

Warehouse Receipt policies as Object Banking Credit Guarantee : Efforts to Support Economic Development in Indonesia

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ABSTRACT

In the business world, the technical term warehouse receipt. Warehouse receipt is a document proof of ownership of the goods stored in the warehouse which was published by the business warehouse (Article 1 (2) of Law No. 9 of 2011 on the Amendment of Act No. 6 of 2006 on Warehouse Receipt System (SRG)). Warehouse receipts provide economic benefit to farmers, because the warehouse receipt can be transferred, traded as a document of the shipment, it can even be used as a bank credit collateral. In banking practices in Indonesia, the use of warehouse receipts as collateral for bank credit is not interested farmers and the banking community itself, especially if it occurs bad credit no representative institutions. The purpose of this research is to build an ideal system that enforces the use of warehouse receipts as a bank credit collateral object in a policy (regulation) as an effort to support economic development in Indonesia.

Keywords: Policy warehouse receipts, bank credit guarantees, economic development

Introduction

In the concept of the welfare state, the state is responsible for presenting the social welfare of its citizens as a right of citizens, requires the state to support economic development. In the face of increasingly fierce competition in the era of globalization required the readiness of the business as part of efforts to confront the competition necessary instrument in structuring trade finance system.

In the context of empowerment and guidance to farmers and small and medium enterprises that are agriculture-based, warehouse receipt is one solution to obtain financing with guarantee commodity stored in the warehouse. Expected with the Warehouse Receipt System can improve the productivity and quality of products produced by farmers, as well as setting planting schedules and marketing strategies. (Explanation of Law No. 9 of 2011 on the Warehouse Receipt System).

Philosophy birth of Law on Warehouse Receipt System aims to improve the welfare of society with social justice based on Pancasila and the Constitution of the Republic of Indonesia Year 1945. The warehouse receipt system as described in Article 1 (1) UUSRG (Act No. 9 of 2011 on the Amendment of the Law number 6 of 2006 on Warehouse Receipt System) is an activity related to the issuance, transfer, underwriting, and transaction settlement Warehouse Receipt. Warehouse receipt (Article 1 (2) UUSRG) is a document proof of ownership of the goods stored in the warehouse of published by business Warehouse.

Warehouse Receipt as one credit guarantees are classified into the collateral material that meets the characteristics of collateral material, among others, have a direct relationship on certain objects, can be defended against anyone, always switch the object and can be moved. Underwriting agreements warehouse receipts as required in Article 14 paragraph (1) of the SRG is accessoir agreement, that agreement is supplemental and is associated with the principal agreement. Basic treaty of the warehouse receipts guarantee agreement is an agreement credit between the debtor and the bank.

Warehouse Receipt System Setup certainly intended to overcome the problems that occur in the farming community, however, although already twice made changes have not touched the farmers and the banking community to utilize the warehouse receipt system as a bank credit financing documents. Warehouse receipt can be used as loan collateral if it meets the conditions stipulated in the Act SRG include warehouse receipts issued by the business warehouse that has obtained the approval of the Supervisory Board, warehouse receipts can only be burdened with the debt guarantee, the recipient should inform the security

interest agreement binding the Warehouse Receipt as the guarantee rights to the Registration Center and business warehouse, as well as the imposition of rights guarantee against warehouse receipt is made by the Deed of Guarantee rights.

This study grouped in the realm of socio-legal studies is a non-doctrinal research that examines the law by using the approach of science of law and social sciences. Social research in this study to examine aspects of unlawful external as social and cultural aspects. The results of research in the Department of Industry and Trade of Central Java province has played an active role in the socialization of the Warehouse Receipt System Program and Financing SRG (Warehouse Receipt System) since 2011 has been done, but in 2013 stopped, because many obstacles in the implementation of SRG. The sample in this study is accredited Warehouse District Government Grobogan-Purwodadi become one of the pilot projects of the Warehouse Receipt System Warehouse 14 SRG in Central Java also has not shown any activity the use of warehouse receipts as collateral for loans. Various factors and constraints in the implementation of warehouse receipt system both in terms of farmers, government and banking. From the government side, among others, have not been synergy between the relevant institutions, pricing policies are not the same grain, costs incurred farmers and transport. From the banking side, Bank Indonesia particularly concerned with the warehouse receipt system associated with levels of inflation and the lack of understanding of the warehouse receipt system either from banks themselves or the farmers, causing farmers to sell grain directly to the employer and the absence of operational costs in the warehouse receipt system (research, Sri Mulyani, Eny Patria, Setiyowati, 2015). Reconstruction of the warehouse receipt system is an ideal setting as the object of bank credit guarantee highly desirable in order to support economic development.

Warehouse Receipt Policy as Credit Guarantee Banking in the Perspective of Economic Development

Understanding the policy (policy) by Harold D. Lasswell and Abraham Kaplan is an achievement of the program objectives, values and practices that are directed (a projected program of goals, values and practices).¹ Implementation of a policy concerning the public interest is based on the authority that belongs to the policy-makers. Rating wisdom can include wisdom about the content, policy implementation and policy impact. These three elements are largely determine the success or failure of an implementation.²

In the context of the policy of the warehouse receipt in Law No. 9 of 2011 on the warehouse receipt based on the basic principles or principles that animate the legal system. Principles or principles governing warehouse receipts, essentially contains the fundamental values that go into the articles of the Law on Warehouse Receipt System to direct the goals to be achieved by legislation Warehouse Receipt System. Warehouse Receipt usage policies as an object of bank credit guarantees set forth in Article 4 (1) of Law No. 9 of 2011 on the Amendment of Act No. 6 of 2006 on Warehouse Receipt System, is an important and effective instrument that facilitates the provision of credit for businesses, especially farmers and businesses with little collateral harvest inventory or goods stored in the warehouse. The development of these macro credit guarantees involving local government bureaucracy (implementor) with the target group (target group) both farmers, banking and warehouse manager. However, in practice difficult to implement due to the complexity of the issues that arise related to high operational costs in the warehouse receipt system.

Actually, the idea of the birth policy of using warehouse receipts as collateral object of bank credit provide value benefits to the welfare of farmers. As adherents of utilitarian Jeremy Bentham argued, that a law should be able to provide the greatest possible happiness for the great majority of society. But the value of certainty and value the user has not touched the fairness of the policy. As Gustav Radbruch view that has made a major contribution on the ideals of law (*Idee des Rechts*), supported by the presence of three basic values (*Grundwerten*), justice (*gerechtigheit*), usefulness (*Zweckmaeszigheit*) and legal certainty (*rechtsscherkeit*).

Economic development , as part of national development is one of the efforts to achieve a just and prosperous society based on Pancasila and the Constitution of 1945. The national development essentially is a series of continuous development effort covering the whole life of the community, the nation and the state to carry out the task of realizing the goal national embodied in the 1945 Constitution, which protect all the people and the country of Indonesia, promote the general welfare, the intellectual life of the nation, as well as participate in implementing world order based on freedom, lasting peace and social justice.

Economic development is defined as a series of businesses in an economy to develop economic activities , so that the infrastructure more available , more and more companies and growing , the higher the level of education and technology is increasing. The implications of this development is expected to be increased employment opportunities, increased income levels, and prosperity of society is becoming increasingly high.³ There are three important elements related to economic development, namely :⁴

1. Development as a process, which means that development is a step that must be followed by every society or nation
2. Development of an effort to increase the per capita income.
3. The increase in income per capita should take place in the long term .

Economic development , as implied in the preamble of the 1945 Constitution, one of its objectives is " to promote the general welfare." Orientation welfare in economic development is also clearly affirmed in the provisions of Article 33 and Article 27 of the 1945 Constitution which by some experts say as cues, that are constitutional, in fact Indonesia has been since the beginning

¹ Harold D. Lasswell dan Abraham Kaplan, *Power and Society*, New Haven: Yale University Press, 1970, hal. 71

² M. Irfan Islamy, *Prinsip-prinsip Perumusan Kebijakan Negara*, Bumi Aksara, cet VIII, 1997, Jakarta, 1997, hal. 20

³ Sadono Sukirno, *Ekonomi Pembangunan Proses, Masalah, dan Dasar Kebijakan*, Edisi Kedua, Cet.ke-3, Jakarta: Kencana, 2006, hlm.3

⁴ Id.wikipedia.org/wiki/pembangunan_ekonomi, diakses 12 Desember 2012

of the offer concept of the welfare state (welfare state),⁵ however, in contrast to the state western welfare which is a variation of the capitalist economic system, the welfare state, Indonesia is a country with a democratic economic system that is to say, the power of capital and capital owners are not considered to be the most powerful, the people are the highest authority.⁶ In the people's economy, people's economy becomes concern basis of any effort to achieve justice.

Infrastructure in economic development is the availability of facilities and infrastructure needed businesses in economic activity. Facilities and infrastructure in an economic perspective, namely the existence of a competitive market, regulatory certainty and consistency in economic conditions, as well as financial institutions to support economic activity. Warehouse Receipt policies have not been effective, less local government play a role in encouraging the implementation of warehouse receipt system. The absence of synergies between relevant agencies, local governments and the private sector as well as the perpetrators of the warehouse receipt system is also not maximized, and yet the formation of the deposit Insurance Agency Rules (LPS) in case of a warehouse receipt collateral execution.

Policy use of warehouse receipts as credit guarantees have not touched the community of farmers and banks to extend credit because credit terms to subsidize interest with collateral warehouse receipts specified in the Minister of Finance No. 171 / PMK.05 / 2009 on Warehouse Receipt Subsidy Scheme, which is still limited magnitude credit limit of a maximum of 70 % of the value of the warehouse receipt ; The amount of the ceiling set by the bank or financial institution with a maximum ceiling of Rp 75,000,000.00 (seventy five million dollars) per farmer ; The maximum ceiling based on the number of Farmers Farmers Group, Cooperative and Farmers Group Association; The maximum ceiling may be reviewed at any time based on analysis of the feasibility of the proposed farming (research Sri Mulyani et al , 2015).

Likewise, the obstacles encountered in the provision of credit through the Warehouse Receipt: first, costs to be incurred by the owner of the commodity is relatively larger. That is because the number of agencies involved in the warehouse receipt system makes cost overruns. Secondly, the quantity of commodities relatively smaller farmers, so that if in the warehouse receipt-it is not worth the costs. Third, there is no party that serves as a watchdog. Fourth, the quantity of the independence and professionalism of the conformity assessment institution also needs to be improved. In addition to constraints on the banking side, the pattern of financing through the warehouse receipt system is also not optimal enforced because they lack understanding of the community and businesses (banking). To reduce the risk of loss, fire, flood, etc., then the goods stored in the warehouse are insured. Likewise, to minimize the risk of failure of the debtor to make payments, then the insured is the credit. With the transfer of risk to the insurance company, then there are additional costs that insurance costs should be borne by the farmer (Research: Sri Mulyani, Eny Patria, Setiyowati, 2015).

Warehouse Receipt as Object Banking Credit Guarantee in Law No. 9 of 2011

Warehouse Receipt settings as loan collateral object has not provided a clear interpretation , caused by several things: some legal regulations related to the implementation of warehouse receipt can not provide legal protection, because of the legal culture is not supportive ; in substance law, setting the warehouse receipt in its implementation can not provide legal protection and legal certainty. Law No. 9 of 2011 on the Amendment of the Law No. 6/2006 on Warehouse Receipt System can not provide clarity. In the legal structure does not yet support the implementation of warehouse receipt arrangements, because it is still weak institutions related to warehouse receipts.

Aspects of the laws governing the substance of the warehouse receipt as collateral rights in Law No. 9 of 20011 on the Amendment of Act No. 6 of 2006 on Warehouse Receipt System can be seen in the table below :⁷

Table 1 : Substance of Warehouse Receipt as collateral in Act

The substance	Article	Description / Payload
The principle of material	Article 4 (ayat1)	Warehouse receipt can be transferred, pledged as collateral for debts, or used as a document of the shipment.
principle Accessoir	Article 12 (ayat1)	Warehouse receipt collateral agreement is an agreement on a treaty follow-up of debt .
The principle of preference	Article 12 (paragraph 2)	Each warehouse receipt can be issued only one guarantee burdened with debt.
principle Trust	Article 15 (paragraph b)	In certain cases the relationship between the holder of the warehouse receipt and creditors

⁵ See look : Mubyarto, *Membangun Sistem Ekonomi*, Yogyakarta:BPFE, 2000, hlm. 281.

⁶ *Ibid.*, hlm. 281-281.

⁷ Sri Mulyani, *Konsep Resi Gudang Sebagai Surat Berharga Dalam Perspektif Jaminan Kredit Perbankan:Perlindungan dan Kepastian Hukum*, Jurnal Supremasi Hukum FH Universitas Bengkulu Nomor 2 Volume 22, Agustus 2013, hal.214-215

		based on trust, creditors felt no need to hold the security interest and the release of the security interest. In this case, creditors no longer hold, rights guarantees and collateral warehouse receipts handed back to the Warehouse Receipt Holder.
Material definition	Article 1 (ayat 5)	Any moving objects that can be stored in a certain period of time and publicly traded .
binding of loading	Article 14 (ayat 1)	Imposition of Rights guarantee against warehouse receipt is made by the Deed of Guarantee Rights
Warehouse Receipt - registration guarantees the principle of publicity	Article 13	Rights receiver collateral warehouse receipts must notify binding treaty rights warehouse receipt as collateral to the Central Register and the business Warehouse
The transfer of warehouse receipt Guarantee	Article 8 (ayat 1) Article 11	The transfer of warehouse receipt in the name of an authentic deed is done . The transfer of warehouse receipt can occur because : - inheritance ; grants ; buying and selling and or other causes that justified the law
Execution rights	Article 16 (ayat 1) Article 16 (ayat 2) Article 16 (ayat 3)	If the giver Rights injury Guarantee promise, guarantee the assignee has the right to sell the object of collateral for its own power by public auction or direct sales . Recipients security interest has the right to take over the receivables settlement proceeds referred to in paragraph (1) after deducting the cost of sales and management costs Sales collateral objects referred to in paragraph (1) may only be carried out on the knowledge of the provider of security rights .

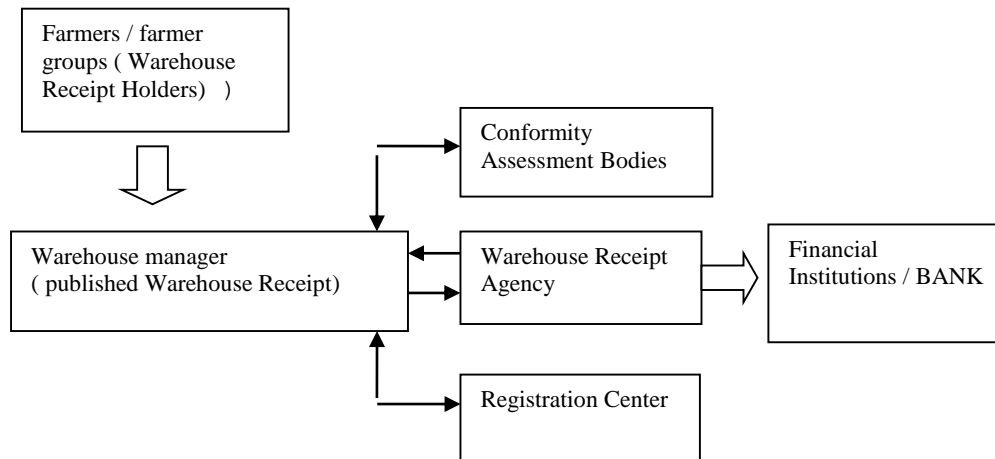
Source : excerpted from Act 11 No. 9 20011 on the Amendment of Act No. 6 of 2006 on Warehouse Receipt System

Ideal Warehouse Receipt System Settings As Object Banking Credit Guarantee

The formulation of the ideal system of warehouse receipts as collateral arrangement of bank credit by developing the concept of "protection", through reform of the cultural aspects of the legal system or legal culture, structure, and substance of the law. As Lawrence M. Friedman the opinion that the concept of law as a system, sub-system consists of legal substance, legal structure and legal culture.⁸ Ideal system settings object warehouse receipts as credit guarantees in order to support economic development that is setting a comprehensive, systemic both from the aspect of legal culture, legal structure and the substance of the law. From the aspect of the functioning of the legal culture of law as a means of education and training or community (in this case the banking community) to develop new values warehouse receipts as a valuable letter so that a change of mindset, attitudes and behaviors that support the development of laws that should guarantee the Warehouse Receipt built on the values of Pancasila and the Constitution of the Republic of Indonesia, 1945. From the farming community awareness of the importance of the warehouse receipt grown to provide benefit to the welfare of farmers. In structure or institutional, to provide certainty and legal protection for economic actors to set up several institutions associated with the existence of warehouse receipt. Substantially, there must be consistency both of law and of Bank Indonesia Regulation governing the banking practice. There must be clarity of meaning warehouse receipts as a valuable letter is proof of ownership of objects of agricultural products stored in warehouses accredited. Aspects of the legal structure of the warehouse receipt system can be seen from the parties involved in the agreement guarantees through the Warehouse Receipt System . Parties involved in the warehouse receipt system is as follows:⁹

⁸ See, Lawrence M. Friedman, 1977, *Law and Society, an Introduction*, Printice Hall, New Jersey, hlm. 7.

⁹ Op.cit, Sri Mulyani, 215



Source : Law on Warehouse Receipt

Based on the legal structure of lending through SRG (Warehouse Receipt System) as mentioned above illustrates that so many parties involved that can cause the failure of the policy itself which aim to provide the benefit and welfare for the farmers in accessing credit for their business activities. Although the actual with the policy SRG provide protection and legal certainty for the community, but instead becomes ineffective implementation. As Gustav Radbruch express purpose enacted legislation in order to provide certainty, fairness and expediency. Ideally that SRG program is effective, the farmers become members of the Koperasi, Koperasi that bridge farmers to store in warehouses RG unhulled rice hereinafter find again farmer credit (max 75%). Farmers still have unhulled rice until the credit is paid off or farmers sell unhulled rice after 6 months from the original storage. SRG subsidy operational costs borne by the state, so that farmers have awareness utilizing SRG to improve their welfare.

In the legislation, the implied warranties of Article 1131 of the Civil Code and Article 1132 of the Civil Code , in the explanation of Article 8 of Law No. 7 of 1992 and Act No. 10 of 1998. The concept of assurance is to ensure fulfillment of the obligations that can be assessed with the money raised from a legal agreement.¹⁰ Legal guarantees in Indonesian civil law in general in Article 1131 of the Civil Code. Thus, it means that the whole thing if the debtor can not meet its debt obligations to creditors, then the material belongs to the debtor will be sold to the public and the sale of such objects is divided among the creditors by the large individual receivable in accordance with Article 1132 of the Civil Code .

Legally, the function will guarantee legal certainty repayment of debt in the credit agreement or the certainty of debts or realization of an achievement in a treaty, while economically, the function is to provide security guarantees repayment of the loan, as the driving motivation of the debtor, related to the implementation of banking regulations and has a market value (marketable).¹¹ In the explanation of Law No. 9 of 2006 on Warehouse Receipt System, intended to provide legal certainty, ensure and protect the interests of the community, the smooth flow of goods, cost efficiency distribution of goods, and be able to create a business climate that could be driving the pace of national development. Warehouse Receipt System benefits, if well managed will create food security in which the public will not be a shortage of food, because the quality of grain stocks in store in accredited warehouses and can be sold during the dry season arrives.

Conclusion

Warehouse Receipt usage policies as an object of bank credit guarantees provide benefits to farmers and banks as credit. Yet channeling institution in its implementation has not been effective, because many of the factors and obstacles that surrounded him. On the substance of the law, there is no clear concept governing warehouse receipts pledged as collateral for loans. Likewise, it does not yet support the implementation of the legal structure of warehouse receipts as collateral arrangement credit, because it is not available legally viable infrastructure, such as legal framework, the market price is not clear. Still weak institutions related to the management of the warehouse receipt. Essence guarantees provide protection and legal certainty will be repayment of a debt as defined in Article 1131 of the Civil Code. Cultural factors greatly affect the legal existence of warehouse receipts as collateral for loans when the lack of awareness among farmers to store in warehouses accredited unhulled rice. The concept of ideal settings warehouse receipts as credit guarantees can be developed is setting warehouse receipts as collateral for bank credit both comprehensive and systemic aspects of legal culture, legal structure and substance law. The need further socialization and assistance in the implementation of the policy of using warehouse receipts as collateral object credit in an effort to support economic development in Indonesia.

¹⁰ Subekti, *Pokok-pokok Hukum Perdata*, Jakarta: Internusa, 1980, hlm.88

¹¹ ELIPS, *Lembaga Jaminan*, Program Kerjasama Proyek ELIPS & Fakultas Hukum: Universitas Indonesia, 1998, hlm.68

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