

Copyright Problems of Lasem Hand-drawn Batik as an Object of Fiduciary Guarantee in Rembang Regency

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Abstract. *This article aims to examine and analyze the implementation of copyright on Lasem batik tulis products as objects of fiduciary guarantees and the problems and solutions in the implementation of copyright on Lasem batik tulis products as objects of fiduciary guarantees in realizing the creative economy in Rembang Regency. This article is an empirical juridical legal research with the statue approach and historical approach methods. The data collection technique used is a field study in the form of observation and interviews as well as a literature study. The data analysis method used in analyzing the data is an interactive qualitative model analysis. The results of the study show that results of the research and study show that until now there has been no Banking or non-banking Institution that has implemented Intellectual Property such as copyright of Lasem batik artwork as an object of fiduciary guarantee or collateral. The non-implementation of intellectual property-based financing is due to several problems, namely regarding regulations, related Institutions or Officials, the concept of valuation and special Institutions for Intellectual Property valuation, the Copyright execution system as an object of fiduciary guarantee and for Creative Economy Actors. From the problems faced, there are solutions that can be done, including: 1) Renewal of regulations, 2) Increasing knowledge and understanding of related Institutions and officials, 3) Establishing a valuation system and special Institution to assess appropriate copyright, 4) Preparing a mechanism for executing Copyright as an appropriate and correct object of fiduciary guarantee and 5) increasing awareness of creative economy actors regarding the legal protection of Copyright.*

Keywords: Batik; Copyright; Fiduciary; Guarantee; Problems.

1. Introduction

The development of economic activities in a country result in the increasing

need of each individual for sources of funds needed in their business activities. This is closely related to credit by a financing institution. Where banks or other financial institutions are business partners for other non-financial companies that can provide loans needed by the community. However, the provision of these funds also needs to be given collateral owned. Banking institutions have a very large role and dominate the financial system of a country.

The guarantee institution that is very well known in countries with civil law and common law legal systems is pawn or mortgage, but along with the flow of globalization and modernization, the form of the guarantee institution is still considered lacking so that another guarantee institution has emerged, namely the fiduciary guarantee institution. Fiduciary guarantee is another type of guarantee form that exists besides pawn and mortgage. The birth of fiduciary guarantee in Indonesia is not only based on jurisprudence, but is also stated in a legal regulation in the form of a law. Law Number 42 of 1999 concerning Fiduciary is the legal umbrella for the parties in carrying out fiduciary practices. When associated with the provisions of Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary, fiduciary is interpreted as a form of transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the control of the owner of the object. Fiduciary guarantees are not only attached to movable objects, both tangible and intangible, but are also attached to immovable objects, especially buildings that are not burdened with mortgage rights.¹

One of the assets of economic value that is being considered as an object of credit collateral is Intellectual Property. In the IPR guidebook, it is explained that Intellectual Property Rights, or abbreviated as "IPR" or the acronym "HaKI" is a synonym that is commonly used for the term IPR, namely rights that exist from the results of human thought that produce a product or process that is useful for humans.² Intellectual Property (IP) is in principle a property right that has economic value in a commercial perspective, meaning it can be transferred, traded, or leased. The current paradigm in viewing Intellectual Property is the optimization of Intellectual Property as working capital. The context of optimizing Intellectual Property as working capital means that Intellectual Property is a collateral instrument used to guarantee debt.³

Intellectual Property that can be used as a credit guarantee object, one of which is Copyright. The provisions of Article 16 paragraph (3) of Law Number 28 of 2014 concerning Copyright state that copyright as a movable object can be used

¹Adhi Budi Susilo, 2022, "Reconstruction of Copyright Regulations that can be used as Fiduciary Guarantee Objects Based on Utility Value", Dissertation of Sultan Agung Islamic University Semarang, p. 29

²Directorate General of Intellectual Property Rights, 2006, Intellectual Property Rights Guide Book, Ministry of Law and Human Rights, Jakarta, p. 2.

³Adhi Budi Susilo, Op. cit., p. 269

as an object of fiduciary guarantee, which will involve the creator, copyright owner and recipient of fiduciary guarantee (banking institutions and financing institutions).⁴ Choirul Djahhari, Deputy for Restructuring and Business Development at the Ministry of Cooperatives and SMEs, said that theoretically, IPR can be used as collateral for debt because certification is a property right that has economic value.⁵

Indonesia is one of the countries that is rich in diverse works of art from various regions in Indonesia. Rembang Regency has intellectual wealth with high economic value, namely Lasem Batik Tulis Artwork. Lasem Batik Tulis Artwork This is recognized as Copyright, namely stated in Article 40 paragraph (1) letter j of Law Number 28 of 2014 concerning Copyright.

Creative Industry Government Regulation (PP) Number 24 of 2022 provides new hope for creative economy actors to easily access financing or credit from financial institutions. Actors in the creative sector are allowed to apply for intellectual property-based financing to bank financial institutions or non-bank financial institutions, in accordance with Article 7 paragraph (1) of Government Regulation Number 24 of 2022 concerning the Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy.⁶ In practice, although there has been a legal update in the Copyright Law, it can be said that this does not strongly support the implementation of the use of Intellectual Property to be used as a digital business asset and credit guarantee or collateral in banking. Therefore, further discussions are still being held in its implementation.

Based on the background above, this article discusses a study entitled Problems of Copyright of Lasem Hand-Written Batik as an Object of Fiduciary Guarantee in Rembang Regency.

2. Research methods

This type of research is empirical legal research. The approach method in this research is the statue approach and historical approach. Data sources come from primary data and secondary data. Data collection methods include observation, interviews and literature studies. The data analysis method used in analyzing data is interactive qualitative model analysis.

⁴Khoirul Hidayah, 2017, Intellectual Property Rights Law, Setara Pers, Malang, p. 3

⁵As quoted from source news on line that is Law On line <http://www.Hukumonline.com/berita/baca/lt542addced8dff/seniman-bisa-menjaminan-his-work-to-owe-to-the-bank>, accessed on 6/7/2024

⁶Ujang Badru Jaman, 2022, "Prospects of Intellectual Property Rights (IPR) as Debt Collateral", *West Science Journal of Law and Human Rights*, Vol. 01, No. 01, p. 16

3. Results and Discussion

3.1. Implementation of Copyright of Lasem Hand-Written Batik Products as Fiduciary Guarantee Objects in Rembang Regency

Financial institutions are business partners for business actors to carry out lending activities or often called credit. One of the credit facilities provided by financial institutions to business actors in Indonesia is credit with Fiduciary guarantees. Progress in Copyright regulations, which is reflected in Law Number 28 of 2014 concerning Copyright (UUHC), provides legal certainty regarding the potential use of Copyright as an object of Fiduciary Guarantee, as regulated in Article 16 paragraph 3 of UUHC. In guaranteeing Copyright as an Object of Fiduciary Guarantee by the Bank, there are several types of criteria or requirements that must be met beforehand, namely having economic value, registered with the Directorate General of Intellectual Property Rights and in accordance with the provisions of UUJF, still under protection, is private property and can be transferred or assigned⁷

One of the intellectual cultural works that has high economic value is the work of Lasem Batik Tulis. Which is a creative work of motifs on Lasem Batik Tulis can be a work that is considered to be an object of fiduciary guarantee. The use of Intellectual Property as collateral or fiduciary guarantee is in line with Government Regulation Number 24 of 2022 concerning the Creative Economy which was stipulated by the President of the Republic of Indonesia on July 12, 2022. In reality, the implementation of intellectual property Copyright is still unclear in its application. This is because there are still several things that need to be fixed to strengthen the implementation of Fiduciary Guarantees for intellectual property Copyright to be used as an object of fiduciary guarantee in Banking or non-banking Financial Institutions including Copyright on Lasem Batik Tulis products.

3.2. Problems and Solutions in the Implementation of Copyright on Lasem Hand-Written Batik Products as Fiduciary Guarantee Objects in Realizing the Creative Economy in Rembang Regency

The use of Intellectual Property as an object of fiduciary guarantee is a new breakthrough so that even though it has been regulated normatively, in its implementation, the mechanism provided by the Government Regulation raises various problems that are important to be followed up so that it can run optimally. The problems faced in the implementation of the Copyright of Lasem

⁷Komang Febri Berliana Mawarni, et al., 2020, "Criteria for Song Copyright as an Object of Fiduciary Guarantee Reviewed from Article 16 Paragraph (3) of Law Number 28 of 2014 Concerning Copyright", *Journal of Yustisia Community*, Ganesha University of Education, Legal Studies Program, Vol. 3, No. 3, p. 266

Batik Tulis Products as an Object of Fiduciary Guarantee include:

1) Regulatory Problems, namely that the factor of Legislation that is not yet comprehensive is the main problem in the implementation of intellectual property-based financing.⁸ Until now, there have been no regulations governing the use of copyright as an object of fiduciary guarantee. In terms of regulation, the implementation of intellectual property-based financing is not yet fully mature to be applied in banking, this refers to the absence of guidelines or technical instructions that have been adjusted to the procedures for implementing financing in banking financial institutions.

2) Problems in related institutions or officials, Banking institutions do not yet know how to manage and assess a copyright in its role as a fiduciary guarantee in banking credit transactions. It is hoped that in the future the Financial Services Authority can create regulations that can support Law Number 28 of 2014 concerning Copyright so that its implementation can be clear in the future. In field practice, notaries face significant obstacles related to the creation of Copyright deeds as a form of fiduciary guarantee. The creation of such deeds has not become common practice, and examples of similar deeds are rarely found. This situation creates a real challenge for notaries, because the lack of common practice and the absence of guidelines make the process of creating Copyright deeds as fiduciaries less standardized and requires adjustments in each case.

3) Problems of the concept of valuation and special institutions for IPR valuation The Government Regulation on Creative Economy (PP EKRAF) attempts to present special public appraisers for copyright, but in terms of substance, there are points that are not explained in detail in PP EKRAF, such as in article 12 which does not explain in detail regarding the competency criteria of an IPR appraiser because it is only explained that the appraiser's competency is obtained from competency certification which is carried out in accordance with laws and regulations.⁹ There is no standardization of technical guidelines for assessing the economic value of intellectual property and there is no institution that manages the intangible asset valuation system to guarantee the value of rights used as fiduciary collateral. Indonesia currently does not have restrictions on the use of copyright as collateral for lending institutions and there is no appraisal institution that has the ability to provide an economic evaluation of copyright.¹⁰

⁸Lidwina Tess Kurnia Prihantiwi and Pujiyono, 2020, "Copyright Problems as Fiduciary Collateral in Banking Credit Transactions in Indonesia", *Jurnal Privat Law*, Vol. VIII, No. 2, p. 195.

⁹Agustianto, Winda Fitri, Angelyn, 2023, "Efforts to Execute Fiduciary Guarantee Objects in the Form of Copyright in Intellectual Property-Based Financing Schemes," *Jurnal Hukum Respublica*, Faculty of Law, Lancang Kuning University, p. 34

¹⁰Somi Ramdani, 2019, "Copyright as an Object of Fiduciary Guarantee in the Law of the Republic of Indonesia," *Aktualita*, Vol 2 No. 1, p. 284

4) Problems of executing copyright as an object of fiduciary guarantee

Another legal problem that arises when copyright is used as collateral in a fiduciary guarantee lies in the procedural aspect when the debtor commits a breach of contract or breach of promise which results in the seizure of the object being guaranteed.¹¹The emergence of copyright execution issues arises because there needs to be a clear explanation regarding which part of the copyright will be executed if the fiduciary grantor defaults. This is complex because in copyright, in addition to moral rights, there are also economic rights. On the other hand, in the latest Copyright Law, there is no article that explicitly states that copyright that is the object of fiduciary collateral can be executed if the fiduciary grantor or debtor defaults. There are no regulations that comprehensively regulate the procedures for transferring ownership and executing Copyright that is the object of fiduciary collateral. The rights that may be exercised are executing the economic value of the copyright or selling the economic value that is the object of fiduciary collateral at the authority of the fiduciary recipient himself through a public auction and taking payment of his receivables from the proceeds of the sale or private sale carried out based on an agreement between the fiduciary grantor and recipient so that the highest price can be obtained that benefits both parties.

5) Problems for creative economy actors

In reality, awareness of the protection of Intellectual Property Rights of their creations in the Lasem Batik Tulis business environment can be said to be quite high. However, business actors are still considered to have minimal knowledge (insight) regarding Intellectual Property Rights as a whole and evenly distributed to the community or business actors. Regarding the creation of batik motifs, not all business actors produce their own batik motif creations and have the opportunity to have their creations legally recognized.

Considering the less than optimal implementation of intellectual property-based financing in Financial Institutions. Therefore, there needs to be a solution that can support the optimization of Copyright on Lasem batik artwork as an object of fiduciary guarantee, namely with the following steps:

1) Regulatory updates

When looking at the future prospects regarding IPR as a guarantee for bank credit, from a legal perspective, with the enactment of Government Regulation Number 24 of 2022, there is already a legal basis for inventors or creative industry business actors in terms of obtaining credit from banking or non-banking institutions through IP guarantees. Regulations regarding this matter are

¹¹Rani Kartika Sari, 2016, "Copyright as an Object of Fiduciary Guarantee," *Lex Renaissance*, Vol 2 No. 2, p. 296

not balanced with the readiness of banking or non-banking financial institutions themselves which do not yet have a legal basis related to IPR as a credit guarantee. The importance of adequate regulation in this case not only provides legal certainty for the parties involved, but can also open the door to further developments in intellectual property-based financing.

2) Improving knowledge and understanding of related institutions or officials

The government can conduct socialization or counseling globally. Where it is expected that both government agencies themselves such as the Directorate General of Intellectual Property Rights, the Ministry of Law and Human Rights, the Ministry of Finance, the Ministry of Tourism and Creative Economy, as well as organizations, banking or non-banking financial institutions and communities will be able to accept and understand matters related to intellectual property-based financing. Socialization and education can be carried out through various media, such as seminars, workshops, and training. Notaries in this case need to improve their knowledge, understanding and soft skills regarding deeds related to intellectual property-based financing, for example Notaries need to have analytical and critical thinking skills regarding collateral binding in intellectual property-based financing.

3) Establish a valuation system and a special valuation institution

Clear regulations and valuation mechanisms are needed that guarantee legal certainty for IP, if you still want to maintain IP as a Banking collateral object. This valuation system needs to be managed by a special institution to guarantee the value of the rights burdened with IP objects, so that if the debtor defaults, the creditor can enjoy the collateral object.

4) Preparing the mechanism for executing Copyright as an object of Fiduciary Guarantee

If observed, the most suitable execution mechanism to execute copyright as a fiduciary guarantee when the debtor defaults on its obligations is through a written transfer, preferably stated in the form of a notarial deed. The next process is that the notarial deed that has been agreed upon between the debtor and creditor must be recorded/registered and announced to the Directorate General of Intellectual Property Rights, the application is made in Indonesian and is subject to administrative fees.

5) Increasing the insight and knowledge of creative economy business actors regarding the importance of legal protection for copyright.

In terms of copyright protection for the Lasem Batik Tulis artwork itself, the Rembang Regency Government has protected and strengthened it with Rembang Regent Regulation Number 29 of 2017 concerning the Preservation of

Lasem Batik Tulis. The Rembang Regency Government has certified the existing Lasem Batik Tulis motifs, although only a few have been registered. Efforts to protect the Lasem Batik Tulis motifs can be a strength in the utilization to obtain additional business capital through financing at banking or non-banking financial institutions. Further regulation is needed by the Government regarding the use of the Lasem Batik Tulis creation as collateral to obtain additional business capital. This is based on the mention in Rembang Regent Regulation Number 29 of 2017 concerning the Preservation of Lasem Batik Tulis, that Lasem Batik Tulis is a unique potential wealth belonging to Rembang Regency. With optimal protection for the Lasem Batik Tulis artwork, it is hoped that the implementation of intellectual property-based financing can also be optimized when it can be implemented and implemented within the scope of creative Lasem Batik Tulis business actors.

4. Conclusion

The implementation of Intellectual Property as an object of collateral has been strengthened by the issuance of Government Regulation Number 24 of 2022 concerning the Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy. However, in reality, the use of Intellectual Property such as Copyright of Lasem Batik Tulis artwork as an object of collateral in banking has not been implemented in Rembang Regency. This is because there are several problems that are being faced in its implementation, both in regulations, related institutions or officials, valuation concepts and special valuation institutions, execution mechanisms and Creative Economy Actor factors.

The need for coordination and cooperation in optimizing the preparation of financing based on Intellectual Property in Indonesia both by the Government, Financial Services Authority, related agencies including the Ministry of Tourism and Creative Economy, the Directorate General of the Ministry of Law and Human Rights, the fiduciary registration division and the Directorate General of Intellectual Property as well as Banking and non-Banking Financial Institutions and creative business actors themselves. In this case, it is necessary to have socialization about Intellectual Property as an object of fiduciary guarantee and accompanied by legal reform, namely the legal umbrella for all regulations related to the implementation of financing based on intellectual property.

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