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Research Article

THE ISLAMIC PERSPECTIVE ON THE TRADEMARK RIGHTS AS A FIDUCIARY GUARANTEE

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Abstract

This study aims at clarifying how the trademark as fiduciary guarantee based on the perspective of Islamic law. This study employed a descriptive qualitative approach with content analysis techniques and library research. The results of the study indicated that the brand right can be used as a fiduciary guarantee due to its economic value. The object characteristic for debt guarantee refers to an object that has economic value. If one day the debtor cannot pay off his debt, the object can be used to cover the debt. Intellectual property on a brand is considered as an asset, so it can become property rights. When the property has become milk ta>m (full), it can be used as a guarantee based on the MUI Fatwa Decree No. 1/MUNAS VII/MUI/5/2005 concerning the Protection of Intellectual Property Rights (IPR) in which it is seen as one of the huqu> q ma> liyyah (property rights) that receive legal protection (mashu> n) as ma> l (assets). IPR that owns protection of Islamic law should not contradict Islamic values. The IPR can be the object of a contract (al-ma'qu> d 'alaih), either a mu'awadhah contract (exchange, commercial), or a tabarru'at one (non-commercial), and can be endowed and inherited.

Keywords: Trademark Rights, Fiduciary Guarantee, Islamic Law.

INTRODUCTION

A trademark or brand is a kind of intellectual property right known as a trademark issued by the government for a certain period. This trademark can be utilized by other parties under an agreement with the owner. The owner may use it for several activities including encumbering the certificate as an object of bank credit guarantee. Several conventional and Islamic banks accept trademark, patents, or copyrights as the object of collateral (Trisadini: 2017). Trademark rights are part of Intellectual Property Rights (IPR) that are considered capable to boost economic condition due to their crucial role of innovation protection for economic growth in a country. The IPR is expected to be able to raise a nation's prosperity beyond natural resources which tend to decrease. It is also expected to become a new instrument in the context of international trade (Mulyani: 2016).

The legality of the recognition and appreciation of intellectual works in Indonesia is getting better, especially in the current economic development. The owners and holders of a trademark can access banking credit with their certification marks as objects of fiduciary guarantees (Subagio: 2010) as regulated in Law No. 42 of 1999 concerning Fiduciary Guarantees and Law No. 15 of 2001 Article 40 concerning the brand. Based on the explanation above, this study aims at discussing how the trademark as fiduciary guarantees based on the perspective of Islamic law. This study employed a descriptive qualitative research approach with content analysis techniques and library research.

Discussion

A. Trademark as an Asset in Islamic Law

The use of trademarks is known after the Industrial Revolution in the middle of the XVIII century. At that time, the production system originating from the Middle Ages prioritized manual labor skills has changed radically as a result of machine use with high production capacities (Jened: 2015). Along with the industrial development, the popularity of advertisements to introduce products has grown. It influences the use of the brand or trademark for this modern function as an identity of the origin or the source of certain goods. At that time, it was known the use of commercial brands (marques de commerce, trademark, brands) as a rival to company brands (marques de fabrique, manufacturer's mark, fabrioeksbranden). The origin of this difference was because in France the brands of silk merchants were more important than the brand originating from the silk fabric company so that the silk traders were concerned to protect their brand like what was done by the manufacturers with their company brands (Jened: 2015).

In the history of brand legislation in Indonesia, during the Dutch colonial period, the Reglement Industriele Eigendom (RIE) listed in Stb. 1912 No. 545 Jo. Stb 1913 No. 214. 3 showed that trademarks in Indonesia were originally regulated in Law Number 21 of 1961 on Company and Business Trademark. Since this law was considered inadequate, it was then replaced by Law No. 19 of 1992 on brands and was later amended by Law Number 15 of 1997 (Sembiring: 2015). In national law, the trademark is regulated in Law Number 20 of 2016 concerning Brands and Geographical Indications (Law No. 20 of 2016) as a replacement of Law Number 15 of 2001 concerning Brands. One of the substances of changes in Law Number 20 of 2016 is tighter rules on the well-known trademark than the former Law Number 15 of 2001 (Novianti: 2018).

A trademark is a mark that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, sound, hologram in 2 (two) dimensions, and/or more. These elements are to distinguish goods and/or services produced by persons or legal entities in the activities of trading goods and/or services. Trademarks are used by business sectors to identify a product or service including the name of a product or service along with the logos, symbols, or images. This mark is an exclusive right granted by the state to the owner of a registered brand for a certain time to be used by themself or other parties under their permission.

From the above provisions, it can be understood that for the parties who want to obtain the rights must register their brand at the trademark office. The brand functions to (1) distinguish certain goods from similar products or services (identity), (2) show the quality of products or services, and (3) be a means of promotion (Sembiring: 2015).

The Paris conference which regulates trade rights stipulates that trademarks include 2 things. The first is a trademark which is used on goods that are traded by a person or legal entity to distinguish them from other types of goods. The second is service marks which are used in trade services by a person or several people or legal entities to distinguish them from other similar services (Martha: 2016). In trade, ownership of a trademark can be in a collective form. The collective trademark

can come from a certain business entity that has trade products in the form of goods and services or from two or more business entities that work together to own the same brand (Hariyanti: 2010). The regulations for the use of the collective trademark must contain as follow:

a. The nature, general characteristics, or quality of goods or services that will use a collective trademark.

b. The provisions of the collective brand owner to carry out effective supervision over the use of their trademark based on the regulations.

c. The sanctions for violating the rules on the use of collective marks, especially this collective trademark, that cannot be licensed to other people or entities.

This is closely related to the collective ownership of registered trademarks which can only be used together (Hasyim: 2013). In addition to the types of brands as specified above, there are also other classifications based on their shapes or forms. The shape or form of a brand, according to Suryatin, is intended to distinguish it from similar goods belonging to other people, such as painting, word, shape, sound, and title (Saidin: 2007).

A brand must fulfill the absolute requirement in the form of sufficient distinguishing power (capable of distinguishing). It means that the sign has the power to distinguish the goods or services produced by a company from other companies. To have this distinguishing power, the brand must be able to provide determination or "individualizing" of the goods or services (Damayanti: 2012). Trademarks are part of Intellectual Property Rights (IPR) as something that has economic value and is part of material rights. The IPR is considered as a property in the form of intangible assets (Hidayat: 2020). With the rights obtained from public authorities, exclusivity or ownership grows so that the owner can prohibit other parties from using these rights without his/her permission. The objects regulated in the IPR involve works that are arouse or born from human intellectual abilities. Intellectual property rights only exist when the intellectual ability has formed something that can be seen, heard, read, or used practically. Therefore, compared to the rights to tangible objects, the right to intellectual property protection is might be more difficult to understand (Santoso: 2018) According to Article 503 of the Civil Code, each object is considered tangible and intangible. The tangible objects include motorized vehicles, land, and others, while the intangible ones such as copyrights, and patents are not regulated in the Civil Code or ii is regulated in separate laws (Caroline: 2016). Although the trademark law does not regulate and categorize brands as objects, an item can be categorized as an object as referred to in Article 499 of the Civil Code if it is fulfilled two elments i.e property rights and having economic value. Everything can be classified as a property if it fulfills two criteria. Firstly, something must be able to meet human needs both materially and immaterially that can bring satisfaction and peace. Secondly, it must be under human ownership, so the consequence is that if it cannot/ have not be owned, it will be failed to be a property (Ramadani: 2018).

Thus, Intellectual Property can be classified as property or asset though it is not an object that is visible or can be sensed due to the fulfillment of the criteria from the above definition of property which can be owned and able to meet human needs both materially and immaterially because there are classification of tangible or intangible objects in economic terms (Tirmidzi, 2017). To avoid the violations of intellectual property rights, especially trademarks, legal protection is needed. The protection means as a preventive action for the occurrence of injustice to the owner. Based on the Trademark Law, it is explicitly stated that a trademark will only receive legal protection when it is registered by the owner, or there must be an active role from the brand owner to register the mark. Trademarks can only be registered based on a request made by a brand owner who has good faith.

In the Qur'an and Sunnah, there is no concept of regulation of intellectual property rights contextually, explicitly, and specifically, however, from many verses of the Qur'an and the Prophet's Hadith, the scholars have formulated the principles of Islamic economics that can show how the concept of intellectual property rights according to Islamic sharia (Imaniyati: 2002). Intellectual property rights, especially trademarks, in Islamic law are included in the category of ibtika rights >r.Ibtika>r meaning the beginning of something. In Islamic fiqh, Ibtikar refers to copyright or creation produced by someone for the first time (Haroen: 2007). Islam appreciates the existence of trademark or brand rights as intellectual property that must be protected. When ibtika>r is associated with the asset in Islam, there are several different opinions among the fiqh scholars.

Assets in Arabic are called 'al-ma>l' coming from a word of –مال which means inclined and tilted (Sahrani: 2011). According to the Hanafiyah scholars, the property must be visible, if it is cannot be stored, it cannot be called property. Benefits cannot be listed as property since the property is only tangible things (Suhendi: 2008). The other scholars (Jumhur ulama) except H>{anafiyah (Sha>fi'iyah, Ma>likiyah, H{anbali) mentions that assets involve anything that has value, and is subject to compensation for those who damage or destroy it (Suhendi: 2008). This is a general understanding used in Indonesian legislation. If the opinion of the majority of scholars is associated with ibtika>r, then the result of thinking, the discovery of an idea contained in a work can be viewed as assets that are equal to other tangible objects. With regard to awards (incentives) for creators, inventors, and protection for intellectual property holders, the following verses can be put forward:
Firstly, QS. Al-Zalzalah: 7 and 8

"Whosoever has done an atom's weight of good shall see it, and similarly whosoever has done so much as an atom´s weight of evil shall also see it"

Secondly, QS. An-Nisa': 29

"O you who believe! do not devour your property among yourselves falsely, except that it be trading by your mutual consent; and do not kill your people; surely Allah is Merciful to you.

The verse above is the basis for the recognition of intellectual property, in which case the author discusses the rights to trademarks which are one of the industrial property rights.
A trademark is an object of property rights because the brand is attached personally to the person who created the work. In addition, the brand has economic value. The economic value contained in the brand can be seen from the right of the brand owner to license the brand to others accompanied by royalty payments. It can also be seen from the level of consumer satisfaction and the obtained benefits from certain brands (Caroline: 2016). In this case, the Indonesian Ulema Council (Indonesian: Majelis Ulama Indonesia - MUI) as Indonesia's top Muslim clerical body issues a decision on intellectual property including the trademark. This fatwa becomes the legal foundation for intellectual property in Indonesia which is to protect the interests of the community concerned for their work. It also provides legal certainty and enforcement related to violations of Intellectual Property Rights, especially trademarks.
According to the MUI Fatwa No. 1/MUNAS VII/MUI/5/2005, it is stated that the IPR is seen as one of the huqu> q ma> liyyah (property rights) that is protected by law (mashu> n) as ma> l (assets). The IPR that is protected by Islamic law should not be contrary to Islamic law. The IPR can be made as to the object of the contract (al-ma'qu> d 'alaih), both the contract of mu'awadhah (exchange, commercial) and the contract of tabarru'at (non-commercial).
Based on the MUI fatwa decision above, trademark rights which are part of Intellectual Property Rights (IPR) also get legal protection which is equal to property. Thus, intellectual property rights have material value, so they are equated with material rights. In Islamic law, firstly, it can be categorized as valuable assets (ma>l mutaqawwim), i.e assets that can be used as long as they are not conflicting with the principles of Islamic law. Secondly, if the intellectual property of the brand cannot be seen or grasped by the senses, what is protected is not an object created but an idea contained in works. It means that trademark rights can be categorized into nafi'i assets in which they are intangible and cannot be stored but have benefits. This benefit gradually has a period of development, so from this benefit becomes everyone's goal. Without any benefits, it is impossible for humans to love the assets. So, in positive law, it is called intangible property. Thirdly, because trademark rights are recognized as intangible assets and can be controlled, the benefits of trademark rights can be transferred just like tangible objects. In this case, intellectual property on trademark rights can be categorized as manqul property (movable property).
Since trademark rights are categorized as property, so they can become property rights. Property rights mean control over something that the owner can take actions on something under their authority and enjoy the benefits if there are no syara' obstacles. The IPR is a right that can be owned personally by the creator because something which gets protection in the form of the IPR is obtained through hard work by devoting their reasoning, thinking, and capital. The owners simultaneously control the product of their creation and its benefits. It makes the owner free to use

and exploit it, and to prevent others from abusing it (Rizal: 2020). In other words, copyright can be classified as milk ta>m.

B. Trademark Rights as Fiduciary Guarantee Objects in Islamic Law

Law Number 42 of 1999 defines that fiduciary is the transfer of ownership rights to an object based on trust meaning that the object remains under the control of the owner. In this case, the transfer of ownership is intended to be used as collateral. Fiduciary guarantees have been known and used in Indonesia since the Dutch colonial era as a form of guarantee as a result of jurisprudence in the Roman era. This form of guarantee is usually widely used in lending and borrowing transactions. This form of guarantee is considered simpler and easier in the credit process (Merista: 2016).

A fiduciary guarantee is a guarantee right on movable objects and immovable objects, either tangible or intangible, especially buildings that cannot be encumbered with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights that remain in the control of the Fiduciary Giver, as collateral for certain debts. It may give priority to the fiduciary recipient over other creditors. Based on the above understanding and explanation, it can be concluded that the elements of fiduciary guarantee include (1) the existence of guarantee rights, (2) the existence of an object, (3) the object of the guarantee under the control of the fiduciary and (4) the creditors' priority Supianto: 2015).

The legal basis for the enactment of fiduciary is Law Number 42 of 1999 concerning fiduciary guarantees. The subject of the fiduciary guarantee is the fiduciary giver, i.e the individual or corporation that owns the object as the fiduciary guarantee and the fiduciary recipient i.e the individual or corporation that receives a payment that is guaranteed by a fiduciary. Meanwhile, the object of fiduciary guarantees as regulated in Law no. 42 of 1996 covers the movable objects, both tangible and intangible as well as the immovable objects, especially buildings, that are not encumbered with mortgage rights, related to the housing collateral (Tutik: 2015).

Law No. 42 of 1999 also regulates the registration of fiduciary guarantees to provide legal certainty to interested parties and registration of fiduciary guarantees gives fiduciary rights (preferences) to other creditors. The registration system regulated in this law can provide guarantees to the fiduciary recipient and parties who have an interest in the object because the fiduciary guarantee gives the fiduciary party the right to keep control of the object as the fiduciary guarantee based on mutual trust (Anshori: 2011).

Fiduciary guarantees can be eradicated due to the elimination of debts guaranteed by fiduciary and the release of rights to fiduciary guarantees by the fiduciary recipient, or the destruction of the objects as fiduciary collateral. If the debtor or fiduciary giver breaks the agreement, the execution of the object as the fiduciary guarantee can be carried out by (1) implementation of the executorial title, (2) public auction of fiduciary guarantees objects on the authority of the fiduciary recipients to take repayment of the loan taken from the auction results, (3) underhand sales between a fiduciary giver and recipient to gain the highest price for the benefits of both parties.

Today, most of the funds are obtained by loan and credit models in the form of goods guarantees to obtain financing including through fiduciary guarantees (Damayanti: 2021). In general, guarantees are regulated in Article 1131 of the Civil Code. The concept of a guarantee is to assure the fulfillment of obligations that can be valued in money arising from a legal engagement. The guarantee legal system regulates objects in a sub-system of the object law in a number of material law principles. The concept of objects contained in Article 499 of the Civil Code is every object and right that can be an object of property rights (Mulyani: 2014).

The fiduciary is the transfer of ownership rights to an object based on mutual trust in which the object remains under the control of the object owners. The fiduciary guarantee is a right on movable objects and immovable objects, both tangible and intangible, especially buildings that cannot be encumbered with mortgage rights as referred to in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the fiduciary giver as collateral in certain loans. It may give priority to the fiduciary recipient over other creditors. Thus, based on the two articles above, there is a difference between fiduciary and fiduciary guarantees. The fiduciary is a process

of transferring ownership rights, while a fiduciary guarantee refers to a given guarantee in the form of a fiduciary (Sari: 2007).

In Muamalah fiqh, property rights can be transferred from one owner to another as a new owner through Ikhra>j al muba>hat, i.e transactions (contracts), and inheritance. The forms and types of transactions (contracts) include buying and selling, leasing, grants, rahn (pawning), syirkah, and others as stated in the Qur'an, Sunnah, and Ijma. The rahn contract (pawning) is to guarantee goods that have asset value based on the sharia view as debt guarantees, so that one may take the loan in whole or in part (Umam: 2016). As for what is used as the basis of collateral by the scholars is from QS. al-Baqarah: 283:

"If you are on the way (and you are not in cash) while you are not getting a writer, then there should be items held (by those who owe). But if some of you trust some of the others, then let those who are trusted fulfill their mandate (debt) and let them fear Allah Allah; and do not (the witnesses) hide the testimony. And whoever hides it, surely he is a sinner; and God knows what you do."

The function guarantee juridically provides legal certainty in a debt or credit agreement. Meanwhile, economically, the function of the guarantee is to provide security for credit repayment, as a driver of debtor motivation, related to the implementation of banking regulations that can be accepted by the market (marketable) (Mulyani: 2014). The purpose of holding a guarantee is to avoid the risk of loss caused by the debtor if they default or break an agreement within a predetermined time limit.

Fiduciary guarantees have become one of the people's alternatives in obtaining financing since the objects used as collateral can still be used by the owner. Although the guarantee is under the rights of the fiduciary giver, the fiduciary recipient also gets legal certainty through a fiduciary guarantee certificate that has the same executive power before a court decision as a permanent legal force (Surinda: 2020)

The element in the guarantee is the existence of objects that can be used as the main collateral object. The commonly used objects in fiduciary guarantees are tangible and movable objects such as vehicles, or tangible and immovable objects like houses and land (Hariyani: 2016). Nowadays, the objects of fiduciary guarantees are not only tangible but can be in the form of intangible objects. As stated in Article 1 point 4 of Law Number 42 of 1999 concerning Fiduciary Guarantees, objects are everything that can be owned and transferred, both tangible and intangible, registered or unregistered, movable or immovable even those cannot be encumbered with mortgages. The movable and intangible objects can be used as collateral, one of which is trademark rights as a form of intellectual property rights that have been recognized and protected in Indonesia (Kusumaningtyas: 2016).

As explained above, every object of property rights has economic value that can be used as a collateral object. It indicates that the trademark can be used as an object of loan guarantee in the form of fiduciary collateral. This form of fiduciary guarantee is suitable to be applied to brands rights because the owner can keep utilizing the brand to earn income and the income can be used to pay off the debts to creditors (Ramdani: 2019). As stated in the Law on Trademarks and Geographical Indications, rights to registered brands can be transferred through inheritance, will, waqf, grant, agreement or other reasons justified by laws and regulations. Regarding the transfer of rights to the case above, it must be justified by law, one of which is through an agreement to charge the trademark as a guarantee for a credit agreement (loan).

The MUI fatwa has also explained the existence of brand rights in the study of fiqh. The description of the MUI Fatwa Decree Number: 1/MUNAS VII/MUI/5/2005 Concerning the Protection of Intellectual Property Rights (IPR) views IPR as one of the huqu>q ma>liyyah (property rights)) that receive legal protection (mashu>n) as ma>l (assets), intellectual property rights that are protected by Islamic law should not be conflicting with Islamic law. The IPR can be used in contract objects (al-ma'qu>d 'alaih), both mu'awadhah contracts (exchange, commercial), and tabarru'at (non-commercial) contracts. It can be taken as waqf (endowment) and inheritance. Any form of violation of intellectual property rights including but not limited to, using, disclosing, making, utilizing, selling, importing, exporting, distributing, handing over, providing, announcing, reproducing, plagiarizing, counterfeiting, illegal hijacking other people's intellectual property rights (IPR) is prohibited and unlawful (MUI: 2005).

Based on the above description, intellectual property can be considered as assets or property rights. It means that when a certain property has become one's assets (full), it is possible to be used as collateral. In Islamic law, the transfer of rights can be done through a transaction

(contract) such as buying, selling, rahn (pawning), grants, and leasing. However, when the property is pawned which is still in a lease agreement or another form of contract, then ownership is no longer milk ta>m, but becomes milk naqis, i.e. limited ownership, or only own its benefits (usability) not the object (Ismanto: 2016).

The right to a brand or trademark that can be used as a fiduciary guarantee certainly has economic value and it fulfills the characteristic of an object as a debt guarantee of which if one day, the debtor cannot pay off his loan, the object can cover it. A fiduciary guarantee institution allows the trademark to be included as an object of debt guarantee because the fiduciary guarantee object is movable. On the other hand, there is a difference that initially the object of fiduciary guarantees is tangible movable objects, while brand rights are intangible movable objects. Although intangible, brand rights provide benefits that have economic values to be commercialized as fiduciary collateral. The benefits and rights attached to the brand are intangible that is possible to be owned and maintained by the inventor or creator of the trademark through preservation of its origin and source (Santoso: 2017). It is supported by Hanafiyah scholars which include property not only in the form of material but also the benefits of an object. Besides, the benefits can be classified as property because they can be controlled from its benefits. If something is not useful, human beings will not seek and love this asset (Syafe'i: 2001). This claim underlies the benchmark that trademark or brand rights which are categorized as intangible are similar to tangible objects because they can be owned and have economic value. Based on the concepts of movable and immovable objects, trademark rights are categorized as movable objects. In Islam, it is called the assets of manqu>l and ghoiru manqu>l. Thus, trademark rights can be listed as movable and intangible objects that can be transferred for fiduciary guarantees.

Islam categorizes loan and borrowing activities with collateral of goods as rahn (pawning) by pledging goods that have assets values aligning with the sharia to be proposed as debt guarantees. It enables someone to take the debt in whole or partial (Umam: 2016). According to sharia principles, rahn is divided into two, namely rahn 'iqdar/rasmi and rahn hiyazi. The first model, Rahn 'iqdar/rasmi, is a form of pawn where there is no transfer of goods because there is only a transfer of ownership. The pawned goods are still with the owner or pawnbroker. For example, Fulan borrowed money from Nasrudin by handing over or pawning the Vehicle Registration Certificate (BPKB) of his/ her motorcycle. Though the BPKB is in Nasrudin's hands, the motorcycle is still in Fulan and he can still use it. Rahn becomes the qiyās in fiduciary guarantees.

The Islamic law has also explained fiduciary guarantees within sharia principles, or better known as rahn tasjily. According to the Fatwa of the National Sharia Council Number 68/DSN-MUI/III/2008, Rahn tasjily or called rahn ta'mini is a guarantee in the form of goods for debt, with the agreement that what is submitted to the recipient of the guarantee (murtahin) is an only valid proof of ownership, while The physical collateral (marhu>n) remains under the control and utilization of the guarantor (rahin) (MUI: 2008).

When using the rahn tasjily contract which provides legal proof of ownership to the murtahin, the legal proof of ownership as collateral is a certificate of trademark rights. The certificate of trademark rights is used as a guarantee in rahn tasjily. The trademark protection is evidenced by the issuance of a certification mark. It indicates that brand rights can be used as objects of fiduciary guarantees under rahn tasjily.

In reality, brand rights or trademark is not always accepted as objects of fiduciary guarantees in Indonesia banking system because economic factors affect the acceptance of brands as collateral. Another problem is the difficulty to measure the economic value of a certain trademark since not all rights possess marketable values. The considerations of Bank Indonesia to limit the object of fiduciary collateral are influenced by the banks' difficulties in guaranteeing the market share of the trademark as well as to anticipate potential losses and bank risks (Mulyani: 2016).

To minimize legal risks, the bank should conduct a thorough assessment of the collateral object, especially related to the period of trademark protection and the inclusion of important clauses in the authentically made pawn agreement. It involves the use of trademark rights, the profits shares, and the prohibition of the pawner to transfer or encumber the trademark rights in any form as well as the ban to utilize the trademark rights that may cause a conflict of interests during the pawn activities (Usanti: 2017).

An effort to minimize legal risks is through careful analysis of the submitted collateral by the customer as assets or objects handed over by customers as guarantee objects for a loan. The collateral object must be assessed by the Islamic bank to determine the risk of the customer's financial obligations to the Islamic bank. The assessment of the collateral includes the type, location, proof of ownership, and legal status. The collateral assessment can be viewed from two aspects, the economic point of view and the juridical aspect whether the collateral has met the juridical requirements (Usanti: 2017).

The research results conducted by Sri Mulyani in 2014 show that there is no legal recognition of the Right to Trademarks as objects of fiduciary guarantees in banking activities in Indonesia. The findings at PT. BNI (Persero) Tbk Jakarta highlights that the trademark is accepted as an object of fiduciary guarantee in a credit agreement, but it is as an additional collateral object because the trademark can not be a permanent guarantee (Mulyani: 2014). Similarly, a study in PT. Bank Muamalat Indonesia Jakarta (Sharia Bank X) also mentions that the trademark certificate is accepted as an additional guarantee. The guarantee institution used by Sharia Bank X to encumber the trademark is a pawning institution, not a fiduciary guarantee institution as was done by PT. BNI (Persero) Tbk (Usanti: 2017). The results from Trisadini Prasastinah Usanti also state that in conventional banking and Islamic banking system in the branch of Surabaya, Sidoarjo, and Jakarta, only a few banks accept trademark rights as objects of guarantee. Among the 12 banks as the research subjects, only one bank confirmed a trademark certificate as collateral objects, even just an additional (secondary) guarantee. It is also revealed that trademark certificates are only considered as legal support for the customers' business (Usanti: 2017).

CONCLUSION

Related to the brand rights or trademarks that can be used for a fiduciary guarantee, it certainly has economic value as the main characteristic of a collateral object. It means if one day the debtor cannot pay off his debt, the object can cover the debt. Although intangible, trademark or brand rights provide benefits that are seen from its economic or commercial values as fiduciary guarantees. When the intellectual rights property is owned by someone (full), it can be used as collateral objects. This is in line with the MUI Fatwa Decree Number: 1/MUNAS VII/MUI/5/2005 concerning the Protection of Intellectual Property Rights (IPR) that receive legal protection (mashu>n) as ma>l (assets) where IPR that is protected by Islamic should not be conflicting Islamic law. The IPR can be used as objects of contract (al-ma'qu>d 'alaih), both mu'awadhah contracts (exchange, commercial), and tabarru'at contracts (non-commercial), and can be a subject for waqf and inheritance. Any form of violation of intellectual property rights including but not limited to, using, disclosing, making, utilizing, selling, importing, exporting, distributing, handing over, providing, announcing, reproducing, plagiarizing, counterfeiting, illegal hijacking other IPRs is prohibited and unlawful.

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