

Newsletter

INDONESIA

INDONESIAN LEGAL DIGEST – BANKING LAW

SECURITY RIGHTS IN INDONESIA AT GLANCE

The following are type of security rights available under Indonesian laws:

1. **Hak Tanggungan (HT)**

HT is the nearest equivalent to a “mortgage” as understood in other jurisdictions. Assets that can be secured by HT are rights on land and assets which form an inseparable part of the land (such as buildings, machineries, fixtures, and plants attached to the land).

Rights on land that can be secured by HT include right of ownership (*hak milik*), right to manage (*hak guna usaha*), right to build (*hak guna bangunan*) and certain right to use (*hak pakai*). Currently HT can also secure ownership over apartment/office space units (strata titles).

HT must be made in a deed of granting HT drawn up by a land deed official (*Pejabat Pembuat Akta Tanah – PPAT*) in Indonesian language having jurisdiction where the land/apartment is located. HT is effective upon its registration with the relevant Land Offices having jurisdiction where the land/apartment is located. It is possible to create multiple HTs over the same objects.

2. **Fiduciary Security**

Fiduciary security is a security right over movable assets (tangible or intangible) and immovable assets that cannot be encumbered by HT. Fiduciary security is a non-possessory security right which is the nearest equivalent to a “floating charge” security which exists in a number of common law jurisdictions.

Fiduciary security must be made in the form of notarial deed drawn up by an Indonesian notary in Indonesian language. Fiduciary security is effective upon its registration with the relevant fiduciary security registration office having jurisdiction where fiduciary grantor is domiciled. It is not possible to create two fiduciary security over the same objects.

3. **Pledge**

Pledge is a security right over movable assets (tangible or intangible). Unlike fiduciary security, pledge over tangible movable assets requires physical possessions to the assets; while pledge over intangible movable assets requires a notification to the party with whom the pledge will be enforced.

Pledge can be granted by a notarial deed or in private. No registration with any government authorities is required for the effectiveness of the pledge. As in fiduciary security, it is not possible to create two pledges over the same objects.

4. Hypothec

Hypothec is a security right over immovable assets (except for those that can be secured by HT). By the enactment of Law on HT in 1996, hypothec is currently used to secure ships with a minimum gross tonnage of 20 metric tons.

A hypothec over ships must be made in a deed drawn up by the Ships Deed Official (*Pejabat Pembuat Akta Kapal*) having jurisdiction where the ships are registered in Indonesian language. As the evidence of registration of the hypothec, the official will issue the *Grosse Akta Hipotek Kapal*.

5. Security over Warehouse Receipts

Security can be established over commodities (ie moveable goods that can be stored for a certain period of time in a warehouse and are generally tradable) by establishing security rights over the warehouse receipts for the relevant commodities (the title documents). The security grantee has priority over other creditors in respect of the commodities. It is important to note that:

1. this security may only secure the security grantor's debt (not third parties' debt) payable to the security grantee; and
2. the commodities can only be encumbered by one security over warehouse receipts and therefore this security requires the security grantee to possess the warehouse receipt or, in the case of a scriptless warehouse receipt, the security grantee must control the warehouse receipt, to ensure that no other security can be established over the same warehouse receipt.

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