

Arrangement and Application of Copyright as an Object of Fiduciary Guarantee in Malang City

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Abstract

This study aims to analyze the regulation and application of Copyright as an object of fiduciary guarantee, especially in Malang City so that this research can provide benefits to the community, especially the public and bank employees in Malang City to know the rules and forms of implementation of the object of fiduciary guarantee, namely Copyright. In Malang City, no people use the object of fiduciary security in the form of Copyright because the provisions of the legislation have not been firmly and established, and there are several other factors. This study uses empirical juridical research methods, interview and observation approach techniques, and two legal data sets, primary and secondary data. The study results found that the statutory arrangements in Indonesia regulate Copyright as an object of fiduciary guarantee as stipulated in Article 16, Paragraph (3) of Law Number 28 of 2018 concerning Copyright. Still, in practice, it has not been implemented optimally and well because in Malang City, no institution oversees, and the nominal amount is not specified in the laws and regulations in Indonesia.

Keywords: Banking; Copyright; Fiduciary Guarantee

1. INTRODUCTION

Intellectual property is the intellect that a person has when it comes to the scientific side. Legal protection is important nationally and internationally, based on agreements to have exclusive rights to ideas or inventions from a person. Indonesia is not a new country that upholds IPR; entering the era of globalization automatically encourages the development of information technology.¹

Copyright is an exclusive right only owned by the owner or creator as a user of the work or idea.² Copyright as a form of intellectual property is categorized as one of the intangible objects that can be used as an object of fiduciary guarantee,³ as stated in Article 16 of Law Number 28 of 2018 on Copyright. The law's passing creates new dynamics in using intellectual property as an asset in financial transactions. Some countries, such as Singapore, China, Thailand, and Korea, have integrated copyright into financial transactions to encourage creative economic growth. At the same time, Indonesia still faces challenges in implementing similar measures.⁴ This is influenced by several factors, one of which is the

¹ Ireyna Chaliva dan Dwi Desi Yayi Tarina, "Penerapan Percepatan Layanan Paten Sederhana Pada Undang-Undang Cipta Kerja," *Jurnal USM Law Review* 6, no. 3 (2 Desember 2023): 1110, <https://doi.org/10.26623/julr.v6i3.7851>.

² Ujang Badru Jaman, Galuh Ratna Putri, dan Tiara Azzahra Anzani, "Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 3, no. 1 (20 April 2021): 11, <https://doi.org/10.52005/rechten.v3i1.22>.

³ Teguh Rizkiawan, "Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan: Prospek Dan Kendala," *Lex Renaissance* 7, no. 4 (2022): 884, <https://doi.org/10.20885/JLR.vol7.iss4.art13>.

⁴ Muhammad Ade Rafli, Erlina Bachri, dan Suta Ramadan, "Implementasi Pembiayaan Berbasis Kekayaan Intelektual Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2022 Tentang Ekonomi Kreatif (Studi Pada Dirjen

mechanism of execution of copyright that is used as fiduciary security when the debtor defaults because the object value of copyright does not have certainty as other movable goods.

There are several studies that have been conducted and have similarities and differences in the research conducted, namely, the first written by Tjoanda.⁵ This study discusses copyright as an object of collateral from the aspect of the agreement. This study discusses the arrangement and implementation of Copyright as an object of fiduciary guarantee in Malang City. Second, written by Abdullah,⁶ this study discusses copyright as a property right and fiduciary guarantee. In this study, the focus is on copyright as a fiduciary guarantee and its implementation in Malang City, and thirdly written by Hudzaefi et al.⁷ This study has a different object of study, which focuses on the application of copyright as an object of fiduciary security and legal arrangements against the object of collateral in the form of copyright. The difference can be used as a form of novelty in this research.

Copyright is a guarantee of intangible objects and less attention from creditors. This happens because no institution can calculate the valuation of copyright in the banking world⁸ specially in Malang, and the bank has only assessed copyright as an additional collateral object, not as the primary collateral object or the principal guarantee. The urgency of this research is to understand the regulation and application of copyright as an object of fiduciary guarantee and legal protection of the object of collateral in the form of copyright, especially in Malang City.

The focus of research in this study is to analyze the regulation and application of copyright as an object of fiduciary guarantee and legal protection of the object of collateral in the form of copyright, especially in Malang City banks that have not received copyright as an object of fiduciary guarantee, so that the results of this analysis can be known to be used as an analytical knife to reinforce the formation of regulations and the value of copyright used as an object of fiduciary in Malang City.

This research is written to answer the setting and application of copyright as an object of fiduciary guarantee and legal protection of the object of collateral in the form of copyright, especially in Malang City. Along with the times, the conception of Indonesia as a state of law certainly cannot be separated from the values and norms that develop and apply

Kekayaan Intelektual Kementerian Hukum Dan Ham Provinsi Lampung Dan Bank Indonesia,” *Journal Presumption of Law* 5, no. 1 (28 April 2023): 93, <https://doi.org/10.31949/jpl.v5i1.4497>.

⁵ Merry Tjoanda, “Karakteristik Hak Cipta Sebagai Objek Jaminan Fidusia,” *Batulis Civil Law Review* 1, no. 1 (30 Oktober 2020): 47–53, <https://doi.org/10.47268/ballrev.v1i1.424>.

⁶ Abbas Abdullah, Kevin Aprio Putra Sugianta, dan Khaerul Anwar, “Kedudukan Hak Cipta Sebagai Hak Kebendaan dan Eksekusi Jaminan Fidusia atas Hak Cipta,” *Jentera: Jurnal Hukum* 4, no. 1 (1 Juni 2021): 440.

⁷ Hafid Hudzaefi, Udin Saripudin, dan Liza Dzulhijjah, “Analisis Fikih Muamalah Dan UU Terkait Nilai Hak Cipta Sebagai Objek Jaminan Fidusia,” *Jurnal Riset Ekonomi Syariah*, 22 Desember 2023, 119–26, <https://doi.org/10.29313/jres.v3i2.2815>.

⁸ Ujang Badru Jaman, “Prospek Hak Kekayaan Intelektual (HKI) sebagai Jaminan Utang,” *Jurnal Hukum dan HAM West Science* 1, no. 1 (14 November 2022): 19.

in society.⁹ This research is intended to be able to provide references in the field of civil law, namely, aspects of copyright as a fiduciary guarantee. For the community, it is intended to provide exposure to the rule of law on the implementation of copyright objects as fiduciary guarantees.

2. METHOD

This writing is certainly composed using a method to make this writing a scientific research that aims to develop science, reveal the truth, a means of improvement methodologically and comprehensively.¹⁰ The research method used in this writing is empirical juridical.¹¹ using a statutory approach, the approach and data used are primary data which includes observations and interviews, as well as secondary data in the form of laws and regulations, namely the Civil Code, Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 28 of 2018 concerning Copyright, Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Offices, Law of the Republic of Indonesia Number 24 of 2019 concerning Creative Economy, and Law of the Republic of Indonesia Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. The research locations in this study are Bank BRI Malang Branch, Bank Mandiri SME Area Malang, Bank BTN Malang Branch, and Bank BNI Malang Branch. The reason for choosing the location is that the community and bank employees do not know about copyright and fiduciary guarantees, so this research aims to determine what arrangements and factors are not implemented. These locations were chosen because these banks play a key role in the national economy by often being the subject of strict regulation. They have access to large data and resources, are involved in financing economic sectors, and are closely linked to government policies.

3. RESULT AND DISCUSSION

3.1 Copyright Arrangement as an Object of Fiduciary Guarantee

Copyright regulation has undergone several changes, one due to the international legal system and the other countries. The first time copyright arrangements were regulated was in Law Number 6 of 1982 concerning Copyright. Copyright as an intangible movable object is

⁹ Revie Rachmansyah Pratama dan Kholis Roisah, "Hubungan Hukum Terhadap Kepemilikan Hak Cipta Yang Dijadikan Merek Bagi Pencipta Dan Pemegang Merek," *Jurnal USM Law Review* 8, no. 1 (29 Januari 2025): 67, <https://doi.org/10.26623/julr.v8i1.10363>.

¹⁰ Arsyah Yustisia Zahra dan Kholis Roisah, "Pembagian Royalti Hak Cipta Sebagai Harta Bersama Dalam Perceraian Studi Kasus Putusan Nomor 1622/PDT.G/2023PA.JB," *Jurnal USM Law Review* 7, no. 3 (4 Desember 2024): 1589–90, <https://doi.org/10.26623/julr.v7i3.8933>.

¹¹ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel (Edisi Revisi)*, vol. 3, 5 (Yogyakarta: Mira Buana Media, 2022), 174.

one form of intellectual property with economic benefits and can be transferred through various means regulated in the Act.

On September 19, 1987, the Government of the Republic of Indonesia enacted Law No. 7 of 1987 as a revision of Law No. 12 of 1982 on Copyright. The elucidation in Law No. 7 of 1987 explicitly states that the amendment to Law No. 12 of 1982 was made in response to an increase in copyright infringement that has the potential to threaten social stability and undermine the progress of the creative works of society. After the enactment of Act No. 7 of 1987, the Government of Indonesia took strategic steps in implementing copyright protection by establishing various bilateral agreements with other countries. The establishment of the Directorate General of Copyright, Patents and Trademarks through Presidential Decree No. 32 in 1988 replaced the role of the Directorate of Patents and Copyrights, which was previously under the Directorate General of Legal Affairs.¹²

Changes were made again in 1997, the Government of the Republic of Indonesia revised so as to produce Law Number 12 of 1997 concerning Amendments to Law Number 6 of 1982 concerning Copyright as Amended by Law Number 7 of 1987, then again underwent changes in 2002 as this was due to the rapid development of digital technology characterized by computers and the internet. In the end, this is the enactment of Law Number 19 of 2002 concerning Copyright, Law Number 29 of 2000 concerning Protection of Plant Varieties, Law Number 14 of 2001 concerning Patents, and currently, Copyright is expressly regulated in Law Number 28 of 2018 concerning Copyright.¹³

The change of legal political policy towards the protection of Intellectual Property Rights, followed by the ratification of TRIPS in Indonesia, also changed legal politics towards the protection of Intellectual Property Rights also changed. The change in policy is a statement of the state's will regarding the applicable law in the region and regarding the direction of legal development built through state bodies in establishing regulations, especially efforts to protect Intellectual Property Rights in Indonesia. The policy change is a justification that Intellectual Property Rights are the efforts of someone who puts effort into creation, having a natural right to own and control what they have created.¹⁴

Objects that can be used as objects of fiduciary security under the Act, namely objects that can be owned and can be transferred legally, can be tangible objects including receivables, movable objects, immovable objects that cannot be bound by mortgages or

¹² Christine S. T. Kansil dan Felicia Amanda Sulistio, "Implementasi Perlindungan Hak Cipta Dalam Era Modernisasi Terhadap Kreativitas Digital Berdasarkan Undang-Undang No. 28 Tahun 2014," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, no. 3 (25 November 2024): 368.

¹³ Rindia Fanny Kusumaningtyas, "Perkembangan Hukum Jaminan Fidusia Berkaitan Dengan Hak Cipta Sebagai Objek Jaminan Fidusia," *Pandecta Research Law Journal* 11, no. 1 (3 Juni 2016): 97, <https://doi.org/10.15294/pandecta.v11i1.6465>.

¹⁴ Imam Wicaksono, "Politik Hukum Pelindungan Hak Kekayaan Intelektual Di Indonesia Pasca Di Ratifikasinya Trips Agreement," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 18, no. 1 (21 Juli 2020): 39, <https://doi.org/10.31941/pj.v18i1.1088>.

mortgages, objects that will be obtained later, including the results of the object of fiduciary security, and inventory objects. Based on Article 16 Paragraph (1) of Law No. 28/2018 on Copyright states that copyright is an intangible movable object, so copyright can be said to be an immaterial or intangible objects. With the categorization of copyright into intangible objects, it will be attached to the rights of immateriality.¹⁵

Copyright can be transferred either in whole or in part to another person, as this is part of the provisions of Article 16 Paragraph (2) of Law Number 28 of 2018 concerning Copyright, namely by way of inheritance, grants, wills, written agreements, and other causes justified in accordance with statutory provisions. The transfer of Copyright must be done clearly and in writing, either with or without a notarial deed. Copyright has exclusive legal rights owned by creators and innovators as a result of intellectual activism and creativity that is distinctive and new. Perceptive protection of exclusive rights originated and to protect the creator. Copyright consists of economic rights and moral rights.¹⁶

Economic rights are the rights to make economic use of the work and related products, while moral rights are rights that are inherent to the creator and cannot be alienated.¹⁷ Juridically, Article 6 (1) bis Berne Convention regulates moral rights as follows:

“Independent of the author’s economic rights, and even after the the transfer of the said right, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action, in relation to the said work, which would be prejudicial to his honor or reputation”.¹⁸

In Article 16, Paragraph (3) of Law No. 28/2018 on Copyright expressly explains that copyright can be used as a fiduciary guarantee. With this arrangement, it confirms that copyright can be used as an object of collateral, meaning that copyright has economic value and is included in the balance sheet of activities.¹⁹

The subjects of fiduciary guarantees are the grantor and the fiduciary recipient. Based on Article 1, Point 6 of Law Number 42 of 1999 concerning Fiduciary Guarantee, it is stated that the fiduciary grantor is an individual or corporation that owns the object of fiduciary guarantee, while the fiduciary beneficiary is an individual or corporation that has

¹⁵ Herda Mardiana, Muhamad Amirulloh, dan Pupung Faisal, “Hak Paten Sebagai Objek Jaminan Fidusia Berdasarkan Peraturan Perundang-Undangan Mengenai Jaminan Fidusia Dan Paten,” *Jurnal Cakrawala Hukum* 11, no. 2 (13 Agustus 2020): 179, <https://doi.org/10.26905/idjch.v11i2.4094>.

¹⁶ Lully Tiyas Junita, “Perlindungan Hukum Terhadap Pencipta Lagu ‘Lagi Syantik’ Atas Perubahan Lirik Tanpa Izin Pemegang Hak Cipta,” *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 4, no. 1 (25 Januari 2021): 76, <https://doi.org/10.33474/yur.v4i1.9300>.

¹⁷ Anggara Putra Silaban, “Kajian Yuridis Terhadap Hak Cipta Sebagai Jaminan Fidusia,” *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]* 1, no. 4 (27 Desember 2021): 5, <https://jurnalmahasiswa.umsu.ac.id/index.php/jimhum/article/view/938>.

¹⁸ Muhammad Rifqi Fauzi, “Hak Cipta Dalam Sudut Pandang Nilai – Nilai Pancasila,” *JIPRO: Journal of Intellectual Property* 3, no. 2 (21 Oktober 2021): 22, <https://doi.org/10.20885/jipro.vol3.iss2.art2>.

¹⁹ Schwarz F. S. Liuw, “Tinjauan Hukum Pengaturan Hak Cipta Sebagai Objek Jaminan Fidusia Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta,” *LEX PRIVATUM* 8, no. 4 (20 Oktober 2020): 77.

receivables whose payment system is guaranteed by fiduciary guarantee. The law on Fiduciary guarantees states in article 4 that “fiduciary guarantees are an accompanying agreement to the main agreement which creates an obligation for the parties to fulfill a performance” and every fiduciary guarantee must have deeds, one of which is a notarial deed.

Copyright has economic value and can be changed or transferred entirely, therefore, copyright can be used as a credit guarantee. Collateral is needed for the parties who feel the need to gain confidence that the other party will carry out its obligations in accordance with what has been promised. Article 570 of the Civil Code on Property Rights states that:

“The right to property in objects is the right to enjoy the free use of an object and to act freely upon it, provided that it is not contrary to law or to general regulations established by a power entitled to determine and not to interfere with the rights of others without prejudice to the possibility of revocation of the right in the public interest based on statutory provisions and upon payment of compensation”.

The imposition of Copyright as an object of Fiduciary Guarantee is based on an agreement made by the Creator and Copyright Holder, with the creditor based on freedom of contract. A binding agreement is an agreement made between the parties. Therefore, it must be obeyed (*pacta sunt servanda* principle). After that, both parties (creators or copyright holders with creditors) are in good faith in carrying out the agreement that has been mutually agreed upon.²⁰

TRIPs or Trade Related Aspects of Intellectual Property Rights is an agreement governing Intellectual Property Rights, which has the aim of increasing the protection of intellectual property in trade and streamlining trade flows as well as continuing the rules in the implementation of intellectual property protection. The basic rules regarding copyright in TRIPs are set forth in Articles 9 through 14. These rules have been accommodated in Law Number 19 of 2002 concerning Copyright and have been updated through Law Number 28 of 2014 concerning Copyright. Article 1, paragraph (1) of Law No. 28 of 2014 on Copyright provides that copyright is an exclusive right for creators or copyright holders to reproduce their work, which arises automatically after a copyrighted work is born without prejudice to restrictions under applicable laws and regulations.²¹

3.2 Application of Copyright as an Object of Fiduciary Guarantee in Malang City

In the context of copyright, the object of the guarantee is not the work itself, but the economic rights attached to the work. These economic rights include the right to reproduce, duplicate, distribute, and display the work of creation. Thus, when someone provides a

²⁰ Shelly Asrika Fazlia, Dwi Suryahartati, dan Lili Naili Hidayah, “Penjaminan Fidusia Dengan Objek Hak Cipta,” *Zaaken: Journal of Civil and Business Law* 3, no. 3 (31 Oktober 2022): 398, <https://doi.org/10.22437/zaaken.v3i3.18693>.

²¹ Kaina Medita, Tasya Safiranita, dan Rika Ratna Permata, “Penarikan Royalti Hak Cipta Sebagai Wujud Jaminan Fidusia Berdasarkan Hukum Positif Di Indonesia,” *Jurnal Hukum, Politik Dan Ilmu Sosial* 3, no. 4 (14 September 2024): 132, <https://doi.org/10.55606/jhpis.v3i4.4293>.

fiduciary guarantee of copyright, what is actually pledged is the potential economic benefits that can be obtained from the work of creation.

According to Mr. Ardi Susanto as Consumer Business Manager of Bank BRI Malang Martadinata.²² The implementation of this concept is not free from various challenges. One of the main challenges is related to copyright valuation. He further said that, unlike physical assets, whose value can be easily determined through the market, the economic value of a copyrighted work is often subjective and difficult to measure. In addition, clear arrangements are also needed regarding the mechanism for exercising rights by creditors in the event of default. Nonetheless, with a strong legal foundation and the development of information technology, the potential for the use of copyright as an object of fiduciary security is increasingly wide open.

The nature of copyright as an intangible asset is a major obstacle to its utilization as collateral. Intellectual Property Certificates have not been fully recognized by Bank Indonesia as one of the acceptable forms of collateral, while banks that are still inclined to tangible collateral further narrow the space for creative industry players. In fact, copyright is a very valuable asset for them. In fact, until now, from what is stated in Article 16 Paragraph (3), both from the Bank and non-Bank parties in Indonesia, especially in Malang City, have not practiced Copyright as an object of Fiduciary Guarantee because there are several obstacles in its implementation.

Based on this, data from interviews with Ms. Indri Dwi Puspita as Retail Credit Operation Officer of Bank BNI Malang Branch Office, Mr. Ardi Susanto, Consumer Business Manager of Bank BRI Malang Branch Office, Ms. Esy Megasari, Senior Relationship Manager of Bank Mandiri SME Area Malang, and Mr. Winarno, Consumer Lending Unit Head of Bank BTN Malang Branch Office, stated that there are several factors, namely:

First, there is no regulation. The emptiness or absence of regulations governing copyright as a fiduciary guarantee is one of the factors that causes banks in Malang City have not accept copyright as an object of fiduciary guarantee. On the other hand, the Copyright Act explicitly describes copyright as an object of fiduciary guarantee, but the provisions are still general in nature, so that the banking world has doubts about utilizing copyright as collateral; overall, still limited.²³

Article 16, paragraph (3) expressly explains that copyright can be used as a fiduciary guarantee. Given that Law No. 28 of 2014 on Copyright does not regulate the execution of fiduciary guarantees on copyright, the provisions of execution against it is to follow the

²² Ardi Susanto, Faktor Penyebab Bank di Kota Malang Belum Menerima Hak Cipta Sebagai Obyek Jaminan Fidusia, Wawancara, 20 November 2024.

²³ Komang Febri Berliana Mawarni, Ni Ketut Sari Adnyani, dan Si Ngurah Ardhya, "Kriteria Hak Cipta Lagu Sebagai Objek Jaminan Fidusia Ditinjau Dari Pasal 16 Ayat (3) Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Jurnal Komunitas Yustisia* 3, no. 3 (2020): 266, <https://doi.org/10.23887/jatayu.v3i3.32872>.

provisions set forth in Law No. 42 of 1999 on Fiduciary Guarantees. In Article 7 of Law No. 42 Year 1999 on Fiduciary Guarantee, states that the debt whose repayment is secured by fiduciary can be in the form of: debts that already exist or will arise in the future, and debts that at the time of execution can be determined in amount based on the principal agreement.

All of these provisions, carried out on the basis of the fulfillment of the obligation of an achievement. If the grantor of the fiduciary guarantee of copyright does not fulfill the obligations of a performance, then the fiduciary receiver can execute copyright as an object of fiduciary guarantee as debt repayment. On the other hand, copyright as an object of fiduciary guarantee has not been listed in article 46 of the Indonesian Banking Regulation No. 9/6/PBI/2007 on the Second Amendment to the Indonesian Banking Regulation No. 7/2/PBI/2005 on Asset Quality Assessment of Commercial Banks so that the banks have not been able to accept as credit collateral.²⁴

Second, there is no specialized valuation agency. Copyright values are highly volatile, affected by unpredictable factors such as trends and competition. The absence of a specialized valuation agency makes the valuation subjective and risky. Unlike physical assets, the value of copyright depends more on market perception. Sharp fluctuations can result in losses for the bank if the collateral value is insufficient.

The banks argue that the main obstacle to accepting copyright as an object of fiduciary guarantee is the difficulty in determining the exact selling value of a copyrighted work due to the absence of a specialized valuation institution. In addition, banks also have concerns related to legal risks that may arise if the debtor defaults. This is due to the lack of standardization in the execution mechanism if the debtor defaults. The lack of clarity regarding the procedure for executing copyright collateral when the debtor defaults is a major obstacle in the development of the market for copyright as a collateral asset. This is due to legal uncertainty that may pose a risk to creditors, thereby reducing their interest in accepting copyright as collateral.²⁵

The risk that occurs in the absence of an appraisal institution that can provide validation of the value of copyright, the bank feels insecure in executing if the debtor defaults. This uncertainty makes banks hesitant to accept copyright as collateral. In addition, copyright is an intangible asset, so assessing its economic value is a challenge. In the absence of clear evaluation standards, banks find it difficult to determine the value of copyrights, which may result in financial risks for them.

²⁴ Agustianto Agustianto dan Yeny Sartika, "Analisis Yuridis Terhadap Penerapan Hak Cipta Sebagai Objek Jaminan Fidusia Dalam Pemberian Fasilitas Kredit Pada Perbankan Di Kota Batam," *Journal of Judicial Review* 21, no. 2 (2 Desember 2019): 131, <https://doi.org/10.37253/jjr.v21i2.674>.

²⁵ Oriza Sekar Arum, "Problematika Dalam Perlindungan Hak Cipta Atas Foto Produk Digital Pada Media Sosial Instagram," *Jurnal Privat Law* 9, no. 2 (2021): 272, <https://doi.org/10.20961/privat.v9i2>.

Third, there is no Credit Scheme with Copyright Collateral. The potential use of copyright as an object of fiduciary collateral in encouraging the growth of the creative economy in Indonesia is enormous. However, the lack of a standard credit scheme hinders the realization of this potential. One of the main challenges in developing the creative economy is the limited access of creative economy actors to financing. To overcome this, the banking sector needs to develop more innovative and affordable financial products and services.²⁶ The lack of specific credit products for copyright as collateral, which provides a concrete picture of the conditions on the ground, is clear evidence that banks are not fully prepared to meet the needs of the growing creative economy sector. This situation requires serious attention from various relevant parties, especially the Government of Indonesia.²⁷

Article 87 paragraph (1) of Law Number 28 of 2014 on Copyright states that “In order to obtain economic rights, every Creator, Copyright Holder, owner of Related Rights becomes a member of the National Collective Management Institution in order to be able to collect reasonable compensation from users who utilize Copyright and Related Rights in the form of commercial public services”, but in reality not all fields of creation protected by Law Number 28 of 2014 on Copyright have a National Collective Management Institution. Of the 9 National Collective Management Institutions that currently exist, there is no National Collective Management Institution that focuses on managing royalties from photographic creations.

Fourth, the lack of Socialization of Copyright as an Object of Fiduciary Guarantee. Implementation in the field still faces various obstacles, one of the main obstacles is the lack of effective socialization from the central government and from local governments. As a result, many creative businesses, financial institutions, and the general public do not understand this concept well. Lack of socialization and education regarding the potential use of copyright as a fiduciary guarantee is also an inhibiting factor. Without an adequate understanding of the value and mechanism of copyright valuation, both on the part of banks and creators, this potential is not well utilized. In this case, cooperation between the government, financial institutions, and copyright providers as objects of fiduciary guarantees is very important.²⁸

Fifth, the low appreciation of Indonesian society towards copyright. The low appreciation of Indonesian society towards copyright is a major obstacle in the development of the use of copyright as collateral in banking transactions. If examined properly,

²⁶ I Gede Agus Kurniawan, “Valuasi Merek sebagai Jaminan Kredit Perbankan: Relevansi dalam Pembentukan Lembaga Penilai Kekayaan Intelektual,” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 4 (31 Desember 2020): 767, <https://doi.org/10.24843/JMHU.2020.v09.i04.p08>.

²⁷ Larasta Shabillia dan Budi Santoso, “Analisis Yuridis Terhadap Pembiayaan Berbasis Kekayaan Intelektual dalam Ekosistem Ekonomi Kreatif di Indonesia,” *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (24 Mei 2023): 739, <https://doi.org/10.37680/almanhaj.v5i1.2871>.

²⁸ Ade Uli Kurniati Siregar, “Penerapan Jaminan Fidusia dalam Pinjaman Online,” *Adagium: Jurnal Ilmiah Hukum* 2, no. 1 (28 Januari 2024): 57, <https://doi.org/10.70308/adagium.v2i1.36>.

developing a copyright-based fiduciary guarantee system can encourage the growth of the creative economy and provide wider access to financing for creative industry players. The creative economy and copyright have a close relationship in terms of fiduciary guarantees. In the context of the creative economy, copyright can be the object of a fiduciary guarantee. Copyright gives its owner the exclusive right to control the use of the copyrighted work and generate profits from the use of the work.²⁹ From the factors that have been described, the potential of copyright as a source of funding for creative economic actors in Malang City has not been optimized and implemented properly.

4. CONCLUSION

Copyright arrangements on the object of fiduciary guarantee are set out in Article 16 of Law No. 28 Year 2014 on Copyright. With these arrangements, it confirms that copyright can be used as an object of collateral, meaning that copyright has economic value and is included in the balance sheet of activities. On the other hand, in the existing legislation in Indonesia, there is nothing that regulates the mechanism and submission of copyright in Act No. 42 Year 1999 on Fiduciary Guarantee, so that it becomes one of the factors and obstacles on the application of copyright as an object of fiduciary guarantee, especially in Malang City.

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²⁹ Abram Shekar Perdana dan Sri Mulyani, "Hak Cipta Sebagai Objek Jaminan Fidusia Dalam Perjanjian Kredit Bank," *Jurnal Akta Notaris* 2, no. 1 (30 Juni 2023): 2, <https://doi.org/10.56444/aktanotaris.v2i1.890>.

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