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Seeking a Legally Certain Framework for the use of Intellectual Property Rights as Collateral for Bank Loans in Indonesia

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Article	**Abstract**
Article History *Received: May 6, 2026;* *Reviewed: May 31, 2026;* *Jun 5, 2026;* *Accepted: Aug 1, 2026;* *Published: Aug 8, 2026:* ***DOI:*** ***10.33474/yur.v9i2.25381***	In addition to normative issues, the fluctuating value of IPR may cause banks to hesitate in granting loans secured by IPR, compounded by the limited duration of IPR protection. This study aims to examine several regulations to formulate an ideal scheme for the application of IPR as fiduciary collateral. The method used is normative research employing a legal and conceptual approach. The findings indicate that, although regulations have established that IPR can be used as collateral for bank loans, this does not automatically mean that IPR holders can easily obtain credit facilities, as banks tend to be far more cautious. In addition to the lack of complementary regulations between IPR and banking regulations, the inherently fluctuating value of IPR also contributes to this issue. There is a need for a framework that can protect all parties, including standardisation of IPR valuation, specific registration of IPR as collateral, integration of data from the Directorate General of Intellectual Property (DJKI), the Financial Services Authority and the banking sector, the establishment of fiduciary agreements, monitoring of collateral value, and enforcement mechanisms in the event of default. The contribution of this study is to analyse issues related to enforcement mechanisms and to develop a fair framework from the perspective of intellectual property law as collateral in the

Darwance et al., 'Seeking a Legally Certain Framework for the use of Intellectual Property Rights as Collateral for Bank Loans in Indonesia', *Yurispruden* 9, no. 2 (2026): 106–28, https://doi.org/10.33474/yur.v9i2.25381.

banking sector, so that the interests of all parties are protected, particularly in terms of legal certainty.

Keywords: Legal Certainty, Intellectual Property Rights, Fiduciary Security; Bank Credit

Abstrak

Selain problem secara normatif, nilai HKI yang cenderung fluktuatif berpotensi membuat bank ragu memberikan pinjaman dengan HKI sebagai jaminan, ditambah terbatasnya jangka waktu perlindungan HKI. Penelitian ini bertujuan untuk melakukan kajian atas beberapa regulasi untuk memformulasikan skema ideal sebagai upaya penerapan HKI sebagai jaminan fidusia. Metode yang digunakan adalah penelitian normatif dengan pendekatan undang-undang dan konseptual. Hasil penelitian menunjukkan, sekalipun regulasi sudah menetapkan HKI dapat dijadikan sebagai jaminan kredit di perbankan, hal ini tidak lantas menjadikan pemegang HKI dapat dengan mudah meraih fasilitas kredit, karena perbankan cenderung jauh lebih berhati-hati. Selain regulasi yang belum saling melengkapi antara regulasi HKI dan perbankan, hakikat nilai HKI yang fluktuatif juga turut menjadi pemicu. Perlu ada skema yang dapat melindungi para pihak, di antaranya adalah standardisasi valuasi HKI, pencatatan khusus HKI sebagai objek jaminan, integrasi data DJKI, OJK, dan perbankan, pengikatan fidusia, pengawasan nilai jaminan, serta mekanisme eksekusi apabila terjadi wanprestasi. Kontribusi dalam penelitian ialah untuk menganalisis persoalan-persoalan mekanisme eksekusi dan menyusun formulasi yang berkeadilan dalam perspektif Hukum Kekayaan Intelektual sebagai jaminan di sektor perbankan, agar kepentingan masing-masing pihak dilindungi, utamanya dari aspek kepastian hukum.

Kata Kunci: *Kepastian Hukum; Hak Kekayaan Intelektual; Jaminan Fidusia; Kredit Bank*

INTRODUCTION

Conceptually, the Intellectual Property Rights (IPR) regime grants rights to objects that stem from a combination of mental labour, rational thought, and human emotional effort.[1] In principle, IPR are property rights that possess economic value; thus, from a commercial perspective, Intellectual Property Rights (IPR) can be transferred, bought, sold, and leased, and they can also be used as collateral for example, through a fiduciary mechanism. For instance, songwriter David Bowie used his copyrights as collateral for a promissory note he issued.[2] Several regulations reinforce this; see, for example, Article 16 (3) of Law No. 28 of 2014 on Copyright and Article 108 of Law No. 13 of 2016 on Patents (Patent Law), among others. On the other hand, Bank Indonesia Regulation

[1] Saidin OK, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)* (Raja Grafindo, 2019), 1.

[2] Rio Christiawan, *Hukum Bisnis Kontemporer* (Rajawali Pers, 2021), 63.

No. 9/6/PBI/2007 (later incorporated into the replacement regulation, namely PBI No. 14/15/PBI/2012 on the Assessment of Commercial Bank Asset Quality) does not specifically address whether intellectual property (IP) assets can be used as collateral at banks.

The fact that Intellectual Property Rights (IPR) is recognized as a form of fiduciary collateral does not automatically mean that IPR can be used as collateral in practice. This is due to several factors, including the lack of alignment between regulations governing Intellectual Property Rights (IPR), fiduciary arrangements, and banking. Second, an institutional gap: the roles of the Directorate General of Intellectual Property (DJKI), the Financial Services Authority (OJK), banks, notaries, appraisers, and other relevant institutions remain unclear. Third, a technical gap: there are currently no established standards for the valuation, registration, liquidity, and enforcement of IPR as collateral. Fourth, a practical gap, namely banks' reluctance to accept IPR as primary collateral. Several previous studies have attempted to examine this issue. First, a study by Tasa Gina Santoso that focused on the regulation, legal certainty, and status of IPR as fiduciary collateral; the findings conclude that although intellectual property rights can be used as collateral, in practice it is difficult for banks to grant loans secured solely by intellectual property; this is because the legal certainty and status of intellectual property assets still pose several major obstacles.[3] Second, research by Teguh Rizkiawan, which focuses on the status, prospects, and challenges of intellectual property rights (IPR) as collateral for bank loans, explains in its findings that IPR, as collateral for bank loans, holds prospects for Indonesia's economic growth through the creative economy industry following the enactment of Government Regulation No. 24 of 2022 on the Creative Economy (Creative Economy Regulation), but also face several challenges, namely the lack of a revision to Bank Indonesia Regulation (PBI) No. 14/15/PBI/2012 on the Assessment of Commercial Bank Asset Quality regarding the banking sector's application of valuation standards for IPR assets. Consequently, there is a need for an IPR asset appraisal institution in Indonesia; however, this study does not specifically outline the mechanisms for using IPR as collateral through to the enforcement stage.[4] Finally, a study by Gerrid Williem

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[3] Tasa Gina Santoso, 'Analisa Hukum Atas Pengaturan Aset Hak Kekayaan Intelektual Sebagai Objek Jaminan Fidusia', *JIPRO: Journal of Intellectual Property* 7, no. 1 (2024): 40–53, https://doi.org/10.20885/jipro.vol7.iss1.art3.

[4] Teguh Rizkiawan, 'Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan: Prospek Dan Kendala', *Lex Renaissance* 7, no. 4 (2022): 883–94, https://doi.org/10.20885/JLR.vol7.iss4.art13.

Karlosa Reskin and Wirdyaningsih, which focused on examining the regulation of intellectual property rights (IPR) as collateral for debt under the Government Regulation on the Creative Economy and the obstacles to using IPR as collateral, concluded that determining the economic value of intellectual property is difficult given that IPR are not physical assets, and that widespread piracy can degrade the value of IPR, leading financial institutions to be hesitant to accept IPR as collateral.[5] In addition to the lack of discussion on enforcement mechanisms, this study also does not explain the valuation methods; although it examines the relevance of intellectual property rights as fiduciary collateral, previous research has focused solely on normative issues. Meanwhile, this paper attempts to map out the issues encountered and then formulate an ideal framework regarding the use of intellectual property rights (IPR) as collateral in the banking sector, so that the interests of all parties are protected, particularly from the perspective of legal certainty.

Identifying legal frameworks related to the use of intellectual property rights (IPR) as collateral is essential to fostering a favourable investment climate and promoting the sustainable development of human creativity. Therefore, this study is important to identify the ideal framework to provide legal certainty not only to banks as creditors but also to debtors in this case, intellectual property rights (IPR) holders. By establishing this framework, the use of intellectual property rights (IPR) as collateral can be facilitated, thereby not only supporting the investment climate but also providing significant opportunities for creative practitioners to develop their ideas and concepts through financing support from the banking sector.

This study will focus on several regulations governing intellectual property rights (IPR) in relation to other regulations governing the use of intellectual property rights (IPR) as collateral in the banking sector, specifically regarding which intellectual property rights (IPR) can be used as collateral. The designation of intellectual property rights (IPR) as fiduciary collateral confirms that, both theoretically and under current regulations, intellectual property rights (IPR) can be used as credit collateral, including in the banking sector. however, several technical issues have the potential to become problematic, so an ideal framework for implementing these provisions will also be a key focus of this study.

Based on its type, the method used is normative research with a legal and conceptual approach, and the legal sources

5 Gerid Williem Karlosa Reskin and Wirdyaningsih, 'Pengaturan Hak Kekayaan Intelektual Sebagai Jaminan Utang Menurut PP Nomor 24 Tahun 2022', *PALAR (Pakuan Law Review)* 8, no. 4 (2022): 193–206, https://doi.org/10.33751/PALAR.V8I4.6857.

used consist of primary and secondary legal sources.[6] Primary sources of law include: Law No. 28 of 2014 on Copyright, Law No. 13 of 2016 on Patents, Law No. 42 of 1999 on Fiduciary Guarantees and its implementing regulations, as well as Government Regulation No. 24 of 2022 on the Implementing Regulations of Law No. 24 of 2019 on the Creative Economy. Secondary legal sources consist of findings from previous research, whether in the form of research reports, journal publications, conference proceedings, or books. Legal materials were collected through a literature review and then qualitatively analysed by reducing, interpreting, and correlating the available legal materials; analysing them; and drawing conclusions from the research. In the final section, a legally binding regulatory framework regarding the use of intellectual property rights as fiduciary collateral in the banking sector is formulated.

This study aims to conduct a review of several regulations related to intellectual property rights (IPR), particularly those that treat IPR as fiduciary collateral, including regulations issued by Bank Indonesia as the regulator of the banking industry in Indonesia. In the next phase, this study aims to formulate an ideal framework for the application of intellectual property rights (IPR) as fiduciary collateral so that it can be effectively implemented in practice, while also providing legal certainty for both creditors (banks) and debtors (IPR rights holders).

RESULT AND DISCUSSION

Potential Issues with Intellectual Property Rights Regulations as Bank Collateral

Humans are the most perfect beings, endowed with reason, intellect, and emotions, which drive them to have many desires and a strong sense of curiosity.[7] It is through this potential that humans create, ultimately producing the fruits of their intellectual labour known as intellectual property. As this field has evolved, intellectual property as the result of intellectual activity is protected by law as intellectual property rights.[8]

Intellectual property (IP) is a type of intangible movable property first recognized in countries with an Anglo-Saxon legal system (common law system); it is also referred to as a “thing” (*zaak in Dutch*) as understood in civil law.[9] Therefore, human intellectual creations in the form of intellectual property encompass property

6 Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel (Edisi Revisi)* (Mirra Buana Media, 2021), 93.

7 Neni Sri Imaniyati et al., *Hukum Kekayaan Intelektual: Kekayaan Intelektual, Hak Kekayaan Intelektual, Hak Cipta, Paren, Dan Merek* (Kencana, 2024), 17.

8 Taufik H. Simatupang, ‘Hak Asasi Manusia Dan Perlindungan Kekayaan Intelektual Dalam Perspektif Negara Hukum’, *Jurnal HAM* 12, no. 1 (2021): 111–22, https://doi.org/10.30641/ham.2021.12.111-122.

9 Khoirul Hidayah, *Hukum Hak Kekayaan Intelektual* (Setara Press, 2020), 2.

rights,[10] specifically intangible property rights. This means that there are legal rights inherent in intellectual property, which are collectively known as intellectual property rights (IPR).[11] Therefore, just as with tangible property rights, intellectual property must also be granted legal protection through a set of regulations known as the intellectual property legal regime,[12] one of the purposes of which is to address the trends of globalization and free markets.

Intellectual property has the potential to bring benefits in various aspects of life, both socially and economically. With a clear legal protection system for intellectual property in place, intellectual works are expected to benefit creators and encourage innovation in various fields.[13] In addition to the economic benefits derived from trade and investment, the protection of intellectual property also has positive effects, including fostering innovation, the mutual benefits for creators and users, as well as the achievement of social and economic well-being.[14] Eric H. Smith it even states that the effective implementation of intellectual property can also have a positive impact on a country.[15]

Intellectual property rights (IPR) are rights arising from creative activities the product of human intellectual capacity that are expressed to the public in various forms, which are beneficial and useful in supporting human life, and also have economic value. intellectual property rights (IPR) are property rights that arise from human works, ideas, or creations. Thus, IPR arise from human intellectual capacity.[16] Both the World Intellectual Property Organization (WIPO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) classify the scope of intellectual property rights into copyright and industrial property rights.[17]

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[10] Ramadhio Adi Prasetyo, 'Hak Kekayaan Intelektual (Hak Cipta) Sebagai Objek Waris Dalam Hukum Perdata', *JIPRO: Journal of Intellectual Property* 5, no. 1 (2022): 65, https://doi.org/10.20885/jipro.vol5.iss1.art4.

[11] Willa Wahyuni, 'Hak Kekayaan Intelektual Serta Dasar Hukumnya', hukumonline.com, accessed 31 July 2026, https://www.hukumonline.com/berita/a/hak-kekayaan-intelektual-serta-dasar-hukumnya-lt623304dc7749d/.

[12] Ismail Koto et al., 'Perlindungan Hukum Atas Kekayaan Intelektual Perspektif Hukum Islam', *Jurnal Yuridis* 10, no. 2 (2023): 67, https://doi.org/10.35586/jyur.v10i2.7142.

[13] Muhammad Japar et al., 'Analisis Aspek Moral dan Budaya Dalam Pemajuan Hak Kekayaan Intelektual Di Indonesia', *Iblam Law Review* 5, no. 2 (2025): 29, https://doi.org/10.52249/ilr.v5i2.606.

[14] Yue Liu et al., 'The Impact of Intellectual Property Rights Protection on Green Innovation: A Quasi-Natural Experiment Based on the Pilot Policy of the Chinese Intellectual Property Court', *Mathematical Biosciences and Engineering* 21, no. 2 (2024): 2590, https://doi.org/10.3934/mbe.2024114.

[15] Sri Imaniyati et al., *Hukum Kekayaan Intelektual: Kekayaan Intelektual, Hak Kekayaan Intelektual, Hak Cipta, Paren, Dan Merek*, 10.

[16] Sulasi Rongiyati, 'Pelindungan Hukum Hak Kekayaan Intelektual Pada Produk Ekonomi Kreatif (Protection of Intellectual Property Rights on Creative Economic Products)', *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2017): 42, https://doi.org/10.22212/jnh.v9i1.1001.

[17] Rachmadi Usman, *Hukum Jaminan Kebendaan Tanah Hak Tanggaungan* (PT. Literasi Nusantara Abadi Grup, 2024), 9.

As a member of the international community, Indonesia has ratified a number of conventions on intellectual property rights.[18] After ratifying the Agreement Establishing the World Trade Organization (WTO), in order to comply with Indonesia's obligations under the TRIPS Agreement, Indonesia accelerated its efforts to protect intellectual property rights by revising a number of regulations and enacting new laws and regulations.[19]

The concept of intellectual property rights is consistent with the concept of Indonesian civil law, which is implicitly found in the property law system as set forth in Article 499 of the Civil Code.[20] Intellectual property rights are included among the rights referred to in Article 499 of the Civil Code, meaning that these intangible property rights can be the subject of a property right. A property right (*zakelijk recht*) is an absolute right over a thing; it confers direct authority over a thing and can be enforced against anyone.[21]

Intellectual property has economic value, so it can also be used as collateral in debt agreements.[22] See, for example, the provisions of Article 16, Paragraph (3) of the Copyright Law, which explicitly states that copyright may be used as the subject matter of a security interest. The same provision is found in Article 108 of the Patent Law. If copyrights can be used as security for a fiduciary lien, this would naturally involve publishers, collective management organizations, creators, copyright owners, and the recipients of the fiduciary lien (such as banks and financial institutions).

Initially, the subject matter of a fiduciary security interest consisted of movable property, as exemplified in the 1929 Bierbrouwerij Case; it later expanded to include immovable property, such as houses, stores, and warehouses, because of the implementation of the principle of horizontal separation of land. One type of fiduciary object in the form of movable property that is intangible consists of property rights within the scope of intellectual property rights. This was further emphasized by Struycken, as cited by Endang Purwaningsih, Muslikh, and Nuruk Fajri Chikmawati, who stated that

18 Dina W. Kariodimedjo et al., *Business Law* (Setara Press, 2024), 219.
19 Lilik Prihatin et al., 'Perlindungan Hak Kekayaan Intelektual: Sebuah Esensial Hak Cipta Pada Era Revolusi Industri 4.0', *UNES Law Review* 6, no. 4 (2024): 11324, https://doi.org/10.31933/unesrev.v6i4.2081.
20 Prasetyo, 'Hak Kekayaan Intelektual (Hak Cipta) Sebagai Objek Waris Dalam Hukum Perdata', 74.
21 Trisadini Prasastinah Usanti, 'Lahirnya Hak Kebendaan', *PERSPEKTIF: Kajian Masalah Hukum Dan Pembangunan* 17, no. 1 (2012): 45, https://doi.org/10.30742/perspektif.v17i1.93.
22 Gerid Williem Karlosa Reskin and Wirdyaningsih, 'Pengaturan Hak Kekayaan Intelektual Sebagai Jaminan Utang Menurut PP Nomor 24 Tahun 2022', *PALAR (Pakuan Law Review)* 8, no. 4 (2022): 193, https://doi.org/https://doi.org/10.33751/palar.v8i4.

rights under property law are transferable from one party to another.[23]

The use of intellectual property rights as collateral is, of course, inseparable from the legal framework governing collateral. Collateral law consists of legal principles that govern the relationship between the grantor and the recipient of collateral in connection with the creation of a security interest to obtain credit facilities.[24] Collateral is something provided to a creditor to ensure that the debtor will fulfil the obligations arising from an agreement.[25] Collateral in the form of real property or personal property, as well as individual rights that can be transferred to another person.[26] Security interest law provides legal certainty and protection for the parties when entering into agreements.

Security interest law in Indonesia is largely influenced by the principles of security interest law derived from the Civil Code. In the conclusions of a seminar on security interests organized by the National Legal Development Agency in collaboration with the Faculty of Law at Gadjah Mada University in 1978 in Yogyakarta, it was stated that a security interest is a guarantee of the fulfilment of an obligation that can be valued as a debt arising from a contractual relationship.[27] The law on security interests in the Civil Code is set forth in Book II on Property. According to Articles 1131 and 1132 of the Civil Code, security interests are classified into general security interests and specific security interests.

A general security interest is a security interest provided by the debtor that arises by operation of law and constitutes a mandatory rule.[28] This is set forth in Article 1131 of the Civil Code, which states that all of the debtor's property serves as security for the debt owed to the creditor. General security applies to all creditors and covers all the debtor's property or assets. General security arises by operation of law, without the need for an agreement between the parties. Under general security, all creditors have equal standing relative to one another; there is no classification of creditors with preferential treatment or priority rights. It can be concluded that the collateral is not designated for a specific creditor, but the proceeds from

[23] Muslikh Endang Purwaningsih and Nunuk Fajri Chikmawati, *Hak Kekayaan Intelektual Dan Investasi: Kajian HKI Dalam Dunia Investasi Termasuk Pada UMKM* (Setara Press, 2019), 41.

[24] Ferdiansyah Putra Manggala, *Dinamika Pembebanan Jaminan Fidusia Terkait Dengan Prinsip Spesialitas*, 4, no. 1 (2023): 82, https://doi.org/doi:%2010.19184/JIK.v4i1.37999.

[25] Ilham Muzzaki and Aris Machmud, 'Prosedur Pengalihan Cessie Dalam Perspektif Hukum: Akibat Hukum Terhadap Jaminan Hak Tanggungan dan Perlindungan Debitur', *Binamulia Hukum* 12, no. 1 (2023): 154, https://doi.org/10.37893/jbh.v12i1.503.

[26] Ahmad Syaifudin, 'Mengungkap Hukum Jaminan Konvensional dan Syariah Dalam Perjanjian Bisnis', *Yurispruden* 7, no. 2 (2024): 255, https://doi.org/10.33474/yur.v7i2.21263.

[27] Usman, *Hukum Jaminan Kebendaan Tanah Hak Tanggaungan*, 3.

[28] M. Ardiansyah Lubis and Mhd Yadi Harahap, 'Perlindungan Hukum Terhadap Kreditur Sebagai Pemegang Hak Jaminan dalam Perkara Debitur Wanprestasi', *Jurnal Interpretasi Hukum* 4, no. 2 (2023): 339, https://doi.org/10.22225/juinhum.4.2.7834.337-343.

the sale of the debtor's assets may be distributed among all creditors in proportion to their respective claims. As stipulated in Article 1131 of the Civil Code, all movable and immovable property belonging to the debtor whether currently owned or to be acquired in the future serves as security for the debtor's obligations. Based on this provision, the debtor's entire estate automatically becomes security for the debt in the event of a future default.

Specific guarantees are divided into two types: collateral guarantees and personal guarantees. A collateral guarantee is a guarantee arising from an asset encumbered by a debt, whereas a personal guarantee is a guarantee provided by a specific individual or legal entity willing to guarantee a specific debt in the event the debtor defaults.[29] A security interest in property creates an absolute right to property whose characteristics are directly linked to a specific item belonging to the debtor; this right is enforceable against anyone, follows the property wherever it may be, and is transferable. Meanwhile, a personal guarantee is a guarantee that creates a direct relationship with a specific individual regarding the debtor's assets in general.[30]

In the case of collateral, the creditor has the right to priority in the satisfaction of its claim from the proceeds of the execution or auction of the debtor's assets. Meanwhile, in the case of personal guarantees, the creditor is granted a more favourable position because there is more than one debtor from whom the debt can be collected. The existence of more than one debtor generally occurs because a third party has bound itself as a guarantor or surety.[31]

Under the security interest system based on the Civil Code, there are two types of security interests in property: pledges and mortgages (for ships and aircraft; after Indonesia gained independence, the institution of land mortgages ceased to apply and was replaced by the institution of security interests in land). Meanwhile, in addition to the security interests covered by the Civil Code, there are other types of security interests, including liens, fiduciary liens, and security interests in warehouse receipts.[32] Security interests, whether provided for in the

[29] Usman, *Hukum Jaminan Kebendaan Tanah Hak Tanggaungan*, 6.

[30] Frederick Septian Tuwan and Ariawan Gunadi, 'The Effectiveness of Executing a Personal Guarantee as Security in Resolving Non-Performing Loans in Indonesia', *Lambung Mangkurat Law Journal* 10, no. 1 (2025): 50, https://doi.org/10.32801/abc.v10i1.209.

[31] Ayudinda Pilar Kharisma, 'Kedudukan Hukum Kreditor Separatis Atas Jaminan Kebendaan Milik Guarantor yang Telah Pailit Dalam Kepailitan Debitor Pailit', *PERSPEKTIF: Kajian Masalah Hukum dan Pembangunan* 28, no. 2 (2023): 80, https://doi.org/10.30742/perspektif.v28i2.850.

[32] Usman, *Hukum Jaminan Kebendaan Tanah Hak Tanggaungan*, 13.

Civil Code or outside of it, have different characteristics and legal bases.[33]

Economic and trade development is always accompanied by an increase in the need for credit and the granting of credit. To protect creditors, collateral is necessary. The provision of collateral by the debtor to the creditor serves to reassure the creditor to extend a loan to the debtor; if the debtor defaults, the collateral will be auctioned off to settle the debtor's debt. The law of collateral in civil law provides legal certainty and risk protection for creditors without depriving the debtor of their rights to the collateral.

Today, intellectual property rights (IPR) are a potential asset as an intangible asset that is likely to become increasingly sought after by the public in the future, in line with the progress of the times and growing recognition of intellectual property rights (IPR) itself. intellectual property rights (IPR) is an intangible asset whose value can be appraised for use as collateral in banking in accordance with applicable principles for determining collateral and financing. The 13th Session of the Working Group on Security Rights in Intellectual Property of the United Nations Commission on International Trade Law (UNCITRAL) stated that, legally, IPRs can be used as collateral to gain access to financing.[34] Among other things, this session also provided 11 clarifications regarding the need for each country to have regulations on using intellectual property rights (IPR) trademarks as collateral without violating the intellectual property rights (IPR) provisions already in place in each country and without breaching international agreements on intellectual property that have been established among nations.[35]

To secure additional funds whether to start or expand a business investors naturally require capital injections, which can result in increased equity; one way to achieve this is by utilizing banking services.[36] In addition to tangible assets, regulations also permit the use of intangible assets, such as intellectual property rights (IPR), as collateral when applying for a loan. As stipulated in Article 16, Paragraph (3) of the Copyright Law or Article 108 of the Patent Law, the use of intellectual property rights (IPR) as collateral follows a fiduciary scheme.

Pursuant to the provisions of Article 1, Paragraphs 1 and 2 of Law No. 42 of 1999 on Fiduciary Security (the Fiduciary Security

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[33] Fauzan F et al., 'Jenis-Jenis Hak Jaminan Dalam Perspektif Hukum Perdata Dan Hukum Islam: Studi Konseptual', *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 2, no. 9 (2025): 2–3, https://doi.org/10.5281/zenodo.15178682.

[34] United Nations Commission on International Trade Law, 'Working Group VI: Security Interests', United Nations Commission on International Trade Law, United Nations Commission on International Trade Law, accessed 1 August 2026, https://uncitral.un.org/en/working_groups/6/security_interests.

[35] United Nations Commission on International Trade Law, 'Working Group VI'.

[36] Heru Hudaya, 'Cara Meningkatkan Mutu Pelayanan Dalam Usaha Menghimpun Dana Masyarakat', *Jurnal Manajemen FE-UB* 12, no. 1 (2024): 106, https://doi.org/10.37721/jm.v12i1.1488.

Law), it is legally possible for intellectual property rights to serve as collateral for financing through fiduciary security, and this is viewed as providing legal certainty and legal protection for banks as creditors in financing, as well as providing legal certainty for inventors so they can continue to work productively with access to capital from banks.[37] Previously, the existing regulations only addressed fiduciary objects in the form of tangible movable property; they were later expanded to include intangible movable property and immovable property. In this context, fiduciaries may take possession of the collateralized property, including, for example, conducting business activities using capital derived from loans secured by a fiduciary interest.

The initial concept of using intellectual property rights (IPR) as collateral for loans is already present in several laws governing intellectual property rights (IPR), primarily the Copyright Law and the Patent Law, which were selected as the main subjects of this study. From a technical and operational standpoint, this is further regulated by the Government Regulation on the Creative Economy. Essentially, creative economy actors are permitted to use intellectual property rights (IPR) such as films and YouTube content as collateral for loans from financial institutions. Creative economy actors are individuals, groups, or business entities (whether incorporated or unincorporated) who are Indonesian citizens and engage in economic activities based on creativity, expertise, talent, and intellectual property to generate added value and original works. According to the Government Regulation on the Creative Economy, there are intellectual property rights (IPR) based financing schemes. The following are the financing schemes outlined in the Government Regulation on the Creative Economy:

Creative economy practitioners must meet certain requirements when applying to a financial institution. These requirements are, of course, based on Article 7, Paragraph 2 of the Government Regulation (PP) No. 24 of 2022 on the Implementing Regulations for Law No. 24 of 2019 on the Creative Economy, namely:

> The requirements for applying for Intellectual Property-based financing include, at a minimum:
> a. a financing proposal;
> b. ownership of a creative economy business;
> c. a legal agreement related to the intellectual property;
> d. of creative economy products; and
> e. a registration letter or certificate of intellectual property.

Financial institutions will verify the data. Referring to Articles 8, this process is

[37] Christiawan, *Hukum Bisnis Kontemporer* (Rajawali Pers, 2021).

not significantly different from the verification of physical collateral, including:

a. Verification of Creative Economy businesses;
b. Verification of registration documents or certificates for
c. Used as collateral that can be
d. Enforced in the event of a dispute or non-dispute;
e. Evaluation of the Intellectual Property used as collateral;
f. Disbursement of funds to Creative Economy Actors; and
f. Receipt of repayment of financing from Creative
g. Economy Actors in accordance with the agreement.

Issues regarding credit or financing disbursement are not new in the banking sector. Banking institutions have long served as financial institutions tasked with mobilizing funds and subsequently channelling them back to the public through various credit or financing schemes. In this credit disbursement process, banks are required to apply the principle of prudence as mandated by Law No. 7 of 1992, as Amended by Law No. 10 of 1998 on Banking (Banking Law). In addition, this principle of prudence is also regulated in Financial Services Authority (OJK) Regulation No. 42/POJK.03/2017 on the Obligation to Formulate and Implement Credit or Financing Policies for Commercial Banks, as the Financial Services Authority is the agency responsible for regulating and supervising the banking sector. Furthermore, banks must use the 5C principles as a guideline in assessing credit applications, namely the assessment of character, capacity, capital, business conditions, and collateral.[38] In the initial stage, before a bank extends credit to its customers, it is required to assess the eligibility of prospective borrowers using both legal and economic approaches.[39]

This is in line with the provisions of the Banking Law, both regarding the application of the principle of prudence and the application of the 5C principles. Of course, the initial assessment is a crucial step for banks to evaluate and analyse the capacity of prospective borrowers before the loan is approved. This assessment stage serves as a safeguard that begins at the very start of the loan planning process for a prospective borrower, with the aim of minimizing the risks associated with the loan being granted.[40] Therefore, it is emphasized that banking principles should be applied from the very beginning. This assessment not only evaluates the prospective borrower's financial capacity

[38] Aidil Falaq Adiyaksa et al., 'Aspek Aspek Hukum Perdata Terhadap Penyaluran Kredit Perbankan Kepada Masyarakat', *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 2379–85, https://doi.org/10.61104/alz.v3i3.1627.

[39] Fitria Amini, 'Analisis Yuridis Terhadap Prinsip Kehati-Hatian Dalam Pemberian Kredit Dengan Jaminan Hak Tanggungan', *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 6 (2025): 11593–99, https://doi.org/10.61104/alz.v3i6.3751.

[40] Rachmat Arnanda et al., 'Analisis Terhadap Risiko Hukum Pemberian Kredit Perbankan dengan Jaminan Personal Guarantee tanpa Penyertaan Agunan Fixed Asset', *Account: Jurnal Akuntansi, Keuangan dan Perbankan* 10, no. 1 (2023): 1836–45, https://doi.org/10.32722/account.v10i1.5574.

but also assesses the collateral to be pledged to the banking institution during the loan period.

Another issue arises when a banking service as a financial institution that extends credit to customers or prospective borrowers is faced with the policy of using Financial Services Authority certificates as collateral. It is undeniable that the Government Regulation on the Creative Economy has affirmed that Financial Services Authority can serve as collateral for bank loans, although its scope remains limited to actors in the creative economy. To date, banks have not fully implemented a system for granting loans using Financial Services Authority certificates as collateral. This is because the provisions of the Government Regulation on the Creative Economy have not yet fully established technical guidelines regarding the implementation of the policy on using intellectual property rights (IPR) as collateral for banking institutions.

Banks assess that Financial Services Authority certificates have value but are not yet secure; consequently, on several occasions, statements have been made affirming that intellectual property rights (IPR) certificates cannot serve as the sole collateral for bank loans. Since these collateral functions as a substitute means of payment, it must have a value equal to or equivalent to the principal loan amount and interest, or if necessary exceed the agreed-upon principal and interest. Consequently, banks are generally not prepared to extend credit when the sole collateral is an intellectual property rights (IPR) certificate.

This impacts the banking principles that should be applied when granting credit to prospective borrowers. Furthermore, in the absence of adequate regulations, lenders.[41] This issue is also consistent with the findings of Tasa Gina Santoso, one of which highlights the matter of legal certainty and the status of intellectual property rights themselves.[42] Therefore, this issue needs to be resolved through the formulation of regulations that are integrated across institutions. This is compounded by the issue of intellectual property rights (IPR) certificates as collateral, which also stems from the fact that the mechanism for securing IPR collateral has not been explicitly regulated in PBI No. 7/2/PBI/2005 in conjunction with PBI No. 9/6/PBI/2007 on Banking Collateral (including subsequently in the replacement regulation, namely PBI No. 14/ 15/PBI/2012 on the Assessment of Commercial Bank Asset Quality). Consequently, some banks are concerned about being held accountable for such IPR-based financing by the Financial

41 Christiawan, *Hukum Bisnis Kontemporer* (Rajawali Pers, 2021), 64.
42 Santoso, 'Analisa Hukum Atas Pengaturan Aset Hak Kekayaan Intelektual Sebagai Objek Jaminan Fidusia', 42.

Services Authority and the Supreme Audit Agency in the case of state-owned banks.[43]

Another issue relates to the valuation of collateral, as there is currently no recognized banking appraisal method for evaluating intellectual property rights (IPR), making it difficult for banks to determine the debt-to-collateral ratio when deciding on acceptable financing terms. The valuation of intellectual property rights (IPR) serves as an incentive provided by the government to inventors to help them realize economic benefits.[44] In line with and to complement the research findings of Teguh Rizkiawan, there must be not only an intellectual property rights (IPR) asset appraisal institution but also a mechanism for using IPR as fiduciary collateral from the outset through to the enforcement stage.[45] Especially given that the value of intellectual property rights (IPR) is prone to depreciation, as found by Gerrid Williem Karlosa Reskin and Wirdyaningsih,[46] the existence of this method is an urgent sine qua non that must be implemented immediately.

The Ideal Legal Framework: Efforts to Provide Legal Certainty for Intellectual Property Rights as Collateral for Banking Transactions

Legal certainty for both parties, namely the IPR holder as the party seeking to provide collateral and the banking sector as the creditor is, of course, an absolute prerequisite for the practical application of provisions regarding intellectual property rights (IPR) as collateral. The principle of legal certainty, as introduced by Gustav Radbruch, holds that there are three fundamental values in law: justice *(Gerechtigkeit),* utility *(Zweckmäßigkeit),* and legal certainty *(Rechtssicherheit)*.[47] The principle of legal certainty serves as a form of protection for those seeking justice against arbitrary actions, meaning that a person will and can obtain what is expected under certain circumstances.[48]

The school of legal positivism states that creating a law that is concrete and free from abstract concepts will only lead to uncertainty. This aligns with the intent and purpose of the principle of legal certainty, namely, to ensure that those seeking justice can rely on a law that is certain, concrete, and objective, without the

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43 Christiawan, *Hukum Bisnis Kontemporer* (Rajawali Pers, 2021), 63.
44 Christiawan, *Hukum Bisnis Kontemporer* (Rajawali Pers, 2021), 63.
45 Teguh Rizkiawan, 'Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan: Prospek dan Kendala', *Lex Renaissance* 7, no. 4 (2022): 892, https://doi.org/10.20885/JLR.vol7.iss4.art13.
46 Reskin and Wirdyaningsih, 'Pengaturan Hak Kekayaan Intelektual Sebagai Jaminan Utang Menurut PP Nomor 24 Tahun 2022', 2022.
47 Renaldy Afriyanto et al., 'Eksistensi Asas Kepastian Hukum, Kemanfaatan Hukum dan Keadilan Hukum Sebagai Tujuan Hukum di Indonesia dalam Perspektif Para Filsuf', *Unizar Law Review* 7, no. 2 (2024): 204, https://doi.org/10.36679/ulr.v7i2.80.
48 Hartono Hartono et al., 'Analisis Tujuan dan Fungsi Hukum Dalam Mewujudkan Ketertiban dan Keadilan Sosial', *Al-Usroh : Jurnal Hukum Keluarga Islam* 4, no. 01 (2026): 42, https://doi.org/10.55799/alusroh.v4i01.975.

influence of speculation or subjective views. John Austin states that legal certainty is the ultimate goal of legal positivism, because achieving legal certainty requires separating law from morality, thereby producing a system that is logical, stable, and codified.[49]

Legal Aspects of Banking

The current legal framework governing banking operations in Indonesia are based on the Banking Law and several other regulations, such as regulations issued by the Financial Services Authority and Bank Indonesia. Essentially, these regulations govern banks in conducting their activities, including the extension of credit to prospective borrowers. The application of banking principles, such as the principle of prudence as mandated in Article 2 of the Banking Law, states that "The Indonesian banking sector, in conducting its business, is based on economic democracy and adheres to the principle of prudence". Additionally, when extending credit, banks must also apply the 5C Principles; these two principles ensure that banks remain in a sound, liquid, and solvent condition. When it comes to credit policies involving IPR collateral, banks cannot avoid the necessity of conducting assessments and applying banking principles. However, these principles cannot be applied using the same rules as those in standard credit assessment systems. Article 43 of Bank Indonesia Regulation No. 14/15/PBI/2012 on the Assessment of Commercial Bank Asset Quality stipulates that collateral or security that may be considered as a deduction in the calculation of the loan-to-value ratio (LTV) includes:

1. Securities and actively traded shares on the Indonesian stock exchange;
2. Land, buildings, and residential homes encumbered by a lien;
3. Machinery that is an integral part of the land and encumbered by a lien;
4. Aircraft or ships larger than 20 cubic meters encumbered by a mortgage;
5. Motor vehicles and inventory secured by a fiduciary lien;
6. Warehouse receipts secured by a security interest in the warehouse receipts.

These regulations have clearly not yet been revised to accommodate the idea of using intellectual property rights (IPR) certificates as collateral for loans. In addition, such collateral must also undergo a valuation process. According to the World Intellectual Property Organization (WIPO), valuation is the process of identifying and measuring the value of an asset. The use of IPR as collateral for bank

[49] Sumartian Suheri and M. S. Tumangor, 'Analisis Teori Positivisme Hukum: Pemikiran John Austin dan H.L.A. Hart dalam Bingkai Negara Hukum', *Jurnal Pustaka Cendekia Hukum dan Ilmu Sosial* 4, no. 1 (2026): 2382, https://doi.org/10.70292/pchukumsosial.v4i1.367.

loans still faces obstacles in its implementation.

Therefore, to move forward with the implementation of intellectual property rights (IPR) as credit collateral, regulations are needed to provide a legal basis for the banking sector. Furthermore, these regulations must also enable banking institutions to apply banking principles such as the principle of prudence and the 5C principles. The most fundamental issue is the need for implementing regulations that can provide a definitive basis for determining the value of intellectual property rights (IPR) used as collateral by banking institutions. intellectual property rights (IPR) currently lack a standard for determining its value, and existing regulations do not specifically address the basis for valuing intellectual property rights (IPR). intellectual property rights (IPR) must have a measurable value to determine the nominal amount of IPR to be used as collateral. Furthermore, it is necessary to clarify the rules regarding the mechanism for classifying intellectual property rights (IPR) eligible for use as banking collateral. To date, there are no established procedures for implementing intellectual property rights (IPR) collateral.

Regulatory Aspects of Intellectual Property Rights

Intellectual property rights are essentially classified as intangible individual property rights.[50] As movable property, intellectual property rights constitute assets that can be transferred to another party, whether through sale, inheritance, gift, or a special agreement such as a license. Intellectual property, as an object of ownership is conceptualized as an intangible (onlichamelijk) asset produced by the human mind, abstracted as a type of movable property that can be transferred, and falls under the category of property rights over an object, referring to types of personal property that are intangible in nature.[51]

As previously mentioned, several laws and regulations governing intellectual property rights (IPR) allow intellectual property rights (IPR) to be used as collateral, more specifically through a fiduciary scheme. However, this permissibility is viewed solely from the perspective of IPR itself and therefore cannot be enforced outright, as the granting of credit involves other sectors, primarily the banking sector. Therefore, to align with the banking regulatory framework,

[50] Alfonsus Syukur Hadirat Ziliwu et al., 'Injauan Yuridis Non Fungible Token (Nft) Dari Aspek Hukum Benda dan Hak Kekayaan Intelektual', *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 1 (2023): 1240, https://doi.org/10.46930/jurnalrectum.v5i1.2962.

[51] Kevin Almer Ramadhani and Hervin Yoki Pradikta, 'Analisi Tentang Hak Kekayaan Intelektual Sebagai Harta Waris', *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 6, no. 2 (2025): 153 https://doi.org/10.24042/nn2kc962.

regulations in the field of intellectual property rights also need to be updated.

Shannon Pratt and Alina V. Nacuilt, as cited by Rio, outline three methods for valuing intellectual property rights (IPR): the market approach, the income approach, and the cost approach.[52] The market approach estimates value based on an analysis of actual sales or transactions related to the licensing of a specific asset. The income approach is based on the capitalization of economic income, considering both present and future value. Finally, the cost approach is based on the economic principle of substitution, which equates the value to the costs incurred to replace the asset based on its utility function. The formulation of intellectual property rights as collateral for financing can utilize the cost approach.

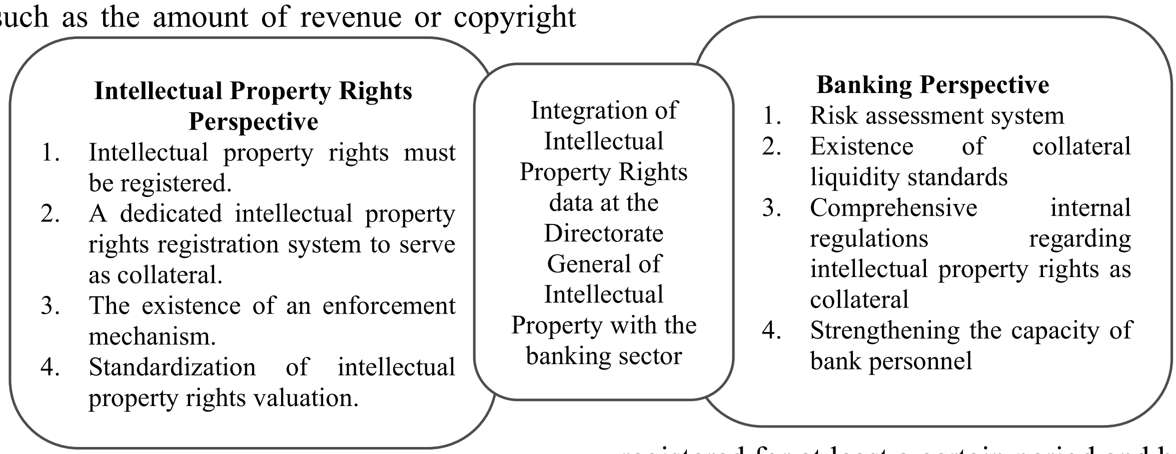
The use of intellectual property rights as collateral in the banking sector requires a method for valuing intellectual property as an asset, whether the appraisal uses the cost approach, the market approach (including brand recognition value, for example), or the income approach. To date, the use of intellectual property as collateral has not been implemented because banks are reluctant to accept it, viewing IPR as illiquid; enforcement procedures remain questionable; there is a lack of confidence in intellectual property rights (IPR) as a form of collateral due to doubts about its liquidity; and many stakeholders lack knowledge about intellectual property rights (IPR), including the absence of appraisers specialized in IPR as collateral.

Unlike tangible property rights, which can be physically identified directly, intangible property rights such as intellectual property rights (IPR) are the exact opposite. IPRs do not consist of physical objects but rather rights inherent to those objects. The issue is that, physically, the object itself may be owned by someone else, but the rights to the substance of the book are held by the copyright holder. A person who physically owns a book has rights only to the physical book itself, not to its contents. This distinct pattern of ownership effectively poses an obstacle to using intellectual property rights (IPR) as collateral.

From an intellectual property rights (IPR) perspective, the Directorate General of Intellectual Property under the Ministry of Law must collaborate with the relevant authorities (such as the Financial Services Authority) to find an ideal formula so that the interests of all parties can be protected. For example, in addition to the issue of appraisers, Directorate General of Intellectual Property could be granted new authority regarding the extent to which intellectual property rights - certified products can be recommended for

[52] Rio Christiawan, *Hukum Bisnis Kontemporer* (Rajawali Pers, 2021), 63.

use as collateral. This means that Directorate General of Intellectual Property could become the authority responsible for issuing recommendations based on certain criteria, such as the amount of revenue or copyright royalties' data for which can be obtained from the National Collective Management Organization. The same applies to other types of intellectual property right:



From the figure above, the legal framework for the use of intellectual property rights (IPR) as collateral for bank loans in Indonesia must not only be strengthened from both perspectives intellectual property rights (IPR) and banking but it is equally important to ensure data integration that allows banks to quickly access data on intellectual property rights being submitted as collateral as part of the risk assessment process. This data also includes the results of analyses or recommendations from the Directorate General of Intellectual Property after (IPR) has been submitted as collateral to a bank, and the bank has requested an analysis and recommendation regarding the intellectual property rights (IPR). One of the recommendations in question pertains to the value of an IPR asset. There also needs to be a clear rule, for example, that a new IPR can only be used as collateral if it has been registered for at least a certain period and has generated income amounting to a certain percentage of the nominal loan amount being applied for. The lack of optimal integration of intellectual property rights (IPR) data between the Directorate General of Intellectual Property and the banking sector indicates limited access to information, which may affect the banking sector's confidence in accepting intellectual property rights (IPR) as collateral. Therefore, this issue must be addressed through several alternatives, including the standardization of intellectual property rights valuation, special registration of intellectual property rights as collateral, enforcement mechanisms, or an institutional framework involving the Directorate General of Intellectual Property, the Financial Services Authority, the banking sector, and notaries. This framework can be established by forming a special task force comprising personnel from each of these institutions. In principle, in addition to the need for standardization of intellectual property rights (IPR) valuation and special registration of intellectual property rights (IPR) as collateral, as well as the integration of data from each institution and the establishment of fiduciary liens, attention must also be given to liquidity standards, enforcement mechanisms, and the strengthening of institutional roles in assessing intellectual property rights (IPR) to be used as collateral.

Key indicators that must be used in intellectual property rights valuation include the cost approach, market approach, and income approach, as also introduced by WIPO.[53] This method should be applied during the stages of verifying the economic value of intellectual property rights (IPR), independent appraisal, bank risk analysis, and determining the loan-to-value ratio. The development of a legally certain framework must begin with the verification of intellectual property rights ownership, independent valuation using accountable methods, the registration of intellectual property rights as collateral, the establishment of a fiduciary lien, the integration of data from the Indonesian Intellectual Property Office, the Financial Services Authority, and the banking sector, the monitoring of intellectual property rights value, and enforcement mechanisms in the event of default. Thus, the use of intellectual property rights as collateral can be made more legally certain.

CONCLUSION

Normatively, intellectual property rights (IPR) have been recognized as collateral under fiduciary schemes, as stipulated in laws and regulations governing copyright, patents, and the creative economy. However, the implementation of IPR as banking collateral still faces various obstacles, including the lack of uniform valuation standards, unclear mechanisms for securing and enforcing collateral, the failure to accommodate intellectual property rights (IPR) in banking collateral regulations, and suboptimal data integration between the Directorate General of Intellectual Property and the banking sector. These conditions have resulted in the banking sector not yet having full confidence in accepting intellectual property rights (IPR) as credit collateral, even though it is legally permissible. To establish legal certainty regarding the use of IPR as bank collateral, integrated regulatory updates are needed across the intellectual property rights (IPR) and banking sectors. These should include standardizing intellectual property rights (IPR) valuation methods, establishing specific record-keeping for IPR as collateral, regulating enforcement mechanisms, strengthening institutional roles, and ensuring data integration among the Directorate

[53] WIPO, 'Valuing Intellectual Property Assets', Business, accessed 1 July 2026, https://www.wipo.int/en/web/business/ip-valuation.

General of Intellectual Property, the Financial Services Authority, the banking sector, and other relevant parties. With the support of an adequate regulatory and institutional framework, intellectual property rights (IPR) have the potential to become an effective collateral instrument while also expanding access to financing for intellectual property rights holders and creative economy actors.

SUGGESTION

The use of intellectual property as collateral for bank loans requires not only regulations that substantively permit it, but also technical measures to ensure that, in practice, intellectual property is truly accepted as collateral by banking institutions. The mere fact that intellectual property such as copyrights and patents is permitted as collateral does not automatically resolve this issue. Therefore, several concrete steps are needed, including data integration supported by standardized intellectual property valuation, specific registration of intellectual property as collateral, clear eligibility criteria, effective enforcement mechanisms, and strengthened institutional coordination to enhance legal certainty and the banking sector's confidence in intellectual property as collateral.

AUTHOR CONTRIBUTIONS

Darwance: Conceptualization, Writing- Original draft preparation, Visualization Writing - Reviewing and Editing, Methodology. **Rafiqa Sari:** Formal Analysis, Investigation, Data Curation, Writing - Reviewing and Editing. **Fabiola Nurul Oktavianingrum:** Writing- Original draft preparation, Resources. **Almaududi:** Writing- Original draft preparation, Data Curation.

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