



Readiness of banks in intellectual property-based financing (regulation and practice in Indonesia)

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ABSTRACT

The creative economy is an economic resource that is expected to support Indonesia's economic growth. One of the ecosystems being developed is intellectual property-based financing sourced from cultural heritage, science, and technology. The aim of this research is to analyze banks' readiness for intellectual property-based financing in Indonesia. This research is normative legal research, which analyzes the formulation of the problem under study using statutory methods and a conceptual approach. Based on the research results, the following results were obtained: 1) There are no technical guidelines for banks to accept intellectual property as collateral; 2) Intellectual property is a complex asset, so the appraiser profession must be handed over to a public appraiser who has expertise, so that in the field of intellectual property it must be officially registered with the Ministry of Tourism and Creative Economy. The auction house is willing to execute intellectual property provided that there is a legal basis for licensing, assessment, and legal protection of intellectual property to attract public interest in carrying out intellectual property auctions.



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INTRODUCTION

An economic asset that has the potential to become the foundation of the national economy both now and in the future is the creative economy. Currid, in Ginting et al. (2018), stated that the creative economy can encourage and improve the economy. This economy encapsulates the creation of added value from intellectual property originating from human ingenuity rooted in cultural heritage, scientific progress, and technological innovation. The government's strategic efforts to optimize the creative economy are in line with increasing global economic activity supported by digital technology (Nuryartono, 2023). One effort to encourage the development of the creative economy is contained in Government Regulation Number 24 of 2022, which regulates the implementation of Law Number 24 of 2019 concerning the creative economy through intellectual property-based financing. Apart from weak human resource capabilities and capacity, access to funding is also an obstacle for creative economy actors. These creative economy actors are part of micro, small, and medium enterprises (MSMEs) as well as start-ups, which are often considered unbankable (Syamsulbahri, 2018); (Shabillia & Santoso, 2023).

Meanwhile, Indonesian MSMEs almost absolutely dominate national business actors, namely 99.98%, with microbusiness actors dominating all business actors at 99.62%. According to BPS in Krisnawati (2016), MSMEs contribute 99% of the number of business actors in Indonesia, have a contribution of 99.6 percent in employment, and contribute 61.1% to gross domestic product (GDP), so they play an important role as engines of growth. national economy. Therefore, the government's efforts to encourage the creative economy as an economic resource must be responded to positively. Apart from that, the increasing number of MSMEs entering the digital economy ecosystem is accelerating the

role of creative economy actors. In 2024, it is hoped that MSMEs entering the digital market will grow to 30 million MSMEs (Rizaty, 2022).

In Indonesia, bank financing using intellectual property as a collateral object is rarely carried out by banks. There are several reasons for banks not to provide funding with intellectual property collateral; namely, there needs to be clear technical guidelines or concepts regarding due diligence and intellectual property assessment. Apart from that, who has the competence as an intellectual property appraiser? Other research concludes that there is a legal vacuum regarding the application of intellectual property as an object of guarantee and refers to Article 5 Number 4 (e) of Minister of Finance Regulation No. 228/PMK.01/2019 concerning Second Amendment to Minister of Finance Regulation no. 101/PMK.01/2019 Concerning Public Appraisers (PMK Public Appraisers), intellectual property and intangible assets are included in Business Appraisal services. This means that the public appraisal profession can assess intellectual property as an object of collateral. In practice, along with banks' reluctance to accept intellectual property as collateral, intellectual property appraisals are also rarely carried out (Susilo, 2022).

Another legal obstacle is the execution of collateral objects in the form of intellectual property. Even though the auction office states that it is ready to accept an intellectual property execution auction, in practice, it is difficult to determine the economic value of the intellectual property (Margono, 2012). Therefore, a legal basis and support from other sectors are needed in licensing, valuation, and public awareness of the importance of protecting intellectual property to attract public interest in participating in intellectual property auctions. Based on the background described above, this study analyzes the regulations and practices of academic property-based financing in Indonesia, particularly regarding the assessment and execution of intellectual property as an object of bank credit/financing guarantees.

RESEARCH METHODS

This study employs normative legal research, which is an approach that specifically concentrates on analyzing established legal norms, including laws, regulations, court rulings, and legal policies (Purwati, 2020). The goal is to understand, investigate, and evaluate the pre-existing legal standards, as well as to shed light on the implications and applications of these standards within a legal framework.

RESULTS AND DISCUSSION

1. Expansion of forms of intellectual property guarantees based on PP Creative Economy

Article 499 of the Civil Code defines goods as objects and rights that can become objects of property rights. Based on this Article, intellectual property is an object. Furthermore, based on Articles 503 and 504 of the Civil Code, intellectual property rights are categorized as intangible movable objects. Therefore, it has material properties, namely absolute (can be defended against anyone), *droit de suite* (follows in the hand of whoever the object is), and *droit de preference* (right to take precedence). However, the material nature of the intellectual property arises after it is registered, except for copyright. This registration function is not absolute or mandatory for copyright (non- compulsory) because even without registration, copyright is protected by law. Indonesian positive law recognizes several Intellectual Property Rights: Trademarks, Patents, Industrial Designs, Copyrights, Geographical Indications, Layout Designs of Integrated Circuits, Trade Secrets, and Communal Intellectual Property. As a registered intangible movable object, intellectual property is an object of the Fiduciary guarantee regulated in Law No. 42 of 1999 Concerning Fiduciary (Fiduciary Law) (Abdullah et al., 2021).

Referring to Articles 14 and 15 of the Fiduciary Law, Banks as holders of intellectual property guarantees have "parate execution," namely the authority to sell collateral objects on their power. In theory and regulation, there are no problems with intellectual property as an object of bank credit/financing guarantee. However, Article 9 Paragraph (2) PP Creative Economy expands the form of intellectual property guarantees so that it can be carried out in other states: contracts in creative economic activities such as license agreements or Work Orders, and/or collection rights in creative economic activities. In contrast to intellectual property rights which are part of objects, contracts in creative economic activities and collection rights are not objects, even though they have a monetary value. Based on the rules of contract law stipulated in Book III of the Civil Code, contracts only give rise to relative rights (personal rights), so they can only be prosecuted against the party making the contract (Karelina et al., 2022). Therefore, another legal basis must be sought to use the economic value

of contracts arising from these creative economic activities. Likewise, billing rights arise from creative economic activities. When viewed from the provisions of Article 9 and the elucidation of Article 9 of the Fiduciary Law, existing receivables can become fiduciary objects. Article 9 must be interpreted regarding the previous definition of objects. Receivables that have material properties are born from securities such as Medium Term Notes (MTN) or bonds. In other words, receivables or rights that are relative must be converted into securities. Another option is to use another legal basis so the bank can utilize the right to claim as collateral for credit/financing repayments.

2. Intellectual Property-Based Financing from the Perspective of Banking Law

Law Number 10 of 1998, which pertains to amendments to Law Number 7 of 1992 regarding Banking, commonly referred to as the Banking Law, and Law Number 21 of 2008 governing Sharia Banking, commonly known as the Sharia Banking Law, require banks to implement prudential banking principles in granting credit/financing (Abubakar & Handayani, 2017); (No, 10 C.E.). The bank must have confidence that the debtor is in good faith and can pay. To have this confidence, the bank must carry out a credit/financing analysis, namely the 5C's analysis of credit, including collateral (collateral), before credit/financing is granted. In intellectual property-based funding, legal constraints still cause banks to be less interested in providing credit/financing with intellectual property guarantees. There are several obstacles for Banks to accept Intellectual property as collateral objects, namely:

3.1. There must be technical guidelines on how and mechanisms to evaluate the intellectual property as collateral objects. Article 12 PP Creative Economy regulates the approach that appraisers can use, namely the cost approach; market approach; revenue approach; and other systems by the applicable assessment standards, but technical guidelines are still needed as a follow-up to Article 12 of the Creative Economy PP.

3.2. Qualifications of appraisers who can conduct intellectual property assessments. Based on the regulations and policies in force in the banking sector, the evaluation of collateral objects can be carried out by internal bank appraisers for loans/financing below Rp. 5 billion and using an external appraiser (Office of Public Appraisal Services) for credit/financing above Rp.5 billion. From a banking perspective, intellectual property is an object of high complexity, so the bank cannot conduct an assessment even if the credit/financing does not reach Rp. 5 billion. On the other hand, Public Appraisers are not used to doing intellectual property appraisals. Based on Article 5 Number 4 (e), Minister of Finance Regulation No. 228/PMK.01/2019 concerning the Second Amendment to Minister of Finance Regulation No. 101/PMK.01/2019 Concerning Public Appraiser (PMK Public Appraiser), intellectual property and intangible assets fall into Business Appraisal services. This means the legal basis for Public Appraiser to conduct an intellectual property appraisal already exists. In accordance with Regulation PP 24 of 2022, Intellectual Property Appraisers are obligated to fulfill additional prerequisites beyond mere registration and the acquisition of a Public Appraiser license from the Ministry of Finance. These conditions necessitate certain adjustments: a. Demonstrate competence in the domain of Intellectual Property assessment, obtained through competency certification in compliance with statutory provisions; and b. Enrollment with the governmental body responsible for overseeing matters within the Creative Economy sector. Hence, Public Appraisers must align their terms and qualifications with the regulations outlined in the Creative Economy PP (Mashdurohatun et al., 2021).

3.3. The auction process for executing intellectual property still requires readiness and regulatory support regarding licensing and appraisal. The intellectual property execution auction mechanism has the advantages of being accessible, objective, and safe.

3. Novation (Debt Renewal) and cessie (Debt Transfer): Legal basis for Contract Optimization and Collection Rights as a form of intellectual property

The economic value of contracts and collection rights arising from creative economic activities can be optimized by using another legal basis approach. In the form of a contract (license contract, work order), the bank can take advantage of this economic value by renewing the debt, where the bank will replace the position of the Creative Economy Actor to obtain the rights attached to the contract. For this reason, it is necessary to take legal action to make a new agreement subject to the novation provisions (debt renewal) based on Articles 1413-1424 KUPerdata. This is also the case with billing rights that arise in creative economic activities (Kurnianingrum, 2017). Two legal options can be used to optimize

the collection rights owned by creative economy actors. First, converting personal (relative) claim rights into objects, namely converting bills into securities.

The second option is to use a receivables transfer mechanism or cession (collection rights) between creative economic actors and the bank so that the bank will become the owner of the new receivables. The second option, namely a cession, is much simpler and easier to do because it is based on an agreement that can be agreed upon at the outset. If the cession option is chosen, then it is necessary to pay attention to the requirements for a valid cession based on Article 613 of the Civil Code, that the submission of receivables on behalf of must be carried out by doing a deed, both authentic and private; and notification/approval from the debtor (the debtor). Through 2 legal actions as described, namely debt renewal (novation) and cession (transfer of receivables), Banks as creditors can take economic value from Creative Economy Actors as an effort to anticipate bad credit/financing risks. Thus, the goal of PP 24 of 2022 to optimize the monetary value of the Creative Economy can be realized.

CONCLUSION

Based on the results of the analysis using a legal science approach, namely a normative juridical approach that prioritizes secondary data in the form of primary, secondary, and tertiary legal materials, it can be concluded as follows:

1. Intellectual property-based financing for creative economy actors is an effort to explore economic resources that arise from culture, science, and technology. Banks can receive intellectual property as collateral for the debt if the constraints in its implementation are technical guidelines for valuation; the appointment of an intellectual property appraisal profession and support for the execution/auction of intellectual property is supported by regulations and a solid legal basis. This aligns with the bank's obligation to apply the prudential principle in lending/financing.
2. Expansion of the forms of intellectual property guarantees in the form of contracts (licenses, cooperation, and SPK) as well as collection rights in creative economic activities can be carried out using a legal basis and other legal actions, namely novation (debt renewal) and cession (collection rights) to provide legal protection for Banks as credit/financing providers.
3. It is imperative to bolster regulations pertaining to the assessment of intellectual property, the competence of Intellectual Property Appraisers, and standardization. These measures serve as the legal foundation for the implementation of intellectual property-based financing.

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