

Juridical Review of Intellectual Property Rights As Credit Collateral

Risti Saka¹, Evita Isretno Israhadi², Riswadi³
ristisaka@gmail.com¹, evita_isretno@borobudur.ac.id², riswadi@borobudur.ac.id³

Universitas Borobudur^{1, 2, 3}

Abstract. Human life cannot be separated from economic activities. Humans tend to develop themselves by innovating and being creative in meeting their needs. The way humans fulfill their needs creates interactions between individuals and groups that can produce advantages and disadvantages. The economic climate with the Covid-19 pandemic that has hit the world has shaken the economy. The range from 2020 to 2022 in Indonesia is also affected by the Covid-19 pandemic. The government imposes restrictions on community activities in Indonesia. It then has an impact on the decline or cessation of business activities which causes a decrease in liquidity and shocks to the company's cash flow as a result of reduced demand from consumers, uncertainty in business activities, supply chain disruptions, and a reduction in workforce. Business actors need funding incentives to rise from the slump in business activities due to the Covid-19 pandemic. The ease of obtaining credit facilities with alternative guarantees other than fixed assets from banking institutions is an opportunity for business actors to obtain funding so that their businesses can rise more quickly. Theoretically, intellectual property rights are intangible assets that have an economic value that can be used as collateral alternatives in credit agreements.

Keywords: Credit; Intellectual Property Rights; Guarantee; Fiduciary

1. Introduction

In supporting business activities, incentives to obtain funding are important. Business actors need convenience in obtaining credit facilities, one of which is by providing collateral alternatives other than fixed assets.

According to Article 1 of the Banking Act, "credit is the provision of money or equivalent claims, based on a loan agreement or agreement between the bank and another party, which obliges the borrower to repay the debt after a certain period with interest."

Lending is the main business activity of conventional banks, in which the implementation of lending is usually associated with various requirements, including the maximum amount of credit, the credit period, the intended use of credit, credit interest rates, how to withdraw credit funds, credit schedules, and credit guarantees. [1]

"Bank credit agreements in Indonesia have a special meaning in the framework of development, they are not ordinary money lending and borrowing agreements. Banking has a strategic role in the trilogy of development because banking is a vehicle that can collect and distribute public funds effectively and efficiently, which based on economic democracy

supports the implementation of national development to increase the distribution of development and its results, economic growth and stability. national direction towards improving the standard of living of the people at large". [2]

The credit understanding by and large requires the handover of an article from the account holder to the lender as insurance for credit. The motivation behind giving the assurance lawfully is as a type of legitimate conviction in the reimbursement of obligation.

The provision of guarantees has the objective of repayment of the debt if in the future the debtor cannot fulfill his obligations or default occurs. In the event of default, because the business actor is unable to pay off his obligations to the Bank, the Bank may take action or sell the collateral.

The assurance regulation in the credit understanding controls the lawful connection between the underwriter (the debt holder) and the assurance beneficiary (the leaser) and the burden of security to get a credit office. These certifications are known as broad certifications and unique assurances. General ensures in light of Article 1131 of the Common Code (KUHPerdata) are "All property of the debt holder, both versatile and enduring, both existing and those that will exist from here on out, will be borne for all singular commitment." Aside from that, there are additionally unique ensures, which comprise of individual certifications and material certifications like vows, home loans, trustees, and home loans.

Licensed innovation Privileges in material regulation are immaterial items. This is on the grounds that Licensed innovation Privileges are adaptable. One of the Licensed innovation Privileges that will be examined in this paper is brand name freedoms.

The right to a brand or what is known as a Trademark is an intangible asset within the company, even though it does not appear on the company's balance sheet but appears in any form. [3] The brand is a special asset because it has an economic impact. A strong brand will generate consumer demand many times over and ensure consumer repurchase in the future.

Article 1 section 1 of Regulation No. 20 of 2016 characterizes a brand as a sign that can be shown graphically as a picture, logo, name, word, letter, number, or variety plan as 2 (two) aspects or potentially 3 (three) aspects, sound, multi dimensional image or a mix of 2 (two) or more of these components to separate products as well as administrations created by an individual or legitimate element in the movement of exchanging merchandise as well as administrations.

Further Article 1 Passage 2 of Regulation No. 20 of 2016 makes sense of that what is implied by a Brand name is an Imprint that is utilized on products exchanged by an individual or a few group mutually or a legitimate element to separate it from other comparative merchandise.

To safeguard the interests of brand proprietors, the state controls the conceding of freedoms to brands. Article 1 passage 5 of Regulation no. 20 of 2016 states that brand name freedoms are select privileges conceded by the state to reserve proprietors who are enrolled for a specific period by utilizing the actual imprint or allowing to different gatherings to utilize it.

Even though it has economic value in a company, accountants do not associate balance issues with brands. They only count the mark as a fee if there is a trademark application registration. If the application for registration of a mark is accepted, it will immediately be seen that there is an economic value. [4]

2. Problems

The problem in this paper is whether Intellectual Property Rights, especially trademark rights, can be used as collateral for bank credit.

3. Method and Approach

3.1 Method

The strategy utilized recorded as a hard copy this applied paper is engaging scientific, to be specific by utilizing information that plainly depicts the issues straightforwardly in the field, then, at that point, dissecting and afterward closing to arrive at an issue arrangement. The gathering information strategies are through perception and writing study to acquire critical thinking in the paper arrangement.

3.2 Approach

The standardizing juridical methodology, in particular the juridical methodology strategy used to look at the issue from a legitimate and efficient perspective, and as a manual for legitimate guidelines, standards, or other lawful guidelines that apply to the execution of the Indonesian Common Code (KUHPerdata), Regulation No. 10 of 1998 concerning alterations to Regulation No. 7 of 1992 concerning Banking, Regulation no. 20 of 2016 concerning Imprints and Topographical Signs.

4. Discussion

4.1 Guarantees in Banking Credit

Credit is an arrangement of cash or its same, which depends on a credit understanding between the loan boss (bank, organization, or individual) and the indebted person (borrower), which requires the debt holder to reimburse the obligation inside a specific period, though a prize for his administrations, the leaser (moneylender) is given the option to get revenue, remuneration, or benefit sharing during the credit time frame. [5]

The meaning of credit depends on Regulation No. 10 of 1998 concerning revisions to Regulation No. 7 of 1992 concerning Banking is "the provision of money or bills that can be equated with it, based on a loan agreement or agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with the provision of interest"; while the definition of financing is "the provision of money or bills that can be equated with that, based on an agreement or agreement between the bank and another party that requires the party being financed to return the money or claim after a certain period of time in return or profit sharing." From this getting it, it tends to be presumed that credit or supporting (credit) can be as cash or bills whose worth is estimated in cash.

Insurance has a cozy relationship with credit. Guarantee can be deciphered as giving confirmation to the lender for the installment of credit or obligation that has been given to the account holder, which for this situation happens because of regulation or emerges in light of an understanding that is assessor to the principal arrangement as an arrangement that issues obligations and receivables. [6]

Therefore, banks always require the provision of guarantees. Credit guarantees in general aim to guarantee the repayment of credit given. The request for collateral is a security measure taken by the bank to avoid the risk of loss due to the debtor's failure to repay the credit.

Juridically, Article 1131 of the Civil Code (KUHPerdata) explains that what is meant by collateral is "all the debtor's assets, both movable and immovable, both those that already exist and those that will soon become borne (guarantee) for individual engagement".

Besides, Article 1132 of the Common Code specifies that "these items become joint certifications for every one of the people who owe them; the pay from the offer of these items is separated by the equilibrium, in particular as per the size of each receivable, except if there is a substantial explanation among the loan bosses to come first.

Collateral is everything received by the debtor to guarantee a loan. Guarantees can be divided into 2 (two) types, namely:

1. Underwriting (Borgtocht)

As per Article 1820 of the Common Code, it is an understanding where an outsider, in light of a legitimate concern for the loan boss, ties himself to satisfy the debt holder's arrangement, in the event that the borrower doesn't satisfy his arrangement.

An assurance is an assurance that doesn't give priority over specific substances yet is just ensured by resources through a party that ensures the satisfaction of the commitment to address.

In practice, generally guarantees/guarantees used in lending in Indonesia consist of 2 (two) types, namely:

- a. Individual Assurance/Individual Assurance: which is given by a person to ensure the satisfaction of the arrangement by the debt holder; And
- b. Corporate Assurance/Corporate Assurance: given by an Organization, to ensure the satisfaction of the understanding by the debt holder.

2. Material Guarantee

Material certifications are ensures as outright privileges to an item, have an immediate relationship to specific articles, can be safeguarded against anybody, and have "material" qualities in the feeling of giving priority freedoms over specific items and having inborn properties and following the concerned articles.

Subekti [7], states that a material right is a right that gives direct power over an object, which can be defended against everyone. Property rights in the Criminal Code can be divided into the following:

- a. Zakelijk Zekenheidsrecht, namely material rights that provide guarantees, including pledges, mortgages, mortgages, fiduciaries; And
- b. Zakelijk Genotsrecht, namely material rights that provide enjoyment, including property rights and bezit.

Material guarantees in Indonesia are grouped as follows:

Against moving objects:

- 1) Mortgage

As to, it is controlled in Article 1150 of the Common Code up to Article 1160 of the Common Code. Article 1150 of the Common Code makes sense of that a lien is a right that is gotten by the loan boss on a versatile article, which is given over to him by the lender, or by his lawyer, as security for his obligation, and which gives power to the leaser to gather the settlement of his receivables and the thing by went before

the banks. other; with the exception of selling costs as the execution of a choice on claims in regards to possession or control, and expenses of rescuing said thing, which is caused after said thing is pawned and should come first.

Further directed in Article 1152 of the Common Code, the pawned object should be put under the power of the debt holder or an outsider settled upon by the two players. This implies that it is far-fetched that the thing will exist from now on.

2) Fiduciary

With respect to is managed in Regulation Number 42 of 1999 concerning Guardian Ensures ("Trustee Regulation") and its carrying out guidelines. In light of Article 1 point 1 of the Guardian Regulation what is implied by guardian is the exchange of proprietorship privileges to an item founded on entrust with the arrangement that the article whose possession freedoms are moved remaining parts in the control of the proprietor of the item, while trustee ensures have the importance as an assurance directly over versatile items both unmistakable and elusive and resolute items, particularly structures that can't be hampered with contract privileges as alluded to in Regulation Number 4 of 1996 concerning Home loan Freedoms Ashore and Articles Connected with Land ("UU Home loan Freedoms") which stay in the ownership of the Provider Guardian, as guarantee for the repayment of specific obligations, which gives a need position to Guardian Beneficiaries over different leasers.

Article 9 of the Guardian Regulation further specifies that trustees can likewise be as receivables, both those that existed at the time the assurance was given and those that were acquired later. Guardian ensures additionally incorporate returns from objects that are objects of trustee ensures and furthermore incorporate protection claims assuming items that are objects of guardian ensures are safeguarded.

Against Fixed objects:

1) Land

With respect to, security is managed in light of Regulation No. 4 of 1996 concerning Home loan Freedoms Ashore and Articles Connected with Land. as well as executing guidelines.

Objects that can be utilized as guarantee for obligations with contract privileges are land freedoms as alluded to in Regulation Number 5 of 1960 concerning Essential Agrarian Guidelines, including, or excluding different items which structure a fundamental piece of the land.

2) Not Land

For guarantee for non-land fixed objects, it is controlled by a home loan. Since the establishment of the Home loan Regulation, contracts just apply to ships. A home loan is managed in the Common Code Article 1162 to Article 1232 of the Common Code and Regulation Number 17 of 2008 concerning Delivery and its executing guidelines.

4.2 Principles of Trademark Rights for Credit Guarantees

In the global world Licensed innovation Freedoms are known as Protected innovation Privileges (IPR). Regulation No. 7 of 1994 concerning the Endorsement of the Understanding Laying out the World Exchange Association, it is perceived that Protected innovation Freedoms are in regards to privileges to property emerging from human scholarly capacities, which have a relationship with the freedoms of an individual by and by, in particular basic liberties).

Licensed innovation Privileges (IPR) are elite freedoms given to an individual or gathering for their protected work. IPR is the option to appreciate financially the aftereffects of scholarly inventiveness. In Protected innovation Privileges, works that emerge or are brought into the world because of human scholarly capacities are directed.

Broadly speaking, HaKI is divided into 2 (two) parts, [4] namely:

1. Copyright, which is the elite right of the maker that emerges naturally founded on the revelatory standard after creation is acknowledged in a substantial structure without diminishing limitations by legal arrangements.
2. Industrial property privileges, in particular modern property freedoms which incorporate, among others, licenses, modern plans, brand names, countermeasures against unreasonable rivalry rehearses, plan format of coordinated circuits (design plan of incorporated circuit), proprietary advantages (proprietary innovation).

Protected innovation privileges are resources that have monetary worth and can be named organization resources in the class of elusive resources. As a result, trademarks that fall under the heading of industrial property rights also fall under the heading of intangible assets in this instance.

Article 1 passage 1 of Regulation No. According to Section 20 of the Laws of 2016 on Marks and Geographical Indications, a mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by individuals or legal entities engaged in the activities of trading in goods

In addition, it is explained in paragraph 2 of Article 1 that a trademark is a mark used to distinguish goods traded by a single person, a group of people, or a legal entity from other similar goods.

Trademarks make a product or service different from other similar goods or services. In other words, a trademark makes a product or service have a unique value. Unique in this case because the trademark makes it a distinguishing mark that makes it easier for consumers to identify the goods or services. This shows that the brand has an important economic value.

Article 1 section 5 of the Law on Imprints and Geological Signs explicitly controls freedoms to an imprint, in particular a select right conceded by the state to enrolled Imprint proprietors for a specific period by utilizing the actual Imprint or allowing to different gatherings to utilize it.

Indonesia as a country that has ratified several international agreements, one of which is regarding Marks, should have the possibility to use trademarks as collateral for credit.

Article 41 of Law Number 20 of 2016 explains that the rights to a registered mark can be transferred or transferred due to an agreement.

Normatively, every trademark that has been registered and obtained a Certificate of Brand Rights can be guaranteed fiduciarily. However, brands as credit guarantees in banking institutions are not yet commonplace.

It is because of the principle of prudence that is owned by the Bank. The precautionary principle of the bank is important because in granting credit facilities, there are elements that are considered by the bank, namely the following:

1. Trust

Trust is a loan boss' conviction that the credit given can be gotten again in the future as per the credit time frame. Therefore, before giving credit, the bank first conducts in-depth research and investigation of the condition of the prospective debtor.

2. Deal

The understanding contains the privileges and commitments between the bank and the account holder as illustrated in the credit arrangement and is made before credit is given.

3. Timeframe

This period includes the agreed credit return period.

4. Risk

The existence of a credit repayment grace period raises the possibility of a risk of uncollectible credit.

5. Refund

Remuneration in conventional banks is commonly referred to as interest, which is the profit or income of the bank for granting a loan.

Article 2 and Article 8 of Regulation Number 10 of 1998 concerning corrections to Regulation Number 7 of 1992 concerning Banking specifies that each bank credit in credit examination should focus on the standard of judiciousness. Credit analysis includes an assessment of various aspects related to prospective borrowers to acquire confidence regarding the willingness and ability of customers to fulfill their obligations to the bank promptly, both for repayment of principal and interest, under the agreement with the bank.

In guaranteeing Intellectual Property Rights, including Trademark Rights, there is still a dilemma regarding legal certainty over the economic value of brands. To decide the financial worth of a brand utilized as security for credit, it is important to assess the monetary worth of the brand name by an expert establishment, to be specific an appraiser who has insight in the field of licensed innovation utilizing subjective and quantitative techniques to create an unmistakable monetary worth.

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