an object freely, and to act freely on the object with complete sovereignty, as long as it is innocent (contradictory). with the law or general regulations stipulated by a power that has the right to stipulate it, and does not interfere with the rights of others. All of this without reducing the possibility of the revocation of rights in the public interest based on the provisions of the law and by payment of compensation.

Article 572 of the Civil Code states that "Every property right must be considered free. Whoever discloses that he has rights to other people's property must prove that right".

Therefore, if there is a party who feels that the object is physically controlled by another person, and who claims that the object belongs to him or belongs to someone other than the one who controls the object, then the person in question, namely the party claiming the right, must prove.

In addition, the Civil Code also regulates the right of retention or the right to retain an object which is detailed in Articles 575, 576, and 1616 of the Civil Code.

It is important to point out how to obtain property rights. In the Civil Code the method of obtaining property rights is regulated in Article 584 of the Civil Code which states "Property rights to an object cannot be obtained in other ways, but by ownership, because of attachment, because of expiration, because of inheritance, either according to law or according to a will, and because the appointment or delivery is based on a civil event to transfer property rights, it is carried out by someone who has the right to act freely on the object."

Based on these provisions, based on civil law the method of obtaining property rights is determined in a limited manner, namely ownership of:

1. Due to Attachment;
2. Due to Expiration;

3. Because of inheritance, either based on the law and/or because of a will;
  4. Due to the appointment or delivery based on a civil event to transfer property rights
- Further descriptions regarding the procedure for acquiring such property rights are described further in the following Articles which can be stated as follows:

### 1. **Due to the attachment**

Property rights obtained by way of attachment are generally regulated in Article 585 to Article 609 of the Civil Code.

Ownership rights to movable objects that originally did not belong to anyone, belonged to the person who first took them. Ownership of all game animals and fisheries is solely for the person who owns the land, **where** the game or fishery water is located.

Ownership of a treasure belongs to the person who finds it in the island. If the treasure is found on someone else's land, then half of it belongs to the finder and the other half belongs to the owner of the land. Based on Article 587 paragraph 2 of the Civil Code, it is emphasized that the definition of treasure is all hidden objects to which no one can approve ownership of the right to and which is obtained by sheer coincidence.

Everything that is attached to an object or constitutes a body with that object belongs to the person who according to the provisions contained in the following articles is considered the owner.

The Civil Code also regulates joint ownership, namely in Articles 605 to 609.

Whoever uses material belonging to another person makes an object of a new type and is permitted to own the object, provided that the price of the material is paid and all expenses and interest are compensated, if there is a reason for that.

If the new object is not formed by the actions of people, but by chance gathering together various materials belonging to several people, then the object is the common property of those people, each in balance with the price of their original materials.

If the new object is in the form of various materials belonging to several people due to the actions of one of the owners, then the latter becomes the owner of the object with the obligation to pay the price of the materials belonging to other people and also pay all costs, loss, and expenses, interest if there is a reason for it.

If in this case the materials are easily separated, then each owner is allowed to return them back into his possession.

### 2. **Due to the expiration**

As the basis for the validity of the acquisition of ownership through expiration, it is regulated in Article 610 of the Civil Code, which states "Property rights to an object are obtained due to expiration, if a person has held a position of power over it for the determined time by law and according to the conditions and how to differentiate them, as stated in the seventh chapter of the fourth book of the Civil Code" (Article 1946 to 1993 Articles of the Civil Code)

Article 1946 of the Civil Code states "Expiration is a tool to obtain something or to be released from an engagement with the passage of a certain time and on conditions determined by law".

It is not permissible for a person to release an expiration date before the time comes, but it is permissible for him to let go of an expiration that has been obtained. Relief expiration is not carried out firmly there is the release of expiration that occurs secretly. The release is secretly concluded from an act that raises the suspicion that a person does not want to use a right that has been obtained.

Article 1963 of the Civil Code states "Whoever in good faith, and based on a legal basis, obtains an immovable object, an interest, or a debt that does not have been paid based on an indication of obtaining ownership rights over it, by way of expiration with a mastery, for 20 (twenty) years.

Whoever in good faith controls it for 30 (thirty) years obtains ownership rights without being forced to demonstrate the basis of his rights.

### 3. **Because of Inheritance**

The acquisition of property rights can also occur because of inheritance. At the time a person dies, then that second, and there has also been an inheritance, namely the property of the deceased person is transferred to all heirs. Article 611 of the Civil Code states how to obtain property rights due to inheritance according to the law or according to a will be discussed in Chapters 12 and 13 of the Civil Code (Articles 830 to 1149 of the Civil Code).

The heirs can occur by law or by will. This means that a person can obtain an inherited object based on certain family relationships regulated in the provisions of the legislation and/or because of a will made by the person who died to a certain person or party.

#### 4. **Because Buy and Sell**

Legitimate buying and selling alsresultts in the transfer of rights. Article 1457 of the Civil Code provides the meaning of buying and selling, namely "an agreement, whereby one party binds himself to surrender an object and the other party pays the promised price".

The sand purchasessess deemed to have taken place between the two parties, as soon as they reach an agreement on the object and the price, even though the object has not been delivered and the price has not been paid.

Even though in the sale and purchase there has been an agreement between the parties conducting the transaction, the transfer of ownership rights to the object that is the object of the sale and purchase has not yet been transferred, as long as the delivery has not been carried out as referred to in Articles 612, 613 and 616 of the Civil Code.

The exception to the above provisionsRifatt the object of sale and purchasislandnd. Because in land law the transfer of ownership rights occurs when the deed of sale and purchase of land is made and signed by the parties before the Land Deed Maker Officer.

If the object sold is in the form of an item that has been determined, then the object from the time of purchase is at the expense of the buyer, even though the delivery has not been made and the seller has the right to demand the price.

Sales and purchases made by "experiment" or about goods that are usurped first are always considered to have been made with tough conditions.

The sale and purchase of goods belonging to another persoareis void and can provide a basis for reimbursement of costs, lo, es, and interest to the buyer in good faith. Thus, proof of ownership of the object by the party who will sell it is important, because if a person sells an object that is not his own, then the object is null and void brawl if the agreement has violated an applicable statutory regulation.

#### 5. **Due to Grantscheckingng)**

One of the acquisitions of an object is to obtain it from a grant or by testament. Based on Article 1666 of the Civil Code, it is stated that a "Grant is an agreement whereby the donor in his life freely and irrevocably submits an object for the recipient of the grant who receives the delivery".

In a narrow sense, this grant must be interpreted as a mere gift, without any other obligations from the recipient of the grant. So there can be no certain requirements. But in a broad sense, grants include the sale of goods at very low prices. Thus, this will involve the provisions stipulated in Article 920 of the Civil Code regarding the limitation of "Legitieme portie", Article 1086 of the Civil Code concerning inbred (ie gifts that must be taken into account in the distribution of inheritance), and Article 1678 of the Civil Code concerning the prohibition of giving objects in the name of husband and wife.

The granting of immovable objects and rights of receivables in the name must be made by a notary or Land Deed Making Officer. However, for movable goods and receivables in the form of carrying documents, it is sufficient to submit them.

In this grant, there must have been an agreement between the grantor and the grantee. As an agreement, which means also as part of an engagement, the grant is subject to the terms and conditions stipulated in the law of engagement. In addition, the approval of the grant alone without any transfer of ownership rights to the object being granted has not occurred a transfer of rights.

#### 6. **Will Grant (tentament)**

Article 876 of the Civil Code states "What is called a will or testament is a deed containing a person's statement about what he wants will happen after he dies, and by which it can be revoked".

The will or testament can be canceled or withdrawn either expressly or tacitly. An express revocation occurs when a new testament is made which clearly states that the previous testament has been withdrawn. while a silent revocation occurs when a new testament is made which contains a message that contradicts the previously made testament.

In this testamental relationship, it must also be considered the provisions stipulated in Article 920 of the Civil Code regarding the limitation of "Legitieme portie" and the limitations that apply in Islamic law where

Islamic law stipulates that the maximum limit for granting a will is 1/3 of the property owned. the giver of the will when he dies.

#### **7. Exchange**

Based on Article 1541 it is stated that "Exchange is an agreement in which both parties bind themselves to give each other an item on a reciprocal basis in exchange for another item". Everything that can be sold can be used as an object of exchange.

If one party has received the goods exchanged for him and then he proves that the other party is not the owner of the goods, then he cannot be forced to give up the goods he has promised, but can only be asked from him to return the goods he has received.

If a certain item that he has promised to exchange is destroyed beyond the fault of the owner, then the agreement is considered void and the party who has fulfilled the agreement can claim back the goods he has given in the exchange.

Regarding other matters in the exchange, it refers to the provisions in the Civil Code regarding buying and selling, among others concerning the authority of the exchanging party, the basis of rights, and the procedure for the transfer.

#### **8. Appointment Or Submission Based On A Civil Event To Transfer Property Rights**

In connection with the procedure for obtaining rights as described above, for its implementation, it is necessary to pay attention to the matters described in this sub-chapter, in particular regarding the procedures for transferring property rights from the existence of a civil event as stated above. In addition, pay attention to the type of object that is the object of the civil incident above.

Article 612 of the Civil Code states "The delivery of movable objects, except for bodily ones, is carried out by real delivery of the objects by or on behalf of the owner or by handing over the keys of the building in which the objects are located. Submission does not need to be carried out if the object that must be submitted for reasons of other rights has been controlled by the person who wants to receive it.

#### **9. Because of Inbreng or income.**

The transfer occurs because an object is included in a company from the original owner. Such transfer is intended as part of the assets included in a company, so that administratively the assets become

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company assets. Such a transfer, still pays attention to the aspect of the transfer of the type of object, whether it is a movable object or an immovable object.

In practice, there are many companies whose assets based on the published company balance sheet are owned by the company concerned, but legally it is still in the name of the owner or the peral name of the founder or management of the company concerned. By law, it is still considered that the asset is still in the name of the owner not in the name of the company and thus, this will trigger a potential dispute between the heirs and the company concerned in the future.

#### **10. Regarding this transfer in the form of waqf**

it is regulated in Law no. 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 concerning waqf. The definition of waqf is a legal act of Wakif to separate and/or surrender part of his property to be used forever or for a certain period of periodate with his interests for the purpose/of public welfare according to Sharia. Wakif is the party who endows his property and is accepted by Nazhir, naNazirhe party who receives the waqf property from the Wakif to be managed and developed according to its designation. In carrying out waqf from wakif to Mazhar, the thMazhar pledge is a statement of the will of the wakif spoken orally and/or in writing to Nazhir to endow his property.

In carrying out this waqf, it must be done by making the Deed proof of the statement of the Wakif's will to endow his property to be managed by Nazhir in accordabynation with the waqf property as outlined in the form of a deed. Waqf pledge in this case the head of the religious affairs office in the sub-district where the object is waqf. The waqf pledge deed is registered with the National Land Agency (BPN) to issue a waqf certificate. Especially for waqf in the form of money, this cash waqf certificate is proven by: Cash Waqf Certificate as evidence issued by Islamic Financial Institutions to Wakif and Nazhir regarding the delivery of cash waqf. While the Islamic Financial Institutions that issue cash waqf certificates are Indonesian legal entities engaged in Islamic finance, including Islamic Banks, both Islamic Commercial Banks, Sharia Business Units of conventional Commercial Banks, and Shari, Rural Banks. In connection with this waqf, the Indonesian



Waqf Board has been established, hereinafter abbreviated as BWI, as an independent institution carrying out its duties to develop waqf in Indonesia.

#### 4 Conclusion

The main conception related to objects is objects as a means to obtain wealth, however in the Compilation of Sharia Economic Law objects are entrusted by Allah Subhanahu Wata'ala, so they must be used as a means to improve human welfare. How to obtain objects based on Indonesian law is in the following ways: a) Due to attachment, b) Due to Expiration, c) Because of Inheritance, d) Because Buy and Sell, f) Due to Grants (schenkingchecking Grant (tentament), f) Exchange, g) Appointment Or Submission Based On A Civil Event To Transfer Property Rights, h) Because of Inbreng or income, i) Because Waqf.

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