



Ius Constituendum Perspective of Movable Object Guarantee Bill in the Implementation of Warehouse Receipt Guarantee Execution

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Abstract— The problem of executing warehouse receipt collateral objects in Indonesia is a complex problem which has an impact on concerns about default by debtors in carrying out their achievements. This makes warehouse receipts minimally attractive to financing institutions, both banking and non-banking. Therefore, further regulations are needed that can minimize risks, losses, and provide legal protection for creditors as holders of collateral rights. Through normative juridical research using a statutory approach and a conceptual approach, it is hoped that it can provide a solution to the problem of executing warehouse receipt guarantees in Indonesia. The research results show that the norms in the Movable Property Guarantee Bill can minimize losses by facilitating the execution process through one integrated service by the ministry which is carried out online. Apart from that, it is necessary to regulate the authority for execution by creditors which is agreed upon through a guarantee agreement as formulated in Article 42 of the Bill on Moving Object Guarantees. This not only simplifies the execution process by creditors, but also provides legal protection to the parties.

Keywords— Warehouse Receipt, Guarantee, Execution.

I. INTRODUCTION

A. Background

The development of the world economy is currently very rapid, this has resulted in the influence of trade economic movements in Indonesia. It seems that economic development is not evenly distributed in all sectors in Indonesia. Many sectors then did not experience development, instead experiencing losses due to several existing factors. Economic development in Indonesia can be felt by sectors engaged in services and goods that can be marketed through online media. However, sectors that cannot be marketed via online media have experienced a decline in interest and sales.

This is shown in the food security sector which is still experiencing several problems in its trade. The problems currently occurring in the field in the food security commodity sector are influenced by several factors, one of which is climate change in Indonesia, such as long dry seasons that cause drought, heavy rain that causes floods, and so on. Especially during the harvest season in the agricultural sector, the selling price of the harvest is not so expensive because the harvest is abundant.

Another factor that occurs in the food security sector that occurs among fishermen regarding the marine catches they obtain is that the quantity of catch is abundant, but the selling price of these marine products is cheap for



collectors. The current condition of food security in Indonesia is worrying. Reporting from the Global Food Security Index (GFSI) states that since 2021 it has had a score of 59.2, which previously reached 61. This figure places Indonesia in 69th position out of 113 countries for food security.[1]

Based on these factors, it is necessary to have a storage place for agricultural and fishing commodities obtained by the community, so that they reach market prices that are higher than before and of course in this case the community needs additional capital for the replanting process and other capital. Therefore, in order to realize national development in terms of food security in Indonesia, and the government in order to provide convenience for the community, the food sector that is stored in warehouses, and has a warehouse receipt (proof of ownership of goods in the warehouse) can be used in terms of selling -purchase, transfer of ownership, until it is registered as collateral for a financing agreement by banking and non-banking institutions called the Warehouse Receipt System.

Through Law Number 9 of 2006 concerning the Warehouse Receipt System as amended into Law Number 9 of 2011 concerning Amendments to Law Number 9 of 2006 concerning the Warehouse Receipt System (hereinafter referred to as the Warehouse Receipt System Law), states that What is meant by warehouse receipt system are activities related to the issuance, transfer, guarantee and settlement of transactions on warehouse receipts.

The warehouse receipt system in Indonesia, which is used as collateral for credit agreements for financing by banking or non-banking institutions, can make it easier for farmers, fishermen and livestock breeders whose commodity products can be stored in warehouses.

Commodities that can be stored in warehouses and become objects of warehouse receipts are any movable objects in the form of commodities that can be stored for a certain period of time and can be traded generally, such as rice, corn, grain, wheat, coffee, rubber, rattan, cocoa, salt, fish, even frozen chicken (vide the Decree/Regulation of the Head of the Commodity Futures Trading Supervisory Agency).

The convenience provided by the government regarding the implementation of the warehouse receipt system as collateral for financing agreements by banking and non-banking financing institutions as regulated in the Warehouse Receipt System Law and its derivative regulations, to the extent of expanding the object of warehouse receipts apparently is still a problem in guaranteeing warehouse receipts in Indonesia. This is because there are still many financing institutions, both banking and non-banking, who doubt the existence of the warehouse receipt system.

These doubts include the existence of a gap in the warehouse receipt object. What is meant by gap is the discrepancy in the value of the product between what was promised and what is perceived as the actual value of the warehouse receipt object.[2]In this case, it is possible that there will be a decrease in the value of the commodity before it is guaranteed and at the time of execution of the guarantee if there is a default by the debtor to the creditor.



Furthermore, there are limitations in reaching products (product constraints), namely regarding the debtor's ability to repay the financing provided by creditors, which in this case are banking and non-bank financing institutions.[3] Still related to the previous problem, this is a concern for creditors in providing financing, namely regarding the occurrence of default by the debtor.

Information imbalance is also one of the factors that causes creditors to hesitate in providing financing for warehouse receipts.[4] Public awareness regarding warehouse receipts is one of the determining factors for stakeholders to provide financing to debtors. The lack of information provided by debtors to creditors makes financing institutions hesitant in providing credit financing to debtors.

This makes warehouse receipts used as collateral for financing unable to satisfy creditors, because practically it can raise concerns about legal protection. Moreover, several provisions regulated in the Warehouse Receipt System Law can make the position of creditors weak.

These doubts form a unity which leads to creditors' fear of carrying out execution on warehouse receipt objects. Apart from that, up to now, legal protection for creditors for the execution of warehouse receipt guarantees in Indonesia is considered to be still minimal because the execution of private sales must be with the debtor's approval and warehouse management.[5] So in this case it is interesting to study further regarding legal protection for parties in the process of executing guarantees for warehouse receipts in terms of the Movable Property Guarantee Bill in Indonesia.

B. Research Methods

This research is a normative juridical research which is carried out by reviewing legal provisions by conducting a literature study, which will be analyzed on a legal issue through statutory regulations. This research uses a statutory approach (Statute Approach) which will be used as a reference in This study is both vertical and horizontal.[6] As well as a conceptual approach that is adapted to the issue that is the object of this research.[7]

II. DISCUSSION

1. Charging Warehouse Receipts as a Collateral Object for Principal Financing Agreements by Banking or Non-Banking Financial Institutions

Warehouse receipts based on Article 1 number 2 of the Warehouse Receipt System Law are documents which are proof of ownership of a commodity object stored in a warehouse issued by the Warehouse Manager.

A warehouse receipt can be traded, transferred, and can be used as collateral for financing by banking or non-bank institutions. The regulation of security rights over warehouse receipts is regulated in Article 1 point 9 of the Warehouse Receipt System Law, which states that security rights over warehouse receipts are the imposition of collateral on warehouse receipts for debt repayment which has a priority position for the recipient of the security rights over other creditors.



This is done by the government in order to support sectors that have potential in commodities produced by the community to obtain convenience in terms of buying and selling, commodity transfer, and/or financing. Therefore, the participation of the central, regional and community governments is needed to create a business climate that encourages national development, especially in the country's economic sector.[8] Warehouse receipts which are used as collateral objects for the principal financing agreement are regulated in BAPPEBTI Head Regulation Number 09/BAPPEBTI/PERSRG/7/2008.

In general, the imposition of guarantees on movable objects can be carried out, referring to the legal provisions of guarantees contained in Burgerlijk Weetboek (BW) which are implicitly contained in Article 1131 BW. Both movable and immovable objects can be used as collateral for debtors' debts. Objects as referred to in BW are those contained in Article 499 BW, which are called material goods, material means every right and every item that can be controlled by property rights.

Furthermore, for movable objects that can be encumbered with collateral from the debtor, in accordance with the provisions of Article 1133 BW, the creditor of the collateral is called a preferred creditor, namely a creditor who has a priority position because of the material rights granted to him by the debtor (vide the Law Warehouse Receipt System). This material guarantee becomes an absolute right to an object, with a direct relationship from the debtor, so that it can be defended against anyone, and can be transferred.[9]

Provisions regarding guarantee agreements as security for a main agreement are not specifically regulated in the BW. However, objects that are classified as material guarantees for a principal agreement, such as fiduciaries and warehouse receipt systems, have been regulated in each implementing law and regulation. Regarding the procedures for an agreement that makes a warehouse receipt an additional agreement or guarantee, Regulation of the Head of BAPPEBTI Number 09/BAPPEBTI/PERSRG/7/2008 states that there are several elements that must be fulfilled, namely:

1. Verification of warehouse receipts by applicants for collateral rights carried out through the registration center;
2. The registration center will carry out further verification regarding the validity of the warehouse receipt, the owner of the warehouse receipt, the term of the warehouse receipt, and the value of the warehouse receipt, to check whether the warehouse receipt has been encumbered with security rights or not.
3. If the verification is approved by the registration center, then the parties can then sign an agreement to assign security rights to the warehouse receipt.[10] The contents of the agreement are not permitted to violate the provisions as regulated in the Warehouse Receipt System Law.
4. Furthermore, the agreement must be immediately notified to the warehouse management by attaching proof of confirmation from the registration center, a copy of the agreement on the assignment of security rights, and a copy of the warehouse receipt.
5. The registration center will update the warehouse receipt status and record the encumbrance of the collateral rights. Then confirmation evidence will be sent to the parties regarding the receipt of the recording of the warehouse receipt guarantee.



6. Changes to the security rights agreement must be notified to the registration center in accordance with the provisions contained in the Regulation of the Head of BAPPEBTI Number 09/BAPPEBTI/PERSRG/7/2008.

Based on the provisions above, there are several parties who play an active role in guaranteeing warehouse receipts, namely 1) the owner of the goods (the applicant for guaranteeing the warehouse receipt) who is a legal subject who stores his commodities in the warehouse for a predetermined period of time, and the holder of the warehouse receipt; 2) warehouse managers who are individuals or corporations who own warehouses and can issue warehouse receipts that are suitable as financial/financing instruments and have legal force because they are under the supervision of Bappeti[11].

3) Banking/non-bank financing institutions, in this case the creditors who will receive guarantees for warehouse receipts from the owner of the goods. There are other parties who also determine whether the guarantee for warehouse receipts is declared valid or not, namely the registration center, the conformity assessment institution, the receipt supervisory body, the warehouse receipt guarantee institution and Notary officials if necessary for making deeds of additional agreements for guaranteeing warehouse receipts for debt agreements. receivables or credit financing by banking or non-bank financing institutions.

Regarding the guarantee agreement for warehouse receipts, only one debt guarantee can be charged (see Article 12 paragraph 2 of the Warehouse Receipt System Law). The Warehouse Receipt System Law does not regulate the obligations of the parties to make a guarantee agreement before a Notary official and make it into a deed of agreement. Agreements for guaranteeing warehouse receipts can be made by private agreement.

The government guarantees the ease of guaranteeing warehouse receipts in Indonesia. This is done to simplify the registration process and implementation of warehouse receipt guarantees. However, this is not necessarily what is expected by financial institutions, both banking and non-banking, as creditors.

In fact, guaranteeing warehouse receipts is something that is difficult to do, because commodities, whether agricultural products, plantations, or even seafood caught by fishermen, are goods that can experience a decline in quality over a certain period of time.

This is what then becomes doubtful for financing institutions as creditors to provide financing to warehouse receipt owners, because the value and quality of commodities can have an impact in the future becoming semi-finished commodities, ready-to-use commodities, or can even rot within a certain period of time. Especially if the debtor defaults and cannot pay off the debt to the creditor.

Therefore, guaranteeing warehouse receipts is the last option chosen by financing institutions because it carries a high risk when the debtor defaults in the future which could result in losses for creditors in executing warehouse receipts in Indonesia.



2. Direction for Regulation of the Execution of Guarantees for Warehouse Receipts in the Moving Objects Guarantee Bill in Indonesia

In a credit agreement, both the debtor and the creditor are definitely faced with credit risk. The risk that may arise is the debtor's inability to pay his obligations, either due to deliberate reasons/bad faith or force majeure which results in the debtor being unable to repay the loan, resulting in loss of business capital. If the creditor is in a state of default where the debtor is unable to pay his obligations, one of the legal protection steps that can be taken by the creditor to protect his rights is by carrying out execution on the object that was pledged as collateral at the start of the credit agreement.

The position of preferred creditor means that the creditor gets debt repayment before other creditors, in this case having a position in repayment of the debtor's debt, which can be carried out by executing the guarantee given by the debtor if the debtor has been proven to be in default. Obtaining guarantees for debt repayment through movable objects in the form of warehouse receipts apparently does not necessarily make creditors feel secure over debtors' debts.

The position of preferred creditors should have the highest position in terms of paying off debts before other creditors. The repayment, as stated by Herowati Poesoko, is carried out by executing the collateral object. Creditors as collateral holders can exercise their rights to carry out execution in accordance with statutory regulations.[12] This execution can be carried out in several ways, namely through execution with an executive title or execution without an executive title.[13]

The absolute right to guarantee material goods in warehouse receipts is not the main benchmark in providing financing to debtors. Even though the warehouse receipt as collateral is under the creditor's control[14] What makes it easier for creditors to execute when debtors are in default does not necessarily make it easier for debtors to obtain credit financing from creditors. This is because there are several problems that are considered not to provide legal protection and pose a high risk to creditors.

This problem concerns the debtor's inability to carry out achievements, which in this case is paying debts to creditors. The debtor's inability to meet his achievements should not be something that the creditor is worried about, because there is a guarantee for debt repayment by the debtor to the creditor. However, creditors still feel this concern regarding warehouse receipt guarantees in Indonesia.

Regulations regarding the execution of warehouse receipts as collateral for a principal agreement are regulated in detail in statutory provisions, namely in the Warehouse Receipt System Law, and the implementing regulations below. However, obstacles to execution do not only occur because legal regulations do not provide legal certainty to the parties.

However, technically there are also problems that cause doubts for creditors in accepting warehouse receipts as collateral for a debt or financing agreement.



The problem that occurs is the risk of decreasing the selling value and quality of commodities that are the object of collateral for warehouse receipts in Indonesia. Currently, there is still minimal interest. Over a certain period of time, as a result of natural resource commodities, of course the quality of the warehouse receipt object will increase or even decrease. If there is an increase in quality, which in this case can occur in agricultural commodities, from raw goods to semi-finished goods, or even finished goods, it can provide profit opportunities for creditors.

Meanwhile, if the commodity experiences a decline in quality, this then becomes a problem for creditors in carrying out execution. Of course, this will have an impact on the sales value and the seller's interest in purchasing the commodity that is the object of collateral from the warehouse receipt. Apart from that, another technical problem that occurs is regarding demand for commodities for warehouse receipts which is less widespread. Many private sectors are not familiar with commodities and how to purchase warehouse receipts in Indonesia.[15]

This was stated by Bappeti in a study conducted by Azizah Fauzi entitled Increasing Farmer Participation in the Warehouse Receipt System, stating that currently Bappeti's passive role in involving the private sector to increase the connectivity of the warehouse receipt system in Indonesia is one of the inhibiting factors for the warehouse receipt system. in becoming an object of collateral for credit in Indonesia.[16] These technical problems are considered to have an impact on the warehouse receipt guarantee process.

First, the encumbrance of the warehouse receipt object as collateral for the financing agreement is carried out through a guarantee agreement as explained in the previous sub-chapter. This agreement can be carried out with an authentic deed, which is interpreted in two ways, namely a private agreement or a deed of guarantee rights agreement before a Notary official (see Article 14 paragraph (1) of the Warehouse Receipt System Law). Meanwhile, in Article 1868 BW, what is meant by authentic deed is a deed made by or before an authorized public official,[17] in the agreement on the guarantee of the warehouse receipt, namely the notary.[18]

Although in Article 16 paragraph (1) of the Warehouse Receipt System Law it is clear that "If the giver of the Guarantee Rights breaks his promise, the recipient of the Guarantee Rights has the right to sell the collateral object under his own authority through a public auction or direct sale."

Furthermore, paragraph (2) states that the creditor can take repayment of receivables upon the sale of the collateral object. Based on these provisions. However, the implementation of Article 16 of the Warehouse Receipt System Law in Indonesia has not fully provided legal protection to creditors.

The limits on the execution of collateral objects on warehouse receipts are contained in Article 16 paragraph (3) of the Warehouse Receipt System Law which states that the sale of collateral objects on warehouse receipts can only be carried out with the knowledge of the party giving the guarantee, in other words the sales execution process is done under the hands of [19] or execution through public auction [20] must be known by the debtor. Furthermore, the execution process through public auction is regulated in Government Regulation no. 36 of 2007



concerning Implementation of Law Number 9 of 2006 concerning the Warehouse Receipt System (hereinafter referred to as PP 36/2007). Article 22 of PP 36/2007 states that notification of an execution will occur no later than 3 days before the auction is held to the debtor, warehouse manager and registration center.

In the event that the execution is carried out by direct sale, Article 23 PP 36/2007 determines the same thing as the execution through public auction regarding written notification of the execution at least containing:

- a. Description of the guarantee object which includes the type, quality level, quantity and class of goods if any;
- b. Price offered; And
- c. Time and place of direct sales execution.

Technically, it is further regulated in the provisions of the Head of Bappeti Regulation Number 09/Bappeti/PER-SRG/7/2008 concerning Technical Guidelines for Guaranteeing Warehouse Receipts.

The large number of parties involved in the process of executing collateral for warehouse receipt objects in Indonesia makes the execution process by creditors complicated.

Moreover, the execution of warehouse receipt guarantees through public auctions must be carried out at the State Receivables and Auction Service Office (KP2LN) which is not accessible in every city/district area in Indonesia. In addition, the diversity of legal regulations regarding movable objects as collateral in Indonesia means that each other experiences conflicting norms in their application, especially in terms of executing collateral objects.

This factor is one of the driving forces for the government to draft the Law on Guarantees for Moving Objects (hereinafter referred to as the Bill on Guarantees for Moving Objects), with the aim of integrating the regulations regarding guarantees for movable objects which are currently considered to be still fragmented.

The execution provisions formulated in the Movable Object Guarantee Bill have been standardized, so as to minimize fragmentation between collateral arrangements with one guarantee institution and another. This can also shed light on the problems that exist in regulating warehouse receipts as collateral in the WRS Law. Referring to the provisions of Article 42 of the Bill on Guarantee for Moving Objects, it explains that the debtor's assets (proven to be in default) are guaranteed by a deed of guarantee rights agreement. [21] can be executed with:

1. private sales based on agreement between creditors and debtors;
2. public auction of collateral objects is within the creditor's power;
3. implementation of executorial title.

Furthermore, Article 45 of the Bill on Moving Object Guarantees explains that executions as in Article 42 must be announced first in the Moving Objects Guarantee system which is managed by the Minister.

The regulation of Article 42 of the Bill on Moving Property Guarantees is one solution to the juridical problems in the SRG Law regarding the authority to execute by creditors which should be regulated in the Deed of Agreement



Granting Security Rights. This can make things easier and provide legal protection to creditors in carrying out executions without an executorial title. Furthermore, the provisions formulated in Article 45 of the Bill on Guarantee for Moving Objects become effective if applied to the provisions on warehouse receipts as collateral. Because notification of the Movable Object Guarantee system managed by the Minister can be a breakthrough in One Stop Integrated Services (PTSP) regarding notifications to other parties concerned.

Because of the conveniences that are considered more effective in the provisions of the Moving Object Guarantee Bill, especially the provisions for execution of collateral objects which are adjusted to the needs of each type of transaction and type of object. So, based on the above analysis, the regulations in the Bill on Guarantees for Moving Objects are sufficient to meet the needs for regulations regarding guarantees for movable objects in Indonesia.

III. CONCLUSSION & SUGGESTION

A. Conclusion

The imposition of collateral for financing agreements on collateral objects for warehouse receipts in Indonesia is subject to statutory regulations as positive law.

This is regulated in the Warehouse Receipt System Law, and the implementing regulations below it. However, regarding the imposition of collateral on warehouse receipts, there are several problems that are of concern to creditors, namely regarding the execution of collateral if the debtor is proven to have defaulted, such as a decrease in the quality of the object of the warehouse receipt, the form of agreement that is still possible in the form of a private agreement, a complicated execution process and Many parties are involved in the execution process.

This can be overcome by formulating norms in the Moving Property Guarantee Bill, such as in Articles 42 and 45 which regulate the ease of the execution process managed by the ministry through One Stop Integrated Services (PTSP).

B. Suggestion

For the Government, it is hoped that the provisions stipulated in the Bill on Guarantees for Movable Objects can be adapted to all types of guarantees that apply in Indonesia, so that there is no prevalence of legal regulations regarding the imposition of guarantees for movable objects in Indonesia.

For Bappeti, to pay more attention to the existence of the warehouse receipt system in Indonesia so that it is more attractive not only to people who operate in the warehouse receipt commodity sector, but also to private parties as buyers or consumers of the warehouse receipt system.

For commodity owners of warehouse receipts, they should pay more attention to and maintain and take into account the value and quality of the warehouse receipt object so that it can be used as collateral for credit financing by banking and non-bank financing institutions.



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