


Zaakwarneming: Legal Balance for Gestor and Dominus

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Abstract

Introduction: *Zaakwarneming* refers to the voluntary managing of another person's matters without a formal agreement, namely the gestor acting in the interest of the dominus. This research discusses how the *zaakwarneming* principle creates a balance between the dominus and the gestor by utilizing the authority granted in Article 1354 of the Civil Code. It analyzes the application of this principle in various legal situations and assesses its impact on the responsibilities and rights of both parties.

Purposes of the Research: The purpose of this study is to analyze the legal Balance for gestor and dominus in *zaakwarneming*.

Methods of the Research: The type of research used is Normative Juridical with the type of library research.

Findings of the Research: The analysis results show that the regulation of *zaakwarneming* should provide a fair and effective legal basis and provide a balanced arrangement for the gestor and dominus.

Keywords: *Zaakwarneming; Legal Balance; Gestor; Dominus.*

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INTRODUCTION

Humans are social creatures who need each other. The term Zoon politicon introduced by Aristotle explains that humans are naturally social creatures who live in communities. The purpose of human groups is to improve the happiness and welfare of their lives.¹ These needs make social functions that live in society have been built and developed from era to era. Social interactions that are formed then make humans have a sense of need and a sense of wanting to help each other. This is also in line with the growth of rules in interaction that live and are obeyed in society. The rules that are formed in the relationship between fellow human beings are then developed and adapted in the Civil Code, especially in chapter III regarding the Law of Obligation.

Social relations carried out by the community develop into a legal relationship that gives rise to rights and obligations. In Indonesian law, the act of helping or what is referred to as *zaakwaarneming* engagement or voluntary representative engagement regulated in the Civil Code. A *Zaakwaarneming* obligation is an obligation entered into voluntarily without the knowledge of the party having an interest, which is carried out until the party having an interest can carry out its own interests.² There are two terms known in *Zaakwarneming*, which are Gestor and Dominus. Gestor refers to a person who acts voluntarily to take care

¹ Dwi Mulyono, *Sosiologi 1: Untuk Kelas X SMA Dan MA Kelompok Peminatan Ilmu-Ilmu Sosial* (Solo: Tiga Serangkai, 2017), p. 41-42.

² Novita Angelina Lado Doyo, Agustinus Hedewata, and Petonius Damat, "Kajian Yuridis Tentang *Zaakwaarneming* Dan Penerapan Hukumnya Dalam Putusan Nomor 1574K/PDT/2011 Menurut KUH Perdata," *Jurnal Hukum Bisnis* 13, no. 3 (2024): 1-7, <https://doi.org/10.47709/jhb.v13i03.4109>.

of the interests of others, while Dominus is a person whose interests are taken care of by another party.

Zaakwarneming describes a situation where a person (gestor) manages the property of another (dominus) without a formal agreement. The Civil Code does not formulate that agreements must be made in writing, but must be made based on agreement and fulfill the requirements as contained in Article 1320 of the Civil Code. Agreements made and agreed by both parties will be binding and apply as law as stated in Article 1338 of the Civil Code.³ However, zaakwarneming is often a potential source of legal disputes. For example, a gestor who is responsible for looking after goods belonging to the dominus faces legal risks if the goods suffer damage. In this case, it is important for the gestor to understand his or her responsibilities are undertaken on an initiative and voluntary basis so that the action may affect the dominus.

In addition, Dominus has the right to claim compensation if the goods or interests managed by the Gestor experience obstacles that cause damage due to the gestor's negligence. Because in the Civil Code, the right of the dominus to get back the goods in good condition is a basic principle in zaakwarneming law. But when viewed from a social point of view, zaakwarneming reflects the importance of trust and good faith in the relationship between the gestor and the dominus. Especially if the issue of zaakwarneming is faced with an increasingly developing situation where the relationship between people should provide balanced rights and obligations and not only be faced with the issue of who should be responsible, but a position that can understand each other even when the assistance is not being requested but in good faith when given, there is an understanding if the arrangement does not always give the desired result. So that the regulation of zaakwarneming is important to be developed and refined in the Civil Code so that there are limits and a balanced position between the gestor and dominus which will provide legal implications for their actions so that in the future the Zaakwarneming action is preceded by good faith and ends with balanced rights and obligations.

METHODS OF THE RESEARCH

The research method used is Normative Juridical Research with the type of library research. The data studied was obtained from the analysis of laws and regulations concerning the Bonds sourced from the law, Zaakwarneming, and its legal consequences as well as relevant journals. The data obtained, both primary data and secondary data, are analyzed qualitatively, namely by describing the data in quality in regular sentences so as to facilitate discussion and understanding, and clearly illustrate their relationship with the research problem.⁴

RESULTS AND DISCUSSION

Zaakwarneming is a concept in civil law that refers to the act of a person (gestor) who voluntarily takes care of the interests or affairs of another person (dominus) without any prior mandate or order. An illustrative example of Zaakwarneming in everyday life is as follows: A is an employee and has a pet cat in the front yard of his house, at one time A was required to leave the house for 3 days due to office business. B is A's neighbor, one day B

³ Wijaya Natalia Panjaitan, "Akibat Hukum Wanprestasi Atas Perjanjian Lisan Pinjam-Meminjam Oleh Pasangan Kekasih Yang Tidak Terikat Perkawinan," *PATTIMURA Legal Journal* 3, no. 1 (2024): 18–24, <https://doi.org/10.47268/pela.v3i1.13063>.

⁴ Irwansyah, *Penelitian Hukum (Pilihan Metode & Praktik Penulisan Artikel)* (Yogyakarta: Mirra Buana Media, 2020).

passes by A's house and sees A's pet cat in an unhealthy condition, then on his own initiative, B feeds and drinks and bathes the cat, then B commits *Zaakwarneming* to take care of A's pet cat. Then are there any legal consequences of what B does? from the illustration and based on Article 1354 of the Civil Code, B is obliged to continue to care for A's pet cat until A returns home and takes care of it himself.⁵

The concept of *Zaakwarneming* is regulated in Articles 1354-1359 of the Civil Code. Article 1354 of the Civil Code states that: "Whoever voluntarily takes care of other people's affairs that are not given to him, must continue and complete the affairs, until the person concerned can take care of his own affairs." This article emphasizes that everything related to private matters is purely the business of the person concerned so that the voluntary initiative in taking action to take care of other people's affairs must be carried out continuously and responsibly, and must be completed until the dominus can continue his own affairs. Although in the management carried out by the gestor, Articles 1355-1356 of the Civil Code also provide a basis for the gestor to request reimbursement of costs incurred during management, provided that the action is carried out in good faith and is necessary for the interests of the dominus. What needs to be underlined is that the act of asking for reimbursement of expenses should not be equated with asking for wages. The gestor in the case of a voluntary action should not expect a fee in doing the arrangement, so that it is purely out of good faith to help until the dominus can do his own business. In detailing the development of *Zaakwarneming* in Indonesia, it is worth noting that this phenomenon not only reflects kinship traditions, but is also relevant in the legal domain.⁶

Based on Article 1354 of the Civil Code relating to *zaakwarneming* can be seen from the elements therein, such as:⁷ a) The act is done voluntarily, meaning on one's own consciousness without expecting anything in return. The one who performs the act has no interest in anything, except the benefit to the one concerned. In this case he acts solely out of willingness to help his fellow human beings, fellow family members, fellow friends; b) Without being authorized (Order), meaning that the person who performs the act acts on his own initiative without any message, order, or authorization from the interested party, either verbal or written; c) Representing the matters of another person, meaning that the person who performs the act is acting in the other person's interest, not his or her own. The matters of other people who are concerned can be in the form of legal actions or reasonable actions (ordinary) for example keeping animals, storing securities; d) With or without the person's knowledge, meaning that the interested person does not know that his interests are being carried out by someone else. However, if he knows about it, he does not authorize the person who organizes his interests. Thus, he tacitly consents to his interest being carried out by another person, even though it may be against his will; e) The obligation to continue and complete the work, meaning that once he has done something for the benefit of another person, he must carry it out until it is completed, so that the person whose interests are represented can enjoy the benefits or can do everything that is included in the work. For this reason, he is obliged to fulfill all the obligations of a good father. He is also obliged, according to the circumstances, to give an account. He is also obliged, according to the circumstances, to give an account; f) Legal action, meaning that in carrying out the act of

⁵ Arthur Daniel P Sitorus, "Mengenal Istilah Hukum *Zaakwarneming*," [indonesiare.co.id](https://www.indonesiare.co.id/id/article/mengenal-istilah-hukum-zaakwarneming), 2019, <https://www.indonesiare.co.id/id/article/mengenal-istilah-hukum-zaakwarneming>.

⁶ Michael Adi Nugraha et al., "Perkembangan *Zaakwarneming* Di Indonesia Dan Implementasinya Di Era Digitalisasi," *Diponegoro Private Law Review* 10, no. 2 (2023): 142-54, <https://ejournal2.undip.ac.id/index.php/dplr/article/view/21058>.

⁷ Hendrik Frederik Arnold Vollmar, *Pengantar Studi Hukum Perdata* (Jakarta: Rajawali, 1992), p. 135.

taking care of the interests, it must be carried out based on obligations according to the law (law), or acting not against the will of the interested party.

Zaakwarneming that occurs as a voluntary act of the gestor in taking care of the needs of the dominus can create legal loopholes. Although the gestor's good intentions are supposed to provide benefits, in practice this can result in losses for the dominus if the management carried out by the gestor for the interests of the dominus turns out to cause problems that may not be in accordance with the standards that should be or in accordance with the standards desired by the dominus, resulting in losses felt by the dominus. As a result, the gestor must be held responsible for the loss, although the responsibility must be placed on the actions taken by the gestor whether it has met the standard of duty and good faith expected in the legal relationship arising between the two, but there is no limit to what actions and to what extent are the benchmarks that the gestor has indeed caused harm in his zaakwarning actions. The principle of good faith has two meanings, namely: 1) Good faith in an objective sense, namely that an agreement made must be implemented with due regard to the norms of decency and morality, which means that the agreement must be implemented in such a way that it does not harm one of the parties. The consequence is that the judge can conduct a review of the contents of the agreement made by the parties if the implementation of the agreement is contrary to good faith; 2) Good faith in the subjective sense, namely the notion of good faith that lies in a person's inner attitude. In object law, good faith is usually defined as honesty.⁸

Based on Article 1354 of the Civil Code, voluntary actions taken by the gestor must be preceded by good faith in managing the affairs of the dominus. The actions taken must be based on the interests of the dominus, not for the personal interests of the gestor. In this context, gestor actions that harm the dominus due to negligence or misconduct may result in legal liability for the gestor. The gestor is liable for losses arising from negligence or misconduct in the management of the affairs of the dominus. This is in line with the general principle in civil law which provides that a person who causes harm to another is obliged to compensate for the harm. This principle emphasizes that the actions taken by the gestor must be careful and based on good faith. The gestor has the right to request reimbursement of costs from the dominus, as stipulated in Article 1355 of the Civil Code. However, such costs must be reasonable and necessary. If the gestor acts outside the interests of the dominus or incurs unnecessary costs, the dominus is not obliged to reimburse the costs. Reasonableness in the determination of these costs is important to develop the extent and extent of the reasonableness in question so as not to trigger a dispute between the gestor and the dominus.

Article 1356 of the Civil Code states that the dominus is obliged to reimburse the costs that have been incurred by the gestor during the management, to the extent that such costs are necessary and reasonable. This confirms that the dominus must appreciate the efforts made by the gestor in protecting its interests. The dominus must act fairly in reimbursing such expenses so as not to cause dissatisfaction on the part of the gestor. Dominus cannot reject the actions of the gestor that are done in good faith and for its interests, as stipulated in Article 1357 of the Civil Code. However, the dominus has the right to refuse if the action is not in accordance with its needs or is considered unnecessary. Dominus has the right to hold the gestor accountable for any action taken. This right is based on the general principle

⁸ Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian," *Jurnal Ius Constituendum* 5, no. 1 (2010): 66-82.

of accountability in civil law, whereby any person who manages the affairs of another without a mandate must be accountable for his actions. Transparency in reporting by the gestor is key to maintaining trust between the gestor and the dominus.

Zaakwarneming creates a Law of Obligation between the gestor and the dominus because it is based on the gestor's voluntary act of management. The gestor's act of managing the affairs of the dominus without a mandate creates a new legal relationship between the two parties, where the gestor acts as a voluntary representative, and the dominus has new rights and obligations that did not exist before. This bond is formed and binds both parties like an unwritten agreement between them. In principle, in every engagement, there is an intention that every agreement that has been made and agreed upon by the parties must be carried out in good faith, as stipulated in Article 1338 paragraph (3) of the Civil Code which states that all agreements must be made in good faith. Based on this article, it can be concluded that good faith is the basis for implementing the agreement.⁹ Volunteerism by the gestor can actually be interpreted as good faith because there is a good intention to help the dominus take care of its interests voluntarily without expecting anything in return. However, if in the future this action causes harm to the dominus, then the gestor must remain responsible with consideration for the dominus so that the responsibility carried out by the gestor is also a responsibility that is also based on the good faith of the dominus who appreciates the goodwill and volunteerism of the gestor in his willingness to take care of the interests of the dominus. This is in line with Article 1356 of the Civil Code which states that "...the Judge has the power to reduce the reimbursement of costs, losses and interest caused by the fault of the person representing the management, depending on the circumstances that caused the management". However, if we look at the theory of responsibility according to Hans Kelsen which 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 contrary act". Hans Kelsen further states that: "The failure to exercise the care required by law is called negligence; and negligence is usually regarded as another type of fault (culpa), although not as severe as the fault which is satisfied by anticipating and intending, with or without malice, a harmful result".¹⁰ Based on Hans Kelsen's theory, this zaakwarneming will raise questions regarding the extent of responsibility that must be carried out by the gestor in his actions? And if the gestor did not previously do zaakwarneming, then who should remain responsible if something untoward happens?

If referred to the example of the act of zaakwarneming in the case of taking care of a cat pet abandoned by its owner, A as a gestor who voluntarily takes care of the cat may experience obstacles in carrying out the management so that for example the cat is sick which causes A to be responsible for the losses suffered by B as the dominus who owns the cat. However, if the position is reversed where A chooses not to take care of the cat left by B, then it could be that the risk that B has to face is even greater because the cat is sick or potentially even the cat could die because no one is feeding it. Can the death of the cat be held liable to B who may be suspected of neglecting and abandoning his pet cat causing death? Therefore, related to Article 1356 of the Civil Code, according to the author, it is actually important to develop so that the good faith carried out in zaakwarneming is not

⁹ Rory Jeff Akyuwen, Wijaya Natalia Panjaitan, and Syadzwin Hindun Nabila, "The Principle of Good Faith In Transactional Agreements In The Community of West Seram Regency," *Batulis Civil Law Review* 4, no. 2 (2023): 119-28, <https://doi.org/10.47268/ballrev.v4i2.1842>.

¹⁰ H Salim HS and Erlias Septiana Nurbani, *Penerapan Teori Hukum Pada Tesis Dan Disertasi* (Jakarta: Raja Grafindo Persada, 2018), p. 7.

only imposed on the gestor who takes care of the interests of the dominus, but also imposed on the dominus whose interests have been voluntarily taken care of by the gestor.

CONCLUSION

The regulation of Zaakwarneming in Civil Law as a voluntary action must also provide a balanced position for the gestor and dominus so that there is no legal impact that only harms one party when Zaakwarneming is implemented.

REFERENCES

- Akyuwen, Rory Jeff, Wijaya Natalia Panjaitan, and Syadzwina Hindun Nabila. "The Principle of Good Faith In Transactional Agreements In The Community of West Seram Regency." *Batulis Civil Law Review* 4, no. 2 (2023): 119–28. <https://doi.org/10.47268/ballrev.v4i2.1842>.
- Arifin, Miftah. "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian." *Jurnal Ius Constituendum* 5, no. 1 (2010): 66–82.
- Dopo, Novita Angelina Lado, Agustinus Hedewata, and Petonius Damat. "Kajian Yuridis Tentang Zaakwaarneming Dan Penerapan Hukumnya Dalam Putusan Nomor 1574K/PDT/2011 Menurut KUH Perdata." *Jurnal Hukum Bisnis* 13, no. 3 (2024): 1–7. <https://doi.org/10.47709/jhb.v13i03.4109>.
- HS, H Salim, and Erlias Septiana Nurbani. *Penerapan Teori Hukum Pada Tesis Dan Disertasi*. Jakarta: Raja Grafindo Persada, 2018.
- Irwansyah. *Penelitian Hukum (Pilihan Metode & Praktik Penulisan Artikel)*. Yogyakarta: Mirra Buana Media, 2020.
- Mulyono, Dwi. *Sosiologi 1: Untuk Kelas X SMA Dan MA Kelompok Peminatan Ilmu-Ilmu Sosial*. Solo: Tiga Serangkai, 2017.
- Nugraha, Michael Adi, Aliph Ramahadi Wicaksana, Muhammad Hafidz Rafli, Damar Gierry Ferdiansyah, and Hidayat Muhammad Sugiharto. "Perkembangan Zaakwaarneming Di Indonesia Dan Implementasinya Di Era Digitalisasi." *Diponegoro Private Law Review* 10, no. 2 (2023): 142–54. <https://ejournal2.undip.ac.id/index.php/dplr/article/view/21058>.
- Panjaitan, Wijaya Natalia. "Akibat Hukum Wanprestasi Atas Perjanjian Lisan Pinjam-Meminjam Oleh Pasangan Kekasih Yang Tidak Terikat Perkawinan." *PATTIMURA Legal Journal* 3, no. 1 (2024): 18–24. <https://doi.org/10.47268/pela.v3i1.13063>.
- Sitorus, Arthur Daniel P. "Mengenal Istilah Hukum Zaakwaarneming." [indonesiare.co.id](https://www.indonesiare.co.id), 2019. <https://www.indonesiare.co.id/id/article/mengenal-istilah-hukum-zaakwarneming>.

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