

The Transfer of Intellectual Property Rights as Object of Fiduciary Guarantee

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Abstract. *The transfer in Intellectual Property Rights (IPR) "can be transferred or transferred" only economic rights. The transfer must be made clearly and in writing either with or without a notarial deed so that the transfer must be based on an agreement. This study aims to examine and analyze the transfer of intellectual property rights in the property law system, and to analyze the transfer of intellectual property rights as objects of fiduciary guarantees. The approach in this study is to use a socio-legal approach. This type of research is a qualitative research. The types of data used are primary and secondary data. Techniques for collecting data, through literature and field studies. Data collection through field studies is through observation and interviews. Observation is research that is conducted directly on the object under study by conducting interviews with research resource persons. The data analysis used is qualitatively inductive. The results of the study found that intellectual property rights as object law in Article 499 and Article 507 of the Civil Code so that intellectual property rights are transferred as objects of fiduciary guarantees through agreements, in accordance with the main agreement. Furthermore, the transfer of IPR as a fiduciary guarantee, of course, underlies the transfer of property rights in accordance with the provisions of the Civil Code, the law on intellectual property rights and the law on fiduciary guarantees, which have been stated in the agreement clause authentically.*

Keywords: Guarantee; Fiduciary; Intellectual Property; Transfer.

1. INTRODUCTION

The government as a "regulator" to regulate all aspects of citizens' lives as a form of advancing the general welfare for all Indonesian people. Intellectual Property Rights (IPR) in addition to providing economic value for those entitled, also provide considerable

benefits to the state, either through taxes levied on IPR holders or in order to accommodate the number of workers.¹

IPR is the result of intellectual (human genius) or human thought, so it is only natural that the state guarantees the legal protection of intellectual property rights. In its development, Intellectual Property Rights provide economic value for those entitled to it, in fact it also provides considerable benefits for the state, either through taxes levied on IPR holders or in order to accommodate the number of workers known in the civil law system used in Indonesia.²

Universal recognition of the protection of intellectual property rights is also regulated in Article 27 of the Declaration of Human Rights.³ Every human being has the right to obtain moral and material protection obtained from scientific, literary or artistic creations as creators. Human genius is the source of art and inventions. These works are the guarantee of a life worthy of men. It is the duty of the state to guarantee with diligence the protection of the arts and invention.⁴

The Government Regulation of the Republic of Indonesia (PP) Number 56 of 2021 concerning Management of Copyright Royalties for Songs and/or Music, is expected to provide legal protection and certainty to creators, copyright holders, and rights owners regarding the commercial use of songs and/or music and those who The most important thing is also to optimize the function of managing copyright royalties for the use of works and related rights products in the field of songs and/or music through the assistance of the State Collective Management Institute which is a non-State Revenue and Expenditure Budget aid government agency established by the minister based on the law on copyright. Intellectual Property Rights as intangible property rights can be used as fiduciary guarantees.⁵ IPR in addition to providing economic value for those who are entitled, it also provides considerable benefits for the state, either through taxes levied on IPR holders or in order to accommodate the number of workers.⁶

Next the government in order to optimize human resources through the development of the Creative Economy as the foundation of national economic growth, increasing the added value of Intellectual Property as the basis of the Creative Economy has issued Government Regulation of the Republic of Indonesia (PP) Number 56 of 2021 concerning the implementation of Act No. 24 of 2019 concerning the Creative Economy. The regulation regulates the Skema Intellectual Property-Based Financing, which is a Financing scheme that makes Intellectual Property an object of debt guarantee for bank financial

¹Adi Sulistiyono, (2008). *Eksistensi & Penyelesaian Sengketa HaKI*, Sebelas Maret University Pres, p.15

²Saptjipto Raharjo, (2004), *Ilmu Hukum*, Alumni, Bandung, p.292

³M. Djumhana & R. Djubaedilah, (2003), *Hak Kekayaan Intelktual Sejarah, Teori & Prakteknya*, Bandung, Cipta Aditya karya Bakti, p.20

⁴ Anis Mashdurohatun, *Copyright Protection towards the Society 5.0*, Journal of Southwest Jiaotong University Vol.56 No.2 Apr. 2021, p.398

⁵Trias Palupi Kurnianingrum, *Negara Hukum*: Vol. 8, No. 1, June 2017, p.31-54

⁶Adi Sulistiyono, Loc.cit, p.15

institutions or non-bank financial institutions in order to provide Financing to Creative Economy Actors.⁷

Thus, it is interesting to conduct in-depth research on the position of intellectual property rights in the national property law system, and how the transfer of intellectual property rights as objects of fiduciary guarantees.

2. RESEARCH METHODS

The approach in this study is to use a socio-legal approach. In principle, socio-legal studies are legal studies, which use a social science methodological approach in a broad sense.⁸ This type of research is a qualitative research. The types of data used are primary and secondary data. The technique of collecting data is through library and field studies. Data collection through field studies is through observation and interviews. Observation is research that is conducted directly on the object under study by conducting interviews with research resource persons. The data analysis used is qualitatively inductive, which is defined as an activity to analyze data comprehensively, namely secondary data from various literatures and literature in the form of books, laws and regulations, journals, research reports or other scientific works. Data analysis was carried out after the inspection, grouping, processing and evaluation were first carried out so that the reliability of the data was known.⁹

3. RESULTS AND DISCUSSION

3.1. Intellectual Property Rights in the Property Law System

The concept of the discussion of national property law in Indonesia in 1848 contained in the *Burgerlijke Wetboek* (BW) or the Civil Code (KUHS) or the Civil Code (*KUH Perdata*) and *Werboek van Koophandel* or the Civil Code. Commercial Law (KUHD)¹⁰Therefore, the Civil Code which is used as a source of law in Indonesia is stated to be still valid in relation to Article II of the Transitional Rules of the 1945 Constitution that "all existing state bodies and regulations shall apply immediately as long as there is no new one according to this Constitution."¹¹

The existence of Article II Transitional Rules of the 1945 Constitution and Article 1 of Government Regulation No. 2 of 1945, it can be seen that there is a plurality of property law, with customary law and Dutch law still in effect on individual property law¹²This is reflected in the provisions of Article 499 of the Civil Code which states: "According to the understanding of the law, what is called material is, every item and every right, which can be controlled by property rights and Article 570 of the Civil Code which states:

⁷Ranti Fauza Mayana, dkk, Skema Pembiayaan Berbasis Kekayaan Intelektual: Peluang, Tantangan & Solusi Potensial Terkait Implementasinya. Das Sollen: Jurnal Kajian Kontemporer Hukum & Masyarakat (2022). 1:1, 1-25

⁸Agus Salim, (2001). *Teori & Paradigma Penelitian Sosial, Dari Denzin Guba & Penerapannya*, Yogyakarta:Tiara wacana Yogya, p.33-34.

⁹Erlin Indarti, *Orasi Ilmiah: Menjadi Manusia Merdeka: Menggagas Paradigma Baru Pendidikan Hukum untuk Membangun Masyarakat Madani*, Sumber Guba & Lincoln. p. 24

¹⁰Mr. Bermawi, (1953) *Hukum Perdata Eropah*, Djilid I, Djakarta : Balai Pustaka, p. 15

¹¹Rachmadi Usman, (2003). *Perkembangan Hukum Perdata dalam DIMensi Sejarah & Politik Hukum di Indonesia*. Jakarta: Pustaka Sinar Harapan, p.35. 2

¹²Ratno Lukito, (2008), *Hukum Sakral & Hukum Sekuler*, Pustaka Alvabet, Jakarta, p. 52-53

"Property rights are the right to enjoy the use of an object freely, and to act freely on that object with full sovereignty, as long as it is not guilty by law or general regulations"

From the reflection of Article 499 and Article 570 of the Civil Code, according to the author, there are 3 inseparable parts: objects (*zaak*), goods (*goed*) and rights (*recht*).

Article 499 of the Civil Code is defined as anything that can be controlled with property rights, regardless of its type or form. One thing that needs to be noted here is that ownership in the form of property rights is control that has economic value. An object that can be owned but has no economic value is not the object of discussion.¹³

So object is every item or every right that can be the object of ownership, including anything that is attached to the item, and every result of the item, whether it is the result of nature or the result of human action. So what is meant by the law of objects or material law is a set of legal rules that regulate objects with all their aspects, including regulation of the nature and various types of objects, also regulates the relationship between objects and the holder or owner of the object, so that most of the object law rules regulate about property rights¹⁴

In Article 570 of the Civil Code, it can be seen that property rights are the most important rights when compared to other rights, because those who own such property rights can enjoy and control fully and freely, in the sense of being able to transfer, rent, make as collateral for debts on a property objects that have economic value. So the right can also be called "part of the property" (*vermogensbestand deel*).

Property Law is one of the materials regulated in the Civil Code where property law is one of the subsections of property law which is defined as legal regulations that regulate human rights and obligations that are worth money. Objects are part of the internal property law, which is divided into two parts, namely:¹⁵

- Object Law, namely, legal regulations that regulate absolute material rights. This means that the rights to objects that everyone must recognize and respect
- The law of engagement, namely the regulations governing property relations between two or more people, where the first party is entitled to a performance (fulfillment of something) and the other party is obliged to fulfill an achievement.

The law of objects or basically is a translation of the Dutch term *zakenrecht*, which is a series of legal provisions that regulate the direct legal relationship between a person (legal subject) and the law directly between a person (legal subject) and objects (objects of property rights) which give birth to various rights material things (*zakelijk recht*).

In civil law, there are legal subjects, namely private entities or individuals and legal entities, and the existence of objects of rights known as objects. And in general, objects

¹³Kartini Muljadi & Gunawan Widjaja, (2003). *Seri Hukum Harta Kekayaan, Kebendaan Pada Umumnya*, Kencana, Jakarta, p. 31-32

¹⁴Munir Fuady, (2014), *Konsep Hukum Perdata*, Rajawali Pers, Jakarta, p. 25

¹⁵Indra Rahmatullah, (2015). *Aset Hak Kekayaan Intelektual sebagai Jaminan Dalam Perbankan*, Yogyakarta: Deppublish. p.26

are defined as anything that can be the object of law.¹⁶ While the object of law does not only include tangible goods, but also intangible goods can be part of wealth in general and can be in the form of legal objects that cannot be touched (*tastbaar*) certain rights that can be used as objects of property rights, such as rights to interest, debt, billing, and so on¹⁷

The legal nature of objects has a closed nature in its arrangement because the rights to objects are limited and are only regulated in book II of the Civil Code¹⁸, which means that one cannot override the provisions regarding the law of objects regulated in the law only based on the agreement of each party. Due to the nature of Copyright in Act No. 28 of 2014 concerning Copyright, Article 4 explains "Copyright as referred to in Article 3 letter a is an exclusive right consisting of moral rights and economic rights".

Objects have transferable characteristics and have economic value. Something that can be said to be an object is something that can be transferred to someone else. There is a transfer of material rights from one person to another with all the legal consequences that exist¹⁹ in accordance with what Mariam Darus Badruzaman underlined the word "can" (in Article 499) which has an important meaning because it opens up various interests, namely at certain times something is not yet an object of law, but at other times it is an object of law, which must meet certain conditions, namely human control, have economic value and therefore can be used as objects (actions) of law.²⁰

The classification of types of objects in the Civil Code is divided into two types, namely tangible objects and intangible objects²¹ as well as movable and immovable objects²². Tangible objects are known as goods (*goed*) and intangible objects are known as rights (*recht*). Which can be described as follows:

- Tangible objects and rights (*recht*) are intangible objects as regulated in Article 503 of the Civil Code

Tangible and intangible objects based on the definition of objects which in the Civil Code explain the meaning of objects as goods and rights that can become objects of property rights²³ there is a difference in the terminology between things and goods. Objects are given a broader understanding of the meaning of goods, namely in addition to covering the goods, also other rights. In a narrow sense, an object is anything that can only be seen. There is also what is meant by an object is a person's wealth.

¹⁶Neng Yani Nurhayani, (2015), *Hukum Perdata*, Bandung, CV Pustaka Setia, p. 163.

¹⁷Frieda Husni Hasbullah, *Hukum Kebendaan Perdata Hak-Hak yang memberikan kenikmatan*, Jakarta L Ind-Hill Vol I 2005. p33

¹⁸Gunawan Widjaja, (2007). *Seri Hukum Bisnis Memahami Prinsip Keterbukaan Aavullend Recht) dalam Hukum Perdata*, Jakarta: PT.Grafindo Persada, p.301

¹⁹Mariam Darus Badruzaman, (1983). *Mencari Sistem Hukum Benda Nasional*, Bandung: alumni, p.35

²⁰Kartini Mulyadi, Gunawan Widjaya, (2003). *Kebendaan pada Umumnya*, Jakarta, Kencana Prenada Media, p.226

²¹Article 503 of the Civil Code

²²Article 499 of the Civil Code

²³Soebekti, (2001), *Pokok-Pokok Hukum Perdata*, Internusa, Jakarta, p. 60.

- Moving objects and immovable (fixed) objects are regulated in Article 504 of the Civil Code.

Moving objects and immovable objects are based on the definition of objects which are in the Civil Code which explains an object is moving because of its nature or determined by law. An object that moves because of its nature is an object that can move itself or be moved. An object is categorized as an immovable object because of two things, namely its nature and its intended use.²⁴ An object that is categorized as an immovable object because of its nature is that it is not an object that can be moved, such as yard land and everything on it and an object that is categorized as an immovable object because its use is an object that is used up and an object that is not used exhaust or registered and unregistered objects, such as land or buildings on it.

Intellectual property rights²⁵ has three elements, namely the element of rights which means something is given by the state to intellectuals who have exclusive works. Exclusive means that the work is new, or the development of an existing one, has economic value, can be applied in the industrial world, has commercial value and can be used as an asset. The element of wealth is defined as something that can be valued in money, can be traded and can be inherited or can be transferred. Intellectual element is defined as intelligent, clear-minded person based on science, or who has high intelligence.

Thus, intellectual property rights are classified as included in the field of civil law which is part of property law. Specifically regarding the law of objects, there are arrangements regarding material rights. Material rights itself consists of the rights of material and immaterial objects. The discussion lies in the rights of immaterial objects, which in the legal literature are often referred to as intellectual property rights or intellectual property rights (Intellectual Property Rights), which consist of copy rights (copyrights) and Industrial Property Rights (industrial property rights) in intangible objects (immaterial objects). Objects in civil law that can be distinguished in tangible objects (*lichamelijke zaken*) and intangible objects (*onlicmalijke zaken*) as described in Article 503 of the Civil Code,²⁶

IPR is included in Article 499 of the Civil Code.²⁷ Intellectual Property Rights are included in the rights referred to in Article 499 of the Civil Code²⁸. This causes immaterial property rights themselves to be objects of a thing, but there are absolute rights whose objects are not objects. This is called HKI (Intellectual property rights).

²⁴Neng Yani Nurhayani, Loc.cit., p. 163.

²⁵Venantia Sri Hadiaranti, (2010), *Memahami Kekayaan Intelektual*, Jakarta: Universitas Atma Jaya, p.13

²⁶Sri Walny Rahayu, (2000), *Perlindungan Hak Ekonomi Pencipta Terhadap Karya Ciptaan Musik & Lagu di Indonesia Berdasarkan Undang-Undang Nomor 12 Tahun 1997 Dikaitkan Dengan Perjanjian TRIPs-WITO*, Program Pascasarjana Universitas Padjadjaran Bandung, p.18

²⁷M. Djumhana and R. Djubaedilah, Loc.cit., 2003.

²⁸Sri Mulyani, *Pengembangan Hak Kekayaan Intelektual Sebagai Collateral (Agunan) Untuk Mendapatkan Kredit Perbankan Di Indonesia*, *Jurnal Dinamika Hukum*, Vol 12 No.3 September 2012. p. 565-578

3.2. Transfer of Intellectual Property Rights as Fiduciary Guarantee

Intellectual property rights basically an asset that has economic value and can be classified as a company asset in the category of intangible assets (intangible assets).²⁹. HKI will be used as collateral to obtain bank credit internationally³⁰. The provisions in Article 9 of Government Regulation Number 24 of 2022 concerning the Creative Economy, states that in the implementation of the Intellectual Property-Based Financing Scheme, bank financial institutions and non-bank financial institutions use Intellectual Property as an object of debt guarantee in the form of fiduciary guarantees on Intellectual Property, contracts in economic activities. Creative and/or collection rights in Creative Economy activities. Intellectual Property that can be used as an object of debt guarantee in the form of Intellectual Property that has been registered or registered with the ministry that carries out government affairs in the field of law and Intellectual property that has been managed either independently and/or the rights have been transferred to other parties.

According to Act No. 28 of 2014 concerning Copyright, especially in Article 16 paragraph (3) states explicitly that "copyright can be used as an object of fiduciary guarantee", and Act No. 13 of 2016 concerning Patents Article 108 paragraph (1) states that "patent rights can be used as objects of fiduciary guarantees".³¹

The government wants to encourage the Creative Economy to grow even more considering that based on data from the Tourism Industry Statistics and Creative Economy 2020, the creative economy is one sector that will become a pillar of the Indonesian economy in the future.³²

In its implementation, there are still various challenges and obstacles faced, including the limited period of IPR protection, the absence of a clear concept related to due diligence,³³ assessment of IPR assets, and also there is no juridical support either in the form of regulations related to IPR assets as objects of fiduciary guarantees through credit agreements.

With regard to the legal terms of the agreement, it must be noted that based on Article 584 of the Civil Code, a transfer of rights must not only be based on an agreement made legally as the basis for a legal right or title, it must also be carried out by the party authorized to transfer the right. This provision is an application of the principle of "*nemo*

²⁹I Gusti Agung Ayu Patrecia Marthavira, Patents As Fiduciary Collateral In Bank Credit, Jurnal Notariil, Vol. 5, No. 1, May 2020

³⁰ Results of the 13th United Nations Commission on International Trade Law (UNCITRAL) session in 2008

³¹Dewa Gede Pradnya Yustiawan, Wayan Werasmana Sancaya, Copyright Reduction As A Fiduciary Warranty Object In Banking Practices In Denpasar City, International Journal of Sociological Jurisprudence, Volume 1; Issue 1; 2018.

³²Rudolf Valentino Saragih, , Wiwik Sri Widiarty, *Intellectual Property Rights as Bank Credit Guarantee*, Vol 6, No 1, June 2022

³³I Gede Agus Kurniawan, Valuasi Merek sebagai Jaminan Kredit Perbankan: Relevansi dalam Pembentukan Lembaga Penilai Kekayaan Intelektual, Jurnal Magister Hukum Udayana (Udayana Master Law Journal), Vol. 9 No. 4 December 2020, p.767-795

plus iuris in alium transferee potest quam ipse hibeat". That is, no one can give up their rights to others more than the rights they have.³⁴

Intellectual Property is an intangible movable object³⁵, and may be assigned or assigned, either in whole or in part, because³⁶: inheritance; grant; *waqf*; will; written agreement; or other reasons justified in accordance with the provisions of the legislation. The definition of "can be transferred or transferred" is only economic rights, while moral rights remain attached to the Creator. The transfer of Copyright must be carried out clearly and in writing, either with or without a notarial deed³⁷. Then regarding "other reasons justified in accordance with the provisions of the legislation" among others, transfers caused by court decisions that have permanent legal force, mergers, acquisitions, or dissolution of companies or legal entities where there is a merger or separation of company assets.³⁸

What is meant by "other reasons justified in accordance with the provisions of laws and regulations" include, among others, the transfer caused by a court decision that has obtained permanent legal force, merger, acquisition, or dissolution of a company or legal entity where there is a merger or separation of company assets.³⁹. The demand for new legal rules in intellectual property rights to be able to adjust the set of rules that follow developments will be a new chapter so that they can be applied correctly with their advantages and benefits in economic rights. Transfer of economic rights to book creations, and/or all written works other songs and/or music with or without text which is transferred in a sale agreement and/or transfer without a time limit, the Copyright is transferred back to the Author when the agreement reaches a period of 25 (twenty five) years.

Intellectual Property Rights in principle are objects that have economic value in the sense that they can be sold or rented. In civil law, the economic value is an asset of the holder of intellectual property rights which is a moral right or economic incentive for a creation, in which the optimization of the Intellectual Property Rights is as a guarantee instrument for venture capital/debt capital. By having the characteristics of objects that can be pledged as collateral, they have economic value in the sense that one day the debtor cannot pay off his debts, the objects that are pledged as collateral can cover the debt.

Fiduciary is the transfer of ownership rights to an object on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object. The act of transferring ownership of an object, provided that the object is still controlled by the owner of the object.

The transfer of ownership rights to an object as a fiduciary guarantee is carried out in principle *constitutum possessorium*, which is based on trust. Here what is meant by trust

³⁴Muh. Aldhyansah Dodhy Putra, Perlindungan Hak Cipta Penerbit terhadap Buku Ciptaan yang Telah Menjadi Public Domain, Journal of Intellectual Property , Vol. 3 No. 2 Tahun 2020 www.journal.uui.ac.id/JIPRO

³⁶See Article 16 paragraph (2) of Act No. 28 of 2014 concerning Copyright.

³⁷See the Elucidation of Article 16 paragraph (2) of Act No. 28 of 2014 concerning Copyright.

³⁸Ibid

³⁹Ibid

is the trust of the party who transfers ownership of an object (fiduciary giver) to the party who receives the transfer of ownership of the object (fiduciary recipient), that the surrender is only temporary and the ownership of the object will be handed back to the party who transfer at the beginning (fiduciary giver), after which the debt whose payment is guaranteed by the object handed over on a fiduciary basis is erased not because of the execution of the fiduciary guarantee object. Trust here is the basis for the *constitutum possessorium* submission. Therefore, this belief is not attached to the act of surrender.⁴⁰

The basis (title) of fiduciary submission should be the existence of a Fiduciary Guarantee Agreement. Fiduciary Guarantee Agreement itself is an agreement. Generally, the guarantee agreement is real. This means that the agreement only exists after the object of the agreement is submitted, so that this guarantee agreement is often included in the qualification of a material agreement, because with the closing of the agreement, rights that are given by law are given the nature of material rights.

The Fiduciary Guarantee Agreement is a consensual agreement and is only obligatory, namely the Fiduciary Guarantee Agreement is valid enough to agree that the parties to close it (as long as it fulfills the provisions of Article 1320 of the Civil Code) and only creates rights and obligations for the parties to be later in accordance with the time and conditions stipulated agreed to hand over the object to be used as collateral through a fiduciary delivery. Fiduciary Guarantee is a guarantee institution. Meanwhile, Fiduciary is a submission institution based on the Fiduciary Guarantee Agreement.

The fiduciary guarantee agreement is a formal agreement that must be stated in a notary deed in Indonesian. Fiduciary guarantee is a follow-up agreement from a main agreement that creates an obligation for the parties to fulfill an achievement. Fiduciary Guarantee Agreement is an agreement that follows the main agreement. The meaning of the follow-up agreement should be the same as the accessoir agreement. This accessoir agreement has the following characteristics: the birth/existence, the transfer and the annulment/expiration following a certain principal agreement. So, the Fiduciary Guarantee Agreement is an agreement that contains an agreement between the Fiduciary Giver and the Fiduciary Recipient, that a certain object is handed over/will be handed over to his property in trust, from the Fiduciary Giver to the Fiduciary Recipient,⁴¹

Objects of Fiduciary Guarantee Article 1 number 2 of Act No. 42 of 1999 concerning Fiduciary Guarantees says: "Fiducia Security is a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be encumbered with Mortgage Rights as referred to in Act No. 4 of 1996 concerning Mortgage "In essence, the object of a fiduciary guarantee is all movable objects, as well as buildings (which are considered by UUF as immovable objects) that cannot be used as objects of Mortgage. In the explanatory provisions of Article 14 paragraph (3) of Act No. 42 of 1999 concerning Fiduciary Guarantees it is stated: "This provision does not reduce the validity of Article 613 of the Civil Code for the transfer of receivables on behalf

⁴⁰ Merry Tjoanda, (2020). *Karakteristik Hak Cipta Sebagai Objek Jaminan Fidusia*, Batulis Civil Law Rev.1(1): 33-53

⁴¹Soegianto, Diah Sulistyani R.S, Muhammad Junaidi, Eksekusi Jaminan Fidusia Dalam Kajian Undang- Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia, Jurnal Ius Constituendum | Volume 4 Nomor 2 October 2019. p. 211

of and other intangible objects. Article 14 paragraph (3) of Act No. 42 of 1999 concerning Fiduciary Guarantees says "Fiduciary Security is born on the same date as the date the Fiduciary Guarantee is recorded in the Fiduciary Register Book." With the birth of a fiduciary guarantee, the objects that are pledged as collateral with this fiduciary guarantee institution currently belong to the fiduciary recipient (creditor in the main agreement). Meanwhile, the Fiduciary Giver is currently only a use borrower or a substitute borrower for the object in question. Because the fiduciary giver is currently only a "borrower", practically the fiduciary giver does not have the authority to take ownership (*beschikking*) of the object he borrows, because the object belongs to someone else (fiduciary recipient).⁴²

The registration of a fiduciary guarantee at the fiduciary registration office has an important meaning, namely to give birth to the material rights of the fiduciary recipient over the fiduciary guarantee object. These material rights include the right as an object owner, the right to take precedence in the payment of a fiduciary debt that is guaranteed by a fiduciary guarantee and the right to follow the object in the hands of whoever the object is (*droit de suite*). A further consequence is that the results that are born from objects that are fiduciary guaranteed also become objects of fiduciary guarantees, meaning that they also become the property of the fiduciary recipient. The provisions of Article 29, Article 30, Article 32, Article 33 and Article 34 of Act No. 42 of 1999 concerning Fiduciary Guarantees, Fiduciary recipients are "owners" of fiduciary guarantee objects, However, the fiduciary recipient's rights are limited to being given a preferred position on the repayment of the debtor's debt to him compared to other creditors who are not guaranteed by special guarantees. Fiduciary recipients are not allowed to take ownership actions (*beschikking*) on fiduciary collateral objects. Its authority is only limited to carrying out executions in a way that has been determined by law if the debtor is in default. If the debtor has paid off his debt to the fiduciary recipient, then by law the ownership of the fiduciary security object returns to the former fiduciary giver.

Constitutional Court Decision No. 2/PUU-XIX/2021 which states "in essence it states that the execution of a fiduciary guarantee certificate through a district court is only an alternative that can be done in the event that there is no agreement between the creditor and the debtor, both in relation to default and the voluntary delivery of the object of guarantee from the debtor to the creditor."

Transfer of Intellectual Property Rights as Fiduciary Guarantee in America. In the US Copyright Act Of 1976 (17 USC 101-1101) codified in Title 17 of the United States Code under the name Copyright Law Of The United State And Related Law Contained In Title 17 Of The United State Code named Library of Congress Copyright Office (<http://www.copyright.gov/>) which provides information on Copyright Office and Procedures. Where the United States Copyright Office will switch to a single EFT payment method (Pay.gov) for payment of royalties and filing fees now, in the past, and in the future. The office strongly recommends that you begin using the Pay.gov method to make electronic royalty payments and filing fees for the year and filing period. For more information on how to make statutory licensing royalties payments, which are collected and invested in interest-bearing securities with the US Department of the Treasury for later distribution to copyright owners.

⁴²Withdrawal of Fiduciary Guarantee Objects by Creditors Without a Guarantee Certificate

In Malaysia has an IP Market Place site called MyIPO (www.ipmarketplace.myipo.gov.my) which provides a source of information and education about commercial IPR and also includes information on the valuation of IPR assets⁴³ which explains *MyIPO is responsible for the development and management of intellectual property system in Malaysia. MyIPO administers and enforces Intellectual Property Legislation namely the Trademarks Act 2019, the Patents Act 1983, the Copyright Act 1987, the Industrial Designs Act 1996, the Layout Designs of Integrated Circuits Act 2000, Geographical Indications Act 2000 and subsidiary regulations.*⁴⁴

MyIPO is responsible for the development and management of the intellectual property system in Malaysia. MyIPO manages and enforces Intellectual Property Legislation i.e. Trademark Act 2019, Patent Act 1983, Copyright Act 1987, Industrial Design Act 1996, Integrated Circuit Layout Design Act 2000, Geographical Indications Act 2000 and subsidiary regulations.

In Indonesia, even though there is an institution as a shelter for economic use, especially copyright as stated in Article 87 Act No. 28 of 2014 concerning Copyright who mentions:

- To obtain the economic rights of every Creator, Copyright Holder, Related Rights owner to become a member of the Collective Management Institute in order to be able to attract reasonable compensation from users who take advantage of Copyright and Related Rights in the form of commercial public services.
- Users of Copyright and Related Rights who utilize the Rights as referred to in paragraph (1) pay Royalties to the Author, Copyright Holder, or Related Rights owner, through the Collective Management Institute.
- The user as referred to in paragraph (1) makes an agreement with the Collective Management Institute containing the obligation to pay Royalties for the Copyright and Related Rights used. is not considered a violation of this Act,
- commercial use of Works and/or Related Rights products by users as long as the users have performed and fulfilled their obligations in accordance with the agreement with the Collective Management Institute.

The National Collective Management Institution which is a non-APBN government aid agency established by the Minister based on the Law only has the authority to withdraw, collect, and distribute Royalties as well as manage the interests of the economic rights of the Creator and the owner of Related Rights in the field of songs and/or music only everyone can take advantage commercially, intellectual property whose users are in accordance with the agreement, it is appropriate to need a recommendation from the ministry so that it can provide a forum for other intellectual property that has not been managed, and or in general, both copyright and industrial property rights, the government and local governments can form intellectual property rights market as a forum for communication between creative actors, Intellectual Property managers, and business actors. So that it will provide more guarantees of legal certainty that is fair to

⁴³ *monetizing intellectual property'* , www.thestar.com.my

⁴⁴ Anis Mashdurohatun, Gunarto, Oktavianto Setyo Nugroho, Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, Jurnal Pembaharuan Hukum, Vol.8(3) December 2021.

the transfer of IPR as fiduciary guarantees to financial institutions, if the fiduciary provider defaults.

4. CONCLUSION

Intellectual Property Rights as part of the law Objects have the characteristics of being transferable and having economic value. Something that can be said to be an object is something that can be transferred to someone else. Intellectual property rights basically an asset that has economic value and can be classified as a company asset in the category of intangible assets. HKI will be used as collateral to obtain bank credit internationally. The characteristics of objects are relevant to the principles of the law of objects. Intellectual property rights are the law of objects, so they can be transferred. The transfer of intellectual property rights as an object of fiduciary guarantee through an authentic agreement.

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