



Legal Standing of IPR-Based Guarantee as a Breakthrough to Support Creative Economy Entrepreneurs

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Abstract. The high potential of the creative economy can improve the economy of business entrepreneurs. The establishment of Government Regulation Number 4 of 2022 concerning the Creative Economy is an opportunity to create Intellectual Property Rights (IPR) as an object of guarantee. The intellectual property financing scheme for bank and non-bank institutions with IPR objects uses a fiduciary guarantee scheme. The Government Regulation concerning Creative Economy provides an opportunity for creative economy entrepreneurs to apply for credit by using IPR. IPR as a loan guarantee can be a new prospect for creative business entrepreneurs. So far, creative business entrepreneurs who are not supported by capital often experience difficulties in applying for credit from banks and financial institutions. They do not have enough assets to be used as a guarantee while receiving IPR as a guarantee has not yet been regulated. The opportunities to use IPR as a guarantee for credit can encourage and stimulate creative economic growth. The purpose of this research is to analyze the ideal regulations for the use of IPR as credit guarantees with the aim of increasing the growth of creative economy entrepreneurs. This is doctrinal research with a statutory and conceptual approach. In conclusion, Bank Indonesia and OJK have not yet regulated IPR as debt collateral, but the Government Regulation on Creative Economy explicitly regulates that IPR can be used as debt collateral because IPR is included in the category of intangible movable objects that are attached to property rights and have value. Although there are still many challenges in realizing IPR as debt collateral, its potential is quite promising, especially for business development for creative economy actors.

Keywords: Guarantee, Intellectual Property Rights, Creative Economy.

1 Background

Creative Economy as a manifestation of the added value of Intellectual Property sourced from human creativity based on cultural heritage, science, and/or technology

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R. Abdul Rahman et al. (eds.), *Proceedings of the 12th UUM International Legal Conference 2023 (UUMILC 2023)*, Atlantis Highlights in Social Sciences, Education and Humanities 15,

https://doi.org/10.2991/978-94-6463-352-8_9

is currently in the spotlight because it is expected to be the foundation of national economic growth by optimizing the creativity of existing human resources. Creative economy is the concept of sustainable economic development by utilizing creativity and innovation. This creativity is derived from ideas and knowledge of human resources. The most important thing in running a creative economy, not only from the aspect of raw material production, but also requires creativity, creation, and innovation, so that the creative economy can not only improve economic welfare but also at the same time increase human creativity.

There are approximately 14 types of creative industries, namely animation, advertising, architecture, arts and crafts, design, fashion, media (film, video, and photography), games or interactive games, performing arts, publishing and printing, software, research and development, music, and broadcasting (television and radio). Creative business opportunities in Indonesia are expected to continue to increase, especially those that are digital-based. Data in 2022 recorded that there were more than 8.2 million creative business actors [1]. The four sub-creative economies that experienced the most massive development are those in the sectors of film, video, animation, and performing arts. The creative economy sector contributed revenue of Rp. 1,534.4 trillion or 7% of the total National Gross Domestic Product. It also absorbed 15.2% of the workers [2]. Indonesia is a huge target market for digital-based creative businesses. The Association of Indonesian Internet Service Providers (APJII) released data on the number of internet users in Indonesia in 2022 reaching 210 million people, as much as 73.7% of the total population of Indonesia [3].

As usual in business activities, the main needs of business actors are related to capital which is useful for ensuring that the business continues to run because this capital can be used to fund various business needs, which also relates to creative economy business actors. In practice, one of the most popular alternative solutions to overcome this problem is to utilize credit facilities that have been widely implemented in everyday life. The concept of this credit facility is to provide money or bills that are equated with it based on the construction of a lending and borrowing agreement between a financial institution (bank or non-bank) or commonly referred to as "creditor" and another party who is then also referred to as "debtor", where this legal relationship gives the debtor the obligation to return the loan within a certain period of time by requiring the provision of rewards to the creditor in the form of interest or profit sharing.

Apart from the provision of interest or profit sharing, there is also a requirement to provide collateral in a credit facility. Collateral is a way for creditors to guarantee the fulfillment of a bill. The function of collateral is to guarantee that the debtor will fulfill his obligations and generally, this guarantee is given in the form of something that can be valued in money. The greater the value (value) of the collateral object is directly proportional to the nominal amount of credit loan that will be given. In fact, creative economy business actors find it difficult to access bank credit mainly because they do not have physical assets [4]. In response to this, the idea is currently being developed to enable IPR as collateral, especially to accommodate the needs of creative economy businesses. This idea has also begun to be outlined in Indonesian positive law, which

is Law Number 24 of 2019 concerning the Creative Economy and Government Regulation Number 24 of 2022 concerning Implementation Regulations of Law Number 24 of 2019 concerning the Creative Economy.

2 Discussion

2.1 IPR in the Perspective of the Law of Property

The Law of Property is the overall rule of law related to objects which generally includes the definition of objects, the distinction of various kinds of objects, and property rights. The Law of Property is regulated in Book II of the Civil Code and several other laws and regulations. The regulation of the Law of Property uses a "closed" system, meaning that people cannot create new property rights other than those already stipulated in the law. The closed system in the Law of Property also means that anyone can only create property rights limited to those already stipulated in the law. The Law of Objects regulates the relationship between people and objects where the legal relationship gives rise to a property right (right to objects) or what is commonly referred to as *zaakelijk recht*. Property rights are rights that give direct power to someone who is entitled to control an object in the hands of whoever the object is [5]. Based on the closed system also makes the Law of Objects compelling (*dwingend*), meaning it must be obeyed and cannot be deviated by making new provisions regarding property rights.

The term "object" is a translation of the word "*zaak*" (Dutch) which means everything that can be valued by people. Benda in the sense of legal science is everything that can be the object of law, as opposed to the subject of law. A legal object is anything that is useful to a legal subject (either *natuurlijke persoon* or *rechtspersoon*) and which can be the object of a legal relationship because something can be controlled by a legal subject. Article 499 of the Civil Code states that the legal definition of objects is everything that can be the object of property rights. The Civil Code defines objects to include tangible ones (which can be captured by the senses) and intangible ones (which cannot be captured by the senses but have existence).

Apart from these classifications, objects can be classified into various other categories, including movable and immovable objects, consumable and non-consumable objects, existing and future objects, and divisible and indivisible objects. Each of these has its own characteristics and IPR can be categorized as objects, especially the classification of intangible movable objects. Intellectual property rights were first recognized as intangible movable property in countries with the Common Law system. According to the WTO, intellectual property rights are assets in the form of intangible objects, for example, such as brands, designs, and other intellectual property that are not visible [6]. This is also emphasized in the Government Regulation concerning Creative Economy which allows IPR to be used as an object of collateral.

2.2 IPR as an Object of Debt Guarantee

Debt collateral plays an important role in securing the return of bank funds provided through lending to the debtor in the event of bad credit or debtor default. In banking practice, the object of the credit guarantee received by the bank will be sold to pay off the debts of debtors who cannot return funds from the provision of credit. The sale of the guaranteed objects by banks is expected to minimize bank losses to debtors who cannot repay bank loans. Before granting credit and receiving credit guarantees, banks must anticipate the risks of granting credit.

Both the Bank Indonesia and Financial Services Authority (OJK) regulations do not regulate IPRs that can be used as objects of credit collateral. Generally, this specific regulation regulates the following items, amongst others, as objects of credit collateral [7]:

- a. Securities and shares that are actively traded on the stock exchange in Indonesia or the stock exchange of another country included in the main exchange, or have an investment rating and are bound in pledge.
- b. Land, buildings, and houses that are bound by mortgage.
- c. Units of flats bound by fiduciary security.
- d. Machinery which is an integral part of the land bound by a mortgage.
- e. Aircraft or ships with a size of more than 20 m³ which are bound by mortgages.
- f. Motor vehicles and inventories bound by fiduciary.
- g. Warehouse receipts that are bound by a security right over warehouse receipts.

The Government Regulation concerning Creative Economy stipulates that intellectual property can be used as an object of credit collateral in bank and non-bank financing institutions. The purpose of the regulation is to help creative economy actors obtain financing facilities to develop their IPR-based businesses. Conceptually, intellectual property rights are intangible movable objects in which there are property rights and ownership rights that can be transferred through inheritance, grants, or sale [8].

The Government Regulation on Creative Economy states that the Government and local governments are responsible for creating and developing the creative economy to contribute to the national economy and increase global power in order to achieve sustainable development goals. OJK supports the development of the IPR ecosystem and commercialization having considerable potential to contribute greatly to the national economy. These potentials include [9]:

- a. IPR can incentivize innovation efforts to maintain business hegemony.
- b. IPR assets are soft skills patents or licenses that can encourage business acceleration through the efficiency of the business processes created.
- c. IPR-intensive companies tend to be more resilient to crises because they are considered faster and more adaptable, such as the gaming, virtual reality, and software industries.

- d. Registered IPRs can be optimized to obtain regular passive income, for example, income from royalties and patents.

However, the reason OJK has not yet regulated the use of IPR for debt collateral is because there are still several factors that cause difficulties in its application, including:

- a. The development of IPR has caused competition between industries to become more competitive for intellectual property-based MSMEs, which may experience difficulties entering the market and accessing capital from external parties.
- b. In terms of financial system stability, IPR is still considered a sector with low productivity and high fluctuations in returns and value, so IPR is categorized as a contributor to stability risk, therefore IPR-based financing requires banks to prepare larger reserves.
- c. The relatively small portion of intangible asset investment financed by bank loans has the potential to weaken the monetary policy transmission channel because it is considered less responsive to changes in interest rates.
- d. The existence of cost dispersion that affects the success of IPR-based business economies of scale depends on the leaders in the sector and depends on the level of new innovation in the creative industry.

In addition to the factors mentioned, there are also several juridical challenges to making IPR a credit guarantee:

- a. The legal principle relating to IPR as a credit guarantee has not been regulated. Currently, only copyrights and patents are recognized under the Copyright Act and the Patent Act in the form of fiduciary binding, but other types of IPR have not yet been regulated.
- b. It is necessary to develop guidelines to assess the economic value of IPR. Experts in the field of IPR may come up with a standard formula for assessing IPR as the basis for credit guarantee assessment.
- c. It is necessary to establish a special appraisal institution to assess IPR.
- d. It is necessary to establish procedures for the execution of IPR as collateral.
- e. The non-existence of secondary markets creates difficulty for the bank to recoup the financial credit disbursed.

In determining the value of an IPR asset as credit collateral, one way that can be used by banks is to use the concept of due diligence. Due diligence is a systematic mechanism carried out to anticipate the risks of business or investment decisions, and in the financial world, the procedure is carried out by examining the finances of a party before the transaction is continued [10]. The purpose of due diligence itself is to ensure that the collateral provided has sufficient value and can fulfill loan payment obligations.

3 Conclusion

Bank Indonesia and OJK have not yet regulated IPR as credit collateral, but the Government Regulation on Creative Economy explicitly regulates that IPR can be used as credit collateral because IPR is included in the category of intangible movable objects that are attached to property rights and have value. Although there are still many challenges in realizing IPR as credit collateral, its potential is quite promising, especially for business development of creative economy actors.

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