

FULFILLMENT OF SECURITY LAW PRINCIPLE IN PLEDGE WITH STOCK AS IT OBJECT

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Abstract: *The study, entitled Fulfillment of Security Law Principle In Pledge With Stock As It Object, aims to find and understand and analyze how the validity of the share Security Law agreement uses the Pledge Security Law institution. Based on the results of the study it can be concluded that the Pledge Security Law Institution is the only Security Law institution in Indonesia whose publicity is different from other security institutions in Indonesia. The publicity of the Pledge Security Institution is manifested and proven by the credibility of the object Security Law by the Creditors. Besides Pledge as a material security agency in Indonesia also has a Principle in the Security law, the principle is the Accesoire Principle which is the legal requirement for a Pledge. Legitimate a Pledge if the object which is used as a security object is under the authority of the Creditor. Whereas in the case of a stock Security Law using a mortgage Security Law institution, the potential of the Accessibility Agreement is null and void by law because in the UUPT provisions, stock that are used as security as a pledge object, the control remains with the Debtor.*

Keywords: *Security, Pledge, Stock.*

1. Introduction

Debt is a business activity that has been happening for a long time in the community. The public conducts debts in general to facilitate their economy and also improve their standard of living. Those who need funds will certainly come to those who have more funds to make a debt agreement. Creditors in providing debt to Debtors often require a security to the Debtor to ensure that the debt given to the Debtor will return one day.

Many business activities associated with the provision of debt security are carried out by individuals and various business entities. Creditors generally explicitly require the Debtor to hand over an object as the object of the Debtor's debt security. Debt securities submitted by the Debtor will generally be assessed by the creditor before

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being accepted as an object of security for the debt they provide. In carrying out the assessment of debt securitys from a legal perspective, the Creditors should do so based on the legal provisions relating to the object of debt securitys and the legal provisions concerning debt securitys referred to as the security law (M. Bahsan, 2010).

Providing material securitys always separates a part of one's wealth, that is, providing security and providing it for debt repayment from the Debtor. The wealth can be in the form of Debtor's own wealth or third party wealth. This special separation is for the interests of certain creditors who have requested it. Therefore, the granting of material securitys to a particular creditor gives the creditor a special privilege or a special position for other creditors. Material security consists of (1) Pledge; (2) Mortgage Rights; (3) Mortgages; and (4) Fiduciary (Arus Akbar Silone and Wirawan B. Ilyas, 2011).

Pledge and Mortgages are security institutions regulated in Burgerlijk Wetboek (hereinafter referred to as BW) especially in Articles 1150-1160 BW for Pledges, and Articles 1162-1232 BW for Mortgages. Whereas the Mortgage Rights are regulated in Law Number 4 of 1996 concerning Mortgage Rights and for Fiduciary Regulations are regulated in Law Number 42 of 1999 concerning Fiduciary. Each security institution, whether pledge, mortgage, mortgage and fiduciary has its own characteristics in terms of mastery of security objects. There are creditors who need to master the security, and there are creditors who do not need to master the security.

Furthermore, if it is associated with a business entity which is a legal entity in which one of them is a limited liability company which according to Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT) precisely in Article 1 number (1) confirms that the Limited Liability Company hereinafter referred to as a Company, is a legal entity which is a capital alliance, established based on an agreement, conducts business activities with authorized capital which is entirely divided into stock and meets the requirements stipulated in this law and its implementing regulations.

The stock in the Company Law have been provided in writing the rules regarding the position of stock in a company, precisely in Articles 48-62 of the Company Law, then Article 60 paragraph 2 of the Company Law confirms that Stock can be used as a security object with a Pledge or Fiduciary. In line with the norm, that Pledge and Fiduciary are material security institutions specifically for movable objects, then in the Company Law it is precisely in Article 60 paragraph (1) that stock are movable objects. Article 60 paragraph 4 of the Company Law provides that the stock pledged using Pledge or Fiduciary, the voting rights remain with the Stockholders.

Based on the above matter, the stock are movable objects and of course the security institutions for movable objects are pledge and fiduciary, so when the stock are used as security objects for pledge institutions, of course, will be affected by the principle of *Inbezitstelling* namely that the pledge object must be controlled by the creditor for the validity of a pledge.

In the Company Law stock have various classifications. One example of classification is ordinary stock. Common stock in the Company Law have the right to dividends, the votes of the GMS and the distribution of the results of the liquidation of the company's assets. When these stock are pledged as security using a pledge, all aspects of these ordinary stock also come out of the Debtor's power, because the object of stock security cannot be said to be stock without voting rights.

Based on the background explanation above, it can be formulated that the problems that will be examined in this thesis are as follows:

What are the characteristics of stock that can be used as security object?

2. Theoretical Framework and Hypothesis Development

Security Law

The term security law is a translation of the terms security of law, *zekerheidsstelling*, or *zekerheidsrechten*. The term "legal security" includes both material and personal security. Based on these conclusions, the definition of security law given is based on the distribution of types of security rights institutions, meaning that it does not provide the formulation of the definition

of security law, but rather gives the scope of the term of the security law, which includes material securitys and individual securitys. Securityd law is a legal provision governing the legal relationship between the guarantor (the Debtor) and the recipient of the security (the creditor) as a result of loading a certain debt (credit) with a security (certain objects or persons). In the security law not only regulates the legal protection of the creditor as the creditor, but also regulates the legal protection of the debtor as the recipient of the debt. In other words, the security law not only regulates the rights of creditors relating to certain debt repayment securitys, but equally regulates the rights of creditors and the rights of debtors relating to certain debt repayment securitys (Rachmadi Usman, 2008).

Pledge

The definition of pledge has been affirmed by Article 1150 BW which states that a pledge is a right obtained by a person owing a movable property, which is surrendered to him by a person owed or by another person on his behalf, and which gives the debtor the power to take repayment of the object. that takes precedence over other debtors; with the exception of the costs of auctioning the item and the costs incurred to save it after the item has been mortgaged, which costs should take precedence. According to Trisadini Prasastinah, the elements contained in the Pledge are:

1. Pledge Objects are movable objects both tangible and intangible;
2. Objects must be submitted to the creditor or a third party (in the authority of the creditor or third party);
3. Pledge holder creditors take precedence in taking repayment compared to other Creditors if the Debtor defaults, unless determined by Law;
4. Pledge Agreement is an additional agreement (Accessoire), meaning that the existence of a Pledge agreement depends on the basic agreement. If the main agreement is deleted then by law the Gadai agreement will be deleted, but not vice versa. The delete agreement does not mean that the main agreement will be deleted (Trisadini Prasastinah dan Leonora bakarbessy, 2016).

A Pledge is a real agreement, that is, an agreement that in addition to an agreement, a real deed is needed (in this case the transfer of authority over the Pledge goods) (Gunawan Widjaya and Ahmad Yani, 2001).

The party who pledged is called a "pledgebroker" and who receives a pledge, is called a "pledgee or recipient". Sometimes in a Pledge involved three parties, namely the Debtor (the debtor), the Pledge giver, that is, the party who surrenders the Pledge object and the Pledge holder, namely the Creditor who controls the Pledge object as security for the receivables (Mariam Darus Badruzaman, 1991,).

Pledge security agreement, possibly ending due to several things, among others:

1. The main agreement is over;
2. Pledge objects escape from the real power of creditors;
3. Pledge objects are destroyed;
4. The Pledge object is voluntarily released by the Creditor;
5. There is mixing (Mariam Darus Badruzaman, 1991,).

Stock

According to **Gatot Supramono**, the general and simple understanding is securities that can be bought or sold by individuals or institutions in the market where the letters are traded (Gatot Supramono, 2014). Stock can also be defined as a sign of capital participation of a person or party (business entity) in a company or limited liability company. By including this capital, the party has a claim on company income, a claim on company assets, and is entitled to attend the General Meeting of Shareholders (RUPS) (Gatot Supramono, 2014).

According to **Darmadji**, stock can be defined as a sign of ownership or ownership of a person or entity in a company or limited liability company. The form of stock is a piece of paper which explains that the owner of the paper is the owner of the company. The portion of ownership is determined by how much investment is invested in the company (Darmadji and Fakhrudin, 2011).

According **Suharkono**, Stock is basically a movable object. Therefore, stock also provide material rights, which can provide immediate enjoyment of an object and can be maintained to all people. Stock can also be used as security or security for a debt,

which in civil law construction is known as the pledge of stock (Suharkono and Kartini Muljadi, 2010).

3. Research Method

This research is a normative study which means that this research examines the side of the legislation itself, not researching the social phenomena due to existing legislation. The approach method used in this research is the statute approach. This approach is used because in the discussion this discussion will refer to the Act.

4. Results and Discussion

Stock that are used as security indicate that the activity is a transaction. A transaction that involves an object must meet two kinds of conditions, which are required to have economic value and can be transferred. Stocks are movable objects in which the classification of movable objects is divided into two types, namely movable objects due to their nature and movable objects due to statutory provisions. Stock are said to be movable objects because of the provisions of the Act, which in Article 60 of the Company Law states that stock are movable objects.

Stock which are movable objects as determined by the law, can certainly be used as one of the objects of business transactions, one of which makes stock as objects of security. Stock used as security have been determined by the Company Law regarding its security institutions, namely Pledge and Fiduciary. Pledge and Fiduciary are special security institutions for movable property, and stock are movable property as stipulated in the Company Law.

The Company Law has set various rules regarding stock, precisely in Articles 48-62 of the Company Law. The rules governed by the stock in the Company Law one of which regulates the classification of stock. The definition of stock based on the explanation of Article 53 paragraph (1) is a grouping of stock based on the same characteristics. Provisions regarding the characteristics of stock in the Company Law are regulated in Article 53, wherein the characteristics of the stock are as follows:

1. Common Stock:

Based on the explanation in Article 53 paragraph (3), what is meant by ordinary stock is stock that have voting rights to make decisions in the GMS regarding all matters relating to the management of the Company, have the right to receive dividends distributed, and receive the remaining assets resulting from liquidation;

2. Stock with voting rights or without voting rights;
3. Stock with special rights to nominate members of the Board of Directors and / or members of the Board of Commissioners;
4. Stock which after a certain period of time are withdrawn or exchanged with other share classifications;
5. Stock that give the right to the holders to receive dividends earlier than other classification shareholders on the distribution of dividends cumulatively or non-cumulatively;
6. Stock that give the right to the holders to receive in advance from other classification shareholders the distribution of the remaining assets of the Company in liquidation.

Just like other securities, one of the characteristics of securities is the existence of a form of letter that has been determined by a regulation, which is known as a formal condition.

The Company Law does not explicitly regulate the formal conditions of a share certificate, but from the existing Articles it can be concluded that the formal conditions of the stock certificate, namely:

1. Writing "STOCK" on the stock certificate (Act 31 ayat (1) UUPT);
2. The nominal value must be in the currency of the Republic of Indonesia (Act 49 ayat (1) UUPT);
3. The name of the stockholder (Act 48 ayat (1) UUPT);
4. Date of issue;
5. Serial number of the stock (Act 50 UUPT);
6. Issuer and signature of the issuer (director and commissioner);
7. Classification of stock (Act 53 UUPT) (James Julianto Irawan, 2014).

Seeing the norm provisions in Act 60 (2) indicates that each classification of stock contained in the Company Law can be used as a security object.

As discussed above the securityd stock criteria above, it can be concluded that each share can basically be used as a security object, both in the mortgage security institution or the Fiduciary security institution. Characteristics of stock

that can be used as security are stock that have fulfilled the formal requirements as stipulated in the Company Law, where there are written "stock", nominal value must be in the currency of the Republic of Indonesia, there are names of shareholders, date of issue, number share series, issuers and the publisher's signature, and have a stock classification. Whereas stock that do not meet the formal requirements as stipulated in the Company Law, these stock cannot be used as security, or stock that only fulfill part of the formal requirements for stock in the Company Law (facultative), because the formal conditions for stock in the Company Law are cumulative.

5. Conclusion, Implication and Limitation

5.1. Conclusion

The UUPT regulates the formal requirements of stock including written stock, mandatory currency in the form of the currency of the Republic of Indonesia, issued based on the name of the shareholder, date of issue, serial number, signature of the issuer and issuance and classification of stock. The characteristics of stock which are intangible movable objects must be fulfilled cumulatively, if there are some formal conditions for stock that are not fulfilled, then these stock cannot be said to be stock. After fulfilling the formal requirements for stock, the next condition is that permits for stock to be used as security by the Limited Liability company articles of association. When in the Articles of Association of a Limited Liability Company does not regulate a ban on underwriting, then these stock can be used as security.

5.2. Implication and Limitation

Conclusion, Implication and Limitation to provide the summary vof research findings, implications and suggestions for future research.

Appendix consist of tables, pictures and research instrument.

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