

Legal Protection of Bank as the Recipient of Warehouse Receipt Security According to Law No. 9 of 2011 Regarding Warehouse Receipt System

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ABSTRACT--*The banking industry has an important and strategic function in economic activity. In distributing funds or credit to borrower, a bank must first conduct a careful assessment toward the character, capacity, capital, condition of economy, and collateral of debtor. Warehouse Receipt is one of instruments that can be used as a security or collateral. In an effort to provide protection for the banks, Law No. 9 of 2011 on Warehouse Receipt System confirms that bank as recipient, shall notify the Warehouse Receipt collateral agreement to the Center of Registration and the Warehouse Manager. Warehouse receipt as collateral must be registered in Indonesia Futures Clearing Company (PT. Kliring Berjangka Indonesia) as the Center of Registration, to be recorded in the Register of Imposition of Guarantee on Warehouse Receipt Rights. In addition, the Warehouse Manager is responsible on any writing error in Warehouse Receipt and of the loss or damage of goods, either caused by its negligence in storing and delivering, or as a result of fire, thief, and flooding. The imposition of rights on Warehouse Receipt in Bank Rakyat Indonesia is implemented based on Circular Letter No. S.2-DIR/ADK/01/2008 governing the Loan of Working Capital Guaranteed by Warehouse Receipt. The research was conducted using a juridical-normative method referring to legal norms. The study concluded that Law No. 9 of 2011 on Warehouse Receipt System has provided sufficient protection for banks. The imposition of guarantee on Warehouse Receipt rights in Bank Rakyat Indonesia is in accordance with the said law. The process itself is conducted in three stages, firstly preceded by a basic loan agreement, followed by a Warehouse Receipt collateral agreement imposing the rights guarantee on Warehouse Receipt, and lastly, the registration of Warehouse Receipt as collateral to the Center of Registration.*

Keywords: legal protection, bank, Warehouse Receipt

I. INTRODUCTION

So far, it is rare for banks to accept warehouse receipts as collateral. Whereas the system of granting credit with a Warehouse Receipt guarantee is a development in the legal guarantee system in Indonesia, where the material object which is used as collateral is the object of agricultural products owned by farmers in this case is grain. Viewed from a legal perspective, there has been formal legality, whereas from a cultural perspective there is no trust (trust) from the banking community itself or the farming community will benefit from the Warehouse Receipt as collateral.

Warehouse Receipt Arrangements are eligible for bank loan guarantees by fulfilling certain conditions mentioned in Article 12 paragraph 2 of Act Number 9 of 2011 concerning Amendments to Act Number 6 of 2006 concerning the Warehouse Receipt System (WRS Act), as well as Bank Indonesia Regulation No. 14/15 / PBI / 2012 concerning Asset Quality Assessment The Bank has recognized the existence of Warehouse Receipts as objects of bank credit guarantees.

Judging from the legal substance, the rules of the Warehouse Receipt as an object of collateral in WRS Act shows that there is no clarity or consistency in the arrangement of the Warehouse Receipt guarantee object in banking practices in the case of takers. Transfer of the object of the Warehouse Receipt guarantee when the contractor guarantees the right, namely as referred to in Article 16 of WRS Act, it is said that the guarantor if the contract fails, the receiver of the guarantee (Bank) possesses the title to sell the object guarantee by their power through direct auction / sale, and also can take the payment of receivables directly. Meanwhile, Article 26 WRS Act regulates that the guarantor if injured promise, then the warehouse manager can sell the Warehouse Receipt s direct or through auctions / public auctions with the approval of the regulatory body.

The existing legal body is still not in line with the duly exercise of the WRS Act, since institutions linked to the Warehouse Receipt are frail. Culturally the law is not yet supportive, meaning that there is no culture / awareness of the farming community on the benefits of implementing the Warehouse Receipt as an object of collateral. Besides the benefits to improve farmers' welfare by delaying selling, the quality of grain and economic value of grain are maintained, but farmers prefer to sell directly to entrepreneurs / middlemen.

Based on the description above, it is necessary to have a study and analysis of legal protection of the Bank as the receiver of the collateral right for the Warehouse Receipt. The focus of this research is on the study of legal protection of the Bank as the recipient of the guarantee rights to the Warehouse Receipt with justice value as the center point of view. This relates to the development of collateral law in Indonesia, where the Bank as the recipient of collateral rights in providing credit is willing to accept the Warehouse Receipt guarantee as the object of collateral.

Derived from the mentioned focus above, the problems in this study are formulated as follows:

1. Why is the legal protection of the Bank as the recipient of the collateral right to the Warehouse Receipt currently not maximized?
2. What constraints does the Bank face with regard to legal protection that should be accepted as the recipient of collateral rights to the Warehouse Receipt?
3. How is the reconstruction of legal protection for the Bank as the recipient of the collateral right for the Warehouse Receipt with justice as the main point of view?

WRS Act stipulates that the Warehouse Receipt is eligible as a form of collateral for bank loan. The eligibility of Warehouse Receipt as a credit guarantee depends on whether it fulfills the requisite in the WRS Act or not, among others, the Warehouse Receipt is issued by the authorized Warehouse Manager who has permission from the Supervisory Agency. One Warehouse Receipt can only be linked with one loan guarantee. Receiver of the guarantee rights must notify the binding agreement of the Warehouse Receipt and the levy of the guarantee rights on the Warehouse Receipt made with the Deed of the Collateral Rights Agreement. Warehouse receipts as one of the credit guarantees are classified as material guarantees that meet the material security characteristics.

Collateral rights to warehouse receipts are collateral rights charged to warehouse receipts for repayment of debts that give priority to recipients of collateral rights given to other creditors. To guarantee the rights of the Warehouse Receipt holder against failure, negligence or the inability of the Warehouse Manager to carry out their obligations in storing and delivering goods, a Legal Entity Warehouse Guarantee Institution is established.

With the establishment of the Warehouse Receipt Guarantee Institute, it is expected that the confidence of business actors (Warehouse Receipt Holders, Banks and Warehouse Managers) will increase the integrity of the Warehouse Receipt System, so that all business actors from large scale (Traders, Exporters and Plantation Companies) to small scale (Farmers, Farmers 'Groups, Farmers' Groups and Cooperatives) are protected by using the Warehouse Receipt System.

The second problem examines the obstacles faced by the Bank against legal protection that should be accepted as the recipient of collateral rights to the Warehouse Receipt. Juridical collateral function provides legal protection and certainty of debt repayment in credit agreements. The Warehouse Receipt Guarantee Agreement is a binding agreement of a debt and credit agreement (Article 12 paragraph 1 of WRS ACT).

In the explanation of the WRS Act, Warehouse Receipt is a document of title for goods that can be used as credit guarantees, because the Warehouse Receipt is guaranteed with certain commodities under the supervision of an accredited warehouse manager. Warehouse Receipt as a receipt document used in the futures market to guarantee the quantity and quality of special commodities stored in the warehouse by

agreement. Warehouse Receipts provide benefits for farmers in managing their yields, strengthen the bargaining power of farmers and farmers can delay the sale of crops, can be used to finance the next land planting process, through the Warehouse Receipt, especially farmers can make transactions related to the goods in warehouse without physical transfer.

The research was conducted in an accredited warehouse in the Grobogan Purwodadi Regency, which is one of the fourteen Warehouse Receipt System Pilot Projects in Central Java, showing that there is no balance between the implementation of rights and obligations and legal protection in credit agreements with warehouse receipt guarantees.

This also addresses the third problem concerning legal protection of the Bank as the recipient of the guarantee rights for the Warehouse Receipt.

II. RESEARCH METHOD

The paradigm applied in this study is the constructivism paradigm, where the truth of a social reality is seen as the result of social construction, and the truth of a social reality is relative. The constructivism paradigm is a critique of the positivist paradigm. According to the constructivism paradigm the social reality observed by a person cannot be generalized to everyone, as is done by positivists.

The approach method in this study is Normative Juridical Research and Empirical Research. Normative Juridical Research means the focus of this study lies in the law conceptualized as a system of collection of positive norms in people's lives; while empirical research examines how reactions and interactions occur when the norm system works in society. Here the task of the researcher is to examine what is behind the application of the legislation.

Based on the nature of the research, the type of research data can be classified into two, namely secondary data as primary data and primary data as supporting data. Data sources used in this study are secondary data in the form of documents, archives, legislation, and various other literatures which include:

1. Primary Legal Materials, consisting of existing regulations
2. Secondary Legal Material, consisting of research results, literature books, scientific journals, results of scientific meetings such as seminars, symposia, scientific discussions and websites.
3. Tertiary Legal Materials, namely: legal materials that can explain both primary legal materials and secondary legal materials in the form of an Indonesian language dictionary and encyclopedia.

In this study data collection was carried out using several methods, namely:

1. Interview, is the most important part in a legal research, especially in empirical legal research, because without an interview, researchers will lose information that is only obtained by asking directly to respondents. But this study used a normative approach

which did not rule out interviews. This interview was conducted as supporting data on existing data.

2. Literature Study, is a way to obtain data by studying data and analyzing the entire contents of the literature by connecting it to existing problems. The references that are used are literature books, scientific journals, research results, laws and regulations as well as documents related to the problems in this study, including tertiary legal materials.

After the data has been validated, the researchers conducted a qualitative data analysis to answer the problem. The discussion is carried out using a theoretical basis or literature review and all data collected is compiled systematically, then conclusions are drawn.

III. FINDINGS AND DISCUSSION

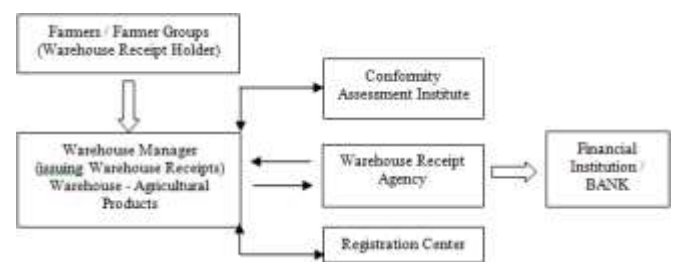
Legal regulations with the Warehouse Receipt System as objects of credit collateral cannot yet provide clear legal protection, because legal culture factors do not yet support. In terms of legal substance, WRS Act has not provided legal protection and legal certainty. The legal structure aspects of the WRS Act can be seen in the table below.

Table 1
The Substance of the Warehouse Receipt Arrangement as a Credit Guarantee in Warehouse Receipt Act

Substance	Article	Description
Material Principle	Article 4 clause 1	Warehouse receipts can be transferred, used as collateral for debt, or used as documents for delivery of goods.
Acessoir Principle	Article 12 clause 1	The warehouse receipt guarantee agreement is a follow-up agreement of a debt agreement.
Preference Principle	Article 12 clause 2	Each issued Warehouse Receipt can only be charged with one debt guarantee.
Trust Principle	Explanation of Article 15 (clause b)	In certain matters, namely the relationship between the Warehouse Receipt Holder and the creditor based on trust, the creditor feels that he no longer needs to hold the guarantee rights and release the guarantee rights. In this case, the creditor no longer holds the collateral rights and the warehouse receipts that are pledged to be handed back to the Warehouse Receipt Holder.
Definition of Object	Article 1 clause 5	Any movable object that can be stored for a certain period of time and traded generally.
Binding of Charges	Article 14 clause 1	Imposition of Collateral Rights to Warehouse Receipt is made by Deed of Collateral Rights Agreement
Guarantee	Article 13	The recipient of the Warehouse

Registration Warehouse receipt - the principle of publicity		Receipt Guarantee Right must notify the warehouse receipt agreement as a guarantee right to the Warehouse Registration and Management Center.
Transfer of Guarantees Warehouse receipt	Article 8 clause 1 Article 11	The transfer of the Warehouse Receipt on behalf is carried out with an authentic deed. Transfer of Warehouse Receipt can occur because of: inheritance; grant; sale and purchase or other reasons justified by law.

The parties involved in the Warehouse Receipt System are as follows:



Factors that are considered crucial to be the cause of the slow implementation of the WRS Act are the limited socialization, especially in the areas producing agricultural commodities.

Bank Rakyat Indonesia and Bank Jateng identify various obstacles that can hamper the implementation of the WRS Act, including:

1. Costs to be incurred by commodity owners are relatively greater, given the quantity of institutions related to WRS Act.
 2. The amount of farmers' produces is quite petty, so the Warehouse Receipt arrangement is not worth the cost.
 3. There is no party that functions as an off taker.
 4. The quantity, autonomy, and professionalism of the Conformity Assessment Agency need to be revived.
- The role of the banking sector is still not optimal.

The results of research in the field revealed that the banking sector as a supporting component of the Warehouse Receipt System has not used many warehouse receipts as collateral rights. That is because some problems arise in the implementation. These problems include considerable costs, uneven construction of supporting facilities, funding disbursed for a short period of time, doubt in the banking sector to use the Warehouse Receipt System and a lack of understanding of the importance and benefits of warehouse receipts.

As a relatively new instrument, the existence of the Warehouse Receipt System still faces a number of problems, including:

1. The lack of facilities and infrastructure.
2. The quality of goods is still low (quality / uniformity).
3. Costs.
4. Lack of confidence in financial institutions or banks.

5. Interest rates are still too high.
6. Relations between institutions are less synergistic.

As a party that received special attention in the Warehouse Receipt System, its implementation at the Farmer / Farmers Group / Collection of Farmers Group level also experienced many obstacles both regarding resource capacity, institutions, infrastructure, socio-economic and cultural. According to the Directorate of Financing (2015), based on the monitoring of the execution of the WRS Act in several regions, it shows that some of the problems are caused by several things, including:

1. The average land ownership is narrow so that it is difficult to consolidate the results;
2. Weak institutional farmers (Farmer Group / Collection of Farmer Group);
3. Limited understanding of WRS by both Farmers and accompanying officers at the field level;
4. Costs incurred in the WRS such as transportation costs, warehouse / storage rent, insurance and others are felt to be quite heavy;
5. Farmers after harvest need money immediately for the costs of the next business;
6. The resulting production does not necessarily meet the quality that can be stored;
7. Crop yields have not been able to be consolidated at the Farmers / Gapoktan level due to the weakness of Farmer institutions;
8. Limited WRS socialization from related technical agencies and banks to farmers;
9. Weak Farmer assistance to access financial institutions.

According to iPasar (2011) in order to WRS Act to be executed in orderly manner, there are at least 4 components that must be available and running well, namely:

1. Availability of warehouse warehouse receipt system;
2. Manager's readiness;
3. System reliability;
4. Availability of commodity Warehouse Receipt System.

From the experience of iPasar who has been dealing with the Warehouse Receipt and Auction Market, revealed that the execution of the WRS Act in the region still faces a number of operational problems. These problems include:

1. Warehouse Receipt System Warehouse is not yet available in all potential areas due to expensive warehouse investment costs;
2. Management operational costs borne by the Warehouse Manager (PG) are high;
3. Participation in the Warehouse Receipt System because the benefits are not yet understood by all business actors;

4. Post-harvest commodities carried out by business actors are generally not in accordance with SNI standards;
5. In the initial stages, farmers are generally not willing to pay the cost of storing goods to the Warehouse Manager (PG);
6. LPK / Goods quality test officer not yet available in all regions;
7. The Warehouse Receipt Information System (Is-Ware) is not yet reliable;
8. Price and Market Information Systems are not yet available for all commodity variants;
9. Financing at Financial Institutions is still relatively long (more than 3 days);
10. Farmer groups, Gapoktan and cooperatives lack socialization and capital to carry out commodity procurement (Product Standardization).

From the constraints of implementing the Warehouse Receipt System there are at least 8 things that need to be addressed namely:

1. Socialization of the Warehouse Receipt System to stakeholders who are still weak;
2. Warehouse facilities that have not been evenly distributed and are adequate;
3. Manager's readiness;
4. Continuity of commodity supply;
5. Weak institutional level at the farm level;
6. Not yet clear off taker / market guarantor;
7. Relatively high transaction costs;
8. Weak synergy between stakeholders.

In addition to these problems, there must also be a firm purpose of the Warehouse Receipt System whether it will be used as an instrument to empower farmers or merely a business instrument. This is important to clarify because the choice of objectives will influence the policy and direction of influencing the policy and direction of future development of the Warehouse Receipt System.

Thus, this research propose for new legal reconstruction as follows:

No	Before Reconstruction	Weaknesses	After Reconstruction
1	Article 16 Law No. 9 of 2011 concerning amendments to Law No. 9 of 2006 concerning the Warehouse Receipt System, reads:	- Cause new problems, because in practice the recipient of the guarantee right may not execute directly, this includes illegal	Article 16 Law No. 9 of 2011 concerning amendments to Law No. 9 of 2006 concerning the Warehouse Receipt System, reads:

	Article 16 (1) If the Giver of the Guaranty Right is in breach of contract, the Beneficiary of the Guarantee Right has the right to sell the Guaranteed object on his own power through a public auction or direct sale	acts committed by the bank - The Bank must submit an auction request for execution to the Court to sell the assets / objects of collateral	Article 16 (1) If the Giver of the Guarantee Right has broken the promise, the Beneficiary of the Guarantee Right must carry out the Anmaning execution to the respondent of the auction auction no later than 8 (eight) days to appear before the Court.
2	Article 21 Government Regulation No. 70 of 2013 concerning Amendments to Government Regulation No. 36 of 2007 concerning the Implementation of Law No. 9 of 2006 concerning the Warehouse Receipt System reads: (1) In the event that the giver of the guarantee right fails to promise his obligations to the recipient of the guarantee right, the recipient of	- Gives rise to multiple interpretations, because in practice the recipient of the Collateral Rights must submit an auction request for execution to the Court to sell the assets / objects of collateral	Article 21 Government Regulation No. 70 of 2013 concerning Amendments to Government Regulation No. 36 of 2007 concerning the Implementation of Law No. 9 of 2006 concerning the Warehouse Receipt System reads: (1) If the requested auction execution executes voluntarily to fulfill its obligations, then the execution

the guarantee right has the right to sell the object of the collateral right on his own authority without requiring the determination of the court after informing the giver of the guarantee right.	auction is not carried out, but if the requested execution execution auction does not carry out anmaning of the execution auction, then the Court will sell the auctioned goods by public auction or direct sale
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IV. CONCLUSIONS

From the results of this study, the author conclusions are as follows:

1. The bank as the recipient of collateral rights to the Warehouse Receipt has a prioritized right (preverent rights) to other creditors in debt settlement. If the debtor defaults or fails to repay the debt, the bank (creditor) as the recipient of the collateral right for the Warehouse Receipt possesses the title to sell the collateral and the priority right to obtain debt repayment from the proceeds of the collateral sale (Article 1 number 9 WRS Act).
2. Warehouse Receipt can only be guaranteed once (Article 12 clause (2) of WRS Act.) This means that the Warehouse Receipt issued by the Warehouse Manager can only guarantee one debt, namely debt between the debtor as the giver of collateral for Warehouse Receipt with the bank (creditor) as the guarantee party for the Warehouse Receipt.
3. If the debtor defaults, according to Article 16 of WRS Act, the bank as the recipient of the Collateral Rights to the Warehouse Receipt possesses the title to sell the object of collateral through public auctions or direct sales. Article 16 WRS ACT is a very powerful tool for banks. Banks have a strong position because of the protection provided by law. This is explicitly stated in Article 13 clause (4) of the Warehouse Receipt Credit Agreement and Article 3 of the Collateral Rights Imposition Agreement on the Warehouse Receipt.
4. Barriers to the implementation of warehouse receipts are still many obstacles in the field. These constraints include the limited number of warehouses, limited socialization of the Warehouse Receipt System, especially in areas that produce agricultural commodities. Other obstacles include:
 - a. Costs to be incurred by commodity owners are greater, given the quantity of institutions related to WRS Act.

- b. The amount of farmers' produces is quite petty, so that the Warehousing Receipt is not worth the cost.
 - c. The role of the banking sector is still not optimal. Banking as a supporting component of the Warehouse Receipt System has not received many Warehouse Receipts as collateral, this is due to doubts from the banking sector to accept the Warehouse Receipt and lack of understanding of the importance and benefits of the Warehouse Receipt, as well as interest rates that are still too high.
5. Legal reconstruction for banks in the Warehouse Receipt System is still running weak, as seen in Article 16 of WRS Act, which says if the Giver of Collateral Rights fails to guarantee, the Recipient of the Collateral Rights possesses the title to sell the object of Collateral on their power through public auctions or direct sales. Its own weaknesses lead to new problems, because in practice the recipient of the guarantee right may not execute directly, this includes illegal acts committed by the bank so that the Bank must submit an auction execution to the Court to sell the assets / objects of collateral. Meanwhile, after the Reconstruction in Article 16 of WRS Act, reads if the Promoter of the Guaranteed is in default, the Guarantee Rights Recipient must perform an execution of the execution of the auction execution at the latest. - not later than 8 (eight) days to appear before the Court. In this study also found Article 21 Government Regulation No. 70 of 2013 concerning Amendments to Government Regulation No. 36 of 2007 concerning the Implementation of WRS Act which still raises multiple interpretations because in practice if the requested tender execution executes in a manner voluntary to fulfill its obligations, then the execution auction is not carried out. But if the execution auction respondent does not carry out anmaning of the subsequent execution auction the court will sell the collateral at the public auction or direct sale.

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