

Juridical Review of Coal as an Object of Fiduciary Collateral in Banking Credit Agreements (Study of the Decision of Pt Anzawara Satria V. PT Bank Artha Graha Internasional TBK)

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Abstract

Mining activity is a capital-intensive industry that requires enormous cost. In supporting financing in mining activities, one of the sources is through a bank credit facility. With a series of mining activities that are quite complex, there is a high risk of financing from mining activities, one of which is the risk of non-performing loans. In anticipating these risks, banking institutions in practice have implemented the prudential principle through the implementation of 5C, one of which is guarantee (collateral). Based on Judicial Decision Number 714/ PDT /2016/ PT.DKI between PT Anzawara Satria against PT Bank Artha Graha Internasional, Tbk., PT Anzawara Satria as a mining company has provided guarantees in the form of coal supplies to PT Bank Artha Graha Internasional Tbk. This research will review the material properties of coal as bank guarantees and analyse the position of coal as collateral based on Indonesian Mining Law. This research uses a normative juridical method with sources from secondary data, namely: (1) primary data materials in the form of relevant laws and regulations; (2) secondary data material, which includes books, journals, articles, or other related sources. This research resulted that, first, based on the nature of coal, coal may be guaranteed by fiduciary and pledge. Second, based on mining law in Indonesia, coal may be guaranteed with the condition that mining business actors are required to pay production fees (royalties) as a form of transfer of ownership rights from the state to business actors

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1. INTRODUCTION

a. Background

Mining activity is a capital-intensive industry, so it cannot be separated from financing or financial aspects. Moreover, mining activities have quite long stages, starting from upstream to downstream, which consists of the stages of exploration, production operations, post-mining. In order to actualize these activities, of course, a very large capital is required. In practice, mining activities use a project financing structure which consists of 2 (two) main instruments, namely equity, through increasing capital from companies, and debt, through loans to financial institutions, one of which is a bank. .

In extending credit, banks must apply the precautionary principle as stipulated in Article 20A of Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking ("Banking Law"). The principle of prudence (prudent banking principle) in general is something that requires banks to be prudent in order to protect public funds entrusted to them and the distribution of funds originating from the funds raised. In order to fulfill the precautionary principle in providing credit, banks must consider the 5C factors, namely character, capital, capacity, conditions, collateral.

One of the important factors in the 5C principle is collateral. The guarantee requirements in 5C are carried out by banks so that they can reject a measure of the ability of credit applicants and provide funding according to this ability. The system is that the collateral submitted must be higher than the credit funding request to anticipate inability to pay. In other

words, collateral function in credit is to be means of safeguarding against risks that may occur. In this case the guarantee can provide certainty for banking institutions if at any time the debtor fails to pay the agreed credit. Where banking institutions can execute these guarantees in exchange for repayment of loans that cannot be paid.

In relation to the provision of collateral for banking credit for the mining industry, there is an interesting matter to examine in Decision Number 714/ PDT /2016/ PT.DKI between PT Anzawara Satria (“PT AS”) versus PT Bank Artha Graha Internasional, Tbk. (“AGI Bank”). In this case, it is known that PT AS as the debtor has obtained a credit facility from Bank AGI in the amount of Rp. 90,000,000,000,- which is contained in two credit agreements, namely as follows.

1. Credit Agreement Number 35 dated 2 February 2012, where Bank AGI provided a credit facility in the form of a revolving loan to PT AS in the amount of IDR 30,000,000,000,- with a credit term of one year; And
2. Credit Agreement Number 36 dated February 2 2012, where Bank AGI provided a credit facility in the form of a fixed loan to PT AS in the amount of IDR 60,000,000,000,- with a safe credit term of three years.

As for guaranteeing the provision of credit facilities, PT AS has provided guarantee as follows.

1. Land and building collateral worth Rp. 44,627,777,000,- consisting of the Karya Karya office space, Ria Relax Hotel, Wind Sand land, Segara Jaya land, and Sentul hill land;
2. Fiduciary guarantee number 37 dated 7 May 2012 in the form of coal (stockpile) with the following details.

Inventory	Tonnage	HPB April 2012	HP & Barging	Stockpile Price (USD)/tonne	Price (IDR)
Raw	103,933.50	55.26	12.51	42.75	40,845,864,849.98
Crushed	6,272.10	55.26	12.51	42.75	2,464,940,004.08
Total	110,205.40				43,310,804,854.05

3. Fiduciary guarantee number 114 dated 13 February 2012 in the form of receivables from PT AS amounting to IDR 49,660,660,166.

From the case above, it can be seen that PT AS as a mining company makes coal an object of fiduciary guarantee in the credit agreement with Bank AGI.

If we refer to Article 33 paragraph (3) of the 1945 Constitution, it is clearly stated that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." From the sound of this article, it is clear that mining products should be controlled by the state, in other words owned by the state. On the other hand, based on the general concept of collateral, an object can only be guaranteed by the owner of the object. This raises various questions regarding the ownership of mining results, especially coal, whether they still belong to the government because the government controls or the mining business actors have full rights to the mining results so that they can be guaranteed. Based on this, the article entitled "**Juridical Review of Coal as an Object of Fiduciary Collateral in Banking Credit Agreements (Study of Decisions of PT Anzawara Satria V. PT Bank Artha Graha Internasional TBK)**" This study will analyze how the legality of imposing fiduciary guarantees on coal in bank credit agreements in Indonesia.

b. Formulation of the problem

1. What are the material characteristics of coal as an object of fiduciary collateral?
2. What is the legality of coal as an object of fiduciary collateral in banking credit agreements based on positive law in Indonesia?

c. Research methods

This research examined legal issues regarding coal as an object of fiduciary collateral in banking credit using normative juridical methods were qualitative in nature sourced from secondary data. The secondary data sources used in research were divided into 2 (two), namely primary and secondary data materials. The primary data materials used include but were not limited to the Civil Code, Law Number 4 of 2009 as amended by Law Number 3 of 2020 concerning Mineral and Coal Mining ("Mining Law"), the Fiduciary Guarantee Law, banking regulations which was relevant. While the secondary data materials used were all books, journals, articles, and other sources relevant to the issues raised in this paper.

2. DISCUSSION**1. PROPERTIES OF COAL AS A FIDUCIARY OBJECT****a. The Material Characteristics of Coal as an Object of Fiduciary Collateral from the Perspective of the Civil Code**

Objects according to Article 499 of the Civil Code are every object and every right that can be the object of property rights. As collateral objects, immovable or movable objects can be used as collateral in fiduciary guarantee institutions. Immovable objects include, among others, factories, housing, and objects attached to these objects such as fish in a pond, and building materials to form a building. Immovable objects produce usufructuary rights, usufructuary rights over immovable property, land service rights, coral reef rights, business rights, and so on. Article 506 of the Civil Code regulates that goods which were immovable are:

- 1) yard and what is built on it;
- 2) milling.
- 3) trees and field plants with their roots embedded in the ground, tree fruit that has not been picked, as well as mining goods such as coal, coal waste and so on, as long as these goods have not been separated and dug out of the ground;
- 4) brushwood from logged forests and wood from tall trees, as long as they have not been felled;
- 5) pipes and channels used to drain water from the house or yard; and in general everything that is stuck in the yard or attached to the building.

Meanwhile, movable goods can be interpreted as goods that are moved or removed. Examples include ships, canoes, mining canoes, mills and wooden dumps that are installed on detached boats. To distinguish between movable and immovable objects, we can identify the differences in the four ways of surrendering these objects, namely control, delivery, expiration, and encumbrance. What is meant by each method of delivery is:

- 1) Mastery (*bezit*). Mastery over movable objects will be exercised through perfect titles. Meanwhile, mastery over immovable objects does not necessarily mean that they are the owners of these objects.
- 2) Submission (levering). Handover of movable objects is carried out physically or *feitelijke* levering as well as juridical handover or *juridische* levering. Meanwhile, immovable objects can only be handed over if it is made in a deed announcement recorded in the register. This handover is referred to as handing over *constitutum possessorium* or physically the goods remain in the control of the party handing over, but ownership rights have been transferred. The transfer of immovable objects includes symbolic and juridical or transferring rights in the form of an authentic deed before a notary.

- 3) Loading (*bezwaring*). Collateral for movable objects is a pledge and fiduciary, while for immovable objects it is a mortgage. Matters relating to land can only be charged with mortgage rights.
- 4) Expired. *Unfor* movable objects 3 years from the time the object is controlled and for immovable objects forever except in. If the owner doesn't take care of the object for 20 or 30 years, it will expire.

Coal as a mining item is included in movable goods. We can refer to Article 506(3) of the Civil Code which contains the sentence "as long as the goods have not been separated and excavated from the ground", which means that minerals that are still in the ground and have not been excavated, will be included as immovable property. On the other hand, items that have been separated and dug out of the ground are included in the category of movable goods. Coal has different terms from coal mining. On the one hand, coal mining refers to coal found in the earth, such as solid bitumen, peat and asphalt rock. After the excavation process, the coal can be handed over *constitutum possessorium*, so that it changes from immovable property to movable property.

b. Position of Coal as Collateral Object

Based on the description of the material properties above, it can be concluded that coal is classified as a movable object. Referring to the provisions of the Civil Code, in this case coal can be guaranteed in the form of a pledge or fiduciary. Even though from a material perspective, pawn and fiduciary guarantees have similarities, they both have different collateral imposition mechanisms. The differences are as follows:

1) Delivery of collateral objects

In the case of a pledge as collateral, the goods pledged as collateral will be handed over to the party receiving the pledge. However, it is underlined that the physical surrender of the object that will be charged with the guarantee does not necessarily mean transferring ownership of the object. In accordance with the concept of collateral in general, ownership of the collateral object is only transferred during the execution process.

In terms of handing over the object of collateral, the pledge has differences with the fiduciary guarantee mechanism. Where based on article 1 point 1 of the Fiduciary Guarantee Law, it is explained that fiduciary is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are transferred remains in the possession of the owner of the object. Therefore, the fiduciary guarantee mechanism does not require physical surrender of the object, but only proof of ownership of the object. Where proof of ownership of an object is adjusted to the type of object.

2) Guarantee imposition

In the fiduciary guarantee mechanism, the collateral object can be given to more than one fiduciary recipient or to the proxy or representative of the fiduciary recipient. In the case of a pledge, the object can only be entrusted to one person.

3) Collateral charges for current and future objects

In the fiduciary guarantee mechanism, collateral objects can be charged to objects that do not currently exist. In Article 9 paragraph (1) of the Fiduciary Guarantee Law, Fiduciary Guarantees can be given to one or more units or types of objects, including receivables, both those that existed at the time the guarantee was given or those that were obtained later. Meanwhile, mortgage guarantees can only be charged to existing objects because they must be submitted physically.

c. Provisions for Charging Coal as Fiduciary Guarantee Based on the Fiduciary Guarantee Law

Based on the explanation above, in terms of guaranteeing coal, fiduciary guarantees are the most effective form of guarantees. This is because, firstly, a fiduciary guarantee

does not require the fiduciary giver to physically surrender the object of the guarantee. The absence of an obligation to physically surrender is of course beneficial for the mining company as the debtor and the bank as the creditor. Where the mining company does not need to hand over coal to the bank, and the bank also does not need to prepare warehouses and special equipment to receive it. The fiduciary giver, in this case the mining company, only needs to submit proof of ownership of the coal which can be set forth in the form of certificates, receipts, permits or other documents proving ownership of the coal. Second, the imposition of fiduciary guarantees can be given to objects that do not exist at this time and will be generated in the future. This condition benefits mining companies because they can guarantee coal units, both those that were in existence at the time the guarantee was given and those that were obtained later.

As for the imposition of coal as a fiduciary guarantee object, it must be carried out in accordance with the provisions and procedures stipulated in the Fiduciary Guarantee Law. The form of responsibility for the existence of a fiduciary guarantee object that will exist must first be stated in a notary deed which must contain the amount of receivables owned by the Fiduciary Giver, signed by the Fiduciary Giver himself and then used as evidence of the object of the fiduciary guarantee so that it can be accounted for in the future. Apart from that, objects used as collateral must be provided with an insurance claim. In Article 5 paragraph (1) of the Fiduciary Guarantee Law, objects that are used as objects of fiduciary guarantees must be registered in an authentic deed drawn up before a notary or at least made in a fiduciary deed. The continuation of registering a fiduciary guarantee object is to obtain a fiduciary guarantee certificate in *grosse* form. *Grosse* is proof of registration of a fiduciary guarantee. After becoming a fiduciary guarantee object, it is necessary to have a *retro-overdracht*, namely returning objects that are used as fiduciary guarantee objects from the Fiduciary Recipient back to the Fiduciary Giver. If the transfer is not carried out again, based on Article 25 of the Fiduciary Guarantee Law, the fiduciary guarantee object can be removed because:

1. Elimination of secured debt
2. Relinquishment of rights to fiduciary guarantees by the fiduciary recipient
3. Destruction of objects that are the object of fiduciary collateral

As long as the fiduciary giver has complied with Articles 5 and 6 of the Fiduciary Guarantee Law, objects that wish to be charged as fiduciary guarantees either at this time or in the future, these objects will continue to be objects of fiduciary guarantees until a transfer occurs again or if the object is deleted.

2. Legality of Coal as an Object of Fiduciary Collateral in Banking Credit Based on Indonesian Positive Law

In discussing the legality or position of coal as an object of fiduciary guarantees in bank credit in Indonesia, there are 2 (two) scopes of regulation that need attention. First, are laws and regulations related to mining, bearing in mind that coal is one of the mining products. Second, banking regulations in the perspective of bank credit.

a. Coal's position as collateral is based on the Mining Law

Technically, coal is a precipitate of carbonaceous organic compounds which are formed naturally from the remains of plants. However, when viewed from a broader perspective, coal is classified as one of the natural resources. Referring to article 33 paragraph (3) of the 1945 Constitution ("1945 Constitution") states that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The classification of coal as a natural resource based on the 1945 Constitution clearly means that coal is controlled by the state. However, in its development the meaning of the phrase "controlled by the state" has undergone evolution. The evolution of meaning can be seen in the following table.

No.	Evolution	Meaning of Elements	Information
1.	First	“Run by the state”	<p>Interpreted as a conception of public law related to political and economic democracy. According to this democratic understanding, the people have the position of "master" in the management of natural resources.</p> <p>There is a special interpretation that the people collectively through the 1945 Constitution mandate the state to carry out the following 5 (five) things.</p> <ol style="list-style-type: none"> a. Policy (<i>beleid</i>) b. Management (<i>bestuurdaad</i>) c. Settings (<i>reglendaad</i>) d. Management (<i>beheersdaad</i>) e. Supervision (<i>toezichthoudensdaad</i>)
2.	Second	“People's prosperity” and “state control”	<p>Determine 4 (four) benchmarks, namely as follows.</p> <ol style="list-style-type: none"> a. Use of natural resources for the people. b. The level of equal distribution of the benefits of natural resources for the people c. The level of people's participation in determining the benefits of natural resources, as well as d. Respect for the people's hereditary rights in utilizing natural resources.
3.	Third	"State control"	<p>Control by the state is determined in stages or tiers which include the following.</p> <ol style="list-style-type: none"> a. The first rank is direct management of natural resources b. The second level is making policies and management c. The third rank is regulation and supervision.

Table 1. Evolution of the Meaning of "Controlled by the State" in Article 33 paragraph (3) of the 1945 Constitution

This evolution of meaning has implications for the content in several regulations containing elements of natural resources, one of which is the Mining Law. In this case, the Mining Law has undergone a shift in meaning from previously being centralized, meaning that all mining activities are held by the state/government, becoming democratic by involving the role of the private sector and the community in order to face the challenges of globalization. Initially, mining activities used a contract of work system. In general, a work contract is a collaboration between the government and a private company.

However, along with its development, the contract of work system has been transformed into a licensing system, namely the Mining Business Permit ("IUP"). In short,

From this explanation, if it is linked to natural resources - especially coal - as collateral, problems regarding ownership will arise. This is because, before an object/item is used as collateral, it must be ensured that the item/object is indeed owned by him. Moreover, with the mining concept which currently adheres to a licensing system, this will raise various questions regarding the ownership of mining results, especially coal, whether they still belong to the government because the government is the one who grants the permits or whether the IUP holder has full rights to the mining results so that they can be guaranteed. Apart from that, does the Mining Law explicitly state that mining results can be used as collateral?

The Mining Law itself does not explicitly state that mining products, in this case coal, can be used as collateral objects. However, article 92 of the Mining Law explains that "IUP and IUPK holders have the right to own minerals, including associated minerals, or coal that has been produced after meeting production fees, except for radioactive associated minerals." In other words, ownership of mining results only shifts from the government to the IUP holder, when the IUP holder has paid production fees. It should be noted that the provisions of Article 92 have undergone changes in line with changes to mining regulations in Law Number 3 of 2020. Where in the previous provisions, The transfer of ownership of mining results only changes when the IUP holder has paid exploration fees or production fees. Thus, it can be concluded that exploration fees are not a benchmark in the transfer of ownership of mining results.

If examined in the perspective of how to obtain property rights regulated in Article 584 of the Civil Code which explains that property rights can only be obtained by means of: attachment, expiration, inheritance (both by law and will), appointment or surrender. In relation to the process of transferring ownership of mining products, namely coal, mining companies obtain ownership rights to mining products by way of delivery. Based on the explanation above, mining companies can only have the right to own mining results after paying production fees. In other words, a mining company based on Article 584 of the Civil Code, obtains rights to mining products by way of submission from the state or government after the mining company pays a production fee.

Production fees or royalties are an amount of money that must be paid for each mining production result. In essence, production fees/royalties are classified as non-tax state revenue. The imposition of production fees/mining royalties varies depending on the type, calorie level and reference coal price. To see production contribution rates/mining royalties, you can refer to PP 26/2022. The imposition of production fees/royalties on coal can be seen in the following table.

No.	Coal Type	Unit	Rates
1.	Coal (Open pit)		
	1. Calorie Level ≤ 4,200 Kcal/Kg (Gross Air Received)		
	a. Reference Coal Price (HBA) < USD 70	Per ton	5% of the price

	b. USD $70 \leq$ HBA < USD 90	Per ton	6% of the price
	c. HBA \geq USD 90	Per ton	8% of the price
	2. Calorie Level > 4,200 - 5,200 Kcal/Kg (Gross Air Received)		
	a. Reference Coal Price (HBA) < USD 70	Per ton	7% of the price
	b. USD $70 \leq$ HBA < USD 90	Per ton	8.5% of the price
	c. HBA \geq USD 90	Per ton	10.5% of the price
	3. Calorie Level \geq 5,200 Kcal/Kg (Gross Air Received)		
	a. Reference Coal Price (HBA) < USD 70	Per ton	9.5% of the price
	b. USD $70 \leq$ HBA < USD 90	Per ton	11.5% of the price
	c. HBA \geq USD 90	Per ton	13.5% of the price
2.	Coal (Underground)		
	1. Calorie Level \leq 4,200 Kcal/Kg (Gross Air Received)		
	a. Reference Coal Price (HBA) < USD 70	Per ton	4% of the price
	b. USD $70 \leq$ HBA < USD 90	Per ton	5% of the price
	c. HBA \geq USD 90	Per ton	7% of the price
	2. Calorie Level > 4,200 - 5,200 Kcal/Kg (Gross Air Received)		
	a. Reference Coal Price (HBA) < USD 70	Per ton	6% of the price
	b. USD $70 \leq$ HBA < USD 90	Per ton	7.5% of the price
	c. HBA \geq USD 90	Per ton	9.5% of the price

	3. Calorie Level \geq 5,200 Kcal/Kg (<i>Gross Air Received</i>)		
	a. Reference Coal Price (HBA) < USD 70	Per ton	8.5% of the price
	b. USD 70 \leq HBA < USD 90	Per ton	10.5% of the price
	c. HBA \geq USD 90	Per ton	12.5% of the price

Table 2. Coal Production/Royalty Fee Rates

Conceptually, the owner of an object can use his object as collateral. This guarantee concept is accommodated in Article 92 of the Mining Law which regulates the transfer of ownership as a form of juridical surrender (*juridische levering*). By transferring ownership of mining products from the government to IUP holders, IUP holders are entitled to these mining products, including to guarantee them. If using the a *contrario* theory, if the IUP holder has not paid the production fee, then the IUP holder cannot guarantee the mining results because there has not been a transfer of ownership. In the event that the IUP holder violates this, then the legal consequence is the imposition of administrative sanctions due to violations of Article 128 of the Mining Law which requires IUP holders to pay state and regional revenues. Where production fees are classified as state revenues that do not come from taxes. The forms of administrative sanctions for violations of these provisions can be in the form of written warnings, fines, temporary suspension of part or all of mining activities, and revocation of IUP.

If we contextualize the guarantee arrangements based on Article 92 of the Mining Law above with Decision Number 714/PDT/2016/PT.DKI between PT AS and Bank AGI, it can be concluded that PT AS as the IUP holder has the right to guarantee coal as an object of fiduciary guarantee. This is permitted as long as PT AS has paid production fees/royalties according to the rates as regulated in PP 26/2022. If PT AS violates these provisions, it may be subject to administrative sanctions in accordance with Article 128 of the Mining Law.

b. The Position of Coal as an Object of Fiduciary Collateral in Banking Credit Based on Banking Regulations

Based on the explanation of the material nature of coal as an object of fiduciary collateral in banking credit and the legality of coal as a collateral object based on the mining regulations above, it can be concluded that the owner of the object, in this case coal, can use his object as a collateral object. The form of collateral that is suitable for coal is a fiduciary guarantee, when compared to a mortgage. This is because, in concept, the mortgage guarantee obliges the debtor to physically hand over the object to the creditor. This is not effective in practice, considering that banking institutions must provide storage or warehouses in accordance with mining regulations. Meanwhile, if coal is guaranteed fiduciary,

In connection with this, banks recognize collateral charges in accordance with those classified in the Civil Code, namely personal guarantees and material guarantees. In other words, the validity of coal as an object of collateral based on the perspective of the Civil Code and the Mining Law also applies to banking regulations. Even though it is normatively recognized, in this case coal must still pay attention to legal and economic requirements, which are the general requirements for granting bank credit. In general, the fulfillment of legal and economic requirements for coal as collateral is as follows.

Table 4.1. Juridical and Economic Conditions for Coal as Collateral

No.	Juridical Terms	Economic Terms
1.	The coal belongs to the debtor himself	Coal must be easy to transfer or transfer ownership
2.	Coal pledged as collateral must be free from collateral bonds from other parties	Coal must have stable economic value and it is better if it increases in the future
3.	Coal is not in dispute with third parties	There are company financial reports that show coal has economic value.

In practice, banking institutions differentiate the types of guarantees into 2 (two), namely main guarantees and additional guarantees. This refers to the following provisions.

- 1) Explanation of Article 8 paragraph (1) of the Banking Law which states that collateral is only in the form of goods, projects or claim rights financed with the credit in question. Banks are not obliged to ask for collateral in the form of goods that are not directly related to the object being financed, which is commonly known as additional collateral.
- 2) Decree of the Board of Directors of Bank Indonesia No: 23/69/Kep/dir dated 28 February 1991 concerning guarantees which states that credit guarantees are the bank's confidence in the ability of the debtor to pay off the credit as agreed.

Through the sound of these two provisions, it is clear that there is a distribution of main guarantees and additional guarantees. When viewed in terms of nature and functionality, the main collateral is mandatory and serves to test the feasibility of prospective borrowers in receiving credit (first way out). Meanwhile, additional collateral is not mandatory and only serves to provide more certainty to convince banks to accept credit (second way out).

In Decision Number 714/ PDT /2016/ PT.DKI between PT AS and Bank AGI, it is not explicitly known regarding the position of coal as principal collateral or additional collateral. In solving this problem, you can refer to Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Asset Quality Assessment of Commercial Banks ("POJK 40/2019"). In Article 45 POJK 40/2019 it is explained that collateral that can be taken into account as a deduction in calculating the Allowance for Asset Quality Assessment ("PPKA") is determined:

- a. Securities and shares that are actively traded on a stock exchange in Indonesia or a stock exchange in another country that is included in the main stock exchange, or have investment grade and are tied to a pledge;
- b. Land, buildings, and residential houses that are bound by mortgage rights;
- c. Flat units that are bound by a fiduciary guarantee;
- d. Machinery which is an integral part of the land which is bound by mortgage rights;
- e. Aircraft or ships measuring more than 20 (twenty) cubic meters which are secured by mortgage;
- f. Motor vehicles and supplies tied to a fiduciary basis; and/or
- g. Warehouse receipts are tied to security rights over warehouse receipts.

In banking practice, the value of collateral in principle must be greater than the amount of debt provided (loan to value ratio). The calculation of the guarantee value refers to the

deduction provisions in the PPKA calculation above. Where this provision applies to the obligation to receive principal collateral by banking institutions. If you look at the category of PPKA deductible collateral above, it can be seen that coal is not explicitly stated as a recognized collateral. However, in category letter (f) above there is the phrase "supply" which is tied to a fiduciary basis. If interpreted broadly, the inventory here can include coal inventory owned by the IUP holder. Moreover, the elucidation of Article 45 letter (f) of POJK 40/2019 only explains that fiduciary guarantees are carried out in accordance with the provisions and procedures regulated in laws and regulations. Thus, there is no further explanation regarding the position of the phrase "supply". This creates uncertainty and ambiguity regarding the position of coal as the main or additional collateral.

However, if you refer to the explanation of Article 8 of the Banking Law which differentiates between basic guarantees and additional guarantees based on their connection to the object being financed. Where the main collateral is goods related to the object being financed, while additional collateral is goods that are not directly related to the object being financed. In the context of financing in mining companies, coal is classified as an item that is directly related to the credit financing being financed. Therefore, if guided by this provision, coal can be classified as a basic guarantee which actually provides a complementary explanation regarding "supply" in POJK 40/2019.

In Decision Number 714/ PDT /2016/ PT.DKI between PT AS and Bank AGI, if linked to the loan to value ratio system above, then the comparison of the amount of credit and guarantees provided is as follows.

- 1) The credit facility amounted to Rp 90,000,000,000
- 2) Guarantee with a total of IDR 137,599,242,020.05 consisting of:
 - a) Land and building collateral in the amount of IDR 44,627,777,000;
 - b) Fiduciary guarantee in the form of coal (stockpile) amounting to IDR 43,310,804,854.05; And
 - c) Fiduciary collateral in the form of receivables amounting to IDR 49,660,660,166

Based on these calculations, it can be seen that coal fiduciary collateral is included as one of the collateral deductions from PPKA calculations. In this case, it can be concluded that Bank AGI holds coal as principal collateral.

3. CONCLUSIONS AND SUGGESTIONS

1. Based on the material nature of coal, coal is classified as a movable object that can be pledged as a pledge or fiduciary. The most effective guarantee for coal is a fiduciary guarantee rather than a pledge. This is because in pawning, the debtor is obliged to physically hand over the collateral. In business practice, this will make it difficult for creditors, namely banks, because they have to provide storage or warehouses for coal in accordance with the Mining Law. By guaranteeing coal with a fiduciary, it will make it easier for mining entrepreneurs because it is only proof of ownership without having to give it physically. The imposition of guarantees on coal can also be carried out for more than coal units, so as to make it easier for mining entrepreneurs who will guarantee the acquisition of coal in the future.
2. In essence, the owner of an object can make an object an object of collateral. The concept of collateral for coal is accommodated in Article 92 of the Mining Law, which states that coal ownership only transfers to the IUP holder when the IUP holder has paid production fees/royalties. The provisions of this provision implicitly allow IUP holders to pledge coal, because the IUP holder already owns it. Then, from a banking perspective, banks essentially recognize material collateral as regulated in the Civil Code. Considering that coal is classified as one of the movable goods which in concept can be guaranteed both by pawn and fiduciary,

banks recognize coal as an object of collateral. However, banks also still have to consider legal conditions and economic conditions rather than coal conditions.

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