

ENHANCING THE CREATIVE ECONOMY : LEVERAGING INTELLECTUAL PROPERTY RIGHTS AS LEGAL COLLATERAL IN CREDIT FINANCING IN INDONESIA

Ika Atikah

Faculty of Syariah, UIN Sultan Maulana Hasanuddin Banten

ika.atikah@uinbanten.ac.id

Rofa Agnia Sari

Faculty of Syariah, UIN Sultan Maulana Hasanuddin Banten

rofa.agnia@uinbanten.ac.id

Abstract

This research investigates new avenues for capital acquisition among creative economy stakeholders through banking institutions, leveraging intellectual property rights (IPR) as valuable collateral following the enactment of PP No.24/2022 alongside Law No.24/2019. Employing normative-empirical methodologies, the study highlights the need for banking institutions to minimize risk exposure while extending credit facilities. PP No.24/2022 elucidates provisions within Law No.24/2019, enabling creative economy actors to access credit capital by leveraging registered intellectual property assets. Registration with the Director General of Intellectual Property Rights Center of the Ministry of Law and Human Rights confers state legitimacy on IP ownership. The economic potential of intellectual property assets as collateral encourages banks to provide business capital loans, contingent upon adherence to legal protocols and due diligence. Key considerations include methodologies for valuing intellectual property, ranging from conventional cost, income, and market approaches to contemporary methods like cost-benefit analyses, expert evaluations, and innovation surveys.

Keywords: Creative Economy, Intellectual Property Right, Credit Financing

Abstrak

Riset ini meneliti peluang baru untuk memperoleh modal bagi pelaku ekonomi kreatif melalui lembaga perbankan dengan memanfaatkan hak kekayaan intelektual (HKI) sebagai jaminan berharga setelah diberlakukannya PP No.24/2022 pelengkap Undang-Undang No.24/2019. Dengan menggunakan metodologi normatif-empiris, penelitian ini menyoroti perlunya lembaga perbankan untuk meminimalkan risiko saat memperluas fasilitas kredit. PP No.24/2022 menjelaskan ketentuan dalam Undang-Undang No.24/2019, yang memungkinkan pelaku ekonomi kreatif mengakses modal kredit dengan memanfaatkan aset kekayaan intelektual yang terdaftar. Pendaftaran dilakukan pada Direktur Jenderal Pusat Hak Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia memberikan legitimasi negara atas kepemilikan HKI. Potensi ekonomi dari aset kekayaan intelektual sebagai jaminan mendorong bank untuk memberikan pinjaman modal usaha, bergantung pada kepatuhan terhadap aturan hukum dan penelaahan menyeluruh. Pertimbangan utama mencakup metodologi untuk menilai kekayaan intelektual, mulai dari pendekatan biaya konvensional, pendapatan, dan pasar hingga metode kontemporer seperti analisis biaya-manfaat, evaluasi pakar, dan survei inovasi.

Kata Kunci: Ekonomi Kreatif, Hak Kekayaan Intelektual, Pembiayaan Kredit**A. Introduction**

The nexus between national economic growth and the burgeoning creative industries has become increasingly pronounced in the era of Industrial Revolution 5.0. This phenomenon is hallmarked by the productivity and innovation of individuals who possess ingenious ideas that translate into income generation. The concept of the creative economy has assumed paramount importance in fostering sustainable economic development and enhancing social welfare. It encompasses not only the realms of arts and culture but also extends to technology and science, including fields such as science and technology, engineering, and telecommunications.¹ Human creativity transcends the mere creation of novel entities; it also encompasses the adaptation and enhancement of existing ideas. Indonesia's creative economy spans a multitude of sectors, ranging from the gaming industry, film, and music to fashion design, advertising, architecture, and handicrafts.

The creative economy in Indonesia has undergone significant transformation driven by digital technology, leading to the rise of both conventional businesses and startups.² This shift is particularly evident in the proliferation of Micro, Small, and Medium Enterprises (MSMEs), which play a crucial role in the country's economic growth and job creation.³ Government initiatives, such as the "UMKM go global and go digital" program, aim to enhance the global competitiveness of Indonesian MSMEs through a digital ecosystem, providing support in financing, mentoring, and market access.⁴ Additionally, business incubators play a vital role in developing startup strategies and fostering innovative SMEs, contributing to the overall spirit of

¹ M. Manioudis & A. Angelakis, "Creative Economy and Sustainable Regional Growth: Lessons from the Implementation of Entrepreneurial Discovery Process at the Regional Level," *Sustainability*, 15 (9), 7681, 2023, <https://doi.org/10.3390/su15097681>

² J. Arifiyanto, "Company Forms in Digital Economy Era," *Neoclassical Legal Review: Journal of Law and Contemporary Issues*, 2(1), 47-52, 2023, <https://doi.org/10.32734/nlr.v2i1.11512>

³ Halifa Haqqi, "The Government's Policy in Encouraging the Global Competitiveness of Indonesian MSMEs through the Digital Ecosystem," *Journal of Economics, Management and Trade* 29 (8):66-76, 2023, <https://doi.org/10.9734/jemt/2023/v29i81115>.

⁴ N.P. Sari, et al, "Sosialisasi Strategi Pemasaran Dalam Rangka Optimalisasi Keuntungan UMKM Kecamatan Rancabungur Melalui Dunia Digital," *Jurnal Abdimas Ilmiah Citra Bakti*, 4(2), 162-173, 2023, <https://doi.org/10.38048/jailcb.v4i2.1484>

Indonesia's creative economy.⁵ This dynamic landscape underscores the importance of leveraging digital tools and innovative approaches to drive entrepreneurship and innovation across various sectors in Indonesia. However, sustainable innovation necessitates adequate capital funding. Credit financing presents a viable solution to bolster the longevity of innovative businesses within the creative economy industry.

Intellectual property rights, including patents, trademarks, and copyrights, can serve as valuable legal collateral in the financing process. Leveraging the potential and viability of intellectual property rights as legal collateral is poised to enhance access to financing for actors within the creative economy.⁶ This, in turn, is anticipated to expedite the expansion of the creative industry, thereby contributing significantly to national economic growth and heightened social welfare. Given the pivotal role of the creative economy in propelling national economic development, employing credit financing backed by intellectual property rights emerges as a strategic approach to foster the advancement of the creative industry in Indonesia.

In 2022, the government issued Presidential Regulation No. 24/2022 concerning the Creative Economy, which introduces a credit financing scheme tailored for individuals involved in the creative economy possessing Intellectual Property Rights (IPR). Despite the prior enactment of Law No. 24/2019 concerning the Creative Economy, detailed provisions regarding the credit scheme for creative economy participants with IPR had not been explicitly outlined. Hence, the issuance of this Presidential Regulation aims to address this gap by offering a comprehensive framework. The aforementioned credit financing entails the requirement of collateral or credit guarantees in the form of tangible assets that hold cash value. These assets encompass intellectual property rights duly registered and safeguarded by the state through the relevant ministry, thereby ensuring legal certainty. Notably, intellectual property rights constitute a component of fiduciary assets, characterized by their intangible nature. This financing initiative is geared towards providing essential capital for creative economy practitioners operating within the IPR domain, thereby

⁵ S. Suhartini, et al, "The Design of the SMEs Digital Innovation Business Collaboration Model," In *3rd Asia Pacific International Conference on Industrial Engineering and Operations Management*, 2022, <https://doi.org/10.46254/AP03.20220255>.

⁶ H. S. Disemadi, "Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia," *LAW REFORM*, vol. 18, no. 1, pp. 89-110, Mar. 2022. <https://doi.org/10.14710/lr.v18i1.42568>

facilitating the expansion of business creativity and facilitating substantial royalty generation.

The MUI Institute enacted Policy No.1/MUNAS/VII/MUI/5/2005, which addresses Intellectual Property Rights (IPR) protection, with a specific focus on copyright as the exclusive prerogative of the creator or rightful recipient of such rights. This policy aligns with the provisions outlined in Law No. 28/2014 concerning copyright, a legal framework that has undergone revisions from its predecessor, Law No. 19/2002. The significance of IPR protection lies in its role in accrediting the endeavors of creative economy participants, as it ensures the integrity of their creations and mitigates the risk of infringement, which could adversely affect all involved parties. Scholars from the Maliki, Shafi'i, and Hanbali schools of thought have concurred on the notion that original and beneficial copyrights represent valuable assets that can be ethically utilized in accordance with Islamic legal principles. This consensus underscores the criticality of IPR protection in furnishing assurances to creative economy stakeholders who utilize their copyrights as collateral for accessing credit financing.

The utilization of Intellectual Property (IP) assets to secure credit financing loans has emerged as a global concern, with an increasing number of multinational corporations and micro, small, and medium enterprises (MSMEs) leveraging IP assets to secure necessary capital. Concurrently, lending institutions worldwide are recognizing IP as viable credit collateral. However, the World Trade Organization (WTO) underscores the significance of financing for innovation, noting the challenges in accessing credit financing, particularly from traditional financial entities like banks. Efficient financial markets are pivotal in fostering economic growth through technological innovation. The research focuses on Indonesian government regulations pertaining to the facilitation of credit financing for stakeholders in the creative economy, specifically addressing the use of IP assets as collateral. It aims to analyze the regulatory framework post the issuance of Presidential Regulation No. 24/2022. The inquiry will delve into factors both facilitating and impeding the provision of credit financing secured by intellectual property collateral to banking institutions. How do Indonesian government regulations govern the provision of facilities for actors in the creative economy concerning the granting of credit with intellectual property (IP) collateral. What factors support or inhibit the provision of credit

financing with IP collateral to banking institutions following the issuance of PP No.24/2022.

B. Research Method

Research methodology is normative-empirical legal research. Normative legal research entails an examination of law through the lens of statutory rules, while empirical legal research involves the systematic collection of empirical data via direct observation and interviews. The methodological approaches employed encompass statutory analysis, conceptual exploration, and case studies. Primary legal sources predominantly consist of legislation, while secondary legal sources encompass pertinent legal and non-legal references. Data collection techniques involve rigorous analysis and interpretation of collected data, facilitating a comprehensive understanding and interpretation to pinpoint issues and devise suitable solutions.

C. Discussion

1. Epistemology of Intellectual Property Rights in Legal Framework

Intellectual property includes rights related to literary, artistic, and scientific works; performances by artists, photographs, and broadcasts; inventions in various fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields. Generally, intellectual property rights are negative rights, meaning they aim to prevent others from taking certain actions without the consent of the rights holder. However, there are also positive rights, such as the granting of patents. Patents provide protection for technological inventions and design rights for the appearance of mass-produced goods for limited periods. Copyrights cover literary, artistic, and musical works for longer durations, while trademarks are protected against copying as long as the brand remains active in the market. All of these fall under the umbrella of intellectual property rights; the term “industrial property” is sometimes used to cover all subjects except copyrights. Patents are granted for inventions that are novel and distinct from previous works. According to the latest European standards, patents are issued by a state or regional patent office following an examination of their validity. They are valid for a maximum of 20 years

from the application date and require public disclosure of the patent in a manner that describes the purpose of the invention. Patents are unique because they grant the owner the right to prevent others from using the invention in their products and services. They are not available for any industrial improvements; there must be a patentable invention.⁷

The concept of intellectual property (IP) gained prominence between the 16th and 18th centuries as businesses sought ways to safeguard their products and innovations from unauthorized replication. During this period, the expansive reach of European colonialism played a significant role, as it necessitated mechanisms for protecting commercial interests across newly acquired territories. As a result, the need for standardized IP regulations became increasingly apparent. The Paris Convention of 1883 marked a pivotal moment in the evolution of IP regulation, providing a foundational framework for international protection. This framework was subsequently embraced and refined at the national level throughout the early 20th century, leading to more robust and comprehensive IP laws worldwide.⁸

Intellectual Property Rights (IPR) are legal protections granted to inventors or creators for their original works and discoveries. These rights recognize and reward the intellectual effort involved in creating something new. The World Intellectual Property Organization (WIPO), a specialized agency of the United Nations, is responsible for addressing issues related to IPR on a global scale. Intellectual property covers a broad spectrum of creations, such as inventions, literary and artistic works, and commercial elements like symbols, names, images, and designs. These rights help ensure that creators can benefit from their work and prevent others from using it without permission.⁹

Intellectual property encompasses a spectrum of rights spanning various creative and innovative domains, including literary, artistic, and scientific works, performances, inventions, scientific discoveries, industrial designs, trademarks, service marks, and commercial names. These rights also extend to protection against

⁷ Ilayda Nemlioglu, A Comparative Analysis of Intellectual Property Rights : A Case of Develop versus Developing Countries, 3rd World Conference on Technology, Innovation and Entrepreneurship (WOCTINE), *Procedia Computer Science* 158, 988-998, 2019, <https://doi.org/10.1016/j.procs.2019.09.140>

⁸ Christopher Foster, Intellectual property rights and control in the digital economy: Examining the expansion of M-Pesa, *The Information Society*, 40:1, 1-17, 2024, DOI: 10.1080/01972243.2023.2259895

⁹ Khoirul Hidayah, *Hukum Hak Kekayaan Intelektual*, (Malang : Setara Press:, 2017), p.17.

unfair competition and encompass all other rights arising from intellectual activities in industry, science, literature, or art. Intellectual Property Rights predominantly operate as negative rights, serving to prevent unauthorized use or reproduction of protected works or inventions without the explicit consent of the rights holder. However, there are instances of positive rights, such as the granting of patents, which actively confer exclusive rights to the inventor or creator for a designated period.¹⁰

Intellectual Property Rights (IPR) represent tangible legal entitlements derived from intellectual creations, originating from the faculties of reason and ingenuity. Conversely, there exists a parallel realm of intangible assets stemming from emotional labor a fusion of rational and emotional endeavors—which culminate in what is aptly termed intellectual labor.¹¹ The outcomes of this endeavor manifest as immaterial entities, akin to intangible creations like songwriting. The process of crafting a sound, notably rhythm, necessitates cognitive effort. Biologists posit that the right hemisphere of the brain contributes to the experience of art, fantasy, spirituality, socialization, and emotional regulation. These functions are characterized by non-verbal, metaphorical, intuitive, imaginative, and emotional aspects. Specialization within this realm is marked by intuitive, holistic approaches capable of processing information concurrently.¹²

Intellectual property rights (IPR) manifest as intangible movable assets, initially recognized in Anglo-Saxon jurisdictions under the common law system. However, IPR is also acknowledged within civil law frameworks. Legal objects encompass all entities that legal subjects, whether individuals or corporate entities, can utilize. Objects, as defined, are entities capable of being assigned rights under the law and can significantly impact economic value. Thus, IPR objects, being assets, are transferable to other parties through various means such as sale and purchase transactions, inheritance, grants, and notably, licenses. License agreements serve as a common method for delegating IPR, wherein the essence of the agreement bestows the right to

¹⁰ Ilayda Nemlioglu, A Comparative Analysis of Intellectual Property Rights: A case of Developed versus Developing, *Procedia Computer Science* 158 (2019) 988–998, . Published by Elsevier B.V ,<https://doi.org/10.1016/j.procs.2019.09.140>

¹¹ Ok Saidin, *Aspek Hukum Hak Kekayaan Intelektual*. (Jakarta: PT. Rajagrafindo Persada, 2015), p. 27.

¹² Yoyo Arifardhani, *Hukum Hak atas Kekayaan Intelektual Suatu Pengantar*, (Jakarta: Kencana, 2020), p.7-8.

utilize intellectual property, including logos, brands, trade names, patents, and trade secrets, in exchange for royalties or fees from the licensee to the licensor.¹³

In the realm of Intellectual Property Rights (IPR), the concept of “property” is often juxtaposed with tangible possessions. It can be understood as wealth owned by an individual, with “intellectual property” encapsulating this notion. IPR establishes a relationship between individuals and the objects of their ownership, which in this context are creations resulting from ideas. Ownership confers certain rights applicable to all. Fitzgerald delineates the characteristics and entitlements of ownership as follows:¹⁴

- a. The owner possesses the right of ownership over the goods, even if control is not absolute; the primary entitlement to the goods remains with the original right holder.
- b. The owner enjoys the liberty to utilize and derive benefits from the owned goods, with the freedom to engage in actions concerning them.
- c. The owner retains the authority to consume, impair, or transfer the goods as deemed appropriate.
- d. The owner's rights are perpetual, lacking a defined temporal limit. Ownership is characterized by its residual nature, implying that property rights encompass what remains after other rights have been allocated to other parties.

Roscoe Pound offers an insightful analysis of the pivotal role property plays in the economic fabric of society, encapsulated within four essential elements:¹⁵

- a. The imperative need for individuals to exert control over property and natural resources, essential for sustaining human life.
- b. The inherent right to exercise freedom in industry and contracting, stemming from one’s ownership of property. This autonomy is crucial as societal structures heavily rely on specific occupations, and the ability to freely choose one’s course of action is fundamental to every individual.
- c. The expectation of promised returns on investment holds significant monetary value. This underscores the necessity for protection against interference from external parties that could disrupt economic transactions, be it in contracts,

¹³ Khoiril Hidayah, *Hukum Hak Kekayaan Intelektual*, (Malang : Setara Press, 2017), p.19.

¹⁴ Rami M. Olwan, *Intellectual Property : Principles and Practice*, (Australia, Thomson Reuters, 2022), p.6-7

¹⁵ Sophar Maru Hutagalung, *Hak Cipta Kedudukan dan Peranannya dalam Pembangunan*, (Jakarta : Sinar Grafika, 2012), p. 132-133.

commercial dealings, employment relationships, or even within households. Legal safeguards are indispensable in ensuring the stability and integrity of these economic relationships, particularly in the context of global demands where profitability hinges on non-interference. By embracing these principles, societies can foster an environment conducive to economic growth and prosperity, where individuals are empowered to pursue their economic endeavors with confidence and security.

The context of Intellectual Property Rights (IPR) is delineated in accordance with the “Decree of the Minister of Law and Legislation No. M03-PR.07.10 of 2000 concerning the Organization and Work Procedures of the Department of Law and Legislation,” as well as the “Approval Letter of the State Minister for Administrative Reform No. 24/M/PAN/1/2000.” The Directorate General of Intellectual Property Rights (DJHKI), as outlined in Article 31 of Presidential Decree No. 144/1998, which amended Presidential Decree No. 61/1998 regarding the Position, Duties, Organizational Structure, and Work Procedures of the Department General of Copyright, Patents, and Trademarks, has evolved into DJHKI. Various theories underpin the protection of IPR, encompassing reward theory, recovery theory, incentive theory, and risk theory. Reward theory posits that creators or inventors who produce innovations or creations warrant protection and acknowledgment for their efforts. Conversely, recovery theory maintains that creators or inventors, expending energy, time, and financial resources in their creative endeavors, should have the opportunity to recoup their investments. Incentive theory asserts that incentives are essential to attract interest, effort, and financial backing for the realization and advancement of creative breakthroughs, thereby stimulating ongoing research endeavors. Lastly, risk theory underscores that intellectual property represents endeavors fraught with risks, thus justifying the provision of protective measures for activities entailing such inherent risks.¹⁶

Intellectual property rights (IPR), as viewed through the lens of material law, encompass intangible objects due to their potential for transfer. The concept of intellectual capital (KI) hinges on the notion of human-produced intellectual work, necessitating significant investments of energy, time, and resources. These investments imbue the resulting work with economic value, stemming from the

¹⁶ Yoyo Arifardhani, *Hukum Hak atas Kekayaan Intelektual Suatu Pengantar*, (Jakarta: Kencana, 2020), p. 8.

benefits it confers. This understanding underscores the imperative for recognizing and safeguarding intellectual property (IP) through legal protection as a means of acknowledging and incentivizing creative endeavors.¹⁷

Robert P. Merges elucidates the expansiveness of Intellectual Property (IP) through its stringent requirement for authorized usage, emphasizing the necessity of owner consent. He explains that IP clearly delineates the boundaries of permissible asset utilization under the owner's jurisdiction, distinguishing between what falls within or outside the realm of their authority. This means that any use of the intellectual property without the owner's explicit permission is considered unauthorized and potentially illegal. Moreover, while IP rights can be broadly transferred through licenses or sales, the owner retains control over the aspects of the intellectual property that remain unassigned. This ensures that the owner maintains continued ownership and oversight over their intellectual property, safeguarding their rights and interests even after partial transfers.¹⁸

Intellectual property (IP) protection is governed by two primary principles: the first-to-file system and the first-to-use system. The first-to-file system operates on a registration basis, whereby priority is given to the party who first files for IP protection. In the event that two individuals file for IP protection on the same day for the same subject matter, priority is granted to the filer who submitted their application first. On the other hand, the first-to-use system prioritizes the individual who first utilizes the intellectual property. The owner of the IP eligible for registration is determined by the party who initially employs the intellectual property. It is worth noting that the United States is the sole country that adheres to the first-to-use system.¹⁹

Intellectual Property Rights (IPR) represent an exclusive privilege granted by the state to an individual, a collective entity, or an institution, conferring the authority to utilize and accrue benefits from intellectual property owned or generated. Intellectual property, stemming from human creativity and ingenuity, can manifest as inventions,

¹⁷ Maria Alfons, Implementasi Hak Kekayaan Intelektual Dalam Perspektif Negara Hukum. Badan Pengembangan Sumber Daya Manusia Hukum dan Hak Asasi Manusia Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, Vol.14 No.03, 2018, <https://ejurnal.peraturan.go.id/index.php/jli/article/view/111>, p.304

¹⁸ Robert P Merges, "What Kind of Rights Are Intellectual Property Rights?" Forthcoming in Rochelle C Dreyfuss & Justine Pila. *The Oxford Handbook of Intellectual Property Law*. RP Merges, 2017, p.4

¹⁹ Andry Setiawan, et.al, Eksistensi Pendaftaran Rahasia Dagang dan Implementasi Perlindungannya (Studi di Kanwil Kemenkumham Jawa Tengah), *Jurnal Law and Justice*, Vol. 3 No.2, 2019, DOI: <https://doi.org/10.23917/laj.v3i2.7123>, p. 77.

designs, artistic works, literary compositions, or the practical implementation of concepts. Possessing economic significance, it is deemed a valuable commercial asset. Indonesia operates under a first-to-file framework for IPR registration, wherein registration rights are bestowed upon the party who initially submits an application to the Director General of Intellectual Property.²⁰

The legal protection of human intellectual works holds paramount importance in Western and advanced industrial societies, which have pioneered the development of the Intellectual Property Rights (IPR) system. This emphasis stems from the recognition that intellectual properties encompass various forms of creative expressions, including art, literature, technological innovations, designs, brands, and other intellectual works originating from human ingenuity, necessitating significant investments of time, energy, and financial resources.²¹ The TRIPs Agreement, outlined in Annex 1C of the World Trade Organization (WTO), mandates member countries to adhere to and enforce universal standards for the comprehensive protection of IPR. Indonesia, by enacting Law No. 7/1994, formally ratified its commitment to the WTO, including adherence to the TRIPs Agreement. However, from the perspective of the Vienna Convention on the Law of Treaties of 1969, the ratification of a treaty imposes legal obligations on member countries to harmonize and align their national legislation with the agreed-upon legal provisions outlined within the respective treaty.

IPR is defined as intellectual property rights. The term "property rights" is already a standard term in legal literature. However, not all intellectual property rights constitute actual property rights in the strictest sense. In Anglo-Saxon literature, this is referred to as IPR. It can be concluded that the term intellectual property rights (HKI) is used officially, in accordance with the Decree of the Minister of Law and Legislation Number M.03-PR.07.10 of 2000. The directorate that handles these matters is called the Directorate General of Intellectual Property Rights (DJHKI), as stated in Article 31 of Presidential Decree No. 144/1998, which amends Presidential Decree No. 61/1998 concerning the Position, Duties, Organizational Structure, and Work Procedures of Departments, as amended several times, most recently by

²⁰ Andry Setiawan et al, Eksistensi Pendaftaran Rahasia Dagang dan Implementasi Perlindungannya (Studi di Kanwil Kemenkumham Jawa Tengah), *Law and Justice*, 3(2), 74-81, 2018, DOI: <https://doi.org/10.23917/laj.v3i2.7123>

²¹ Ni Ketut Supasti Dharmawan et al, *Hak Kekayaan Intelektual (HKI)*, (Sleman, Deepublish, 2016), p.28

Presidential Decree No. 142/1998. The renaming of the directorate general of copyright, patents, and trademarks to DJHKI is in accordance with Article 4 of Presidential Regulation No. 44/2015 concerning the Ministry of Law and Human Rights.²²

2. National Financial Institution Creative Economy Credit Financing

The global economy has undergone profound transformations, with a notable shift towards a knowledge-based paradigm where intangible assets reign supreme, surpassing the value of tangible counterparts. The world's top-ranking companies exemplify this trend, with Apple, Microsoft, Amazon, Alphabet (Google), and Facebook leading the pack. These companies predominantly rely on intangible assets, as evidenced by their staggering market valuations of 150.8 trillion (USD 2.051 billion), 130.7 trillion (USD 1.778 billion), 114.5 trillion (USD 1.558 billion), 102.4 trillion (USD 1.393 billion), and 61.7 trillion (USD 839 billion), respectively, as of March 31, 2021. According to the Global Intangible Finance Tracker 2020, physical assets constitute a mere fraction of these companies' net worth, with Amazon's standing at 4%, Apple at 6%, Microsoft at 7%, Facebook at 16%, and Alphabet at 26%. Brand Finance's 2020 report further underscores this trend, revealing that over 16% of patent shares in the US are utilized as collateral at any given time, highlighting the increasing significance of intangible assets in the contemporary economic landscape.²³

Banks hold a distinctive significance due to their liabilities, encompassing banknotes, coins, and deposits, which are acknowledged as a medium of payment or exchange, constituting money. This unique role enables them to serve as key facilitators of financial transactions and economic activity. Through the facilitation of central banks, banks possess the ability to generate additional money to cater to the needs of individuals, businesses, and governments. These distinctive attributes, coupled with their balance sheet structure, position banks in a unique realm of inherent instability, necessitating robust regulation and supervision. As a result, regulatory frameworks and supervisory measures are essential to ensure the stability

²² Rachmadi Usman, *Dasar-Dasar Hukum Kekayaan Intelektual*, (Jakarta: Kencana, 2021), p. 3-4

²³ Panda, B., & Joy, S, Intellectual Property Rights-based Debt Financing to Startups: Need for a Changing Role of Indian Banks. *Vikalpa*, 46(3), 2021, 143-152. <https://doi.org/10.1177/025609092111041817>

and integrity of the banking system, preventing potential crises that could have widespread economic repercussions.²⁴

Banks hold a central position in a country's economy as key providers of credit and financial liquidity, making the management of bank capital paramount. Heavily regulated by central banking authorities, banks must adhere to stringent regulatory rules governing their capital. They engage in various transactions aimed at effective capital management, all subject to regulatory oversight. Furthermore, banks fulfill crucial roles through their commercial activities, facilitating loans and deposits. They extend credit to individuals, companies, and other financial institutions, thereby stimulating business investments and fostering economic growth.²⁵

The term "Banco" originates from the word "bench" symbolizing the historical practice of conducting financial transactions on benches in marketplaces. Bankers, commonly referred to as actors, facilitate operational activities within banks to serve customers. Banks represent entities within the financial industry that offer services to the public, operating as legal entities primarily focused on gathering funds from third parties. They act as intermediaries, channeling credit requests and offers within specified timeframes. G.M. Verryn Stuart elucidated that banks serve as the primary entities responsible for creating credit to fulfill credit requirements, utilizing either their own payment mechanisms or funds acquired from others. This process involves circulating new forms of exchange, typically in the form of demand deposits, to address the demand for credit.

Banks, as financial institutions, engage in banking activities primarily involving the collection of funds from the broader community, termed funding activities. Funding entails acquiring funds by soliciting investments from the wider community. The banking practices in Indonesia are governed by the Banking Law. In terms of functionality, banks vary in the breadth of activities they undertake and the range of products they offer, as well as their operational scope, ultimately directing funds by extending public credit through loans. These loans are tailored to suit the needs and preferences of the customers. According to Black's Law Dictionary, a bank is a financial institution responsible for the acceptance of deposits, lending, currency exchange, or money issuance, and for facilitating fund transfers. In the case of Federal

²⁴ AP Faure, *Investment : An Introduction* 1st Edition. Grahamstown: Quoin Institute Limited., 2013, p. 7, <http://lib.ibs.ac.id/repository/banking-an-introduction.pdf>

²⁵ Moorad Choudhry, *An Introduction to Banking : Principles, Strategy and Risk Management*, (United Kingdom : John Wiley & Sons Ltd), 2018, p.12.

Mortgage Bank of Nigeria vs. Nigeria Deposit Insurance Corporation, the Supreme Court of Nigeria defines a bank as an entity or establishment providing financial services.²⁶

The banking sector plays a pivotal role in regulating the lifeblood of the national economy. A seamless flow of capital is essential to sustain economic activities. Fostering public trust in banking stands as a cornerstone of the bank's mission, facilitating the provision of credit to customers to bolster economic advancement. The primary objective of extending banking credit is to empower local businesses to actively contribute to national development endeavors. Such credit provision represents a crucial effort by the bank, acknowledged and supported by the government's developmental initiatives aimed at enhancing the standard of living and welfare of the populace.²⁷ Business banking relies on the principle of safeguarding customer funds within financial institutions. By encouraging savings within the banking system, the aim is to facilitate and bolster business endeavors undertaken by customers. Upholding trust in banks is essential, and this trust is fortified by both governmental support and community confidence. It is through this symbiotic relationship that the banking sector can effectively contribute to economic prosperity and overall financial stability.

Banks, as vital financial institutions in Indonesia, play a pivotal role in the national economic landscape, supporting development efforts aimed at fostering a just and prosperous society. They function as intermediaries, efficiently collecting public funds and directing them towards entities in need, thereby facilitating the flow of capital between surplus units and those requiring funds. According to Shelagh Heffernan, banks serve as intermediary institutions for two primary reasons: Firstly, the presence of information costs hampers potential lenders' ability to identify suitable borrowers independently, necessitating the intervention of intermediaries. Secondly, divergent liquidity preferences between lenders and borrowers further underscore the importance of intermediary functions in the financial ecosystem.²⁸

²⁶ Matthew Enya Nwocha, *Banking Law and Economic Development in Nigeria: Contributions and Constraints of the Banks and Other Financial Institutions Act*, Beijing Law Review, Vol.8 No.4, 2017, DOI: 10.4236/blr.2017.84025

²⁷ H. Bachtiar Simatupang, *Peranan Perbankan dalam Meningkatkan Perekonomian Indonesia*, Jurnal Riset Akuntansi Multiparadigma (JRAM), 6(2), 136-146, 2019, <https://jurnal.uisu.ac.id/index.php/JRAM/article/view/2184>

²⁸ Andika Persada Putera, *The Prudential Principle as The Basis in Implementing Banking Transaction*. Hang Tuah Law Journal. 4 (2). 52-60. 2020, <https://law-journal.hangtuah.ac.id/index.php/jurnal/article/view/16/26>, p.53.

The Indonesian banking sector operates under the principle of prudence, serving as a cornerstone in the collection and allocation of public funds. Its primary objective is to bolster national development efforts, fostering equitable growth, economic stability, and an enhanced standard of living for the Indonesian populace. Tracing back through the annals of Indonesian banking history, the essence of financial institutions is encapsulated in the decree issued by the Minister of Finance of the Republic of Indonesia under No. 792/1990, defining them as entities engaged in financial activities, facilitating the collection and distribution of funds to the public, particularly to fuel corporate investments.

Bank activities aimed at collecting funds from the public and companies, subsequently channeling them into productive ventures across various economic sectors such as agriculture, mining, and services, serve to augment both national income and community wealth. The efficacy of these endeavors heavily relies on the credit distribution policies adopted by banks, as they delineate the allocation of public funds. When extending credit, banks must conduct meticulous credit analyses to ensure that the funds allocated do not readily sour into bad debts. A surfeit of non-performing assets would inevitably stymie the bank's capacity to meet its obligations to depositors. Consequently, the bank's ability to honor public deposits hinges upon its proficiency in recouping loans extended to debtor customers.

According to POJK No. 32/POJK.03/2018, credit is defined as the availability of funds or their equivalents, based on an agreement or lending arrangement between a bank and another party, obligating the borrower to repay the debt with interest within a specified period. BI Regulation No. 17/12/PBI/2015 defines MSME credit or financing as funds provided to business entities that meet MSME criteria. Article 2 mandates commercial banks to allocate a minimum of 20% of total credit or financing towards MSMEs. Consumer credit, as outlined in BI regulation, refers to a contractual agreement not backed by collateral, wherein a creditor extends or commits to extend credit to a consumer in various forms such as loans or financial accommodations. Consumer credit is classified into installment and non-installment categories. Installment credit necessitates consumers to repay principal and interest in equal periodic payments over an agreed period, typically monthly. Types of consumer credit encompass credit cards, personal loans, overdrafts, high-cost short-term loans, credit for acquiring goods or services, hire purchase, and installment purchases.

Banking credit provision to the public constitutes the largest component of bank assets, serving as the primary determinant of banks' performance and influencing their ability to fulfill their functions of collecting and allocating public funds. In the process of soliciting funds from the public through savings, banks concurrently operate as credit or financing institutions, as outlined in Article 6, sections b and m of Law No.10/1998. However, in practice, a significant portion of the credit extended by banks remains unrecovered from customers (debtors), exposing banks to business risks and ultimately resulting in credit impairments. The prevalence of non-performing loans poses a substantial challenge to the banking sector, representing a significant social and economic concern.²⁹

Credit regulations in Indonesia pertain to legal provisions within the banking sector. The definition of credit is outlined in Article 1, Number 11 of Law No. 10/1998, where credit is described as the provision of money or equivalent bills, facilitated through a formal agreement between a bank and another party. This agreement permits the borrowing party to settle their debt after a predetermined period, typically accompanied by interest payments. Additionally, according to PBI No. 72/PBI/2005, Article 1, Point 5 elaborates that credit encompasses the provision of money or bills, or their equivalents, established through an agreement between a bank and another party. This arrangement allows the borrowing party to repay the debt within a specified timeframe, typically involving the payment of interest. Notably, this definition includes overdrafts, which represent negative balances on customer checking accounts that cannot be settled in full by the end of the day. It also encompasses activities such as the acquisition of bills within factoring operations, as well as the acquisition or purchase of credit from third parties.

Banks are mandated to facilitate inclusive financing, encompassing the provision of credit or financing both directly and within the supply chain. The inclusive financing referred to entails banks providing capital funds to Micro, Small, and Medium Enterprises (MSMEs) in the form of the local currency, Rupiah, as stipulated in "PBI No.24/3/PBI/2022 concerning Macroprudential Inclusive Financing Ratios for Conventional Commercial Banks, Sharia Commercial Banks, and Sharia Business Units". Article 6 of PBI No.24/2022 elucidates that credit is extended by financial service institutions such as People's Credit Banks or Sharia People's Financing Banks,

²⁹ Rachmadi Usman, *Hukum Jaminan Keperdataan*, (Jakarta: Sinar Grafika, 2008), p.ix.

non-bank financial service institutions, and through collaborative arrangements with public service agencies and/or business entities authorized to manage bank funds for inclusive financing, in alignment with statutory provisions.

This financing scheme is tailored for participants in the creative economy possessing commercially valuable intellectual property, duly registered with the relevant intellectual property rights (IPR) institution, thus serving as eligible collateral for both banking and non-banking financial institutions. Credit financing against intellectual property is governed by Article 7, Paragraph 2, which stipulates specific conditions, including the submission of financing applications, the establishment of a creative economy enterprise, engagement with intellectual property related to creative economy products, and possession of an IP registration letter or certificate.

Business activities conducted by banks are inherently fraught with risks, necessitating the implementation of effective risk management strategies. Article 29, paragraph 3 of the Banking Law underscores this obligation, stating that banks must employ methods in providing credit or financing based on Sharia principles and other business endeavors that safeguard both the bank and the interests of its customers. Hence, it is imperative for banks to manage these risks diligently. Regulatory frameworks such as POJK No.18/POJK.03/2016 and SEOJK No.34/SEOJK.03/2016 specify the definition of risk as the potential for loss stemming from specific events, underscoring the imperative for risk management. Risk management is delineated as a comprehensive set of methodologies and procedures aimed at identifying, measuring, monitoring, and mitigating risks arising from all banking activities. The presence of collateral is indispensable for mitigating lending risks, particularly when debtors fail to meet their credit obligations. Indonesian governmental regulations, exemplified by PP No.24/2022, a derivative of Law No.24/2019 on the Creative Economy, facilitate credit financing assistance to creative economy stakeholders. This assistance, agreed upon by both lending and borrowing parties from banks and non-bank financial institutions, necessitates the repayment of funds over a specified period, accompanied by interest or profit sharing.

Banks are mandated to uphold public trust, a responsibility contingent upon effective management. Sound bank management necessitates adherence to principles of bank health, as outlined in Article 29, Paragraph 2 of the Banking Law. Banks are required to maintain soundness levels in accordance with prescribed criteria,

encompassing capital adequacy, asset quality, management quality, liquidity, profitability, solvency, and other facets pertinent to banking operations, while conducting business activities in alignment with the precautionary principle. Within a bank's balance sheet, the predominant allocation of operational funds materializes in the form of credit. Despite serving as a primary income source through interest, credit constitutes the principal source of operational risk for banks. Problematic credit has the potential to deteriorate into non-performing assets, precipitating financial losses for both the bank and its depositors, thereby compromising the institution's financial liquidity and overall health.

This financing scheme is exclusively designed for participants in the creative economy possessing commercially valuable intellectual property that has been officially registered with the pertinent institution issuing Intellectual Property Rights (IPR) certificates. Such intellectual property can serve as collateral for debt with both banking and non-banking financial institutions. Credit financing based on intellectual property is governed by Article 7, Paragraph 2, which outlines specific conditions, including the submission of a financing proposal, establishment of a creative economy business, engagement in activities related to intellectual property for creative economy products, and possession of an intellectual property registration letter or certificate.

In developing countries, such as Indonesia, the primary function of major banks revolves around extending credit, making it their cornerstone activity. Consequently, interest income derived from credit stands as the foremost revenue stream, overshadowing earnings from ancillary fee-based services. The allocation of credit demands a meticulous approach, characterized by thorough analysis, judicious distribution, rigorous supervision, and vigilant monitoring. It necessitates the formulation of legally sound agreements, fortified by robust collateral and comprehensive documentation, ensuring timely repayment in accordance with contractual obligations. On a bank's balance sheet, credit assets constitute the predominant portion of operational funds, underscoring its pivotal role in financial operations. While credit remains the principal revenue driver, it also exposes banks to significant business risks³⁰. In practice, banks adhere to the prudent principles outlined in Article 8 of the Banking Law, commonly known as the "6C" principle,

³⁰ Etty Mulyati, *Kredit Perbankan Aspek Hukum dan Pengembangan Usaha Mikro Kecil Dalam Pembangunan Perekonomian Indonesia*, (Bandung, Refika Aditama, 2016), p. 83-84

which emphasizes character, capacity, capital, collateral, economic conditions, and constraints as vital considerations in the credit assessment process.³¹

By implementing these measures effectively, the bank can enhance its risk management practices and uphold the principles of responsible lending while safeguarding its interests and those of its customers. According to John Rawls, when individuals are bound by a contract with one another, they are afforded liberty by prioritizing the positions of both parties to achieve justice. Rawls delineates two fundamental principles of justice: firstly, the principle of greatest equality stipulates that each individual should possess identical rights to the fullest extent of basic freedoms, ensuring that these freedoms are as comprehensive as those enjoyed by all others. Central to this principle is the assurance of fundamental human rights for every individual, thereby attaining justice through parity in freedoms. Secondly, social and economic disparities must be governed by two additional principles: the principle of fair equality of opportunity and the principle of difference.³²

The banking industry serves as the lifeblood of a country's economy, playing a crucial role in fostering the growth of various sectors, particularly within the creative economy. Banks are integral to national development, facilitating sustainable progress and promoting a just and prosperous society in line with Pancasila and the 1945 Constitution of the Republic of Indonesia. Through their ability to provide essential financial services and support, banks help drive economic innovation and expansion. They offer critical funding and resources necessary for businesses to thrive, thus contributing significantly to the overall economic stability and growth. Consequently, the strategic importance of banks cannot be overstated, as they underpin the financial infrastructure required for a vibrant and dynamic economy.

At the core of this strategic importance lies the fundamental function of banks: aggregating funds from the public and reallocating them into the community through credit provision. This pivotal role is legally supported by Article 6(b) of Banking Law No. 10/1998, which explicitly outlines the business activities of banks, including the provision of credit. Furthermore, the essence of the relationship between banks and their clientele is underscored by a principle of trust, as detailed in Article 29,

³¹ Etty Mulyati, *Kredit Perbankan Aspek Hukum dan Pengembangan Usaha Mikro Kecil Dalam Pembangunan Perekonomian Indonesia*, (Bandung, Refika Aditama, 2016), p. 83-84

³² M. Taufik, *Filsafat John Rawls tentang Teori Keadilan*, *Mukaddimah Jurnal Studi Islam*, 19 (1), 41-63, 2013, <https://digilib.uin-suka.ac.id/id/eprint/33208/1/Muhammad%20Taufik%20-%20Filsafat%20John%20Rawls.pdf>

paragraphs 3 and 4 of the same legislation. This trust-based relationship is crucial for the smooth functioning of financial systems, ensuring that banks can effectively manage and distribute resources. Consequently, banks ability to fulfill their role in the economy is deeply intertwined with maintaining public confidence and adhering to legal standards, reinforcing their significance within the financial sector.

Paragraph 3 emphasizes that banks, when extending credit or financing based on Sharia principles and undertaking other business activities, are obligated to utilize methods that protect the interests of both the bank and its customers who have entrusted their funds. Similarly, Paragraph 4 underscores banks responsibility to provide customers with detailed information about potential risks associated with transactions conducted through the bank, promoting transparency and enabling customers to make well-informed decisions. In essence, the pivotal role of the banking sector in Indonesia's national development stems from its ability to mobilize and allocate funds effectively, while adhering to principles of trust and transparency in customer interactions. This dual commitment not only supports economic growth but also cultivates an environment conducive to societal well-being and prosperity.

Risk entails the obligation to absorb losses stemming from external events affecting the contracted objects, with force majeure often serving as its root cause. In case of default, compensation typically serves as the initial recourse. According to Article 1237 of the Civil Code, risk associated with a contract for a specific item falls upon the debtor from the contract's inception. If the specified item is destroyed before delivery due to an event beyond either party's fault, the recipient bears the loss.

Bank-provided credit inherently carries risks, notably credit risk—the potential loss arising from the lender's inability or unwillingness to fully repay the borrowed funds at maturity or thereafter. Effective bank supervision plays a crucial role in ensuring standardized credit approval and monitoring processes. Objective credit-granting standards grounded in sound credit principles should be articulated in a written policy encompassing credit-granting criteria, approval procedures, credit administration protocols, and documentation transmission, along with ongoing credit monitoring. Credit analysis serves as a pivotal preventive measure, acting as the primary filter to mitigate the risks associated with problematic loans when conducted professionally. The primary objective of credit analysis is to evaluate the potential debtor's capacity and willingness to repay the loan and fulfill interest obligations as

stipulated in the credit agreement. The bank's assessment outcomes can provide insight into the level of risk associated with granting the requested credit.³³

In 2022, the Indonesian government introduced a policy allowing "intellectual property rights" to serve as collateral for debts, provided the intellectual property (referred to as IP) is duly recorded and registered with the Ministry of Law and Human Rights, whether managed individually or transferred to other parties. Article 9 of Presidential Regulation No. 24/2022 outlines the implementation of an intellectual property-based financing scheme, enabling both banks and non-bank financial institutions to utilize intellectual property as collateral through fiduciary guarantees, creative activity contracts, and/or collection rights in creative endeavors. Despite the enactment of Law No. 24 of 2019, which addresses aspects of the creative economy, the Director of Creative Industry Intellectual Property Development at the Ministry of Tourism and Creative Economy noted that no banks currently extend credit solely based on intellectual property rights, often requiring additional collateral for objects of commercial value. The Financial Services Authority (OJK) subsequently issued regulations post PP No. 24/2022 to enforce Law No. 24/2019, particularly focusing on intellectual property-based financing. Intellectual property (IP) encompasses intangible creations of the intellect, recognized by most countries, and includes various types of intellectual property rights (IPR). The Chief Executive of OJK's Banking Supervision Division disclosed ongoing assessments related to valuation, availability in secondary markets, evaluation for intellectual property rights liquidation, and legal infrastructure for executing intellectual property rights. Ultimately, the decision to grant credit rests with banks, contingent upon risk assessment of potential borrowers, with the choice of collateral or guarantee dictated by the bank's risk appetite and the nature of the credit scheme, as well as the borrower's capacity.³⁴

Financing within the framework of the Creative Economy Policy Program originates from the State Budget (APBN), Regional Budgets (APBD), and/or other lawful sources. The allocation of funds through the APBN or APBD is contingent upon the financial capabilities of the state or respective regions. As defined in Article 1, Clause 3, "financing or credit" refers to the disbursement of funds or their

³³ Trisadini P. Usanti & Abd. Shomad, *Hukum Perbankan*, (Jakarta : Kencana, 2017) p.. 136

³⁴ Antara, *OJK Kaji Kelayakan Hak Kekayaan Intelektual jadi Jaminan Kredit Bank*, 2022, <https://www.antaraneews.com/berita/3017561/ojk-kaji-kelayakan-hak-kekayaan-intelektual-jadi-jaminan-kredit-bank>

equivalent, based on an agreement or loan contract between a financial institution, whether bank or non-bank, and another party. Such agreements obligate the recipient to reimburse the principal amount or equivalent after a stipulated period, along with compensation in the form of interest or profit-sharing. Article 1, Clause 4 delineates the Intellectual Property-based financing scheme as a financial arrangement wherein intellectual property assets serve as collateral for debts extended by bank financial institutions or non-bank financial institutions to stakeholders within the creative economy sector.

Intellectual property can serve as collateral for debt under specific conditions, including: 1) registration with the relevant governmental body overseeing legal affairs, and 2) commercialization or transfer of rights to a third party. The governmental body responsible for legal affairs provides accessible data on such intellectual property for use as collateral to both banking and non-banking financial institutions, as well as the public. Evaluation of intellectual property as collateral for debt employs various approaches such as the cost, market, and income approaches, in accordance with established assessment standards. Entities within the creative economy sector are required to record any financing received from either banking or non-banking financial institutions in a designated facilitation system administered by the governmental body overseeing the creative economy sector. Moreover, creative economy actors receiving financing from non-banking financial institutions are eligible to obtain guarantee facilities through authorized guarantee companies, in compliance with relevant regulations.³⁵

Furthermore, each bank is mandated to establish specific criteria governing the granting of credit within their credit application and approval processes. Among these criteria lies the bank's risk acceptance standards, which encompass the evaluation of business prospects and the repayment capacity of prospective debtors. Banks utilize credit scoring mechanisms to analyze the payment capabilities of potential debtors. If the prospective debtor aligns with the bank's predefined criteria and falls within its risk appetite range, the credit application may be considered for approval.

In addition to the inherent characteristics of the type of intellectual property (IP), there are attributes at the IP level that can significantly influence its suitability as

³⁵ Hukum Online.com, Syarat Kekayaan Intelektual dapat diajukan sebagai Jaminan, 2022, <https://www.hukumonline.com/berita/a/syarat-kekayaan-intelektual-dapat-diajukan-sebagai-jaminan-lt6315dc133c6f6/?page=2#!>

collateral in a loan agreement. The deployability of an asset and its market liquidation value determine the extent to which lenders can mitigate losses resulting from loan defaults. In cases of default, lenders often liquidate confiscated IP to recoup losses. Hence, we anticipate that the redeployment ability will be positively correlated with the asset's suitability as collateral. Additionally, the capacity to accurately measure the collateral's true value is expected to have a positive impact, as it diminishes the risks for lenders associated with the collateral. This aspect holds particular significance in the realm of intellectual property, where there is typically a high degree of asymmetric information and uncertainty regarding returns. Furthermore, the personal value of an asset to the borrower may also be a crucial factor. It is true that defaulting on a loan could result in the forfeiture of exclusive rights to strategic assets, such as the company name or key technology. This dual consequence has the potential to exert opposing influences on the likelihood of IP collateralization: borrowers may exhibit reluctance to pledge valuable assets as collateral. However, from the lender's perspective, the value of the collateral to the borrower serves to mitigate risks associated with the loan.³⁶

3. Factors to Consider in Offering Credit Financing through Financial Institutions

Credit provided by banks carries inherent risks, particularly credit risk, which refers to the potential loss stemming from the inability of the borrower to fully repay the borrowed funds at maturity or thereafter. Effective bank supervision plays a pivotal role in ensuring the availability and implementation of standardized credit-granting and monitoring processes. Credit-granting standards should be objective and grounded in sound credit principles, delineated in a comprehensive written policy encompassing credit granting policies, approval processes, administrative procedures, and credit documentation, as well as ongoing monitoring of disbursed credit. The risk of problematic loans can be mitigated through various means, including thorough credit analysis. Credit analysis, when conducted with expertise, serves as a crucial initial screening process, aiding banks in averting the perils associated with non-performing loans. The primary objective of credit analysis is to evaluate the prospective debtor's capacity and willingness to repay the loan principal and interest

³⁶ Laurie Ciaramella, et.al, Intellectual Property as Loan Collateral, Available at SSRN: <https://ssrn.com/abstract=4260877> or <http://dx.doi.org/10.2139/ssrn.4260877>, 2023, p.7

in accordance with the terms outlined in the credit agreement. Thus, the results of the bank's assessment serve to illustrate the minimal risk posed should the requested credit be granted to the borrower.³⁷

Sutan Remy Sjahdeni similarly emphasized the necessity of conducting credit analysis to ascertain the customer's willingness and ability to repay the credit extended by the bank. International banking adheres to a standard framework known as The six C's of Credit, encompassing borrowing competence, character, capacity to generate funding sources, capital, collateral, economic conditions, and business sector viability.³⁸ In Article 8 of Banking Law, a detailed explanation is provided, stating that banks must thoroughly assess five key factors—character, capacity, capital, collateral, and business prospects of the debtor—to instill confidence in the customer's ability to fulfill their obligations as agreed. Prioritizing trust and prudence, banks are obliged to conduct credit analysis to mitigate potential future risks, such as business failure or credit default, thereby minimizing the risk exposure. The principle guiding these efforts is to extend credit while minimizing risk exposure. This entails proactive risk management strategies, including risk diversification, as outlined in Article 11 of the Banking Law. The Banking Law stipulates that Bank Indonesia (BI) establishes a legal lending limit to individual borrowers or related borrower groups, aiming to prevent credit concentration, mitigate bad debt risk, safeguard public funds from being exploited solely for the benefit of shareholders or corporate entities, and ensure the overall stability of the banking system.

The concept of caution in muamalah is also delineated in Surah Al-Baqarah, specifically verses 282 and 283, offering a suitable Sharia basis for muamalah transactions, particularly in the realm of banking. Article 2 of the Sharia Banking Law further elucidates that conducting business activities must adhere to Sharia principles, economic democracy, and the principle of prudence. This precautionary principle establishes a legal foundation guiding Sharia banks to conduct their business activities on the bedrock of sound banking principles. Financing stands as a pivotal banking activity, crucial for a bank's sustenance when managed effectively. Inadequate management of financing can engender numerous issues, potentially leading to the collapse of productive financing, which epitomizes a form of financing characterized

³⁷ Trisadini P. Usanti & Abd. Shomad, *Hukum Perbankan*, (Jakarta : Kencana, 2017) p.189-193

³⁸ Andika Persada Putera, *Hukum Perbankan Analisis Mengenai Prinsip, Produk, Risiko dan Manajemen Risiko Dalam Perbankan*, (Surabaya : Scopindo,2019), p. 42

by adherence to secure and efficient regulations, yielding fruitful outcomes in financing endeavors.

The OJK plays a pivotal role in scrutinizing government regulations concerning the provision of credit financing with Intellectual Property Rights (IPR) guarantees to banks. This was emphasized by the Chief Executive of OJK Banking Supervision, highlighting ongoing evaluations regarding various aspects including valuation, secondary market availability, IPR liquidation assessment, and legal infrastructure for IPR execution.³⁹ The rationale behind this focus stems from the insufficient robustness of IPR diversity in the secondary market and the limited mechanisms for determining IPR valuation. Collateral is a crucial requirement in facilitating credit or financing, contingent upon the operational framework influenced by the bank's risk appetite, credit scheme, and the prospective debtor's capacity. Each bank maintains standardized criteria in the credit application and approval process, notably including the "Bank Risk Acceptance Criteria", which evaluates the business prospects and payment capability of prospective debtors. Under Article 9, paragraph 1 of Presidential Regulation No. 24 of 2022 concerning the Creative Economy, in the Knowledge Intensive (KIP)-based financing scheme, both banks and non-bank financial institutions employ IP as collateral for debt, with IPR being a component of the fiduciary where the object is intangible.

The Otoritas Jasa Keuangan (OJK), acting as the supervisory authority not only within the banking sector but also extending its oversight to non-banking sectors, has firmly expressed its support for regulatory measures concerning capital financing for creative entities. This backing is exemplified by the issuance of Letter No. S-12/D.03/2022 directed to all conventional commercial banks. The letter serves as a formal affirmation and endorsement from the OJK for the practice of utilizing intellectual property (IP) assets as collateral for credit by banks. In providing credit facilities, banks are required to adhere to several critical factors, with paramount importance placed on the principles of good faith and the financial viability of potential debtors, including the collateral they offer. While collateral is considered essential and its long-term commercial value duly acknowledged, the acceptance of specific collateral remains subject to the discretion of each bank, contingent upon

³⁹ OJK, Siaran Pers : Sinergi Mendukung Penggunaan Kekayaan Intelektual Sebagai Agunan Kredit, 2023, <https://ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/Sinergi-Mendukung-Penggunaan-Kekayaan-Intelektual--Sebagai-Agunan-Kredit.aspx>

individual assessments of potential debtors. Moreover, provisions governing collateral arrangements in Indonesia are integrated into the computation of the Allowance for Asset Quality Assessment and its associated specifications. Notably, Asset Quality Assessment calculations primarily serve prudential supervision, involving the comparison of Impairment Losses with Asset Quality Assessment in the computation of Bank Capital (KPMM). The OJK emphasizes its respect for the decisions and policies formulated by each bank, grounded in thorough assessments of potential debtors. Alternative collateral is deemed necessary to ensure coverage of principal and interest in the event of credit default, as per the terms of the agreement. This evaluation process extends to non-banking institutions, including pawnshop companies, which require a comprehensive examination of the implications of the PP regulating the provision of capital to creative credit actors with intellectual property. Valuation becomes crucial in this context, with specific reference to the “Risk Management System”. There exist two primary methodologies for determining IPR (Intellectual Property Rights) valuation. Firstly, a traditional approach involves a combination of cost assessment, income projection, and market analysis. Secondly, a modern approach integrates various factors such as cost-benefit analysis, expert evaluation, empirical studies, network analysis, foresight, benchmarking, innovation surveys, microeconomic and macroeconomic methodologies, productivity analyses, and control group comparisons. Central to this process is the principle of transparency and integrity, which is vital for both customers and the public when registering intellectual property with the Director General of IPR at the Ministry of Law and Human Rights. This serves to mitigate the risks associated with fraudulent activities and potential losses.⁴⁰

The principle of prudence, as stipulated in Article 8 of the Banking Law and POJK No.42/POJK.03/2017 concerning Obligations for Preparing and Implementing Credit or Bank Financing Policies for Commercial Banks, underscores the imperative for cautious decision-making in banking operations. In its practical application, banks extending credit are mandated to exercise due diligence by meticulously assessing the borrower's intentions and their capacity to honor the repayment terms. Banks may consider accepting funds in the form of KI for credit provision, provided

⁴⁰ Kompas.com, Kekayaan Intelektual jadi Jaminan Kredit Jenis Agunan Bank, 2023, <https://money.kompas.com/read/2023/04/05/214300526/kekayaan-intelektual-jadi-jaminan-kredit-ojk-sebut-tak-batasi-jenis-agunan>

that they possess unwavering confidence in the borrower's repayment capabilities, guided by the fundamental tenets of the 5C principles: "Character, Capacity, Capital, Collateral, Conditions."

D. Conclusion

PP No.24/2022 clarifies regulations from Law No.24/2019, allowing creative economy players to use intellectual property as credit collateral. However, Article 8 of Banking Law No.10/1998 requires banks to conduct thorough credit analyses based on character, capacity, capital, collateral, and business prospects to minimize risks. Article 11 allows Bank Indonesia to set maximum credit limits to diversify credit exposure and protect public funds. For creative economy actors, banks support PP No.24/2022 and require intellectual property to be registered to validate ownership. Intellectual property assets are valued for their economic benefits, and banks offer business capital loans following legal procedures and assessing economic viability. Collateral with lasting value is crucial, though criteria vary by bank. Institutions are re-evaluating policies on credit capital for the creative economy, using traditional and modern valuation methods to ensure sound risk management and sustainable financing.

Reference

Book :

- Arifardhani, Yoyo. 2020. Hukum Hak atas Kekayaan Intelektual Suatu Pengantar. Jakarta: Kencana
- AP Faure. 2013. Investment: An Introduction 1st Edition. Grahamstown: Quoin Institute Limited., <http://lib.ibs.ac.id/repository/banking-an-introduction.pdf>
- Choudry, Moorad. 2018. An Introduction to Banking: Principles. Strategy and Risk Management. United Kingdom : John Wiley & Sons Ltd.
- Dharmawan, Ni Ketut Supasti et al. 2016. Hak Kekayaan Intelektual (HKI). Sleman: Deepublish
- Hidayah, Khoirul. 2017. Hukum Hak Kekayaan Intelektual. Malang: Setara Press
- Hutagalung, Sophar Maru. 2012. Hak Cipta Kedudukan dan Peranannya dalam Pembangunan. Jakarta: Sinar Grafika
- Mulyati, Ety. 2016. Kredit Perbankan Aspek Hukum dan Pengembangan Usaha Mikro Kecil Dalam Pembangunan Perekonomian Indonesia. Bandung: Refika Aditama
- Olwan, Rami M. 2022. Intellectual Property: Principles and Practice. Australia: Thomson Reuters
- Putera, Andika Persada. 2019. Hukum Perbankan Analisis Mengenai Prinsip, Produk, Risiko dan Manajemen Risiko Dalam Perbankan. Surabaya: Scopindo
- Saidin, Ok. 2015. Aspek Hukum Hak Kekayaan Intelektual. Jakarta: PT. Rajagrafindo Persada
- Usanti, Trisadini P. & Shomad, Abd. 2017. Hukum Perbankan. Jakarta: Kencana
- Usman, Rachmadi. 2008. Hukum Jaminan Keperdataan. Jakarta: Sinar Grafika
- _____. 2021. Dasar-Dasar Hukum Kekayaan Intelektual. Kencana: Jakarta

Article :

- Arifiyanto, J. 2023. Company Forms in Digital Economy Era. *Neoclassical Legal Review: Journal of Law and Contemporary Issues*, 2(1), 47-52. <https://doi.org/10.32734/nlr.v2i1.11512>.
- Alfons, Maria. 2018. Implementasi Hak Kekayaan Intelektual Dalam Perspektif Negara Hukum. Badan Pengembangan Sumber Daya Manusia Hukum dan Hak

Asasi Manusia Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, Vol.14 No.03. <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/111>.

Ciaramella, Laurie et.al. 2023. Intellectual Property as Loan Collateral, Available at SSRN: <https://ssrn.com/abstract=4260877> or <http://dx.doi.org/10.2139/ssrn.4260877>.

Disemadi. H. S. 2022. "Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia," *LAW REFORM*, vol. 18, no. 1, pp. 89-110. <https://doi.org/10.14710/lr.v18i1.42568>.

Foster, Christopher. 2024. Intellectual property rights and control in the digital economy: Examining the expansion of M-Pesa, *The Information Society*, 40:1, 1-17, 2024, DOI: 10.1080/01972243.2023.2259895.

Haqqi, Halifa. 2023. "The Government's Policy in Encouraging the Global Competitiveness of Indonesian MSMEs through the Digital Ecosystem". *Journal of Economics, Management and Trade* 29 (8):66-76. <https://doi.org/10.9734/jemt/2023/v29i81115>.

Manioudis M, Angelakis A. 2023. Creative Economy and Sustainable Regional Growth: Lessons from the Implementation of Entrepreneurial Discovery Process at the Regional Level. *Sustainability*. 15(9):7681. <https://doi.org/10.3390/su15097681>.

Mergers, Robert P. 2017. What Kind of Rights Are Intellectual Property Rights" Forthcoming in Rochelle C Dreyfuss & Justine Pila. *The Oxford Handbook of Intellectual Property Law*. RP Merges.

Nemlionglu, Ilayda. 2019. A Comparative Analysis of Intellectual Property Rights: A case of Developed versus Developing, *Procedia Computer Science* 158 988–998. Published by Elsevier B.V ,<https://doi.org/10.1016/j.procs.2019.09.140>.

Nwocha, Matthew Enya. 2017. Banking Law and Economic Development in Nigeria: Contributions and Constraints of the Banks and Other Financial Institutions Act, *Beijing Law Review*, Vol.8 No.4. DOI: 10.4236/blr.2017.84025.

Panda, B., & Joy, S. 2021. Intellectual Property Rights-based Debt Financing to Startups: Need for a Changing Role of Indian Banks. *Vikalpa*, 46(3), 2021, 143-152. <https://doi.org/10.1177/02560909211041817>.

Putera, Andika Persada. 2020. The Prudential Principle as The Basis in Implementing Banking Transaction. *Hang Tuah Law Journal*. 4 (2). 52-60. <https://law-journal.hangtuah.ac.id/index.php/jurnal/article/view/16/26>.

Sari. N.P. et al. 2023. "Sosialisasi Strategi Pemasaran Dalam Rangka Optimalisasi Keuntungan UMKM Kecamatan Rancabungur Melalui Dunia Digital," *Jurnal Abdimas Ilmiah Citra Bakti*, 4(2), 162–173. <https://doi.org/10.38048/jailcb.v4i2.1484>.

- Setiawan, Andry. et.al. 2019. Eksistensi Pendaftaran Rahasia Dagang dan Implementasi Perlindungannya (Studi di Kanwil Kemenkumham Jawa Tengah), *Jurnal Law and Justice*, Vol. 3 No.2. DOI: <https://doi.org/10.23917/laj.v3i2.7123>.
- Simatupang, H. Bachtiar. 2019. Peranan Perbankan dalam Meningkatkan Perekonmian Indonesia, *Jurnal Riset Akuntansi Multiparadigma (JRAM)*, 6(2), 136-146. <https://jurnal.uisu.ac.id/index.php/JRAM/article/view/2184>.
- S. Suhartini, et al. 2022. "The Design of the SMEs Digital Innovation Business Collaboration Model," In *3rd Asia Pacific International Conference on Industrial Engineering and Operations Management*. <https://doi.org/10.46254/AP03.20220255>.
- Taufik, M. 2013. Filsafat John Rawls tentang Teori Keadilan, *Mukaddimah Jurnal Studi Islam*, 19 (1), 41-63. <https://digilib.uin-suka.ac.id/id/eprint/33208/1/Muhammad%20Taufik%20-%20Filsafat%20John%20Rawls.pdf>

Regulation :

- Peraturan Bank Indonesia No.24/3/PBI/2022 "Rasio Pembiayaan Inklusif Makroprudensial bagi Bank Umum Konvensional, Bank Umum Syariah, dan Unit Usaha Syariah"
- Peraturan Otoritas Jasa Keuangan No.18/POJK.03/2016 "Penerapan Manajemen Risiko Bagi Bank Umum"
- Peraturan Otoritas Jasa Keuangan No.42/POJK.03/2017 "Kewajiban Penyusunan dan Pelaksanaan Kebijakan Perkreditasn atau Pembiayaan Bank Bagi Bank Umum"
- Peraturan Pemerintah No.24/2022 "Ekonomi Kreatif"
- Surat Edaran Otoritas Jasa Keuangan No.34/SEOJK.03/2016 "Penerapan Manajemen Risiko Bagi Bank Umum"
- Surat No. 24/M/PAN/1/2000 "Hak Kekayaan Intelektual"
- Undang-Undang No.10/1998 "Perbankan"
- Undang-Undang No.24/2019 "Ekonomi Kreatif"

Other Source :

- Antara, OJK Kaji Kelayakan Hak Kekayaan Intelektual jadi Jaminan Kredit Bank, 2022, <https://www.antaranews.com/berita/3017561/ojk-kaji-kelayakan-hak-kekayaan-intelektual-jadi-jaminan-kredit-bank> accessed on 05 September 2023

Hukum Online.com, Syarat Kekayaan Intelektual dapat diajukan sebagai Jaminan, 2022, <https://www.hukumonline.com/berita/a/syarat-kekayaan-intelektual-dapat-diajukan-sebagai-jaminan-lt6315dc133c6f6/?page=2#!> accessed on 10 September 2023

Kompas.com, Kekayaan Intelektual jadi Jaminan Kredit Jenis Agunan Bank, 2023, <https://money.kompas.com/read/2023/04/05/214300526/kekayaan-intelektual-jadi-jaminan-kredit-ojk-sebut-tak-batasi-jenis-agunan> accessed on 19 September 2023

OJK, Siaran Pers : Sinergi Mendukung Penggunaan Kekayaan Intelektual Sebagai Agunan Kredit, 2023, <https://ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/Sinergi-Mendukung-Penggunaan-Kekayaan-Intelektual--Sebagai-Agunan-Kredit.aspx> accessed on 20 September 2023