

LEGAL PROTECTION FOR COPYRIGHT CERTIFICATE HOLDERS OF YOUTUBE VIDEO CONTENT AS FIDUCIARY COLLATERAL UNDER GOVERNMENT REGULATION NUMBER 24 OF 2022 ON CREATIVE ECONOMY

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Abstract. *The promulgation of Government Regulation of the Republic of Indonesia Number 24 of 2022 regarding the Creative Economy includes a policy permitting the utilization of intellectual property certificates as collateral; specifically, YouTube video content, classified as intellectual property, can now serve as fiduciary collateral. This study seeks to analyze the legal framework governing the utilization of YouTube video copyright certificates as fiduciary collateral, together with the legal protections available to holders of such certificates employed as fiduciary collateral. The study utilizes a descriptive-analytical methodology from a normative legal standpoint. Data gathering methodologies encompass primary and secondary data, with library research, to acquire information pertinent to the research subject. The findings demonstrate that the legal framework governing the utilization of YouTube video copyright certificates is already encompassed by current laws and regulations, which include fiduciary collateral. Nonetheless, the practical application of intellectual property as fiduciary collateral encounters numerous obstacles, including the lack of a qualified entity to evaluate the worth of intellectual property assets, such as those associated with YouTube videos, and the absence of a market to accommodate these assets. Consequently, legal safeguards for holders of YouTube video copyright certificates utilized as fiduciary collateral are presently restricted to preventive measures.*

Keywords: Legal Protection, Copyright, Fiduciary Collateral

I. INTRODUCTION

In general, the use of social media is tailored to the type of message and the target audience. Nowadays, there is a wide range of social media platforms, including WhatsApp, Twitter, Facebook, Line, TikTok, and YouTube. YouTube offers users the ability to watch a variety of videos shared by other users and also to upload videos for others to view. The popularity of YouTube in Indonesia is evident in a Populix survey conducted in March 2022. The survey, which involved 1,023 respondents, showed that

YouTube was the most frequently used media by many people, with 94% of respondents.¹

Article 1, point 1 of Government Regulation of the Republic of Indonesia Number 24 of 2022 regarding the Implementation of Law Number 24 of 2019 on the Creative Economy characterizes the Creative Economy as the realization of added value from intellectual property originating from human cognition or creative concepts rooted in cultural heritage, science, and/or technology. In the current period of globalization, Indonesia's creative economy can swiftly expand thanks to technology innovations, which greatly enhance enterprises involved in this area.²

The implementation of Government Regulation Number 24 of 2022, which operationalizes Law Number 24 of 2019, explicitly delineates the economic rights of copyright holders. It provides financing arrangements that employ intellectual property as collateral, supported by fiduciary guarantees..³

Intellectual Property (IP) is a state-granted exclusive right awarded to individuals in recognition of their creations. Intellectual property owners possess the authority to utilize, sell, and engage in other actions with their assets. Intellectual property is categorized as intangible movable property—entities that can be owned. Consequently, proprietary rights extend to intellectual property, including the capacity to transfer it to another entity..⁴

The Indonesian government has initiated the development of the creative economy sector in the digital market through the adoption of a collateral system utilizing Intellectual Property. The government offers a chance for creative economy participants, particularly YouTube content providers, to secure loans from financial institutions by utilizing their works as collateral. YouTube certification is regarded as have economic value due to its classification as a type of intellectual property with both ethical and monetary significance..⁵

YouTube content is an artistic medium comprising videos posted to the YouTube social media website. YouTube content, classified as intellectual property, may serve as fiduciary collateral if it satisfies certain criteria.

Undeniably, YouTube is a powerful platform with great potential to generate income (economic value).⁶

However, in practice, the use of intellectual property as fiduciary collateral still encounters several issues, the main one being the difficulty in assessing its value. YouTube video content is difficult to evaluate because there is currently no competent institution to assess the value of such intellectual property. Another issue is the absence

¹ Shera Aske Cecariyani and Gregorius Genep Sukendro, "Analisis Strategi Kreatif Dan Tujuan Konten Youtube (Studi Kasus Konten Prank Yudhist Ardhana)," *Prologia* 2, no. 2 (2019): 495

² Dzaki Yudi Ananda and M. Halley Yudhistira, "Kepemilikan Hak Kekayaan Intelektual Dan Kinerja Sektor Ekonomi Kreatif Di Indonesia," *Jurnal Kebijakan Ekonomi* 15, no. 1 (2021): 1–17.

³ *ibid.* hlm. 22

⁴ Maulidina Laelatul Luqma, Dwi Susilowati, and Novi Primita Sari, "Peran Ekonomi Kreatif Dan Sektor Pariwisata Dalam Pertumbuhan Ekonomi Di Indonesia," *Community Development Journal: Jurnal Pengabdian Masyarakat* 4, no. 2 (2023): 3331–3339.

⁵ Muhammad Alhada Fuadilah Habib, "Kajian Teoritis Pemberdayaan Masyarakat Dan Ekonomi Kreatif," *Journal of Islamic Tourism, Halal Food, Islamic Traveling, and Creative Economy* 1, no. 2 (2021): 106–134.

⁶ Asyrofi Aziz et al., "Konten Youtube Dan Dampak Pembentukan Karakter Bagi Anak Beserta Solusinya," *Jurnal Kajian Pendidikan Islam dan Studi Islam* 4, no. 2 (2021): 148.

of a market to absorb these assets when creative industry players default or fail to meet their payment obligations.⁷

II. RESEARCH METHOD

This study utilizes a normative legal research methodology, scrutinizing, probing, and analyzing secondary evidence pertinent to the research subject. This study utilizes a statutory method, analyzing law and literature to investigate secondary data comprising primary, secondary, and tertiary legal sources. All acquired data will be examined, and the findings will be presented descriptively in this paper.

III. RESEARCH RESULTS

A. Legal Regulation on the Use of YouTube Video Copyright Certificates as Fiduciary Collateral

This matter, when associated with the utilization of YouTube video copyright certificates as fiduciary collateral, is governed by Articles 28C and 28D of the 1945 Constitution of the Republic of Indonesia. Article 28C, paragraph (1), asserts: "Everyone possesses the right to self-development through the satisfaction of basic needs, the right to education for enhancing their quality of life and the welfare of humanity, and the right to access science and technology, as well as art and culture, to elevate their quality of life and the welfare of humanity." Paragraph (2) asserts: "All individuals possess the right to collectively advocate for their rights in order to construct their society, nation, and country." Article 28D, paragraph (1): "The right to acknowledgment, assurance, safeguarding, and equitable legal certainty, along with equal treatment under the law." "The entitlement to employment and the receipt of equitable remuneration and treatment in the workplace." Paragraph (3): "The entitlement to equitable access in governance."

The property law system in Book II of the Civil Code is inherently closed. This indicates that no more property rights can be acknowledged beyond those specified in Book II of the Civil Code. Article 499 of the Civil Code delineates objects as all entities that may be the subject of ownership rights. Intangible assets, including copyrights and patents, are not explicitly governed by the Civil Code but are addressed under separate legislation, notably Law Number 28 of 2014 concerning Copyrights. Consequently, the Civil Code categorizes objects into two classifications: tangible and intangible, with rights classified as intangible objects. YouTube video content, as fiduciary collateral, constitutes an intangible asset categorized as intellectual property, namely copyright.

Article 1, point 1 of the Fiduciary Guarantee Law delineates Fiduciary as the conveyance of ownership rights to an object predicated on trust, stipulating that the object, whose ownership rights are transferred, stays in the hands of the original owner. Fiduciary collateral is a security interest in movable assets, both tangible and intangible, as well as immovable property, notably structures that cannot be subject to mortgage

⁷ Viskha Purwita Lana et al., "Urgensi Kelengkapan Teknis Dalam Regulasi Penggunaan Konten YouTube Sebagai Jaminan," *Padjajaran Law Review* 10, no. 2 (2022)

liens. YouTube video content, regarded as a creative production and intangible movable property, may serve as fiduciary collateral. Creative works, including YouTube video footage, may be safeguarded by copyright certificates registered and issued by the appropriate ministry for fiduciary collateral purposes. The utilization of intellectual property, including YouTube video copyright, as fiduciary collateral is viable owing to its economic value. Article 4 of the Copyright Law delineates copyright as an exclusive right encompassing both moral and economic rights. Copyright is an intangible asset and can be utilized as fiduciary collateral, either whole or partially.

YouTube video content constitutes a kind of intellectual property categorized as creative work, safeguarded by copyright as specified in Article 40 of Law No. 28 of 2014 on Copyright. YouTube video content comprises creative works originating from a creator's concepts on the platform. Upon upload, such creative works instantly bestow economic rights upon the creator. To exercise these economic rights, the inventor may utilize their copyright as fiduciary collateral (Article 16, paragraph (3) of the Copyright Law). Copyright is an intangible asset that can be used as collateral. Copyright is fiduciary collateral due to its commercial worth.

Article 9 of Government Regulation Number 24 of 2022 concerning the Creative Economy stipulates: (1) In executing Intellectual Property-Based Financing Schemes, both banks and non-banking financial institutions may utilize Intellectual Property as collateral for loans. The collateral for the debt mentioned in paragraph (1) shall consist of:

- a) Fiduciary collateral about Intellectual Property;
- b) Agreements in Creative Economy endeavors; and/or
- c) Receivables from Creative Economy activities.

Article 10 of the same regulation states that the types of Intellectual Property that may serve as collateral include:

- a) Intellectual Property that has been documented or registered with the ministry overseeing legal matters; and
- b) Intellectual Property that has been autonomously managed and/or whose rights have been assigned to another entity.

Government Regulation Number 24 of 2022 was enacted to facilitate the establishment of a creative economy ecosystem that enhances the national economy, in accordance with Law Number 24 of 2019 on the Creative Economy. This law represents a significant step forward in addressing the financial challenges faced by participants in the creative economy. The regulation asserts that Intellectual Property may function as fiduciary collateral. YouTube video content, classified as intellectual property under copyright law, may serve as fiduciary collateral.

B. Legal Safeguards for Copyright Certificate Holders of YouTube Video Content as Fiduciary Collateral under Government Regulation Number 24 of 2022 on the Creative Economy

According to the principle of collateral, which is defined by its proprietary nature, YouTube video content, when associated with fiduciary guarantees as stipulated in Article 9 paragraph (2) of Government Regulation Number 24 of 2022, exhibits distinct characteristics in comparison to other fiduciary guarantees, such as real estate

or automobiles. The principal challenge of utilizing intellectual property as collateral lies in its valuation complexities. Several factors, including view count, popularity, and advertising revenue, influence the value of YouTube video material. Valuing YouTube content is challenging due to the absence of a qualified entity to evaluate its intellectual property worth. A further concern is the lack of a secondary market to accommodate these assets in the case of payment default.

.This issue of valuation and market will pose a challenge during execution if the debtor defaults, as Article 29 paragraph (1) of Law Number 42 of 1999 on Fiduciary Guarantees regulates the execution of fiduciary guarantees, stating: “If the debtor or fiduciary grantor defaults, execution of the object secured by fiduciary can be done by:

- a. Execution based on the executive title as referred to in Article 15 paragraph (2) by the fiduciary recipient.
- b. Sale of the object secured by a fiduciary under the power of the fiduciary recipient through public auction and recovery of debt from the sale proceeds.
- c. Private sale based on agreement between the fiduciary grantor and recipient if the highest price favorable to both parties can be obtained.”⁸

This article affirms the executive title and sale of the object. In the case of YouTube video content that lacks a definite market and fixed value, execution becomes difficult. A good debt guarantee allows the creditor to recover the full amount of their receivables easily and without interference from other creditors.

YouTube content, as collateral, does not meet several criteria for a good guarantee. First, YouTube content is not an asset that can be easily valued—there is no standard measure for such valuation, unlike land, which can be assessed using the NJOP (Tax Object Sales Value). Second, the value of YouTube content as collateral is unpredictable in the future—there is no guarantee it will appreciate over time, as it depends on factors such as popularity. Popularity is measured by the number of subscribers and views, which can be artificially inflated through the use of subscriber or view-buying services. The creator’s branding also influences popularity.

Essentially, the most valuable part of YouTube content is the creator’s creativity. This factor complicates the valuation process due to its subjective nature. A content creator adds value through positive personal branding. Personal branding is the process of building a professional and recognizable reputation, forming a comprehensive self-image. Personal branding enhances a creator's image both personally and in business. Since YouTube content is the result of a creator's work, its value is inherently subjective. Its popularity can fluctuate—today it may trend, tomorrow it may not; this year it may be famous, next year it may decline. This requires the debtor to continue creating content to maintain its popularity during the credit period. Thus, the economic value is hard to measure, whereas a good guarantee should have a value that is easily measured and preferably stable or increasing.

Because the value of YouTube content is difficult to assess, it is also challenging to execute following Article 29 of the Fiduciary Guarantee Law. Issues arise, such as

⁸ Gerrid Williem Karlosa Reskin, “Wirdyaningsih, *Pengaturan Hak Kekayaan Intelektual Sebagai Jaminan Utang Menurut PP Nomor 24 Tahun 2022*”, *Pakuan Law Review*, Vol. 8, No. 4, 2022.

the difficulty of reselling the content and its depreciation. Value can decline if the creator cannot maintain their popularity. This is particularly problematic in credit arrangements with extended repayment periods, as they require the creator to produce content to support the asset's value continuously.

This challenge affects creditors because there is no secondary market to resell such assets in the event of default, which would facilitate recovery of the loan. If the bank, as a creditor, cannot liquidate the asset, it can impact the bank's health. Bank health is assessed by several factors known as CAMEL (*capital, asset quality, management quality, earnings, and liquidity*).⁹

Government Regulation Number 24 of 2022 fails to offer sufficient legal protection for creditors when YouTube content is utilized as collateral and subsequently depreciates in value. The valuation of YouTube material is affected by the content creator's popularity, which is determined by personal branding and inventiveness. Increased creativity or uniqueness of material correlates with greater popularity. In credit transactions utilizing YouTube video content as collateral, should a default transpire and creditors are compelled to liquidate the content, there is no assurance that it would maintain its original value at the time of the loan agreement. This is due to the variable nature of YouTube content, necessitating that creators consistently innovate to sustain popularity and worth.

Financial institutions, as creditors, are obligated to implement the precautionary principle when extending credit. This entails evaluation according to the 5C, 4P, and 3R criteria. Collateral refers to the necessity for banks to meticulously assess the value of the collateral provided by the debtor. Another factor is repayment—the borrower's capacity to fulfill the loan obligation. In this regard, it's crucial to assess the potential for debt recovery, whether through counter-performance or collateral execution.

Additionally, banks want legal certainty and simplicity of execution concerning the executive title of the fiduciary guarantee, as outlined in Article 29 of the Fiduciary Law. This satisfies a requirement of effective collateral: it can be readily executed with low expense and without debtor participation upon default. An effective guarantee should possess a value comparable to currency.

Establishing explicit standards within the legal framework for intellectual property-based financing schemes enhances the protection of banks as creditors. The criteria derived from Singapore's financing regulations are pertinent to rectifying the deficiencies of intellectual property-based collateral in Indonesia, particularly concerning YouTube video content. Key challenges encompass valuation and the absence of a market for intellectual property assets, which obstructs execution in cases of default.

IV. CONCLUSION

The utilization of YouTube video copyright certificates as fiduciary collateral is governed by current legislation. Nevertheless, the legal safeguards for holders of such certificates, as stipulated in Government Regulation Number 24 of 2022

⁹ I Wayan Yasa, "Penerapan Prinsip Kehati-Hatian Dalam Pembuatan Perjanjian Kredit Bank Dengan Jaminan Harta Bersama," *Journal Economic & Business Law Review* 2, no. 1 (2022): 48.

regarding the Creative Economy, fail to offer sufficient security for both creditors and debtors. Numerous challenges persist, including the lack of a definitive institution to evaluate the worth of YouTube video content as fiduciary collateral and the absence of a market equipped to assimilate such intellectual property assets, which impedes the execution process in cases of default. Consequently, financial institutions may adopt preventive legal measures to mitigate challenges in loan recovery by employing the precautionary principle throughout the credit process.

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