



The Role of Notaries in Drafting Fiduciary Guarantee Deeds over Intellectual Property: Challenges in Verification and Economic Valuation

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Article Info

Article history:

Received 250725

Revised 290725

Accepted 310725

Keyword:

Economic Valuation;
Fiduciary Guarantee;
Intellectual Property;
Notarial Deed;
Verification.

ABSTRACT

This study analyses the role of Notaries in drafting fiduciary guarantee deeds with intellectual property as collateral, and the challenges encountered in verification and economic valuation. Problems arise because some Notaries face obstacles in preparing intellectual property guarantee deeds due to limited experience, complex document requirements, and difficulties verifying ownership. This study employs a normative juridical method, drawing on statutory and conceptual approaches. Secondary data were obtained from primary legal materials, including legislation, and from secondary legal materials comprising relevant legal literature. The findings indicate that Notaries play a central role in ensuring legal certainty by preparing authentic deeds, registering fiduciary guarantees, and processing fiduciary guarantee certificates. Notaries also act as authorized representatives to register fiduciary guarantees on behalf of fiduciary recipients. The main challenges faced by Notaries include verifying the registration status of intellectual property with the Ministry of Law and Human Rights, understanding the specific characteristics of intangible intellectual property, and assessing the economic value, which is often subjective and fluctuating. This study concludes that Notaries need to apply the principle of prudence by ensuring that intellectual property licenses are documented in notarial deeds, carefully verifying ownership and legal status, and considering potential infringement risks against the collateral objects.



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INTRODUCTION

The development of the creative economy in Indonesia has encouraged the use of intellectual property as collateral in financing transactions. Law Number 28 of 2014 concerning Copyright explicitly recognizes copyright as intangible movable property that can be used as an object of fiduciary guarantee (Sudjana, 2012). This regulation is reinforced by Government Regulation Number 24 of 2022 on the Implementation of Law Number 24 of 2019 on the Creative Economy, which regulates intellectual property-based financing mechanisms. This legal framework opens opportunities for creative economy actors to access financing by pledging their intellectual property assets as collateral (Ramadhani et al., 2017).

The practice of imposing fiduciary guarantees on intellectual property objects still faces various challenges. Banking financial institutions tend to prioritize fixed assets with clear value measurements, such as land, buildings, or motor vehicles (Sri Mulyani, 2012). Intellectual property, as an intangible asset, has characteristics distinct from those of conventional assets, thus requiring a special approach to its guarantee. Article 8 of Government Regulation Number 24 of 2022 stipulates that bank and non-bank financial institutions, as prospective creditors, must undergo various verifications before accepting intellectual property as collateral objects. This verification process is essential to ensure that intellectual property meets the requirements as valid collateral and has measurable economic value (Mayanan, 2022).

Notaries play a central role in imposing fiduciary guarantees for intellectual property. Article 5, Paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees stipulates that fiduciary guarantees must be imposed by a Notarial deed in Indonesian (Herliyani, 2023). Notaries are responsible for ensuring that the collateral object in the form of intellectual property meets the criteria

listed in Article 10 of Government Regulation Number 24 of 2022, including verification of registration status at the Ministry of Law and Human Rights. The role of Notaries becomes crucial to ensure legal certainty and protection for both fiduciary grantors and recipients (Ramadhani et al., 2017). Furthermore, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries requires Notaries to ensure that intellectual property used as collateral is registered and has clear economic value.

The main challenges faced by Notaries in drafting fiduciary guarantee deeds over intellectual property include verification and economic valuation aspects. Regarding verification, Notaries face difficulties confirming ownership and the validity of intellectual property rights because documentation and registration are often scattered across various agencies (Cahayani, 2021). Notaries also need to verify whether the intellectual property is not currently in legal dispute or has been licensed to other parties. The verification process requires thorough examination of registration certificates, ownership history, and any encumbrances that may affect the validity of the collateral (Dhukas, 2016). This complexity demands that Notaries possess comprehensive knowledge of intellectual property law and fiduciary guarantee regulations.

Regarding economic valuation, the value of intellectual property is subjective and fluctuates because it depends on commercialisation potential, creator reputation, and market conditions (Sri Mulyani, 2012). The lack of standardised valuation methods makes it difficult for Notaries to include accurate guarantee values in deeds. Intellectual property value assessment requires consideration of various factors, including market demand, remaining protection period, licensing potential, and historical revenue generation (Mayanan, 2022). Financial institutions remain hesitant to accept intellectual property as collateral due to these valuation uncertainties, which directly impacts the role of Notaries in facilitating such transactions.

Field conditions indicate that some Notaries require further understanding regarding the preparation of intellectual property guarantee deeds. Limited experience in handling intellectual property as collateral can lead to inaccuracies in document examination (Cahayani, 2021). This may increase the risk of errors or negligence that harm the parties to the fiduciary guarantee agreement. The complexity of intellectual property characteristics, combined with the evolving regulatory framework, necessitates that Notaries continuously update their knowledge and skills in this specialized area (Herliyani, 2023).

Based on the above description, this study examines two issues. First, what is the role of Notaries in drafting fiduciary guarantee deeds with intellectual property objects? Second, what aspects should Notaries consider regarding verification and economic valuation challenges for intellectual property used as fiduciary guarantee objects? This study aims to analyse the role of Notaries in drafting fiduciary guarantee deeds for intellectual property and to identify critical aspects Notaries should consider when addressing verification and economic valuation challenges.

RESEARCH METHODS

This study employs a normative juridical research method to analyse the role of Notaries in drafting fiduciary guarantee deeds for intellectual property and the challenges of verification and economic valuation. Normative juridical research examines legal norms, principles, and doctrines by analysing legal materials (Soekanto and Mamudji, 2015). This method aligns with the research objectives because the study focuses on analysing legal provisions governing fiduciary guarantees, intellectual property, and notarial functions within the Indonesian legal framework.

The research applies two approaches to achieve a comprehensive analysis. First, the statutory approach (statute approach) examines relevant legislation, including Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, Law Number 28 of 2014 concerning Copyright, and Government Regulation Number 24 of 2022 concerning the Implementation of Law Number 24 of 2019 concerning Creative Economy. This approach enables systematic analysis of legal norms governing the role of Notaries and the requirements for intellectual property as fiduciary collateral. Second, the conceptual approach analyses legal concepts, doctrines, and scholarly views on fiduciary guarantees,

intellectual property rights, and notarial functions. This approach provides a theoretical foundation for understanding the challenges Notaries face in verifying and valuing intellectual property.

The research uses secondary data comprising primary, secondary, and tertiary legal materials. Primary legal materials comprise binding legal instruments including the 1945 Constitution of the Republic of Indonesia, Civil Code (*Burgerlijk Wetboek*), Law Number 42 of 1999 concerning Fiduciary Guarantees, Law Number 30 of 2004 concerning the Position of Notaries as amended by Law Number 2 of 2014, Law Number 28 of 2014 concerning Copyright, Law Number 20 of 2016 concerning Marks and Geographical Indications, Law Number 13 of 2016 concerning Patents, Government Regulation Number 24 of 2022 concerning the Implementation of Law Number 24 of 2019 concerning Creative Economy, and Government Regulation Number 21 of 2015 concerning Fiduciary Guarantee Registration Procedures and Fiduciary Guarantee Deed Preparation Fees. Secondary legal materials include legal literature, journal articles, books, dissertations, and scholarly works that explain and analyse primary legal materials. The researcher specifically selected literature discussing fiduciary guarantees, intellectual property as collateral, and notarial practice. Tertiary legal materials consist of legal dictionaries, encyclopedias, and other reference materials that clarify terminology and concepts.

The researcher collects legal materials through library research and documentation study. Library research involves systematically collecting relevant legal materials from various sources, including university libraries, online legal databases, and official government websites. The researcher accesses legislation through the official database of the Ministry of Law and Human Rights and reviews journal articles from reputable legal journals indexed in national and international databases. Documentation study involves examining official documents, registration procedures, and practical guidelines related to fiduciary guarantee registration and intellectual property documentation.

This study analyses legal materials through qualitative analysis, employing deductive reasoning. The analysis process begins with collecting and classifying legal materials based on research issues. The researcher then examines legal norms governing fiduciary guarantees and intellectual property to identify the role and responsibilities of Notaries. Subsequently, the researcher analyzes the challenges Notaries encounter in verifying intellectual property ownership and status, as well as difficulties in determining economic value. The analysis interprets legal provisions in conjunction with scholarly opinions and practical considerations to formulate comprehensive conclusions. The researcher presents findings in a descriptive-analytical form, describing legal norms and analysing their implementation in the context of intellectual property as fiduciary collateral.

The research scope focuses on the role of Notaries in drafting fiduciary guarantee deeds with intellectual property objects under Indonesian law. The study explicitly examines verification challenges related to ownership confirmation, registration status, and the legal validity of intellectual property. Additionally, the study analyses economic valuation challenges, including valuation methods, market considerations, and factors that affect intellectual property value. The research does not cover comparative analysis with foreign jurisdictions or empirical field studies involving primary data collection from Notaries or financial institutions.

RESULTS AND DISCUSSION

a. The Role of Notaries in Drafting Fiduciary Guarantee Deeds with Intellectual Property Objects

Law Number 42 of 1999 concerning Fiduciary Guarantees establishes the legal foundation for Notaries to draft fiduciary guarantee deeds over intellectual property. Article 5, Paragraph (1) of this law mandates that parties must create a fiduciary guarantee imposition in the form of a Notarial deed in the Indonesian language. This requirement aims to provide legal certainty and legal protection to all parties involved in the fiduciary agreement (Ramadhani et al., 2017). The Notarial deed serves as authentic evidence with full evidentiary weight before the court, distinguishing it from private deeds, which require additional verification (Herliyani, 2023).

Notaries perform several essential functions in the fiduciary guarantee process involving intellectual property. The primary function involves drafting the authentic deed that contains

comprehensive information about the fiduciary agreement. Article 13 Paragraph (2) of Law Number 42 of 1999 specifies that the fiduciary guarantee deed must include the identity of the fiduciary grantor and recipient, the name and domicile of the Notary who signs the deed along with its date and number, information regarding the principal agreement secured by fiduciary, description of the object serving as fiduciary collateral, guarantee value, and the value of the object serving as fiduciary collateral. Notaries must ensure that all these elements appear wholly and accurately in the deed to guarantee its legal validity.

The registration of fiduciary guarantees constitutes another critical responsibility of Notaries. After completing the deed, the fiduciary recipient must register the fiduciary guarantee at the Fiduciary Registration Office. Notaries commonly act as authorized representatives to register the fiduciary guarantee on behalf of the fiduciary recipient (Dhukas, 2016). The power of attorney granted by the fiduciary recipient determines the scope of Notarial authority, which is typically limited to registration matters rather than the imposition of the guarantee itself. The fiduciary guarantee certificate serves as tangible evidence of the Notary's accountability for this registration task, and the Notary receives an honorarium from the grantor of the power of attorney as compensation for services rendered.

Government Regulation Number 21 of 2015 concerning Fiduciary Guarantee Registration Procedures and Fiduciary Guarantee Deed Preparation Fees modernises the registration process by introducing an online fiduciary application system. This regulation aims to provide one-day service and reduce registration backlogs that exceed daily capacity limits (Irma Devita, 2016). Notaries must familiarize themselves with this electronic registration system to fulfil their responsibilities efficiently. The shift to online registration requires Notaries to develop technical competencies beyond traditional notarial skills, particularly in navigating digital platforms and ensuring data accuracy in electronic submissions.

When changes occur to information contained in the Fiduciary Guarantee Certificate, Notaries acting as creditor representatives may submit certificate amendment applications through the online fiduciary application. Article 16 of Law Number 42 of 1999 stipulates that if changes occur to matters listed in the Fiduciary Guarantee Certificate according to Article 14, Paragraph (2), the Fiduciary Recipient must apply for registration of such changes to the Fiduciary Registration Office. Common changes in Fiduciary Guarantee Certificates include modifications to fiduciary collateral objects, related documents, fiduciary recipients, principal agreements, and fiduciary guarantee values (Hasanah, 2017).

The explanation of Article 16, Paragraph (1) of Law Number 42 of 1999 states that certificate changes must be communicated to interested parties and do not require a Notarial deed. This provision aims to ensure business efficiency in commercial transactions. However, legal certainty cannot be fully guaranteed without a Notarial deed (Cahayani, 2021). The phrase "does not require" indicates that this article functions as regulatory *law (aanvullend recht)* rather than mandatory law (*dwingend recht*). Based on this interpretation, parties may use a Notarial deed to amend the fiduciary guarantee certificate, even though the law does not require it.

Notaries who possess the authority to register fiduciary guarantee certificate amendment applications must adhere to the principle of prudence in their execution. This principle becomes particularly important when amendments lack support from a Notarial deed, as such a situation may endanger legal certainty and lead to inaccuracies in fiduciary deed amendments submitted by the parties (Herliyani, 2023). The most effective prudential measure that Notaries can implement is to use a Notarial deed as the foundation for amendments to fiduciary guarantee certificates. Nevertheless, Notaries cannot compel parties to create a Notarial deed if they do not wish to do so, as the law does not require it. Notaries should recommend the preparation of amendment deeds to ensure strong legal force, even when parties initially prefer simpler documentation.

b. Aspects that Notaries Should Consider Regarding Verification Challenges for Intellectual Property as Fiduciary Collateral

Notaries face significant verification challenges when intellectual property serves as fiduciary collateral. The verification process begins by confirming the registration status of the intellectual property with the Ministry of Law and Human Rights. Article 10 of Government Regulation Number

24 of 2022 concerning the Implementation of Law Number 24 of 2019 concerning Creative Economy establishes criteria that intellectual property must satisfy to qualify as valid collateral. Notaries must verify whether the intellectual property has been registered or recorded with the competent authority, as unregistered intellectual property may lack the legal standing required for fiduciary guarantee purposes (Mayanan, 2022).

Ownership verification presents particular complexity for Notaries handling intellectual property collateral. Unlike tangible assets with clear ownership documentation, such as land certificates or vehicle registration, intellectual property ownership may involve multiple parties, joint creators, or corporate entities (Sri Mulyani, 2012). Notaries must examine registration certificates, assignment agreements, and any licensing arrangements that may affect the intellectual property. The verification process requires Notaries to confirm that the fiduciary grantor possesses full rights over the intellectual property and that no legal disputes currently encumber the asset. This examination helps prevent future problems that could harm the parties to the fiduciary agreement.

The characteristics of intellectual property demand specialized knowledge from Notaries. Intellectual property does not manifest physically like other property assets but rather represents the result of creativity, innovation, or ideas produced by individuals or groups (Sudjana, 2012). Notaries must understand various types of intellectual property, including copyright, trademarks, patents, and industrial designs, to ensure validity and appropriate legal protection in the guarantee deed. Each type of intellectual property has distinct characteristics, protection periods, and registration requirements that Notaries must understand to draft accurate, legally sound deeds.

Notaries must prepare intellectual property licenses for the parties and document them in a Notarial deed when licensing arrangements exist. The intellectual property license in the form of an authentic deed ensures its existence receives legal recognition (Cahayani, 2021). This documentation becomes crucial because the license serves as a vital reference point in the event of future disputes regarding the object serving as fiduciary collateral. After preparing the license documentation, subsequent processes follow fiduciary guarantee procedures in accordance with applicable legislation.

The verification of intellectual property also requires Notaries to examine whether the intellectual property has been licensed to third parties. Licensing arrangements may limit the rights that the fiduciary grantor can transfer or encumber as collateral. Notaries must obtain complete information about existing license agreements, their scope, duration, and any restrictions they impose on the intellectual property (Dhukas, 2016). This examination ensures that the fiduciary guarantee does not conflict with existing contractual obligations and that the creditor understands the nature of the collateral they receive.

c. Aspects that Notaries Should Consider Regarding Economic Valuation Challenges for Intellectual Property as Fiduciary Collateral

Economic valuation of intellectual property presents substantial challenges for Notaries and financial institutions. The value of intellectual property tends to be subjective and fluctuating because it depends on commercialization potential, creator reputation, and market conditions (Sri Mulyani, 2012). Unlike real property or vehicles, which have established market values and standardised appraisal methods, intellectual property lacks universally accepted valuation standards. This lack of standardised valuation methods makes it difficult for Notaries to include accurate guarantee values in deeds.

Notaries must consider several factors when addressing economic valuation challenges. The economic value of intellectual property depends heavily on its ability to be commercialised through licensing, sales, or franchising (Mayanan, 2022). Notaries should ensure that all aspects related to economic value and commercialisation potential are clearly stated in the guarantee deed, providing strong assurance to creditors and certainty to intellectual property owners. The deed should include detailed descriptions of the intellectual property, its current commercial applications, and, when available, projected revenue streams.

The remaining protection period significantly affects the assessment of intellectual property value. Patents protect for 20 years from the filing date, while copyrights generally last for the life of the

creator plus 70 years. Trademarks require periodic renewal to maintain protection. Notaries must verify the current protection status and remaining duration when documenting intellectual property as collateral (Sudjana, 2012). Intellectual property approaching the end of its protection period may have diminished value as collateral, and Notaries should reflect this consideration in the guarantee documentation.

Financial institutions remain hesitant to accept intellectual property as collateral due to valuation uncertainties. Sri Mulyani noted that the government continues to seek methods to determine the economic value of creative works so they can serve as collateral, thereby facilitating debtors' access to funds for business or personal needs (Sri Mulyani, 2012). This ongoing effort indicates that the regulatory framework for intellectual property valuation continues to evolve, and Notaries must stay informed about developments in valuation standards and practices.

Notaries should also consider infringement risks that may occur against intellectual property. Intellectual property rights remain vulnerable to various forms of infringement, such as counterfeiting and idea theft (Cahayani, 2021). Notaries must ensure that the deed provides adequate legal protection for intellectual property owners and regulates preventive measures that parties can take to prevent infringement by third parties. This protection ensures that intellectual property rights remain intact throughout the duration of the fiduciary guarantee.

The practical implementation of intellectual property as fiduciary collateral in Indonesia remains slow despite existing regulations. Financial institutions demonstrate reluctance to accept debtors who use intellectual property licenses as fiduciary guarantees (Mayanan, 2022). The primary reason is the difficulty of measuring the economic value of creative works. Notaries can help improve this situation by developing expertise in intellectual property matters and providing guidance to parties on documentation requirements and valuation considerations. With enhanced notarial competence and standardised practices, acceptance of intellectual property as fiduciary collateral may gradually increase.

Notaries must apply the principle of prudence comprehensively when handling fiduciary guarantees over intellectual property. This principle encompasses thorough verification of ownership and legal status, careful consideration of economic value factors, documentation of licensing arrangements in authentic deeds, and attention to potential infringement risks. By adhering to these prudential measures, Notaries fulfil their responsibility to ensure legal certainty and protect all parties involved in the fiduciary agreement (Herliyani, 2023). The preparation of fiduciary guarantee deeds in authentic form by Notaries ensures strong evidence before the law and provides the foundation for enforceable rights when disputes arise.

CONCLUSION

This study analyses the role of Notaries in drafting fiduciary guarantee deeds for intellectual property and examines the challenges of verification and economic valuation. The legal analysis of relevant legislation and legal literature yields several significant findings that contribute to understanding notarial practice in this specialised area.

Regarding the role of Notaries in drafting fiduciary guarantee deeds with intellectual property objects, this study concludes that Notaries play a central role in ensuring legal certainty and protecting parties to fiduciary agreements. Notaries draft authentic deeds that contain comprehensive information as required by Article 13, Paragraph (2) of Law Number 42 of 1999, including party identities, notarial information, principal agreement details, collateral object descriptions, and guarantee values. Notaries also act as authorized representatives to register fiduciary guarantees at the Fiduciary Registration Office through the online application system established by Government Regulation Number 21 of 2015. Furthermore, Notaries process fiduciary guarantee certificates and handle certificate amendments when changes occur to the registered information. Although Article 16 of Law Number 42 of 1999 does not require Notarial deeds for certificate amendments, Notaries should recommend the preparation of an amendment deed to ensure strong legal force and apply the principle of prudence in their practice.

Concerning verification challenges for intellectual property as fiduciary collateral, this study identifies several critical aspects that Notaries must address. Notaries must verify the registration status

of intellectual property at the Ministry of Law and Human Rights to confirm compliance with Article 10 of Government Regulation Number 24 of 2022. Ownership verification requires examining registration certificates, assignment agreements, and licensing arrangements to verify that fiduciary grantors possess full rights to the intellectual property. Notaries must understand the distinct characteristics of various forms of intellectual property, including copyright, trademarks, patents, and industrial designs, to ensure accurate documentation. When licensing arrangements exist, Notaries must document them in authentic deeds to provide legal recognition and serve as reference points for future dispute resolution. The verification process also requires Notaries to examine whether existing licenses limit the rights that fiduciary grantors can encumber as collateral.

Regarding economic valuation challenges, this study finds that intellectual property valuation poses substantial difficulties due to its subjective and volatile nature. The value depends on commercialisation potential, creator reputation, market conditions, and remaining protection period. The absence of standardized valuation methods complicates the determination of accurate guarantee values in fiduciary deeds. Financial institutions demonstrate reluctance to accept intellectual property as collateral due to these valuation uncertainties, which limit the practical implementation of intellectual property-based financing despite existing regulatory frameworks. Notaries must ensure that guarantee deeds include detailed descriptions of the intellectual property, current commercial applications, and commercialisation potential to provide adequate information to creditors. Additionally, Notaries must consider infringement risks and include protective measures in the deed to safeguard intellectual property rights throughout the guarantee period.

Based on these findings, this study offers several recommendations. First, Notaries should develop specialized competence in intellectual property law through continuous professional education to handle verification and valuation challenges effectively. Second, the government should establish standardised intellectual property valuation guidelines to facilitate acceptance by financial institutions and to provide more precise parameters for Notaries when documenting guarantee values. Third, the Ministry of Law and Human Rights should develop integrated databases that enable Notaries to efficiently verify intellectual property registration status, ownership history, and existing encumbrances. Fourth, professional notarial organizations should formulate practice guidelines specifically addressing fiduciary guarantees over intellectual property to promote consistency and prudence in notarial practice. Fifth, financial institutions should collaborate with intellectual property appraisers and Notaries to develop practical frameworks for accepting intellectual property as collateral while appropriately managing associated risks.

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