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## The Use of Intellectual Property Rights as Collateral for Debt: Legal Regulations and Valuation Analysis

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### Abstract

**This study aims** to examine the legal regulations governing IPR as collateral for debt, and how to determine the valuation of IPR used as collateral.

**The study method used** is normative law with a legislative and conceptual approach. Data was obtained through a literature study of primary and secondary legal materials.

**The novelty** of this study lies in its focus on the legal vacuum and implementation constraints in the field in making IPR, particularly copyright, an object of fiduciary collateral, especially in terms of economic valuation and ownership validity.

**The results** of the study show that although Indonesian fiduciary law has normatively recognized the possibility of using IPR as collateral, in practice financial institutions still face various obstacles. This is partly due to the absence of standard assessment criteria, issues of proof of ownership, and a declarative IPR registration system.

**The conclusion** of this study is that IPR has economic potential and a legal basis as collateral for debt, but it still requires specific derivative regulations and a clear economic value assessment mechanism in order to be widely accepted by financial institutions. The development of this policy is important to support the sustainable financing of the creative economy sector.

**Keywords:** Intellectual Property Rights; Fiduciary Collateral; Creative Economy; Legal Regulations

### Abstrak

**Penelitian ini bertujuan** untuk mengkaji Pengaturan hukum terhadap HKI sebagai jaminan utang, dan cara menentukan valuasi HKI yang dijadikan sebagai jaminan.

**Metode penelitian** yang digunakan adalah hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Data diperoleh melalui studi pustaka terhadap bahan hukum primer dan sekunder.

**Kebaruan dalam penelitian** ini terletak pada sorotan terhadap kekosongan hukum dan kendala implementasi di lapangan dalam menjadikan HKI, khususnya hak cipta, sebagai objek jaminan fidusia-khususnya dalam aspek penilaian ekonomi dan keabsahan kepemilikan.

**Hasil Penelitian** menunjukkan bahwa meskipun secara normatif hukum fidusia Indonesia telah mengakui kemungkinan penggunaan HKI sebagai jaminan, dalam praktiknya lembaga keuangan masih menghadapi berbagai hambatan. Hal ini antara lain disebabkan oleh belum adanya standar penilaian yang baku, persoalan pembuktian kepemilikan, serta sistem pendaftaran HKI yang bersifat deklaratif.

**Kesimpulan** dari penelitian ini adalah bahwa HKI memiliki potensi ekonomi dan dasar hukum sebagai jaminan utang, namun masih memerlukan regulasi turunan yang spesifik serta

*mekanisme penilaian nilai ekonomi yang jelas agar dapat diterima secara luas oleh lembaga keuangan. Pengembangan kebijakan ini penting untuk mendukung pembiayaan sektor ekonomi kreatif secara berkelanjutan.*

**Kata Kunci:** Hak Kekayaan Intelektual; Jaminan Fidusia; Ekonomi Kreatif; Regulasi Hukum

## 1. INTRODUCTION

Indonesia is among the top three countries in the world with the largest creative economies, after the United States and South Korea. Although it does not occupy the top position, this sector plays an important role in driving national economic growth by creating jobs, generating income, diversifying exports, and supporting post-pandemic recovery.<sup>1</sup> In response to these developments, the Indonesian government issued Government Regulation No. 24 of 2022 on the Creative Economy, which officially allows creative industry players to use their intellectual property rights as collateral to obtain financial support.<sup>2</sup> This policy marks a milestone because it positions Intellectual Property Rights (IPR) not only as a cultural or economic asset, but as a viable and reliable asset suitable for use in credit agreements.<sup>3</sup>

However, despite normative progress, practical implementation is still limited by various challenges. The intangible nature of Intellectual Property Rights (IPR) distinguishes them from tangible assets regulated in the Burgerlijk Wetboek (Civil Code).<sup>4</sup> This makes the legal recognition and enforcement of intellectual property rights (IPR) as collateral more complex. Financial institutions show reluctance in accepting IPR due to the absence of a standard assessment framework, difficulties in verifying ownership, and the declarative nature of the IPR registration system in Indonesia.<sup>5</sup> Such uncertainty creates difficulties in assessing credit risk and enforcing debt collection in the event of default.

Previous studies on Intellectual Property Rights (IPR) in Indonesia have mostly focused on protection against infringement, such as in the music and film industries,<sup>6</sup> or theoretical aspects of assessment. Other works have proposed normative reforms but have not provided concrete implementation models or comparative lessons from countries where intellectual property rights (IPR)-backed financing has been successfully implemented.<sup>7</sup> As a result, there is a clear gap in the literature regarding: (1) the practical application of Government Regulation No. 24 of 2022 in financial institutions, (2) the absence of a standard and enforceable methodology for intellectual property rights (IPR) assessment in Indonesia, and (3) the lack of comparative insights from international best practices that can be used as a reference in

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<sup>1</sup> "Laporan Kegiatan Kementerian Pariwisata Dan Ekonomi Kreatif" (2022).

<sup>2</sup> *Peraturan Pemerintah Nomor 24 Tahun 2022 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 24 Tahun 2019 Tentang Ekonomi Kreatif*, n.d.

<sup>3</sup> R Djumhana, M., & Djubaedillah, *Intellectual Property Rights: History, Theory, and Practice in Indonesia*. (Bandung: Bandung: Citra Aditya Bakti., 2014).

<sup>4</sup> "Burgerlijk Wetboek (KUHPERDATA) Buku Ke II Tentang Benda" (n.d.).

<sup>5</sup> Widya Marthauli Handayani, "KEBERLAKUAN HUKUM HAK CIPTA SEBAGAI OBJEK JAMINAN FIDUSIA BERDASARKAN UNDANG-UNDANG NOMOR 28 TAHUN 2014 TENTANG HAK CIPTA," *Jurnal Legislasi Indonesia*, 2019.

<sup>6</sup> Hendrawati et Al, "Copyright Protection In Indonesia's Music and Film Industries," *Jurnal Hukum*, 2021.

<sup>7</sup> and Hanif Nur Widhiyanti. Arief, Sofyan, M Fadli, Yuliati Yuliati, "Regulating Patent As Collateral in Indonesia," *Audito Comparative Law Journal (ACLJ)*, 2025, <https://doi.org/https://doi.org/10.22219/aclj.v6i3.40629>.

regulatory development. This article addresses these gaps by combining legal analysis, economic perspectives, and a comparative approach to examine how IPR-particularly copyright-can be optimized as fiduciary collateral. This study aims to identify normative and practical challenges, analyze valuation mechanisms, and propose policy directions that can strengthen legal certainty and financial confidence. Thus, this research makes an original contribution to the discourse on IPR-based financing in Indonesia, highlighting its economic potential and the need for regulations to support creative economic growth.

## **2. METHOD**

This research is a normative legal study with descriptive-analytical specifications, which aims to thoroughly examine the legal norms, principles, and concepts related to the use of Intellectual Property Rights (IPR)-especially copyright-as fiduciary collateral based on Government Regulation Number 24 of 2022 concerning the Creative Economy. This study uses a statutory approach by reviewing various national legal instruments, such as Law No. 42 of 1999 concerning Fiduciary Guarantees, Law No. 28 of 2014 concerning Copyright, as well as implementing regulations and related policy documents from relevant institutions. In addition, a comparative legal approach is used to explore how other countries have implemented financing schemes supported by IPR, as a reference for potential policy improvements in Indonesia. The data used in this study consists of secondary legal materials, including primary legal sources, secondary legal literature, and tertiary references.

Data collection was conducted through library research, reviewing legal documents, academic books, scientific journal articles, and policy reports from official sources such as government portals and international organizations. The data was analyzed using qualitative descriptive and argumentative methods, interpreting relevant legal provisions and evaluating their practical application. This analysis aims to identify normative and practical problems arising from the current framework and provide legal recommendations to strengthen the use of IPR as collateral for loans in Indonesia's creative economy financing system.

## **3. DISCUSSION**

### **3.1. Regulation of Intellectual Property as Debt Collateral in Indonesia**

In Indonesia, the legal basis for using Intellectual Property Rights (IPR) as collateral in financial transactions is regulated in Law Number 28 of 2014 concerning Copyright. This law explicitly classifies copyright as an intangible asset that can be transferred or assigned in part through various legal mechanisms, including inheritance, grants, wills, written agreements, or other legal means. In addition, Article 16 paragraph (3) of the Copyright Law emphasizes that "Copyright can be used as fiduciary collateral," thereby recognizing copyright as a valid form of asset to guarantee debt obligations. However, practical implementation still faces obstacles due to the absence of detailed procedural regulations governing registration, assessment, and enforcement within the fiduciary framework. This regulatory vacuum is an obstacle for financial institutions in assessing the legal certainty and market value of copyright-based collateral.<sup>8</sup>

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<sup>8</sup> S. Wijayanti, A., & Raharjo, "The Effectiveness of Indonesian Intellectual Property Law on Traditional Textile Patterns. *Jurnal Mimbar Hukum*," n.d., <https://doi.org/https://doi.org/10.22146/jmh.68845>.

The concept of fiduciary guarantees itself goes beyond tangible assets to include both transferable intangible assets and intangible assets that cannot be used as mortgage collateral. This broader definition provides opportunities for business actors to obtain credit facilities by utilizing their intangible assets, such as copyrights, as permissible collateral, in accordance with Article 16(3) of the Copyright Law. A prominent example is the use of musical compositions as fiduciary collateral, where economic potential and validity of ownership are the main determining factors of eligibility.<sup>9</sup> In the Indonesian context, several criteria have been established to ensure the economic viability and legal validity of copyright-based fiduciary guarantees. The economic value of song copyrights, for example, can be derived from potential revenue streams generated through performance royalties, digital distribution, and public broadcasting. Indicators such as digital platform popularity, streaming statistics, and market recognition of creators are often used in the assessment process. For legal guarantees, the copyright must be registered with the Directorate General of Intellectual Property (DJKI) under the Ministry of Law and Human Rights and affiliated with a Collective Management Organization (CMO) to facilitate systematic royalty administration. In accordance with Law Number 42 of 1999 concerning Fiduciary Guarantees (UUJF), intangible assets such as these can be legally pledged as collateral after having a verified economic value and registration record. Fiduciary agreements must be made in the form of a notarial deed and recorded at the Fiduciary Registration Office to obtain a certificate that gives priority rights to creditors.

For song copyrights to be used as fiduciary collateral, they must still be within the copyright protection period and registered in the Public Registry of Works. In fiduciary collateral law, the object used as collateral must be owned by the collateral provider and not by another party. This principle is based on the assumption that whoever controls the object is considered its owner. The copyright of a song intended as fiduciary collateral must be transferable, either in whole or in part. This is in line with Article 1 Paragraph (4) of the Fiduciary Security Law (UUJF), which stipulates that the transfer of song copyright must be clear and in writing, with or without a notarial deed, as explained in Article 16 Paragraph (2) of the Copyright Law and Article 5 of the UUJF.

Government Regulation (PP) Number 24 of 2022 opens up the possibility of using Intellectual Property Rights (IPR) as fiduciary collateral. Fiduciary is the transfer of ownership rights over an object based on trust, with the provision that ownership rights are transferred, but its implementation depends on the fiduciary guarantee law. Its implementation still leaves issues related to determining the economic value of IPR and the implementation process, as well as all related consequences. The Government Regulation (PP) on the regulation of IPR certificates as economic financing with debt collateral was signed by President Joko Widodo on July 12, 2022. IP that can be used as collateral for debt is that which has been recorded or registered with the ministry authorized in legal matters, or that which has been independently

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<sup>9</sup> and Annalisa Yahanan Handayani, Sri, Joni Emirzon, "The Idea of Trademark Rights Valuation As Collaterals: A Financing Solution for Creative Economy Actors," *Jurnal Ilmiah Kebijakan Hukum*, 2025, <https://doi.org/https://doi.org/10.30641/kebijakan.2025.V19.%p>.

managed or transferred to another party. PP No. 24 of 2022 concerning the creative economy is the added value of IP that comes from human creativity based on cultural heritage, science, and/or technology. Intellectual Property Rights are the rights to enjoy the economic benefits of intellectual creativity. The objects regulated in Intellectual Property Rights are works that arise or are born as a result of human intellectual ability.<sup>10</sup>

Government Regulation No. 24 of 2022 offers intellectual property rights-based financial assistance, a financing method that allows banks or non-bank financial institutions to use intellectual property rights as collateral for debt. This initiative aims to facilitate financial support for creative economy actors. In addition, to encourage innovation in creating creative industry-based services and goods, intellectual property rights protection is also considered essential. This regulation is a breakthrough for the development of the creative economy, including micro and small enterprises (MSEs) that own intellectual property. Based on this regulation, intellectual property can be used as collateral for loans from both banking and non-banking financial institutions. This policy supports the government's commitment to help creative economy actors and MSEs develop as pillars of national economic growth.<sup>11</sup>

The issuance of Government Regulation No. 24 of 2022 serves as support for economic activities, particularly for creative economy industry players. This regulation opens up opportunities for creative economy players to apply for loans secured by their intellectual property rights. According to Government Regulation No. 24 of 2022, loan applications are made through a financing scheme based on intellectual property rights. Article 1 paragraph (4) of this regulation defines an intellectual property-based financing scheme as a financing scheme that uses intellectual property as collateral for loans from banking or non-banking financial institutions to provide financing to creative economy industry players. The collateral referred to in this provision can be implemented in the form of fiduciary collateral on intellectual property, contracts, and/or receivables in creative economic activities (Article 9 paragraph (2) of Government Regulation Number 24 of 2022).<sup>12</sup>

In an intellectual property-based financing scheme, creative economy actors seeking funding can apply for financing from banking or non-banking financial institutions using their intellectual property as collateral. The requirements for applying for such financing include: a financing proposal, ownership of a creative economy business, legal rights related to the intellectual property of creative economy products, and a registration certificate or intellectual property rights certificate. After receiving a financing application, financial institutions are required to verify the creative economy business, verify the registration or intellectual property certificate used as collateral, ensure that it can be executed in the event of a dispute or non-

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<sup>10</sup> Soni Ramdani, "Hak Cipta Sebagai Objek Jaminan Fidusia Dalam Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta," *Aktualita (Jurnal Hukum)* 2, no. 1 (June 19, 2019): 252–78, <https://doi.org/10.29313/aktualita.v2i1.4701>.

<sup>11</sup> Susanti Yuliandari, "Jaminan Pembiayaan Berbasis Kekayaan Intelektual: Analisis Peraturan Pemerintah Tentang Ekonomi Kreatif," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 2 (December 16, 2022): 125–40, <https://doi.org/10.14421/sh.v11i2.2800>.

<sup>12</sup> *Peraturan Pemerintah Nomor 24 Tahun 2022 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 24 Tahun 2019 Tentang Ekonomi Kreatif*.

dispute, assess the value of the intellectual property used as collateral, channel funds to creative economy actors, and receive repayment of financing from creative economy actors in accordance with the agreement. In addition, Article 10 of Government Regulation Number 24 of 2022 stipulates that the following types of intellectual property rights can be used as collateral for loans: Intellectual Property Rights that have been registered or recorded with the ministry authorized in legal matters; and Intellectual Property Rights that are managed independently and/or whose rights have been transferred to another party.<sup>13</sup>

Based on Government Regulation No. 24 of 2022 concerning the Creative Economy, the use of intellectual property (IP)-based financing schemes is intended to facilitate loan applications by creative economy actors. However, several obstacles hinder the effective implementation of this regulation. One of the main problems is the unclear and sometimes vague design of the financing scheme, raising concerns about its feasibility in practice. For example, Bank Indonesia Regulation No. 14/15/PBI/2012 has not been revised to accommodate the assessment of intellectual property assets by banking institutions. As a result, there is an urgent need to establish a special intellectual property assessment agency in Indonesia to support this process. The Financial Services Authority (OJK) also notes that several obstacles remain in realizing the welfare of creative economy actors and supporting national economic growth through intellectual property-based financing schemes. Therefore, special attention is needed to overcome these challenges-such as reviewing and clarifying ambiguous regulatory aspects-so that clarity and certainty can be provided to creative economy actors as well as banking and non-banking financial institutions.

### **3.2. Determination of the Collateral Value of Intellectual Property Rights Used as Fiduciary Security**

Article 16 (2) of the Copyright Law explains that only the economic rights of copyright can be transferred or assigned, while moral rights remain permanently owned by the creator. Any transfer must be made in writing clearly, either with or without a notarial deed. Copyright, as an asset of its owner, can be managed freely, including being used as collateral in credit agreements. To be used as collateral, an asset must have economic value and be transferable. Taking out a loan using intellectual property as collateral is considered easy-if the criteria are met, the application will most likely be approved by a bank or non-bank financial institution. A collateral agreement cannot stand alone; it must be supported by the underlying principal agreement. Therefore, a collateral agreement is accessory in nature. If the principal agreement ends, the collateral agreement also ends, because no one will guarantee a debt that does not exist.<sup>14</sup>

Intellectual Property Rights (IPR) used as collateral may include intangible and non-tangible copyright assets, such as copyright certificates, licenses, or registered works, as well as intellectual property that is self-managed or has been transferred to another party. Franchises can serve as primary collateral, while contracts can serve as additional intellectual

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<sup>13</sup> BPHN., "Butuh Intervensi Pemerintah Agar Skema Pembiayaan Berbasis Kekayaan Intelektual Berjalan Optimal.," 2023, <https://bphn.go.id/publikasi/berita/2023111610131582>.

<sup>14</sup> H. S. Salim, *Development of Security Law in Indonesia*. (Jakarta: RajaGrafindo Persada, 2004).

property collateral. Based on Government Regulation No. 24 of 2022 implementing Law No. 24 of 2019 on the Creative Economy, only works that have IPR certificates (specifically copyright) are eligible as collateral for loans at banking and non-banking financial institutions. Article 9 paragraph (1) of the regulation states that in implementing IPR-based financing schemes, financial institutions may use intellectual property as collateral for loans.<sup>15</sup>

As a form of intellectual property, copyright is included in property law as a transferable intangible asset. Its intrinsic value makes copyright an asset that can be used as collateral in bank loan agreements by its creator. Theoretically, copyright can be used as fiduciary collateral, as stipulated in Article 16(2) of the Copyright Law, which states that copyright can be transferred through gifts, inheritance, grants, wills, written agreements, or other methods permitted under Indonesian law. Therefore, the most appropriate type of collateral for copyright is fiduciary collateral, because copyright is categorized as a movable asset and can be transferred in accordance with the definition of "assets" in Article 1 of Law Number 42 of 1999 concerning Fiduciary Collateral (Fiduciary Collateral Law).<sup>16</sup>

Based on the legal basis for "contracts" (obligations), there are two essential elements:<sup>17</sup> An act, and the parties bound by obligations (Article 1313 of the Civil Code). In addition, to form a valid agreement or obligation, the parties must meet the requirements listed in Article 1320 of the Civil Code, namely: The parties jointly agree to be bound by the agreement, The parties have the legal capacity to create obligations, The agreement has a clear purpose or object, and The agreement has a valid and permissible legal cause. A fiduciary guarantee is an additional agreement that complements the main agreement between the parties. The term "fiducia" comes from the Latin word "fides," which means trust or confidence. In a legal context, "fiducia" refers to a trust-based agreement in which one party entrusts property to another party, with the understanding that the property will be returned after certain conditions are met. This concept originated in Roman law and has influenced modern legal systems. Therefore, fiduciary guarantees involve a relationship of trust, in which the lender holds collateral (such as intellectual property) with the obligation to return it after the debtor repays the debt.<sup>18</sup>

In fiduciary guarantees, the object being guaranteed must have economic value. This economic value ensures that if the debtor fails to repay the loan, the creditor can liquidate the

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<sup>15</sup> R. A Atikah, I. & Sari, "ENHANCING THE CREATIVE ECONOMY : LEVERAGING INTELLECTUAL PROPERTY RIGHTS AS LEGAL COLLATERAL IN CREDIT FINANCING IN INDONESIA," *Jurnal Yuridis*, 2024, <https://doi.org/10.35586/jjur.v11i1.7617>.

<sup>16</sup> Endang Purwaningsih, Nurul Fajri Chikmawati, and Nelly Ulfah Anisariza, "KEKAYAAN INTELEKTUAL SEBAGAI OBJEK JAMINAN FIDUSIA DALAM UPAYA MENDAPATKAN KREDIT PADA LEMBAGA KEUANGAN," *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 11, no. 1 (March 1, 2020): 21–36, <https://doi.org/10.32493/jdmhkdmdhk.v11i1.5805>.

<sup>17</sup> Mieke Yustia Ayu Ratna Sari and Riza Yudha Patria, "TANTANGAN PEMANFAATAN HAK KEKAYAAN INTELEKTUAL SEBAGAI SOLUSI PERMODALAN [The Challenges of Utilizing Intellectual Property Rights as a Capital Solution]," *Law Review* 20, no. 2 (November 26, 2020): 111, <https://doi.org/10.19166/lr.v20i2.2671>.

<sup>18</sup> Yudhistira Ardana et al., "AKIBAT HUKUM DEBITOR WANPRESTASI TERHADAP PERJANJIAN HAK PATEN SEBAGAI OBJEK JAMINAN FIDUSIA," *Lex Librum: Jurnal Ilmu Hukum* 7, no. 2 (June 4, 2021): 111, <https://doi.org/10.46839/ljih.v7i2.214>.

asset to recover the unpaid debt. The economic value of an asset is usually determined through market assessment or analysis. For example, intellectual property rights can be valued based on projected income streams or market demand. This appraisal process is crucial for both parties to understand the value of the collateral and the associated risks.<sup>19</sup> In fiduciary guarantees, the loan amount cannot exceed the economic value of the collateral. Typically, banks can provide loans of up to 85% of the collateral value. If the loan exceeds this limit, the creditor risks incurring losses, as the proceeds from the auction of the collateral may not be sufficient to cover the unpaid debt. This principle is in line with regulations set by Bank Indonesia and the Financial Services Authority (OJK), which emphasize prudent lending practices and collateral assessment to maintain financial stability.

A work must include moral rights and economic rights in order to qualify as an object of fiduciary security. Moral rights are rights that are inherent and cannot be transferred from the creator. If the work is published, the creator's name must be included on copies of the work.<sup>20</sup> A work must include moral rights and economic rights in order to qualify as an object of fiduciary security. Moral rights are rights that are inherent and cannot be transferred from the creator. If the work is published, the creator's name must be included on copies of the work. Economic rights, on the other hand, relate to the creator's right to obtain economic benefits from the work. To determine whether a work has these rights and qualifies as collateral, an assessment process is required. This process evaluates the economic value of the work, ensuring that it meets the criteria for collateral in a financial agreement.<sup>21</sup>

To conduct an economic assessment of copyrighted works, the World Intellectual Property Organization (WIPO) has established the following criteria: Identification: The work must be specifically identifiable and recognizable. Proof of Existence: There must be concrete evidence of the work's existence, such as contracts, licenses, registration documents, or financial records. Creation: The work must have been created at a specific point in time. Legal Protection and Transferability: The work must be legally protected and transferable. Marketability: The work must have commercial value.

These criteria ensure that copyrighted works have the attributes necessary to be considered valuable assets in financial transactions, including their use as collateral in fiduciary guarantees. From an economic perspective, intangible assets related to copyright have the same economic and legal characteristics as other types of intellectual property, including trademarks, patents, and trade secrets.<sup>22</sup> Intangible Nature: These assets have no physical

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<sup>19</sup> C Adisty, C., & Silaen, "Analisis Yuridis Hak Cipta Yang Dijadikan Jaminan Fidusia Berdasarkan Undang-Undang Hak Cipta Di Bank BTPN," *Notary Journal* 1 (2021): 89–115, <https://doi.org/https://doi.org/10.19166/nj.v1i1.3273>.

<sup>20</sup> Rindia Fanny Kusumaningtyas, "Perkembangan Hukum Jaminan Fidusia Berkaitan Dengan Hak Cipta Sebagai Objek Jaminan Fidusia," *Pandecta: Research Law Journal*, 2016, <https://doi.org/http://dx.doi.org/10.15294/pandecta.v1i1.6465>.

<sup>21</sup> Citra and Silaen, "Analisis Yuridis Hak Cipta Yang Dijadikan Jaminan Fidusia Berdasarkan Undang-Undang Hak Cipta Di Bank BTPN".

<sup>22</sup> Adisty, C., & Silaen, "Analisis Yuridis Hak Cipta Yang Dijadikan Jaminan Fidusia Berdasarkan Undang-Undang Hak Cipta Di Bank BTPN."



substance but derive their value from legal rights and market recognition. Economic Value: They can generate income through licensing, sales, or exclusive use, contributing to the company's financial performance. Amortization: Typically, these assets are amortized over their useful lives, reflecting their consumption and economic benefits over time.

### **3.2.1. Legal Characteristics**

**Legal Protection** Each type of intellectual property is protected by specific laws, which grant exclusive rights to its owner. **Transferability:** These rights can be transferred, sold, or licensed to other parties, enabling commercialization and strategic use in business. **Legal Enforcement:** Owners have legal means to enforce their rights and seek compensation in the event of infringement.

According to Gilbert, three commonly accepted methods of collateral valuation also apply to the valuation of Intellectual Property Rights (IPR), including copyrights. However, the cost approach is less commonly used than the income or market approaches. This is because copyrights grant monopoly rights to their owners, making the cost approach less suitable for copyright valuation analysis. The three valuation approaches are:<sup>23</sup> The cost approach is a valuation method based on the costs incurred in developing or creating a work, or the costs of creating or developing a similar product or service, without considering the economic value of the work itself. This principle states that the value of an object or piece of intellectual property does not exceed the cost of producing it.<sup>24</sup>

This approach is based on the principle of economic substitution, which states that an investor will not pay more for an asset than the cost of acquiring a substitute asset with the same utility. This approach is particularly useful when market data is scarce or when the asset is unique and has no direct comparison. However, this approach has limitations, such as not taking into account the asset's future income potential or market demand, which can lead to an undervaluation. Therefore, this approach is often used in conjunction with other valuation methods to provide a more comprehensive assessment.<sup>25</sup>

The cost approach does have some limitations when analyzing the economic value of a copyright. Because of these limitations, the cost approach is often considered to provide only a basic estimate of economic value. One significant limitation is that the cost approach does not take into account the potential future income that a copyright can generate. Copyrights often have significant earning potential through licensing, royalties, or other revenue streams. By focusing solely on the costs incurred in creating the work, this approach ignores the asset's ability to generate future income, which can lead to an undervaluation.

In addition, the cost approach may not fully capture the unique aspects of copyright that contribute to its value. For example, the originality, market demand, and strategic importance

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<sup>23</sup> Consor.com, "No TitleIP Valuation: What Methods Are Used to Value Intellectual Property and Intangible Assets?," n.d., <http://www.consor.com/intellectual-property-advice/methods-used-to-value-ip-and-ia.html>.

<sup>24</sup> Consor.com.

<sup>25</sup> IPLawMastery.com. "Cost Approach to IP Valuation." n.d. [https://iplawmastery.com/cost-approach-to-valuation/?utm\\_source,IPLawMastery.Com. 'Cost Approach to IP Valuation.'](https://iplawmastery.com/cost-approach-to-valuation/?utm_source,IPLawMastery.Com.%20%27Cost%20Approach%20to%20IP%20Valuation.%27) n.d. [https://Iplawmastery.Com/Cost-Approach-to-Valuation/?Utm\\_source,IPLawMastery.Com. 'Cost Approach to IP Valuation.'](https://Iplawmastery.Com/Cost-Approach-to-Valuation/?Utm_source,IPLawMastery.Com.%20%27Cost%20Approach%20to%20IP%20Valuation.%27) n.d.

of the work are not reflected in a cost-based valuation. As a result, this method may not accurately represent the true market value of the copyright. Market Approach Method The market approach method is a valuation method in which intellectual property or intangible assets are valued by comparing them to recent sales, transfers, and transactions involving similar assets in the same market.

One of the challenges of the market approach method is the difficulty in analyzing the selling price of copyrighted works. In other words, it is difficult to convert the data into a price "per image," "per lyric," or "per word." In addition, the market approach method has been used for tangible assets where established markets have existed for decades, such as property, equipment, and raw materials. However, intangible assets, at least to date, have not been traded frequently enough to establish a value based solely on direct market comparisons. Therefore, analysis and adjustments are almost always necessary. Furthermore, transactions involving intangible assets are often confidential in terms of their value. Income Approach Method The income approach method determines economic value based on future income that can or will be generated from intellectual property or intangible assets. The income approach method for intellectual property is a widely used valuation method; however, it can be complex because it requires decisions about how to measure "income." The three basic parameters of the income approach method are future income streams, the duration of income streams, and the possible risk or discount rate.<sup>26</sup>

Based on Article 12 paragraph (1) of Government Regulation Number 24 of 2022, there are four methods of assessment or determination of intellectual property value that can be used as collateral, namely: Cost Method This assessment is based on the costs incurred in developing or creating copyrighted works, or the costs required to create or develop similar products or services, without taking into account the economic value of the copyrighted work itself. This principle states that the value of an object or part of intellectual property does not exceed the cost of producing it. In terms of cost components, various elements can be included, such as labor costs, intellectual property protection registration costs, marketing costs, and "soft costs" such as time value.<sup>27</sup>

The market approach method is used to value intellectual property rights or intangible assets by comparing them with recent sales, transfers, and transactions involving similar assets in the same market. The main challenge of the market approach method is the difficulty in analyzing the market value of copyrighted works. This approach has been widely used for tangible assets where established markets have existed for decades, such as real estate, equipment, and raw materials. However, intangible assets, at least to date, have not been traded frequently enough to establish their value exclusively through direct market comparisons. Therefore, analysis and adjustments are almost always necessary. In addition, the transaction value of intangible assets is often confidential.

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<sup>26</sup> Consor.com, "No TitleIP Valuation: What Methods Are Used to Value Intellectual Property and Intangible Assets?"

<sup>27</sup> Better Business Finance, "Valuing Your Intellectual Property.," 2023, [https://betterbusinessfinance.co.uk/images/pdfs/Valuing\\_your\\_Intellectual\\_Property.pdf](https://betterbusinessfinance.co.uk/images/pdfs/Valuing_your_Intellectual_Property.pdf).

The income approach determines economic value based on future income that can or will be generated from intellectual property or intangible assets. This approach is widely used to value intellectual property; however, it can be complex, as it requires determining how to measure "income."<sup>28</sup> Other Assessment Approaches in Accordance with Applicable Assessment Standards In addition, with regard to copyrighted works that can be used as collateral, Article 12 paragraph (3) stipulates that intellectual property appraisers as referred to in paragraph (2) must meet several criteria, including having a public appraisal license issued by the ministry responsible for state financial affairs. They must also have competence in the field of intellectual property valuation and be registered with the ministry responsible for creative economy affairs. Competence in intellectual property valuation is obtained through a certification process carried out in accordance with applicable laws and regulations. The duties of intellectual property appraisers include appraising intellectual property to be used as collateral, conducting market analysis of intellectual property to be used as collateral, and reviewing analysis reports on the use of intellectual property that has been used previously in the industry.

After determining the collateral value based on the approach mentioned above, the mechanism for developing intellectual property as fiduciary collateral involves financial institutions-namely banks-that establish fiduciary collateral agreements. This serves as a legal protection measure to ensure the security of banks, providing certainty that debtors will repay their loans. A fiduciary agreement is not a collateral right that arises automatically under the law, but must be agreed upon in advance between the bank and the debtor.<sup>29</sup> Fiduciary guarantees, as a form of collateral, are a form of credit protection for banks, established based on prior bank credit agreements. Article 1 paragraph 1 of the Fiduciary Guarantee Law states that fiduciary guarantees are the transfer of ownership rights over an object based on trust, with the provision that the object whose ownership rights are transferred remains under the control of the original owner.<sup>30</sup>

Conceptually, fiduciary guarantees are a form of property rights (in rem) that apply after the fiduciary-guaranteed object is registered at the fiduciary registration office. Therefore, if the fiduciary-guaranteed object is not registered, the rights of the recipient arising from the fiduciary agreement are not property rights, but personal rights (in personam). This is where the role of the notary, as a public official, becomes essential in drafting the Fiduciary Guarantee Deed on Intellectual Property Rights. Provisions regarding the proceeds from objects used as fiduciary collateral, the substance of the collateral, the binding, and the registration of rights to collateral in intellectual property rights must be explicitly and clearly regulated in the Fiduciary Guarantee Deed on Intellectual Property Rights. Based on Article 6 of the Fiduciary

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<sup>28</sup> Reni Budi Setianingrum, "Mekanisme Penentuan Nilai Appraisal Dan Pengikatan Hak Cipta Sebagai Objek Jaminan Fidusia," *Jurnal Media Hukum* 23 (2016): 7, <https://doi.org/DOI.10.18196/jmh.v23i2.15735>.

<sup>29</sup> T. Kamelo, *Fiduciary Security Law: A Desired Necessity – Its History, Development, and Implementation in Banking and Court Practice*. (Bandung: Alumni., 2004).

<sup>30</sup> *Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia*, n.d.

Law, the Fiduciary Guarantee Deed as referred to in Article 5 of the Fiduciary Law must contain at least the following matters.<sup>31</sup>

Identity of the Grantor and the Trustee in a Trust Agreement The term “identity” includes full name, religion, place of residence/domicile, place of birth, date of birth, gender, marital status, and occupation. Main Agreement Data A Fiduciary Guarantee Agreement is accessory in nature; therefore, the Fiduciary Guarantee Deed must include the main agreement data, specifically the “type of agreement” and the “debt” being guaranteed. The type of agreement is usually a reciprocal credit agreement or a unilateral agreement such as a deed of acknowledgment of debt. Regarding debt, Article 7 of the Fiduciary Law states that debts secured by fiduciary guarantees may consist of: existing debts, agreed future debts, or debts that can be determined at the time of signing. The Fiduciary Security Deed must include details of the principal agreement, including whether the agreement was made in the form of a notarial deed or a private deed (underhand), as well as the date and number of the principal agreement if it was made in the form of a notarial deed.

### **3.2.2. Description of the Collateral Object**

The requirement listed in point (c) regarding “explanation of collateral” is a logical requirement, because the Trust Law aims to provide legal certainty, in accordance with the specific principles it adheres to. This includes identification of the object and documents proving ownership. In a Fiduciary Security Deed on Intellectual Property Rights, it is mandatory to explain the substance of the encumbrance, the bond, and the registration of rights to security in intellectual property rights. Security Value

The collateral value indicates the level of collateral encumbrance imposed on the collateralized object. This means that the creditor, as the fiduciary recipient, can only collect their receivables up to (at most) the stated collateral value. The requirements for determining the “collateral value” are closely related to the nature of Fiduciary Security Rights as priority rights (*droit de préférence*). The amount of collateral burden is determined based on the stated collateral value, but the priority right is limited to the amount (or remaining balance) of the secured debt. Collateral Object Value This refers to the appraisal value of the collateral object, which is determined based on certain appraisal standards or appraisals conducted by an appraisal team appointed and approved by both parties. The requirement to state the value of the collateral object is a new provision in collateral law. In the case of Mortgages (*Hipotik*), Land Liens (*Hak Tanggungan*), or Pledges (*Gada*), there is no requirement to state the value of the collateral object.

## **4. CONCLUSION**

The regulation of intellectual property rights (IPR), particularly copyright, as fiduciary collateral in Indonesia has been officially recognized through Law No. 28 of 2014 on Copyright, Law No. 42 of 1999 on Fiduciary Collateral, and Government Regulation No. 24 of 2022 on the Creative Economy. These instruments provide a normative basis that allows creative economy actors to use IPR-especially copyright-as collateral for loans to access formal financing.

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<sup>31</sup> J. Satrio, *Law of Security Rights: Fiduciary Security Rights over Property* (Bandung: Citra Aditya Bakti., 2002).

However, despite being legally recognized, its practical implementation is still limited by several systemic challenges. The absence of a standardized assessment framework, uncertainty in ownership verification due to Indonesia's declarative registration system, and the lack of supporting financial regulations—such as Bank Indonesia Regulation No. 14/15/PBI/2012, which has not been updated—significantly limit the adoption of IPR-based financing. In addition, fiduciary guarantees involving IPR require stronger institutional infrastructure, including certified IPR appraisers and clearer enforcement mechanisms in the event of default. Valuation methods such as the income, market, and cost approaches, although recognized, are still lacking in technical implementation in Indonesia. Therefore, for IPR to function effectively as collateral, especially in supporting the creative economy sector, regulatory and institutional improvements are needed. This includes issuing detailed implementing regulations, establishing IPR standards and assessment bodies, improving coordination between legal and financial authorities, and providing legal certainty for the implementation of fiduciary. Without these measures, the transformative potential of IPR as a financeable asset will remain underutilized in Indonesia's economic development.

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