

Cirebon Annual Multidisciplinary International Conference (CAMIC 2024)

JURIDICAL REVIEW RECONSTRUCTION REGULATION OF COPYRIGHT AS A MATERIAL GUARANTEE

1st Raden Handiriono

Law Department, Faculty of Law
Universitas Swadaya Gunung Jati
Cirebon, Indonesia
raden.handiriono@ugj.ac.id

2nd Sigit Gunawan

Law Department, Faculty of Law
Universitas Swadaya Gunung Jati
Cirebon, Indonesia
gunawansigit037@gmail.com

3rd Siska Karina

Law Department, Faculty of Law
Universitas Swadaya Gunung Jati
Cirebon, Indonesia
Okekarina763@gmail.com

4th Insan Kamil

Law Department, Faculty of Law
Universitas Swadaya Gunung Jati
Cirebon, Indonesia
insmile24@gmail.com

Abstract—The increasing economic role of Copyright as material security raises significant questions regarding how to qualify Copyright as material security and the ideal form of regulation of copyright use as material security. This research aims to conduct a juridical review of the use of Copyright as material security with a focus on the qualifications of Copyright as material security and the formulation of ideal arrangement copyright use as material security research is qualitative research, namely using normative juridical methods by analyzing statutory regulations and the opinions of legal experts. This research found challenges in implementing Copyright as material collateral because there are no technical implementing regulations, such as enforcing rules for estimating intellectual property objects and financial services authority regulations so that banks and financial institutions can use Copyright as material collateral.

Keywords— *Intellectual Property Rights; Copyright; Material Guarantee*

I. INTRODUCTION

In this era of globalization, economic value is increasingly influenced by innovation and creativity, primarily reflected in copyright ownership. Copyright is a form of legal protection for intellectual works, playing an essential role in motivating creators and having great potential as a material asset that can be used as collateral to obtain financing or credit from financial institutions.

The ratification of Law Number 24 of 2019 concerning the Creative Economy (now called the Creative Economy Law) as

a manifestation of added value from intellectual Property originating from human creativity based on cultural heritage, science, and technology has opened up quite ample opportunities for actors—creative economy by obtaining the facilities provided by the government. One of the facilities the government offers to encourage the creative economy is an IP-based financing scheme, making it an object of collateral. Although the Creative Economy Law does not mention specific financing schemes in detail, through this foundation, the government can develop financing policies and programs that suit the characteristics and needs of the creative economy sector.

At the implementation stage of the Creative Economy Law, the government formed Government Regulation (PP) Number 24 of 2022 concerning the Implementation of the Creative Economy Law. As Article 4 paragraph (2) of this PP states, a financing scheme is provided to creative economy actors. This financing scheme is based on IP, including using copyrights with economic value and assessing these copyrights. Financing schemes in the context of the creative economy can consist of various approaches, such as venture capital financing, people's business credit financing, microfinancing, and risk-based financing (Working et al.). By allowing Copyright as material collateral, questions arise regarding the qualifications of Copyright so that it can be used as material collateral and the ideal form of using Copyright as material collateral.

Copyright is an exclusive right or right owned by the creator or copyright holder to regulate the use of specific works, ideas, or information. Copyright is "the right to copy a work" or legally enjoy a work. A work is limited for use and

prevents unauthorized use, which may be carried out by the right holder based on Copyright. Exclusive rights in Copyright have a limited validity period because exclusive rights contain an economic value that not everyone can pay for. In the IP protection system, Locke also proposed a work theory or labor theory, which states that the results of a person's work and hands belong to that person. When humans have mixed the results of nature with their work (mixed their labor), these results remain their own.

Creators also have moral and economic rights to their creations. The creator's moral rights will always exist, even if the work is transferred to someone else. In contrast, economic rights can be transferred to other people if the creator allows other people to reproduce or copy the work. The economic value of copyrights can be transferred in whole or in part through various mechanisms, such as inheritance, gift, will, written agreement, or other reasons permitted by statutory regulations. Thus, Copyright is recognized as having eligibility as an asset that can be pledged to support credit acquisition.

Previous research explains that Copyright can be used as an object of fiduciary security because Copyright has moral rights attached to the creator and economic rights that are used for the benefit of the creator to duplicate and reproduce the creation. Article 16, paragraph 3 of Law No. 28 of 2014 concerning Copyright emphasizes that Copyright can be used as an object of fiduciary guarantee. The economic value attached to the Copyright will be used as collateral or collateral. However, the use of Copyright as collateral is still difficult to enforce; there needs to be outreach from the government, especially the Ministry of Law and Human Rights, as well as the Ministry of Cooperatives and SMEs, regarding Copyright can be used as an object of fiduciary guarantee to the public. Then, there needs to be a Government Regulation regarding the rules for implementing Copyright as an object of Fiduciary Guarantee. For fiduciary institutions, there needs to be a special team that calculates economic rights in copyrights to determine the economic value of copyrights c

However, the further problem is regarding the formulation of the implementation of the financing scheme and how to bind Copyright as collateral and execution in the event of default, which still needs to be clearly explained and is still a big question. From a banking perspective, Copyright is seen as an asset that is not simple, so in using Copyright as collateral, banks will need a valuation institution that acts as an appraiser at the pre-realization stage to determine whether the collateral value can cover the credit value. Will be given to the Copyright owner. Only now, the valuation institution recognized by the state has the right to carry out a Copyright valuation, which has become an obstacle to the execution of guarantees from this financing scheme.

In general, three things must be fulfilled to qualify an object as collateral, including: Ownership, as the basis for formal juridical rights, proves ownership and the extent of its implementation in the financing scheme from the perspective of the alter ego principle.

Economic value means a guarantee must have an appropriate economic value to determine its value. In IP financing, this is related to reward theory as a form of appreciation for the creator and the results of his efforts.

Transferable. The collateral object can be transferred to resolve bad credit so that it can be auctioned to obtain repayment.

More research from existing research is needed to discuss how Copyright is qualified as material security and what the ideal form of copyright regulation as material security is. Through normative and comparative analysis, this research seeks to contribute to a better understanding of how Copyright can be implemented as an effective material asset in the Indonesian legal structure. The conclusions of this research can provide a holistic view and an ideal form for further renewal and development in the regulations for the use of Copyright as collateral for Property in Indonesia.

V. METHOD

The method used in this research is a normative juridical approach, especially one implemented through legal regulations. The research stage is carried out by analyzing legal studies, which include basic legal materials, especially laws and other regulations. In addition, legal materials are obtained by studying the opinions of experts in the legal field, and other legal materials are obtained through dictionaries, encyclopedias, and other sources. The data analysis method is carried out according to the qualitative normative method, namely analyzing the legal norms discussed without statistical calculations and formulas.

VI. RESULTS AND DISCUSSION

Copyright is regulated in Law Number 28 of 2014 concerning Copyright, from now on referred to as UUHC of 2014. The Indonesian Copyright Regulations have undergone several changes—law Number 28 of 2014 concerning Copyright results from amendments to Law Number 19 of 2002. Meanwhile, Law Number 19 of 2002 concerning Copyright is an amendment to Law Number 12 of 1997, while Law Number 12 of 1997 is an amendment to Law Number 7 of 1987. Meanwhile, Law Number 7 of 1987 concerning Copyright is an amendment to Law Number 6 of 1982 concerning Copyright, which replaces the 1912 Copyright

Law, namely the Copyright Law inherited from the Dutch colonial government, which was still in effect during Japanese colonialism.

Apart from regulations at the national level, Indonesia is also subject to international agreements such as TRIPS (Trade-Related Aspects of Intellectual Property Rights), which sets standards for the protection of intellectual property rights. The implementation of TRIPS significantly impacts the protection of Intellectual Property Rights (IPR) in Indonesia. TRIPS in articles 9 to 14 regulate the basic principles of copyright protection. This principle has been adopted in the Indonesian Copyright Law, especially Law No. 19 of 2002 and Law No. 28 of 2014. Copyright gives the creator or copyright holder the exclusive right to publish or reproduce their work, which takes effect automatically after a work is born without registering it first. TRIPS also recognize the importance of legal protection for expressing original ideas that reflect the unique characteristics and forms of the creator's creativity. The requirement is a minimum standard of authenticity or originality of a creation.

Terms related to Copyright have different definitions and views. Some believe the term refers to the creator, holder of Copyright and creation, announcing the creation, reproducing the creation, and giving permission. Based on Article 1 paragraph (1) of Law Number 28 of 2014 concerning Copyright, it means that Copyright is the exclusive right of the creator, which arises automatically, based on the principle of declaration, after the creation is realized in natural form, without restrictions according to the provisions of statutory regulations. Invitation. Copyright gives exclusive rights to creators to publish, reproduce, and duplicate their creations in science, art, and literature.

The development of Copyright with the existence of Law Number 28 of 2014 concerning Copyright provides legal protection to creators of creative works; apart from Copyright, it can also be used as an object of fiduciary guarantee; this article shows that Copyright is currently very beneficial for creators of creative works because of the results His creations can be used as collateral for debt. Article 16, paragraph 3 UUHC 2014 states that copyright provisions can be used as fiduciary collateral. In principle, in fiduciary guarantees, when an object has been pledged, it means that ownership of the object has been transferred to the creditor, but control of the object remains with the debtor. Which means the debtor still holds the object. The basis of the agreement is a loan-to-use agreement, and if the debtor's debt has been paid off, the ownership of the object that is guaranteed must be recovered or returned by the creditor to the debtor. In this way, creators of works can access credit by pledging their creations as material collateral. Regulations relating to Copyright can be used as an object of fiduciary guarantee; there are two main

things: firstly, Copyright is an intangible property right, and secondly, the economic value of Copyright is as collateral. The economic value of Copyright is used to estimate whether the debtor can fulfill its performance to the creditor.

Intellectual Property Rights have had the opportunity to be used as collateral in credit contracts since the 2014 Copyright Law and 2016 Patent Law were enacted. However, applicable regulations in this field have only recently emerged, along with the publication of Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy. This implementing regulation is not mandatory in the Copyright Law and Patent Law. PP Number 24 of 2022 contains rules and provisions relating to intellectual property rights, which can be used as credit collateral.

Based on Article 10 of Government Regulation Number 24 of 2022, intellectual Property that can be used as an object of debt collateral, namely;

Intellectual Property that has been recorded or registered with the ministry that carries out government affairs in the legal sector And

Intellectual Property is managed independently, and the rights have been transferred to another party.

Then, intellectual Property can be assessed as material collateral using cost, market, income, and other approaches by applicable assessment standards. These approaches are explained in the explanation of Government Regulation Number 24 of 2022, namely;

The cost approach produces an indication of value using economic principles. At the time of purchase or construction, the buyer will not pay for an asset more than the cost to acquire an asset with the same or equivalent use.

The market approach indicates value by comparing the asset being valued with identical or comparable assets for which transaction or bid price information is available.

The income approach indicates value by converting future cash flows into present values.

The following criteria can be taken into consideration when applying for credit using Copyright as collateral:

Official Registration: Copyright must be officially registered with the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights. This registration provides legal clarity regarding copyright

ownership and protection.

Estimated Economic Value: Copyright used as collateral must have an estimated economic value that can be accounted for. Parties assessing the economic value of copyrighted works can carry out this assessment.

Managed by a Collective Management Institution: Copyright should be managed by a Collective Management Institution. This makes determining the royalty value that can be known easier, thereby strengthening the economic basis of Copyright as collateral.

Permitted Intellectual Property Rights Certificate: Copyright must be accompanied by an intellectual property rights certificate recognized and permitted as collateral in bank credit financing. The existence of this certificate is essential to ensure the validity of Copyright as collateral.

Additional Guarantee: If necessary, the credit provider can request additional collateral, such as a personal guarantee or borscht from the company that owns or manages the copyrighted work. This additional guarantee can provide extra security to the credit provider.

Furthermore, in carrying out an intellectual property assessment, the intellectual property appraiser must meet the following criteria:

Have a public appraisal permit from the ministry that handles government affairs in the field of state finance;

Have competence in the field of Intellectual Property assessment And

Registered with the ministry that carries out government duties in the creative economy sector.

Several factors hinder the implementation of intellectual property assets to be guaranteed in banks, such as ownership status of intellectual property rights, limited protection period, legal risks, measures of economic value, lack of experience to carry out professional validation, lack of particular institutions that handle assessment of intellectual property rights in Indonesia. Based on the factors that have been mentioned, the author tries to clarify the inhibiting factors as follows:

Technical implementation regulations. It still needs to be more with the issuance of Government Regulation No. 24 of 2022 as an implementation of Law No. 24 of 2019 concerning the Creative Economy. There is still a need for further implementing regulations at the level of ministerial regulations that are more technical. Practices in the field so that

Intellectual Property Rights are accepted as credit collateral and will only run smoothly with technical implementation instructions. For example, the implementation of fiduciary is regulated in technical regulations in the form of Regulation of the Minister of Finance of the Republic of Indonesia Number 130/PMK.010/2012 concerning Registration of Fiduciary Guarantees for Finance Companies Carrying out Consumer Financing for Motor Vehicles with Fiduciary Guarantees.

Assessor officer. A collateral item in a credit agreement requires an appraiser. The estimated results become the basis for whether the bank accepts collateral from the debtor. Article 41 of the Minister of Finance Regulation Number 173/PMK.06/2020 concerning Assessments by Government Appraisers within the Directorate General of State Assets regulates three approaches for the Public Appraisal Services Office to carry out its duties. Each of these approaches is the Market Price Approach (the process of determining the fair value of assets based on the selling price of assets that are similar to the object of appraisal), the Cost Approach (fair value is determined from the cost of creating/replacing a new one or New Replacement Cost (NRC) minus depreciation), and Income Approach (the fair value of an asset is determined from the amount of income or income generated from the asset). So far, the Public Appraisal Services Office has carried out these three approaches only to value assets or a company. Of course, it will be very different if applied to Intellectual Property Rights, especially works of art.

Existence of Financial Services Authority Regulation (POJK) Number 40/POJK.03/2019 concerning Assessment of Commercial Bank Asset Quality (POJK 40/2019). Banks are bound, among other things, by the provisions of the Financial Services Authority in binding collateral for credit distribution to debtors. POJK 40/2019, among other things, regulates collateral that can be calculated as a deduction for the allowance for asset write-offs, namely securities and shares actively traded on the stock exchange, land, buildings, residences, machines that are part of the land, aircraft, ships, motor vehicles, inventory, and warehouse receipts. POJK 40/2019 does not accommodate Intellectual Property Rights as collateral.

Period constraints. Please remember that intellectual property rights have a term depending on their form. Copyright is based on Article 58 of Law No. 28 of 2014, which states that Copyright is for the creator's life plus 70 years after the creator dies. Another thing is for Patent Rights based on Article 22 of Law No. 13 of 2016 concerning Patent Rights, namely for 20 years. It should be noted that the credit period that will be given by the bank to the debtor must take into account the period of the Intellectual Property Rights themselves. Intellectual Property Rights have a time limit to become the collateral object.

There is no secondary market, so it is difficult for banks to earn returns on the credit/financing they have provided.

Thus, the government should immediately create and revise more technical regulations to ideally regulate the use of Copyright as material security, such as;

Make government regulations (PP) regarding Copyright as material security.

Revise POJK 40/2019 so that banks can bind Intellectual Property Rights as collateral for credit agreements.

Make a ministerial regulation regarding the registration of fiduciary guarantees for finance companies that carry out consumer financing for Copyright by charging fiduciary guarantees.

Create government regulations (PP) that regulate risk mitigation that banks can carry out if they experience default on bank credit with copyright guarantees.

Implement regulations for the Public Appraisal Services Office to estimate intellectual property rights objects.

VII. CONCLUSIONS

This research shows that the qualification of Copyright as material security is regulated in Government Regulation No. 24 of 2022, namely intellectual Property that has been recorded or registered with the ministry that carries out government affairs in the legal sector and intellectual Property that has been managed either independently and the rights have been transferred to another party. In assessing intellectual Property, three approaches are used, namely the cost, market, and income approaches carried out by appraisers who have met the criteria by Government Regulation No. 24 of 2022.

The use of Copyright as material collateral is still hampered by the absence of technical regulations guaranteeing Copyright, so regulations must be created and revised to implement them immediately. Thus, regulations on using Copyright as material security must continue to be reviewed and refined to provide legal certainty and optimal protection for all parties involved. The results of this review can contribute to the development of intellectual property law, especially in Indonesia.

REFERENCES

- [1] Haryanto, I. (2014). Intellectual Property Misconceptions. Jakarta: Kepustakaan Populer Gramedia.
- [2] Hidayah, K. (2018). IPR Law Intellectual Property Rights. Malang: Setara Press.
- [3] Jaman, U. B., Putri, G. R., & Anzani, T. A. (2021). The Urgency of Legal Protection for Copyright of Digital Works. *Rechten Journal: Legal And Human Rights Research*. Vol. 3 Number 1.
- [4] Kadir, M. A. (1995). Introduction to Indonesian Company Law. Bandung: Citra Aditya Bakti.
- [5] Kadir, M. A. (2001). Economic Law Study of Intellectual Property Rights. Bandung: PT Citra Aditya Bakti.
- [6] Mayana, R. F. (2022). Intellectual Property Based Financing Schemes: Opportunities. *Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat*, accessed <https://journal.forikami.com/index.php/dassollen/article/view/23>.
- [7] Qorina Khoirunisa, R. F. (2023). Implementation Of Copyright Financing Schemes. *Eksekusi: Journal Of Law*, Vol. 5 No.2, 141-160.
- [8] Rahmatullah, I. (2015). Intellectual Property Rights Assets As Collateral In Banking. Yogyakarta: Deepublish.
- [9] Ridho, M. R. (2024). Copyright as an Object of Fiduciary Collateral in Bank Credit Agreements. Jambi: Universitas Jambi.
- [10] Siwi, C. T. (2017). Legal Aspects of Immovable Objects as Objects of Fiduciary Security. *Jurnal Notariil* 2.
- [11] Sudaryat. (2010). Intellectual Property Rights Understanding Basic Principles. Scope and Applicable Laws. Bandung: Oase Media.
- [12] Ulinnuha, L. (2017). Use of Copyright as an Object of Fiduciary Security.UN