COPYRIGHT AS CREDIT COLLATERAL IN LEGAL PERSPECTIVE: EVIDENCE FROM INDONESIA

a Acep Rohendi, b Dona Budi Kharisma, c Purwadhi, d Muqtadir Ghani Putranto

ABSTRACT

Objective: There are two main points in this legal research: (1) to analyze the legal problem of copyright as credit collateral in Indonesia (2) and to compare copyright law arrangement in South Korea.

Method: This study uses normative legal research. The legal documents used are South Korean and Indonesian copyright laws and regulations. Utilizing techniques from literature studies, the procedure of gathering legal materials is carried out.

Results: There are still issues with the regulation and application of the law in Indonesia, particularly in relation to the issue of valuation and appraisal for the liquidation of intellectual property law (hereafter referred to Indonesia language as HKI) because there isn't a secondary market, the legal infrastructure mechanism for executing HKI is unclear.

Conclusions: In contrast to Indonesia, South Korea itself has rules and regulations for copyright assessment that have been supported by the South Korean Government, such as having a special panel of judges that exclusively handles HKI disputes, copyright collection agencies in South Korea have trusteeship agreement with copyright holders so that their copyrights are transferred to copyright collection agencies as trust property. This legal problem occurs because the implementation of regulations in Indonesia still overlaps, so that the implementing rules are still not optimal.

Keywords: copyright, credit collateral, intellectual property law, banking and finance law.

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a Doctor in law, Faculty of Management, Adhirajasa Reswara Sanjaya (ARS) University, Indonesia,
E-mail: arohendi@ars.ac.id, Orcid: https://orcid.org/0000-0001-6465-5127
b Master in law, Faculty of Law, Universitas Sebelas Maret (UNS) Indonesia,
E-mail: donabudikharisma@staff.uns.ac.id, Orcid: https://orcid.org/0000-0003-1361-5613
c Professor in Management, Faculty of Management, Adhirajasa Reswara Sanjaya (ARS) University, Indonesia,
E-mail: purwadhi@ars.ac.id, Orcid: https://orcid.org/0000-0003-1362-0789
d Master in law, Faculty of Law, Universitas Sebelas Maret (UNS) Indonesia,
Email: muqtadirghanip19@student.uns.ac.id, Orcid: https://orcid.org/0009-0002-4782-5619
DIREITOS AUTORAIS COMO GARANTIA DE CRÉDITO EM PERSPECTIVA JURÍDICA: EVIDÊNCIAS DA INDONÉSIA

RESUMO

Objetivo: Há dois pontos principais nesta pesquisa jurídica: (1) analisar o problema legal dos direitos autorais como garantia de crédito na Indonésia (2) e comparar o acordo de direito autoral na Coreia do Sul.

Método: Este estudo utiliza pesquisa legal normativa. Os documentos legais usados são leis e regulamentos de direitos autorais sul-coreanos e indonésios. Utilizando técnicas de estudos de literatura, realiza-se o procedimento de coleta de material legal.

Resultados: Ainda há problemas com a regulamentação e a aplicação da lei na Indonésia, particularmente em relação à questão da avaliação e avaliação para a liquidação da lei de propriedade intelectual (doravante referida como língua indonésia como HKI) porque não há um mercado secundário, o mecanismo de infraestrutura legal para a execução de HKI é pouco claro.

Conclusões: Em contraste com a Indonésia, a própria Coreia do Sul tem regras e regulamentos para avaliação de direitos autorais que têm sido apoiados pelo governo sul-coreano, como ter um painel especial de juízes que lida exclusivamente com disputas de HKI, agências de coleta de direitos autorais na Coreia do Sul têm acordo de curadoria com os detentores de direitos autorais para que seus direitos autorais sejam transferidos para agências de coleta de direitos autorais como propriedade fiduciária. Este problema jurídico ocorre porque a aplicação dos regulamentos na Indonésia continua a sobrepor-se, pelo que as regras de execução ainda não são ótimas.

Palavras-chave: direitos autorais, garantia de crédito, direito de propriedade intelectual, direito bancário e financeiro.

1 INTRODUCTION

Indonesia which has digital competitiveness, has shown development in a country (Kharisma, 2020). Of course, the current development requires support to distribute digital potential more evenly throughout Indonesia. Indonesia’s digital economy is ranked third in the globe following South Korea and the United States (finansial.bisnis.com, 2021). Investment development is also consistent with positive trend of digital economy development. The investment value in Indonesia’s digital economy during Quarter 1 (Q1) 2021 was 4.7 billion USD, surpassing the highest value for the previous four years, according to study by Google, Temasek, and Bain & Company (2021). The results of these achievements have made Indonesia popular in Southeast Asia for investment purposes, even surpassing Singapore (Kementerian Koordinator Bidang Perekonomian Republik Indonesia, 2022).

In 2022, Singapore and Indonesia will be the top two investment destinations in Southeast Asia. Indonesia attracts 25% percent of the total value of private funding in the
region and remains attractive in the long run for investors along with Vietnam and Philippines. However, given the macroeconomic headwinds, the transaction value in Semester 1 2022 fell by USD 2 billion YoY due to concerns about profitability and valuation (Indonesia.googleblog, 2022).

Government Regulation Number 24 of 2022 regarding the Creative Economy was passed by Indonesia’s President, Joko Widodo (hereinafter referred to as the Government Regulation of Creative Economy). The move to issue the government to support HKI, especially copyrights as credit collateral, which hopes to provide easy financing or credit from financial institutions to creative economy actors (kemenkumham kanwil jogja, 2022). Because perpetrator business or Micro, Small and Medium Enterprises (hereinafter called UMKM) Creative Economy There is need capital (Kharisma & Hunaifa, 2022).

Deputy for Industry and investment of the Ministry of Tourism and Creative Economy (hereinafter referred to as Kemenparekraf) Fadjar Hutomo said that currently capital is still an obstacle, so it is a factor in the slow development of creative economy businesses. Most of the creative economy businesses, 92% percent, still use their own capital or loan from family and friends. These business actors have difficulty getting access to financial institutions, both banking and non-banking (Antara, Tempo.co, 2020). Capital problems often arise due to inconsistencies between business actors and the requirements for borrowing capital from financial institutions. The requirements are closely related to asset ownership. On average, business actors own 22% percent of fixed assets which are land and buildings. While the rest is movable assets such as vehicles, machinery and other equipment. Intellectual assets are also very important capital to build any business (medcom.id, 2020).

Then, in previous research conducted by Dashpunstag Erdenechimeg entitled "Using Intellectual Property as Collateral: An International Experience and A Mongolian Perspective," which discussed security asset riches intellectual yet developed in a manner area, and also comparison law from Mongolian country perspective (Erdenechimeg, 2016). The other study previously carried out by Dewi et al. (2021) entitled “Regulations of Copyright Certificate as a Material Gurantee and Bankrupt Estate/Beodel in Indonesia,” which said that copyright is an intangible object that can be used as collateral and is categorized as an intangible commodity. However, there is a lack of clarity in this situation regarding the rules governing copyright as a subject that can be rendered insolvent.
However, the two previous research above have not discussed in depth the prospects and challenge of copyright as credit collateral through a comparison of Indonesian and South Korean rules and regulations.

2 THEORETICAL FRAMEWORK

2.1 THE PURPOSE AND MEANING OF COPYRIGHT

The special term copyright used in Indonesia, as is the case with the term copyright which is generally better known in international discourse, conceptually accommodates the main elements contained in two different foreign terms, namely the aspect of the right to return benefits and the rights of the person who produces the copyrighted work (Koesowo, 2021).

The capacity for human thought, which is valued in a variety of fields of endeavor, is helpful for sustaining human life, and has economic value, is another source of copyright (Saidin, 2015). According to the World Intellectual Property Organization (hereinafter referred to as WIPO), the term "rights create" is used in law to describe creators who have ownership rights to their literary and creative creations. Books, music, paintings, sculptures, films, computer programs, databases, advertisements, maps, and technical drawings are among the works protected by rights create. Philip Wittenberg then argued about the right to create, claiming that it originated from copy Latin, which is translated as "a lot" and denotes, generally, the right to produce lots of copies or to create. This specifically refers to the ability to reproduce and copy works of art and writing that are known to be created by humans. it has also been described as having the ability to decide what needs to be created, how it should be published, what needs to be done, and who should do it (Wittenberg, 1937).

A work under copyright is an object listed is defined as "any copyrighted work in the fields of science, art, and literature that is produced on inspiration, ability, mind, imagination, dexterity, skill, or expertise that is expressed in a tangible form" in Article 1 Paragraph 3 of the Indonesian Copyright Act. Article 499 of the Civil Code, also known as the "Civil Code," defines the object (Zaak) as follows: "According to the law, goods are every object and every right that may become the object of property rights." According to these clauses, property is defined as having rights (recht) so long as a legal subject has the ability to govern the object of ownership. At this level, the concept of an
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Object is not confined to tangible items known as goods but also encompasses intangible or stature objects, such as rights (Usman, 2018).

The function of copyright in supporting such creative growth, on the other hand, is a far more problematic issue that has split observers. Intellectual property rights have long been seen as a vital instrument for incentivizing innovative investments in standard economic theory. Property rights prevent market failures caused by free riding, which would otherwise result in inferior creative work output (Landes & Posner, 1989). Property rights also promote effective investment allocation by utilizing private knowledge exposed via market mechanisms and directing creative resources toward socially useful objectives (Demsetz, 1969).

2.2 DEFINITION OF CREDIT COLLATERAL

According to Soedikno Mertokusumo (2007) regarding collateral law, it consists of 2 (two) words, namely law and guarantee. Meanwhile, according to Hartono Hadisasaputro in the writings of Salim H.S. (2007) explained that collateral is something that the debtor gives to the creditor as security that they will uphold their end of an agreement's obligations that have a monetary worth. The word "credit" itself derives from the Latin word "credere," which means "to trust." In contrast, faith is referred to as "trust or confidence" in English (Sutarno, 2003).

When a bank extends credit to borrowers, also known as debtors, it typically conducts a study of the credit extension. The intention is to reduce the amount of poor credit brought on by defaulting borrowers. In order for the bank to extend credit, the bankrupt will typically need to provide guarantees. Collateral guarantees basically serve as a guarantee for the payment of debts owed by debtors who have been promised bankruptcy or have been so adjudged. By executing collateral on the in question bank's credit, the credit collateral will offer good security for creditors by ensuring that the credit will still return even if the debtor defaults. Regarding collateral, it may take the form of goods or objects to serve as a material guarantee or it may take the form of a pledge to hold debt to serve as a personal guarantee (Usman, 2016).

Because they meet the requirements for material rights namely, that they are absolute rights, have a droit de suite, a droit de preference, have a material claim, and last but not least, are assignable copyright encompasses things that can be used as collateral objects. Copyright can be used as a guarantee because it is a material property that is part
of the category of movable, intangible objects and can be transferred. Article 16 paragraph 4 of the Indonesia Copyright Act, which states that copyright is an object of guarantee and operates as a fiduciary in compliance with the laws and regulations, is the foundation for the imposition of copyright as collateral. Thus, only a fiduciary whose binding procedure is in accordance with the requirements of law can impose copyright as an object of guarantee. Ensure Fiduciary (Artana et al., 2017)

3 METHODOLOGY

Methodology is portrayed as a set of rules and guidelines for performing unique tasks, such as conducting original study. (Chang, 2014). Doing so would require him to have the necessary name ability to recognize problems with the legislation as it currently stands, as well as the necessary legal reasoning (Marzuki, 2021). The kind of investigation used in legal studies this is normative law education. Law is always normative, so studying it requires related research that must advance its method and materials (Marzuki, 2021). Regarding the study's properties, this is prescriptive as opposed to research. Based on studies comparing Indonesia and South Korea, this study draft law and all provisions currently in effect in Indonesia addressing solving challenge rights create as guarantee credit.

For legal research this requires data collection with an objective to acquire relevant legal information used to research all problems. Law is studied in the library as a collection method (library research). This method gathers fundamental knowledge by studying, learning, and taking notes on books, laws, documents, reports, archives, and other topics that are connected to the research issue (Marzuki, 2021).

Learn law this employs two kinds the first method of approaching legislation, known as the statute method, entails writing regulations that are norm binding law in a way that is public and developed by state organizations. The implementation also includes a technique for studying the Constitution and any pertinent laws (Marzuki, 2021). Approach to the law Learn more about the laws governing copyright and guarantee credits in Indonesia and South Korea by visiting this website. Second, approach comparison (comparative approach) compares laws without considering system law or level development economics; instead, it only considers the elements that are generally necessary (Marzuki, 2021). comparative strategy This can aid in the study of draft laws and their general principles, helping to solve problems and ensure credit while also
allowing for approach comparisons with other nations. In the same way that South Korea upholds the protection and tall service rights he established (Kurnianingrum, 2017).

Legal resources used in the research these include: (1) the Indonesia Civil Code, (2) Indonesia Copyright Act, (3) Indonesia Fiduciary Guarantee Act, (4) Indonesia Government Regulations Creative Economy, (5) Republic of Korea Act No. 12592 of 2014 regarding Security Treasure Moves, Bonds, and Other Matters, (6) Act No. 19036, Year 2022, Republic of Korea, Concerning Promotion Discovery, (7) Act No. 18667, relating to Guarantee Funds Credit, Republic of Korea, 2021, (8) Act No. 17253, Republic of Korea Year 2020, pertaining to the Korea Development Bank.

4 RESULT AND DISCUSSION

4.1 PROBLEMS WITH COPYRIGHT LAW AS COLLATERAL FOR BANKING CREDIT IN INDONESIA

The nature human change which is always developing dynamically creates a change in technology by intervening in aspects of life. One form of this intervention is creative economy actors who are active particularly in the field of intellectual property and copyright which make it a means to gain profit (Ainuri et al., 2009).

Furthermore, in the Government Regulation of Creative Economy, HKI-based financing must have proof of HKI recording or registration, and already have an utilization contract of HKI, as explained in Article 7 paragraph (1) “Creative Economy Actors apply for intellectual property-based financing with banks or non-bank financial organizations”. However, behind the usual use of copyright as credit collateral, there are still problems. The challenge is the implementation and system in the field, especially related to the problem of hampered valuation and appraisal systems for HKI liquidation, the absence of Secondary Market availability, and the unclear legal infrastructure mechanism for HKI excecution (Rizki, 2022). Copyright as an object of credit collateral for the time being, conventional banks, Islamic banks, and finance are not brave enough to take risks. Therefore, in the implementation of the field these provisions cannot be implemted optimally due to factors that hinder the implementation (Otoritas Jasa Keuangan, 2022).

Copyright as credit collateral in banking credit transactions still finds a number of things that become obstacles in its application as mandated in Article 16 paragraph (3) of the Indonesia Copyright Act which clarifies that copyright provisions as a collateral
object fiduciary as mentioned in paragraph (3) are carried out in accordance with the rules and regulations of laws and regulations as an intangible movable object. The following are the reasons for the challenges:

4.1.1 Obstacles in the valuation and appraisal system for liquidation of copyright as credit collateral

Making copyright as an object of credit collateral is not an easy thing to do at this time. Because is anyone willing to buy a copyright for some money? And does a market for intellectual property really exist? Both of those questions are relevant to the fact that there is no clear system for making copyright as credit collateral.

The distinction is made between works, namely property and copyright as intellectual property. Copyright gives rights to various commercialization of property in the form of works. Since the enactment of the Indonesia Copyright Act, Article 16 paragraph 3 now contains a new rule that "Copyright can be used as objects of fiduciary guarantee". The fiduciary guarantee deed also includes the information required by Article 6 of the Indonesia Fiduciary Collateral Act, including: a. the giver and recipient's identities; b. the terms of the fiduciary guaranteed principal agreement; c. a description of the item that serves as the fiduciary collateral; d. the guarantee value; and e. the value of the item that serves as the fiduciary collateral.

WIPO, defines valuation as "the process of identifying and measuring the financial benefit of an asset." The definition of valuation in this context is "the process of identifying and measuring financial benefit and risk of an asset, in a particular context," if it relates to HKI, an intangible asset. According to Paul Flingor and David Orozco, HKI valuation can provide the potential to increase knowledge, especially regarding intellectual property to describe the business, legal and financial aspects of intangible assets (Paul et al.). Valuation is used when: a) assist in the process of making decisions on the company’s business development strategy; b) investment guarantee; c) business negotiation; d) measure potential damage due to HKI infringement; e) determine the HKI license royalty; f) accounting standard requirements; and g) taxes.

While the Public Service Office (hereinafter referred to as KJPP) defines asset valuation as an appraisal process in providing an opinion on the value of an asset, based on the findings of an analysis of objective and pertinent facts using the valuation techniques and principles, for both tangible and intangible assets that apply to certain time
(Public Service Office, 2015). One of the uses and benefits of asset valuation is to obtain bank guarantee. According to the Association of Indonesian Appraisal Companies (hereinafter referred to as GAPPI), in determining asset valuation, there are several parameters that can be used as a reference (Emrizon, 2005): a) market value; b) fair value (depreciated replacement cost); and c) liquidation value.

HKI is used by banks or other financial organizations as a debt guarantee. Article 8 Letter C states that "valuation of Intellectual Property is used as collateral." The economic value of HKI is based on Article 12 Paragraph 1, specifically on the valuation of Intellectual Property as referenced in Article 8 Letter C using the cost approach, market approach, revenue approach, and/or other valuation approaches in accordance with the relevant assessment standards.

According to Article 12 Paragraph 2, "Intellectual Property Appraisers and/or a Panel of Appraisers carry out the valuation of Intellectual Property as alluded to in Paragraph (1). The following duties are listed for the Intellectual Property Appraiser as mentioned in paragraph (2) in Article 12 paragraph (3): Perform a market analysis of the intellectual property to be used as security; a. evaluate the intellectual property that will be used as collateral; or b. review the analysis report on the use of intellectual property that has been applied in the sector.

Making copyright credit security is difficult to do in practice, though. Intangible movable things have never before been made the subject of fiduciary guarantees. The standards for determining the economic worth of immaterial assets like patents are therefore not yet at their best. OJK Head of Legal Research and Development Group for the Financial Services Sector, Arief Rachmat Pramana, disclosed the challenges in putting these provisions into practice. Due to problems with monetary value, the banking industry frequently rejects copyright as credit collateral (Elnizar, 2018). It is not simple to deal with the problem of copyright as credit collateral. First, it is important to comprehend that moral and economic rights are used to build copyright in Indonesia. A guarantee of credit that only covers its commercial rights is possible with copyright. The second is that the copyright holder is not always the creator due to these transferable commercial rights.

In contrast to Indonesia, South Korea practices HKI asset valuation through the Korean Intellectual Property Office (hereinafter referred to as KIPO) in collaboration with the Korea Invention Promotion Association (hereinafter referred to as KIPA) and WIPO also seeks to introduce information on the importance of HKI asset valuation.
through IP Panorama. IP Panorama is designed to help SMEs to utilize and manage HKI assets in their business strategy (Kurnianingrum, 2017). This IP Panorama has the main task of setting guidelines for valuation standards and considering the feasibility of whether certain HKI objects can be used as collateral.

Furthermore, what is interesting to observe is that there are also countries that actually use the help of HKI asset appraisal professionals, such as professional appraisal. The United States for example. In the United States, it is not explicitly explained about the existence of a special institution for assessing HKI assets, but the mechanism is left to professionals called the American Society of Appraisers (hereinafter referred to as ASA). The oldest appraisal organization is the ASA, which was established in 1936 and is a reliable organization that covers all aspects of appraisal. The Canadian Institute of Chartered Business Valuators (hereinafter referred to as CICBV), The Institute of Business Appraisers (hereinafter referred to as IBA), The American Institute of Certified Public Accountants (hereinafter referred to as AICPA), and The National Association of Certified Valuation Analysts (hereinafter referred to as NACVA) are among the accredited organizations in the United States that conduct IP business valuations in addition to the ASA. (Rahmatullah, 2015).

Comparison of the two state arrangements above that handle valuations and appraisals makes a lesson for Indonesia that there is a need for clarity about who has the right to become a debtor in credit collateral in the form of copyrights. Notaries have an important role needed to compile the construction of any rights that are submitted to creditors as credit collateral. So a valuation system is needed that can be trusted if you still want to maintain copyright as collateral for credit. This valuation system needs to be managed by a special institution or professionals to guarantee the value of fiduciary-encumbered rights that can be enjoyed by fiduciary holders if the debtor defaults.

4.1.2 Not availability of secondary market for copyright as credit collateral

Securities that are already in the public's possession are traded on the secondary market between the community's own members, allowing money to move from one investor to another (Hartono, 2000). The secondary market is a place where investors can buy and sell securities after they have been registered on the stock exchange or after they have been issued on the primary market (also known as an initial public offering, or IPO),
so it is also a market for securities that have been registered on the stock exchange. (Mubarok, 2017).

OJK itself is still reviewing the prospects and feasibility of HKI as credit collateral to banks. Until now, the HKI ecosystem, especially copyrights in the secondary market, is still not strong enough, and the mechanism for determining the valuation of HKI is still limited. Meanwhile, the bank must know the value of the credit guarantee item. Regarding collateral or guarantees, they are optional when providing funds in the form of financing or credit and rely on the bank's risk tolerance for the plan and type of credit as well as the potential debtor's capacity. Each bank must have its own credit granting criteria in the credit application and approval process. One that is usually in the Bank's Risk Acceptance Criteria is the business prospects and capacity to pay the prospective debtor.

The release of the Government Regulation of Creative Economy outlines the strategy for making intellectual property bank security. The Government Regulation of Creative Economy has regulated a financing plan for creative economy actors from financial institutions based on intellectual property, according to Yasonna Laoly of the Ministry of Law and Human Rights. This law is referred to as the government's method of using and safeguarding community-owned HKI. Actors in the creative economy may hold certificates that subsequently serve as credit collateral. (CNBC Indonesia, 2022).

According to paragraph 1 of Article 9 of the government regulation on the creative economy, "Bank and non-bank financial institutions use intellectual property as the object of debt guarantees in the implementation of Intellectual Property-based financing schemes." The debt guarantee object is then further described in Article 9 paragraph (2), which stated that "The debt guarantee object as referred to in paragraph (1) is carried out in the form of: a. fiduciary guarantee on Intellectual Property; b. contract in creative economic activities; and/or c. billing rights in creative economic activities."

South Korea itself has been ranked 12th in the global innovation index in 2018. And the intellectual property rights trade balance remains in the red (USD 0.72 billion in 2018) due to substantial deficits borne by small and medium-sized companies, even though large companies have posted surpluses. It is important to increase financing to increase the use of intellectual property in business. In South Korea, the government encourages intellectual property financing through the Korean Intellectual Property Office and the Korea Funds. The company plans to expand the financing volume to 2
Going forward, asset and securities management companies need to expand the scope of eligible intellectual property to include trademarks, copyrights, and content, in addition to patents. Finally, given its high-risk and high-yield nature, intellectual property investments need to be led by large securities firms, working closely with organizations with expertise and knowledge in intellectual property evaluation, such as the Korea Technology Finance Corporation and the Korea Invention Promotion Association.

In a copyright-intensive industry in the United States in 2014, 14 states had an above-average share of employment and 11 of these appeared on the list of 2010. Minnesota was removed from the list, while Illinois and New Hampshire were added. As in previous reports, the state is mostly spread along the East and West coasts. Overall, five of the six states that have an above average share of employment for the patent, trademark, and copyright-intensive industries in 2010 also did so in 2014. These are California, Connecticut, Massachusetts, New Jersey, and Utah. Moreover, Oregon and Washington became intellectual property-intensive states in 2014 (Michelle K Lee, 2016).

Comparison of the market systems of the two countries can be learned for Indonesia for the need to determine the institution for assessing the economic value attached to HKI, especially for copyrights. This is because until now there has been no appraisal agency or even professionals who specifically assess HKI and serve as a reference for banks. Then also the secondary market which is not yet available. So that at the time of execution, such collateral cannot be sold effectively without a liquid secondary market.

4.1.3 Unclear copyright execution legal infrastructure mechanism

Intellectual property certificates may be used as debt collateral in funding plans for creative economy players under the Government Regulation of Creative Economy. Regarding the execution of guarantees or auctions in the case of default, there aren't any rigid regulations, though. Actors in the creative economy can easily acquire financing from the banking or non-bank sectors thanks to the assistance of the state. The
Government Regulation of Creative Economy regulates the funding plan for creative economy participants.

As a result, there are issues with how solid the legal framework is for property execution. "The Fiduciary Collateral Certificate as referred to in paragraph (1) has the same executive power as a court decision that has obtained permanent legal force," states Article 15 paragraph (2) of the Indonesia Fiduciary Collateral Act. The Fiduciary Recipient also has the right to sell the item that is the subject of the Fiduciary Guarantee on his or her own initiative, according to Article 15 paragraph (3), "If the debtor defaults."

A further explanation of the transfer of fiduciary collateral can be found in Part Three of the Indonesia Fiduciary Collateral Act, Section 19 (1), which states: "The transfer of fiduciary guarantee rights results in the transfer by law of all rights and obligations of the Fiduciary Recipient to new creditors." As stated in Part Four of Article 25 paragraph (1), "Fiduciary guarantee is deleted due to the following matters: a. write-off of debt guaranteed by fiduciary; b. relinquishment of rights to Fiduciary Guarantee by Fiduciary Recipients; or c. destruction of the object which is the object of the Fiduciary Guarantee."

Regarding general travesty, the Indonesia Fiduciary Collateral Act explains in Article 29 paragraph (1) that "If the debtor or Fiduciary Giver defaults, the execution of the object that is the Fiduciary Guarantee object can be carried out by: a. implementation of the executorial title as referred to in Article 15 paragraph (2) by the Fiduciary Recipient. b. the Fiduciary Recipient authorizes the seller of the Fiduciary Guarantee item to sell it at public auction on his own behalf, and the seller collects the settlement of the receivables from the sale proceeds; c. sales conducted privately on the basis of an agreement between the Fiduciary Giver and Recipient if this method results in the highest price that benefits the parties.

Henny Marlyna, a lecturer at the University of Indonesia's Faculty of Law, claims that prior to the publication of the Government Regulation of Creative Economy, the application of financing schemes for intellectual property faced several challenges and obstacles. There are at least four challenges and obstacles, the first is regulations regarding collateral where regulations of Bank Indonesia (hereinafter referred to as BI) regarding banking collateral do not regulate collateral in the form of HKI certificate. The second, HKI valuation. The absence of an institution or professional intellectual property valuator makes it difficult for banks or other financial institutions to determine debt and
collateral ratios to determine acceptable financing, and the HKI valuation method is very specific and complex, there is a need for a special profession of intellectual property valuator. The third is the legality of intellectual property and its filing as collateral. In this instance, not all HKI must be registered in order to be protected, ownership changes cannot be determined from certificates, certificates printed online are used for intellectual property registration, and there is no system in place to document intellectual property as collateral objects. The fourth, which has to do with bidding and execution. According to Henny, there is no private market. Does anyone want to purchase the intellectual property certificate, particularly the copyright, if they have poor credit? (Rizki, 2022).

The bank’s perception of execution, the bank wants to know the customer’s ability to pay off his/her credit and also the customer’s commitment to paying off his/her credit. Then, guarantee in the form of tangible goods such as cars or land or securities. The second guarantee such as tangible goods or securities themselves are an alternative if a bank’s trust in the customer’s ability and commitment is not going well. Banks in determining what items can be used as collateral or fiduciary rights are items that can be auctioned, sold, or easily liquidated in the event of default. However, it is undeniable that if a client submits a credit request with a copyright fiduciary guarantee, it can, but with other factors like the client's capability and dedication that can make the bank completely trust the client. Therefore, at this moment, the possibility of copyright being accepted as credit collateral is not due to the bank's opinions, but rather to the capacity and dedication of its clients (Prihantiwi & pujiyono, 2020).

However, the issue of executing intellectual property as collateral for debt has not been explicitly regulated in the Government Regulation of Creative Economy. Like how the execution will take place, Is it sufficient to present a letter of registration or certificate of intellectual property, along with evidence that you were the auction's victor, to the Directorate General of Intellectual Property (hereinafter referred to as DJKI). Then, in accordance with Article 39, paragraph 1, letter a. 6 of Ministry of Act and Human Rights Regulation Number 67 of 2016 concerning Mark Registration, other evidence supported by laws and regulations may be included in the auction minutes as genuine evidence.

The Copyright Act in the United States is unlike the Lanham Act and the Patent Act. The law deals with recording the transfer of ownership of copyright which is a term explicitly defined to include mortgages. In the context of the Copyright Act, a mortgage has been interpreted as equivalent to a security interest. As a result, the Federal Copyright
Act predated U.C.C. Article 9, and the guaranteed party must complete his/her warranty interest in a registered copyright by filing a document detailing the security interest with the United States Copyright Office. In particular, financing statement of UCC-1 is still required to complete the warranty interest in an unregistered copyright. However, most insured parties will also file UCC-1 financing statement to improve liens in registered copyrights, arguing, once more, to let others know their collateral interests better (American Bar Association, 2022).

5 CONCLUSIONS

In Indonesia, copyright can be used to ensure credit, but there are still difficulties, such as barriers to system valuation and appraisal for liquidation, a lack of secondary market access, and unclear infrastructure laws execution rights. Directorate General Riches Intellectual, Ministry of Law and Human Rights, Ministry of Tourism and Creative Economy, as well as OJK, actively participate in government center connected for quick promote method evaluation to asset right Create what you want with confidence, no problem setting up a unique organization or working in connection with qualified raters. Similar to case open institution evaluation system valuation and appraisal for liquidation, secondary market providing for the perpetrators economy creative assets right create, and clarify more comprehensive process execution right create as collateral credit.
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