



# Copyright of Digital Works as Credit Collateral Integration between Legal Protection and Human Rights in the Digital Economy

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**Abstract.** The rapid advancement of technology and knowledge has driven significant economic growth, particularly through integrating modern technology into the economic system. This change has led to the increasing need for individuals to enhance their abilities continuously, creating products or intellectual works that cultivate the inherent rights of human rights rooted in human dignity and intellectual complexity. Intellectual Property Rights (IPR) holds a strategic position as a protector of human rights, as it requires good legal instruments and mechanisms to protect and accommodate the economic and moral rights of creators. The protection of IPR is crucial to maintain a competitive edge in the global economy, which is increasingly driven by innovation. As the creative economy expands, individuals and businesses recognize the potential of intellectual assets, such as copyrights, as collateral for financing. A normative juridical approach is utilized in this study to analyze the legal framework governing the use of digital copyrights as collateral in Indonesia, particularly in relation to the new Government Regulation on the Creative Economy. This study identifies the main challenges faced by creditors and debtors, including issues related to assessment, market availability, and enforcement of IPR. Furthermore, the report also proposes feasible models to enhance legal protection and utilization of digital works, emphasizing the importance of government regulations to improve certainty for financial institutions and creators.

**Keywords:** Copyright; Credit Collateral; Creative Economy; Digital Works

## 1 Introduction

With the advancement of technology and knowledge, the economy has also undergone massive development through the integration of modern technology into the economic system. This economic progress has propelled human beings to further develop themselves. As time progresses, the ability of humans to develop themselves and think has led to the belief that humans, considered noble creatures due to their intellectual

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D. B. Kharisma et al. (eds.), *Proceedings of the International Conference for Democracy and National Resilience (ICDNR 2024)*, Atlantis Highlights in Social Sciences, Education and Humanities 30,

[https://doi.org/10.2991/978-94-6463-634-5\\_18](https://doi.org/10.2991/978-94-6463-634-5_18)

complexity, possess certain privileges known as Human Rights. These privileges are absolute and must be acknowledged, respected, and honored. Throughout human history, this perspective has emerged because human privileges are natural, originating from individuals and developed through their reasoning. Each individual logically believes in these inherent and eternal rights. The legitimacy of these privileges is embodied in the form of laws or regulations that must be adhered to by the government and society.

Intellectual Property Rights (IPR) laws are a form of instrument used to protect Human Rights over Intellectual Property (IP). The mechanism of protection through legal instruments is necessary to provide adequate and proper protection as a form of respect for IPR. This is especially important considering that IPR is a legally valuable right. The existing instruments are created to protect inventors and creators from the unauthorized use of their intellectual creations by the wider community. Given these benefits, the existence of IPR legal instruments is an effort to harmonize and find a common ground so that a discovery resulting from intellectual intelligence can benefit society, and likewise, its creator can enjoy the benefits of their hard work contributing to the welfare of all humankind.

The protection of Intellectual Property Rights (IPR) has been advancing due to innovation and technology. Intellectual Property (IP) can be defined as ownership rights over assets that are not visible to the eye or intangible assets, or the right to use human creative, logical, and rational thinking abilities to create intellectual works. IP encompasses various rights such as copyright, patents, trademarks, industrial designs, and trade secrets, all of which aim to protect intellectual works and discoveries from unauthorized use or theft by irresponsible parties. In the context of IP, exclusive rights provide protection to the IP owner, and these rights are manifested in physical or tangible forms (material objects). In the global economic context, IP protection has been highly regarded due to intense economic competition, demanding IP protection for trade and business in society for fair and competitive business competition. Without adequate protection, the dangers of IP infringement can limit incentives to develop and share new discoveries, resulting in detrimental impacts on economic growth.

The creative economic growth in Indonesia is driving business owners to increase working capital to expand their operations. Many companies today realize that offering innovative products or services is an effective method for conveying brand image and standing out in the market. The continuous production and execution of creative ideas in business provide substantial added value to the economy. The creative economy plays a central role in developing the corporate environment and the overall economic prosperity of society. One distinctive feature of the creative economy is the presence of intellectual discoveries in the economic sector.

The response to economic and intellectual property developments indicates that intellectual works can be used as collateral to secure further company financing for business expansion, especially in the realm of copyright. Article 16 paragraph (3) of

Law Number 28 of 2014 concerning Copyright explicitly states that copyright can be used as collateral in a fiduciary agreement. The utilization of intellectual property as collateral for credit or loans in the Indonesian banking sector has been developed since the government issued Government Regulation Number 24 of 2022 concerning the Creative Economy (Government Regulation on the Creative Economy) on July 12, 2022. Through this regulation, the Indonesian government aims to invigorate the Creative Economy.

Based on the Government Regulation on the Creative Economy, it is mentioned that works that can be used as collateral for bank loans are works that have a certificate of intellectual property, especially copyright. Article 7 paragraph (2) states that the requirements for intellectual property-based financing applications include at least a financing proposal, ownership of a Creative Economy business, contracts related to Creative Economy intellectual property products, and intellectual property registration or certificates. This means that YouTube content that can be used as collateral for loans is content that has an intellectual property certificate. YouTube content can fall under the category of Intellectual Property Copyright because it meets the criteria or elements for copyright registration.

Banks and non-bank organizations consider intellectual property used as debt collateral when the owner registers this debt application, and the work referred to is YouTube content. This content is said to be used as collateral for loans from financial institutions, both banks and non-banks. With intellectual property as collateral, banks will conduct evaluations before choosing to offer a loan or not. Before providing a loan, an evaluation is carried out to determine the applicant's eligibility and the available amount. However, behind the possibility of using copyright as collateral, there are still implementation and system issues. This is related to the uncertainty of the existence of a secondary market, valuation, estimation when intellectual property liquidation occurs, and legal instruments for intellectual property execution.

## **2 Method**

In legal research, sources are utilized as references to bolster the researcher in conducting legal analysis, especially when employing a normative legal approach.[1] The collection of legal materials is aimed at obtaining resources to address the pertinent issues under study. In this legal research, the researcher utilizes library research as the technique for collecting legal materials.

### **3 Finding and Discussion**

#### **3.1 Legal Barrier Faced by Creditors and Debtors in Using Digital Copyrights as Loan Collateral**

In the modern era, with all kinds of technological advancements, there is a vast horizon and pathway for the development of various aspects of life in the world, including the development of human creativity that results in copyrights. The existing developments show that copyrights are not limited to artistic works such as books, songs, music, photography, and other conventional models, but also encompass other works, especially digital creations. Currently, digital creations are seen as strategic works, competitive, and possess highly competitive economic value.

In general, copyrights provide benefits through the emergence of exclusive rights that arise declaratively or automatically. These exclusive rights are related to both the economic and moral rights of individuals or groups that successfully create a unique and distinctive work. For individuals or groups recognized as the creators of a creation, their names will be listed in the general creation registry. Compared to other types of Intellectual Property Rights (IPR), copyrights have a longer economic rights validity period, as the rights are recognized as long as the creator is alive and for 70 years after the creator's death.

Furthermore, under the Government Regulation on the Creative Economy, Intellectual Property Rights (IPR)-based financing must have evidence of IPR registration and already have an IPR utilization contract. After completing the aforementioned procedures, the owner of creative works can leverage their economic value through bank credit financing. In Article 7, paragraph (1), it is explained that the application for financing using the results of intellectual property can be made to various types of financial institutions, both banks and non-banks.

However, behind the common use of copyright as collateral for credit, there are still challenges. The main challenges lie in the implementation and system in the field, especially regarding the hindrance in the assessment and appraisal system for the liquidation of Intellectual Property Rights (IPR), the lack of a Secondary Market, and the unclear legal infrastructure mechanism for IPR execution.[2] As of now, conventional banks, Islamic banks, and multi-finance companies are still hesitant to take the risk of using copyright as collateral. The existing reality shows that the implementation of IPR as collateral is still not optimal due to several inhibiting factors. Therefore, not many conventional banks, Islamic banks, and multi-finance companies are willing to take the risk of using copyright as collateral for credit.

Technological advancements in the field of Copyright have led to the emergence of digital copyright works. One of the widely used and diverse digital copyright works is the content on YouTube. YouTube is an internet-based application that showcases various popular videos uploaded by users from all around the world. The displayed

videos serve various purposes and benefits, ranging from educational, business, entertainment, current affairs, to even political content. They vary according to the intended purpose and benefits to be provided through the uploaded videos for education, business, and entertainment purposes. Similarly, in terms of access, YouTube offers a variety of options, including free videos, ad-free videos, and subscription-based videos, each with its own market and value.[3]

As one of the leading and largest platforms showcasing video as its main product, the majority of people use this platform as a source of information, much like Google. This is not surprising because most of the information presented is sometimes more engaging due to the emphasis on aesthetics, beauty, and uniqueness by YouTube content creators in presenting information, making it less boring for its users. In addition to being a source of information, YouTube also provides other facilities that can be enjoyed by its users as a form of innovation and adaptation to market demands, such as the development of YouTube Music, YouTube Kids, and so on.

In addition to attracting users, YouTube also pays great attention to video uploaders by providing them with the opportunity to earn loyalty or payment from their digital creations, so that YouTube content can provide economic benefits. This is certainly aimed at making content creators more interested in using YouTube as a platform to showcase their creative work. This also has a positive impact on YouTube because the quality of videos can continue to be improved, and YouTube can remain a popular platform used until now.

Stimulating the creative economy industry through the YouTube platform is also related to data from the Ministry of Tourism and Creative Economy, which shows that throughout 2019, the creative economy industry contributed to 7.3% of the National GDP, or if calculated, equivalent to Rp 1,153.4 trillion. This is inseparable from the presence of digital platforms as a space for creative work in the digital entertainment industry.

The regulation of intangible assets in Indonesian property law is outlined in Book II of the Indonesian Civil Code (KUHPerdata), which defines property as all types of goods or rights that can be owned with ownership rights. Some experts argue that such rights can also be considered as intangible assets. According to Article 503 of the Civil Code, property or assets are divided into two categories based on their form: tangible and intangible assets.

The presence of copyrighted content on the YouTube platform is also related to the Reward Theory proposed by Robert N. Sherwood, which pertains to intellectual works.[4] The use of this content as collateral for financing is an implementation of the Economic Growth Stimulus Theory. Utilizing copyright content as collateral for financing for creative economy actors can support economic development by increasing the country's intellectual property assets.[5]

The utilization of intellectual property assets for commercialization or as loan collateral is a crucial factor for economic growth. The act of borrowing money and the

existence of collateral are inevitable in today's society.[6] The commercialization of intellectual property assets used as fiduciary collateral presents a fresh opportunity and a new financing option. This development can also provide benefits for banks in the form of a wider variety of credit collateral objects and protection from problematic clients facing the risk of bad debts or defaults.

The accessory nature of a fiduciary security agreement implies that it serves as a supplementary agreement originating from a credit or financing agreement between the creditor and debtor. In the case of Copyright, a fiduciary security agreement is crucial for using it as collateral for financing. However, for Copyright to be eligible as collateral, it must be officially registered with the Directorate General of Intellectual Property (DJKI) as per Article 10 of the Government Regulation on Creative Economy.

In civil law, property rights are categorized into two types: property rights that provide enjoyment, such as ownership rights, and property rights that serve as security, such as pledge rights, mortgage rights, and fiduciary rights. Under the Copyright Law, digital works on platforms like YouTube are considered creations, and their creators, including foreign nationals, are referred to as authors. Consequently, the status, rights, and obligations of YouTube content creators concerning their works are similar to those of other copyright holders, such as songwriters, musicians, and creators of similar works of art.

YouTube content that generates revenue from a large number of subscribers and viewers can be considered as an object of fiduciary security. Fiduciary security involves the transfer of rights to an object based on trust, with the condition that the original owner may still use it. For instance, a car used as fiduciary security allows the debtor to continue using it even though ownership is transferred to the creditor. If the debtor defaults or fails to pay, the creditor has the right to sell the collateral in accordance with Article 1243 of the Civil Code to fulfill the debtor's obligations.

In accordance with the Government Regulation on Creative Economy, obtaining credit from banks is not a straightforward process. Article 9, paragraph (2) stipulates that detailed explanations are required regarding the debtor's guarantee of repayment to the creditor. When it comes to providing credit with intellectual property as collateral, such as YouTube content, banks typically consider the value of the copyright within that content. While banks may offer loans based on the copyright's assessable value, they often require additional collateral, such as land ownership certificates or motor vehicle ownership books, to mitigate the risk associated with intellectual property as collateral.

The use of intellectual property as collateral necessitates caution and is generally less favored due to the relatively high risk involved. This underscores the importance of enhancing the capabilities of notaries as creators of secure agreement structures. Notaries are expected to enhance their risk assessment abilities and the inclusion of relevant provisions in agreements. Establishing a specialized institution to safeguard the rights of fiduciary holders over intellectual works in the event of debtor default

could be beneficial. Furthermore, a market is needed to facilitate the sale of intellectual property, such as YouTube content. If the fiduciary holder is hesitant to pursue collections, a structured approach is necessary to address this concern.

YouTube digital works as fiduciary collateral must be created in the form of an authentic deed prepared by a notary. In this case, the bank as the creditor and the debtor as the borrower agree to bind themselves in a credit agreement. The fiduciary collateral registered by the notary must be in the form of a certificate that has previously been submitted to the DJKI.

### **3.2 Support from the Indonesian Government for the Use of Digital Copyright Works as Loan Collateral**

In the field of intellectual property, one valuable asset that can be used as collateral in the banking sector for digital works is YouTube content. This type of content holds intellectual value once registered and recognized by the government. In order to provide legal certainty, the government has issued regulations related to the creative economy, including Government Regulations on the Creative Economy. However, the banking sector has not yet formally regulated the implementation of the Creative Economy Law regarding the use of intellectual property rights (IPR) as credit collateral. Making IPR an object of collateral in the banking world requires further study of the complete mechanisms, especially in terms of how to bind and maintain the value of the object (such as YouTube content) to keep its value stable or even increase it.

The government is encouraging businesses in the creative economy sector, especially in the field of IPR, to increase their capital through financing, one of which can be obtained by applying for credit from a bank. This lending activity enables businesses to realize their funding needs. To date, banking remains the most dominant institution in providing credit compared to other financial institutions due to its large valuation and assets, allowing for the potential approval of significant loan amounts. Choosing to use fiduciary arrangements as a type of collateral is appropriate because creative industry players, in this case, digital content owners, can maintain control over their property ownership, thus ensuring the continuity of their business operations remains productive without the shadow of repossession.

The copyright of creative works such as YouTube content in the form of videos can be used as fiduciary collateral with a certificate issued by the relevant ministry. The development of fiduciary collateral in the creative economy sector is initiated to support national economic growth in collaboration with the government, financial institutions, and creative economy players in Indonesia. This new policy is expected to drive progress in various aspects, including the development of a more creative and innovative economy by leveraging technological advancements.

The Government Regulation on Creative Economy explains several provisions used to support the acceleration and development of the creative economy through the

development of financing models, infrastructure, product marketing systems, increased government involvement at various levels through the allocation of responsibilities, increased community participation as the target of the creative economy, and the establishment of dispute resolution instruments. To ensure legal certainty, the government issues regulations related to the creative economy that include registered intellectual property rights (IPRs) and will receive certificates, thus can be used as collateral when applying for credit at a bank. These rules are created to provide legal protection for micro, small, and medium enterprises (MSMEs) when they want to borrow from banking financial institutions.

Article 10 of the Government Regulation on Creative Economy explains that the copyright of YouTube content has been registered with the Ministry of Law and Human Rights and managed independently from the copyright of YouTube content, or the rights have been transferred to others. However, this provision is considered non-binding due to inconsistencies in the copyright clause that make YouTube content a fiduciary collateral object. Various legal issues arise regarding who is entitled to submit works that will be fully paid by the buyer. There are YouTube content creator communities that produce original videos by purchasing viewing services. These content creators must meet certain requirements for their content to be used as collateral.

Article 10 of the Government Regulation on Creative Economy states that the copyright of YouTube content has been registered with the Ministry of Law and Human Rights and is managed independently from the YouTube content copyright, or the rights have been transferred to others. However, this provision is considered non-binding due to inconsistency in the copyright clause, which makes YouTube content the object of fiduciary guarantee. Various legal issues arise regarding who has the right to submit works that will be fully paid for by the buyer. There are communities of YouTube content creators who produce original videos by purchasing viewing services. These content creators must meet certain requirements for their content to be used as the object of fiduciary guarantee, but this can complicate execution because some copyrights cannot be marketed in the context of a sales agreement between the copyright owner and the buyer, where the content creators are the rights holders.

Collaboration between the Directorate General of Intellectual Property in assessing intellectual property certificates aims to facilitate the assessing team that will use intellectual property as collateral. The absence of a specific institution will complicate the process of calculating the nominal value of YouTube content used as collateral, requiring intensive training for the intellectual property assessment team within the relevant financial institutions. Without this training, the government tends to be reluctant to provide loans, and the royalties from content creators cannot be developed and utilized optimally. Comprehensive efforts are also needed through the improvement of electronic transaction system management in Indonesia, which is currently vulnerable to unauthorized hacking. Updating the national cybersecurity system



standards needs to be strengthened through guidance and supervision in electronic system management to prevent hacking of YouTube content.

The government urgently needs to establish new regulations that provide detailed technical guidelines for the use of YouTube content as collateral if it is serious about developing the creative economy. Existing regulations should ensure financial institutions feel secure when providing credit for financing digital economy, especially YouTube content. This will also facilitate and encourage intellectual property creators to expand their businesses into a larger industry. Without prompt implementation of these technical regulations, the government's efforts to use YouTube content as collateral will be in vain, as banks will hesitate to participate.

## 4 Conclusion

The conclusion of the analysis regarding the legal constraints faced by creditors and debtors in using digital copyright as collateral for credit indicates that despite supportive regulations for the use of copyright, its implementation is still hindered by several practical issues. Despite the recognition of copyright as a credit collateral, many banks are reluctant to apply it, preferring physical collateral such as vehicle certificates, which are easier to assess and liquidate. Additionally, the lack of clear legal infrastructure and challenges in the assessment and marketing of copyright works hinder the optimization of digital content, including YouTube content, as collateral. The government also encourages the creative economy sector to utilize financing through banks, but there are still deficiencies in the assessment infrastructure and legal uncertainties related to copyright. Collaboration between relevant institutions and training for intellectual property assessment is crucial to ensure the optimal utilization of digital works. Therefore, comprehensive regulations and support from relevant institutions are necessary to strengthen the use of copyright as credit collateral to support the growth of the creative economy in Indonesia.

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