



Challenges in the Implementation of Intellectual Property Rights as Fiduciary Collateral in Indonesia

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ABSTRACT

Intellectual property rights (IPRs) refer to legal entitlements from intellectual and creative efforts, resulting in intangible assets. Copyright, as a specific form of IPR, is classified as an intangible movable property and is legally recognized as a potential object of fiduciary security in Indonesia. Despite regulatory developments—particularly Government Regulation No. 24 of 2022 concerning the creative economy—the practical implementation of IPR-based collateral remains constrained by the absence of standardized valuation mechanisms, institutional readiness, and legal certainty. This study employs a normative juridical method grounded in statutory and doctrinal analysis to examine the valuation framework of copyrights as fiduciary collateral and the legal role of public notaries and certified appraisers. The findings reveal that regulatory inconsistencies and the lack of operational guidelines inhibit financial institutions from accepting copyright as a credible collateral asset. Moreover, the role of notaries is pivotal in affirming ownership validity and ensuring the legal enforceability of fiduciary deeds involving intellectual property.

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1. Introduction

The global economy's ongoing shift toward a knowledge-based and digital framework has transformed perspectives on economic assets.¹ No longer relying solely on physical resources, businesses and governments have begun to recognize Intellectual Property Rights (IPRs) as a key component of economic growth strategies. In this context, developed countries have positioned IPRs as a primary instrument to foster innovation, attract investment, and enhance competitiveness.²

In Indonesia, the role of intellectual property rights—particularly copyright—has become increasingly prominent in line with the rapid growth of the creative economy sector, which contributes significantly to the national Gross Domestic Product (GDP). As an intangible asset, copyright is legally classified as movable property that can be used as an object of fiduciary security,³ as stipulated in Article 16 paragraph (3) of Law Number 28 of 2014 on Copyright. The state's commitment to utilizing intellectual property as collateral in financing schemes has been further reinforced by the issuance of Government Regulation Number 24 of 2022 concerning the Implementation of Law Number 24 of 2019 on the Creative Economy.⁴

Nevertheless, implementing intellectual property rights (IPRs) as fiduciary collateral continues to face several significant challenges.⁵ The primary obstacles are the absence of a structured valuation standard,⁶ the lack of a due diligence system,⁷ and the suboptimal role of notaries in ensuring legal certainty of fiduciary deeds involving IPRs.⁸

¹ Hari Sutra Disemadi dan Cindy Kang, "Tantangan Penegakan Hukum Hak Kekayaan Intelektual dalam Pengembangan Ekonomi Kreatif di Era Revolusi Industri 4.0," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 54, <https://doi.org/10.23887/jkh.v7i1.31457>.

² Damián Migueles Chazarreta dan Ignat Stepanok, "Intellectual property rights protection and the dynamic gains from trade," *Economic Theory* 79, no. 2 (2024): 445–95, <https://doi.org/10.1007/s00199-024-01584-7>.

³ Rindia Fanny Kusumaningtyas, "Perkembangan Hukum Jaminan Fidusia Berkaitan dengan Hak Cipta," *Pandecta* 11, no. 1 (2016): 98–112; Lutfi Ulinnuha, "Penggunaan Hak Cipta Sebagai Objek Jaminan Fidusia," *Journal of Private and Commercial Law* 1, no. 1 (2017): 85–110, <https://doi.org/10.15294/jpcl.v1i1.12357>; Luh Inggita Dharmapatni, "Hak Cipta Sebagai Suatu Objek Jaminan Fidusia," *Lex Journal: Kajian Hukum & Keadilan* 2, no. 2 (2018), <https://doi.org/10.25139/lex.v2i2.1412>; Merry Tjoanda, "Karakteristik Hak Cipta Sebagai Objek Jaminan Fidusia," *Batulis Civil Law Review* 1, no. 1 (2020): 47, <https://doi.org/10.47268/ballrev.v1i1.424>.

⁴ Hari Sutra Disemadi dan Cindy Kan, "Tantangan Penegakan Hukum Hak Kekayaan Intelektual dalam Pengembangan Ekonomi Kreatif di Era Revolusi Industri 4.0," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 54–71, <https://ejournal.undiksha.ac.id/index.php/jkh/article/view/6106>.

⁵ Ferry Gunawan C, "Tantangan profesi hukum dalam melindungi hak cipta sebagai jaminan kredit perbankan di era digital," *Rechts Vinding, Media Pembinaan Hukum Nasional* 13, no. 2 (2024): 165–87.

⁶ Muhammad Rifqi, Kholis Roisah, dan Sartika Nanda Lestari, "The Prospects of Intellectual Property Rights as a Credit Collateral: An Indonesia-Singapore Comparative Study," *Jurnal Hukum Novelty* 14, no. 2 (2023): 170–91, <https://doi.org/10.26555/novelty.v14i2.a27017>.

⁷ Rifqi, Roisah, dan Lestari.

⁸ Abiandri Fikri Akbar dan Riani Talitha Nazhiif Soemadji, "Peran Notaris pada Pembuatan Akta Jaminan Fidusia dengan Objek Jaminan Berupa Hak Cipta," *Indonesian Notary* Vol. 3, no. No. 2 (2021): p.36-57, <http://notary.ui.ac.id/index.php/home/article/view/1510>.

In addition, the disharmony between legal regulations—particularly between the Copyright Law and Law Number 42 of 1999 on Fiduciary Security—has led to legal uncertainty, especially regarding collateral registration and execution.⁹ This condition has caused reluctance among financial institutions to accept IPRs as collateral, ultimately hindering access to financing for creative economy actors.

Several previous studies have addressed similar issues. Tanwir and Ranti Fauza Mayana (2019) highlighted the legal protection of intellectual property rights in promoting investment through alternative dispute resolution mechanisms.¹⁰ Rina Puspitasari (2021) examined the legal validity of copyright as fiduciary collateral and the authority of notaries in drafting fiduciary deeds.¹¹ Putri Mayang Sari (2023) focused her analysis on the valuation challenges of copyright, including appraisal methods and the legal standing of public appraisers.¹² Lastly, Muhammad A. Rifqi (2023) conducted a comparative study between Indonesia and Singapore, revealing that Indonesia's institutional infrastructure—comprising valuation agencies, insurance systems, and secondary markets—is not yet fully prepared to support IP-based financing.¹³

However, there have not been many studies that specifically and in-depth analyze the challenges of implementing IPR as a fiduciary guarantee, especially in the Indonesian context after the issuance of the Government Regulation Number. 24 of 2022 includes aspects of regulation, institutions, and the strategic role of legal actors such as notaries and financial institutions. Therefore, this research is here to fill that void.

The novelty of this research lies in its comprehensive approach that integrates both normative and institutional analyses in examining the obstacles to the implementation of intellectual property rights (IPR) as fiduciary collateral in Indonesia. Unlike previous studies focusing solely on normative aspects or limited case studies, this research positions legal actors—particularly notaries and financial institutions—as integral components of the IPR fiduciary system. This approach provides a more holistic understanding of why existing policies have not been effectively implemented and how legal reforms and institutional strategies can be directed in a more practical and applicable manner.

⁹ Zurisman Zakaria dan Wahyudi Umar, “Penggunaan Properti Virtual sebagai Objek Jaminan Fidusia : Potensi dan Tantangan The Use of Virtual Property as Fiduciary Collateral Objects : Potentials and Challenges,” *Halu Oleo Law Review* 7, no. 1 (2023): 1–12.

¹⁰ Ranti Fauza Mayana Tanwir dan Daniel Hendrawan, “Alternative resolution of intellectual property disputes as part of investment in the creative industry sector under Indonesian law,” *Humanities and Social Sciences Reviews* 7, no. 5 (2019): 93–97, <https://doi.org/10.18510/hssr.2019.7512>.

¹¹ Rina Puspitasari, “Hak Cipta Sebagai Jaminan Fidusia,” *JIPRO : Journal of Intellectual Property* 4, no. 1 (2022): 1–12, <https://doi.org/10.20885/jipro.vol4.iss1.art1>.

¹² Putri Mayang Sari, “Problematika Valuasi Hak Cipta Sebagai Objek Jaminan Fidusia,” *UNES Law Review* 6, no. 2 (2023): 5307–20.

¹³ Rifqi, Roisah, dan Lestari, “The Prospects of Intellectual Property Rights as a Credit Collateral: An Indonesia-Singapore Comparative Study.”

This study aims to critically examine the obstacles to the implementation of intellectual property rights (IPR) as fiduciary collateral in financing practices in Indonesia, as well as to formulate alternative legal and institutional solutions to promote the use of IPR as a legal, viable, and reliable credit guarantee. Using a juridical-normative approach, this research is expected not only to contribute theoretically to the development of intellectual property law and secured transactions law, but also to offer practical guidance for regulators, notaries, and financial institutions in building an inclusive and adaptive financing system that responds to the evolving nature of intellectual assets in the digital era.

2. Legal Material and Methods

This study is a normative legal research aimed at examining and analyzing legislation, legal principles, theories, and doctrines relevant to using copyright as an object of fiduciary security. The research adopts a descriptive-analytical approach, systematically portraying the characteristics of the legal phenomena under study and conducting an in-depth analysis through a qualitative lens. This method is employed to obtain a comprehensive understanding of the legal issues at the core of the inquiry, particularly concerning legal certainty and the implementation of intellectual property fiduciary security in the banking sector based on current regulations.

The research employs both statutory and conceptual approaches. The statutory approach is utilized to examine applicable legal norms, including the Indonesian Civil Code (KUHPerdata), Law No. 10 of 1998 on Banking, Law No. 42 of 1999 on Fiduciary Security, Law No. 28 of 2014 on Copyright, and Government Regulation No. 24 of 2022 on the Creative Economy. Meanwhile, the conceptual approach is applied to explore legal principles and theories that have evolved in practice concerning fiduciary security over intellectual property, particularly copyright.

The data used in this study are secondary and comprise three types of legal materials: primary, secondary, and tertiary. Primary legal materials include legislation and court decisions that form the core legal foundation. Secondary legal materials include legal literature, textbooks, journal articles, research findings, and expert opinions that interpret the primary sources. Tertiary legal materials include legal dictionaries and encyclopedia tools for tracing and understanding legal terms and concepts. The data are presented in the form of a literature review and analyzed qualitatively to draw argumentative and systematic conclusions per scientific norms.

3. Results and Discussion

3.1. Intellectual Property as Collateral for Bank Credit

Advancements in information technology and transportation have driven economic globalization. Investment is no longer confined to national markets but has extended across

international borders.¹⁴ This evolving global marketplace is also accompanied by the application of intellectual property rights (IPR), which play a crucial role in product production and marketing.¹⁵

Intellectual property is a product of human creativity that emerges from thought aimed at fulfilling needs and improving quality of life. Individual creativity has long been regarded as an intellectual asset significantly impacting human life, particularly through inventions and creative works in art and literature. As individual creativity evolves, human civilization will continue progressing and developing accordingly.

According to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), intellectual property rights are rights granted to individuals over the creations of their minds.¹⁶ One of the primary functions of intellectual property is to provide creators with exclusive rights to use their creations for a specific period. This affirms that intellectual property is not only moral but also carries legal force and economic value that can be leveraged.¹⁷

In general, intellectual property consists of two major domains: the industrial and artistic domains. In the industrial domain, patents and trademarks require formal procedures to obtain legal protection. Patents protect inventions or technical discoveries and are typically valid for 20 years.¹⁸ Meanwhile, trademarks safeguard signs that distinguish the goods or services of one entity from those of others, and their protection can last indefinitely, provided that the trademark remains distinctive and is actively used.

In the artistic and literary domain, intellectual property manifests as copyright and related rights. Copyright protection arises automatically once a work is expressed in a tangible form without formal registration.¹⁹ The primary requirements are that the work must be original and fixed in a form that is perceptible or capable of being reproduced. The duration of protection typically extends for the author's life plus approximately 50 years after their death. As such, anyone can create works protected by copyright, from simple handwritten notes to photo uploads on social media platforms.

¹⁴ Yilmaz Akyüz, *Global Economic Prospects, June 2020, The Financial Crisis and the Global South* (Washington, DC: World Bank, 2020), <https://doi.org/10.1596/978-1-4648-1553-9>.

¹⁵ Kholis Roisah, *Konsep Hukum Hak Kekayaan Intelektual HKI: Sejarah, Pengertian dan Filosofi Pengakuan HKI dari Masa ke Masa*, (Malang: Setara Press, 2015), hlm. 1.

¹⁶ "What are intellectual property rights?," *World Trade Organization*, 2018, https://www.wto.org/english/tratop_e/trips_e/intell_e.htm.

¹⁷ Katrin Muehlfeld dan Mei Wang, "Intellectual Property Rights in China—A Literature Review on the Public's Perspective," *Frontiers in Sociology* 7, no. April (2022): 1–11, <https://doi.org/10.3389/fsoc.2022.793165>.

¹⁸ "What are intellectual property rights?"

¹⁹ Michael a. Carrier, "Copyright and Innovation: The Untold Story," *Wisconsin Law Review* 891, no. October 2012 (2012): 72, <http://ssrn.com/abstract=2099876>.

Given its legal characteristics and significant economic value, intellectual property is increasingly being utilized as a financing instrument, including within the banking sector. In several countries, intellectual property is no longer regarded merely as an intangible asset but has been formally recognized as a legitimate and valuable form of loan collateral. In Singapore, for instance, patents and trademarks have been employed as collateral in bank financing. Through the Intellectual Property Office of Singapore (IPOS), the country has partnered with banks such as DBS, OCBC, and UOB to provide IP-backed loans for players in the creative industry.²⁰

In Indonesia, intellectual property's status as an object of banking collateral has a clear legal basis. Fundamentally, intellectual property grants legally recognized exclusive rights to individuals or groups over their creations.²¹ In legal terms, exclusivity refers to the right to a new work or the development of an existing work that has industrial applicability and economic value and can be treated as a valuable and transferable asset.²²

Under the Indonesian Civil Code (KUHPerdata), intellectual property is classified as an intangible object, as outlined in Article 503, which distinguishes between tangible and intangible objects, and Article 499 defines objects as goods or rights that can be controlled.²³ Although the concept of "object" is generally regulated, specific provisions concerning intangible rights are further elaborated in various statutes, including Law No. 28 of 2014 on Copyright, Law No. 13 of 2016 on Patents, Law No. 20 of 2016 on Trademarks and Geographical Indications, Law No. 31 of 2000 on Industrial Designs, Law No. 32 of 2000 on the Layout Design of Integrated Circuits, and Law No. 30 of 2000 on Trade Secrets.

Protected under various legal frameworks, intellectual property (IP) possesses transferable value, whether through licensing or as collateral. Its capacity to be assigned, sold, and leased makes it a strategic asset in business transactions, including as security for credit. IP plays a critical role in modern commerce, as evidenced by business expansion, mergers, and acquisitions that increasingly involve intellectual assets such as patents, copyrights, and trademarks. The legal mechanism for developing IP as collateral under Indonesia's legal system is accommodated through fiduciary agreements, which provide legal protection for the banking sector. Such security arrangements ensure that debtors fulfill their repayment obligations. However, it is important to note that a fiduciary

²⁰ Trias Palupi Kurnianingrum, "Hak Kekayaan Intelektual Sebagai Jaminan Kredit Perbankan Intellectual Property As Banking Credit Guarantee," *Negara Hukum* 8, no. 1 (2017): 31–54, www.ipos.gov.sg/.

²¹ Ni Putu Ega Maha Wiryanthi, "Copyright Infringement in Online Media: Corporate Legal Liability," *Al-Adalah: Jurnal Hukum dan Politik Islam* 10, no. 1 (31 Januari 2025): 151–67, <https://doi.org/10.30863/ajmpi.v10i1.7681>.

²² Debojoyti Chakraborty, "Copyright Challenges in the Digital Age: Balancing Intellectual Property Rights and Data Privacy in India's Online Ecosystem," *SSRN Electronic Journal*, 2023, <https://doi.org/10.2139/ssrn.4647960>.

²³ *KITAB UNDANG-UNDANG HUKUM PERDATA (Burgerlijk Wetboek voor Indonesie)*, n.d.

agreement does not constitute an automatic security right under the law; rather, it must be explicitly established through mutual agreement between the creditor and the debtor.²⁴

As an asset rooted in knowledge and creativity, the value of intellectual property (IP) tends to appreciate over time, especially with advancements in technology. This characteristic distinguishes it from physical assets, which generally depreciate. Therefore, utilizing IP as collateral is not only a recognition of its economic value but also a strategic effort to promote innovation and foster the growth of the creative economy. By strengthening the legal framework and enhancing the understanding of both business actors and financial institutions regarding the commercial potential of IP, Indonesia holds significant potential to develop a more inclusive, IP-based financing system.

3.2. Regulatory Challenges in the Utilization of Intellectual Property as Fiduciary Collateral in Bank Financing Following Government Regulation No. 24 of 2022

Intellectual Property Rights (IPR), encompassing Copyrights, Patents, Trademarks, Geographical Indications, Industrial Designs, Integrated Circuit Layout Designs (ICLD), Trade Secrets, and Plant Variety Protection, are intangible assets with economic value. Under Indonesian civil law, specifically Articles 499 and 503 of the Civil Code (KUHPerdara), Intellectual Property is categorized as intangible movable property. Despite their intangible nature, Intellectual Property Rights possess characteristics that enable their use as collateral for debts, either in the form of pledges or fiduciary security.²⁵

The Copyright Law No. 28 of 2014 and the Fiduciary Security Law No. 42 of 1999 provide a legal foundation for Intellectual Property Rights (IPR), particularly copyrights, to be used as objects of fiduciary security. Copyrights are explicitly categorized as intangible movable assets that cannot be subjected to mortgage or hypothec and can only be encumbered through fiduciary security. Article 16(3) of the Copyright Law states that copyrights can be used as fiduciary security, with implementation by prevailing laws and regulations.²⁶

Government Regulation Number 24 of 2022, which implements Law Number 24 of 2019 on the Creative Economy, affirms the potential utilization of Intellectual Property (IP) as collateral for financing. This is emphasized in Article 1 point 4, which defines a

²⁴ Tan Kamelo, *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan: Sejarah, Perkembangannya, dan Pelaksanaannya dalam Praktik Bank dan Pengadilan*, (Bandung: Penerbit PT. Alumni, 2004), hlm. 187.

²⁵ Abbas Abdullah, Kevin Aprio Putra Sugianta, dan Khaerul Anwar, "Kedudukan Hak Cipta Sebagai Hak Kebendaan dan Eksekusi Jaminan Fidusia Atas Hak Cipta," *JURNAL JENTERA* 4, no. 1 (2024): 440–57, <https://doi.org/10.62383/demokrasi.v1i3.239>.

²⁶ Rina Puspitasari, "Hak Cipta Sebagai Jaminan Fidusia," *JIPRO : Journal of Intellectual Property* 4, no. 1 (2021): 1–12, <https://doi.org/10.20885/jipro.vol4.iss1.art1>.

financing scheme based on Intellectual Property.²⁷ Accordingly, this regulation allows creative economy actors to access financing from financial institutions using Intellectual Property, related contracts, or accounts receivable as fiduciary collateral.²⁸ Article 10 of the regulation stipulates that the Intellectual Property that may be used as collateral must either be registered with the ministry responsible for legal affairs, or managed independently and/or transferred to another party through a valid agreement.

Nevertheless, implementing Intellectual Property (IP) as collateral in the banking system faces several challenges. One of the main obstacles is the lack of revision to Bank Indonesia regulations, such as Bank Indonesia Regulation No. 9/6/PBI/2007,²⁹ which does not explicitly regulate the use of Intellectual Property as credit collateral. As a result, financial institutions, particularly banks, do not yet have an adequate operational basis to accept Intellectual Property as a fiduciary collateral object. In practice, however, intellectual property holds tremendous commercial potential, sometimes exceeding the value of tangible assets.

Another challenge is the absence of specialized appraisal institutions capable of accurately valuing Intellectual Property (IP). In banking finance, the appraisal process is a crucial element in determining the value of collateral. However, due to the intangible and complex nature of Intellectual Property, its valuation approach is far from straightforward. Although the Financial Services Authority (OJK) has issued Regulation No. 28/POJK.04/2021 concerning property valuation, there are still no technical guidelines available that regulate specific valuation methods for Intellectual Property. Moreover, appraisal certifications such as the Appraiser Certification Examination by The Indonesian Society of Appraisers³⁰ generally remain limited to tangible assets.

In the context of prudential banking principles, banks must conduct credit analysis based on the 5Cs: Character, Capacity, Capital, Collateral, and Condition of the Economy.³¹ Due to the lack of a clear appraisal mechanism for Intellectual Property (IP) and the uncertainty surrounding its economic value, banks tend to reject using IP as

²⁷ An Intellectual Property-Based Financing Scheme is a financing model that uses Intellectual Property as collateral for debt, enabling banking and non-banking financial institutions to fund creative economy actors.

²⁸ Pasal 9 ayat 2

²⁹ Gubernur Bank Indonesia, "Peraturan Bank Indonesia Nomor: 9/6/PBI/2007 Tentang Perubahan Kedua Atas Peraturan Bank Indonesia Nomor 7/2/PBI/2005 Tentang Penilaian Kualitas Aktiva Bank Umum," 2007, 1–44.

³⁰ MAPPI (Masyarakat Profesi Penilai Indonesia) is the official professional body for appraisers in Indonesia. It is responsible for certification, regulation, and development of valuation standards. See: <https://mappi.or.id>.

³¹ Sulistyandari et al., "Implementation of Prudential Banking Principles: State Responsibility in Combating Banking Crimes in Indonesia," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no. 2 (2024): 341–59, <https://doi.org/10.24090/volksgeist.v7i2.12132>.

collateral. This reluctance is rooted in ensuring legal protection and certainty for the credit they disburse.

From a legal perspective, although Intellectual Property (IP) has been normatively recognized as an object of fiduciary security, its practical implementation remains suboptimal. This creates a discrepancy between *das sollen* (what ought to be) and *das sein* (what occurs in practice). Legal protection for IP holders is also not yet fully guaranteed when IP is used as loan collateral, considering the absence of a clear execution mechanism in the event of default or breach of contract.

Ideologically, Pancasila's existence as the state's foundation provides a value-based framework that supports the protection of Intellectual Property Rights. The second principle, "*Just and Civilized Humanity*," affirms the state's obligation to respect creators' economic and moral rights, which should also be accommodated within the national financing system.³²

Therefore, although Government Regulation No. 24 of 2022 has provided a legal basis for using Intellectual Property (IP) as fiduciary collateral, its implementation still faces regulatory and technical challenges. To realize the effective use of IP as collateral, it is necessary to establish a specialized IP appraisal institution, revise technical banking regulations by the monetary authority, and develop a collateral execution mechanism that ensures legal certainty. These steps are crucial to maximising IP's commercial value and supporting the growth of the creative economy sector in Indonesia.

3.3. The Role of Notaries in the Execution of Fiduciary Agreements Involving Intellectual Property as Collateral

Notaries hold a strategic position in various business activities that require legal legitimacy. For documents to have legal force, the drafting of deeds must be carried out by a notary by the provisions of the Notary Position Act. Authentic deeds regulate the parties' rights and obligations, ensure legal certainty, and help prevent potential disputes.³³

Financial institutions' use of Intellectual Property (IP) as collateral, particularly in the banking sector, is regulated under the Fiduciary Security Law. Fiduciary security provides a sense of assurance for creditors by ensuring legal certainty regarding the

³² Bambang Setyabudi, "Rekonstruksi Regulasi Perlindungan Hukum Bagi Debitur Dan Pihak Ketiga Dalam Perjanjian Kredit Dengan Objek Jaminan Fidusia Berbasis Keadilan" (Universitas Islam Sultan Agung, 2022).

³³ Dominicus Aditio Nugraha, "Akibat Hukum Pembatalan Akta Jual Beli Objek Jaminan yang Tidak Dilakukan Pengikatan Jaminan oleh Kreditor," *Indonesia Notary* 2, no. 4 (2020): 165.

debtor's fulfilment of obligations. In legal theory, fiduciary security falls under security rights over property, originating from a credit agreement. Unlike legal guarantees that arise automatically from statutory provisions, fiduciary security requires an explicit agreement between the creditor and the debtor, formalized as a notarial deed.³⁴

The principle of justice, as reflected in the fifth principle of Pancasila, “*Social Justice for All the People of Indonesia*,” serves as a normative foundation in the implementation of fiduciary security. This value emphasizes the importance of balance and fairness in the equitable access to rights for all levels of society.³⁵

In applying fiduciary security to copyright, notaries are required to possess in-depth competence regarding the procedures and substance of the registration process. Article 6 of the Fiduciary Security Law³⁶ mandates the inclusion of the value of the collateral object in the notarial deed. Nevertheless, several legal scholars have criticized this provision for three main reasons: First, the purpose of including the object's value is not entirely clear and does not affect the validity of the security itself; Second, there is no definitive provision regarding which party has the authority to determine the value; Third, there is a risk if the stated value is inaccurate, as it is difficult to determine who would be held accountable.³⁷ Despite these criticisms, the economic value of the collateral object remains a mandatory element to ensure legal certainty for all parties involved.

Fiduciary security may be imposed on movable tangible and intangible objects,³⁸ as well as on immovable property, such as buildings that cannot be encumbered with a mortgage right. In practice, the collateral object remains in the possession of the fiduciary giver (the debtor), while the creditor, as the fiduciary recipient, obtains a priority right in the event of default.

The implementation of the Fiduciary Security Law is expected to meet the need for legal certainty while also strengthening the national financing system.³⁹ The proprietary

³⁴ Tan Kamelo, *Hukum jaminan fidusia suatu kebutuhan yang didambakan sejarah, perkembangannya, dan pelaksanaannya dalam praktik bank dan pengadilan*, PT. Alumni (Bandung, 2006), 187.

³⁵ T. Muhammad Ali Bahar et al., “Contractual Obligations in Financing with Fiduciary Security in Indonesia in the Context of Justice,” *Lex Scientia Law Review* 7, no. 1 (2023): 215–48, <https://doi.org/10.15294/lesrev.v7i1.69318>.

³⁶ Republik Indonesia, “Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia,” Lembaran Negara Republik Indonesia Tahun 1999 Nomor 168 (1999).

³⁷ J Satrio, *Hukum jaminan, hak-hak jaminan kebendaan*, PT Cintra Aditya Bakti (Bandung, 2007), 193.

³⁸ David Heller, Leo Leitzinger, dan Uwe Walz, “Intellectual Property as Business Loan Collateral: A Taxonomy of Institutional and Economic Determinants,” *GRUR International* 73, no. 5 (2024): 379–92, <https://doi.org/10.1093/grurint/ikae043>.

³⁹ Bahar et al., “Contractual Obligations in Financing with Fiduciary Security in Indonesia in the Context of Justice.”

nature of fiduciary security is recognized only after official registration. Without registration, the fiduciary right is considered personal and does not possess proprietary legal force.

The notary is crucial in drafting the Fiduciary Security Deed over Intellectual Property. The deed must explicitly contain information regarding the collateral object, the mechanism of encumbrance, and the registration provisions.⁴⁰ The notary is responsible for preparing an authentic legal instrument that serves as valid evidence and as a legal intermediary between the pledgor and the pledgee.

Government Regulation Number 24 of 2022 on the Creative Economy represents a significant step in supporting the use of Intellectual Property as fiduciary collateral. Nevertheless, more technical and comprehensive implementing regulations regarding the encumbrance of Intellectual Property-based financing remain needed.⁴¹

The Government Regulation on the Creative Economy allows creative industry players to use Intellectual Property as loan collateral with financial institutions. This is supported by normative recognition in the Copyright and Patent Law, both of which State's's that Intellectual Property can be used as an object of debt security.⁴²

Nevertheless, implementing Intellectual Property-based financing schemes continues to face obstacles, primarily due to the absence of detailed technical guidelines. Therefore, the government must promptly formulate operational implementing regulations to enforce existing legislation. Such regulations serve as a practical guide for notaries and all relevant stakeholders.

In drafting an authentic deed, a notary is obligated to perform their duties with integrity and professionalism, as stipulated in Article 16 paragraph (1)(a) of Law No. 2 of 2014 on the Office of the Notary. A notary must act independently, honestly, and fairly to safeguard the legal interests of all parties involved.⁴³ In addition, the notary is also obliged to provide legal counseling, as outlined in Article 15 paragraph (2)(e) of the same law.⁴⁴ The term "counseling" is derived from the Dutch word *voorlichting*, which refers to

⁴⁰ Yohana Maranatha dan Nadia Inggriada Hartono, "The Notary's Function in Drafting Fiduciary Security Deeds Involving Patent Rights as Collateral," *Unnes Law Journal* 9, no. 2 (2023): 509–32, <https://doi.org/10.15294/ulj.v9i2.75589>.

⁴¹ Bahar et al., "Contractual Obligations in Financing with Fiduciary Security in Indonesia in the Context of Justice."

⁴² S. H. Aili Papang Hartono, "Credit agreement with fiduciary collateral in the form of a patent in the perspective of Indonesian law," *Humanities and Social Sciences Reviews* 7, no. 5 (2019): 71–75, <https://doi.org/10.18510/hssr.2019.759>.

⁴³ Republik Indonesia, "Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004," Lembaran Negara Republik Indonesia tahun 2014 Nomor 3 § (2016).

⁴⁴ Indonesia.

providing information or guidance, while the final decision remains with the advice recipient.⁴⁵

In practice, the legal counseling provided by a notary during the drafting of a fiduciary security deed includes (i) the identification of the fiduciary giver and recipient, (ii) information regarding the principal agreement being secured, (iii) an explanation of the fiduciary collateral object; (iv) the amount of the secured value; and (v) the economic value of the asset used as collateral.

All parties involved must understand the legal consequences of using Intellectual Property, particularly copyright, as fiduciary collateral.⁴⁶ Key aspects to be considered include the validity of ownership and the accuracy of the assigned economic value.⁴⁷

The imposition of fiduciary security through a notarial deed drafted in Indonesian constitutes an authentic deed. Ratnawari W. Prasodjo asserts that the requirement for a notarial deed in fiduciary security arrangements is based on several considerations: (i) a notarial deed possesses strong evidentiary value under the law; (ii) the object of the security is generally a movable asset; and (iii) the prohibition of re-fiduciary arrangements as stipulated by statutory regulations.⁴⁸

The copyright registration process is crucial, as it serves as a prerequisite for using Intellectual Property as a collateral object. Registration provides authentic proof of ownership and prevents other parties from filing similar applications. Through registration, legal protection for Intellectual Property becomes stronger and more reliable.⁴⁹

In terms of valuation, the notary must explain the process of determining the value of the collateral object and how it is to be stated in the deed. The value of the collateral object is often equated with the guaranteed amount, namely the maximum amount that the creditor may claim upon execution. However, the amount recovered may be lower if the

⁴⁵ Ririk Eko Prasetyo, M. Khoidin, dan Ermanto Fahamsyah, "Makna Pemberian Penyuluhan Hukum Oleh Notaris Pembuatan Akta Menurut Undang-Undang Jabatan Notaris," *Lex Humana* 1, no. 1 (2016): 51–68.

⁴⁶ John Freear, Jeffrey E. Sohl, dan A. R. Venkatachalam, "Leveraging intellectual property in the financing of entrepreneurial ventures: a technology-based solution to the perfection of security interests," *International Journal of Entrepreneurship and Innovation Management* 4, no. 2–3 (2004): 178–93, <https://doi.org/10.1504/ijeim.2004.004724>.

⁴⁷ S. M. Nikitenko dan M. A. Mesyats, "Intellectual property rights as the resource for innovative economy development," *IOP Conference Series: Earth and Environmental Science* 377, no. 1 (2019), <https://doi.org/10.1088/1755-1315/377/1/012012>.

⁴⁸ Ratnawati W. Prasodjo, "Pokok-Pokok Undang-Undang No 42 Tahun 1999 Tentang Jaminan Fidusia." Paper presented at the National Seminar on 'Substance and Implementation Review of Law No. 42/1999 on Fiduciary Security', organized by the Civil Law Department, Faculty of Law, Trisakti, 1999.

⁴⁹ Sri Mulyani, "Pengembangan Hak Kekayaan Intelektual Sebagai Collateral (Agunan) Untuk Mendapatkan Kredit Perbankan Di Indonesia," *Jurnal Dinamika Hukum* 12, no. 3 (2012): 568–78, <https://doi.org/10.20884/1.jdh.2012.12.3.128>.

principal debt is partially repaid. Therefore, an accurate economic valuation is essential, particularly in the context of copyright as collateral. This is important to ensure alignment between the collateral value and the guaranteed amount so as not to disadvantage the creditor.

4. Conclusion

This study finds that implementing copyright as a fiduciary collateral object in banking finance practices in Indonesia continues to face various structural and technical obstacles despite having obtained normative legitimacy through the Copyright Law and Government Regulation No. 24 of 2022. The main challenges include regulatory disharmony, the absence of standardized valuation guidelines, limited availability of qualified valuers, and unclear execution procedures in default cases.

This research enriches the discourse on the position of Intellectual Property Rights (IPR) within the secured transactions system. It underscores the importance of legal reform in integrating IPR into the national fiduciary system. Practically, these findings offer strategic contributions for regulators, notaries, and financial institutions in developing an operational and credible legal and technical framework. The role of notaries in ensuring the validity and enforceability of fiduciary documents is also identified as a critical point in strengthening IPR-based financing systems.

This study recommends harmonizing regulations between the Copyright Law and the Fiduciary Security Law, formulating national valuation guidelines for IPR, and establishing an IPR database accessible to financial institutions. Further research is suggested to empirically explore industry and banking actors' readiness to implement intellectual property-based financing schemes.

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