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IMPLEMENTATION OF PROBLEMS AND BINDING OF COPYRIGHT AS AN OBJECT OF FIDUCIARY GUARANTEE IN INDONESIA

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Abstrak
This research analyzes the application of copyright as a fiduciary guarantee in Indonesia. Copyright is the exclusive right of creators over their original work which has significant economic value and with the new regulations in Indonesia copyright can be used as fiduciary security. This is contained in Law Number 28 of 2014 concerning Copyright and Law Number 42 of 1999 concerning Fiduciary Guarantees. However, in its implementation there are still several legal problems regarding copyright which is used as fiduciary collateral. The problems in this research are, first, what are the obstacles to the implementation of copyright as an object of fiduciary guarantee in Indonesia? Second, how do you overcome copyright so that it is bound and can be used as an object of fiduciary guarantee regardless of these obstacles? This research is normative legal research and is descriptive qualitative in nature. The results of the research show that, first, the obstacles that become problematic in implementing copyright as an object of fiduciary guarantee are because there is not yet a very broad regulation and understanding of related matters. Second, there needs to be confirmation of copyright objects that are used as objects of fiduciary collateral supported by proof of ownership.

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I. INTRODUCTION

Copyright is divided into 2 (two) types, namely copyright is original (original) which authorizes or rights to individuals who create such as the creators of songs, books, writers of poetry and also other creations. Then the second is the derivative (derivative) rights arising from individuals who have original copyright, including grants, wills, inheritance and purchases. Copyright itself generally has economic rights in it and then this can be given by inheritance, grants and wills or by making a written agreement either for part or all of which is legally correct by looking at it then this copyright can be said to have a possibility to be used as a guarantee when doing a credit agreement. (Soni Ramdani, 2019). In order to obtain credit, financial institutions will generally require prospective debtors to hold a guarantee. The existence of this guarantee is intended to be able to provide confidence or trust to financial institutions for debt installments from debtors.

Based on the provisions in "Article 1131 of the Civil Code (hereinafter referred to as KUHper) stipulates that all objects belonging to the debtor, both movable and immovable, existing and future, are liable for his debts and become collateral for their payment." Furthermore, the KUHper does not regulate fiduciary guarantees, but it provides a discussion of mortgages and pawning which can be used as a form of consequence that must be done when there is a division of objects where the pawn will be the benchmark for regulating guarantees with movable objects while the pawn will provide rules for guarantees with immovable objects. The object used for this pawn process itself must be in the power of the individual holding the pawn which is intended to make parties who have small to medium-sized businesses where they actually still need the objects they make as collateral to be able to help their business activities. So then, a new collateral is needed that is movable in nature but does not give the power of the collateral object which is known as "fiduciary". (Purwaningsih, Endang, Nurul Fajri Chikmawati, Nelly Ulfah Anisariza, 2020).

Fiduciary is a word derived from its root word "fides" and means "trust". In this case, it explains the relationship between the recipient and the Fiduciary grantor where they will have trust in each other. The Fiduciary grantor itself gives trust to the beneficiary who will give back his property rights after the debtor has successfully resolved his debt. And vice versa, the creditor also trusts that the debtor will not misuse the goods that have been used as collateral in their power. Based on the provisions of UUHC Article 16 paragraph 1 and also paragraph 3 states (1) this copyright has the form of objects that are moving and also has no form; (3) copyright can be utilized to be used as an object of collateral in fiduciary. So based on this it can be concluded that copyright can be utilized as an object that can guarantee the fiduciary which is described in UUHC Article 16 paragraph 4 in which it states copyright has provisions to be used as an object of fiduciary guarantor is in paragraph 3 which in the process will be carried out in accordance with applicable legislation.

But in its implementation, the presence of UUHC is not necessarily able to provide legal certainty for the creator in registering his copyright to be used as a fiduciary security item because of some of the issues that make copyright as an obstacle and problematic in terms of being used as a fiduciary guarantee.

II. RESEARCH METHOD

The type of research used is sociological juridical research. Normative juridical is a library legal research conducted by examining library materials or secondary data only. (Soerjono Soekanto and Sri Mahmudji, 2003). The research specifications used are descriptive analytical and qualitative research. Descriptive analytical which reveals laws and regulations related to existing legal theories and also legal links in relation to implementation in society. Meanwhile, qualitative research is research that aims to explain an in-depth phenomenon by collecting data. It is related to the data obtained to analyze the constraints on the implementation of copyright as the object of the Fiduciary

Guarantee in Indonesia and how to overcome copyright to be bound and can be used as an object of the Fiduciary Guarantee regardless of the constraints.

III. RESEARCH RESULTS AND DISCUSSION

A. Obstacles to the Implementation of Copyright as an Object of Fiduciary Guarantee in Indonesia

Copyright is one part of intellectual property that has the broadest scope of protected objects, this right because it covers science, art and literature which also includes other programs such as computer programs. Indeed, if seen from the development of today's times, the development of the creative economy in Indonesia is one of the things that is often used either by the government or the community in conducting either activities or used as a fiduciary guarantee. Along the way and the development of information and communication technology requires an update to the relevant Act. In this regard, the previous copyright law did not regulate Copyright as an object of Fiduciary Guarantee, but after the enactment of Act No. 28 Year 2014 in Article 16 paragraph (3) which states that in the implementation of Copyright as an object of Fiduciary Guarantee implemented by the provisions of the Legislation. . Therefore, with the development of the times, the object of the Fiduciary Guarantee was expanded. Initially, the objects that could be used as objects of the Fiduciary Guarantee were only limited to tangible movable assets in the form of objects in stock, merchandise, accounts receivable, machine tools and motorized vehicles. However, after the promulgation of new regulations, the Fiduciary Guarantee Law Number 42 of 1999 concerning Fiduciary Guarantees was updated that the object of Fiduciary Guarantees was expanded to include tangible movable objects or intangible movable objects but also immovable objects that cannot be encumbered with mortgage rights.

In terms of fiduciary security, fiduciary is based on the concept of trust, which means the transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred, the object remains in the possession of the owner of the object. It should be noted that in this concept, it is known that there is an important element in fiduciary, namely the transfer of property from the debtor to the creditor based on the belief that if the debt is later repaid, the property rights to the pledged goods will return to the debt recipient (debtor) and even though it is legally determined that the property rights to the goods have moved, the debt recipient still has the right to enjoy or use the pledged goods. (Imron Rosyadi, 2017). Copyright as an intangible movable object based on the provisions of Article 1 number 4 of the UUJF can be used as an object of fiduciary guarantee. However, problems and obstacles arise when in practice the valuation of copyright becomes a problem in the field because in Article 13 paragraph (1) of the UUJF explains that the application for registration of fiduciary guarantees made by the fiduciary (creditor), his attorney or representative by attaching a registration statement. When followed up legally registration statement as referred to in the article a quo explained must include the value of the guarantee which means expressly (expressis verbi) copyright used as an object of fiduciary security must have a valuation that can be accounted for. Regarding the valuation of copyright needs to be considered by the debtor if he wants to make copyright as an object of fiduciary guarantee. This is because copyright has economic value but because copyright is intangible objects will be difficult to assess or determine its economic value, this is not like tangible movable objects such as cars, jewelry and others. This also relates to unlike tangible objects that tend to be more stable and easy to do asset valuation and buyers easily get market information when assessing the value of an asset that has a tangible object. This is because copyright does not have certainty in terms of assessment and value, thus making investors and creditors reluctant to invest because of the fear of experiencing losses someday.

The obstacles that occur not only this, it is also related to the not too broad understanding of the issues related to market value, ownership, authority and submission of copyright as an object of collateral and execution. In Indonesia, the thing that has always been the main reference is not to accept copyright as a fiduciary guarantee is due to valuation issues in the form of money, especially the market to sell / cash out the right to collect in the form of copyright and still does not exist if in the future the fiduciary holder wants to sell the copyright that has been pledged. Regarding the copyright registration system should be implemented in accordance with the UUJF, it is because as a property right copyright also has other characteristics, one of which is "droit de suite which means the copyright holder continues to follow in the hands of anyone copyright attached to the object is located." In Indonesia there is no institutional valuation services against IPR assets, especially regarding copyright, when compared with foreign countries such as Thailand, Malaysia and Singapore they have developed a credit system based on intangible assets / intangible objects (intangible assets) that ownership of IPR is bankable ie can be used as collateral or collateral to the bank, not only that in South Korea itself also has a system that can introduce and explain information about the importance of valuation of IPR assets through the IP Panorama system. In the event that Copyright is used as an object of Fiduciary Guarantee, the bank must be able to assess and estimate the economic value of the Copyright, but currently in the absence of an appraisal service institution for Copyright, of course, the economic value of the rights cannot be determined by the creditor, given that the bank's business objective is to make a profit (profitability) and balanced with the prudential principles of the bank (safety) because these principles are actually needed by the bank because the bank in providing the loan certainly has a very high level of risk for the bank and customers as depositors of funds (degree of risk). (Tiominar Octavia, Ayu Putu Laksmi Danyathi, 2022).

B. Binding of Copyright as an Object of Fiduciary Guarantee

Talking about copyright can not be separated from moral issues because in copyright itself attached moral rights throughout the term of copyright protection still exists. Moral issues arise because basically everyone has the obligation to respect or appreciate the copyrighted works of others and can not at will take or change someone's copyrighted work into his name. Related that copyright as intangible movable objects that have properties can be transferred either in whole or in part because copyright can be transferred or transferred either in whole or in part, among others by inheritance, grants, or written agreements, fiduciary guarantees. In this case strengthening copyright can be used as an object of collateral, because copyright is classified as intangible movable objects but has a value that can be assessed with money and can be transferred through a sale and purchase agreement and can be used as debt collateral such as other movable goods. In Article 1 Point 2 of the Fiduciary Guarantee Act, the definition of fiduciary guarantee is formulated, namely "Fiduciary guarantee is a security right over movable objects, both tangible and intangible, and intangible objects, especially buildings that cannot be encumbered by mortgage rights as referred to in Law Number 4 of 1996 Mortgage Rights, which remain in the possession of the Fiduciary, as collateral for the repayment of certain debts, which gives priority to the Fiduciary against other creditors". This means that the Fiduciary Guarantee Law explicitly states that the Fiduciary Guarantee is a collateral for property or material security (Zakelijke zekerheid, security right in rem) that gives the Fiduciary recipient a priority position, namely a right that takes precedence over other creditors. This right is not extinguished by the bankruptcy and or liquidation of the fiduciary (Article 27 paragraph (3) of the Fiduciary Guarantee Law). The characteristics of the property used as an object of fiduciary guarantee are that it must have economic value that can be valued in money if in the future the debtor is unable to carry out his debt obligations or defaults. So that the object of the guarantee can pay off the debts of the debtor. In relation to his copyright as an object of fiduciary guarantee, of course the copyright must have an economic value that can be assessed with money. The collateral institution that allows encumbrance in the object of copyright is a fiduciary security institution in the form of intangible movable objects. In this case, due to the absence of legislation that specifically regulates further on the form of copyright that can be used as a fiduciary encumbrance can be used some criteria as credit collateral, among others as follows (Erika Natalina Br Ginting, Yetniwati, 2020):

a) Copyright must have been registered with the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights.
b) The copyright must have an estimate of economic value that can be accounted for.
c) The copyright has been managed by the Collective Management institution, so that the royalty value can be known.
d) The certificate of intellectual property rights is included in the type of collateral allowed in bank credit financing.
e) If necessary then given other guarantees in the form of personal guarantee or borgtocht of the company that houses a copyrighted work.

In addition, Article 6 of the Fiduciary Guarantee Law states that the Fiduciary Guarantee deed requires a description of the object of the Fiduciary Guarantee, the description of this object must be explained with proof of ownership of the object. Copyright registration application is submitted to the Minister of Justice through the Directorate General of IPR. In Copyright registration is only done recording does not give rise to a right, because the right already exists when the creation is realized in real form. Registration is done by recording that aims for evidence, not in the form of a certificate. If a Copyright that has not been registered and then used as an object of Fidsua Guarantee, will make a burden in the responsibility of ownership of Copyright. Although Copyright adheres to the declarative nature, in order to obtain legal certainty for the creditor. Before being pledged as an object of Fiduciary Guarantee, the Copyright must first be registered with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia. Copyright registration is done with the aim of avoiding things that are not desirable, for example, such as one of the creditors or debtors defaulting, transfer of assets and so forth. To find out that someone has the right to a particular creation, then a proof is done. This proof is done by the existence of a Copyright registration letter, with the registration letter it is clear or certain that a creator is a person whose name is registered in the general register of creations at the Directorate General, or a person whose name is stated in a creation or announced as a creator. The Fiduciary Guarantee begins with an Obligatoir agreement (Obligatoir Overeenskomst). The agreement is in the form of a money lending agreement, the Fiduciary Guarantee is only accesoir or an additional agreement. The Fiduciary Guarantee is implemented if both parties, the creditor or the debtor, agree to it. This agreement of will is carried out so that a contract is considered valid in the eyes of the law, without coercion (dwang, duress), fraud (bedrog, fraud) and mistake (dwaling, mistake). This is related to Article 1321 of the Civil Code which stipulates that an agreement is invalid if it is given by mistake or obtained by force or fraud. (Nur Amelia Pertiwi, Sukirno, 2019).

IV. CONCLUSION

Copyright has the potential to cause legal problems in practice if there is no regulation that really regulates the provisions of the implementation of copyright binding that can be used as an object of fiduciary guarantee and other legal problems are when the debtor makes a breach of promise or default, the execution of copyright will be difficult because copyright includes intangible objects and the implementation of its execution will pose a risk for the lending institution to assess the object of intangible collateral such as copyright. And the implementation of its execution only refers to the main rules, namely Act No. 49 Year 1999 on Fiduciary Guarantees. It is also related to the not too broad understanding of the issues related to market value, ownership, authority and submission of copyright as an object of collateral and execution. In Indonesia, the thing that has always been the main reference is not to accept copyright as a fiduciary guarantee is due to valuation issues in the form of money, especially the market to sell / cash out the right to collect in the form of copyright and still does not exist if in the future the fiduciary holder wants to sell the copyright that has been pledged. Regarding the copyright registration system should be implemented in accordance with the existing UUJF, it is because as a property right copyright also has other characteristics, one of which is "droit de suite which means the copyright holder continues to follow in the hands of anyone copyright attached to the object is located." Moreover, in Indonesia there is no institutional valuation services against IPR assets, especially regarding copyright, when compared with foreign countries such as Thailand, Malaysia and Singapore they have developed a credit system based on intangible assets / intangible objects (intangible assets) which ownership of the IPR is bankable that can be used as collateral or security to the bank, not only that in South Korea itself also has a system that can introduce and explain information about the importance of valuation of IPR assets through the IP Panorama system.

Copyright includes intangible movable objects that are born declaratively, of course the main legal basis for the footing relating to copyright as the object of the fiduciary guarantee is Act No. 42 Year 1999 on Fiduciary Guarantee with partial or full regard to the economic rights of copyright pledged. Affirmation in the implementing regulations of the implementation of the article that the object of copyright is the object of copyright pledged must be accompanied by proof of ownership which will be registered as a supporting document for the notary in making the deed of encumbrance of fiduciary security over copyright. It also means the opening of opportunities for copyright pledged in fiduciary is a new thing that needs to be reviewed through legal observations, the theory of copyright can be used as a Fiduciary Guarantee but in reality it is very difficult if there are no more specific rules. Needed is the establishment of new legal norms or more specific rules regarding copyright as an object of Fiduciary Guarantee, so that financial institutions can easily accept Copyright as an object of Fiduciary Guarantee and reviewed the norms that apply to its application.

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