

QUO VADIS COPYRIGHT AS FIDUCIARY GUARANTEE IN INDONESIAN LEGAL ARRANGEMENT

Achmad Busro, Diponegoro University
Dewi Sulistianingsih, Semarang State University
Yuli Prasetyo Adhi, Diponegoro University
Pujiono, Semarang State University

ABSTRACT

The copyright setting that is used as a fiduciary guarantee object is a new aspect in Indonesia. The provision of Article 16 Paragraph (3) of the Copyright Act stating that copyright can be used as an object of fiduciary guarantee affirms the beginning of the occurrence of copyright as the object of fiduciary guarantee.

This study aims to provide empirical evidence of the application of copyright as fiduciary guarantee in Indonesia. By using socio-legal approach, the results of field research show that the copyright has not attracted attention from banking and financial institutions as fiduciary guarantee. The provisions of the Copyright Act are not necessarily well accepted by creditors, bank and financial institutions.

The results further reveal that this phenomenon is mainly caused by the lack of implementing regulation specifying the method for financial institution to assess the value, market, ownership and authorization of copyright submission as the object of collateral. The copyright mechanism as the object of the fiduciary guarantee needs more technical rules. The creditor's reluctance to accept fiduciary copyright as related to the problems that will arise probably results in legal uncertainty and investment security for creditor. While there are such limited literatures discussing the matter, the originality of this article lies in its consideration on the development of copyright as fiduciary guarantee object and its empirical evidence in developing countries.

Keywords: Fiduciary, Collateral, Copyright, Legal Arrangement, Ownership.

INTRODUCTION

Fiduciary is the transfer of ownership rights of an object on the basis of trust with the mechanism of transfer of property rights to the debtor's property to the creditor, while the possession is fixed to the debtor (Sfikas, 1997). Fiduciary guaranty is the right of security of tangible and intangible mobile objects, especially immobilized buildings which remain in the possession of the fiduciary giver, as collateral for the settlement of certain debts and which give the preferred position to the beneficiary fiduciary to other creditors. In Indonesia, the fiduciary guarantee object mentioned in Article 1 point 2 of the Fiduciary Guaranty Act is tangible and intangible moving object and immovable property, especially a building which cannot be burdened with mortgage. In Article 1 item 4, the thing is defined as everything that can be owned

and transferred, whether tangible or intangible, registered or unregistered, moving or immovable that cannot be borne by mortgage or mortgage rights. Legally, the fiduciary guarantee object is set in Article 1 points 2 and 4, Article 2 and Article 3 of the Fiduciary Guaranty Act. Article 2 of the Act affirms that this Act applies to any agreement that aims to burden objects with fiduciary guarantees and is then affirmed by Article 3 which states the Act is not applicable to: 1) mortgage rights related to land and buildings, as long as the applicable laws and regulations determine such items shall be registered; 2) mortgages on registered vessels with gross content of 20 (twenty) metres square or more; 3) mortgage on airplanes and 4) pawn.

Based on the Decree of the Ministry of Law and Human Rights, the Directorate General of Legal Administration to the Regional Office of the Department of Law and Human Rights of Jakarta No C. HT. 06-10-01 dated February 24, 2010, it is stated that: (1) The object of fiduciary guarantee is a material right; (2) The project terms, leases, contracts or borrowings and other personal rights are not understood as objects of fiduciary security; (3) The insurance policy shall not be subject to fiduciary security because of the insurance/insurance policy that is the inherent right of the person who owns it but is not transferable. In essence, the fiduciary guarantee is an object which ownership rights may own and transfer, whether tangible or intangible, registered or unregistered, mobile or immovable, which cannot be borne by mortgages. On the other hand, the object of fiduciary assurance, especially on intangible objects, has a significant development. Law No. 28 of 2014 on Copyright has governed the development of intangible objects that can be guaranteed by fiduciary collateral. Copyright Law also regulates copyright as a fiduciary security object. This is stated in Article 16 paragraph (3) of the Copyright Act stating ‘copyright can be used as an object of fiduciary guarantee.’

Copyright arguably has prospects to serve as credit collateral, because it has an economic value and can be transferred either entirely or partially. The presence of Article 16 paragraph (3) of the Copyright Law does not necessarily make the bank easily give its loan. The bank cannot accept the copyright as the object of fiduciary guarantee because of the rules that support it. The arrangement in Article 16 paragraph (3) does require further elaboration. This is related to the guarantee for the bank itself to get the certainty of the refund that has been lent. The copyrighted work as the object of fiducially guarantee in Indonesia only exists after the enactment of Law No. 28 of 2014, so the arrangement order is incomplete. Banking parties in Indonesia have not practiced copyright as a credit guarantee because there are some obstacles in the implementation. These barriers relate to issues of value, market, ownership and authorization of copyright submission as the object of collateral. These barriers arise because there is no special regulation on copyright as an object of guarantee, including the unavailability of an appraisal agency that has the ability to provide an assessment of the economic value of a copyright. This situation poses a considerable risk to the banks to accept the copyright as an object of guarantee. The financial institution of either bank or non-bank will undertake appraisal in advance of a guarantee object, such as the readiness of the creators, copyright holder and financial institution and the proper mechanism for carrying out an assessment of the value of recorded or unrecorded copyright.

LITERATURE REVIEW

Historically, the term ‘transfer and security financial collateral arrangement’ was implemented in the Roman law (Mangatchev, 2008). Fiduciary or Fiduciary Eigendom Overdracht/FEO is a transfer of ownership based on trust. The term ‘fiduciary’ means trust, in

which the parties give each other's trust, i.e., one party gives full trust to other parties to transfer their ownership, but the objects that are used as collateral is a guarantee of debt. Another definition of fiduciary is the transfer of ownership rights to the debtor's goods which are pledged to the creditor on the basis of trust, whereas physically the goods concerned remain with the debtor (Hadisoeparto, 1984). Fiduciary is a transfer of ownership of objects in the control of the object owner. Fiduciary guarantee is the right of guarantee for moving objects, both tangible and intangible, as well as immovable objects, especially buildings, that cannot be burdened with the bail and remain in the control of the debtor. This guarantee is functional as collateral for the repayment of a certain debt, which guarantees to the creditors toward other creditors (Adhi, 2014).

Based on the above definition of fiduciary, Article 1(1) of the Law No. 42 of 1999 on fiduciary guarantee states that 'fiduciary is a transfer of ownership of an object on the basis of trust with the condition that the transferred object remains in the control of the object's owner.' From the statement, there are some elements of fiduciary, including: (1) the transfer of ownership of an object; (2) is done on the basis of trust; and (3) the object remains in the hand of its owner. Fiduciary is the transfer of ownership of an object on the basis of trust provided that the object to which the right of ownership is transferred shall remain in the possession of the possessor of the object (Gold, 2007). Fiduciary guarantee is the right of assurance of tangible and intangible mobile objects, especially buildings which cannot be burdened with mortgage liabilities which remain in the control of fiduciary givers, as collateral for certain debt repayment, which gives priority to fiduciary recipients over other creditors. Fiduciary in Indonesia has grown since 1931, contained in court decisions (arrest of HGH in BPM-Cligent case). This means that fiduciary has been known in court decisions. Furthermore, fiduciary development has become more popular since fiduciary institutions meet the needs in practice. This is because fiduciary is very closely related to the credit agreement of the bank, when the debtor wants to borrow money from the bank to expand its business by providing assurance of moving objects, because the debtor has no guarantee of other objects (Sutedi, 2012).

In other countries such as in the United States, guarantees of intangible goods such as copyright are set up. Software developers can get help from financial institutions. The provisions in Article 16 paragraph (3) are related and even dependent on other laws, as mentioned in Article 16 paragraph (4) that 'the provisions concerning copyright as fiduciary security objects as referred to in paragraph (3) are carried out in accordance with the laws and regulations.' The closest legislation is Law no. 42 of 1999 on Fiduciary Guarantee. Copyright may be subject to fiduciary guarantees as set forth in the Copyright Act, not on objects that are encumbered with the copyright, but on the economic value attached to the copyright (Sudjana, 2012). Subsequent developments need to be examined more deeply by conducting research to determine the development of intangible objects assurance that can be guaranteed fiduciary. The object of fiduciary assurance which develops due to the new provisions in the rule of the Act shall result in another provision in the fiduciary guarantee that is related to the process of making fiduciary assurance with the object of assurance of intangible objects. Possibilities may occur such as copyright that may be the object of fiduciary collateral, that is, other rights in the intellectual property such as brand rights, patents, industrial design rights, etc.

METHODOLOGY

Research Design

This study is a qualitative research that aims to discover the meanings behind subject of research using secondary data as initial data continued by seeking the primary data (Budiharseno, 2017; Nugroho, Bakar and Ali, 2017). This study used the socio legal approach, that contains two aspects of research, namely (a) the legal aspects of research, namely the object of research existed in the form of law in the sense of norm, and (b) socio research, namely the use of social science theories and methods to help researchers conduct analysis (Zamroni, 1992).

Data Collection and Sampling

The research was conducted at the Regional Office of the Ministry of Law and Human Rights of the Special Capital Region of Jakarta and the Provinces of Central Java, East Java, West Java, as well as the Ministry of Justice and Human Rights of the Republic of Indonesia and notary firms. The selection of notaries as informants is determined purposively, while the number of informants is not determined by the limitative but follows the principle of a snowball sampling, in accordance with the need for informants in the reality research. Data in this research consist of primary data and secondary data. Primary data is data sourced from the parties involved in the problem, as the object of research. In other words, data was obtained from field research (Muhammad, 2004), including key informants consisting of respondents from the Ministry of Law and Human Rights, notaries, Financial Services Authority of Indonesia (*Otoritas Jasa Keuangan/OJK*), National Legal Development Board (*Badan Pembinaan Hukum Nasional/BPHN*), Directorate General of Intellectual Property, Financial Institutions and other informants from practitioners and academics. The secondary data was sourced and obtained through document and literature study on primary legal materials. The data in this research is obtained through observation activities, interviews (Coffey, 2004), visual sightings, interpretation of documents and materials, as well as personal experience. In accordance with this research paradigm, in making observations, researchers will take a position as a participant observer. Researcher is the key instrument (Nasution, 1992; Bogdan and Taylor, 1992) in data collection. In-depth interviews were done with open ended questions, but it is possible to answer closed-ended questions especially for informants who have a lot of information but there are obstacles in elaborating the information.

Data Analysis

The analysis of primary data was done using the technique adopted from Stratuss and Corbin (1990), i.e., by analysing the data since the researcher was in the field. The researchers used an interactive analysis using a field note consisting of description and data reflection (Sutopo, 1990). Furthermore, researchers conducted a data classification through the process of indexing, sharing, grouping and filtering. After the research data was considered valid and reliable, the next step was to reconstruct and analyse it by inductive and qualitative methods to answer the problems of the focus of research (Sudarto, 2002) using data analysis techniques proposed by Miles and Huberman (1992) which consists of three cycles of activity, i.e., data reduction, data presentation and conclusion or verification.

RESULTS

Intellectual Property Rights (IPR) is from the brain that produces a useful product or process to humans. In essence, the IPR is the right to enjoy the result of an intellectual creativity. IPR objects are works that arise or are born because of human intellectual abilities that are broadly divided into 2 (two) major parts namely: 1. copyright and 2. industrial property rights, which include patent, industrial design, trademark, lay out design of the integrated circuit, trade secret and varieties of plants protection. In Indonesia, the stipulations regarding the copyright as a fiduciary object is regulated in Article 16 paragraph (3) of Law No. 28 of 2014 and is also in accordance with article 1 paragraph (2) of Law No. 42 of 1999 concerning fiduciary guarantee. The copyright under Article 16 paragraph (3) of Law No. 28 of 2014 is an intangible moving object. It is legally well regulated in article 1, paragraph (2) of Law No. 42 of 1999, stating that as the intangible moving object, copyright can be used as fiduciary. There, copyright is regarded as a moving object that is not tangible and having an economic value that can be used as an object of guarantee. The copyrights that can be made into a fiduciary guarantee are copyrights that have been registered in the Directorate General of Intellectual Property. The development of IPR as a fiduciary guarantee in terms of various aspects of existing law has a very significant correlation value.

Under the existing legislation, the IPR must be transferable. This provision of "transfer of rights" applies thoroughly to all areas of IPR, namely copyright, trademark, patent, industrial design, Integrated Circuit Layout Design (DTLST), trade secrets and plants variety protection and other objects such as follows (a) inheritance, b) grants, (c) testaments, (d) written agreements, or (e) other reasons justified by laws and regulations. IPR can be guaranteed by a fiduciary by transferring with a written agreement. This transfer is related to the economic value of IPR. In doing so, copyright as an intangible moving object can be guaranteed as an object of fiduciary guarantee. With this provision, the copyright that has been registered through the Directorate of Intellectual Property, Ministry of Justice and Human Rights of the Republic of Indonesia can be subsequently registered as a fiduciary guarantee whose object of guarantee is the copyright. The characteristics of an object used as an object of debt guarantee is that is an object that has an economic value in the sense of a time when a debtor cannot pay off its debt and the object can be used to pay that debt. In relation to copyright as the object of warranties, a copyright that can be used as a guaranteed object, of course, shall have an economic value and have been registered with the Directorate General of Intellectual Property Rights and is still in a period of protection as it relates to the economic value the copyright. The most likely guarantee institution to be imposed on copyright as an object of debt guarantee is a fiduciary guarantee agency considering the type of the object of collateral in the form of moving objects and concerning the delivery of collateral goods (Sudjana, 2012). In practice, in Indonesia, fiduciary guarantees are mostly done with the object of assurance of tangible moving objects. Data from the Ministry of Law and Human Rights states that in 2016 the fiduciary registration on the object of fiduciary assurance of tangible moving objects is 10,397,795, while the fiduciary guarantee registration data on intangible moving objects, as shown in Table 1, is much less.

Year	No.	Fiduciary Guarantee Object	Amount
2014	1	Stock	16
	2	Bond	55
2015	1	Stock	21
	2	Bond	54
2016	1	Stock	12
	2	Bond	19

The development of security guarantees in Indonesia, especially in intangible moving objects, occurs in copyright aspect. Copyright can be used as a credit guarantee because copyright has economic value and can be transferred either entirely or partly because of inheritance, grant, testament, written agreement or other reasons justified by laws and regulations. The type of appropriate guarantees applied to copyright is the fiduciary for the transfer of objects as fiduciary object on the basis of trust where these objects remain in the possession of the debtor. Copyright also meets the requirements specified in Article 1 paragraph (2) of the Fiduciary Guaranty Act. At first, the Copyright Act did not regulate copyright as the object of warranties. With the issuance of the latest law on copyright that is Law No. 28 of 2014 on Copyright, Article 16 paragraph 3 stated explicitly that the object of copyright can be the object of fiduciary security. In this Act, it is also mentioned that in the implementation, copyright can be made fiduciary objects by following the ordinances that have been regulated by the Fiduciary Guarantee Act. In this case, copyright has an economic value. However, because of intangible objects, it is actually difficult to determine its economic value, unlike tangible goods such as cars, land and jewellery.

Copyright can be used as an object of fiduciary security. This is because copyright has exclusive rights in terms of economic rights owned by the copyright holder/creator. The economic right of a work means that creation has an economic value, derived by the creator or copyright holder existed from the utilization of economic rights to the object of the creation. The utilization of economic rights such as getting rewarded for the utilization of the object of the creation or getting royalties in case of contract/license agreement. Therefore, the party entitled to pledge his/her rights is the creator or the copyright holder. However, though it is well regulated, the banks in Indonesia have not been practicing the financing intellectual property rights, especially copyright as loan collateral with fiduciary manner because there are several obstacles in its implementation, regarding the value, market, ownership and authorization of copyright submission as the object of guarantee. These obstacles arise from the existence of the main problem of the absence of special regulation on intellectual property rights, especially copyright as the object of guarantee. This situation poses a considerable risk to the banks to accept the copyright as an object of guarantee. Although the birth of copyright law opens the opportunity for copyright to become the object of fiduciary guarantee and Law No. 28 of 2014 on copyright stipulates that copyright holders can obtain loans from banks by pledging their work used as collateral, no creator or copyright holder has guaranteed his copyright to the bank and financial institutions. This can be seen in Table 2.

Table 2
REGISTRATION OF FIDUCIARY INTANGIBLE MOVING OBJECTS BETWEEN 2015-2017

Year	No.	Object	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
2015	1	Stock	0	0	0	1	3	8	3	1	0	1	2	2
	2	Bond	3	1	5	4	10	2	10	4	3	5	6	1
	3	IPR	0	0	0	0	0	0	0	0	0	0	0	0
2016	1	Stock	0	0	0	0	0	0	5	1	1	4	1	0
	2	Bond	1	3	0	0	7	1	1	1	4	0	0	1
	3	IPR	0	0	0	0	0	0	0	0	0	0	0	0
2017	1	Stock	0	0	0	5	3	0	n/a	n/a	n/a	n/a	n/a	n/a
	2	Bond	0	0	4	4	1	0	n/a	n/a	n/a	n/a	n/a	n/a
	3	IPR	0	0	0	0	0	0	n/a	n/a	n/a	n/a	n/a	n/a

Increasing business development in many countries provides an opportunity for intellectual property to play its role as collateral. The mechanism of guaranteeing intellectual property as a security item is necessary to obtain the support of good legislation and to provide legal certainty for the parties (Kurniawan, 2017). In addition, awareness and openness of the banking industry will also be required for the presence of intellectual property as collateral items. In such context, loans given by the bank that are based on trust are regarded as dependent on customer trust (Djumhana, 2006). On the other hand, credit allocation is a risky activity for the bank. Therefore, it needs to be balanced with the provision of a clear and complete guarantee law, considering that any loan disbursement requires a strong guarantee. In the case of IPR as collateral, under the Law of Guarantee, it can simply be interpreted as a law that regulates the security of debt, whether in the form of material security or individual (Tahir, 2017). Collateral can be distinguished in the guarantee of material and personal guarantee. Individual guarantees are an agreement between a creditor and a third party who guarantees the fulfilment of the debtor's obligations. Individual guarantee agreements may even be held without the knowledge of the debtor. Material guarantees may be held between the creditor and the debtor or between the creditor and the third party guaranteeing the fulfilment of the debtor's obligations. The success of IP financing is highly dependent on the support of law and regulations, of the banking industry and capital markets. For developing countries, IP financing can be purposively used as the main source of funding as well as to enhance the creativity and innovation to a higher level. Since it has not been explored well, developing countries need to pay more attention to asset financing based on IPR (WIPO, 2009). The development of IPR as a fiduciary guarantee in terms of various aspects of existing laws has a very significant correlation value. This is because fiduciary is the transfer of ownership rights of an object on the basis of trust with the provision that objects whose ownership rights are transferred remain in the possession of the object owner.

CHALLENGES AND FUTURE DEVELOPMENT

Copyright as intangible moving object actually has large economic value. Since it is transferable, one way to utilize its economic value is by way of sale and purchase agreement. Moreover, copyright may be fiduciary security because of the economic value attached to it, as set forth in Article 16 paragraph (3) of Copyright Law stating that copyright can be used as an object of fiduciary guarantee. The problem, henceforth is that copyright as a fiduciary guarantee cannot be confiscated because it is attached to the copyright holder. This shows that although the initial purpose of law is actually to provide the protection and the ownership of a person as the copyright holder. Such irresponsible attitude can be categorized as copyright infringement

(Sumanjeet and Minakshi, 2013). In terms of utilization of its economic value, the stipulations in copyright have limited the further development, by solely focusing on the ownership protection. In addition, in terms of the agreement related to the utilization of copyright object, the debtor is obliged to submit the object of fiduciary guarantee for the execution of fiduciary guarantee. Since in general the creditor is willing to give debt requiring that the debtor provides his/her assets, in this context is copyright, to guarantee the smoothness of his debt payment. Therefore, the importance of the guarantee goods is not owned by the creditor but if in the future the debtor breaks the promise and the debt becomes non-performing debt then the warranty goods can be sold by auction and the proceeds are then used for debt repayment. Moreover, the lack of asset-financing based on the IPR by banking and financial institutions may be related to the lack of regulatory practice governing copyright become fiduciary, because of its characteristics as intangible objects in the form of intellectual property. Other issues are related to more technical aspects regarding the method to assess the value, market, ownership and authority of the submission of copyright as an object of fiduciary.

On the other hand, the government agencies have not conducted surveillance, because the fiduciary agreement is regarded as an *accessories* agreement. Such agreement is characterized as an essential follow-up of the loan agreement. The government only provides legal certainty for objects bound by the deed of fiduciary based on the online fiduciary system and issues the certificate of fiduciary under Article 4 of Law of Fiduciary Guarantee, which states that the fiduciary is a treaty follow-up of a principal agreement which creates obligations for the parties to meet an achievement. The development of fiduciary guarantee in Indonesia in the future needs to be developed regulation of fiduciary guarantee that is adjusted to the development of social demands nowadays. The impetus of future development of fiduciary guarantee in Indonesia, especially on intangible moving objects, is the need for implementing regulations that specify more specifically about the classification of fiduciary security objects, institutions conducting judgments of fiduciary security objects and entitled authority to register intellectual property objects, such as copyright and the procedure of execution in the event of default to intangible movable objects. This is in line with Berne Convention. The basic principle of the Berne Convention is that protection does not have to depend on compliance with formality (the principle of automatic protection). This principle is basically acknowledged in Indonesia, (there is no special formality for obtaining copyright, where copyright still obtains protection even though it is not registered), but specifically for copyrights to be guaranteed as fiduciary security must be registered with the Ministry of Justice and Human Rights. Registration is to ensure legal certainty for both creditors and debtors. This is in accordance with the provisions of Law no. 42 of 1999 on Fiduciary Guarantee, that fiduciary shall be registered. Thus, registration is a must for fiduciary assurance.

IPR as collateral, in the process definitely will do appraisal and valuation. To do this, the assessment of IPR can make comparisons with various ratings in the banking system including (a) the market value, (b) reproduction cost, (c) depreciated replacement cost, (d) liquidation value and, (e) insurable value/actual cost value). The lack of fiduciary guarantee based on copyright allows the government to establish an implementation regulation that regulates the use of copyright as fiduciary guarantee in Indonesia. This arrangement is enforced as a strong legal basis for using copyright as an object of debt guarantees. Lastly, copyright as the object of fiduciary will be effective if the previous payment of royalty to the creator or copyright holder really runs smoothly so that its copyrights can be seen as valuable by banks and financial

institutions. Most importantly, it is also the impetus for Indonesia to stop copyright piracy that is increasingly widespread in Indonesia.

CONCLUSION

Fiduciary objects experienced a very significant development after the presence of the Copyright Act which determined that copyright can be made the object of fiduciary. The provisions concerning the security object has opened opportunities for other intellectual property like brands, patents, industrial designs, layout designs, integrated circuit to be the object of fiduciary guarantee. The Copyright Act No. 28 of 2014 contains the provisions of the copyright which may be the object of fiduciary. However, more specific regulations are needed, such as the implementing regulations of the law on copyright that can be used as fiduciary. The implementing regulations are needed to clarify the implementation of the copyright as a fiduciary, mainly to assess the appraisal of a copyright, so as to have a clear legal certainty. In addition, banks and other financial institutions need to be given information on the law in order to provide loans to guarantee the copyright. In Indonesia, institutions to assess the economic rights and clear value contained in the Intellectual Property Rights are needed. Thus, Act No. 28 of 2014 on the Copyright will be workable and useful to social and economic development.

It is worth noting that mechanisms of technical rules for guaranteeing copyright become fiduciary objects have constraints such as unavailability of an appraisal agency that has the ability to provide an assessment of the economic value of a copyright. This situation poses considerable risk to the banks to accept the copyright as an object of guarantee. The financial institution of either bank or non-bank will undertake appraisal in advance of a guarantee object. The problem faced in Indonesia is the unavailability of a provision on the use of copyright as collateral in the banking lending system and the unavailability of an appraisal institution that has the ability to provide an assessment of the economic value of the copyright.

Furthermore, it is worthwhile to point out about what should be the lessons arising from this study that could benefit global copyright protection regime and other countries. Primarily, the results of this study can be used as consideration for the Government of Indonesia to change the fiduciary guarantee system which is now incapable of providing certainty for the copyright as the object of guarantee. The chances of copyright as the object of fiduciary guarantee have been open with the enactment of the Law on Copyright Guarantee. Hence, the Government of Indonesia should improve the existing legal system for the implementation of copyright as the object of fiduciary guarantee. This will be beneficial to the creators both from domestic and from other countries who want to guarantee their copyrights with fiduciary guarantees. Copyright that can be made object of fiduciary guarantee is not only in rule of law only but also is capable of being implemented. The importance of copyright practices as fiduciary guarantee objects should be well accommodated by law. The implementing regulations must be well understood by the parties to the fiduciary agreement of fiduciary givers and fiduciary benefactors.

Future research is expected to detail the establishment of an appraisal agency of intellectual property rights capable of assessing the economic rights of the intellectual property. In addition, it is also necessary to further investigate about performance assurance as the right solution for intellectual property as a guarantee object. Indonesia should be familiar with the performance guarantee system and open a new paradigm in guarantee law. It is based that the law performs its function as a means of conservation of human interest in society, in this case is the interests of the parties involved in fiduciary guarantee. Hence, the law has objectives to

equally divide the rights and obligations between fiduciary givers and fiduciary recipients. The law also authorizes and regulates ways of solving legal problems and maintaining legal certainty. As a dynamic entity, the law never stops at a certain point, but continues to accommodate with certain social conditions and circumstances. The development of fiduciary assurances in Indonesia compels a change in fiduciary law.

RECOMMENDATION

Based on the results, this study put forward some practical recommendations to related parties to advance the economic value of copyright assurance. This recommendation is primarily addressed to the legislative, executive and banking institutions directly involved in the field of copyright assurance.

Recommendation 1

More specific regulations such as implementing regulations of fiduciary copyright. This implementing regulation is necessary to clarify the implementation of copyright as fiduciary guarantees, particularly to assess appraisal of a copyright, to have clear legal certainty.

Recommendation 2

Indonesia needs to establish an institution that can assess the economic rights contained in Intellectual Property Rights to clear the value to be guaranteed. These institutions can be institutions either in the form of government agencies or private institutions.

Recommendation 3

Bank or non-bank financial institutions need to be given legal counselling in order to provide credit loans with copyright guarantees, so that Law No. 28 of 2014 on Copyright can be implemented and useful for the community.

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