

Intellectual Property as An Object of Banking Credit Collateral in The Digital Era

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ABSTRACT

Banks must adhere to the fiduciary and prudential principles in their management as a financial institution whose operational activities are channelling and storing funds to and from the public. Every banking institution operating in Indonesia must go hand in hand with implementing the national development program. This statement is also in line with the objectives of the bank that must be achieved, one of which is to support the implementation of national development as outlined in Article 4 of the Banking Law. Because of this, the function and purpose of banking institutions is to manage public funds and expedite the implementation of national economic development. Research Methods uses normative juridical research methods, a process to find legal rules, principles and doctrines to answer the legal issues at hand. The results of research on HKI credit as an object of bank credit guarantees and revisions regarding Bank Indonesia Regulation (PBI) No. 9/6/PBI/2007 concerning Asset Quality Rating for Commercial Banks related to credit collateral is one of the main factors why the bank has not been able to accept IPR as the object of bank credit guarantees. To realize this renewal concept, strict and detailed juridical support regarding IPR assets as objects of bank credit guarantees, comprehensive outreach, and an IPR appraisal institution in Indonesia are needed.

Keywords: Intellectual Property; Objects of Credit Collateral; Digital Age

INTRODUCTION

Intellectual property rights (HKI) or Intellectual Property Rights (IPR) are classified as individual property rights, namely intangible material rights. Regarding IPR, the term currently used in Indonesia is "Intellectual Property (IPR), the abbreviation IPR is no longer used but refers to IPR because it follows the terms mostly applied in other countries. Regarding the change in terms used in Indonesia from HKI to IP, this can also be found in Presidential Regulation Number 44 of 2015 concerning the Ministry of Law and Human Rights. Article 25, part seven of this Presidential Decree states that the directorate's name is the Directorate General of Intellectual Property, not the Directorate General of

Intellectual Property Rights. In connection with this, the next abbreviation in this paper will use the term KI. (Ni Ketut Supasti Dharmawan, et al, 2016).

Advances in science and information technology have made countries appear without borders. Various developments in a country quickly spread and are easily accessible to people in other parts of the world. This condition is directly proportional to intellectual property rights (IPR) development. IPR is one of the main pillars of a country's economic development. (Khoirul Hidayah, 2017). In the current era, the state is directly required to strengthen IPR with globalization and free markets. The flow of globalization and the free market can only be dammed by building a system of IPR protection. To deal with it, it is necessary to have a legal transplant as the most appropriate step. (Robiatul Adawiyah, et al, 2021).

The development of life, which is taking place very quickly, especially in the economy, both at the national and international levels, has contributed to changes in intellectual property rights (IPR). To form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice..., which is then outlined in the articles article of the 1945 Constitution, which one aspect describes the welfare of a nation for its success in economic development. Article 33 of the 1945 Constitution states: (Maria Alfons, 2017)

1. The economy is structured as a joint venture based on kinship.
2. The branches of production which are important for the state and affect the livelihood of the masses are controlled by the state.
3. Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
4. The national economy is organized based on economic democracy with the principles of justice, togetherness, efficiency, sustainability, environmental perspective, and independence, and by maintaining a balance of progress and national economic unity.

LITERATURE REVIEW

Furthermore, in consideration of the MPR Decree No. IX/MPR/2001 states that "natural resources/agrarian resources include earth, water, space and the natural resources contained therein as a gift from God Almighty to the Indonesian nation, which is a national wealth that is must be grateful. Therefore, it must be optimally managed and utilized for the present and future generations to create a just and prosperous society."

Intellectual property is a right granted to the state or a creator, inventor or designer for creativity that has economic value and automatically or through registration following its legal protection because intellectual property is the basis of the economy. (Nanda Dwi Rizkia, et al, 2022). The rapid development of the

economy through trade routes is difficult to follow due to global changes in economic and trade matters, which are broadly based on changes in international regulations. Changes from the economy in the law field are difficult to prevent because the law always follows global economic progress, which substantially follows statutory regulations and other international regulations used within national borders. Based on the opinion of Lawrence M. Friedman, the rules are not autonomous, but the rules are influenced from outside. Information technology and communication media connect systems worldwide in various aspects, and this system influences the progress of the globalization era in particular. (Ferry Gunawan Christy, et al, 2020).

In previous research, the author cites Lutfi Ulinnuha's article entitled the use of copyright as an Object of fiduciary guarantees, economic rights on copyright as collateral to guarantee payment or repayment of debt (certain goods) which can be valued in money, high quality, the maximum value for the amount of debt given to him, for this reason, banks and other financial institutions or even individuals should ask for material guarantees with the intention that if the debtor cannot pay off his debt or is declared bankrupt, then the collateral material can be disbursed or poured out to cover the repayment or refund of the remaining money. The link with intellectual property as collateral (collateral) in the guarantee law is defined as the law governing debt guarantees, both in material and individual guarantees. Apart from that, Intellectual Property is a Fiduciary Guarantee; in the process, there will definitely be an appraisal (valuation). In order to do this, an intellectual property valuation can make comparisons with various assessments carried out by banks, including (1) market value; (2) new replacement costs (reproduction costs); (3) Fair value (depreciated replacement cost); (4) Liquidation value; (5) Insurance value (insurable value/actual cost value). (Lutfi Ulinnuha, 2017).

In the previous research article written by Ninik Zakiyah entitled Repositioning Copyright as an Object of Fiduciary Guarantee, it has been explained previously that legally as explained copyright as a fiduciary guarantee had fulfilled the requirements for the fiduciary guarantee itself, related to the direct implications for implementation in the environment. financial institutions can be seen in the technical implementation of copyrights for fiduciary guarantees and the OJK has not yet found implementing regulations. Referring to Bank Indonesia Regulation (BI) No.15/PBI/2012 concerning the assessment of the quality of commercial bank assets, Article 43 states that collateral that can be taken into account is securities and shares that are actively traded on the Indonesian stock exchange or have an investment rating and are followed by in lien, land, buildings and residential houses which are bound by mortgages, machines which are an integral part of the land and which are bound by mortgages, aeroplanes or ships with a size of 20m³ which are bound by motor awareness mortgages and inventories which are bound by fiduciary and warehouse receipts that are bound with collateral rights over warehouse receipts (UU No.9 of 2006 concerning the warehouse receipt system), specifically intended for collateral objects in the form of agricultural, plantation and fishery products. (Ninik Zakiyah, 2021).

In the research written by Widya Marthauli Handayani, the article entitled *Applicability of Copyright Law as an Object of Fiduciary Guarantee Based on Law No. 28 of 2014 Concerning Copyright*, the qualification of copyright as a fiduciary guarantee in Indonesia, intellectual property rights or better known as IPR As has been discussed by previous studies, it is acknowledged that some of the things mentioned above are one of the obstacles to the inability to accept copyright or intellectual property rights as objects.

RESEARCH METHOD

The method used in this research is normative juridical research, a process to find legal rules, principles, and doctrines to answer legal issues (Nanda et al. et al., 2022). This character of the perspective of law differs from research conducted in descriptive science which examines the truth or not of a fact caused by a certain factor; legal research is carried out to produce arguments, theories or new concepts as descriptions in solving the problems at hand. If the scientific is descriptive, the answer expected in legal research is right, appropriate, inappropriate, or wrong. Thus, the results obtained in legal research have value. (Peter Mahmud Marzuki, 2011).

RESULT AND DISCUSSION

Intellectual Property as a Business and Banking Credit Guarantee in the Digital Age

Intellectual property (from now on, abbreviated as KI) is becoming an increasingly interesting issue to be studied because of its role in determining the pace of national development acceleration in the globalization era. Although a Private Right, IP serves and contributes to the business world, including dealing with Micro, Small and Medium Enterprises (MSMEs) groups. Intellectual property is a translation of Intellectual Property Rights (IPR), Property Rights born from human intellectual abilities within the scope of science, art and literature. Intellectual property is creativity produced from human thought to meet human life's needs and welfare. Human creativity that emerged as an intellectual asset of elders has long had a significant influence on human civilization, among others, through inventions and results in the field of creation and art (art and literary work). The Potential and Role of MSMEs, so The work of MSMEs is also very minimal, so there are business actors who need to learn Intellectual Property (IP). This situation is certainly worrying because there is always competition in the business world. The unfair competition will make business actors experience defeat in terms of product discovery and marketing. Therefore, protecting the law for MSME products based on Intellectual Property (IP) is important. (Sulano, 2018).

Intellectual Property Rights (IPR) are exclusive rights the state grants to creators, inventors, or creators of their findings that have commercial value either directly, automatically or through registration. The concept of legal protection through granting exclusive rights to IPR holders serves as evidence of protection when legal disputes occur. Along with the increasing global market development, HKI can also be used as collateral to obtain bank credit. It was supported in the 13th session of the United Nations Commission on International Trade Law (UNCITRAL) in 2008 with material on security rights in intellectual property, which stated that IPR would be used as collateral to obtain international banking credit. Including IPR material as an object of banking guarantee is considered very important, especially for business people who have IPR to be able to access banking credit to develop their business. It is not without reason, considering that in some countries, IPR ownership can be bankable, which means it can be used as collateral for bank guarantees. For example, Singapore, Malaysia and Thailand have developed intangible asset-based credit. Even Singapore, through The Intellectual Property Office of Singapore (IPOS), has provided infrastructure and facilitated the development of IPR, including the provision of bank credit. (Trias Palupi Kurnianingrum, 2017).

Positive Indonesian law recognizes the existence of Intellectual Property Rights or IPR. IPR is the exclusive right given to someone over a work created through the results of intellectual abilities and human thinking or creativity that can produce a product in a form useful for human survival. Copyrighted works produced from the creativity of human intellectual ability, which has useful and economic value, are the object of intellectual property rights. Intellectual property rights are recognized in Indonesia and have a legal basis, such as Copyright, Trademark, and Patent Law. These laws regulate the rights obtained for copyrighted works that human intellectuals have produced. Moreover, these works have economic value and are transferable, so they can be used as torn.

Benda is zaak in Dutch. According to Article 499 of the Civil Code, what is interpreted as zaak is all goods and rights. It is further known that Izaak is a part of wealth (vermogensbestanddeel). What is meant by objects in the legal sense is everything that is the object of property rights. The rights attached to an object are referred to as material rights (Mavenlink recht), which is a right that gives direct power over an object and can be defended against each person. While the definition of property rights based on Article 570 of the Civil Code is the right to enjoy the usefulness of property freely and to act freely on that property with full sovereignty. With the control of objects based on property rights, a person has the right to enjoy these objects safely without interference from other parties. It also implies that the owner of the right.

Interpretation, according to analogy in civil law, often used due to its nature which generally only regulates and does not coerce, is the interpretation of intellectual property rights as collateral objects because intellectual property rights include immaterial movable objects. Therefore, based on analogous interpretation, it is possible to remember that property rights as part of the law of objects, namely

intangible movable objects, have a value that can be transferred or transferred because of agreements. Intellectual property rights fall into the realm of property law. Property law is part of civil law; its principles are absolute, defensible against anyone *droit de suite* (always following wherever things are), *Droit de preference* (the right of precedence over repayment over other creditors), and transferable. Intellectual property rights include movable objects that are disembodied (abstract) and have a value that should be.

Banks must have confidence based on an in-depth analysis of good faith and the ability and ability of debtor customers to pay off their debts or return the financing as agreed so that conservative banks can interpret the certainty of dissertation credit return with guarantees. The obligation to bind objects as collateral for credit facilities with the prudential principle stipulated in various Bank Indonesia regulations originating from Article 29 of Law No. 10 of 1998 proves the importance of guarantee institutions in providing bank credit. (Sri Mulyani, 2012) A credit agreement that belongs to the class of obligatory agreements and produces qualified collection rights is always personal; in fact, the authority has been given a guarantee, as stated in Article 1131 BW. The essence of the provisions of Article 1131 BW is that every object, whether moving or immovable, whether.

CONCLUSION

Banking as a financial institution in Indonesia can channel public funds through lending or providing money. The bank, as a creditor in disbursing credit to customers as a debtor, applies the precautionary principle, where the bank requires a guarantee in carrying out lending and borrowing activities. The exclusive rights granted to human copyrighted works produced by their intellectual abilities are called Intellectual Property Rights (IPR). Where the work can be in various fields of science and has uses and economic value. The use of IPR as credit collateral conceptually that IPR has material rights and is an intangible object whose ownership rights can be transferred through inheritance, grants and an agreement. Moreover, the position of IPR as a bank credit guarantee has been stated in the law regulating the types of intellectual wealth.

As mandated in the Copyright and Patent Law, it is necessary to immediately establish strict and detailed implementing regulations related to IPR assets as objects of bank credit guarantees. It is considered very important, considering that until now, there has been no implementing regulation governing IPR as an object of bank credit guarantee. Second, it is necessary to establish an IPR asset appraisal institution in Indonesia immediately. The information provided above leads to the conclusion that Government Regulation Number 24 of 2022 concerning the Implementation Regulations of Law Number 24 of 2019 concerning the Creative Economy has provided regulatory leeway for the freedom of the community in creating ideas or ideas that can be an economical selling point but must be ratified through relevant laws and regulations and must have

Rights on Intellectual Property (IPR), which must be obtained by registering with the person concerned. IPRs, such as copyrights and patents, are currently used as objects of fiduciary guarantee.

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