

Execução direta modelo em marca registrada como objeto de garantia ao banco de crédito

Execution rights model on trademark as guarantee object to credit bank

Modelo de derechos de ejecución de marca comercial como objeto de garantía al banco de crédito

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Resumo

Com base no requisito que deve cumprir que o objeto pode ser uma garantia de objeto, os Direitos de Marca Registrada qualificam o requisito como garantia de objeto, porque têm valor econômico e podem ser transferidos com contrato por escrito. Em Jurídica, a existência de direitos de marca registrada é garantia de segurança jurídica para o pagamento de dívidas do devedor ou a realização de uma conquista, embora na prática os direitos de marca registrada bancária sejam apenas uma garantia adicional. Instituição de garantia que é possível onerá-lo é hipoteca ou garantia fiduciária. Neste artigo, o foco está na garantia fiduciária. Quando o devedor quer que os direitos da marca como objeto fiduciário garantam a execução, seja por execução parate, título executório ou pela venda de contrato feito em particular. No entanto, o credor ou devedor pode fazer um esforço encontrando compradores dispostos a comprar os direitos de marca registrada. Sempre que um comprador é encontrado e serve para que uma ação de transferência seja feita em marca registrada autêntica, segue-se com a remoção da garantia fiduciária e o registro da transferência dos direitos de marca registrada no IPR do Diretor Geral até a transferência de direitos de marca, além de garantir segurança jurídica ao comprador e também vinculando terceiros.

Palavras-chave: Garantia Fiduciária; Direitos de Marca Registrada; Transferência de Direito; Direitos de Execução.

Abstract

Based on requirement that must to fulfill that the object is able to be a object guarantee so Trademark Rights is qualify the requirement as object guarantee because have economic value and able to transferred with written agreement. In Juridical, existence of trademark rights is guarantee legal certainty for repayment of debtor debt or implementation of an achievement although in practice banking trademark rights only as additional guarantee. Guarantee institution that possible to burden it is mortgage or fiduciary guarantee. In this article this is focusing on fiduciary guarantee. When the debtor wanprestasie so the trademark rights as fiduciary object guarantee allow doing execution either by parate execution, executorial title or by selling privately made agreement. However, creditor or debtor is able to make an effort by finding buyers who are willing to buy the trademark rights. Whenever a buyer is found and serve so a deed of transfer is made on trademark in authentic then it follows with removal of fiduciary guarantee and recording of transfer of trademark rights that registered to Director General IPR until transfer of trademark rights besides giving legal certainty for buyer and also binding the third party.

Keywords: Fiduciary Guarantee, Trademark Rights, Transfer of Right, Execution Rights.

Resumen

Basado en el requisito que debe cumplir para que el objeto pueda ser una garantía de objeto, por lo que los derechos de marca se califican como garantía de objeto porque tienen valor económico y pueden transferirse con un acuerdo por escrito. En Jurídical, la existencia de derechos de marca registrada es garantía de seguridad jurídica para el pago de la deuda del deudor o la implementación de un logro, aunque en la práctica los derechos de marca bancaria solo como garantía adicional. La institución de garantía que es posible cargarla es una garantía hipotecaria o fiduciaria. En este artículo, esto se centra en la garantía fiduciaria. Cuando el deudor desea que los derechos de marca registrada como garantía de objeto fiduciario permitan realizar la ejecución, ya sea mediante la ejecución de un parate, el título de ejecución o mediante la venta de un acuerdo privado. Sin embargo, el acreedor o deudor puede hacer un esfuerzo al encontrar compradores que estén dispuestos a comprar los derechos de marca. Cada vez que se encuentra y sirve un comprador, se realiza una escritura de transferencia de la marca registrada en auténtico y luego se elimina la garantía fiduciaria y se registra la transferencia de los derechos de marca registrada al Director General IPR hasta la transferencia de los derechos de marca registrada, además de dar seguridad jurídica al comprador y también vinculante al tercero.

Palabras clave: Garantía Fiduciaria, Derechos de Marcas, Transferencia de Derechos, Derechos de Ejecución.

1. Introduction

Based on the research that has been done on conventional banking or syaria banking so it was found that not many bank that receive Intellectual Property Rights (IPR) especially Trademark Rights as object guarantee(Usanti, n.d.-a) with some reason that IPR is object guarantee that needed special skills for economic value from that IPR, while the availability of human resources that have expertise in the field of IPR assessors expertise in the field of IPR assessors is limited or even not in the bank, so banks prefer collateral objects that are commonly known in the banking world and relatively easy in his judgment for example land rights, motor vehicle, production machine, goods stocks and gold.(Usanti, 2017)

As well there are no laws regulations that support the existence of trademark rights as collateral objects in banks. Referring to Article 43 of Bank Indonesia Regulation Number 14/15 / PBI / 2012 concerning Assessment of Commercial Bank Asset Quality or in Article 45 Financial Services Authority Regulation Number 16/POJK.03/2014 concerning Sharia Commercial Bank Asset Quality Assessment and Sharia Business Unit which is amended by the Financial Services Authority Regulation Number 19/ POJK.03/2018, IPR is not stated as collateral deduction in the calculation of Elimination for Asset Losses (PPA). This is proved that the IPR existence as collateral not calculated on banking as primary collateral so that it whereabouts only as addition collateral. According to **Wangsawidjaja** what is meant by a credit guarantee is a in the form of bank confidence in the ability of the debtor to do repayment credit is abstract. While, collateral is credit guarantee that which is real (riil), include moving object, not moving object, or insurance (warranty).(Wangsawidjaja Z, 2012) While Subekti argued that the ideal guarantee are: (Subekti, 1986)

- a. Able to easy help credit acquisition by party that needed credit;
- b. Not weaken potential the credit seeker to do or continue his efforts;
- c. Gives certainty to credit giver that object guarantee each time available to executions and easy cashed in to repayment repay the loan recipient's debt.

The existence on trademark rights on banking practice although only as additional collateral but not losing bank obligation for be careful on receive trademark rights as guarantee object. According to **M. Isnaeni** that deny that collateral is the central door of the savior for creditors when channeling loan funds to debtors who need loan funds and in order anticipate breach of contract/wanprestasi from debtor (Isnaeni, 2017). Then whenever debtor

breach of contract/wanprestasi so the effort that must do from bank as creditor is do execution on that object guarantee. Become problem for bank when experience difficulty in execution that object guarantee until inflict bank losses. So the function of guarantee as tools of protection for banks, is certainty in repayment debtor debt not achieved because that guarantee is cannot be execution. Based on description above so the problem will analyze is a model of executing trademark rights as collateral of bank credit guarantees in the context of paying off debtors' debts.

2. Methodology

Type of this research is normative law research that which is doctrinal because legal science is indeed prescriptive in nature and not descriptive as is social knowledge.(Marzuki, 2005) The approach that used is legislative approach (statute approach) and conceptual approach (conceptual approach). Legal material that used is the laws and regulations in the form of Burgerlijk Wetboek, Constitution Number 20 of 2016 about Trademark and Geographic (Constitution Trademark and Geographic), and Constitutions Number 42 of 1999 about Fiduciary Guarantee, The Beneficiary Contribution (PBI) and Financial Services Authority Regulations (POJK) that related with research topic.

3. Discussion

A. Characteristic Trademark Rights As Object Guarantee Credit Bank

Trademark Rights according Constitution Trademark and Geographic is Exclusive that given by state to Trademark owner that registered to a certain period of time using the Trademark himself or giving permission to other party to use it. Trademark Rights obtained after those Trademark is register, as the proof is published Trademark certificate by Director General of Intellectual Property (DJKI).

In civil law contexts according to **Sri Mulyani** the rights that attached to the Trademark has object properties. In the material nature of the brand which is one of the intellectual property rights is contained two rights, besides economic rights can gives the profit in form royalty, also contain moral rights (*moral rights*) that always attached to his own. Economic rights (*economic rights*) that have by someone on its creativity, the nature can transferred or moved to other people (*transferable*), until other people as receiver switchover rights also get the economic profit.(Mulyani, n.d.) Related with ownership (*ownership*) is a social institution and law that always related with two things, is owner (*owner*) and things that object owned (*something owned*). If a concept of belonging and wealth is associated with

rights (*rights*) so in law are called ownership rights and rights so in the law it called rights that including owner and right that include property. Basically, Property rights also including owner right because other owner cannot accept showing a specific goods.(Sudjana, 2013)

Trademark Rights based on dividing object according BW is included in the category of movable objects intangible. As stated in Article 499 BW that according to understanding of constitution that called material is each material and each right that able to manage by rights of ownership, so Trademark Rights are material. Based on condition that must to fulfill the condition as a guarantee object because have economic value and can be transferred with written agreement. Besides those both conditions so the other conditions must be fulfill, are:(Usanti, n.d.-b)

- a. The financial report of the company which owns The Trademark Rights to know whether that The Trademark Rights have value or not.
- b. The Trademark Rights is Trademark Rights. Referred to as the famous Trademark Rights is Trademark Rights that has been recognized by the public (consumers). Referring to the opinion from **Haedah Faradz**(Faradz, 2008) that to a trademark become famous that able to showing quality guarantee or reputation a certain product is not easy and needed a quite long time. Coca Cola from United States of America takes 100 years.
- c. Trademark Rights can be used as collateral if the Trademark Rights are Trademark Rights that are registered in the List General Register of Trademark Rights at the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia with proof of certificate of Trademark Rights, so that the Trademark Rights said legal protection for a period of 10 years from the date of receipt and the period of protection can be extended. There are 3 (three) size in assessing IPR according to **Shannon P.Pratt, Alina V.Naculit**, are:(Mulyani, 2012)
 1. Market approach (*market approach*), is estimating the value of intangible assets based on an analysis of actual sales and/or intangible licensing transactions that are comparable to objects.
 2. Income approach (*income approach*), is estimating of value of intangible assets based on capitalization economic income or present value and future value. The economic income will come from the use, license or leasing of the trademark.
 3. Cost approach (*cost approach*), is estimating of value of intangible assets based on substitution economic principal which is worth it with the costs incurred as a comparable substitute to the utility function.

The same thing was stated by **Cita Citrawinda Noerhadi** that as an intangible movable object IPR has the prospect of being used as a credit guarantee because:(Noerhadi, n.d.)

- a. IPR have economic value that able to count based on market cost
- b. Able to sale
- c. Able to licensed
- d. Able switch/be transferred, either in whole or in part (inheritance, grant, legacy, written agreement or other causes justified by statutory regulations).

In juridical that the guarantee function is guarantee law certainty for repayment debtor debt or implementation an achievement so must be an objects that can be guaranteed can be cashed, because the existence property guarantee are a preventive measures in securing credit so it is unlikely that objects that are guaranteed cannot be thawed or cashed.(Hasan, 2011)

Because of it, Trademark Rights is fulfilling the condition as guarantee object so guarantee institution that possible to burdening it is a mortgage and fiduciary guarantee. The reason is object from mortgage or fiduciary guarantee is moving object that intangible. As in Article 1150 BW it is emphasized that the pledge is a right obtained by the creditor of a movable property. Likewise, Article 1 number 2 of Law Number 42 of 1999 Concerning Fiduciary Guarantees (UUJF) states that Mortgage is guaranteed rights to *movable objects both tangible and intangible*. Based on those conditions so in practice conventional banking and Syaria Banking then is showing those two guarantee institutions to burden The Trademark Rights as collateral.(Usanti, n.d.-b)

In this article the discussion focused on fiduciary guarantee institutions that burden the trademark rights as objects of credit guarantees. As in practice have been done by Sri Mulyani in 2014 in BNI Bank. Referring to The authentic Fiduciary Guarantee of Trademark made by BNI is appropriate because it is based on Article 5 of the UUJF that imposition of fiduciary agreement is made by notary deed in Indonesian and is a deed of fiduciary guarantee. Besides it, fiduciary guarantee has born with proof of the Fiduciary Guarantee Certificate.

The birth of fiduciary guarantee giving certainty law for bank as preference creditor attached to the characteristics of object rights is absolute principle, droit de suite principle (zaaksgevolg), droit de preference, priority principle and material claims. As for the enforce of Government Regulation Number 21 of 2015 concerning Procedures for Registration of Fiduciary Guarantees and Cost of Making Deed Fiduciary Guarantee so process fiduciary guarantee registration services are carried out electronically.

As in deed fiduciary guarantee that was made by notary always there is a clause about the transfer of ownership. As well as in deed of fiduciary guarantee where the trademark rights as a guarantee object. As in Article 2 from deed of fiduciary guarantee on trademark:

- To secure and guarantee payment on time on all or part of debt that guarantee in the present or the future which from time to time must be paid by the debtor to the creditor with a guarantee value of up to.....
- Debtor hereby is transferring fiduciary to the creditor from and because of its creditor receives transfer from all debtor owner rights, ownership and trademark interest.
- Whole/total trademark value in the date of this agreement is as much as....
- After published notification implementation by the creditor so the creditor is authorized to exercise all the rights and interests of the debtor on the trademark and the debtor is no longer entitled to involving the rights associated with the trademark.

The inclusion of this clause is the impact of Article 1 number 1 UUF which states that Fiduciary is transferring ownership rights a material on the basis of trust with condition material that the ownership rights are transferred remain in the possession of the owner of the objects. So many people argued that in fiduciary guarantee a transition occurred transferring ownership as in opinion from **A. Hamzah and Senjun Manulang** that fiduciary is a way of transferring the ownership rights of owner (debtor) based on existence of the principal agreement (loan agreement) to creditor, however only rights are surrendered only the rights in *juridische-levering* and only have by creditor only in trust (as credit guarantee debtor), while the goods still managed by debtor but no longer as an *eigenaar* or *bezitter* but only as a *detentor* or *houder* and on behalf of a creditor-*eigenaar*.(Salim, 2014) As well as stated by **Mariam Darus Badruzaman**, that transfer of ownership rights in fiduciary as guarantee occur in the process as below:(Badruzaman, 1987)

a. First phase:

Obligatoire Agreement. Between giving party and fiduciary receiver held an agreement that determined the debtor borrow some money with a promise will give the owner rights in fiduciary as a guarantee to creditor. This agreement this is consensual, obligatory.

b. Second phase:

Property agreement (*zakelijke overeenkomst*). Besides two parties (giver and a fiduciary receiver) is transferring in a manner *constitutum possessorium* (objects are still managed by the fiduciary giver)

c. Third phase:

Lease agreement (*bruiklening*). Besides two party (giver and fiduciary receiver) held an agreement, that fiduciary owner is borrowing use the ownership rights that have been in managed of the fiduciary giver to the fiduciary giver.

Based on those opinions so transferring owner rights to fiduciary agreement is not correct, this is able to describe below in some opinion:

1. Based on opinion from **M. Isnaeni** that in principal in owner rights guarantee on object guarantee still recognize in property ownership, creditor only just have property right guarantee and not ownership. So it called by M. Isnaeni that existence from Article 1 Number 1 UUF is showed many opacity of the arrangement sentence: "...transfer owner rights a material on basic trust..." until showed the dots of ambiguity. That in BW is embrace momentum system when owner rights on material switches, it focusing on levering events or transferring. So according to M. Isnaeni needs explanation from Article 1 Number 1 UUF that means is not explanation levering like what it means in Article 612 Burgerlijk Wetboek not a model to transferring in *constitutum possessorium* that means many opinions. (Isnaeni, 2017)
2. Based on the statement from **J. Satrio** that must any 2 opinion connect with transferring owner to fiduciary guarantee. The first opinion is called that creditor receive fiduciary. The first meant that creditor receive fiduciary it called fiduciaries with those levering while the guarantee is truly work has been an owner from property guarantee with that rights that the owner's have. The second opinion means that the fiduciary receiver is hold as owner of third party to giving fiduciary only hold as a guarantee holder that not manage property guarantee because the party is not truly means transferring property guarantee owner rights and in practice the party do an agreement that limited creditor rights until how far the right of guarantor. Between both that admit owner right creditor fiduciary receiver but with limitation. The last group that most adherents.(Satrio, 2002) This opinion many followed by the notary then poured in one of clause in Deed Fiduciary Guarantee about transferring owner.
3. According to the history emergence fiduciary guarantee that the object that guarantee in time is moving material that commonly form of stocks goods, trading, debt, inventory material company (property modal) where it known that principle that based moving material is the principle that contain in Article 1977 BW, "that whoever managed moving property is considered as the owner property". Because of it, to protect the creditor party that have been given the debt so carry out a legal engineering

with offer property agreement, which is offering transferring property owner with handover in *constitutum possessorium*¹ (property that transferring still managed by seller, in this giving fiduciary). Then followed with loan agreement, that fiduciary receiver to fiduciary giver such as stated by **Mariam Darus Badruzaman** above. True meaning of owner transfer in fiduciary guarantee not in the meaning transferring “owner” in truly, such as the meaning “*levering*” in Article 584 BW, but it need to be observed and see are the meaning the party that those property serve as collateral object, but the meaning to transferring object in order in purchase agreement such as in Article 1457 BW. When in fiduciary guarantee are occur transferring owner in the true meaning so the articles in UUFJ must reflect occurring owner transfer, but UUFJ is not consistent support those transferring owner. This can be reviewed from the following articles:

- a. Article 33 UUFJ that “each promise that give authority to give fiduciary to have property can be object fiduciary guarantee is debtor breach of promise, cancelled for law. If indeed there was a transfer of ownership in truly meaning must not needed appear Article 33 UUFJ restriction to have the property that become collateral object.”
- b. Article 34 UUFJ that “in the result of execution exceed the guarantee value, fiduciary receiver must return those overload to fiduciary giver. If the result execution not sufficient to repayment debt debtor still responsible on debt that has not been paid yet. If it does owner transfer in the true meaning so the creditor (receiver fiduciary) not obligation to return what must be his owner, evidently in Article 34 set the opposite.”

So from those 2 (two) article above so able to underline means forming constitution in fiduciary guarantee that the meaning is not transferring ownership in the true meaning but it means to guarantee those property on debt that received. But, in other side an article that support occur ownership transfer such as in clarification of Article 17 of the Fiduciary UUFJ is re-issued by the Fiduciary Giver, whether debtor or third party guarantor, it is not possible on Property become Fiduciary Object Guarantee because *ownership rights to the object have been transferred to the Fiduciary Recipient*. This is showing not harmony articles in UUFJ.

B. Execution right on Trademark as Fiduciary Object Guarantee.

When debtor breach of contract so creditor receive fiduciary guarantee authorized to execute collateral objects as long as the fiduciary guarantee has been born with the proofed fiduciary guarantee certificate. So the condition creditor receiver fiduciary guarantee is able to do execution when debtor breach of contract.

The meaning breach of contract when referring to Article 31 PBI Number 14/15/PBI/2012 about General Bank Quality Asset Assessment (PBI 14/ 2012) that debtor stated breach of contract if:

- a. Occur principal arrears and/or interest and/or other payment while 90 (ninety) days although Productive Asset is not due to deadline;
- b. Not accepted primary payment and/or interest and/or other payment in Productive Asset in deadline; or
- c. Not fulfilling other condition except primary payment and/or interest that able causing breach of contract is happen.

So based on PBI 14/2012, the debtor is said to be breach of contract when occur principal arrears and/or interest and/or other arrears in 90 (ninety) days although Productive asset is not due to deadline so when principal arrears occur and/or interest and/or other bill while 30 days or 60 days is not called as breach of contract. This is different meaning breach of contract in law of obligations that obligation is fulfilling achievement must fulfilled by debtor until if debtor not fulfilling something that is required as specified in agreement so it called debtor has been breach of contract. 4 conditions that called breach of contract, is: (Setiawan, 1979)

- a) Debtor is not fulfilling achievement at all
- b) Debtor is fulfilling achievement not as promised
- c) Debtor is late to fulfill achievement
- d) Debtor offer doing that not allowed in agreement

Referring to law of obligation so if occur primary arrears and/or interest and/or other arrears while 30 days is qualifying the criteria of breach of contract or debtor doing that now allowed in agreement so it called as breach of contract. As an example clause in credit agreement:

Stated that in a something that is based on the Credit Agreement must be paid by the Debtor to the Bank has not been paid off, so Debtor is forbidden to sell, rent, transfer, lend (borrow-wear), usage leveraging, mortgage or guarantee with the anyway Guarantee that it means in this Credit Agreement to other party

Then whenever debtor is breaking up what has been promised above like rent or pledged collateral objects has been doing breach of contract.

Whenever breach of contract condition has been fulfill by debtor so creditor recipient of fiduciary guarantees can do execution as arranged in Article 29 UUJF. Execution that served by UUJF gives convenience for banks in completing their credit, is not must with submit a accusation to the district court but creditor is able to do execution with 3 (three) ways, there are through parate execution: execution with the executorial title: execution underhand sales that do based giver agreement and Fiduciary Receiver if with that way is able to get the higher price that profitable the party.

Execution model with parate execute is direct execution without executorial title means the birth it can be promised and if debtor breach of contract if creditor in absolute authorized to sell collateral object and take to its repayment. This is confirmed in Article 15 paragraph (3) UUJF. The rights execution parate in fiduciary guarantee born because constitutions. The meaning creditor is able to sell yourself directly through auctions without court assistance with:(Poesoko, 2008)

- a. Selling in public
- b. Local habit
- c. Selling in auction.

The specialty of execution parate is on 2 (two) things, which is: (Anggoro, 2007)

1. Selling without involving debtor
2. Selling without intermediary/through the court.

This is confirmed by **J. Satrio** that execution parate are execution executor creditor rights on for guarantee without (out) through procedural law provisions, without foreclosure, without involving bailiff, without court permission. (Satrio, 2002)

Execution model can be held from executorial title fiduciary certificate that using advice "For the sake of Justice based on the Almighty God" as referred to in Article 15 paragraph (2) UUJF. Fiduciary is copying from Fiduciary List Book that contain notes about matters as determined by Article 13 paragraph (2) UUJF like creditor identity and debtor, primary agreement data, specification property fiduciary guarantee and guarantor value. (Isnaeni, 2017)

Execution model is with underhand sales. An underhand sale is able to do if fulfilling the condition such as arranged in Article 29 paragraph (2) UUJF there are:

1. There is an agreement between the fiduciary giver and receiver, meaning that in this case there is good intention from the fiduciary giver, which is trademark ownership right.
2. The sale is carried out after 1 (one) month has passed since written notification by the Giver and Fiduciary Receiver to the interested parties.
3. And it announced at least in 2 (two) newspapers circulating in the area that concerned.

From the third execution model above it is possibly to do by bank to execute trademark rights. Besides it, execution model that arranged on UUJF, so peaceful efforts that can be done by creditors to get credit repayment with how to find a buyer with an agreement condition between creditor and debtor to solved the credit with selling the rights of trademark. When there is buyer on those trademark rights so it offering the steps as an effort to protect for creditor and buyer of those rights of trademark, there are offering sale and purchase agreements in front of notary between the owner of the trademark rights and the buyer witnessed by the bank to ensure a sale and purchase agreement. Then money from those sales results by owner trademark rights are using as credit repayment. When there are the advantages so those advantages are the rights of old trademark owner right. (Usanti, 2017)

As such stated in Article 41 UU Trademark and Geography that trademark rights registered can be switch or diverted with transferred one of them by agreement. So what is done is the transfer of trademark rights by buying and selling. As for clause in deed transfer trademark rights contain about:

- a. Price from trademark rights
- b. The power and trademark rights and all results and profits all expenses and taxes and all rights and risks are the responsibility of the buyer.
- c. Statement that seller is the right party to transfer or transferring trademark rights and guarantee that not will be bothered or get sued by anyone else. When there are disturbances, claims or claims from other parties then it becomes the responsibility from seller.
- d. The seller state no more rights to do legal actions on rights on those trademark, except get written authorization/approval from the buyer.
- e. The seller bound himself to help until those trademarks certificate turned over the buyer's name.

Trademark rights such as explain above is classified as moving object intangible so transferring ownership rights on movable intangible objects with *feitelijke levering* as well as *juridische levering*. *Feitelijke levering* do with right *levering* certificate on trademark from

seller to buyer while juridische levering by the way to signing of the transfer deed in authentic and followed with application submission of transfer rights registration for registered trademarks over registered trademark submitted by owner trademark or authority as regulated on Rules of Law Minister and Human Rights of Republic Indonesia Number 67 of 2016 about Trademark Registration.

Credit repayment from this seller result it conduce this accessoire agreement is removing fiduciary agreement so creditor receive fiduciary, authorize or co-authorize required to do removal fiduciary guarantee from portal.ahu.go.id in the longest period of time 14 (fourth teen) days is counting since removing date fiduciary guarantee. The notification Fiduciary Guarantee remove at least contain:

- a. Information or reason Fiduciary Guarantee removal;
- b. Number and date Fiduciary Guarantee;
- c. Name and date notary position; and
- d. Date Fiduciary Guarantee removal.

Based on notification removal, Fiduciary Guarantee removed from list Fiduciary Guarantee and published description of removal that stated Fiduciary Guarantee certificate that concerned is expired. If creditor Fiduciary Receiver, authority not informed Fiduciary Guarantee removal so Fiduciary Guarantee that concerned it cannot register again.

So the next steps is do application transfer rights to Directorate General of Intellectual Property (Directorate HKI) with application transfer rights registration for trademark registration by owner trademark or authority to Directorate HK Ministry of Law and HAM RI with attachment requirement document as below:

Proof of transfer trademark rights in this thing is transfer rights deed of trademark, copying trademark certificate, official passage of registered trademark or proof application, copy application identity, a letter of authority if submitted from authority and payment cost proof.

If not offering registration transfer rights of trademark do this transfer is not caused on law to third party.

4. Conclusion

A trademark rights is classified as moving object that intangible. Based on requirement that must to fulfill that property it can be collateral object so Trademark Rights is qualify as collateral object because it is have economic value and can be transfer with written agreement. In juridical the guarantee function is ensure legal certainty for debtor debt

repayment or implementation of achievement so it must be property that can be guaranteed can be cashed in, because the existence of material guarantees are preventive effort in credit security so it is impossible the objects that are guaranteed cannot be cashed or cashed. If debtor breach of contract so trademark rights as fiduciary object guarantee is possible to do execution as it arranged in Article 29 UUJF. But, creditor or debtor is doing an effort with searching buyer that ready to buy trademark rights. If it found buyer that ready to make transfer deed trademark rights in authentic then followed with removal fiduciary guarantee and register transfer trademark rights that registered in Directorate HKI until transfer trademark rights besides giving legal certainty for buyer and also bound the third party.

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