



Valuation Method of Intellectual Property Rights for Copyright Products of Small and Medium Enterprises as Objects of Credit Guarantees Benefit-Based in the Digital Era

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Abstract. The purpose of this study is to analyze the valuation mechanism for Intellectual Property Rights copyright's products as objects of credit guarantees in the era of digitalization, analyze the factors that affect the valuation of Intellectual Property Rights copyright's products as objects of credit guarantees in the digitalization era, and formulate the valuation method for Intellectual Property Rights Products. Copyright is as objects of credit guarantees in the value-based digitalization era. The research method used is non-doctrinal. This research is a qualitative research; the type of data used is primary and secondary data. Data collection techniques were done through literature and field studies (focus group discussions, interviews and questionnaires). The data collected was analyzed through descriptive analysis. The legal theory used is the theory of expediency and the theory of the legal system. The results of the study found that the Intellectual Property Right valuation mechanism for copyright products as an object of credit guarantees is through three market approaches. The income approach and the cost approach, including the market approach method and the method, is the factors that influence the Intellectual Property Right valuation method for copyrighted products. As an object of credit guarantees, namely in legal substance, there is no regulation on the valuation guidelines for Intellectual Property Right, in a legal structure there is no public appraisal agency specifically for Intellectual Property Right valuation. There is no Intellectual Property Right auction institution as an intellectual property market and in legal culture there is still weak trust. Financial institutions is lack of in-depth understanding of intellectual property rights as objects of credit guarantees, and the lack of culture of Intellectual Property Rights as credit guarantees. To formulate the Intellectual Property Right valuation method for copyrighted products as objects of credit guarantees in the era of digitalization in financial institutions through a legal system based on benefit value, namely in legal substance it is necessary to have legal products that regulate intellectual property public appraisers, intellectual property public appraisers, property markets intellectual property and increasing the trust of financial institutions to intellectual property as an object of credit guarantees, changing the mindset of financial institutions from tangible assets to tangible and intangible assets as well as increasing intellectual property legal education for financial institutions and Indonesian citizens in general.

Keywords: Valuation · IPR · Credit · Guarantee · Object

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1 Introduction

In the era of globalization and the digital era [1], the music industry has become a very promising business area in the economy in Indonesia [2]. The emergence of digital platforms both in Indonesia and abroad provides evidence that the development of the music industry is currently an undoubted business field. Through the creative economy, the music industry can be exploited so that it becomes a reliable business area for the present and the future.

The development of smartphone technology has also become one of the developments of the music industry in the country. In the era of digital platforms, people easily access download music without having to spend a lot of money when enjoying the music. Connoisseurs of songs and music have many choices to enjoy it through downloading songs including platforms, streaming, ringtones, karaoke, cafes, hotels, and music concerts. Everything that is enjoyed cannot be separated from the economic value generated from the exploitation of these musical works and songs, the users/entrepreneurs have an obligation to pay an amount of money according to the provisions stipulated in the legislation, from the results of payments from the user/entrepreneur that will be the result of exploitation. These copyrights are collectively and distributed to songwriters and related rights owners [3].

Copyright is an exclusive right to enjoy one's own creations or to give permission to others to use their creations. An author has moral rights and economic rights. The moral rights of the creator will always be eternally attached even though the creation is transferred to another person, while economic rights are the rights to obtain economic benefits from the creation and related rights products. These economic benefits will be obtained when the copyright holder provides to a third party that is used for commercial purposes based on an agreement or license [4].

In developing and developed countries, SMEs have a very important role, not only because these business groups absorb the most labor compared to large businesses, but also their contribution to the formation and growth of gross domestic product (GDP) is greater than that of large businesses [5]. World Intellectual Property Organization (WIPO): Study on the Economic Contribution of Copyright and Related Rights Industries in Indonesia 2018 states that the economic contribution of the right to announce songs to Indonesia's national income is Rp. 13 billion. The smallest amount compared to other copyright fields, such as the press and literature (Rp. 61.8 trillion), non-announcement song industry (Rp. 5.9 trillion), pictures and videos (Rp. 5.3 trillion), radio and television (Rp. 66.9 trillion), photography (Rp. 10 trillion), software and databases (Rp. 5.8 trillion), graphic and visual arts (Rp. 2 trillion), and advertising services (Rp. 10 trillion) [6].

2 Research Method

The research method used is non-doctrinal [7]. This research is a qualitative research, the type of data used is primary and secondary data. Data collection techniques through literature and field studies (focus group discussions, interviews and questionnaires). The data collected was analyzed through descriptive analysis [8].

3 Results and Discussion

3.1 Mechanism of Valuation of Intellectual Property Rights for Small and Medium Enterprises Copyright Products as Credit Guarantee Objects in the Digitalization Era

Scientifically, the assessments carried out are: 1. Reliability is an assessment with reference to standards. The appraiser performs an assessment based on the standard. It refers to local and international standards, supervised by the Assessment Board of the association. From the government by the Ministry of Finance, P2PK (Center for Financial Professional Development): Appraisers, Accountants, Actuaries (appraisers in insurance, to assess reserves to cover and so on). Appraisers for public companies (Tbk.) are supervised by OJK (capital market). And has its own standards, namely: Valuation Standards for valuation of public companies. 2. Validity is the assessment process by testing. True or not the value of the appraiser's report. Has there been a transaction that was valued at that amount? In assessing the validity of the company the assessment is limited. Is there a transaction? According to research, an average company has 20–30% of intangible assets. Indonesia needs research from academic institutions or the government, so that the assessment of the transaction is in accordance with an independent assessment. This research is related to the accuracy of the value and independence in the assessment. After the description above regarding the purpose of conducting a Copyright assessment, and the Copyright subjects that have been assessed in Indonesia, the following are some of the conditions analyzed by the appraiser, if Copyright is a guarantee.

Some of these conditions are: 1. The copyright can be assessed economically; 2. The Copyright has been commercialized. In general, the guarantee must meet the following requirements: Availability (the existence of a guarantee in terms of its form and supporting documents); Compatibility (feasibility in terms of the value of the collateral with the loan (loan covering); and Executability (can be transferred to other parties and the term of the guarantee is still valid).

With regard to proper guarantees in the form of copyrights, in this case Copyrights, the following conditions must also be considered: 1. Availability (its existence); a. The existence of Copyright, as well as other IP, is a movable object that is not tangible (immateral). In law, guarantees are special guarantees whose existence is due to an agreement, in accordance with Article 1150 and Article 1162 of the Civil Code. Meanwhile, the arrangement in UUJF regulates fiduciary objects, one of which is intangible movable objects, then IP including Copyright is included in fiduciary objects. b. The existence of the existence of Copyright is proven by the existence of supporting documents. Based on Law no. 28 of 2014 concerning Copyright, it is stipulated that the Copyright Note is issued by the Minister since the Copyright is realized and registered. Thus, a document in the form of a copyright document is issued by the Minister as evidence of a Copyright document. 2. Compatibility (feasibility in terms of collateral value compared to loans or loan covering);

Data from the Creative Economy Agency and the Central Statistics Agency stated that in 2018 there were 92.37 percent of creative economy business units that used their own funds to run their business. Based on the information collected, the cause of this is the absence of physical assets that can be used as collateral to obtain financing

products from the banking sector. Currently, one thing that can be expected from the creative economy sector to increase the added value of this sector is intellectual property. To that end, the Government through the Directorate General of Intellectual Property of the Ministry of Law and Human Rights and the Ministry of Tourism and Creative Economy/Tourism and Creative Economy Agency are intensively seeking to create an intellectual property-based financing scheme.

The government is preparing a financing facility based on 265 intellectual property, the implementation of which will be regulated in a Government Regulation (PP). "Intellectual property-based financing schemes are financing schemes that make intellectual property the object of debt guarantees for financial institutions in order to provide financing to active economic actors," Law Number 28 of 2014 concerning Copyright and Law Number 13 of 2016 concerning Patents has regulated that types of intellectual property such as copyrights and patents can be used as objects of fiduciary guarantees. However, it must be admitted, this is not quite familiar in the financial services sector. Therefore, until now, not many financing sectors have dared to accept intellectual property as collateral for their financing products. In this regard, since 2017 the Creative Economy Agency has built communication with the Indonesian Society of Appraisers (MAPPI) to prepare an appraiser who is capable of evaluating intangibles objects such as intellectual property.

As one of the challenges faced if you want to make intellectual property copyright products a fiduciary guarantee, there are still many stakeholders who do not have a good understanding of the intellectual property system, including the notary profession. In addition, there are still many stakeholders who do not know how to evaluate intellectual property. These two things are, of course, in addition to regulations in the banking sector which do not explicitly state that intellectual property can be used as collateral. The Intellectual Property Market (IP Market) can be used as a valuation reference and a solution in the event of a default. It has tried to design the IP Market.

The Mechanism of Valuation of Intellectual Property Rights for Small and Medium Enterprises Copyright Products as Credit Guarantee Objects In the Digitalization Era. Legally, it has not been specifically regulated. In practice, Banks in Indonesia have not been able to accept Intellectual Property/Copyright as collateral for credit or financing due to several reasons, among others, related to the certainty of valuation and risk management. Indonesian banks apply the precautionary principle considering that the Bank is an intermediary institution that manages the majority of customers' money. It has a very big risk if in applying intellectual property as a fiduciary guarantee, in the future it turns out that there is a default. The amount of assets managed by the bank is Rp. 7,752 trillion. The management of the bank's business is based on the precautionary principle, a number of legal issues that are currently a concern if you want to use intellectual property as a financing guarantee. From the aspect of credit guarantee provisions in the banking sector, for example. Credit guarantees are not mandatory and are accessor agreements that follow the main agreement. However, the guarantee is basically one of the risk mitigations to give confidence to the bank on the debtor's ability to pay off obligations. To obtain such confidence, banks must conduct a careful assessment of the Character, Capacity, Capital, Collateral, Condition of economics, known as the principles of lending. Collateral is one of the factors that must be considered by banks in providing credit,

considering that the credit provided is public funds that must be returned. The main thing that is the bank's concern in assessing collateral is the valuation because the value of the collateral is taken into account as a deduction in the formation of the Allowance for Earning Assets.

3.2 Factors Affecting the Valuation of Intellectual Property Rights for Small and Medium Enterprises Copyright Products as Objects of Credit Guarantees in the Digitalization Era

Achmad Ali quoting Lawrence M. Friedman's opinion about the 3 elements in the legal system [9], also adds that there are 5 elements in the legal system, namely: 1. Structure, namely the entire existing legal institutions and their apparatus, including among others the police and the police, the prosecutor's office with its prosecutors, the court with its judges and so on; 2. Substance, namely the entire legal order, legal norms and legal principles, both written and unwritten, including court decisions; 3. Legal culture, namely opinions, beliefs, habits, ways of thinking, and ways of acting, both from law enforcement and from members of the community, about the law and various phenomena related to the law; 4. Professionalism is an element of personal ability and skill of a law enforcement figure; 5. Leadership is also an element of personal abilities and skills of law enforcement figures, especially among law enforcement officials [10].

Satjipto Rahardjo said that one of the legal paradigms is; First, the value can be seen as a value figure as well. The presence of the law is to protect and promote the values upheld by the community. Second, Law as an ideology is a statement in the form of an alignment with certain values regarding statements held by a ruling group. Third, law as an institution, namely law is realized through the activities or work of various bodies, such as courts, police and others. So that legal ideals, ideas, doctrines are sought to become a reality in everyday life. Fourth, law as social engineering, namely the use of law as a social means cannot be separated from the assumption and understanding that law is an instrument used to achieve clear goals [11]. The use of legal sociology tools in deconstructing legal thought is increasingly crystallized, due to empirical legal sociology. Legal thought must depart from the facts. Indonesia is able to absorb existing changes, such as ideas of values, traditions and ideals. Mochtar Kusumaatmadja believes that the law is one of the "tools for community renewal". This means that the law must be sensitive to the development of society and the law must also be adjusted or adapted to changing circumstances [12].

There are several obstacles in conducting assessments in Indonesia, namely: 1. Availability of data; (Indonesia does not yet have data related to IP, usually using reference data from America). 2. Carry out an estimation of the assessment; 3. Level of risk; 4. Term of time;

The attributes of the Intangible Assets must have the following criteria: 1. Subject to special identification and identifiable description. 2. subject to the existence and protection of the law. 3. is subject to private property rights, and this private property must be legally transferable. 4. is shown by some tangible evidence of existence. 5. Created or has existed at an identifiable time or as a result of an identifiable event. 6. is subject to extinction or cessation of existence at an identifiable time or as a result of

an identifiable event. 7. explained by certain legal rights. 8. recognized for accounting, taxation, or legal purposes.

The factors that influence the Intellectual Property Right valuation method as an object of credit guarantees are legal substance, there is no regulation on the valuation guidelines for Intellectual Property Right, legally there is no public appraisal agency specifically for Intellectual Property Right valuation, there is no Intellectual Property Right auction agency as an Intellectual property market and legal culture are still weak in the trust of financial institutions, lack of in-depth understanding of intellectual property rights as objects of credit guarantees, and the lack of culture of Intellectual Property Rights as credit guarantees.

3.3 Method of Valuation of Intellectual Property Rights for Copyright Products of Small and Medium Enterprises as Objects of Credit Guarantee Value-Based in the Digital Era

The federal law governing copyright (system) is the Lanham Act. In 15 U.S.C. 1127 (2006) Official Comment includes IP in the meaning contained in the term General Intangible. Therefore, according to the Official Comment; IP can be used as a guarantee for IP as regulated in Article 9 of the UCC. In general, IP is as collateral in Articles 9-12 UCC. America does not specify an institution that specifically evaluates a guarantee. The American Society of Appraisers (ASA), the oldest professional appraisal agency in America which is a credible institution that represents all elements of appraisers, was founded in 1936.

Accredited valuation institutions namely: Canadian Institute of Chartered Business Valuators (IBA), the American Institute of Certified Public Accountants (AICPA), The National Association of Certified Valuation Analysts (NACVA). In 2001, the Financial Accounting Standards Boards (FASB) set a standard in terms of valuation, issuing a Statement of Financial Accounting Standards No. 141, which categorizes IP as a form of intangible asset for companies. It is as member of the Madrid Protocol since 2 November 2003.

The use of intellectual property rights in America is very supportive of the economic development of the community, this is because: First, the people of the United States have a very high concern for someone's copyright. It can be seen in the royalty income obtained by America is very high compared to other countries, because in America users are not given the opportunity to commit piracy. The sanctions given to the perpetrators of piracy are very high, so that people's awareness of the originality of the creator is highly appreciated. It creates the income of a songwriter is very high. Second, the number of international singers who are very popular throughout the world has a good impact on the music industry which is very well sold in the market, so that it can increase the income of both royalties or income earned directly. Third, a youtube influencer earns income at the number of followers on the digital platform. The fourth database system in America already has a very good system, so that anyone can see how much the top artists earn through the digital platform.

According to Gustav Radbruch [14], the law must contain 3 (three) identity values, namely as follows:

- a. The principle of legal certainty (*rechtmatigheid*), this principle is reviewed from a juridical point of view;
- b. The principle of legal justice (*gerechtigheit*), this principle reviews from a philosophical point of view, where justice is equal rights for all before the court;
- c. The principle of legal expediency (*zwech matigheid or doelmatigheid or utility*)

Satjipto Rahardjo demonstrates these three basic values on the basis of validity. The performance is as follows [15]:

Base Value:	Validity	Valid:
Justice	Philosophy	
Benefits	Sociological	
Certainty	Yurisdiction	

The benefit of law is the principle that accompanies the principles of justice and legal certainty. In implementing the principle of legal certainty and the principle of justice, the principle of expediency should be considered. For example, in applying the death penalty to someone who has committed a murder, one can consider the benefits of imposing punishment on the accused himself and the community. If the death penalty is considered more beneficial to society, it will do. Law is a number of knowledge formulations that are set to regulate the traffic of human behavior so that it can run smoothly, not collide with each other and be fair. As usual knowledge, law is not born in a vacuum. It was born based on the flow of human communication to anticipate or be a solution to the congestion caused by the negative potentials that exist in humans. In fact, the law is to be obeyed.

Utilitarianism [16] has the view that the purpose of law is to provide benefits to as many people as possible. Benefit here is defined as happiness, so that the assessment of whether a law is good or bad or not depends on whether the law gives happiness to humans or not. Thus, it means that every preparation of legal products (laws and regulations) should always pay attention to the purpose of the law, namely to provide as much happiness as possible for the community.

The theory of benefit of Sheikh Jalal al-Din 'Abdu al-Rahman [17], in his book entitled *al-Mashalihu al-Mursalat*, clearly defines *maslahah* (benefit) from the point of view of Arab customs as: "Maslahah that applies in Arabic language means that all forms of charity that are born contain benefits for humans."

Whereas *maslahat* is a form of action that brings benefits to humans, the main focus of formulating the conception of *maqashid al-syari'ah* (the main goal of sharia) is to get *maslahah* and avoid the emergence of *mafsadah* (damage). According to Imam al-Ghazali, *maslahah* is discussed as *sabili al-ibtida'*, to realize prosperity. Efforts to realize prosperity must not be separated from efforts to avoid the emergence of *mafsadah*. If welfare is achieved precisely by causing great benefit for humans, then that benefit must be wrong in reaching it. In this context, there are times when in the general view, an object, such as air and water, can be considered to have no economic value, but because of its nature and use, it actually has a high economic value.

The economic meaning according to the Civil Code is not rigid. Understanding the economic meaning in Article 499 of the Civil Code in conjunction with Article

1131 of the Civil Code must be seen and assessed in a casuistic manner and in this right it is an obligation for the debtor to maintain the objects owned by him and not to take unnecessary actions, which can bind the reduced economic value of the debtor. The property constitutes the property. From the description above, it can be underlined that the definition of objects or *Zaak* contained in the Civil Code, apart from tangible objects, also includes intangible objects. So, the object of the guarantee does not have to be tangible or tangible (material) objects, but also objects that cannot be seen, touched, or held (immaterial). So Intellectual Property is included in this last group of objects, namely, objects born from creative power or human thought.

The economic value of objects in general and copyrights in particular are very different. If the object generally has a standard of economic value or a standard of price, copyright does not have a standard of economic value. The economic value of copyright is highly dependent on the quality of the creation and the extent to which the public accepts the creation. Copyright in particular and intellectual property in general, including property rights, property rights or material rights, are very different from materials in general. If it is associated with copyright, it can be said that copyright is a material right. This is formulated in Article 4 of Law Number 28 of 2014 concerning Copyright which reads "Copyright is an exclusive right consisting of moral rights and economic rights. 'Exclusive rights' are rights that are only intended for the creator, so that no other party can take advantage of that right without the author's permission. Copyright holders who are not creators only have part of the exclusive rights in the form of economic rights." Intellectual property rights do not display real objects at all. It is not a material thing. It is the result of human creative activities that are expressed to the outside world in a form, both material and immaterial. It is not the protected form of incarnation but the creativity itself. Thus, the notion of objects here is limited to everything that can be owned by legal subjects, whether in the form of objects, or rights, as long as they can be controlled by legal subjects.

According to Law Number 28 of 2014 concerning Copyright, the implementation of the granting of copyright to be used as an object of fiduciary guarantee refers to the provisions of the legislation. The legislation in question is not clear because the explanation of this law does not clearly state which laws and regulations are used to carry out copyright guarantees as fiduciary guarantees. In terms of copyright guarantee as a fiduciary guarantee, of course, it is closely related to the Fiduciary Guarantee Act. In a systematic interpretation, the implementation of copyright guarantee will be in accordance with and refer back to the Fiduciary Guarantee Act. The terms and conditions of an object can be used as an object of fiduciary security and the validity of the object as an object of fiduciary security must be in accordance with the Fiduciary Guarantee Act. The Fiduciary Law requires that every object that will be used as a fiduciary guarantee must be registered with the Fiduciary Registration Office [18].

The appraisal profession is increasingly playing an important role in various aspects of the economy. One of its roles is in the interests of guaranteeing bank loans (credit). In this case, related to the provision of bank credit, it is necessary to guarantee adequacy in the form of fixed asset values to anticipate if the debtor is unable to pay its obligation.

The credit guarantees can be executed to fulfill obligations by selling them. In assessing collateral in the form of assets, fairness objectivity is needed in accordance with applicable valuation rules.

The valuation of these assets is carried out by internal appraisers and independent appraisers. In general, an independent appraiser before collaborating or being assigned a task by the bank to assess assets, first asks for what purposes the assets will be assessed, for example for credit guarantee purposes or for other purposes. This is because the valuation criteria are adjusted to the characteristics of the needs for the usefulness of the asset valuation. This will provide a fair and objective assessment of each assessment process. The bank should understand when there is an inequality in the assessment of credit collateral, because when a mark-up occurs by the bank, the risk is already borne by the bank, not on the independent appraiser.

In general, there are three methods of assessing the valuation [19] of IPR intangible assets, including the following [20]:

a) Market Approach

In the mind of Shanon P.Pratt, Alina V.Naculit's market approach provides a systematic framework for estimating the value of intangible assets based on analysis of actual sales and/or licensing transactions of comparable tangible objects. In this case, the assessment of copyrights approaches the market in terms of how many songs are in the market, so that they get a measurable value.

b) Income Approach

The income approach provides a systematic framework for estimating the value of an intangible asset based on its economic income capacity or present value and future value. value of economic income will come from use. In the case of copyright, future income must also be measured, whether it decreases or even becomes higher, this is done so that the estimated value of a copyright can survive and be adjusted to future income.

c) Cost Approach

The cost approach provides a systematic framework for estimating the value of intangible assets based on the economic principle of substitution commensurate with the costs to be incurred as a comparable substitute as the utility function. The cost approach in terms of copyrights is seen how much the costs incurred during the process of creating music and songs. This will also be a measure of how much the estimated price will be obtained [21].

Valuers must use pre-tax cash flows and pre-tax discount rates for the valuation of non-financial liabilities [22]. In certain circumstances, it may be appropriate to perform an analysis with after-tax cash flows and discount rates. In such cases, the appraiser must explain the rationale for using after-tax inputs, or specifically note any regulations, case law, or other interpretive guidance that requires the use of after-tax inputs (see IVS 200 Business and Business Interest, paragraph 30.2). If after-tax inputs are used, it may be appropriate to include the tax benefits generated by the projected cash outflows

associated with non-financial liabilities. The aim of IVS is to increase the trust and confidence of users of assessment services by establishing transparent and consistent appraisal practices. The standard will do one or more of the following:

- a) identify or develop globally accepted principles and definitions,
- b) identify and disseminate considerations for the performance of assessment tasks and assessment reporting,
- c) identify specific matters requiring judgment and methods commonly used to value various types of assets or liabilities.

To formulate the Intellectual Property Right valuation method as an object of credit guarantee in financial institutions is done a value-based legal system, namely in legal substance, it is necessary to have a legal product that regulates intellectual property public appraisers, intellectual property public appraisers, intellectual property markets and increases institutional trust. Finance on intellectual property is as an object of credit guarantees, changing the mindset of financial institutions from tangible assets to tangible and intangible assets as well as increasing intellectual property legal education for financial institutions and Indonesian citizens in general.

4 Conclusion

The mechanism for the valuation of Intellectual Property Right as an object of credit guarantees is through three approaches, the market approach, income and costs. However, legally it has not been specifically regulated. The factors that influence the Intellectual Property Right valuation method as an object of credit guarantees are legal substance, there is no regulation on the valuation guidelines for Intellectual Property Right, legally there is no public appraisal agency specifically for Intellectual Property Right valuation. There is no Intellectual Property Right auction agency as an Intellectual property market and legal culture are still weak in the trust of financial institutions, lack of in-depth understanding of intellectual property rights as objects of credit guarantees, and the lack of culture of Intellectual Property Rights as credit guarantees. To formulate the Intellectual Property Right valuation method as an object of credit guarantee in financial institutions through a value-based legal system, in legal substance, it is necessary to have a legal product that regulates intellectual property public appraisers, intellectual property public appraisers, intellectual property markets and increases institutional trust. Finance on intellectual property is as an object of credit guarantees, changing the mindset of financial institutions from tangible assets to tangible and intangible assets as well as increasing intellectual property legal education for financial institutions and Indonesian citizens in general.

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