



Assessment of Intellectual Property Rights as Credit Collateral

Anis Mashdurohatun^{1*}, H Gunarto², Adhi Budi Susilo³

¹⁻³Faculty of Law, Universitas Islam Sultan Agung Semarang, Semarang, Indonesia
anism@unissula.ac.id*

Abstract. The primary objective of this study is to investigate and analyze the assessment of intellectual property rights as collateral for credit purposes. The methodology employed in this research involves the utilization of a socio-legal framework. The present study employs a qualitative research methodology. The data utilized in this study include primary and secondary data sources. Data collecting strategies encompass several methods used to gather information, which can be achieved through both literature review and field studies. Data collection in field studies often involves the utilization of observation and interviews as primary methods. Observation refers to the direct research approach employed to explore the object of inquiry, involving the conduction of interviews with research informants. The employed method of data analysis is characterized by a qualitative and inductive approach. The study's findings revealed that the evaluation of intellectual property rights as collateral underwent multiple phases. Regarding the methodology for valuation, the market approach entails evaluating intellectual property assets by analyzing real sales or transactions pertaining to a certain object. The income approach, specifically the income approach, evaluates intangible intellectual property rights (IPR) assets by considering their economic revenue in terms of both present and future values. The cost approach evaluates intellectual property rights (IPR) by applying the economic concept of substitution, which considers the expenses associated with finding a suitable substitute that aligns with the utility function.

Keywords: IPR, Collateral, Credit, Evaluation

1 Introduction

The concept of copyright encompasses two unique components, namely economic rights and moral rights, which can be effectively employed as a means of ensuring copyright protection [2]. Economic rights encompass the entitlement to derive economic advantages from creative works and their associated goods [1]. In contrast, moral rights are intrinsic rights that persist regardless of any rationale, and cannot be waived or extinguished even when copyright or related rights are transferred [3].

The necessity for policy adjustments in the economy arises from the presence of progressively intricate difficulties and a progressively sophisticated financial system. Economic rights that provide benefits, this means that copyright as a material right

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has characteristics, one of which is *droit de suite*, which means that the copyright holder continues to follow in the hands of whoever the copyright attached to the object is. The principle of *droit de preference* itself is essentially a principle that provides protection or legal certainty (priority) for creditors holding fiduciary guarantees to obtain debt repayment from the sale of fiduciary collateral objects if the fiduciary debtor defaults [4].

In the contemporary era, financial institutions, encompassing both banks and non-banks, assume a pivotal role in facilitating transactional activities. The transition from manual transactions to digital transaction systems, facilitated by electronic devices and internet network connections, has been motivated by various factors. One key reason is the perceived convenience, speed, and practicality offered by digital transaction systems, which enable transactions to be conducted at any time and from any location, without constraints of physical space or time.

In carrying out its business, the lender certainly provides conditions, one of which is the existence of a guarantee. Collateral or collateral in a credit agreement is absolute, because based on statutory provisions, there is no credit without collateral. Repayment guarantees are required to guarantee certainty, order and smooth settlement of debtors' debts to creditors.

In the process of granting credit, in addition to paying attention to guarantees that have physical immaterial value. This is to prevent the impression that banks are only concerned with physical collateral. How important is guarantee in every credit decision-making as the last resource for certainty of loan/debt/credit repayment by the debtor to the bank if the debtor is in a bad state.

The inclusion of copyright as a subject of fiduciary guarantee is in line with the provisions of Law Number 42 of 1999 on Fiduciary Guarantees. Under this law, copyright can be secured in the form of a fiduciary guarantee. However, it is important to note that the guarantee is not placed on the actual copyrighted object itself, but rather on the economic value associated with the copyright. Conducting a comprehensive examination of the Assessment of Intellectual Property Rights as credit guarantees can be a captivating endeavor, particularly through exploring the valuation of works within collective management structures.

2 Research Methods

This study employs a socio-legal approach, which is a distinct methodology that investigates legal phenomena through the lens of social and cultural factors, in contrast to traditional doctrinal analyses of law. Socio-legal studies, in essence, encompass legal studies that employ a methodological approach rooted in the social sciences, encompassing a wide range of perspectives [5]. The present study employs a qualitative research methodology. The data utilized in this study comprises both primary and secondary sources. Primary data encompasses information and legal cases that are gained firsthand through field research. This includes data gathered from respondents who are directly associated with the study subject, as well as observations and practices that are directly observable and relevant to the research subject. Data collection

in field studies often involves the utilization of observation and interviews as primary methods. Observation refers to a research method wherein data is collected firsthand by directly studying the object of inquiry and engaging in interviews with research informants. The employed data analysis method is qualitatively inductive, which refers to the full study of secondary data obtained from diverse sources such as libraries, literature (including books, rules and regulations, journals, research papers, and other scientific works). The data underwent a preliminary examination, where it was checked, grouped, processed, and evaluated to ascertain its dependability. Subsequently, a qualitative analysis was conducted.

3 Results and Discussion

In the banking world, a credit policy must outline responsibilities for appraisal and must define standard and formal appraisal procedures, including references for reassessment to the credit renewal or extension process [6]. Types and accepted limits regarding the amount of assessment must be described for each type of credit facility. Circumstances requiring an assessment by a qualified independent appraiser should also be described. Ratios of loan amounts to estimated values for projects and guarantees, as well as valuation methods and differences between the various types of lending instruments should also be detailed.

According to WIPO Valuation or Valuation is "The process of identifying and measuring the financial benefit of on assets". The valuation of IP as an intangible asset is 'a process to determine the monetary value of subject IP.'" [7]. Valuation usually aims to be a tool for achieving strategies in terms of development, resource allocation, measuring the level of investment in order to achieve optimal needs. Usually this valuation is used for business activities such as: acquisitions, mergers, investment guarantees, determining royalties, tax reports, buying or selling IP, IP licenses, IP franchises and so on.

The valuation of intellectual property has developed very rapidly. For example, the value of a well-known soft drink brand can be over Rp. 1 trillion. Several brand disputes that are busy in the public show that there is no small value from these brands. Likewise with works of music and songs, which have a great deal of economic value which can be obtained either through distribution through LMK or direct income. A mutual understanding is required between all stakeholders.

The purposes of copyright owners or IP owners who have assessed rights so far in Indonesia are: Direct copyright assessment: a. Copyright transfer transaction, b. The purpose of tax planning is the value of the Copyright directly. For example: transferring Copyrights to Collective Management Institutions and/or to record companies in order to commercialize them and to produce an assessment regarding the value of the Copyrights. Indirect Copyright Assessment: Copyright Assessment for financial statements: Acquisition of controllers in accordance with PSAK (Accounting Standard Guidelines) must be consolidated with the controlling agency, namely LMK, in this case, how many royalties are obtained from the songwriter and related rights

owner, this is where the value is obtained [8]. This assessment does not directly assess the copyright, but the amount of income derived from royalties.

Indonesia already has valuation standards for intangible assets. Apart from that, the MAPPI Association (Indonesian Appraiser Profession Society) and Indonesian valuation standards refer to the International Valuation Standard. The scientific evaluations conducted encompass two key aspects: reliability, which involves assessing adherence to established norms. Validity, also known as the process of assessment through testing. Whether or not the appraiser's report holds true value [9]. Has there been a transaction of comparable magnitude? When evaluating the credibility of the company's restricted evaluation.

In Indonesia, it is mandated that research conducted by academic or government institutions be utilized to ensure that the valuation of a transaction aligns with an independent assessment. This study pertains to the precision of values and autonomy in evaluation.

The objective of evaluating copyrights and the copyright matters that have been evaluated thus far in Indonesia are as follows: Several criteria need to be met in order to qualify for consideration. Firstly, the condition must be economically assessable. Secondly, it must have undergone commercialization. Thirdly, it should be registered with the Collective Management Institute. Additionally, the condition must possess a historical income with a proven track record. Lastly, it should demonstrate a dependency on other assets associated with intellectual property within the business context [10]. The registration process with the Ministry of Law and Human Rights has been completed, enabling the possibility of a transfer. The validity of the era remains unchanged. Furthermore, it is imperative to ensure that appropriate legal safeguards are in place.

Banking in extending credit always adheres to the principle of prudence and the principle of trust. Implicitly in conducting analysis related to bank loans, one of which is analyzed is collateral. This can be seen in Principle 5 C (Character, Capacity, Condition of Economy and Collateral), the banking side considers that Collateral is the last resort [11]. Collateral has an important function when the debtor defaults. Another analysis is the analysis of the 5 P Principles (Party, Purpose, Payment, Profitability and Protection). In this case, the banking sector emphasizes protection, namely guarantees from the debtor, which is an important thing to note. This relates to anticipating undesirable things to happen in the future. Likewise in the 3 R Principle (Returns, Repayment, and Risk bearing ability). In this principle, the banking sector also analyzes the debtor's ability to bear risks against events that are beyond the predictions of creditors and debtors.

By paying attention to several principles that must be carried out by the banking sector, the existence of an appropriate guarantee is an important factor to consider in extending credit from banks or creditors. According to the author, to be able to assess a guarantee that is feasible as a guarantee for banks, in general, the guarantee must meet the following conditions:

1. Availability (the existence of a guarantee in terms of its form and supporting documents);
2. Compatibility (feasibility in terms of collateral value with loans (loan covering);

3. Executability (can be transferred to another party and the guarantee period is still valid);

Copyright as Intellectual Property is included in the realm of property law (the civil law section), so that it has the same principles as other objects. Several principles can be identified, such as the principle of a closed system, the principle of *droit de suite*, the principle of publicity, the principle of speciality, the principle of totality, the principle of accessie, the principle of horizontal separation, the principle of transferability, the principle of protection, and the principle of absolute ownership rights, which confer the power to transfer objects.

In the Indonesian context, it is common for companies to assess their intellectual property (IP) for many reasons, such as facilitating transactions, internal utilization, and other objectives. The current evaluation conducted by the appraiser in his professional capacity is grounded in the Indonesian Appraiser's Code of Ethics (KEPI) and the Indonesian Assessment Standards (SPI). According to Regulation of the Minister of Finance Number 101/PMK.01/2014 regarding Public Appraisers, an appraisal is defined as a procedural activity that entails the provision of a written assessment regarding the economic worth of an appraised object, in adherence to the Indonesian Appraisal Standards. These standards serve as fundamental guidelines that appraisers are obligated to adhere to when conducting an appraisal.

From the appraiser's perspective, copyright as part of IP is an intangible asset. The characteristics of intangible assets are: no physical elements, grant rights and/or special rights (patents, copyrights), provide competitive advantage (non-patent technology), components needed for survival, and are generally not recognized on the balance sheet.

The criteria for the Attributes of the Intangible Asset include the requirement of being subject to specific identification and description that can be recognized. Additionally, the asset must be subject to the existence and protection of law, as well as the right of private ownership, which must be legally transferrable. Furthermore, the existence of the asset should be indicated by several pieces of evidence, and it should be created or have existed at an identifiable time or as a result of an identifiable event. The asset should also be subject to annihilation or cessation of existence at an identifiable time or as a result of an identifiable event. Moreover, the asset should be described by certain legal rights and recognized for accounting, taxation, or legal purposes.

It Further States, that the Asset Is Identifiable, If It Is:

- a. The term "separable" refers to the ability of an entity to be divided or separated from its whole and afterwards sold, transferred, licensed, or exchanged either independently or in conjunction with identified contracts, assets, or liabilities. This characteristic remains irrespective of the entity's intention to engage in such actions;
- b. The emergence of contractual or legal rights, irrespective of their transferability or separability from the entity or other rights and duties.

Intellectual Property will be used as collateral for credit at banking institutions, so several things that must be fulfilled include having intellectual capital; must have a

fixed value that does not fluctuate, must be a number and a real number; and must be commercialized so that it has a high value. It is well known in the valuation world that there are several intangible assets, including: Marketing Based; Technology Based; Customer Based; Contract Based; and Artistic Based.

In practice, there are Approaches and Methods in the valuation of intangible assets. Based on the Indonesian Assessment Standard 320 (SPI 320), there are 3 (three) Approaches in valuation, namely: Market Approach; IPR has ever been commercialized or royalty has been paid, you can use the existing data to evaluate IPR. The income approach is a valuation method employed to ascertain the worth of intangible assets. It involves capitalization revenue, cash flows, or potential cost savings that can be attributed to the intangible assets being evaluated, based on a specified level of income. Appraisers ascertain the valuation of the revenue generated by Copyright. The Relief-From-Royalty Method/Royalty Savings Method is a commonly employed valuation approach in Indonesia. This approach is employed to generate intangible asset value by capitalizing on the cost savings achieved through the assumption of royalty payments through ownership or rental. Cost Approach; The cost approach is used with the following provisions: Appraisers are prohibited from using the cost approach to value intangible assets whose service potential is not equivalent to the acquisition price, such as the cost of developing Copyrights or publishing titles that are difficult to determine. Assessing intangible asset development projects which lasted for years and did not contribute positively to the company's revenue. This approach is also rarely used because the value is much higher or much lower. The most common approach used to assess Copyright is the Income approach [12].

The approach above is used after identifying the Copyright first. Before that, look at whether the Copyright has ever been "sold out or temporarily released" to companies and so on. If the history is obtained, then immediately use the income approach. In Indonesia, the market approach is rarely used because the data (research data) is not available, if abroad it is possible to do it, because the research data is already available.

Valuation of intangible assets, especially KI, Indonesia already has its arrangements in the Indonesian Valuation Code of Ethics (KEPI) and Indonesian Valuation Standards (SPI) Edition VI-2015 [13]. Although in practice business valuation (related to intangible assets) is used, such as: acquisitions and sales, mergers (mergers), valuation of shareholder ownership and the like. Because there is no comprehensive juridical support in the recognition of Copyright as a fiduciary guarantee in banks, the use of intangible asset valuation has never been carried out in an appraiser's assessment of collateral for bank credit.

Singapore as a neighboring country is known to be very innovative in terms of business. Likewise, his seriousness in valuing issues, especially copyrights. Copyright valuation debates occur in certain industries with different results from other different industries. There are several primary factors that contribute to divergent viewpoints. These include variances in the definition of Copyright assets, discrepancies in the valuation date, differences in the approach employed, variations in financial projections, disparities in revenue allocation to Copyright, discrepancies in the application of the weighted average cost of capital, variations in growth rate estimations, dispari-

ties in tax and inflation considerations, and variations in the anticipated usable life of Rights Create.

4 Conclusion

The evaluation of intellectual property rights as collateral for loans encompasses multiple phases. Regarding the methodology for valuation, the market approach evaluates intellectual property rights (IPR) assets by analyzing real sales or transactions pertaining to a certain object. The assessment of intangible intellectual property rights (IPR) assets is conducted through the income approach, which involves evaluating these assets based on their economic income and considering both present and future values. The cost approach evaluates intellectual property rights (IPR) by considering the economic concept of replacement, which involves determining the costs associated with finding a suitable substitute that aligns with the utility function.

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