

The Idea of Trademark Rights Valuation as Collaterals: A Financing Solution for Creative Economy Actors

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Abstract

The renewal of intellectual property-based financing schemes represents a groundbreaking solution to help creative economy actors secure loans using their creative assets. This breakthrough has the potential to foster creativity and improve the welfare of these actors. However, the implementation of trademark rights, especially as collateral, is still hampered by the valuation of the trademark rights themselves, what are the challenges of binding trademark rights as collateral and the idea of trademark rights valuation as a financing solution for creative economy actors. The research method used is normative juridical supported by empirical data with a statutory approach, analytical approach, conceptual approach and comparative approach as well as primary, secondary and tertiary legal materials which are analyzed descriptively qualitatively. The research results show, challenges such as difficulties in determining the value of trademark rights, high fluctuations in their value, rampant piracy, and general business risks have led to intellectual property-based businesses being viewed as high-risk ventures. The difficulty in valuing trademark rights, along with their volatility, results in low acceptance of intellectual property-based collateral by financial institutions. Despite this, intellectual property development, which translates creative ideas into viable businesses, requires facilities and support, including financing for the transformation of valuable creative economy concepts. Progress can be made by strengthening technical arrangements, standardizing mechanisms for intellectual property-based financing, establishing valuation procedures for securing trademark rights as collateral, creating appraiser institutions, developing secondary markets, and providing incentives and assistance. These steps will accelerate the implementation of trademark-based financing, ultimately enabling creative economy actors to access capital with legal certainty

1. INTRODUCTION

The legal system governing intellectual property in any country, including Indonesia, is significantly influenced by international law and the legal frameworks of other nations. This influence is undeniable, as the international legal system regulating intellectual property emerged earlier and has evolved more dynamically and progressively compared to national laws. The development of intellectual property in Indonesia impacts economic growth as part of national development, aiming to achieve a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This is pursued by maintaining and ensuring sustainable development.¹

Advancements in science and technology necessitate normative support to enable these developments to serve as tools for enhancing the creative economy. Consequently, intellectual property owners require adequate legal protection to encourage the creation of original works.² Intellectual property rights have become a crucial focus area, as intellectual works contribute significantly to societal progress, including economic advancement.³ The rapid growth of information and telecommunications technology in this era of globalization has further propelled the globalization of intellectual property.

Realizing, developing, and optimizing intellectual property as a creative idea inevitably requires capital, which is closely tied to loan distributions by financial institutions, both banks and non-bank entities.⁴ Creative economy actors rely on capital to scale their businesses to an industrial level. Indonesia's economic development, as part of national development, strives to achieve a just and prosperous society rooted in Pancasila and the 1945 Constitution. To sustain development, both governmental and non-governmental actors-whether individuals or legal entities-require substantial funds. With the increasing pace of development activities, the need for funding has grown, and a portion of these financial requirements is met through borrowing.⁵

According to Ranti Fauza Mayana, the distribution of loans by financial institutions, particularly banks, remains hindered by issues such as the availability of collateral. In practice, creditors tend to favor conventional forms of collateral, including land, buildings, vehicles, inventory, and receivables. This situation is highly disadvantageous for the creative economy sector, where capital is predominantly intellectual in nature.⁶ Although the Copyright Law and the Patent Law explicitly legitimize intellectual property as fiduciary collateral, they remain regulatory in nature and require more detailed support through implementing regulations.

The government has enacted Law Number 24 of 2019 concerning the Creative Economy. Article 16, paragraph (1) of this law mandates the government to facilitate intellectual property-based financing for creative economy actors. This legislation has been reinforced by Government Regulation Number 24 of 2022, which serves as the implementing regulation for the Creative Economy Law. This regulatory framework represents an effort to advance legal development in the creative economy, collateral law, and intellectual property

- 1 Nurwati Nur, Adi Sulistiyono, and Martin Roestamy, "Model Pengembangan Jaminan Fidusia Bagi Pemilik Hak Cipta Karya Musik Dan Lagu Sebagai Objek Jaminan Untuk Mendapatkan Kredit Perbankan Di Indonesia," *Jurnal Sosial Humaniora* 11, no. 2 (2020): 190–202.
- 2 Sudjana Sudjana, "Progresivitas Pelindungan Terhadap Pencipta Dalam Mendorong Ekonomi Kreatif Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 183–200.
- 3 Sri Handayani; Joni Emirzon; Annalisa Yahanan, "Lembaga Manajemen Kolektif Nasional (LMKN) Sebagai Penilai Nilai Ekonomi Dalam Pengikatan Hak Cipta Musik Dan Lagu Sebagai Objek Jaminan Fidusia," *Jurnal Ilmiah Kebijakan Hukum*, no. Vol 17, No 1 (2023): March Edition (2023): 13–24, https://ejournal.balitbangham.go.id/index.php/kebijakan/article/view/3182/pdf_1.
- 4 Hilda Fachrizah et al., "Financing Creative Industries in Indonesia," in *Creative Economy 2030: Imagining and Delivering a Robust, Creative, Inclusive, and Sustainable Recovery* (Tokyo: Asian Development Bank Institute, 2022): 304–18.
- 5 "Undang-Undang Nomor 42 Tahun 1999 Tentang Fidusia" (1999).
- 6 Ranti Fauza Mayana; Ahmad M Ramli, and Tisni Santika, "Dysfunctional Regulations and Ineffective Implementation of Intellectual Property Rights-Based Banking Collateral: A Critical Analytical Study," *NTUT Journal of Intellectual Property Law and Management* 58 (2020).

law, fostering inclusive and sustainable growth within Indonesia's creative economy. Furthermore, these regulations form a cornerstone in accelerating national economic recovery. While this legislation recognizes intellectual property as collateral, it does not automatically render intellectual property-particularly trademark rights-bankable as fiduciary objects for loans. A primary obstacle is the lack of instruments to assess the value of trademark rights intended for use as collateral. Additionally, there is no institution designated to appraise intellectual property, nor is there a mechanism in place to secure intellectual property-especially trademark rights certificates-when used as loan collateral.

The challenge of utilizing intellectual property, especially trademark rights, as a viable alternative to traditional collateral for financial institution loans primarily revolves around valuation. Binding trademark rights as collateral objects is an innovative step in the world of finance, especially to facilitate access to financing for business actors, especially creative economy players. However, its implementation is still faced with various challenges, one of which is the gap between valuation ideas and practices. Valuation gaps can hinder access to financing for creative economy actors who want to use trademark rights as collateral. Efforts to establish intellectual property rights, including trademark rights, as alternative loan collateral in Indonesia require focused government attention. This includes creating regulations that accommodate the valuation of intellectual property rights. Moreover, the government must empower Indonesia's Financial Services Authority (OJK) to appoint public appraisers and define the loan ranges applicable to intellectual property-based collateral, particularly trademark rights. By doing so, OJK will be able to take on a more clearly defined role in formulating the necessary regulations.

In order to conduct research on the idea of valuing trademark rights as a guarantee for creative economy actors, researchers have at least conducted a literature review of previous research. **First**, research by Muhammad Rizki Asmar Fauzan, Ambar Budhisulistiyawati with the title Implementation of Brand Rights as Collateral in banking credit⁷. This research concludes that trademark rights should be used as collateral, considering that brand rights meet the criteria of being an intangible movable object. However, obstacles arise in its implementation related to the valuation of intellectual property rights. As a result, the banking sector experiences difficulties in accepting trademark rights as collateral objects in credit transactions. **Second**, research by Yolanda Eronisa et al with the title Criteria and Implementation of Trademark Rights as Objects of Credit Guarantee.⁸ This research concludes that trademark rights are intangible movable objects that can be used as collateral if they can be traded and have economic value. The establishment of Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy as a supporter of economic activities, allows brands as intellectual property rights to be used as objects of credit collateral for bank and/non-bank financial institutions in the form of fiduciary guarantees. **Third**, research by Alya Nuzulul Qurniasari, Budi Santoso with the title Intellectual Property as a Business Asset and Banking Credit Guarantee in the Creative Economy Era⁹. This research concludes that banking institutions in general legally know and understand that Intellectual Property, especially trademarks, can be used as fiduciary collateral. This is regulated in Intellectual Property legislation. However, in practice, banking institutions rarely use Intellectual Property as fiduciary collateral in Indonesia because they are constrained by the valuation or assessment of trademark rights. **Fourth**, research by I Gede Agus Kurniawan with the title Brand Valuation as Banking Credit Guarantee: Relevance in the Establishment of an Intellectual Property Appraisal Institution.¹⁰ This research concludes that Indonesia needs synergy in the security law system in Indonesia, especially the regulation of intellectual property valuation, including the urgency of establishing an institution that handles the valuation of movable objects in the form of intellectual property. With the results of

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- 7 Muhammad Rizki Asmar Fauzan and Ambar Budhisulistiyawati, "Implementasi Hak Atas Merek Sebagai Agunan Dalam Kredit Di Perbankan," *Jurnal Privat Law* 10, no. 2 (2022): 322–31.
 - 8 Yolanda Eronisa Siahaya et al., "Kriteria Dan Pelaksanaan Hak Merek Sebagai Objek Jaminan Kredit," *Tanjungpura Law Journal* 8, no. 1 (n.d.): 101–16.
 - 9 Alya Nuzulul Qurniasari and Budi Santoso, "Kekayaan Intelektual Sebagai Aset Bisnis Dan Jaminan Kredit Perbankan Di Era Ekonomi Kreatif," *Notarius* 16, no. 3 (2023): 1376–91.
 - 10 I Gede Agus Kurniawan and Gede Agus, "Valuasi Merek Sebagai Jaminan Kredit Perbankan: Relevansi Dalam Pembentukan Lembaga Penilai Kekayaan Intelektual," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 4 (2020): 767.

the valuation of trademark rights in terms of methods and intellectual property assessment institutions, it gives banks confidence to resolve their doubts about using brand objects and other Intellectual Property as collateral for banking credit. *Fifth*, research by Tengku Habib Ihza Husny with the title Challenges in Implementing Intellectual Property as Financing Guarantee Based on Government Regulation Number 24 of the Year¹¹. This research concludes that the implementation of PP 24 of 2022 has obstacles or challenges, such as there is no standardization of technical assessment guidelines for determining the economic value of intellectual property, there is no visible institution that manages the intangible asset valuation system to guarantee the value of rights used as fiduciary collateral. This regulation is a form of recognition and confirmation from the government. Creative economy players are encouraged to continue producing works that indirectly contribute to the development of the country. The government must strengthen coordination and socialize this regulation to related agencies and institutions. This is the background to the need for further research regarding the idea of valuing trademark rights as collateral to help creative economy actors obtain capital for business development.

Based on the description above, the researcher raises issues related to how to evaluate the binding of brand rights as collateral. Have the provisions for binding trademark rights been strictly regulated so as to provide legal certainty? There is still a legal vacuum in the regulation of the binding valuation of Brand Rights as an object of fiduciary collateral in banking activities in Indonesia so that implementation is not yet optimal. Even though this financing scheme has been regulated in Government Regulation Number 24 of 2022, it does not guarantee legal certainty for banks. An analysis that emphasizes the idea of tying up brand rights as a guarantee so that the implementation of tying up brand rights as a guarantee can be accepted by financial institutions as a guarantee. This can clearly encourage creative economy actors to continue to produce works that indirectly contribute to the country's economic development.

Furthermore, in connection with the problems that have been determined above, in order to obtain a systematic discussion several things will be explained, namely the challenges of binding brand rights as collateral for creative economy actors and the idea of valuing trademark rights as financing solutions for creative economy actor based on legal certainty.

2. METHOD

Legal research typically employs normative legal research methods, supported by empirical data. According to Soerjono Soekanto, the normative legal research method involves examining library materials or secondary sources as the primary basis, using regulatory and literature reviews relevant to the issues under study.¹² This type of normative juridical research is used in this research by positioning law as the object so that the truth can be found from a normative perspective. This type of research does not merely identify it with statutory regulations, but also analyzes the norm system in more depth.¹³ According to Peter Mahmud Marzuki,¹⁴ legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer legal issues faced. The approaches applied in this research include the statutory approach, the analytical approach, the conceptual approach and comparative approach. The data for this study were gathered from literature sources such as journal articles, proceedings, books, and other materials accessed from the internet. The legal materials were analyzed qualitatively, and the conclusions were drawn deductively.

11 Tengku Habib Ihza Husny, "Tantangan Dalam Implementasi Kekayaan Intelektual Sebagai Jaminan Pembiayaan Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2022," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 3 (2023): 2335–45.

12 Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Press, 2001), 13-14

13 Ahsan Yunus Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, Cet, vol. 4 (Yogyakarta: Mirra Buana Media, 2022): 100

14 Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, hlm. 35.

3. FINDING AND DISCUSSION

3.1. Challenges for Securing Trademark Rights as Collaterals for Creative Economy Actors

Normatively, the foundation of Indonesia's economic system must align with Pancasila and the 1945 Constitution of the Republic of Indonesia. Within the Pancasila economic framework, justice serves as a central theme, functioning simultaneously as the spearhead, process, and ultimate goal.

The economy and the law must evolve in harmony to ensure that the legal framework accommodates the necessary provisions in the form of regulations and policies for the economic sector. As a pillar of Indonesia's national economy, the law must remain open to global market developments, adopting internationally agreed-upon provisions into national legislation. Law is not merely a static set of rules, norms, or formal regulations rooted in the past.¹⁵ Instead, it continually provides answers to relevant contemporary issues,¹⁶ consistent with the pure law or progressive law theories proposed by Satjipto Raharjo. These theories address the interplay between production systems and economic systems through the lens of formal and logical legal science.

The era's advancements call not only for a technological revolution but also for the evolution of civil law to address the renewal of information and communication technologies. This evolution targets the lives of the digital Society 5.0 community.¹⁷ The creative economy represents a tangible step toward achieving sustainable development, fostering an economic climate characterized by competitiveness and renewable resource reserves. In essence, the creative economy embodies a survival ethos, which is particularly critical for developing nations. Regardless of a country's achievements, failing to develop a modern creative economy tailored to its national needs risks being left behind. Therefore, creative economy development must be a priority for all stakeholders involved in national development.

In achieving a just and prosperous society capable of advancing general welfare, the Indonesian state must optimize all economic resources, especially optimizing the creativity of human resources based on cultural heritage, science and/or technology. To optimize these human resources, it is necessary to develop the creative economy as the basis for national economic growth, increase the added value of Intellectual Property as the basis of the Creative Economy which provides massive economic benefits with the nation's intellectual resources, design and develop an Intellectual Property Based financing scheme as a development stimulus creative economy ecosystem, optimizing the potential of Creative Economy Actors through the use of Intellectual Property resulting from the creativity of creative economy actors, and protection of Creative Economy Actors.¹⁸

The creative economy is an economic idea that is focused on people's skills and abilities. This is in accordance with what Toffler said.¹⁹ Toffler divided the history of human civilization into three economic waves. Changes throughout the world cannot be separated from shifts in the way economic development works. The economy is moving away from the agricultural, industrial and information sectors towards the creative economy sector. The creative economy is an inevitability that cannot be avoided in the development of sustainable civilization.²⁰ If done correctly, the growth of a country's creative economy will be competitive and have an impact on social life. So, for a new economic wave to come, people need to be innovative and

15 Edision Hatoguan Manurung, "Prinsip Kontrak Konstruksi Terhadap Pemberian Jaminan Perlindungan Hukum Dalam Kaitannya Dengan Perbuatan Tidak Merugikan," in *Proceeding of Conference on Law and Social Studies*, 2021. 6

16 Ngozi Chukwuemeka Aja, "Hart on Formalism in Legal Reasoning: Implication for Judicial Review," *Activa Yuris: Jurnal Hukum* 2, no. 1 (2022), <https://doi.org/10.25273/ay.> : 2

17 Nur Rohman, "Urgence and Security of Digitalization of Land Electronic Certificate Issuance Documents," *Activa Yuris: Jurnal Hukum* 2, no. 2 (2022): 1

18 Susanti Yulindari, "Jaminan Pembiayaan Berbasis Kekayaan Intelektual: Analisis Peraturan Pemerintah Tentang Ekonomi Kreatif," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 2 (2022): 125–40.

19 Jean B McGrew, "Future Shock. Alvin Toffler. New York: Random House, 1970. 505 Pp. \$7.95," *The Bulletin of the National Association of Secondary School Principals* 54, no. 349 (1970): 123–29.

20 Suciyadi Ramdhani, "Pengembangan Ekonomi Kreatif Dan Keragaman Budaya Dalam Perspektif Antropologi," *Empower: Jurnal Pengembangan Masyarakat Islam* 5, no. 1 (2020): 83–100.

creative.²¹ This means that the quality of human resources as creative economy actors is important.

The creative economy law provides guidance for fostering a creative economy ecosystem. The government's intellectual property-based financing scheme for creative economy actors, along with facilities to develop a marketing system for creative economy products based on intellectual property, represents a new economic sector initiative aimed at revitalizing the creative economy. This scheme is implemented through government regulations, serving as a legal foundation in line with the mandate of the creative economy law. Article 16 explicitly outlines these measures. Roscoe Pound's perspective that law serves as a tool of social engineering underpins the integration of these innovative schemes into the legal framework.²²

Trademarks as part of Intellectual Property are regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Article 1 paragraph 5 explains that brands have exclusive rights granted by the state to registered trademark owners for a certain period of time by using the trademark themselves, or give permission to other parties to use the mark. This brand protection is intended to provide legal certainty for the registered mark to be used. Trademark Rights have been accepted as collateral for credit at Bank BNI and Bank Muamalat. Based on research conducted by Sri Mulyani in 2012,²³ trademark rights are accepted as an object of fiduciary collateral in credit agreements, but are accepted as additional collateral, not the main collateral. BNI Bank provides credit with brand collateral objects based on several considerations such as BNI's internal provisions and BNI considers that brands are included in intangible movable objects with proof of certificates.

Meanwhile, according to research conducted by Trisadini Prasastinah Usanti which was conducted in 2017 at Bank Muamalat.²⁴ Trademark Rights are accepted as objects of credit collateral by binding the pledge with Muharabah and Musyarakah financing provided by the Bank to the debtor. Based on the research above, in principle brand rights can be used as collateral objects because brands are included in intangible movable objects. It is possible for a trademark as an object of collateral to be encumbered by fiduciary financing and pledges.

The utilization of intellectual property contributes significantly to business development and accelerates the national economy. However, Government Regulation Number 24 of 2022 stipulates that only intellectual property registered with the Directorate General of Intellectual Property (DJKI) and associated with the creative economy can be used as loan collateral. Intellectual property eligible for this purpose must originate from one of 17 sub-sectors,²⁵ including advertising, architecture, art, crafts, design, fashion, video, film and photography, interactive games, music, performing arts, publishing and printing, computer services and software or information technology, television and radio, research, and culinary arts. Article 7 of Government Regulation Number 24 of 2022 specifies the minimum requirements for intellectual property-based financing. These include submitting a financing proposal, conducting a business related to the creative economy, having a bond with intellectual property from creative economy products, and holding a registration letter or intellectual property certificate.

Following the submission of a financing application by creative economy actors, Article 8 requires financial institutions to verify the existence of the creative economy business, as well as the registration letter or intellectual property certificate provided as collateral. This verification ensures that the collateral can be executed in the event of a dispute. Furthermore, financial institutions are mandated to assess the value of the intellectual property collateral to determine the loan amount. As stipulated, the financial institution retains the

21 Muhammad Hasan, "Pembinaan Ekonomi Kreatif Dalam Perspektif Pendidikan Ekonomi," *Jurnal Ekonomi Dan Pendidikan* 1, no. 1 (2018): 81–86.

22 Roscoe Pound's dalam Bernard L Tanya, dkk, 2010, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, hlm. 154

23 Sri Mulyani, 2012, *Realitas Pengakuan Hukum terhadap Hak Atas Merek Sebagai Jaminan Fidusia Pada Praktik Perbankan di Indonesia*, Hukum dan Dimanika Masyarakat, Vol. 11 No. 2 April 2014, Semarang Universitas 17 Agustus 1945. hlm. 139

24 Trisadini Prasastinah Usanti, 2017, *Analisis Pembebanan Gadai Atas Sertifikat Merek di Bank Syariah*. Mimbar Hukum, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, hlm. 413-429.

25 Rochmat Aldy Purnomo, *Ekonomi Kreatif Pilar Pembangunan Indonesia* (Surakarta: Ziyad Visi Media, 2016): 18

right to recover the financing provided, based on the terms of the agreement. The status of intellectual property used as collateral is held under the financial institution's control during the loan term. Article 9 paragraph (2) elaborates that intellectual property collateral can serve three functions: as a fiduciary for intellectual property, as a basis for contracts in creative economic activities, and as collection rights in creative economic activities.

Government Regulation Number 24 of 2022 also governs alternative financing sources for creative economy development, including information technology-based joint funding services and securities offerings through information technology-based general fund services. These services must be authorized by the OJK and operated in compliance with its regulations. Business actors can apply for financing from financial institutions by using patents, trademarks, copyrights, and other legally owned intellectual property rights as collateral, provided the intellectual property has been properly assessed to meet their business's financial needs.²⁶

The regulation further permits the use of intellectual property as fiduciary collateral in addition to creative economic activity contracts or collection rights. The concept of using intellectual property as fiduciary collateral is not new in Indonesian collateral law. Under the Copyright Law, copyrights can serve as fiduciary objects, and Patent Law similarly recognizes patent rights as fiduciary objects. As defined in Article 1 number 2 of the Fiduciary Law, fiduciary refers to the right over movable objects, both tangible and intangible, as well as immovable objects (particularly buildings that cannot be mortgaged under Law No. 4 of 1996 on Mortgage). These objects remain under the control of the fiduciary giver while serving as collateral for debt repayment, granting the fiduciary receiver priority over other creditors.

The procedure for imposing an object as fiduciary is as follows:

- a. Creating a Fiduciary Deed before a Notary.
- b. Registering the deed at the Fiduciary Registration Office, part of the Directorate General of Legal Administration under the Ministry of Law and Human Rights.
- c. Paying the fiduciary registration fee.
- d. Issuance of the Fiduciary Certificate.
- e. Including the value of the object and the collateral value of the fiduciary object in both the Fiduciary Deed and Fiduciary Certificate.

A key characteristic of fiduciary collateral is that it does not require the physical submission of the collateral object to creditors. This aspect benefits creative economy actors as intellectual property owners, allowing them to continue using and utilizing their intellectual property. However, despite the normative provisions enabling intellectual property to be used as fiduciary collateral, the mechanisms outlined in the Government Regulation present several challenges that may hinder its implementation. These challenges need to be studied and supporting regulations strengthened to provide legal certainty in the implementation of binding trademark rights as collateral.

The first challenge pertains to the valuation of intellectual property rights assets. Valuation is crucial as it determines the maximum loan amount that can be extended to the debtor. In practice, financial institutions adhere to the 5C principle as a guideline for loan provision, with one of the components being collateral. Collateral offered by debtors serves as security in case of loan default. To ensure its feasibility, the collateral must undergo analysis from both legal and economic perspectives. For creditors, collateral represents legal certainty that the debtor will fulfill their loan repayment obligations.²⁷

The valuation of an object before it is used as fiduciary collateral involves the services of public appraisers, engaged at the request of financial institutions. The existence of public appraisers is guaranteed under the Regulation of the Minister of Finance of the Republic of Indonesia Number 101/PMK.01/2014. These appraisers act as third parties, providing professional assessments of the economic value of an object that will be used as collateral.²⁸

26 Gerid Williem Karlosa Reskin, "Pengaturan Hak Kekayaan Intelektual Sebagai Jaminan Utang Menurut PP Nomor 24 Tahun 2022," *PALAR (Pakuan Law Review)* 8, no. 4 (2022): 193–206.

27 I Made Adi Guntara and NMAY Griadhi, "Penerapan Prinsip 5C Sebagai Upaya Perlindungan Terhadap Bank di dalam Menyalurkan Kredit," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 8 (2019): 1–15.

28 Reni Budi Setianingrum, "Mekanisme Penentuan Nilai Appraisal Dan Pengikatan Hak Cipta Sebagai Objek Jaminan

The establishment of a dedicated institution to manage the intellectual property valuation system in Indonesia is crucial. Intellectual property valuation benefits parties seeking to sell, license, or engage in commercial agreements related to intellectual property. It is also valuable for enforcing intellectual property rights, managing intellectual property assets internally, and supporting various financial processes.²⁹

Article 12, paragraph 7 of Government Regulation Number 24 of 2022 introduces new provisions regarding the intellectual property assessment mechanism. In addition to utilizing professional appraisers, financial institutions now require the services of intellectual property appraisers to determine the value of intellectual property. Valuation may involve asking appraisers to assess intellectual property that has not yet been evaluated by intellectual property appraisers or requesting both appraisers and intellectual property appraisers to conduct joint assessments. The methods used for intellectual property valuation are outlined in Article 12, paragraph 1, and include:

- a. Cost approach, which determines value based on economic principles, assuming that a buyer will not pay more for an asset than the cost to acquire or create an equivalent asset at the time of purchase or manufacture.
- b. Market approach, which establishes value by comparing the asset being evaluated with similar or comparable assets, providing transaction or offer price information.
- c. Income approach, which assesses value through changes in future cash flows converted into present values.
- d. Other assessment approaches, as per applicable valuation standards.

Although intellectual property appraisers and the methods used to determine the value of intellectual property have been regulated, their practical implementation remains challenging due to the absence of technical guidelines for assessing the economic value of intellectual property and the lack of an institution to manage the intangible asset valuation system. This gap undermines the ability to guarantee the value of intellectual property used as collateral. Consequently, many financial institutions are hesitant to accept intellectual property as collateral, as they face difficulties in valuing it. This reluctance is understandable, as financial institutions must ensure they can recover the funds lent to debtors.

The regulation also does not specifically address the issue of fiduciary grants. For instance, if intellectual property rights have been commercialized or transferred, who is entitled to receive the financing—the creator or the holder of the intellectual property rights? This uncertainty complicates the determination of who should be the fiduciary grantor.

A second issue concerns the lack of a secondary market capable of absorbing intellectual property assets if a debtor or creative economy actor defaults. Regarding the stability of the financial system, intellectual property is often perceived as an asset with high value but low productivity and returns. As a result, banks must set aside larger reserves when providing financing based on intellectual property collateral.³⁰

The existence of a secondary market is crucial, as it would facilitate the sale of assets during execution, enabling banks to recover the funds they lent. Collateral serves as a substitute payment, and as such, it must have a value that either matches or exceeds the debt plus interest. The assessment of collateral focuses on the economic value of the assets, and the ease of resale is an important consideration since collateral execution is typically carried out through auction or direct sale.³¹

The third issue concerns the widespread piracy of intellectual property. Piracy, particularly in the form of song or book copyright infringement, is a frequent problem. It arises because a very small proportion of works circulating in the community have been registered with the government to obtain intellectual property

Fidusia,” *Jurnal Media Hukum* 23, no. 2 (2016): 229–38.

29 Sekar Paramesti Justiciari et al., “Peluang Dan Tantangan Skema Valuasi Youtube Sebagai Objek Jaminan Kredit Perbankan,” in *Proceeding of Conference on Law and Social Studies*, Vol. 4, 2023.

30 Ujang Badru Jaman, “Prospek Hak Kekayaan Intelektual (HKI) Sebagai Jaminan Utang,” *Jurnal Hukum Dan HAM Wara Sains* 1, no. 01 (2022): 15–20.

31 Darmoko Yuti Witanto, *Hukum Jaminan Fidusia Dalam Perjanjian Pembiayaan Konsumen*, Bandung: Mandar Maju (Bandung: CV. Mandar Maju, 2015), 35.

certificates. According to data from the tourism and creative economy industry statistics in 2020, only 1.98 percent of creative industry players have registered their intellectual property.³² Additionally, weak law enforcement in addressing piracy has led to a devaluation of intellectual property. Pirated products circulating in the market are often preferred by the public because they are more accessible and cheaper. As a result, financial institutions are reluctant to accept intellectual property as collateral, fearing that the value of the intellectual property will decrease if piracy occurs.

Government Regulation Number 24 of 2022 represents a government effort to increase the economic value of intellectual property and recognize and appreciate creative economy actors who produce such property. This regulation is a practical manifestation of reward theory, one of the intellectual property rights protection theories proposed by Robert M. Sherwood in Balqiz.³³ Although this regulation regarding intellectual property as collateral is new, the problems it faces must be addressed promptly. Given the importance of utilizing intellectual property to enhance its commercial value and to encourage creative economy actors to continue producing new works, the government—specifically the Ministry of Law and Human Rights of the Republic of Indonesia—needs to continue public outreach and strengthen cooperation with relevant agencies such as the Financial Services Authority, Bank Financial Institutions, Non-Bank Financial Institutions, the Association of Indonesian Financing Companies, Bank Indonesia, and creative economy actor groups. This cooperation can foster synergy and mutual agreement to effectively implement Government Regulation Number 24 of 2022.

To provide a sense of legal certainty to bank financial institutions and non-bank financial institutions, it is necessary to support complete technical regulations regarding the imposition of brand rights as objects of collateral. With comprehensive and consistent regulations, it can create legal protection for creative economy actors who use brands as objects of fiduciary collateral, while maintaining a balance between protection for creditors and brand owners.

3.2. The Idea of Valuing Trademark Rights as Financing Solutions for Creative Economy Actor Based on Legal Certainty

The role of the creative economy as one of the business assets, whose valuation is vital for companies, is growing. The development of the creative economy is closely tied to intellectual assets, which are a significant form of capital in this sector. In the business context, intellectual capital encompasses a broad scope, ranging from market access and human resource assets (human-centered assets) to intellectual property.³⁴

The data derived from the creative economy sectors indicate that intellectual property, as part of intellectual capital, is a crucial pillar at every stage of business growth. For start-up companies, intellectual property serves as essential business capital, while for growing companies, it functions as a means of business development. For stable creative businesses, intellectual property is a highly valuable business asset. This aligns with findings from the World Intellectual Property Report titled “Intangible Capital in Global Value Chains,” in which WIPO’s Francis Gurry highlighted that intangible assets in the global market increasingly determine the success of companies, contributing to one-third of total production value.³⁵

Intellectual capital is an ideal asset for the core business of the creative industry because it can serve as a highly effective and valuable asset whose economic potential can be explored and sustainably exploited. The effectiveness, high added value, and sustainability of intellectual capital make it a business-friendly asset. Another advantage of intellectual capital/intellectual property as a business asset is its ability to generate various income streams, which are crucial for business sustainability. Intellectual capital is highly compatible with the creative economy, an economic concept that emphasizes information and creativity and relies on

32 Dian Cahyaningrum, “Kekayaan Intelektual Sebagai Jaminan Utang Pelaku Ekonomi Kreatif,” *Jurnal Info Singkat*. XIV (15), 2022, 19–24.

33 Wizna Gania Balqis, “Perlindungan Merek Sebagai Hak Kekayaan Intelektual: Studi Di Kota Semarang, Indonesia,” *Journal of Judicial Review* 23, no. 1 (2021): 41–56.

34 Mahdi Manzari et al., “Intellectual Capital: Concepts, Components and Indicators: A Literature Review,” *Management Science Letters* 2, no. 7 (2012): 2255–70.

35 World Intellectual Property Organization, *World Intellectual Property Report 2017 : Intangible Capital in Global Value Chains*. (Switzerland: World Intellectual Property Organization, 2017): 1-138.

a stock of ideas and knowledge as the primary production factors. Furthermore, human resources are a key production factor in economic activities, underpinned by the three main drivers of the creative economy:³⁶ creativity, innovation, and invention.

The protection of intellectual property/intellectual assets, to increase their valuation and monetization in the era of the Industry 5.0 revolution, requires not only regulatory action from stakeholders but also active participation from these stakeholders. One of the key roles of financial institutions in supporting the growth of creative businesses-from micro to industrial scale-is to provide working capital. This role is significant, given that capital is often the main obstacle to the growth of creative businesses. Loans and financing distributed to creativity-based businesses have a dual impact, benefiting both creative business actors and financial institutions. For business actors, loans can be used as initial capital or for business expansion. For financial institutions, the distribution of loans/financing is part of their function as intermediary institutions, channeling funds from surplus parties to deficit parties in exchange for interest, fees, administrative charges, and profit-sharing.

Law Number 24 of 2019 on the Creative Economy (Creative Economy Law), followed by Government Regulation Number 24 of 2022 on the Implementing Regulations of Law Number 24 of 2019, is a positive response to the rapid growth of the creative economy, with intellectual property as one of its core pillars. This is an important development and deserves recognition, though there are several areas that still require improvement. One potential solution to mitigate risks is the establishment of an intellectual property-based financing scheme, which would involve the valuation of intellectual property rights as collateral for creative economy actors.

Intellectual property valuation is the process of determining the economic value of intellectual property so that it can be used as collateral for loans. According to Module 11 concerning Intellectual Property Valuation, in the process of evaluating Intellectual Property (including Trademark Rights) there are several factors that can influence the results of the interpretation, such as:³⁷

1. Premise of value (the value of an object depends on the context or condition of an object at the time the assessment is carried out);
2. Standard value of an object;
3. Reasons and objectives for carrying out the valuation of the object;
4. Valuation time and date;
5. Access and reliability of data and information related to the object being assessed;
6. Valuation method used;
7. Legal, tax and business and financial conditions;
8. Validity and advantages of the object being assessed

Apart from the things that have been mentioned, a person's portfolio can also be classified as an asset and can be assessed on it or influence the assessment of an Intellectual Property.³⁸

This valuation is crucial for institutions seeking to commercialize their intellectual property. It helps determine the amount of financing that can be requested from financial institutions to support the commercialization of intellectual property. The value of intellectual property represents the net economic benefit that can be derived from it. Thus, intellectual property valuation involves identifying and measuring the financial benefits and risks of intellectual property, both in the present and future, which is typically converted into monetary value. Given the importance of valuation for institutions using intellectual property, the government should implement regulations, such as a Minister of Finance Regulation, to serve as a reference for valuation assessment by appraisers. Proper intellectual property valuation is expected to enhance

36 Purnomo, *Ekonomi Kreatif Pilar Pembangunan Indonesia*, .8-10.

37 World Intellectual Property Organization, *Module 11: IP Valuation Tle* (United States: World Intellectual Property Organization, n.d.) p.7-9.

38 Jeffrey A Cohen, *Intellectual Asset: Valuation and Economic Benefit* (New Jerse: John Wiley & Sons Inc, 2005) p.61.

its economic function, increasing the income of creative economy actors. Maximizing the economic rights of intellectual property requires clear regulation and standardization of valuation methods. The use of intellectual property as collateral is an integral part of this process, as it ensures that intellectual property can be accepted as loan collateral. Legal certainty provided by intellectual property valuation regulations will help improve the economy and increase the capital of creative economy actors, ultimately supporting the broader Indonesian economy.

Guidelines for the assessment of intellectual property valuation are ultimately needed. Appraisers currently use the Indonesian Valuation Standard as their reference. However, the intangible nature of intellectual property makes its valuation process complex. The Indonesian Valuation Standard for intellectual property valuation should include the methods, approaches, and other special considerations involved. The valuation of intellectual property must take these aspects into account.

Regarding the form and type of rights held by intellectual property holders, intellectual property encompasses several types, each differing in both form and the type of legal protection. The protection or ownership period of intellectual property must also be considered in the valuation. While the protection period is regulated, the duration of the economic value of intellectual property is not fixed; intellectual property can lose its economic value before the protection period ends. Another important factor in the valuation standard is market availability, which is critical for the execution of the valuation.

In addition to the valuation standard, technical regulations regarding the assessment or the position of intellectual property as collateral are also lacking. Although the Financial Services Authority (OJK) has stated that intellectual property can be used as collateral, there are no technical regulations that explicitly define its position as bank loan collateral. Therefore, the Financial Services Authority Regulation is crucial for addressing the concerns of financial institutions and appraisers regarding the use of intellectual property as collateral. Financial institutions must establish specific assessment standards, and appraisers must have their own assessment guidelines. Therefore, it is essential to create or update valuation standards that incorporate intellectual property content so that intellectual property valuation can be effectively implemented.

This study also suggests the establishment of a secondary market for intellectual property. The Intellectual Property (IP) market would bring together buyers and sellers for intellectual property transactions and allow for the execution of intellectual property when a debtor defaults. The government, through the relevant ministries, must facilitate the creation and strengthening of the intellectual property market ecosystem. One possible measure is the establishment of an auction house that functions as an IP market, linking intellectual property holders with potential investors. A market that legally facilitates the sale of intellectual property can establish its value and serve as a reference for valuation.

In addition to its role in valuation, the IP market can also be used for the execution of intellectual property. In the event of a default, creditors can auction the intellectual property used as collateral, with the involvement of relevant parties to ensure the right market value is determined. In the case of an auction house, the auction letter or decision would be included in the transfer of intellectual property, and this transfer can be registered with the Directorate General of Intellectual Property to ensure the legality of the transaction. Thus, intellectual property marketing facilities can serve as a reference for valuation and act as a secondary market for the execution of intellectual property.

To implement the intellectual property-based financing scheme, particularly the regulation of brand rights as collateral, the experience of countries such as the United States, South Korea, and Singapore can provide valuable insights. In these countries, the successful implementation of intellectual property-based financing schemes involved, among other factors, the direct intervention of the government, including the initial placement of funds. Government support can take the form of assistance with valuation costs or recovery costs in the event of a debtor default. These incentives can help persuade financial institutions to provide financing to intellectual property holders, particularly individuals and creative economy actors. Such financial assistance and incentives are essential for stimulating the implementation of intellectual property-based financing schemes.

Based on the description above, this study proposes the idea of brand rights valuation as collateral for financing solutions for creative economy actors. The proposed steps are as follows:

First, strengthening technical regulations related to intellectual property-based financing schemes is essential. This involves updating the Financial Services Authority Regulations governing intangible collateral based on intellectual property and Bank Indonesia Regulations. The existence of laws and regulations alone is insufficient without the direct supporting instruments. We can learn from countries that have successfully implemented intellectual property-based financing schemes, such as Singapore, South Korea, and the United States. The growing trend of intellectual property being used as collateral for credit has made several countries begin to regulate and evaluate intellectual property rights, including trademarks, as collateral for credit. The use of trademarks, copyrights, patents and other intellectual property rights which are used as collateral objects to carry out IP financing in the United States is carried out by one of the well-known fashion companies, namely Levi's, owned by Levi Strauss. The guarantee includes trademarks, designs, logos. Service standards, trade dress, name of the parent company, name of each type of business owned by the parent company. Trade style, as well as product designs both in finished form and in the form of design concepts in software owned by the company, the collateral was used to obtain credit amounting to 350 million US dollars from Bank of America. In 2006, the American automotive company, Ford Motor Company, pledged its trademarks and product patents as credit collateral through Citi Group Bank with a credit value of 18 million US dollars. The collateral objects provided include trademarks, patents for products being marketed, names, logos of the parent company, buildings and factories.³⁹ The Singapore government is also focused on making Singapore an Intellectual Property Center in Asia, because the Singapore government believes that Intellectual Property is considered to have great potential in helping the development of the world economy. Singapore also has an intellectual property management institution called Intellectual Property of Singapore (IPOS). IPOS is domiciled in Singapore and was founded in 2001 under the auspices of the Singapore Ministry of Law. IPOS functions as an institution that provides examination and analysis services in the field of Intellectual Property. IPOS also appoints Intellectual Property asset appraisal institutions and banks to provide credit with Intellectual Property collateral as collateral objects.⁴⁰ Learning from Singapore and the United States, Indonesia must immediately adopt a system for regulating the valuation of binding trademark rights as collateral. Indonesia must have clear and comprehensive regulations regarding the use of trademarks as collateral. This will provide legal certainty for the parties involved in binding trademark rights as collateral objects. Apart from that, it must have a clear valuation mechanism that adopts a market-based valuation system or uses a more detailed valuation model to estimate trademark value in banking transactions. This may involve an independent third party agency to carry out an assessment of the trademark as collateral.

Second, institutional integration in the implementation of intellectual property-based financing schemes needs to be prioritized. One of the challenges in implementing Government Regulation No. 24 of 2022 lies in its administrative system, particularly the recording system. The fiduciary system requires the involvement of several institutions, including the Ministry of Law and Human Rights, which is the authorized institution for recording fiduciaries, the Directorate General of Intellectual Property, responsible for recording intellectual property, and the Ministry of Tourism and Creative Economy, which oversees the intellectual property-based financing recording system. Additionally, the Fiduciary Law requires a notarial deed for fiduciary imposition and registration at the Fiduciary Registration Office, serving as public notification that an object has been used as collateral.

Third, the need for strengthening intellectual property valuation regulations is crucial. Intellectual property valuation determines the economic value of intellectual property to be used as collateral. This valuation is particularly important for institutions looking to commercialize their creations, as they need to assess the value of financing that can be provided. The value of intellectual property is the net economic benefit that can be derived from it. Intellectual property valuation is a process of identifying and measuring both the current and future financial benefits and risks, which are generally converted into monetary value.

39 Gerald B. Halt, dkk, 2017, *Intellectual Property in Consumer Electronics, Software and Technology Startup*, Swiss: Springer, pp. 29-30

40 World Intellectual Property Organization WIPO, *Unlocking IP-Backed Financing: Country Perspective - Singapore's Journey* (Geneva, 2021), <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2021-15-en-unlocking-ip-backed-financing-country-perspectives-singapore-s-journey.pdf>. p.13

The Indonesian Valuation Standard for asset assessment must be developed immediately, as there are currently no technical regulations regarding the assessment of intellectual property or its position as collateral. In this regard, financial institutions must establish specific assessment standards for intellectual property, and appraisers must also have their own standards for intellectual property valuation. Therefore, it is imperative to create or update valuation standards to incorporate intellectual property content, ensuring that intellectual property valuation can be accurately carried out.

Creative economy actors need to implement intellectual property-based financing schemes. Therefore, at the legal and policy levels, this study proposes the following:

First, it encourages synergy in strengthening technical regulations within the collateral legal system in Indonesia, particularly in the regulation of intellectual property valuation. This includes establishing an institution responsible for the valuation of intangible movable assets, such as intellectual property. The establishment of the right methods and professional appraiser institutions will help build the confidence of banking parties and alleviate their doubts about using trademarks and intellectual property rights as loan collaterals.

Second, this study emphasizes the need for the Indonesian Valuation Standard as the foundational standard for assessing intellectual property for debt guarantee purposes.

Third, this study advocates for the creation of a secondary market for intellectual property. The availability of such a market is essential for supporting the use of intellectual property as a fiduciary object. An Intellectual Property market is crucial in facilitating transactions between buyers and sellers and in executing intellectual property when a debtor defaults. The government, through relevant ministries, must accommodate this need by forming and strengthening the intellectual property market ecosystem, including the establishment of an auction house.

4. CONCLUSION

The idea of valuing trademark rights as collateral needs to be supported by appropriate strategic steps in the form of follow-up from technical, regulatory, administrative and implementation aspects in the form of formulating an Intellectual Property-based financing scheme, especially trademark rights as an object of guarantee that is implementable, has legal certainty and provides legal protection for stakeholders, parties as well as coordination and synergy between ministries. Regulation of intellectual property valuation includes the urgency of establishing an institution that handles the valuation of intangible movable objects of intellectual property. The results of the valuation of trademark rights in terms of methods and intellectual property assessment institutions give banks confidence to resolve their doubts about using brand objects and Intellectual Property in general as collateral for banking credit. In terms of legal rationality, both in terms of the constitutional context and in the context of international law, there is no reason not to regulate and be unclear in Indonesian legal politics regarding trademark rights as collateral. Indonesia's Intellectual Property Regulations could consider taking comparative elements from other countries, such as forming an independent Intellectual Property assessment panel, establishing Indonesian assessment standards, and supporting it with guarantees of Government support for loans supported by Intellectual Property, especially Trademark Rights. At least, access to capital for Creative Economy Actors is starting to roll out with pilot projects from several government banks such as in other countries so that financing solutions for Creative Economy Actors can run well so that they can increase welfare and improve the national economy as well as legal certainty.

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6. CONFLICT OF INTEREST

No conflict of interest exists in this research manuscript article.

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