

Regulation of Copyright Certificate as a Material Guarantee and Bankrupt Estate/Beodel in Indonesia

AJRI



Author Notification
04 May 2020
Final Revised
04 May 2020
Published
06 May 2020

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To cite this document:

Sri Kusuma Dewi, N. L., Dewi, P. E., & Sari, N. P. R. (2020). Regulation of Copyright Certificate as a Material Guarantee and Bankrupt Estate/Beodel in Indonesia. ADI Journal on Recent Innovation (AJRI), 2(2), 290-303.

DOI :

<https://doi.org/10.34306/ajri.v2i2.76>

Hash :

vpa-MyDNtXoEbgMtSfgwrHDcJxffcLkqjzXkW60XjuQ=

Abstract

The existence of copyright as one type of intangible objects (intangible) in the development of the business and economic world is used as guarantee assets in banking and general confiscation of debtor assets declared bankrupt. The use of copyright then creates problems in its application both in terms of regulation and how to interpret the value of the copyright. This study uses a type of library research with the approach of legislation and legal comparison. The results of this study indicate that copyright can be used as an object of collateral in guaranteeing debtor debt through the imposition of fiduciary collateral but there are obstacles in realizing it both in terms of regulations and the approach used in interpreting its value. There is also a vagueness of norms related to copyright regulation as an object that can be used as a bankruptcy in the Bankruptcy and Debt Delay Obligation Act so that justice, benefit and legal certainty cannot be realized in settling debts through bankruptcy institutions.

Keywords: Copyright, Collateral, Debtor's Asset, Bankruptcy.

I. INTRODUCTION

The development of the business and economic world brings interesting dynamics in its journey. One of the important issues of the increasingly creative pace of the economy is the need to provide funds by the banks. Funds or capital is an absolute thing in the development of the business world, bank services in lending are the lifeblood of business people (Djuhaendah Hasan, 1996) This is certainly in line with the function of the bank whereas collecting funds from the public as well as credit and financing institutions as regulated in Article 6 letter b of the Law of the Republic of Indonesia Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking

Banks in providing funds to borrowers of funds or commonly referred to as debtors will usually conduct an analysis of lending. The aim is to minimize bad credit due to the inability of debtors to pay their obligations. Banks in providing credit generally will demand the debtor to provide a collateral. Collateral guarantees in essence to provide a guarantee of repayment of debtor debts that are promised or declared bankrupt. With the guarantee of lending, it will provide good protection for creditors that their credit will continue to return even if the debtor defaults, by executing collateral on the credit of the bank concerned.

Relating to collateral can be in the form of goods (objects) so that it is a guarantee of material and or in the form of a promise to hold debt so that it is guaranteed by individuals (Rachmadi Usman, 2016). Specifically, this research will be focused on material guarantees. One of the most recent developments is that debtors provide guarantees in the criteria for Intellectual Property Rights (IPR) which are conceptually categories of objects. It is interesting when determining what type of imposition can be placed in IPR and how the analysis mechanism used by banks to interpret the amount of credit and how the mechanism of execution when the debtor is liable for failing to pay his credit.

In this study, we looked at the two bases regarding IPR, especially copyright, as a guarantee of assets for the provision of bank credit and copyrights that are commonly confiscated from bankrupt debtor assets. Of course this is highly correlated because between the possibilities juridically, copyright is guaranteed as asset and copyright is used as a bankrupt debtor asset, both of them arise from the same paradigm.

Insolvencies or bankruptcy is a condition that can happen to anyone, both individuals and legal entities. In the development of the business world even a millionaire and a multinational company did not escape the state of bankruptcy. Charles J Tabb stated "Bankruptcy has become a feature in our society, touching the lives of almost everyone" (Charles J. Tabb, 1995). Bankruptcy has become an inseparable part of society and touches various lines in people's lives.

Generally, bankruptcy has an important meaning as a tool that has been provided by law to settle accounts payable between debtors and their creditors (Sunarmi, 2017). Bankruptcy is also interpreted as a joint effort to get payments for all people in fair debt (Subekti, 2001). According to Jerrr, bankruptcy is a common confiscation of "bankruptcy is general statutory attachment encompassing all assets of the debtor" (Jerry Hoff, 1999). General confiscation referred to here to all debtor assets that have been declared bankrupt by the court. Article 21 of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment

Obligations determine the general seizure in bankruptcy covering all the assets of the Debtor at the time the bankruptcy decision is pronounced as well as everything obtained during bankruptcy.

In the context of Indonesian's Law, bankruptcy was made as an executor of Article 1311, whereas regulating debtor assets both movable and immovable property, both those that have existed and those that will still exist in the future is a guarantee of all the agreements. Looking at the provisions of the debtor's assets are not only limited to assets in the form of fixed goods. Including tangible and intangible goods as well as movable and immovable property which are in the possession of others, the debtor has rights (Adrian Sutedi, 2009).

Generally, when talking about bankruptcy by the commercial court, it will result in the loss of the right of the debtor to manage and control the assets including bankruptcy or bankrupt estate/*boedel* bankruptcy assets from the day the bankruptcy decision is pronounced. It must also be observed that the decision of the bankrupt debtor does not mean that the debtor will lose all his rights to the rights (*volkomen handelingsbevoegdheid*). Bankrupt debtors only lose their rights to manage and control their wealth. Likewise, those which include bankrupt estate/*boedel* bankruptcy under general seizure apply for anyone, not only for certain parties.

Regarding the dynamics of debtor property, it will be closely related to objects as an inseparable entity. The object (*Zaak*) in the perspective of Article 499 of the Civil Code is stated as follows "According to the understanding of the law, the material is the object of each property and right, which can be controlled by property rights". Based on these provisions, the meaning of goods which are *goed* or rights (*recht*) insofar as the object of ownership can be controlled by legal subjects. In this level the understanding of objects is not only limited to tangible objects called goods but also includes objects that are intangible or *stature* that can be in the form of rights (Rachmadi Usman, 2018: 49). Thus in the perspective of civil law other than the tangible items (*sache*) also recognize goods that are part of assets (*vermogens bestanddeel*) which are part of assets that have economic value (Rachmadi Usman, 2008).

Objects are divided into two, i.e. tangible and intangible objects. If it's traced further in the classification of intangible objects, Intellectual Property Rights (hereinafter referred to as IPR) are one type. Intellectual property rights are material rights, rights to something that comes from the work of the brain as a result of work ratio, the results of reasoning human work (Mahadi, 1998) and the results of this work can be intangible. Classification of IPR into property is because IPR has the properties of material rights and can be owned in absolute terms (multi rights) with the main characteristics of these rights can be sold, licensed and others like any other material rights. The point is that these rights can be transferred to ownership based on valid reasons justified by legislation (Dadan Samsudin, 2016).

Alongside with the development of the global market, IPR in its capacity can be used as collateral to obtain bank credit. If IPR can be used as the same logical collateral, it can also be used as a bankrupt debtor's asset for repaying debt to its creditors. This is of course based on 2 (two) logical reasons. First, IPR has material properties and is part of wealth, which in the legal sense is everything that belongs to property and gives direct and defensible power from everyone, both IPRs basically a material asset that has a high economic value (commercial value). Based on the reasons above, IPR fulfills the elements as stipulated in Article 21 of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

IPR in Indonesia is divided into two categories, i.e. Copyright and Industrial Property which consist of patent brands, integrated circuit industrial designs and plant varieties. Especially in this scientific paper will be studied regarding the copyright certificate in its existence and its probability as a debtor asset that can be sold. This is quite interesting because in Indonesian

law against bankrupt debtor assets in the category of copyright certificates, the practice has not been carried out by public prosecutors because the regulation has not yet been embodied in how the mechanism is implemented and how to interpret the value of the copyright certificate. Moving on from this background the author is interested in studying more deeply about "Regulation of Copyright Certificates As a Material Guarantee and Bankrupt Estate/*Boedel* in Indonesia.

II. LITERATURE REVIEW

Regarding the development of Indonesian Regulation, Copyright was regulated on some regulation starting from Law No. 6 of 1982 about Copyright, Law No. 7 of 1987 about Copyright, Law No. 12 of 1997 about Copyright, and Law No. 19 of 2002 about Copyright. The existence of this regulation was a response of the Indonesian Government regarding the importance of copyright protection in the development of industry and trading. Even more to face the rapid of free competition. Now the copyright matter was regulated on Law No. 28 of 2014 about Copyright. Replacement of Law No. 19 of 2002 about Copyright to Law No. 28 of 2014 is carried out by prioritizing national interests and taking into account the balance between the interests of the Creator, the Copyright Holder, or the owner of Related Rights, with the community and observing the provisions in international agreements in the field of Copyright and Related Rights.

The development of science, technology, art, and literature, has been so rapid that it requires increased protection and guarantee of legal certainty for the creator, holder of copyright, and the owner of related rights. In international conventions, the issue of protecting copyright has often been discussed. This can be seen from the organization *Berne Convention for the Protection of Artistic and Literary Works* and *World Intellectual Property Organization Copyright Treaty*, which later became the basis for the formation of laws and regulations regarding copyright protection in Indonesia.

Copyright has an economic value and also a moral value that is inherent in the creation and creator. The economic value contained in copyright makes copyright can be categorized as a person's valuable assets and can be used as collateral or traded. Because it is a valuable asset, even in the bankruptcy system, copyright is also included in bankrupt assets.

In Indonesia, bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Delay of Postponement of Debt Payment Obligations. According to the Bankruptcy Act is the general seizure of all the assets of a bankrupt debtor whose management and execution is carried out by the curator under the supervision of the Supervisory Judge as stipulated in the bankruptcy law. This bankruptcy law institution is expected to provide justice and legal certainty for both creditors and debtors who have a debt problem. Gregory Germain (Gregory Germain, 2016) explains related to the bankruptcy system as follows:

"The bankruptcy system is designed to pick up where state law leaves off by providing for orderly collective creditor action, providing for the discharge of debts that are not paid through the bankruptcy process, and addressing the holdout problem by facilitating orderly and fair reorganization proceedings."

Creditors do not always get the maximum amount of payment by simply liquidating the bankruptcy loan (*boedel*). Usually, when the debtor is declared bankrupt, there are no debtor assets that can be executed to pay the loan, because the debtor has no assets or the assets can't be appraised due to limitations of regulation. This condition is known as *commonpool*,

which is a condition where the creditor bills accumulate and can not be paid out of bankrupt assets, because the debtor loan is higher than the value of assets.

Creditor's bargain theory born as the answer to the *common pool* issues that is resulted from the unfairness of the creditor's priority rights or (*debt-collective system*). Creditor's priority rights were adapted based on the principle *who gets what from a bankrupt debtor* and it was an implementation of distributive fairness (*suum cuique tribuere*). Jackson asses that this system only prospers the creditor that aggressively acts to execute their rights from the debtor's assets. (Kenneth M. Ayotte dan David A. Skeel Jr, 2013).

Thomas H. Jackson (1982) on his writings regarding *creditor's bargain* on bankruptcy mentioned that:

"Bankruptcy, at first glance, may be thought of as a procedure geared principally toward relieving an overburdened debtor from "oppressive" debt. Yet this discharge-centered view of bankruptcy is correct neither from an historical perspective nor from a realistic appraisal of the presence and operation of most of the provisions in the federal bankruptcy laws over the years. For although discharge of the debtor (and such related issues as "exemptions" that enable an individual debtor to keep assets out of the bankruptcy pool) may well be the motivating cause of a majority of bankruptcy cases, most of the bankruptcy process is in fact concerned with creditor-distribution questions. Assets are marshalled so that they can be allocated among those holding claims against the debtor or the debtor's property. Claims are determined so that participants in the allocation process may be assembled. And the rules governing priorities determine who, among the claimants, will get what and in what order. Although the Bankruptcy Code specifies some of these priority rules, the claimants who fare best in the bankruptcy process hold special entitlements under applicable non- bankruptcy law. The priorities enunciated in the Bankruptcy Code itself deal largely with the allocation of rights among persons not entitled to preferential treatment outside of bankruptcy".

Thomas H. Jackson and Robert E. Scott (1989) explained that: *"finance theorists have long recognized that bankruptcy is a key component in any general theory of the capital structure of business entities. Legal Theorists have been similarly sensitive to the substantial allocational and distributional effects of the bankruptcy law.*

III. METHOD

The research method which is used in this writing was *library research* that used statute approach and comparative legal approach. Terry Hutchinson explained regarding statute approach as follows : (2002) .

if you know the name of one Act, then you should be able to use this piece of information to locate :

- *An updated version of the Act and any amendments through the annotations;*
 - *Cases discussing the legislation through the annotations and encyclopedias.*
- you will be using existing knowledge to link to further information relevant to your subject.*

Regarding Henry Campbell Black (1991) that *Comparative Jurisprudence* is *"The study of The principles of legal science by the comparison of various systems of law"*. This approach was to *"finding out what the law is in other countries, and considering whether it can be adapted with or without modifications to lead to law reforms or development of law"*. (S K

Verma and M Afzal Wani: 2001).

IV. RESULT AND DISCUSSION

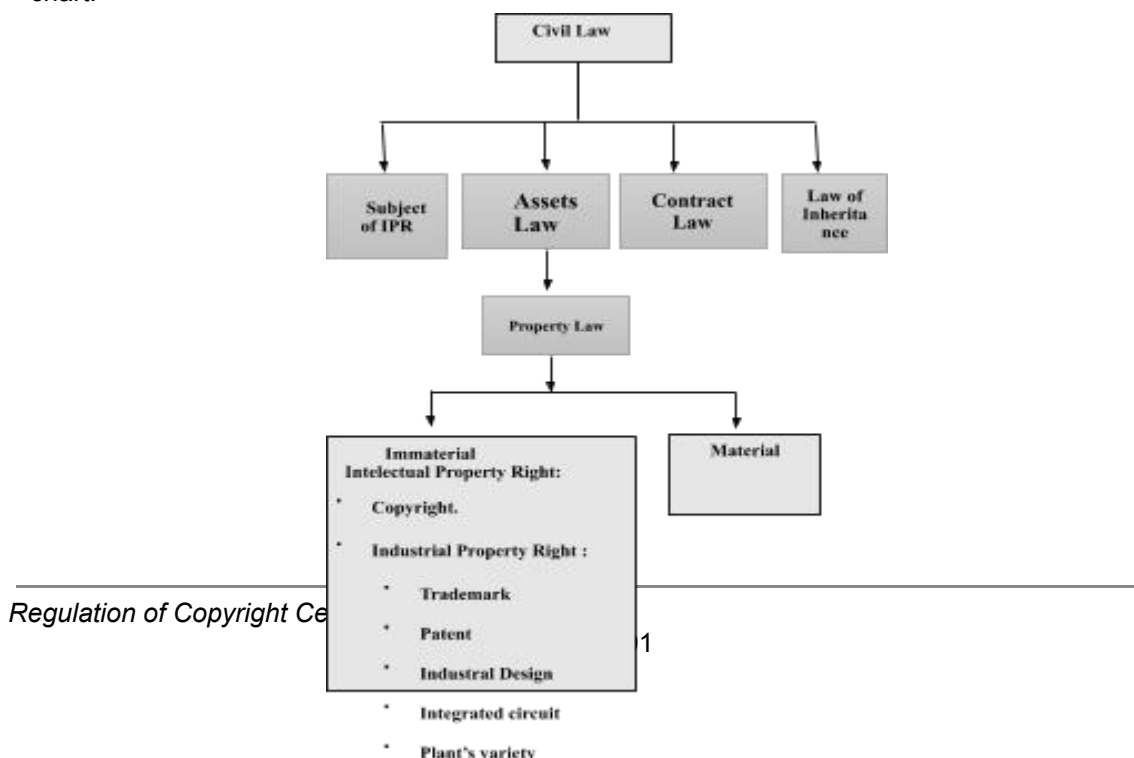
The Existence of Copyright as a Material Guarantee in a Guaranteed Legal System in Indonesia

Intellectual Property Rights are rights derived from creative results, which comes from the ability of human thinking power that is appreciated in sharing forms of work, useful, and useful to support human life and have economic value. (O.K. Saidin, 2015) According to World Intellectual Property Organization Journal:

“Intellectual property describes a variety of legal rights that enable their owners to protect in different ways various intangibles, such as ideas and inventions, data and creative expressions, names and commercial reputations”.(WIPO Arbitration and Mediation Centre , 2012)

The concept of the right protection of the intellectual property arose initially from the concept and western legal system, where IPR protection was designed to give a protection to individual rights, so that it resulted in a conflict with the legal concept in Indonesia which still put forward the concept of communal ownership where IPR was a joint work. The entry of the concept of protection of IPR in Indonesia due to the ratification of the International Agreements in the field of Intellectual Property Rights. As a result, the Indonesian legal system is obliged to harmonize and harmonize the arrangements and implementation of Intellectual Property Rights with the standards set out in the International Intellectual Property Rights agreement specifically in the TRIPS Agreement.

The TRIPS Agreement specifically in Articles 3 and 4 stated that the General Agreement Trade and Tariff-GATT / Basic Principle which must be transformed into the national legal system for WTO member countries. Intellectual Property Rights can be divided into two types, such as Copyright and Industrial Property Rights, where in civil law Intellectual Property Rights fall into the category of Law of Objects. As for these things can be described in the following chart:



Copyright as stated in Article 1 number 1 of Law No. 28 of 2014 concerning Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of the legislation. As stipulated in Article 499 of the Civil Code that, "According to the Law, objects (*zaken*) are every item (*goederen*) and every right (*rechten*) that can be an object of ownership". Furthermore, it is also regulated that objects are divided into several classifications, including:

- a. tangible goods (*lichamelijk*) and intangible goods (*onlichamelijk*) are regulated in Article 503 of the Civil Code;
- b. movable goods and immovable goods are regulated in Article 504 of the Civil Code;
- c. goods that can be used up (*vebruikbaar*) and goods that cannot be used up (*onvebruikbaar*) are regulated in Article 505 of the Civil Code;
- d. existing goods (*tegenwoordige zaken*) and items that will still be available in the future (*toekomstige zaken*); and so on (Sri Soedewi, Masjchoen Sofwan, 1981).

If we look at the definition of moving objects according to their nature, moving objects are defined as material that can be moved or moved. As regulated in Article 16 paragraph (1) of Law No. 28 of 2014 concerning Copyright that, copyright is a difference between intangible moves. Furthermore, in Article 16 paragraph (2) the Copyright Act also states that copyright can be transferred or transferred either in whole or in part by several methods including: inheritance, grants, endowments, wills, written agreements, or other reasons justified by statutory regulations-invitation. On that basis, in copyright there is the concept of ownership rights, where the ownership rights have a period as stipulated in the Act (Sopnar Maru Hutagalung, 2012).

Copyright consists of moral rights and economic rights. Moral rights are rights inherent in the creator of his creation as regulated in Article 5 of Law No. 28 of 2014, while economic rights are the rights of the creator or copyright holder to obtain economic benefits from the results of his creation. The existence of economic rights in copyright certainly gives an important meaning that this is a form of appreciation to the creator given by the state so that it can support and bring financial benefits to a creator for the work that he produces. Economic rights have properties that can be transferred or transferred to other people, so that other people as recipients of rights also get economic benefits (Sri Mulyani, 2012), not only providing financial benefits to the creator. One of the financial benefits obtained by the creator or copyright holder of the existence of copyright, such as copyright, can be used as an object of fiduciary security as regulated in Article 16 paragraph (3) of the Copyright Act.

Speaking of guarantees, it can be defined that guarantee law is a legal provision that regulates the legal relationship between the giver of the guarantee (the debtor) and the recipient of the guarantee (creditor) as a result of a certain debt (credit) with a guarantee (in the form of goods or certain people) (Rachmadi Usman, 2016). Based on these definitions, the guarantee can be divided into 2 types, namely material guarantees and individual guarantees. In the world of banking, the term guarantee differs from understanding to collateral. The word guarantee is a translation of the term *zekerheid* or *cautie*, which means the ability of the debtor to repay his debt to creditors is done by holding certain objects of economic value as a liability for loans or debts received by the debtor from his creditor (Rachmadi Usman, 2016). While the word collateral as stipulated in Article 1 Number 23 of Law No. 10 of 1998 is an additional guarantee submitted by debtor customers to banks in the context of providing credit facilities or financing based on sharia principles. The existence of guarantee law basically as a form of legal certainty for creditors to ensure that he gets a repayment of the credit that has been given to the debtor.

As regulated in the laws and regulations in Indonesia there are various forms of guarantee institutions, especially material guarantees, one of which is fiduciary guarantees. Fiduciary guarantees are guaranteed rights for movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be burdened with mortgages, which remain in the control of the fiduciary giver, as collateral for certain debt repayments that give priority to fiduciary recipients towards other creditors (Article 1 number 2 of Act No. 42 of 1999 concerning Fiduciary Guarantees).

Therefore, we can observe that objects that are objects in fiduciary collateral are: movable objects that are tangible; immovable moving objects; registered moving objects; unregistered movable objects; certain immovable objects that cannot be burdened with mortgages; certain immovable objects that cannot be burdened with mortgages; the object must be owned and transferred (Rachmadi Usman, 2016)

Based on provisions regulated in Article 16 paragraph (1) as mentioned above related to copyright qualifications classified as intangible moving objects, they have fulfilled the requirements to be charged with fiduciary collateral. However, regarding the imposition of fiduciary guarantees on copyright in guarantees, especially in the banking sector in Indonesia, there are various obstacles in it. The constraints include:

1. Difficulties in assessment and the absence of regulations regarding the valuation of the value of intellectual property rights as objects of bank guarantees in Indonesia.

Based on Article 16 paragraph (3) and (4) relating to the regulation of copyright as an object of fiduciary guarantee carried out in accordance with the provisions of the laws and regulations. In this case the Law regulating fiduciary is Law No. 42 of 1999 concerning

Fiduciary Guarantees. Although it has been regulated in terms of objects as objects of fiduciary collateral, it can be in the form of tangible and intangible objects, registered or unregistered objects, but implementively this is still a debate because in the banking world the provisions in current legislation still do not provide guarantees certainty to move Copyright as an object of fiduciary collateral in the banking guarantee system in Indonesia.

This is because copyright which is an intangible object must be assessed in advance to be able to be determined or it cannot be used as collateral. The problem in Indonesia is that there is no institution that specifically has the authority to assess the value of a Copyright. Then related to the assessment guidelines of the Copyright value there is still a vacuum of norms so that there is no reference that can be used in conducting the assessment.

Principally, there are two criteria for objects that can be used as collateral, i.e. marketable and secured. Marketable means that the object used as collateral is easy to sell or cashed in order to pay off all debts paid; while secured means that the guarantee concerned can be tied in a formal juridical manner in accordance with the applicable regulations, so that if the debtor defaults, the bank has the legal power to execute (Irma Devita Purnama Sari, 2012) Determining the economic value of a work can be seen from several approaches, such as market approach, income approach, and cost approach. (Lutfi Ulinuha, 2017)

In comparisons with other countries, for example the United States, Singapore, Thailand and South Korea, they have implemented Intellectual Property Rights, one of it is Copyright as a Guarantee Object. Regarding the valuation of Intellectual Property Rights in South Korea, Denmark and the United Kingdom, they weren't form new institutions authorized to carry out valuations of Intellectual Property Rights, but the appraisal tasks are carried out

by existing intellectual property offices. Meanwhile in Australia and Singapore, a new institution was established which was tasked with valuing Intellectual Property Rights. Australia formed The Australian Valuation Office (AVO) under the Australian Taxation Center, while Singapore formed the Intellectual Property Value Lab (IPVL) which was established as a subsidiary of IPOS. Then the United States has a different way of working with professional appraisals in the field of Intellectual Property Rights through the American Society of Appraisers (ASA). (Trias Palupi Kurnianingrum, 2017)

Indeed, Indonesia can choose to adopt one of them in the context of valuing Intellectual Property Rights, especially Copyrights, because both combining it with the DJKI or forming a new institution or cooperating with professional appraisals are very open opportunities for how the government regulates regulations from the provisions of its laws.

1. Copyright may be the property of the Author or the Copyright Holder

Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a creation is manifested in a tangible form. The Copyright contained Moral Rights and Economic Rights. The Moral Rights are inherent in the creator and his creation, while the Copyright in the form of Economic Rights can be given to the Creator or the Copyright Holder in terms of obtaining economic benefits from his creation. In the case of the imposition of fiduciary guarantees on copyright, it is certainly borne by the economic rights of the copyright. therefore the possibility of being able to submit is not always the creator, it could be the other party as the copyright holder.

2. Declarative Principle of Copyright creates a Copyright that does not have a Creation Record

Intellectual Property Rights in this case are divided into two categories such as Copyright and Industrial Property Rights where each of these rights has different protection principles. Industrial Property Rights such as trademarks, patents, trade secrets, industrial designs, are given protection based on a constitutive principle or first to file system, which means who is the first registrant has the right to get protection for his rights. Unlike copyright which adheres to the principle of declarative or automatic protection which states that copyright protection is automatically granted to the party who first published the work rather than the one who registered it. The consequence of this is that registration or recording of work is not a mandatory thing to do. Recording carried out on a work is intended to obtain a preliminary proof of ownership of a work or related product rights by the creator, copyright holder or related product owner. While the state in this case will still provide copyright protection for the person who first published the creation.

Furthermore with the existence of a declarative protection system, the copyright of a work is registered and some are not, so not all copyrights have a copyright certificate or in the Copyright Act known as the Creation Registration Letter. The correlation with the binding of fiduciary guarantees is that principally, objects that become fiduciary collateral as mentioned above can be tangible and intangible objects, registered or unregistered objects which essentially fulfill economic value requirements so that they can be used to cover debt payments from debtors if insolvent. Although normatively there has been room for copyright as an intangible object that has either been registered or listed, but in the banking world, of course, which will provide more legal certainty, it is the copyright that has obtained a work registration letter because it has written evidence of ownership of the right. This is in line with the principle adopted in the guarantee law, namely the existence of a special principle which states that responsibility rights, fiduciary rights, and mortgages can only be charged to parcels or to items that have been registered in the name of a particular person (Salim HS, 2011).

Collateral Foreclose of Copyright Certificate as Bankruptcy Estate/*Boedel* in Indonesia's Bankruptcy Law

The role of bankruptcy institutions is basically very important to ensure that the parties, between debtors and creditors, get justice from the bankruptcy process. Bankruptcy according to Edward A. Haman (2005: 1) is a legal procedure that can be used by debtors to get out of debt and restart their business: "bankruptcy is a legal procedure that allows you to get out of positive debt and get a fresh start financially "Bankruptcy according to John Ventura (John Ventura, 2004) is a constitutional right:" bankruptcy is a constitutional right of protection against creditors. "Bankruptcy legal instruments are very important, namely as institutions that provide justice for the distribution of bankruptcy of debtors to their creditors and" fresh start "for debtors, namely as a financially new beginning for debtors who have no more ability to pay their debts to creditors. So bankruptcy is actually one way to resolve debt debt disputes.

Basically bankruptcy law is a legal field related to any field of law, including civil law and intellectual property rights law. The issue of material, for example, is regulated according to the Civil Law in force in Indonesia, as stated in Article 499 of the Civil Code, stating that what is meant by objects is each item and every right that can be controlled by property rights. The definition contained in article 499 of the Civil Code is an object in the real sense / material, while there are other types of objects, namely objects that are not real / immaterial / invisible, which are usually tangible rights. This is in accordance with the classification of objects according to article 503 of the Civil Code, namely the classification of objects into groups of tangible and intangible objects. Intangible objects which are usually types of rights, one of which is intellectual property rights.

The basic of bankruptcy law is not about the regulation of bankruptcy, but the basis of why the confiscation of property or assets of the bankrupt debtor. In the Indonesian context, Indonesian bankruptcy law was made as the implementation of Article 1131, Article 1132 of the Civil Code and Article 21 Bankruptcy and Delay of Postponement of Debt Payment Obligations. Article 1131 of the Civil Code determines that, "all the material owed, both movable and immovable, both existing and future, will be borne by all individual engagements". Intellectual Property Rights (IPR) as one type of object, related to bankruptcy processes, is one type of object that can be used as part of assets in the process of repaying debts' debts to creditors. Intangible Assets are part of bankrupt assets. Furthermore Article 1132 of the Civil Code determines that: "The material becomes a guarantee together for all those who represent it; the sales revenue of the objects is divided according to the balance, that is according to the size of the respective receivables, except if there are debts that are valid for precedence. " Article 1132 of the Civil Code determines a number of things in relation to accounts payable, namely:

- a. Material guarantees apply to all creditors;
- b. If the debtor does not carry out the obligations the material will be sold;
- c. Sales proceeds are shared with creditors based on the amount of the credit (balance principle or *ponds ponds gewijs*);
- d. There are creditors who are prioritized in obtaining their shares (preferred creditors and separatist creditors).

Article 21 of Bankruptcy and Delay of Postponement of Debt Payment Obligations Law stated that: "Bankruptcy covers the entire wealth of the debtor when the decision on bankruptcy statement is pronounced and everything obtained during bankruptcy". The provisions of Article 21 of the Bankruptcy and Delay of Postponement of Debt Payment Obligations Law are almost the same as the provisions of Article 1131 of the Civil Code, only the provisions of Article 1131 of the Civil Code are broader because they cover existing and future assets, whereas in Article 21 of the Bankruptcy and Delay of Postponement of Debt

Payment Obligations Law only cover the wealth when the decision is made.

General confiscation which covers the debtor's wealth which becomes bankrupt estate/*boedel* in bankruptcy is carried out by the Curator. In the bankruptcy process the Curator has a considerable role and is very important in the bankruptcy settlement process. In Article 15 paragraph (1) of Bankruptcy and Delay of Postponement of Debt Payment Obligations Law is stated: "In the decision of a bankruptcy statement, the Curator must be appointed and a Supervisory Judge appointed from the Court Judge". It shows that the position of the Curator is very strong in the bankruptcy settlement process in addition to the Supervisory Judge. Curators have quite a lot of roles and are very important, not only that Curators in bankruptcy processes have a strategic position. The strategic position of the Curator can be seen in the bankruptcy process of the company. In the bankruptcy of the company, the Curator is the same as the company's directors because the Curator replaces the position of the company's directors after the company was declared bankrupt (Bernard Nainggolan: 2015). Nevertheless the Curator cannot be arbitrary, because Bankruptcy and Delay of Postponement of Debt Payment Obligations Law strictly regulates the duties and authority of the Curator.

The curator has the primary duty to sell and bankrupt estate/*beodel* deposits. The meaning of the word "settlement" in the context of bankruptcy law based on Bankruptcy and Delay of Postponement of Debt Payment Obligations Law is to liquidate bankrupt assets. The curator in the bankruptcy process is based on the principle of cash is the king, where the Curator must liquidate bankrupt assets (in the sense of selling all bankrupt assets, to be later distributed to creditors in accordance with applicable regulations) (H. Eries Jonifianto and Andika Wijaya: 2018).

Generally, the authority of the Curator in selling the assets of bankrupt debtors includes the following (H. Eries Jonifianto and Andika Wijaya: 2018):

- a. Selling debtor assets whose results will be handed over to the authorities;
- b. Selling assets, because holding assets can cause losses;
- c. Sell debt collateral in the period of suspension of debt guarantee execution or after the suspension period
- d. Selling assets needed for business continuity.

The task of a curator in bankruptcy is spread in articles in Bankruptcy and Delay of Postponement of Debt Payment Obligations Law. But the most fundamental task of the curator and administrator, as stipulated in article 67 paragraph (1) of Bankruptcy and Delay of Postponement of Debt Payment Obligations Law, is to administer and deposit bankrupt assets. In carrying out this task the curator and management have one main vision, namely to make the best decision to maximize the value of bankrupt assets. Curators can maximize the use of IPR, especially copyright when bankruptcy is in several ways, such as:

1. At the management stage, so that the company continues to go (going concern), the Curator can use the copyright for the continuation of the company's business so that the bankrupt company (debtor) can run as usual;
2. The curator can license the copyright to a third party (either an exclusive or non-exclusive license) so that the bankrupt debtor will get a royalty that can be used to increase the value of the copyright.
3. At the settlement stage, the Curator can sell the copyright through the auction process, or if the failed auction can be done under the sale of the hand so that the debtor's assets can be cleared and distributed to the creditors from the bankrupt debtor

The problem that arises regarding copyright certificates as a *boedel* bankruptcy in bankruptcy law in Indonesia is not the establishment of copyright certificates as *boedel* bankruptcy but on the guarantee seizure (bankruptcy assets) that will be carried out by the

curator. The several problems can be described as follows:

1. Copyright as an Intangible Asset must be assessed first by a certified / certified Appraisal (appraiser). Later it will be known, what is the real value of certain types of IPR, taking into account the benefits to the Company and market value. The obstacles faced by curators in maximizing intellectual property rights, especially copyright during bankruptcy, among others, the first is that copyright is not sold. All debtor assets should be sold during the period of repayment and distributed to creditors without exception, but copyrights including bankruptcy boedel are difficult to sell because the protection is fully attached to the creator or the copyright holder. The copyright of the nature of protection is for life. Article 29 of the Copyright Act states that almost all types of copyright protection are valid for the life of the Creator and continue for up to 50 (fifty) years after the Author's death. From this point of view we can imagine how copyright protection is so inherent in the creator.
2. The copyright owned by the debtor is in dispute with a third party. This is considering and considering that all cases filed against bankrupt debtors since bankruptcy were dropped were declared null and void (article 29 of Bankruptcy and Delay of Postponement of Debt Payment Obligations Law), then it is not clear who is referred to as the legal owner of the copyright concerned. Copyrights which in such conditions certainly cannot be stated solely as bankrupt boedel. An exception is when the debtor acts as the plaintiff, the case will continue to be carried out pending the outcome of the court's decision.

Shortly, from the author that there is no seizure arrangement guaranteeing copyright certificates in bankruptcy law in Indonesia or the absence of norms related to this. The norm vacuum in confiscating copyright certificates in bankruptcy law in Indonesia is related to not being regulated in Bankruptcy and Delay of Postponement of Debt Payment Obligations Law regarding the procedures for confiscating guarantees in the form of copyright certificates and the absence of a certified Appraisal (appraisal) institution to assess economic value from a copyright. As explained in the previous discussion that Singapore has an institution called the Intellectual Property Office of Singapore (IPOS). IPOS is a legal entity that is under the Government of Singapore's Law Department, by developing business laws to support economic sectors that are driven by innovation, build IP skills and expertise, and encourage innovation and creativity for Singapore's future growth. In the official IPOS website, <https://www.ipos.gov.sg/AboutUs/WhatDoWeDo.aspx> is explained:

"The Intellectual Property Office of Singapore (IPOS) is a statutory board under the Ministry of Law. We develop the right legal regime and business ecosystem to support an innovation-driven economy, build IP skills and expertise, and foster innovation and creativity for Singapore's future growth. We deliver on our commitments through our core values of integrity, professionalism, teamwork and by investing in our greatest assets - our people."

IPOS regulates patents, trademarks, industrial designs, plant varieties and copyrights. Related to IPOS copyright regulates things that are protected and not protected by IPOS related to copyright. Regarding the copyright that was used as fiduciary collateral in Singapore, in practice, IPOS appointed three banks, UOB, OCBC, and DBS to distribute loans under copyright guarantee. After that, an intangible asset assessment company was appointed. IPOS then provides subsidies for valuation and underwriting fees.

From the explanation, it can be seen that the copyright which is Intangible Asset is part of bankruptcy that can support the debts of bankrupt debtors, so it is urgent to immediately regulate the procedures and procedures for confiscating bankruptcy debtors in the form of a copyright certificate in the upcoming Bankruptcy and Delay of Postponement of Debt Payment Obligations Law. In addition, it is important to establish an appraisal institution that can assess

copyright certificates so that legal certainty can be realized regarding the economic value of a copyright certificate included in bankruptcy.

V. CONCLUSION

Based on the disclosure as described above, conclusions can be drawn as follows:

1. Intellectual Property Rights, which is that the Copyright in this case can be used as an object of guarantee in guaranteeing debtor's debts which are carried out through imposition of fiduciary guarantees. The main obstacles faced in the context of realizing copyright as an object of fiduciary guarantee are in terms of appraisal and approaches used to estimate the value of the Copyright. This is due to the absence of regulations governing the assessment of Copyright as one of the objects that can be used as collateral for debt. Therefore, the Government should immediately form a regulation that is able to accommodate related to what approach and approach used in appraising the Copyright as an object of fiduciary collateral.
2. Copyrights are intangible objects that can be classified as intangible assets and used as collateral. But in this case there is a vagueness of norms related to the issue of the regulation of copyright as an object that can be used as a bankruptcy bankrupt estate/boedel in the Bankruptcy Act and Delay of Obligation to Pay Debt because it is not clearly stated that copyright can be included in bankrupt estate/boedel bankruptcy and the absence of related norms procedures and procedures on how to assess the copyright so that justice, benefit and legal certainty cannot be realized in the settlement of accounts payable through bankruptcy institutions.

VI. ACKNOWLEDGMENT

The authors gratefully acknowledge the financial support from Rector of Ngurah Rai University and Faculty of Law Ngurah Rai University.

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