



Legal Protection for Creative Economic Actors of Intellectual Property as the Debt Guarantee

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Abstract: The development of the creative economy often experiences problems such as limited access to capital; with the enactment of Government Regulation No. 24 of 2022 concerning the Creative Economy, the government facilitates Intellectual Property-Based Financing Schemes through financial services institutions, but in its implementation there is a need for legal protection for creative economy actors who want to get a source of financing, besides that many people do not understand how the requirements for filing Intellectual Property-based financing due to the intangible nature of the collateral object. This research uses the normative juridical method. This research uses all laws and regulations to examine more deeply related to the research in question. The research results indicate that the requirements for applying for an Intellectual Property-Based Financing Scheme must be registered and have a certificate from the Directorate General of Intellectual Property. Intellectual Property (IP) in question is copyright and patent rights based on Article 16 paragraph (3) of the Copyright Law and Article 108 of the Patent Law. Legal protection of creative economy actors in the Intellectual Property-Based Financing Scheme has been pursued by the government, including the existence of further regulations issued by the Financial Services Authority, which makes creative economy actors avoid conflicts or financing disputes through insurance contracts, preventing theft of ideas by others, providing incentives from the government to register IP, providing legal assistance before the court process, and providing legal assistance in the event of a financing dispute.

Keywords: Legal Protection, Creative Economy Actors, Intellectual Property

Abstrak: Pengembangan ekonomi kreatif seringkali mengalami permasalahan seperti terbatasnya akses modal, dengan disahkannya Peraturan Pemerintah Nomor 24 Tahun 2022 tentang Ekonomi Kreatif. Pemerintah memfasilitasi Skema Pembiayaan Berbasis Kekayaan Intelektual melalui lembaga jasa keuangan, namun dalam pelaksanaannya perlu adanya perlindungan hukum bagi pelaku ekonomi kreatif yang ingin mendapatkan sumber pembiayaan. Selain itu banyak masyarakat belum memahami bagaimana persyaratan pengajuan pembiayaan berbasis Kekayaan Intelektual dikarenakan sifat objek jaminan yang tidak berwujud. Penelitian ini menggunakan metode yuridis normatif, menggunakan aturan perundang-undangan tentang perlindungan hukum terhadap pelaku ekonomi kreatif. Hasil penelitian menunjukkan syarat dalam mengajukan skema pembiayaan berbasis kekayaan intelektual harus didaftarkan dan telah mempunyai sertifikat dari Direktorat Jenderal Kekayaan Intelektual (DJKI) yaitu hak cipta dan hak paten berdasarkan Pasal 16 ayat (3) Undang-Undang Hak Cipta dan Pasal 108 Undang-undang Paten. Perlindungan hukum terhadap pelaku ekonomi kreatif dalam skema pembiayaan berbasis kekayaan intelektual telah diupayakan oleh pemerintah, yaitu adanya peraturan lanjutan yang dikeluarkan oleh Otoritas Jasa Keuangan (OJK) yang membuat pelaku ekonomi kreatif terhindar dari konflik atau sengketa pembiayaan melalui kontrak asuransi, mencegah adanya pencurian ide yang dilakukan oleh orang lain, pemberian insentif dari pemerintah untuk melakukan pendaftaran kekayaan intelektual, adanya pendampingan hukum sebelum proses pengadilan serta adanya bantuan hukum apabila terjadi sengketa pembiayaan.

Kata Kunci: Perlindungan Hukum, Pelaku Ekonomi Kreatif, Kekayaan Intelektual

A. Introduction

The creative economy is one of the economic drivers that contribute to the development of the Indonesian economy. This creative economy is characterized by economic activities based on ideas, ideas, and creativity to create welfare and jobs.¹ The Ministry of Tourism and Creative Economy has established 17 creative economy subsectors consisting of applications, game developers, crafts, interior design, music, fine arts, product design, fashion, culinary, film, animation and video, photography, visual communication design, television and radio, architecture, advertising, performing arts, and publishing.² The creative economy has one of the added values related to the registration of Intellectual Property Rights (IPR), which is the capitalization of human intellect.³ Protection of Intellectual Property Rights owned by creative economy actors

¹Rachmayanthi, "Analyzing the Licensing and Franchising Legislations as Means of Intellectual Property Protection in Indonesia," *International Journal of Criminal Justice Sciences* 17, no. 2 (2022); H. Ahmad M. Ramli, Ranti Fauza Mayana, and Tisni Santika, "Fostering a Creative Economy with Copyright Protection: 'Weightless Economy' and Creativity-Based Sustainable Development," *International Journal of Innovation, Creativity and Change* 10, no. 10 (2020); David Grinlinton, "The Intersection of Property Rights and Environmental Law#," *Environmental Law Review* 25, no. 3 (2023).

²Kementerian Pariwisata dan Ekonomi Kreatif/Badan Pariwisata dan Ekonomi Kreatif, "Subsektor Ekonomi Kreatif" <https://doi.org/https://kemenparekraf.go.id/layanan/Subsektor-Ekonomi-Kreatif>, diakses pada tanggal 9 November 2023 pukul 16.45 WIB; Dyah Permata Budi Asri, "Perlindungan Hukum Hak Kekayaan Intelektual Bagi Produk Kreatif Usaha Kecil Menengah Di Yogyakarta," *Jurnal Hukum Ius Quia Iustum* 27, no. 1 (2020).

³Rochmat Aldy Purnomo, *Ekonomi Kreatif Pilar Pembangunan Indonesia*, Ziyad Visi Media, Surakarta, 2016, h. 30.

in conducting business efforts has an important role in economic development. Their business activities can expand employment, increase income, reduce poverty and unemployment, and spur sustainable development and growth.⁴

In practice, creative economic development often experiences problems such as limited access to banking, capital, and promotion. One of the cases of lack of capital is the creative economy actors in Soreang District, Parepare City. This case stems from Mrs. Norma's clamshell handicraft business. The development of processed clam shells has been going on since 2014, so the sustainability of this home industry product can be one of the efforts to fulfill or provide additional income to help the family economy. However, optimizing this creative economy is still not optimal because of the many obstacles, one of which is the lack of capital. Mrs. Norma said that making this clamshell craft requires considerable capital, so when she gets a lot of orders, she needs to limit sales, which also makes her unable to expand marketing by selling her crafts in online shops.⁵

Based on the case example, on July 12, 2022, President Joko Widodo ratified Government Regulation No. 24 of 2022 on the Creative Economy to help creative economy actors in Indonesia obtain financing sources to develop their businesses. Article 4, paragraph (1) of Government Regulation 24 of 2022 concerning the Creative Economy states that the government facilitates Intellectual Property-Based Financing Schemes through financial services institutions. An intellectual property-based financing scheme is a financing scheme that makes intellectual property an object of debt guarantee to make it easier for creative economic actors to obtain financing sources from bank financial institutions or non-bank financial institutions.

Intellectual property rights as an object of debt collateral play a very important role in the development of the creative economy in Indonesia. Creative economy actors can pledge their intellectual property to access bank credit in order to develop their businesses. The greater the business of creative economy actors, the more significant the impact on Indonesia's economic growth. Intellectual property rights are intangible movable objects that can be used as collateral objects. They have requirements for filing intellectual property-based financing that are different from other tangible objects due to their intangible nature. Besides that, the law also needs to provide protection for creative economic actors who want to get these sources of financing.

Thus, based on the background described above, the author is interested in discussing how Intellectual Property is an object of debt collateral and discussing in detail what legal protection is obtained by creative economy actors for Intellectual Property used as collateral to obtain financing based on Government Regulation No. 24 of 2022 concerning the Creative Economy.

The type of research used in this study is normative juridical. Normative legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced. This research uses all laws and regulations to examine more deeply related to the research in question. Normative legal research is research focused

⁴Disemadi, H. S., & Kang, C, "Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0," *Jurnal Komunikasi Hukum (JKH)*, Vol. 7 No. 1, 2021, h. 54-71.

⁵Ibnu Rusdi, "Peran Ekonomi Kreatif Dalam Meningkatkan Pendapatan Masyarakat Di Kecamatan Soreang Kota Parepare (Studi Pengrajin Cangkang Kerang)," *Institut Agama Islam Negeri Parepare*, 2022, h. 57-58.

on examining positive law, which in this case is written legal material, especially related to the legal protection of creative economy actors over intellectual property used as the object of debt guarantees regulated in Government Regulation Number 24 of 2022 concerning Creative Economy.

B. Intellectual Property as an Object of Debt Guarantee based on Government Regulation Number 24 of 2022 concerning Creative Economy

Currently, the development of the creative economy in Indonesia has provided benefits for the community's welfare and contributed greatly to the national economy. A creative economy manifests added value from intellectual property derived from creativity, science, and technology. The government to increase the development of the creative economy and the mandate of Law Number 24 of 2019 Creative Economy has issued Government Regulation Number 24 of 2022 concerning Creative Economy, which regulates the facilitation of financing schemes for intellectual property-based creative economy actors who want to find alternative sources of funding through bank financial institutions and non-bank financial institutions.

Article 9 Paragraph 2 of Government Regulation Number 24 of 2022 concerning the Creative Economy states that the objects that can be used as collateral in the Intellectual Property-based financing scheme are:

- a. Fiduciary Guarantee on Intellectual Property, Intellectual Property (IP) registered or registered through the Directorate General of Intellectual Property (DJKI). The IP has never been used as a fiduciary guarantee and still has a sufficient protection period.
- b. Contracts in Creative Economy Activities: these include license agreements, work contracts, or work orders (SPK) received by creative economy actors when they want to start a job. In this contract, the license agreement can be guaranteed because there is a royalty amount that the licensee must give to the licensor during a certain period that can be assessed by the financing institution.
- c. Bill Rights in Creative Economic Activities: the billing rights in question are the right to collect royalties that must be paid by song or music users for commercial use. Example: National Institute of Collective Management.

The creative economy in Indonesia is currently in 3rd position after America and South Korea, with a value of 191 trillion, and has absorbed a workforce of more than 18 million people.⁶ Intellectual Property Rights as a financing guarantee has been implemented in several countries, such as Singapore, Malaysia, and Thailand. These intellectual works are part of the property included in intangible movable objects that can be used as collateral to obtain banking credit. In Indonesia, regulations regarding banking guarantees in intellectual property have been contained in laws and regulations, namely Law Number 28 of 2014 concerning Copyright (Copyright Law). Article 16 of the Copyright Law clearly states that copyright is an intangible movable property that can be transferred or transferred either in whole or in part through inheritance, grants, endowments, wills, written agreements, or other causes justified by the provisions of laws and regulations.

Article 16 Paragraph (3) of the Copyright Law expressly states that "copyright can be used as an object of fiduciary guarantee." with the enactment of this provision,

⁶Syafrida, "Produk Ekonomi Kreatif Berbasis Hak Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan," *Jurnal Sosial Dan Budaya Syar-I* 10, no. 1, 40, 2023.

copyright objects such as copyrighted works, both tangible (paintings, books, batik, etc.) and intangible (films, music, and so on) can be used as objects of fiduciary guarantee. If they need a bank loan, copyright holders can use the copyright as collateral to the bank. The same is true for patents. Patents are intellectual property granted by the state to inventors for the results of their inventions in the technology field that have a strategic role in supporting nation-building and advancing the general welfare.⁷

Patents can be used as objects of banking guarantees as stated in Article 108 Paragraph (1) of Law Number 13 of 2016 concerning Patents (Patent Law), which states that "patent rights can be used as objects of fiduciary guarantee." Through this provision, patent holders, both patents and simple patents that do not have sufficient capital, can guarantee their patents' rights so that they do not need to wait for other people or foreign companies to provide funds for product manufacturing. The regulation of material regarding intellectual property rights as bank credit guarantees in the Copyright Law and Patent Law indirectly becomes the basis that the object of debt guarantee referred to in Article 9 of Government Regulation Number 24 of 2022 concerning Creative Economy is copyright and patent rights because the regulation states that the object of debt guarantee that can be used in intellectual property-based financing schemes is the fiduciary guarantee of intellectual property and contracts and billing rights in creative economic activities.

Article 10 of Government Regulation Number 24 of 2022 concerning Creative Economy states that the object of debt guarantee is Intellectual Property that has been recorded or registered with the ministry that organizes government affairs in the field of law and Intellectual Property that has been managed either independently and/or transferred its rights to other parties in creative economic activities, then the intellectual property that can be used as an object of debt guarantee is if the intellectual property The registration has been carried out at the Directorate General of Intellectual Property (DJKI) at the Ministry of Law and Human Rights (Kemenkumham). Several conditions must be done for submitting applications for copyright and patent registration, including the following:

a) Copyright Registration

Application requirements that must be prepared:⁸

- 1) Copyright Application Letter
- 2) Proof of Copyright Transfer
- 3) Affidavit of Creation
- 4) ID card
- 5) Power of Attorney (if by power of attorney)
- 6) Proof of Legal Entity (if the applicant is a legal entity)

After completing all the requirements, the applicant can apply by registering an account on hakcipta.dgip.go.id. The applicant referred to in this case is:⁹

⁷Venantia Sri Hadiarianti, *Memahami Hak Kekayaan Intelektual*, Jakarta, Universitas Atmajaya, 2010, h. 13.

⁸Kementerian Hukum dan HAM Republik Indonesia, "Permohonan Pendaftaran Hak Cipta", <https://jakarta.kemenkumham.go.id/layanan-divisi-pelayanan-hukum-dan-ham/permohonan-pendaftaran-hak-cipta>, diakses pada tanggal 10 Maret 2024 pukul 16.47 WIB.

⁹Tri Yuni Hendrawati, *Panduan Hak Kekayaan Intelektual Di Bidang Hak Cipta*, Jakarta, Universitas Muhammadiyah Jakarta, 2022, h. 11.

- a. Creator, a person or several people whose inspiration gives birth to a creation based on the ability of the mind, imagination, skills, or expertise expressed in a distinctive and personal form.
- b. Copyright holder, the party who received the rights lawfully from the creator or another party who received further rights from the party who received the rights lawfully.
- c. A legal entity that has made announcements, distributions, or communications on works originating from that legal entity without naming someone as the creator.
- d. Attorney, intellectual property consultant, or authorized person from the creator or copyright holder.

Registered applicants can create an account by filling out the form provided, then opening the email that the applicant used to create a copyright account and looking for the verification email. Click the link in the email; then the applicant can return to the copyright request page to log in. After logging in, select the Copyright menu, then click New Application. The applicant can upload the required requirements. If the applicant is sure that all the data filled in is in accordance with the work you want to record, then click submit. The applicant needs to make a Non-Tax State Revenue (PNBP) payment through the bank in accordance with the nominal listed and enter the billing code at the time of payment.

Applicants who apply for copyright for micro business computer programs, small businesses, educational institutions, & government R&D need to make a payment of Rp. 300,000, while general computer programs are Rp. 600,000. For applicants who apply for copyright for non-computer programs, micro-enterprises, small businesses, educational institutions, & government R&D, the cost that needs to be paid is Rp. 200,000, while non-general computer programs are Rp. 400,000.¹⁰ After payment is made, the system will immediately process the application in a few minutes through the Automatic Approval of Copyright Registration (POPHC) service, once approved the applicant can download a letter of registration of the work, which is a copyright certificate that can be used as an object of debt guarantee.

b) Patent Registration

Application requirements that need to be prepared:¹¹

- 1) Description of Patent Application in Indonesian
- 2) Invention Claims
- 3) Abstract of Invention
- 4) Invention Images (PDF) and Images for Publication (JPG)
- 5) Statement of Ownership of the Invention by the Inventor
- 6) Letter of Transfer of Ownership Rights of the Invention (if the application is submitted by an applicant who is not an Inventor)
- 7) Power of Attorney (if submitted through a consultant)
- 8) Company Deed (if the applicant is a legal entity)

¹⁰Direktorat Jenderal Kekayaan Intelektual - Kementerian Hukum dan HAM Republik Indonesia, "Biaya Dan Cara Pembayaran", <https://www.dgip.go.id/menu-utama/hak-cipta/biaya>, diakses pada tanggal 10 Maret 2024 pukul 17.10 WIB.

¹¹Direktorat Jenderal Kekayaan Intelektual - Kementerian Hukum dan HAM Republik Indonesia, "Prosedur Pendaftaran Paten Baru", <https://dgip.go.id/menu-utama/paten/syarat-prosedur>, diakses pada tanggal 10 Maret 2024 pukul 17.36 WIB.

After all the requirements are complete, the applicant or his attorney can apply by registering an account at <https://paten.dgip.go.id/>. The applicant referred to in this case is:¹²

- a. Inventor, one or several people who jointly carry out ideas that are poured into activities that produce inventions; in this case, the person in question is an individual or legal entity.
- b. The patent holder, inventor as the owner of the patent, the party who receives the right to the patent from the patent owner, or another party who further receives the right to the patent listed in the general register of patents.
- c. Power of attorney, an intellectual property consultant who resides or has a permanent domicile in the territory of the Unitary State of the Republic of Indonesia.

The applicant after registering, can click add to create a new application. The applicant fills out all available forms, uploads the required requirements, and then orders the payment code by clicking "generate billing code." the applicant makes a payment in accordance with the applicable billing code through the Perception Bank or Perception Post, which uses the SIMPONI system.¹³ Payment can be made within 3 (three) calendar days.¹⁴ Applicants who apply for MSME patents need to make a payment of Rp350,000, while general patents are Rp1,250,000. For applicants who apply for MSME simple patents, the cost that needs to be paid is Rp200,000, while general simple patents are Rp800,000.¹⁵ The applicant, if he has made a payment and all uploads are considered correct, can click finish and wait for the results from the Directorate General of Intellectual Property (DJKI). Based on Article 46 of Law Number 13 of 2016 concerning Patents (Patent Law), DJKI will announce a patent application that has met the stipulated conditions no later than 7 (seven) days after 18 (eighteen) months from the priority date if the application is submitted with priority rights, but if the applicant wants the announcement to be made faster along with the reason, the announcement can be made no earlier than 6 (six) months from the date of receipt at a fee. Referring to Article 58 of the Patent Law, the Minister will issue a patent certificate within a maximum of 2 (two) months from the date the notification letter is announced. A Patent Certificate is proof of patent rights, and this certificate can be used as an object of debt guarantee.

Article 7 of Government Regulation Number 24 of 2022 concerning Creative Economy states that creative economy actors can apply for intellectual property-based financing to bank financial institutions or non-bank financial institutions. Regulations regarding things that must be done by bank financial institutions and non-bank financial institutions in providing intellectual property-based financing are regulated in Article 8 of Government Regulation Number 24 of 2022 concerning Creative Economy, then

¹²Direktorat Jenderal Kekayaan Intelektual - Kementerian Hukum dan HAM Republik Indonesia, "Frequently Asked Question", <https://www.dgip.go.id/faq/list-faq/umum/umum?page=4&kategori=umum>, diakses pada tanggal 18 Maret 2024 pukul 19.46 WIB.

¹³Muhammad Citra Ramadhan, *Paten*, Medan, Merdeka Kreasi, 2020, h. 69.

¹⁴Muhammad Citra Ramadhan.

¹⁵Kementerian Hukum dan HAM Republik Indonesia, "Permohonan Pendaftaran Paten", <https://jakarta.kemenkumham.go.id/layanan-publik/pelayanan-hukum-dan-ham/layanan-kekayaan-intelektual/permohonan-pendaftaran-paten?csrt=7328279669435374079>, diakses pada tanggal 10 Maret 2024 pukul 18.08 WIB.

Article 9 of Government Regulation Number 24 of 2022 concerning Creative Economy states that one of the objects of debt guarantees that can be used is fiduciary guarantees on intellectual property, therefore, by referring to Article 16 paragraph (3) of Law Number 28 of 2014 concerning Copyright and Article 108 of Law Number 13 of 2016 concerning Patents, it is stated that only these two intellectual properties can be used as objects of fiduciary guarantee.

Creative economy actors, in applying to obtain intellectual property-based financing as an object of debt guarantee, must go through several stages, such as business verification, verification of intellectual property legality, intellectual property valuation, disbursement of funds, and receipt of refunds. The requirements determined refer to Article 7 paragraph (2) of Government Regulation Number 24 of 2022 concerning Creative Economy in obtaining intellectual property-based financing, consisting of:

1. Financing Proposal

Creative economy actors who will apply for intellectual property-based financing must prepare a financing proposal. Financing/credit proposals generally contain at least a description of business activities, the purpose of using funds/credits related to business activities, the mechanism for financing/credit payments, and guarantees that will be provided in the context of applying for financing.

2. Have a Creative Economy Business

Creative economy actors who will apply for financing/credit must certainly have a business that enters the creative economy sector. The requirement to have a creative business is a must because the purpose of intellectual property-based financing is intended for business financing (development) in the creative economy sector.

3. Have an Engagement related to the Intellectual Property of Creative Economy Products

Article 7 Paragraph 2 letter C of Government Regulation Number 24 of 2022 concerning Creative Economy explains that the requirements for having an engagement related to the intellectual property of this creative economy product include that the intellectual property is licensed to other parties.

4. Have a Registration Letter or Intellectual Property Certificate

Creative economy actors must have an intellectual property certificate issued by the Ministry of Law and Human Rights. These intellectual property certificates can be both Copyright and Patent.

Creative economy actors who have met the above requirements can apply for intellectual property-based financing schemes to bank and non-bank financial institutions. The financial institution will verify business activities, verify intellectual property certificates submitted as collateral, and assess the intellectual property that will be used as collateral. After the verification and assessment process is complete and economic actors are declared eligible for financing or credit, a credit agreement or financing agreement will be made between the financial institution and creative economy actors. The next stage is to make an agreement for the imposition of fiduciary guarantees made by notarial deeds.

Creative economy actors who have obtained financing/credit from bank or non-bank financial institutions are required to record the financing. Based on Article 13 of Government Regulation Number 24 of 2022 concerning Creative Economy, the

recording is carried out through a recording system for financing the facilitation of creative economy actors at the Ministry of Tourism and Creative Economy. In this financing requirement, Intellectual Property Rights (IPR) are positioned as objects of bank credit guarantees, while the parties to the credit agreement are banks as creditors and IPR holders as debtors. The relationship between the Bank (the creditor) and IPR Holder (the debtor) is bound in an agreement called a debt receivable agreement with material collateral as the object of the guarantee is IPR.

In principle, the bank will not grant credit if there is no collateral or guarantee, and the value of the guarantee must exceed the debtor's debt, so the bank believes that even if there is a default, there is still a collateral object that can be sold or auctioned in exchange for paying the debtor's debt. It should be underlined that the transferred fiduciary guarantee is proprietary. The object of the fiduciary guarantee will still be in the possession of the owner of the object so the owner of the object still has the right to use the object. The surrender of fiduciary guarantees is carried out constituted possession, which means the transfer of property rights from the guarantor to the recipient of the guarantee, which is carried out with the promise that the guarantor can still physically control the object. Intellectual Property Rights (IPR) can be transferred through a written license agreement. The party receiving the transfer of IPR is given the right to manage IPR, which has economic benefits. The party is also obliged to pay royalties in accordance with the agreement made in the license agreement. License agreements made by owners and holders of Intellectual Property Rights (IPR) aim to transfer IPR to other parties so that the other parties will also become IPR holders but not creators. IPR holders who receive IPR transfers through the license agreement will obtain exclusive rights that provide economic benefits. The more license agreements made by IPR holders with other parties, namely licensees, the better the prospects of the IPR and the greater the economic value that will be received by IPR holders. If the IPR is used as an object of bank credit guarantee, then the prospect of IPR that has economic value will give confidence to the bank to grant the credit application submitted by the holder of the Intellectual Property Rights (IPR).¹⁶

C. Legal Protection for Creative Economy Actors over Intellectual Property that is used as Debt Guarantee Objects based on Government Regulation Number 24 of 2022 concerning Creative Economy

The government has passed Government Regulation Number 24 of 2022 concerning the Implementing Regulation of Law Number 24 of 2019 concerning Creative Economy as a new breakthrough to revive the economy, which is carried out through the form of easy access to funding for creative economy actors through the use of creative industry products as debt collateral.¹⁷ Creative economy actors are mostly micro, small, and medium entrepreneurs. Creative economy (EKRAF) can be interpreted as economic activity by creating a reason for processing a product to be of high value.¹⁸

¹⁶Ujang Badru Jaman, "Prospek Hak Kekayaan Intelektual (HKI) Sebagai Jaminan Utang," *Jurnal Hukum dan HAM West Science* 01, no. 01, 18, 2022.

¹⁷Clara Amelia, "Bangkitkan Ekonomi, Sandiaga Uno Tindak Lanjuti Peraturan Pemerintah SoalEkraf," <https://economy.okezone.com/amp/2022/11/24/320/2713916/bangkitkan%02ekonomi-sandiaga-uno-tindak-lanjuti-peraturan-pemerintah-soal-ekraf?page=2>, diakses pada tanggal 11 Maret pukul 09.35 WIB.

¹⁸Yuwono Prianto, "Perlindungan Hukum Terhadap Para Pelaku Ekonomi Kreatif Masyarakat Hukum Adat Baduy," *Seri Seminar Nasional Ke-III Universitas Tarumanagara*, 2021, h. 96.

The creative industry is believed to be a driving force in the recovery of the national economy; compared to the general industry, there are striking differences in character, namely the types of diverse industries, and each of them processes and realizes ideas so that they become intellectual property.¹⁹

The government provides convenience regarding the flow of intellectual property-based funding distributed to financial institutions, both banks and non-banks. Ease regarding the flow of intellectual property-based funding to creative economy actors is implemented through:²⁰

- 1) Utilization of intellectual property with economic value, namely facilities in intellectual property application procedures and optimizing intellectual property into debt collateral objects
- 2) Intellectual property appraisal, namely accommodation, learning, and training, intellectual property appraisal.

The government, in this case, has also prepared alternative creative economy funding sources consisting of two types, namely joint funding services based on information technology and securities offerings through crowdfunding services based on information technology. Both must have a license from the Financial Services Authority and, in their application, must be in sync with regulations from the Financial Services Authority. The forms of facilities obtained by creative economy actors obtained from the government and local governments for their intellectual property which are used as objects of debt guarantee, as stated in Article 19 of Government Regulation Number 24 of 2022 concerning Creative Economy, namely:

- 1) Technical guidance. For example, business validation, intellectual property management, product quality development, and product sales.
- 2) Business licensing services or electronically integrated registration. For example, it helps smooth production, registration applications, and permits in marketing products.
- 3) Access or funding assistance. For example, incentive assistance or the allocation of special funding schemes.
- 4) Information services or business consulting. For example, the procurement of data portals and business consulting.
- 5) Marketing promotion assistance. For example, sales promotion assistance through various media and the provision of programs to market creative economy products.
- 6) Provision of a digital collective management system. For example, recording creative economy products, listing creative economy business criteria, procuring platforms, and integrating electronic systems.
- 7) Marketing access. Examples include the priority of government goods or services and the establishment of communication forums between creative economy actors.
- 8) Marketing incubation through designated institutions. For example, resource allocation and service procurement to speed up the service process.
- 9) Assistance in calculating intellectual property valuation. For example, assistance in

¹⁹Dyah Permata Budi Asri, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya," *Journal of Intellectual Property*, Vol. 1, No. 1, 2018, h. 16.

²⁰Firqoh Nazia, "Prospek Perlindungan Kekayaan Intelektual Terhadap Produk Ekonomi Kreatif Pasca Terbitnya Peraturan Pemerintah Nomor 24 Tahun 2022", *Jurnal Studi Islam Indonesia*, vol. 1, no. 1, 2023, h. 76.

calculating assets and establishing or appointing asset valuation bodies.

- 10) Legal assistance and assistance services. For example, legal counseling, legal consultation, mediation, preparation of legal documents, and legal assistance before court proceedings.

Article 36 of Government Regulation Number 24 of 2022 concerning Creative Economy also provides many benefits for creative economy actors, including:

- 1) Creative economy funding. This creative economy funding is based on the state budget, regional budget, and support from financial institutions through commercial funding schemes. Creative economy funding is organized through the utilization of intellectual property with economic value and intellectual property assessment.
- 2) Facilities for developing creative economy product sales techniques based on intellectual property can be run through:
 - a. License, permission granted by the holder of Intellectual Property rights to another party based on an agreement granting rights to enjoy the economic benefits of a right.
 - b. Franchising, special rights owned by individuals or business entities to business systems with business characteristics in order to market goods and or services that have proven successful and can be utilized by other parties based on written agreements.
 - c. Transfer of technology, the transfer of the ability to utilize and master science and technology between institutions, agencies, or people, both within the domestic environment and those from abroad to the country or vice versa.
 - d. Shared branding, the use of two or more brands in one product offering to increase the economic added value of a good and/or service.
 - e. Transfer of rights, transfer of intellectual property rights from the owner of rights to the recipient of rights in accordance with the provisions of laws and regulations.
 - f. Another form of partnership is intellectual property marketing, which uses strategic alliances such as joint venture systems or existing marketing systems by applying local wisdom.
- 3) Incentives for creative economy actors, in the form of fiscal incentives from the government consisting of tax services, services in terms of customs, and services in terms of excise, as well as fiscal incentives from local governments consisting of regional tax incentives and levy incentives.
- 4) The government or local government has an obligation to optimize the creative economy, including improving funding schemes and improving sales techniques for creative economy products based on intellectual property, which in this case can collaborate with educational institutions, business aspects, industrial aspects, communication networks, and media.
- 5) Community participation includes appreciating, caring for, and protecting intellectual property produced by creative economy actors.

Government Regulation Number 24 of 2022 concerning Creative Economy, in addition to providing many conveniences, facilities, and benefits, also provides legal protection for creative economy actors. Protection of creative economy actors is basically also a manifestation of the important value of intellectual property rights (IPR)

itself; protection of creative economy actors has the aim of protecting someone as the legal owner of IPR from actions or actions of others that can harm IPR holders. Legal protection is absolutely necessary; in the context of international law, intellectual property rights have been regulated in various sources of law, such as conventions, one of which is regulated in Article 27 (2) of the Universal Declaration of Human Rights. The regulation states that intellectual property rights are part of human rights that must be protected, respected, and fulfilled by the government. However, the awareness of the Indonesian people towards intellectual property rights and legal aspects is still very concerning, so it often causes various legal problems to lead to disputes in court.

For creative economy actors, IPR registration is very important because it aims to ensure legal certainty about the rights and obligations that must be carried out by creative economy actors related to the works that have been created. In principle, a person with ideas and ideas is allowed to get protection for his ideas and ideas, and it is not allowed for others to use them without permission from the creator. IPR protection is irrelevant if it is not associated with commercialization processes or activities. Commercialization is a series of efforts to market an intellectual property product with the aim of increasing added value. The added value of an intellectual property product is also attached to the economic rights of the owner.²¹ Creative economy actors can increase the added value of their commercialization activities by applying for financing to financial institutions for the intellectual property they have registered.

The Financial Services Authority (OJK) issued Letter Number S-12/D.03/2022 to the Directors of Conventional Commercial Banks regarding the Follow-up to Government Regulation Number 24 of 2022 concerning Creative Economy, which discusses the appeal to conventional banks to be able to accept intellectual property as collateral. Based on the letter, banks need to apply the precautionary principle by formulating policies such as Standard Operating Procedures (SOPs) or implementation guidelines tailored to the needs of each banking institution. In general, after all the requirements submitted by the customer or creative economy actors to the bank are met, the bank will make a financing proposal submitted by the customer. If it has been approved, then a contract will be made, and the customer will sign the agreed agreement contract; after the contract is completed, the customer needs to enter into an insurance contract.²² Insurance aims to protect customers or creative economy actors against the risks they face.

During the installment period, if the creative economy actor dies due to an accident due to permanent disability due to an accident so that he cannot continue his obligations to the bank or lender. Against these risks, the insurance company will pay off the insured's loan or obligation, which is considered paid off. During the installment period, if the creative economy actor defaults or defaults, it can be paid in advance using insurance. Default insurance can cover up to 70%, but customers still have dependents as large as the loan.²³ Insurance is only a barrier so that bookkeeping at banks remains

²¹Noviriska, "Perlindungan Hak Kekayaan Intelektual Terhadap Pelaku Ekonomi Kreatif Berdasarkan Undang-Undang Hak Kekayaan Intelektual Nomor 28 Tahun 2014 Tentang Hak Cipta," *Jurnal Ilmiah Publik*, vol. 11, no. 02, 302, 2022.

²²Ria Kusmawati, "Implementasi Produk Pembiayaan UMKM Di BSI KCP Kajen Pekalongan," *Jurnal Manajemen Dan Perbankan Syariah*, Vol. 4, No. 3, 2022, h. 22.

²³Dewi Puspita, "Peran Asuransi Terhadap Resiko Pembiayaan," *Mahkamah*, vol. 3, no. 2, 2022, h. 275.

smooth with the existence of Government Regulation Number 24 of 2022 concerning Creative Economy, which is followed up by the Financial Services Authority (OJK), it has provided legal protection for creative economy actors to avoid financing risks such as default and death due to illness or due to accidents during the installment period.

The classification of legal protection consists of two characteristics: preventive (efforts to prevent a violation codified in laws and regulations) and repressive (protection if a dispute has occurred). The progress of the creative economy world is strongly supported by the enactment of IPR as a form of legal protection for the results of creativity or innovation of creators of economic value and prevent and even crack down on violations or fraud that occur.²⁴ The form of preventive legal protection provided by the government to support intellectual property-based financing programs is the existence of insurance contracts in the financing process so that creative economy actors avoid financing risks such as default and death during the installment period, the Ministry of Law and Human Rights through the Directorate General of Intellectual Property Rights also provides registration incentives to increase the productivity of producers intellectual creation to apply for Intellectual Property Rights. Schools, universities, micro and small businesses, and community-assisted citizens are given special incentives.²⁵ In this case, the Directorate General of Intellectual Property (DJKI) provides free copyright registration and recording facilities to micro, small, and medium enterprises (MSMEs). Besides DJKI also provides intellectual property (IP) consulting services to the public with the aim of increasing understanding and protection of intellectual property in the community, especially to encourage the utilization of the economic value of intellectual property that can be used as financing collateral.²⁶

The hope that arises from the existence of insurance contracts, as well as the provision of incentives, is to provide a sense of security, protection, and convenience and help ease the burden on creative economy actors. By increasing intellectual property registration through incentives, the large registration fee cannot be a reason anymore for creative economy actors not to register their intellectual property, so creative economy actors who want to get business capital from the existence of intellectual property-based financing programs can immediately apply for financing because they already have certificates for their intellectual property.

The government also provides repressive legal protection, namely by preparing the flow of handling intellectual property-based creative economy financing disputes; this refers to Article 40 of Government Regulation Number 24 of 2022 concerning Creative Economy, including handling disputes carried out by deliberation to reach consensus and dispute resolution resolved by a court or outside the court. Out-of-court dispute resolution can be resolved by alternative institutions that are available inside or outside institutions that already have permission from the Financial Services Authority.

²⁴Hari Sutra Disemadi, "Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0," *Jurnal Komunikasi Hukum (JKH)*, Vol. 7, No. 1, 2021), h. 56.

²⁵Desak Putu Sri Shania Aprilia, "Pelaku Ekonomi Kreatif Diuntungkan Insentif Fiskal Dan Nonfiskal", <https://konsultan-pajaksemarang.com/2022/07/28/pelaku-ekonomi-kreatif-diuntungkan-insentif-fiskal-dan-nonfiskal/#>, diakses pada tanggal 11 Maret 2024 pukul 10.35 WIB.

²⁶Direktorat Jenderal Kekayaan Intelektual - Kementerian Hukum dan HAM Republik Indonesia, "DJKI Berikan Fasilitas Permohonan Hak Cipta Gratis" <https://dgip.go.id/artikel/detail-artikel/djki-berikan-fasilitas-permohonan-hak-cipta-gratis?kategori=liputan-humas>, diakses pada tanggal 11 Maret 2024 pukul 11.00 WIB.

Examples of alternative dispute resolution outside the Financial Services Authority are the Indonesian National Arbitration Board (BANI) and the Intellectual Property Rights Arbitration and Mediation Board (BAMHKI). Creative economy actors also receive legal protection through legal assistance and assistance services such as legal counseling, legal consultation, mediation, preparation of legal documents, and legal assistance before court proceedings.

D. Conclusion

Intellectual property rights that can be used as objects of debt collateral are copyright and patent rights, as stipulated in Article 16 paragraph (3) of Law Number 28 of 2014 concerning Copyright and Article 108 of Law Number 13 of 2016 concerning Patents. Government Regulation No. 24 of 2022 on Creative Economy is a regulation that regulates the requirements for applying for intellectual property-based financing, where the object that can be used as collateral is Intellectual Property (IP) that has been registered through the Directorate General of Intellectual Property (DJKI), and implemented in the form of fiduciary guarantees submitted to bank financial institutions or non-bank financial institutions. The enactment of Government Regulation No. 24 of 2022 concerning the Creative Economy and the existence of further regulations issued by the Financial Services Authority (OJK) make creative economy actors receive legal protection and economy actors avoid conflicts or financing disputes, prevent the theft of ideas by others, and provide legal assistance in the event of a financing dispute.

The legal protection sought by Government Regulation No. 24 of 2022 concerning the Creative Economy against creative economy actors is preventive, namely providing incentives for registering intellectual property to the community, insurance contracts to minimize financing risks, and providing intellectual property (IP) consulting services to increase understanding and protection of intellectual property in the community. The government has also sought repressive legal protection by creating regulations, especially in Article 40 of Government Regulation 24 of 2022 concerning the Creative Economy, which regulates handling disputes over intellectual property-based creative economy financing. The regulation stipulates that if creative economy actors experience a dispute, it can be done through deliberation or resolved by a court or out of court; besides that, creative economy actors will get legal assistance and assistance services before the court process.

References

- Budi Asri, Dyah Permata. "Perlindungan Hukum Hak Kekayaan Intelektual Bagi Produk Kreatif Usaha Kecil Menengah Di Yogyakarta." *Jurnal Hukum Ius Quia Iustum* 27, no. 1 (2020).
- Clara Amelia. "Bangkitkan Ekonomi, Sandiaga Uno Tindak Lanjuti Peraturan Pemerintah Soal Ekraf."
- Desak Putu Sri Shania Aprilia. "Pelaku Ekonomi Kreatif Diuntungkan Insentif Fiskal Dan Nonfiskal."
- Dewi Puspita. "Peran Asuransi Terhadap Resiko Pembiayaan." *Mahkamah* 3, no. 2 (2022): 275.

- Direktorat Jenderal Kekayaan Intelektual - Kementerian Hukum dan HAM Republik Indonesia. "Biaya Dan Cara Pembayaran."
- . "DJKI Berikan Fasilitas Permohonan Hak Cipta Gratis."
- . "Frequently Asked Question."
- . "Prrosedur Pendaftaran Paten Baru."
- Disemadi, H. S., & Kang, C. "Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0." *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 54–71.
- Dyah Permata Budi Asri. "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya." *Journal of Intellectual Property* 1, no. 1 (2018): 16.
- Firqoh Nazia. "Prospek Perlindungan Kekayaan Intelektual Terhadap Produk Ekonomi Kreatif Pasca Terbitnya Peraturan Pemerintah Nomor 24 Tahun 2022." *Jurnal Studi Islam Indonesia* 1, no. 1 (2023): 76.
- Grinlinton, David. "The Intersection of Property Rights and Environmental Law#." *Environmental Law Review* 25, no. 3 (2023).
- Hari Sutra Disemadi. "Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0." *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 56.
- Ibnu Rusdi. "Peran Ekonomi Kreatif Dalam Meningkatkan Pendapatan Masyarakat Di Kecamatan Soreang Kota Parepare (Studi Pengrajin Cangkang Kerang)." Institut Agama Islam Negeri Parepare, 2022.
- Jaman, Ujang Badru. "Prospek Hak Kekayaan Intelektual (HKI) Sebagai Jaminan Utang." *Jurnal Hukum dan HAM West Science* 01, no. 01 (2022): 18.
- Kementerian Hukum dan HAM Republik Indonesia. "Permohonan Pendaftaran Hak Cipta."
- . "Permohonan Pendaftaran Paten."
- Kementerian Pariwisata dan Ekonomi Kreatif / Badan Pariwisata dan Ekonomi Kreatif. "Subsektor Ekonomi Kreatif."
- Kusmawati, Ria. "Implementasi Produk Pembiayaan UMKM Di BSI KCP Kajen Pekalongan." *Jurnal Manajemen dan Perbankan Syariah* 4, no. 3 (2022): 22.
- Muhammad Citra Ramadhan. *Paten*. Medan: Merdeka Kreasi, 2020.
- Noviriska. "Perlindungan Hak Kekayaan Intelektual Terhadap Pelaku Ekonomi Kreatif Berdasarkan Undang-Undang Hak Kekayaan Intelektual Nomor 28 Tahun 2014 Tentang Hak Cipta." *Jurnal Ilmiah Publika* 11, no. 02 (2022): 302.
- Rachmayanthi. "Analyzing the Licensing and Franchising Legislations as Means of Intellectual Property Protection in Indonesia." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022).
- Ramli, H. Ahmad M., Ranti Fauza Mayana, and Tisni Santika. "Fostering a Creative Economy with Copyright Protection: 'Weightless Economy' and Creativity-Based Sustainable Development." *International Journal of Innovation, Creativity and*

Change 10, no. 10 (2020).

Rochmat Aldy Purnomo. *Ekonomi Kreatif Pilar Pembangunan Indonesia*. Edited by Ziyad Visi Media. Surakarta, 2016.

Syafrida. "Produk Ekonomi Kreatif Berbasis Hak Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan." *Jurnal Sosial dan Budaya Syar-i* 10, no. 1 (2023): 40.

Tri Yuni Hendrawati. *Panduan Hak Kekayaan Intelektual Di Bidang Hak Cipta*. Jakarta: Universitas Muhammadiyah Jakarta, 2022.

Venantia Sri Hadiarianti. *Memahami Hak Kekayaan Intelektual*. Jakarta: Universitas Atmajaya, 2010.

Yuwono Prianto. "Perlindungan Hukum Terhadap Para Pelaku Ekonomi Kreatif Masyarakat Hukum Adat Baduy." *Seri Seminar Nasional Ke-III Universitas Tarumanagara* (2021).