The Development of Copyright in Fiduciary Guarantee Law in Sharia Bank Financing Agreements

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Abstract. This study explores the use of copyright as a fiduciary guarantee in Islamic banking financing in Indonesia. The background is the growth of the creative economy in Indonesia, which produces many copyrighted works, driving the need for innovative financing solutions in Islamic banking. The goal is to understand the legal basis for using copyright as a fiduciary guarantee, evaluate its implementation, and identify challenges and opportunities in the field. The research method uses a qualitative approach with literature study techniques, in-depth interviews, and analysis of legal documents. The results of the study show that the legal basis is already available, but its implementation is still limited due to a lack of understanding of copyright valuation, technical complexity in collateral execution, and Sharia challenges such as ensuring fairness. Education and socialization need to be improved to maximize the benefits of copyright as a fiduciary guarantee for the creative industry in Islamic banks. In the world of Sharia banking which is a guarantee of fiducia in the form of motorcycles, cars, heavy equipment, or machine tools that are guaranteed in Islamic banks, for copyright guarantees for works in the form of books, electronic books, paintings, songs, paintings, works of art and so on that must have been registered as creations through intellectual property rights, copyright is an intangible movable object in material law. Thus, the research highlights the significant potential of copyright as a fiduciary guarantee with a more structured approach to support the growth of the creative economy in Indonesia through Islamic banks.

Keywords: Copyright, Fiduciary Collateral, Islamic Bank.

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1. Introduction

Law Number 28 of 2014 concerning Copyright in Indonesia provides an important legal basis related to the protection, recognition, and utilization of copyright in various contexts, including as an object of fiduciary guarantee. Article 20 Paragraph (1) of this Law specifically states that the exclusive rights granted to the Creator or Copyright Holder can be used as an object of guarantee in a fiduciary agreement. This implies that copyright, as a form of exclusive rights to intellectual works produced by a person or legal entity, can be used as collateral in financial transactions.

This arrangement is crucial in supporting the creative ecosystem and digital economy, where copyright is often the main asset owned by creators, companies, or other institutions. By having the ability to pawn copyrights, copyright owners can use them to obtain additional financing, support business expansion, or manage their financial liquidity more efficiently. It also provides additional incentives for creators to continue producing quality works without having to sacrifice control over their copyright ownership.

In the context of sharia economics, the use of copyright as a fiduciary guarantee is also related to the principles of justice and risk sharing that are the basis for sharia transactions. The Fatwa of the National Sharia Council Number 7 of 2000 concerning Mudharabah provides additional legitimacy and guidance on the use of copyright in sharia financing, recognizing that copyright can be used as a legitimate asset to support sharia financial transactions. This reflects a positive response to modern technological and economic developments that demand innovation in Islamic financial instruments in accordance with Islamic values.

The legal clarity provided by the Copyright Law is also important in attracting investment and supporting the growth of the knowledge-based economy in Indonesia. By providing strong protection for copyright, both at the national and international levels, Indonesia creates an environment conducive to the development of the creative and technological industries. This has the potential to increase Indonesia's global competitiveness in the growing digital economy market.

Overall, the combination of clear legal regulations in the Copyright Law and guidance from sharia fatwas provides a solid foundation for the use of copyright as a fiduciary guarantee in Islamic financial transactions in Indonesia.

The purpose of this research is to find out how to use copyright as a fiduciary guarantee, evaluate its implementation, and identify in Sharia Banks. As is known in Islamic banks to provide loans that are to obtain interest is not permissible because of usury, but can be carried out if the rahin agrees to share the profits from the loan.

2. Method

This study uses a normative research method with a normative juridical approach. The normative juridical approach aims to analyze the applicable laws and regulations as well as legal theories relevant to the research topic. In this context, the normative juridical approach will focus on legal analysis related to the use of copyright as an object of fiduciary guarantee in Islamic bank financing contracts.

Primary and secondary data were used to support the analysis in this study. Primary data was obtained through literature studies from various major legal sources, such as Law Number 28 of 2014 concerning Copyright, Law Number 42 of 1999 concerning Fiduciary Guarantees, and the fatwa of the National Sharia Council related to sharia financing and the use of copyright as collateral. In addition, primary data also includes other relevant laws and regulations relevant to the research topic.

Secondary data is obtained from books, scientific articles, journals, and other relevant sources of information. The books used include literature on copyright law, fiduciary guarantee law, and Islamic banking. Scientific articles and journals provide insights from previous research in both national and international contexts. Other sources of information include reports from government agencies, non-governmental organizations, and publications from the banking and creative industries that provide additional perspective.

The data collection techniques in this study include document study and literature analysis. Document studies involve the collection of various legal documents, such as laws and regulations, as well as academic documents and other relevant publications. Literature analysis includes the review of books, scientific articles, and journals to gain a comprehensive understanding of the research topic.

Data analysis techniques involve descriptive and normative analysis. Descriptive analysis describes the content and provisions of laws and regulations as well as the literature that has been collected. Normative analysis examines applicable legal norms and interprets how the law is applied in practice. The research steps begin with problem identification, primary and secondary data collection, data analysis, conclusion drawn, and recommendation formulation. This research is expected to contribute to understanding financing problems in the creative industry and supporting the development of the creative economy through innovation in sharia financing.

3. Result And Discussion

Law Number 28 Of 2014 Concerning Copyright In Indonesia Provides An Important legal basis related to the protection, recognition, and utilization of copyright in various contexts, including as an object of fiduciary guarantee. Article 20 Paragraph (1) of this Law specifically states that the exclusive rights granted to the Creator or Copyright Holder can be used as an object of guarantee in a fiduciary agreement. This implies that copyright, as a form of exclusive rights to intellectual works produced by a person or legal entity, can be used as collateral in financial transactions.

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Overall, the combination of clear legal regulations in the Copyright Law and guidance from sharia fatwas provides a solid foundation for the use of copyright as a fiduciary guarantee in Islamic financial transactions in Indonesia. This is not only beneficial for copyright owners in leveraging their intellectual assets, but also strengthens the legal infrastructure to support inclusive and sustainable economic growth in today's digital era.

4. Application of Copyright as an Object of Fiduciary Guarantee in Sharia Banks

The application of copyright as an object of fiduciary guarantee in Islamic banks is a growing topic of great significance. Islamic banks need to deeply understand the mechanism for managing and executing copyright as collateral, as well as the procedures that must be undergone in the event of default by the party providing the guarantee. [1] Copyright management in the context of fiduciary guarantees involves a series of important steps:

(a) Copyright value assessment, The valuation of copyright value is a major challenge in financial and legal practice, especially due to the abstract and intangible nature of copyright.

In contrast to physical assets that have a relatively clear market value, the value of copyright is often dependent on future revenue potential, which is difficult to predict with high accuracy. This assessment process is crucial in the context of using copyright as a fiduciary guarantee in financial transactions. The valuation of copyright in the creative industry is very complex and requires a comprehensive approach. Some factors to consider in this assessment include the popularity of the work, its future market potential, the revenue history associated with the work, and external factors such as industry trends and global market conditions.[2] Commonly used assessment methods include. Revenue approach, cost approach, and market approach. The revenue approach considers the estimated future revenue generated by the copyright, while the cost approach tries to assess the costs incurred to develop or produce the work. The market approach, on the other hand, compares a work with similar works that already exist in the market to determine its relative value. However, each of these assessment methods has its own challenges. For example, future revenue estimates can be highly speculative depending on changing industry trends and market responses that are difficult to predict. Determining costs can also be difficult because not all costs associated with the development of the work can be easily established. In addition, in the context of sharia economics, the assessment of copyright value must also consider compliance with sharia principles that prohibit riba (interest) and excessive speculation. This adds complexity in determining valuation methods that are in accordance with ethical values and Islamic law. Thus, the valuation of copyright as a fiduciary guarantee requires a careful and careful approach, taking into account various economic, legal, and sharia aspects. Further development of guidelines and regulations in this regard could help create a more predictive and stable environment for financial transactions involving copyright in the context of an ever-evolving global economy; (b). Copyright Execution, The execution process of copyright as an object of fiduciary guarantee is an important stage in financial transactions involving intellectual assets. This not only requires an in-depth understanding of copyright law, but also involves the technical and commercial aspects of repurposing or selling copyrights to recover the loaned funds. Especially in the context of Islamic banks, the implementation of execution procedures must comply with sharia principles that prohibit riba (interest) and encourage fairness in the distribution of risks and profits.

The main challenges in copyright execution as a fiduciary guarantee are: (1) Understanding Copyright Law, Bank or Islamic financial institutions need to have a deep understanding of applicable copyright regulations, including exclusive rights owned by the creator or copyright holder. This is important to ensure that the execution is carried out in accordance with the applicable legal provisions, so as not to cause legal disputes in the future; (2) Technical and Commercial Aspects, Managing and executing copyrights involves technical aspects such as managing licenses or use rights of works, as well as commercial aspects such as assessing the economic value of those copyrights. This process requires the ability to identify and maximize the value of the pledged copyright; (3) Implementation of Sharia Execution Process, Islamic banks must ensure that the execution procedures are not only efficient and effective, but also in accordance with sharia principles.

This includes aspects such as selling copyrights in a fair manner and ensuring that transactions do not involve usury or excessive speculation.

Salsabila et al., (2023) highlight that Islamic banks need to have a mature mechanism in place to manage situations where debtors are unable to meet payment obligations. In this context, banks must be able to conduct careful risk evaluations and take appropriate steps to protect their interests without violating the underlying sharia principles.[3] In addition, there needs to be good cooperation between Islamic financial institutions, creators or copyright holders, and other related parties to ensure that the execution process runs smoothly and fairly for all parties involved. It involves open and transparent communication and clear arrangements in the fiduciary agreement established from the outset. Overall, the implementation of copyright execution as a fiduciary guarantee in the context of Islamic banks requires careful involvement and careful management of all aspects involved, both from a legal, technical, and commercial perspective.

This is important to ensure that financial transactions run in accordance with sharia values that are firmly held by Islamic financial institutions.Lack of Understanding

The lack of understanding of copyright as an object of fiduciary guarantee is one of the main obstacles in its application in financial transactions, especially in the creative industry and Islamic banks. This phenomenon includes two important aspects: the lack of awareness from creative industry players about the potential of copyright as a collateral asset, and the lack of capacity from Islamic banks to manage and use copyright as collateral in their financial practices.

Creative industry players are often not fully aware of the economic value contained in their copyrights. Many creators or copyright holders do not consider the option of using their copyright as collateral to gain access to additional financing. This can be due to a lack of information or understanding of how to guarantee copyright, as well as the complexity of assessing the value of copyright which is not always realized in the form of direct cash.

On the other hand, Islamic banks are also faced with the challenge of increasing their capacity in managing and executing copyright as a fiduciary guarantee. This process requires a deep understanding of copyright law, technical mechanisms for copyright management, and the application of sharia economic principles in financial transactions. Islamic banks must ensure that copyright execution procedures are carried out in compliance with sharia principles, such as avoiding riba and ensuring fairness in the sharing of risks and benefits.

Putri (2024) highlighted the importance of education and socialization to both parties, namely creative industry players and Islamic banks, to increase understanding and acceptance of the concept of copyright as a fiduciary guarantee. This education can help creators to understand the economic value of their works and the potential for gaining access to additional financing through copyright.[4] On the other hand, Islamic banks need to increase their internal capacity, both through employee training and the development of internal policies that support the effective use of copyright as a fiduciary guarantee asset and in accordance with sharia principles.

Overall, to overcome this barrier to lack of understanding, concrete steps such as educational campaigns, seminars, or joint workshops between creative industry players and Islamic banks can help create better awareness and facilitate the use of copyright as a fiduciary guarantee in Islamic economic practices in Indonesia. Thus, the potential of intellectual assets such as copyright can be more optimally utilized to support sustainable and inclusive economic growth.

Despite some challenges, copyright as an object of fiduciary guarantee also offers some significant opportunities: (a) Increasing Access to Financing for Creative Industry Players, The statement on increasing access to financing for creative industry players by using copyright as an object of fiduciary guarantee highlights the importance of new strategies in supporting the creative economy. The creative industry often relies on intellectual assets such as copyrights to artwork or designs, which are difficult to collateralize due to their intangible nature. However, by recognizing copyright as a fiduciary guarantee, creative industry players can access financing more easily from financial institutions. This not only allows them to develop their works without having to give up ownership, but also encourages innovation and business growth. One study confirmed that wider access to financing will encourage innovation in the creative sector. By having better financial resources, creative industry players can invest these funds in research, new product development, or improving the quality of existing production.[5]` This not only increases their competitiveness in the global market but also creates more job opportunities and local economic growth. Thus, the use of copyright as a fiduciary guarantee not only provides immediate financial benefits, but also supports the sustainability and expansion of the creative sector as a whole, becoming a key driver for the knowledge-based economy and innovation. (b) Encouraging the Growth of the Creative Industry The statement on encouraging the growth of the creative industry through easier access to financing highlights the importance of financial support in spurring the creative economy in Indonesia. The creative industries are often vital engines of innovation and cultural expression, but are often limited by access to capital. By facilitating access to financing through copyright recognition as a fiduciary guarantee, creative industry players can get the financial support they need to develop new works without having to sacrifice ownership of their copyrights. Another study emphasizes that adequate financing can increase productivity and innovation in the creative sector. With sufficient financial resources, creators can focus more on exploring new ideas, developing products, and improving the quality of existing works.[6] This not only strengthens their competitiveness in the global market, but also has the potential to create new jobs and drive local economic growth. Furthermore, with the right financial encouragement, the creative industry in Indonesia can play a key role in developing a knowledge-based economy and innovation. Overall, initiatives to improve access to financing for the creative industries are not only about providing financial assistance, but also recognizing the economic value of intellectual assets such as copyright. Thus, these measures not only support the sustainability of individual businesses, but also benefit the growth of the creative economy as a whole, strengthening Indonesia's position in the global market as a hub for creation and innovation; (c) Increasing Islamic Bank Revenue: For Islamic banks, copyright as an object of fiduciary guarantee can be a new source of income. By developing financing products that utilize copyright as collateral, Islamic banks can reach new market segments and expand their service portfolios. Salsabila (2023) said that copyright-based financing can provide a competitive advantage for Islamic banks in attracting more customers.[3]

5. Conclusion

The conclusion of this study underlines several important points related to the use of copyright as an object of fiduciary guarantee in Islamic bank financing contracts in Indonesia. First, Law Number 28 of 2014 concerning Copyright provides a clear legal basis for the use of copyright as a fiduciary guarantee, which supports the creative economy and innovation in the digital era. Second, the application of copyright as a fiduciary guarantee in Islamic banks requires a deep understanding of copyright valuation, copyright execution, and minimizing challenges such as lack of understanding and technical complexity. The assessment of copyright value must consider economic, legal, and sharia aspects, which can affect the success of financial transactions. Third, there are significant challenges in managing and executing copyright in accordance with sharia principles, such as avoiding riba and ensuring fairness in the sharing of risks and benefits. Good cooperation is needed between Islamic banks, creative industry players, and the government to create an environment conducive to the sustainable development of the creative economy. Fourth, education and socialization about the potential of copyright as a fiduciary guarantee need to be improved, both among creative industry players and Islamic banks. This step is expected to increase understanding of the economic value of copyright and facilitate its use in obtaining wider access to financing. Fifth, the potential benefits of using copyright as fiduciary guarantee include increasing access to financing for creative industry players, encouraging the growth of the creative sector, and increasing the income of Islamic banks through the development of innovative financing products. Overall, the use of copyright as a fiduciary guarantee in Islamic banks not only presents opportunities, but also challenges to manage properly. It is necessary to continue to develop a comprehensive and sustainable approach to maximize the potential of copyright in supporting the growth of Indonesia's creative economy in an inclusive and sustainable manner in the digital era

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