

Intellectual Property Rights as Fiduciary Collateral in the Indonesian Banking System

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ABSTRACT

This study analyzes the utilization of Intellectual Property Rights as an object of fiduciary guarantee in the national financing system. This normative juridical research uses a statutory and conceptual approach to examine the legal position of IPR, the fiduciary guarantee framework, valuation mechanisms, and implementation barriers in IPR-based financing. The results of the study indicate that IPR has a strong legal position as intangible property that can be used as an object of fiduciary guarantee. The fiduciary guarantee framework has provided protection for creditors, but its implementation faces procedural obstacles and certainty of execution. The IPR valuation mechanism requires methodological standardization and the strengthening of the role of appraisal institutions. Implementation barriers include the absence of standard procedures, the absence of value benchmarks, the lack of clarity in execution mechanisms, and the absence of a secondary market. This study recommends regulatory strengthening, the establishment of a specialized valuation institution, the development of international valuation standards, and synergy among stakeholders to create a credible and sustainable IPR-based financing ecosystem.

INTRODUCTION

Intellectual Property Rights have become one of the strategic assets in the modern economy along with the global economic transformation toward a knowledge- and innovation-based system. The role of IPR is no longer limited to the function of legal protection for creators, but has evolved into an economic instrument possessing significant commercial value. Legal protection of intellectual property has long served as a foundation in encouraging innovation and economic growth (Apriyanto & Hardyansah, 2024). The economic potential of IPR encourages various countries to integrate these intangible assets into the national financing system through credit guarantee schemes (Putri et al., 2024). The recognition of the economic value of IPR opens opportunities for rights holders to obtain access to financing from financial institutions by making IPR an object of collateral. The ideal condition expected is the creation of a financing ecosystem that allows IPR to be utilized optimally as a productive economic instrument.

Intellectual property (IP) owners still face various obstacles in obtaining credit facilities secured by IP, even though the regulations governing this matter are already available. Financial institutions tend to reject financing with IP as collateral because of uncertainty in valuing the economic worth of intangible assets (Badriyah & Marjo, 2024). The absence of uniform valuation standards and of specialized IP valuation institutions makes financial institutions reluctant to accept IP as loan collateral. Banks are also expected to act prudently and responsibly when assessing every credit application (Firmanto et al., 2024). This prudence is related to trust in ethical and sustainable business management (Mardikaningsih et al., 2022). The gap between potential and reality is a fundamental problem that requires serious attention from various stakeholders.

As an intangible asset, IP differs from tangible assets in terms of valuation, transfer, and execution. These differences create specific challenges in efforts to integrate IP into the banking collateral system. The value of IP rests on the knowledge held

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by business actors, which becomes a source of competitive advantage (Darmawan, 2023). This value also stems from the creativity and innovation that are produced (Darmawan, 2023). IP owners cannot easily demonstrate the value of their assets to financial institutions without a credible and standardized valuation process (Rizkiawan, 2022). Financial institutions require legal certainty and certainty of value before they can accept IP as loan collateral. This condition means the economic potential of IP cannot be fully utilized to support business growth and innovation.

The problem relates to the legal standing and characteristics of IP as an economic asset. Recognition of IP as an intangible object in the Indonesian legal system has provided a legal basis for its use in economic transactions. However, understanding of the characteristics of IP as an economic asset remains limited among business actors and financial institutions. Interest in a financial product is influenced by knowledge of that product (Hardyansah et al., 2023). Available regulations are also not necessarily understood and used effectively by the affected parties (Rahman et al., 2024). This limited understanding hinders the optimal use of IP as a financing instrument. The first research question is how the legal standing and characteristics of IP as an economic asset can be optimized to support its use as loan collateral.

Another problem concerns the legal framework of fiduciary security for intangible assets. The Fiduciary Security Law has recognized intangible objects as collateral, but its implementation in practice still faces various obstacles. Legal compliance by the parties determines the security and certainty of a banking transaction (Fitrotinisak et al., 2023). Registration procedures, execution, and legal protection for creditors do not yet provide adequate legal certainty. Protection of creditors' rights also becomes an issue when a debtor is unable to fulfill its obligations (Prabowo et al., 2024). The lack of clarity in the fiduciary mechanism for intangible assets is an obstacle for financial institutions in accepting IP as collateral. The second research question is how the fiduciary security legal framework can provide legal certainty for the use of IP as loan collateral.

The next problem relates to valuation mechanisms and the role of financial institutions in IP-based financing. IP valuation requires methods and standards that can be justified academically and professionally. Financial institutions need credible valuation results to determine the amount of credit that can be extended to IP owners. Technology can

assist the valuation process, but the results still depend on how it is used (Darmawan, 2024). A bank's reputation and service quality also affect customers' trust in financing products (Hardyansah & Jahroni, 2023). The absence of uniform valuation standards leads to significant differences in assessment from one appraisal institution to another. The third research question is how IP valuation mechanisms and the role of financial institutions can be optimized in IP-based financing.

Various practical and regulatory obstacles still hinder the implementation of IP-based financing in Indonesia. The absence of a secondary market for IP, problems of rights infringement, and unclear execution mechanisms are significant constraints. Rights holders also face difficulty enforcing their rights through civil lawsuits (Hardyansah et al., 2021). Dispute resolution outside formal channels can be an alternative when execution mechanisms are unclear (Futriyah et al., 2023). Comparison with practices in developed countries shows that strategic steps are needed to overcome these obstacles. The fourth research question is how a strategy for strengthening the IP-based financing system can be formulated to overcome the existing implementation obstacles.

Based on these problem formulations, this study aims to analyze the legal position and characteristics of IPR as economic assets that can be optimized to support their utilization as an object of credit guarantee. This study aims to examine the legal framework of fiduciary guarantees in providing legal certainty for the utilization of IPR as a credit guarantee object. This study aims to evaluate the IPR valuation mechanism and the role of financial institutions in IPR-based financing. This study aims to formulate strategies for strengthening the IPR-based financing system that can overcome existing implementation barriers.

RESEARCH METHOD

This research is carried out using a normative juridical research method focusing on the study of written legal norms related to IPR, fiduciary guarantees, and financing systems. The approach used in this research is the statute approach, which examines various regulations governing IPR and fiduciary guarantees, as well as the conceptual approach, which reviews legal doctrines and theories relevant to the utilization of intangible assets as credit collateral. The legal materials used consist of primary legal materials in the form of laws and regulations related to IPR and fiduciary guarantees, secondary legal materials in the form of legal literature, scientific journals, and academic works

discussing related topics, as well as tertiary legal materials in the form of legal dictionaries and encyclopedias providing explanations for the technical terms used.

The collection of legal materials is carried out through library research, which includes tracing, collecting, and inventorying written legal materials in both print and digital forms. The collected legal materials are then classified based on topic and relevance to facilitate the analysis process. The analysis of legal materials is performed qualitatively using deductive reasoning techniques, which begin the thought process from general premises in the form of applicable legal norms and theories to then draw specific conclusions regarding the implementation of IPR as an object of fiduciary guarantee in the national financing system. This technique allows researchers to test the consistency between applicable legal norms and their implementation practices in the field, as well as to identify gaps that constitute barriers in utilizing IPR as an economic asset.

RESULT AND DISCUSSION

The Legal Position and Characteristics of Intellectual Property Rights as Economic Assets

Intellectual Property Rights (IPR) are the result of human thought manifested in various forms of creations, inventions, and innovations that hold strategic value in the modern economic system. The recognition of IPR as an economic asset is based on its ability to generate financial benefits for its owner or creator. IPR possesses the characteristics of intangible property that can be objectively evaluated through established standard valuation methods (Zulfikri, 2022). The corporeal nature of IPR provides a juridical foundation for its utilization in various economic transactions, including as an object of credit collateral in financial institutions. Protection of IPR in Indonesia reflects the state's commitment to the global trading system ratified through Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization.

The Indonesian legal system classifies IPR as an intangible object based on the provisions of the Indonesian Civil Code (KUH Perdata). Article 499 of the Civil Code defines an object as every item or every right that can be subject to ownership. Article 503 of the Civil Code distinguishes objects into tangible and intangible objects (Adyawan, 2024). Based on these provisions, IPR is categorized as an intangible movable object with certain proprietary characteristics. These proprietary characteristics form the legal basis for recognizing IPR as an object

that can be transferred, traded, and used as collateral in proprietary agreements. Recognition of IPR as an intangible object opens opportunities for its use in various financing schemes that require asset collateral. Such financing schemes require the public to understand credit agreements and their legal consequences (Hardyansah et al., 2022).

IPR has two main rights attached to its owner, namely moral rights and economic rights. Moral rights are permanent and cannot be transferred to other parties because they are personally attached to the creator or IPR owner. Economic rights can be transferred to other parties through legal engagements, and their benefits can be monetized, for example in the form of royalties. Law Number 28 of 2014 concerning Copyright affirms that copyright is an economic right that must be protected as property. Copyright law enforcement in Indonesia plays an important role in protecting economic rights while supporting the development of the creative industry (Huda et al., 2023). Enforcement of these rights also depends on the integrity of legal practitioners (Saktiawan et al., 2021). This recognition gives IPR a strategic position as an asset that can be used in financing activities and other commercial transactions (Hidayat et al., 2023). The separation between moral rights and economic rights allows the transfer of economic rights without eliminating the creator's moral rights.

The characteristics of IPR as an economic asset support its use as an effective financing instrument. Trademarks, patents, and industrial designs need legal protection so that they cannot easily be imitated and can be used as a source of income for their owners (Rizky & Darmawan, 2021). The monetization value of IPR can be turned into a source of income through various commercialization mechanisms. IPR has the potential to be traded in the market, licensed to other parties, and transferred through grants, inheritance, or other valid agreements. These characteristics make IPR a strategic asset that can be used as loan collateral while encouraging the optimization of its economic value in business and the creative industry (Wahyuni, 2022). The ability of IPR to generate sustainable cash flow through licensing and royalties provides certainty of economic value that financial institutions can use as a basis for valuation. However, this income stream is influenced by the tendency of customers to stay with or switch to other products (Darmawan, 2022). These characteristics distinguish IPR from other intangible assets that may lack clear monetization potential.

Regulatory developments in Indonesia show

increasingly strong recognition of the economic value of IPR as an intangible asset. The Government and the House of Representatives have issued various sectoral regulations governing the protection and use of IPR in economic activities. These regulations recognize that IPR is an intangible asset that can be transferred through proprietary rights. This recognition becomes the foundation for using IPR as fiduciary collateral from financial institutions. The existing regulatory framework provides legal certainty for IPR owners and financial institutions in conducting IPR-based financing transactions. Strengthening these regulations is needed to encourage the optimization of the economic value of IPR in supporting national economic growth. This growth needs to be maintained so that economic resources continue to be managed sustainably (Mardikaningsih & Nuraini, 2022).

Regulatory developments in Indonesia show an increasingly strong recognition of the economic value of IPR as intangible assets. The government and the House of Representatives have issued various sectoral regulations governing the protection and utilization of IPR in economic activities. These regulations recognize that IPR are intangible assets that can be transferred through proprietary rights. This recognition serves as the foundation for utilizing IPR as an object of fiduciary guarantee from financial institutions. The existing regulatory framework provides legal certainty for IPR owners and financial institutions in conducting IPR-based financing transactions. This regulatory strengthening is necessary to encourage the optimization of the economic value of IPR in supporting national economic growth.

The Legal Framework of Fiduciary Guarantees for Intangible Assets

A fiduciary guarantee is a form of transfer of ownership rights over an object based on the principle of trust, which is regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. The provisions in this law state that fiduciary guarantees apply to movable property, both tangible and intangible, as well as immovable property (Kosali, 2020). This regulation allows IPR assets that have been evaluated by appraisal institutions to be submitted as collateral to financial institutions. The IPR owner retains proprietary rights over the asset, while the guarantee is registered with the fiduciary registration office. This concept is known as *constitutum possessorium*, which is the transfer of ownership rights through trust while the property remains in the possession of the owner (Dalimunthe & Wahyuni, 2023).

In many cases, delays or failures in debt payment can cause losses to creditors and increase risk in the financing system (Prabowo et al., 2024). A fiduciary agreement provides legal protection for creditors in facing the risk of debtor default. Default can also harm the weaker party, so the legal consequences need to be kept clear (Aryanto et al., 2023). Creditors have executory rights that can be exercised if the debtor fails to fulfill its obligations as regulated in Article 11, Article 14, and Article 15 of the Fiduciary Security Law. Execution of IPR assets is carried out through public auction after notification to the relevant parties. These executory rights provide legal certainty for creditors that the value of the collateral provided can be realized (Wardoyo et al., 2024). A clear execution mechanism is an important factor in encouraging financial institutions to accept IPR as loan collateral. Legal protection for creditors through executory rights is one of the main prerequisites in an asset-backed financing system.

Banking financial institutions apply the prudential principle in granting credit, which requires collateral from debtors as a form of credit security. The collateral can take the form of proprietary security or personal guarantees that protect banks against the risk of bad loans. Basically, banks assess credit risk based on the debtor's ability to pay, the value of the collateral, and the ease of enforcing rights when default occurs (Sularno et al., 2024). Credit is granted through an analysis that considers various factors, one of which is the existence of collateral as an application of the prudential principle (Arista, 2023). This principle is an important foundation for banks in minimizing risk while maintaining public trust in the banking system. This trust is also built by the open and consistent attitude of institutional managers (Mardikaningsih et al., 2022). Applying the prudential principle requires banks to carefully assess every collateral submitted, including intangible assets such as IPR.

A fiduciary agreement allows the use of movable and immovable assets, including intangible assets such as IPR, as legally valid loan collateral. This arrangement gives debtors flexibility in providing collateral without having to relinquish physical control of the asset (Hentriawan et al., 2024). Debtors can still use IPR to generate income throughout the credit agreement period. Creditors obtain legal certainty through the registration of fiduciary security, which grants preferential rights over the collateralized asset. The balance of interests between debtors and creditors is reflected in the fiduciary mechanism, which provides protection for both parties. This

balance still requires supervision so that practices comply with the rules (Rizaldi et al., 2024). This flexibility makes fiduciary security an appropriate collateral instrument for intangible assets such as IPR.

Registration of a fiduciary guarantee is a mandatory procedure that provides legal certainty for the parties in a financing agreement. Registration is carried out at the authorized fiduciary registration office to record every fiduciary agreement made. This registration process provides information to the public regarding the existence of guarantee rights over a particular asset. The principle of publicity in fiduciary guarantee registration protects the creditor's interest from potential disputes with third parties. Legal certainty obtained through registration encourages financial institutions to have more confidence in accepting IPR as credit collateral. An integrated and easily accessible registration system serves as an important prerequisite for the development of IPR-based financing in Indonesia.

The Valuation Mechanism and the Role of Financial Institutions in IPR-Based Financing

IPR valuation is the process of identifying and measuring the financial value of an intangible asset conducted by professional appraisal institutions. Appraisal institutions possess the authority to conduct evaluations on intangible assets based on expertise and standard methods determined by appraiser associations. This valuation aims to provide a credible basis for the utilization of IPR in various economic transactions (Sulistianingsih et al., 2023). The certificate of valuation results can be used as a basis to determine the selling price of the asset, to use the asset as credit collateral in financial institutions, and as a basis to determine the amount of compensation for IPR infringement. Credible valuation results provide value certainty for financial institutions in determining the amount of credit that can be granted.

The Government has established an IPR valuation mechanism through Government Regulation Number 24 of 2022 concerning the Creative Economy. Article 12 of this regulation states that IPR valuation is carried out by an IPR appraiser or an appraisal panel that meets certain criteria. These criteria include holding a public appraiser license from the Ministry of Finance, having competence in intellectual property valuation, and being registered with the Ministry of Tourism and Creative Economy (Rochadiningsih et al., 2023). This provision aims to ensure that the IPR valuation process is carried out professionally and accountably. Appraiser competence needs to be maintained through continuous knowledge updating

(Darmawan, 2024). Appraisers also need to be able to adapt to changes in valuation methods and technology (Mardikaningsih & Darmawan, 2022). The existence of regulations governing the qualifications of IPR appraisers provides legal certainty for parties who need valuation services. Standardizing appraiser qualifications is an important step in building trust in IPR valuation results.

Financial institutions play a central role in providing financing for various purposes, both working capital and consumer needs. Financing is carried out through a debt agreement as the principal agreement, which may be accompanied by a proprietary agreement in the form of asset collateral, including intangible assets. Banks, as financial institutions that perform an intermediation function, are regulated by Law Number 10 of 1998 concerning Banking (Sriwati, 2021). Banking activities are regulated by the Banking Law and related regulations to ensure transaction security and to protect customers and the economy (Sulistiono et al., 2024). Healthy competition among banks also affects customer trust and satisfaction (Hardyansah et al., 2021). In carrying out their functions, banks are required to apply the prudential principle to ensure that debtors are able to repay the credit granted. This principle is applied through credit analysis that considers various factors, including customer identification and an assessment of their ability to repay loans. Banks need to apply stricter policies in identifying customers to reduce the risk of bad loans caused by the use of another party's identity (Firmanto et al., 2024). Customers' trust in and experience with a bank also determine their loyalty (Darmawan, 2022). The role of financial institutions is not limited to providing funds, but also extends to safeguarding the stability of the financial system through collateral mechanisms that provide legal protection for the parties.

The creative economy is a process of producing goods and services that relies on creativity and intellectual capital as its main sources (Djaelani & Putra, 2021). The creative economy sector makes a significant contribution to Indonesia's Gross Domestic Product, particularly in culinary, fashion, and the arts. This contribution shows a positive trend along with rising export value and employment in the sector. The creative sector has continued to develop since the creative economy began to be promoted up to the present (Putra et al., 2022). This development has also been shaped by increasingly flexible work patterns (Darmawan, 2023). The growth of the creative economy sector creates a greater need for financing among business actors in this field (Johan, 2024). This

growing need for financing requires readiness to face the risk of default in agreements (Anggoro et al., 2024). Using IPR as loan collateral can open access to financing for creative economy business actors who often find it difficult to provide tangible collateral. Businesses that obtain legal protection and government support, such as IPR protection and access to financing, tend to be better able to face various challenges in business development (Nurhadi et al., 2023). The media also play a role in raising business actors' awareness of the protection of rights to their works (Hardyansah et al., 2022). Optimizing the use of IPR as collateral requires support from financial institutions that understand the characteristics of intangible assets. Increasing the capacity of financial institutions to assess and manage the risks of IPR-based financing is a key factor in the successful implementation of this scheme.

Coordination among appraisal institutions, financial institutions, and IPR owners is necessary to create an effective IPR-based financing ecosystem. Appraisal institutions are responsible for providing objective and credible evaluations of the value of IPR to be used as collateral. Financial institutions are responsible for conducting comprehensive credit analyses by considering the results of IPR evaluations. IPR owners are responsible for ensuring the legality and validity of the collateralized IPR through public recording and announcement. Synergy among these three parties is necessary to create legal certainty and optimal economic value. The strengthening of coordination and communication among stakeholders constitutes a strategic step in developing IPR-based financing in Indonesia.

Implementation Barriers and Strategies for Strengthening the IPR-Based Financing System

The implementation of IPR guarantee-based financing in Indonesia faces various practical and regulatory barriers that need to be systematically addressed. The main barriers include the absence of standard procedures because neither Bank Indonesia nor the Financial Services Authority has clear technical guidelines regarding the implementation of IPR guarantees. The absence of IPR value benchmarks is due to the lack of valuation standards or methods that can serve as references in determining credit amounts (Mayana et al., 2024). The validity and recording of IPR require public recording and announcement as the principle of publicity to guarantee the validity of the IPR status as collateral. The execution and auction mechanism lacks clear guidelines, thereby creating uncertainty in the process of enforcing creditor rights. These obstacles cause many banking

and financial institutions to be reluctant to accept IPR as credit collateral.

Another significant problem is the absence of a market or institution that can purchase IPR collateral if the IPR holder fails to fulfill its obligations. Ease of executing IPR collateral is essential to ensure that its economic value can be realized through a sales process (Fahmi, 2021). Piracy and legal violations against IPR remain obstacles that have not yet been fully addressed effectively. Uncertainty in the execution process reduces financial institutions' interest in accepting IPR as loan collateral. Developing a clear execution mechanism and a secondary market for IPR is an urgent need in an IPR-based financing system. Strong legal protection of IPR is also needed to preserve the value of the collateralized asset. Legal protection of asset owners' rights and data also needs to be maintained in banking services (Hardyansah et al., 2024).

A comparison of global IPR management practices shows that recognition of the economic value of intangible assets greatly influences a country's economic progress. This progress is supported by an innovation culture that balances technological speed with depth of thought (Darmawan, 2023). Countries such as China, Japan, Singapore, Malaysia, the United States, and European countries have made IPR a form of loan collateral in financial institutions. This success is possible because these countries have official institutions authorized to appraise tangible and intangible assets. Singapore has implemented an IPR insurance system designed to provide protection in the event of default risk in IPR-based transactions. China has developed a legal framework that regulates trademark, patent, and copyright rights as collateral, with a mechanism for transferring pledge rights based on agreement between the parties. The experiences of these countries provide valuable lessons for Indonesia in building an IPR-based financing system.

Strategies for strengthening the IPR-based financing system in Indonesia require a comprehensive and integrated approach. Strengthening the legal substance by drafting clear and comprehensive regulations on IPR as an object of fiduciary collateral is a fundamental step. Establishing a dedicated IPR institution responsible for managing and validating IPR as collateral is also needed to provide legal certainty (Atikah & Sari, 2024). The involvement of notaries in drawing up deeds, registering, and issuing IPR fiduciary deeds through the Ministry of Law and Human Rights is an important aspect of providing legal certainty. Digital registration also needs to be accessible to all parties, including those less familiar with technology

(Darmawan, 2023). Facilitating companies or individuals who wish to buy IPR as a monetizable asset through the organization of an IPR market needs to be considered. Involving insurance institutions to guarantee the security of the economic value of IPR used as loan collateral is an anticipatory step.

The Indonesian Society of Appraisers has established Indonesian Valuation Standards that refer to International Valuation Standards headquartered in London, United Kingdom. This step demonstrates the government's commitment to building an internationally credible and standardized valuation system. The strengthening of the regulatory and institutional framework is an important step to ensure that IPR is not only recognized as an exclusive right, but can also be optimally utilized as an effective financing instrument. The utilization of IPR as a strategic economic asset requires synergy among regulations, appraisal institutions, and financial institutions to create legal certainty and optimal economic value. Through the strengthening of the legal framework and IPR-based financing mechanisms, Indonesia can optimize the potential of IPR as a strategic economic asset that supports the growth of MSMEs and the creative economy sector as a whole. The government's role in creating a conducive climate for the development and utilization of IPR is not limited to regulation, but also through policies that encourage the utilization of intangible assets in the development of the creative economy. By implementing these strategic steps, Indonesia can build a credible IPR-based fiduciary guarantee system, increase financing access for business actors, and sustainably drive creative economy growth.

CONCLUSION

IPR possesses a strong legal position as intangible property that can be made an object of fiduciary guarantee based on the Civil Code and the Fiduciary Guarantee Law. The characteristics of IPR as an economic asset that can be monetized, licensed, and transferred provide significant opportunities for its utilization in the national financing system. The legal framework of fiduciary guarantees has provided protection for creditors through executorial rights, but its implementation still faces obstacles in terms of registration procedures and execution certainty over intangible assets. The IPR valuation mechanism requires the standardization of valuation methods and the strengthening of the role of competent appraisal institutions to provide value certainty for financial institutions. Barriers to the implementation of IPR-based financing include the absence of standard

procedures, the absence of value benchmarks, the lack of clarity in execution mechanisms, and the absence of a secondary market for IPR.

The implication of this study is the need for regulatory strengthening that specifically governs the procedures for valuation and execution of IPR as an object of fiduciary guarantee. The government needs to establish a specialized valuation institution for IPR and develop appraisal standards that refer to international practices. Financial institutions need to enhance the capacity of human resources in understanding the characteristics and evaluation of intangible assets. The development of a secondary market and an insurance system for IPR constitutes a strategic step in creating a credible and sustainable IPR-based financing ecosystem. Synergy among the government, financial institutions, appraiser associations, and creative economy business actors serves as a primary prerequisite for the successful implementation of IPR-based financing in Indonesia.

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