

Jurnal Notariil

Jurnal Notariil, Vol. 5, No. 1, Mei 2020, 33-38

P ISSN 2540 - 797X

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

E ISSN 2615 - 1545

<http://dx.doi.org/10.22225/jn.4.2.1208.65-72>

PATENTS AS FIDUCIARY COLLATERAL IN BANK CREDIT

I Gusti Agung Ayu Patrecia Marthavira

Magister of Notary, Universitas Warmadewa, Denpasar, Bali-Indonesia

patreciamarthavira@gmail.com

How To Cite:

Marthavira, I. G. A. A. P. (2020), Patents As Fiduciary Collateral In Bank Credit, *Jurnal Notariil*, 5 (1) 2020, 33-38,

Doi: <https://doi.org/10.22225/jn.5.1.1725.33-38>

Abstract

The aims of this study are to determine the regulation of patents as fiduciary guarantees in bank credit and find out how to assess the economic value of patents as fiduciary guarantees. This study used statute approach and conceptual approach. This research method used three sources of legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials. The legal material collection is done through library research. The main legal material obtained from the field was first examined for completeness and clarity to be classified as well as systematic and consistent preparation to facilitate analysis. Secondary legal material was obtained from the literature and was collected systematically, so that it could be used as a reference in conducting analysis. The results of the legal material were carried out with library and field research, as well as descriptive analytical discussions. The results of this study are the regulation of patents as fiduciary guarantees in bank credit contained in Article 108 paragraph (1) of Law Number 13 Year 2016 concerning Patents which determines that the right to a Patent can be used as an object of fiduciary security. Patents include intangible movable property that can be transferred or transferred because of a written agreement. How to assess the economic value of patents as fiduciary guarantees, namely the market approach, income approach and cost approach.

Keywords: Credit, Economic Value, Fiduciary Collateral, Patents

1. INTRODUCTION

In community economic activities, most of the funding needs are obtained through lending and borrowing activities. To obtain these funds there are various ways that can be done by the community, one of them is by way of lending and borrowing in the form of goods guarantees to get financing, namely through fiduciary collateral. Fiduciary collateral is a financing product that is currently growing rapidly in people's lives. Fiduciary is a way of carrying out the ownership rights of the owner or debtor, based on the existence of the principal agreement (debt agreement to the creditor, but only the rights are given in Yuridish-levering rights and only owned by the creditor in trust alone (as collateral for the debtor's debt), while the goods remains controlled by the debtor, but no longer as *egenaar* or *bezitter*, but only as detentors or *bonder* and on behalf of *iaeditor-eigenaar* (HS, 2004). A fiduciary collateral is an

agreement that has certain characteristics (Hoey, 1985). Fiduciary collateral has the nature of *accessoir*, *droit de suite*, and *droit de preference* (Usman, 2016).

Initially, objects that became fiduciary objects were limited to the wealth of movable objects in the form of movable objects consisting of objects in inventory, merchandise, accounts receivable, machine tools, and motor vehicles. However, in further developments, not only movable objects can be used as fiduciary collateral objects, intangible movable objects, or immovable objects can now become fiduciary objects (Isnaeni, 2016) (Tan, 2006).

Intangible movable objects that can be used as collateral, one of which is a patent is contained within the scope of Intellectual Property Rights. Intellectual Property Rights are rights of difference, the right to something that comes from the work of the brain, the work of the ratio of the results of work is immaterial objects

or intangible objects. Objects in civil law are classified into various categories, one of which is the grouping of objects into the classification of tangible and intangible objects. Intellectual Property Rights are divided into two types namely Copyright and Industrial Property Rights. The Right to Industrial Property is divided into several types namely; Patents, Industrial Design, Trademark, Commercial or trade name, and Source of sign or designation of origin. Copyright as an object of debt security is a fiduciary guarantee institution, considering that copyright is a movable object (Sudjana, 2012).

Law Number 13 of 2016 concerning Patents is a sign of the government's efforts to realize economic independence by moving the economic sector. According to Article 1 number 1 of Law Number 13 Year 2016, a Patent is an exclusive right granted by the state to an inventor for his invention in the field of technology for a certain period of time carrying out the invention himself or giving approval to other parties to implement it. The scope of patent protection is technology that can be applied in industrial processes.

Patents have a certain period of time in granting their protection, in which a patent is granted a protection period of only twenty years from the date of receipt. If the patent is used as an object of fiduciary security, there will be problems in terms of granting funds if using a patent guarantee. Based on this, guaranteeing movable objects also has risks because the economic value of an object from time to time does not continuously increase but can decrease over time. Thus, the economic value of a movable object is one of the obstacles encountered by financial institutions in Indonesia (Setianingrum, 2016). In the practice of financing there has been a practice of guarantee with patents in big cities, but because the sale value is still small, so the implementation has not been maximized.

The problem in society is whether or not a bank can make intellectual property rights as a credit guarantee. A fiduciary guarantee institution is a collateral institution that allows the patent to be charged as an object of debt security because the fiduciary guarantee object is a movable object. However, on the other hand, there will be differences in the beginning the object of fiduciary security is tangible movable objects, while patents are intangible movable objects. In an economic perspective, patents are part of

industrial property rights are considered capable of contributing to the economic growth of a nation. In the context of civil law, the rights attached to patents have a material nature that contains two rights, in addition to economic rights that can provide benefits in the form of royalties, it also contains moral rights that are always attached to their owners. Bearing in mind the above provisions provide opportunities for patents as collateral for credit.

Article 108 of Law Number 13 Year 2016 paragraph 1 stipulates that patents can be made objects of fiduciary guarantees and paragraph 2 stipulates that the provisions regarding the terms and procedures for patent rights as objects of fiduciary guarantees are governed by applicable laws and regulations. Patents are movable objects that can be transferred, for example sold, granted, inherited, and so on (Djumhana & Djubaedillah, 2003). Patent rights are exclusive rights granted by the state to investors for the results of their inventions in the field of technology, which for a certain period of time carry out their own inventions or give their approval to other parties to implement them (Purwaningsih, 2005).

With regard to patents that can be used as fiduciary security objects, of course they have economic value. Characteristics of an object used as a fiduciary collateral object, debt collateral is an object that has economic value in the sense that if the debtor cannot repay his debt, the object can cover the debt. However, there is a lack of clarity regarding empty norms in the way of evaluating the economic value of patents as fiduciary guarantees. Based on the description of the problems that have been described above, this study therefore is limited on the patents as fiduciary collateral in Bank Credit. The aims of this study is to determine the regulation of patents as fiduciary guarantees in bank credit and find out how to assess the economic value of patents as fiduciary guarantees.

2. METHOD

Broadly speaking, legal research which is seen from the perspective of its divided into 2 (two), namely normative legal research (Amiruddin & Asikin, 2018) and empirical legal research. This writing uses normative juridical legal research types, namely research conducted by examining existing library materials such as legislation, books relating to law, and dictionaries or encyclopedias.

In legal research in general there are several types of approaches, which consist of: legal approach, case approach, historical approach, comparative approach, and conceptual approach. This approach is intended so that researchers can obtain information from various aspects of the problem that are trying to find the answer. Of the several types of approaches above, as for the types of approaches used in this study consist of: statute approach, which is an approach using legislation and regulation and conceptual approach, which is an approach using legal concept construction.

The writing of this study uses 3 (three) sources of legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials (Soekanto & Mamudji, 2009). Primary law consists of legal principles and rules that can take the form of Basic Regulations, Constitutional Conventions, Legislation, unwritten laws, court decisions, Administrative Decisions of the State. Whereas secondary legal material consists of legal books, legal journals, legal letters or the views of legal experts contained in the mass media, dictionaries and legal encyclopedias. The collection of legal materials begins with inventory activities, by collecting and organizing legal materials into information systems, making it easier to trace back legal materials. Legal material is collected by documentation study, which is by recording the source of primary legal material and secondary legal material, then carrying out an inventory of relevant legal material by recording or quoting using a card system. Thus there are two main activities carried out in carrying out this research, namely library research, obtained through literature, by studying, analyzing and processing literature, legislation, and articles or writings relating to the problem to be examined.

The main legal material obtained from the field is first examined for completeness and clarity to be classified as well as systematic and consistent preparation to facilitate analysis. Secondary legal material obtained from the literature is selected and collected systematically, so that it can be used as a reference in conducting analysis. From the results of the library and field research legal materials, a descriptive analytical (Diantha, 2016) discussion was conducted.

3. RESULT AND DISCUSSION

Regulation of Patents as Fiduciary Collateral in Bank Loans

The history of patent arrangements in Indonesia is greatly influenced by patent arrangements in the Netherlands. Initially, objects that became fiduciary collateral objects were only tangible movable objects in the form of movable objects consisting of objects in inventory, merchandise, accounts receivable, machine tools, and motor vehicles. But in its development, not only movable objects can be used as fiduciary collateral objects, intangible movable objects or immovable objects can become fiduciary collateral objects. The Importance of Intellectual Property, one of which is Patent Rights can be used as a collateral object, considering the development of the business world where the product owner as well as the owner of Intellectual Property on the resulting product requires capital by entering into a credit agreement with Patent Rights as collateral.

For the purposes of credit guarantee, the most appropriate form of guarantee is used in this case, namely by using fiduciary guarantees. Fiduciary guarantees are regulated in Act Number 42 of 1999 concerning Fiduciary Guarantees. Fiduciary guarantees have existed in Indonesia since the Dutch colonial era as a form of guarantee born from jurisprudence. This form of collateral is widely used in credit transactions because the loading process is considered simple, easy and fast. As a guarantee of material in banking practices, fiduciary is very popular and popular because it can meet the needs of the community. Fiduciary can provide multiple benefits, where the debtor can still control collateral for daily business needs and the creditor uses practical procedures to improve fiduciary, and the bank does not need to provide a special place for depositing collateral as in the pawnshop.

Fiduciary collateral as collateral provided in the form of an agreement to give money loans, the lender stated in the agreement that the debtor must surrender certain items as collateral for paying off debts. Thus the legal relationship between the guarantee holder and the guarantor is an engagement relationship, where the guarantee holder (creditor) has the right to demand delivery of collateral from the debtor. The definition of Fiduciary Guarantee according to Article 1 number 2 of Law Number 42 of 1999 concerning Fiduciary Guarantee determines that:

"Fiduciary guarantee is a guarantee

right on movable objects both tangible and intangible and immovable objects, especially buildings that are not encumbered with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights which remain under the control of fiduciary givers, as collateral for the payment of certain debts, which give priority to fiduciary recipients over other creditors."

Based on this Law, without mentioning the Patent Law, patents can actually be guaranteed as fiduciary guarantees because fiduciary guarantees also include movable and tangible movable objects. However, the explicit statement that patents can be guaranteed as fiduciary will further provide legal certainty and trust for creditors (especially banks) to provide fiduciary because in practice it turns out that even though the Fiduciary Act has opened the way to Intellectual Property, it can be burdened with fiduciary since 1999 but banks are still in doubt hesitate to accept it because there are no strict provisions in the Intellectual Property Law (especially patents). The definition of Patent according to Article 1 number 1 of Law Number 13 of 2016 concerning Patents stipulates that: "Patent is an exclusive right granted by the state to an inventor for his invention in the field of technology for a certain period of time carrying out the invention himself or giving approval to another party. to carry it out."

Regulation of Patents as fiduciary guarantees in bank credit can be seen in Article 108 paragraph (1) of Law Number 13 of 2016 concerning Patents which stipulates that: "Patent rights can be used as objects of fiduciary collateral". Patents including intangible movable property may be transferred or transferred because of a written agreement. The written agreement in question is a guarantee agreement with the object of a Patent. In connection with this, the Patent is an intangible movable object (right) so that according to Fiduciary Law it can be guaranteed. Intangible movable objects that can be used as collateral, one of which is the Patent Rights contained within the scope of Intellectual Property Rights, where Article 59 paragraph (3) of Law Number 13 of 2016 concerning Patents stipulates that: "Patent Rights as referred to are intangible movable objects."

Patent Right Conditions are Fiduciary Guarantees

The patent holder gets absolute rights

to the tangible income of the patented object. Patents like trademark rights and author rights are absolute rights that are not material rights, but can apply to others. Debt activities are often carried out by the community, one of which is using Fiduciary Guarantee institutions. Initially, objects which are objects of Fiduciary Guarantee are limited by tangible movable objects in the form of equipment, but with the development of the age of objects which become objects of Fiduciary Guarantee include intangible movable objects or movable objects.

The Intellectual Property Link as collateral, in the Collateral Law can simply be interpreted as a law governing debt guarantees, both in the form of material collateral or individual collateral. An individual guarantee is an agreement between a creditor and a third person that guarantees the fulfillment of the debtor's obligations. An individual guarantee agreement can even be held without the debtor's knowledge. Material guarantees can be held between the creditor and the debtor, or between the creditor and the third person who guarantees the debtor's obligations are fulfilled.

According to Article 108 paragraph 1 of Law Number 13 Year 2016 Regarding Patents, "Patent Rights can be used as objects of fiduciary security". So that patents which are the object of fiduciary collateral are not collateral rights that are born under the law, but are born because they must be agreed in advance between the Fiduciary Guarantee Institute as the creditor and the customer as the debtor. Therefore, legally the binding of fiduciary guarantees is more special, compared to guarantees born under the law as regulated in Article 1131 of the Civil Code.

Patent Requirements to be used as fiduciary collateral in a bank, namely:

a) Patents that have been registered in advance.

According to Article 1 number 6 of the Patent Law stipulates that the Patent Holder is an inventor as the owner of the patent or the party who receives the right from the patent owner or other party who further receives the right, which is registered in the public register of patents. Then the rights to the Patent must be registered in the general list of Patents from the results of the Patent Holder of the Invention produced by the Inventor.

b) Patent certificate which is proof of patent rights.

According to Article 59 paragraph (1) of the Patent Law stipulates that a Patent Certificate is proof of patent rights. Then paragraph (2) determines that the right to patent as referred to in paragraph (1) determines the scope of its protection based on the invention described in the claim.

c) The period of patent protection.

According to Article 22 the Patent Law stipulates that a Patent is granted for a period of 20 (twenty) years from the date of receipt and that period cannot be extended. Whereas Article 23 of the Patent Law stipulates that a simple Patent shall be granted for a period of 10 (ten) years from the Filing Date. In order to be used as a fiduciary guarantee in a bank, the patent must be within the period of protection, if the patent protection period has ended, an invention will become public property so that other parties can produce and sell it freely.

How to Assess the Economic Value of Patents as a Fiduciary Guarantee

The use of patent rights as a Fiduciary Guarantee is inseparable from the characteristics of the object of the Fiduciary Guarantee. Characteristics of objects that can be pledged as objects of Fiduciary Guarantee are objects that have economic value in the sense that one day if the debtor cannot repay his debt, the object can cover the debt. In relation to Patents, Patents have moral rights and economic rights so that they can be used as Fiduciary Guarantees. Moral rights are rights that are eternally inherent in the creator to keep his name on the copy in connection with the use of his work to the public. Whereas economic rights are the exclusive rights of inventors or patent holders to obtain economic benefits from the invention.

According to (Mulyani, 2012) in the Journal of Legal Dynamics, there are several approaches to valuing Intellectual Property as collateral. Determination of the economic value of a work can be seen from several approaches. The first approach is the market approach. The market approach provides a systematic framework for estimating the value of intangible assets 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 the present or future value. The value of economic income will come from the use, license or lease of these intangible objects. Third is the cost approach. The cost approach provides a systematic framework for estimating the value of intangible assets based on the substituted economic principle is commensurate with the costs to be incurred as a comparable substitute as a function of unity.

Intellectual Property in principle is a material right that has economic value. Having economic value, in a commercial perspective means it can be transferred, traded or leased. In the context of civilization, the economic value is the assets of the inventor who holds the intellectual property rights. Intellectual Property Based Financing has not been run optimally. As explained above, because there is no public appraiser who can assess Intellectual Property collateral, given the size and criteria for Intellectual Property-based financing does not yet exist.

In evaluating the value of Intellectual Property as a collateral object, Shannon Pratt and Alina V Nacuult assess the formulation of Intellectual Property as a financial guarantee can use the principle of cost approach. In relation to Patent Rights as objects of Fiduciary Guarantee, the economic value of a work affects the Fiduciary Guarantee category. Loading objects using fiduciary must contain:

- a) The identity of the fiduciary giver and receiver;
- b) Data on principal agreement guaranteed by fiduciary;
- c) A description of the object which is the object of the Fiduciary Guarantee;
- d) The value of a guarantor; and
- e) The value of the guarantor and the value of the object which is the object of Fiduciary Guarantee.

Invention as an object of Fiduciary Security is included in the category of an object is immaterial as described previously. The economic value of an invention raises the conception that the invention can be used as a collateral object. In the economic framework of birth an invention has so involved labor, time and cost. If these factors are converted into numbers, then all of them will show the value of the work because of the usefulness or economic value of the invention. The economic value contained

in a Patent can be calculated using several models such as those described above. Of course, a bank or financial institution has a special appraisal team to determine the value of objects that will be used as collateral in banks or financial institutions that accept intangible movable objects such as patent rights. The economic value of an invention determines the amount of collateral value the higher the collateral value will be obtained by the debtor or fiduciary giver. The economic value of an invention is also influenced by the inventor's moral rights, the more famous the inventor, the higher the economic value obtained.

4. CONCLUSION

Based on the discussion above, the following conclusions can be drawn: The regulation of patents as fiduciary guarantees in bank credit, as seen in Article 108 paragraph (1) of Law Number 13 Year 2016 concerning Patents, which stipulates that patent rights can be used as objects of fiduciary security. Patents including intangible movable property may be transferred or transferred because of a written agreement. Patent rights are immovable property, so that according to Fiduciary Law it can be guaranteed.

How to evaluate the economic value of patents as fiduciary guarantees, namely the market approach, income approach and cost approach. The economic value of an invention determines the amount of collateral value, the higher the value of the invention the higher the collateral value will be obtained by the debtor or fiduciary giver. The economic value of an invention is also influenced by the inventor's moral rights, the more famous the inventor, the higher the economic value obtained.

REFERENCES

- Amiruddin, & Asikin, Z. (2018). *Pengantar Metode Penelitian Hukum*. Jakarta: Rajawali Pers.
- Diantha, I. M. P. (2016). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana.
- Djumhana, M., & Djubaedillah, R. (2003). *Hak Milik Intelektual*. Bandung: PT. Citra Aditya Bakti.
- Hoey, O. T. (1985). *Fidusia sebagai Jaminan Unsur-Unsur Perikatan* (Cetakan II). Jakarta: Ghalia Indonesia.
- HS, H. S. (2004). *Perkembangan Hukum Jaminan di Indonesia* (Cetakan I). Jakarta: PT. Raja Grafindo Persada.
- Isnaeni, M. (2016). *Hukum Benda dalam Burgerlijk Wetbok*. Surabaya: PT. Revka Petra Media.
- Mulyani, S. (2012). Pengembangan Hak Kekayaan Intelektual Sebagai Collateral (Agunan) Untuk Mendapatkan Kredit Perbankan di Indonesia. *Jurnal Dinamika Hukum*, 12(3). Retrieved from <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/128>
- Purwaningsih, E. (2005). *Perkembangan Hukum Intellectual Property Right*. Bogor: Ghalia Indonesia.
- Setianingrum, R. B. (2016). Mekanisme Penentuan Nilai Ekonomis dan Pengikatan Hak Cipta Sebagai Objek Jaminan Fidusia. *Jurnal Media Hukum*, 23(2). Retrieved from https://www.google.com/url?client=internal-element-cse&cx=partner-pub-9491756922145733:4562159575&q=https://media.neliti.com/media/publications/113222-ID-none.pdf&sa=U&ved=2ahUKEwjEpcv_h7XpAhVR63MBHcLWCNMQFjABegQIBxAB&usg=AOvVaw0eFkoPzhrOvRj9tbAZgy6e
- Soekanto, S., & Mamudji, S. (2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.
- Sudjana. (2012). Hak Cipta Sebagai Jaminan Kebendaan Bergerak Dikaitkan Dengan Obyek pengembangan Fidusia. *Mimbar Hukum*, 24(3). Retrieved from <https://jurnal.ugm.ac.id/jmh/article/view/16118>
- Tan, H. K. (2006). *Hukum Jaminan Fidusia Suatu Kebutuhan yang didambakan*. Bandung: PT. Alumnii.
- Usman, R. (2016). *Hukum Jaminan Keperdataan*. Jakarta: Sinar Grafika.
- Article 1 number 2 of Law Number 42 of 1999 concerning Fiduciary Guarantee
- Article 1 number 1 of Law Number 13 of 2016 concerning Patents
- Article 108 paragraph (1) of Law Number 13 of 2016 concerning Patents
- Article 59 paragraph (3) of Law Number 13 of 2016 concerning Patents
- Law Number 13 of 2016 concerning Patents, State Gazette of the Republic of Indonesia Number 179 of 2016, Supplement to the State Gazette of the Republic of Indonesia Number 5922.
- Law Number 42 of 1999 concerning Fiduciary Guarantee, State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889.
- Law Number 4 of 1996 concerning Mortgage Rights