International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 13-06-2021, Accepted: 29-06-2021, Published: 15-07-2021
Volume 7, Issue 4, 2021, Page No. 80-86

Rights to trademarks as collateral for fiduciary property rights

Adhitya Dhairya Dhurandhara
Faculty of Law, Universitas Katolik Parahyangan, Indonesia

Abstract
Currently, business in Indonesia is growing very fast. Business actors are increasing, and there are more and more facilitators who offer various facilities that support the progress of the business. One of them is by providing credit facilities, and this credit facility is undoubtedly critical along with the increase in development activities. The need for funding also increases; most of the funds needed to meet these needs are obtained through lending and borrowing activities that require collateral. The purpose of this article is to analyze the implementation of brand rights as fiduciary property guarantees. The method used in this study is to use a qualitative with a normative juridical approach. This article concludes that the law regarding contracts in Indonesia is regulated in Book II of the Civil Code. According to Article 1131 of the Civil Code, what is meant by collateral is covering all existing and new debtor assets in the future, so that without having to be expressly agreed, these objects have become collateral for all debtors' debts. Collateral is significant in terms of repayment of debtor achievements to creditors. Then a question arises whether trademark rights can be used as collateral in a business agreement. The existence of a brand element in the protection of Intellectual Property Rights indicates that a brand is a creation of human intellectual products that have economic value for the holder of the brand. The brand also gives birth to the rights to the brand. The existence of a brand element in the protection of Intellectual Property Rights indicates that a brand is a creation of human intellectual products that have economic value for the holder of the brand. Marks also give birth to the right to a pattern wherein the law the Right to Mark is an exclusive right granted by the state to the owner of a registered mark for a certain period by using the Mark himself or giving permission to other parties to use it.

Keywords: rights, warranties, trademarks, fiduciary and legal

Introduction

In facing the era of globalization and realizing economic development, both the government and the community, both individuals and legal entities are required to be active in developing their potential, likewise in Indonesia, which is one of the developing countries and continues to strive for development to face the era of globalization. At this time, business in Indonesia is growing very fast. Business actors are increasing, and there are more and more facilitators who offer various facilities that support the progress of the business. One of them is by providing credit facilities to finance companies that are starting to bloom in Indonesia. Credit facilities are, of course, critical along with the increase in development activities; the need for funding also increases, most of the funds needed to meet these needs are obtained through lending and borrowing activities that require collateral.

Finance companies can provide capital in the form of money or capital goods. The beginning of the issuance of finance companies, related to the credit application process or commonly referred to as accounts payable. Meanwhile, accounts payable cannot be based solely on trust, so they must be accompanied by guarantees. The law regarding contracts in Indonesia is regulated in Book II of the Civil Code. According to Article 1131 of the Civil Code, what is meant by collateral is covering all existing and new debtor assets in the future so that without having to be expressly agreed upon, these objects have become collateral for all debtors' debts. Article 1131 of the Civil Code also stipulates that all assets belonging to the debtor, both movable and fixed, existing and those that will still exist, become dependents/guarantees for all debtors' debts. The article is a general guarantee because it arises from the law. The character of the available security in the report implies that the contract is used by all creditors, which sometimes amounts to not small enough so that they are unable to accommodate the bill as a whole due to the inadequate value of the creditor's assets. So that in the guarantee, there are two kinds of elements, namely Schuld (debt) and Haftung (responsibility), That exist in the debtor.

While Article 1132 of the Civil Code states that these objects are a mutual guarantee for all those who owe them, the seller's income from these objects is divided according to the balance, that is, according to the size of the receivables, unless among the debtors there are reasons-valid reasons for precedence. So the proceeds from the sale of all debtor's property are used to pay creditors in a balanced manner according to the size of the receivables unless there is a priority right. So based on the above understandings, it can be concluded that the Guarantee Law is the entirety of the legal rules governing the legal relationship between the giver and recipient of the guarantee or the debtor and the creditor in an additional agreement relating to the imposition of a contract as a supplementary agreement in fulfilling the debtor's performance. Guarantee law in Indonesia is divided into general warranties and unique guarantees. Available contracts are born from the provisions of the law, while special guarantees are born from agreements. Outstanding warrants are classified into two parts, namely unique guarantees for materials and impressive deposits for individuals. Material guarantees include 1) Pawn; 2) Mortgage; 3) Mortgage; 4) Fiduciary; 5)

Warehouse Receipt. While the Individual Guarantee includes: 1,) Insurer agreement; 2) Liability agreement; 3) Guarantee agreement (Meliala, 2015).

In the Civil Code, of the five material guarantees, all of which are additional agreements. So that the guarantee follows the main deal, again, contracts are signed in paying off debtors' achievements to creditors. Then a question arises whether trademark rights can be used as collateral in a business agreement. The brand itself is a form of intellectual work used to distinguish goods and services produced by a company to show the characteristics and origin of an item. In Article 1 of the Trademark Law no. 20 of 2016, a Mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, colour arrangement, in the form of 2 (two) dimensions or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods or services that are carried out by persons or legal entities in the activities of trading goods or services. The brand itself has a significant role in the business world, especially if it has reached international trade. With the increasingly advanced world trade and better means of transportation and promotions, the marketing area for goods has become even more comprehensive. This adds to the importance of the brand's meaning, namely to distinguish the origin of goods and their quality and avoid imitation. In the trade of goods or services, the brand as a form of intellectual work has an essential role in the smoothness and improvement of trade in goods or services. Brands have strategic and crucial values for both producers and consumers. For producers, the brand is not only meant to differentiate its products from other similar companies' products; it is also intended to build a company's image in marketing. For consumers, the brand and facilitating the identification are also a symbol of self-esteem. People used to choose goods from specific brands tend to use goods with that brand onwards for various reasons, such as because they have known for a long time, trusted the quality of their products, etc.

The existence of a brand element in the protection of Intellectual Property Rights indicates that a brand is a creation of human intellectual products that have economic value for the holder of the brand. Marks also give birth to the right to a spot wherein the law the Right to Mark is an exclusive right granted by the state to the owner of a registered mark for a certain period by using the Mark himself or giving permission to other parties to use it. Based on this warning, not just anyone can use a brand, and someone who has the right will get protection from the state as long as the request is still registered. Departing from there, the author would like to explain further through this paper, namely whether the request to a mark can be made the object of a guarantee and the procedure for guaranteeing the Mark. According to the author, the exclusive right is possible as a guarantee because of its whole nature. It has economic value so that if it is used as a guarantee, it should be used as an object of repayment of the debtor's achievement in the event of a default. From this background, the purpose of this article is to analyze trademark rights that can be used as collateral objects and how brand procedures can be used as collateral objects.

Method

This research uses descriptive-analytical and normative juridical methods. Analytical descriptive is an analysis that does not use the form of numbers or quantitative data. Instead, describe the problems that exist in this study. Normative Juridical Research is a legal research method carried out by examining library materials or mere secondary materials. The data analysis method is carried out by collecting data through the study of library materials or secondary data, which includes primary legal materials, secondary legal materials and tertiary legal materials, both in documents and applicable laws and regulations relating to the normative juridical analysis of synchronization between statutes.

Results and Discussions

As the author has explained in the introduction, the law regarding guarantees in Indonesia is regulated in Book II of the Civil Code. According to Article 1131 of the Civil Code, what is meant by collateral is covering all existing and new debtor assets in the future, so that without having to be expressly agreed, these objects have become collateral for all debtors' debts (Meliala, 2015) [9]. Article 1131 of the Civil Code also stipulates that all assets belonging to the debtor, both movable and fixed, existing and those that will still exist, become dependents/guarantees for all debtors' debts. Therefore, the article is a general guarantee because it arises from the law. The character of the available security in the article implies that the contract is used by all creditors, which sometimes amounts to not small, so that they cannot accommodate the bill as a whole due to the inadequate value of the creditor's assets (Isnaeni, 2016). So that in the guarantee, there are two kinds of elements, namely Schuld (debt) and Haftung (responsibility), that exist in the debtor.

While Article 1132 of the Civil Code states that these objects are a mutual guarantee for all those who owe them, the seller's income from these objects is divided according to the balance, that is, according to the size of the receivables, unless among the debtors there are reasons-valid reasons for precedence. So the proceeds from the sale of all debtor's property are used to pay creditors in a balanced manner according to the size of the receivables unless there is a priority right. They are so based on the above understandings that the Guarantee Law is the entirety of the legal rules governing the legal relationship between the giver and recipient of the guarantee or the debtor and the creditor in an additional agreement relating to the imposition of a contract as an additional agreement in fulfilling the debtor's performance (Naja, 2015).

J. Satrio (1986) defines collateral law as a legal regulation that regulates the guarantees of a creditor's receivables against the debtor. In the extensive Indonesian dictionary, collateral is a guarantee for a loan received, collateral, he borrows money from a bank with a house and a plot of his land or costs borne by the seller for damage to goods purchased by the buyer for a certain period, guarantees, he buying a television with one year or one person's promise to assume the debt or obligation of another party if the debt or obligation is not fulfilled.

There are two guarantees, namely guarantees determined by a law called available warranties and guarantees arising from the agreement reached unique guarantees (Meliala, 2015) [9]. Then according to Isnaeni (2016) [6], in his book, the classification of contracts is divided into 2, namely material guarantee agreements and individual guarantee agreements. The material guarantee agreement gives birth to

material rights because, in the agreement, an object is an object. At the same time, the individual guarantee agreement gives birth to individual rights as a result of the insurance agreement that involves a third party in binding themselves if the debtor defaults. Unique guarantees, which are material, include:

1. Pawn. The definition of a pawn according to Article 1150 of the Civil Code is a right that a debtor obtains on a movable property, which is handed over to him by a debtor or by another person on his behalf, and which gives the debtor the power to take payment of the goods with precedence over other people. Other debtors, except the costs that have been incurred to save it after the item, is pawned. So, according to the article, the pledge is a right. The condition for pawning is that the pawned object must be placed under the authority of the pawnbroker (inbezitstelling). Because in Article 1152 of the Civil Code, the pawn agreement is considered invalid if the pawned object is still in the debtor's power. Not everything can be pawned. Some examples of objects that cannot be pawned are livestock, perishable and perishable objects, objects whose price is unstable, state property and others. b) Withholding the pledged object shall receive payment in advance. Meanwhile, the obligation of the pawnbroker: 1) Be responsible for the loss of the collateral object; 2) Notify the pawnbroker if the object will be resold; 3) Taking into account the results of the sale of pawned objects. The abolition of the lien or the expiration of the lien due to several ways, namely: a) the abolition of the principal engagement, namely an agreement that uses the object of the pledge as the object of collateral; b) The pledged object is returned to the debtor or pawnbroker by the creditor or pawnee; c) The destruction or loss of the pledged object; d) Misuse of pawned objects (Article 1159 paragraph (1) of the Civil Code); f) Execution by the pledge holder; g) The creditor releases the pledged object voluntarily (Article 1152 paragraph (2) of the Civil Code);
2. Mortgage. According to article 1162 of the Civil Code, the definition of a mortgage is a material right on immovable objects to take a replacement from it for repayment for an engagement. Installing a mortgage according to Article 1171 of the Civil Code must be done with a notary deed. Mortgage guarantees only contain the right to pay off debts and do not contain the right to control the object but can agree to sell the goods on their power if the debtor defaults according to Article 118 (1) and (2) Civil Code. The characteristics of mortgage rights are a) It is an indivisible right of distinction derived from an assessor agreement; b) Because it is a material right, payment must be prioritized and easy to execute according to Article 1178 of the Civil Code; c) Mortgages can only be made by people who are authorized to control the object according to Article 1168 of the Civil Code. The cancellation of the mortgage rights are: 1) the abolition of the principal mortgage engagement; 2) The release of the mortgage by the creditor, and 3) Determination of judges;
3. Mortgage right. Mortgage according to Law no. 4 of 1996 concerning Mortgage on Land and Objects Relating to Land is a guaranteed right imposed on land rights as referred to in Law Number 5 of 1960 concerning the principal agrarian regulations, including or not including other objects which is an integral part of the land, for the settlement of certain debts, which gives priority to certain creditors over other creditors. The difference between the object of Mortgage and Mortgage is that the object of Mortgage is the right to land and includes objects attached to the land, which have property rights, HGU (Cultivation Rights), HGB (Shared Use Rights), right to use both property rights and rights to the State and rights to land including buildings, plants, works which are an integral part of the land. While the object of mortgage rights to land, including property rights, rights to cultivate, and the right to use buildings, since the enactment of Law no. 4 of 1996 concerning mortgage rights, the mortgage rights to land are no longer valid. Elimination or expiration of the Mortgage due to a) the abolition of the debt guaranteed by the Mortgage; b) Released by the holder; c) Clearing of mortgage rights, and d) Elimination of land rightsts.
4. Fiduciary. A fiduciary guarantee is a combination of two words guarantee and fiduciary. The term guarantee is a translation of the Dutch language, namely zekerheid or cautie, which generally means how creditors guarantee the fulfilment of their bills in addition to the debtor's general responsibility for the debts they have (Rosyadi, 2017). A fiduciary is the transfer of ownership rights to an object based on trust, provided that the object whose ownership rights are transferred remains in the control of the owner of the object. According to Article 1 paragraph (2) of Law Number 42 of 1999, objects that can be fiduciary are movable, tangible and intangible and immovable objects, especially buildings that cannot be burdened with mortgage rights. So that Fiduciary Guarantee is a guarantee right on movable objects, both tangible and intangible and immovable objects, especially buildings that cannot be burdened with mortgage rights as referred to in Law no. 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Giver, as collateral for the repayment of particular money, which gives priority to the Fiduciary Recipient over other creditors. Immovable objects/goods can be used as fiduciary guarantees, and property rights are handed over. Immovable objects that can be used as fiduciary guarantees are buildings that are not burdened with mortgage rights (flats). Recipients of fiduciary guarantees may not buy/own fiduciary collateral because it is feared that if fiduciary guarantee recipients buy collateral, fiduciary recipients will estimate the price of collateral items not following the cost of the goods due to the weak position of the debtor The difference between a fiduciary and a pawn is that the fiduciary handed over by the debtor to the creditor is his property. The physical object is still with the debtor, while the instrument handed over by the debtor to the creditor is the physical object and the ownership rights are still with the debtor. A fiduciary agreement must be made with a fiduciary deed by a notary. After a notary does a fiduciary deed, a fiduciary guarantee registration must be held at the fiduciary registration office under the Justice Department. Objects burdened with fiduciary guarantees must be registered because a) To provide legal certainty to interested parties; b) Giving

priority to the fiduciary recipient over other creditors; dam c) To fulfil the principle of publicity so that third parties can know that the collateral is being charged;

5. Warehouse Receipt. Warehouse receipt system, according to Article 1 number (1) of Law no. 9 of 2006 concerning Warehouse Receipt System, is an activity related to the issuance, transfer, guarantee, and settlement of warehouse receipts. Article 1 number 2 explains that the warehouse receipt itself is a document of proof of ownership of the goods stored in the warehouse issued by the warehouse manager. Warehouses are all rooms that do not move and cannot be moved not to be visited by the public, but for particular use as a place for storing goods that can be traded in general and fulfilling other conditions stipulated by the Minister, in general, the field of trade. Guarantee Rights on Warehouse Receipts, referred to as Guarantee Rights, are collateral rights imposed on Warehouse Receipts for repayment of debts, prioritising the recipient of the guarantee rights against other creditors. Based on the explanation in the Warehouse Receipt Law, information was also found that warehouse receipts are documents of title for goods that can be used as collateral because certain commodities guarantee the warehouse receipts under the supervision of an accredited warehouse manager. The warehouse receipt system is an integral part of the marketing system that has been developed in various countries. The advantage of having a Warehouse Receipt is that transactions related to goods in the warehouse do not need to be physically transferred, but by moving the Warehouse receipt.

In addition to material guarantees, guarantees in Indonesia also include personal guarantees. Individual guarantee agreements give birth to individual rights due to insurance agreements that involve third parties in binding themselves if the debtor defaults. There are three types of personal guarantees (Melaila, 2015), namely:

a. Treaty of Exaltation / Borgtocht. The definition of borgtocht, according to Article 1820 of the Civil Code, is an agreement in which a third party, for the benefit of the debtor, commits himself to fulfil the debtor's engagement when the debtor is in default. From several provisions of the law, it can be concluded that the guarantee agreement (borgtocht) is accesoir in the sense that it is always associated with the main agreement. As for the characteristics of borgtoch: 1) There is no guarantee without a valid principal engagement; 2) The amount of the guarantee will not exceed the amount of the principal engagement; 3) The Insurer has the right to submit objections related to the direct engagement; 4) The burden of proof that is focused on the debtor within certain limits is also binding on the guarantor; 5 the abolition of the principal engagement will generally terminate) Insurers. In its position as an accesoir agreement, the guarantee agreement, like other accessor agreements, will have the following consequences: 1) The existence of a backing agreement depends on the main agreement; 2) If the main agreement is cancelled, the guarantee agreement is also cancelled; 3) If the main agreement is cancelled, the insurance agreement will also be cancelled; and 4) With the transfer of receivables in the main agreement, all accessor agreements attached to the receivables will also be transferred. The types of guarantees are credit guarantees, bank guarantees, guarantees by government institutions. According to Article 1845 of the Civil Code that the engagement arising from underwriting is cancelled for the same reasons as other engagements, namely because a) Mixing of debts according to Article 1846 of the Civil Code; b) the Insurer is a defence according to Article 1847 of the Civil Code; c) The actions of creditors according to Article 1848 of the Civil Code; d) Creditors voluntarily accept payments according to article 1849 of the Civil Code; e) Postponement of payment according to Article 1850 of the Civil Code;
b. Warranty Agreement. Article 1316 regulates the guarantee agreement, which is an agreement where the guarantor guarantees that a third party will do something, usually, but not always and does not have to. The guarantee agreement is similar to the guarantee agreement, namely that a third party is obliged to fulfil the performance. The only difference is in the guarantee agreement; the obligation to complete the achievements is stated in the main stand-alone agreement. Such obligations in the insurance agreement are listed in the assessor agreement (Meleila, 2015);
c. Liability Agreement. Article 1278 of the Civil Code explains that a liability agreement is an agreement between several debtors, if the contract expressly gives each of them the right to demand the fulfilment of all debts, while payments made to one of the debtors release the debtor even though the agreement according to its nature can be broken down and divided between people who owe debts.

After the author discusses the types of guarantees, then the author will discuss the brand. Law regarding Marks in Indonesia is regulated in Law no. 20 of 2016 concerning Brands. In Article 1 of the Law, the definition of a mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, colour arrangement, in the form of 2 (two) dimensions or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods or services which a person or legal entity in the activity of trading goods or services Mark is something (image or name) that can be used to identify a product or companies in the market (Asian Law Group, 2013). Brands are divided into two, namely trademarks and service marks. Trademark is a mark used on goods traded by a person or several people together or by a legal entity to distinguish them from other similar interests.

Meanwhile, a service mark is a mark used for services traded by a person or several persons jointly or by a legal entity to distinguish them from other similar services. Right to a Mark is an exclusive right granted by the state to the owner of a registered mark for a certain period by using the character himself or giving permission to other parties to use it. Trademark rights also provide an exclusive right for the owner of a registered mark to use the spot in the trade of goods or services, according to the class and type of goods/services for which the mark is registered (Hernoko, 2010) [5]. Brands can be a form of IPR protection that is closest to our daily lives. Whatever goods or services we need, we often refer to them by their trade names rather than

by their generic names. For example, in daily life, from waking up to going back to sleep, how many brands have we encountered, from the water we drink, the vehicles we carry, the telecommunications equipment we use, etc. A brand - or also commonly known as a brand is a marker of the identity of a product or service in the trade. However, not only as an identity, but a brand also plays a vital role in representing the reputation of the product and the producer of the product/service in question. No wonder branding is an essential part of marketing a product/service. Anyone has the right to use any registered mark or not as long as it is not the same as a registered mark belonging to another person in the same class and type of goods/services. However, with a registered mark, the mark owner has the right to prohibit anyone from using the same mark as his registered mark, of course, for the same class and type of goods/services.

Regarding trademark protection, unlike Patents or Copyrights, the safety of Registered Marks does not require either "novelty" or "originality". Thus, a mark that has been widely used for many years can still be registered, as long as it does not have similarities either in whole or in principle with a mark belonging to another party that has been registered or an application for registration has been submitted. Trademarks also adhere to the first to file declaration, so that a person's failure to register a trademark for the goods/services he trades may result in someone else writing the same/similar mark for similar goods/services, so that he may lose the right to use his influence which he has used before.

Trademarks also adhere to the territorial principle, which means that trademark protection only applies in the country where the patent application is filed and granted. To obtain trademark protection in the Indonesian jurisdiction, the inventor must apply for a trademark in Indonesia, in this case to the Directorate General of Intellectual Property Rights (DJHKI). On the other hand, a brand that is only registered in Indonesia does not have protection in other countries. To report a mark abroad, the applicant must document the mark individually in each desired country by appointing a Registered IPR Consultant whose work area covers that country as the attorney for the application. Within six months from the Filing Date for the first time in Indonesia, the applicant can apply for registration for the same mark for similar goods/services in other countries which are both members of the Paris Convention and obtain the same Filing Date as the Filing Date in Indonesia with use Priority Rights. According to the plan, Indonesia will soon ratify the Protocol to the Madrid Agreement on the International Registration of Marks, which will allow applicants from Indonesia to apply for a single mark registration centrally, to be processed in all member countries of the Madrid Protocol as desired by the applicant.

Before submitting a trademark application, it is highly recommended that the prospective applicant first search the DJHKI trademark database to obtain an overview of whether there is already a registered trademark or the registration process belongs to another party, which has similarities both in whole and in essence with the applicant's brand. Suppose from the search results it is believed that the risk of a mark being rejected by a mark that another party has registered is not too worrying. In that case, the applicant is advised to apply for the registration of the character in question immediately. Further requirements regarding trademark registration in Indonesia can be accessed at https://indonesia.go.id/categories/kepabeanan/433/mengurus-hak-mark. The period of protection of Mark Rights is valid for ten years from receipt of the said mark. If the Filing Date of application for registration of a character is May 1, 2021, then the protection will be valid until April 30, 2031. The period of protection of Mark Rights can be extended every ten years continuously. Mark Rights Holders can apply for a trademark extension six months before the mark protection period until six months after the protection period ends. In the example above, the trademark rights holder can already apply for an extension from April 30, 2031.

It was slightly repeating that the Right to Mark is a form of IPR protection that gives the owner of a registered mark an exclusive right to use the character in the trade of goods or services according to the class and type of goods/services mark is registered. The period of protection of Mark Rights is valid for ten years from the Filing Date. The period of protection of Mark Rights can be extended every ten years continuously. So that what is emphasized in the definition of the right to a mark is that the right is created because there is registration, not because of the first user. In the previous chapter, the author explained several guarantees, namely material guarantees that give birth to material rights and individual guarantees that result in protection rights. Because the mark is part of the IPR, which is a material right, the collateral must be in the form of material guarantees, including pledges, fiduciaries, mortgages, mortgages and warehouse receipts..

Because the most recent trademark law, namely the Trademark Law no. 20 of 2016 concerning Marks, does not stipulate that a mark can be used as an object of guarantee but only states that a mark can be transferred. According to Ok Sadikin (2015) [13], trademark rights are material rights, so they can still be used as collateral objects. The arrangement is subject to the principles of book 3 of the Civil Code. The form is fiduciary because trademark rights are classified as registered objects, not movable objects or immovable objects. The author, in this case, also agrees that the right to the mark can be guaranteed because it is part of the objective law of the Civil Code. Philosophically, the basis for trademark rights as part of intellectual property is based on moral rights and economic rights. These rights are attached as an appreciation of the findings or creations, which are individual property rights; therefore, legal protection needs to be given. In material goods in a mark, one of the intellectual property rights, there are two rights. Besides economic rights that can provide benefits in royalties, there are also moral rights that are permanently attached to the owner. Economic rights (economic rights) that a person has for their creativity can be transferred or transferred to other people (transferable). Other people, as recipients of the transfer of rights, also get economic benefits. In addition, the characteristics of a brand as a guarantee indicate that a brand is an immaterial object that can be owned, controlled and owned by a registered trademark holder. The binding of a mark as an object of guarantee is carried out through a fiduciary guarantee institution. The legal consequences of a mark bound as an object of collateral if the debtor defaults, the creditor can execute the thing of the guarantee.

However, in a journal, the author reads that the practice of guarantees, especially the use of IPR objects in terms of collateral for bank credit, said that Indonesian banking practices had not accepted intellectual property rights as

objects of fiduciary guarantees as stated by the Director-General of Intellectual Property Rights of the Ministry of Law and Human Rights, Andy N Sommeng in the opening ceremony of the seminar organized by the Indonesian Intellectual Property Association in collaboration with the Japan Patent Office, that IPR certificates abroad as collateral have been implemented (Mulyani, 2012) [10]. A guarantee agreement is an accesoir of credit agreement between debtor and creditor. With the approval of a credit agreement between the entrepreneur (the debtor) and the Bank as the creditor, a legal relationship occurs where in fact, there have been two conflicting interests (conflict of interest), namely, on the one hand, the debtor needs credit easily and quickly, on the other hand, the creditor (banks) require certainty and security against repayment of debt repayments through credit promptly with material objects as collateral that is quickly executed. At the same time, intellectual property rights (IPR) are intangible assets as company assets (intangible assets) where property rights Intellectual property has no legal regulation as an object of guarantee. In addition, it is also difficult to predict the value of IPR at the time of granting credit or executing IPR if the debtor defaults. There are several approaches to assessing IPR as an object of guarantee. Shannon P. Pratt, Alina V. Naculit, provide three measures in assessing IPR. First, the market approach (market approach). In the mind of Shannon P. Pratt, Alina V. Naculit, the market approach provides a systematic framework for estimating the value of intangible assets based on an analysis of actual sales or licensing transactions of comparable tangible objects. The 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 their present and future discounts. The value of "economic income" will come from the use, licensing or leasing of the mark. Third, the cost approach. The cost approach provides a systematic framework for estimating the value of an intangible asset based on commensurate economic principle with the costs incurred in exchange for a comparable utility function (Mulyani, 2012) [10].

Again, the fiduciary guarantee as collateral in the example of the agreement to provide a loan of money, the creditor includes understanding that the debtor must submit certain goods as collateral to settle debts. Thus, the legal relationship between the holder and the guarantor is an engagement relationship. The guarantee holder (the creditor) has the right to demand the collateral from the debtor (guarantee). Conceptually, a fiduciary contract is a guaranteed material after the object with a fiduciary burden is registered at the Fiduciary Registration Office. So if the thing that is burdened with a fiduciary is not written, then the rights of the fiduciary recipient arising from the existence of a fiduciary assignment agreement are not material but are individual rights. Transferred remains in the control of the owner of the object. Fiduciary as one of the guarantees is an element of bank credit security, which is born preceded by a bank credit agreement. This construction shows that the fiduciary guarantee agreement has an accessoir character regulated in the Fiduciary Guarantee Act (Law Number 42 of 1999).

According to the analogy in civil law, interpretation is often used due to its nature, which generally only regulates and does not force (Mulyani, 2012) [10]. So if the performance of intellectual property rights is carried out as an object of fiduciary guarantee, then intellectual property rights include movable things that are not tangible (immaterial). Therefore, based on the interpretation by analogy, this is possible considering intellectual property rights as part of the law of objects, namely movable objects that are intangible have value that can be transferred or transferred by agreement. Intellectual property rights are included in the realm of property law. Property law is part of Civil Law, and its principles are absolute (absolute), can be defended against anyone, droit de suite (always follow wherever the object is), Droit de preference (rights are paid first before other creditors), can be transferred. Intellectual Property Rights, including immovable objects (abstract), have a value that should be taken into account in global trade traffic; this is possible as an object of fiduciary guarantee.

Then the procedure for guaranteeing IPR objects, especially brands, is fiduciary. Because on April 6 2015, the Indonesian government issued Government Regulation (PP) No. 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Fees for Making Fiduciary Guarantee Deeds (New PP). This new PP replaces PP No. 86 in 2000 with the same title (Old PP). Registration of Fiduciary Guarantees is carried out by recipients of fiduciary security rights (creditors) at the Ministry of Law and Human Rights (Ministry). This type of registration must be carried out no later than 30 days from the date the Fiduciary Guarantee certificate is issued by enclosing the following information: a) Identity of the Fiduciary Giver and Recipient; b) The date, number of the Fiduciary Guarantee deed, name, and domicile of the notary who made the Fiduciary Guarantee deed; c) Fiduciary guaranteed principal agreement data; d) A description of the object that is the object of the Fiduciary Guarantee; e) Guarantee value, and f) the value of the object that is the object of the Fiduciary Guarantee.

Under the new regulation, the registration of a Fiduciary Guarantee certificate is not only carried out by recording the Fiduciary Guarantee in the Fiduciary Register Book but the Collateral rights are registered electronically and become valid after the creditor has made the registration payment. This certificate is provided (electronically) on the same day as registration. In the case of damage or errors in the registration process, creditors can submit a request for repair within a period of no later than 30 days from the date the Fiduciary Guarantee certificate is issued, while the old PP stipulates 60 days.

Conclusions

The conclusion is that guarantees are divided into general guarantees and unique guarantees. Available guarantees are born from the provisions of the law, while special guarantees are born from agreements. Unique guarantees are classified into two parts: unique guarantees for materials and unique guarantees for individuals. Material collateral: a) Pawn; b) Mortgage; d) Mortgage; e) Fiduciary; and f) Warehouse Receipt. Personal guarantees are guarantee agreements, liability agreements and guarantee contracts. While the brand is a brand is something (image or name) that can be used to identify a product or company in the market. In Article 1 of the Trademark Law no. 20 of 2016, a Mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, colour arrangement, in the form of 2 (two) dimensions or 3 (three) dimensions, sound, hologram, or a combination of 2 (two)

or more of these elements to distinguish goods or services that are carried out by persons or legal entities in the activities of trading goods or services. Brands are divided into two, namely trademarks and service marks. Trademark is a mark used on goods traded by a person or several people together or by a legal entity to distinguish them from other similar interests. Meanwhile, a service mark is a mark used for services traded by a person or several persons jointly or by a legal entity to distinguish them from other similar services. Right to a Mark is an exclusive right granted by the state to the owner of a registered mark for a certain period by using the Mark himself or giving permission to other parties to use it. Then about brand rights being used as objects of guarantee, the authors conclude that intellectual property rights as part of the law of objects, namely movable objects that are intangible, have the value that can be transferred or transferred by agreement. Intellectual property rights are included in the realm of property law. Property law is part of Civil Law, and its principles are absolute (absolute), can be defended against anyone, droit de suite (always follow wherever the object is), Droit de preference (rights are paid first before other creditors), can be transferred. Intellectual Property Rights, including immovable objects (abstract), have a value that should be taken into account in global trade traffic; this is possible as an object of fiduciary guarantee. So according to the author, trademark rights can be used as objects of guarantee, and fiduciary guarantees are suitable as a form of guarantee.

References

1. Asian Law Group, Hak Kekayaan Intelektual Suatu Pengantar, Bandung: PT Alumni, 2013.
2. Djumhana, Muhamad. Perkembangan Doktrin dan Teori Perlindungan Hak Kekayaan Intelektual, Bandung: PT Citra Aditya Bakti, 2006.
3. Government Regulation No. 21 of 2015 concerning Procedures for Registration of Fiduciary
4. Guarantees and Fees for Making Fiduciary Guarantee Deeds
5. Hernoko, Agus Yudha. Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial, Jakarta: Prenada Media Group, 2010.
6. Isnaeni, Moch, Hukum Jaminan Kebendaan ksistensi, Fungsi dan Pengaturan, Yogyakarta: Laksbang PRESSindo, 2016.
7. Law No. 4 of concerning Mortgage on Land and Objects Related to Land, 1996.
8. Law No. 20 of 2016 on Brand
9. Meliala, Djaja S. Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan, Bandung: Nuansa Aulia, 2015.
10. Mulyani, Sri. Pengembangan Hak Kekayaan Intelektual sebagai *Collateral* untuk mendapatkan kredit perbankan di Indonesia. Jurnal Dinamika Hukum,2012:12:3.
11. Naja HR, Daeng. Hukum Kredit dan Bank Garansi The Bankers Hand Book, Bandung: Citra Aditya Bakti, 2005.
12. Rosyadi, Imam. Jaminan Kebendaan Berdasarkan Akad Syariah (Aspek perikatan, prosedur pembebanan dan eksekusi), Depok: Kencana, 2017.
13. Sadikin, Ok. Aspek Hukum Kekayaan Intelektual, Jakarta: PT Raja Rasindo Pesada, 2015.
14. Satrio J. Hukum Jaminan Hak-Hak Kebendaan, Bandung: Citra Aditya Bakti, 1986.