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The Role of Auction Officials in Executing Intellectual Property Fiduciary Guarantees as Bank Credit Collateral

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Abstract. *This study aims to determine the practice of notaries in Indonesia, namely the placement of the facer's fingerprints as authentic and vital evidence in various transactions, requiring adaptation to face the challenges of forgery and maintain validity. The placement of the facer's fingerprints emerged as a solution to increase security and legal certainty, using a normative juridical approach with a statutory approach method. Then, data was collected from primary legal materials (the Notary Law and related regulations), secondary (legal literature and journals), and tertiary (legal dictionaries and encyclopedias). Data collection methods included library studies, field observations, and interviews with competent sources. Data analysis used a qualitative descriptive-analytical method with a deductive-inductive thinking framework. The results show that the Notary Law requires the placement of fingerprints to increase the validity of deeds. Fingerprints, as unique biometrics, provide stronger legal certainty. However, its implementation faces technical challenges (system accuracy, infrastructure), legal (incomplete regulations, personal data protection), and social (public trust, digital literacy) challenges. Comprehensive and integrated regulations, which take into account technical, legal, and social aspects, are crucial to ensure the effectiveness, security, and fairness of the implementation of fingerprinting in the preparation of notarial deeds.*

Keywords: *Digitalization; Fingerprints; Notarial.*

1. Introduction

The significant increase in the creative economy sector in Indonesia has given rise to an urgent need for business capital, where Intellectual Property (IP), especially Copyright, is now recognized as an economic asset that can be monetized through bank credit. Law Number 28 of 2014 concerning Copyright explicitly allows the transfer of economic rights to creations to be used as objects of Fiduciary Guarantee (Article 16 paragraph (3) of the Copyright Law and Article 1 number 2 of the UUJF).[1]However, in practice, the execution of fiduciary guarantees over IP faces serious obstacles when the debtor defaults, primarily due to the complexity of intangible asset valuation and the unclear authority of the Auction Officer in executing such execution. Failure to resolve these execution obstacles has the potential to hamper the growth of the national creative economy, as supported by Law Number 24 of 2019 concerning the Creative Economy (EKRAF Law), as banks will be reluctant to disburse IP-based loans.

Historically, the guarantee institution focused on tangible objects, but amendments to the Copyright Law codify IP as an object of Fiduciary Guarantee. The specificity of IP lies in its intangible nature and the inherent moral rights of the creator, which complicates the determination of value and the confiscation process. Although the Copyright Law initially provided for the option of parate executie through a Fiduciary Guarantee Certificate (SJF), Constitutional Court (MK) Decisions No. 18/PUU-XVII/2019 and No. 2/PUU-XIX/2021 fundamentally limit unilateral execution, so that execution now requires a default agreement or a court order. This limitation on unilateral execution creates a procedural vacuum regarding how Auction Officials, who traditionally operate on the basis of court orders, can receive execution orders for intangible objects.

This study seeks to demonstrate that the role of the Auction Officer in the execution of Fiduciary Guarantees for Intellectual Property Rights has not been explicitly defined in regulations, particularly following the Constitutional Court's restriction on parate executie. The hypothesis is that the Auction Officer will face legal difficulties in receiving execution orders for intangible objects that are not physically controlled. A fundamental challenge arises when the debtor refuses to hand over the collateral; the physical seizure process is impossible, resulting in the authority[2]The Auction Officer's ability to conduct an auction based on a court order has become procedurally stalled, given that the Fiduciary concept is based on the constitutum possessorium. This research needs to examine whether the Auction Officer has the authority to order the transfer of economic rights to a work as a prerequisite for an auction, or whether this authority rests solely with the Fiduciary Recipient through civil procedure.

Furthermore, valuation challenges remain a central issue due to the lack of an independent, bank-recognized public IP appraisal body, which directly impacts creditor confidence. This legal vacuum is exacerbated by the lack of education

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[1]Ika Atikah, 2019, Copyright as Collateral in Fiduciary Guarantees, Al Ahkam, Vol. 15 No. 1, June 2019, DOI:http://dx.doi.org/10.32678/ajh.v15i1.1894.

[2]Agustiantoa et al., 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, Vol. 23 No. 01, DOI:https://doi.org/10.31849/respublica.v23i01.17059.

among creative economy actors regarding formal IP registration.[3]The targeted resolution effort of this research is to formulate a framework that effectively integrates the role of Auction Officials in the execution of IPR, both through the affirmation of authority in court decisions and harmonization of regulations. This research will specifically examine the legal basis for Auction Officials to act as auctioneers in cases of Copyright Fiduciary Guarantee, with the aim of formulating an execution procedure that provides legal certainty and justice for creditors without violating the moral rights of creators.

This research focuses on two crucial issues: identifying the mechanism for collective IPR enforcement following the Constitutional Court Decision, and elaborating the Auction Officer's normative authority in conducting auctions of intangible assets. As someone who has an interest in technical legal aspects and often studies financial reports to determine the solvency of debtors, the legal issues regarding the execution of intangible assets are highly relevant in the context of developing specialized competencies in the fields of civil law and capital markets.

2. Research Methods

The research method used is Normative Legal Research, which focuses on studying the application of positive legal rules through secondary data or literature, as defined by Peter Mahmud Marzuki.[4]This research adopts three main approaches, namely the Statute Approach, the Analytical Approach, and the Theoretical Approach, with data collection conducted through Library Research covering primary legal materials (such as the UUJF and the Copyright Law), secondary, and tertiary legal materials. The data analysis process applied is prescriptive, aiming to provide arguments and assessments regarding what should be legally binding on the facts or legal events studied.

3. Results and Discussion

3.1. Legal regulations regarding the mechanism for executing Fiduciary Guarantees for Intellectual Property Rights (IPR) as Collective Bank Credit

Legal regulations regarding the use of Intellectual Property (IPR), particularly Copyright, as an object of Fiduciary Guarantee represent a significant development in supporting the capital needs of the creative economy sector in Indonesia. Legally, Law Number 42 of 1999 concerning Fiduciary Guarantee (UUJF) has anticipated the collateral object in the form of movable property,

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[3]Muhammad Yusuf Ibrahim, 2020, "Copyright Collateral Appraisal in Banking in Indonesia", Cermin: Jurnal Penelitian, Vol. 4 No. 1, pp. 202–216,https://doi.org/10.36841/cermin_unars.v4i1.601.

[4] Peter Mahmud Marzuki, 2010, Legal Research, Kencana, Jakarta, p. 35.

both tangible and intangible, which provides a priority position (droit de preference) to creditors in the event of debt repayment.[5]

Explicit recognition that Copyright can be used as an object of Fiduciary Guarantee is contained in Article 16 paragraph (3) of the Copyright Law (Law No. 28 of 2014). The main requirements for IPR to be guaranteed are ownership of economic value and the ability to be transferred.[6]Copyright has two main components: moral rights which are inherent in the creator and cannot be transferred, and economic rights which cover nine forms of commercial use, such as publishing and licensing, which can be transferred as collateral.

The process of imposing a Fiduciary Guarantee on IPR is accessory to the principal debt agreement and must be outlined in a Fiduciary Guarantee Deed (AJF) drawn up by a notary. The notary is required to verify the ownership status of the IPR, often through a check with the Ministry of Law and Human Rights (Kemenkumham), and to ensure the value of the collateral is clearly stated in the deed to ensure legal certainty for both parties.

Although the legal framework is in place, its practical implementation faces significant obstacles that hinder bank lending. Two central issues that arise are the concept of intellectual property rights (IP) valuation and the lack of a specialized valuation agency widely recognized by financial institutions. The dynamic and subjective nature of IP values makes it difficult to determine objective market prices, significantly different from the valuation of tangible assets such as vehicles or property.

The challenge of execution has become increasingly complex following the Constitutional Court's ruling limiting the parate executie (unilateral execution) mechanism. Execution now often requires a court order, raising fundamental questions about how Auction Officials can carry out the seizure and sale of intangible assets that remain in the debtor's possession (constitutum possessorium).

In the context of public auctions (lelang), the execution of Copyright must clearly distinguish between economic rights that can be transferred to the bidder, and moral rights that must remain with the creator. Existing auction regulations do not fully accommodate the unique characteristics of these immaterial assets, thus creating procedural ambiguity in the public sale process.[7]

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[5]Trias Palupi Kurnianingrum, 2017, Intellectual Property Rights as Banking Credit Guarantee, Negara Hukum, Vol. 8 No. 1, p. 32.

[6]Tasa Gina Santoso, 2024, Legal Analysis of the Regulation of Intellectual Property Rights Assets as Fiduciary Guarantee Objects, Journal of Intellectual Property (JIPRO), Vol. 7 No. 1, p. 41.

[7]Taryan Setiawan, 2021, The Concept of Copyright as Fiduciary Guarantee According to Law Number 28 of 2014 Concerning Copyright and Law Number 42 of 1999 Concerning Fiduciary

Compared to developed countries with established regulatory infrastructure and specialized IP assessment bodies, Indonesia lags behind in terms of ensuring the security of supporting infrastructure. The lack of clear technical guidelines from regulators such as the Financial Services Authority (OJK) or Bank Indonesia regarding the implementation of IP guarantees, along with the lack of standardized valuation guidelines, has led financial institutions to be cautious or even reject IP as primary collateral.

The notary's readiness to handle the legal aspects of IPR guarantees is crucial, as they must not only draft a formal Fiduciary Guarantee Deed (AJF), but also be able to formulate a comprehensive execution clause. This includes clear regulations regarding the execution procedures.[8]either through public auction or private sale, as well as anticipating protection of the creator's moral rights and the possibility of pre-existing third-party licenses.

In more detail regarding the object of guarantee, Economic Rights in Copyright encompass nine forms of exclusive rights that can generate financial benefits, such as Publishing Works, Reproduction, Translation, Distribution, Performance, Announcement, Communication, Rental, and Adaptation. Only these economic rights can be transferred or made the object of fiduciary guarantee, while the creator's moral rights that protect the name and reputation remain inherent and cannot be transferred.

The procedural weakness of execution is exacerbated by the principle of constitutum possessorium, which underlies Fiduciary obligations, where physical control of the collateral remains with the debtor. If the debtor defaults and refuses to hand over the intangible asset, the physical seizure process, a prerequisite for the Auction Officer to conduct the auction based on a court order, becomes procedurally stalled due to the lack of a physical object to seize.

To overcome this stagnation, regulatory reforms that integrate legal infrastructure are needed, in line with the views of international organizations such as WIPO, which emphasize valuation as key to the utilization of economic assets. The establishment of an official IPR assessment body and the establishment of clear enforcement procedures for immaterial assets are crucial steps to ensure IPR functions optimally as the backbone of financing within the national creative economy ecosystem.[9]

Guarantee in the Context of Realizing Legal Certainty, Justitia Nusantara Media Law Journal, Vol. 8 No. 1, p. 52.

[8]Ranti Fauza Mayanan et al., 2022, Intellectual Property-Based Financing Schemes: Opportunities, Challenges, and Potential Solutions for Their Implementation, Das Sollen, Vol. 1 No. 1, p. 10.

[9]Ksatria Dwi Putra Ramadhan, 2025, The Effectiveness of Intellectual Property Rights (IPR) as Fiduciary Guarantee and Execution Through Auction, Journal of Law and Citizenship, Vol. 15 No. 10, p. 15.

Overall, although Indonesia has a legal basis that recognizes IPR as an object of Fiduciary Guarantee, its implementation is hampered by the issue of valuation that has not been standardized and the lack of clear authority for Auction Officials in carrying out auction executions for intangible assets following the unilateral limitation of execution by the Constitutional Court.

Therefore, effective legal arrangements require structural improvements, including harmonization of regulations to clarify the authority of Auction Officials in executing IPR following the Constitutional Court's decision, the establishment of a credible independent appraisal institution, and the preparation of standard procedures that accommodate the nature of intangible assets in order to provide legal certainty for creditors and encourage the monetization of creative economy assets.

3.2. The authority of the Auction Officer in carrying out the auction execution for Fiduciary Guarantee objects in the form of Copyrights which are intangible and not physically controlled.

An analysis of the Auction Officer's authority in executing the auction of the Fiduciary Guarantee object in the form of Copyright, an intangible asset not physically controlled by the state, shows a tug-of-war between formal legal legitimacy and the complexity of the substance of intellectual property assets. The Auction Officer plays a central role as a state apparatus that ensures the realization of creditors' rights through an open market mechanism, but this role is very limited by the unique characteristics of the collateral object that is the object of its execution.

A. Legal Basis for the Authority of Auction Officials in Executing Fiduciary Guarantees

The Auction Officer's authority to execute auctions for Fiduciary Guarantee objects is firmly rooted in Indonesia's positive legal system, which aims to provide certainty for creditors. The primary legal basis lies in Law Number 42 of 1999 concerning Fiduciary Guarantees (UUJF).[10]Article 29 paragraph (1) of the UUJF gives the fiduciary recipient the right to sell the collateral object through a public auction if the debtor defaults, confirming the principle of parate executie, namely execution without requiring a prior court decision.

Although the principle of parate executie grants autonomy to creditors, the Auction Officer remains the central actor in ensuring the sale process is legitimate, transparent, and legally binding for the public. This public attribution authority is clarified in technical regulations, such as Minister of Finance

[10]Law Number 42 of 1999 concerning Fiduciary Guarantees, Article 14 and Article 29 paragraph (1).

Regulation (PMK) Number 213/PMK.06/2020.[11]which establishes the Auction Officer as a civil servant within the Directorate General of State Assets who is mandated to lead the implementation of open auctions.

Copyright, as part of IPR, is explicitly recognized as being able to be used as an object of fiduciary guarantee through Article 16 paragraph (2) of Law Number 28 of 2014 concerning Copyright. Consequently, the Auction Officer has a legal basis to process the execution of Copyright provided that all formal requirements for fiduciary encumbrance have been fulfilled, including registration of Fiduciary Guarantee at the Fiduciary Registration Office.[12]

B. Legal Challenges in the Implementation of Copyright Auctions

Auctioning copyright presents complex legal challenges due to its intangible nature and lack of physical control. Unlike tangible assets, auction mechanisms must rely entirely on valid legal documents, such as a registered Fiduciary Guarantee Deed and a price ceiling established by an independent appraisal.

The biggest normative challenge is the lack of clarity regarding the detailed procedures for the execution of intangible assets under both the UUJF and the Copyright Law. This forces Auction Officials to carefully interpret the law to avoid formal flaws in the process, particularly since Copyright is subject to the principle of constitutum possessorium, where physical control remains with the debtor.[13]

Another substantial obstacle is economic valuation. Copyright values are highly dynamic and subjective, unlike physical assets. Auctioneers rely on appraisals, but they remain legally responsible for auction results deemed unfair, creating legal uncertainty that could lead to civil lawsuits from debtors.

Procedurally, auctions are also influenced by the Constitutional Court's (MK) ruling, which limits parate executie. The Constitutional Court emphasized that execution without a trial is only valid if there is agreement and no objection from the fiduciary. This requires the Auction Officer to carefully verify the debtor's objection status before conducting the auction.[14]

Administrative challenges include the lack of integrated inter-agency coordination between financing institutions, the Fiduciary Registration Office, and the Directorate General of Intellectual Property (DJKI), which slows down the

[11]Regulation of the Minister of Finance of the Republic of Indonesia Number 27/PMK.06/2016 concerning Guidelines for the Implementation of Auctions of State-Owned Goods, Article 5
[12]Financial Services Authority, 2020, Guidelines for the Use of Intellectual Property as Credit Collateral, OJK, Jakarta, p. 12
[13]Andi Hamzah, 2015, Fiduciary Guarantee Law in Indonesia, Raja Grafindo Persada, Jakarta, p. 122
[14]Barda Nawawi Arief, 2019, Kencana Criminal Law Policy Anthology, Jakarta, p. 145

process of recording the transfer of auction rights and potentially reduces the economic value of auctioned assets.[15]

C. Legal Analysis of the Limitations and Responsibilities of Auction Officials

Legally, the Auction Officer's authority is limited to the formal-administrative realm. The Auction Officer does not have substantive authority to assess the validity of fiduciary agreements or disputes over copyright ownership. Their duty is to conduct public sales based on valid documents, as stipulated in the Minister of Finance Regulation governing auctions.[16]

The Auction Officer's responsibilities are both administrative and legal. Administratively, they are responsible for procedural accuracy, including the obligation to publicly announce the auction in accordance with the principle of transparency, and may be subject to sanctions for violations of operational provisions. Under civil law, they can be held liable if proven negligent in verifying the validity of the formal documents serving as the basis for execution.

A crucial responsibility inherent in copyright enforcement is the protection of the creator's moral rights. The Auctioneer is obligated to ensure that only economic rights are transferred through the auction, while the creator's moral rights (such as the right to attribution of the name) remain intact and are not infringed. Failure to do so could lead to legal action.

In addition, the Auction Officer must ensure that the Copyright being auctioned has been legally registered as a fiduciary object in accordance with Article 14 of the UUJF. He is not authorized to execute Copyright that is not registered as a fiduciary guarantee, so that checking the registration documents from the DJKI and the fiduciary certificate is part of the prudence principle that must be implemented.[17]

The Auction Officer's authority in executing Copyright auctions is supported by a strong legal framework to guarantee creditors' rights, but its implementation is severely hampered by the intangible nature of the objects, valuation challenges, and procedural limitations following the Constitutional Court's ruling on parate executie. The Auction Officer's professionalism and integrity, which prioritize the principles of legality and accountability, are key to navigating this complexity while protecting the fundamental rights of creators.

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[15]Romli Atmasasmita, 2016, Principles and Theories of Criminal Law and its Development, Refika Aditama, Bandung, p. 214
[16]R. Subekti, 2001, Contract Law, Intermasa, Jakarta, p. 88
[17]Philipus M. Hadjon, 2008, Introduction to Indonesian Administrative Law, Gadjah Mada University Press, Yogyakarta, p. 94

4. Conclusion

Although the Indonesian legal framework has provided an adequate normative basis for making Intellectual Property Rights (IPR) an object of Fiduciary Guarantee based on the recognition of IPR as an intangible movable object in Law No. 42 of 1999 and Law No. 28 of 2014, legal certainty in its execution mechanism is still not optimal due to technical ambiguity regarding asset valuation and the lack of alignment of administrative procedures for the transfer of rights, especially in separating economic rights from inherent Moral Rights. Auction Officials have the legal formal administrative authority to carry out public auctions based on the UUJF and related auction regulations, but this authority is legally limited to the realm of formal execution, not including determining the substance of the validity of fiduciary agreements or the fate of the creator's Moral Rights. Therefore, to increase effectiveness and provide better legal certainty for all parties, it is recommended that the Government immediately establish a Special IPR Valuation Institution authorized to provide objective asset values, while harmonizing more detailed technical and procedural regulations between the Fiduciary Guarantee Law, the Copyright Law, and auction regulations, especially to emphasize the administrative procedures for recording the transfer of economic rights after the auction.

5. References

Journals:

Agustiantoa, dkk. 2023. Upaya Eksekusi Objek Jaminan Fidusia Berupa Hak Cipta dalam Skema Pembiayaan Berbasis Kekayaan Intelektual. *Jurnal Hukum Respublica Fakultas Hukum Universitas Lancang Kuning*, Vol. 23 No. 1. https://doi.org/10.31849/respublica.v23i01.17059.

Ibrahim, Muhammad Yusuf. 2020. Penilai Agunan Hak Cipta dalam Perbankan di Indonesia. Cermin: Jurnal Penelitian, Vol. 4 No. 1, 202–216. https://doi.org/10.36841/cermin_unars.v4i1.601.

Kurnianingrum, Trias Palupi. 2017. Hak Kekayaan Intelektual sebagai Jaminan Kredit Perbankan (Intellectual Property as Banking Credit Guarantee*). Negara Hukum*, Vol. 8 No. 1, 32.

Mayanan, Ranti Fauza, dkk. 2022. Skema Pembiayaan Berbasis Kekayaan Intelektual: Peluang, Tantangan dan Solusi Potensial Terkait Implementasinya. Das Sollen, Vol. 1 No. 1, 10.

Ramadhan, Ksatria Dwi Putra. 2025. Efektivitas Hak Kekayaan Intelektual (HKI) sebagai Jaminan Fidusia dan Eksekusi melalui Lelang. *Jurnal Hukum dan Kewarganegaraan*, Vol. 15 No. 10, 15.

Santoso, Tasa Gina. 2024. Analisa Hukum atas Pengaturan Aset Hak Kekayaan Intelektual sebagai Objek Jaminan Fidusia. *Journal of Intellectual Property (JIPRO*), Vol. 7 No. 1, 41.

Setiawan, Taryan. 2021. Konsep Hak Cipta sebagai Jaminan Fidusia Menurut Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dan Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia dalam Rangka Mewujudkan Kepastian Hukum. *Jurnal Hukum Media Justitia Nusantara*, Vol. 8 No. 1, 52.

Atikah, Ika. 2019. Hak Cipta sebagai Collateral dalam Jaminan Fidusia. *Al Ahkam*, Vol. 15 No. 1, June 2019. http://dx.doi.org/10.32678/ajh.v15i1.1894.

Books:

Arief, Barda Nawawi. (2019). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana.

Atmasasmita, Romli. (2016). *Asas dan Teori Hukum Pidana dan Perkembangannya*. Bandung: Refika Aditama.

Hamzah, Andi. (2015). *Hukum Jaminan Fidusia di Indonesia*. Jakarta: Raja Grafindo Persada.

Hadjon, Philipus M. (2008). *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gadjah Mada University Press.

Marzuki, Peter Mahmud. (2010). *Penelitian Hukum*. Jakarta: Kencana.

Subekti, R. (2001). *Hukum Perjanjian*. Jakarta: Intermasa.