The Advantages of Pledge on Trademark Certification of Bank Credit in Indonesia

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Abstract: This research discusses the advantages of Trademark Rights as pledge in banking practice. In the previous research, it was mentioned that Trademark Right was used as fiduciary security in banking. However, We believe that pledge is more beneficial for banks and debtors compared to fiduciary security. Pledge is more efficient in terms of cost and simpler in imposition and execution. There are several advantages of pledge, such as no obligation for authentic deeds and no registration needed in fiduciary security. Thus, the process of issuing material rights on the pledge can be done through delivery of lien to creditors or third parties. The process is different from fiduciary security in which it must be done electronically and there is no obligation in pledge to carry out the write-off in the post-execution procedures of the secured objects.

1 INTRODUCTION

In practice of conventional and *sharia* banking in Indonesia, there are few banks that accept Trademark rights as collateral for several reasons. One of the reasons is Trademark rights as collateral requires more skillful resources to determine its economic aspect. Meanwhile, the availability of related expertise is limited or not even available in most of the banks. Therefore, conventional and sharia banks tend to choose collateral that is commonly known in banking practice such as land rights, vehicles, production machinery or securities which are relatively easy in its assessment and execution. Using primary and qualitative research into several banks in Indonesia, a list of banks who accept or decline Trademark Right as collateral was made. The results can be seen as follows:

Table 1: The list of banks that accept or decline Trademark Right as collateral.

Bank Name	Accept/ Decline	Explanation
Bank Central Asia (BCA)	Decline	BCA requires Trademark Rights Certificate as a supplementary legality to analyze the business prospective
1. Bank Rakyat Indonesia (BRI) 2. Bank Jatim 3. Bank Tabungan Pensiunan Nasional (BTPN) 4. Bank Negara Indonesia (BNI), Surabaya 5. Bank Mandiri 6. Bank Syariah Bukopin 7. Bank BRI Syariah 8. Bank Tabungan Negara (BTN) Syariah 9. Bank Panin Syariah		(e.g. land rights, vehicles and machinery) and movable objects (e.g. account receivables)
Bank Negara Indonesia (BNI), Jakarta	Accept	Trademark Rights Certificate is accepted as additional collateral and imposed with fiduciary security.

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Bank Bukopin	Decline	Trademark Right can be used only as supplementary legality of customer's business. For example, a tea producing company can only use its Trademark Right Certificate as supplementary legality.
Bank Muamalat Indonesia (BMI)	Accept	Trademark Right Certificate is accepted as additional collateral and imposed with a pledge security. However, in some cases Trademark right is only used as the supporting legality of the customer's business.

The cause of this occurrence is due to the absence of supporting regulations such as Bank Indonesia Regulation (PBI) and the Financial Services Authority's Regulation (POJK) on the existence of Trademarks right as collateral, which can be calculated as a deduction in Asset Allowance for Asset Losses (PPA) calculation in banking practice.

Based on the research conducted by Mulyani (2014) at Bank Nasional Indonesia (BNI), Jakarta and our research at Bank Muamalat Indonesia (BMI), both banks accept Trademark Right Certificate as additional collateral, not the principal collateral. Using Trademark Rights as principal collateral can be highly risky due to the fact that Trademarks cannot be guaranteed.

Jened (2007) explains that Trademark Rights, as a part of Intellectual Property Rights, is basically a sign to identify the origin of a certain company's goods and/or services to the others. This identification function has been enacted in medieval Europe to represent the origin of a product. At that time, Trademark Right was often symbolized on merchandise.

In trading activities, these names and symbols would be recognized as Business Name, Company Name, Brand Name, Trademark and Attributes. Therefore, the economic value of Trademark right depends on the value of the products or services. If the products or services are popular in the market, the economic value of Trademark Right will be high. Conversely, if there is a decline in sales of products or services, the economic value of the Trademark Right will decrease. Matthes (2013) mentions that:

In practice, valuation is not main issue where the trademark rights are only one category of asset in security for a large-scale financing. In such cases the lender's overall goal is to take security over virtually each asset that the debtor owns. Sometimes the impression is that this catch-all approach makes detailed valuation redundant, at least for assets that are difficult to value, such as IP rights.

Even though Trademarks right as an additional security object, it does not mean that conventional banks and sharia banks override precautionary principle especially in conducting collateral analysis and imposing a perfect collateral charge. On the banking practices in Indonesia, there emerged fiduciary and pledge security to burden the Trademarks right. Referring to the objects of both agencies, it does allow Trademarks right as an intangible moving object to be burdened with a fiduciary security agency. However, both institutions have different characteristics and, consequently, they have different risk effects. Therefore, this research will discuss the advantages of pledge as a proper security institution to burden the certificate of Trademarks right as the object of collateral.

2 IMPOSITION OF PLEDGE OR FIDUCIARY SECURITY ON TRADEMARKS RIGHT

According to Mulyani (2014), in the context of civil law, the rights attached to the brand have a material nature. The nature of property in brand which is one of the intellectual property rights contained in the existence of two rights, they are economic rights that can provide benefits in the form of royalty, and moral rights that is always attached to the owner. The economic rights of person for his or her creativity can be transferred to another person (transferrable); therefore, others as beneficiaries of the transfer of rights can also get benefit from economic gain.

Based on the Article 499 of Burgerlijk Wetboek (BW), they mention the understanding of material legislation where each good and every right can be controlled by property rights. Trademarks right is categorized as an object, that is, an intangible moving object. Hartkamp (1975) argues that Trademarks right is the right of mind product:

"It was originally intended to devote the last book of the Code (Book 9) to the third category of subjective patrimonial rights: "the rights on the

products of the mind". The statutes containing these rights (at that time: patents, trade mark, copyright, trade name) were to be split up. The provisions of a civil character would be included in Book 9, those of an administrative, procedural and penal character were to be placed elsewhere."

Referring to the condition of the object may be security object; the Trademarks right qualifies as the security object for economic value and transferrable by written agreement. In addition to these two conditions, other conditions that must be met, namely:

a. The financial statement of the company owner on Trademarks right in order to acknowledge whether the Brand has value or not.
b. Trademarks right is a well-known Trademarks right. It refers to Trademarks right known to the public (consumer). Referring to the opinion of Haedah Faradz (2008) who believes that in order to make a brand famous, they need to realize quality assurance or reputation of a certain product which is not easy and require a long time. Coca Cola from the United States takes 100 years.
c. Trademarks right may be used as security object when registered in the General Register of Trademarks right at the Directorate General of Intellectual Property of the Ministry of Justice and Human Rights of the Republic of Indonesia with the proven certificate of Trademarks right, so the Trademarks right shall be protected by law for 10 years from the date of receipt and the period of protection may be extended.

Given the juridical security function is to ensure legal certainty for debt repayment or the implementation of an achievement, it is clear that the security items must be cashable, because the existence of material security is a preventive measure in securing the credit where it is not possible to guarantee something not cashable as stated by Hasan (2011).

In a study conducted by Mulyani and her team (2014) that the Trademarks right by BNI is encumbered with fiduciary security as regulated in Law Number 42 Year 1999 on Fiduciary Security (UUJF), whereas in BMI, Trademarks right is burdened with pledge insurance agency. It is possible to be encumbered with pledge or fiduciary, when referring to the scope of pledge and fiduciary objects. In Article 1150 BW, it is affirmed that a pledge is a right earned by a creditor of a moving good. Likewise, in Article 1 point 2 UUJF mentioned that Fiduciary Security is the security right for tangible objects either tangible or non-material. Based on these provisions, in the practice of conventional banking and sharia banking, it emerges two collateral institutions that burden the Trademarks right as security object.

Both institutions have different characteristics, especially in the mastery of objects. The possession of object on the pledge in the power of creditor or the third party while in the fiduciary, the mastery of fixed object is on the owner of the object. In the fiduciary security, the object remains to the owner of the object because it functions a capital object used by the owner to support its business activities. While on the pledge, the object must be removed from the power of the object owner (giver) and even threatened their unlawful pledge when the pledge is allowed to remain in the power of debtor or the lender.

In addition, pledge is not required for an authentic form agreement so that an informal agreement is possible. Meanwhile fiduciary security requires it since the authentic form of fiduciary security certificate is used to issue fiduciary security.

For pledge, there is no regulation on the registration of a security object. A lien emerges at the time the pledge is delivered to a creditor or a third party as defined in Section 1152 (1) BW, known as *inbezitstelling* pattern. In pledge, the principle of publicity is not meaningful to be registered in the general register, but the principle of publicity on the pledge, namely by alienating objects from the owner to be submitted to creditors or third parties. This is a manifestation of the principle of publicity. In contrast to fiduciary security, the issue of fiduciary security is based on the obligation to register objects charged with fiduciary collateral to the Law and Human Rights Registry. Fiduciary Security Registration is recorded electronically after the applicant has paid Fiduciary security registration fee. The Fiduciary security was issued on the same date as the Fiduciary security date recorded in the Fiduciary Registration Office database. The Fiduciary security certificate is electronically signed by the Official at the Fiduciary Registration Office. The Fiduciary security Certificate can be printed on the same date as the Fiduciary security Date recorded. Therefore, the birth of fiduciary security is based on the obligation to register. Comparisons of pledge and fiduciary charges can be illustrated below:

Table 2. A Comparison between Pledge and Fiduciary Security.

Explanation	Pledge	Fiduciary Security
Basic Law	Article1150-1160 BW	Law Number 42 Year 1999 on Fiduciary Security

Form of Agreement	Written Form	Needs to be in form of authentic deed
Object	Both tangible and intangible moving objects	Both tangible and intangible moving objects, especially buildings that cannot be burdened with pledge
Mastery of collateral object	On a Creditor or a third party	On the object owner
The authority to pledge	It is possible not the owner of the object to pledge the object of pledge. Referring to Article 1152 paragraph (4) of the BW: The absence of the pledgebroker's authority to act freely on the goods cannot be held accountable to the creditor, without prejudice to the right of the person who has lost or suspected the goods to claim it again.	Must be the owner to pledge

Table 3. The Characteristics of Material Right between Pledge and Fiduciary Security.

Explanation	**Pledge BW**	**Fiduciary Security**
Droit de suite principle	The pledge is removed when the pledge is separated from the pledgebroker's power. However, if the item is lost, or taken from his or her power, then he/ she is entitled to reclaim it under Article 1977 (2) BW, and if the pledge has returned, then the lien is considered never to be lost.	Fiduciary Security still follows the Object which is the object of the Fiduciary security in the hands of whoever it is located, except the transfer of the inventory item to the object of the Fiduciary security.
Droit de preference principle	A pledge is a right earned by a creditor of a moving good, which is delivered to him by the creditor, or by his/her proxy, as collateral for their debt, and which authorizes the creditor to take his or her receivables and the goods off by taking it before other creditors; with the exception of the cost of the sale as the execution of the judgment on the claim of ownership or control, and the cost of saving the goods, issued after the goods as pledge in which they must take precedence	Non-moving objects, especially Buildings that cannot be encumbered by the pledge rights as referred to in Act Number 4 of 1996 on Pledge Rights which remain in the control of the Fiduciary giver as collateral for the settlement of certain money, which gives priority to the Fiduciary recipients to other creditors.
Publicity principle	The pledge on tangible moving objects and on the receivables arise by way of surrendering the pledge to the creditor's power or under the	Objects encumbered with Fiduciary shall be registered electronically

	authority of a third party.	
Priority principle	Not in pledge because there is no redistribution for different creditors	In principle the priority principle is not in the fiduciary security
Specialty principle	Not specifically set	Fiduciary security Act contains at least the following: a. the identity of the Fiduciary Recipient and Receiver; b. data c. principal agreement guaranteed by fiduciary; d. description of the object of Fiduciary security; e. the value of the security; and f. the value of the Object being the Fiduciary object
Issue of Material Right	At the moment the object is left to the creditor or a third party.	Fiduciary registration is done electronically
Execution of collateral object	Parate execution	a. Parate Execution b. Based on the executorial title c. Sales are under the deal

Referring to the description above, it shows that pledge is a security institution that is simple and efficient, especially in terms of cost compared to fiduciary. There are some basic things including imposition and the issue of material rights of both securities. Fiduciary requires the cost of making a fiduciary certificate and registration fee electronically charged to the debtor. Meanwhile, pledge does not require authentic form and must be registered so that the cost in the pledge can be minimized. Then, regarding the issue of material rights, the fiduciary must be registered electronically to the Fiduciary Registration Office, while the pledge, material rights with the object of pledge is left to the creditors or third parties. From the aspect of legal assurance for the position of the bank receiving the pledge or fiduciary as the creditor is the same as the position of the preferred creditor from the process of security burden which is done perfectly.

When referring to Nieuw Nederlands Burgerlijk Wetboek (NBW), Title 9: Rechten Van Pand en Hypotheek, there are only two types of security namely the right to pledge and the right to pledge. Rose (2000) also asserts that immovable objects such as properties, ships, and aircrafts are the object of pledge (hypotheekrecht). Immovable objects such as ships and aircraft shall be registered as proof of ownership and as collateral. While moving objects such as accounts receivables, collect rights, and Intellectual Rights are burdened with pledge.

In terms of NBW, pledge is distinguished into: possessory pledge (disclosed pledge) and non-possessory pledge (undisclosed pledge). According to the provisions of Article 2: 236, what is meant by possessory pledge are:

"The right of pledge on a movable thing or on a right payable to bearer or order, or on the usefruct of such a thing or right, is established by bringing the thing or the document to bearer or order under the control of the pledgee or of a third person agreed upon by the parties. Furthermore, endorsement is required for the establishment of a right of pledge on a right payable to order or on the usufruct thereof."

In a possessory pledge, the grant of a moving object is followed by the goods delivery in the creditor real power (the security recipient) or a third party. This is similar to the pledge arrangement in BW, called *inbezitstelling*. This principle is an absolute requirement of possessory pledge.

Furthermore, Nugraheni (2016) stated in the possessory pledge made a pledge (written) agreement between pledgebroker and pledge recipient which is guaranteed the existence of the liens and the notification by the pledge recipient to the debtor. It is impossible for the debtor to transfer the guaranteed goods because the real possession of the goods is on the creditor / guarantee recipient (bank). This possessory pledge fulfilled the requirements of legitimate liens of the bank to make repayment of its receivables through the pledged objects contain the following components:

1. Title (the right to exercise a transfer of rights) of a contract of pledge;
2. Collateral
3. Power of disposition over property (*beschikkings bevoegdheid*).

Meanwhile, the meaning of non-possessory pledge is stipulated in the provisions of Article. 1: 239, which states that:

A right of pledge on a right, or a right of pledge on the usefruct of such a right, can also be established by an authentic deed or a registered deed under private writing without notification thereof to those persons, provided that the right of pledge or will be acquired pursuant to a juridical relationship already existing at the time.

Affirmed by Nugraheni (2016) that non-possessory pledge, which is pledged on a moving object, is realized through notarized deed or registered private deed and not accompanied by a concrete delivery of goods guaranteed to the creditor/Article 1: 237 NBW). In this regard, it is affirmed that the debtor/lender has right to pledge and transfer over the secured asset without being burdened with other material rights. If the debtor defaults, the creditor/pledge broker (non-possessory pledge) may request that the subsequent collateral be handed over him/her. Thus, it is possible that the pledge is encumbered with two or more non-possessory pledges. Non-possessory/undisclosed pledge is usually done by deed under the registered/notarial deed. This type of pledge does not need for any real collateral transfer to the creditor (without notice to the debtor). Non-possessory pledge as intended in Article 1: 239 NBW discusses the document of titles. If the debtor defaults, the bank will convert the undisclosed to disclosed right by making a notice to the debtor. Different from pledges in BW which do not recognize registration, pledges in NBW might involve registration. The meaning of registration, as described by Brahn (1999) is not in general meaning but the making of authentic or under registered deeds.

The making of this deed explains that there has been a pledge agreement between the debtor and the creditor that the secured asset is not submitted *inbezitstelling* to the creditor and in the event of default the creditor will notify the debtor to make a goods transfer for the execution. In other words, according to Wibier (2014), the agreement contains the authority of the collateral transfer by creditors. This registration is intended as publicity for third parties, regarding the security existence.

The fiduciary institution in the Dutch no longer existed as stated by Erp and Vliet (2002) that:

The fiduciary ban will not be adopted in the new Netherlands Antilles and Aruba Civil Code which is based on the new Dutch Civil Code. Generally speaking, the new Dutch Civil Code following established civil law principles in regard to real and personal security law as the code seems to function well in legal practice. There is, however, one area where this is not the case: the ban on fiducia cum creditore. The Civil Code explicitly adheres to the principle that ownership is a unitary concept and that it cannot be transferred for security purposes. However, the Supreme Court acknowledged sale and lease back by way of security as a valid transaction. Also, the Dutch legislator has already limited the impact of the fiduciary ban in special statutes.

In the Netherlands, the fiduciary has been imposed on the basis of Jurisprudence on the decision of Hoge Raad on 29 January 1929 which is famous for Bierbrouwerij Areest. Likewise, in Indonesia before the enactment of UUJF, the fiduciary was based on Jurisprudence based on Hooggerechtsh of (HGH) dated August 18, 1932. Before the enactment of UUJF, fiduciary was no regulation on registration so as to legal engineering by transferring ownership of fiduciary objects from their owners to creditor with submission constituted posessorium. The ownership of fiduciary objects switched over the credit period while the object remained in the power of the fiduciary giver because it was a capital object so that the fiduciary giver could still run its business.

a. The existence of fiduciary in Indonesia in the period since its enactment in 1999 until present cannot be separated from legal problematics that do not provide legal certainty for fiduciary recipients in this case is the bank. Problematic in UUJF:
b. The fiduciary object is divided into inventory and non-inventory items. The problem is in the stock. Items are defined as changeable and unfixed objects used as objects in a business. Thus, by UUJF, fiduciary givers are allowed to divert fiduciary objects in the manner and procedure commonly practiced in trade. The object which becomes the Fiduciary security object that has been transferred shall be replaced by the Fiduciary Giver with an equivalent object. The position of the bank is preferred to creditor as long as collateral exists. It would be the problem if the supplies of the transferred goods are not replaced by fiduciary givers even the proceeds of sale are not used as debt repayment. Does the bank remain preferred creditor when the collateral object is a non-existent inventory item that has been transferred to the buyer? Even the buyer of fiduciary security objects in the form of inventory objects is free from the demands of the bank according to UUJF. This is obviously risky for the bank to accept secured asset in the form of a stock item.

c. Fiduciary objects are possible in the form of subsequently acquired receivables based on research I have done that most banks in Indonesia receive collateral. In terms of commercial and flexibility for the bank capital seekers are very helpful but principles of material rights, principle of specialism, principle of publicity and the principle of legal certainty for the position of the bank as a creditor are somehow neglected. Given the collateral in the form of newly subsequently acquired objects resulted in the non-fulfillment of the specification of objects that must be listed on the fiduciary security certificate. This resulted in no legal certainty over which objects are burdened with fiduciary. There is no legal certainty of objects as collateral which puts the bank at stake in the event of the debtor defaults. The execution problem of subsequently-acquired assets emerges when the debtor breaches the contract while the collateral in the form of subsequently acquired receivables on the client debtor cannot be collected or under-performing loan, consequently, the bank cannot execute the receivables.

3 MINIMIZING IMPOSITION RISK OF PLEDGE OR FIDUCIARY SECURITY

Credit or financing distributed by conventional or sharia bank is a majority of productive assets owned by banks, then its quality must be maintained because the business activity cannot be separated from the risk which can disrupt the continuity of bank business. Therefore, bank must manage that risk by applying risk management including credit risk, market risk, liquidity risk, operational risk, law risk, reputation risk, strategic risk, compliance risk. Meanwhile, sharia banks apply additional risks such as yield risk and investment risk. One of the risks closely related to pledge or fiduciary charges on Trademarks right is law risk. Law risk is a risk caused by lawsuits and/or weakness of juridical aspect.

Sharia or conventional banks must apply strict secure measures in order not to cause weakness juridical aspect in accepting trademark as secured object. This must be anticipated considering its important role when debtor defaults. if security imposition is not executed in accordance with the set procedures, it would cause bank loss in terms that bank cannot do the execution towards the secured object because its material rights do not exist and the other loss for the bank is the position of the bank is only concurrent creditor not preferred creditor. This is confirmed by Matthes (2013) that:

In essence, the first decision to be made is whether the trademark owner (as the debtor under a financing arrangement) is supposed to remain the legal owner of the marks. If so, the lender and the trademark owner must reach an agreement about pledging the marks. If not, they must consider a security assignment of the trademarks to the lender. While some basic exercises – such as due diligence and proper identification of trademarks concerned – do apply to each of these two concepts, the legal and contractual implications differ significantly.

One of the efforts to minimize law risk to pledge or fiduciary charges on trademark is by analyzing it thoroughly submitted by customers. Valuation towards collateral involves type, location, proof of ownership and its legal status. Valuation toward collateral can be reviewed from the following aspects:

a. Economic aspect, it is economic value from objects to be secured
b. Juridical aspect, it assesses whether the objects are qualified as pledge in juridical requirements.

As a research example that I conducted in BMI, accepting trademarks certificate from a restaurant permitted by Directorate General of Intellectual Property Rights of the Ministry of Justice and Human Rights of the Republic of Indonesia as a pledge in financing *Murabahah* and *Musyarakah* contract which customers gain. Akad *murabahah* is a financing Agreement of an item by asserting its purchase price to the buyer and the buyer pays it at a price more as an agreed profit. Meanwhile, Akad *musyarakah* is Contract of cooperation between two or more parties for a particular business which each party provides a portion of funds provided that the profits will be divided in accordance with the agreement, while the losses are borne in accordance with the portion of their respective funds.

BMI makes an assessment towards the collateral, that the restaurant trademarks have been registered proven by certificate which was published and officially announced in electronic or non-electronic Official News. Trademarks Certificate contains:

a. Name and full address of the owner of registered trademarks;
b. Name and full address of the attorney in fact, in the application through the attorney in fact;
c. Receipt date;
d. Name of state and date of receipt of initial application using priority rights
e. Registered Trademarks label includes information about kind of colors if it uses any color, and if

trademarks use foreign language, except Latin, and/or unusual number used in Indonesia along with its translation in Indonesia, Latin letters and usual numbers used in Indonesia along with the spelling in Latin;

f. date and number of registrations
g. class and type of object and/or services that trademarks registered, and
h. expiration date of trademarks

According to Sujatmiko (2008), Trademarks right is a special right given by a state to the trademarks holder to use or given approval to someone to use it. Thus, trademarks right is not automatically given. Those who want it must apply a registration which is obligatory to issue a trademark right. Nur (2015) stated that a registration is required to get a protection for Trademarks right in Indonesia. Similarly, Permata (2016) confirmed that Indonesia adheres to the constitutive system in Trademarks right registration system. Registration is an obligation to gain the right unless the state will not give permission to the owner. This means without registering the trademarks, someone will not get a protection.

Besides the registered Trademarks right, BMI must pay attention to the protection period towards the Trademarks right since the law protection has been set for 10 years since the receipt date. As an example, receipt date of application Trademarks right on April 1 2017 then it will be valid until April 1 2027. The protection period can be renewed every ten years continuously as long as the Trademarks right is used on goods or services as included in certificate of Trademarks right and the goods and services are still produced and/or traded. If it is not anymore, the application will be rejected. The holder of Trademarks right can file an application for renewal six months before the expired date and it can still be filed six months after the expired date. This condition is set so the owner will not easily lose the trademark because of the delay in applying for Trademarks right renewal.

Certificate for Trademarks right by BMI is as ancillary not primary security. The primary is still the goods relatively easy in value and in the execution, for instance land rights, vehicles, production machine, and securities. Even though certificate of Trademarks right is only ancillary, it does not mean BMI eliminates the principle of conscience that must be done. BMI still pays attention to receipt date and range of payment which will be given to customer of the facility costs. If it is neglected, it will risk the position of BMI. If the range of payment is not on due yet the protection period is over and there is no renewal and miss the time, the trademarks is no longer valid. It is consequence of ancillary in terms that when Trademarks right is over, the pledge dealing is removed but not the main dealing. If this occurs, it can risk the position of BMI as preferred creditor changing into concurrent creditor.

The position of BMI as concurrent creditor is disadvantaged since they are only secured by general security as has been set in Article 1131 BW, that the security which lies on treasures from the debtor and the right which is owned by concurrent creditor is relative. The right is only enforced by the opposite contract. It will be different if BMI is as preferred creditor; the emerged right is material rights. Material right is absolute and accurate in analyzing the collateral in form of Certificate of Trademarks right.

Certificate of Trademarks right for restaurant by BMI is burdened by the pledge institution not fiduciary security as in BNI. The burden of Certificate of Trademarks right by BMI with pledge arrangement is made by authentic deed. If it is referred to Article 1151 BW, authentic deed is not a must: “That the pledge agreement must be proven by equipment that is allowed to prove the main agreement”. It is different from fiduciary that the agreement must be made. Hence the agreement must be made by notarial deed in Indonesia as ruled by Article 5 UUJF jo. Article 2 and Article 3 Government Regulation Number 21 Year 2015 on Fiduciary registration procedure and Fiduciary deed making cost. If it is not made in notarial deed, the registration cannot be performed electronically by fiduciary recipient, agent or the representative as a result of the fiduciary absence and make creditor only as concurrent creditor.

Several important clauses which listed in pledge agreement, they are:

a. Related to trademarks right used by pledgee (pledge giver), unless the default occurs, the pledger deserves the right in relation to third parties and give them the rights as listed in Trademarks right certificate.

   Trademark right certificate is given by the owner to BMI to be kept securely. It does not mean ownership transfer but unless default occurs, the copyrights still belong to the owner of Trademark right (pledger). It is in accordance with Article 1152 (1) BW that the pledged item is given to the creditor or third parties. Yet, the owner can still use the rights unless default occurs. In this context, the collateral in terms of certificate functions as proof of ownership.
b. Related to profit and other sharing. Unless default occurs, the pledger has a right to receive any profit and other sharing paid under the name of

Trademarks right. However, if the agreement broke, there is no such right and it should be given to the pledgee. The pledgee has a single right to receive and maintain the Trademarks right with its profit.

c. Related to restrictions that must be obeyed by the pledger, he is not not allowed to transfer or burden Trademarks right in form of anything nor manipulate Trademarks right which contradicts to pledgee's interest.
   This clause must be agreed as form of protection to BMI as pledgee, although the owner of Trademarks right is (pledger) still allowed to use his copyrights and receive any profit related to the copyrights but the pledger is not allowed to do any unalwful act that harms the pledgee.
   This restrictive clause is common in fiduciary deed, pledge deed and hyphotec deed which listed promises that must be obeyed by pledger to prevent unlawful act without written contract from creditor as pledgee. In agreement of financing principle on behalf of a customer who receives financing facility by BMI, it is mentioned that: during the financing period without written agreement from BMI, customer (owner) prohibited to pledge asset which have been pledged based on financial contract.
d. Clause related to dispute settlement. Any breach of contract, pledgee can take any necessary action to protect their rights based on this agreement including sell, transfer, and handover or in other way give every part of copyrights certificate through direct selling, auction or other way allowed in applicable provision.

Parate executie is provided in pledge law, if debitor defaults as ruled in Article 1155 BW. If the parties do not agreed, debitor or pledger does not fulfill their obligation, after the set time or after a warning in case there is no certain period of time, creditor has the rights to sell their asset in front of public convenient with local customs with the given regulation. The purpose is in order to pay debt with its interest using sales result. If the collateral consists of merchandise or saleable effects in stock exchange, thus it can be sold directly, as long as there are two expert brokers. Since the Article 1155 BW is a governing rule, all of the parties are free to do anything as long as it does not violate Article 1155 BW. Parate executie in pledge appear because law does not need to be agreed. No executive title necessary, the creditor can sell the secured items without any court or bailiff help.

Meanwhile execution of fiduciary deed as governed in Article 15 and Article 29 UUJF stipulate that bank in settling credit does not need to submit a lawsuit to district court. Yet, creditor can choose one of three ways of execution namely parate executie, execution with executive title or privately sale execution based on agreement between fiduciary giver and recipient which is beneficial for both parties. Among the three ways, the most effective execution for Trademarks right is privately sales execution that has to meet the following.

1. There is an agreement between fiduciary giver and recipient, therefore there is a good will from fiduciary giver, owner of Trademarks right.
2. Sale and purchase are done after one month starting from written notice by fiduciary giver and recipient to interest parties.
3. And announced at least on two newspapers circulated in related region.

If there is a transaction of Trademarks right, several steps will be taken as a protection for bank and the buyer of coprights including an authentic sale agreement made between the owner of Trademarks right and buyer witnessed by bank to ensure sale and purchase agreement occur. Money from the selling is used for loan repayment. If there any surplus, it would be given to the previous copyright owner. Having completed repayment of credit bank, the fiduciary giver requests right conveyance to HKI Directorate General by submitting statement request of rights conveyance typed in two duplicates by applicant or his attorney/agent who registered as HKI consultant in Directorate General. The statement typed in Bahasa Indonesia addressed to copyrights director, Ditjen HKI, ministry of justice, HAM RI, which clearly contains:

1. Name of Trademarks right and its registration number.
2. Name and complete address of the Trademarks right owner which was registered as previous owner.
3. Name and address of the new owner.
   By enclosing:
   - Photocopy of both parties identity;
   - Photocopy deed of the company and its change;
   - Proof of conveyance of rights, in form of sales and purchase agreement, letter of endowment, legal inheritance certificate, last will, original or photocopy which has been legalized by official authorized;
   - Statement of copyright use from the rights recipient and stamped;
   - Special power of attorney if the request of Trademarks right conveyance submitted through consultant HKI in Directorate General

by mentioning copyrights and the number which will be taken over and stamped;
- Proof of payment of rights conveyance application, convenient with current goverment regulations;
- Photocopy of Trademarks right certificate;
- Documents of rights conveyance which uses foreign language must be translated first into Bahasa Indonesia.

After request of rights conveyance, there is still another procedure which should be passed namely removal procedure of fiduciary security application from the list of fiduciary agreement by fiduciary recipient, attorney, or his representative. It must be noticed to ministry within 14 days starting from the date of fiduciary security removal. The removal can be conducted by notary public electronically and printed statement telling that fiduciary security is out of date. If fiduciary recipient, attorney and his representative do not announce the removal of fiduciary security, it cannot be registered again which means it cannot be used as fiduciary security objects.

It is different from simple execution, which is after the execution of copyrights, the sales result is used for loan repayment from debitor so the next step is request for copyrights conveyance to Directorate General HKI with submitted statement request of Trademarks right conveyance typed in two duplicates by applicant or attyorney registered as HKI consultant in Directorat general in Bahasa Indonesia adressed to Director of Trademarks right, HKI Dirjen, ministry of justice, HAM RI. In pledge, it is unnecessary to remove pledge public register as in fiduciary security since there is no regulation of registration so the pledge agreement will be automatically deleted according to the nature of accesoire agreement.

4 CONCLUSION

In conclusion, using Trademark Right as pledge is more beneficial than fiduciary security due to its simple and efficient mechanism. There are several advantages of pledge that is related to the manifestation of material rights, which are no cost for making security deeds and imposition of security. On the other hand, fiduciary security requires cost to make fiduciary deeds and electronic registration, which is the responsibility of the debtors. Furthermore, after the execution of fiduciary security, it has an obligation to remove fiduciary from the fiduciary register. Thus, using Trademark Right as pledge is more cost efficient and less complicated than fiduciary security.

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