

## Intellectual Property As Fiduciary Object In Banking Institution

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*Abstract. Global Market Development today by the Industrial Revolution 4.0 brings influence to Intellectual Property (IP) in the fields of Economy, especially in getting loans at banks to increase the capital of a business, Intellectual Property (IP) is used as the object of Fiducia. Fiduciary Assurance Intellectual Exclusive Rights given a Act or regulation to a person or group of people for works of copyright under the Act so that Intellectual Property is right in Act-related issues Results of invention and Creativity person or persons relative to the Protection problems reputation in the field of commercial (commercial reputation) and action / services in the commercial field (goodwill). In the Global Market Development or the Industrial Revolution 4.0, the Intellectual Property (IP) can be made possible Fiducia. The guarantee proper object used in this case is Fiduciary. Setting Intellectual as Objects Fiduciary in Act Fiduciary not clearly regulated so that the necessary concept of ideal settings intellectual property as the object of Fiduciary must be developed by setting a comprehensive, systematic aspects of Substance, Structure, and Culture Act based on Pancasila and the Constitution Of the Republic of Indonesia Of 1945 in efforts to achieve economic development in Indonesia.*

*Keywords: Intellectual Property; Banking Object Fiduciary.*

### 1. Introduction

Global Market Development today by the Industrial Revolution 4.0, Intellectual Property (IP) has an important role in economic development, both individual and legal entity in the search for Capital Increase or funds in development efforts. For additional capital or funding through the Credit Guarantee Banking is needed. It can be said that the Intellectual Property (IP) is the Intangible Asset object that has a high economic value so it can be a valuable asset for an individual or Legal Entity Company's role in this regard. Intellectual Property (IP) is given an Exclusive Rights Acts or Regulations to a person or group of people for works of copyright under the Act.<sup>2</sup> Intangible moving objects it is regulated also in Article 499 BW, moving objects such intangibles have Economic Value can be transferred by Agreement. So Intellectual Property (IP) can be used as collateral as a guarantee (collateral) to get credit in Banking in order to realize Economic Development. In Practice at the World Bank in Indonesia has not been able to receive the Intellectual Property (IP) as the object of Fiduciary, but Intellectual Property (IP) as a guarantee (collateral) for lending to banks outside the State has been received. Based on the Background, then the problem is as follows:

- a. Why Intellectual Property (IP) has not been received as collateral (collateral) Loan as Fiduciary in the Practice of Banking in Indonesia; and
- b. How Ideal Construction intellectual property (IP) as the object of Fiduciary in order to realize Economic Development.

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<sup>2</sup> *Acts and Regulations Fiduciary and Encumbrance*, South Tangerang, 2010, SL Media, page 8.

## 2. Research Methods

This study included in the review Social-Legal Research, which is a Non Doctrinal study assessing the Act by using the approach of Legal Studies and Social Sciences, are empirical and philosophical. Approach of Hermeneutic Act the doctrine of Philosophy regarding understand / comprehend something, or a method of interpretation (interpretation) is the process of communication through speech or movement between the two (2) or more speakers who are not able to use the symbols are the same, either simultaneously (known as Simultaneous Interpretation) or sequentially (known as sequential interpretation)<sup>3</sup> and Non Interpretation. Data were collected either obtained from Primary and Secondary Data Qualitative processed, as well as Inductive-Deductive. The data were analyzed using the Act of Economy Approach (Economic Analysis of Act).

## 3. Result and Discussion

### 3.1. Intellectual Property (IP) has not been received as collateral (collateral) Loan as Fiduciary in Indonesia's Banking Practice.

From the results of research that Intellectual Property in Indonesia can not be accepted as the object of Fiduciary in Banking Practice. Results of Interviews with several banks in Semarang due to factors of Act, Economics and Culture (trust).

#### 3.1.1. Legal factors;

By Juridical Formal yet used the Basic Act of Intellectual Property as a Fiduciary. From some of the Intellectual Property (Copyright, Copyright Marks and Geographical Indications, Patents, Design Rights, Rights of Integrated Circuits and Trade Secret) only 3 (three) of such rights (Copyright, Trademark and Geographical Indications and Patents) that can be used as Fiduciary in Banking Credit Submission in Indonesia. While others there is no regulation as collateral loans using Fiduciary. The forms of collateral are recognized based on Bank Indonesia Regulation or PBI No. 9/6 / PBI / 2007 regarding the Second Amendment PBI Amendment No. 7/2 / PBI / 2005 regarding Asset Quality Rating for Commercial Banks under Article 46 includes:<sup>4</sup>

- a. Securities and shares actively traded on the Indonesia Stock Exchange or rated investment grade and tied with a pledge;
- b. Land, buildings, and homes are tied up with mortgage (HT);
- c. Machines that are installed on the ground and tied with mortgage (HT);
- d. Aircraft Or Ships with a size above 20 cubic meters, bound with mortgage;
- e. Motor vehicles and inventory bound under fiduciary;
- f. Warehouse receipt Tied with Top Security Warehouse Receipt (Act No. 9 of 2011 on the Amendment of Act No. 9 of 2006 concerning Warehouse Receipt System),

<sup>3</sup> <https://id.m.wikipedia.org/wiki/Tafsiran>, Accessed on 12 September 2019.

<sup>4</sup> Pe, hundreds of Bank Indonesia Number 9/6 / PBI / 2007 regarding the Second Amendment to Bank Indonesia Regulation No. 7/2 / PBI / 2005 regarding Asset Quality Rating for Commercial Banks.

- specifically designed for the object collateral in the form of agricultural, plantation and fisheries; and
- g. Binding Mortgage governed by Act No. 17 of 2008 on Shipping<sup>5</sup> and Act No. 1 of 2009 on Flights,<sup>6</sup> only for the object of collateral in the form of ships or aircraft with a size above 20 cubic meters.

Bank Indonesia set PBI No. 9/6 / PBI / 2007 regarding the Second Amendment to change PBI No. 7/2 / PBI / 2005 regarding Asset Quality Rating for Commercial Banks based on the ideas and philosophies in order to encourage the real sector, it is necessary for a major role of banking through financing the business sector. This is done to promote the business sectors with due regard to the principles of prudence and risk management at the bank, taking into Act No. 7 of 1992, as amended by Act No. 10 of 1998, Act No. 23 of 1999 About Bank Indonesia as amended by Act No. 23 of 2004.

The restriction object Fiduciary particularly Vehicle and Goods Inventory regulated in PBI No. 9/6 / PBI / 2007 Article 46 e of saying that Bank Indonesia in his capacity as the Board of Public Act authorized to enact the Regulations, can provide convenience and provide restrictions within the scope of its authority. This is the Rationale for Banking Practice in Indonesia to provide credit. This is because not all of the Intellectual Property can be used as an object of Fiduciary. Actually, in Act No. 42 of 1999 on Fiduciary in Article 1 point (2) states that the object is a moving object Fiduciary either tangible or intangible can be used as a Fiduciary.<sup>7</sup> Meanwhile, one of the moving objects are intangible in the Loan Agreement as the object of Fiduciary is Intellectual Property. In the Fiduciary Agreement is an agreement with the Object Delivery Guarantee is *constitutum possessorium* means that the thing that made the object Fiduciary still occupied by owners Assurance (debtor). According to Hans Kelsen in Pure Theory of Act conceptualize Act as rules made and recognized by the State, if dibungkan by Act No. 42 of 1999 on Fiduciary, then apply a Positive Act that applies in the community.

Actually in Intellectual Property, all rights can be transferred with the agreement because it gives an understanding that the Intellectual Property (IP) can be routed in the Treaty. IP is an object that provides strong authority on the owner to transfer to the Agreement. The agreement in this case interpreted as a guarantee Credit Agreement with Intellectual Property Rights as the Object Fiduciary Rights. Legal certainty regarding the existence of a Rights Object Fiduciary thus Socio-Historical,

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<sup>5</sup> Act No. 17 of 2008 on Shipping

<sup>6</sup> Act No. 1 of 2009 on Flights

<sup>7</sup> Act No. 42 of 1999 on Fiduciary Books entitled Act and Regulation & Mortgage, South Tangerang, 2010, Publisher SL Media.

Legal Certainty problems surfaced with the economic system based on the calculation efficiency.<sup>8</sup>

Context Certainty, Essence of Rule of Act is a matter of legal protection from acts of arbitrariness.<sup>9</sup> The concept of legal protection is a protection afforded to Law in the form of Legal Instruments, both preventive and repressive, both written and unwritten that legal protection is a description of the function of the Act is the concept in which the Act can provide a fairness, certainty and expediency.<sup>10</sup> The concept of legal protection in the form of legal instruments, both repressive and preventive. By Philip M. Hadjon,<sup>11</sup> yet when linked with the receipt of Intellectual Property (IP) as the object of Fiduciary in the Practice of Banking in Indonesia is a form of legal protection both preventive and repressive. Forms Protection preventive Act aims to prevent disputes when used as an object of intellectual property in the Banking Credit Guarantee which Bank as creditor difficulty in predicting the value of intellectual property that is used as the object of collateral in case of bad credit arising from the dispute. While the Legal Protection of repressive aims to resolve disputes in the event of bad credit relating to intellectual property as the object of Fiduciary. That requires the Rule of Act on Intellectual Property (Copyright, Patent, Trademark and Geographical Indications,

### 3.1.2. *Economic Factors; and*

Economic factors affecting yet receives all Intellectual Property (Copyright, Patent, Trademark and Geographical Indications, Industrial Designs of Integrated Circuits and Trade Secret) as collateral in obtaining loans in the Banking, among others,

- a) The difficulty of how to measure the economic value of intellectual property;
- b) Not all of the Intellectual Property has economic value;
- c) Not all of the Intellectual Property worth the money that can be traded (marketable);
- d) Bank Indonesia requires consideration attractions Fiduciary considering Intellectual Property that will serve as the object of Fiduciary;
- e) Banks is difficult to measure the value of intellectual property and the existing market share; and
- f) Anticipated losses and risks for banks.

Economic factors are considered by the Bank when it received the Intellectual Property (IP) as the Fiduciary is based on an analysis of profit and loss (Cost and Benefit Analysis).<sup>12</sup> If the Cost and Benefit analysis was applied as the object of Fiduciary, then

<sup>8</sup> Satjipto Rahardjo, 2009, Rule of Act, reading to the doctoral students Undip in Science Subjects and Legal Theory, page 5.

<sup>9</sup> E. Fernando M. Manullang 2007, *Menggapai Hukum Berkeadilan Tinjauan Hukum Kodrat dan Anatomi Nilai*, Jakarta, Kompas Book, page 94.

<sup>10</sup>HR. Ridwan, 2008, *Hukum Administrasi Negara*, Jakarta, Grafindo, page 282.

<sup>11</sup>Philip M. Hadjon, 1987, *Perlindungan Hukum bagi Rakyat di Indonesia*, Surabaya, Development Studies, page 2-3.

<sup>12</sup>This analysis is intended to determine the financial terms or loss as well as to consider the feasibility of costs to be incurred costs to be incurred and the benefits to be achieved in a project in the Aula Ahmad Hafidh SF 2010, Cost and Benefit Analysis Module Course Project

each party either Own Intellectual Property (IP) and Banking (Receiver Security / debtor) will take into account the obligations and rights in the form of the value or price of such Intellectual Property. It underlies Intellectual Property has not applied or received as Object Fiduciary in obtaining credit in the Indonesian Banking Practice. Intellectual Property so that has economic value that can be considered to be the object of Fiduciary in obtaining credit in banking.

### 3.1.3. Cultural factors

Is one factor he has not received the intellectual Property (IP) as the object of Fiduciary. Confidence (trust) it is due to the behavior of people (especially banking) will flow the Intellectual Property and protection of Intellectual Property (IP) is. Difficulty banks accept Intellectual Property (IP) as the Credit Guarantee is also caused by the value of an intellectual property will depend a good name / reputation of Intellectual Property, the better reputation of Intellectual mentioned in acceptance in the market or trade, the better the quality and possessed a great opportunity to serve as collateral or guarantee credit in Banking in Indonesia.

Research findings in the field, on the nature of the receipt of Intellectual Property (IP) as the Fiduciary require not only the support of the Positive Act (Act) as Regulations issued State, but also require the support of others, namely Social Institution Economic Factors and Trust (the Trust), as proposed by Wemer Menski<sup>13</sup>, In the development of the Global Society, there are a variety of Legal System in Society both from the Positive Act as Religion / Ethics / Morality and habits of others in the community. Each legal system will affect each one (1) to each other, so it is diversity (pluralistic). Because there is no legal system that can stand on its own without the influence of other legal systems. In the study also found aspects Legal Substance, Structure Act and Legal Culture intellectual property settings (IP) as Fiduciary not provide clarity, so there is no Rule of Act and the Act for the Protection of the Parties., Related directly or indirectly to the Fiduciary where Intellectual Property (IP) as the object of guarantee. Conditions or Norma That Act including Act No. 10 of 1998 Amendment Act No. 7 of 1992 on Banking, Act No. 42 of 1999 on Fiduciary, Act No. 28 of 2014 on Copyright, Act No. 13 2016 on Patents, Act No. 20 of 2016 on Marks and Geographical Indications, as well as Bank Indonesia Regulation No. 9/7 / PBI / 2007 on Amendment to Bank Indonesia Regulation Number 8/3 / PBI / 2006 on Business Activities Conventional Commercial Bank to Commercial Bank Conducting Business Based on Sharia Principles and Establishment of Bank Offices Conducting Business Based on Sharia Principles by Bank conventional public. The substance of the Act Fiduciary not show clarity in the interpretation, so that any one (1) consideration may be achieved Intellectual Property (IP) as a guarantee or collateral loans in the banking sector is considered Value Act

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Evaluation, Economic Education Faculty of Social Sciences and Economics, Yogyakarta, Yogyakarta State University, page 5.

<sup>13</sup>Wemer Menski, 2010, *Perkembangan Hukum Dalam Konteks Global Sistem Eropa, Asia, dan Afrika*, Translators M.Khozim, Nusa Media, Bandung, 243 pages.

means necessary to support the juridical order to use Fiduciary Property (KI ) as Collateral / Guarantee Credit.

The nature of matter in the intellectual property (IP) is a one of one (1) Rights which contains two (2), namely Economic Rights (*Economic Rights*) which can provide economic benefits in the form of Royalty, also the Right to Moral (Moral Rights) that is attached to the rights as the owner or creator of the object. Economic Rights (Economic Rights) owned by a person on Creativity can be assigned or transferred to someone else (Transferable) so that another person as the recipient of the Right switchover will also benefit Economics.<sup>14</sup> In civil Act, the interpretation by analogy is often used in conjunction properties are generally only set the course and not pushy.<sup>15</sup> In the Civil Act interpretation by analogy is often used relating to nature in general just set it and not force.<sup>16</sup> Interpretation of intellectual property as the object of Fiduciary, this was due to intellectual property (IP) including moving objects that not intangible (immaterial). So based on an interpretation by analogy, this is possible in view of intellectual property as part of the Act Benda ie Moving Bodies intangibles (Right) under Article 499 Book of the Act of Civil Act (hereinafter written Civil Code) and regulated also in Article 1 paragraph 2 and 4 of the Act, which reads Fiduciary may be transferred for an agreement as to which set in some intellectual property Act (Copyright Act, Patent Act and Trademark Act and Geographical Indications) that intellectual property can be diverted because of the agreement.

In terms of Aspects Structure Legal regulation of Intellectual Property is an intangible asset that can be used as the object of Fiduciary, of which consists of a binding Deed of Fiduciary performed by a Notary, Registration Fiduciary conducted online and Execution Fiduciary can be done without the Court's decision because Fiduciary is Characteristically Accessories Treaty.<sup>17</sup> So that the Fiduciary Act actually provides legal protection as well as the Rule of Act, but in practice Indonesia's Banking Intellectual Property Rights Complementary Assurance only used, not used as a Main Guarantees as Object Fiduciary. It proves Act Fiduciary not provide clarity in the interpretation, so that the implementation is causing uncertainty in giving legal protection for the Parties. Intellectual Property will be used as the Credit Guarantee is Intellectual already registered with the Directorate General of Intellectual Property (DGIP) Ministry of Justice and Human Rights with evidenced by their possession one of Intellectual Property Certificate. Thus Registration DGIP Intellectual Property at the Ministry of Justice and Human Rights to be very important. Besides useful as Legal Evidence Intellectual Property that has been registered in the Intellectual Property Objects offers as Collateral Loans in Banking in Indonesia.

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<sup>14</sup>Agung Sujatmiko 2010, Famous Trademark License Agreement, Journal of Act UGM Pulpit, Vol 22, No. 2, page 257.

<sup>15</sup>Heru Huda, 2012, *Penafsiran Dalam Hukum*, University of Borobudur, Jakarta, page 62.

<sup>16</sup> Ibid, page 62.

<sup>17</sup>This is in accordance with Article 15 of the Act Fiduciary, which reads in fiduciary guarantee certificate referred to in Article 14 paragraph (1) included the words, "As Justice Based on God". Fiduciary Certificates as referred to in Article 15 paragraph (1) shall have the same force eksekutorial judicial decisions has permanent legal force.

Provide the intellectual Property Act Protection for the owner / holder of intellectual property to access credit through Fiduciary Agreement. In this case the owner can put their Intellectual Property Intellectual Property in the Credit Loan Submission in bank. According to the Economic Perspective of Intellectual Property has economic value in terms of the Act Benda. Intellectual Property Rights or an object that Intangible can switch or routed in the Treaty.<sup>18</sup>Intellectual Property so that the object can be used as a fiduciary in order to encourage economic development in Indonesia. Thus not only provide legal protection and justice, security, and benefit when viewed from the aspect of economy, but also can provide Social Aspects. In this case the Act has an important role in improving the economy in Indonesia related to the provision of working capital or capital base through a bank credit facility.

### **3.2. Ideal Construction intellectual property (IP) as the object of Fiduciary in order to realize Economic Development.**

The concept of setting Ideal Construction of Intellectual Property Rights Legal System Fiduciary seen from the aspect of Legal Culture, Structor Act and Legal Substance in philosophy comes from Cita Act (rectsidee) of the Pancasila. The concept of intellectual property as the object of Fiduciary in Philosophical containing the values of Pancasila mainly found in the Line-2 which reads "Humanitarian Just and Civilized" and Line-5, which reads "Social Justice" and inspired by the precepts others, because the activity in the field of business, especially in Lending by using intellectual property as the object of Fiduciary banking practice in Indonesia contain Core Values humanitarian or human rights.

In the Constitution, it is also stipulated in Article 27 paragraph (1) of the Constitution of the Republic of Indonesia Of 1945 which states that everyone has the same status in Act. With the presence of Intellectual Property as well as with one's creativity, the Act not only provides legal protection for intellectual property owner or holder, but also provide a guarantee on quality of certain products. Intellectual property used in a business in the field of industry and trade of goods and services is a means to advance in the Field of Economic Sectors. Intellectual Property as one of the Industrial Property Rights and Copyright is part of one of the riches in a company that needs to be maintained, Maintained and protected as Assets in the other company. Someone who has the intellectual property in the Industrial Products will contribute to the economic growth Nations, which in principle has leveraged Resources alternative, as stipulated in Article 33 paragraph (4) of the Constitution of the Republic of Indonesia Of 1945 Amendment 4, which reads "National Economy organized by on principle to principle

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<sup>18</sup> This is regulated in Article 1 paragraph 2 of Act Fiduciary stating that the Fiduciary is security interests in movable goods that tangible or intangible and immovable in particular building can not be burdened Mortgage referred to in Act Number 4 Of 1996 About mortgage who remain in control of the Giver Fiduciary, as collateral for the repayment of specific money, which gives precedence to the Receiver position Fiduciary against other creditors.

Mutual Economic Democracy, Justice Efficiency, Sustainability, Environmental, Independence and Unity Balancing Progress and National Economy.

As Product Intellectual Property that has been registered in DGIP Ministry of Justice and Human Rights so that the product could be a company that intangible assets (intangible assets), which provides donations to the interests of the State with the resulting product and benefit for Economic Progress in Indonesia. It is the embodiment of the values of Pancasila, particularly Line-2 (two). While the implementation of Line all five (5) of the Pancasila also underlies the concept of Intellectual Property Act System Fiduciary. The purpose of Social Justice is Developing a balanced or regular society where people get a chance to build a decent life and the weak get the necessary assistance.<sup>19</sup>Social Justice in Economic Perspective is the Proportional fairness. Proportional Justice concept is each party has the Rights and Obligations in accordance with the portions as outlined in the contract.<sup>20</sup>

In the Act Development includes three (3) elements, namely; Development of Legal Substance, Structure Act and Legal Culture. In terms of key issues facing society in the world of banking to the existence of its Intellectual Property that can not be accepted as an object Fiduciary banking practice in Indonesia. Therefore necessary revamping the legal system solutions, ranging from Substance Act, Legal Structure and Culture Act conducted simultaneously. Culture Change Act to be done first is in banking circles then Business communities have Intellectual Property / Intellectual Property Holders and other communities. Because it involves changes Mindset, Attitude, and the behavior of Act has not led to or complies with applicable Act and the values that support the Economic Development in Indonesia. In The Culture Act Settling an important thing as an Effort to Realize Economic Development Goals in Indonesia. Act Culture change can be done through the socialization of the Society of Economic Value of Intellectual Property that can be used as collateral or coletaral in seeking a loan or credit. Legal Structure (Legal Structure) is part of the legal system is one of the basic and real elements in the Legal System. Act Culture change can be done through the socialization of the Society of Economic Value of Intellectual Property that can be used as collateral or coletaral in seeking a loan or credit. Legal Structure (Legal Structure) is part of the legal system is one of the basic and real elements in the Legal System. Act Culture change can be done through the socialization of the Society of Economic Value of Intellectual Property that can be used as collateral or coletaral in seeking a loan or credit. Legal Structure (Legal Structure) is part of the legal system is one of the basic and real elements in the Legal System.<sup>21</sup>Legal structure symbolized as that Sustains Column Rule Framework A Legal System Building. Institutional Legal Structure component is created by the legal system with a wide range of functions to support the operation of the legal system. Institutional in this case not only Formal institutions associated with the Government but the institutions that relate to the business and

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<sup>19</sup> Kirdi Dipoyudo, 1985, *Keadilan Sosial*, Jakarta, Eagle, page 31.

<sup>20</sup> Agus Yudha Hemoko, 2010. *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, Jakarta, Prenada Media Group, page 74.

<sup>21</sup> Esmi Warassih 2005, *Pranata Hukum : Sebuah Telaahan Sosiologis*, Semarang, PT. Top Suryandaru, page 104.

banking. To build the substance of Intellectual Property Act as an Intangible Asset in the Legal System Fiduciary in future need in the community about the value of the intellectual property. Economic Approach to Act by Richard A. Posner that the involvement of Act must be seen in terms of:

- a. Value (Value); In this case, if the Intellectual Property tends to decline in value over time and eventually lost all its value means Intellectual uncertainty. But if managed properly Intellectual shown in the financial statements profit / annual loss, the Intellectual Property will be more valuable or worthwhile.<sup>22</sup>
- b. Expediency (Utility); Value expediency of Intellectual Property is an Intangible Asset as the object of Fiduciary is required by the business communities as well owner or holder of intellectual property in the development effort to get capital in the banking, asset management companies Intangible good, then the stakeholders in this regard Banking or Investors can see the development of Intellectual Property which is a source of income Intangible Asset as a company that applied in the financial statements.
- c. Efficient (Efficiency); Fiduciary as one of the National Act Implementation Act cause various problems, among others; absence of Rule of Act and Legal Protection. Inconsistency of substance Fiduciary Institution, Structure Institute Fiduciary not in favor of the business communities of the effective cause that Act in the Practice of Banking in Indonesia.<sup>23</sup>

Context meaning Intellectual Property as an object that has the Economic Value to over the Treaty of Guarantee as a fiduciary for clarity in the interpretation, hence the importance of an amendment Act Fiduciary, Industrial Design, Layout Design of Integrated Circuits and Trade Secret, for three (3) is Copyright, Patent and Trademark rights and Geographical Indications in one of the reason has been mentioned and adjust if such rights can be used as one object Fiduciary. For a change to the Act Fiduciary need for regulating about Appraiser Or Estimator (Appraisal) Intellectual Property as an object Fiduciary.

In practice in the field to date, there are no guidelines or a basis for determining how much of a value of intellectual property used as the object of guarantee or collateral, but the Intangible Asset Valuation (Intangible Assets) usually Appraisal use the Market Approach (market) against Products manufactured by a company that contains Intellectual Property. The approach was used as the Free Practice Assessment

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<sup>22</sup>David Arnold, 1996, *Pedoman Untuk Manajemen Merek*, Surabaya, Kethino Soho, 208 pages.

<sup>23</sup>AA Andi Prajitno 2009, *Fiduciary Act Enforcement Juridical Problems of Act No. 42 of 1999*, Dissertation, UNTAG Surabaya, also researches Sigit Irianto, Sri Mulyani, Agnes, implementation of Act 42/1999 on Fiduciary in Lending to Small Traders in BNI Cab. Karang Ayu Semarang, Research, FH-untag 2004, Research Agnes Maria et al, *Fiduciary Registration System Dysfunction in Lending for BPR in Semarang*, Research Young Lecturer, Higher Education, 2007.

Indonesia or commonly called GN namely Intangible Asset Valuation (Intangible Assets) in the amount of Lending Banks in Indonesia

#### 4. Closing

##### 4.1. Conclusion

a. Based on the issues that were discussed on Intellectual Property as an object of Fiduciary on Banking, it can be concluded as follows:

1) Intellectual property can be used as an object of Fiduciary on Banking Practices in Indonesia. This is due to several factors influencing that; Factors of Act, Economics, and Culture. Legal factors, in Juridical Formal there are some who do not have the Intellectual Property Legal Basis (Industrial Design, Layout Design of Integrated Circuits and Trade Secret). To three (3) Intellectual Property namely the Copyright, Patent and Trademark Rights and Geographical Indications in one of the articles has been mentioned and adjust if such rights can be used as one object Fiduciary. Similarly, in Article 1 (2) of the Act Fiduciary been arranged on one form of intangible objects that can be used as Fiduciary. Economic Factors, not all Intellectual Property has economic value that can be used Object Security and have a good market share. In this case the bank not only assess the financial statements prepared by a public accountant one of the companies but also uses appraiser or appraisal institution independent. As for the cultural factor, in this case the banks have not fully believe if Intellectual Property has economic value in trade.

2) Intellectual Property as an object arrangement Fiduciary not give a clear interpretation by some of the following:

- Some of the Intellectual Property Act has not given legal protection against objects Fiduciary (Industrial Design, Layout Design of Integrated Circuits and Trade Secret) because the legal culture supportive factor.
- In substantive Act, intellectual property settings as the Object Fiduciary in its implementation can not provide Protection and Legal Certainty in substantive. For example, Act No. 42 of 1999 on Fiduciary not provide clarity in the interpretation.
- Legal Structure In yet support Implementation of Intellectual Property Settings as the object of Fiduciary since, still weak institutions related to Intellectual Property Registration.

b. Ideal Construction intellectual property (IP) as the object of Fiduciary in order to realize the Economic Development should be done comprehensively, systematically, both from the aspect of Substance, Structure, and Culture Act that includes:

- 1) The substance must be consistency in both the Act and the Regulation of Bank Indonesia and other Regulations governing Banking Practices on Intellectual Property as a Fiduciary Objects Objects Intangible (Intangible Assets) of A Company that Has Economic Value;
- 2) On the Structure of the Act or Institutional to provide certainty and legal protection for Actors economy by establishing the Institute relating to the

existence of Intellectual Property as an object Fiduciary, namely Institutions Services Worth, Institute of Purchase Intellectual so Performers Good economy creditor or bank or owner / holder Intellectual Property in developing a business that requires capital have certainty and clarity and have the legal protection of market share, in addition to already their two (2) Institution namely Fiduciary Registration Office (AHU Online) and the Registrar of IP (DGIP);

- 3) By Culture Act, activating the Act as a means of education and training for the community, in this case the banks to develop new values how to value intellectual property as the object of Fiduciary causing Change Mindset, attitude, and behaviors that support the development of the Act Fiduciary which is built on values of Pancasila and the Constitution of the Republic of Indonesia Of 1945.

#### 4.2. Suggestions

- a. The need for socialization at the World Bank that can be used as Objects of Intellectual Property Fiduciary in obtaining credit in Banking;
- b. Need to be formulated and realize the Bank Indonesia Regulation to recognize intellectual property as the object of Fiduciary, particularly the Economic Actors have certainty and legal protection; and
- c. The necessity of making changes in three (3) of the Act on Intellectual Property as Industrial Design, Layout Design of Integrated Circuits and Trade Secrets for the third Act no settings on the Object Fiduciary.
- d. Need for regulation of appraisal or assessment in Lending the use of intellectual property as the object of Fiduciary and Additions to the Settlement of the Case in Court in connection Religion in the Era of Globalization or the Industrial Revolution 4.0, many banks who hold about Sharia Act. For the completion of the Case in the field of civil or receivables are not only resolved at the General Court, but also in the Religious Court.

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