



Legal Protection for the *Dominus* in Acts of *Zaakwarneming*

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Abstract

An incident that often occurs in the life of others is an act without orders from others or voluntary help, this act is called *Zaakwarneming*. Juridical-normative legal research using the Legislation approach, Conceptual approach related to the problem being studied. The findings of this study are that *Dominus*' protection in the Civil Code includes the *Manager's* obligation to account for its actions, *Dominus*' right to reject or accept the *Manager's* actions, the *Manager's* obligation to compensate for damages, *Dominus* not paying wages to the *Manager*, and *Dominus*' right to terminate the act of *Zaakwarneming*. Currently, existing legal rules focus more on regulating the rights and obligations of *Dominus* (the owner of the interest) without providing sanctions or a clear compensation mechanism for *Dominus* if the *Gestor* (the party carrying out the management act) makes a mistake.

Keywords: *Dominus; Zaakwaarneming; Legal Protection.*

INTRODUCTION

Obligation law is a legal relationship between two or more parties concerning property rights. According to C. Asser, the distinctive characteristic of an obligation is the reciprocal relationship between the involved parties, where each party has the right to receive something (performance) and the duty to provide something in return (counterperformance). Meanwhile, according to R. Syahrani, an obligation is a legal relationship between two or more persons involving property, in which one party has the right to receive something (performance) and the other party is obliged to provide that performance.¹ Article 1233 of the Indonesian Civil Code (KUHPPerdata) stipulates that, "Every obligation arises either from an agreement or contract, or from the law."²

Obligations arising from the law are regulated in Article 1352 of the Indonesian Civil Code (KUHPPerdata), which states, "Obligations born of the law arise solely from the law, or from the law as a consequence of human actions." According to the Civil Code, obligations originating from the law are divided into two types; obligations that arise solely due to statutory provisions, and obligations that arise from the law as a result of human conduct.³

Human interaction illustrates that humans are social beings. A common occurrence in social life is the act of voluntarily assisting or acting without instruction from others. Such conduct is referred to as *Zaakwarneming*. *Zaakwarneming* often occurs when a person voluntarily represents the affairs of another without having been instructed to do so. The legal basis for this is found in Book III concerning Obligations of the Indonesian Civil Code (KUHPPerdata). Article 1354 of the Civil Code states, "If a person voluntarily, without receiving

¹ Sri Wahyuni, et. al, *Hukum Perikatan*, (Depok: Rajawali Pers, 2020), p. 11 – 12.

² *Ibid.* p. 36.

³ Joko Sriwododo dan Kristiawanto, *Memahami Hukum Perikatan*, (Yogyakarta: Kepel Press, 2021), p. 7 – 9

any instruction, manages the affairs of another, with or without the knowledge of that person, he thereby tacitly obligates himself to continue and complete the management of those affairs until the person represented is able to manage his own affairs."

The parties involved in the act of *Zaakwarneming* are referred to as the *Gestor* and the *Dominus*. The *Gestor* is a person who voluntarily offers assistance, while the *Dominus* is the person who receives such voluntary assistance. The obligations of the *Gestor* are regulated in Article 1356 of the Indonesian Civil Code (KUHPerdara), which states, "He is obliged, in managing the affairs, to fulfill the duties of a good *paterfamilias*." Furthermore, Article 1358 of the Civil Code provides that, "A person who has managed the affairs of another without receiving any instruction is not entitled to any remuneration." These articles form part of the legal basis for the protection of the *Dominus*. However, in practice, legal certainty is sometimes not realized, despite the fact that such protection is stipulated in the prevailing legislation.

A legal fact that occurred in Indonesia, particularly in the city of Ambon, between 1999 and 2001, involved riots that devastated the economic foundations and religious tolerance in Ambon. As a result of these riots, many houses and lands were abandoned for a considerable period by both non-native residents and the indigenous population of Ambon. These houses were then voluntarily guarded by their neighbors, some of whom also established businesses on the premises. To fulfill the *Dominus's* obligation to cover the expenses incurred, the *Dominus* regularly transferred monthly payments to the *Gestor*. After the riots subsided and conditions began to normalize, the *Dominus* returned to Ambon and went to his residence. Upon arrival, the *Dominus* found that the *Gestor* had occupied the house and developed a business there. The *Dominus* politely informed the *Gestor* of his intention to reside in his house again. However, the *Gestor* did not agree, arguing that he had guarded, maintained, and even established a business in front of the house. The *Gestor* insisted that if the *Dominus* wished to occupy the house, the *Dominus* was obliged to pay remuneration to the *Gestor*; otherwise, the *Gestor* would not vacate the *Dominus's* property.

Based on the legal facts described above, the *Gestor* has acted as a good *paterfamilias* in accordance with Article 1356 of the Indonesian Civil Code (KUHPerdara) and is able to hand over the house and land to the *Dominus* since the *Dominus* has returned. However, the *Gestor* has violated the obligations he is required to fulfill. The *Gestor* should not demand any remuneration pursuant to Article 1358 of the Civil Code.

The legal fact illustrated above is one example of an occurrence that has taken place. In Indonesia, there are still many similar cases that require proper legal resolution so as not to disadvantage the *Dominus*. Agreements between two parties without a legally binding contract often become obstacles to the proper exercise of rights and obligations, and one of the consequences may include violence, moral and ethical crises, abuse of rights, disputes, and other issues. Therefore, the author is interested in writing a study entitled "Legal Protection for the *Dominus* in Acts of *Zaakwarneming*."

METHODS OF THE RESEARCH

The purpose of this research is to identify the legal foundations, both in terms of theory and doctrine, to address the legal issues raised, namely the legal protection for the *Dominus* in acts of *Zaakwarneming*. This study focuses on positive legal regulations related to *Zaakwarneming*, as stipulated in Articles 1353 to 1363 of the Indonesian Civil Code (KUHPerdara). These articles serve as the legal basis for obligations that arise not from

agreements but from statutory law. The approaches used in this research are the statutory approach and the conceptual approach. The sources of legal materials used in this study are categorized into three types: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant legislation, namely the 1945 Constitution of the Republic of Indonesia and the Indonesian Civil Code. Secondary legal materials consist of books, journals, articles, and papers related to *Zaakwarneming* and legal protection for the *Dominus*. Tertiary legal materials are obtained from internet sites that assist in exploring the position of the *Dominus* in *Zaakwarneming* and the legal protection afforded to the *Dominus*. The procedure for collecting legal materials was conducted through library research by inventorying information from relevant primary and secondary legal materials. After the legal materials were collected, the data were analyzed qualitatively. The qualitative analysis in this study was carried out by categorizing the legal materials. Subsequently, the data were interpreted with the aim of answering the research questions.

RESULTS AND DISCUSSION

A. The Position of the *Dominus* in *Zaakwarneming*

Obligation law, as an integral part of civil law, recognizes two main sources: agreements and statutory law. Agreements create obligations based on the consensus of the parties involved, whereas statutory law creates obligations without requiring such consensus. *Zaakwarneming* falls within the category of obligations arising from statutory law. *Zaakwarneming* is a voluntary representation carried out by the *Gestor* without the knowledge or consent of the *Dominus*. The parties involved in *Zaakwarneming* are the *Gestor*, who performs the voluntary act, and the *Dominus*, who receives the voluntary act. The elements of *Zaakwarneming* include the existence of a legal act, meaning the *Gestor's* action is not merely a casual act but one that carries legal consequences. The action is performed voluntarily by the *Gestor*, who acts without coercion or pressure from others and without any specific intention to benefit himself. It is done without any instruction from the *Dominus*, taken on the *Gestor's* own initiative. The action may be carried out with or without the knowledge of the *Dominus*, depending on the circumstances. Furthermore, the *Gestor* is obliged to complete the management of the affairs until the *Dominus* is able to take over and manage his own interests. Lastly, the *Gestor* is prohibited from requesting any remuneration from the *Dominus*, as stipulated in Article 1358 of the Indonesian Civil Code (KUHPPerdata).

Based on the foregoing explanation, the position of the *Dominus* is that of the party who receives the benefits of the voluntary and good-faith actions performed by the *Gestor*. The *Dominus* is the recipient of the *Gestor's* goodwill, who on his own initiative manages the interests or problems faced by the *Dominus* without prior request or instruction. The relationship between the *Gestor* and the *Dominus* arises from the proactive actions of the *Gestor*, not from any formal agreement or contract between them. The *Dominus* occupies a passive position, accepting the assistance provided by the *Gestor* and bearing certain legal obligations as a consequence of such voluntary actions, such as the obligation to reasonably reimburse the expenses incurred by the *Gestor*. This position of the *Dominus* emphasizes the element of voluntariness. The *Dominus* does not actively initiate the management process but receives and benefits from the positive effects of the *Gestor's* actions. Rights are inherent to every human being from birth and are absolute in nature. They encompass the rights holder, the scope of their application, and the parties involved. Rights regulate the interaction between individuals and the state, particularly concerning equality and

freedom.⁴ Meanwhile, an obligation is a form of juridical and moral responsibility that must be fulfilled by every individual. According to Sukamto Notonagoro, an obligation is an authority that can be enforced coercively by the interested party and must be fulfilled by the obligated party with a high sense of responsibility.⁵

In the context of *Zaakwarneming*, a comprehensive understanding of the rights and obligations of the *Dominus* (the owner of the interest) is crucial to ensure that the legal system functions properly and protects the interests of all parties involved. First, the *Dominus* is obliged to reimburse all expenses incurred by the *Gestor* during the management of the *Dominus's* interests. Article 1357 of the Indonesian Civil Code (KUHPPerdata) affirms that the *Dominus* cannot receive benefits without bearing the costs incurred by the *Gestor*. This obligation covers all reasonable and relevant expenses incurred by the *Gestor* in carrying out his duties, including but not limited to transportation, communication, materials, and professional services if necessary. Second, the *Dominus* is responsible for compensating any losses that the *Gestor* may suffer as a result of his actions in managing the *Dominus's* interests. Third, the *Dominus* must fulfill all obligations undertaken by the *Gestor* during the management process. Fourth, the *Dominus* has the right to demand that the *Gestor* perform the management duties with full responsibility and diligence. This emphasizes the importance of careful consideration and rational actions by the *Gestor* in managing the *Dominus's* interests. Fifth, the *Dominus* has the right to request detailed and transparent accountability reports from the *Gestor* regarding all activities undertaken. Sixth, the *Dominus* is entitled to clear accountability from the *Gestor* concerning all actions taken on his behalf, including detailed information about the assets and resources managed. This right is essential to ensure transparency, accountability, and oversight, and provides a legal basis for the *Dominus* in case of any irregularities or losses. Seventh, the *Dominus* has the right to claim compensation for any losses, costs, or interest suffered. This right protects the *Dominus* from negative impacts and covers direct and indirect financial losses as well as costs arising from the *Gestor's* errors. The *Dominus* may also claim interest as compensation, thereby providing strong legal protection and ensuring the *Gestor's* accountability.

B. Legal Protection for the *Dominus* in Acts of *Zaakwarneming*

The origin of the word "protection" is "to shield," which means to shelter, prevent, defend, and fortify. According to Fitzgerald, as cited by Satjipto Raharjo, the philosophical foundation of the theory of legal protection lies in the natural law theory. This theory, pioneered by ancient Greek philosophers such as Plato, Aristotle, and Zeno, places God as the source of law. From the perspective of this school of thought, law is not merely a human creation but a universal and eternal principle inherent in the universe. The implication is that law and morality have an inseparable relationship. Good law must be in harmony with true morality. Therefore, legal protection is not merely a formal mechanism but also a manifestation of the moral values that are believed in.⁶ Legal protection can be realized in both preventive (prevention) and repressive (enforcement) forms.

Legal protection for the *Dominus* in the context of *Zaakwarneming* is regulated in the Indonesian Civil Code (KUHPPerdata), a legacy of Dutch colonial law (*Burgelijk Wetboek* or *BW*). This legal protection primarily takes the form of preventive measures aimed at avoiding legal disputes. The legal relationship between the *Dominus* and the *Gestor* is not

⁴ Tim ICCE, *Demokrasi, Hak Asasi Manusia dan Masyarakat Madani*, (Jakarta: Perana Media, 2003), p. 199

⁵ R.M.T Sukamto Notonagoro, 2010, p. 31

⁶ Satjipto Raharjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), p. 595

founded on an agreement but on statutory provisions governing *Zaakwarneming*. The absence of a formal contract does not imply the absence of legal protection; rather, the state's objective to protect its citizens' interests remains the fundamental basis for regulating *Zaakwarneming*. This is also reinforced by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Legal protection for the *Dominus* in the Indonesian Civil Code (KUHPerdata) is characterized by a balanced regulation between rights and obligations. The legal protection for the *Dominus* in acts of *Zaakwarneming* is specifically regulated in the Indonesian Civil Code, particularly in Articles 1355, 1356, 1357, 1358, and 1362.⁷ Based on the articles regulating the protection of the *Dominus*, first, there is the obligation of the *Gestor* to be accountable for his actions (Article 1355 of the Indonesian Civil Code). This article is not merely an administrative rule but the core definition of *Zaakwarneming*. The *Gestor*'s accountability obligation defines the limits of *Zaakwarneming*, distinguishes it from other legal acts, ensures transparency, and protects the *Dominus* from abuse of authority. Second, the *Dominus* has the right to accept or reject the *Gestor*'s actions (Article 1356 of the Civil Code). This article balances the rights and obligations of both the *Dominus* and the *Gestor*. The *Dominus*'s right to reject the *Gestor*'s actions is balanced by the *Gestor*'s obligation to restore the original condition. Meanwhile, the *Dominus*'s acceptance of the *Gestor*'s actions creates an implicit agreement, obliging the *Gestor* to complete his duties. Third, the *Gestor* has the obligation to compensate for any losses (Article 1358). This article affirms the *Gestor*'s full responsibility for any losses suffered by the *Dominus* as a result of the *Gestor*'s actions in *Zaakwarneming*. This responsibility includes both direct and indirect financial losses. Fourth, the *Dominus* is not required to pay remuneration to the *Gestor* (Article 1357 of the Civil Code). *Zaakwarneming* must be carried out voluntarily, without expectation of reward, and based on good faith to assist the *Dominus*. This practice, rooted in traditional Indonesian values, remains relevant in modern law, demonstrating the dynamic interaction between customary law and modern law in responding to societal needs.⁸ Fifth, the *Dominus*'s right to terminate *Zaakwarneming* (Article 1362 of the Indonesian Civil Code). This article affirms the *Dominus*'s right to end *Zaakwarneming* at any time without cause or prior notice, reflecting the *Dominus*'s autonomy and freedom in controlling his own interests. This flexibility is important because *Zaakwarneming* is carried out without the *Dominus*'s initial consent, thereby granting the *Dominus* full control over the situation. Legal protection for the *Dominus* in *Zaakwarneming* in Indonesia remains inadequate. Existing legal regulations are not comprehensive and contain gaps that need to be addressed to provide more effective protection and ensure justice for the *Dominus* if their rights are violated. A comprehensive regulatory revision is necessary to create a fairer balance between the *Dominus* and the *Gestor*.

Repressive legal protection is a legal mechanism focused on resolving disputes or legal issues that have already occurred. Unlike preventive legal protection, which aims to prevent legal violations, repressive legal protection concentrates on actions taken after a legal violation has happened. The preventive legal protection regulated in the Indonesian Civil Code concerning *Zaakwarneming* still has weaknesses. Currently, the existing legal provisions focus more on regulating the rights and obligations of the *Dominus* (the owner of the interest) without providing clear sanctions or compensation mechanisms for the *Dominus*

⁷ Ronald Saija, et. al. *Hukum Perikatan*, (Yogyakarta: Penerbit Deepublish, 2023), p. 6

⁸ Wijaya Natalia Panjaitan, "Zaakwarneming: Legal Balance for Gestor and Dominus". *TATOHI: Jurnal Ilmu Hukum* 4, no. 12 (2025): 916-921.

if the *Gestor* (the party managing the affairs) commits an error. This situation creates legal uncertainty from a repressive perspective for the *Dominus* if they choose litigation (court) to resolve disputes. Therefore, at present, the *Dominus* may pursue nonlitigation legal remedies (outside the court) as an initial step in dispute resolution. The first method is negotiation. Negotiation, derived from the word "negotiation," is an interactive communication process aimed at reaching a mutual agreement among parties with differing interests or those in dispute. This process involves the exchange of information, bargaining, and concessions to achieve a mutually beneficial resolution. The legal basis for negotiation is regulated under Law Number 30 of 1999 concerning Alternative Dispute Resolution. In conducting negotiations, the stages to be followed according to Article 6 paragraph (2) of Law Number 30 of 1999 include preparation, opening, the core of negotiation, bargaining phase, and reaching an agreement among the involved parties.⁹ However, negotiation also has several weaknesses.

Second, Mediation. Etymologically, the term "mediation" derives from the Latin verb *mediare*, which means "to be in the middle" or "to intervene." This meaning aptly describes the role of the mediator as a neutral and independent third party in the dispute resolution process. The mediator must be capable of maintaining a balance of interests among all disputing parties and act fairly and objectively. The neutrality and fairness of the mediator are key factors in building trust and cooperation among the conflicting parties, thereby enabling the achievement of a peaceful and sustainable resolution of the dispute.¹⁰ The legal basis governing mediation in Indonesia is the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts, which is a revision of the earlier Supreme Court Regulation Number 1 of 2008. According to Article 2 paragraph

(3) of this regulation, the mediation mechanism includes the following stages: the case is reported to the district court or religion court, the mediator explains the mediation procedure and discusses the core issues, followed by a meeting involving all parties, and if an agreement is reached, the parties sign a joint agreement.

Based on the foregoing explanation, the application of law for the *Dominus* to resolve issues with the *Gestor* can be addressed through negotiation and mediation. It is also possible for the *Dominus* to bring the matter to court (litigation). However, litigation does not guarantee enforceable protection of the *Dominus's* rights. Likewise, non-litigation avenues cannot ensure legal certainty for the *Dominus*, as these methods also have inherent weaknesses. This situation should be a matter of concern for the government, which needs to formulate more comprehensive regulations regarding the protection of the *Dominus* to establish legal certainty.

CONCLUSION

Based on the results of the research on legal protection for the *Dominus* in acts of *Zaakwarneming*, several conclusions can be drawn. First, *Zaakwarneming* is a voluntary representation carried out by the *Gestor* without the knowledge or with the knowledge of the *Dominus*. The parties involved in *Zaakwarneming* are the *Gestor*, who performs the voluntary act, and the *Dominus*, who receives the voluntary act. The essential elements of *Zaakwarneming* are that it is conducted voluntarily and without compensation. Considering

⁹ Iday Setiasih, *Terampil Melakukan Negosiasi*, p. 36-43

¹⁰ Syahrizal Abbas, *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat dan Hukum Nasional*, (Jakarta: Kencana, 2011), p. 2.

the parties involved, the position of the *Dominus* is that of the recipient of the voluntary act performed in good faith by the *Gestor*. Second, preventive legal protection for the *Dominus* is regulated in the Indonesian Civil Code (*Burgelijk Wetboek* or BW). The rights and obligations of the *Dominus* are governed by Articles 1355, 1356, 1357, 1358, and 1362 of the Civil Code. However, Indonesian regulations currently lack adequate sanctions or effective legal protection for the *Dominus*. This results in the absence of legal certainty for repressive protection of the *Dominus* when disputes are brought to litigation (court proceedings).

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