

## **Strengthening Regulations on the Implementation of Intellectual Property-Based Financing Scheme Using *YouTube* Content as Collateral**

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### **Abstract**

This research aims to examine how intellectual property-based financing can be optimally implemented by strengthening and harmonizing the regulation. As of now intellectual property-based financing cannot be implemented as it faces some obstacles, a few of which are valuation regulation, conflicting regulation, and executing intellectual property as collateral. This research is considered necessary, because, besides Government Regulation Number 24 the Year 2022 which becomes the basis to give financing under intellectual property as collateral, banking institutions might still be in doubt to implement such a financing scheme due to many weak supporting regulations, such as there is no regulation or technical guidance on how to evaluate Intellectual Property as collateral and Regulations of Financial Services Number 40/POJK.03/2019 on Assessment of Public Bank Asset Quality still not qualify Intellectual Property as bank's asset. This research is conducted with a normative-juridical approach method. The research shows that there are still many regulations that have not accommodated the financing implementation of intellectual property-based financing schemes basis, especially those regulations related to valuation, recognition of intellectual property as a banking asset, and execution of intellectual property when a debtor defaults. The conclusions of this research show in order to implement an intellectual-property-based financing scheme, the regulator needs to establish stronger regulations such as establishing regulation regarding valuation and revising POJK regarding bank assets. So that the bank has legal certainty and protection in its financing with intellectual property as the collateral. The regulators are supposed to be able to create regulations to optimize financing implementation with intellectual property as collateral.

**Keywords:** Collateral, Creative Economy; Financing; Intellectual Property Rights

### **1. INTRODUCTION**

Economic growth is an important factor for a country, as the aim of economic growth is to improve the welfare of its people.<sup>1</sup> Therefore, a country shall create a healthy and independent economy. To realize it, a country shall support economic practitioners as the economic drivers, either through regulations or direct support. In an era of globalization, the forces of entrepreneurship and economic interdependence have become key drivers shaping local economic landscapes around the world. This is particularly evident in urban centers, where the creative industrial sector plays a crucial role as both a beacon of cultural expression and a powerful economic engine.<sup>2</sup> As economy agents, they surely need capital to carry out their

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<sup>1</sup> Nina Amelia Simangunsong et al., "Peran Pertumbuhan Ekonomi Dalam Menunjang Kesejahteraan Masyarakat," *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam* 4, no. 5 (2023): 1289–98, <https://doi.org/10.47467/elmal.v4i5.2808>.

<sup>2</sup> Loso Judijanto et al., "The Impact of Globalization on the Economy and Entrepreneurship in the Creative Industry Sector: A Case Study in Jakarta City," *West Science Journal Economic and Entrepreneurship* 1 (December 30, 2023): 446–52, <https://doi.org/10.58812/wsjee.v1i12.447>.

businesses. In doing so, they can get capital in various ways, one of them is through credit from the Bank. Bank has many important roles in the economy.<sup>3</sup> One of those is a strategic role in a country's growth, as the bank is an institution that collects and distributes public funds.<sup>4</sup> Thus, the Bank is one of the economic pillars in Indonesia that can contribute to creating inclusive and sustainable economic growth.<sup>5</sup>

In carrying out its function as a fund distributor, bank is allowed to give credit or to facilitate financing to the parties in need, such as economic agents. Bank credit is one of the important roles in national economic financing and a driving motor of economic growth.<sup>6</sup> Credit availability can make economic practitioners make investments that cannot be conducted with their own funding. In distributing credit to economic practitioners, the bank faces some risks so banks must be prudent. For banks and other financial institutions, risk and return management is critical to be profitable in the long run.<sup>7</sup> One of the forms of credit risk management is the bank's urgency to apply prudential principles before distributing the credit. This is included in the Explanation of Article 8, Law Number 7 Year 1992 Regarding Bank that changed by Law Number 10 Year 1998 (UU Perbankan), which states that before giving the credit, the bank shall obtain assurance of the debtor's capability and willingness to pay its obligation. To get such assurance, the bank can conduct a 5C analysis or a thorough assessment of the debtor's character, capacity, capital, collateral, and condition of economic. Collateral as one of the 5C aspect play a important role before bank give credit, as collateral would help to secure bank position in case of debtors default.

One of the credit or financing forms that exists nowadays is an intellectual property-based financing scheme. The intellectual property-based financing scheme is arranged in Government Regulations No. 24 Year 2022 on Implementation Regulations of Law 24 Year 2019 on Creative Economy (PP 24/2022). This intellectual property-based financing scheme is a way to strengthen people's economic growth in order to achieve what is mandated in Article 33 point (4) the 1945 Constitution, which says that the national economy shall be conducted based on economic democracy with the principles of togetherness, just, continuous and environmental-horizon

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<sup>3</sup> Allen N. Berger, Phil Molyneux, and John O.S. Wilson, "Banks and the Real Economy: An Assessment of the Research," *Journal of Corporate Finance* 62 (June 2020): 101513, <https://doi.org/10.1016/j.jcorpfin.2019.101513>

<sup>4</sup> I Putu Pasek Bagiarta W and Habibi, "Fungsi Financial Intermediary Perbankan Dalam Hukum Hindu," *Widya Kerta Jurnal Hukum Agama Hindu* 6, no. 1 (June 2023): 15–26. <https://e-journal.iahngdepudja.ac.id/index.php/WK/article/view/1015>.

<sup>5</sup> Tri Handayani and Lastuti Abubakar, "Banks Contribution to Promote Indonesian Financial Inclusion," in *1st Borobudur International Symposium on Humanities, Economics and Social Sciences (BIS-HESS 2019)* (Atlantis Press, 2020), <https://doi.org/10.2991/assehr.k.200529.204>.

<sup>6</sup> Ninuk Dwiastuti. "Pengaruh Kredit Perbankan Terhadap Pertumbuhan Ekonomi dan Hubungannya Dengan Kesejahteraan Masyarakat Kabupaten/Kota di Provinsi Kalimantan Barat", *Prosiding Seminar Akademik Tahunan Ilmu Ekonomi dan Studi Pembangunan 2020* (2020). <https://feb.untan.ac.id/wp-content/uploads/2020/12/Ninuk-Dwiastuti.pdf>

<sup>7</sup> Muhammad Rahat Abbas and Barkat Ullah, "The Impact of Credit and Liquidity Risk on Bank Performance", *Bulletin of Business and Economics* 12, no. 4 (2023): 205-218 <https://doi.org/10.61506/01.00104>

efficiency, independence, and balanced stability of national economic progress and unity.<sup>8</sup> With such a financing scheme, creative economy practitioners can propose financing or credit to the bank by using their intellectual property as the debt collateral. PP 24/2022 does not limit the types of intellectual property to be guaranteed, which means any kind of intellectual property acknowledged by Indonesian law can be used as the objects of financing collateral, including work creation in digital formats such as *YouTube* videos.

The Intellectual Property-Based Financing Scheme is something new, especially if the collateral is a digital work such as *YouTube* Content. Bank cannot just rely on its prudential principle in implementing the intellectual property-based financing scheme, but it needs a regulation that arranges technical aspects and guidance on how an *YouTube* Content can be accepted by the bank as a collateral.

Suwandono (2022) in his research regarding *YouTube* as collateral in financing, tries to describe the procedures of *YouTube* content to be used as collateral.<sup>9</sup> This research found that the procedure of using *YouTube* as collateral in financing starts with registering the *YouTube* content to the Ministry of Intellectual Property Rights and then proceeds to submit the proposal to Banks, after the proposal is submitted and accepted by the bank, the Bank and the Creative Economic Actor will enter agreement. However, this research has a weakness which is, only focuses solely on administration steps and does not highlight the problems of *YouTube* content being used as collateral.

Another research regarding *YouTube* content as collateral has been done by Adriliya (2024).<sup>10</sup> This research seeks to find the method of valuation for *YouTube* Content Collateral. This research shows that in Indonesia there is still no Law or any other Regulation regarding the valuation of *YouTube* as collateral, however by comparing with Singapore, which already implemented *YouTube* as collateral there are existing regulations that can be used as guidance to do valuation to *YouTube* contents. The weakness of this research is its only discusses one of the few problems of *YouTube* content to be used as collateral, which is valuation.

Research by Saputra (2023) regarding implementation of *YouTube* content as collateral to support economic growth<sup>11</sup>, shown that implementation of *YouTube* Content as collateral could stimulate economic creative growth however before *YouTube* content can be used as collateral

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<sup>8</sup> Putri Azka Adriliya, Lastuti Abubakar, and Tri Handayani, "Copyright Content on the YouTube Platform as Collateral for Creative Economy Financing," *Unes Law Review* 6, no. 3 (March 2024): 7991–8004. <https://doi.org/10.31933/unesrev.v6i3.1702>

<sup>9</sup> Agus Suwandono, "Konten YouTube Sebagai Jaminan Bagi Pelaku Ekonomi Kreatif Dalam Perspektif Hukum Jaminan," *Unes Law Review* 5, no. 4 (June 2023): 2728–40. <https://doi.org/10.31933/unesrev.v5i4.588>

<sup>10</sup> Adriliya, Abubakar, and Handayani, "Copyright Content on the YouTube Platform as Collateral for Creative Economy Financing."

<sup>11</sup> Andhy Saputra and Andi Irfan Efendi, "Implementasi Penggunaan Konten Youtube Sebagai Jaminan Hutang Berbasis Kekayaan Intelektual Dalam Mendukung Pertumbuhan Ekonomi Kreatif Di Provinsi Sulawesi Tengah," *Inovasi: Jurnal Ekonomi, Keuangan Dan Manajemen* 19, no. 4 (2023): 1004–12. <https://doi.org/10.30872/jinv.v19i4.13901>

there various sectors that need to be improved. However, this research does not give any concrete solution, it only suggests generic solutions.

The difference between this research and the previous research above, that this research focuses on studying what are the challenges of how *YouTube* content can be used as collateral and how those constraints can be solved from regulation aspects, so *YouTube* content can be used as Collateral in financing and banks willing to facilitate credit for creative economy actors by using IP as collateral. The aim of this research is to find out how regulation can be strengthened and harmonized so intellectual property-based financing can be optimally implemented by banks as one the financial institutions.

## 2. METHOD

The method used in this research is a normative-juridic approach method, a research method that secondary data, such as regulations, legal norms and principles and any legal doctrines, as the basic material for research by conducting an examination of regulations and literature related to the issues being studied.<sup>12</sup> The specification of this research is using descriptive-analytical. Descriptive-analytical is a specification that describe the applicable laws and regulations that related to the legal theories and legal practices regarding problem of this research.<sup>13</sup>

This research use data from Primary Legal Sources such as UU Perbankan, Law No. 28 year 2014 regarding Copyrights (UU 28/2014), PP 24/2022 and/or any other regulation that related to intellectual property-based financing scheme; Secondary Legal Sources such as books or journals by professional and experts; and tertiary legal sources such as legal dictionaries, English Dictionaries, Internet Articles, etc). Those sources are chosen because it gives understanding how banking analyse borrower before facilitate any form of financing and how can a Intellectual Property can be used as a collateral in financing scheme, especially *YouTube* Content as a collateral in financing.

The data collection method used in this research involves library research with the aim of obtaining theories, principles, or conceptual related to the object of the research. The data that has been gathered are going to be analyzed by using qualitative analysis. Qualitative Analysis is a method for evaluating data based on its characteristics, significance or conditions, thus the validity of research is measured or found through an understanding of the quality, value, or condition of the data involved.<sup>14</sup> For the research specification, the writer is going to use analytical descriptive research specification which describes legal facts systematically and accurately. The secondary data obtained will be analyzed in a qualitative juridic manner.

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<sup>12</sup> Djulaeka and Devi Rahayu, *Buku Ajar Metode Penelitian Hukum* (Surabaya: Scopindo Media Pustaka, 2019).

<sup>13</sup> Ronny Haditjo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990).

<sup>14</sup> Dian Ratu Ayu Uswatun Khasanah and Ronald Jolly Pongantung, "Analysis of the Influences of Mood and Emotions on Legal Compliance Levels in Society," *Jurnal Ius Constituendum* 9, no. 2 (June 2024): 178–93. <http://dx.doi.org/10.26623/jic.v9i2.8820>

### 3. RESULT AND DISCUSSION

#### 3.1 The Use of Collateral in Financing or Credit

A bank is a financial institution that has an important role in driving the economic wheel of a country.<sup>15</sup> A banking institution functions as a collector and distributor of people's funds, and one of its implementations in society is to give financing or credit.<sup>16</sup> Based on the Law of Banking, credit is defined as provision of money or any similar to money collection, based on a lending-borrowing agreement between the bank and another party which requires the lender to pay up its debt within a certain period under the bank's interest rate as fund distributor which needs to be extremely prudent before distributing credit to another party, in which it is closely related to the bank function as the agent of trust where the bank has to be trustworthy in distributing the society's fund already collected by the bank. In addition to its function of being the agent of trust, the bank also has the function of the agent of development, the bank is considered an agent of development because of its capabilities to provide society with financial activities such as investment, distribution, consumption or any services that use money.<sup>17</sup> Bank as the society's fund collector must be prudent in distributing the credit to business practitioners because the fund entrusted shall not be misused to create a bad impact on the fund loss. It means in distributing the credit to people's businesses, the bank shall conduct a thorough analysis of risk ratios taken if such credit is given to business practitioners because the credit distributed is people's fund which needs to be returned to the bank together with the capital service already agreed upon during credit agreement.<sup>18</sup> Implementation of the prudential principle by the bank is very crucial, because bank's business activities are really influenced by the people's trust. Such prudential principle is basically the maximum-security principle of a credit facility to comply with any norms in the process of giving the credit.<sup>19</sup>

In order to gain assurance of the debtor's capacity, the bank needs to conduct an analysis or assessment of various aspects. With the implementation of the bank's prudential principle, the bank can carry out a 5C analysis towards the debtor before giving the credit. The 5C analysis is a) Character, the principle which requires a bank to obtain debtor's data as detail as possible by Reviewing the curriculum vitae of a potential debtor, Looking at the potential debtor's credibility in his business environment, Observing the debtor's behavior in daily life, Searching some

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<sup>15</sup> Desak Ayu Sriary Bhegawati and Made Suyana Utama, "The Role of Banking In Indonesia In Increasing Economic Growth Rate And Community Welfare," *South East Asia Journal of Contemporary Business, Economics and Law* 22, no. 1 (2020): 83–91. [https://seajbel.com/wp-content/uploads/2020/10/SEAJBEL22\\_227.pdf](https://seajbel.com/wp-content/uploads/2020/10/SEAJBEL22_227.pdf)

<sup>16</sup> Trisa Mardeta Putri, Paramita Prananingtyas, and Anggita Doramia Lumbanraja, "Implementasi Objek Jaminan Kredit" *Notarius* 13, no. 2 (August 2020): 667–81, <https://doi.org/10.14710/nts.v13i2.31087>

<sup>17</sup> Claudio Kereh, Sri Murni, and Jol Elly Tulung, "Analisis Perbandingan Kinerja Keuangan Bank Devisa Dan Bank Non-Devisa Di Indonesia Tahun 2012-2016," *Jurnal Emba: Jurnal Riset Ekonomi, Manajemen, Bisnis Dan Akuntansi* 8, no. 4 (October 2020): 903–10. <https://doi.org/10.35794/emba.v8i4.31195>

<sup>18</sup> Maidin Simamora, Syawal Amry Siregar, and Mhd. Yasid Nasution, "Penerapan Prinsip Kehati-hatian Dalam Penyaluran Kredit Pada Lembaga Keuangan Perbankan," *Jurnal Retentum* 4, no. 1 (2022): 159-69, <https://doi.org/10.46930/retentum.v4i1.1341>

<sup>19</sup> Simamora, Siregar, and Nasution.



information to the other bank; b) Capacity, The principle which urges a bank to see the potential debtor's capacity in developing his business as well as using and paying back the credit given by the bank; c) Capital, Bank shall notice that the fund given is to increase the already existing debtor's business capital, not for a new business. This principle is to minimize risks of business failure that can cause payment failure by the debtor. d) Collateral, The principle which urges collateral as a requirement of credit proposal. This principle aims at minimizing a bank's loss when a debtor cannot pay back the loan or experiences payment failure. The collateral value given by the debtor shall exceed the credit value given and the bank shall thoroughly oversee the ownership validity of the collateral items; e) Condition of Economics, The condition of economics in this principle shall be the sector in which the debtor carries out its business. The bank must examine business prospects conducted by the debtor. A business in the sector not really related with the condition of eco politics has a much lower risk.<sup>20</sup>

One of the 5Cs is collateral. Collateral in giving a credit or financing is very important element in determining whether a credit can be executed or not. This is because collateral is the bank's risk management in facing risks of troublesome credit. In practice, however, the bank can only count on the debtor's capability assurance, therefore collateral or guarantee in distributing the credit is necessary. With collateral, the bank can execute it to be used as payment when the debtor default. In practice, collateral might be in the form of items, projects, or the right to claim being financed with such a credit.<sup>21</sup>

Based on Article 1131 Civil Law which states, that all items belonging to the debtor, movable or immovable, existing or to exist in the future, may become collateral or guarantee of all debts. This means collateral in general occurs or happens automatically from a credit agreement made by the parties, in this case, the Law gives equal protection for all creditors.<sup>22</sup> In practice, collateral is usually put in a separate collateral agreement. The collateral agreement is an accessory, which means it cannot stand alone without the main agreement. In the meantime, some collateral institutions which are usually in practice are a) Pawn or pledges, a collateral institution called pawn arranged by the provisions in Article 1150 to Article 1160 of the Civil Law. A pawn is a collateral institution used to bind debt collateral for moveable items.<sup>23</sup> Moveable items such as jewelry (for example gold necklace and gold bracelet), securities and certificates with value (for example shares and certificate of deposit), machines not set firmly on

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<sup>20</sup> Johannes Ibrahim, *Bank Sebagai Lembaga Intermediasi Dalam Hukum Positif* (Bandung: CV Utomo, 2004).

<sup>21</sup> Rochmawati and Anggun Nila Kusuma Wardani, "Perlindungan Hukum Terhadap Kreditur Dalam Perjanjian Kredit Tanpa Agunan," *Justice Pro: Jurnal Ilmu Hukum* 4, no. 2 (December 2020): 1–9. <https://doi.org/10.53027/jp.v4i2.104>

<sup>22</sup> Rivaldo Marcello Kaliey, Karel Yossi Umboh, and Suriyono Soewikromo, "Kedudukan Benda Tak Bergerak Sebagai Jaminan Dalam Perjanjian Kredit," *Lex Privatum* 11, no. 1 (January 2023). <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/45539>

<sup>23</sup> Dina Amanda and Hanafi Tanawijaya, "Hukum Benda Bergerak Sebagai Objek Jaminan Dan Gadai (Hak Kebendaan) Atas Pelunasan Hutang Debitur," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 10, no. 1 (2023): 282–90. <https://dx.doi.org/10.31604/jips.v10i1.2023.282-290>

the ground or building (for example: genset), and so on. Collateral binding through pawn is giving physical collateral to the creditor as the fiduciary holder, which means the creditor has the right to ask to pay up his receivable bound with such pawn. The collateral agreement through a pawn gives rights of being prioritized or preferred rights to the creditor as the pawn holder, which means that the creditor will get priority payment upon its receivable of disbursement (sales) of the items bound with the pawn compared with other creditors; b) Mortgage, mortgage is property rights for immovable items where the immovable items used as collateral for debts.<sup>24</sup> Mortgage can only be imposed on items such as collateral of a ship with 20 m<sup>3</sup> weight or more per the provisions of Article 314 Trade Law and Law No.21 year 1992 on Shipment, by referring to, among others, the provisions of mortgage included in the Civil Law. Agreement the ship through a mortgage gives legal certainty for the creditor in accordance with the making of mortgage deed and certificate in real implementation of Mortgage Deed based on the loan agreement and the Power of Attorney in a Mortgage Use; c) Land Mortgage, Land mortgage is collateral right borne to right on land as meant by Law No. 5 year 1960 on Basic Regulations on Agrarian Principles, including or excluding other objects as one unity with the land, for paying up a certain debt, which gives a prioritized condition to the creditor compared with other creditors.<sup>25</sup> Its use is an addition to the main agreement which creates a loan agreement with paying up guarantee; d) Fiduciary, fiduciary born from jurisprudence to respond to the needs and the challenges in society, this kind of collateral is not arranged in legislation but it develops based on jurisprudence. It was lately arranged in law in 1999 under Law Number 42 Year 1999 Regarding Fiduciary (UU Fidusia).<sup>26</sup> Fiduciary is the development of mortgage institutions, therefore what becomes the collateral objects are movable objects, be they tangible or intangible, and immovable objects especially buildings which do not bear any land mortgage right. Based on the general provisions in Article 1 point 1 Law UU Fidusia, fiduciary is an ownership transfer right of a based-on-trust object, under a provision that such object ownership being transferred is still under the control of the object owner.

Within banking institutions and financing institutions, the most favorite collateral is a special collateral especially property or asset be it tangible or non-tangible. This kind of collateral becomes more favorable for the banks because it possesses characteristics that provide a priority right over specific assets and is inherent and follows the respective asset. Among the various types of tangible collateral, pledges, fiduciary security, and warehouse receipts are forms of collateral for movable property.

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<sup>24</sup> Azra Balqis et al., "Pembebanan Hak Tanggungan Dan Hipotik Kepada Debitur Sebagai Bentuk Perwujudan Perlindungan Hukum Bagi Kreditur," *Diponegoro Private Law Review* 9, no. 1 (2022): 1–17. <https://ejournal2.undip.ac.id/index.php/dplr/article/view/18426>

<sup>25</sup> Article 1 Number 1 Law Number 4 Year 1996 Regarding Land Mortgage On Land With Any Objects Related To Land (UU Hak Tanggungan)

<sup>26</sup> Eliana Deggan Trianita Lumbanraja et al., "Eksekusi Benda Jaminan Fidusia: Analisis Konseptual Dalam Undang-Undang Jaminan Fidusia," *Diponegoro Private Law Review* 8, no. 2 (2021): 132–50. <https://ejournal2.undip.ac.id/index.php/dplr/article/view/18461>

Basically, collateral objects shall have economic values because they will be related to legal certainty and legal protection for a bank. If a collateral does not have economic values, it will be in line with the collateral that functions to secure the creditor's position when a creditor cannot pay up his debt. In general, a bank will not approve 100% credit plafond of the collateral object value, which aims at avoiding collateral depreciation when such credit takes place.<sup>27</sup> Banking shall at least consider 2 (two) factors, which are a) Being secured, which means that collateral is accountable to bind juridically-formally, in accordance with legal provisions and legislations. If there is a debtor's default in the future, then the creditor has juridical power to carry out actions; b) Being marketable, which means that when collateral is to be executed it can immediately be sold or monetized to pay up all the debtor's obligation.<sup>28</sup>

In practice, banks mostly ask for tangible assets such as buildings, machinery, or land property for collateral before giving credit to their debtors. However there are also cases where a bank uses right to claim as collateral before giving credit. Depending on what kind of collateral being used, banks can choose which collateral institutions that going to be used for securing the collateral. For movable property banks could use pledges, fiduciary or warehouse receipts, while for immovable property banks could use a mortgage, land mortgage, or fiduciary. However as per article 1 number 2 UUF, fiduciary can be used for tangible or intangible moveable property and for immovable property, especially for property that cannot be used by land mortgage. The most common practice for this is when debtor using right to claim as collateral, the banks will use fiduciary insitutions to secure the right to claim as collateral. Collateral gives legal certainty to banks as creditor, this is because when a debtor defaults bank is allowed to execute the collateral. By executing collateral, the bank can recover the debtor's debt from the proceeds of the collateral sale, therefore maintaining the bank's liquidity. As for debtor or borrower, collateral is needed in order to get financing for bankings, without collateral banks won't be able to give credit, as its bank duty to perform 5C of credits before giving credits to borrower, in which one from 5C analysis is credits.

### **3.2 Intellectual property of *YouTube* content as collateral in intellectual property-based financing scheme**

Technology advancement brings so many changes in various aspects of society including intellectual property as one of them. One of the aspects of intellectual property rights in Indonesia is copyright. The copyright is stipulated in the UU 28/2014. Article 1 Point 1 UU 28/2014 defines copyright as an exclusive right of the creator, which is automatically based on declarative principles after a creation is realized in a real form without diminishing limitation in accordance with the provisions of legislative regulations. Copyright automatically gives exclusive rights to its creator or holder based on declarative principle for those creations, without

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<sup>27</sup> Suwandono, "Konten YouTube Sebagai Jaminan Bagi Pelaku Ekonomi Kreatif Dalam Perspektif Hukum Jaminan."

<sup>28</sup> Sri Redjeki Slamet, Anatomi Muliawan, and Kandou Heddy, "Pembaharuan Hukum Jaminan Indonesia," *Lex Jurnalica* 19, no. 3 (2022): 427–40. <https://doi.org/10.47007/lj.v19i3.5971>



reducing or diminishing the limitations as stated in the regulations.<sup>29</sup> The copyright gives economic right to the creator. The economic right is the creator's right of the copyright owner to enjoy economic benefit of its creation. The economic right is closely related to the reward theory proposed by Robert N. Sherwood, where based on the reward theory an intellectual work created by someone shall get appreciation as a reward of his creative efforts in finding and creating the intellectual works.<sup>30</sup> As an object, copyright belongs to an immovable object which can be transferred by ways determined by law and can become one of fiduciary collateral objects carried out in accordance with legislative regulations.<sup>31</sup> The coming of digital work technology is helpful for all creators to enjoy economic benefits of their works. One of the general platforms used by digital artwork creators or often called as content creators is *YouTube*. *YouTube* is a media site that makes users possible to share videos with open media platform.<sup>32</sup>

*YouTube* content is one of art works in the form of videos uploaded on the social media platform of *YouTube*.<sup>33</sup> *YouTube* gives advantages for the content creators to be able to enjoy economic benefits from their works uploaded to *YouTube* or more recognized as monetization. *YouTube* uses an AdSense system for the content creators who upload their works in *YouTube*. The AdSense system is basically a system where content creators can insert advertisements (ads) in their works, so that each content creator's work watched can get some money. To be able to use the AdSense system in their works, the content creators required to have a minimum of 1,000 subscribers and their videos have been watched for 4,000 hours. After this requirement is met, the content creators may propose a request to be part of *YouTube* Partner Program. If the request is accepted, then they may apply the *AdSense* system in their works uploaded on *YouTube*. When a content creator can use the *AdSense* system in his works, then these works can create economic benefits. With such economic benefits, the work can be considered to have economic value because it can produce money.

The thriving use of *YouTube* pushes the growth of creative economy practitioners in Indonesia. Creative Economy is a concept in the new economic era which prioritizes information and creativity by using ideas and knowledge of human resources as the production factor.<sup>34</sup> Creative

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<sup>29</sup> Arifah Ayundari Dwitriani, Budi Santoso, and Bagus Rahmanda, "Prinsip Fair Use Atas Cover Sing Di Instagram Menurut Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta," *Diponegoro Law Journal* 11, no. 2 (2022). <https://doi.org/10.14710/dlj.2022.33302>

<sup>30</sup> Helitha Novianty Muchtar et al., "Urgensi Pengaturan Valuasi Paten Untuk Start up Dalam Rangka Meningkatkan Perekonomian di Era Industri 4.0," *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 84–102, <https://doi.org/10.23920/jbmh.v6i1.170>.

<sup>31</sup> Viskha Purwita Lana et al., "Urgensi Kelengkapan Teknis Dalam Regulasi Penggunaan Konten YouTube Sebagai Jaminan," *Padjadjaran Law Review* 10, no. 2 (2022), <https://doi.org/10.56895/plr.v10i2.1035>

<sup>32</sup> Saputra and Efendi, "Implementasi Penggunaan Konten Youtube Sebagai Jaminan Hutang Berbasis Kekayaan Intelektual Dalam Mendukung Pertumbuhan Ekonomi Kreatif Di Provinsi Sulawesi Tengah."

<sup>33</sup> Vinka Kurnia Dewi, Ferdiansyah Putra Manggala, and Ferdiansyah Putra Manggala, "Pembebanan Jaminan Fidusia Pada Konten Youtube Yang Telah Memiliki Iklan (Adsense)," *Inicio Legis* 3, no. 2 (2022): 116–26, <https://doi.org/10.21107/il.v3i2.17087>.

<sup>34</sup> Sri Wahyuningsih and Dede Satriani, "Pendekatan Ekonomi Kreatif Terhadap Pertumbuhan Ekonomi," *Iqtishaduna: Jurnal Ilmiah Ekonomi Kita* 8, no. 2 (2019): 195–205, <https://doi.org/10.46367/iqtishaduna.v8i2.172>.

Economy is defined as realization of added values of intellectual property which source is people's creativity based on cultural heritage, knowledge, and/or technology.<sup>35</sup> This thriving growth of creative economy practitioners in Indonesia pushes the government to give real support to these creative economy practitioners. As a form of government support, PP 24/2022 is promulgated. Based on Article 1 Point 3 PP 24/2022, the intellectual property-based financing scheme is a scheme which treats intellectual property as the debt collateral object for banks or other non-bank financial institutions to be able to give financing to the creative economy practitioners. Looking at the definition, we can understand that what differentiates this financing scheme from others is the debt collateral object where the intellectual property-based financing scheme uses the intellectual property as the debt collateral and it is directed for creative economy practitioners.

According to Article 7 PP 24/2022, financial institutions be it banks or non-banks are allowed to give Intellectual property based financing. As such, Bank is mandated as one of the financial institutions to give this financing facility to creative economy practitioners.<sup>36</sup> However, before giving the credit, the bank shall apply the 5C analysis to potential debtors, which in this financing are the Creative Economy. Where in the intellectual property-based financing scheme, the collateral that is being used is intellectual property. In terms of legal perspectives, the intellectual property such as copyright is indeed can be used as collateral since the legitimation of UU 28/2014. According to Article 7 PP 24/2022, in order to propose intellectual property-based financing, the creative economy practitioners shall be required to have a Financing Proposal, owning a Creative Economy business, have an agreement related to intellectual property of Creative Economy products and have a Registered Letter or intellectual property certificate.

PP 24/2022 also urges banking and non-banking financial institutions to conduct assessment before giving the intellectual property-based financing. The assessment is conducted towards creative economy businesses, a record or certificate of intellectual property as collateral and valuation of intellectual property assessment to be made as collateral. PP 24/2022 does not limit the types of intellectual property as collateral, but this intellectual property must already be registered at the Ministry of Law and Human Rights and such intellectual property shall be managed well. The implementation of collateral intellectual property is carried out in a form of fiduciary collateral on Intellectual property, contracts in Creative Economy activities and receivable rights in Creative Economy activities.

Considering how digital artwork can generate economic value on the *YouTube* platform, essentially, a work that has been uploaded to *YouTube* can be used as collateral in an intellectual property financing scheme. The agreement between *YouTube* and the Content Creator was formed when the content creator was accepted as part of the *YouTube Partner Program*, because

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<sup>35</sup> Pasal 1 angka 1 UU 24 Year 2019 tentang Ekonomi Kreatif

<sup>36</sup> Pasal 7 ayat (1) PP 24/2022

when the content creator is accepted as a *YouTube Partner* the creator is allowed to put ads on their videos, therefore *YouTube* has obligations to pay the content creator. This agreement can be the basis for proposing an intellectual property-based financing scheme, as per Article 7 PP 24/2022. The object to be made as collateral is a collection right of the creative economy activities which occurs from the agreement between *YouTube* and the content creator. The use of collection rights as a collateral object is in line with what is confirmed in Article 9 point (2) letter C PP 24/2022, which is a collection right in Creative Economy.

The usage of *YouTube Content* as collateral could stimulate creative economy growth. This is evident from the growth observed from 2018 to 2022, where the creative economy workforce in Indonesia grew by 6.33%. Furthermore, during the same period, the creative economy in the sub-sectors of film, animation, and video experienced significant growth, increasing by 22.67% since 2018.<sup>37</sup> Implementation of *YouTube Content* as collateral, could help economic creative growth further, therefore stimulating Indonesia's economic growth. However, since Intellectual-Property based financing scheme is quite new, the implementation is not without any challenges or issues. This is proven by that there are no banks that are willing to give financing using Intellectual-Property Based Financing Scheme, albeit the PP 24/2022 has already in effect since 12 July 2023.

### **3.3 Challenges for *YouTube* to be Used as Collateral in an Intellectual Property-Based Financing Scheme**

An intellectual property-based financing scheme is something new in financing matters. PP 24/2022 was promulgated on 12 July 2022, however, based on Article 41 PP 24/2022 was effectively applied for 1 year as of the promulgation, so it was in operation starting 12 July 2023. But up to now, there has been no bank to accept the intellectual property of *YouTube* content as collateral. At least there are 3 (three) constraints in using a *YouTube* content as collateral, which are valuation, execution of *YouTube Content* when debtor default and harmonization of Regulation.

Valuation Regulation toward *YouTube Content*, valuation is very important in determining a collateral, especially for banking. This is because valuation is closely related to one of 5C analyses, i.e. collateral. As explained in the previous discussion, the collateral shall have economic value so that when there is a default, the bank may execute the collateral to pay the debtor's debt. A common assessment in banking is assessment in legal and economic aspects.<sup>38</sup> In practice, banking will appoint a public appraiser to carry out assessment of the object to be a collateral. In carrying out such an assessment, the public appraiser uses the Indonesian

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<sup>37</sup> Kementerian Pariwisata dan Ekonomi Kreatif, “*Statistik Tenaga Kerja Pariwisata dan Ekonomi Kreatif 2018-2022*” Kementerian Pariwisata dan Ekonomi Kreatif 1 Desember 2023, <https://kemenparekraf.go.id/statistik-pariwisata-dan-ekonomi-kreatif>

<sup>38</sup> Siti Nurul Intan Sari Dalimunthe and Ridha Wahyuni, “Perkembangan hak Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan,” *Adil: Jurnal Hukum* 14, no. 1 (2023): 28–45, <https://doi.org/10.33476/ajl.v14i1.3566>.

Assessment Unit or SPI as the basis of object assessment. Based on SPI, in general there are 2 categories of assessment, which are Assessment property and assessment business asset. Intellectual property falls into assessment business assets, not as collateral.<sup>39</sup> This creates legal uncertainty for the bank in accepting intellectual property as collateral, including the works uploaded to *YouTube* and already monetized. This will cause difficulty in determining the economic value of a work, especially determining the income of a work uploaded to *YouTube* will be determined by the video play frequency, which causes instability in the income received. This will really influence the bank's consideration before giving its financing, because the availability of collateral will be used by the bank to assess whether such financing is feasible or not. Basically, valuation on the *YouTube* content can be conducted by looking at the video income such as Cost Per Click (CPC), Revenue Per Mille Impression (RPM), and AdSense.<sup>40</sup> On top of it, Article 12 PP 24/2022 also gives guidance in conducting an assessment of intellectual property which can be conducted using a cost, market, or income approach. However, there has been no standard guidance of assessment mechanism up to now, which can be used by a public appraiser to assess intellectual property, especially *YouTube* content.

Execution of collateral is another factor that the bank has to consider before the bank gives credit to the debtor. If the debtor defaults, then the only way the bank to get payment from the debtor is by executing the collateral, however not every collateral can executed easily and not every collateral is easy to sell. Before *YouTube* content can be proposed as collateral, one of its requirements is it must have an agreement to the intellectual property of creative economy products.<sup>41</sup> Content uploaded to *YouTube* can become collateral, but it must be able to monetize or use AdSense system because a collection right between the content creator and *YouTube* will appear only when the content uses *AdSense*. In addition, the work shall be registered with the Ministry of Law and Human Rights. Referring to Article 9 PP 24/2022, the collateral institutions are using fiduciary collateral. So the execution also uses the provisions in the Law of Fiduciary Collateral, which are a) implementation of executorial title shall be based on fiduciary collateral certificate; b) sales of object upon the power of fiduciary receiver shall be through a public auction; c) Sales through an underhand agreement shall be of the highest price. However, in the context of *YouTube* content as collateral, it will be difficult to do the execution because the work is intangible. To anticipate this, the bank can do two ways, the first is to change the collection right to be an object, which is to change the collection right to be securities. The second is a

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<sup>39</sup> Ni Wayan Nilandari and Putu Aras Samsithawrati, "Kekayaan Intelektual Sebagai Objek Jaminan Fidusia: Perspektif Keabsahan Hukum Dan Mekanisme Penilaian," *Acta Comitas: Jurnal Hukum Kenotariatan* 8, no. 2 (August 2023): 324–39. <https://doi.org/10.24843/AC.2023.v08.i02.p9>

<sup>40</sup> Adriliya, Abubakar, and Handayani, "Copyright Content on the *YouTube* Platform as Collateral for Creative Economy Financing."

<sup>41</sup> Pasal 7 PP 24/2022.

*cessie* mechanism between creative economy practitioners and the bank so that the bank can become the owners of new receivables.<sup>42</sup>

Harmonization between regulations is an important factor, as harmonization between regulations can provide legal consistency and certainty. PP 24/2022 has mandated the bank to be able to give financing with intellectual property, but there has been no regulation to accommodate intellectual property as collateral which can be accepted by the bank. Based on Article 45 Regulations of Financial Services Number 40/POJK.03/2019 on Assessment of Public Bank Asset Quality (POJK 40/2019), the collateral that can be used as a diminishing factor in the asset quality assessment is: a) securities and shares which are actively traded in the Indonesian Stock Exchange or the stock exchange in other countries included as major stocks, or with investment rank and agreement in a pawn; b) land, building, and residence agreement with land mortgage; c) an apartment, bound with fiduciary collateral, machines which are one unity with the land-bound with land mortgage; d) airplane or ship of the size more than 20 (twenty) cubic meter, bound with a mortgage; e) motor vehicles and inventory, bound in fiduciary; f) warehouse receipt, bound with collateral right on warehouse receipt. Judging from these provisions, intellectual property is still not accepted as collateral which can be accepted by the bank, and makes the bank hesitate to implement and provide intellectual property-based financing scheme.

Those issues must be solved before the Intellectual-Property Financing Scheme can be implemented optimally. First, for valuation issues, regulator must work together with professional appraisers to establish regulations or technical guidance related to valuation. Appraisers cannot solely rely on the approach as stipulated in PP 24/2022, this is because valuation is crucial in financing and for legal certainty for banks, as the collateral value will greatly affect a financing, such as the financing amount. Regulators and appraisers can adopt or even conduct research on several countries that have implemented intellectual property-based financing schemes, such as Singapore and Korea. After regulation or technical guidance has been established, the second step is to solve the execution of Intellectual Property as collateral, such as *YouTube*. If *YouTube* content is being used as collateral, banks can execute the right to claim for the *YouTube* content using the means that already stipulated in UUJF and by using *cessie* to assign the claim to the banks. Further, the regulator could establish regulations regarding IP Market for selling and buying Intellectual property assets from insolvent debt or establish regulation that appoint expert companies that could manage intellectual property from insolvent debt. Lastly harmonization, the biggest issue about regarding harmonization regulation is that according to POJK No. 40/2019 Intellectual Property still not deemed as bank's asset. This could cause another issue for bank to accept Intellectual Property as collateral, as this could affect bank assessment. Especially banks in Indonesia are subject to every Financial Services Authority or OJK regulations. Therefore OJK needs to revise POJK No. 40/2019 and qualify Intellectual

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<sup>42</sup> Lastuti Abubakar, Dewi Kania Sugiharti, and Tri Handayani, "Readiness of Banks in Intellectual Property-Based Financing," *International Journal of Latin Notary* 4, no. 1 (2023), <https://doi.org/10.61968/journal.v4i1.60>.



Property as bank's asset. This could create new legal certainty for banks in implement Intellectual Property based financing scheme.

#### 4. CONCLUSION

By the passing of PP 24/2022, the bank as one of the financial institutions is mandated to be able and ready to distribute the intellectual property-based financing scheme to creative economy practitioners. This is related to the function of the bank as the agent of development. However, another function of the bank is the agent of trust, in which the bank as the financial intermediary shall be trusted in distributing the fund because it is collected from the society. Therefore the bank must implement its prudential principles, especially in implementing the intellectual property-based financing scheme. Even though the bank is ready to carry out its job, in this case, giving intellectual property-based financing to creative economy practitioners, the Bank still lacking in terms of legal certainty, as there are still constraints before the bank can implement the new financing scheme. With no strong supporting regulations, the intellectual property-based financing scheme will be difficult to implement. Especially, the intellectual property of content uploaded to YouTube because of the high risk of such a collateral object, not to mention the difficulties of selling or auctioning the collateral of such intellectual property. There are already few regulations that state how to anticipate those constraints, however, regulations are still needed because the Bank needs a profound basis to give financing and to avoid legal uncertainty. Regulators can use the existing laws and harmonize the existing ones with the upcoming regulation, this is to create legal certainty for the Bank and also for intellectual property-based financing schemes can be implemented with maximum optimization.

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