

Optimizing the Intellectual Property Rights as Banking Credit Collateral by Art Workers in Karawang

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Abstract

As proprietors of Intellectual Property Rights (IPR), creative professionals (designers, creators, and inventors) in Karawang regency own exclusive rights that enable them to independently profit from their works in the form of royalties or licensing. However, in reality, they have difficulties in accessing capital needed to expand their business. Some financial institutions might not accept IPR as collateral for credit even though the law principally states that they are valuable assets and therefore eligible as collateral. Article 16 of Law Number 28 of 2014 on Copyrights and Article 108 of Law Number 13 of 2016 on Patents have allowed holders and owners of IPR to make use of those rights as debt collateral through Fiduciary scheme. It is unfortunate that the laws have not been applicable for the case of copyrights and patents, even when they are in principle eligible to be considered so. Making IPR eligible as debt collateral is hampered by the fact that there has been no revision of Article 43 of BI Regulation Number 14/15/PBI/2012 concerning types of credit collateral. The regulation must be amended to ensure that the principle is applicable.

I. Introduction

Law Number 7 of 1992 concerning Banking, amended by Law Number 10 of 1998, defines credit as provision of money or bills that can be equivalent to it based on an loan agreement between the bank and borrowers.¹ This clause requires the

¹ Tri Setiady dan Yohan Hanfiah, Optimalisasi Lembaga Pembiayaan Modal Ventura Sebagai Alternatif Pembiayaan Bagi Usaha Mikro, Kecil Dan Menengah Dalam Rangka Mewujudkan pembangunan Ekonomi Nasional, Jurnal Yustitia, Jilid 9, Terbitan 2, Desember 2023, hlm 176

borrowers to pay off their debt with interest after a certain period of time. The clause entails several requirements that must be fulfilled:

- 1) Provision of money or bills is equivalent to the credit;
- 2) It is based on an agreement between the bank and the borrowers as the other party;
- 3) Payment of the debt is within an agreed upon period of time;
- 4) Debt repayment is accompanied by interest.

Apart from those requirements, one other thing that might be needed is the provision of collateral. Collateral is often assets with economic value that the borrowers provide and then the lenders hold to guarantee that the borrowers fulfill their obligations. The provision of collateral is in line with 5C and 4P principles which banks as lenders adhere to.²

According to Subekti, collateral as a security to the borrowers' obligation can be valued in money of which the amount depends on the nominal of the credit proposed. The realization of the collateral takes form in the liquidation the assets. This takes into account the amount that is within the creditor's rights. Therefore, the collateral must be assets or rights that can be valued in money. The money cashed in is then to be transferred to another party. Consequently, items that can be used as collateral must also be objects or rights that can be transferred to other people.³

To the debtors, the collateral secures peace and certainty in business. On the other hand, with the capital they have acquired from the loan, the debtors can further expand their business. If the debtors are unable to pay off the debt and its interest, the creditor can liquidate the collateral for cash. This implies that the value of the collateral is often higher than the value of the debt.⁴

The use of collateral ensures:⁵

- 1) It enforces of the rights and authority of the creditors to receive payment from collateral if the borrowers commit a breach of contract of paying off the debt in accordance within an agreed upon deadline;
- 2) It involves the borrowers in the process of funding their business. This also deters the debtors from abandoning their business which is damaging to themselves or their company.
- 3) It encourages the debtors to adhere to their contract with the other party regarding the repayment based on the agreed terms, so that the debtor and/or third party who participates in the guarantee do not lose the assets that have been pledged.

The Intellectual Property Rights (IPR) are considered valuable assets since the creation involves a creative and intellectual process artistic or scientific or both.

² Tantowi Akbar, "Hak Cipta Sebagai Jaminan Pemberian Kredit Bank Dikaitkan Dengan Prinsip 5c (Character, Capacity, Capital, Collateral, Condition Of Economy)", *Dharmasisya* Vol. 2 N0. 2, Juni 2022, Hlm 583

³ R. Subekti, *Pokok-pokok Hukum Perdata*, Bandung: Almunir, 1981, Hlm. 24.

⁴ Salim HS., *Perkembangan Hukum Jaminan dan Jaminan Kredit Perbankan di Indonesia*, Jakarta: Rajagrafindo Persada, 2004, Hlm. 28-29.

⁵ Thomas Suyatno, *Dasar-dasar Perkreditan*, Jakarta: Gramedia, 1995, Hlm. 88.

Works of art, literature, or even technology is born out of the creators' effort, energy, time, cost, and expertise, making the enterprise undertaken valuable. The value inherent to them raises the concept of ownership rights within these intellectual works. In business terms, these works can be considered assets.⁶

IPR as an intangible movable object possess economic value. In principle, IPR are eligible as collateral in debt agreements. The old Copyright and Patent Law did not regulate IPR as collateral. However, the new amendments, namely Law Number 28 of 2014 concerning Copyright, and Law Number 13 of 2016 concerning patents, regulate the use of copyright and patents as fiduciary collateral.⁷

Fiduciary assignment denotes the transfer of ownership rights to an object through trust, while the object remains in the possession of the owner of the object. If copyrights can be used as an object of fiduciary collateral, the provision of credit can surely be guaranteed. This process involves of the creators, the recipient, and authorized institutions in the assessment of intellectual property rights which will then be used as collateral.⁸

Based on data from the Karawang Regency Tourism and Culture Office, there are around 3,000 artists and cultural figures.⁹ IPR holders in Karawang Regency (creators, inventors, designers) have exclusive rights to utilize IPR independently or license IPR to other parties in order to obtain economic benefits in the form of royalties. However, in reality, many IPR owners and holders still have difficulty with capital to develop their businesses. Their IPR assets cannot be used as collateral for debts at financial service institutions, even though IPRs are valuable assets that can actually be used as collateral for debts. IPR, especially Copyright and Patents, can now be used as objects of debt collateral through a Fiduciary scheme based on Article 16 of Law Number 28 of 2014 concerning Copyright and Article 108 of Law Number 13 of 2016 concerning Patents.

The Creative Economy Agency (Bekraf) encourages financial institutions to accept IPR as collateral for financing. Bekraf hopes that financial institutions and capital market regulators will be more open in looking at financing opportunities for creative industries that use IPR as collateral. Until now, IPR cannot be used as collateral in banking because there are no examples or adequate systems. Currently, less than 11% of creative industries have IPR, and most still depend on funding from venture capital. Another challenge is the absence of a system that can accurately measure the valuation of IPR assets. Without a supporting ecosystem, monetizing IPR ownership becomes difficult, especially because banks still do not consider IPR as

⁶ Bambang Kesowo, *Pengantar Hukum Mengenai Hak Atas Kekayaan Intelektual (HKI) di Indonesia, Bahan Penataran Dosen Hukum Dagang se-Indonesia*, Yogyakarta, Fakultas Hukum UGM, 1995, Hlm. 5.

⁷ Ali Masykur Fathurrahman dan Muhammad Sopiyan, "Perbandingan Pemanfaatan Hak Cipta Sebagai Objek Jaminan Fidusia di Negara Indonesia & Amerika Serikat", *Jurnal Surya Kencana* Satu Vol. 13 No. 2, Oktober 2022, Hlm 110

⁸ Jessica Francis Gunawan dan Yunanto Yunant, "Implementasi Penggunaan Kekayaan Intelektual sebagai Jaminan Kredit Perbankan", *Syntax Literate: Jurnal Ilmiah Indonesia*, Vol. 7 No. 12, Januari 2022, Hlm 18531

⁹ <https://radarkarawang.id/karawang/100-seniman-dan-budayawan-akan-terima-bantuan>, diakses pada tanggal 29 Januari 2025

appropriate collateral.¹⁰

Relevant research was conducted by Endang Purwaningsih et al in 2020 with the title "Intellectual Property as an Object of Fiduciary Collateral in Efforts to Obtain Credit at Financial Institutions." The differences in this research lie in the aspect of optimizing Intellectual Property Rights (IPR) for artists, the position of IPR as collateral for banking credit in the banking legal system in Indonesia, as well as identifying the obstacles that cause IPR assets to not be able to be used as objects of credit collateral in banking.

The background above raises the following questions:

- 1) How is the regulation of Intellectual Property Rights as Bank Credit Guarantee?
- 2) How is the implementation of artists' using intellectual property rights as collateral to access loan in Karawang Regency?

2. Research Method

The research in this writing is descriptive in nature with a normative juridical approach. The type and source of data used is secondary data. Data collection was carried out through document studies (library research and online research) by inventorying the required secondary data, including primary, secondary and tertiary legal materials. Next, a historical search and synchronization of these legal materials is carried out. The primary legal materials used include statutory regulations, especially those relating to the optimization of Intellectual Property Rights as collateral for banking credit by arts workers in Karawang Regency. Secondary legal materials include scientific works, research results, and literature relevant to the substance of the research. Meanwhile, tertiary legal materials consist of supporting sources such as data from newspapers, journals, dictionaries and encyclopedias.

3. Results and Discussion

The Regulation of Intellectual Property Rights as Bank Credit Collateral

The status of IPR in Indonesia as an object of fiduciary guarantee has been regulated in the provisions of the legislation concerning IPR, considering that the ownership of IPR has an element of rights inherent to them. The rights in question refer to exclusive rights which are granted by the law to a person or a group of people as proprietors of their creative and intellectual works. By exclusive, it means that they are inventive works, a development of the previous works, or works useful and applicable in industrial settings, works valuable economically, and works that can be considered an asset.¹¹ By possessing these exclusive and absolute rights, IPR owners

¹⁰ Disarikan dari berita "Bekraf dorong lembaga keunngan lirik HKI sebagai jaminan pembiayaan, Bisnis indonesia, Finansial.bisnis.com, 19 Januari 2019, diakses pada tanggal 1 Agustus 2021

¹¹ Venantia Sri Hadiarianti, Memahami Hak Kekayaan Intelektual, Jakarta: Universitas AtmaJaya, 2010, hal. 13.

have freedom of utilizing their IPR in various contexts, including benefiting from them as objects eligible for collateral, as long as it is not in conflict with laws and regulations. When viewed from the perspective of the Civil Code, IPR are considered intangible or immaterial objects.

The Civil Code has regulated the existence of intangible objects (onlichamelijke zaken) in Article 503 of the Civil Code, stating "objects are divided into two, namely objects with bodies and objects without bodies". The limitation regarding objects is contained in Article 499 of the Civil Code, which clarifies that "according to the understanding of the law, what is meant by an object is every item or every right that can be controlled by ownership". From this understanding, there are three categories: objects (zaak), goods (goed), and rights (recht).¹² Objects (zaak) in the Civil Code are further divided into tangible objects and intangible objects. Goods (goed) have narrower definition due to its concrete and tangible quality. On the other hand, rights (recht) refer to things intangible and immaterial such as accounts receivables, IPR (including copyrights and patents), rights to geographical indications, and so on. However, it should be noted that, although the formulation of objects has been regulated in Article 499 of the Civil Code, the provisions related to intangible or immaterial rights are not expressed clearly in the code. Intangible or immaterial rights can be found in various laws and regulations, for example Law No. 28 of 2014 concerning Copyright, Law No. 13 of 2016 on Patents, Law No. 20 of 2016 on Trademarks and Geographical Indications, Law No. 31 of 2000 concerning Industrial Design, Law No. 32 of 2000 concerning Integrated Circuit Layout Design, and Law No. 30 of 2000 concerning Trade Secrets.

IPR are considered an intangible or immaterial object because the nature of the ownership is abstract when compared to the ownership rights to visible objects. The World Intellectual Property Organization (or WIPO) categorizes IPR as intangible objects (immaterial).¹³ In WIPO's definition, IPR is within the category of intangible assets. IPR can also be considered as company's assets. For example, a company's brand can be considered an asset and indirectly provides value to the company.¹⁴ Because the rights are protected through law, IPR have a value¹⁵ which is transferable either through a license or a guarantee. According to Agus Sardjono, IPR as a "right" cannot be separated from economic matters. IPR are identical to the

¹² Alya Nuzulul Qurniasari dan Budi Santoso, "Kekayaan Intelektual Sebagai Aset Bisnis dan Jaminan Kredit Perbankan di Era Ekonomi Kreatif", NOTARIUS, Volume 16 Nomor 3, Oktober 2023, Hlm 1382

¹³ Rina Puspitasari, "Hak Cipta Sebagai Jaminan Fidusia", Journal of Intellectual Property Vol.4 No. 1, Desember 2021, Hlm 7

¹⁴ Agil Febriansyah Santoso dan Budi Santoso, "Implementasi Hukum Kekayaan Intelektual Dalam Meningkatkan Kesejahteraan Masyarakat Dalam Perspektif Negara Hukum", Notarius, Volume 15 Nomor 2, Desember 2022, Hlm 820

¹⁵ With the existence of exclusive rights attached, almost all IPR assets have economic value. Take for example copyrights. In addition to having moral rights, creators also have economic rights. With these economic rights, the rights holder has the right to obtain economic benefits from the creation and the related products. Economic rights can be transferred to a person or a legal entity, so that the person or legal entity has the right to commercialize within a certain period of time and based on the provisions that have been agreed upon. This also applies to patents, brands, geographical indications.

commercialization of intellectual works. The protection of IPR is irrelevant if it is not associated with the process or commercialization.¹⁶ Djuhaendah Hasan, explained that as an asset with economic value, IPR indirectly provides economic benefits to the owners or the holders of the rights.¹⁷

In terms of developing the concept of IPR as an object of bank credit guarantee, the status of IPR itself as discussed above can be transferred, traded, and leased through various agreements. Considering that development, IPR play an important role in the current era of modern trade. IPR's ever increasing role is apparent in the process of business expansion, mergers, and acquisitions. In line with these developments, several transactions through patents, copyrights, trademarks and others have influenced the conduct in various industrial sectors including technology, communications, and banking. Thus, the presence of IPR as an asset is starting to be felt, especially in financing, taking into account IPR's economic value that can be equated as assets and collateral.¹⁸

As a source of funding, banking has an important role in the process of business and economic development. It is only natural that the parties involved, the creditors and the debtors, get protection from the presence of strong collateral right institutions in ensuring legal certainty for all interested parties. The law on collateral itself is a subsystem of the law of objects that consists of a number of principles on property rights (real right), while the law of personal collateral is a subsystem of the law of contracts that clarifies the principle of personal rights.¹⁹ In the Civil Code, the concept of collateral law is detailed in Article 1131, which states that "all movable and immovable goods belonging to the debtor, both presently existing or about to materialize in the future, become collateral for the debtor's individual obligations". Moreover, Article 1132 of the Civil Code emphasizes that these goods become joint collateral for the creditors; the amount of the value from the liquidation of the goods is divided according to the ratio of each creditor's receivables unless there exists a certain priority.

It is undeniable that the economic development of a country cannot be separated from the development of IPR.²⁰ This is not without reason considering that in business development, product owners as well as owners of intellectual properties have an interest in accessing capital by relying on credit agreements with their

¹⁶ Agus Sardjono, "Hak Kekayaan Intelektual dan Pengetahuan Tradisional", Hal. 149. dikutip tidak langsung oleh Irawaty, *Perkembangan dan Perspektif Yuridis Rahasia Dagang Sebagai Benda Jaminan Kredit*, Tesis, Universitas Indonesia, 2008, hal. 15.

¹⁷ Muhammad Yuris Azmi, "Hak Cipta Sebagai Jaminan Fidusia Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dan Undang-Undang No. 42 Tahun 1999 tentang Jaminan Fidusia", *Jurnal Privat Law*, Vol. IV, No. 1, Januari 2016, hal. 100-101.

¹⁸ Teguh Rizkiawan, "Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan: Prospek dan Kendala", *Lex Renaissance* NO. 4 VOL. 7, Oktober 2022, Hlm 884

¹⁹ Sri Mulyani, "Pengembangan Hak Kekayaan Intelektual Sebagai Collateral (Agunan) Untuk Mendapatkan Kredit Perbankan di Indonesia", *Jurnal Dinamika Hukum*, Vol. 12, No. 3, September 2012, hal. 568-578.

²⁰ Rindia Fanny Kusumaningtyas, "Perkembangan Hukum Jaminan Fidusia Berkaitan dengan Hak Cipta", *Jurnal Hukum Pandecta*, Vol. 11 No.1, Juni 2016, hal. 96-112.

intellectual properties as collateral. Theoretically, IPR are eligible as bank collateral because they are assets with economic value. It should again be noted that laws and regulations on IPR accommodate these provisions.²¹

For example, the Copyright Law in Article 16 paragraph (3) of the Copyright Law emphasizes that "copyright can be used as an object of fiduciary collateral". Furthermore, Article 108 paragraph (1) of the Patent Law also states that "rights to patents can be used as objects of fiduciary collateral". In addition, as a property right, IPR can be transferred or assigned through written contracts. A written agreement is intended as a guarantee with the object of IPR. This principle is applicable by considering the provisions found in Article 5 paragraph (1) of Law No. 30 of 2000 concerning Trade Secrets, which states that "trade secret rights may be transferred or assigned by inheritance, grant, will, written agreement, or other reasons permitted by statutory regulations". Article 31 paragraph (1) of Law No. 31 of 2000 concerning Industrial Design also clarifies that "industrial design rights may be transferred or assigned by inheritance, grant, will, written agreement, or other reasons permitted by statutory regulations". Comparable provisions are present in Law No. 32 of 2000 concerning Integrated Circuit Layout Design. Additionally, Article 23 paragraph (1) of Law No. 23 of 2000 concerning Integrated Circuit Layout Design states that "integrated circuit design rights may be transferred or assigned by inheritance, grant, will, written agreement, or other reasons permitted by statutory regulations".

The mechanism to develop the idea of IPR as an object of banking guarantee is present in the Fiduciary Guarantee Law, where it is stated that fiduciary guarantee is considered the most appropriate form of guarantee. In this principle, fiduciary guarantee serves as one of the legal protection facilities of bank security to ensure that the debtors will pay off the loan.²² A fiduciary agreement is not to be understood as a guarantee right that arises from the law. Instead, it is understood as a contract made in advance between the banks and the debtors.²³

Conceptually, fiduciary is a guarantee that is material in nature. Fiduciary functions as an element of bank credit security that is preceded by a bank credit agreement. Article 1 number 1 of the Fiduciary Guarantee Law states that fiduciary is the transfer of ownership to an object on the basis of trust. The provision necessitates that the object of which the ownership rights is transferable remains under the control of the owner of the object. Fiduciary serves as a guarantee right to movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be burdened with mortgage rights under Law No. 4 of 1996 concerning Mortgage Rights that remain in the control of the fiduciary, as collateral for the settlement of certain debts which are prioritized to the fiduciary recipient over other

²¹ Trias Palupi Kurnianingrum, Hak Kekayaan Intelektual Sebagai Jaminan Kredit Perbankan, Jurnal Negara Hukum Vol 8 No 1 Juni 2017, hal 42

²² Putri Mayang Sari, "Problematika Valuasi Hak Cipta Sebagai Objek Jaminan Fidusia", UNES LAW REVIEW Vol. 6 No. 2, Desember 2023, Hlm 5312

²³ Tan Kamelo, Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan: Sejarah, Perkembangannya, dan Pelaksanaannya dalam Praktik Bank dan Pengadilan, Bandung: Penerbit PT. Alumni, 2004, hal. 187.

creditors.²⁴ The Fiduciary Guarantee Law correlates with the legal need that rises from national development. The law, in effect, warrants legal certainty and legal protection for interested parties in doing business.

It should be noted that, because of its material nature, the object burdened with fiduciary is to be registered at the fiduciary registration office. If the object being imposed with fiduciary is not registered, the recipient's rights arising from the fiduciary burden agreement consequently serve not as material rights but individual rights.²⁵ Unfortunately, although there have been legal developments of IPR, particularly regarding IPR holders, The principle of IPR assets serving as banking collateral still faces obstacles or constraints. This is inconsistent with the theoretical concept of legal certainty and protection. The theory of legal certainty, put forward by Hans Kelsen, defines law as a norm. A norm is a statement that emphasizes the aspect of "should" or *das sollen*, which necessitates several regulations of what must be done. Every human being has freedom, but in living together he bears the responsibility of creating an orderly life together.²⁶

To realize that commitment to an orderly life, effective guidelines must be brought about and then be obeyed by everyone. These guidelines are called laws. If a law has determined a certain pattern of behavior, then everyone should behave according to that expected pattern. In line with what Hans Kelsen and Gustav Radbruch explained, the law must contain three identity values, namely the principle of legal certainty (*rechtmatigheid*), the principle of legal justice (*gerechtigheid*), and the principle of legal benefit (*zwechtigheid*). As the bearer of the value of justice, the law measures the fairness or unfairness in the legal system.²⁷

Meanwhile, the proposition above raises the question of legal protection, which according to Satjipto Raharjo provides protection of human rights. Granted by the law, communities are protected from human rights violation so that people enjoy the rights that are inherent to them.²⁸ Sudikno Mertokusumo further explains the principle of legal protection:²⁹

"In its function as a protection of human interests, the law has a purpose. The main purpose of the law is to create an orderly social order, to create order and balance. By achieving order in society, it is hoped that human interests will be protected. In achieving its purpose, the law is tasked with dividing rights and obligations among individuals in society, dividing authority and regulating how to

²⁴ Adisty Citra dan Chandra Silaen, Analisis Yuridis Hak Cipta Yang Dijadikan Jaminan Fidusia Berdasarkan Undang-Undang Hak Cipta di Bank BTPN, Notary Journal Vol. 1 No. 1, April 2021, Hlm 94

²⁵ Betty Dina Lambok, "Akibat Hukum Persetujuan Tertulis dari Penerima Fidusia Kepada Pemberi Fidusia untuk Menyewakan Objek Jaminan Fidusia Kepada Pihak Ketiga", Hal. 224. dikutip tidak langsung oleh Sri Mulyani, "Pengembangan Hak Kekayaan Intelektual Sebagai Collateral (Agunan) Untuk Mendapatkan Kredit Perbankan di Indonesia", Jurnal Dinamika Hukum, Vol. 12, No. 3, September 2012, hal. 568-578

²⁶ Bernard L. Tanya, dkk, Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi, Yogyakarta: Genta Publishing, 2010, hal. 127.

²⁷ Ibid, hal. 128-130.

²⁸ Satjipto Raharjo, Ilmu Hukum, Bandung: PT. Citra Aditya Bakti, 2000, hal. 54.

²⁹ Sudikno Mertokusumo, Mengenal Hukum Suatu Pengantar, Yogyakarta: Liberty, 1999, hal. 71.

solve legal problems and maintaining legal certainty.”

Roscoe Pound stated that law is a tool of social engineering. The law demands that human interests be protected. Pound categorized human interests that are protected by law into three types. The first is the interest of the state as a legal body. The second is the interest of the state in fulfilling its role as the guardian of social interests. The third revolves around the personal interest of individuals within their privacy.³⁰

The realization of legal protection requires legal certainty. In the case of IPR as an object of collateral, the material deserves appreciation because it opens the door to a legal renewal. However, the new material of the concept of IPR as object collateral has not provided legal certainty and protection. The absence of adequate legal certainty and protection here opens the gap for many national banking institutions not to accept the concept of IPR as collateral. This is not without reason considering that Article 2 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning banking firmly states that Indonesian banks conduct their business based on economic democracy and the principle of prudence.³¹

Bearing economic democracy and prudence in mind, in providing credit loan assistance to debtors, Indonesian banks apply the principles of five C's: namely character, capital, collateral, capacity, and economic conditions. In addition, banks also put an attention to several stages of the process: credit analysis stage, credit documentation stage, credit use stage, credit restructuring stage, and credit collection stage. Among these five stages, the credit analysis point is the most crucial risk assessment stage because it is the moment in which banks acquire confidence and assurance that prospective customers or debtors have the will and the ability to fulfill their obligation.

Table 1. Types of Credit Collateral According to Bank Indonesia Regulation Number 09/6/PBI/2007

No	Types of Collateral	Binding	Legal Basis
1.	Stock securities with an investment rating and actively traded on stock exchanges in Indonesia	Mortgage	Article 1150-1160 of the Civil Code
2.	Land, buildings and houses	Mortgage right	Law No. 4 of 1996 concerning on Mortgage Rights
3.	A machine that is one unit with the ground	Mortgage right	Law No. 4 of 1996 concerning on Mortgage Rights

³⁰ Bernard L. Tanya, dkk, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta: Genta Publishing, 2010, hal. 154.

³¹ Riedel Wawointana, “Manfaat Jaminan Fidusia Dalam Pelaksanaan Perjanjian Kredit Bank”, *Jurnal Lex Privatum*, Vol. I, No. 3, Juli 2013, hal. 101-109.

4. Aircraft or ships with dimensions over twenty cubic meters.	Mortgage	Law No. 17 of 2008 concerning on Shipping Law No. 1 of 2009 concerning on Aviation
5. Motorized vehicles and supplies	Fiduciary	Law No. 42 of 1999 concerning Fiduciary Guarantees
6. Warehouse receipt	Warehouse receipt guarantee rights	Law No. 9 of 2011 concerning the Warehouse Receipt System

Source: PP No.19 of 2021, Permen ATR/BPN of 2021

Uncertainty and the lack of legal grounds regarding the types of credit collateral had previously discouraged banks. However, Bank Indonesia finally issued Bank Indonesia Regulation (PBI) No. 9/6/PBI/2007. Article 46 of PBI No. 9/6/PBI/2007, which mentions the following types of credit collateral: (a) securities and shares that are actively traded on stock exchanges in Indonesia, have investment rating, and are bound by mortgage; (b) land, buildings and houses that are bound by mortgage rights; (c) machinery that is an integral part of the land and bound by mortgage rights; (d) aircraft or ships with more than twenty cubic meters in dimension and bound by mortgage; (e) motor vehicles and inventory that are bound by fiduciary rights; and/or (f) warehouse receipts that are bound by security rights. More details on the types of credit collateral mentioned in Article 46 of PBI No. 9/6/PBI/2007 can be seen from the table above.

However, the provisions stated in PBI No. 9/6/PBI/2007 have not accommodated individuals or companies with only intangible assets when they try to obtain bank credit guarantees. Even when these assets are guaranteed, they only serve as a complementary addition to the credit agreement, not the main one. Regardless its legal legitimacy, the situation demands a clearer legal concept to ensure the applicability of the principle of IPR as an object of bank credit guarantee. Moreover, the provisions were only codified in 2014 for the case of copyrights³² and in 2016 for patents.³³ The reality is that until now there have been no clear regulations regarding the interpretation of IPR values and the concept of due diligence.

The Implementation of Bank Credit Applications Using The Intellectual Property Rights as Collateral by Artists in Karawang

The regional arts of Karawang were influenced by the culture of three

³² Article 16, Paragraph (3) of Law No. 28 of 2014 on Copyright.

³³ Article 108, Paragraph (1) of Law No. 13 of 2016 on Patents.

ethnic groups in West Java, namely Sundanese, Betawi and Cirebon. Cirebon shadow puppets in Karawang is a part of the *Kulon*-style Cirebon puppetry, which covers the areas of Subang and Karawang. Taking into account the distribution pattern in Karawang, the villages in Cilamaya Wetan District, Karawang (including the Cilamaya village area and its divisions), some villages in Banyu Sari District (including Banyu Asih village) are the main centers of preservation of the puppetry. These villages also coordinate with other villages which still retain similar cultural characteristics found in Subang Regency, such as Rawa Meneng Village and its surroundings, which also play an important role in reviving and preserving Cirebon shadow puppets in Karawang.³⁴ Based on data from the Karawang Regency Tourism and Culture Office, there are around 3,000 artists and cultural figures.³⁵ The IPR holders in Karawang, especially the creative professionals, have exclusive rights to independently utilize or license them to other parties for economic benefits in the form of royalties. However, in reality, many IPR owners and holders may still face difficulties in accessing funds to expand their works. These assets cannot be used as collateral for debt in financial service institutions, even though in principle they are valuable assets and therefore eligible to be taken into consideration as collateral. The IPR, especially Copyright and Patents, are qualified as debt collateral through the Fiduciary scheme based on Article 16 of Law Number 28 of 2014 concerning Copyright and Article 108 of Law Number 13 of 2016 concerning Patents. Unfortunately, these provisions are not applicable to various types of IPR other than Copyright and Patents, even though they are acceptable according to Fiduciary scheme. The application of the IPR as credit collateral in banking face constraints because of the absence of revision of Article 43 of BI Regulation Number 14/15/PBI/2012 regarding the types of credit collateral.

The concept of due diligence is understood as an important process to clarify the object and the subject of the IPR concerning the ownership. This process is crucial in light of the provisions regarding due diligence that has been regulated in Article 6 letter (a) of the Fiduciary Guarantee Law, which states the need to clarify the giver and the recipient of the fiduciary. Meanwhile, the valuation of the IPR assets is interpreted as a process to determine the monetary value of the IPR.

The WIPO defines valuation as "the process of identifying and measuring financial benefit of an asset". The valuation concerns with IPR as an intangible asset, so it also entails "the process of identifying and measuring financial benefit and risk of an asset, in a particular context".³⁶ According to Paul Flingor and David Orozco, the process of IPR valuation has the potential to increase the understanding of intellectual properties. This is also a relevant process to

³⁴ https://id.wikipedia.org/wiki/Kabupaten_Karawang "Kesenian Daerah", accessed on 9 June 2024

³⁵ <https://radarkarawang.id/karawang/100-seniman-dan-budayawan-akan-terima-bantuan>, diakses pada tanggal 29 Januari 2025

³⁶ Understood as the process of identifying and measuring financial gains and risks of assets within a specific context.

situate intangible assets within business, legal and financial frameworks.³⁷ Valuation is needed in: a) assisting the decision-making process of a company's business and development strategy; b) investment guarantees; c) business negotiations; d) measuring potential damages due to IPR infringement; e) determining IPR licensing royalties; f) accounting standard requirements; and g) taxes.

Meanwhile, the Public Appraisal Service Office (KJPP) defines asset valuation as an assessment process to provide an opinion on the value of an asset, both tangible and intangible, based on the results of an objective analysis and relevant facts using the valuation methods and principles applicable at a particular time.³⁸ This process is typically required to acquire bank guarantees. According to the Association of Indonesian Valuation Companies (GAPPI), there is depreciated replacement cost and liquidation value in determining asset valuation.

The assessment of IPR assets is a crucial factor.³⁹ In Indonesia, there are no specific follow-up regulations which detail the characteristics of IPR assets eligible as fiduciary guarantees in the view of the banks. This is not without reason. The Fiduciary Guarantee Law has clearly clarified that, in addition to the description of the object as a guarantee, the value of the guarantee and the object is an important point of the credit guarantee. Taking into account countries which have practiced this provision, the application may face challenges in Indonesia. This is problematic because the assesment of IPR value is necessary to understand particular aspects like patent value and calculation of royalties as a result of asset value contracts. This is an important issue in light of the use of IPR as a strategic asset, so that IPR receive the same treatment like other objects that are eligible as a guarantee in the view of the banks. However, it is still necessary to pay attention to the process of the assessment of the IPR. This is as the result of IPR objects having different characteristics from each other. There are several parameters to address this issue:⁴⁰ a) market value;⁴¹ b) fair value (depreciated replacement cost);⁴² and c) liquidation value.⁴³

³⁷ Paul Flingor and David Orozco, "Intangible Assets & Intellectual Property Valuation: A Multidisciplinary Perspective", www.wipo.int/sme/en/documents/ip_valuation_fulltext.html, accessed on 2 August 2021.

³⁸ Public Service Office, "Definition of Asset Valuation", 2 February 2015, http://www.kjpptrisanti.com/index.php?option=com_content&view=article&id=50%3Apenilaian-aset&catid=31%3Aumum-jasa-dan-pelayanan&limitstart=2, accessed on 4 August 2021.

³⁹ Virly Vidiasti Sabijanto, "Kepastian Hukum Terhadap Hak Kekayaan Intelektual Youtuber Dalam Transaksi Pembiayaan Bank Menggunakan Konten Youtube", *Jurnal Litigasi* Vol. 25 (1), April 2024, Hlm 89

⁴⁰ Joni Emrizon, "Kode Etik dan Permasalahan Hukum Jasa Penilai Dalam Kegiatan Bisnis di Indonesia", *Jurnal Manajemen dan Bisnis Sriwijaya*, Vol. 3, No. 5, Juni 2005, hal. 3.

⁴¹ Market value is the amount of money that can be obtained from a sale or exchange transaction of a property on the valuation date between a buyer who is interested in buying and a seller who is interested in selling in a free transaction where the offer is made properly where both parties know and act prudently and without coercion;

⁴² Fair value is an estimate of the amount of money obtained from calculating the cost of new reproduction or replacement minus depreciation that occurs due to physical damage, functional decline and economic decline if any;

⁴³ Liquidation value is an estimate of the amount of money obtained from a property sale transaction in the market

In addition to the concept of the IPR assessment, there are some other points that may hinder the eligibility of IPR as an object of bank credit guarantee. The first issue is related to limited period of protection and ownership of IPR. It is undeniable that the period of protection and ownership of the IPR is sometimes different from each other. Article 58 paragraph (2) of the Copyright Law, states that copyright is valid for life and seventy years after the death of the creators.⁴⁴ On the other hand, patents are valid for twenty years. Moreover, simple patents are valid for a period of ten years from the date of the receipt.⁴⁵

Trademarks themselves are valid for ten years⁴⁶ and can be extended for another ten years.⁴⁷ The period of industrial design protection is ten years.⁴⁸ Meanwhile, trade secrets are valid indefinitely as long as its confidentiality is maintained.⁴⁹ The same applies to geographical indications. The validity of geographical indication will be granted as long as the reputation, quality, and characteristics are well maintained.⁵⁰ Considering the difference in validity period, bank may want to proceed cautiously to ensure the terms and conditions of the guarantees align with the period of validity of the IPR.

Secondly, some intellectual property rights are different in nature. This is true for the case of copyright when compared to other types of IPR. In principle, copyrights are acquired not from the process of formal registration but from its inherent and exclusive nature that cannot be separated from the creators. The exclusive right of the creators is automatically valid from the declarative principle after the process of creation manifests a tangible form without reducing restrictions in accordance with the provisions stated in laws and regulations.⁵¹

With this provision, it means that exclusive rights to copyright can be granted without the creators having to go through registration. This is a problem in the view of banks, especially in providing loan assistance, considering that objects burdened with fiduciary guarantees must be registered.⁵² Registration adheres to and is mandated in the Fiduciary Guarantee Law, which states that it must be carried out at the fiduciary registration office.⁵³

In light of that view, the process of securing legal validity of fiduciary guarantee requires registration of copyrights. It should also be noted that the

within a limited time where the seller is forced to sell while the buyer is not forced to buy. This value can be used by the party who will conduct the auction.

⁴⁴ Article 22, Paragraph (1) of Law No. 13 of 2016 on Patents.

⁴⁵ Article 23, Paragraph (1) of Law No. 13 of 2016 on Patents.

⁴⁶ Article 35, Paragraph (1) of Law No. 20 of 2016 on Trademarks and Geographical Indications.

⁴⁷ Article 35, Paragraph (2) of Law No. 20 of 2016 on Trademarks and Geographical Indications.

⁴⁸ Article 5, Paragraph (1) of Law No. 31 of 2000 on Industrial Designs.

⁴⁹ Article 3, Paragraph (1) of Law No. 30 of 2000 on Trade Secrets.

⁵⁰ Article 61, Paragraph (1) of Law No. 20 of 2016 on Trademarks and Geographical Indications.

⁵¹ Article 1 number 1 of Law No. 28 of 2014 on Copyright.

⁵² Article 11 paragraph (1) of Law No. 42 of 1999 on Fiduciary Security.

⁵³ Article 12 paragraph (1) of Law No. 42 of 1999 on Fiduciary Security

burden of objects with fiduciary guarantee requires a notarial deed in Indonesian and a fiduciary guarantee deed. Moreover, registration, in addition to its legal meaning, is inseparable aspect in the process of reaching an agreement.⁵⁴ Registration is a representation of legal certainty principle.⁵⁵ Therefore, IPR as an object of bank credit guarantee must undergo registration to obtain valid legal force. This too applies to the case of copyrights. The mechanism for copyright registration must adhere to the provisions present in Fiduciary Guarantee Law, which states that, as property rights, copyrights possess the characteristics of *droit de suite* in which the holders remain in the hands of the persons who own the copyright attached to the object.⁵⁶

Registration of IPR is very important, especially in the view of the banks. Banks will usually perform a process of verification for collateral. The process may be conducted at the Directorate General of Intellectual Property Rights (DJKI) to verify whether the IPR assets to be accepted as an object of bank credit collateral have already obtained permanent legal force (registered) in the name of the registered holder or owner. The check may also be performed by a bank or a notary's office.⁵⁷ This ensures that the debtors are indeed the party with the authority over the collateral.

The third is the issue of legal risks. Many banks may be reluctant to accept IPR as guarantees because there are still many violations related to IPR. Piracy is one example. This is not without reason since banks must uphold the principle of prudence in conducting their business. Although the problem of piracy has been regulated in details in the provisions of laws and regulations (such as the Trademark Law⁵⁸ and the Copyright Law,⁵⁹ for instance), violations are still rampant. This circumstance is one of the reasons why banks may feel reluctant to accept IPR assets as guarantees.

Fourth, there has been no IPR asset appraisal service institution in Indonesia. Appraisal is the process performed by an appraiser to provide an estimate or opinion on the economic value of a property, whether tangible or intangible, taking into account the results of an objective analysis and relevant facts by using applicable assessment methods, parameters, and principles.⁶⁰ Appraisal itself is divided into two categories based on the parameters, namely

⁵⁴ Article 5 paragraph (1) of Law No. 42 of 1999 on Fiduciary Security.

⁵⁵ Rio F. Najoan, "Kajian Hukum tentang Hak Cipta Sebagai Objek Jaminan Fidusia", Jurnal Lex et Societatis, Vol. IV, No. 7, Juli 2016, hal. 151-156.

⁵⁶ Sudjana, "Hak Cipta Sebagai Jaminan Kebendaan Bergerak Dikaitkan dengan Pengembangan Objek Fidusia", Jurnal Mimbar Hukum, Vol. 24, No. 3, Oktober 2012, hal. 405-417.

⁵⁷ Susilowardani, "Optimalisasi Nilai Ekonomi Hak Merek Menjadi Agunan Kredit di Bank (Kajian Kritis Peraturan Perundang-undangan di Bidang Hak Kekayaan Intelektual, Perbankan, dan Fidusia)", Jurnal Repertorium. Vol.1, No.1, 2014, hal. 5-18.

⁵⁸ Article 100 paragraph (1), Article 100 paragraph (2) of Law No. 20 of 2016 on Trademarks and Geographical Indications.

⁵⁹ Article 10, Article 113 paragraph (4), Article 116 paragraph (4), Article 117 paragraph (3) of Law No. 28 of 2014 on Copyright

⁶⁰ KJPP, "Jasa Appraisal/Penilaian", <http://www.kjpp-akr.co.id/> layanan/jasa-penilaian, accessed on 10 August 2021

property assessment and business assessment. Property appraisal parameters include a) assessment of lands and buildings with their equipment, as well as other developments taking place on the land (land development); b) assessment of installations and equipment assembled in one unit and/or stand-alone linked with production process; c) assessment of transportation equipment, heavy equipment, communication equipment, medical equipment, laboratory equipment and utilities, office equipment and furniture, and military equipment; d) agriculture, plantations, animal husbandry, fisheries, and forestry; and e) mining.⁶¹

On the other hand, the parameters of business appraisal include a) business entity; b) participation; c) securities including derivatives; d) company rights and obligations; e) intangible assets; f) economic losses caused by particular activities or events (economic damage) of which the assessment might provide various moves to take; and g) fairness opinion.⁶² This fourth point is notably important, considering the fact that there has been no special institution which executes the appraisal of IPR. This hinders the process of obtaining bank capital guarantee loans. Although Indonesia already has DJKI, the body has not been specifically directed to appraise IPR assets.

DJKI, a body which administers several matters assigned by the Ministry of Law and Human Rights, is tasked with formulation and implementation of policies in the field of intellectual property. The body performs its tasks in accordance with the provisions of laws and regulations. In administering its duties, DJKI has the following functions:⁶³

- a. formulating policies concerning legal protection of intellectual properties, settlement of intellectual property registration, investigations, dispute resolution and complaints of intellectual property violations, cooperation, promotion of intellectual properties and information technologies;
- b. providing technical guidance and supervision concerning legal protection of intellectual properties, settlement of intellectual property registration, investigations, dispute resolution and complaints of intellectual property violations, cooperation, promotion of intellectual properties and information technologies.
- c. monitoring, evaluating, and reporting legal protection of intellectual properties, settlement of intellectual property registration, investigations, dispute resolution and complaints of intellectual property violations, cooperation, promotion of intellectual properties and information technologies
- d. implementing DJKI administration; and

⁶¹ Ibid

⁶² Ibid

⁶³ Direktorat Jenderal Hak Kekayaan Intelektual, "Struktur Organisasi", <http://laman.dgip.go.id/tentang-kami/struktur-organisasi-djki>, accessed on 11 August 2021.

e. executing functions assigned by the ministry.

Therefore, it shows that DJKI's responsibilities have not extended to the appraisal of IPR assets. This is regrettable because several countries have relevant institutions specialized in administering IPR valuation. As a comparison, several countries do possess IPR asset appraisal bodies. However, there are also others which do not require separate appraisals. In this case, the task of appraising IPR assets is usually imposed on local intellectual property agencies which perform their duties in their own way, such as disseminating information as widely as possible to the public through media, printed or online.

Furthermore, the status of IPR assets as intangible assets are acceptable as an object of bank credit guarantees due to its movability, intangibility, economic value, transferability, and eligibility as fiduciary guarantees. Again, despite the provisions of laws and regulations having clarified that IPR are qualified as objects of bank guarantees, in reality not all banks may apply the principle. The barriers include (a) having minimum strong legal support in the implementability of the principle that validates IPR as collateral for bank credit as mandated in Copyright Law and Patent Law, or the revision of the Bank Indonesia Regulation (PBI) regarding collateral adhered to by banks; b) having no clear concept concerning due diligence and assessment of IPR assets; c) having limited period of protection of IPR assets; d) the nature of IPR themselves; e) legal risks; f) the absence of specialized institutions which administer IPR assessment in Indonesia.

With the increasing number of trends which put IPR as a credit collateral, several countries have developed solutions to evaluate IPR assets as credit collateral. In Denmark, for instance, the Danish Patent and Trademark Office (DPTO) established the IP Marketplace site to showcase IPR assets. On www.dpto.org, IPR owners may register their assets either for sale or licensing. The site provides a variety of information related to IPR which help owners gain insight into IPR valuation and the prices of patents and copyrights. IPR designated as credit collateral in Denmark must first be valued by a registered and certified appraisal institution.

Several Asian countries which have practiced IP Financing include China. China Development Bank has disbursed credits equivalent to 1.3 billion US dollars for 134 credits with patent guarantees and 34 credits with trademark guarantees. Korea, Malaysia, and Singapore have been actively developing IP Financing. One example of the use of a copyright as credit collateral in China is the film *Curse of the Golden Flower* which guaranteed the 2005 film pre-sale contract for a debt worth of 10 million US dollars. The provision of credit with patent guarantees in China has also experienced positive developments. In 2015 alone, for example, China has accumulated around 8.1 million US dollar for patent guarantees. For trademark guarantees, it has amassed an estimated total

of 29 million US dollars.⁶⁴

Malaysia also owns an IP Marketplace site called MyIPO that can be visited on www.ipmarketplace.myip.gov.my. The site provides relevant educational and informative sources regarding the commercialization of IPR and global market trading platform. Other insights include information on how to obtain patents, trademarks, and copyrights from various industrial sectors, applications, and technologies available for credit proposals. MyIPO also provides information on the valuation of IPR assets. It serves to facilitate a dynamic market for the IP-based business community eager to maximize and monetize their IP assets. The Malaysian government has demonstrated their seriousness in providing capital to business actors through the IP guarantee scheme by allocating a total of RM 19 billion throughout the 2013 budget year for the development of the MyIPO site.⁶⁵

4. Conclusion

The Copyright Law clarifies the provisions on the intellectual property rights. Article 16 paragraph (3) of the Copyright Law states that "copyright can be used as an object of fiduciary collateral". Furthermore, Article 108 paragraph (1) of the Patent Law also explains that "rights to patents can be used as objects of fiduciary collateral". In addition, as property rights, the IPR are eligible to be transferred or assigned in writing. A written agreement is intended as a settlement to make IPR the object of collateral.

The implementation of using intellectual property rights as collateral in bank credit applications has not been optimal and faced obstacles because there has been no revision of Article 43 of BI Regulation Number 14/15/PBI/2012 concerning types of credit collateral. The highest authority on this matter (previously under BI's authority, but now under OJK) must immediately revise the PBI so that the principle of IPR as collateral is applicable in practice.

The Financial Services Authority (OJK) has the authority to regulate the IPR as credit collateral. It needs to regulate the role of appraisal institutions tasked with appraising IPR assets which may be used as collateral. As such, the valuation of musical works and songs can involve the roles of Collective Management Organization (LMK) who is tasked with collecting royalties from musicians, singers and songwriters (artist). The valuation of other creative works such as films, videos, games, applications, software, books, architectural designs, visual communication designs, and others, may involve the parties who have experiences in the matters.

⁶⁴Foreign-Invested Firm and IP for Loan Collateral in China, www.naipo.com, accessed on 7 July 2021

⁶⁵ Monetising Intellectual Property, www.the-star.com.my, accessed on 20 July 2021

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