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LEGAL PROTECTION OF PATENT RIGHTS AS FIDUCIARY GUARANTEES IN BANKING CREDIT

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Abstract

This study aims to identify and understand the legal protection of patents as fiduciary guarantees in bank credit and how to measure the economic value of patents as fiduciary guarantees. In addition, the study will investigate how to measure the legal protection of patents as fiduciary guarantees. This is a normative legal research using statutory approach, in this case Law Number 13 of 2016 concerning Patents and the Legal Concept Analysis Approach. This study includes primary legal material in the form of Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 10 of 1998 concerning Banking as well as secondary legal material that is not binding but explains the primary legal material. The findings revealed that in granting credit, clearly there is a guarantee that must be given by the debtor to the creditor. Hence, for the purpose of guaranteeing credit, the form of guarantee that is most appropriate to use in this case is to use a fiduciary guarantee. Further, fiduciary guarantees are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees.

Keywords: *Credit, Fiduciary Guarantee, Legal Protection, Patent Rights*

1. INTRODUCTION

According to Article 1 sub 1 of the Fiduciary Law, fiduciary is the transfer of ownership rights to an object on the basis of trust, provided that the object whose ownership rights are transferred remains under the control of the object's owner. The transfer of ownership rights over an object and on the basis of trust are two of the defining aspects of this concept. The transfer of property rights entails the transfer of the owner's ownership rights to the object pledged as collateral to the creditor receiving the collateral, so that the creditor getting the guarantee is now the owner of the thing pledged as collateral (Kharismawan & Purwanto, 2019). On the basis of trust, the mention of the characteristics mentioned above by legislators is immediately followed by the mention of the next characteristic, namely on the basis of trust. As for what these words mean, there is no official explanation. In the past, before the emergence of the Fiduciary Law, the doctrine of these words was given an interpretation, that although it was stated that there was a transfer of property rights, the transfer was actually not intended to actually make the creditor the owner of the collateral object, but only to provide collateral rights to creditors. This is in accordance with the purpose of submitting collateral objects to Fiduciary Institutions whose purpose is none other than to provide guarantees for a claim (Latuihamallo, 2014).

Initially, fiduciary objects consisted only of physical movable property in the form of inventories, merchandise, receivables, machine tools, and motorized vehicles (Prayudi, 2008). However, as time goes on, not just movable goods can be utilized as fiduciary guarantee objects; intangible moving objects, as well as stationary objects, can also become fiduciary objects.

One of the transportable intangible assets that can serve as collateral is a patent that is within the scope of intellectual property rights. Patents cannot be used as collateral for loans because they are not governed by any legal rules. However, there has been a way out since the issuance of Law Number 13 of 2016 concerning Patents, as this law is a change from Law Number 14 of 2001.

The purpose of Law Number 13 of 2016 is to achieve economic independence by relocating the economic sector. In accordance with Article 1 number 1 of Law No. 13 of 2016, a patent is an exclusive right granted by the state to an inventor for his invention in the field of technology for a specified period of time to carry out the invention himself or give permission to another party to carry out the invention (Dharmawan, 2018). The scope of patent protection is technology that can be applied in industrial processes.

There is a specified duration of patent protection to ensure that the patent holder o holder must publish his invention at the end of the patent protection so that the invention can be known to the general public. In connection with these economic benefits, it can be assumed that patents can become collateral objects. Regarding the high or low economic value of patents, it is influenced by the enforcement of patent law in a country and the provisions on patent protection in a country.

The activities of banks as financial institutions include collecting cash from the public in the form of demand deposits, savings deposits, and time deposits, as well as offering credit facilities to the public. Most of the time, people go to the bank to apply for a credit loan. In granting credit, the bank will reduce the impact of the risk of the possibility of default by the borrower so that the bank will place a guarantee for each credit that will be disbursed. Collateral is an absolute right to an object that is the object of collateral for a debt, which at any time can be cashed for repayment of the debtor's debt if the debtor breaks his promise. By its nature, this guarantee is divided into 2, namely: individual guarantees and material guarantees. Collateral with tangible (material) objects, can be in the form of objects or tangible (immaterial), can be in the form of goods or immovable objects that are commonly accepted by banks as credit guarantees in the form of debtors' rights to claim against third parties.

The issue that arises in society is whether or not banks can use patents comprising intellectual property rights as collateral for fiduciary guarantees when extending credit. Patents, as part of industrial property rights, are considered capable of contributing to a nation's economic progress from an economic standpoint (OK, 2003). In the realm of civil law, the rights linked to patents are material in character, as patents comprise two rights: economic rights that might offer advantages in the form of royalties, and moral rights that are always tied to the patent owner. Considering the aforementioned provisions, patents can serve as collateral for loans.

Paragraph 1 of Article 108 of Law No. 13 of 2016 states that patent rights may be utilized as objects of fiduciary guarantees, while paragraph 2 states that applicable rules and regulations govern the terms and processes for patent rights as objects of fiduciary guarantees. However, the empty standard for determining the economic value of a patent as a fiduciary pledge is ambiguous.

Based on the previous explanation of the background, this study aims to identify and understand the legal protection of patents as fiduciary guarantees in bank credit and how to measure the economic value of patents as fiduciary guarantees. In addition, the study will investigate how to measure the legal protection of patents as fiduciary guarantees.

2. RESEARCH METHODS

In this study, we used normative legal research methods. According to Irvan & Purwanto (2020), normative legal research was a research that focuses on norms. This research was conducted by examining the laws and regulations that apply or apply to a particular legal issue (Abdulkadir, 2004). This study employed the statutory approach, specifically Law No. 13 of 2016 pertaining to Patents, as well as the Legal Concept Analysis Approach (Sukardi, 2021). Primary legal material in the form of Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 10 of 1998 concerning Banking. Then secondary legal material was material that is not binding but explains the primary legal material (Marzuki, 2021). The technique for collecting legal materials used a card system technique. This technique begins by collecting legal materials and then analyzing legal books, legal journals and all relevant materials to be used as research objects. The legal material analysis technique used was the description technique, namely by describing the relationship between the theories related to the problem.

3. RESULTS AND DISCUSSION

3.1. Patent Legal Protection as Fiduciary Guarantee in Banking Credit

Based on Article 1 of the Paris Convention regarding the protection of industrial property rights in 1883, patents are included in the legal protection of industrial property. Patents are granted by the state to inventors for their inventions in the field of technology and provide exclusive rights to inventors. Granting rights by the state is a form of legal protection given to inventors. This is in line with the theory of intellectual property rights put forward by John Locke which says that the property rights that a human has towards objects have existed since humans were born. Objects in this case are tangible and intangible objects called intellectual property rights. On the basis of this theory, legal protection of intellectual property rights is based on two very strong reasons, namely moral rights and commercial rights (Syafrinaldi, 2006).

According to Setiono (2006), "legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings". (Soekanto, 1984) also explained "legal protection is all efforts to fulfill rights and provide a sense of security to witnesses and/or victims. Legal protection for victims of crime as part of public protection can be realized in various forms, such as through the provision of restitution, compensation, medical services and legal assistance".

The concept of legal protection for patents refers to the exclusive nature of patents. These monopoly property rights can be used by other people with the permission of the patent owner. The implementation of the permit is in the form of granting a license through a licensing agreement. Article 1 point 11 of the Patent Law defines a license as a permit provided by a patent holder, whether exclusive or non-exclusive, to a licensee based on a written agreement to use a patent that is still protected over a specified time period and under particular circumstances. The patent license is a means for patent law protection, apart from through law.

The license functions to break through the exclusivity of patents, so that other people can use a brand safely and legally. Licensing is also a form of free will of the

patent owner in exploiting his exclusive rights. The making and execution of a license agreement is based on the principles of the agreement contained in contract law in general.

Pratama et al. (2022) said “Legal protection for creditors in credit agreements with fiduciary guarantees is very necessary, considering that objects that are objects of fiduciary guarantees are on the debtor's side, so that if the debtor defaults on a credit agreement with fiduciary guarantees, the creditor's interests can be guaranteed by this legal protection”. Legal protection for these creditors is regulated in general, namely: regulated in the Civil Code Articles 1131 and 1132 and Law Number 42 of 1999 concerning Fiduciary Guarantees. Article 1131 of the Civil Code stipulates, "all materials, both existing and new ones that will exist in the future, are borne by all individual engagements". The preceding article can be interpreted to mean that once a person commits to an agreement, all assets, both existing and future, become dependents for all his agreements.

Law Number 42 of 1999 in this case describes legal protection for interested parties in credit agreements with fiduciary guarantees, in other words the Law which specifically regulates fiduciary guarantees, Articles 11, 14 and 15 of Law Number 42 of 1999 which basically states that objects burdened with a fiduciary guarantee must be registered and then a fiduciary guarantee certificate is made which includes the directions “For the sake of Justice and Belief in the Almighty God”, so that the fiduciary guarantee certificate has the same executive power as a court decision that has been obtain permanent legal force (Fuady, 2013).

According to Ardiawan & Purwanto (2019) reserach, “the creditor has the right to carry out the execution as stated in the fiduciary guarantee certificate, if the debtor defaults”. Creditors also have the right to sell things that are the subject of fiduciary guarantees via public auctions and settlement of receivables from sales or underhand sales conducted based on an agreement between the creditor and the debtor. Law Number 42 of 1999 further establishes penal provisions for fiduciary donors or debtors who transfer, control, or lease assets subject to fiduciary guarantees without the recipient's or creditor's prior written consent. Then it may be penalized with a maximum of two years in prison and a fine of up to Rp50.000.000,00.

3.2. How to Measure the Economic Value of a Patent as a Fiduciary Guarantee

Objects or goods that will be used as collateral must be assessed at the time the credit analysis is carried out. Inaccuracies in determining the value of collateral will affect and or may result in errors in the analysis of lending and losses on the part of the bank. The basis for guarantee assessment is based on realistic prices and tends to be conservative (Priyanto & Purwanto, 2022). According to Naja et al. (2018), “the meaning of the appraisal itself is the work process of an appraiser in providing an estimate and opinion on the economic value of a property, both tangible and intangible”.

It is impossible to isolate the use of a patent as a Fiduciary Guarantee from the object features of the Fiduciary Guarantee. Objects that can be pledged as Fiduciary Collateral have economic value in the sense that they can one day cover the debt if the debtor is unable to repay it (Dewi & Purwanto, 2018). Patent rights include moral and economic rights, allowing them to serve as Fiduciary Guarantees. Moral rights are rights that are perpetually tied to the inventor to continue to include his name on the copy in relation to the public's usage of his work. Economic rights are inventors' or patent holders' exclusive rights to gain economic benefits from their discoveries.

According to Mulyani (2012) in the Journal of Legal Dynamics, "there are several approaches to assessing Intellectual Property as collateral objects". Several methods can be utilized to determine the monetary worth of a work. The market approach is the initial strategy. The market approach provides a standardized framework for assessing the value of intangible assets based on an examination of similar real sales and/or tangible license transactions. The second strategy is the income approach. The income approach provides a systematic framework for assessing an intangible asset's worth based on the capitalization of economic income or its present or future value. Utilization, licensing, or renting of the intangible asset will provide economic value. The third is the cost methodology (Naja et al., 2018).

Intellectual property is principally a material right that has economic value (Awatari et al., 2020). Economic value signifies the ability to transfer, trade, or lease anything from a business standpoint. The inventor who has intellectual property rights is the owner of the economic value in a civil context. The implementation of this finance based on intellectual property has been subpar. As explained previously, there is no public appraiser who can evaluate intellectual property collateral, and the size and eligibility requirements for financing based on intellectual property do not exist.

In this case, the government must initiate the Ministry of Finance and Bank Indonesia to make regulations regarding the valuation of Intellectual Property as collateral. By making regulations related to Intellectual Property valuators and assessment criteria in Intellectual Property, banks can use the results of the valuation of Intellectual Property collateral in providing financing. Thus, banks do not need to worry about violating OJK and BI regulations, considering that the value of financing is based on an appraisal formula made by a certified public appraiser and the value of Intellectual Property collateral is calculated according to these regulatory standards.

The capitalization of economic income is reflected in the financial statements, considering that Intellectual Property is recorded in intangible assets. Intellectual Property is an intangible asset of a company regulated in the inclusion of accounting standards (PSAK) Number 19 regarding intangible assets (Suryo, 2010). The concept of assets in PSAK No. 19 of 2000 is a resource that is controlled by the company as a result of past events and can generate economic benefits. Based on the description above, Intellectual Property is an intangible asset whose value can be estimated to be used as collateral in banking according to the applicable principles of determining guarantees and financing.

In assessing the value of KL as collateral, Shannon Pratt and Alina V Nacuilt conclude that the cost approach can be applied to the formulation of Intellectual Property as financing collateral. The economic value of a work influences the category of Fiduciary Guarantee in connection to a patent as an object of Fiduciary Guarantee. The loading of things with a fiduciary must include the following:

1) Identity of the fiduciary giver and recipient;
2) Main agreement data guaranteed by fiduciary;
3) A description of the objects that are the object of the Fiduciary Guarantee;
4) guarantor value; and
5) The guarantor value and the object value of the Fiduciary Guarantee (Bakti et al., 2019)

As previously explained, invention as an object of Fiduciary Guarantee falls under the category of immaterial object. The economic significance of an invention inspires the

notion that it can serve as a guarantee. Besides inventions, land also has significant economic worth (Purwanto, 2005). In an economic framework, the birth of an invention involves a lot of effort, time, and money. All of these will indicate the value of the work based on the usefulness or economic value of an innovation if these criteria are quantified. When viewed from the perspective of the state's need to realize the order of economic life, continue to pay respect to individual rights in a balanced manner with the interests of society (Bujangga & Purwanto, 2022). Based on this, a creation is a product of human thought that has value, and is considered as intangible wealth.

Several models can be used to calculate the economic value of a patent, as discussed above. Obviously, banks and financial institutions have a specialized team of appraisers to estimate the worth of goods to be used as collateral in institutions that accept intangible moveable objects such as patents. The economic value of an innovation determines the collateral value; the greater the invention's value, the greater the collateral value received by the debtor or fiduciary donor. The economic value of an innovation is also affected by the moral rights of the inventor; the more well known the inventor, the greater the invention's economic value.

4. CONCLUSION

4.1. Conclusion

As the subject of banking credit fiduciary guarantees, patents can be legally protected through a license agreement. The license is granted by the right holder to give other parties the opportunity to enjoy the economic value of the patent. In this particular instance, the legal protection afforded to interested parties in credit agreements that include fiduciary promises is outlined in Law Number 42 of 1999.

Using the market approach, the income approach, and the cost approach, the economic value of a patent as a fiduciary promise can be determined. The economic value of an innovation dictates the quantity of collateral value; the greater the invention's value, the greater the collateral value the debtor or fiduciary donor will earn. The economic value of an innovation is also affected by the moral rights of the inventor; the more well known the inventor, the greater the invention's economic value.

4.2. Suggestion

The government should provide socialization to the public and banking institutions regarding Intellectual Property Rights, especially Patents that can be guaranteed as fiduciary guarantees. Therefore, the Government should establish an institution such as KJPP (Public Appraisal Services Office), especially to assess Intellectual Property Rights that have been registered at the Directorate General of Intellectual Property, so that fiduciary institutions as well as other credit institutions obtain clarity regarding the economic value of guaranteed patents.

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