



The Urgency of Regulations for the Exercise of Copyright as a Fiduciary Collateral

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ABSTRACT

Copyright as part of Intellectual Property Rights (IPR) in developed countries has expanded its use as an object of guarantee to obtain credit or financing from financial institutions. The problem faced in Indonesia is that there need to be supporting devices in implementing the regulations in article 16 paragraph (3), such as the procedures for implementing it, assessing the economic value of Copyright, and how to disburse from Copyright. The research method used in the framework of this research is the normative legal research method. Although Copyright can be used as collateral as stipulated in law No. 28 of 2014, It still needs to be implemented in its practice. Copyright has economic value and can be transferred either in whole or part due to inheritance, grants, wills, written agreements or other causes justified by laws and regulations. In addition, Copyright has qualified as an object of fiduciary guarantee, among others. It belongs to the category of things and has economic value, so Copyright allows it to be used as an object of debt guarantee. The Copyright that will be used as the object of debt guarantee must be registered in the general register of works as proof of ownership of a Copyright. However, in its laws, Copyright does not have to be registered. Another condition is that the validity period of copyright protection has not expired, this is important in terms of the economic value of the Copyright because it can still be maintained against anyone.

ABSTRAK

Hak Cipta sebagai bagian dari Hak Kekayaan Intelektual (HKI) di negara-negara maju telah diperluas pemanfaatannya sebagai objek jaminan untuk mendapatkan kredit atau pembiayaan dari lembaga keuangan. Permasalahan yang dihadapi di Indonesia adalah belum adanya perangkat-perangkat yang mendukung dalam pelaksanaan pengaturan didalam pasal 16 ayat (3) tersebut, seperti tata cara pelaksanaannya, penilaian nilai ekonomis Hak Cipta, bagaimana pencairan dari Hak Cipta tersebut Metode penelitian yang digunakan dalam rangka penelitian ini adalah metode penelitian hukum normatif. Meskipun Hak Cipta dapat dimanfaatkan sebagai jaminan sebagaimana diatur dalam undang-undang No 28 tahun 2014, namun demikian Hak Cipta dalam parakteknnya masih sulit untuk dilaksanakan. Hak Cipta memiliki nilai ekonomi dan dapat dialihkan baik seluruhnya maupun sebagian karena pewarisan, hibah, wasiat, perjanjian tertulis atau sebab-sebab lain yang dibenarkan oleh oleh peraturan perundang-undangan. Selain itu, Hak cipta telah memenuhi syarat sebagai objek jaminan fidusia antara lain, termasuk dalam kategori benda dan memiliki nilai ekonomis sehingga Hak Cipta memungkinkan untuk dijadikan objek jaminan utang. Hak cipta yang akan dijadikan objek jaminan utang wajib didaftarkan dalam daftar umum ciptaan sebagai bukti kepemilikan suatu Hak Cipta, walaupun dalam undang-undangnya Hak Cipta tidak harus didaftarkan. Syarat lain ialah masa berlaku perlindungan Hak Cipta tersebut belum habis, ini penting artinya dalam hal nilai ke-ekonomian Hak Cipta tersebut karena masih dapat dipertahankan terhadap siapa saja.

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I. INTRODUCTION

Various forms of cyber intimidation have caused dramatic and serious repercussions for victims even to the point of suicide. One of the newest and dangerous forms of cyber bullying that appears in the infinite virtual world is known as revenge porn or in other words posting the victim's intimate life without the victim's permission for the purpose of humiliating her. In cases like this, generally, the victims are mostly women. (Ashilly Achidsti., 2022) Revenge porn as a tool used by the perpetrator as a means of forcing his victim (female) to be able to follow the will of the perpetrator himself, for example asking for a certain amount of money, threatening, and can continue to acts of sexual violence.

People's social reactions to the issue of revenge porn will generally be more mentally damaging than the victim, otherwise known as victim blaming and slut shaming. Not infrequently, it is not only the victim who experiences a negative reaction which as a result is able to attack the victim's psychology but also attacks the mentality on the part of the victim's family. Victims and their families often receive abuse, exclusion, and even to the extent of being expelled from their own villages because they are considered a disgrace to the village. Not only that, law enforcement officials, especially the police, often see this issue as a legalistic-positivistic view, meaning that law enforcement officials, especially the police, only make the elements of criminal acts fulfilled rather than realizing the values that live in society. To make matters worse, law enforcement officials participated in the decriminalization, causing the victim to experience a psychic state that was destroyed a second time. The conditions mentioned describe a state that is contradictory to divine values, and far from what is contained in the 1st Pancasila precept "Almighty Godhead".

Then if the analysis is more comprehensive, then revenge porn is not only a matter of intersection of norms of Law No. 19 of 2016 Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (Hereinafter referred to as ITE Regulation, but also the issue of dealing with online gender-based violence (hereinafter referred to as OGBV). OGBV is understood as a form of gender-based violence facilitated by technology, where in this violence the main objective is to harass victims based on their gender or sexual identity. (Puteri Hikmawati., 2021)

From previous studies that have been carried out on revenge porn, it will generally result in a common point, namely the current positive legal inability to protect and provide legal certainty guarantees to victims. This is not without reason, the difficulty of the law officers is caused by the inability to perceive various provisions of legal norms governing revenge porn. Then in addition, legal policies rather than OGBV arrangements in ITE Regulations often make it difficult for law enforcement by officials because there are multi-interpretation norm provisions (violating decency). (Azza Fitrahul Faizah & Muhammad Rifqi Hariri., 2022).

Generally, in previous studies, it was only discussed from one perspective. For example, it is viewed from the point of view of positive criminal law only, such as the Criminal Law Books, ITE Regulations, and Pornography regulations. (Ni Putu Winny Arisanti & I Ketut Rai Setiabudhi., 2021). Furthermore, the research conducted only discusses the regulation of positive criminal viewpoints, namely the ITE Regulation, as well as the Pornography regulation, and the Witness and Victim Protection regulation. (Nabila Chandra Ayuningtyas., 2021). Then, not far from the two previous studies conducted, this

study uses the basis of Criminal law, ITE Regulation, and Pornography regulation as the legal construction. (Anneke Putri Willihardi & Eko Wahyudi., 2020)

For previous research, this research will bring an update on research, authorship, and involve various legal perspectives. The legal update in this study will use Law Number 12 of 2022 concerning the Crime of Sexual Violence (Hereinafter referred to as the TPKS Regulation 2022). The use of the 2022 TPKS Regulation is closely related to the passage of the regulation. Then, in this study, it will also be discussed how Islamic law, especially jinayah, views the issue of revenge porn. In addition, revenge porn, which people generally know and understand, is an issue about revenge on their former lovers, it turns out that it is just a little bit of the purpose of revenge porn. Moreover, the purpose of revenge porn in some countries has recently developed, namely that some people have commercial goals and are driven by popularity or in other words viralism. (M. A. Franks., 2015).

As explained in the background above, two formulations of the problem will be solved in this study, namely how are the juridical rules regarding revenge porn in the scope of cyber bullying based on the perspective of Indonesian national law? and what is the form of legal liability for revenge porn in the study of qanun jinayah and Indonesian national law?.

Making this research an academic study and a further reference to solve the problem of revenge porn in Indonesia is the main goal and main benefit that the author wants to achieve. In addition, knowing and understanding the problem solving of revenge porn issues in accordance with positive law through various legal perspectives.

II. RESEARCH METHOD

This writing uses a normative juridical research method, which is carried out by examining only library materials or the research object focuses on legal norms, both contained in laws and regulations, customs or others. The research approach used includes; Statutory Approach, "statuta approach," and Conceptual Approach, "conceptual approach". Normative research must certainly use a statutory approach because various legal regulations will be examined, which are the research focus (Suhaimi, 2018). This step starts with researching the existence of legal norms regarding food security and then looking at social facts in the field. Furthermore, it is analyzed whether there is a gap between the rule of law and the social facts. The types of legal materials used in this study consist of (1) Primary legal materials, which are the main materials in conducting normative research consisting of laws and regulations relating to the formation of regional apparatus and food. (2) Secondary legal materials are references related to the topic raised, consisting of books and other scientific writings. (3) Tertiary legal materials are supporting legal materials in the form of dictionaries and other sources (print and electronic media). The collection of legal materials is carried out by taking an inventory of all regulations (primary materials) related to regional apparatus, including related references (secondary legal materials). Furthermore, the legal material is analyzed deductively by drawing conclusions from general matters to specific matters.

III. RESULTS AND DISCUSSIONS

Copyright Has Economic Value That Can Be Guaranteed.

Intellectual Property Rights, or IPR, is the official term used for the rights granted to certain works of human thought that have economic value. As part of IPR, Copyright is an exclusive right that only belongs to the creator or copyright holder to regulate the use of works or the results of processing certain ideas or information. Copyright is the "right to copy a work" or to enjoy a work (Jaman et al., 2021). Copyright also allows the holder of the right to limit the use and prevent unauthorized creation use. Given that exclusive rights contain the economic value that not everyone can pay for, then to be fair, exclusive rights in Copyright have a certain limited validity period (Permata & Ramli, 2021).

The Steward summarizes from various copyright conventions and laws in various countries, six kinds of rights can be seen as the basis for the economic rights of creators or actors, one of which is that The reproduction right is the most fundamental of all economic rights of the creator and this right is recognized both in the Berne Convention, the Universal Copyright Convention (UCC) and copyrights in every country. In essence, this right permits producing or duplicating many creations in various ways, by the printing or mechanically (Sulistyaningsih & Hendrawati, 2017). This proves that copyright is a part of IPR, so copyright is classified as an economic right which is a special right in IPR.

Article 8 of the 2014 Copyright Law also states "that economic rights are the exclusive rights of creators or copyright holders to obtain economic benefits from creations", meaning that in the definition of economic rights, it can be concluded that copyrights have economic benefits. Copyright has economic value through the transfer method and can be valued in money. So it can be concluded that Intellectual Property Rights, in this case, are Copyrights, which are exclusive rights granted by law to a person or group of people as a result of their creativity which is expressed to the general public in a tangible form that has economic value and can be valued in money.

In terms of credit agreements or debts, to bear or guarantee the payment or repayment of certain debts, the debtor is generally required to provide collateral in the form of collateral (certain objects) that can be valued in money, the minimum value of which is the amount owed to him (Lailiyah, 2018). For this reason, debt guarantee institutions or individuals should ask for collateral with the intention that if the debtor cannot pay off his debt (default) or is declared bankrupt, the collateral can be disbursed or cashed to cover repayment or repaying the loan (debt). Not all objects or rights (receivables) can be used as collateral for debt unless the collateral material has fulfilled the requirements to be used as collateral for a debt. One of the conditions for objects that can be guaranteed is objects that have a value that is economical and can be valued in money.

Thus it can be said that collateral material is intended to provide protection and, at the same time, legal certainty both to creditors and debtors. For creditors, binding a debt with collateral will provide legal certainty for guaranteeing the repayment of the debtor's debt if the debtor defaults or is declared bankrupt. The collateral material will provide legal certainty to the creditor along with interest, which will still be returned by cashing the related debt guarantee material.

Guaranteeing an object is one of the good intentions of the debtor to ensure the repayment of his debt, as stated in the main agreement. At the same time, the creditor becomes more convinced of the good intentions of the debtor if certain objects have economic value bound in an agreement known as material guarantees. The guarantee must be legally owned by the debtor or guarantor and can be accepted by the creditor because the guarantee is considered to have economic value.

The requirements for an object to be used as a fiduciary guarantee object are regulated in Article 1 number 4 of Law Number 4 of 1999 concerning Fiduciary Guarantees, which reads, "Objects are anything that can be owned and transferred both tangible and intangible, registered or unregistered, movable or immovable which cannot be saddled with Mortgage or Mortgage. From the sound of the Article above, it can be concluded that objects that can be used as objects of fiduciary guarantees are in the form of: a. Tangible or intangible objects; b. Objects that are registered or not registered; c. Objects that cannot be saddled with Mortgage Rights or mortgages; and d. The object must be owned and transferred.

From the explanation above, we can conclude that Copyright as an intangible movable object is a form of intellectual property with economic value benefits and can be transferred in various ways regulated in the Law. Copyright ownership rights can appear automatically from the birth of the Copyright, whether registered or not, but if it is used as collateral, that must be registered.

Copyrights also cannot be saddled with mortgages or mortgages because of the nature of copyrights which are movable objects. This makes Copyright included in the object of fiduciary guarantees because it has fulfilled all the elements and conditions to become an object of fiduciary guarantees.

The Urgency of Arrangements Concerning the Implementation of Copyrights as Fiduciary Guarantees.

In Law Number 19 of 2002 concerning Copyright, there is no mention of copyright as an object of fiduciary guarantees. This creates disharmony between the Fiduciary Guarantee Law and the Copyright Law. In addition, if there is a guarantee of copyright as a fiduciary guarantee, in practice, then there is no clear legal basis regarding the guarantee of copyright as a fiduciary guarantee. Fiduciary guarantees are increasingly being used in terms of credit, and the objects that serve as collateral are increasingly diverse, one of which is copyright.

To meet the community's needs, the government renewed and formed the newest Copyright Law, Law Number 28 of 2014 concerning Copyright. This law clearly states that copyright can be used as a fiduciary guarantee. Therefore, the legal requirements for copyright as a fiduciary guarantee are still based on the Fiduciary Guarantee Law. As previously described, arrangements for Copyright to be used as objects of fiduciary guarantees have been regulated in Article 16 paragraph (3) of the Copyright Law Number 24 of 2014, which states: "Copyrights can be used as objects of fiduciary guarantees". Furthermore, paragraph (4) states that the provisions regarding Copyright as an object of fiduciary guarantees, as referred to in paragraph (3), are carried out by the provisions of laws and regulations.

The laws and regulations referred to here are Law Number 42 concerning Fiduciary Guarantees and Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

The fiduciary arrangements in the new UUHC provide hope for musicians, both from the enforcement and protection of copyrighted works, especially in terms of economic utilization through fiduciary guarantees. (Liuw et al., 2020). As stated by the creator (musician) Abdi Negara Nurdin or better known as Abde Negara, guitarist for the Slank Band Group, during the National Convention for Intellectual Property Rights and Creative Economy at Graha Pengayoman, the Secretariat General Building of the Ministry of Law and Human Rights, said that there are many very interesting thing about this new Copyright Act. In addition to the existence of an article that regulates piracy that has never been regulated before, there is also an article regarding fiduciary. This means that all our copyrights or intellectual works can be guaranteed by a fiduciary and can be used to borrow money at the bank as an investment to work.

The regulation that Copyright can be used as collateral means that it has economic value and can be included in the activity balance. On the other hand, musicians, artists and songwriters feel that UUHC 2014 has given more attention and encouragement to continue working because their creations are valued and can be used as objects of fiduciary guarantees.

A credit agreement begins with a credit application. Prospective debtors who submit applications come to the bank to obtain information regarding the requirements for granting the credit in question. Then the prospective customer will submit a written application to obtain credit by preparing and attaching data and document information or other requirements required by the bank.

Banks, in extending credit, there are 2 (two) important things, namely trust and prudence. Prudence can be manifested in the consistent application of all applicable laws and regulations related to bank lending. (Novendra & Aulianisa, 2020). In general, the stages of applying for credit in banking practice include: a. The credit application stage from prospective customers, meaning that the credit applicant comes to the bank to obtain information about the requirements for granting credit; b. The credit application assessment stage is the detailed assessment stage of the credit application file. If the assessment results show that the application file is incomplete and does not meet the requirements submitted, the applicant will be asked to complete it. If the funds are complete, it will

be continued at the next stage, namely the creditworthiness assessment stage; c. In The creditworthiness assessment stage, at this stage after the data and information have been obtained, the bank analyzes various aspects, namely, aspects regarding the applicant's curriculum vitae data, the applicant's experience in managing his business, finance, collateral, socio-economic, environmental impact and credit risk; d. In The credit decision stage, in this case, the bank will give a sign of approval in the form of a letter to the applicant notifying the approval of the credit; e. The implementation and credit administration stage, meaning that after all the requirements listed in the credit decision have been approved, a credit agreement must be signed in an agreement called a credit agreement because the existence of a legal agreement can protect business relations between business people; f. After the credit agreement is made, the collateral binding stage is continued with the binding of the object used as collateral for credit; g. The credit disbursement stage is the stage after the binding of the credit guarantee. Then the credit funds can be disbursed by way of a book transfer.

Fiduciary as explained earlier is the ownership of the rights of an object on the basis of trust provided that the object whose ownership rights are held remains in the control of the owner of the object. The fiduciary is regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. A fiduciary Guarantee is a guarantee right over movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be saddled with a Mortgage as referred to in Law Number 4 of 1996, regarding mortgage rights that remain in the control of the fiduciary giver as collateral for the settlement of certain debts that give the fiduciary recipient a priority position over other creditors.

The nature of a fiduciary guarantee is a follow-up agreement to a principal agreement that creates an obligation for the parties to fulfil an achievement (Bhakti, 2018). The imposition of fiduciary guarantees is carried out in the following way: a. Done by notarial deed in Indonesian; The deed contains at least the identities of the fiduciary giver and recipient, data on the principal agreement guaranteed by the fiduciary, a description of the object that is the object of the fiduciary guarantee, the value of the guarantee, the value of the object that is the guarantee; b. Debts whose repayment is guaranteed by a fiduciary guarantee are: existing debts; debt that will arise in the future that has been agreed upon in a certain amount; the amount of debt in execution debt can be determined based on the main agreement that gives rise to the obligation to fulfil a performance.

Copyright is a part of intellectual property with the widest scope of protected objects, one of which is regarding fiduciary guarantees. This is one of history for artists in Indonesia.

Furthermore, it is emphasized in Article 16 paragraph (4) UUHC that Copyright as an object of fiduciary guarantees, as referred to in paragraph (3), is carried out by statutory provisions. In this regard, it is assumed that the laws and regulations that serve as a benchmark for enforcing copyrights as objects of fiduciary guarantees from a procedural perspective are Law No. 42 of 1999 concerning Fiduciary Guarantees. However, until now, there has been no concrete further government action regarding the regulation of copyright as an object of guarantee.

Suppose it is said that copyright can be used as a fiduciary guarantee as in UUHC, which is based on UUJF, then in a systematic interpretation. In that case, the relation lies in implementing copyright guarantees which will be appropriate and refer back to the Fiduciary Guarantee Law. The terms and conditions for an object to be used as a fiduciary guarantee object and the validity of the object as a fiduciary guarantee object must follow the Fiduciary Guarantee Law.

Based on this, according to the author, further regulations as in Article 16 paragraph (4) UUHC must emphasise the mechanism of economic valuation of copyright as a basis that creditors can use. This is in line with Mari Elka Pangestu's statement as the former Minister of Tourism and Creative Economy for the 2011-2014 period that regulation is urgently needed, which further elaborates the mechanism regarding the execution of copyright as a fiduciary guarantee. This is considering that the bank cannot judge an artist's work and determines the price with the question of how it can be

appreciated. Also agree with Dwi Tatak Subagiyo that this implementing regulation is needed to clarify the implementation of copyright as a fiduciary guarantee, especially to assess the appraisal of copyright.

Furthermore, objects that can be used as fiduciary guarantees must have a value that can be measured as collateral for the debtor's debt repayment. In terms of copyright as an object of fiduciary guarantees, it is difficult to measure the value of these rights because what is guaranteed is the intellectual property rights of the creation (Merista, 2016). This causes the need for a third party as an appraisal guarantee institution appropriate for copyrights to become guarantees.

The Collective Management Institute (LMK) is an institution that can provide an appraisal/assessment of the economic value of copyright. Several LMKs in Indonesia are Karya Cipta Indonesia (KCI), Royalty Award Indonesia (RAI), and Wahana Musik Indonesia (WAMI). These links collect royalties from users of copyrighted works from musicians or singers members of each LMK. LMK can be a reference data provider for appraisal agencies on royalty-performing rights for creators/copyright holders.

Assessing the economic value of copyright will be more difficult than measuring the economic value of tangible movable objects. The economic value that can be guaranteed is the value of utilising the economic rights of the goods/objects created. The utilization of these economic rights can be seen from the rewards received for such utilization or from royalties (Merista, 2016). To help assess the appraisal of copyright, LMK is needed as an institution that can provide an assessment of the economic value of copyright.

Referring to several economic theories, in terms of determining the economic value of a copyright, can include; First, according to Herman H. Gossen, the value of an item can be divided into value in use and exchange value. Second, Earl Naumann's idea describes that customer value or the assessment given by customers or consumers, consists of several components, namely Product Quality, Service Quality, Price and Image. (Handayani, 2020). Suppose this second theory is used in the method of calculating the economic value of a work that has been registered as a Copyright. In that case, the quality of the product, service, price and image owned by the work will be eligible to be accepted as an object of debt guarantee by banks because rights the copyright has fulfilled the marketable and secure elements for loan repayments. Third, Sri Mulyani, through her idea that the size in determining the economic value of intellectual property includes; Market approach (market approach), the income approach (income approach), the income approach, the cost approach (cost approach), and the cost approach.

The absence of implementing regulations regarding Copyright as an object of collateral can cause the Article to become a vacuum. Therefore, the implementation arrangement, as intended, is to set certain standards through an assessment process using relevant economic theory so that there are standard standards for copyrights that can be accepted as objects of collateral for a debt. The legal vacuum regarding the execution of copyrights as fiduciary guarantees reaped a situation that, in turn, resulted in different perceptions and attitudes on the part of the banks. On the one hand, copyright objects were rejected. On the other hand, copyright objects were accepted as debt guarantees in the Indonesian banking world.

IV. CONCLUSION

Based on their meaning and nature, copyrights are classified as intangible movable objects owned by creators and copyright holders have rights that are also owned by other material rights. Namely, they can be guaranteed. Copyright meets the requirements as an object of collateral, among other things, is included in the category of objects and has economic value so that Copyright makes it possible to be used as an object of debt guarantee. The Copyright process as an intangible object in Indonesian

legal practice can be seen in Article 16 paragraph (4), implemented by the applicable laws and regulations, in this case, the fiduciary guarantee law and banking law. However, because of its nature, Copyright cannot easily be used as an object of fiduciary guarantees. In practice later, Fiduciary officers or financial institutions such as banks will experience difficulties in estimating the economic value of collateral goods/objects in the form of copyrights, unlike tangible goods/objects that have a value that can be determined through market prices and there are not regulations governing in detail regarding the implementation of copyright registration. Guaranteed by fiduciary will add to the difficulty of the fiduciary guarantee institution in establishing Copyright as the object of the guarantee. This is due to the absence of instruments that support the implementation of these arrangements, such as the procedures for implementing them, assessing the economic value of copyrights, and how the copyrights are disbursed.

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