



Implementation and Execution of Guaranteed Youtube Accounts that Have Been Monetized as Fiduciary Guarantee

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ABSTRACT

Youtube content is a copyrighted product and as copyright law recognizes that copyright can be guaranteed in a fiduciary manner. Departing from this, the law in Indonesia is still very unprepared for the practice of making Youtube a fiduciary object because there are significant differences between Youtube accounts and Youtube content. This separation is part of the lack of legal certainty regarding how fiduciaries see Youtube as a guarantee whether it is separate in each content or a unit in a Youtube account. The legal view should be even more prepared to make Youtube a fiduciary guarantee so that both the account owner and the guarantor do not experience injustice in carrying out legal acts in the form of guaranteeing content or Youtube accounts. This also includes legal protection in telematics law as there is a wedge between Youtube as a medium and Youtube as collateral. Based on this thought, it is necessary to have a solution to the reform of the law in Indonesia so that it is enough to strengthen the content or Youtube account as a fair fiduciary guarantee for the parties.

Keywords: Fiduciary Guarantee, Youtube Account, Youtube Content, Copyright, Intellectual Property Rights

INTRODUCTION

Intellectual Property Rights (IPR) are an inseparable part of everyone's rights to their intellectual property. One form of IPR is copyright, which specializes in art, literary, and scientific works (Castaldi et al., 2024; Kraizberg, 2023; Lin & Wu, 2022; Siltaloppi & Ballardini, 2023; Spina Ali, 2020). The form of videos and accounts that have been monetized are part of IPR in the development of the times until today. Social media accounts and the content they produce are part of IPR in the form of copyright in the realm of "art." Social media accounts that then receive protection by IPR in the form of exclusive rights can be seen from two types of rights, namely moral rights and economic rights. That copyright certainly has the potential to have commercial value so that the rights of the parties related to the commercialization of copyright must be protected by law (Ellison et al., 2023; Kunitsyna et al., 2018; Oniovosa & Godsdan, 2023; Shin & Woo, 2024; Zang et al., 2022).

YouTube is an open media platform so that it can be accessed by anyone, and everyone can upload anything as long as it does not violate existing laws. The open nature of YouTube makes YouTube accounts divided into several parts to separate positions according to the user's actions, namely:

1. YouTube Users/Viewers (Audience), who are anyone who enjoys the works of content creators on YouTube without producing content.
2. Content Creator, who is anyone who produces content on YouTube
 - a. Not yet Monetized, which is a situation when a YouTube account and its content do not have commercial rights and do not get a profit from the airing of the content.
 - b. It has been Monetized, which is a situation when a YouTube account and its content are entitled to commercial rights and profit from content views.

If examined further, the concept of "Monetization" here refers to content that gets commercial revenue directly from the YouTube platform and not from cooperation with other parties. Legal relationships created through cooperation with other parties are not monetization because the commercialization that occurs is not based on content but comes purely from service relationships outside of YouTube payments.

The current legal development was raised by the Deputy for Digital Economy and Creative Products of the Ministry of Tourism and Creative Economy, Muhammad Fauzy, explaining Government Regulation (*PP*) Number 24 of 2022 concerning the Creative Economy, which hints that creative content on YouTube that has many viewers can be used as debt collateral. In terms of law, Article 16 paragraph (3) of Law Number 28 of 2014 concerning Copyright (*HC Law*) states that it is true that copyright can be guaranteed fiducially (2014, 2014; Alifatul Junaida, 2021; Noviriska, 2022; Saputra et al., 2022). Fiduciary can be interpreted according to Article 1 number 1 of Law Number 42 of 1999 concerning Fiduciary (*Fiduciary Law*) that "Fiduciary is the transfer of ownership rights of an object on the basis of trust with the provision that the object whose ownership rights are transferred remains in the possession of the owner of the property."

Based on this statement, the monetized YouTube account has commercial value that is protected by the *HC Law* and can be guaranteed fiducially because it is copyrighted. However, there are still no procedures related to efforts to guarantee YouTube accounts in a fiduciary manner by protecting each party from threats and losses that may potentially arise. This considers several aspects, the main ones being the law, business aspects, and security aspects related to guaranteeing a YouTube account as a fiduciary guarantee.

YouTube accounts are electronic media, so the role of legislation regarding information and electronic transactions should play a role in protecting security for parties. The recipient of the fiduciary guarantee in this case has difficulty creating protection from the security of the object of the guarantee because it has the potential for electronic media violations. That by pledging a YouTube account as a fiduciary guarantee, the guarantor should know in good faith that there are restrictions that should not be imposed that violate the fiduciary agreement. Based on the previous explanations, certainty is needed regarding the procedures for fiduciary guarantees for YouTube

accounts that have been monetized so that the parties get the same guarantees and protection before the law[A1].

The rapid growth of digital platforms like YouTube has introduced new complexities in the realm of intellectual property rights (IPR) and fiduciary guarantees. Previous research has explored the monetization of YouTube content as a form of copyright-protected asset, with studies such as Tjoanda (2020) examining the feasibility of copyright as a fiduciary object. However, these studies often focus narrowly on the economic value of content, overlooking the legal and procedural challenges of using YouTube accounts as collateral. Research by Ramli (2006) highlights the broader implications of cyber law in Indonesia, yet gaps remain in addressing the specific legal frameworks needed to govern fiduciary guarantees for digital assets like monetized YouTube accounts. This underscores the need for a more comprehensive analysis that bridges IPR, fiduciary law, and telematics law.

A significant research gap lies in the lack of clarity regarding the separation between YouTube accounts and their content under Indonesian law. While the Fiduciary Law (No. 42 of 1999) and the Copyright Law (No. 28 of 2014) provide a foundation for fiduciary guarantees, they fail to address the unique challenges posed by intangible digital assets. Studies such as Sinaga and Darwis (2015) have discussed default and execution in fiduciary agreements, but their findings are not tailored to the digital context. The absence of standardized procedures for valuing and executing guarantees on YouTube accounts further exacerbates this gap, leaving both creditors and debtors vulnerable to legal uncertainties and potential injustices.

The urgency of this research is heightened by the increasing commercialization of digital content and the Indonesian government's recent push to recognize creative content as collateral, as noted in Government Regulation No. 24 of 2022. Without clear legal safeguards, disputes over ownership, monetization, and execution could undermine trust in digital fiduciary transactions. Moreover, the rise of cybercrimes and account breaches poses additional risks, necessitating robust legal protections. This study addresses these pressing issues by proposing a framework that integrates fiduciary law with telematics law, ensuring equitable outcomes for all parties involved.

The novelty of this research lies in its interdisciplinary approach, combining insights from IPR, fiduciary law, and telematics law to address the unique challenges of YouTube account guarantees. Unlike previous studies that treat YouTube content and accounts as separate entities, this research advocates for their unified treatment under fiduciary agreements. It also introduces the concept of preventive and repressive legal protections, drawing from Muchsin's (2003) work on legal safeguards, to mitigate risks in digital transactions. By doing so, the study offers a fresh perspective on how intangible assets can be securely and fairly leveraged as collateral.

The purpose of this research is to analyze the legal, procedural, and security challenges of implementing fiduciary guarantees for monetized YouTube accounts in Indonesia. Its contributions include a proposed legal framework that clarifies the valuation, execution, and protection mechanisms for such guarantees. The implications are far-reaching: policymakers can use these findings to draft clearer regulations, financial institutions can develop safer lending

practices, and content creators can gain better access to capital while retaining their rights. Ultimately, this study aims to foster a more equitable and secure environment for digital fiduciary transactions in Indonesia.

RESEARCH METHODS

This study uses a qualitative approach with a descriptive analysis design to explore the application and execution of YouTube account guarantees that have been monetized as a fiduciary guarantee. The population studied included YouTube account owners, legal experts, and practitioners in the field of intellectual property rights, with purposive sampling to gain relevant insights. Data were collected through in-depth interviews with sources experienced in fiduciary and copyright guarantees, as well as through a literature review to complete the information. Data collection techniques include semi-structured interviews designed to obtain in-depth information and literature studies that cover a wide range of legal and regulatory sources. Data analysis is carried out using the thematic analysis method, which includes data reduction to select relevant information, presentation of data in the form of descriptive narratives, and drawing conclusions to formulate recommendations related to the application of fiduciary guarantees. The validity of the data is guaranteed through triangulation by comparing information from interviews, literature studies, and relevant legal sources. Through this approach, this study is expected to provide a comprehensive understanding of the challenges and opportunities in the implementation of fiduciary guarantees for monetized YouTube accounts, as well as provide useful recommendations for legal practice in Indonesia.

RESULTS AND DISCUSSION

Youtube Accounts and Youtube Content Are Separate Matters According to the Law and Get Different Treatment and Are Copyright Products

When looking at it from the perspective of the object of collateral, there are 2 (two) separations that have different meanings, namely Youtube accounts and Youtube content. It should be underlined that "Youtube Account" and "Youtube Content" are both legal objects. To separate this, the explanation of the difference is as follows:

1. A Youtube account is an account that holds the key so that users can access the content of their account. This account controls the security and monetization (when it has been monetized) and information about the user and everything else interested in it. Youtube accounts act as a forum for storing and publishing as well as monetizing economically value. Youtube accounts also store all YouTube content that has been published and stored privately.
2. Youtube content is limited to only 1 (one) product specificity of all content in the Youtube account.

As already explained, there is a significant difference that a Youtube account is a repository of copyrighted products, namely the content. When defined, copyright aims to protect the form of

human works that are born because of their intellectual abilities. This legal protection only applies to creations that have been manifested in a distinctive way so that they can be seen, heard, or read. A Youtube account that is access to Youtube content is an object that can be used as a guarantee as explained that Youtube content is tied to a Youtube account.

Returning to the concept of civility, Van Apeldoorn defines an object as "an object in the juridical sense is something that is a legal object. The essence of things (zaak) is an essence given by objective law. While the law of things is a regulation of material rights." Article 499 of the Civil Code (KUHP) states that "Material is every property and every right that can be controlled by property rights". Departing from Apeldoorn's opinion that objects can be described as legal objects so that they can be regulated by the provisions of material law. IPR is a part of the material that is classified as an immaterial object.

The relationship between Youtube as an intangible object is that Youtube is an object that is beyond the reach of the human senses. It is further part of the object recognized by the law of telematics. Youtube as an intangible object cannot be defined as worthless. Intangible objects and valuable objects are two different categories. Youtube can be a valuable object even though it is intangible because of the monetization feature provided by Youtube. Monetization of Youtube accounts is the main door so that a Youtube account can be categorized as a valuable object.

Youtube content is the result of thinking ideas that are collected and realized. According to Arpad Bogsch, intellectual property is "Human genius is the source of all works, of art and inventions. These works are the guarantee of a life worthy of men. It is the duty of the state to ensure with diligence the protection of the arts and inventions" . Bogsch's opinion is an introduction that intellectual property requires protection so that copyright becomes a rule to protect the rights that arise. Article 16 paragraph (3) of the HC Law is a legal provision that protects and underlies that intellectual property is entitled to economic treatment, one of which is through fiduciary guarantees. Based on Reward Theory, a person who has succeeded in discovering or creating intellectual works needs to be given recognition and appreciation in the form of protection for his works as a balance for these creative efforts. That the view of reward theory emphasizes "reward" so that this theory complements Bosch's view because the need for reward is necessary in a creation.

Legal Relationship of Intellectual Property Rights and Telematics Law Related to Youtube Accounts as Part of the Copyright and Fiduciary Guarantee Process

According to the provisions of Article 25 of Law No. 1 of 2024 concerning Electronic Information and Transactions (ITE Law) it is written "Electronic Information and/or Electronic Documents that are compiled into intellectual works, internet sites, and intellectual works contained therein are protected as Intellectual Property Rights based on the provisions of Laws and Regulations". Through the basis in the provisions of the ITE Law, IPR has a big role even in the digital world. Youtube is part of a digital object because it has no form, but is recognized as an object. This was explained by Ahmad M. Ramli regarding the scope of telematics law that "The

term cyber law used in this paper is based on the idea that cyber, if identified with "cyber", will be enough to face problems when it comes to proving and enforcing the law. Considering that law enforcers will face difficulties if they have to prove a problem that is assumed to be "virtual", something invisible and pseudo". Just because Youtube is a virtual object does not mean that it is not recognized by law as a valuable object.

When looking at the protection in the context of telematics law, then a switch of a Youtube account under fiduciary guarantee requires protection from telematics law by considering:

1. The need for legal certainty for criminal acts in the digital world as protection for each party in a legal act related to guaranteeing a Youtube account as a fiduciary guarantee.
2. The need for legal certainty as a basis for a lawsuit if losses occur within the scope of Youtube.

Recipients of fiduciary guarantees in the event of a legal problem within the scope of the Youtube account during the fiduciary period can use telematics legal instruments as a basis for protection. Muchsin explained clearly about the concept of protection that "legal protection is an activity to protect individuals by harmonizing the relationship between values or rules that are embodied in attitudes and actions in creating order in the life of fellow human beings".

This protection can be used in the event that one of the parties does not have good faith and clearly violates the law. Article 39 of the ITE Law states regarding lawsuit efforts that:

- 1) Civil lawsuits are carried out in accordance with the provisions of laws and regulations.
- 2) In addition to the settlement of civil lawsuits as intended in paragraph (1), the parties may resolve disputes through arbitration, or other alternative dispute resolution institutions in accordance with the provisions of Laws and Regulations.

This must still be emphasized because Youtube is an object regulated by telematics law in Indonesia based on the ITE Law. This returns the civil lawsuit to the dignity of the civil procedure law that applies in Indonesia. The ITE Law and the Fiduciary Law have special criminal provisions that have not been regulated in existing legislation. The criminal provisions in the ITE Law apply in accordance with Chapter XI of The ITE Law and the FIdusia Law regulates criminal provisions in Chapter VI of The Fiduciary Law.

That protection related to civil and criminal law enforcement both in the Fiduciary Law and the ITE Law is the ultimate remedium for violations during the fiduciary guarantee process. Youtube as an electronic media certainly has the potential to carry out unlawful forced efforts during the guarantee period which can harm existing parties. This has certainly not been regulated in the fiduciary agreement by the parties so that in cases like this, the enactment of the ITE Law can be a real solution. According to protection, it is divided into 2 (two) types, namely:

1. Preventive Protection, protection provided by the government with the aim of preventing before a violation occurs.
2. Repressive Protection, In repressive legal protection, it is the final protection in the form of sanctions such as fines, imprisonment and additional punishments given if there has been a dispute or a violation has been committed.

That the protection in question in the context of law enforcement is part of repressive law

that has been recognized by legislation and legal doctrine. This is obviously to prevent procedural defects and violations during the guarantee by the parties.

Execution of Youtube Account Guarantee as a Fiduciary in Its Position as an Electronic Object

Merry Tjoanda quoted Azmi as stating "Copyright as a fiduciary guarantee is still not in demand by business people for the time being, this is influenced by among other things because they feel that the law is still unclear and the value of the object has also never been known its market value like other movable goods". As has been explained, copyright is an intangible object, so according to Saraswati, intangible objects in the form of receivables can be done by:

1. receivables in the name (op naam) by way of cessie;
2. receivables on the appointment (aan toonder) by handing over the letter from hand to hand;
3. receivables on substitutes (aan order) by endorsing and handing over the letter from hand to hand.

That clearly, intangible objects are legal as part of debts and receivables and in this case fiduciary as a type of guarantee to be an umbrella for this legal act is legitimized. Youtube accounts must have limitations to be used as a fiduciary object, one of the limitations is related to the separation of the original owner of the Youtube account with the fiduciary guarantor. If we look at the concept of intangible objects as part of fiduciary guarantees, the opinion of Hamzah and Manullang states something similar that "Assignment of Property Rights as Security (Eigendomsoverdracht tot Zekerheid). But in the end, people prefer to use a short term, namely fiduciary because it is shorter and easier to mention."

That in the case of making a guarantee through fiduciary, there are limits that must be followed in accordance with laws and regulations. Limitations related to fiduciary objects as referred to in Article 3 of the Fiduciary Law that the applicability of fiduciary can be used for:

1. Dependent Rights related to land and buildings, as long as the prevailing laws and regulations stipulate guarantees for such objects must be registered;
2. Mortgage on a registered vessel with a gross content of 20 (twenty) M3 or more;
3. Mortgage on aircraft; and
4. Pawn.

Based on the things mentioned above, the Youtube account is likely to be used as a lien and/or pawn. This certainly has value to determine the price of a quo guarantee. The problem that often occurs is regarding the determination of the price related to a Youtube account.

The problem of the weakness or lack of certainty regarding the valuation of a Youtube account, this then becomes difficult for the parties to determine a value for the existing Youtube account. This is part of the obstacle to implementing a fiduciary guarantee process to a YouTube account, but this will be facilitated if it is stated in writing in an agreement. Recalling that one of the important parts in this case is the protection related to the process of the fiduciary agreement in a fiduciary guarantee agreement. Article 4 of the Fiduciary Law expressly states that "Fiduciary

Guarantee is a follow-up agreement of a principal agreement that creates an obligation for the parties to fulfill an achievement". This indicates that the consequence of the failure to fulfill the achievement in the fiduciary agreement is execution.

Execution in the provisions of the law is regulated in Article 30 of the Fiduciary Law stating that "The Fiduciary is obliged to hand over the Object that is the object of the Fiduciary Guarantee in the context of the execution of the Fiduciary Guarantee". Again linking the concept of fiduciary execution to the fiduciary object, namely the Youtube account as explained that it will be difficult to separate the Youtube account from its content so that in the case of the execution, this should be done to the Youtube account without partially splitting the content. Tjoandra is right in his opinion that copyright is less in demand in terms of fiduciary guarantees as in the case of a quo, there are several obstacles in the form of:

- a. The appraise value of a Youtube account that cannot be calculated in accounting is of definite value.
- b. Execution is difficult because objects are intangible objects. Youtube has the potential to be hacked so this is a potential that is detrimental to both parties.

Based on the two statements above and the previous discussion, protection in the application of Youtube must be carried out not only using the perspective of fiduciary law. However, looking at the legal view of telematics as discussed to also be included as part of the law that governs a fiduciary agreement.

The HC Law does allow the existence of a copyright to be guaranteed by fiduciary, but this does not mean that all copyrights can be a fiduciary guarantee. As already explained, fiduciary is an agreement, the parties must be subject to the agreement. Again explain the main concept in *fidusia constitutum possessorium* (the surrender of ownership of objects without giving up physical objects at all). That again in the civil element regarding treaty law, there are several aspects that must be met regarding a valid circumstance for a guarantee of fiduciary execution.

Execution, according to Yahya Harahap, can be defined as "execution is an attempt to enforce a court decision against the losing party by using force". That in the context of the doctrine of Harahap that execution can be carried out through a court decision. According to Fandy Ahmad, emphasizing that fiduciary execution is "If the debtor violates the promise, the Fiduciary has the right to sell the Object that is the object of the Fiduciary Guarantee on his own power". This opinion about execution is what makes the foundation for the need for a court decision to execute the pledged Youtube account.

The need for a court decision as a basis for execution to a fiducially pledged YouTube account from the perspective of guarantee law

As explained regarding Article 30 of the Fiduciary Law regarding the obligation to hand over the object of collateral, it must be based on Article 29 of the Fiduciary Law that:

- 1) If the debtor or Fiduciary is injured by the promise, the execution of the Object that is the object of the Fiduciary Guarantee can be carried out by:

- a. the execution of the executory title as referred to in Article 15 paragraph (2) by the Fiduciary.
 - b. the sale of the Object that is the object of the Fiduciary Guarantee on the power of the Fiduciary himself through a public auction and taking the repayment of its receivables from the proceeds of the sale;
 - c. an under-handed sale made under the agreement of the Giver and the Fiduciary if in such a way the highest price that benefits the parties can be obtained.
- 2) The implementation of the sale as intended in paragraph (1) c shall be carried out after 1 (one) month has passed since it has been notified in writing by the Grantor and/or Fiduciary to interested parties and announced in at least 2 (two) newspapers spread in the area concerned.

In this case, there is an element of "breach of promise" as a condition in executing a fiduciary guarantee. According to civil law, an injury to a promise can be declared as a default. The element of "default" is regulated in Article 1243 of the Criminal Code that "reimbursement of costs, losses and interest due to non-fulfillment of an agreement, only begins to be obliged, if the debtor, after being declared negligent in fulfilling his agreement, still defaults on it, or if something that must be given or made by him, can only be given or made within the grace period that has been exceeded by him". Departing from the Criminal Code, that the element of "breach of promise" in Article 29 paragraph (1) of the Fiduciary Law must be "declared negligent in fulfilling its commitment" as referred to in Article 1243 of the Criminal Code.

That the civil law has expressly stated that the execution of a fiduciary guarantee cannot be carried out by oneself without a basis for execution. Niru Anita Sinaga and Nurlely Darwis emphasized the default, namely:

1. Cancellation of the agreement, that is, the cancellation of the agreement will bring both parties back to the state before the agreement was held.
2. The cancellation of the agreement is accompanied by a claim for compensation arising because the debtor has committed a default. Based on Article 1246 of the Civil Code, compensation consists of 3 elements:
 - a. Costs, which are all expenses or costs that have actually been incurred;
 - b. Loss, which is loss due to damage to the creditor's property caused by the debtor's negligence;
 - c. Interest, which is the profit that should be obtained or expected by the creditor if the debtor is not negligent.
3. Contract fulfillment, where the creditor only asks for the fulfillment of achievements from the debtor.
4. The fulfillment of the contract is accompanied by a demand for compensation, namely in addition to demanding the fulfillment of achievements, the creditor also demands compensation by the debtor.
5. Demand compensation only.

That one of the elements in this case is the "cancellation of the agreement" which in Article

1266 paragraph (2) of the Criminal Code states that "In such a case the agreement is not null and void for the sake of the law, but the cancellation must be requested from the Judge". Again considering that Article 4 of the Fiduciary Law expressly emphasizes that guarantees are part of an agreement, then the legal validity of the agreement in the Criminal Code can be applied in it.

Youtube accounts as discussed earlier are part of the copyright that is allowed by law to be fiducially guaranteed. It applies a provision in fiduciary law to perform a Youtube guarantee as part of the fiduciary guarantee object. That the Youtube account becomes the object of collateral as the parties agree with the appraisal that has been agreed upon in value. The binding of the Youtube account as a fiduciary object based on the agreement then if the debtor commits an injury to the promise can be used as an object for reimbursement of costs, interest, and losses by the creditor.

Reimbursement of costs, interest, and losses by creditors is not permitted in the absence of a limitation of a declaration by the court based on a valid declaration of default. A statement of default is only obtained by the parties to the dispute in court and then executed based on a court decision. That the execution to the debtor's Youtube account has legal force as long as it has a court statement that has permanent legal force.

CONCLUSION

To achieve a perfect value of justice, the guarantee of the YouTube account must be fully assessed as a whole and cannot be done partially. This concerns the legal status of YouTube accounts and YouTube content, which must be considered a unit within a YouTube account. The separation of YouTube accounts and YouTube content is a violation of *material rights* because the "economic rights" obtained from YouTube accounts must be considered unanimous from a single YouTube account. It needs to be emphasized again that YouTube content is indeed the creation of human thought (*human intellectual*), so this right needs to be protected and rewarded accordingly. A fiduciary guarantee can be part of a reward to the creator as a guarantee that forms part of the creator's rights.

From another perspective, there is also the role of *telematics law* as protection for the fiduciary guarantee process carried out by the parties. This protection can be in the form of civil or criminal safeguards as regulated by laws regarding information and electronic transactions. Protection can be sought as preventive protection and repressive protection, so that there are possible efforts to defend the rights of the aggrieved party or victim in a criminal act. Continuing regarding the part of protection, the law regarding fiduciary guarantees cannot independently have the capacity to carry out legal remedies related to YouTube accounts and content, so it requires branches of other laws as protection.

In addition to protection, the provisions in the *Fiduciary Law* also discuss the limitations and execution of fiduciaries. This indicates that the YouTube account cannot be pledged other than what is limited in the *Fiduciary Law*, namely *pawn* and/or *dependent*. As has been stated, a fiduciary guarantee is carried out in the form of an agreement, which can have civil consequences

if violated, namely execution. As explained in the *Fiduciary Law*, the YouTube account is the object of execution, so the guarantor is obliged to hand over the YouTube account in its entirety in case of a violation related to a fiduciary guarantee agreement.

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