ANALYSIS OF THE ARRANGEMENT OF INTELLECTUAL PROPERTY-BASED FINANCING SCHEMES WITH COPYRIGHT COLLATERAL FOR BANK FINANCIAL INSTITUTIONS

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Abstract
Intellectual property can be used as collateral for credit at banks through Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy with fiduciary institutions. However, the assessment of intellectual property by the Appraisal Panel has not been explicitly regulated and the use of copyright as collateral is not supported by Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Assessment of Commercial Bank Asset Quality. This is different from the United States which benefits from the Uniform Commercial Code (UCC). The aim of this research is to analyze the incompleteness of norms in Intellectual Property Based Financing Schemes with guarantees in the form of copyright. This type of research is normative with a statutory, conceptual and comparative approach. The research results show that copyright meets the requirements as credit collateral. Registration of copyright when pledged and commercialization are necessary to generate economic benefits. The form of copyright can be in the form of fiduciary guarantees for intellectual property and contracts in creative economic activities. The assessment panel provisions require Financial Services Authority Regulations regarding Appraisers in the field of intellectual property as well as the assessment and presentation of assessment reports in the context of intellectual property-based financing. Legal construction is carried out by including intellectual property as a deduction in the PPKA calculation in Article 45, the aim of which is to provide legal certainty for banks so that they comply with the precautionary principle.

Keywords: corporate transformation, legal implications, business practices

1. Introduction

The creative economy represents a transformative shift in the global economic structure,

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where economic growth is transitioning from a reliance on natural resources to a focus on human resources. According to Article 1 point 1 of Law Number 24 of 2019 on Creative Economy (referred to as the «Creative Economy Law»), the Creative Economy is defined as «the realization of added value from intellectual property derived from human creativity, which is based on cultural heritage, science, and/or technology.» This law reflects the increasing recognition of intellectual property (IP) as a valuable asset in the modern economy.

To support the growth of the creative economy, the Indonesian government has taken significant steps to allow IP products, including copyrights, from creative economy actors to be used as collateral for credit in both bank and non-bank financial institutions. This provision is specifically regulated in Government Regulation Number 24 of 2022 on the Implementation of the Creative Economy Law (hereinafter referred to as «PP Creative Economy»). Before the enactment of these regulations, intellectual property, particularly copyright, could already serve as debt collateral through fiduciary arrangements based on Article 16 of Law Number 28 of 2014 on Copyright (hereinafter referred to as the «Copyright Law»), which states that «Copyright can be used as an object of Fiduciary Guarantee.» Fiduciary guarantees themselves are governed by Law Number 42 of 1999 on Fiduciary Guarantee (the «Fiduciary Law»).

Despite these legal provisions, the practical application of intellectual property as collateral remains challenging. The requirements for accessing IP-based financing include having a creative economy business, a proposal for financing, engagement with IP related to creative economy products, and proof of IP registration or certification, as stated in Article 10 of PP Creative Economy. This requirement for IP registration differs from the Copyright Law, which operates on a declarative protection system where copyrights are granted automatically upon the work's creation or publication without needing prior registration, as per Article 64 paragraph (2) of the Copyright Law (Redaksi Harian Aceh Indonesia, 2023). This difference in regulatory approach creates barriers for creative economy actors seeking to use their copyrights as collateral, as the automatic and non-registrational nature of copyright contrasts with the formal requirements set by PP Creative Economy. Additionally, the banking sector has not yet fully integrated or accepted IP-based collateral due to the sector's traditional preference for conventional forms of collateral, such as land, buildings, and other tangible assets.

Article 8 letter c of the PP on Creative Economy requires that bank or non-bank The acceptance of IP-based collateral by financial institutions is further hampered by the fluctuating and volatile nature of IP's economic value, which is influenced by consumer trends and widespread IP violations. As per Article 8(c) of PP Creative Economy, financial institutions are required to conduct an assessment of IP collateral to determine its value. However, the regulations regarding this assessment process, including the roles of IP appraisers and appraisal panels, remain incomplete, contributing to the reluctance of banks to embrace IP as collateral.(CNN Indonesia, 2022).

Moreover, current regulations, such as the Regulation of the Financial Services Authority Number 40/POJK.03/2019 on Asset Quality Assessment of Commercial Banks, have not yet provided sufficient juridical support for the use of IP assets as collateral in banking, leaving financial institutions with limited guidance on managing the risks associated with such collateral. (Tampubolon, 2022). Given these regulatory and practical challenges, there is an urgent need to analyze the legal protection mechanisms available to financial institutions when accepting copyrights as collateral in IP-based financing schemes. This research focuses specifically on copyright as collateral due to its unique characteristics compared to other IP rights, particularly its non-registrational nature that complicates its integration into conventional financing models. Understanding and addressing these challenges is crucial for aligning IP-based collateral with the prudential principles mandated by the Banking Law, which emphasizes economic democracy and the principle of prudence in banking operations.

This research adopts a normative legal research approach, which is primarily aimed at providing juridical arguments regarding the incompleteness of norms, particularly within the Government Regulation on Creative Economy (PP Creative Economy), as it pertains to bank financial institutions receiving collateral in the form of copyrights under intellectual property-based financing schemes (Djulaeka & Rahayu, 2020, p. 20). Normative legal research is fundamentally concerned with examining legal principles, doctrines, and existing regulations to assess their adequacy and propose necessary improvements.

The study analyzes the legal framework established by the Creative Economy Law and its implementing regulations, focusing specifically on the PP Creative Economy. This analysis is contextualized by examining related legal provisions from other statutes, including the Copyright Law, Fiduciary Law, Banking Law, and the principles of prudential banking. The objective is to explore the legal protection available to bank financial institutions accepting IP-based collateral and to provide legal certainty for debtors within the creative economy who seek to obtain credit through these financing schemes.

Simanjuntak in his article entitled Overview of Legal Protection and Franchise Contracts (Rahardjo, 2000, p. 61) defines legal protection as all government efforts to ensure legal certainty and provide protection to its citizens so that their rights as citizens are not violated, and those who violate them will be subject to sanctions in accordance with applicable regulations (JDIH Kabupaten Sukoharjo, 2022).

Legal Norm Analysis: The research systematically examines legal norms found in relevant legislation to identify any gaps, inconsistencies, or ambiguities that affect the implementation of intellectual property-based financing schemes. The analysis focuses on the provisions within the Creative Economy Law and PP Creative Economy, assessing how these regulations interact with other relevant laws such as the Copyright Law, which governs the use of copyrights as collateral, and the Fiduciary Law, which outlines the framework for fiduciary guarantees.

Comparative Legal Analysis: To provide a comprehensive understanding, the research also incorporates a comparative analysis with banking regulations and principles, especially focusing on how other jurisdictions handle IP as collateral. This approach helps identify best practices and offers insights into potential regulatory reforms needed in Indonesia.

Juridical Argumentation: The study employs juridical argumentation to propose solutions to identified regulatory shortcomings. This involves constructing legal arguments based on established principles and precedents to support the need for clearer and more comprehensive regulations that safeguard the interests of financial institutions while also providing accessible credit opportunities for creative economy actors.

Integration with Prudential Banking Principles: The research links the analysis of IP-based collateral with the prudential principles outlined in the Banking Law, emphasizing the importance of aligning credit and guarantee agreements involving IP with the principles of prudence and economic democracy. This ensures that proposed regulatory enhancements do not compromise the stability and integrity of the banking sector.

2. Intellectual Property-Based Financing with Copyright Collateral for Banks under Creative Economy Law

The arrangement of intellectual property-based financing schemes with debt collateral in the form of copyright for bank financial institutions, as regulated by the Creative Economy Law and its implementing regulations, represents a critical shift towards recognizing intellectual property (IP) as valuable collateral in the creative economy sector. The creative economy is a transformative force that has redefined the global economic structure, shifting from traditional natural resource-based growth to a human resource-based model centered on creativity and intellectual capital (Howkins, 2001, p. 1) According to Article 1 point 1 of the Creative Economy Law, the creative economy is defined as «the realization of added value from intellectual property sourced from human creativity based on cultural heritage, science, and/or technology.» This definition underscores the importance of creativity, which, as described by Christ Bilton, involves

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two key aspects: (1) the introduction of new or different perspectives that deviate from conventional tools and methods, and (2) the necessity for individuals to have the freedom to express their talents and vision, contributing both management and psychological benefits to society (Galloway & Dunlop, 2007, p. 21).

The creative economy focuses on the creation of goods and services by relying on skills, talents, and creativity as intellectual capital (United Nation Conference on Trade and Development (UNCTAD), 2022) Generally, the characteristics of creative economy products are goods and services produced from intellectual activities that have creative value and have economic value (economic value/economic viability) and also a clear market share. The creative economy emphasizes the production of goods and services that are derived from intellectual activities, skills, and talents, forming the basis of intellectual capital (UNCTAD, 2022). These products typically have distinctive characteristics, including creative and economic value, as well as identifiable market share potential. The legal framework supporting the creative economy, particularly as outlined in the Creative Economy Law, aims to maximize the potential of creative economy actors, protect their creative endeavors, and elevate the creative economy's role in national development planning. despite the strategic importance of the creative economy, its development has been hindered by significant obstacles, particularly in accessing financial resources from banking institutions. One of the primary challenges is the lack of comprehensive and practical regulations that specifically address the use of intellectual property as collateral in lending. Although the Creative Economy Law and its implementing regulations provide a foundation, they fall short of offering clear guidelines and protections for financial institutions when accepting IP as collateral, especially copyrights.

Copyright is an exclusive right held by the creator or copyright holder over their intellectual work, including the right to reproduce, publish, and authorize the use of the work. In Indonesia, copyright is recognized as a form of property right protected by law, specifically under Law Number 28 of 2014 concerning Copyright. Within the legal context of property rights, copyright is classified as intangible property, which provides economic value and ownership rights to its holder (Darusman, 2016, p. 204) The protection of copyright is intended to encourage creativity and innovation, as well as to provide legal certainty for copyright holders in managing and utilizing their works.

Copyright as intangible property possesses characteristics that distinguish it from tangible properties, such as land or buildings. Copyright does not have a physical form but grants economic and moral rights to the holder for the use and exploitation of the work. Unlike tangible properties, which have a visible and touchable form with clear physical boundaries, such as land or buildings, copyright exists as an idea, expression, or creative result that is valued primarily for its economic and social benefits (Nainggolan & SH, 2023, p. 12) The intangible nature of copyright makes it more susceptible to infringement due to the ease of unauthorized duplication and distribution. However, as an intangible property, copyright still holds significant economic value and can be used as collateral or in other commercial transactions.

In Indonesia, copyright protection is comprehensively regulated under Law Number 28 of 2014 concerning Copyright. This law grants exclusive rights to creators or copyright holders over their intellectual works, including the rights to publish, reproduce, and authorize the use of their works. These rights encompass economic rights, which allow copyright holders to derive financial benefits from their works, as well as moral rights, which protect the integrity and reputation of the creator as the original owner of the work (Nugroho & Utama, 2020, p. 11). The law also provides legal protection against copyright infringement by imposing criminal and civil sanctions on violators. This protection aims to encourage innovation and creativity by providing legal certainty for creators and copyright holders.

Copyright can be used as collateral in the context of security law in Indonesia, particularly through fiduciary arrangements. Under Law Number 28 of 2014 concerning Copyright, it is stipulated that copyright can be used as an object of fiduciary guarantee, a type of security interest that provides priority rights to the creditor without transferring physical possession from the debtor to the creditor. The more detailed regulations on fiduciary are outlined in Law Number 42 of 1999 concerning Fiduciary Guarantee, which allows intangible property rights, such as copyright, to be used as collateral in credit agreements (Fadli et al., 2023, p. 482) The use of copyright as collateral opens opportunities for creative economy actors to access financing without resorting to tangible assets like land or buildings. However, the success of using copyright as fiduciary collateral also depends on the economic valuation of the copyright, often requiring an independent appraiser to objectively assess its economic value.

The use of copyright as collateral in banking or financing transactions faces several significant legal and practical challenges. First, one of the main challenges is the uncertainty in valuing the economic value of copyright. Copyright value is often volatile and difficult to predict due to factors such as market trends, the age of the work, and demand levels (Crews, 2020, p. 12). Second, the lack of understanding and readiness of financial institutions towards intangible assets like copyright often results in low acceptance of copyright as collateral. Additionally, existing regulations do not fully provide clear guidelines on procedures and legal protections in the execution of copyright collateral, which can increase risks for creditors. Third, the enforcement process against copyright infringement is often time-consuming and costly, making copyright less attractive as collateral compared to traditional security interests.

In the context of Indonesian law, copyright is recognized as a form of intangible property that grants exclusive rights to its creator over their intellectual creations. The principles of property law applied to copyright include the recognition of the economic value inherent in the work, where the copyright holder has the right to commercially exploit the work, such as through licensing, sale, or use as fiduciary collateral (Fitzpatrick & Compton, 2021, p. 23) The transfer of copyright can occur in various ways, including sale or licensing, allowing copyright to be a subject of business transactions. In the context of security law, copyright can be used as fiduciary collateral, where ownership rights remain with the copyright holder, but temporary control rights are granted to the creditor as security for debt repayment. This principle ensures that even when copyright is used as collateral, the copyright holder can continue to economically benefit from their work, as long as it does not violate the fiduciary agreement.

In security law, the use of copyright as fiduciary collateral provides flexibility for copyright owners to continue benefiting from their works. Fiduciary security allows ownership to remain with the copyright holder, while temporary control rights are granted to the creditor as security for debt repayment. This contrasts with traditional securities, such as land or vehicles, where physical control is often transferred to the creditor. With copyright, the transfer is temporary and limited only to the right to secure, not to alter or exploit the work without the permission of the copyright holder.

The transfer of copyright in the context of fiduciary security also introduces the concept of economic valuation of the work. This valuation is crucial because the value of copyright depends significantly on the popularity of the work, its age, and market demand. Therefore, the assessment of copyright as collateral often requires an independent third party to ensure that the set value is objective and reflects the actual market value. This is regulated within fiduciary regulations in Indonesia, which require the registration of fiduciary agreements with the Fiduciary Registration Office to ensure legal certainty over the given collateral.

Additionally, in the context of transfer of rights, licensing becomes an essential instrument for copyright holders. Licensing allows the owner to maintain copyright ownership while granting others the right to use the work for a specified period and purpose. This is one way in which copyright can generate sustainable income for its creator while still allowing the work to serve as fiduciary collateral without losing its fundamental rights.

However, the use of copyright as fiduciary collateral faces challenges. One major obstacle is the lack of understanding and acceptance by financial institutions of intangible assets like copyright. This often makes copyright less attractive as collateral compared to tangible assets such as real estate or vehicles. Therefore, education and capacity building of financial institutions are needed to better understand the economic

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potential of copyright as collateral. The main principle in security law is the protection of the rights of both creditors and copyright holders. Even when copyright is used as collateral, creditors do not have the right to exploit the work unless specifically agreed upon in the fiduciary agreement. Copyright holders retain the right to use and profit from their work as long as they fulfill their obligations to the creditor. This shows that fiduciary law in Indonesia strives to balance the protection of the economic rights of copyright holders with the interests of creditors providing financing.

3. The Use of Copyright as a Collateral Object in Intellectual Property-Based Financing

Copyright can be considered as collateral in intellectual property-based financing because it holds significant economic value. As a form of intellectual property, copyright grants its holder exclusive rights to commercially exploit the work, such as through sales, licensing, and distribution, all of which have the potential to generate sustainable income (Nguyen et al., 2020, p. 8830) In the context of financing, using copyright as collateral allows creative economy actors to access capital without resorting to tangible assets like property or vehicles. This offers a flexible alternative for creators and copyright holders, particularly in the creative industry where their primary assets are often intangible intellectual works. Additionally, the use of copyright as collateral reflects a broader recognition of the economic potential of intellectual property, which can drive innovation and economic growth in the creative sector.

The use of copyright as collateral provides various benefits for both copyright holders and financial institutions. For copyright holders, one of the primary advantages is improved access to financing. By using copyright as collateral, holders can secure capital without having to sacrifice physical assets or other properties that may not be available or needed for their business operations. This is particularly relevant for creative economy actors, whose most valuable assets are often intangible intellectual works (Haryono & Nugroho, 2023). Moreover, using copyright as collateral encourages asset diversification, allowing holders to optimize the economic value of their intellectual property while maintaining ownership and control over their work.

For financial institutions, accepting copyright as collateral opens opportunities to reach new market segments previously underserved, such as the creative and technology industries. It also allows financial institutions to expand their collateral portfolio beyond traditional assets like land and buildings, thus reducing portfolio concentration risk (Upadhyay, 2024, p. 12). Additionally, with professional valuation of copyrights, financial institutions can obtain more accurate information regarding the value of these intangible assets, which can be leveraged in financing decisions. The use of copyright as collateral also reflects the commitment of financial institutions to support innovation and growth in the creative economy sector.

Valuing copyright as collateral faces several significant challenges, particularly related to value uncertainty, market volatility, and difficulties in determining the appropriate collateral value. First, the value of copyright is often subjective and dependent on various factors, such as the popularity of the work, its age, demand level, and constantly changing industry trends (Haspada, 2024, p. 1037). These factors can lead to sharp fluctuations in value, posing risks for financial institutions that accept copyright as collateral. Additionally, there is no uniform standard for valuing copyrights, making the valuation process complex and sometimes inconsistent.

Market volatility is another major challenge. Copyrights are highly influenced by shifts in consumer trends, technological innovations, and intense market competition. For example, a work that is highly popular today may lose its value within a few years if trends change or if widespread copyright infringement occurs. This makes the value of copyrights unstable and difficult to predict, posing a major challenge in their use as collateral (Parr, 2018, p. 21). Furthermore, the difficulty in determining collateral value is compounded by the lack of professional appraisers with specialized expertise in valuing intangible assets like copyrights. This often results in significant discrepancies in value estimates, which can affect financing decisions.

In Indonesia, the use of copyright as collateral is supported by key regulations, including Law Number 28 of 2014 concerning Copyright and Law Number 42 of 1999 concerning Fiduciary Guarantee. The Copyright Law states that copyright can be used as a collateral object, allowing rights holders to leverage the economic value of their works as a financing tool. Meanwhile, the Fiduciary Law provides the legal framework for the use of intangible assets, including copyrights, as collateral. Through the fiduciary mechanism, ownership of the copyright remains with the rights holder, but temporary control rights can be granted to the creditor as security for debt (Mashdurohatun et al., 2023, p. 43)

In practice, to legitimize copyright as fiduciary collateral, the fiduciary agreement must be registered with the Fiduciary Registration Office to have binding legal force and provide protection to creditors. This process ensures that creditors have priority in the event of debtor default. Although these regulations provide a legal basis for the use of copyright as collateral, challenges remain, particularly regarding valuation and enforcement of creditor rights in cases of fiduciary breach. Therefore, there is a need for further development in regulatory and implementation aspects to enhance the acceptance and recognition of copyright as collateral within the financial system.

Empirical studies and real-world cases demonstrate the application of copyright as collateral, highlighting both opportunities and challenges in its implementation. One notable example is the case of music copyrights being used as collateral in the United States, where artists and music publishers have secured loans by pledging their music catalogs. This approach was successfully used by David Bowie in the 1990s when he issued «Bowie Bonds,» a type of asset-backed security collateralized by future royalties from his music. This innovative financial strategy allowed Bowie to raise $55 million without selling his copyrights, showcasing the potential of intellectual property as a financial asset (Singh, n.d., p. 175). Similar strategies have been employed in Indonesia, albeit on a smaller scale, where creative entrepreneurs have used their copyrighted works, such as films and literary works, as collateral to secure funding for future projects.

The economic impact of using copyrights as collateral is significant, with the potential to stimulate the growth of the creative economy by providing greater access to financing for creative entrepreneurs. By unlocking the economic value of intangible assets, such as copyrights, businesses can secure necessary funding without traditional physical collateral, which is often out of reach for many in the creative industries. This democratization of access to capital can empower creators to invest in new projects, scale their businesses, and generate more revenue, thus contributing to broader economic growth (Bae & Yoo, 2015, p. 102). Moreover, the ability to use copyrights as collateral can drive innovation by encouraging creators to produce new works, knowing that their intellectual property holds tangible financial value. This can lead to increased investment in creative sectors such as music, film, literature, and software development.

4. Analysis of Norm Incompleteness in Intellectual Property-Based Financing Schemes

Norm incompleteness refers to the gaps, ambiguities, or inadequacies in legal regulations that fail to comprehensively address specific situations, leaving stakeholders without clear guidance. In the context of intellectual property (IP)-based financing, norm incompleteness significantly impacts the effectiveness and reliability of using IP assets, such as copyrights, patents, and trademarks, as collateral in financial transactions. These gaps create uncertainty for both financial institutions and IP holders, hindering the broader adoption of IP-based financing schemes. Without clear regulations on the valuation, registration, and enforcement of IP collateral, financial institutions may be reluctant to accept these assets due to perceived risks, such as unpredictable market value and difficulty in securing creditor rights (Ghosh & Calboli, 2018, p. 221)

This regulatory shortfall affects the availability of credit for creative economy actors who often rely on intangible assets as their primary source of value. The lack of comprehensive norms leaves critical aspects such as IP valuation standards, fiduciary registration procedures, and enforcement mechanisms underdeveloped or inconsistent.

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As a result, IP holders face challenges in leveraging their assets to access capital, and financial institutions face increased legal and financial risks, limiting the potential for IP-based financing to drive innovation and economic growth (Rahmah, 2017, p. 91). Addressing norm incompleteness is crucial for creating a more robust legal framework that supports the integration of intellectual property into mainstream financial systems.

Incomplete regulations concerning the use of intellectual property (IP) as collateral present significant challenges, particularly in areas such as valuation standards, legal recognition, and technical guidelines. One of the critical gaps is the absence of standardized valuation methods for IP assets, which leads to inconsistent and unreliable assessments of collateral value. Without clear guidelines, financial institutions struggle to determine the accurate market value of IP, leading to a lack of confidence in accepting these assets as security for loans. Additionally, legal recognition of IP as a viable form of collateral is often limited or ambiguous, with many jurisdictions lacking clear legal provisions that define the enforceability of IP-based collateral agreements. This uncertainty can discourage lenders from engaging in IP-based financing due to the perceived legal and financial risks.

Furthermore, technical guidelines for registering and perfecting security interests in IP are often underdeveloped. For example, the lack of clear procedures for registering IP collateral in fiduciary registries or equivalent systems complicates the process of securing creditor rights. This regulatory ambiguity undermines the protection of lenders in the event of borrower default, making IP assets less attractive compared to traditional forms of collateral such as real estate or machinery. These regulatory shortcomings highlight the need for comprehensive reforms to establish clear, consistent, and enforceable norms that can support the growth of IP-based financing.

The incompleteness of regulations in IP-based financing schemes adversely affects both financial institutions and rights holders. For financial institutions, the lack of clear guidelines creates uncertainty and increases perceived risks, making them hesitant to accept IP as collateral. Without standardized valuation methods and legal recognition, banks and other lenders face challenges in assessing the creditworthiness of borrowers who offer IP as security. This uncertainty often results in higher transaction costs, increased due diligence requirements, and a reluctance to offer favorable loan terms, ultimately limiting access to finance for creative economy actors.

For rights holders, the incomplete regulatory framework restricts their ability to leverage IP assets to access financing. Many creators, artists, and inventors, whose primary assets are intangible, find themselves excluded from traditional financial markets due to the perceived high-risk nature of their collateral. This exclusion can stifle innovation and growth, as the lack of access to capital constrains their ability to invest in new projects, expand their businesses, and compete effectively. Furthermore, the absence of clear legal protections for IP collateral exposes rights holders to additional risks, including the possibility of losing control over their assets in poorly structured agreements

A notable example of norm incompleteness affecting IP-based financing in Indonesia can be seen in the limited application of copyrights as collateral in the banking sector. Despite regulatory frameworks such as the Copyright Law and Fiduciary Law, financial institutions remain hesitant to accept copyrights due to unclear valuation methods and enforcement mechanisms.

One high-profile case involved a local film producer who attempted to secure financing using his copyrighted films as collateral. The bank's refusal, citing concerns over the fluctuating value of the films and potential legal disputes over ownership rights, highlighted the regulatory gaps and the lack of clarity on how such assets should be valued and secured. This case illustrates the broader challenges faced by creative economy actors in Indonesia, where the regulatory framework does not yet fully support the use of IP as a reliable form of collateral, thereby limiting their access to necessary capital.

Several countries have taken proactive steps to address norm incompleteness in their regulations concerning the use of intellectual property (IP) as collateral, providing valuable lessons that can be compared to the situation in Indonesia. For instance, the United States has developed a relatively robust legal framework for IP collateralization, particularly through the Uniform Commercial Code (UCC). The UCC provides clear guidelines for the registration, valuation, and enforcement of security interests in IP, making it easier for financial institutions to accept IP as collateral. The presence of standardized valuation practices and established legal precedents enhances the confidence of lenders, reducing the perceived risks associated with IP-based financing (Lemley, 1999, p. 111)

In contrast, the European Union has also advanced IP collateral regulations, emphasizing harmonization across member states. The European Intellectual Property Office (EUIPO) has developed specific guidelines for valuing IP assets and assessing their viability as collateral. These efforts aim to standardize the process and mitigate the risks associated with divergent national regulations. The EU's approach demonstrates the importance of creating a consistent legal environment that facilitates cross-border IP transactions, which is crucial for fostering a thriving creative economy (Gill & Heller, 2024, p. 107169)

Compared to these jurisdictions, Indonesia's regulatory framework remains underdeveloped and lacks the specificity needed to support IP as collateral effectively. While Indonesia has enacted laws such as the Copyright Law and Fiduciary Law, these regulations fall short of providing clear procedures for IP valuation, registration, and enforcement. The absence of standardized guidelines and the lack of specialized institutions for IP appraisal create significant barriers for IP holders seeking to leverage their assets. This comparison highlights the urgent need for Indonesia to refine its legal framework to align with international best practices, thereby enhancing the utility of IP as a financial tool (Umamaheswari & Prabu, 2023)

The current regulatory framework in Indonesia exhibits significant shortcomings in adequately supporting the use of intellectual property as collateral, necessitating a thorough legal reform. One of the critical missing elements is the lack of standardized valuation protocols for IP assets, which creates inconsistencies and uncertainty in the lending process. Without clear criteria for determining the economic value of IP, lenders face substantial risks, as the value of these assets can be highly volatile and subjective. This absence of standardized valuation methods not only undermines the confidence of financial institutions but also limits the ability of IP holders to leverage their assets effectively.

Furthermore, Indonesia's current regulations do not adequately address the registration and enforcement of IP collateral. While fiduciary agreements can theoretically cover IP assets, the lack of specific procedures for registering these agreements and protecting creditor rights in the event of default creates legal ambiguities. The existing system also lacks robust enforcement mechanisms to protect creditors' interests, making it difficult for financial institutions to recover value from IP collateral in case of borrower insolvency. These gaps in the regulatory framework hinder the broader adoption of IP-based financing and limit the economic potential of the creative economy.

To address these issues, legal reforms should focus on establishing clear guidelines for the valuation, registration, and enforcement of IP collateral. This could involve developing a centralized IP valuation and registration system, similar to those in more developed markets, which would provide transparency and consistency. Additionally, reforms should include the creation of legal standards for the appraisal of IP, possibly through the establishment of accredited IP appraisers who specialize in assessing the value of intangible assets. Enhancing enforcement mechanisms, such as providing clearer pathways for the recovery of collateralized IP assets, would further strengthen the regulatory environment, thereby encouraging financial institutions to engage more confidently in IP-based lending.

5. Conclusions

The analysis of norm incompleteness in intellectual property (IP)-based financing schemes highlights significant regulatory gaps that hinder the broader adoption of IP as collateral in Indonesia. The absence of standardized valuation methods, ambiguous legal recognition, and insufficient guidelines for the registration and enforcement of IP collateral create substantial barriers for both financial institutions and IP holders. Compared to international practices in countries like the United States and the European Union, Indonesia's regulatory framework lacks the specificity and robustness needed to support IP-based financing effectively. This regulatory shortfall limits access to capital for creative economy actors and reduces the willingness of financial institutions to engage in IP-backed lending due to perceived risks and uncertainties.

The impact of these incomplete norms is far-reaching, affecting the financial viability of creative businesses and constraining the growth of Indonesia's creative economy. Without clear and consistent legal standards, IP assets remain underutilized as financial tools, stifling innovation and economic potential. Empirical cases in Indonesia illustrate the practical challenges faced by IP holders, including difficulties in valuation, registration, and securing creditor rights, which further exacerbate the reluctance of lenders to accept IP as collateral.

To address these issues, comprehensive legal reform is essential. This should include the development of standardized valuation protocols, clear registration procedures, and enhanced enforcement mechanisms to protect both creditors and rights holders. Establishing accredited IP appraisers and a centralized IP registry could provide the consistency and transparency needed to build confidence in the use of IP as collateral. By aligning its regulatory framework with international best practices, Indonesia can unlock the economic potential of its creative industries, facilitate greater access to finance, and foster a more dynamic and innovative economy. In conclusion, addressing the current regulatory gaps through targeted reforms will be crucial in transforming IP assets into viable financial instruments, supporting the growth of the creative sector, and enhancing the overall economic landscape in Indonesia.

References

Bae, S. H., & Yoo, K. (2015). Economic modeling of innovation in the creative industries and its implications. *Technological Forecasting and Social Change, 96*, 101–110. https://doi.org/10.1016/j.techfore.2015.02.010

CNN Indonesia. (2022). BCA Kaji Sertifikat HAKI Jadi Tambahan Jaminan *Kredit. ekonomi.* https://www.cnnindonesia.com/ekonomi/20220727193502-78-827057/bca-kaji-sertifikat-haki-jadi-tambahan-jaminan-kredit

Crews, K. D. (2020). *Copyright law for librarians and educators: Creative strategies and practical solutions.* American Library Association.

Darusman, Y. M. (2016). Kedudukan Serta Perlindungan Hukum Bagi Pemegang Hak Paten dalam Kerangka Hukum Nasional Indonesia dan Hukum Internasional. *Yustisia Jurnal Hukum, 5*(1). https://doi.org/10.20961/yustisia.v5i1.8732

Djulaeka, D., & Rahayu, D. (2020). *Buku Ajar: Metode Penelitian Hukum*. Scopindo Media Pustaka.

Fadli, M. A., Muhammad Pravest Hamidi, Farhan Azzahra Edwin, & Rayyan Gustio Kevin Aritonang. (2023). Let's Play Content as a Fiduciary Collateral under Indonesian Law: Potential Challenges. *Yuridika, 38*(3), 481–498. https://doi.org/10.20473/ydk.v38i3.44756

Fitzpatrick, D., & Compton, C. (2021). *Law, Property and Disasters: Adaptive Perspectives from the Global South.* Routledge.

Galloway, S., & Dunlop, S. (2007). A Critique of Definitions of the Cultural and Creative Industries in Public Policy. *International Journal of Cultural Policy, 13*(1), 17–31. https://doi.org/10.1080/10286630701201657

Ghosh, S., & Calboli, I. (2018). *Exhausting intellectual property rights: A comparative law and policy analysis.* Cambridge University Press.

Gill, A., & Heller, D. (2024). Leveraging intellectual property: The value of harmonized enforcement regimes. *Journal of Banking & Finance, 163*, 107169.

Haspada, D. (2024). Digital Tranformation and Copyright As Fiduciary Security: Legal Economic and Technological Perspective. J*ournal of Social and Economics Research, 6*(1), 1037–1054.

Howkins, J. (2001). T*he Creative Economy: How People Make Money from Ideas. Allen Lane.*

JDIH Kabupaten Sukoharjo. (2022). Pengertian Perlindungan Hukum dan Cara Memperolehnya. https://jdih.sukoharjokab.go.id/berita/detail/pengertian-perlindungan-hukum-dan-cara-memperolehnya

Lemley, M. A. (1999). Beyond preemption: The law and policy of intellectual property licensing. *Cal L. Rev., 87*, 111.

Mashdurohatun, A., Gunarto, H., & Susilo, A. B. (2023). Assessment of Intellectual Property Rights as Credit Collateral. In M. Umiyati, I. N. P. Budiartha, A. Saptomo, P. Verhezen, S. H. Idris, C. A. Soares, E. Lisdiyono, F. Santiago, E. Pratomo, A. Sudiro, & A. F. Susanto (Eds.), *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)* (219–226). Atlantis Press SARL. https://doi.org/10.2991/978-2-38476-180-7_24

Nainggolan, D. B., & SH, M. (2023). *Pemberdayaan Hukum Hak Cipta dan Lembaga Manajemen Kolektif.* Penerbit Alumni.

Nguyen, N. P. T., Hoang, T. D., Tran, V. T., Vu, C. T., Siewe Fodjo, J. N., Colebunders, R., Dunne, M. P., & Vo, T. V. (2020). Preventive behavior of Vietnamese people in response to the COVID-19 pandemic. *PloS One, 15*(9), article number e0238830.

Nugroho, B. S. F., & Utama, M. A. R. (2020). Legal Protection of Copyright in the Globalization Era: A Comparison of Indonesia and China. *Journal of Law and Legal Reform, 1*(4). https://doi.org/10.15294/jllr.v1i4.39424

Parr, R. L. (2018). *Intellectual property: Valuation, exploitation, and infringement damages.* John Wiley & Sons.

Rahardjo, S. (2000). *Ilmu hukum.* Citra Aditya Bakti.

Rahmah, M. (2017). Promoting intellectual property securitization for financing creative industry in Indonesia: Challenges and solutions. Journal of Intellectual Property Rights, 22(2), 90–103.

Redaksi Harian Aceh Indonesia. (2023). HKI Masih Sulit Jadi Agunan Perbankan. https://www.harianaceh.co.id/2023/03/21/hki-masih-sulit-jadi-agunan-perbankan/

Singh, R. (2022). IP Financing: Intellectual Property Used as Security to Raise Funds. In *Intellectual Property Rights and Competition Law in India* (pp. 174–192). Routledge.

Tampubolon, S. (2022). *Kekayaan Intelektual sebagai Jaminan* Utang. kompas.id. https://www.kompas.id/baca/opini/2022/08/03/kekayaan-intelektual-sebagai-jaminan-utang

Umamaheswari, A., & Prabu, S. L. (2023). Intellectual Property-Global Perspective Advances and Challenges. G*lobal Perspective Advances and Challenges, 5*, 12-25.

United Nation Conference on Trade and Development (UNCTAD). (2022, October 7). Creative economy offers countries path to development, says new UNCTAD report | UNCTAD. https://unctad.org/news/creative-economy-offers-countries-path-development-says-new-unctad-report

Upadhyay, D. (2024). Unleashing India's inventive capital: Intellectual property as loan collateral. *Law and Financial Markets Review*, 1–13. https://doi.org/10.1080/17521440.2024.2372099