

Establishing Warehouse Receipts as Debt Guarantees in Indonesia's Sharia Economic Law

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Abstract: This study addresses Indonesian farmers' challenges in accessing credit due to limited collateral options recognized by financial institutions. Farmers often struggle with capital access, as their agricultural products are not classified as eligible collateral under existing regulations. As a result, they cannot use their crops as collateral due to the absence of legal provisions. The research aims to answer two main questions: How can the position of Warehouse Receipts be recognized as a Debt Guarantee Right in Indonesian law? What is the execution power of Warehouse Receipt guarantees if the debtor defaults? This study analyzes the relevant laws and regulations using a normative juridical research method with a statutory approach. The findings reveal that Law No. 9/2006 (amended by Law No. 9/2011) established a legal framework for Warehouse Receipts, transforming them from proof of custody into evidence of property rights. This legal recognition enables Warehouse Receipts to be used as collateral, providing farmers an avenue to access credit. Furthermore, the study concludes that the execution of Warehouse Receipt guarantees is enforceable in cases of debtor default, offering enhanced legal certainty for creditors.

Keywords : *Warranty Law; Warehouse Receipt; Execution*

Mu'amalah : Jurnal Hukum Ekonomi Syariah

Website: <http://e-journal.metrouniv.ac.id/index.php/muamalah/index>

Received : 2024-01-06 | Reviewed : 2024-07-23 | Published : 2024-11-15.

DOI: <https://doi.org/10.32332/muamalah.v3i2.9693>



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Introduction

The guarantee is a property belonging to the debtor or a third party that is used as a means of payment in the event of default by the debtor to the creditor.¹ A guarantee is a bank or guarantor's assurance of the debtor's ability to repay the loan as promised. In other words, a guarantee serves as a means or guarantee of payment of a loan or debtor's debt if he fails to pay before the loan matures or the debt expires.²

The legal provisions on security in Indonesia are changing and evolving. It is not apart from the history of the development of the law of guarantees during the colonial period, the period of independence to the present day.³ During the colonial period of the Dutch Indian government, they applied the rules of law governing the law of security, which we find in Book II of the Personal Law Act (hereinafter referred to as KUHPerdata) and Stb. 1908 No. 542 as amended to Stb., 1937 No. 190 of the Credietverband.⁴

The second book of covenant regulates the law of things and its inheritance law. In interpreting the Law of Things, various objects are described according to civil law. One of the most important objects under civil law is the moving and non-moving objects.⁵ The two items have different security provisions, including mortgages. A mortgage is a security institution for things that are not moving or fixed.⁶ It is regulated in Articles 1162 to 1232 KUHPerdata, whereas the collateral (Pand) is

¹ Rinda Asytuti, 2015, *Isu-isu Kontemporer Lembaga Keuangan Mikro Syariah di Indonesia*, CV Duta Media Utama, Pekalongan, Hal. 135

² Angga Pratama, "Warehouse Receipts as Credit Guarantees for Farmer Welfare Farmers Based on Pancasila Justice at Bandar Lampung," *Pancasila and Law Review* 4, no. 1 (28 Maret 2023): 29–38, <https://doi.org/10.25041/plr.v4i1.2933>.

³ Annalisa Yahanan dkk., "URGENCY OF REGULATION: AIRCRAFT AS OBJECT OF CREDIT GUARANTEE," *Diponegoro Law Review* 5, no. 1 (30 April 2020): 19–33, <https://doi.org/10.14710/dilrev.5.1.2020.19-33>.

⁴ Salim Hs, 2023, *Perkembangan Hukum Jaminan di Indonesia*, Rajawali Press, Depok, Hal. 1

⁵ Enny Puji Lestari dkk., "Minat Investasi Pekerja Migran Indonesia Dalam Meningkatkan Ketahanan Ekonomi Keluarga Di Lampung Timur," *FINANSIA : Jurnal Akuntansi dan Perbankan Syariah* 6, no. 1 (21 Juli 2023): 89–104, <https://doi.org/10.32332/finansia.v6i1.6630>.

⁶ Fitri Mustikaning Wibowo, "Legal Analysis of the Enforcement of Two Mortgage Rights on One Land Certificate as a Credit Collateral Object," *Proceedings Series on Social Sciences & Humanities* 14 (16 November 2023): 342–47, <https://doi.org/10.30595/pssh.v14i.1062>.

governed in Articles 1150 to 1160 KUHP, the guarantee agency for moving objects.⁷

The Dutch Government of India imposed the Credietverband as a security charge for the Bumiputera concerning land rights, property rights, use of buildings (HGB), and business (HGU). When Japan ruled Indonesia, replacing the Netherlands, the security law provisions remained unchanged as they still referred to the terms of international law.⁸ It is what we know from the sound of Article 3 of Act No. 1 of 1942, which reads:

"All the bodies of government, its powers, the laws and the laws of the previous government, remained recognized for a time only originally not in conflict with the Military Government."

The rise of the new guarantee law was felt during the era of Indonesian independence to the present day. Many new provisions relate to security laws enforced as the legal umbrella of security laws.

In 1960, Indonesia succeeded in making a law relating to agricultural law, namely, Act No. 5 of 1960 on the Basic Rules of Agrarian Trees. The provision revokes the validity of Book II of the Covenant concerning the arrangements concerning Earth, Water, Space, and Natural Property contained therein, except for the provisions concerning mortgages, which remain in force since the entry into force of this Act. However, since the enactment of Act No. 4 of 1996 on Dependency Rights, the unique land security agency no longer uses a mortgage but formally and materially uses the provisions of the dependency right.

The subsequent development related to guarantees was when Act No. 42 of 1999 on Trust Guarantee was born. This guarantee is one of the institutions for movable and non-movable objects in particular houses that cannot be charged with the Right of Dependency. The above security rights provide a solution to the problem when there are legal subjects who need funds either for business purposes or personal needs. It can be well dealt with provided they have assets or objects following the

⁷ Ashar Sinilele, Suriyadi Suriyadi, dan Syahrul Alim, "Implementation of Hardship Principles on Financing Agreements Islamic Bank Due to Corona Virus Disease 2019," *Jurnal Hukum Novelty* 13, no. 2 (Desember 2022): 202–15, <https://doi.org/10.26555/NOVELTY.V13I2.A22274>.

⁸ Sami Al-Daghistani, ed., "The Appraisal: Contemporary Islamic Economics and the Entrenchment of Modernity," dalam *The Making of Islamic Economic Thought: Islamization, Law, and Moral Discourses* (Cambridge: Cambridge University Press, 2022), 221–55, <https://doi.org/10.1017/9781108990813.005>.

categories determined and established by the guarantee agency. However, according to the Indonesian people, most of the sources of income come from agriculture professions as farmers face problems with financing difficulties and limitations of credit guarantees, so they need a container of the guarantee agency for their crops. This means that the farmers cannot guarantee their crops a credit guarantee.⁹

In 2006, the government provided a way out for the farmers over the problem by issuing Act No. 9 of 2006 on the Warehouse Recession System and its implementation regulations, which was subsequently changed to law No. (Selanjutnya disebut UU Resi Gudang). The Warehouse Receipt System is a system that allows farmers to store their crops in a warehouse that issues a receipt, which is used as proof of ownership of the commodity or the crops stored and releases those crops to the market at a higher price.

The warehouse residence is proof of ownership of the goods stored in the warehouse, which the warehouse manager issues. This warehouse is then a residence that can be charged with the Guarantee Right on the Warehousing Residence as a guarantee of authenticity.¹⁰ However, in its implementation, the Guaranteed Warehouse residential has not been used much by the farmers because of the lack of popularity, and the warehousing residential is also a guaranteed institution that provides legal certainty. It is related to executing the guaranteed right of the warehouse residential, which remains a legal question of whether to provide legal guarantees for the creditors.¹¹

Although the Warehouse Receipt System (WRS) regulated by Law No. 9 of 2006 and its amendments provides a solution for agricultural financing issues, its implementation remains limited due to a lack of awareness among farmers and financial institutions and limited access to appropriate warehouse facilities. The warehouse receipt, as a document of ownership of goods stored in the warehouse,

⁹ Lathifah Hanim, "IMPLEMENTATION THE WAREHOUSE RECEIPT SYSTEM AS ONE OF BANKING CREDIT GUARANTEE ACCORDING TO ACT ON WAREHOUSE RECEIPT SYSTEM," *Sultan Agung Notary Law Review* 1, no. 2 (7 Januari 2020): 121–38, <https://doi.org/10.30659/sanlar.1.2.121-138>.

¹⁰ Khoirul Hidayah, Iffaty Nasyiah, dan Dwi Fidayanti, "The Evaluation of Warehouse Receipt System Object Regulation: A Perspective Study of Commodity Goods Concept in Indonesia," *Jurnal Legalitas* 15, no. 02 (Oktober 2022): 136–52.

¹¹ Rahmat Ilyas dan Iskandar Iskandar, "Effectiveness of Warehouse Receipt Management in Increasing Sharia Banking Access for Pepper Farming Communities," *IQTISHODUNA: Jurnal Ekonomi Islam* 12, no. 2 (1 Oktober 2023): 579–92, <https://doi.org/10.54471/iqtishoduna.v12i2.2312>.

can be used as collateral for loans, but in practice, this system has not been widely utilized by farmers. It is mainly due to the lack of legal certainty regarding enforcing collateral rights on warehouse receipts, which poses a challenge in ensuring the credibility and effectiveness of this system as a legitimate debt guarantee instrument.

In Islamic law, the application of collateral instruments such as warehouse receipts faces additional challenges because Islamic law prohibits the practices of *riba* (interest) and *gharar* (uncertainty). While instruments like *rahn* (pledge) and *hiyal* (mortgage) are well-known in Islamic law, research on warehouse receipts application within Islamic finance's framework remains scarce.¹² Therefore, it is essential to explore how warehouse receipts can be adapted to comply with Islamic principles, particularly regarding profit-sharing and the prohibition of interest, to create a fair and Sharia-compliant financing system.

Moreover, while warehouse receipts offer an innovative solution for commodity-based agricultural financing, it is important to compare them with other more established forms of collateral, such as movable collateral, recognized in civil and Islamic law. A comparative analysis between warehouse receipts and more conventional pledge systems can provide insights into differences in legal regulations, enforcement of collateral rights, and execution of guarantee rights. It also opens up opportunities to analyze the advantages and disadvantages of warehouse receipts as a more flexible debt guarantee alternative for Indonesia's agricultural sector.

One critical issue that requires further exploration is the application and enforcement of warehouse receipts as debt guarantees in default cases. Despite legal provisions regulating the use of warehouse receipts as collateral, the mechanism for enforcement in the event of debtor non-performance remains unclear. This research aims to fill this gap by exploring the potential for warehouse receipts to be used as legitimate, enforceable debt guarantees within the Indonesian Sharia economic law framework. Thus, this study contributes by clarifying the legal certainty and execution of warehouse receipt guarantees following applicable regulations while offering solutions for business operators in the agribusiness sector to gain better access to financing.

¹² Ilyas dan Iskandar.

Research Method

The type of research used in this scientific work is the method of normative juridical research.¹³ This secondary data consists of primary legal material and various legal regulations for the investigated storage area. Primary legal materials include: Data Law Book; Act No. 9 of 2006 on the Warehouse Recession System; Act Number 9 of 2011 on the Amendment of Act Number 9. of 2006 concerning the warehouse recession system; Government Regulation No. 36 of 2007 on the Implementation of Law Number 9, 2006 on Warehouse recovery system; Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016 on the Instructions for the Execution of Auctions; and Chief Order No. 09/BAPPEBTI/PER-SRG/7/2008 on the Technical Guidelines for the Guarantee of Warehouse Crisis. Secondary legal material includes journals, papers, other supporting documents, and tertiary legal materials such as law dictionaries, Indonesian Dictionary, and the like.

Methods of data collection through library studies were obtained by collecting books and regulations of the Constitution and the number of journals and articles required. In addition, searches were also carried out against other sources that support, i.e., articles and data from the Internet by browsing. The analytical nature of this research is descriptive, i.e., in analyzing by providing a picture or exposure of the subject and object of research as the results of the research are carried out, while the analytical approach uses the Statute approach with various rules or legal products relating to matters that regulate the guarantee rights of warehouses.

Results and Discussion

The Position Of The Warehouse Residence As A Debt Security Right In Indonesian Legislation

Some Indonesian society can meet the needs of financing and financing, quickly supported by the success of adequate entrepreneurial and financial factors, but on the other side, there is a part of society that meets its needs by pursuing various ways, one of which is by "loans" (loans) to the financing institutions. The Indonesian government needs to seek a solution in the face of such competition by providing an effort and a way out for preparedness in the face of rapid economic changes, especially related to trade.

¹³ Nurul Qamar dkk., *Metode Penelitian Hukum (Legal Research Methods)*, ed. oleh Abd Kahar Muzakkir, 1 ed. (CV. Social Politic Genius (SIGn), 2017).

Therefore, it is necessary to have instruments or instruments of rules that support the establishment of a trading system to be effective and efficient. Such a condition can be achieved if supported by a guaranteed business climate with available and programmed financing systems that can be accessed by every entrepreneur clearly and provide guarantees of legal certainty.¹⁴

The public needs financing systems in carrying out its business activities to ensure that its business is smooth and continuous, as well as for farmers and small and medium-sized agricultural enterprises that are generally facing financing problems due to limited access and credit guarantees for their business. The Indonesian government created Warehouse Receipts to provide them with solutions to obtain funding with guaranteed commodities stored in a warehouse as capital for the needs of subsequent growing periods.¹⁵

Its warehouse recessions have been practised in various developed countries like America and Canada as well as in some other developing countries like the Philippines, India, Ukraine, Brazil, and Zambia, and these transactions have also been done in countries with economies still in transition like Poland.¹⁶ In Indonesia related to the Warehouse Receipts is still a new thing and, in practice, is still rarely found. Depository recession as a guarantee institution is new and not as prevalent in society as other guarantee agencies, so its development is slow and unused. Therefore, the researcher would like to know more about the position or arrangement related to the warehouse residence as a guarantee agency under the Legislative Regulations in Indonesia.

The original purpose of the warehouse residence was to make it easier for agribusinesses to trade without having to carry them anywhere, but only by showing a replacement document called the Warehouse Residence. Through the warehousing residence, farmers should not move their commodities when the harvest arrives but can

¹⁴ Dewa Ayu Agung Laksmi Dewi, I. Nyoman Putu Budhiartha, dan Ni Luh Made Mahendrawati, "Resi Gudang sebagai Objek Jaminan Kredit Bank (Warehouse Receipts As Bank Credit Guarantee Objects)," *Jurnal Interpretasi Hukum* 3, no. 1 (2 Maret 2022): 148–52, <https://doi.org/10.22225/juinhum.3.1.4734.148-152>.

¹⁵ Hidayah, Nasyiah, dan Fidhayanti, "The Evaluation of Warehouse Receipt System Object Regulation."

¹⁶ H. Zaeni Asyhadie, Rahma Kusumawati, 2018, *Hukum Janinan di Indonesia; Kajian Berdasarkan Hukum Nasional dan prinsip Ekonomi Syariah*, PT. RajaGrafindo Persada, Depok, Hal. 288

store them first in warehouses that have obtained permission from the Ministry of Trade and move them later when their prices and conditions improve.¹⁷

The book of the Law of Conservation (hereinafter referred to as KUHPPerdata) in article 613 of the law has indirectly regulated the guarantees of the Warehouse Residence. As for what it sounds like:

"The surrender of debts in the name of other intangible goods is done utilizing an authentic act or under a hand that transfers the rights to those goods to another person. This surrender does not affect the debtor before it has been notified to him, approved in writing, or acknowledged by him. The submission of debt notes is done by handing them over, while the handing over debt letters by order is done with the endorsement of the letter."

The provisions of the Covenant appear to explain that the deposit of warehouses as securities can be guaranteed by employing the submission of credit in the name, and the intangible goods must be made with an Act of authenticity or an Act underhand as also regulated by the Act of Deposit of Warehouses subsequently on one of its articles.

In July 2006, the Government of Indonesia officially issued Law No. 9 of 2006 on the Warehouse Receipt System (hereinafter referred to as the Act No. 36 of 2007 on the Implementation of the Law Number 9 of 2006, on Warehouse Resistance System (hereby known as the PP No. 36, of 2007), the Bank of Indonesia Regulation Number 9, of 2007, and the Banque d'Indonésie Regulation No.9/6/PBI/2007 on the Second Amendment to the PBI No. 7/21/2005, which, among other things, regulated the use of the warehouse resistance as one of the bank credit agencies.

According to Article 1 of the Law on Warehousing Recessions, the warehousing recessions system is an activity related to issuing, transferring, guaranteeing, and settling warehouse recession transactions. On the other hand, the own warehouse recession is proof of ownership of the goods stored in the warehouse, which the warehouse administrator publishes. Therefore, crop products stored under official custody can be used as a debt guarantee by the creditor of the owner of the right of authority when the owner issues a warehouse recession or evidence of the storage of goods.¹⁸

¹⁷ Dwi Suryahartati, Arsyad dan Dicky Azwan, Eksistensi Sistem Jaminan Resi Gudang dalam Perkembangan Industri di Provinsi Jambi Berdasarkan Undang-Undang Nomor 9 Tahun 2011 tentang Resi Gudang, Jurnal Sains Sosio Humaniora LPPM Universitas Jambi, Vol 1 No 2, Tahun 2017, Hal 120

¹⁸ Elyta Ras Ginting, 2019, Hukum Kepailitan: Pengurusan dan Pemberesan Harta Pailit, Sinar Grafika, Jakarta, Hal 337

Meanwhile, according to Ashari, the warehouse recession system is more specifically related to the agricultural sector, which makes it proof of ownership of goods stored by farmers in shiftable warehouses, marketed, and even made a bond without the need for other bonding requirements.¹⁹ In the case of a warehouse residence, the assurance of the warehouse itself is a further development of the trust assurance, while the trust guarantee is the further evolution of the security assurance.²⁰

The guarantee of a warehouse residence may be classified as a credit guarantee in which the creditor does not possess the object of the security (Retentions) because the security object is not in the possession of either the creditors or the debtors but is in the hands of a third party, the owner/manager of the warehouse that the government has accredited. It leads to the authenticity of the Warehouse Residence, which guarantees a moving or non-fixed object because it has the characteristics of a moving object starting from the Bezit, the Levering, the Verjaring, and the Bezwaring.

The Treaty on the Guarantee of the Receipt of a Warehouse is an agreement that is a subsidiary or supplementary agreement (accessory) to the principal agreement of a debt agreement as set out in Article 12, paragraph 1 of the Treaty of the Warehouse. Each Treaty issued may be charged only one debt guarantee pursuant to Article 12 para. 1 and 2 of this Treaty, whereby the charge of the guarantee right to the return of a warehouse is made by the "Contract of the Right to Guarantee" under Article 14 para.

The Resi Warehouse legal framework as a guarantee of debt is also included in the Trade Minister's Regulation No. 26/M-DAG/PER/6/2007, which has established eight agricultural commodities as goods that can be stored in warehouses in the maintenance of the Warehouse Resi System, among others: Goose, Rice, Coffee, Cacao, Lada, Rubber, Seafood, and corn.²¹ Other commodity settlements of goods in the Warehouse Recession System are done with consideration of recommendations from the Regional Government, related instances, or the Commodity Association. Of course, by continuing to refer to the above Decree of the Minister of Commerce listed in Article 3, at least the following

¹⁹ H. Zaeni Asyhadie, Rahma Kusumawati, *Op.Cit*, Hal 291

²⁰ Iswi Hariyani, R. Serfianto, 2010, *Resi Gudang Sebagai Jaminan Kredit & Alat Perdagangan*, Sinar Grafika, Jakarta, Hal. 24

²¹ Trisadini Prasastinah Usanti, Hak Jaminan Atas Resi Gudang dalam Perspektif Hukum Jaminan, *Jurnal Perspektif* Volume XIX Nomor 3, Tahun 2014, Hal 169

requirements must be met: (a) Have a shelf life of less than 3 (three) months; (b) Meet specific quality standards; (c) Minimum quantity of goods stored.

The availability of a clear and firm legal umbrella concerning the Warehouse Recession System in Indonesia is expected to run well and increase rapidly. However, in its development, some weaknesses in the field significantly impede the development of Warehouse recession, so it is impressed slowly; among them is the lack of a relatively affordable guarantee mechanism for the Officer when the warehouse manager's business suffered fraud or carried out negligence in management so that it could not fulfil its obligation to return the goods stored in the store according to the quality and quantity described in the warehousing recession.²² It resulted in the birth of a guarantee institution for the warehouse residence, as stipulated in Article 37 D letter a, which contains that "The guarantee body has the function to protect the rights of the holder of the Warehouse Residence and/or the recipient of the guarantee right in the event of failure, inability, and or default of the warehousing manager in carrying out its obligations."

Farmers and small and medium-sized enterprises based on agriculture get their way to financing loans with precise, simple mechanisms and procedures through these warehouse recession guarantees. It is hoped that the existence of this institution can improve the productivity and quality of the products produced by the farmers and guarantees for the stakeholders, both the holders of the Warehouse Residence and the lenders. Although Article 37 D letter a does not describe in detail the form of legal protection such as what is provided by the guarantee agency to the debtor and also the creditor when the manager is in bankruptcy or default, resulting in the emergence of legal uncertainty for the holders of warehouse receipts and the recipients of the right of security on the warehouse revenue.

The form of the warehouse recession guarantee agreement is governed by Article 14 of Act No. 9 of 2011 on Amendment of Law No.9 of 2006 on the Warehouse Recession System, that the promise is made in the Act on the Treaty of Security Rights. This reference is the same as the reference in the previous law. The meaning of the aforementioned Act may be understood to be that the warranty agreement is in the form of the Authentic Act or the Act under the hand. However, if referring to the explanation

^{22 22} H. Zaeni Asyhadie, Rahma Kusumawati, *Op.Cit*, Hal 295

of Article 14 of the Warehouse Residence Act, there are the words "...as a perfect proof...", it can be interpreted that the guarantee agreement on the warehouse residence is in its form. As for an authentic act, according to article 1868 BW, an act in the form prescribed by the Act, made by or before the General Office competent for it in the place where the Act was made. The office I am referring to here is a notary. So, the purpose of drafting the Act is to protect and give legal force to the parties, and it can be used as proof.

The position of the warehouse residence as a security or credit guarantee is strengthened by the presence of Bank Indonesia Regulation No. 14/15/PBI/2012 on Asset Quality Assessment, in Article 43 letter f, which explains that the warehousing residence bound by the right of security over the Warehouse Residence can be accepted as security or guarantee for obtaining credit facilities from the national banking party. The process of guaranteeing the warehouse residence certificate begins when the warehousing residence holder hands over the Warehouse Residence to the bank as a guarantee to obtain credit facilities. Then, the banking party, as the Recipient of the Guaranteed Rights, will verify the authenticity and veracity of the Warehousing Residence data with the Wareholders.²³

In order to provide legal provisions in case of non-performance or injury of pledge by the Debtor as the Recipient of the Warehouse, Indonesia through Government Regulation No. 2 of 2016 on the Guarantee Enforcement Agency in Article 19 also regulates on Guarantee Institution of the warehouse granting provisions when the debtor fails to perform, which states that "In the case of a Warehouse Residence being charged with a security right, the Executive Institution precedes the claim of losses to the recipient of a guarantee right rather than the holder of a warehouse residence."

Based on the appendix to the Regulations of the Chief of the Commodity Futures Supervisory Body No. 09/BAPPEBTI/PER-SRG/7/2008 concerning the Technical Guidelines for the Guarantee of Warehouse Receipts dated July 24, 2008, the Model Form No. SRG-OPR 14 on the Agreement on the Liability of Guaranteed Rights on Warehouses Receipt contains information on the identity of the parties, namely the guarantor and recipient of the guaranteed rights, the data of the substantive agreement secured by the right of guarantee, the Specification of the warehouses rise, the value of the debt

²³ Puja Putri Neland, Perlindungan Hukum bagi Pemegang Resi Gudang dan Penerima Hak Jaminan Resi Gudang Terhadap Pengelola Gudang yang Pailit, Jurnal Zaaken Volume 3 Nomor 3, Tahun 2022, Hal 506

guarantee and the market value of goods at the time the goods are put into the warehouse.²⁴

If the Treaty on the Liquidation of Guaranteed Rights on the Warehouse Receipt is concluded, then no later than 1 (one) day after the date of the agreement on the liability of guaranteed rights on the warehouse residence, then according to Article 13 (2) of the Law on Warehouse Residence that the Bank, as the recipient of the guarantee rights, is obliged to notify the Manager of Warehouse and the Registration Center of the Warehouses Receiving Rights System to make a record in the Register of Liquids of Guarantee Rights on The Warehouse receipt. Subsequently, the Registry Centre will issue a Proof of Confirmation of the notice of the charge of the security rights that the record has been received and made. Issuing such evidence is done to avoid and prevent the occurrence of double guarantees, monitor the movement of the Warehouse Residence, and provide legal certainty about the party entitled to the goods in the event of non-performance.

The Registration Centre, about the charge of security, is only responsible for carrying out the entrepreneurship of the Warehouse Receipts if it is to be charged as a security right, such as verifying whether or not it is charged with the security right at the request of the potential recipient of the security rights, inter alia, by verifying: the validity of the warehouse residence; the credibility of the guarantor's party; the duration of the Receipt of security; the value of the Residence of Warehouse at the time of publication; and has or has not been charged by the Storehouse Residence with security rights. Confirmation proof gives two possibilities. The first possibility is that the verification results indicate that the Warehouse Residence cannot be secured. The Registration Centre will notify the Candidate Recipient of the security right and its reason. If the second possibility is acceptable as security, the Registry Centre informs that the warehouse residence can be guaranteed to the C Candidate Recipient of the Security Right.

Based on the results of such verification, then proceeded with the signing of the Agreement on the Guarantee Rights of the Warehouse Receipt by the Giver and Recipient of the Guaranteed Rights, which is an accessory agreement of the Credit Agreements loaded in Article 14 of the Law on the Warehousing Receipts as described above. After signing then, the Guarantor, in this case, the Bank, shall notify the occurrence of the

²⁴ *Ibid*

guarantee rights of the warehouse receipt to the Registration Center and the retailer of Warehouses by attaching the Proof of the confirmation of the Receive of Warehouse charged with security rights from the Registry Center, photocopies of the agreement on Guarantee rights on the warehousing rise and photographic copies of warehouses rise.

The Registration Centre subsequently updated the status of the Warehouse Residence and recorded the Liquidation of Guaranteed Rights in the List of Liquids of Guarantee Rights, and the Registration Center sent proof of the confirmation that it had received and had made the recording of the notice of the claim of the Guarantee Right. So basically, the Warehouse Residence Guarantee also contains the Publicity Fundamentals, the Trust Guarantee, and the Dependency Rights.

Force of Enforcement on Guarantee of Warehouse Resignation when the Debtor is declared Non-Performing

Granting credit by the Bank to the debtor can potentially become a crash credit, so to anticipate such risks, the Bank generally requires the Debtor to provide credit guarantees or credit assurances. Warranty can be distinguished into two (two) kinds. Among other things, material warranty is the authenticity guarantee, and intangible guarantee is the individual guarantee.²⁵ Indonesia provides legal protection through the Legislative Regulations in the interests of the parties to the agreement, as is the case for the parties involved in the credit or debt agreement.

The law guarantees all creditors and all debtors' goods, whether fixed or movable, existing or remaining, and all are a security for the debtor's debt. Such security is called general security, which means that the security is not explicitly specified and is not assigned to the successor creditors, where the proceeds of the sale of the security shall be divided among the existing creditors equally according to the size of each of their claims. The creditors guaranteed by the general security are called the Competing Creditors.

Such a general guarantee would not be satisfactory to the creditor because of the lack of certainty that his share would be paid. Therefore, the creditor must be secured with things of a specific nature intended explicitly as security for his debt and only applicable to that creditor. Such security is named with exceptional security, whose creditor is called with the creditors of preference. This means that creditors have a preferential position

²⁵ Salim HS, Op.Cit, Hal 23

because they are promised higher wages than competitors. The position of a preferential creditor leads to the consequence that he will obtain debt repayment before any other creditor. The execution of the security object carries out the repayment of this debt.

Herowati Poesoko states that the execution of the object of security is the exercise of the rights of the creditor of the holder of the right of security to the item of security when the debtor does not perform by way of the sale of the security object for the disbursement of its debt.²⁶ Sri Soedewi Masjchoen Sofwan adds that the execution of such objects can take place through public sale due to the presence of the Parate Executive on particular objects used as collateral.²⁷

The provisions governing the exercise of the rights of the creditor in the debtor's debt are directed against the property of the debtor, whereas the obligation of a debtor to pay is not fulfilled or better known as the enforcement in the law of security is known to be of two kinds, among others:

a) There is an Execution Title.

In order to enforce the creditor's rights against certain things of a debtor, the creditors have the right to enforce by executive seizure (*executorial beslag*). This is a form of protection for the debtor against acts that go beyond the limits of the creditor. So, the execution is handed over to the commissioner at the creditor's request. Based on *Reglement of de Rechtsvordering* (next called RV), The executive title can occur due to two (two) things; the first is based on a judge's decision made in the executive form that decides that the debtor must pay a certain amount of payment / confident performance (Article 430 RV)—the second based on a notary act intentionally made in executory form (Act 436 RV), because according to the provisions of the gross Law of the Notary Act such has executive power. Wherein the Act contains a declaration of debt of a certain amount of money from the debtor to the creditor. Therefore, the words should be inscribed in the Head of the Notary Act: "For justice based on the One God. The autonomy of the executive power of the Act has the power to be enforced as the judgment of the Court."²⁸

²⁶ Herowati Poesoko, 2007, *Parate Exceutie Obyek Hak Tanggungan (Inkonsistensi, Konflik Norma dan Kesesatan Penalaran dalam UUHT)*, LaksBang Pressindo, Yogyakarta, Hal. 28

²⁷ Sri Soedewi Masjchoen Sofwan, 1980, *Hukum Jaminan di Indonesia, Pokok-pokok Hukum Jaminan dan Jaminan Perorangan*, Liberty, Yogyakarta, Hal. 31

²⁸ *Ibid*, Hal 32

b) Without an Executorial Title (Parate Eksekusi)

Execution of security may also be carried out based on a Parate of Enforcement, i.e., the creditor's right to sell the object of security in his possession when the debtor fails to perform. Djuhaendah Hasan added that the parade of execution is a direct execution without an executive title, such as a gross notary or a judge's decision.²⁹ Sri Soedewi Masjchoen Sofwan also expressed a similar opinion. Parate Execution has two characteristics: It does not require an executive title to exercise its rights and can carry out its execution directly (independently) as a separatist creditor.³⁰

Based on the character of the security right of the Warehouse Residence, then the security rights of the warehouse residence are prior rights or priority rights of its creditors in respect of the execution of the exhaustion of its obligations as listed in the Law of Warehousing Residence provisions Article 1 paragraph 9 of the Act of Warehouse Resi stated that "... which gives a priority position for the acceptance of security rights against other creditors." The further explanation that the creditors of security rights over the warehousing residence are preferential creditors is further disclosed in provisions of Article 16 of the Law and Article 21 up to Article 24 PP No. 36 of the Year 2007.

During the debt process with the guarantee of the Warehouse Resi, the possibility of a non-performance or breach of promise by the guarantor debtor is highly likely to occur. To that end, the law provides for the means of execution through Parate Execution as stipulated in Article 16 of the Warehouse Residence Act, among others:

1. Following Article 16, paragraph (1) of the Warehouse Residence Act, when the guarantor of the right of security fails to make a promise, the recipient of the security right has the right to sell the object of security in his possession through a public auction or direct sale;
2. Before taking action of direct sale or public auction, the Borrower of the Recipient of the security right shall notify the Debtor of the Guarantor, the Registration Centre and the Warehouse Manager no later than 3 (three) days before the auction or direct sale is carried out;

²⁹ Djuhaendah Hasan, 1996, Lembaga Jaminan Kebendaan Bagi Tanah dan Benda Lain yang Melekat pada Tanah dalam Konsepsi Penerapan Asas Pemisahan Horisontal (Disertasi), Citra Aditya Bakti, Bandung, Hal. 10

³⁰ Sri Soedewi Masjchoen Sofwan, Op.Cit, Hal 33

3. The beneficiary of the security right has the right to take the exhaustion of the sale proceeds of the warehouse residence minus the cost of sale and management costs per the terms of Article 16 (2) of the Warehouse Residence Act. If the loan amount is exceeded, the creditor shall return the amount to the debtor, and if the amount is insufficient, he shall be liable for the remainder of the unpaid amount.
4. Article 16 Paragraph (3) of the Warehouse Residence Act explains that the sale of a security object as described above may be carried out only with the knowledge of the guarantor or debtor.

The conditions of such notification are also regulated in Article 22 of the Civil Code No. 36 of 2007, which is:

"Before carrying out the sale by public auction as referred to in Article 21 Paragraph (2) letter a, the guarantor shall notify the Guarantor, the Registration Centre and the Warehouse Manager no later than 3 (three) days before carrying on the sale through public auctions."

According to the Regulations of the Head of Commodity Futures Trade Supervisory Authority No. 09/BAPPEBTI/PER-SRG/7/2008 dated July 24, 2008, on the Technical Guidelines for the Guarantee of Warehouse Receipts, which regulate technically the execution of the security through the sale of guaranteed objects entirely and clearly. According to these Regulations, the Sale of Guaranteed Objects shall be initiated by making notification to the Recipient of Guarantee Rights about the plan of the seller of the object of the guarantee right as a result of the injury of the debtor's promise to the Debtor, the Guarantor, the Registration Centre, and the Warehouse Manager no later than 3 (three) days before the direct sale or public auction. The notice shall contain at least: 1. a description of the goods, including the type, quality level, quantity and, if any, class of goods; 2. the price offered; and 3. the time and place of the direct sale or public auction.

The provisions relating to the legal protection of the security on the Warehouse Receipt when the Debtor is not satisfied are also contained in Government Regulation No. 1 of 2016 on the Guarantee Institution Article 19, which reads: "In the case of a warehouse residence being charged with a security right, the Implementing Institution shall give priority to the liability of losses to the Recipient of the guarantee right or the Creditor than to the Owner of the warehouse Residence." Thus, according to the provisions of the Regulations of the Law-Laws above, then the Guarantor may determine

the procedure of sale to be passed in order to carry out the execution of the object of security in his possession either through public auction or direct sale so that they will be avoided from the loss of a guarantor who has not performed his duties. The lawmakers also expect the Warehouse Resolution to provide legal certainty to those who use it.

Conclusion

Based on the results of the above analysis, the following conclusions can be drawn:

1. In order to provide legal certainty for the parties to provide easy access to the trade financing system for business operators in the field of agribusiness, including Farmers and small and medium-sized enterprises based on agriculture and to ensure their legal status, the government of Indonesia issued legislation in 2006 issuing regulations related to the Guarantee of the right to the residence of the warehouse, namely the Act No. 9 of 2006 on residence, which was subsequently amended to the Act Number 9 of 2011 on the Amendment of the Law No. 9, 2006 on Residence, the Government Regulation No. 36 of 2007 on the Implementation of the Act, the Regulations of the Bank of Indonesia Number 9, 2007, and the Regulation of Bank Indonesia Number 9/6/PBI/2007 on the Second Amendment to the PBI No. 7/21/2005 which, among other things, regulates the use of residence as one of the bank credit agencies.
2. Like the debt guarantee agency, the warehouse residence also has executive power through Parate Execution as regulated in Article 16 of the Warehouse Residence Act, PP No. 36 of 2007 and the Regulations of the Head of the Commodity Futures Trade Supervisory Authority No. 09/BAPPEBTI/PER-SRG/7/2008 and Government Regulations No. 1 of 2016 on the Guarantee Institution, i.e. a) The debtor is liable to a pledge or non-performance; b) The creditor receiving the security right has a right; c) The right to sell on his power; and d) The sale is made through Public Auction or Direct Sale.

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