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The Legal Fremwork and practice of Using Intellectual Property Right as Fiduciary Collateral in Indonesia : Challengs and Solution

Fahmi Ihsan Margolang [1*], Fenny Fenny [2]
[1,2] Universitas Islam Negeri Sunan Gunung Djati, Indonesia

Corespondensing author: fahmiimrgolang@gmail.com *

Abstract *: This paper examines the legal framework and practical implementation of using Intellectual Property Rights (IPRs) as fiduciary collateral in Indonesia. The study identifies existing legal uncertainties and administrative challenges that hinder the optimization of IPRs as collateral objects, such as the absence of technical implementation regulations and limited awareness among stakeholders. Through normative legal analysis supported by empirical evidence, this research explores how the current fiduciary security law can be adapted to better accommodate IPRs, highlighting the potential for IPRs to enhance access to finance, particularly for creative economy actors. The paper also presents solutions, including the need for clear implementing regulations, capacity-building among stakeholders, and stronger coordination among government institutions. Ultimately, the research emphasizes the strategic importance of integrating IPRs into financial mechanisms and proposes actionable steps for regulatory and institutional reform.*

Keywords*: Access to Finance, Creative Economy, Fiduciary Collateral, Indonesia, Intellectual Property Rights, Legal Framework, Legal Reform*

1. INTRODUCTION

In the digital era, the role of intangible assets—particularly Intellectual Property Rights (IPRs)—is becoming increasingly strategic in shaping the modern economy. As the backbone of innovation and creativity, IPRs represent not only legal instruments of protection for inventors and creators but also serve as potential financial instruments. In advanced economies such as the United States, Japan, and members of the European Union, IPRs are widely utilized as collateral to secure loans, enhancing access to finance for creative industries and tech startups. This paradigm reflects a broader trend in global financial innovation: shifting from tangible, traditional assets toward knowledge-based assets (Andersen & Konzelmann, 2008).

Indonesia, as one of the largest emerging markets in Southeast Asia, has begun to acknowledge the value of IPRs in economic development, especially within its fast-growing creative economy sector. The government has enacted several legal frameworks to strengthen the protection and utility of IPRs, including Law No. 28 of 2014 on Copyright, Law No. 13 of 2016 on Patents, and Law No. 42 of 1999 on Fiduciary Security. Furthermore, Presidential Regulation No. 44 of 2021 emphasizes the importance of creative economy development through innovation, suggesting the potential use of IPRs as bankable collateral.

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Despite the regulatory foundation, the practical implementation of IPRs as fiduciary collateral in Indonesia remains underdeveloped. There is limited precedent, minimal institutional capacity, and low awareness among key stakeholders, including financial institutions, intellectual property holders, and government agencies. The absence of specific technical guidelines and a standardized valuation mechanism has further discouraged lenders from accepting IPRs as reliable security instruments (WIPO, 2020). This mismatch between policy ambition and institutional readiness forms a significant policy gap that this study seeks to address.

This paper employs a normative-juridical approach to analyze the legal framework governing the use of IPRs as fiduciary collateral in Indonesia, combined with empirical insights gathered through a qualitative review of practices, case studies, and regulatory responses. The normative aspect focuses on the interpretation of laws, regulations, and legal doctrines, while the empirical component draws upon interviews, secondary data from banking policies, and reports from the Directorate General of Intellectual Property (DGIP). Through this hybrid methodology, the study aims to offer a comprehensive and realistic view of both legal theory and its real-world application.

In addition to mapping the legal and institutional landscape, the paper also considers comparative legal frameworks from other jurisdictions. For example, South Korea and Singapore have established legal infrastructures that support IPR financing through government-backed valuation institutions and credit guarantee schemes. These models can provide valuable insights for Indonesia, particularly in how to overcome information asymmetry and mitigate risk in lending decisions involving intangible assets.

The lack of valuation standards for IPRs remains a critical bottleneck. IPRs, unlike physical assets, require specialized expertise to assess their commercial value, market potential, and legal enforceability. This challenge is compounded by the absence of licensed IPR valuers in Indonesia and limited data integration between intellectual property registries and financial markets. As a result, banks and lenders often perceive IPRs as high-risk, illiquid, and complex to execute in default situations. Without resolving this structural issue, efforts to mainstream IPR-based financing will continue to face resistance.

Another institutional challenge lies in the siloed coordination between relevant government bodies. While the Ministry of Law and Human Rights oversees IPR registration and protection, the Financial Services Authority (OJK) regulates lending institutions, and the Ministry of Finance manages broader financial inclusion strategies. These institutions often

work in parallel without integrated policy frameworks, hindering the development of a coherent ecosystem for IPR-based fiduciary systems.

From a legal perspective, the principle of pacta sunt servanda underlies the enforceability of fiduciary agreements, including those involving IPRs. However, Indonesian law currently lacks clear implementing regulations that translate this principle into practical mechanisms for IPR transactions. Furthermore, Law No. 42 of 1999 on Fiduciary Security, while theoretically accommodating intangible assets, was originally designed with physical assets in mind. Thus, legal reform is necessary to modernize fiduciary law in line with the realities of a digital, creative economy.

The potential impact of enabling IPRs as fiduciary collateral extends beyond economic efficiency. It can serve as a driver for financial inclusion, particularly for startups, small enterprises, and individual creators who often lack conventional forms of collateral. With the rise of Indonesia's digital and creative sectors—including software, music, literature, fashion, and film—unlocking the capital value of IPRs can become a transformative strategy to bridge the financing gap and foster innovation-led development.

In conclusion, this study is both timely and relevant in addressing a growing need for alternative financing mechanisms in Indonesia. By diagnosing the legal, institutional, and operational barriers to IPR-based fiduciary systems, and proposing targeted reforms, the paper contributes to a strategic discourse on how intangible assets can be leveraged in the national financial system. The findings may also serve as a roadmap for policymakers, legal practitioners, and financial regulators aiming to construct a more inclusive, innovation-friendly legal infrastructure.

2. THEORETICAL REVIEW

The use of intellectual property rights (IPRs) as collateral in financing agreements is grounded in the theory of property as capital. According to Hernando de Soto (2000), assets that are properly documented and legally recognized can be transformed into capital, even if they are intangible. Intellectual property, when registered and protected under the law, possesses characteristics similar to tangible property—it can be transferred, assigned, and in some jurisdictions, used as collateral. This theoretical foundation underpins the idea that IPRs, such as patents, trademarks, and copyrights, can function as financial tools within modern economies.

From a legal standpoint, the fiduciary security mechanism is based on the lex commissoria principle within civil law systems, which allows for asset transfer under

conditional terms. Fiduciary law, as regulated under Indonesia's Law No. 42 of 1999, defines a fiduciary guarantee as the transfer of ownership of an object on the basis of trust, with the condition that ownership is returned after the debtor has fulfilled their obligation. While this law does not exclude intangible assets, its application has historically favored tangible, movable property. The expansion of fiduciary objects to include IPRs therefore demands a broader interpretation of "property" and recognition of intangible asset value in contractual obligations (Mertokusumo, 2003).

Economic theories of information asymmetry and market signaling also inform the limited use of IPRs as collateral. Akerlof's (1970) "market for lemons" problem illustrates how asymmetric information can create distrust in markets where asset quality is uncertain. Without standardized IPR valuation methods or accessible registries, financial institutions perceive high risk in accepting IPRs as collateral. As a result, potential lenders are deterred despite the underlying value of the intellectual property. This highlights the necessity of creating transparent IPR databases, valuation standards, and institutional mechanisms to reduce uncertainty and signal credibility to the financial sector (Stiglitz & Weiss, 1981).

The theory of legal institutionalism also supports the idea that legal norms, institutions, and enforcement mechanisms must evolve to match the economic functions of emerging asset classes. North (1990) argues that institutions—both formal (laws, regulations) and informal (practices, norms)—shape economic performance. In the context of Indonesia, while laws protecting IPRs exist, the absence of technical regulations enabling their use as collateral indicates institutional inertia. A lack of interagency coordination and sectoral silos between the Ministry of Law and Human Rights, the OJK, and financial institutions further exacerbate the problem.

Finally, the stakeholder theory in law and policy emphasizes the importance of multi-sectoral collaboration in regulatory reform. Freeman (1984) proposes that sustainable outcomes in legal-economic systems are only possible when all stakeholders—government, private sector, and civil society—are engaged in policy design and implementation. Applying this to the case of IPRs as fiduciary collateral, the success of this financial innovation requires not only legislative changes but also awareness-building, capacity development, and infrastructure investment from a range of actors. Without shared ownership of the regulatory agenda, the shift toward IPR-based financing will remain largely theoretical.

3. RESEARCH METHODOLOGY

This study employs a normative legal research method, also known as doctrinal research, which focuses on analyzing legal norms, statutes, and doctrinal interpretations relevant to the use of intellectual property rights (IPRs) as fiduciary collateral. The normative approach is essential for understanding the legal basis, structure, and implementation challenges of current Indonesian regulations, including Law No. 28 of 2014 on Copyright, Law No. 13 of 2016 on Patents, and Law No. 42 of 1999 on Fiduciary Security. These laws serve as the primary legal sources for this research.

In addition to normative analysis, the study integrates a qualitative empirical component to enrich the theoretical findings with practical perspectives. This includes a review of case studies, policy papers, and government reports from relevant institutions such as the Directorate General of Intellectual Property (DGIP), the Financial Services Authority (OJK), and selected banking institutions. The empirical element also draws from legal commentaries, journal articles, and secondary data from academic and regulatory sources to highlight the practical obstacles and stakeholder perceptions.

Legal materials used in this study are categorized into three groups: primary legal materials (laws and regulations), secondary legal materials (books, legal journals, academic writings), and tertiary materials (legal dictionaries, encyclopedias, and internet resources). The analysis technique used is prescriptive, aimed at providing recommendations to bridge the gap between legal theory and regulatory implementation.

The research also incorporates a comparative law approach, by referencing how other jurisdictions—such as Singapore, South Korea, and the United States—have structured legal frameworks and institutional mechanisms to support IPR-based financing. This comparative perspective provides benchmarks and insights that may inform future legal reforms in Indonesia.

All findings are analyzed using a descriptive-analytical framework, whereby legal norms are interpreted systematically and connected to real-world practices. The objective is not only to identify gaps within the current regulatory regime but also to offer normative solutions and legal construction models that can support the full utilization of IPRs as collateral in fiduciary arrangements.

4. RESULT AND DISCUSSION

The Legal Framework and Recognition of IPRs as Fiduciary Collateral

The legal foundation for using intellectual property rights (IPRs) as fiduciary collateral in Indonesia is rooted in several primary regulations, namely Law No. 28 of 2014 on Copyright, Law No. 13 of 2016 on Patents, and Law No. 42 of 1999 on Fiduciary Security. Although these laws regulate IPR protection and fiduciary arrangements separately, they provide a basic normative space for interpreting IPRs as valid collateral objects. Article 16 of the Copyright Law, for instance, allows copyrights to be transferred, licensed, and used as an object of security, thus supporting their economic function.

Law No. 42 of 1999 does not explicitly limit fiduciary objects to tangible property. Instead, Article 1(2) broadly defines fiduciary security as a "transfer of ownership rights to an object on the basis of trust." This language opens the door for intangible assets—such as IPRs—to be used as fiduciary collateral, as long as the object has clear ownership and can be transferred under certain conditions. However, this theoretical recognition is not yet followed by comprehensive technical regulations.

The absence of an implementing regulation (peraturan pelaksana) specifically addressing IPRs as collateral has led to legal ambiguity. For example, while Article 16(3) of the Copyright Law allows copyrights to be encumbered as fiduciary objects, it lacks further guidance on procedures, valuation, and enforcement mechanisms in case of default. This regulatory vacuum hinders both lenders and borrowers from engaging in transactions involving IPR-based fiduciary security.

Furthermore, the fiduciary registration process through the Fiduciary Registration Office (under the Ministry of Law and Human Rights) is designed primarily for movable, physical assets. IPRs, being intangible and highly specialized in nature, require a separate system of documentation and valuation. According to WIPO (2020), jurisdictions that support IPR-based financing generally establish specialized valuation bodies and enforceable registries to reduce transaction costs and uncertainty.

Another legal barrier is the lack of harmonization between IPR laws and financial regulations issued by the Financial Services Authority (OJK). While IPR laws permit their use as collateral, most banking regulations do not explicitly accommodate non-tangible assets unless under certain high-risk lending schemes. As a result, many financial institutions are reluctant to consider IPRs as acceptable forms of security due to legal and regulatory inconsistencies (World Bank, 2021).

Comparatively, other countries have taken proactive legislative steps to recognize IPRs within secured transaction regimes. In Singapore, for instance, the Personal Property Securities Act (PPSA) allows for the registration of security interests over intangible assets,

including IPRs, in a centralized registry. South Korea goes a step further by establishing public institutions that provide standardized IPR valuations, reducing perceived lender risk and supporting IPR monetization (Kim & Cho, 2018).

From a theoretical standpoint, this situation reflects a gap between de jure recognition and de facto implementation. While Indonesia's laws do not prohibit the use of IPRs as collateral, the lack of clarity and infrastructure renders the mechanism practically inaccessible. North's (1990) theory of institutional economics helps explain how incomplete institutions or vague norms limit economic outcomes, even when legal permissions exist.

The legal system's reliance on traditional, tangible conceptions of property reflects a lag in adapting to the intangible economy. As emphasized by de Soto (2000), formalizing property—whether physical or intellectual—is crucial to transforming it into functional capital. Without a clear regulatory structure, IPRs in Indonesia remain underutilized assets, even though they hold potential economic value

To advance the legal framework, Indonesia requires not only regulatory alignment across sectors but also institutional innovation. This includes developing official valuation guidelines, establishing digital platforms for IPR pledge registration, and amending fiduciary security laws to specifically include intangible assets in their operative clauses. Legal certainty is the first step toward building market trust in IPRs as reliable collateral.

Practical Challengs in Implementation and Institutional Barries

Despite Indonesia's legal openness to recognizing intellectual property rights (IPRs) as fiduciary collateral, the practical implementation remains minimal and fragmented. One of the main challenges lies in the absence of a standardized and credible valuation system for IPRs. Unlike tangible assets, which can be valued using established market references, the valuation of IPRs requires specialized expertise in assessing potential revenue streams, enforceability, market demand, and legal strength. This technical complexity discourages both lenders and borrowers from utilizing IPRs in financial transactions (WIPO, 2020).

Banks and financial institutions in Indonesia generally remain skeptical about accepting IPRs as collateral due to high perceived risk and the lack of precedent. This cautious stance is rooted in traditional lending practices that prioritize physical guarantees such as land certificates, vehicles, or inventory. In the absence of government-backed valuation standards or public insurance schemes to cover IPR default risk, financial institutions are unlikely to innovate independently in this area (OECD, 2022).

Moreover, there is a low level of awareness among IPR holders—especially those in the creative economy sector—about the potential of their intellectual assets as sources of

financing. Many small and medium-sized enterprises (SMEs) and startups do not register their intellectual property or maintain adequate documentation, making their IPRs difficult to verify or leverage. Education and outreach regarding the economic value of IPRs remain limited, particularly outside urban centers and among informal creative workers.

From the institutional perspective, coordination among relevant agencies is weak. The Directorate General of Intellectual Property (DGIP) under the Ministry of Law and Human Rights is primarily responsible for registration and legal protection of IPRs, while the Financial Services Authority (OJK) regulates banking and financial institutions. However, there is no formal protocol or integrated platform that allows these entities to collaborate on IPR-based financing schemes. This siloed governance undermines policy coherence and results in regulatory fragmentation (World Bank, 2021).

A further obstacle is the lack of accessible, transparent, and integrated IPR databases. Even though Indonesia has an online IPR registry, it is not yet equipped with features that support valuation, transaction history, or linkage with credit risk databases. This limits lenders' ability to conduct due diligence and raises concerns about the legal certainty and enforceability of IPR-based fiduciary arrangements (UNESCAP, 2020).

Legal enforcement also presents a significant challenge. In fiduciary agreements involving IPRs, creditors must be confident that, in the event of default, they can assume control over the asset or monetize it efficiently. However, enforcement procedures in Indonesia are often slow, expensive, and inconsistent—particularly when dealing with intangible and non-physical property. The judicial system is still unfamiliar with many issues surrounding IPR monetization and may lack the technical competence to resolve disputes involving valuation or infringement.

Comparative experiences from countries like China and Singapore suggest that strong government intervention is often needed to bridge the initial market gap. China’s National Intellectual Property Administration (CNIPA), for instance, has introduced credit insurance schemes and loan guarantees to reduce the lending risk associated with IPRs. Singapore, through IPOS (Intellectual Property Office of Singapore), actively facilitates matchmaking between IPR owners and financial institutions, providing valuation support and legal assurance mechanisms (IPOS, 2021).

In Indonesia, however, such proactive mechanisms are still underdeveloped. Although the Ministry of Tourism and Creative Economy has introduced programs to promote intellectual property registration among creative workers, the linkage between those registrations and financing institutions remains limited. Without institutional innovation—

such as government-backed valuation agencies, IPR risk-sharing schemes, or regulatory sandboxes—the practical use of IPRs in financing will remain stalled.

Furthermore, the role of notaries and legal advisors in facilitating IPR fiduciary transactions is not yet institutionalized. Many legal practitioners lack training or awareness regarding how to structure fiduciary agreements involving intangible assets. This institutional gap contributes to low market confidence and reinforces the status quo, in which IPRs are seen primarily as legal instruments of protection rather than financial instruments of leverage (Erika & Yetniwati, 2020).

In summary, while the legal foundation for IPR fiduciary collateral exists in Indonesia, a variety of institutional, technical, and informational barriers prevent its practical implementation. Addressing these challenges will require comprehensive policy reform, targeted capacity-building initiatives, and stronger collaboration across sectors. Only through coordinated efforts can the potential of IPRs as collateral be fully realized in Indonesia's financial ecosystem.

Opportunities for Reform and Policy Recommendations

A Indonesia's creative economy continues to grow, contributing significantly to GDP and employment, yet it remains underfinanced due to a lack of access to credit. Unlocking the potential of intellectual property rights (IPRs) as collateral presents a transformative opportunity to bridge this financing gap. Legal and institutional reform is essential to realizing this potential. While the current legal framework offers a basic foundation, the next step is to design specific reforms that reduce uncertainty, encourage innovation, and provide incentives for financial institutions to accept IPRs as credible security.

One of the most urgent reforms involves the establishment of official valuation standards for IPRs. Without standardized valuation models, lenders cannot adequately assess the risk or value of IPRs, and borrowers cannot credibly leverage their assets. Indonesia could consider creating a centralized valuation body under the Directorate General of Intellectual Property (DGIP) or in partnership with independent accredited valuation professionals, as practiced in the UK under the Intellectual Property Office (UKIPO, 2019).

Alongside valuation, the development of IPR registries that include commercial and transactional data is equally critical. A registry that not only documents ownership but also indicates licensing deals, revenue generation history, and pledges could significantly increase transparency and lender confidence. Estonia and Canada offer digital platforms that link IPR registries with secured transaction systems, streamlining due diligence for banks (OECD, 2021).

Legal reforms should also include amendments to Law No. 42 of 1999 on Fiduciary Security to explicitly recognize intangible assets, including IPRs, as objects of fiduciary transfer. This could include drafting new implementing regulations (Peraturan Pemerintah) that outline procedures, registration steps, valuation references, and enforcement protocols specific to intangible assets. Japan's 2005 reform of its collateral law to include patent rights as pledgable assets could serve as a comparative model (Tanaka, 2017).

On the financial side, government-backed loan guarantee schemes and credit insurance mechanisms can serve as risk mitigation tools for banks. The Indonesian government can establish an Intellectual Property Financing Guarantee Fund (IP-FGF), similar to South Korea's KIBO Technology Fund, which provides partial guarantees for loans secured by patents and trademarks (Lee & Hwang, 2016). Such mechanisms would make it more attractive for banks to accept IPRs while protecting them against total loss in the event of borrower default.

Capacity-building should be prioritized. Training programs for bankers, notaries, legal professionals, and creative entrepreneurs are essential to ensure all parties understand how IPRs can be monetized and safeguarded. Academic institutions, bar associations, and business associations can collaborate to offer certification programs on IPR financing and fiduciary law. Malaysia's collaboration between IPOS and its national university system has yielded similar outcomes (IP Academy Singapore, 2018).

Inter-agency coordination must be institutionalized through a cross-sectoral working group or national task force on IP-based financing. This group could include the Ministry of Law and Human Rights, the Ministry of Finance, OJK, Bank Indonesia, DGIP, the Ministry of Tourism and Creative Economy, and representatives from the banking sector. Regular coordination meetings and shared data systems would help align regulatory strategies and remove existing silos (ADB, 2020)

There is also an opportunity to implement regulatory sandboxes for IPR-based lending models. The OJK can pilot flexible frameworks that allow fintechs and banks to experiment with IPR-backed loans in a controlled environment. This would generate empirical evidence, test risk models, and provide insights before wide-scale implementation. Regulatory sandboxing has been a successful policy tool in the Philippines and India for promoting financial innovation (Allen, 2020).

Incentives such as tax deductions for banks that lend against IPRs, or reduced capital reserve requirements for such loans, could be considered to stimulate market participation. On the borrower side, grants or tax credits could be provided for creative enterprises that register

their IPRs and use them as collateral. Fiscal incentives have proven effective in Canada and Israel, where innovation-driven financing models have been nurtured through public support (Innovation Canada, 2019)

From a broader perspective, the reform agenda should be aligned with Indonesia's national economic transformation goals. Presidential Regulation No. 74/2022 on the National Strategy for Intellectual Property Economy lays the groundwork for integrating IPRs into development planning. However, this must be followed by actionable steps and measurable outcomes, such as increased IPR-backed financing volume, improved SME access to capital, and enhanced enforcement capacity.

In conclusion, the opportunity to reform Indonesia's legal and institutional ecosystem to support IPR-based fiduciary collateral is both timely and necessary. Drawing lessons from comparative jurisdictions and supported by strong political will, Indonesia can transition from a normatively supportive but practically inactive framework to a robust, innovation-friendly financial system. Such reform would not only empower the creative economy but also modernize the country's approach to intangible capital in line with global economic trends.

5. CONCLUSION

The use of intellectual property rights (IPRs) as fiduciary collateral in Indonesia presents a transformative opportunity to enhance financial inclusion, particularly for creative industries and SMEs. Although the legal framework formally allows IPRs to be used as collateral, practical implementation remains limited due to the absence of technical regulations, standardized valuation methods, institutional coordination, and market confidence. Bridging this gap requires comprehensive reforms, including the development of implementing regulations, accredited valuation systems, integrated registries, and financial incentives such as government-backed guarantees. Learning from international best practices, Indonesia must align legal, financial, and institutional mechanisms to fully unlock the economic potential of intangible assets. With strong policy commitment and stakeholder collaboration, IPR-based financing can become a strategic driver of innovation and inclusive economic growth.

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