



Qualification of Copyrights as Objects on Fiduciary Warranty Objects

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ABSTRACT

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The economic and legal development of Copyright in Law Number 28 of 2014 concerning Copyright provides new regulations regarding Copyrights that can be used as objects of Fiduciary Guarantees. Article 16 paragraph (3) UUHC provides an opportunity to bind Copyrights as objects of Fiduciary Guarantees, Copyrights include intangible movable objects that are born in a declarative manner. However, based on the Civil Code, whoever has a right or proposes an act to confirm his right, or to refute the rights of others, must prove the existence of that right or the existence of such an act. The regulation regarding Copyright as the object of Fiduciary Guarantee is in accordance with the provisions on the loading, registration and transfer of Fiduciary Guarantee in Law Number 42 of 1999 concerning Fiduciary Guarantee. Philosophically, copyright as a material right is in accordance with the legal system of objects in Indonesia where each "object" and "right" can be controlled by property rights, as "intangible objects" which can be used as objects of guarantee as mandated by UUHC. The regulation of copyright as a fiduciary guarantee must have clear and detailed qualifications related to the assessment of copyright in each type of copyright that has been stipulated in the UUHC, there must be new operational regulations on fiduciary guarantees for each type of copyright so that it can be fully Fiduciary guarantees can be carried out in the banking sector.

Keywords:

Copyright; Fiduciary Guarantee; binding

I. INTRODUCTION

The birth of a creation is a human effort through the ability to think and imagine, skills, or expertise that is manifested in a unique and personal form, referred to as a creator. 28 of 2014 concerning Copyright. Based on the provisions that the rights of the creator are born immediately when a creation is born or has taken shape. Copyright contains a declarative principle which means that the Copyright is automatically born after a thought or idea is realized in a tangible form without reducing restrictions according to legislation. This right that arises automatically is called Copyright which contains declarative principles, so it is a work created by a person or several people with their thoughts. (Hutagulung, 2012).

Copyright which is one of the intellectual property that has the broadest scope of protected objects, because it does not only cover science, art and literature (art and literary), but also includes computer programs. In principle,

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copyright protects all forms and developments in works, namely literature (literary works) and artistic works (Suyud Margono, 2015).

With regard to guarantees, it tends to be closely related to banking activities, because basically a guarantee is an additional agreement based on the main agreement, namely a debt agreement. The Bank Indonesia regulation states that IPR on trademark rights has not been recognized as a form of collateral in a credit agreement even though the mark has an economic value that can be used as a deduction in the formation of an allowance for asset losses. The laws and regulations have not regulated or qualified that a mark is an object and therefore cannot be used as an object of guarantee (Berkatini Caroline, 2017).

Since the promulgation of the latest regulations, I have never heard and know whether there are parties who have pledged their copyrighted works to individuals as well as financial and banking institutions to then be bound by fiduciary guarantees to obtain financing facilities (Rany Kartika Sari, 2014). This is considered reasonable considering that there is no further regulation related to copyright, plus financial institutions such as banks still do not know the Bank's assessment in measuring the amount or

value of copyright and then setting a price for a copyrighted work of someone who is guaranteed fiduciary. Therefore, the presence of fiduciary guarantees in the latest UUHC does not necessarily make fiduciary recipients "free" to provide loans with guarantees of someone's copyrighted work.

Other legal problems that will arise, if the copyright as an object is used as a collateral (collateral/guarantee) in the procedural aspect, when the debtor commits a default and/or breach of contract which results in the confiscation of the object being guaranteed. In view of the provisions of Article 29 paragraph (1) UUJF which states that: "if the debtor or fiduciary giver breaks the promise, the object that is the object of the fiduciary guarantee can be executed. The emergence of problems with the implementation of copyright execution, how a copyright can be confiscated, then it must be explained clearly how the execution will be carried out if the fiduciary guarantee provider is in breach of contract. Indonesian Banking should have a special standard to describe intangible objects. The legal rules already exist, where copyright is part of the Intellectual Property Right (IPR) universe and the legal norms regulated in UUHC Article 16 paragraph (3) can be used as objects of guarantee.

IPR is like Copyright in other countries such as the United States, guarantees for intangible goods such as copyright have been regulated. Software Developer or Creator of an application software on a computer or program, the Creator can get help from financial institutions in guaranteeing the copyright. The author has not found implementing regulations or qualifications regarding copyright as an object of fiduciary guarantee that can meet guarantee standards that can be accepted by banking institutions in Indonesia. Generally, banks are willing to give debt to borrowers as long as the borrower or debtor provides his assets to ensure the smooth running of his debt.

The current legal issue is that after the Government has ratified Government Regulation Number 24 of 2022 concerning the Creative Economy, which is expected to encourage the creative industry in providing funds or loans between bank financial institutions and creative economy actors, a musician and Secretary General of the Association of Singing Artists, Creators Republic of Indonesia Songs and Musicians (PAPPRI) Dwiki Dharmawan believes that the Government Regulation (PP) Number 24 of 2022 is still facing obstacles, namely that it requires a valuator or work appraiser regarding the implementation of the regulation in the future.

Based on the description above, although it has brought legal reforms, especially for holders of IPR rights (in this study, especially Copyrights), it turns out that on the other hand there are obstacles. The concept of IPR assets as bank guarantees is still facing obstacles. This condition is certainly not in accordance with the concept of legal certainty and protection theory which states that copyright as a material right can also be used as collateral with a fiduciary guarantee mechanism based on UUJF, so the absence of implementing

rules regarding Copyright as an object of guarantee has the potential to result in a norm vacuum.

This situation has also resulted in different perceptions and attitudes of the banking sector, on the one hand the object of copyright is accepted as debt guarantee in the Indonesian banking world, on the other hand the object of copyright is rejected. Based on the description of the background above, the researchers put in the form of three problems, namely:

1. What is the basis of copyright as a guarantee based on Law Number 42 of 1999 concerning Fiduciary Guarantees?
2. How to qualify copyright as a fiduciary guarantee?
3. How will the future arrangement of copyright as an object of fiduciary guarantee be?

II. LITERATURE REVIEW

2.1. Legal certainty

Legal certainty emerged historically when Montesque (Utrecht and Moh. Saleh, J Jindang, 1989) defined the concept of separation of powers. This legitimacy includes two definitions: first, there are general rules that force the public to know what actions can or cannot be taken, and second, in the form of legal guarantees for individuals against government violence, because these general rules allow individuals to know them. What has happened is that the state has sued the individual or made a claim. Legal certainty is not only in the form of articles in the law, but also in the consistency of judges' decisions in similar cases between one decision and another (Peter Mahmud Marzuki, 2008).

Legal certainty is one of the conditions that must be met by law enforcers. Legal certainty in this case means "justified protection against arbitrariness, which means that a person will be able to obtain something expected under certain circumstances" (Soedikno Mertokusumo, 1999). Legal certainty is not always associated with the state as a value because the nature of legal certainty is self-defense against arbitrary actions, so that those who do it are limited to the state element but not limited to the state element. However, the legal aspect in this case relates to the extent of the role of the state and its relationship with other law enforcement officers.

It is important to understand that the value of legal certainty is closely related to positive legal instruments, and that the state has a role in enforcing positive laws and regulations. Whereas the role of the state is not limited to that, but also supports the constitution (I Nyoman Putu Budiarta, 2016). Legal certainty is one of the objectives of the law aimed at achieving justice. Anyone can predict what will happen if they take various legal steps by legal certainty. Certainty is needed to recognize the principle of equality before the law without discrimination. Legal certainty is a written legal principle.

2.2. Legal protection

The emergence of the theory of legal protection stems from the theory of natural law or the flow of natural law. According to the flow of natural law, it states that the law comes from God, which is universal and eternal, and morality cannot be separated. Adherents of this school believe that law and morality are a reflection and regulation of internal and external human life, which is realized through law and morality (Satijipto Raharjo, 2000).

Legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Laws can be operated to achieve protection that is not only adaptive and flexible, but also predictive and anticipatory. Legislation is needed for those who are weak and not yet strong socially, economically and politically to achieve social justice (Phillipus M. Hadjon, 1987).

According to the explanation above, it can be said that the function of legal protection is to protect the public from the dangers and threats of crimes that can harm themselves. Legal protection is a matter of protecting legal entities through applicable laws and regulations and enforcing them with sanctions.

2.3. Copyright Law Concept

Law Number 28 of 2014 concerning Copyright Article 1 paragraph 1 explains that copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations.

Meanwhile, according to Patricia Loughlan, copyright is a form of ownership that gives the creator exclusive rights to supervise the use and use of an intellectual creation as defined in the copyright category, namely literature, drama, music and artistic work as well as sound recordings, films, radio and television broadcasts, as well as papers that are reproduced or published (Afrilliyanna Purba, et al, 2005). Furthermore, McKeough and Stewart explained that copyright protection is a concept where the creator, namely the artist, musician, filmmaker, has the right to use his work without allowing other parties to imitate his work.

Based on the understanding given by several experts, it can be concluded that these provisions provide almost the same meaning. Therefore, copyright is defined as the exclusive right for creators to publish or reproduce a work, or to give permission to other parties to do the same within the limits of applicable law. It is important to remember that these rights allow the copyright holder to prevent others from reproducing without permission (Asian Law Group, 2001).

UUHC Article 1 explains that, copyright is a special right for creators and recipients of the right to announce or reproduce or give permission for it without reducing the restrictions according to applicable laws. So the function of copyright under this article is to give permission to publish or

reproduce the work, and to make an agreement with the copyright to other parties, for example to publish it. If there is a copyright agreement for a book to be published, then the agreement must be complete in a language that is clear and easy to understand by both parties, and lest the language of the agreement can be interpreted in various ways.

2.4. The Concept of Objects in Civil Law

Indonesian property law has been regulated in the second book of the Civil Code (KUHPerdara) with several provisions that have been removed and specifically regulated by new laws and regulations. In civil law, matters concerning objects are regulated in Book II of the Civil Code. Since September 24, 1960, there has been a change in the law of matter, in particular fixed objects such as soil significantly (I Ketut Oka Setiawan, 2016).

The second book of the Civil Code uses the word "object" in two meanings, but the most common is the meaning of tangible legal objects (tangible objects). Because the Second Book of the Civil Code mostly discusses rights to objects, in reality these rights can only be thought about. The term object law is basically a translation of the Dutch term zakenrecht. In civil law, property law is also part of property law (vermogensrecht). The law of matter is the entire normative rule of law that regulates the legal relationship between fellow legal subjects relating to objects and material rights (Dominikus Rato, 2016).

Article 1131 of the Civil Code which states that all objects owned by debtors, both existing and those that will exist in the future, both movable and immovable, become a guarantee for repayment. The definition of objects given by Article 499 of the Civil Code above shows that there is a difference in terminology between objects and goods. Objects have a broader meaning than the notion of goods, namely in addition to including the goods themselves.

2.5. Guarantee Object Concept

In the Civil Code, the meaning of guarantee is not found. Various literatures use the terms "zekerheid" for guarantees and "zekerheidsrecht" for the law of guarantees or guarantee rights. However, guarantee law certainly has a broader meaning and is legal in nature than guarantee rights. The guarantee law regulates the legal provisions related to guarantees, while the guarantee rights are part of the guarantee law (BPHN, 2018).

J Satrio stated that the guarantee law is a legal regulation that regulates guarantees. Meanwhile, the definition of guarantee itself, Hartono Hadisaputro stated as something given by the debtor to the creditor to create confidence that the debtor will fulfill obligations that can be valued in money.

Fiduciary, according to the origin of the word comes from the word 'fi'des' which means trust. Since Roman times fiduciary institutions have been known by the Roman community, where there are two forms of fiduciary guarantees, namely fiduciary cum creditore and fiduciary cum amico arising from an agreement called the pacium

fiduciae which is then followed by the transfer of rights or in iure cession. Fiduciary in the form of fiducia cum creditore, a debtor will transfer ownership of an object to a creditor as a guarantee or debt with an agreement that the collateral object will be transferred back to the debtor if he has paid off all the debt.

III. RESEARCH METHOD

The method used in this research is normative juridical (legal research), with a statute approach, conceptual approach and historical approach. Used to examine the characteristics of copyright as an object of fiduciary guarantees and to examine sources containing information about the past and carried out systematically, in other words, research that describes symptoms but not what happened at the time or at the time the research was conducted.

IV. DISCUSSION

4.1. Copyright Basis as Fiduciary Guarantee

Talking about the basics, of course, explains the principal or foundation of Copyright as a Fiduciary Guarantee or the reason why copyright can be used as a Fiduciary Guarantee. The new provisions regarding Copyrights that can be used as Objects for Fiduciary Guarantees are a form of facilitative from the government to the community in providing a forum for economic development to improve the welfare of the community as a form of appreciation for works that have been realized in a tangible form.

Article 16 paragraph (1) UUHC, Copyright is an intangible movable object, paragraph (3) Copyright can be used as an object of fiduciary guarantee, Paragraph (4) Provisions regarding Copyright as an object of fiduciary guarantee as referred to in paragraph (3) are implemented in accordance with with the provisions of laws and regulations. Seeing the concept of objects or objects in Civil Law regarding their nature, objects are divided into two namely movable objects and immovable objects. Movable objects are regulated in Articles 506 to 508 of the Civil Code, while immovable objects are regulated in Articles 509 to 518 of the Civil Code. Again, according to Subekti, movable and immovable objects can be reviewed from their nature, purpose of use, and on the stipulation of the Act.

It is said to be a movable object because its nature is defined as an object that can move or can be moved, while immovable objects are objects that have the connotation of being attached or attached to other objects so that they cannot be moved easily or at all. The division of objects according to their type is considered important with regard to the position of power (bezt), delivery (levering), imposition (bezwarning), expiration (verjaring) (Letezia Tobing, 2022).

Recognition of copyright as an intangible thing and deserves to be protected by law is the result of thinking from the journey of the development of the concept of copyright itself internationally. The emergence of doctrines accompanied by international conventions encourages an

understanding of copyright as an object that deserves legal protection (OK Saidin, 2015).

Two of them are the WIPO Copyright Treaty and the TRIPS Agreement by the WTO. Both require countries that participate in their conventions to provide the widest possible access for the public to register their copyrights so that they will be given legal protection. Indonesia as a member of the two agreements, implemented it by establishing the Copyright Law. On the status of the material guaranteed by law, it can be concluded that copyright is an object of movable property law that is intangible and can be transferred. So that copyright can be treated in the same way as legal objects with similar classifications.

To bear or guarantee the payment or settlement of certain debts, debtors are generally required to provide collateral in the form of collateral (certain objects) that can be valued in money, of high quality, the minimum value of which is the amount of the debt given to them. In relation to IPR as collateral, in the Law of Guarantees it can simply be interpreted as the law that regulates debt guarantees, both in the form of material and individual guarantees.

Intellectual property as a fiduciary guarantee, in the process there will be an assessment (appraisal, valuation). The assessment is carried out by way of comparison with various assessments carried out by banks, including: (1) market value; (2) new replacement cost (reproduction cost); (3) fair value (depreciated replacement cost); (4) liquidation value; (5) insurance value (insurable value/actual cost value). In relation to Copyright as the object of Fiduciary Guarantee, the economic value of a work affects the category of Fiduciary Guarantee. The assignment of objects using a fiduciary must contain (1) the identity of the fiduciary giver and recipient; (2) data on the main agreement that is guaranteed by fiduciary; (3) a description of the object that is the object of the Fiduciary Guarantee; (4) guarantor value; (5) the value of the guarantor and the value of the object that is the object of the Fiduciary Guarantee (Junaidi Akhmad and Muhammad Joni, 2011).

Copyright cannot be confiscated because it is attached to the Copyright holder. This means that the law protects one's property in accordance with the theory of natural law which respects and respects the work of human intellectuals. In addition, copyright protection is not directed to the object, but to the copyright of the object. Thus, the execution of the Copyright cannot be carried out as the basis for the recognition of human rights. What may be done is to execute the economic value of the Copyright or the sale of the economic value that is the object of the Fiduciary Guarantee on the power of the fiduciary recipient himself through a public auction and to take the settlement of his receivables from the proceeds of the sale, or an underhand sale made based on an agreement between the giver and the recipient. fiduciary.

The economic value in Copyright can be calculated using several models such as those described above. The bank

or financial institution has a special assessment team to determine the value of the object to be used as the object of the guarantee. The economic value of a work certainly determines the amount of the guarantee value, so the higher the value of the creation, the higher the value of the guarantee that will be obtained by the debtor or fiduciary giver. The economic value of copyright is also influenced by the moral rights of the creator, the more famous the creator, the higher the economic value obtained.

3.2. Copyright Qualification as Fiduciary Guarantee in Indonesia

The provisions in Article 16 paragraph (3) of the Copyright Law expressly state that "Copyright can be used as an object of Fiduciary Guarantee". Based on the provisions above, Copyrights, both tangible and intangible, can be used as objects of Fiduciary Guarantees and if at any time the Copyright Holder needs loan funds from the Bank, the Copyright Holder can use the Copyright as debt guarantee to the Bank. The enforcement of Copyright as an object of Fiduciary Guarantee in Indonesia as stated in Article 16 paragraph 3 of this Copyright Law is valid not without cause.

When referring to several foreign 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 loans based on intangible assets. Even Singapore, through The Intellectual Property Office of Singapore 16 (IPOS) has actually provided infrastructure and facilitated the development of intellectual property rights including the provision of bank credit. As discussed by previous studies, the issues raised are regarding the limited period of IPR protection, the valuation of IPR assets, as well as the revision of Bank Indonesia Regulation (PBI) No. 9/6/PBI/2007 concerning the Second Amendment to PBI No. 7/2/PBI/2005 concerning Assessment of Asset Quality for Commercial Banks (PBI No. 9/6/PBI/2007) related to credit collateral.

It is acknowledged that some of the things mentioned above are one of the factors that hinder the acceptance of copyright as an object of debt guarantee by banking institutions. However, if you look closely, there are other problems that cause the difficulty of accepting copyright as collateral for debt, namely, there is no qualification regarding which copyright object can be used as debt security (fiduciary guarantee). When referred to UUHC, the Law has classified only the types of creations that are protected and those that are not protected in practice, and states that copyright has economic value, however UUHC has not yet provided a clear statement or description regarding the qualifications of the work. which have been classified, what are they like and what meet the requirements, which can later be used as debt guarantees (Fiduciary Guarantees).

In line with the definition of Fiduciary Guarantee, Copyright is an intangible movable object and Copyright can be transferred or transferred, either in whole or in part due to: inheritance; grant; waqf; will; written agreement; or other

reasons that are justified in accordance with the provisions of laws and regulations and Copyrights can be used as objects of Fiduciary Guarantees. Provisions regarding Copyrights as objects of Fiduciary Guarantees are implemented in accordance with the provisions of laws and regulations.

Regarding the economic value of the object that is the object of the Fiduciary Guarantee, in calculating the value of the Copyright by using the Cost-Based Model, Market-Based Model, Income-Based Model, Option Model. By using one of these methods, the economic value of a work will be known. In addition, banks or financing institutions in the process of fiduciary guarantees are assessed in the form of market value (market value), reproduction cost (new replacement cost), depreciated replacement (fair value), liquidation value (liquidation value) and insurable value/actual cost value (insurance value).).

There are several approaches to assessing Intellectual Property as a guarantee object. The determination of the economic value of a work can be seen from several approaches. The first approach is the market approach. The market approach provides a systematic framework for estimating the value of intangible assets based on an analysis of actual sales and/or tangible licensing transactions that are comparable to objects. Second, the income approach. The income approach provides a systematic framework for estimating the value of an intangible asset based on capitalized economic income or its present or future value. The value of economic income will come from the use, license or lease of the intangible object. The three cost approaches (cost approach). The cost approach provides a systematic framework for estimating the value of intangible assets based on the principle of substitute economics which is commensurate with the costs that will be incurred as a comparable substitute as a unit function (Sri Mulyani, 2022).

Then the economic rights on copyright can be qualified in more detail by using the Economic Theory. If in the copyright law there is a classification regarding the types of copyright that are protected by law, then in the implementing regulations of the legislation regarding Copyright in the future, it is hoped that there will be a qualification of the types of copyright with certain standards through a process. an assessment using the relevant economic theory, so that there is a standard for copyright to be accepted as an object of debt guarantee

3.3. Future Arrangement of Copyright as Object of Fiduciary Guarantee

The regulation of Copyright to be used as an object of fiduciary guarantee as described previously has been regulated in Article 16 paragraph (3) and paragraph (4) of the Copyright Law which states that the provisions regarding Copyright as an object of fiduciary guarantee. The nature of a fiduciary guarantee is a follow-up agreement from a main agreement that creates an obligation for the parties to fulfill an achievement. The fiduciary guarantee is charged in the following way:

- a. Made by notarial deed in Indonesian;
The deed at least contains the identity of the fiduciary giver and recipient, data on the main agreement guaranteed by the fiduciary, a description of the object that is the object of the fiduciary guarantee, the value of the guarantee, the value of the object that is the guarantee.
- b. Debts whose repayment is guaranteed by fiduciary guarantees;
Existing debts, debts that will arise in the future that have been agreed in a certain amount, debts whose execution debt can be determined based on the principal agreement that creates an obligation to fulfill an achievement.

Before a Copyright is submitted as an object of Fiduciary guarantee, the Copyright must have been registered at the Directorate General of Intellectual Property, evidenced by a Copyright certificate that has been issued by the Directorate General of Intellectual Property Rights as the authorized institution for that matter. Then, the Copyright must meet the secure and marketable elements, meaning that the Copyright can be applied to the way of calculating its economy by banking institutions using the economic theory that has been described in the previous discussion, as a reference for the next arrangement to assess the economic value of the copyright.

Determination of the value of the object of copyright guarantee, of course, by conducting an appraiser, of course by appraising (valuation) of the copyright, determining the appraisal value of a copyright that is used as an object of fiduciary guarantee is the estimated annual royalty value of the copyright, reflecting on UUHC and UUJF does not limit the parties who are the appraiser (Heru Setiyono, 2020).

Then from the IP financing scheme as copyrighted by the Deputy for Strategic Policy of the Ministry of Tourism and Creative Economy or the Indonesian Tourism and Creative Economy Agency, it is explained that the future arrangement of copyright as a Fiduciary Guarantee by establishing a Copyright Appraiser (appraisal) specifically for copyright objects considered very important, in addition to calculating the economic value of the work, it is also needed when there is a default by the debtor.

Suppose the author takes one example of copyright on a song, whether a song that already owns or is registered as a copyright to a work that is used as a guarantee is a popular song, 'hits' and sells in the market or the world of the music industry. This article is a good breakthrough for lawmakers in fulfilling the expectations of creators and rights holders regarding copyright, so that it has a good impact on musicians, or other creators of works. Because the assumption so far that the object of bank guarantees is tangible objects such as land and so on, even though guarantees for intangible movable objects such as copyrights

have been regulated in other countries as described previously. This is because of course there are Banks/financing institutions that must be used as collateral as collateral in the form of songs and/or music, in accordance with the precautionary principle (Banking principles) in providing credit which must be adhered to by the said bank/financing institution.

With the application of intellectual property-based financing by creative and creative actors, bank financial institutions or non-bank financial institutions in providing intellectual property-based financing shall:

- a) verification of creative businesses;
- b) verification of the registration letter or intellectual property certificate used as collateral which can be executed in the event of a dispute or non-dispute;
- c) assessment of intellectual property used as collateral;
- d) disbursement of funds to creative economy actors; and
- e) receipt of refunds from creative economy actors according to the agreement (Article 8 PP Creative Economy).

Objects that are used as debt collateral in intellectual property-based financing schemes are intellectual property. However, based on Article 10 of PP Ekraf, intellectual property that can be used as an object of debt guarantee is intellectual property that is "registered or registered" in the ministry that carries out government affairs in the field of law.

However, in reality, there are still very few creative businesses that have IPRs. From data based on all creative and creative businesses in 2020, only 1.98% of businesses have IPRs and 98.02% of businesses do not or do not have IPRs. Of all creative and creative businesses that have IPRs, 39.39% of businesses have IPRs in the form of trademarks, 33.74% in the form of copyrights, 33.46% in the form of patents, 30.17% in the form of trade secrets, 30.02% in the form of industrial designs, and 25.92% are integrated circuit layout designs. The lack of creative and creative businesses owning IPR is due to the fact that many do not realize the importance of IPR. In 2020, only 27.63% of creative businesses consider owning IPR important, while 72.37% of creative businesses have not felt the urgency or importance of owning IPR (Dian Cahyaningrum, 2022).

V CONCLUSION

The basis or basis of copyright as a fiduciary guarantee according to UUJF is that provisions regarding copyright can be used as objects of fiduciary guarantees cannot be separated from the legal provisions on Copyright which say that copyright is an intangible movable object, the existence of economic value/rights in rights copyright, copyright can be transferred or transferred, can be executed on the economic value of copyright or on the sale of economic

value which is the object of a fiduciary guarantee on the power of the fiduciary recipient himself through a public auction, and copyright that in 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, it is in accordance with UUJF because copyright is a material right with the characteristics of *droit de suite*, which means that the Copyright Holder remains in the hands of whoever the copyright attached to the object is. . So that copyright as an intangible movable object can be used as a fiduciary guarantee. Philosophically, copyright as a material right is in accordance with the legal system of objects in Indonesia where each "object" and "right" can be controlled by property rights, as "intangible objects" which can be used as objects of guarantee as mandated in UUHC, Article 449 of the Civil Code, Article 503 of the Civil Code which has been adopted into the provisions of Article 16 paragraph (1) UUHC Number 28 of 2014.

Qualification of copyright as a fiduciary guarantee is not all in accordance with the fiduciary guarantee system. In order for a copyright to be accepted as an object of guarantee, the copyright must be qualified by using other disciplines using relevant economic theory. The theory describes that customer value or the assessment given by customers or consumers consists of several components, namely product quality, service quality, price and image. If these four components can be exceeded by consumers, then the consumer's assessment of the company will be higher. A high rating will shape customer perceptions of good value for the company. If the theory according to Sri Mulyani, namely the market approach, income approach, and cost approach is applied to calculate the economic value of a work that has been registered as a copyright, then the quality of the product, service, price and image owned by a work will be feasible for can be accepted as an object of debt guarantee by banks, because the copyright has fulfilled the marketable and secure elements for the repayment of loan funds. In UUHC there is a classification regarding the types of copyright, so the qualification of copyright from types of copyright with certain standards through an assessment process with the economic theory, in order to ensure legal certainty and legal protection as well as standard standards for copyright can be accepted as debt guarantee object.

The regulation of copyright as a fiduciary guarantee must have clear and detailed qualifications related to the assessment of copyright in each type of copyright that has been stipulated in the UUHC, there must be new operational regulations on fiduciary guarantees for each type of copyright in order to Fiduciary guarantees can actually be carried out in banking, therefore BI Regulation No. 14/15/PBI/2012, especially Article 43 letter e must be revised as soon as possible and include intangible nouns (HKI), especially copyright, and spelled out the types- the type of copyright in it, where later the IPR can be used as a fiduciary guarantee.

In addition, after the issuance of the latest Government Regulation Number 24 of 2022 concerning the Creative Economy on July 12, 2022. Although intellectual property-based financing schemes have been regulated in the Creative Economy Government Regulation, some parties feel the need for regulations that further regulate intellectual property as collateral. Several things that need to be further regulated are the binding of debt guarantees in the form of intellectual property rights, methods of intellectual property assessment, and technical execution. The absence of clear regulations can cause financial institutions to worry about extending credit to creative economy actors. future arrangements for the Government to act quickly with several matters being studied, namely the issue of valuation, secondary market availability, appraisal for the liquidation of intellectual property rights; and legal infrastructure for IPR execution.

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