



## The Process of Transferring Fiduciary Rights to Inventory as Working Capital Credit Guarantee

| Article  | Abstract  |
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### INTRODUCTION

Economic development in Indonesia has continued to increase in line with population growth, rising human needs, and advancements in technology that support the fulfillment of those needs (Kurniawan & Managi, 2018). Similarly, the banking sector in Indonesia has experienced growth, as increasing demands for primary necessities such as clothing, food, and housing as well as secondary needs, have led to a greater distribution of funds to the public in the form of credit (Bawono, 2021).

As stipulated in Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking, as well as Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK), Article 1 paragraph (1) defines the financial system as an integrated framework consisting of financial service institutions, financial markets, and financial infrastructure, including payment systems, which interact to facilitate the collection and allocation of public funds to support national economic

activities, as well as corporate and household sectors connected to financial institutions(Amaglobeli et al., 2023).

From a juridical perspective, banking encompasses all matters relating to banks, including institutional structures, business activities, and procedures for conducting such activities(Putrevu & Mertzanis, 2024). Banks are business entities that collect funds from the public in the form of deposits and distribute them to the public in the form of credit and/or other financial services aimed at improving the standard of living of the wider community(van Zanden, 2023). As intermediaries in the distribution of public funds, banks conduct lending activities, which must adhere to prudential principles and risk management standards(Abasimel, 2023).

Article 20A of Law Number 4 of 2023 emphasizes that, in providing financing whether based on sharia principles or otherwise banks are required to ensure a strong and measurable level of confidence in the integrity, capacity, and commitment of debtor customers to fulfill their repayment obligations(Abasimel, 2023). Since all financing activities inherently involve risk, the application of prudential principles and sound financing practices is mandatory(Çıkırıyal & Azrak, 2023). Prior to extending credit, banks are therefore required to conduct a comprehensive assessment covering the debtor's character, business capacity, capital condition, collateral, and business prospects(Mahi, 2024).

Pursuant to Law Number 10 of 1998, credit is defined as the provision of money or claims equivalent thereto, based on a loan agreement between a bank and another party, which obligates the borrower to repay the debt within a specified period along with interest. A debtor customer is a customer who receives credit or financing facilities based on sharia principles or equivalent arrangements under a banking agreement. Accordingly, banks must conduct thorough credit analysis based on the prudential principle and risk management, commonly applying the 5C analysis: character, capacity, capital, collateral, and condition.

According to Hasim Purba, a legal relationship between two or more parties who are legal subjects, which gives rise to reciprocal rights and obligations, constitutes an obligation (perikatan)(Simanjuntak et al., 2024). Such relationships arise from agreements made by the parties and are founded on good faith. Law Number 4 of 2023 explicitly states that good faith includes the obligation to provide honest and accurate information(Khairunnisak et al., 2024).

The provision of credit is closely linked to the certainty of repayment. To mitigate future risks arising from uncertainty in credit repayment, banks generally require collateral. Under Article 1 paragraph (23) of Law Number 10 of 1998, collateral is defined as additional security submitted by a debtor to obtain credit or financing facilities. The form of collateral required varies depending on the type of credit and the nature of the debtor's business. Assets used as collateral may include land, buildings, ships, inventory, gold, or other assets with economic value.

In Metro, the growth of businesses particularly manufacturing and distribution enterprises has led to increased credit distribution by PT Bank Central Asia Tbk (BCA). For certain debtors, particularly those operating factories or distribution businesses, inventory is commonly pledged as collateral. In practice, several cases have arisen in which debtors defaulted, leading to the execution of collateral. While land and buildings

were successfully auctioned, issues emerged with inventory collateral, which was no longer available at the designated location at the time of execution.

This study examines the process of transferring fiduciary rights over inventory as collateral for working capital loans at PT Bank Central Asia Tbk, Main Branch Office of Metro, as well as the legal resolution adopted by the bank when inventory collateral is unavailable during execution. The study is expected to provide recommendations to BCA Metro to ensure legal certainty and mitigate the risk of non-performing loans, while also contributing to the development of legal scholarship on credit provision and fiduciary security, ensuring balanced legal protection for both creditors and debtors.

## RESEARCH METHODS

The research method employed in this study adopts both normative and empirical juridical approaches. The normative approach is conducted by examining statutory regulations, legal norms, principles, and doctrines relating to considerations in the acceptance of inventory as credit collateral, as well as the process of transferring fiduciary rights over such inventory. The empirical approach is carried out through field research using observation, interviews, and surveys. After the data are collected, they are systematically analyzed and presented in an organized manner, followed by the formulation of conclusions using deductive reasoning in order to obtain a comprehensive understanding and general answers to the research problems based on the findings.

## RESULTS AND DISCUSSION

### A. Process of Transferring Fiduciary Rights over Inventory as Credit Collateral

In the process of granting credit to an applicant, a bank is required to conduct a thorough analysis based on good faith and trust, accompanied by the application of the 5C principle prior to making a credit decision. Bank Central Asia Main Branch Office of Metro, hereinafter referred to as BCA KCU Metro, applies the 5C principle in analyzing credit applications submitted by debtors. The process begins with a written credit application letter containing information on the applicant or prospective debtor, the type of credit facility requested, the desired loan tenor, the nature of the application (new, extension, or amendment), the purpose of the credit, details of the collateral offered, and, most importantly, the signature of the authorized party.

The application process is followed by a credit analysis stage conducted in accordance with BCA's Credit Approval Policy, which must be prepared comprehensively and at a minimum include: (1) information on the total credit facilities already granted and/or to be granted to the applicant; (2) business-related information and applicant data, including the results of checks against the non-performing loan registry, an assessment of credit feasibility to prevent over-financing that could harm BCA KCU Metro, and an objective evaluation free from external influence; (3) an analysis of character, capacity, capital, collateral, and business conditions of the applicant, including an assessment of the source of repayment, with emphasis on business income; and (4) a legal evaluation of the credit aspects derived from the analyses above, aimed at mitigating potential risks.

Collateral analysis is a crucial element in risk mitigation. According to Ashibly, collateral can be classified based on applicable law, both domestically and internationally,

into material (real) security and immaterial (personal) security. Real security provides proprietary characteristics, including priority rights over specific assets and the ability to follow the object regardless of its holder. Based on marketability, collateral is classified into primary collateral (highly marketable assets such as land, buildings, gold, and deposits), additional collateral (assets with moderate marketability such as vehicles and machinery), and complementary collateral (assets with low marketability such as inventory, trade receivables, and personal or corporate guarantees).

At BCA KCU Metro, certain debtors engaged in trading businesses are required to provide not only primary collateral in the form of land and buildings but also complementary collateral in the form of inventory. Initially, fiduciary security was not explicitly regulated in statutory law but developed through legal practice and jurisprudence. Formal regulation in Indonesia began with the enactment of Law Number 42 of 1999 on Fiduciary Security. Fiduciary security evolved from the pledge institution and applies to movable tangible and intangible assets, as well as certain immovable assets not eligible for mortgage rights.

Article 1 paragraph (1) of Law Number 42 of 1999 defines fiduciary transfer as the transfer of ownership rights over an asset based on trust, with the condition that the asset remains in the possession of its original owner. Fiduciary security must be established through an authentic deed drawn up by a notary. Fiduciary transfer refers to the transfer of ownership rights, while fiduciary security constitutes a proprietary security right that grants priority to the creditor. Fiduciary security is characterized by droit de suite, preferential rights, its accessory nature to the principal agreement, adherence to the principles of specificity and publicity, legal certainty, and ease of execution in the event of default.

The transfer of fiduciary rights over inventory as collateral for working capital loans at PT Bank Central Asia Tbk, Main Branch Office of Metro, is carried out in accordance with the Credit Manual. The inventory collateral is provided after the signing of the Credit Agreement as the principal agreement, followed by the execution of a Fiduciary Deed before a notary and its registration with the Ministry of Law. Upon registration, the creditor receives a Fiduciary Certificate as proof of the transfer of rights. The inventory collateral must also be insured against risks such as fire and theft and supported by a statement of ownership.

Based on the foregoing, it can be concluded that the process of transferring fiduciary rights over inventory as working capital credit collateral at BCA KCU Metro complies with the Credit Manual and Law Number 42 of 1999 on Fiduciary Security, thereby ensuring legal certainty for both parties. The bank gains assurance of execution rights and preferential status, while the debtor retains possession and use of the inventory for business continuity. This aligns with Gustav Radbruch's theory of legal certainty and Jeremy Bentham's theory of legal utility, as the arrangement provides clarity, fairness, and mutual benefit for both creditor and debtor.

## **B. Legal Settlement by the Bank in the Event that the Collateral Is Unavailable at the Time of Execution**

### **1. Legal Status of Inventory as an Object of Fiduciary Security**

Inventory constitutes a type of tangible movable property that may be used as an object of fiduciary security as referred to in Article 1 paragraph (2) of Law Number 42 of 1999 on Fiduciary Security. Under the fiduciary system, ownership rights over the inventory are transferred to the creditor based on trust, while physical possession remains with the debtor.

Inventory as an object of security has unique characteristics, namely:

- (1) It has a rapid turnover in business activities.
- (2) It carries a high risk of reduction, depletion, or unlawful transfer during the term of the agreement.

Therefore, in the implementation of a fiduciary agreement, inventory requires strict supervision to ensure its availability when needed for debt settlement through execution.

## **2. Legal Implications When Inventory Is Unavailable at the Time of Execution**

The absence of inventory at the time fiduciary execution is to be carried out gives rise to several legal implications, namely:

- a) **Default (Breach of Contract);** The debtor is deemed to be in default for failing to deliver the collateral object as agreed in the fiduciary deed. This contradicts the principle of good faith that underlies contractual relations in civil law.
- b) **Unlawful Act;** If the inventory has been transferred, sold, or misappropriated without the creditor's consent, such conduct may be classified as an unlawful act (*onrechtmatige daad*) and may even constitute a criminal offense pursuant to Articles 36 and 37 of the Fiduciary Security Law and/or Article 372 of the Indonesian Criminal Code (embezzlement).
- c) **Failure of Execution and Loss to the Creditor;** The absence of the collateral object deprives the creditor of an execution instrument for its receivables, thereby rendering the purpose of fiduciary security—to ensure certainty of debt repayment—ineffective.

## **3. Legal Protection for BCA KCU Metro as Creditor**

The Fiduciary Security Law grants preferential status to the creditor (Article 1 paragraph (2) of the Fiduciary Security Law), meaning that a fiduciary creditor retains the right to priority repayment from the proceeds of execution of the debtor's other assets. The legal remedies available to the creditor include:

- a) Filing a civil lawsuit for damages.
- b) Pursuing criminal proceedings if intent is found in the disappearance of the collateral object.
- c) Applying for a security attachment over other assets owned by the debtor.
- d) Filing for bankruptcy, in which the fiduciary creditor acts as a secured (separatist) creditor.

In accordance with Article 23 paragraph (2) in conjunction with Article 24 of Law Number 42 of 1999 on Fiduciary Security, legal protection for BCA KCU Metro as the fiduciary recipient is provided under Article 36 of the same law, which stipulates that a fiduciary grantor who transfers, pledges, or leases the object of fiduciary security without prior written consent from the fiduciary recipient shall be subject to imprisonment of up to two (2) years and/or a fine of up to IDR 50,000,000 (fifty million rupiah).

#### **4. Preventive Measures by BCA KCU Metro as Creditor**

To minimize the risk of inventory loss, BCA KCU Metro as creditor may implement supervisory policies, including:

- a) Requiring debtors to prepare and submit monthly inventory reports.
- b) Conducting periodic physical inspections at inventory storage locations.
- c) Incorporating supervision and transfer-restriction clauses into credit agreements.
- d) Utilizing barcode technology, stock tracking systems, and digital audits.

#### **5. Legal Affirmation Based on Survey Results**

The absence of inventory as an object of fiduciary security at the time of execution not only constitutes a civil law violation but may also give rise to criminal liability. This reinforces the urgency of revising fiduciary security governance to be more adaptive to collateral objects that are rapidly changing or consumable in nature, such as inventory in commercial cycles.

Based on the foregoing analysis, it can be concluded that the process of transferring fiduciary rights over inventory as working capital credit collateral at PT Bank Central Asia Tbk, Main Branch Office of Metro, has been carried out in accordance with the collateral submission provisions stipulated in the Credit Approval Policy (Credit Manual) and Law Number 42 of 1999 on Fiduciary Security. Each party thereby obtains legal certainty regarding its respective rights. BCA KCU Metro is assured of its rights as a fiduciary creditor with preferential status over inventory collateral, and in the event of default, is entitled to take legal action, including filing a criminal report against the fiduciary grantor pursuant to Article 36 of Law Number 42 of 1999 on Fiduciary Security.

### **CONCLUSION**

The process of transferring fiduciary rights over inventory as collateral for working capital loans at PT Bank Central Asia Tbk, Main Branch Office of Metro, has been carried out in accordance with the prudential principle, as well as the provisions, systems, and procedures stipulated in Bank Central Asia's Credit Approval Policy, commonly referred to as the Credit Manual. The objectives of credit provision are consistent with Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 and Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. Furthermore, the collateral binding agreement complies with Law Number 42 of 1999 on Fiduciary Security, and the Fiduciary Deed has been duly registered in the Legal Entity Administration System (AHU) of the Ministry of Law.

The legal settlement undertaken by PT Bank Central Asia Tbk, Main Branch Office of Metro, in circumstances where inventory collateral as the object of fiduciary security is unavailable at the time of execution does not merely give rise to civil law violations but may also result in criminal liability for the debtor. This condition underscores the urgency of reforming fiduciary security governance to ensure greater adaptability to collateral objects that are rapidly changing or consumable in nature, such as inventory within commercial trading cycles.

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