IMPLEMENTATION OF COPYRIGHT AS AN OBJECT OF FIDUCIARY COLLATERAL IN INDONESIA

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ABSTRACT

Objective: The aims of this study is to examine the application of copyright as an object of fiduciary guarantee in Indonesia, considering both the legal certainty aspect and a comparative analysis with other countries.

Theoretical Framework: The Fiduciary agreement mechanism is that there will be guaranteed law and mortgage rights when there is an impasse. Based on a huge need, it is necessary to offset with provision clear and complete laws governing institution guarantee.

Method: This study is normative legal research that produces prescriptive analytics of the legal issues raised. Study This uses approach laws and approaches producing a conceptual something draft where is Copyright can made as an object guarantee fiduciary.

Results: The results of this study indicate that Copyright including in object guarantee fiduciary that has fulfilled all elements and terms for become object guarantee fiduciary, then the Copyright possible for made object debt guarantee form guarantee fiduciary.

Conclusions: Application rights created as object guarantee fiduciaries in Indonesia are still hampered because regulation legislation has yet to be comprehensive. To sum it up, the types of objects are fiduciary collateral objects. Copyright, on the one hand, is included in the realm of Intellectual Property Rights (IPR). Similar properties with the right property in general (can be transferred and owned mark the economy).

Keywords: fiduciary, collateral, copyright.

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IMPLEMENTAÇÃO DE DIREITOS AUTORAIS COMO OBJETO DE GARANTIA FIDUCIÁRIA NA INDONÉSIA

RESUMO

Objetivo: O objetivo deste estudo é examinar a aplicação dos direitos autorais como objeto de garantia fiduciária na Indonésia, considerando tanto o aspecto da segurança jurídica quanto uma análise comparativa com outros países.

Referencial Teórico: O mecanismo do acordo fiduciário é que haverá garantia de lei e direitos hipotecários quando houver um impasse. A partir de uma enorme necessidade, é necessário compensar com a previsão de leis claras e completas que regem a garantia das instituições.

Métodos: Este estudo é uma pesquisa jurídica normativa que produz análises prescritivas das questões jurídicas levantadas. Estudo Utiliza leis de abordagem e abordagens produzindo um anteprojeto de algo conceitual onde o Direito Autoral pode ser constituído como objeto de garantia fiduciária.

Resultados: Os resultados deste estudo indicam que o Direito Autoral inclui no objeto garantia fiduciária que cumpriu todos os elementos e condições para se tornar objeto garantia fiduciária, então o Direito Autoral é possível para objeto de garantia fiduciária de dívida constituída em forma de garantia fiduciária.

Conclusão: Os direitos de aplicação criados como objetos fiduciários de garantia na Indonésia ainda são dificultados porque a legislação regulamentar ainda não é abrangente. Resumindo, os tipos de objetos são objetos colaterais fiduciários. Os direitos autorais, por um lado, estão incluídos no domínio dos Direitos de Propriedade Intelectual (DPI). Imóveis semelhantes com direito de propriedade em geral (podem ser transferidos e possuídos marcam a economia).

Palavras-chave: fiduciário, garantia, direito autoral.

1 INTRODUCTION

Business and economic growth in Indonesia and even in the world cannot be separated from the role of banking in every business transaction. Several business actors, both State-Owned Enterprises (BUMN), National Private, Foreign Private and the public, need the role of banking as a place to collect income earned, for business transactions, and as a financing institution in carrying out their business activities (Ansari, 2019). In this case, the Banking Industry plays a central role in various business activities for a country's economy (Chen et al., 2021). It can be seen from the growth of this financial sector in collecting and distributing financing or credit to the public and business actors (Kamaruddin & Soemitra, 2022).
The distribution of this financing, carried out by providing loans or granting credit, must go through various stages that are quite complex, especially in granting grandeur which is used to guarantee the provision of credit to the public and business actors (Henning et al., 2019). Currently, one cannot simply offer land and buildings as collateral objects. Many objects belong to someone who meets the requirements to be used as collateral objects for their debts (Zainuddin & Ramadhani, 2021). Even if needed, additional collateral is still needed to cover the shortage of collateral that has economic value and can be transferred so that it can be used as collateral objects other than land, buildings, motorized vehicles, machinery/equipment, merchandise, plants/gardens/rice fields and others (Mardhotillah, 2020).

Objects of Fiduciary Guarantees are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees in Article 1 number 2, Article 1 number 4, Article 3, and Article 9 of Law Number 42 of 1999 concerning Fiduciary Guarantees, State Gazette of the Republic of Indonesia of 1999 Number 64, Supplement to the State Gazette of the Republic of Indonesia Number. 3889 (UU 42/1999). Fiduciary objects are types of objects including receivables, both those that existed when giving the guarantee and those that were obtained later (Sri Kusuma Dewi et al., 2020).

The type of merchandise material is classified as unique to be used as an object of fiduciary guarantees (Johan, 2021). The Goods in Law 42/1999 is everything owned and transferred, tangible and intangible, registered and unregistered, movable and immovable, which cannot be burdened with mortgage and mortgage rights. Inventory objects can be collateral objects with economic value that protect to make them assets of high value to the right holder (Zulfikri & Sagala, 2022), as it is known that the principle underlying movable objects is the principle contained in Article 1977 of the Civil Code (BW). Therefore, to protect creditors who have provided loans, legal engineering is carried out by entering into a material agreement, namely the transfer of ownership rights to objects with a delivery that the owner has determined (Göswein et al., 2021).

Concerning inventory items that can become fiduciary objects as stipulated in Law 42/1999, Copyrights within the scope of Intellectual Property Rights can also be categorized as fiduciary guarantee objects because they focus on ownership of something that can be transferred. The essence of a fiduciary guarantee object is that the object has economic value that can be used as a guarantee object (Yin et al., 2023). Indonesia has a high cultural diversity, with various arts included in the scope of Copyright, such as batik,
dance, and writing (Simatupang et al., 2021). As a rule of law, Indonesia states that every policy is a legal product (Indriyani & Fakrulloh, 2022). Copyright provides exclusive rights for creators to obtain economic benefits and moral rights for their creations (Sharfina et al., 2021).

However, Implementation from Article 16 paragraph (3) of the Law Number 28 of 2014 concerning Copyright still can apply. Still needs to be regulation implementation about rights created as object guarantees so that the chapter becomes a vacuum (Setyabudi & Mashdurohatun, 2022). Application regulations are yet comprehensive, as well as the application concept of "guarantee" (Dan et al., 2020). The result exists a different perception; on one side, object right created rejection. On the other side, object right created acceptance as a debt guarantee in Indonesian banking. According to B & Ajaykrishna, (2021) a guarantee is given to a third party for security to pay later. Copyright is a debt guarantee yet owns clear rules. It can harm the creditor (Markum et al., 2021). In this case, Copyright in Indonesia with regulations yet comprehensive can harm party third if the right create made as a guarantee (Wiradirja et al., 2020).

This study application right created as object guarantee fiduciary in Indonesia is reviewed from facet certainty law and study comparison application right created as object guarantee fiduciaries in several other countries. However, there is a weakness in the study that still needs to be established arrangement of statutory regulations comprehensive arrange about guarantee fiduciary so that study becomes limited. Based on the problem above, the researcher is interested in “Copyright Application as Object Guarantee Fiduciary in Indonesia”. As for the formula problem in the study, is Copyright used as Fiduciary Guarantee Object and about the application right created as an object guarantee fiduciary in Indonesia.

To sum it up, a study related to Copyright As Object Guarantee Fiduciary has been done several times, one of thus Widya Marthauli entitled “Enforcement of Copyright Law As object Guarantee Fiduciary Based on Constitution Number 28 of 2014 concerning Copyright Widya Marthauli Handayani,"Applicability of Copyright Law as an Object of Fiduciary Guarantee Based on Law Number 28 of 2014 Concerning Copyright." It is focused on the execution guarantee fiduciary form right created if the debtor default. That research execution guarantees mandatory fiduciary for registration right copyright. However, the research studied the writer's novelty and meaning alone. The research has not found of special study application right created as object guarantee fiduciaries are
reviewed from facet certainty Indonesian law as well study comparison application right created as object guarantee fiduciaries in several other countries.

2 THEORETICAL FRAMEWORK

2.1 COPYRIGHT AS OBJECT GUARANTEE FIDUCIARY

The form of fiduciary guarantee is fiduciary with creditors, which means a promise of trust made with creditors (Jamil, 2021). It said that the debtor would transfer ownership of an object to the creditor as collateral for his debt (Ramadhani, 2020), agreeing that the creditor would take back property rights to the debtor when the debt has been paid off. It means the agreement appoints a representative over assets to a trusted party to look after, provide protection and return the rights to the deposited party (Golovina & Shchelkonogova, 2023).

Article 3 of Law 42/1999 states that objects that cannot be burdened with a fiduciary guarantee are:

a. Mortgage rights related to land and buildings, as long as the applicable laws and regulations stipulate that collateral for these objects must be registered;
b. Mortgage on ships registered with a gross content of 20 (twenty) M³ or more;
c. aircraft mortgage; And
d. Pawn, so what can be burdened with Fiduciary guarantees are objects that are not used as collateral for other materials.

2.2 COPYRIGHT AS ANTEM NO TANGIBLE

According to Subekti, an object is counted as a class of moving objects because of its nature or because it is determined by law (Cho et al., 2014). An object that moves because of its nature is an object that is not attached to the ground or is intended to follow the land or building, for example, household furniture (Yuan et al., 2017). The provisions of Article 16 paragraph (1) of the 2014 Copyright Law state that "Copyright is an intangible movable object". Concerning the classification of immovable property according to Subekti above, Copyright is included in the category of movable property because it is determined by law as contained in Article 511 of the Civil Code (Subekti et al., 2021).
2.3 COPYRIGHT CAN SWITCH

As a movable object, Copyright can be transferred either in part or in whole except in the case of moral rights, which cannot be transferred due to the inherent nature of the work even though it has been transferred in various transitional ways stipulated in the Law (Walter, 2019). In the Elucidation of Article 16 paragraph (2) of the 2014 Copyright Law, it states that it can be transferred to the economic rights, while moral rights remain attached to the Creator itself. The transfer of Copyright must be carried out clearly in writing of whole by various means of transition, which have been mentioned in Articles 16-18 of the 2014 Copyright Law. Therefore, Copyright has fulfilled one of the requirements for objects that can be fiduciary, namely objects that can be diverted. (Article 1 paragraph (4) of the 1999 Fiduciary Law). Article 21, paragraph (1) of Law 42/1999 states that: “Fiduciary givers can transfer inventory objects that become objects of Fiduciary collateral procedures that are commonly carried out in the trading business.”

In this case, the purpose of transfer in fiduciary guarantees is not in the sense of actual transfer of rights as defined in Article 584 BW. Furthermore, it needs to be observed and seen is the intention of the parties whose object is used as collateral, does not intend to transfer the object in the context of sale and purchase agreement (Ramadhani, 2020).

Article 1 of Law No. 42/1999 states that Fiduciary is the transfer of ownership rights of an object based on trust that the object remains in the possession of the first owner (Ginting et al., 2020). Meanwhile, a Fiduciary Guarantee is a security right over movable tangible and intangible objects. In addition, immovable objects, especially buildings that cannot be encumbered by mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights, remain in the control of the Fiduciary. From explanation before, it is explained that a Fiduciary is differentiated from a Fiduciary Guarantee, where a Fiduciary is a process of transferring property rights and a Fiduciary Guarantee is a guarantee pledged in a fiduciary manner (Anwar, 2023). It means that the fiduciary guarantee institution regulated in Law 42/1999 is the fiduciary guarantee institution as referred to in the mortgage agreement with the creditor (Jamil, 2021).

2.4 COPYRIGHT THAT HAS ECONOMIC VALUE CAN BE GUARANTEED

Copyright is part of property rights or ownership rights (property) that have economic value or "economic rights" because of the exclusive right to exploit (Rahmi,
2022). Odoi defines ownership rights as "the exclusive right to possess, enjoy and dispose of or rights having economic value" (Odoi, 2020). Property rights are exclusive rights to control, enjoy and regulate an object or rights that have economic value (Lamping, 2023).

3 RESEARCH METHOD

Legal research is a scientific process to find solutions to legal problems (Kroeze, 2013). Legal research uses a problem approach in the form of a statute approach and a conceptual approach (Taekema, 2018). The study's statutory approach (statute approach) will refer to regulatory provisions and legislation related to the legal issues to be reviewed (McMichael & Markowitz, 2023). Meanwhile, the conceptual approach departs from the views or doctrines that develop in the science of law (Rahmat, 2023). This research is needed to examine the opinions and principles of fiduciary agreements.

The legal materials used include primary legal materials, namely Civil Code, Law Number 42 of 1999 concerning Fiduciary Guarantee, Law Number 28 of 2014 concerning Copyright, Law Number 4 of 1996 concerning Mortgage Rights, Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Regulation Government Number 21 of 2015 concerning Registration Procedures Guarantee Fiduciary and Fees Making Deed Guarantee Fiduciary. Meanwhile, secondary legal materials are in the form of books and journal articles related to legal matters copyright as object guarantee fiduciary. All legal materials collected will be systematically compiled and analyzed the result of moderate problem researched. Deep data analysis techniques study use pattern thinking deductive based on statements that are general to characteristic special things with logic certain.

4 RESULTS AND DISCUSSION

In Fiduciary guarantees, objects in the form of inventory items can be used as Fiduciary collateral objects. The definition of inventory items needs to be explained in the law. Still, Article 6 letter c of Law 42/1999 states that objects of Fiduciary security are objects in inventory that are always changing and/or not fixed, such as stocks. Inventory objects as Fiduciary collateral objects have special features compared to non-inventory objects that can become Fiduciary collateral objects. It was because these inventory objects can change at any time, and their amount is different from other Fiduciary collateral objects, which cannot change at any time, and the amount. In addition, registration of non-supply goods is carried out by identifying and explaining
proof of ownership. In contrast, inventory goods are carried out simply by mentioning the type, brand, and quality.

4.1 TYPES OF FIDUCIARY GUARANTEE OBJECTS BASED ON LAW 42 OF 1999 CONCERNING FIDUCIARY GUARANTEES

Lending and borrowing activities using Mortgage Rights or Mortgage Rights have been regulated in Law Number 4 of 1996 concerning Mortgage Rights, which is the implementation of Article 51 Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), and at the same time as a substitute land mortgage agencies and credit relationships. Since pre-independence, fiduciary guarantees have been used as a form of contract born from jurisprudence in Indonesia.

This form of collateral is widely used in lending and borrowing transactions because the filling process is considered simple, easy, and fast. The fiduciary guarantee institution allows the Fiduciary Giver to control the object that is guaranteed so that it can continue to carry out business activities of loans using Fiduciary Collateral. Dutch literature states that the mention of the term Fiduciary Guarantee as follows (Suryandari, 2018):

a. Collateral Ownership (Property as collateral);
b. mortgage rights of ownership (guarantee without ownership);
c. Extended property concept (Extended mortgage);
d. Transfer of property rights as collateral (transfer of property rights as collateral);
e. Ownership property (non-holding mortgage);
f. Disguised building rights; (covered mortgage);
g. Building expansion (KPR extended).

Besides that, the trust cum creditor means a promise of trust made with a creditor. It said that the debtor would transfer ownership of an object to the creditor as collateral for his debt with an agreement that the creditor would take back the property. If the debtor debt has been paid off, arising from a fiduciary agreement which is then followed by a legal transfer or submission.

Objects or goods are needed in every aspect of human life. Because of these things, the rights are attached to the private ownership of each person. To make it easier for everything to be grouped according to legal norms, the former Civil Code divided
them into several groups with each type. Wibisono et al. (2019) divides objects (goods) as follows:

1. Tangible and intangible objects (Article 503 BW);
2. Movable and immovable objects (Article 504 BW);
3. Consumables and non-consumables (Article 505 BW);
4. Objects that already exist and objects that will continue to exist (Article 1131 BW);
5. Objects that can be divided and objects that cannot be divided (Article 1163 BW);
6. Goods in trade and goods outside trade (Article 1332 BW);
7. Objects that can be replaced and objects that cannot be replaced (Article 1694 BW);
8. Property and non-owned goods (Article 519 BW).

Developments regarding material rights have penetrated the fiduciary direction. When a fiduciary guarantee institution appears in the realm of the Guarantee Law, the legal instruments are then regulated more specifically in the Fiduciary Guarantee Law. This development initially occurred because when an object was used for business, the owner offered it as collateral to get several debts to develop or verify his business. The objects community members need to support their lives have economic value and can be transferred. Property rights are one of the rights desired by every human being in his civil relationship (Borges et al., 2020). It is because property rights have superior characteristics as stated by Suryandari (2018) as follows:

1. That property rights are the parent of civil rights;
   Because from property rights, building use rights, rental rights, usufructuary rights, management rights, mortgage rights and mortgage rights can be born.
2. Whereas property rights are permanent;
   Even though other civil rights have been issued, property rights still exist and do not disappear. Even if the owner dies, the treasure will not be lost. The term of ownership rights is unrestricted as long as they are not revoked by the authorities based on law with valid reasons.
3. Whereas property rights are more complete in quantity and quality;
   Can carry out various legal actions without asking permission from other parties.
Generally, the provision of fiduciary objects used as fiduciary guarantees whose ownership rights to transferred an object based on trust. It is provided that the object whose ownership rights are transferred remains in the control of the object's owner (Vide: Article 1 point 1 UU JF) must be stated in detail. The mention of details does not only refer to the number of units and type, usually in more detail, such as brand, size, quality, condition (new or expired), color, and serial number, if any.

4.2 COPYRIGHT VALIDITY (COPYRIGHT) AS A FIDUCIARY COLLATERAL OBJECT

Assessing the legitimacy of an agreement are important in contract law. In the business world, an agreement is an important instrument that always frames legal relations and secures the transactions of the parties in an effort to fulfil their needs (Kagramanto & Serfiyani, 2019). An agreement said to be able in protecting the legal relations process of the parties if it is made legally. In order to be legally valid, the agreement must meet the requirements such as in Article 1320 BW, namely:

1. Approve those who bind themselves (agreement/ permission);
2. Ability to perform engagement (skills/ ability);
3. A certain thing (a certain object/ a certain topic);
4. A cause that is allowed (causa / cause).

The first and second conditions are subjective because they involve the person or subject agreeing. In contrast, the third and fourth conditions are objective because they involve the agreement itself or the object of the legal action. Fiduciary agreements are the same as agreements in general, where there is an agreement to do something. Where from an agreement arises a relationship between one person and another person called an agreement. Therefore, the agreement is part of the engagement domain in civil law, especially as stipulated in Book III of the BW. By definition, an agreement can be seen in the provisions of Article 1313 BW: "an act by which one or more people bind themselves to one or more people" can also be interpreted as someone promising to another person or two people promising to do something.

The legal instrument in Indonesia that regulates forms of human Copyright in the Copyright scheme (Copyright) is Law Number 28 of 2014 concerning Copyright (UU 28/2014). It is regulated because the rapid development of science, technology, art, and literature requires increased protection and guarantees of legal certainty for creators,
copyright holders, and related rights owners. Article 1 number 1 Law Number 28 of 2014 Concerning Copyright provides for the notion of Copyright as an exclusive right of the creator that arises by itself based on the declarative principle after a work is realized in tangible form without reducing restrictions under the provisions of this Law.

The creator and his creation in Law Number 28 of 2014 concerning Copyright are defined as a person or several people who individually or jointly produce a unique and personal creation. Every copyrighted work in science, art, and literature is produced based on inspiration, ability, thought, imagination, dexterity, skill, or expertise, expressed in a tangible form. As regulated in Article 4 of Law Number 28 of 2014 Concerning Copyright, it can be categorized that Copyright which is an exclusive right, consists of Moral Rights and Economic Rights.

Economic rights are regulated in Article 8 of Law Number 28 of 2014 concerning Copyright. Economic Rights are the exclusive rights of the Author or Copyright Holder to obtain economic benefits from Works. In Article 9 of Law Number 28 of 2014 Concerning Copyrights, it is stated that the Author or Copyright Holder has the economic rights to carry out:

- Creative Publishing;
- Copying Works in all its forms;
- Works Translation;
- Adaptation, arrangement or transformation of Works;
- Distribution of Works or copies thereof;
- Creation Show;
- Discovery Announcement;
- Creative Communication; And
- Creative Rentals.

Enacting the Fiduciary Guarantee Law (UU JF) provides legal certainty regarding fiduciary objects. Article 1 number 4 Law 42/1999 states that objects can be owned and transferred, tangible or intangible, registered or unregistered, movable or immovable, which cannot be burdened with mortgage or mortgage rights. In this regard, it is clear that everything related to land and buildings cannot be used as fiduciary objects. However, property rights (copyright) can be used as objects of fiduciary guarantees.

In essence, only property rights can be transferred. All material rights can be transferred except material rights that are unimportant, such as usage and occupancy...
rights (Vide: Article 823 BW, Article 827 BW). In comparison, personal rights are only rights with relative working power that can be transferred if regulated separately by law or because of their nature.

Regarding a person's responsibility for his debts, the principle is regulated as stipulated in Article 1131 BW because of the Circular of the Supreme Court of the Republic of Indonesia Number: 82 of 1964 as follows: divided according to the balance sheet, that is according to the amount of each receivable, unless there is a valid reason to take precedence among the debtors. Creditor." In addition to discussing movable and immovable objects, objects that can be used as objects of fiduciary guarantees can also be applied to tangible and intangible objects under the provisions of Article 9 Law 42/1999:

Sentence (1):
Fiduciary guarantees can be given to one or more units or types of objects, including receivables that existed when granting the guarantee and those that were obtained later.
Sentence (2):
The imposition of collateral on objects or receivables obtained later, as referred to in paragraph (1), does not need to be carried out with a separate guarantee agreement.

As stated in Article 1 Letter 4 UUJF, which can become objects of fiduciary guarantees, are tangible objects (goods) and include intangible objects such as debt, namely rights to collect. Because receivables/bills are rights that can be categorized as intangible objects, the delivery method must also comply with the provisions of Article 613 BW, which, if in the form of a money order on behalf of it, must be included in the cession deed.

Broadly speaking (besides the object being owned and having economic value), there are 2 (two) main requirements regarding an item/object that is used as an object of fiduciary guarantees, namely: First, the object/object is made in an authentic deed, and Second, the goods/objects must be registered (Vide: Article 5 because of Article 11 of the Fiduciary Guarantee Law). An authentic deed, as referred to in Article 1868 BW is a deed made in a form determined by law by or before a public official authorized for that at the place where the deed was done, then explained again in Article 1 point 7 Law Number 2 of 2014 Regarding Amendments to Law Number 30 of 2004 Concerning the Position of Notary (UUJN), namely as a deed made by and/or before a Notary according to the form and procedure regulated in the law.
The making of an Authentic Deed by a Notary in a fiduciary guarantee contains elements as stipulated in the provisions of Article 6 Law 42/1999, which contain the following matters:

a. Identity fiduciary giver and recipient, including full name, religion, place of residence or position, place and date of birth, gender, marital status, and occupation. This kind of thing in terms of a notary is referred to as a comparator or appeared.

b. Agreement data guaranteed principal in a manner fiduciary; about type guaranteed agreements and debts.

c. Description of object guarantee fiduciary; explained by identifying the object and explaining the letter of ownership.

d. Value guarantee fiduciary; entered to know how large the value of collateral with credit and the value of fiduciary guarantee objects are compared. With a note that the value of the collateral cannot be greater than the total value of the objects pledged as collateral;

a. Mark objects of fiduciary guarantees, also stated in the certificate of ownership.

In addition to being made in the form of an Authentic Deed, which is useful for clearly establishing rights and obligations, guaranteeing legal certainty, avoiding disputes, as the strongest and most complete written evidence and containing formal truth notified by the parties, other conditions must be met in order an item/object that can become an object of fiduciary guarantees is that it must be registered at the Fiduciary Registration Office (Vide: Article 12 paragraph (1) UUJF) related to the principle of publicity and the principle of civil law. A legal system mandates that the registration of collateral for goods must be the object registered. It is related to the principle of publicity. It aims to protect debtors who do not have good faith by registering fiduciary collateral objects elsewhere or even selling fiduciary collateral objects without the knowledge of the original creditor.

Fiduciary registration is the most important requirement in the imposition an object/goods to become a fiduciary guarantee object. Initially, the legal instrument that regulated this was Government Regulation Number 86 of 2000 concerning Procedures for Registration of Fiduciary Guarantees and Costs for Making Fiduciary Guarantee Deeds which was later revoked with the promulgation of Government Regulation

From the whole exposure, the Copyright as object move no form is one form riches intellectuals who have benefits based on provision legislation. Copyright ownership rights can appear in a manner automatic since birth right created that, if made as an object guarantee, then Copyright must be registered. Copyright cannot be burden right dependent or mortgage because the nature of the Copyright is object move. Copyright including in object guarantee fiduciary Because it has fulfilled all elements and terms to become object guarantee fiduciary, then the Copyright can be the object debt guarantee form guarantee fiduciary.

4.3 IMPLEMENTATION OF COPYRIGHT AS AN OBJECT OF FIDUCIAL COLLATERAL IN INDONESIA

In Indonesia, the regulation regarding IPR as an object of banking guarantee is contained in Law no. 28 of 2014 concerning Copyright. The law states that Copyright is an intangible movable object which can be transferred or transferred either in whole or in part through inheritance, grants, endowments, wills, written agreements, and other reasons justified under the provisions of the legislation. Furthermore, Article 16 paragraph (3) of the Copyright Law states that "Copyrights can be used as objects of Fiduciary Guarantees."

Based on the provisions above, natural and intangible Copyrights can be used as objects of Fiduciary Collateral. If one day the Copyright Holder requires a loan from the Bank, the Copyright Holder can make the Copyright as collateral for debt to the Bank. Application of Copyright as an object of Fiduciary Guarantee in Indonesia as stated in Article 16 Paragraph 3 of this Law on Copyright applies not without reason (Jamil, 2021). Regarding several foreign countries, HKI ownership can be bankable, which means it can be used as collateral for bank guarantees. For example, Singapore, Malaysia, and Thailand have developed credit based on intangible assets (intangible assets). Even Singapore, through The Intellectual Property Office of Singapore (IPOS), has provided the infrastructure and facilitated the development of IPR, including the provision of bank
credit. As has been discussed by the researchers previously, the issues raised are Copyright can make object guarantee fiduciary and causal how difficult reception right create as guarantee fiduciary by the Bank. When referred to Law no. 28 of 2014 concerning Copyright, the law has classified the types of works that are protected and which are not considered protected in practice, and states that Copyright has economic value. However, the Copyright Law still needs to provide a statement or is clear regarding the qualifications of the work that has been classified, what kind it is, and who meets what conditions, which can later be used as collateral for debt (Fiduciary Guarantee).

That type of institution's possible guarantee tied to Copyright is with use institution guarantee fiduciary. So that if the object guarantees fiduciary in the form of Copyright, the creator or copyright holder still controls objects/goods created and will still get an inherent advantage economical from his creation for objective debt repayment creditor holder to guarantee fiduciary.

A Copyright that will guarantee the best debt has registered in the general list creation. However, the law did not require a Copyright for registration because the system from Copyright without recording (constitutive). However, registration is created by the Directorate General of Intellectual Property Rights as an institution of Copyright registration in Indonesia. It will be advantageous in matter proof if There is dispute ownership later day, registration This although in Article 72 of the Copyright Law it says, "Registration Creation in the General Register Creation No means as _ endorsement on content, meaning, intent, or form from Listed works "However, in Copyright assessment as object debt guarantee, Copyright certificate as a proof is written ownership of Copyright would be constructive proof of Copyright owner. The copyright validity period is essential. If identified, at least several hinders thing the implementation of application right create an object guarantee fiduciaries in Indonesia, including:

1. Factor regulation legislation that has not comprehensive.

Until the moment, there is a regulation executor about How the application of Copyright as a guarantee fiduciary. As for the current laws and regulations, namely Article 16 paragraph (3), UUHC, has yet to provide clear guidelines regarding applying Copyright as an object of fiduciary guarantees.

2. There is no stipulation regarding copyright qualifications that can be used as collateral objects.
Copyright as an intangible movable object has unique properties that are different from tangible objects, where that specificity can be used as a consideration in giving special treatment to the object. When the object to be used as collateral by the credit applicant does not provide confidence and certainty to the bank both in terms of binding and the value of the object so that it provides a risk of loss in the future, it is understandable if until now banks have been reluctant to provide credit with collateral/collateral in the form of copyrights.

3. *Intellectual property rights have not been classified as banking institution assets by the financial services authority (OJK) and Bank Indonesia (BI)*. *article 16 paragraph (3) of law number 38 of 2014 concerning copyright stipulating that copyright can be used as an object of fiduciary guarantees does not stand alone. it is interrelated with other laws and regulations.*

For overcome problems the need does comparison Copyright law in the United States like. The Government of Indonesia can establish a particular institution that deals with copyright issues such as the CRB in the United States or optimize the role of the Directorate General of Intellectual Property Rights under the Ministry of Law and Human Rights as an institution authorized to issue regulations and technical standards related to Intellectual Property Rights in Indonesia. The Government of Indonesia may apply standards and qualifications regarding copyrights whose economic value can be calculated by adopting the provisions in Module 11 WIPO concerning IP Valuation. Indonesia can adopt the same steps as the United States, namely adopting the copyright valuation mechanism as stipulated by WIPO in Module 11 on IP Valuation as a guideline for implementing IPR economic value valuation with several adjustments so that it can be implemented effectively in Indonesia.

5 CONCLUSION

The object of a fiduciary guarantee is inseparable from the existence of an agreement entered into by the parties prior to the existence of the fiduciary agreement itself. It was considered that fiduciary is an additional agreement that is an accessory attached to an existing agreement. Copyright as object move No form is one form riches intellectuals who have benefits with mark possible economy diverted based on the provision. In the object guarantee, the fiduciary fulfilled all elements and terms. For
becoming an object guarantee fiduciary, Copyright is possible for making an object debt guarantee or guarantee fiduciary.

In Indonesia, HKI as an object guarantees banking contained in Law No. 28 of 2014 concerning Copyright. Constitution has classified types of protected works and those that are not protected in practice, as well as states the right to create their own mark economy. However, Copyright Act now Not yet give a statement or clear description of Copyright qualification and Copyright application as an object guarantee fiduciary. Several hindering thing implementation applications right created as object guarantee fiduciaries in Indonesia, including Factors Regulation Legislation that has not comprehensive. The determination about Eligible Copyright Qualification made object collateral, property rights Intellectual has not classified as asset institution banking by the Financial Services Authority (OJK) and Bank Indonesia (BI). If referring to several foreign countries, HKI ownership can be bankable for a bank guarantee. For example, the countries of Singapore, Malaysia, the United States, and Thailand. In this study, researchers hope that the Indonesian government forms a special governing body problem right to create and create regulation executor/regulation government as mandated in Article 77 of the Law Number 28 of 2014 concerning Copyright. Study This own excess Where study This study application right created as object guarantee fiduciary in Indonesia is reviewed from facet certainty law and study comparison application right created as object guarantee fiduciaries in several other countries. However, in the study, there is a weakness that does not yet exist arrangement of statutory regulations comprehensive arrangement about guarantee fiduciary so the study becomes limited. As for the implications, a study is right to create a guarantee fiduciary. The Indonesian government must make regulation executor from Copyright Act and adopt the copyright valuation mechanism implemented by the United States and Singapore.
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