



Islamic Law Aspect on in Valuation and Execution Intellectual Property (IP) Asset as Bank Collateral in Creative Economy

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Abstract

One of the issues faced by many creative economy actors in this relatively newly established industry is the lack of supporting infrastructure, such as the limited access to financing and one of the prominent issues is banks' reluctance to accept intellectual property ("IP") as collateral to secure loans including problems concerning valuation of IP Asset as Collateral which has implications several regulation concerning Intellectual Property. In the spirit of furthering the creative economy, the Government has recently issued Government Regulation Number 24 of 2022 on Intellectual Property-Based Creative Economy Financing. This matters includes in relation with IP assets that are exposed and exploited their product (goods or services) on the basis of exclusivity in financing and loan contractual scheme as collateral. This article normative legal research in which intended for studies that are literary and practical works which is Intellectual Property (IR) system in relation with valuation and execution as bank collateral either Indonesia prevailing law and Islamic (Syariah) Law. The result of this research that IP owners often deal with complex contractual relationships that involve different forms of cooperation in research, production or commercialization. most important aspect concerning capacity and competency with comprehensive knowledge deal with IP Asset as Collateral before Banks, and others financial institution, execution of guarantees as applied to Islamic banking has adopted many syariah law, in the practice, there are still many problems the implementation of guarantees as applied to Islamic banking has adopted many Islamic laws. However, in the practice, there are still many problems that arise from the Islamic law scope the concept of justice and the philosophy of *maslahah*.

Keywords: *Islamic (Syariah) Law; Intellectual Property (IP) Collateral; Creative Economy Valuation and Execution Asse*

1. Introduction

Innovation and creativity as a business strategy is an intellectual work that is an intellectual property rights (IPR/HKI)¹ that not only needs to be rewarded but also protection in exclusivity. Protection of Intellectual Property (IP) is inseparable from the efforts of the State in guaranteeing protection of IP through strong legal instruments in the sense of having "forced power" in the form of criminal or civil sanctions for violations. Legal certainty that guarantees protection of intellectual property assets will stimulate industries to continue to develop themselves through their innovations which will certainly enliven the local industrial market to compete with products from abroad.

A creation or innovation derived from human thought within the scope of Intellectual Property (IP) protection, there are strict limits between the development of a technology or Copyrighted work as part of previous innovations², but which is often used as an excuse for an industry, namely on the grounds that its products are the result of the development of existing intellectual property. Common problems that often occur have an impact on the development of the creative industry in the country, as if it can be said to make something new does not get protection or appreciation because it will only be easily traced or hijacked. These industries (in the sense of corporate actors) often do not think about or do not care about the further consequences of cheating, which is very detrimental to the owners / holders of actual IP Rights.

Appreciation for innovation and creativity, this is where the strategic and challenges in the digital industry going forward, not only for policy makers but stakeholders deal with with Intellectual Property Asset as Collateral which has implications for aspects of Intellectual Property (IP) from intangible to be movable asset, this discourse will be one of the most important considerations for implementation IPR in the future given the implications for intellectual property, including trade, finance and business compliance.

Indonesian government has issued Government Regulation Number 24 of 2022 concerning the Creative Economy, where in Article 9 it is stated *that in implementing the Intellectual Property Based Financing Scheme, bank financial institutions and non-bank financial institutions use Intellectual Property as an object of debt collateral in the form of fiduciary guarantees for Intellectual Property, contracts in Creative Economy activities and/or collection rights in Creative Economy activities.*³

Furthermore, in Article 10 Government Regulation Number 24 of 2022 concerning the Creative Economy it is stated that Intellectual Property that can be used as an object of debt collateral is in the form of Intellectual Property that has been recorded or registered with the ministry that carries out government affairs in the field of law and Intellectual Property that has been managed either independently and/or the rights have been transferred to another party. The issue of IP as collateral for

¹ The acronym HAKI /HaKI/ HKI is a translation of Intellectual Property Rights, previously this understanding was better known as HAKI /HaKI, before finally in the whole agreed with the aronym HAKI as H K I / IPR. And in its development, the acronym IPR as a Directorate General of Intellectual Property Rights (IPR) under a system subscription from the Indonesian Ministry of Law and Human Rights., Also see Zen Umar Purba., Paper presented at a national seminar organized by KADIN, Jakarta 31 January 2001., page. 2 Based on the Decree of the Minister of Law and Republic of Indonesia Law No. M.03.PR.07.10 of 2000 and Approval of the State Minister for Administrative Reform in Letter Number 24 / M / PAN / 1/2000 the term "Intellectual Property Rights" (without "Above"), can be abbreviated with "H.K.I."

² The opposite condition or reasoned in good faith - when in fact there is intention (bad intentions) or "bad faith" that is to ride the popularity of a certain brand / business reputation of another party for the benefit of its business and worse, the community in this case the market will associate a duplicated products are considered to be the same as the original products that already existed.

³ Law no. 28 of 2014 concerning Copyright (Copyright Law) especially in Article 16 paragraph (3) of the Copyright Law which states explicitly that "copyright can be used as an object of fiduciary guarantee", and Law no. 13 of 2016 concerning Patents (Patent Law) Article 108 paragraph (1) of the Law which states that "the right to a patent can be used as an object of fiduciary guarantee"

credit or loans to banks has started to emerge again since the Government issued Government Regulation Number 24 of 2022 concerning the Creative Economy on 12 July 2022. The President wants to encourage the Creative Economy to grow further, considering that it is based on data from the 2020 Tourism Industry and Creative Economy Statistics., the creative economy is one of the sectors that will become a pillar of the Indonesian economy in the future.⁴

The existence of false perceptions coupled with a lack of understanding as well as awareness of business actors for the protection of intellectual property rights makes rampant acts of piracy an illegal act, but the state and interested parties cannot do much because their intellectual property rights have not been submitted for protection.⁵ Intellectual Property Rights (IPR) under the rules of Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement which are in several respects different from the laws that live in Indonesia. Therefore, it is necessary to initiate Intellectual Property Law that is in accordance with the values that live in Indonesia, the majority of which are Muslim communities.

This study illustrates that the legal protection of the owners of Intellectual Property (IP) in Indonesia has been regulated in various laws and regulations that are included in the Intellectual Property Law system. The Intellectual Property Rights regime with the rules of TRIPs has two sides in the protection of intellectual property rights, on the one hand it protects individual interests from piracy and theft of intellectual property, but on the other hand empirically this legal protection greatly benefits developed countries particularly with the source of material law originating from values that live in Indonesian society, namely Islamic law.⁶

In Islam, the majority of contemporary scholars agree to acknowledge intellectual property or copyright in accordance with Islamic jurisprudence and there is no rule against or prohibit the protection and enforcement of copyright. The Qur'an and Hadith in conjunction with other sources of Islamic law are non-textual as *ijma'* and *qiyas*, provide principles that tend towards protecting intellectual property and it is the basis for strong protection of intellectual or particularly copyright.⁷

Intellectual property (IP) collateralization, which has been widely discussed by the public lately. Intellectual property including property rights (*milkiyah*) in Islamic law can be obtained from various ways, including namely *ihraz al-mubahat* (free control of property), namely the method of ownership through control over assets that have not been controlled or owned by other parties so that assets that have become his property is obliged to be protected by both formal law and Islamic law as individual property rights.⁸

Economic and legal problems arise when pledging objects in the sense of intellectual property rights for debts and Financing and Collateral guarantees. Besides that, is there anyone willing to buy Copyrights (*intellectual property*) for a certain amount of money? Does a market for intellectual property rights really exist? This problem concerns Copyright (*intellectual property*) as an object of fiduciary guarantee.⁹ This hypothesis is because the question is relevant to the fact that there is no clear mechanism for making Copyrights an object of fiduciary collateral, even though regulations regarding collateral are

⁴ <https://www.ojk.go.id/ojk-institute/id/capacitybuilding/upcoming/1110/prospek-hak-kekayaan-intelektual-hki-sebagai-jaminan-utang>

⁵ https://www.kompasiana.com/nadyadjajadiningrat/role-Attorneys-intellectual-property-rights-in-business-and-industry-why-needed_5554677b6523bdc5144aeff1

⁶ Triana, Nita. 2018. "Menggagas Hak Kekayaan Intelektual Perspektif Hukum Islam Ke Dalam Hukum Nasional". *Al-Manahij: Jurnal Kajian Hukum Islam* 12 (2):177-92. <https://doi.org/10.24090/mnh.v12i2.1747>

⁷ Aunur Rohim Faqih, *Hak Kekayaan Intelektual, Bagaimana Perlindungannya dalam Perspektif Islam?*, Jurnal Wakaf Hak Kekayaan Intelektual, (Yogyakarta: Pusat HKI FH UII Press, 2016), p. 75-76

⁸ Marasabessy, Fachrul. 2023. "Analisis Fatwa MUI Tentang Perlindungan Hak Kekayaan Intelektual". *I-BEST: Islamic Banking & Economic Law Studies* 2 (1):33-50. <https://doi.org/10.36769/ibest.v2i1.329>

⁹ Law No. 42 of 1999 (Fiduciary Guarantee)

closely related to Indonesian economic development efforts which already exist, namely in the field of property in the sense of tangible objects, not intangible objects, but real (tangible).

Based on the provisions of Law Number 24 of 2019 concerning the creative economy, the State, through the central government or regional governments, will provide Intellectual Property Facilitation. As specified in Article 23, it is stated:

- (1) *The Government and/or Regional Government facilitates the recording of copyright and related rights as well as the registration of industrial property rights to Creative Economy Actors.*
- (2) *The Government and/or Regional Government facilitates the use of intellectual property for Creative Economy Actors.*

Critical Study from this article as valuable lesson from this a bundle of opportunity and problems related to financing & IP asset collateral), therefore IP as intangible property under Securitization System particularly in valuating IP Asset that its must be appraised and frameworks in relation with nominal value on IP (Intellectual Property) Asset as Intangible Property shall be object of Guaranty on the Basis of Movable Property in Islamic syariah law in financing and loan contractual scheme.

Based on the concept of collateral from the perspective of Islamic law, Islamic finance and banking may involve collateral as security to protect themselves against the possibility of customers' default. The concept of collateral is rooted in the *idea of al-Rahn* (pawn/pledge) in fiqh muamalah, the management of the Shariah-compliant bank as the collateral recipient has the right to sell the collateral if the debtor cannot fulfil its obligations as at when due date.¹⁰

With the guarantee system, the creditor has the right to both goods and collateral as they are in the control of the creditor and not for settlement of accounts receivable of debtors (Abdullah, 2010). The conventional banking guarantee system is also applied in the provision of financing facilities in the Islamic banking industry. This is because not all financing goes as expected. Distribution of funding for the activities of the community in the form of financing the economy contains the element of risk of failure or also called Non-Performing Loan (NPL). NPL is the constraints that often arise in the implementation of financing by Islamic (syariah) banks¹¹ to customers such as non-current financing, financing that the debtor does not meet the promised requirements, and the financing does not keep the instalment schedule. These things have a negative impact on both parties.¹²

2. Research Method

The nature of the research in this study is prescriptive in nature. This type of research is normative research in the form of primary legal materials, secondary legal materials, and tertiary legal materials. After the data has been collected, a conceptual approach is used. This research method is intended for studies that are literary and practical works which in essence are a means of infrastructure for the development of science and technology, so the applied research methodology is adjusted to the

¹⁰ Muhammad Fadhli., *Review of Islamic Law Against Execution of Collateral Auctions on Islamic Banking Institutions in Aceh, Indonesia.*, The Journal of Management Theory and Practice (JMTP) ISSN: 2716-7089, Volume-2, Issue-1, <http://dx.doi.org/10.37231/jmtp.2021.2.1.95>

¹¹ Bank Syariah Indonesia (abbreviated as BSI) is a bank in Indonesia which operates in the field of sharia banking. This bank was inaugurated on February 1 2021 at 13.00 WIB or coinciding with *Jumadil Akhir 19 1442 H*. This bank is the result of a merger between Bank Syariah Mandiri, Bank BNI Syariah, and BRI Syariah. This bank is also a sharia bank belonging to HIMBARA (Association of State-Owned Banks), with the majority of its shares held by Bank Mandiri, so this bank is considered part of the Mandiri Group.

¹² AbdulGaniyy, A., & AbdulKareem, I. A. (2020). Islamic Banking and Global Financial Crises: A Review of Liquidity Risk Management. *Islam Universalia, International Journal of Islamic Studies and Social Sciences* 2(1), 153-170

main body of knowledge in the field of law.¹³ This research is also an analysis process of observing and acting logically, methodically and systematically regarding phenomena, events or empirical facts that occur or exist around us to be reconstructed in order to reveal facts and information that are useful for life,¹⁴ particularly In Valuation and Execution Intellectual Property (IP) Asset as Bank Collateral in Creative Industry, on Islamic (Syariah) in Indonesia society.

This literary work is written based on the material collected and analyzed based on data according to the topic to be discussed. As we all know that a research is an effort made by humans to find new things and solve a problem,¹⁵ therefore written of this scientific paper uses an approach in the perspective of national interests, with a multidisciplinary analysis in accordance with the practical and theoretical framework review on based on regulation an practices in Valuation and Execution Intellectual Property (IP) Asset as Bank Collateral in Creative Industry.

3. Discussion and Analysis

3.1. Discourse in Professional Valuation of Intellectual Property Asset (IP) Asset as Bank Collateral

The possibility of Intellectual Property (IP) Asset to be used as collateral has already been envisioned in Indonesian Law Number 28 of 2014 on Copyrights and Indonesian Law Number 42 of 1999 on Fiduciary Security. However, the absence of any implementing regulations remains a hinderance to creative economy actors in actual implementation of this mechanism. Thus, in the spirit of furthering the creative economy industry, the Government has recently issued Government Regulation Number 24 of 2022 on Intellectual Property-Based Creative Economy Financing, which will come into force on 12 July 2023.¹⁶

Creative Economy Infrastructure There are two types of infrastructure support that will be provided by the government. First, physical infrastructure will be provided in the form of exhibition space, training space, and creative space. Creative economy actors then can use these physical infrastructures to showcase their products, all aligned with the intellectual property-based creative economy marketing system. Secondly, in terms of information and communication technology infrastructure, the government will facilitate creative economy actors by providing technology to prepare, collect, process, analyze, store and announce information relating to their creative economy business' products. In providing the above-mentioned facilitation, the government can establish a technical work unit on its own or in partnership with third-party private entities.

Whereas previously Creative Economy Financing shall be implemented practically under IP asset as Collateral for Loans and actually there was no specific law regulating financing in the creative economy. Therefore, regulation now serves as a breakthrough instrument to solve the financing problems faced by many creative economy actors. Generally, there are two viable financing schemes for the creative economy, as governed under Government Regulation Number 24 of 2022 (i) schemes executed by financial institutions, either bank or non-bank; and (ii) alternative schemes.

Previously, business actors have found it difficult to secure bank financing due to the requirement to provide collateral security, as banks would rarely accept IP as collateral (despite existing regulations).

¹³ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research*, (Jakarta: PT Raja Grafindo Persada), 2012, p. 1.

¹⁴ Abdul Kadir Muhammad, *Law and Legal Research*, (Bandung: PT Citra Aditya Bakti), 2004, p. 2.

¹⁵ Bambang Sunggono, *Method of Legal Research*, (Jakarta: PT Raja Grafindo Persada), 2001, p. 27.

¹⁶ Government Regulation Number 24 of 2022 acts as the implementing regulation of the previously promulgated Law Number 24 of 2019 on Creative Economy.

Thus, to ease the process of bank financing schemes, Government Regulation Number 24 of 2022 now further governs IP as a collateral to secure loans, in the forms of:

- Fiduciary security;
- Contracts in the creative economy sector, such as licensing contracts, service contracts, or work orders; and/or
- Collection rights over a creative economy business, such as collection rights over outstanding royalties and similar.

Under Government Regulation Number 24 of 2022, only particular IP Intellectual Property that are managed (commercialized) individually or by a third party, and those that are registered with the Ministry of Law and Human Rights, are eligible to be used as a collateral to secure loans. GR 24/2022 also governs the methods to assess the value of an IPR by utilizing a certified appraiser or panel of appraisers, *inter alia* through cost approach, market approach, and profit approach, all of which are non-exhaustive and open to other viable approaches in accordance with the recognized standards in the industry.

Discourse concerning Intellectual Property (IP) based Creative Economy based on Marketing System performed by Creative economy actors will be able to utilize the marketing system facilitated by the government to further their businesses. As mentioned previously, one of the main issues in the creative economy industry is the lack of a marketing ecosystem to promote businesses, especially for micro, small, and medium enterprises. Based on Government Regulation Number 24 of 2022 facilitates creative economy actors through a marketing system, based, *inter alia*, upon: licensing, franchise, transfer of technology, collaborations (*jenama bersama*) and transfer of rights. The government will provide an integrated marketing system, where eligible creative economy actors will be given technical assistance for their business needs, such as legality/licensing, intellectual property registration and management, financing, information services, and marketing incubation. One of the interesting features brought Government Regulation Number 24 of 2022 is the digital collective management system, whereby the creative economy can access assistance for product inventory, marketing platforms, and priority in government procurement.

A profession is a designation or position in which a person who bears it has special knowledge gained through training or other experience, or is obtained through both, so that profession persons can guide or give advice / advice or also serve others in their own fields. The existence of Intellectual Property (IP) Attorneys¹⁷ is intended to represent the Petitioner, specifically the Author / Right Holder, Brand Owner, Creator, Inventor, Designer or other interested parties in the framework of obtaining protection and submission of registration in the field of IPR to countries where each IPR field has its own characteristics and procedures. respectively. While IP Attorneys are also expected to provide various advice to IPR Applicants (as Clients in the scope of consultation), with respect to the application requirements in the field of IPR. It is important to understand that the understanding of IP Attorneys¹⁸ has

¹⁷ The existence of IPR Attorneys in Indonesia is regulated in Government Regulation (PP) No. 2 of 2005 concerning IPR Attorneys which is the implementation of various Laws on IPR (specify the Act). Before the presence of IPR Attorneys in 1991, PP No. 33 of 1991 concerning Special Registration of Patent Attorneys governing the existence of Patent Attorneys in Indonesia which is the implementation of Law No. 6 of 1989 concerning Patents.

¹⁸ Article 1 paragraph (1) Government Regulation Number 2 of 2005 concerning Intellectual Property Rights Attorneys, is determined: IPR Attorneys are people who have expertise in the field of Intellectual Property Rights and specifically provide services in the field of filing and processing applications in the field of Intellectual Property Rights that are managed by the Directorate General and registered as a Attorneys of Intellectual Property Rights at the Directorate General at the Ministry of Law and Human Rights of the Republic of Indonesia. The IPR Attorneys in this article is a Registered IPR Attorneys, a person who has undergone special education and is sworn in by an oath by the Indonesian Minister of Law and Human Rights, and is

power of attorney is different from the notion of legal counsel in assisting / representing clients in or out of court or acting for and on behalf of clients in the context of seeking justice, in short that meaning that IPR Attorneys as special powers of the Applicant to apply for registration and management in the field of Intellectual Property practices.

The development of the Intellectual Property Rights Attorneys Profession is very closely related (linked) to the Intellectual Property sector which is currently still generally seen in the scope of registered IP (IP registered) and protection within the boundaries of the State (countries territorial based IPR protections), therefore, (in the meantime) the IPR Attorneys profession solely a complementary agent for entities or individuals to obtain protection or registration of Intellectual property when a minimum requirement to obtain patents to protect inventions, copyright protects films, art, literature, music, etc., brands to protect brands, naming includes geographical indications.¹⁹

However, the profession of IP Attorneys is very important in the framework of increasing digital development and IP economic interests (Assets), among others:²⁰

- Digital development and IP economic interests (Assets) are becoming a mainstay for business actors because they are becoming increasingly high (Needs) (For example: application-based information technology industry, internet of things, etc.).
- Portfolio of IPR Assets "as material security" for the Creative Industries, impacting Development Potential or Opportunities for both micro and medium scale industries
- Business transactions involving the IPR Asset Portfolio will have consequences that can cause problems, which can result in disputes/cases. Including involving IP assets as collateral/collateral for movable objects with fiduciary guarantees

The current development is that more business actors who own several IPR assets use exclusive rights and manage them (IPR Asset Management) to increase revenue (eg through licensing) or further corporate strategic objectives. The strategic role can be in the form of repositioning the Intellectual Property Rights Attorneys as well as examiner/auditing (IP Audit), appraiser (IP valuator), assistant (IP Partners), manager (IP Management) as well as promotional activities that are broader than just getting rights protection or intellectual property registration. This reposition includes a commitment to legal action against parties who use their technology in good faith, or without prior rights/permissions (unlawful act).²¹ This important reason for recording Intellectual Property licensing (exclusive License agreement) is to provide protection for a license agreement made. Recording is intended to facilitate proof if a dispute occurs in the future between the Licensor and Licensee, as well as to protect third parties if it is related to the implementation of the license agreement.²²

registered with the Directorate of Intellectual Property Rights at the Ministry of Law and Human Rights of the Republic of Indonesia. Article 3 letter f, determines: To be appointed as an IPR Attorneys, one must meet the requirements for passing the Intellectual Property Rights Attorneys training. Article 4 paragraph (1), determines: The training referred to in Article 3 letter f is held by a university designated by the Directorate General and Article 4 paragraph (2) determines: The training referred to in paragraph (1) uses a curriculum determined by the Directorate General.

¹⁹ Suyud Margono, <https://kliklegal.com/world-ip-day-digital-industries-dan-reposisi-profesi-konsultan-hki/>

²⁰ Suyud Margono., "The Role of the IP Consultant Profession in Valuing IP Asset Portfolios as Collateral", at Focus Group Discussion (FGD), "Preparation of Indonesian Appraisal Standards for Intellectual Property (SPI-KI)". Indonesian Ministry of Tourism and Creative Economy, Deputy for Resources and Institutions, June 16, 2023.

²¹ Suyud Margono., *The Role of Intellectual Property Rights Consultants As A Legal Profession For Completion Of Disputes In The Digital Industry Era*, Journal Talenta – IPR Review, Publisher Faculty of Law, University North Sumatera, Vol. 2 No 01 January 2019, p. 103.

²² <https://innnews.co.id/ketum-akhki-perjanjian-lisensi-wajib-dicatatkan-agar-terproteksi/>

In a disruptive era like now, change is so fast happening across national borders. Traffic in trade in goods, for example, now relies heavily on electronic transactions with the potential for infringement of intellectual property to remain and could even be greater, as Salvatore Caserta said, quoted,

*“One key societal institution that is likely impacted by these developments is law and relatedly, the legal profession. Law in practices whether understood as a profession, a method of handling, soliciting and solving disputes, a tool to achieve justice. In the other hand structure in the hands of the power to protect their interests and/or more simply, an instrument to guide human behaviour, is at its core an intellectual endeavour of legal profession in handling, storing, interpreting, and sharing knowledge as well as information. Recent advancements in digital technology are precisely transforming the ways in which information is created, stored, and conveyed. Moreover, these developments are making inroads into artificial knowledge production, thereby potentially entering the intellectual and human aspect of law”.*²³

We find that the Intellectual Property Attorneys profession can come from a variety of disciplines²⁴, this is because of the responsibilities that must be carried out as a Attorneys handling various fields related to leading edge technology, industry, commerce and even the arts. IP Attorneys Professionals, in addition to being consistent in providing advice on intellectual property in each field of IPR, ownership principles and all phases in the application for IPR registration. An IPR Consultant must be able to provide an opinion in the form of "IP Opinion" in the form of giving an opinion on the possibility of success of an intellectual property to be registered, besides that currently the Professional IP Attorneys can give an opinion on "IP valuation"²⁵ or the values of an IPR owned by IP Owner / Holder.

Article 1 point (3) jo (4) Government Regulation (PP) 24 of 2022 as the Implementation of Law No. 24 of 2019 concerning the Creative Economy, determines:

- 3). *Financing or credit, hereinafter referred to as financing, shall means the provision of money or equivalent bills based on an agreement or loan agreement between a bank financial institution or non-bank financial institution and another party which requires the financed party to return the money or bill after a certain period of time with compensation in the form of interest or profit sharing.*
- 4). *Intellectual Property Based Financing Scheme shall means a financing scheme that makes Intellectual Property an object of debt collateral for bank financial institutions or non-bank financial institutions so that can provide financing to creative economy actors.*

The Intellectual Property Valuation regulation in the field of Creative Economy that will be used as collateral according to Article 12 Government Regulation Number 24 of 2022 as the implementation of Law No. 24 of 2019 concerning the Creative Economy, the law maker determines as follows:

- 2) *The Intellectual Property Valuation as intended in paragraph (1) is carried out by an Intellectual Property appraisal and/or a panel of assessors.*
- 3) *The Intellectual Property Appraiser as intended in paragraph (2) must meet the following criteria:*
 - a. *Have a public appraisal permit from the ministry that handles government affairs in the field of state finance;*

²³ Salvatore Caserta and Mikael Rask Madsen., *The Legal Profession in the Era of Digital Capitalism: Disruption or New Dawn.*, Laws 2019, 8, 1; doi:10.3390/laws8010001, www.mdpi.com/journal/laws, p. 2

²⁴ Based on Government Regulation Number 2 Year 2005 concerning Intellectual Property Rights Attorneys.

²⁵ Since 2017, the author as the Indonesian National Work Competency Standards Formulation Team (SKKNI) IPR Valuator Profession which was initiated by the Indonesian Creative Economy Agency (Badan Ekonomi Kreatif)/BEKRAF RI.

- b. Have competence in the field of Intellectual Property valuation; and*
- c. Registered with the ministry which carries out government duties in the field of Creative Economy.*
- 4) Competence in the field of Intellectual Property assessment as referred to in paragraph (3) letter b is obtained through competency certification which is carried out in accordance with the provisions of statutory regulations.*
- 5) The Intellectual Property Appraisal as intended in paragraph (2) has the following duties:*
 - a. Carry out an assessment of the Intellectual Property that will be used as collateral;*
 - b. Carry out market analysis of the Intellectual Property that will be used as collateral;*

The Patent rights for inventions and the Copyrights for creations which are movable objects can be used as objects of fiduciary guarantees,²⁶ which are permitted by the Fiduciary Guarantee Law, and basically fulfill the elements of objects that can be used as objects of fiduciary guarantees because they have economic value and can be transferred.²⁷ If it is agreed that a breach of contract (default) has occurred, execution of patent rights which are the object of fiduciary guarantees can be carried out in the manner contained in Article 29 paragraph (1) of Law 42 year 1999 concerning Fiduciary Guarantee, namely:

1. Implementation of executorial title;
2. Selling under one's own power through public auction;
3. Underhand sales.

Until now, there have been no guidelines for assessing the economic value of intangible objects such as Copyrights. These norms have been left as norms in law without any implementing regulations until now. In this writing, the Management and Team of the Indonesian Society of Appraisal (Indonesian Appraisal Professional Society abbreviated as MAPPI²⁸ have carried out a study with several stakeholders in assessing Intellectual Property Assets for Debt Collateral. Because it is relatively new, the depth of valuation standards is very important because it has a big impact on the valuation results which are determined by the value of money.

Draft for Intellectual Property Assets Valuation Standard by the Indonesian Society of Appraisers (known as MAPPI) was initiated by the Ministry of Tourism and Creative Economy and as a follow-up to Government Regulation Number 24 Year 2022, as implemented regulation Law Number 24 Year 2019 concerning Creative Economy, has prepared an Indonesian Valuation Standard (SPI), together with stakeholders including Indonesian IP Attorneys in the Indonesian Valuation Standards (SPI) Drafting Team, currently holding a public expose on the Draft Indonesian valuation Standards (SPI) specifically for Intellectual Property Valuation for Debt Guarantee., and the MAPPI's mission as follows:²⁹

²⁶ Before this Patent Law (law Number 13 year 2016) and Copyright Law (Law Number 28 Year 2014) was promulgated, generally the objects that were the object of Fiduciary Guarantee were movable property objects consisting of objects in stock (inventory), merchandise, receivables, machine tools and motorized vehicles

²⁷ <https://www.hukumonline.com/klinik/a/eksekusi-paten-sebagai-objek-jaminan-fidusia-lt590af6f153f9d/>

²⁸ MAPPI is known as the abbreviation for the Indonesian Society of Appraisers (ISA). The MAPPI Central Management is domiciled in the Capital of the Republic of Indonesia, each Indonesian Appraiser profession is in its entirety as an individual. Founded on October 20 1981, with the name Indonesian Appraisal Professional Society, abbreviated as MAPPI, which is a Professional Association in Indonesia which specifically accommodates professionals involved in the Appraisal Profession with the current number of members being approximately 3500 people spread throughout Indonesia

²⁹ <https://mappi.or.id/SitePages/Berita.aspx?item=18>

1. Providing a platform for professional development of Indonesian appraisers through continuing education, research, ethics and standards;
2. Developing Indonesian Appraisal with an international perspective;
3. Improving the quality of Indonesian Appraisal;
4. Participate in increasing national development;
5. Create appraisers who are beneficial and maintain the honor and dignity of MAPPI;
6. Creating and maintaining a conducive business climate for appraisal services and other services; and
7. Realizing good organizational governance from a national and international perspective

The problem does not stop when an IP asset has been assessed by an IP Valuator, in the future it will be revealed that the difficulty of implementing these provisions in the banking sector tends to reject creations (Copyrights) and inventions (Patents) as fiduciary collateral because of the issue of valuation in the form of monetary value. Banking parties in providing credit try so that the credit loan can be returned and if a credit loan occurs, the legal system and norms are clear regarding real movable property which can easily be executed or transferred, but if intellectual property rights will be difficult. in implementation, especially if there is a default and execution of guarantees for works and inventions where there is a high possibility that the creation or invention will no longer have commercial value.

Apart from that, it turns out that there is still a need for a comprehensive understanding regarding the appraisal profession which will later provide assessment results in monetary terms regarding the value of the creation and the value of the invention (specifically for Patents on the basis of registration ownership which must be accompanied by a certificate as proof of ownership of the Patent right). So when there is a financing scheme, especially for debt and guarantees based on intellectual property, which does not yet include the execution mechanism, if the credit for the guarantee of the creation or invention has problems, then in the end, banks in Indonesia are not willing to provide financing with copyright or patent as intellectual property asset guarantees.

In Copyrights scheme that Creation Work and Invention protected claim of patents must first be registered at the Directorate General of Intellectual Property (DGIP) if it is to be used as an object of Fiduciary security. The goal is that if the debtor defaults, it can be interpreted that the debtor is the Copyright and/ or Patent owner. Then the execution of the object of Fiduciary collateral can then be carried out without having to go through the process and court decision. The shows that the Certificate of Intellectual Property Rights Copyrights and/ or Patent) until now has not been included in the list of collateral referred to by the authorities of Bank Indonesia.³⁰

3.2. Review on Islamic (Syariah) and Positive Law on Intellectual Property (IP) as Asset Bank Collateral

Intellectual Property (IP) Rights including Copyrights ownership relates to the rights attached to or owned by the copyright holder. In general, copyright law provides several rights known as exclusive rights (a number of exclusive rights). In the following we quote some of the exclusive rights to a

³⁰ Christian Mauliate, *Legal Analysis of Copyright as an Object of Fiduciary Guarantee*
<https://etd.repository.ugm.ac.id/penelitian/detail/180220>

Copyrighted work, namely: ³¹ “These exclusive rights vary according to the different types of works and other subject-matter protected by copyrights. The owner of copyright in a literary, dramatic or musical work.

According to Government Regulation Number 24 of 2022,³² there are 6 (six) major governing limbs to further the creative economy industry, namely:

1. Creative Economy Financing;
2. Intellectual Property-Based Creative Economy Marketing System;
3. Creative Economy Infrastructure;
4. Incentive for Creative Economy Business Actors;
5. Government's Responsibility and the Role of Society; and
6. Creative Economy Financing Dispute Resolution.

According Indonesian Law that this provision for the Recordation of Works has the consequence that the Office of the Directorate General of Intellectual Property (DGIP/ Indonesia IP Offices) has the authority under the law to manage the recordation of Works. The consequence of this provision regarding the Recordation of Works is that the DGIP Office acts as an Examiner and determines whether a copyrighted work is eligible or not eligible to be registered. Even though there is no Substantive Examination in the Recordation of Works, this will be a problem, especially regarding the objectivity of the examiner.³³

The intellectual property in the Islamic view is a privilege of wealth should get legal protection as legal protection of property of a person. Islam prohibits the act of theft or the use of things with a way get it incompatible with Islam, which in this case can be exemplified as the practice of piracy or unlicensed software usage (pirated) often happens in Indonesia. Any act that is clearly a criminal offense according to the laws of Islam.³⁴ This is also conveyed from the opinions of scholars about Intellectual Property Rights (IPR), they argue that the majority of scholars from the Maliki school of thought, Shafi'i and Hambali argue that the copyright of the original creations and benefits belong to valuable treasures as if the objects may be utilized in a way *syara'* (Islamic law).³⁵

Wahbah az-Zuhaili also said that this relates to the right of authorship (*Haq At-Ta'lif*) as one of the copyright, He asserts that the authorship is the rights that protected by sharia, reprint or download a copy of the book considered a violation or a crime against the rights of the author. In another word from the viewpoint of sharia, this act is immoral (*ma'shiyah*) that causes a sin, and considered as a theft that requires an indemnity to the author for violating and oppressing the rights of printed manuscript and causing a moral loss to the author.³⁶ In the explanation of that verse has explained that a person is not allowed to take the property in a manner that is prohibited by Islamic law, as this would be detrimental

³¹ Attorney General's, Department Copyright Law Australia, Short Guide Copyrights Information, Attorney General's Department Copyright Law in Australia, January 2000.

³² Government Regulation Number 24 of 2022 acts as the implementing regulation of the previously promulgated Law Number 24 of 2019 on Creative Economy, that the government's role is to support and develop the creative economy ecosystem,[iii] particularly with respect to facilitating financing, and providing infrastructure and marketing system

³³ Suyud Margono, *Copyrights Protection On The Internet: Critical Study On Declarative Principle Of Digital Works Recordation In Indonesia.*, Russian Law Journal Volume XI (2023) Issues 5, page. 1407

³⁴ Agus Triyanta, *Sejarah Hak Milik Intelektual dalam Islam*, Jurnal Al-Mawarid Edisi IX Tahun 2003, p. 23

³⁵ Fathi ad-Durain, *Haqu-l-Ibtikār Fī-l-Fiqhal-Islāmi al-Muqāran*, (Beirut: Mu'assasah ar-Risālah, 1981), p. 20.

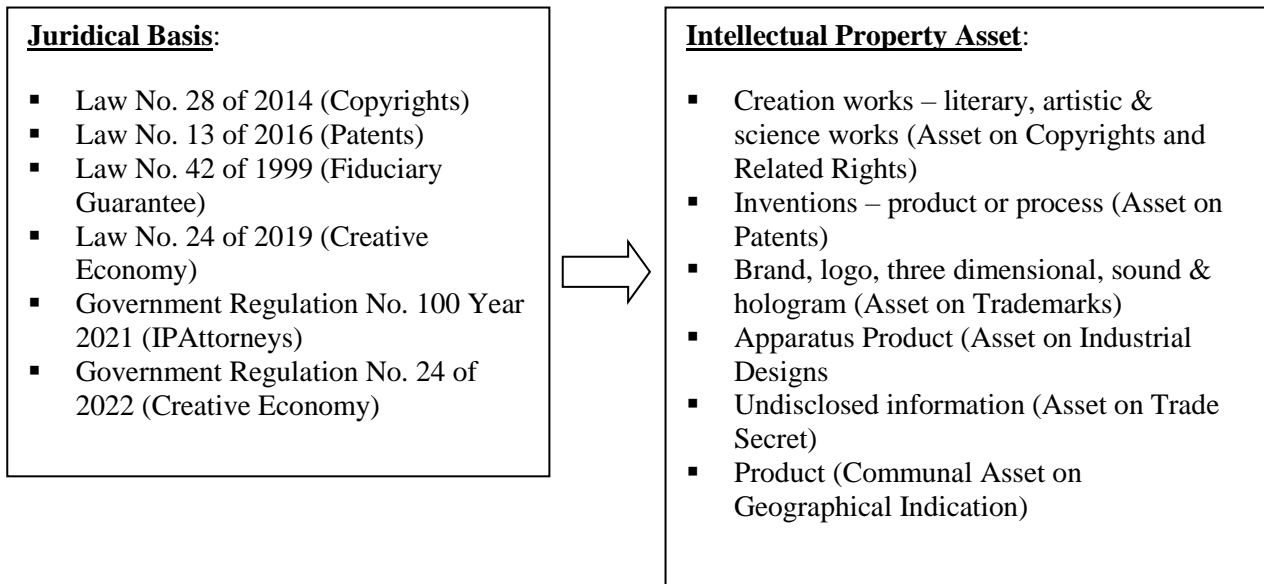
³⁶ Wahbah az-Zuhaili, *Al-Fiqh al-Islāmi Wa 'Adilatuhu*, 4th Edition (Damascus: Dārul Fikr, 2004), p. 2875.

and dangerous to one another. Because in this intellectual property is property owned by a creator over the results of the exertion of power, time, and mind.³⁷

The problem is that material guarantees currently apply to tangible objects and special regulations regarding guarantees for movable objects are determined based on Law No. 42 of 1999 concerning Fiduciary Guarantees. This legislative product only specifically regulates movable objects which are the object of material collateral (as debt collateral), rules of the game, and settlement (execution) when submitted to banks or financial institutions, so special standards are needed to adapt financial and banking practices to the characteristics of specifically where copyright and/or Patent Inventions are the object of debt collateral or project financing required by the IP Owner including the Inventor or Creator (Authors).

Transaction problems related to commercialization activities Intellectual assets such as disputes arising from sale and purchase transactions, exclusive licenses, transfer of technology not only appear on transactions (contracts) that are local but also occur on international business contracts.³⁸ The problem that often arises is determining the legal system which country will be used. This issue is commonly known as the issue of "the proper law of contract", namely the choice of law that should be used in resolving disputes in the implementation of contracts between two or more different legal systems.³⁹

Flow 1: Juridical Basis for IP Asset as Bank Collateral Guarantee



Another problem is that there must be a distinction between objects of creation (copyrights) and objects or essence of invention (Patent) in the sense of property with Copyrights or Patents as intellectual property rights, so there are basic differences in meaning of property and intellectual property rights. In the Copyright System there is the right to publish and the right to reproduce and various commercialization of assets from creative works. Since the enactment of Law Number 28 of 2014

³⁷ Ahmad Musthafa Al-Maraghi, *Terjemah Tafsir Al-Maraghi*, (Semarang: CV. Toha Putra, 1986), p. 24.

³⁸ Suyud Margono, *Industrial Property Rights: Regulation and Practice in Indonesia*, PT. Ghalia Indonesia, Jakarta, 2011., p. 240. International business contracts in this case specifically only relate to individuals or private institutions which in practice involve parties who are subject to two or more different national legal systems so that if there is a dispute in the implementation of the contract, legal problems always arise and resolved.

³⁹ Sudargo Gautama, *Introduction to Indonesian International Civil Law.*, Binacipta, 1987. hal. 11.

concerning Copyright (Copyright Law) to replace the old Copyright Law, a new regulation appears in the provisions of Article 16 that copyright can be an object of fiduciary guarantee, determined as follows:

Article 16 Copyright Law:

- (1) Copyright is an intangible movable object.*
- (3) Copyright can be used as an object of fiduciary guarantee.*
- (4) Provisions regarding Copyright as an object of fiduciary guarantee as referred to in paragraph (3) are implemented in accordance with the provisions of statutory regulations.*

Article 17 paragraph (1) stipulates "*The economic rights to a work remain in the hands of the creator or copyright holder as long as the creator or copyright holder does not transfer all economic rights from the creator or copyright holder to the recipient of the transfer of rights to the work.*"

As with the provisions of the enactment of Law Number 13 of 2016 concerning Patents which also replaces the old Patent Law, there is a new regulation in the provisions of Article 16 that copyright can be the object of fiduciary guarantees, determined as follows:

Article 56:

- (1) A Patent Certificate is proof of the right to a patent.*
- (2) The right to a Patent as intended in paragraph (1) is determined by the scope of protection based on the Invention described in the claim.*
- (3) The right to a patent as intended in paragraph (1) and paragraph (2) is an intangible movable object.*

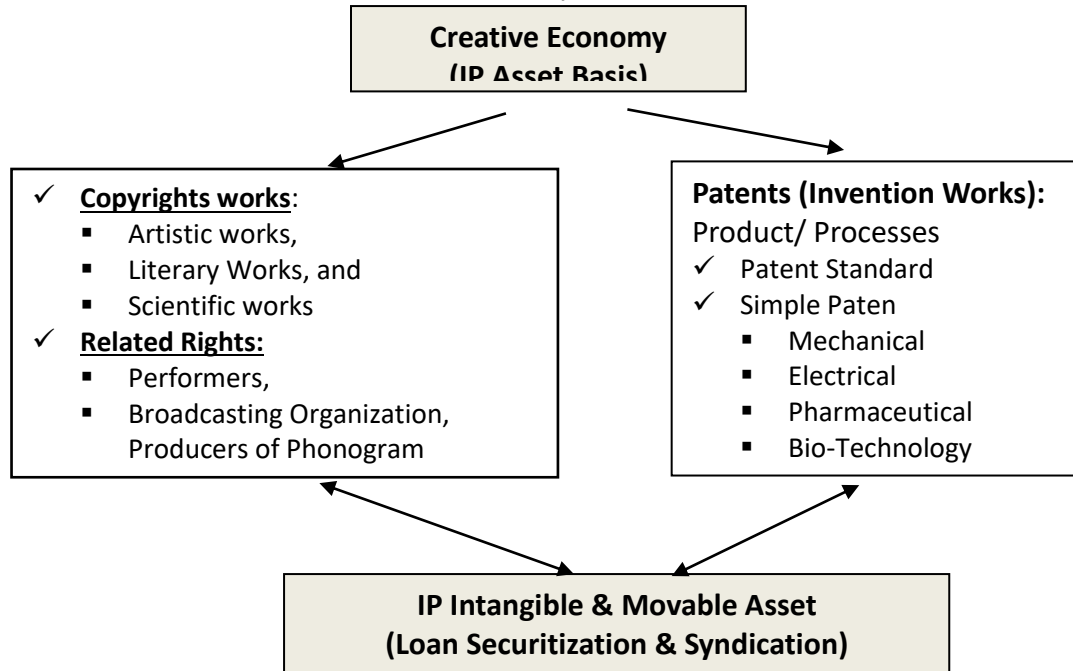
Article 108:

- (1) Patent rights can be used as an object of fiduciary guarantee.*
- (2) Provisions regarding the terms and procedures for Patent Rights as an object of fiduciary security as an object of fiduciary security are regulated by Government Regulation.*

Thus, the new provisions regarding Copyright as an object of fiduciary guarantee are closely related to Law Number 42 of 1999 concerning Fiduciary Guarantees which anticipates the possibility of making intangible movable objects as collateral objects. Meanwhile, in the Fiduciary Guarantee Law, it is also determined based on Article 1 Number 2, Law Number 42 of 1999 concerning Fiduciary Guarantees, stipulates that

"Fiduciary Guarantee is a security right for movable objects, both tangible and intangible, and immovable objects, especially buildings which cannot be encumbered with mortgage rights as intended in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Giver, as collateral for repayment of certain debts, which gives the Fiduciary Recipient a preferred position over other creditors"

Flow 2: Creative Economy Basis as Bank Collateral.⁴⁰



Thus, the new provisions regarding Copyright as an object of fiduciary guarantee are closely related to Law Number 42 of 1999 concerning Fiduciary Guarantees which anticipates the possibility of making intangible movable objects as collateral objects. Meanwhile, in the Fiduciary Guarantee Law, it is also determined based on Article 1 Number 2, Law Number 42 of 1999 concerning Fiduciary Guarantees, stipulates that

"Fiduciary Guarantee is a security right for movable objects, both tangible and intangible, and immovable objects, especially buildings which cannot be encumbered with mortgage rights as intended in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Giver, as collateral for repayment of certain debts, which gives the Fiduciary Recipient a preferred position over other creditors"

In reality, making copyright an object of fiduciary guarantee is not an easy thing to do. Notary Profession qq The Official Land Deeds (PPAT), explained that he had never found any attempt to make intangible movable objects (such as creations or patented inventions) submitted as objects of fiduciary collateral. In practice, it is very rare, they have never even made a deed, and they have difficulty in assessing (price valuation) with money.⁴¹

It must be acknowledged that the issue of copyright or Patents as a fiduciary guarantee is not an easy matter, this structural legal matters is at least:

- a. the Minister, through the Directorate General Intellectual Property (DGIP) Office, is given the authority in accordance with regulations to delete works that have been registered, if the work violates religious norms, moral norms, public order, state defense and security, as well as statutory provisions. Not to mention, if there is a dispute or lawsuit for the cancellation of a work in the Commercial Court which has been registered in the General Register of Works at the

⁴⁰ Suyud Margono., *Future of Patent System: Role of Patent Attorneys on Ownership & Human Utilization.*, Presented at the National Symposium at the Faculty of Law, UPN Veteran University, Jakarta: October 17, 2023

⁴¹ <https://law.ui.ac.id/hak-cipta-sebagai-jaminan-fidusia-terhambat-sistem-valuasi/>

Directorate General Intellectual Property (DGIP) Office, it will have an impact on the cancellation of the debt agreement with the guarantee of the Copyright Registration Certificate, then this will be detrimental of the Creditor interests.

- b. it must be understood that the legal construction of copyright protection in Indonesia is divided into economic rights and moral rights. Regarding copyright, it can be a fiduciary guarantee limited to economic rights. Second, this transferable economic right must mean that the Copyright Holder is not always the Creator who has moral rights, as a simple example: For example, a book works (non-fiction) becomes commercial on the market when it is sold to consumers (buyers), Creators (Authors), has given a publishing license, which is bound by a publishing agreement, so in this case whether the creator (author) can enter into an agreement directly with a bank or financial institution or it could be that the debtor is the author or publisher.
- c. other problems related to the implementation of alternative dispute resolution (ADR)⁴² specific for intellectual property dispute as a standard clause for dispute resolution which must be stated in a debt agreement with collateral for the object of creation (Copyright) and object of invention (Patent), as the chosen and agreed forum (choice of forum). by Debtors (Creators or Inventors) and Creditors (Banking Parties or Financial Institutions).

As is known, the concept of duplication (reproduction) means transferring the form of a new creation (for example, a novel (fiction) creation) which is then realized by the Film Producer in the form of a film creation with a title and character artist according to the content in the novel. The situation of transferring the creation of this (fiction) novel in fact must obtain approval/permission from the Creator (Author). Apart from that, in film production which involves several parties with their own creative works, for example the musical creations used in the film production, this is the condition so that many parties related, even if only to 1 creation.

Therefore, there needs to be clarity regarding matters and ensuring who has the right to be the debtor in fiduciary guarantees in the form of copyrights, for example written works, which were previously preceded by a debt or financing agreement related to the production and commercialization of the work, so the important role of a notary is needed to prepare the construction of the agreement. debt (authentic deed of agreement) between the artist (creator) as the debtor and the Bank or Finance Company as the creditor, including clauses related to any bundle of rights handed over by the debtor to the creditor as fiduciary collateral.

Another thing that needs to be provided is a market system that can systematically monetize the claim rights from collateral for debts of copyrighted works, because there can be a condition where the creditor holding fiduciary rights does not make a claim to the debtor (Creator), then in business practice a pass-through mechanism is implemented. Collective rights (or known as selling collection rights), then this condition is important to find a market for micro business. Effectiveness of commercialization of inventions with a patent protection period (protection period of 20 years for standard patents and 10 years for simple patents), because after the expiry period the patent becomes public domain. This condition is different from Copyright Protection which is carried out over a longer period of time in line with the application of regulations in various countries so that the period of Copyrights protection in certain fields is enforced during the lifetime of the creator plus 70 (seventy) years after the Creator dies.

⁴² In relation to the Intellectual Property dispute resolution institution, on April 21 2011 an Intellectual Property Rights Arbitration and Mediation Board (BAMHKI) was established, domiciled in Jakarta, which provides IPR dispute resolution services that are adjudicative, namely arbitration and non-adjudicative, such as mediation, negotiation and conciliation. With the establishment of BAMHKI, it is hoped that the community and/or business actors will have an alternative to seeking justice, active participation in dispute resolution other than Out of Court Settlement in seeking justice and legal certainty in resolving disputes related to IPR.

Apart from that, there are also problems related to the publication of copyrighted works (especially music), the relationship between creators, copyright holders and related rights owners becoming members of the Collective Management Organization (CMO) Institution in order to be able to collect rewards or royalties. Creators and/or owners of Related Rights receive Royalty compensation for Works or Related Rights products that are created in a business relationship and used commercially. Collective Management Organization (CMO) Institutions whose function is to collect and manage the economic rights of Creators and owners of Related Rights are required to submit an application for an operational permit to the Minister. Use of Copyrights and Related Rights in multimedia facilities to respond to developments in information and communication technology. Related to the issue of publication and reproduction of Works on the internet, it really needs protection with several aspects including aspects of Protection of Rights (Owners and Licensees).⁴³

Issues related to Intellectual Property development touch various aspects such as economic, technological, industrial, socio-cultural aspects, and so on. However, the most important aspect is the legal aspect/legal protection. The law must be able to provide protection for intellectual work so that society is able to develop its creative power which ultimately leads to the goal of successful IPR protection. As we all know, the process, time for alternative dispute resolution (Alternative Dispute Resolution/ ADR) and effectively through mediation, arbitration or court processes, as well as the implementation of complaint offenses for criminal prosecution. Trading place managers are responsible for sales places and/or violations of Copyright and/or Related Rights in the shopping centers they manage.

Intellectual Property Disputes include disputes arising from commercial transactions or disputes related to or involving the IP sector, including dispute resolution regarding IPR violations which must be resolved by the Parties to the case before criminal prosecution/remedies are carried out for Copyright violations as intended in Article 95 paragraph (4) Law no. 28 of 2014 concerning Copyright and Related Rights and Patent Infringement as referred to in Article 154 of Law no. 13 of 2016 concerning Patents. In several laws regarding Intellectual Property Rights it has been accommodated that Parties can resolve civil disputes through dispute resolution outside of court. Intellectual Property Owners often deal with complex contractual relationships involving parties in various different forms of collaboration on research and development, production or marketing of Intellectual Property. One of the prudential standards in financial governance in the operations of the Bank is the collateral as an assurance of the bank to guarantee that the debtors perform the agreed-upon accomplishments in the agreement.

In the Islamic Banking Act No. 21 of 2008 in Article 1 (26) described that “Collateral is an additional guarantee, either in the form of movable or immovable objects that are handed over by the owner of collateral to a Sharia Commercial Bank or Sharia Business Unit (UUS), in order to guarantee repayment of the obligations of the recipient customer”. In view of this article, a significant assurance is to ensure the interests of Islamic banks from the actions of debtor client that may be inconvenient to the bank. With the collateral Islamic banks can ensure its interests and interests of the client’s creditor can be well protected. The management of the Islamic bank can hold the collateral to cover all bills that an indebted person should pay. On other hand, the guarantee is utilized as a guideline for the Islamic bank to ensure that the customers or debt carry out all their obligations and will be sized by the Bank if the customer default to perform his/her obligation as the time given. With the collateral, the customer will have a determined commitment to carry out his/her duties to the Islamic bank.⁴⁴

⁴³Suyud Margono, “*Technical Standard Copyrights Recordation on Platform Digital*”, paper presentation Webinar., Indonesian Intellectual Property Attorneys Association supported Directorate General Intellectual Property (DGIP), Ministry of Law and Human Rights RI, September 29, 2022

⁴⁴Disemadi, H. S. *Risk Management in the Provision of People’s Business Credit as Implementation of Prudential Principles. Diponegoro Law Review*, 4(2), 2019, p. 194-208

Financial institutions are exceptionally close to the country's economic activities, starting from basic financial transactions to extremely complex financial traffic both at the international and local levels. Regarding the quick improvement of Islamic banking and finance in the country as well as one of the backbones of the economy, the development of Islamic finance and banking in the country is faster than in the nations particularly Malaysia. Currently, Indonesia Islamic banking has increased by 40 per cent in the previous five (5) years. Bank Indonesia hopes that market shares Islamic finance can infiltrate the 30 per cent figure in the long haul, while as of August 2019 the financial of Islamic banks have reached Rp 193.98 trillion, and it is predictable that in a long time Islamic banking can reach 30% contrasted to existing on collateral financing.⁴⁵

Closing

Intellectual Property Rights is one of the company's main assets and therefore their economic interest in IPR becomes increasingly higher. As a consequence, disputes involving these rights can disrupt or even paralyze the activities of companies, especially problems or cases related to IP Assets which should be in the Company's portfolio as owner. The position and involvement of the Intellectual Property Attorneys profession does not stop when an IP asset has been assessed by an IP Valuator, because in the future there will still be a need for assistance and assistance regarding the application of the provisions on Creations (Copyrights) and inventions (Patents) as fiduciary collateral.

The implementation of guarantees as applied to Islamic banking has adopted many Islamic laws. However, in the practice, there are still many problems that arise from the Islamic law scope which uphold the philosophy of *maslahah* and the concept of justice. In any financing activity, the management of Islamic banks always requires customers to include the collateral for the financing. Third-party guarantee and collateral both serve the same objective forms of financing as security for Islamic finance and banking require from the customers during the documentation process before funding. Islamic financial institutions can hold important assets title and other forms as assurance such as liquid asset, gold, land title and other valuable properties. If customer financing runs smoothly until the repayment stage, the collateral items will be returned to the customer.

Intellectual Property Rights (particularly object Copyrights and Patent) may as an object of fiduciary guarantee is in accordance with Law Number 42 of 1999 concerning Fiduciary Guarantee where Copyright or Patents can be encumbered with collateral in the form of fiduciary, but not for the object that is encumbered with the Copyrights or Patents, but rather the economic value attached to the Copyright or Patents. Regarding the critical note that a reliable valuation system is needed if you still want to maintain copyright or Patents as a fiduciary guarantee. This valuation system needs to be managed by a special institution to ensure that the value of rights encumbered by fiduciaries can be enjoyed by fiduciary holders if the debtor breaks his promise.

Creation protected under Copyrights Law and Invention protected Patent an intangible movable object can be used as an object of fiduciary security. Thus, the Government recognizes that the Copyrights and Patents as one of the objects that can be used as collateral for debt. The movable objects as IP asset referred to in this article occur because they are determined by law, not because they are easy to move. In its implementation, there are still various challenges and obstacles faced, including the limited period of IPR protection, the absence of a clear concept regarding due diligence, assessment of IP assets, and also the lack of juridical support in the form of regulations regarding IPR assets as collateral

⁴⁵ Solihah, C., Widjajaatmadja, D. A. R., & Husaeni, U. A. *The Element of Injustice in The Process of Executing the Auction of Collateral Items from the Murabaha Financing Contract at Shariah Commercial Bank.* *Justicia Islamica*, 16(2),2019,p.343-366.

objects. Based on the matters above, there is a need for further study and discussion regarding the implementation of IPR as collateral in obtaining credit in the financial services sector.

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Law No. 20 of 2016 concerning Trademarks and Geographical Indications;.

Law No. 19 of 2022 concerning Creative Economy;.

Government Regulation No. 24 of 2022 concerning Implementation; Law No. 19 of 2022 concerning Creative Economy;.

Government Regulation Number 2 of 2005 concerning Intellectual Property Rights Attorneys;.

Government Regulation No. 42 of 2007 concerning Franchising.

Government Regulation No. 36 of 2018 concerning Recording of Intellectual Property Rights License Agreements.

Ministerial Regulation No. 39 of 2018 concerning Granting of Compulsory Patent Licenses.

Other related legislation.

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