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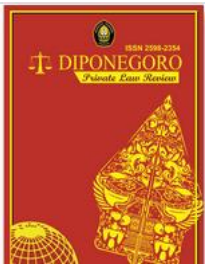

Copyright as an Object of Banking Guarantee (Comparative Study of Indonesia and Singapore)

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ABSTRACT

Copyright as an object of guarantee is stated in the 2014 UUHC No. 28 article 16 paragraph (3) that copyright can be used as an object of fiduciary guarantee. In practice, no bank has issued a regulation related to this. Through research with a statutory approach and comparing it with Singapore, the author finds that there are several gaps, where Singapore already has clear rules, specialized banks, valuation agencies and IP market agencies. Meanwhile, Indonesia is still constrained by the unpreparedness of banking institutions.

Keywords: Fiduciary, Collateral, Credit

INTRODUCTION

National Development is one of the goals of every country which includes economic, political, cultural, social, and defense aspects. This is also included as an effort to realize the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. This field is growing rapidly in the times, especially the 20th to 21st centuries, namely the field of creative economy. Through this field, every individual is motivated to produce creative work and generate economic benefits through his creativity.

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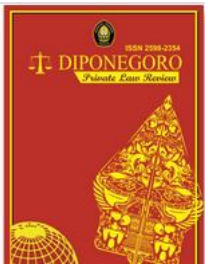

Part of the development of the creative economy sector is art as a place for individuals to work and express themselves. This relates to Intellectual Property (IP) as a right arising from the results of one's creativity economically. Simatupang in his research entitled "Choosing a Copyright Assessment Method in Evaluating a Fiduciary Guarantee Object in Indonesia" explained that intellectual property itself is produced through dedication or dedication given by covering energy, time, to costs given by its creator, so there is no doubt that the work of one's Intellectual Property is important to be given proper protection(Simatupang et al., 2021).

In essence, (IPR) is a special right from the state to the creator, inventor, or shaper of works with profit value and commercial value. In Intellectual Property, it is divided into two categories as its branches that get recognition from the law, namely Copyright and industrial property rights which include trademarks, industrial designs, integrated circuit layout designs, patents, trade secrets, and plant varieties.

Based on Article 1 paragraph 1 of Law No. 28 of 2014 concerning Copyright Law, it is explained that "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without prejudice to restrictions in accordance with the provisions of the regulations" which hereby, states that Copyright is a form of property rights for someone who has created the work and as a form of appreciation for the creator of the work In the form of appreciation for the benefits that have been created so that they can be used by all levels of society.

Basically, Copyright contains two inherent rights including moral rights and economic rights. Through moral rights, it means that the work that has been created will always be eternally attached and fixated on its creator, even if the work passes for another. Meanwhile, economic rights as profit-making rights for creators economically through permission given to other parties to reproduce or copy works, which means that these rights can transfer to others.

Currently, the development of copyright law has grown rapidly, from local to international levels, especially in the fields of information, economy, transportation, telecommunications, to law. Law is an important

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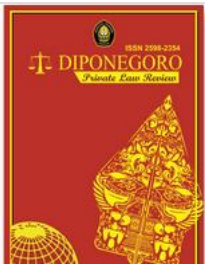

instrument, because through the provision of legal protection, copyright will be carried out efficiently as one of the components of IPR.

Due to the attachment of an Intellectual Property to the economic growth of a country, it is necessary to give proper appreciation and protection to intellectual works for their creators, in order to create a contributive and mutualism condition for creative and innovative actors as revealed by Banerjee in a study entitled "Optimal Enforcement And Anti-Copying Strategies To Counter Copyright Infringement"(Banerjee et al., 2008). Through awards and protection given to Intellectual Property through Copyright, it is expected to encourage the desire of actors in the creative economy industry to continue to work and produce increasingly productive creativity, then can increase the country's economic growth.

In Indonesia, Copyright is regulated based on Law No. 28 of 2014 discussing Copyright replacing the previous Law, namely Law No. 19 of 2002 based on the same purpose, namely to provide legal protection for the creator of a work. Thus, its development always refers to existing laws. Without Copyright, the economic rights and moral rights of creators are not fulfilled properly and may cause a decrease in motivation for individuals to create works and create, because there are no rules that protect each individual. With this, economic growth and welfare will also be affected, because there is no contribution from the creative economy. This proves the importance of Copyright as part of Intellectual Property Rights. Unfortunately, as concluded by Kurnianingrum in his research entitled "Intellectual Property Rights As Banking Credit Guarantee", clear and detailed implementing regulations regarding IPR as an object of banking credit guarantee in accordance with the provisions in the Copyright Law in Indonesia are not yet available(Palupi, Trias, 2017). In fact, based on the description above, by making Copyright as an object of banking guarantee, it will have great potential to encourage the creativity of creators so that they can realize economic progress.

Therefore, in this scientific article, we will try to further explore the position of copyright, its use as an object of guarantee, and future challenges. This article will compare the situation in Indonesia with

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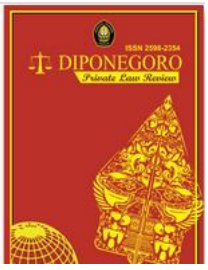

Singapore which is one of the countries that has succeeded in making intellectual property rights as an object of banking guarantees.

METHOD

In compiling this article, the author chose normative legal studies in determining the direction of research. The method taken through the review of legal regulations from all secondary data in the form of books, scientific journals, government publications, and internet searches, coupled with primary data that strengthens or bases research is the Copyright Law and other regulations(Taufani, n.d.). In addition, to support this writing, the author uses a type of statutory approach and compares the development of intellectual property rights, especially Copyright as an object of guarantee in Singapore. This is because the main focus in this study is to see the existence of the use of Copyright as an object of guarantee between Indonesia and Singapore.

RESULTS AND DISCUSSIONS

Comparison of the Position and Legal Basis of Copyright in Indonesia and Singapore

Since 2000, Indonesia has officially entered the era of Intellectual Property Rights (IPR). Marked by the political decision in Indonesia in 1994 to accept the General Agreement on Tariffs and Trade (GATT), the result of the Uruguay Round negotiations, namely the agreement on the establishment of the World Trade Organization (WTO). The Uruguay Round of Negotiations (GATT) resulted in several agreements on legal protection of intellectual property, including trade in counterfeit goods, in addition to the establishment of the World Trade Organization (WTO)(Prabandari, 2008).

Related to that, copyright is also a component contained in intellectual property law to take care of several creative works such as scientific works, works of art, drama, dance, songs, films, or cinematography. As mentioned in Article 12 of the Copyright Law No. 28 of 2014 for types of creative works that have been modified based on the

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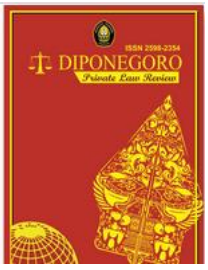

procedures of Article 40 of the Copyright Law No. 28 of 2014 (the so-called UUHC). All copyright protections have exclusions and restrictions on exclusive rights often referred to as "fair use." This principle means if one wants to take the work of others for teaching, research, and scientific work.

The position and legal basis of copyright in Indonesia and Singapore have several differences. Here is the comparison. Copyright Position In Indonesia, it is regulated in Law No. 28 of 2014 concerning Copyright, while in Singapore, copyright is regulated under the Copyright Law in Singapore. Meanwhile, in the country, copyright protects the embodiment of creations assembled by human creations that have economic value, such as books, music, films, and software. Similarly, in Singapore, copyright also protects these works and also protects works of art and sound recordings. In Indonesia, copyright is protected for the lifetime of the creator, added 70 years from the time the creator of the work dies. In Singapore, copyright is reserved for 70 years from the time the creator of the work dies or 70 years from the time of publication for corporate works.

In the case of fair use in Indonesia, works protected by copyright can be performed outside the permission of the copyright owner. However, it must still meet certain criteria. While in Singapore, fair use is also recognized, but the definition and criteria of fair use are different from those in Indonesia. Violations related to Copyright itself in Indonesia may be subject to criminal and civil sanctions. similarly in Singapore, copyright infringement can be subject to criminal penalties and can also be filed through civil proceedings. in the case of Dispute Resolution in Indonesia, dispute resolution regarding copyright can be pursued by mediation or through court. While in Singapore, copyright dispute resolution can also be done through mediation and court, but there is also a dispute resolution body called IPOS (Intellectual Property Office of Singapore) that can help resolve disputes effectively and efficiently.

Differences in Violation Detection In Indonesia, copyright enforcement is carried out by the Directorate of Copyright and Copyright Protection under the Ministry of Law and Human Rights, and also the Criminal Investigation Agency (Bareskrim) under the police. Whereas in Singapore, there are bodies like IPOS and the Singapore Copyright Board

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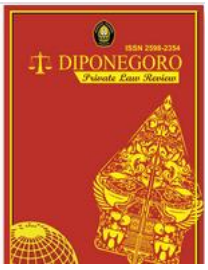

that are responsible for dealing with copyright issues and there are also private bodies that provide services to detect copyright infringement. Protection of Creative Works In Indonesia, creative works protected by copyright include written works, music, art, films, and so on. However, there are some types of creations that a person creates and do not get protected by copyright, such as ideas, concepts, and theories. While in Singapore, copyright protection covers original works that have been embodied in certain forms, including written works, music, art, film, design, and so on.

Copyright registration in Indonesia and Singapore is not mandatory, but it can provide benefits such as clear proof of ownership and facilitate copyright dispute resolution. Copyright Protection Online In Indonesia, there are provisions regarding online copyright based on Law No. 19 Th 2016 containing Amendments to the previous Law, namely Law No. 11 Th 2008 concerning Information and Electronic Transactions (ITE). While in Singapore, there are provisions regarding copyright in the network contained in the Copyright Law of Singapore.

Indonesia and Singapore are both involved in various agreements or international copyright protection, including the Bern Agreement on the Protection of Literary and Fine Arts Works, the WTO TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement, and other bilateral or multilateral trade agreements. This shows that both countries have a strong commitment to protecting copyright internationally. Copyright Law Enforcement in Indonesia, copyright law enforcement has been listed in the Copyright Law and carried out by the National Copyright Agency and the police. However, there are still obstacles related to efforts to enforce copyright laws in Indonesia, such as lack of compliance of industry players and weak judicial system. In Singapore, copyright law enforcement is enshrined under Singapore's Copyright Act and implemented by the Ministry of Law and the Ministry of Communications and Information Policy. Singapore also has a strong and effective judicial system in dealing with copyright infringement.

In Indonesia, in order to protect digital copyright, it is regulated in Law No. 19 Th 2016 concerning Amendments to Law No. 11 Th 2008

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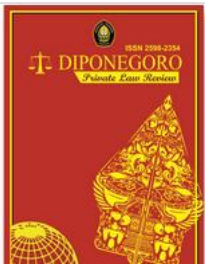

concerning Information and Electronic Transactions, which regulates legal action against piracy and digital copyright infringement. In Singapore, digital copyright protection is subject to Singapore's Copyright Act and includes measures such as restrictions on the use of technology that enables piracy, reporting and blocking copyright-infringing websites, and legal action against piracy and digital copyright infringement.

Comparison of the Use of Intellectual Property Rights (Copyright) as Collateral Objects in Indonesia and Singapore

Regarding copyright as collateral, if it is seen in its application in Singapore itself, the creator's creation in the form of IP can be used as collateral and debtors can get access to make loans from the bank. Singapore itself is also very responsive about everything related to economic improvement, especially related to everything that is not related to natural resources. Singapore has provided a large share of IP as collateral to banks (financial institutions), this is also considering that Singapore has many IP owners, such as patents, copyrights, and brands.

Then in Singapore itself regarding the regulation of Copyright there is already a law, namely Copyright which is under the Copyright Act 1995. The Singapore government itself is related to the provision of bank credit in accordance with guarantees with the object of IP and even initiated the creation of an IP financing framework, which at that time was implemented and ended on March 31, 2018, which aims to support companies that have IP assets based in Singapore, in order to grow and expand the economic value of these companies(Cheng, 2003).

The Singapore government is also ready to shoulder the risk of IP lending together with the Participating Financial Institution (PFI) to encourage financial institutions to accept IP assets as collateral to support the loan(Tsakalerou, 2017). While in Indonesia itself intellectual property is considered as an intangible object and has not maximized in utilizing the copyright. Copyright rights have been included as collateral in the law on copyright, but there are doubts that IP banks can be used as collateral. Then in Indonesia there is no banking regulation related to copyright as a banking guarantee.

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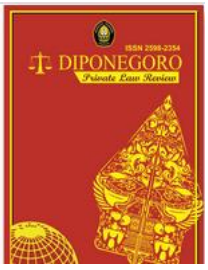

Then, the laws and regulations in Indonesia itself have not been fully created for IP (Copyright) which can be used as collateral in banking which includes:

a. Fiduciary Guarantee Law, Banking Law, Copyright Law which has not clearly regulated IP (Copyright) as collateral(Nurani et al., 2020).
b. Unavailability of provisions related to PBI & POJKKI (Right to Copyright) as collateral.
c. There is no provision regarding the assessment of IP (right to copyright) as a guarantee.

In practice, banks in Indonesia themselves have not been able to accept Intellectual Property / Copyright as credit or financing guarantees due to one thing, including: lack of certainty in valuation and risk management, banks in Indonesia themselves prioritize the principle of prudence because the Bank as a financial intermediary institution that manages all customer money, so it is at high risk if intellectual property is applied as a fiduciary guarantee And in the future there will be a default.

Originally, the guarantee was an effort to provide confidence to the bank regarding the ability and ability of the debtor in carrying out its obligations. In order to gain such trust, the bank must first conduct an assessment that also takes into account the principles of lending. Things that must be considered and become the main focus of banks in assessing collateral are in the form of valuation.

In regulations in Indonesia related to copyright as an object of guarantee has also been listed in the 2014 UUHC No. 28 where article 16 paragraph (3) states that copyright can be used as an object of fiduciary guarantee. However, in practice, no bank has issued a regulation related to IP as an object of guarantee.

Copyright protection is extended in accordance with the laws of each country. In some jurisdictions, the term of copyright protection is the lifetime of the creator plus 70 years after his death.

Regarding Indonesia which is a member of the WTO in fulfilling the values that have been mutually agreed in international agreements, there are still differences of views with those in Indonesia. The need for understanding that aims to obtain new elements and can complement existing shortcomings or take over the position of old elements. This is due to the weakness of the new element and/or importance, and this occurs because of the emptiness and absence of renewal of the existing element. Indonesia itself needs to respond with regard to support from UNIDROIT and UNICITRAL, as well as absorb the elements of existing norms in order to adapt to the Indonesian context.

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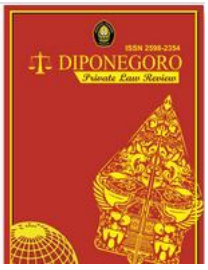

Challenges and Constraints of Intellectual Property Rights (Copyright) as Collateral Objects in Indonesia

The development of debt guarantee with IPR as the object still encounters various obstacles. Call it Bank Indonesia regulation No. 14 of 2012 article 43 and article 45 OJK which has not included IPR in the list of allowance and write-off of collateral assets that are taken into account(Wawointana, 2013). So that the existence of IPR to be used as an object of guarantee feels vague and difficult to feel. Asset valuation for intellectual property is also still limited to the independent process carried out by the guarantor bank by looking at market prices and producers' recommendations regarding the capital used(Atsar, 2018). Even though the role of this asset appraiser is quite crucial to map and even out the value of a brand from intellectual property rights. Meanwhile, Singapore has established an intellectual asset appraisal agency called the Intellectual Property Office of Singapore (IPOS). Therefore, it is time for an institution outside the bank to be an appraiser of IPR assets.

IPR in credit collateral is indeed a form of legal novelty that deserves appreciation, unfortunately the legal certainty that regulates it is still not felt. Indonesia, which is currently paying attention to the creative economy through new regulations, has declared recognition of intellectual property that can be used as debt collateral while still following the applicable terms and assessment processes. Government Regulation No. 24 of 2022 has sharpened the provisions that allow copyright and patent rights as collateral in the fiduciary mechanism. While other intellectual property rights do not yet have a clear legal umbrella. In fact, it is known that not all are willing to accept IPR as a guaranteed object in giving credit. Then it was affirmed in banking regulation Law No. 10 of 1998 that to carry out activities including credit lending, banks must have prudence with the first important stage being analyzing the size of the debtor's ability to repay the loan.

The problem faced by Indonesia to utilize IPR as credit collateral is coupled with the absence of a clear market, in the sense that it is not clear who the target will buy and where to sell an intellectual property object. This is in contrast to Singapore, where IPR has been successfully commercialized through an agency formed by the ministry of trade. The institution is named A STAR (Agency for Science, Technology, and Research)(Cadavid, n.d.). All forms of guarantee and IPR ecosystem are sheltered in it. If you look back, actually Indonesia also has an institution to encourage the IPR ecosystem, especially copyright by helping to commercialize an innovation or creation to developers in the business world. This

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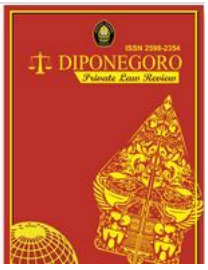

institution is the Business Innovation Center. Unfortunately, this institution is not even heard of in the ears of the public. Thus, many potential copyrights are able to be in the market but must be confined because of the difficulty of achieving business market value.

Copyright as an object of guarantee is justified in Copyright Law No. 28 of 2018, but in the field banks still do not dare to accept copyright to be used as collateral. Many notaries have said that they have never made a deed for copyright guarantee in banking. Moreover, in copyright there are economic rights and moral rights. For this guarantee mechanism, only economic rights are used, meaning that the copyright holder is not necessarily the creator. As in the example of a recorded piece of music. In one creation there are many economic rights holders of copyright, there are composers, songwriters, singers, producers, and so on. So the Bank complains about the unclear who the debtor is and how to execute if in the future there is a bad debt(UI, 2023). In addition, the banking law does not clearly address this matter. In this case, Singapore is very serious about responding to the development of copyright potential generated by many creators through loan financing by appointing a number of banks, including DBS, OCBC, AFC Bank, and UOB to handle copyright and other intellectual property(Santoso et al., 2022). Of course, under the supervision of IPOS and the regulations of The Copyright Act of 1995.

Other obstacles that make banks hesitate to make copyright as an object of guarantee are that productivity is still undervalued, investment potential is lacking because it is an intangible object, and there is no movement in interest rates. So that banks must reserve more funds for financing must also be really prepared for all future risks. While developed countries such as Singapore apparently have a mechanism that is able to conduct assessment research on copyright owners and is willing to bear all risks through the Participating Financial Institution. The institution accepts all intellectual property assets including copyrights. Regarding potential interest rates, it is PFI that later reviews the loan applicant and his assets before finally giving loan approval.

Seeing the many obstacles and challenges above, Indonesia still has to continue to improve its regulations first, especially the strength and clarity of the legal umbrella of copyright guarantee objects in banking. Indonesia also needs to learn from Singapore's readiness response in facing reforms in the banking guarantee sector. Institutional management and socialization will be a way to help Indonesia realize intellectual property rights as collateral. So that it can help creators to run their businesses and encourage the creative economy movement.

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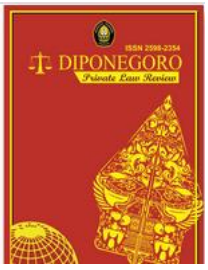

CONCLUSION

When comparing the position and legal basis of Copyright between Indonesia and Singapore, there are several similarities, including: there is a Basic Law that regulates and guarantees the protection of one's works that have economic value, there is a period of protection, and the two countries are involved in various international agreements regarding copyright protection. In banking-related matters, Intellectual Property can be used as collateral and gain access to obtain loans. The Singapore Government established an Intellectual Property financing scheme to provide banking credit as collateral using Intellectual Property as its object, aiming to increase profits of companies with Intellectual Property assets and based in Singapore(Purbasari et al., 2023). In addition, shouldering losses from Intellectual Property loans is assisted by the Participating Financial Institution (PFI) in order to increase the progress of financial institutions receiving Intellectual Property assets as collateral. While in Indonesia, Intellectual Property as collateral is considered unfulfilled and its utilization has not been maximized, because it is considered an intangible object. Although copyright rights have been included as collateral in the law on, there are still doubts by banks about Intellectual Property as collateral. The application of the use of Copyright as an object of guarantee in Indonesia is still followed by various obstacles. One of them is the practice at Bank Indonesia that has not received Intellectual Property / Copyright as collateral which is motivated by several things including the valuation or measurement of assets for intellectual property is still limited to the independent process carried out by the guarantor bank by looking at market prices and producer recommendations regarding the capital used, there is no clear market, the Bank has not dared to accept copyright to be used as collateral, to Productivity which is still considered low with less investment potential because it is an intangible object.

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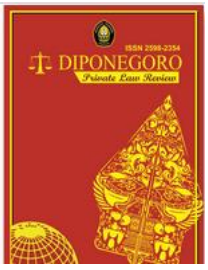

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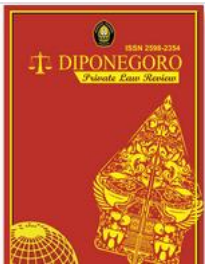

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