

THE MOVEABLE GOODS AS A COLLATERAL OBJECT IN WAREHOUSE RECEIPT SYSTEM

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Abstract

The Law of Warehouse Receipt (Act No. 9/2006 about Warehouse Receipt System) has defined a new collateral object called Warehouse Receipt. Warehouse Receipt is a proof of ownership of a commodity that can be negotiable, exchanged and pledged. This article used Normative Juridical Assessment by assessing and analyzing the primary, secondary and tertiary legal material. It is related to the Law of Banking, generally in collateral, and particularly in Act No. 9/2006 about Warehouse Receipt System. Warehouse Receipt as a negotiable instrument can be classified into moveable goods. Such classification is based on an argument that Warehouse Receipt has an economical value. Thus, it can be used as a collateral object. Warehouse receipt as a pledged moveable good may comply with the terms of execution in pledge.

Keywords

warehouse receipt, moveable good, execution.

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Introduction

The establishment of Act No. 9 2006 about Warehouse Receipt System (amended by Act No. 9 2011 about the Amendment of Act No. 9 2006 about Warehouse Receipt System, which latterly called WRS Law) is a response to the problem that both businessmen and commodity exporters encounter. The problem often reveals when it comes to harvest time; a phenomenon on which the price of commodity dramatically declines and may potentially harm the commodity owners. In addition, they encounter some problems such as limited storage space (warehouse), too high warehouse expense, and the decline of price that leads to losses. Thus, it is reasonable for the owners of commodity to minimizing the possibility of losses by immediately selling their commodity.

Besides, they commonly have a financial problem due to the limited access to banking and no assurance of credit. They encounter several issues such as having no assurance in fixed assets, including land and building, and convoluted bureaucracy and administration. Therefore, Warehouse Receipt System is useful for the owners of commodity to store their goods during the harvest time, and thus, the price of the commodity may become stable after the harvest time. As mentioned in WRS Law, this system makes the owners of commodity may prolong their selling period.

Furthermore, the establishment of WRS Law is expected to create a necessary financial system of commerce in business field, including the owners of commodity. Consistent with R. Lacroix and P. Varangis that "Warehouse receipts can be used by farmers to finance their production, and by processors to finance their inventories," (Lacroix & Varangis, 1996) Daniele Giovannucci, in warehouse receipt system, argues that the owners of commodity may get access to credit and inventory collateral or warehouse for their commodity (ssm.com, 2013).

WRS Law aims to provide and improve the public access to legal assurance, which protect people and expand their access to utilize the financial facilities. This act addresses the needs of an instrument for public to get finance for their business, things they have been difficult to have since long time ago. It is also helpful for Small and Medium Enterprises (SMEs), groups of farmers, warehouse management, finance companies, and banks to get access to investments for developing their business (www.indonesia.go.id, 2013 & www.bappebti.go.id, 2010).

Research Problem

The purpose of Warehouse Receipt System is to support the assurance and stabilize the price of commodity, as mentioned in Act No. 9 2006 about Warehouse Receipt System, amended by Act No. 9 2011. One effort to reach this purpose is by optimizing the commodity classified into the object of WRS. Therefore, this article will discuss Warehouse Receipt as a collateral object under Warehouse Receipt System.

Discussion

The term “Warehouse Receipt” is a proof of evidence of ownership on goods deposited in warehouses. The Free Encyclopedia, Wikipedia of Bahasa Indonesia, defines the term “warehouse receipt” as follow.

“Warehouse Receipt is a proof of evidence for the ownership of goods deposited in a warehouse, and it is established by the warehouse management, and it is a security that functions as a trading instrument, as well as the part of marketing and financial system for many industrial countries.” (www.resigudang wikipedia bahasa Indonesia.co.id, 2014)

On the other hand, Food And Agriculture Organization Of The United Nations (FAO) defines, “Warehouse receipts are special security papers (which can be in an electronic format) issued by a warehouse operator (a warehousing company or a collateral manager) that prove that the commodity has been deposited, the ownership of the commodity, and the warehouse’s obligation to deliver the commodity to the legitimate holder of the receipt.” (Hollinger & Rutten, 2009) Furthermore, Devajit Mahanta, argues, “Warehouse Receipts are documents issued by warehouses to depositors against the commodities deposited in the warehouses and this gives depositors the confidence that their commodities will be stored with guaranteed quality and quantity.” (Mahanta, 2012) Warehouse Receipt is also called warrants. It is a document of ownership on particular goods with particular characteristics, stored in a warehouse along with particular warehousing expense.

As mentioned in the previous section, Article 1 subsection (2) of WRS Law defines that Warehouse Receipt is a document of evidence of the ownership on goods stored in a warehouse, and it is established by the warehouse management. Hence, it refers to a proof of evidence of the ownership on goods deposited and stored in a warehouse, which is established by the warehouse management. It is defined as document of title over the goods stored in warehouses, and it is established by Warehouse Management.

Basically, the provision of Article 1 subsection (5) WRS Law mentions that the commodity deposited in warehouses under WRS is solely moving objects which can be stored in particular period of time and publicly traded. Although WRS Law does not defines the kinds of commodity to be stored, it provides some criteria for the kinds of commodity to be stored under the Warehouse Receipt System. First, it is moving objects to be stored in particular period of time. Second, the moving objects are publicly traded.

Furthermore, the provision of Article 3 subsection (2) of Government Regulation No. 36 2007 sets the criteria of commodities to be stored under Warehouse Receipt System, as follow.

- a. It should have the storage energy at least 3 (three) months, without decompressing or decreasing either the quality or the quantity of the pertinent commodity under the limits of general tolerance in trade practices for the pertinent commodity;
- b. It should meet particular standard of quality; and
- c. The minimum amount of commodity to be stored, in order to have an efficient cost (cost-benefit relationship). The less the commodity is deposited, the less effective the establishment of Warehouse receipt will be. Therefore, Department of Supervisory has determined the minimum amount of stored commodity.

The Warehouse Receipt should meet the criteria mentioned in Article 5 of WRS Law, asserted more in the provision of Article 4 subsection (1) of Government Regulation No. 70 2013, as follow

- a. The title of Warehouse Receipt;
- b. The kind of Warehouse Receipt;
- c. Name and address of the owner of commodity;
- d. The location of warehouse;
- e. The date of establishment;
- f. The number of establishment;
- g. The due date of deposit;
- h. The description of commodity;
- i. The cost of deposit;

- j. Deleted;
- k. Security Code;
- l. Letterhead of warehouse management; and
- m. Signature of the commodity owner and warehouse management.

Based on the provision of Article 4 subsection (1) of Government Regulation No. 70 2013 about the Amendment of Government Regulation No. 36 2007 about the Implementation of Act No. 9 2006 about Warehouse Receipt System (later called Government regulation No. 70 2013) it finds that the document of Warehouse Receipt established by Warehouse Management will be broken and objected when it does not meet those all criteria.

Frank Hollinger and Lamon Ruten, in their study, also described information that should be mentioned in Warehouse Receipt, including: (1) location and amount of the commodity in storage; (2) year, harvest and quality of the commodity; (3) information about insurance; (4) information about endorsements of the receipt; and (5) any other important information related to the contractual agreement between the depositor and the warehouse operator (Hollinger & Rutten, 2009).

Toward the essence of Warehouse Receipt as an object, Article 499 BW has defined that objects refer to each good and right that can be controlled by proprietary right. As previously described, Warehouse Receipt is a security which can be traded (i.e., with economy value) and transferred. With such nature, Warehouse Receipt is categorized into an object.

With transferable Warehouse Receipt, this document is classified into moving objects. The provisions of BW classify moving objects into two categories, including: due to its nature of naturally moveable (Article 509 BW) and due to legislation (Article 511 BW) (Soedewi, 1981).

Based on its nature, the proprietary warrant is classified into 2 (two) categories, including tangible and intangible. The former one involves moving and unmoving assets. The later one, particularly those that banks commonly take as a warrant for credit is account receivable rights.

Toward Warehouse Receipt, the owner of this document has rights over the commodity they store in warehouse by showing the document of Warehouse Receipt they bring with them. Furthermore, based on Article 4 subsection (1) WRS Law, it can

be transferred to other parties as well. Transferring the document of Warehouse Receipt should correspond to the types of the Warehouse Receipt itself. On-behalf Warehouse Receipt should be transferred by cessie, and by-order Warehouse Receipt should be transferred by endorsement. Article 8 subsection (3) WRS Law mentions that every individual is required to report every Warehouse Receipt Transferring they make to the Registry Center.

According to the previous section, it defines that Warehouse Receipt is a collateral object in collateral right over the Warehouse Receipt. Defining collateral object as goods, it argues that the collateral right on Warehouse Receipt is a proprietary right that provide warrant (zakelijk zekerheidsrecht). It finds that the provision of Article 1 subsection (9) WRS Law mentions that:

“The right of warranty on Warehouse Receipt, later called collateral right, is those charged to Warehouse Receipt for liability reimbursement, and it provides a priority to recipient of the right against other debtors.”

According to that article, it finds that collateral right on Warehouse Receipt is a proprietary right that provides warranties over particular objects, in particular to the debtors' Warehouse Receipt, for the sake of their liability reimbursement to the creditor, and they may become priority against other debtor.

Bank, as an inter-mediatory body, has particular characteristics in business field. It works with assets that mostly derive from public funds. In order to keep the public trust, banks always implement the Principles of Prudence in each of their activities, including credit.

Article 8 subsection (1) of Act No 10 1998 about the Amendment of Act No. 7 1992 about Banking (later called Law of Banking) defines the term 'credit' as follow.

“Credit or financing by banks, following the principle of Syari'ah, brings several risks within, thus, the implementation should consider the principles of credit or financing under a fair Syari'ah principles. To minimize the possible risks, it needs warranties for financing. Based on the Principle of Syari'ah, trusting debtors' competence and capability to repay their loan as what is mentioned in agreement is a crucial factor that banks should take into account. Therefore, to keep that trust, banks should take a very careful appraisal on the personality, competence, assets, collateral, and the business plan of their prospective debtors before providing credit.

In order to trust the capability of debtors to repay their liability, and given that collateral is one element of having credit from bank, it may only be in the form of goods, projects, or the right of liabilities financed by the pertinent credit. Furthermore, the land area (e.g., girik, petuk, and other similar ones) which proprietary right is based on common law can be used as collateral. Banks may not ask for collateral in the form of goods that has nothing to do with the financed object, commonly called additional collateral. In addition to Syari'ah Principles, banks should consider the result of their analysis on Environmental Effect, especially for big-scale and/or high-risk companies, in order to make the financed projects keep maintaining the environment."

In term of implementing the principles of prudence in providing credit, the Law of Banking mentions that banks should consider the principles of financing before providing any credit to debtors. Trusting the capability of debtor to repay their loan as mentioned in an agreement is crucial for banks to consider.

The creditors' trust on debtors' capability to repay their loan is seen as warranty of the credit. Furthermore, collateral is an additional warrant, as defined in Article 1 subsection (23) of Banking Law that it is a proprietary warrant in the form of goods, projects, or rights of liability. Banks may not ask for any additional warrant if they have already had the trust of the debtors' capability to repay their loan through the primary collateral. Thus, the primary function of collateral is to secure and facilitate the credit by banks.

Article 4 subsection (2) of WRS Law defines that "Warehouse Receipt, as a proprietary document, can be fully used as a warrant of loan without requiring any additional collateral." The legislators see this primary collateral as a proprietary warranty in providing loans. In relation to collateral objects, Warehouse Receipt is classified into an object with limited period of time, in case of the kind of commodity mentioned in that receipt. Therefore, Warehouse Receipt can be utilized as a warranty of credit which period of time should correspond to the quality of the commodity within. The lower the quality, the lower the price will be. In general, such characteristic is consistent with those on short-term loans, which only takes short time for its reimbursement. It also corresponds to the needs of the owners of Warehouse Receipt as well, given that farmers need a short-term loan as their asset before selling their crops.

In juridical context, banks take Warehouse Receipt as collateral, as mentioned in the Regulation of Bank of Indonesia No. 14/15/PBI/2012 about the Appraisal of Quality

on the Assets of Public Banks. The provisions of Article 46 of the Regulation of Bank of Indonesia No. 14/15/PBI/2012 are as follow.

“Collaterals to be considered as the subtrahend in the establishment of PPA are as follow.

- a. Securities and stocks that are actively traded in Indonesia stock exchange or having a level of investment and to be engaged in fiduciary;
- b. Land, building, house in mortgage;
- c. Machines embedded with land and in mortgage;
- d. Airplanes or ships which size is over 20 (twenty) meter cubic and in mortgage;
- e. Motor-driven vehicles and supplies in fiduciary; and/or;
- f. Warehouse Receipt engaged in a collateral right of warehouse receipt (written in italic by the author).”

Overall, it infers that Warehouse Receipt is a security that shows the ownership of particular commodities stored in warehouse. It is classified into a tangibly moving object. Thus, it belongs to an object with proprietary natures which can be either traded, transferred, or even mortgaged due to its economic value.

Conclusion

The provision of Article 499 BW mentions that every good and right may belong to proprietary right. As in discussion, Warehouse Receipt can be traded and/or transferred due to its economic value. Thus, it can be defined as an object. Furthermore, given its movable nature, Warehouse Receipt is classified into moving object. The provisions of BW divide moving objects into two categories, including: due to its nature (as mentioned in Article 509 BW) and due to legislation (as mentioned in Article 511 BW).

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