Development of Micro, Small, Medium Enterprises Intellectual Property Rights as Fiduciary Guarantee Object in Credit Agreement in Banking Institutions in Indonesia

Anis Mashdurohatun

1Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia
anism@unissula.ac.id

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Abstract: Intellectual Property as a material right can be used as a fiduciary guarantee. This study aims to analyze the factors that influence banking institutions not yet utilizing the MSMES IPR as a fiduciary guarantee in credit agreements at the banking institution and to know the obstacles of the MSMES IPR as an object of fiduciary security and the Development of the Intellectual Property Rights of the MSMES as an object of fiduciary collateral in the credit agreement at the banking institution in Indonesia. The method of approach in this research is sociological juridical. Data collection was carried out with literature and field studies (through observations, questionnaires and interviews) of intellectual property holders and banking institutions. Data analysis was performed using qualitative descriptive analysis. The research found that factors affecting banking institutions not yet utilizing MSMES IPR as a fiduciary guarantee in Indonesia are due to the absence of standardization of assessments or determining the nominal value of IPR, regarding the risk of fluctuations in value of IPR, there is no market (seller and buyer) of IPR and procedures or mechanisms Execution of Execution of IPR guarantees. Development of Intellectual Property Rights of MSMEs as Fiduciary Objects in Credit Agreements in Banking Institutions in Indonesia, several things need to be strengthened in legal substance, Establishment of IP IPR Institutions, Notaries in making deeds, registrations and fiduciary certificates of MSMES IPR through the Ministry of Law and Human Rights, MSMES IPR Execution, Companies / individuals who will buy IPRs and Insurance Institutions as guarantors as well as the legal culture of IPR SMEs.

Keywords: IPR; Fiduciary Guarantee; Banking Institutions

1. Introduction

Globalization has many characteristics in common with internationalization, so these two terms are often exchanged. Globalization is nothing but capitalism in its most recent form. Countries that are strong and rich will practically control the world economy and small countries are increasingly powerless because they are unable to compete (Mashdurohatun, 2018; Mashdurohatun, 2019).

In practice, developing countries are under significant pressure both inside and outside the WTO (Cullet, 2004). Developing countries must use all the flexibility provided by the TRIPS (Haugen, 2015) Agreement, so that they have important opportunities for policy innovation in the field of IPR (Shadlen, 2008). Technological opportunities that continue to develop have become a market force playing a large role in determining the type of industry (Weller, Kleer, & Piller, 2015). Technology will have economic implications (Weller, Kleer & Piller, 2015).

The Nature of Intellectual Property is Intangible (Morgan, 1999), Given by Law, Territorial, Non-Competing and Personal Rights (Gepty & Atty, 2014).

Patent protection is proven to provide a positive average premium and it stimulates R&D in almost all manufacturing industries, with the magnitude of influence varying substantially (Arora, 2003). The business value of intellectual property is far higher in Arizona. The analysis also shows that biotechnology SMEs in the US benefit from a patent and obtain significant business value from patents. The researchers suggest that biotechnology SMEs in Europe can benefit from patents (Kiški, Limba & Gulevičiūtė, 2016).

In some countries items, namely Bangladesh, India, Cambodia, Canada, China, Kenya, Malaysia, the US (Texas) IPR is recognized as collateral example (Busro & al, 2018) 1. India: LT Foods, using the trademark ‘Daawat’ (rice packaging) as collateral in a loan of £ 50 million to acquire a competitor company based in the USA. 2, USA: In 2006, the Ford Motor Company offers its intellectual property, trademarks including Ford and the entire domestic tangible assets to obtain loans amounting to US $ 23 billion. 3. China: In 2008, the Chinese government started a pilot project of use of IPR (Patent) as collateral loans are backed by insurance. Until 2013, the pilot project has covered 29 regions with a total value of outstanding loans amounted to CNY25.4 billion. 4, Malaysia: In 2013, the Malaysian government allocated a budget of RM 200 million for the Malaysian Debt Ventures Bhd (MDV) to develop the IPR Financing Guarantee Scheme. The financing scheme is for SMEs...
engaged in the fields of biotechnology innovation, green technology, and ICT (information, communication and technology). With this scheme, the government through the Credit Guarantee Corporation Malaysia provides an interest subsidy of 2% and a guarantee of 50%.(Mashdurohatun&Gunarto, 2018).

Political Law of the government in improving economic competitiveness in accordance with the Vision of the Indonesian Vision 2005-2025, where Intellectual Property Rights must be able to bring royalty to the creator/inventor/designer/right holder, and bring in foreign exchange. The Blueprint of the ASEAN Economic Community (AEC) is a guideline for ASEAN Member Countries to achieve the 2015 Asean Economic Community, where each country is obliged to implement the commitments in the blueprint. The AEC Blueprint contains four main pillars, among them namely: ASEAN as a region with high economic competitiveness, with elements of competition rules, consumer protection, intellectual property rights, infrastructure development, taxation, and e-commerce (Adriyanto&Mashdurohatun 2014).

As a result of research, Santoso (2010) concluded that IPR has become the largest source of income in the State Budget in America, this is the government's step in anticipating that natural resources cannot be renewed, while the availability of natural resources is running low. Ironically, Indonesia has not yet optimized IPR, but rather relies on natural resources as a source of national income.

In the Indonesian legal system, movable objects are divided into tangible movable objects and immaterial movable objects (Santoso, 2006). Intellectual Property Rights are part of ownership rights to immovable property by basing IPR as part of the law of intangible objects and whose rights can be transferred, which according to their nature and type can be used as collateral. As a result of the identification of the Cooperative Office and MSMEs, many MSME actors are constrained in producing products, weak partnerships with financial institutions and limitations in market development regionally and globally. Therefore, MSMEs need to get venture capital and banking institutions need collateral as collateral for their capital.

<table>
<thead>
<tr>
<th>Subject</th>
<th>2017</th>
<th>2018</th>
<th>Development</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit MSMES</td>
<td>62.928.077</td>
<td>64.199.606</td>
<td>1.271.529</td>
<td>2.02</td>
</tr>
<tr>
<td>Human Resource</td>
<td>120.260.177</td>
<td>120.598.138</td>
<td>337.961</td>
<td>0.28</td>
</tr>
</tbody>
</table>

Source: Statistics of the Ministry of Cooperatives and SMEs 2018

From the table, it shows that the development of the number of MSMEs in Indonesia is very rapid with an increase of 2.02% and automatically the employment is also increasing with an increase of 0.28%. In realizing the competitiveness of MSMEs globally in the Industrial Revolution era 4.0, the role of banking institutions in channeling funds to the MSME community through credit is an alternative as business capital, but certainly with strong guarantees.

Based on the description above, it is very important to conduct in-depth research related to the factors that influence banking institutions not yet utilizing MSMEs IPR as a fiduciary guarantee in credit agreements at banking institutions, and Developing Intellectual Property Rights of MSMEs as objects of fiduciary collateral in credit agreements at banking institutions in Indonesia.

2. Methodology

The approach method used in this research is socio-legal (Warasih, 2006). In connection with the formulation of the problem and its purpose, this study uses the nature/form of descriptive analytical (Suryabrata, 2010) and prescriptive research (Marzuki, 2008). With descriptive analytical research, the data source of the data (Nasution, 2006) consisted of primary and secondary data. Primary data (Soekanto, 1998), namely data obtained from empirical legal/legal practice. Secondary data, i.e. data obtained from literature and documentary studies in order to obtain primary legal materials, secondary legal materials, and tertiary legal materials. To obtain and collect primary data in this study, conducted by direct and in-depth interviews with several respondents who have determined. The data obtained is then collected and compiled for further analysis using descriptive analysis.
3. Results and Discussions

Factors Affecting Banking Institutions have not Utilizing MSMES Intellectual Property Rights as a Fiduciary Guarantee in Credit Agreements

In lending credit to the debtor, the bank must analyze the background of the customer or the customer’s company, the prospects of the business being financed, guarantees provided, and other matters determined by the bank in order to convince the bank that the credit requested by the debtor is proper and can be trusted (Muhammad, 2006).

In evaluating this guarantee, at least 2 (two) factors must be considered, namely (Ibrahim, 2004):

1. Secured means that guarantees can be made legally binding so that in the event of default by the debtor, the creditor can carry out executions that have a strong legal basis.
2. Marketable means the collateral to be executed can be immediately sold and cashed so that all debtor obligations can be paid off.

Collateral object valuation is aimed at the economic value of the goods; in terms of ease of sale is also a very important factor because the execution of collateral objects is done through general sales. In the provisions of Article 16 of Law Number 28 Year 2014 concerning Copyright, explains as follows, that Copyright is an intangible movable object. Copyright can be transferred or transferred, either in whole or in part because: a. legacy; b. grant; c. waqf; d. will; e. written agreement; or f. other reasons justified in accordance with statutory provisions (Mashdurohatun, 2019:71), (Mashdurohatun,2020). Copyright can be used as a fiduciary security object. Provisions regarding Copyright as an object of fiduciary security as referred to in paragraph (3) are implemented in accordance with statutory provisions.

If the contents of the Article are connected with Law Number 42 of 1999 concerning Guarantees, then Article 1 numbers (1) to (4) state as follows:

1. Fiduciary is the transfer of ownership of an object based on trust as long as the object whose ownership rights are transferred remains the property of the owner of the object.
2. Fiduciary Guarantee is a guarantee of the rights to movable objects both tangible and intangible and immovable objects, especially buildings which cannot be burdened as collateral as referred to in Law Number 4 of 1996 concerning Mortgage Rights which remain under the control of the Fiduciary Giver, as collateral for certain debt payments, which prioritizes Fiduciary recipients over other creditors.
3. Receivables are the right to receive payments
4. Object is anything that can be owned and transferred, both tangible and intangible, registered or unregistered, movable or immovable that cannot be burdened with a mortgage or mortgage.

In Indonesia, the concept of IPR (including Copyright) as an object of guarantee is that there are no further regulations on this matter and are still experiencing problems, namely the regulation in Article 16 Paragraph (3) does require further elaboration and even relies on the law others, as regulated in Article 16 Paragraph (4) that “Provisions regarding copyright as an object of fiduciary security as referred to in paragraph (3) are implemented in accordance with statutory provisions.” The closest legislation is Law Number 42 of 1999 concerning fiduciary guarantees (Law 42 of 1999). Bank Indonesia Regulation (PBI) No. 14/15 / PBI / 2012 related to credit collateral (PBI No. 7/2 / PBI / 2005) and OJK Regulation No.42.POJK.03 / 2017 Concerning the compilation and implementation of credit or financing policies for commercial banks. Based on the description above, legal normative copyright can be used as an object of fiduciary collateral, but required the implementing regulations are related to the IPR object as collateral / fiduciary collateral for the Bank (as a creditor) to obtain certainty of the return of funds that have been lent to MSMEs (as debtors).

In various countries, as the results of Claessens and Laeven’s research found that increased asset allocation due to better allocation of company resources among property rights has an effect on the growth of various types of sectoral assets. The result is in an environment with stronger secure property rights, using various samples and
specifications, allocating more available resources to intangible assets including controlling growth opportunities (Laeven, 2002).

Small and medium-sized businesses (SMEs) in Kenya are an important part of the economy, becoming a source of various economic contributions through income generation through exports, providing new job opportunities, introducing innovations, stimulating competition, and machining for jobs. Small and medium enterprises (SMEs) in Kenya represent a vital part of the economy, being the source of various economic contributions through the generation of income via exporting, providing new job opportunities, introducing innovations, stimulating competition, and engines for employment (Ngugi, 2013). The current economy is known as knowledge-based economics where knowledge, information and soft assets are more important than physical assets. The role and importance of SMEs in the knowledge-based economy has been highly valued and recognized. In addition, in today's economy, SMEs face extraordinary challenges and threats to survive in a competitive environment.

US multinationals prefer to invest in areas that have better protection of intellectual property rights (Du, Lu & Tao, 2008). The results found that an unsecured guaranteed loan is no worse than another guaranteed loan. Overall, I find evidence consistent with the fact that intangible asset guarantees are credit market innovations that reduce some financial friction (Loumioti, 2012).

The results provide broad insights into the guarantee of intangible assets, and have important academic and managerial implications. First, an important point that emerges from paper is that intangible assets increase the value of the company not only in the equity market, but in the credit market. Under certain conditions, effective guarantees of intangible assets have reduced financing friction and satisfy lenders’ appetite for high-yield assets. Second, provide evidence that lender incentives to guarantee intangible loans are related to credit supply. Third, loans that are intangible are guaranteed to have no worse quality than other guaranteed loans, so that negative selection and the inherent moral hazard in intangible matters will not be a problem in securing loans with intangible assets (Loumioti, 2012).

Copyright as an object of fiduciary security still has several legal issues in its implementation. These legal issues include a limited period of protection of intellectual property rights, the absence of a clear concept related to due diligence (Kurnianingrum, 2017) and appraisal institutions of intellectual property rights in Indonesia as the object of copyright protection. These legal issues arise because there are no specific regulations regarding what copyright can be the object of collateral. This situation poses a considerable risk for the lending institution to receive copyright as an object of collateral (Nurdawati, 2017).

Development of MSME in Indonesia; in 2013 the number of MSMEs was 57,895,721 units and in 2014 to 2016 the number of MSMEs was 57,900,000 Units. In 2017 it is estimated to grow to more than 59,000,000 Units. MSMEs have become the backbone of the economies of Indonesia and ASEAN, around 88.9-99.9% of businesses in ASEAN are MSMEs with employment reaching 51.7-97.2% of the total business operators in Indonesia. From the number of MSMEs mentioned above amounting to 57,900,000 based on the Kompas survey on November 19, 2017, as many as 60% do not have formal and complete licenses. They are a micro business. In fact, there are still many formal legalities such as NPWP for MSMEs that do not yet have them.

Financial Institution is a business entity that has assets in the form of financial assets or claims in the form of shares, bonds and other securities. The term financial institution includes (Muhammad & Murniati, 2004):

a. Business entities that have assets in the form of financial assets that are provided for conducting business in the field of financial services, including financing.
b. Business entities that only carry out business in the field of financing services provide funds or capital goods without withdrawing funds directly from the public.

The legal basis of a credit, namely (Santiago, 2019): There is an agreement between the debtor and the creditor called the credit agreement, the existence of parties, namely creditors and debtors; The ability or promise to pay debts; The existence of loans in the form of giving some money; There is a time difference between granting credit and paying credit. The elements of granting credit, namely (Santiago, 2019): Trust, Time of a period, Achievement (credit object), and Prudence.

Types of bank credit in providing MSME loans are adjusted to the types of MSME business activities. The granting of credit relating to businesses, especially MSMEs and will be divided into banking practices can be divided into several terms:
a. Working capital credit. Credit is used to increase working capital of a company, such as purchasing raw materials, production costs, marketing and working capital for operations.

b. Investment credit. Medium or long-term credit used to purchase capital goods and services needed for rehabilitation, modernization and expansion of existing projects.

c. Project financing credit. Loans are used to finance investment or working capital to work on new projects or the development of old projects.

In general, the practice that is often used by MSMEs is investment credit and working capital. For this facility, prospective debtors must meet the following criteria / requirements:

a. Prospective debtors have a business (trading, manufacturing, mining, etc.)
b. The business has been running for more than 2 years.
c. Has a business and company legality
d. Not listed as a debtor is Bad or blacklisted (Bank Indonesia)
e. Fixed Assets placed as collateral must be adequate and marketable.
f. Results of Trade Checking to Customers and Suppliers and Work Partners No Negative Information
g. Finance Prospective borrowers must be good, that the financial results of operations (Cash Flow) can cover operational costs and bank obligations.

The principles in extending MSME credit to banking practices, including the main principles, include: the principle of trust, prudent banking principles, 5C Principle (5C’s of credit). Five principles commonly known as 5C, including character, Capacity, Capital, Collateral and Condition of economic (Muhammad & Murniati, 2004).

Basically from the 5C principle, for banks the main one is the fourth principle, namely collateral, especially in the event of non-performing loans, or bad loans. Collateral or collateral submitted to the Bank and the value must be able to cover the Credit facility provided by the Bank, in this case the Bank must also assess the marketability (easily sold) of the collateral in question, and examine the validity of the legality of the evidence of ownership of collateral, collateral that can be accepted by the Bank it can be in the form of Movable or Immovable Property which must be legally binding. This means that the guarantee is a guarantee that the customer can pay off his debts and interest as well as other customer obligations as stated in the contents of the credit agreement. Thus the risks faced by banking institutions in providing credit are in the event of default, defaults or investment.

Trademark Rights which has been registered with the Directorate General of Intellectual Property, has economic value, and thus, is valid as collateral. Though trademark is transferable, it has not yet received juridical support as collateral. The mechanism for imposing trademark rights under the Fiduciary Security Law is made in the form of a notary deed and in Indonesian. Fiduciary collateral certificates must be registered to the Fiduciary Registration Office online for the issuance of a Fiduciary Guarantee Certificate that has an executorial power. Yet the registration system has not been able to provide legal certainty related to the prohibition of re-fiduciary. If the Bank executes collateral objects in the form of Trademark Rights, the winner of the execution auction must register the transfer of Trademark Rights to the Directorate General of Intellectual Property Rights with supporting documents to be recorded in the General Register of Brands and also announced in the Official Gazette of the Trademark being the name of the new rights holder (auction winner). Legal factors that cause trademark rights have not been widely accepted as collateral in banking include in: its unpredictable nature, no specific regulations governing trademark rights as collateral objects, and institutions that support trademark rights as collateral are incomplete and optimal (Susilowardani, 2015).

The current problem faced in Indonesia is the unavailability of a provision regarding the use of IPR as collateral in the banking credit distribution system. In addition, in Indonesia there is also no appraisal institution that has the ability to provide an assessment of the economic value of IPR. For example, how to determine the economic value of copyright on a work of a film or song title or a literary work, trademarks and / or trademarks, patents, etc.

Factors affecting banking institutions not yet utilizing MSMES IPR as a fiduciary guarantee in Indonesia are due to the absence of standardization of assessments or determining the nominal value of IPR, regarding the risk
of fluctuations in value of IPR, there is no market (seller and buyer) of IPR and procedures or mechanisms Execution of Execution of IPR guarantees.

According to (Kurnianingrum, 2017), several obstacles hampered IPRs as objects of fiduciary collateral in credit agreements: First, the period of IPR protection and ownership was limited. It cannot be denied that the period of protection and ownership of IPR is not the same as the other. Second, the nature of IPR is known that each IPR has different properties. Copyright for example. Compared with other IPR objects, in principle, copyright is obtained not because of registration, considering that it is the creator's exclusive rights that appear automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with legal provisions. Third is legal risk. Banks seem reluctant to approve collateral because there are still many violations related to IPR. Piracy for example. Although the issue of piracy has been regulated in statutory provisions (for example, the Trademark Act and the Copyright Act), piracy is actually still rife. This condition is one of the obstacles why banks seem reluctant to approve collateral for IPR assets. Fourth, there is no assessment body for IPR assets in Indonesia. This is a work process or appraisal activity in providing estimates or opinions about the economic value of property, both tangible and intangible based on the results of objective and relevant fact analysis using the applicable methods, parameters and valuation principles.

Banking institutions in general legally know and understand MSMES IPR (such as trademarks, copyrights and patents, etc.) can be used as fiduciary guarantees. This has been regulated in IPR legislation including the Copyright, the Trademark and Geographical Indications Law, the Patent Law and so on) as well as the Fiduciary Guarantee Act. However, in practice banking institutions are not uncommon to use IPR MSMES as fiduciary collateral objects in credit agreements. In general, the problems faced by Small, Micro and Medium Enterprises (SMEs), internally include:

c. Quality of Human Resources (HR).
d. Mentality of MSME Entrepreneurs.
e. Lack of Transparency.

As for externally, the problems faced by Small, Micro and Medium Enterprises (SMEs), internally include

a. The Business Climate Is Not Completely Conducive.
b. Limited Business Facilities and Infrastructure.
c. Effects of Free Trade.
d. The Nature of Products with Short Durability.
e. Limited Access to Information and Markets.

**Developing Intellectual Property Rights of MSMEs as Fiduciary Collateral Objects in Credit Agreements at Banking Institutions in Indonesia**

IPR is a moving object that is intangible, is exclusive, has economic value, and can be applied in the industrial world, playing an important role in providing the welfare of a nation. IPR as a material right, can be shared meaning it can be transferred in whole or in part to another party. Transfer of IPR, through inheritance; Grant; Will; Written agreement; or other reasons justified by law. With such a classification, IPR qualifies as one of the objects of fiduciary security in credit agreements with banking institutions in Indonesia. In some developed countries, especially the United States has implemented potential intellectual property, especially trademarks to function as strong objects of fiduciary security, such as KFC, Starbuck, Coca Cola and others.

Development of Intellectual Property Rights of MSMEs as Fiduciary Objects in Credit Agreements in Banking Institutions in Indonesia, several things need to be strengthened in legal substance, Establishment of IP IPR Institutions, Notaries in making deeds, registrations and fiduciary certificates of MSMES IPR through the Ministry of Law and Human Rights, MSMES IPR Execution, Companies / individuals who will buy IPRs and Insurance Institutions as guarantors.

**Strengthening Legal Substance**

Amendment to Law No. 42 of 1999 concerning Fiduciary Guarantee, To Accommodate Fiduciary Collateral in the form of IPR, in addition to the age of the Fiduciary Security Law, it has been more than 20 years in line with the times, especially in the era of globalization and the era of the industrial revolution 4.0, especially
regarding the procedure for registration, execution and transfer of rights of IPR guarantees, between the provisions of Article 1 and Article 5, Article 11, Article 12, Article 15, Article 29 of the Fiduciary Guarantee Law. In addition, amendments to the provisions of Article 6 of the Minister of Finance Regulation Number 27 / PMK.06 / 2016 concerning Bidding Implementation Guidelines. It also becomes a legal consequence with the Constitutional Court Decision Number 18 / PUU-XVII / 2019 Against Execution of Fiduciary Objects as a Result of Default.

In addition to the fiduciary guarantee law, there are also several laws and regulations relating to the regulation of the fiduciary guarantee as follows:

c. Presidential Decree No. 139 of 2000 concerning the Establishment of Fiduciary Registration Offices in All Provinical Capital Cities in Indonesia.
e. Republic of Indonesia Police Chief Regulation No. 8 of 2011 concerning the Safeguarding of Fiduciary Security Execution.
f. Minister of Law and Human Rights Regulation No. 8 of 2013 concerning Delegation of Electronic Fiduciary Assignments.
g. Minister of Law and Human Rights Regulation No. 9 of 2013 concerning Notification of Registration of Electronic Fiduciary Guarantees.
h. Minister of Law and Human Rights Regulations No. 10 of 2013 concerning Procedures for Electronic Registration.
i. Regulation of the Financial Services Authority No.035 of 2018 concerning the Operation of the Financing Company Business.

Establishment of IPR Appraiser / Appraisal Services Professional

DJKI's big vision is to reach The Best IP Office in The World, based on the spirit of clean and serving bureaucratic reform through the preparation of the DJKI Strategic Plan for the period 2020-2024. To make DJKI become a public servant in the field of Intellectual Property this has a vital role in the National Creative Ecosystem. Creative industries and business actors have shifted in understanding IP. At present IPR is not only seen conventionally as a form of moral recognition or as an economic incentive for a work. The optimization paradigm of IC is as working capital. The context of optimizing IC as working capital means that IC is a collateral instrument used to guarantee debt.

To determine the economic value of an intellectual property, a competent appraisal service profession is needed to calculate the valuation of intellectual property. According to Sabartua, to answer the needs of IPR assessors, it can be done by increasing the competence of existing appraisers or establishing a new professional certification body with the specialty of intellectual property assessors.

According to (Mulyani, 2013) there are three measurements in determining the economic value of Intellectual Property, namely: First, the market approach. According to Shannon P. Pratt, Alina V. Naculit, the market approach means providing a systematic framework for estimating the value of intangible assets (Intellectual Property) based on an analysis of actual sales and / or tangible license transactions that are comparable to objects. Second, the income approach. The income approach provides a systematic framework for estimating the value of intangible assets based on the capitalization of economic income or present and future value. The value of "economic income" comes from the use, licensing or leasing of intellectual property. Third, the cost approach. The cost approach provides a systematic framework for estimating the value of intangible assets based on the principle of economic substitution which compares the costs incurred with the utility function in par.

According to (Naumann, 1995) in his book entitled "Creating Customer Value: The Path to Sustainable Competitive Advantage," the customer value or assessment provided by the customer consists of several components, namely Product Quality, Service Quality, Price and Image. The four components determine consumer ratings. A high rating score determines the perception of a company that is valuable. When this theory
is applied to calculate the economic value of a copyrighted work, the quality of products, services, prices and images owned by a work, will meet the requirements to be accepted as collateral by the bank, because copyright has fulfilled the elements that can be marketed and secure for repayment of loans.

Singapore has an IP Value Lab (IPVL) which aims to (1) Educating Businesses (Developing businesses for the benefits of intellectual property for companies); (2) Setting Industry Standards (providing space for academics and practitioners to collaborate in developing best practices in the industry, (3) Building Businesses (providing opportunities to manage risks so as to strengthen business positions; (4) Promoting & Facilitating IP Financing (Patent Management in Intellectual Property Rights in Singapore can be used as an object of loan guarantees to meet financing needs).

MyIPO strongly believes that having a proper IP Assessment Model and a holistic infrastructure to develop a sustainable and healthy IP Ecosystem. It will provide good hope for a series of Malaysian catalysts for national transformation, and has led to engage a variety of key stakeholders including regulators, financial institutions and businesses in developing IP assessment models that provide the clarity and standards that are so needed to be applied by various stakeholders and key players. The result is an IP Assessment Model (IPVM), which was launched and introduced to the market in November 2013.

Australia has a specialized agency that assesses IPR assets outside the government. The particular institution is The Australian Valuation Office (AVO), which is established under the organization of The Australian Taxation Center. The task of AVO is to provide evaluation services, including to conduct sales, purchases, acquisitions, and leasing of IPR. AVO itself also provides valuations for the benefit of the financial reporting and management of assets. Australia not only has AVO, but also has other institutions tasked with serving IPR valuations, namely the Australian Certified Practicing Accountants (CPA) and the Australian Institute of Chartered Accountants.

The United States uses the term American Society of Appraisers (ASA). ASA is the oldest appraisal institution established since 1936 and is a credible institution representing all elements of appraisers. The ASA institution, the United States, also has another institution as an International Property. It accredits in the form of IP business valuation, namely the Canadian Institute of Chartered Business Valuators (CICBV), The Institute of Business Appraisers (IBA), The American Institute of Certified Public Accountants (AICPA), The National Association of Certified Valuation Analysts (NACVA).

Indonesia itself does not yet have an Appraisal Value institution, national banks do not yet know Intangible assets, in America, Singapore, and Malaysia, they have developed Intangible asset-based creditors, the Singapore IPOS scheme appoints three banks namely DBS, OCBC, and UOB to provide credit, this valuation agency get subsidies from IPOS.

Imposition of Fiduciary Guarantee with Notarial Deed

Fiduciary guarantee is the right of guarantee for movable objects both tangible and intangible and immovable objects, especially buildings which cannot be encumbered with mortgages as referred to in Law No. 4 of 1996 concerning Mortgage Rights which remain in the control of the fiduciary giver, as collateral for repayment of certain debts, giving a preferred position to the fiduciary recipient of other creditors.

The collateral has certain criteria to be accepted by banks. The collateral criteria include having economic value in the sense that it can be valued in money and can be cashed. the bank has the right to take precedence over the liquidation of the guarantee.

In the provisions of Article 5 UUJF, it states that the imposition of Fiduciary Guarantees with a Notary Deed in Indonesian. Furthermore, the provisions of Article 6 of the UUJF state that the Fiduciary Deed of Guarantee includes: a. The identity of the Fiduciary Giver and Receiver. b. Data of principal agreement guaranteed by fiduciary. c. A description of the object which is the object of fiduciary security. d. Guarantee value. e. The value of the object which is the object of fiduciary security. In the fiduciary deed there is a value of the object of fiduciary guarantee in the form of IPR and the value of the guarantee, it is necessary to make a scheme for the assessment.

This is when used as an object of fiduciary guarantee of copyright (Mashdurohatun&Mansyur,2017), there are two inherent rights, namely moral rights and economic rights. Moral rights are rights that protect the personal interests of the creator. This moral right means that even though ownership of the Copyright can be transferred to
another party, the moral rights remain inherent and inseparable from the original creator. Economic right is the right owned by the creator to get benefits for his work. Economic rights can be transferred to a person or legal entity, so that the person or legal entity is entitled to obtain economic benefits from a work for its own use or commercialization within a certain period of time and based on agreed terms.

Thus, for the binding of fiduciary guarantees on IPRs, special formulas for the articles of the notarial fiduciary deed guarantee must be made in order to protect the parties, including the Notary, creditors/fidusianrecipients, debtors, fiduciary/guarantor parties, Other Parties (Prospective Buyers, Prospective Creditors (Take Over)) and Notaries.

Online IP Integrated System in the Ministry of Law and Human Rights

With regard to IPR certificates and Fiduciary Certificates, an integrated online system is needed. The things that need to be prepared are as follows:

a. Memorandum of Understanding (MoU) with banking institutions and other relevant institutions in accordance with tangible products to which IPR is attached;

b. The objects that are guaranteed are only those with proof of rights in the form of certificates or preliminary proof of rights in the form of Registration Certificate and Trade Secret Registration Certificate (License);

c. Arrangement for the imposition of collateral objects for certain objects of a certain value with a Notarial Deed, whereas for objects other than that, a Deed under the hand is provided by the fiduciary registration office;

d. Setting the deadline for Fiduciary registration and legal consequences if the deed is not immediately registered;

e. Regulations related to Fiduciary Power of Attorney

Execution of MSMES Intellectual Property Rights in the event of default or breach of contract

In the banking business, collateral is a means for banks to get debt payments. When there is a default, the bank as a creditor can sell collateral that has been agreed by both parties previously. Of course the collateral as a loan guarantee must be the same value as the loan. That is why banks will first look at the economic value of collateral provided by prospective borrowers before agreeing to a loan proposal. This assessment indicator does not yet exist in Indonesia.

In fiduciary, the collateral object is not controlled by the creditor but by the debtor, and there is no physical surrender. Fiduciary agreements must be made in writing as outlined in a notarial deed and registration is also required. Without registration there will be no fiduciary guarantee. Therefore, when IPR is used as a fiduciary guarantee, the work must first be registered at the Directorate General of Intellectual Property. In the event of breach of contract or breach of contract, fiduciary collateral execution will be carried out, through an auction or underhand sale, and / or voluntarily submitted by the debtor.

IPR Market

This IPR market is a meeting of buyers and sellers of IPR objects in the form of copyrights, brands, patents, trade secrets, etc. Each party can be a legal subject (person) and or legal entity. Thus the Company (PT) / CV / Foundation / individual who will buy IPR uses the object of fiduciary security. For example PT.Ny.Menir, Soto Bangkong, Lumpia express, LumpiaDelux, Batik Danar Hadi, Batik Keris, Warung Lombok Idjo, JenangMubarrak. Mr. Mustache Meatballs.

Insurance Institutions as guarantors

MSMES Credit Insurance, banking institutions transfer the risk of credit agreements by working with insurance institutions, as follows: Jamkrindo, PT. Askindo (Credit Insurance Indonesia), PT. Jasindo (AsuransiJasa Indonesia), PT. BNI Life Insurance, PT. ASEI (Indonesian Export Impo). The insurance institution wants to close the credit guarantee in the form of IPR when the debtor is interpreted or fails to pay. Thus, insurance institutions is as one solution to credit risk that has been channeled by the banking institution.
With the principle of good faith, the principle of balance, the principle of economic benefits, and legal certainty which is the crystallization of Indonesia's basic values, as elaborated in Pancasila as the nation's philosophy and which animates the 1945 Constitution as the Constitution of the Indonesian state. The development of MSMES IPR as an object of fiduciary guarantee will provide more legal certainty and economic benefits for IPR holders and institutions (banking and leasing) in order to stimulate / encourage the birth of good intellectual creativity in increasing community economic development.

In developing the IPR model as a fiduciary object in banking institutions, it will have a positive impact on the community as holders of IPR, state institutions and banks. The positive impacts are as follows: first, the trust of banking institutions to provide business capital in improving the community's economy and inventors / creators / designers in stimulating the development of intellectual property rights in the future for MSMEs that are more creative, productive, superior and competitive. Secondly, there is legal certainty that guarantees business capital issued by banking institutions will develop very well, thus providing a balance of interests between the banking institutions and the MSME community as holders of the IPR brand. Third, encourage people to always be creative and innovate in order to improve the economic development of society to realize the competitiveness of MSMEs globally, which automatically supports the realization of the ideals of the State as mandated by the Constitution of the Republic of Indonesia in the opening of the Constitution of the Republic of Indonesia 1945, which is to improve the welfare of the community.

4. Conclusion

Banking institutions in general legally know and understand MSMES IPR (such as trademarks, copyrights and patents, etc.) can be used as fiduciary guarantees. This has been regulated in IPR legislation including the HC Law, the Trademark and Geographical Indications Law, the Patent Law and so on) as well as the Fiduciary Guarantee Act. However, in practice banking institutions are not uncommon to use IPR MSMES as fiduciary collateral objects in credit agreements. Factors affecting banking institutions not yet utilizing MSMES IPR as a fiduciary guarantee in Indonesia are due to the absence of standardization of assessments or determining the nominal value of IPR, regarding the risk of fluctuations in value of IPR, there is no market (seller and buyer) of IPR and procedures or mechanisms Execution of Execution of IPR guarantees. Development of Intellectual Property Rights of MSMEs as Fiduciary Objects in Credit Agreements in Banking Institutions in Indonesia, several things need to be strengthened in legal substance, Establishment of IP IPR Institutions, Notaries in making deeds, registrations and fiduciary certificates of MSMES IPR through the Ministry of Law and Human Rights, MSMES IPR Execution, Companies / individuals who will buy IPRs and Insurance Institutions as guarantors as well as the legal culture of IPR SMEs.

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