

Conference Paper

Problematic on Copyright Execution as Fiduciary Collateral When Debtor Defaults

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Abstract.

The issuance of Government Regulation of the Republic of Indonesia Number 24 of 2022 on Regulation of the Implementation of Law Number 24 of 2019 on creative economy has served as the foundation of the copyright financing concept with an economic value, which can be used as fiduciary collateral. Therefore, problems that arose in the application of the mentioned concept are when copyright as fiduciary collateral is executed. Problem of copyright as fiduciary collateral for executed intellectual property due to defaulting debtor, which includes moral rights that remain attributed to despite the implementation of the execution, void of legal norms on the execution of copyrights and strength of minutes of auction evidence as proof of property rights transfer to copyright, as well as restriction of property rights by Law of Copyrights in the execution of copyright. Moreover, the research method applied in this paper was normative research, by analyzing library materials or primary and secondary data. The first result obtained only economic factors that are transferable in the transfer process of copyright, moral rights attributed to the creator, implementation of copyright execution such as legal objects with similar classification, and auction report as evidence of copyright transfer. Second, different restrictions from Article 28 H paragraph (4) of the 1945 Constitution of the Republic of Indonesia may lead to multiple interpretations and conflict of norms. The recommendation is to conduct a comparative study with countries that have the same legal system and revise Law Number 28 of 2014 on Copyright or establish the implementation of a mechanism for copyright execution.

Keywords: problematic, copyright execution, fiduciary collateral


1. INTRODUCTION

In the present days, fiduciary collateral on intellectual property is a topic of discussion that has become more intriguing. In addition to that, the Republic of Indonesia issued Government Regulation Number 24 of 2022 concerning on Implementation Regulations of Law Number 24 of 2019 concerning on Creative Economy which further referred to as

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PP No. 24/2022 as a policy that serves as the legal foundation for intellectual property-based financing and credit schemes. In this financing scheme, intellectual property that is eligible for fiduciary collateral as intellectual property may be used as a loan guarantee object for bank financial or non-bank financial institution, allowing creative economic participant to access additional working capital to expand their business.

The Indonesian Government only decided to adopt this scheme after the number of intellectual property registrations increase at the Directorate General of Intellectual Property which further referred to DJKI. According to Yasonna Laoly, Indonesia's Minister of Law and Human Rights, there has been a 25% growth in domestic intellectual property registrations at DJKI that come from the UMKM sector[1]

This scheme was first acknowledge by the world at the 13th session of the United Nations Commission on International Trade Law (UNCITRAL) in 2008 [2]. Formerly, Indonesia had already ratified legislation concerning intellectual property, namely TRIP's (Trade Relates Aspects Intellectual Property Rights). TRIP's is an international agreement in the field of intellectual property through Law Number 7 of 1994 concerning on ratification of the Agreement Establishing the World Trade Organization which aims to increase, expand, strengthen, and secure markets for all products, both goods and services, including aspects of investment and intellectual property rights related to trading, as well as to increase competitiveness, particularly in international trade. Indonesia accepts agreements from various TRIP's members, each of which has a distinct political and legal environment between countries [3]. The ratification aims to provide protection and law enforcement in the area of intellectual property in order to grow and develop, support innovation in different areas of intellectual property, and realize social and economic welfare as well as a balance between rights and obligations among TRIP's member countries[4]. Articles 9 through 14 of TRIP's contain regulations that address the foundation for copyright. These articles cover: copyright and related rights, computer program protection, lease rights, duration of protection, exceptions, protection of performing artists, sound recording producers and broadcasting organizations. The content of these articles have been accommodated in Law Number 19 of 2002 concerning on Copyright and has been amended to Law Number 28 of 2014 Copyright. Intellectual property developed by humans as creators as a result of their intellectual abilities which are acquired through power, taste and work that are manifested by intellectual works that must be protected, particularly ones with financial worth [5], whereas creator is a person or group of people who work independently or collaboratively to produce unique and personal work.

In this discussion, researchers will focus on Copyrights as a fiduciary collateral for intellectual property being executed due to default debtors. Copyright regulations in Indonesia have been amended several times, the most recent and valid until today is Law Number 28 of 2014 Concerning on Copyrights which further referred to UUHC.

Copyright is an exclusive right that is automatically obtained after a work of creation is realized in a physical form without decreasing restrictions in accordance with the legislation. These exclusive rights include both moral and economic rights. Economic rights in a creation can be transferred to other people, whereas moral rights cannot be transferred as long as the creator is still alive. However, the activity of this right can be transferred by a testament or for other reasons in accordance with the legislation after the creator passes away. This suggests that moral rights remain beholden to the creator whether he/she is alive or not despite if the fact that the economic rights of his/her work of creation has been transferred.

The previous UUHC did not regulate that copyright could be used as a guarantee. However, in the most recent amendment, which is still valid until today, namely UUHC and Law Number 13 of 2016 Concerning on Patents, which further referred to as Patent Law, there are regulations that allow copyright and patents to be the subject of fiduciary collateral. Fiduciary, as we are aware of, is the transfer of ownership rights to objects based on reliability, with the ownership of the objects remaining intact. If copyright may be utilized as a fiduciary collateral, it will obviously involve publishers, collective management institutions, creators, copyright owners, and beneficiaries of fiduciary collaterals (including banking and financial institutions).

Therefore, the foundation of this fiduciary is the reliability in ownership rights that are used as a guarantee. Fiduciary collateral objects can be movable material and immaterial objects, as well as immovable objects particularly buildings that cannot be charged with mortgage rights and thus remain in the control of the fiduciary giver as a building for the settlement of certain debts which provides fiduciary recipients precedence over other creditors. The granting of fiduciary collaterals begins with debts between creditors and debtors; this agreement serves as the foundation for predicting if the debtor defaults to pay debts. A notary deed is frequently used to draft this fiduciary agreement.

Based on the explanation above, copyright can be utilized as a fiduciary collateral object due to the fact that it is part of intellectual property, which comprises material and property rights. In this context, material rights refer to intellectual property as immaterial objects, and objects, as defined in Article 499 of the Civil Code, are any item or right that is regulated by property rights. Therefore, copyright is part of property rights on immaterial objects. However, there is no legal law which indicates that copyright can

be executed, and there are no defined procedures for executing a copyright that is utilized as a fiduciary collateral for intellectual property. Thus, is it possible to carry out the copyright auction-based execution process in this situation? In order to allow the transfer of ownership rights through the auction.

Article 16 paragraph 2 of the UUHC provides more specific guidance on the transfer process and clarifies that only economic rights may be transferred. The transfer of rights must be put into an agreement, either with or without a notary deed, in order to fulfill the requirements of Article 1320 of the Civil Code; however, in order to get legality that is legitimate and has perfect legal force, the agreement is created with a notary deed.

As a result, researcher in this study focused on whether the copyright applied as a fiduciary collateral was executed due to defaulting debtor. Consequently, various legal issues arise during the execution process. Given the current concern that intellectual property rights are being violated frequently in Indonesia, data from the DJKI website show that there were 138 complaints of such violations from 2019 to June 2022, resulting in state losses from such violations from 2015 to 2020 totaling of 291 trillion rupiah [6], where these circumstances may influence the assessment of the value of intellectual property, which may impact financial institutions if value of intellectual property pledged declines in value during the execution process.

Based on the background of the legal problems outlined above, this research will be limited through numerous problem statements in order to avoid broadening the scope and desired objectives. The problem statements are written as follow 1) What are the problems with copyright as fiduciary collateral for intellectual property executed due to defaulting debtors?; 2) How are the restrictions on property rights by Law Number 28 of 2014 Concerning on Copyrights in terms of copyrights as fiduciary collaterals being executed?

2. METHODOLOGY/ MATERIALS

This legal study employs normative research. Normative legal research is a method or procedure to discover legal norms, legal principles, and legal doctrines in order clarify legal problems under consideration. Normative legal research is conducted by evaluating literature, primary and secondary evidence. Normative legal study or literature comprises research on legal principles, legal systematic, vertical and horizontal synchronization levels, and comparative law[7].

3. RESULTS AND DISCUSSIONS

According to the copyright principle, an exclusive right in the form of Moral Rights is a right that is permanently attributed to the author to continue including or not including the author's name on copies associated with public use of the work, to modify the title and subtitles, to protect their rights in the case of a distortion of the work, mutilation, modification, or anything that is damaging the work of creation to their self-respect or reputation [8]. These moral rights are not transferable while the author is still alive, however, the activity of this right can be transferred by a testament or other reasons after the Author passes away, in accordance with the legislation. The party who benefits of the exercise of moral rights can further waive to release or refuse the activity of these rights, on condition that the release or refusal is in written form. Therefore, these moral rights remain attributed even after the author died and the validity period of copyright protection has expired, and these moral rights remain attributed to the creator exclusively at the moment the work of creation is genuinely recognized.

The Berne Convention refers to Moral Rights as rights that are related to the author. Related denotes that even when the copyright has expired, the right cannot be withdrawn. Moral rights are regulated in Article 6 paragraph 1 of the Berne Convention, which reads as follows:

“... the author shall have the right to claim the authority of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.”

The foundation of Moral Rights is personal and private and attributed to the creator, therefore moral rights are distinguished from economic rights to creations. Moral rights are classified into two primary scopes [9], which are:

1. Rights of Integrity

Integrity rights are rights on treatment and attitudes that correspond to the author's dignity and integrity. This right can be achieved from restrictions on decreasing, destroying, or modifying works that may have the potential of destroying the creator's integrity. Essentially, the creation must be preserved in its original form.

2. Rights of Attribution

Attribution rights are rights that oblige author's identity to be included in the work, either stating under real name or pen name. Under specific conditions, the creator may make his work anonymous.

Based on the above definition, it can be determined that the distinction between economic rights and copyright exists simply to safeguard the creator's economic interests, as well as to maintain the creator's good name or reputation as another kind of acknowledgement of one's intellectual work[10]. The notion of moral rights was founded on the idea that the author has personal rights to stop others from plagiarizing his work and to be respected for his creative efforts[11].

Accordingly, in the situation of copyright being executed based on the UUHC, moral rights cannot be transferred, despite the fact that copyright does not explicitly indicate that when copyright as a guarantee is exercised, all ownership rights and exclusive rights to the author are completely transferred. As a result, the article in Article 5 paragraph (2) must be interpreted authentically, so that moral rights that are eternally attributed to the creator cannot be transferred as long as the creator is still alive, and restrictions are expressly stated in the UUHC in an effort to protect the creator's intellectual property creations.

The second legal issue that occurs when using copyright as fiduciary collateral is in the procedural element when the debtor defaults / breaches the contract, resulting in the execution of the guaranteed object. In this scenario, copyright is the object, therefore can a copyright be confiscated [12]. Given the character of intellectual property as an immaterial object [13], which can be demanded as a fiduciary collateral of intellectual property and by considering the regulations of Article 29 paragraph (1) of the Fiduciary Collateral Law which basically state that if the debtor or fiduciary giver defaults, execution can be carried out on objects that become Fiduciary Collateral Objects. Thereby, copyrights can be regarded in the same way as other legal objects with equivalent categories [14].

The absence of rigid regulations declaring that copyright can be executed/seizure of copyright guarantees used as fiduciary collateral is a void in the legal norms regarding on copyright execution. For this reason, the author draws a parallel between the character of copyright objects with the execution of comparable objects or those characterized as moving and material objects. Due to the fact that there are no regulations regarding on the execution of copyrights based on *das sein*, similar cases has not yet be found. If there are circumstances when copyrights are guaranteed as fiduciary collateral as copyrights are inherently material, the author believes that the execution process will proceed in the same manner as other material objects with comparable classifications.

In this case, the regulations for executing fiduciary agreement objects in the form of copyrights can be executed in the same manner as other materials, which is in accordance with Article 15 of the Fiduciary Collateral Law in accordance with Article 29

paragraph (2) of the Fiduciary Collateral Law. According to Article 15 of the Fiduciary Collateral Law, a fiduciary collateral certificate with the title “FOR THE SAKE OF JUSTICE BASED ON THE ALMIGHTY GOD” has the same executive power as a court decision that has permanent legal force (inkracht) so that the fiduciary recipient can make profits on his/her own power.

However, given the above-mentioned statement, specifically, stated in the Constitutional Court Number 18/PUU-XVII/2019, which decision states that:

”Regarding Article 15 paragraph (2) of the Fiduciary Collateral Law, the phrases “executive power” and “same as a court decision that has permanent legal force” are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force as long as they do not mean that “against a fiduciary collateral that does not exist agreement on breach of contract (default) and the debtor objecting to voluntarily surrendering the object that is a fiduciary collateral, then all legal mechanisms and procedures in executing the Fiduciary Collateral Certificate must be carried out and apply the same as executing a court decision that has permanent legal force.”

Regarding on Article 15 paragraph (3) of the Fiduciary Collateral Law, the phrase “default” is contrary to the 1945 Constitution of the Republic of Indonesia and has no permanent legal force as long as it is not interpreted that “the existence of a breach of contract is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on basis of legal remedy which determines that a breach of contract has occurred”.

In this instance, the execution of the fiduciary collateral can be done if the agreement contains a default regulation and an agreement allowing the parties to conduct execution independently. If there are conditions not included in the agreement, the execution procedure can only be done if a judge obtains a court ruling on executing fiduciary collateral objects.

According to the earlier explanation, there is disharmony in laws and regulations, which results in different interpretations in their implementation, legal uncertainty, regulations that are not implemented effectively and efficiently, and legal dysfunction, which results in the law malfunctioning to provide behavioral guidelines to the public, social control, resolving disputes, and serving as a means of social change in an orderly and regular manner. Legal harmonization can therefore be accomplished through harmonizing and amending laws and regulations, as well as legal concepts, using legislative review instruments to generate revisions product to laws. The implementation of harmonization and synchronization of legal products is not only limited to the development of a legal product, but additionally occurs on legal products that have

already been produced. In terms of the synchronization and harmonization implemented due to legal dynamics related to the formulation or promulgation of new laws, this legal product becomes disharmonious or out of sync with the newly published regulations [15].

This is necessary due to the law's ineffectiveness, as stated by Allott in the Academic Text of Copyright Law 2013 in the journal of Luthfi Ulinuha [5] which mentioned as below:

1. Ineffective conveyance of the law's objectives. This is due to laws that are difficult for ordinary people to grasp, as well as a lack of a governing organization to adopt and enforce these laws.
2. Existence of conflict between the aiming goals by legislators and the character of the society.
3. Lack of supporting instruments for laws such as implementing regulations, institutions or processes related to the implementation and enforcement of these laws.

Furthermore, in accordance with the author's intention, moral rights that are not transferred limit the buyer's rights to executed works. For instance, the right to make changes to his creation in accordance with the needs and propriety of the society, modify the title and subtitles of works. These rights are moral rights that only the creator has in terms of protecting an intellectual property that is manifested in an authentic manner.

Therefore, new designs or concepts for the principle of ownership of copyrights is required, which is executed by designing legal harmonization of ownership rights regulations and the execution of fiduciary collaterals in the form of copyrights so that the boundaries of rights gained by purchasing copyrights through execution are more apparent in accordance with the regulatory legislation. As long as the execution continues, the only right that will transfer is economy rights, which limits the right to ownership of repaid items. Of course, the implications of this execution are in contrast to the regulations of Article 5 paragraph (2), which states that moral rights cannot be transferred during the creator's life except in circumstances of the creator's death. It is also in against the principle of Droit De Suite, which states that when an object is automatically transferred, the rights of the object automatically transfer to whoever holds the rights to the object and wherever the location of the object is, as well as the regulations of Article 499 of the Civil Code, which states that each item and each right that can be controlled by property rights.

Thus, in this particular instance, the absence of legal norms in the implementation of copyright execution means that if execution occurs, the execution process that is used is the same as with the regulations for material executions, whether movable or immovable, either material or immaterial, following the regulations outlined in the Fiduciary Collateral Law due to the lex specialist of Fiduciary Collateral Law, which regulates the manner in which fiduciary collateral objects can be executed, where the regulations for implementing copyright execution are not governed by UUHC. This is consistent with the perspective expressed by Sudikno Mertokusumo, who underlined that law is more than merely a collection or total of regulations that individually stand alone. According to this point of view, a legal rule has a systematic link with other legal regulations. Systematic law study in this case means a technique of studying law that views law as a unit consisting of sub-systems.

3. Minutes of Auction as Evidence of Copyright Transfer

Habib Adjie mentioned in his book, “understanding and mastering the theory of notary deed types of initial deed, comparison, and end of deed” Article 1868 BW [16]. The regulations of Article 1868 BW, which are used as parameters in evaluating PPAT deeds and Auction Minutes, are not yet recognized as authentic deeds given that there is no Law Concerning the Positions of Officials Making Land Deeds and Laws Concerning Auction Officials which explicitly state that auction minutes made by officials or public employees can be used as evidence of the transfer of ownership of an intellectual property right. As a result, the PPAT deed and the Minutes of Auction remain quasi-authentic deeds whose evidential power will be determined by the judge’s ruling if any parties suit. If none of the parties suit, the PPAT deed and the Auction Minutes remain its attachment on the parties involved, regardless the party entered into or formed the agreement.

The Minutes of Auction, on the other hand, are proof of the auction being carried out and made by the auction official in the form of auction minutes, the auction minutes are referred to as “minutes of the auction.” According to the definition of auction minutes in Article 1 Number 32 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 213 of 2020 Concerning on Instructions for Conducting, which further referred to as PMK No 213/2020, which mention the minutes of auction as below: “Minutes of the auction implementation made by the Auction Official, which is an authentic deed and has perfect evidentiary power.”

In this case, the record of the auction may be justified as the minutes of auction itself, because it is essential to prepare records of auctions or auction minutes as referred to in Article 87 paragraph (1) PMK No 213/2020, which states:

“For each execution of auction, each auction record will be compiled by the Auction Officers.”

In addition from the PMK, the auction regulations are pronounced in the Vendu Regulations, which are still in effect nowadays. This policy is an Ordinance or was amended on February 28, 1908, and went into effect on April 1, 1908. Article 35 of the Vendu Regulation also governs auction minutes, as it states:

”A separate report must be made from each public sale conducted by the auctioneer or his attorney during the sale, for each day of the auction or sale.”

The minutes of auction details all of the events that transpired during the auction or public sale managed by the auctioneer. It includes the following information: what, why, where, when, how, and who is engaged in the implementation [17]. Article 87 paragraph (1) of PMK No. 213/2020 states that the auctioneer has the authority to compile the minutes of auction.

An auctioneer, according to the definition, is a person who is appointed based on rules and regulations and has permission to hold the auction. There are two types of auction officials: class I auction officials and class II auction officials. According to Article 1 points 45 and 46, the two officials have different positions. Class I auction official is a public servant at the Ministry of Finance who is appointed or appointed as an auction official. Whereas class II officials are persons appointed as Auction Officials by the Minister from either the private or public sector, a Notary, in this case, can also be appointed as an auction official with the status of class II auction official.

In the above example, the auction official’s function in carrying out the auction relates to the right transfer of the auction item being auctioned based on the auction minutes [17], and the transfer constructed on the auction minutes can be read as follows:

1. The legal action of transferring rights in a cash auction;
2. Implementation of the auction is a legal act of auction on the item that is the object of the auction so that there is a transfer of rights to the beneficiary buying the auction;
3. Auction minutes can be used to prove that a legal activity occurred, which is the auction. The legal action is monetary in character, and it serves as evidence of the transfer of rights to the recipient of the rights, or in this example, the buyer, over the item or objects of the auction;
4. In the field of administration, sales through auctions are open to the public because the auction is held in public with the announcement of the auction as an invitation

to the public. In addition to open auctions, there are also closed auctions that have evidence of the transfer of the same rights, which are limited to the party conducting relevant legal action.

In the Big Indonesian Dictionary, well known to as KBBI, a deed is described as “a letter of evidence containing statements (statements, confessions, decisions, etc.) about legal events made according to applicable regulations, witnessed and ratified by official officials”. In other words, “deed” is spelled “act” or “deed” in English, and “acte” in Dutch. Meanwhile, authentic in KBBI denotes trustworthy, unique, genuine, and valid.

Meanwhile, the definition of an authentic deed as referred in Article 1868 of the Civil Code is:

”Authentic deed is writing which form is determined by Law, made by or before a public official in power for that purpose where the deed was made”. In line with the above article, Article 165 of Herzien Inlandsch Regulation, further referred to as HIR, defines the deed as follows: “An authentic deed is a deed drawn up by or in the presence of an official who is authorized to do so, and it serves as complete evidence between the parties and their heirs, as well as those who have rights based on what is listed in it as mere notification.”

As stated in multiple previous articles, there are components which render a document or letter a valid deed, such as:

1. Its structure is prescribed by law;
2. It is performed by or before a public official; and
3. It is performed within the authority of the general officer who performed the deed.

In accordance with the previously mentioned elements, Irawan Soerodjo argues in his book “Legal Certainty of Land Rights in Indonesia” that there are three important aspects for a deed to meet the formal criteria as an authentic deed [7], specifically as follow:

1. Its structure is prescribed by law;
2. It is performed by and before a public official; and
3. A deed made by or before a Public Official who is authorized to do so and at the place where the deed was made.

Furthermore, A. Pitlo defines a deed as a letter that is signed, utilized as evidence, and used by persons who have needs for whom the letter is written[18]. A deed, according to Prof. Sudikno Mertokusumo, is a letter attached with a signature that contains events

that constitute the basis of a right or obligation and is made for evidence [18]. Meanwhile, Prof. Subekti believes that an authentic deed is one produced by or before an employee or public official who has the power to create it at the location where the deed was made[19].

According to various definitions of an authentic deed given above, an authentic deed is a letter or document made by an official or public employee door often overstaan van openbare ambtenaren) who has the authority to make an authentic deed in accordance with the regulations of the contents determined by law (welke in de wettelijke vorm is verleden) that results in an agreement with the party in it and is made at the office or place where the official or public employee works.

In terms of the authority of compiling authentic deeds, as stated particularly in Article 1 point 1 of Law No. 2 of 2014 Concerning on Amendments of Law Number 30 of 2004 Concerning on Functions and Duties of a Notary, a Notary is a public official authorized to make authentic deeds and other authorities as referred to in the Law, where its authority is contained in Article 15 UUJN.

According to Article 15 UUJN, notaries in this circumstance have the authority to make minutes of auction deeds, as do class II auction officials, who are also general officials appointed like a notary to make auction minutes deeds. This is in accordance with Article 87 paragraph (1) PMK No. 213/2020, which states that the person who creates auction minutes is an auction official. Auction officials may be a Notary who was recently appointed as a class II auction official in accordance with Article 4 of Regulation of the Minister of Finance of the Republic of Indonesia Number 189/PMK.06/2017 Concerning Class II Auction Officials, which further referred to as PMK No. 189/2017.

As stated in Article 4, PMK No. 189/2017 does not list Notary as a profession that is excluded from appointment as class II auction officer. Thus, in this case, notary can be appointed as an official authorized to carry out and make deeds of auction minutes according to their authority, which has been stated rigidly in UUJN and PMK No. 189/2017.

If the deed is not written out by a general official who has been confirmed, then it is an incompetent or unqualified official or has a faulty form, according to the regulations of Article 1869 of the Civil Code. According to this article, the deed created is invalid or does not fit the formal conditions of an authentic deed, and so cannot be considered as an authentic deed. However, if the parties sign the deed, it has the same power as a deed under the influence [20]. Making an authentic deed is not only required by affirmative law regulations, but also created through the will of the interested parties for a specific legal action done in the form of an authentic deed as a means of proof [21]. According to Prof. Sudikno Mertokusumo, an authentic deed is purposely created

for official verification. This means that since the letter or deed was created, its aim is to serve as evidence in the event of a disagreement [22].

As previously explained, before drawing conclusions, the author must define the validity of authentic deed evidence in the case of auction minutes as proof of material rights transfer through a public auction. Several restrictions govern the strength of establishing an authentic deed, including Articles 1870 and 1871 of the Civil Code/BW, Article 165 HIR, and Article 285 Rbg. It concludes, as indicated in its basic content, that a genuine deed has sufficient proving legal force for the parties, heirs, and those who gain the rights mentioned in the deed.

In the case of an authentic deed whose drafting and contents contrary to the requirements or are not proven accurate, unless what is said has a direct link with the major elements of the deed, as referred to in Article 1871 of the Civil Code, the deed will apply as the beginning of written evidence. For activities that went against the rules or prohibitions, the power of evidence of a deed is reduced from what was previously perfect proof power as a genuine deed to demonstrating an private deed and can be invalidated by law.

In terms of the power of authentic deed evidence, it can be distinguished through 3 (three) elements, which are:

1. Power of formal evidence
2. Power of material evidence
3. Power of birth evidence

Based on the three elements listed above, a deed is considered authentic if it meets all three requirements, as law has separated the power of evidence between authentic and deceptive deed. An authentic deed is delivered between the parties and their heirs or those who have rights from them; it is a reliable evidence of what is included therein (see article 1870 BW), and which mention identical statement to article 165 HIR.

There is an exception if an authentic deed retains full evidential power until shown differently [23]. Therefore, first and foremost, if what is contained in an authentic deed is a simple story that has no direct link with the primary contents of the deed, it may only be used as the beginning of evidence in writing (see Article 1871 BW). Second, under Article 1872 BW, if an authentic deed is suspected/suspected to be a forgery, its execution can be suspended.

Thus, through an agreement based on the legislation on the execution of a public auction, the author believes that it may be equated with an authentic deed since the

elements and procedure of producing it correspond to the criteria as an authentic deed. Consequently, even though there are no legal norms in statutory regulations that states clearly that auction minutes have the same status as an authentic deed as long as the contrary is not proven and can be used as evidence of the transfer of ownership rights to an object that is executed through a public auction.

Therefore, in order to cover the absence in these legal norms through legal constructions conducted by the author, the author contend that auction minutes can be used as evidence of the transfer of ownership rights to creations given the requirement of a law which states the position of the auction treatise deed as an authentic deed as long as it is not proven otherwise.

Restrictions on Property Rights by Law Number 28 of 2014 Concerning Copyrights in the Matter of Copyrights as Fiduciary Collaterals in Execution

In the process of executing copyright as a material guarantee that is guaranteed by a fiduciary collateral, there are moral rights associated to copyright that cannot be transferred while the creator is still alive, unless the law determines differently. This right is granted if copyright provides protection for creative subjects, whether it is a person or several people working together, who produce a work based on the ability of thought, imagination, dexterity, skill, or expertise that is poured into a form that is unique and personal in fields like arts, literature, and science. The rights for Copyright grant creators the right to control and exploit their creations by preventing others from duplicating their work without permission.

In terms of utilization, the acquisition of property rights is also restricted in order to avoid causing disruption to third parties. This limitation is founded on the premise that someone who possesses rights is free to utilize those rights, but that freedom must take into account the rights of others [24], where this is consistent with the limits set out in Civil Code Article 570.

As an outcome, even while the activity of rights is legally protected, it must be done in such a way that it does not hurt or clash with the rights of others. Distinguish between outcomes that produce material losses and immaterial effects, such as disruptions. This limitation can also be understood if economic rights have been transferred. As a result, authors may not engage into agreements with third parties to carry out legal activities based on transferred economic rights.

As the legal system for intellectual property rights which is meant to ensure an equitable standing for the right owner and the community, copyright limitations are a method of balancing the rights of copyright holders and the public to benefit from authors' works that are copyrighted. Therefore, copyright as a property right confers

certain powers on the right holder, this does not imply that rights holder may utilize his rights indefinitely since private interests do not exceed the interests of society. Thus, according to the terms of Article 570, the limitation of property rights based on laws or general regulations means that the owner of the right may not interfere with laws or general regulations in exercising his rights. There is a conceptual distinction between coercive and regulating legislation[24].

Furthermore, from the perspective of material objects, Prof. Subekti believes that material objects may be classified into three types, which are as follows:

1. Narrow definition of objects is goods that can be seen or material;
2. As a person's wealth in the form of rights and income;
3. As a legal object side by side with a legal subject.

According to Prof. Subject's understanding, copyright as a right is intended to be intellectual property created by the creator and income obtained from the economic rights of the creation, as well as a legal object, particularly moral rights to a creation that are side by side or more precisely attached to its legal subject (creator).

Furthermore, from a material perspective in the author's viewpoint, if understood as Prof. Subekti's opinion, there is really a limitation of rights that cannot be transferred even when copyright is being enforced. As a result, the concept of *droit de suite* on copyright is difficult to apply, given that the rights that move to copyright are mainly economic rights. This brings up the point raised in the preceding explanation, whether or not the determination of copyright as a permanent object can be enforced given the *droit de suite* principle as one of the difficult to apply qualities of fiduciary assurances.

Subsequently, in fiduciary practice, it may harm one of the parties as a result of modifications that make fiduciary collaterals similar to general guarantees. Whereas the qualities of fiduciary collaterals are projected to be a guarantee technique that is simple to perform throughout the execution process, it turns out that in present reality, many procedures must be carried out, which does not meet the criteria of rapid, simple, and low cost. This is accurate because even if a fiduciary collateral has been imposed, if there is no default clause in the agreement, execution must be carried out by a court order, which in this situation takes time, cost, and processes to be followed.

Continuing with the issue of non-transferable rights, this partial transfer of rights may result in the presence of two or more right holders in one work. Thus, it is discovered that there are two separate rights holders to a creation, causing doubt as to who is the legitimate holder of the complete rights to the object and has the power to make full use of the work. Keeping in mind that adjustments or transitions cannot be made in

terms of copyright if what is held is part of the rights of a creator. Accordingly, if you wish to add a name as ownership of a work, you must have all the rights in a work, which is equal to Article 36 UUHC unless otherwise agreed, the creator and copyright holder of a work created in a working relationship or based on an order, namely the party creating the work. Where inventions are acquired either by ordering or, if not agreed otherwise, through execution, specifically an agreement that establishes who the copyright holder is.

The fact that there are two different right holders makes this concept more challenging to comprehend. As a result, questions with answers that are explicit in the UUHC will inevitably arise. One such question is whether copyright can be classified as an item with a nature similar to property rights, even if it is manifested in real terms. Evidently, the solution to this is in Article 16 paragraph (1) UUHC, which is stated directly. The simplest explanation is that copyright is a material moving object as a result of a legal requirement. According to Prof. Subekti's argument, an item may be categorized as moveable according to its characteristics or in accordance with the legislation ([14]. In order to conduct authentic interpretation of Article 16 paragraph 1 UUHC.

The restrictions and prohibitions regulated in the UUHC will also result in difficulties in executing through private agreements, due to problems with the transfer of ownership rights where the owner of the right conflicts with the principle of freedom of contract where there are restrictions related to the existence of copyright which has principles material possessions, as well as the *droit de suite* characteristics as the author explained in the previous discussion, which are also elements of moral rights inherited from the Civil Law system. This is because it is recognized that the transfer of ownership rights might be controlled by legal regulation [25].

The concept of moral rights is further based on and closely tied to the preservation of human rights, as stated in Article 27 (2) of 1948 of Universal Declaration of Human Rights, which states that:

"Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".

In this case, it is strengthened by the perception of human rights in the protection of scientific, artistic and literary of the creator, where the statement of the article is also identical to the terms and definitions used in defining works in UUHC. Furthermore, the way of purchasing copyrights that may be accomplished by private agreement, which is the form of sale contract required by Article 18 UUHC, which clarifies that:

”Creations of books, and/or all other written works, songs and/or music with or without text that are transferred in a sale contract and/or transfer without a time limit, the Copyrights are transferred back to the Author when the agreement reaches 25 years.”

This obviously limits the free will of contract, as copyright is carried out through a contract in which the sale and purchase contract confirms the conditions for the return of economic rights after the agreement lasts more than 25 years and the prohibition on the transfer of moral rights as regulated in Article 5 UUHC. In terms of this restriction, the state contributes by interfering in giving protection to creators through statutory regulatory instruments. In fact, the manner of the state in offering protection does not have to rely on the terms of restoring economic rights to the Author after the sale contract has reached more than 25 years and prohibiting the transfer of moral rights. Due to the limitation in this case is contrasted to Article 28 H paragraph (4) of Constitution of the Republic of Indonesia 1945, which also establishes the provision of protection for private property rights and property rights that cannot be taken over arbitrarily by anyone, where restrictions on property rights (moral rights) towards a creation that is limited by UUHC as a statutory instrument. This is because, in the author’s perspective, both of these laws constitute a type of deprivation of the rights of purchasers or investors to acquire property rights. As a result, the concept of sale and purchase cannot be equated with the sale and purchase value, because the concept of sale and purchase is analogous to a ‘leasing’ agreement whose value cannot be equated with the sale and purchase value (due to a limitation that the copyright must be returned to the creator after 25 years). Therefore, reasons that prohibit, hinder, or prevent buyers or investors from owning Copyrights on a work without a time limit through a constitutionally valid transition are not permitted because they violate the provisions of Article 28 H paragraph (4) of Constitution of the Republic of Indonesia 1945, these provisions may result in legal confusion since the laws and regulations enacted generate doubts and different interpretations, could lead to a conflict of norms.

Furthermore, it can be resolved using the object law system approach, which is compared to the contract law system, and using comparative law theory, where the sale contract is regulated both by countries adhering to the Common Law legal system and by countries with a legal system [25].

The comparison of law presented here is not one of civil, criminal, or constitutional law, but of one legal system to another. Comparing in this context means looking for and highlighting differences and similarities by explaining and studying how the law and the juridical solution work in practice, as well as non-legal variables that affect [26].

The law that is known and will be compared is referred to as “comparatum,” whereas the law that is compared to a known law is referred to as “comparandum”.

The law itself may be compared in two ways: on a large and micro basis. A macro comparison is one that compares legal topics in general. The micro comparison is done by comparing certain legal concerns. There are no hard and fast distinctions between macro and micro comparisons [26]. The limitation in the agreement is used as an example in this study, with agreement as the focus of comparison.

Following that, if there are issues with the transfer of ownership rights, an inter-sub-legal system method can be adopted. According to Sudikno Mertokusumo, system theory analyses a system as a unit that acts under specific constraints. Flexible, mechanical, biological, or social systems exist [25]. In examining Article 18 UUHC, which contains contradictory concepts, one can refer to System Theory, where Friedman’s opinion states that in studying law as a system, the legal system in operation has three components that interact with each other, including structure, substance, and culture[27]. Legal structures are institutions established by the legal system to perform various duties in order to assist the system’s operation . Legal structure is the legal system’s output as substantive regulation and legal regulations governing how institutions established by substantive legal regulations should act. Meanwhile, culture is a kind of social support for laws consisting of values and attitudes such as habits, opinions, and approaches on how to act and think which can drive community support to comply or not comply with the regulations[25].

In the practice of making agreements on the transfer of rights, either countries that adhere to Common Law and Civil Law have similar views or relevance in the development of standard agreement law, including regarding the written requirements (statute of frauds), the validity of standard agreements, breach of contract, and the exoneration clause contained in the standard agreement [28]. Although there are differences in the method of transferring copyright, the principles and general rules of contract law and principles in agreements, such as the principles of good faith, fairness or equity, prohibition of unfair conditions, and some interpretation principles, are used in making contracts. These principles are included in the agreement to protect both creators and buyers/publishers/producers, so that reciprocal rights and obligations are created based on the principle of balance between the two parties, and the transfer of copyright deserves compensation in accordance with the principles of justice, both in terms of remuneration and exploitation of the original work [25].

Outright selling contract is not elaborated within UUHC. Therefore, using a comparison model, a study of the laws that apply in various countries is conducted to get a

full picture of the legal provisions and practice of sale contracts [25]. Countries such as Netherlands, Belgium, Hungary, England, Germany, Poland, France, Spain, and Sweden exhibit a mix of Common systems and Civil Law systems, which have different traditions and schools of thought and defend certain rights in different ways. John Locke, who is influential in countries adhering to the Common Law System legal tradition, and the stream put forward by Hegel, who is influential in countries adhering to the Civil Law System legal tradition [29].

In addition to using a systems approach, it is necessary to analyze particular rules governing the protection of balanced interests by using a number of crucial legal concepts that are governed by the rules of contract law and the provisions of property rights over things that are the subject of a sale contract. Each sort of copyrighted work can be transferred copyright ownership through an agreement between the author and the buyer if done legally, allowing the use of the work to be commercialized for profit. When rights are transferred using the outright sale model, the buyer/investor who received the copyright as the first recipient assumes the role of the buyer in the sale contract. This allows for the transfer of ownership rights to copyright to be accomplished using the same model as when reselling the rights obtained through the outright sale contract with new customers or investors who want to profit from the exploitation of works by entering into a business relationship.

In addition, the author believes that Article 18 UUHC's period of limitations would be in contradiction with the first buyer's agreement to transfer copyrights, which is why it is also in disagreement with the limitation period. This is due to the fact that Article 18 UUHC does not further regulate the purchaser of the original creation who transfers the work back before the expiration period, which renders the prohibitions on sale and purchase ineffective because, in the author's opinion, a transfer is intended to be carried out permanently until it reaches a 25-year period.

Consequently, the goal of protecting creators' rights in the implementation of this particular rule is a type of protection that is likewise backed by human rights. Thus, in addition to selling out, the transfer of rights through the exercise of contractual freedom can also be a solution, and the exploitation contract/royalty model is still widely accepted because of the principles of good faith, balance, and justice that complement or create multiple obligations, as well as reduce or set aside contract clauses that are thought to be unfair to the author/author, whether choose a royalty contract or sale contract, contract law can be a settlement solution regarding the protection of creators' rights[25].

4. CONCLUSION AND RECOMMENDATION

According to the author, the correct solution is to pay attention to PP No. 24/2022 because the issues with the execution of copyrights that are used as fiduciary collaterals not only have an impact after the execution is carried out but also at the time of imposition/registration of copyrights, resulting in a legal void in the procedure for registration. A transfer or assignment is the execution of a copyright transfer, whether it is in whole or in part. Transfer by way of diversion results from inheritance, grants, testaments, agreements, buying and selling, etc. Assignment, on the other hand, is a transfer that allows for the use of Copyright for a specific time period, such as a licensing agreement.

After the execution is carried out, problems arise such as moral rights that continue to exist even though the execution has been carried out, an absence in the legal norms governing the method of carrying out copyright execution, and the requirement for legal construction to fill an absence in the legal norms governing the use of the deed of minutes of the auction as evidence of the transfer. There is no distinct idea of an intellectual property-based financing plan that engages the state in funding it; copyright is like a sale and purchase deed unless it is demonstrated differently.

The legal restriction of property rights on the concept of copyright material as a fiduciary collateral that is implemented against it is really against the material concept that Indonesia embraced. Due to the limitations placed on rights by UUHC, the idea of material in fiduciary collaterals where the *droit de suite* principle is present will be challenging to apply. The authors believe that the idea of purchasing and selling split apart can be applied as a work around for the copyright enforcement process, appears to be in conflict with the idea of free will of contract and the clauses in Article 28 H paragraph 4 of the 1945 Of Constitution of the Republic of Indonesia, which might result in a variety of interpretations and contradictory norms. Since there are two ways to compare the legal system, referred to as macro and micro comparisons, the author can provide a solution to this issue by utilizing the legal system of agreements and studies as the basis for his or her research and employing comparative law theory.

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