

Position of Intellectual Property Rights as Banking Guarantee Based on Government Regulation Number 24 of 2022

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ABSTRACT

The rapid development of digital technology has an impact on the growth and development of the creative economy industry where this industry is a type of industry that applies digital-based technology in its business and produces digital goods. The existence of Intellectual Property Rights attached to products owned by the Creative Economy Industry certainly requires legal protection. The facilities provided to the creative economy industry itself are IPR which can be used as collateral, but the absence of implementing regulations makes the practice still not available. This study uses a normative juridical method to analyze the existing problems. The result of this research is the issuance of PP 24 of 2022 as the implementing regulation of Law no. 24 of 2019 concerning the creative economy provides legal certainty for both debtors and creditors where this Government Regulation regulates the re-assessment of IPR as an object of debt guarantee and the availability of IPR market access as an auction place in the event of a potential default.

ABSTRAK

Perkembangan teknologi digital yang semakin pesat berdampak pada tumbuh kembangnya industri ekonomi kreatif dimana industri ini merupakan jenis industri yang menerapkan teknologi berbasis digital dalam bisnisnya serta menghasilkan barang-barang digital. Adanya Hak Kekayaan Intelektual yang melekat pada produk yang dimiliki oleh Industri Ekonomi Kreatif tentunya membutuhkan perlindungan hukum. Fasilitas yang diberikan pada industri ekonomi kreatif sendiri adalah HKI yang bisa dijadikan jaminan namun belum adanya peraturan pelaksana membuat praktiknya masih belum ada. Penelitian ini menggunakan metode yuridis normatif untuk menganalisa permasalahan yang ada. Hasil penelitian ini adalah dengan dikeluarkannya PP 24 Tahun 2022 sebagai peraturan pelaksana UU No. 24 Tahun 2019 tentang ekonomi kreatif memberikan kepastian hukum baik bagi debitur maupun kreditur dimana dalam Peraturan Pemerintah ini diatur mengenai penilaian Kembali HKI sebagai objek jaminan hutang serta tersedianya akses pasar HKI sebagai tempat pelelangan apabila terjadi potensi gagal bayar

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I. INTRODUCTION

The economic sector is the most vital sector in all countries where the economic sector is one sector that has a high level of crucialism because if the economic needs of the people in a country are not met, there will automatically be a decline in economic welfare which will have a major impact on people's lives. Therefore, the government as the regulator must of course issue policies that are able

to improve the quality of the economy so that it can support the various needs of citizens. Therefore, as the regulator of the economy, the government must have accuracy and good thinking power in formulating a policy related to the economic sector so that it is able to provide economic welfare to its citizens.

One of the economic programs that are being initiated by the government which is now becoming a trend in society is the creative economy industry where the creative economy industry is one type of industry in the economy that is currently the center of government attention as a result of the rapid development of digital technology and increasingly the proliferation of digital business in today's era. Therefore, the government feels the need to create a program that supports this industry to develop so that it will be able to become a pillar in the economic sector for several years to come.

The creative economy development plan itself has been realized by the government through the issuance of laws and regulations to provide certainty and legal protection to creative economy industry players in Indonesia so that creative economy industry players will be able to develop their businesses and protect their businesses because they are guaranteed by law. The regulation is Law Number 24 of 2019 concerning the creative economy where in this legislation it is said that in order to provide legal certainty for creative economy actors in Indonesia, of course, the Indonesian government needs to issue regulations regarding the creative economy industry in order to provide legal guarantees and certainty. for creative economy industry players (Mulyani, 2020)

This type of creative economy industry is a type of industry that has differences compared to the type of industry in general where the creative economy industry places more emphasis on the production of assets that do not have a form or are intangible. This is because in the creative economy industry the role of technology is very high so that the creative economy industry is very closely related to industries based on digital technology. The products produced in the creative economy industry themselves are cryptography, filmography, videography, brands, and various other types of intangible products which have aspects of Intellectual Property Rights attached to a product. or creations that have legal aspects and if someone wants to use the product, he or she must pay a certain amount to the owner or creator of the product in question (Kurnianingrum, 2017).

The progress of human civilization and the rapid development of digital technology in industry 4.0 is certainly one of the reasons why the creative economy must be developed simultaneously if you want to make the creative economy one of the pillars of the economy in the next few years. The concept of the creative economy itself was actually born because of a new business model that utilizes digital technology in regulating and creating a product that has value. This is what then encourages the emergence of the creative economy which is one type of industry in the economic sector that is currently the government's concern for development. But whatever it is, if the development of the creative economy sector is not carried out by taking into account the welfare of the creative economy itself, it will certainly threaten the existence of the creative economy itself.

Globally, the creative economy industry is one form of manifestation of the influence of globalization where globalization is synonymous with the application of the latest technology in every activity or line of business. This type of creative economy industry is certainly expected to grow rapidly in accordance with increasingly rapid technological developments. The government is also expected to be able to have a significant impact on the creative economy industry in Indonesia by issuing policies that are able to support the growth and development of the creative economy industry in Indonesia.

Intellectual property rights attached to products created in the creative economy industry deserve appreciation. This is because considering the amount of sacrifice made by the creator or inventor of the product so that the product can be enjoyed by the whole community. Therefore, in the Intellectual Property Rights attached to a product or service, it is expected to be able to become a form of appreciation or appreciation for the efforts made by the creator or inventor of a product or service in the creative economy industry.

Intellectual Property Rights are a type of intangible asset attached to a product or creation where this Intellectual Property Rights will be granted by the party who has the authority to grant Intellectual Property Rights which in this case is the Director General of Intellectual Property Rights in which the owner or creator of the product or service must register the product of his creation to the Director General of Intellectual Property Rights to obtain the Intellectual Property Rights. This Intellectual Property Rights will later function as a protector of products owned by a company or entity from piracy activities in any form so that if there is piracy or duplication of the product that has not received permission from the creator, it will be subject to sanctions in the form of criminal or civil.

Regarding the use of Intellectual Property Rights which can be used as bank guarantees or collateral, if viewed from the perspective of its own terms, Intellectual Property Rights are an asset that can be measured in monetary units. This means that Intellectual Property Rights can be used as collateral or guarantees in a bank because it can be measured in monetary units and is included in the category of assets owned by the company because it is able to generate profits in its use. Law number 42 of 1999 concerning fiduciary guarantees has also guaranteed that Intellectual Property Rights can be used as collateral or collateral for banks or loan institutions.

This does not only apply in Indonesia but also in several other countries such as Malaysia, Thailand, and Singapore where Intellectual Property Rights can be used as collateral or guarantees for a loan to the Bank. Singapore, for example, has facilitated the development and research related to Intellectual Property Rights. Not only that, the Intellectual Property Rights market in Singapore has also increased so that Banks in Singapore do not need to hesitate anymore regarding the market that will be used as a place for selling or auctioning Intellectual Property if the debtor has the potential to default.

Intellectual property rights including patents are also objects that can be used as fiduciary guarantees at various loan institutions in Indonesia because patents are a category of intangible assets that can also be used as collateral to banks or other lending institutions when the debtor makes loan. However, in practice, there are no lending or banking institutions that use patents as a form of guarantee when creditors apply for loans, even though this has been guaranteed by Law Number 13 of 2016 concerning patents where in article 108 it is stated that patent rights can be used as objects of collateral. fiduciary, so with this, if it is traced constructively, then there is no reason for banks or other lending institutions not to allow the filing of patents as banking guarantees because based on the principle of *lex superior derogate legi inferiori*, the law has a higher level than other implementing regulations. .

As explained above, with the law that regulates the use of Intellectual Property Rights as collateral for banks or other lending institutions, companies or individuals may automatically apply for guarantees related to these Intellectual Property Rights. However, in practice, the banking sector has not adopted what is mandated in Law Number 42 of 1999 concerning fiduciary guarantees where Intellectual Property Rights may be used as credit guarantees to banks or other loan institutions. This is because it is difficult to determine the value related to Intellectual Property Rights and there is still no market where the Intellectual Property Rights can be bought and sold which can be used as a place of sale or auction of Intellectual Property Rights if in this case the debtor as the owner of Intellectual Property Rights fails to pay. . This is what underlies why the banking sector has not implemented what is stated in Law Number 42 of 1999 concerning Fiduciary guarantees because if it is implemented without further policies from the Government, it will certainly affect banking liquidity.

This has been explained in Bank Indonesia Regulation (PBI) 9/6/PBI/2007 which regulates the assessment of the quality of banking assets or assets where in this Implementing Regulation it is explained that the quality of assets or assets that can be used as collateral must also be seen from the market aspect. in the sense of whether the guarantee provided by the debtor has a market value as well as the market available to conduct the auction when the debtor fails to pay. This is done solely

to maintain the level of liquidity from the banking side if the debtor experiences a potential default (Setianingrum, 2016).

In addition, in order to encourage the development of the creative economy industry in Indonesia, on July 12, 2022, the government officially issued Government Regulation (PP) Number 24 of 2022 concerning the implementing regulations of Law Number 24 of 2019 concerning the creative economy where in this government regulation it is regulated regarding Intellectual Property Rights owned by industries engaged in the creative economy can be used as collateral or credit guarantees which of course are carried out with certain mechanisms and procedures that will be discussed in this study. The issuance of this government regulation itself will certainly answer the void of implementing regulations regarding the position of Intellectual Property Rights which can be used as bank guarantees or collateral as referred to in Law number 42 of 1999 concerning fiduciary guarantees. This is certainly a government policy that needs to be appreciated considering that so far there have been no banks that require Intellectual Property Rights to be a guarantee given the lack of market owned by Intellectual Property Rights and the Intellectual Property Rights assessment procedure. With this implementing regulation, it is hoped that it will be able to develop the creative economy sector which will certainly have a significant impact on the development of the national economy as a whole.

Intellectual Property Rights (IPR) is a right granted by the state to a product or service created by a person or group of people or an entity where for the rights granted, someone who wants to use the creation of the person or group of people concerned must First, ask for permission from the owner of the right by paying a sum of money for compensation for the use and if it is violated, it will automatically get sanctions in the form of civil and criminal (Setianingrum, 2016).

The types of works that are protected and obtain Intellectual Property Rights are Books, CDs, Photography, Videography, and various other types of creations. The emergence of Intellectual Property Rights itself is due to pressure from parties who have their own created products with the aim that these products are not easily duplicated or claimed by other parties to the detriment of the creator as the producer and main owner of a product or service (Marlinah, 2017).

Agreement regarding aspects of Intellectual Property Rights (TRIP) which is an agreement formed by member countries of the World Trade Organization (WTO) where this agreement is the beginning of the birth of Intellectual Property Rights Law which is regulated in various countries with the aim of protecting the rights owned by the creator of a products or services so that there is legal protection for the creators of goods or services from all types of copyright infringement such as piracy or copying. The following are the principles of protection of Intellectual Property Rights as referred to in the TRIP agreement initiated by the WTO:

- a. There must be protection that contains the value of justice and balance in the sense that the protection of Intellectual Property Rights must include:
- b. There is a whole in the granting of copyright which includes protection of the product and the subject who created the product
- c. There are arrangements regarding administrative matters and sanctions that will be imposed if there are violations, both civil and criminal.
- d. Matters that regulate how to resolve disputes in the event of a dispute related to Intellectual Property Rights
- e. There is transparency from rule makers related to regulations regarding Intellectual Property Rights in order to increase public understanding of the legal aspects of Intellectual Property Rights.

The law governing Intellectual Property Rights has actually existed since the Dutch East Indies era or the Dutch colonial period at which time the Dutch Government which colonized Indonesia was included in a canyon country which had agreed to the Paris Convention governing Intellectual Property Rights. This of course will affect the Dutch colonized country, namely Indonesia where the

existing laws in Indonesia that regulate Intellectual Property Rights cannot be separated from the influence of the Dutch East Indies which once colonized Indonesia (Daulay, 2018).

Regulations regarding Intellectual Property Rights during the occupation of the Dutch East Indies government were still enforced during the Japanese occupation because the Government still felt that there was a legal logic that was still relevant to the regulation of Intellectual Property Rights starting from the registration of these intellectual property rights to what form of legal protection was provided by the government. Government related to Intellectual Property Rights. However, the regulation regarding Patent Rights in this case was abolished because it was felt to be contrary to what was expected by the Indonesian government, which in this case was related to simplicity in administration where the regulation regarding copyright in the law that had been prepared by the Dutch East Indies Government where the registration of Intellectual Property Rights could be carried out in Batavia (now Jakarta) but the inspection must be carried out in the Netherlands. This was felt by the government of the Republic of Indonesia at that time seemed ineffective and time efficient.

The announcement of the Minister of Justice of the Republic of Indonesia in 1953 was a milestone in the history of the birth of a more modern regulation regarding Intellectual Property Rights, where this year a policy-making team was formed related to the Regulation on Intellectual Property Rights which of course will be used as the legal basis related to Intellectual Property Rights which is expected by The Indonesian government will be able to become the basis for the implementation of Intellectual Property Rights.

In 1987 as a form of government concern for Intellectual Property Rights and the government's appreciation of the creators of goods or products in which there are aspects of intellectual property rights, Law No. 7 of 1987 concerning Copyright was issued which in the same year was formed the Director General of Copyright and Intellectual Property which functions to provide protection for products or services that contain copyright so that what is created by a party can be protected with certainty by law.

With the development of business and the economy followed by increasingly complex legal developments, in this case the House of Representatives as the regulator tries to issue regulations that better describe business developments in real terms, especially in the field of Intellectual Property Rights. The regulation issued by the Government is Law no. 28/2014 concerning Copyright, Law no. 13/2016 concerning Patents, and Law no. 20/2016 concerning Brands and Geographical Indications. These changes and the formation of new laws and regulations are expected to be able to provide legal certainty and protection related to Intellectual Property Rights attached to a product or service (Ananda, 2020).

Creative economy when viewed from the side of the word comes from the word economy and creative where the economy is everything related to the way humans meet their needs while creative is an idea or idea that is owned by a person or group of people or an entity in producing something that is expected. will be able to provide added value and benefits for both the party who has the idea and the users of the idea. So in terms, the creative economy is a way of human activity in meeting their needs through ideas in producing goods or services which in the process of creating an item or service are expected to be able to provide added value for both the creator of the goods or services and the users of the goods or services. those services. However, when viewed from a modern understanding of the creative economy and in accordance with current developments, it is a type of industry which in that industry has implemented digital-based technology that produces digital-based products that can be utilized by everyone on terms and conditions in accordance with applicable laws and regulations. applies (Daulay, 2018).

From a western perspective, the creative industry was first introduced by Richard Florida who said that all humans are unique creatures because they are endowed with reason so they can produce different mindsets compared to other creatures. This idea later became the initial milestone for the birth of creative industries in western countries where they believe that humans have been blessed

by God with all kinds of abilities which, if exploited continuously, will produce something that will be beneficial both economically and socially.

The Industrial Revolution in England also had a very important role in the development of Intellectual Property Rights where at that time, although there was no regulation regarding copyright and various other types of intellectual property, at that time it was an industry that was able to produce products whose characteristics and characteristics were different from those produced by industry. Otherwise, what will be done is by giving a special label for the product in the hope that when there are other parties who have the same type and product, it will be brought to the realm of the kingdom for trial because it is considered a form of theft of ideas or ideas (Ananda, 2020).

II. METHOD

The research method used in this study is a normative juridical legal research method where the normative juridical legal research method is a legal research in which researchers will use legal theory theory and existing laws and regulations to discuss a legal problem that exists in a study (Mulyani , 2020). The normative juridical method is used by researchers in conducting this research because researchers will use existing sources or legal literature that discusses intellectual property as bank guarantees and the latest regulations that have relevance to intellectual property rights as bank guarantees. In addition, researchers will of course also use references from various literatures such as journals, books, and other literature that discusses the same topic to support the results of the analysis conducted by researchers regarding the concept of Intellectual Property Rights that can be used as collateral or bank guarantees.

III. RESULT AND DISCUSSION

1. Regulation of Intellectual Property Rights as Collateral in PP 24 of 2022

The regulation regarding Intellectual Property Rights as collateral is still causing debate both among academics and practitioners engaged in law because although Intellectual Property Rights can be used as banking guarantees, the government has not provided technical arrangements regarding how to assess and market the Intellectual Property Rights itself so that parties banks or other lending institutions have not carried out the mandate contained in Law Number 42 of 1999 concerning fiduciary guarantees. The absence of implementing regulations that are able to provide certainty to the implementation of Law No. 42 of 199 concerning fiduciary makes banks and other lending institutions still have doubts about the use of Intellectual Property Rights as bank guarantees because if the debtor has the potential to default it will have an impact on increasing non-performing loan from a bank which will result in a decrease in the level of liquidity from the Bank

Based on this as explained in PP 24 of 2022 regarding the Implementing Regulations of Law number 24 of 2019 where in this government regulation is the implementing regulation of Article 16 paragraph 2 and Article 21 paragraph 2 of Law number 24 of 2019 where in article 16 contains about government policy in order to provide financing facilities based on Intellectual Property Rights or in the sense that Intellectual Property Rights owned by a company or industry can be used as collateral in financing proposed to the banking sector. While article 21 paragraph 2 concerning the regulation of the marketing system for creative economic products based on Intellectual Property Rights, in this article the government will try to establish a market where the buying and selling of products from the creative economy industry based on Intellectual Property Rights is carried out. The formation of this market itself certainly has a purpose other than to increase the market share of the creative economy in Indonesia, it can also be used as a place for banks to auction Intellectual Property Rights if the debtor as the owner of Intellectual Property Rights used as collateral experiences default or has the potential to experience fail to pay.

Regarding Intellectual Property Rights which are used as collateral in applying for loans to banking and non-banking institutions, it is regulated in paragraph 2, namely from article 7 to article 17 of Government Regulation Number 24 of 2022. Article 7 states that in the process of applying for loans to banks, There are 4 conditions that must be met by creative economy industry players, including the following:

- a. Prepare proposals related to financing
- b. There is a creative economy business
- c. Products that have Intellectual Property Rights in them
- d. Have a certificate that the Intellectual Property Rights of the product have been registered

From article 7 it can be concluded that Intellectual Property Rights that may be registered at the time of submitting a financing proposal by creative economy actors are Intellectual Property Rights that have been registered with the Ministry that carries out government affairs in the legal field which in this case is the Ministry of Law and Human Rights (Ministry of Law and Human Rights) as referred to in Article 10 of PP 24 of 2022. Furthermore, Article 11 of PP 24 of 2022 states that the Ministry of Law and Human Rights is obliged to provide data in the form of Intellectual Property Rights which are used as objects of debt guarantees and have been registered in the system owned by the Ministry of Law and Human Rights.

In Article 8 of PP 24 of 2022, before approving the financing proposal submitted by creative economy business actors, they must reassess the Intellectual Property Rights that are guaranteed as a means to obtain loans. This is done with the aim that the value of Intellectual Property Rights from the results of the assessment is equal to or exceeds the value of the proposed loan. The loan value in this case is the principal loan value plus interest. In conducting an assessment of intellectual property rights that are used as collateral, then based on the explanation of article 12 PP 24 of 2022 the assessment will be carried out by a panel of appraisers or appraisers who have expertise in the field of valuing an asset. This is because to know correctly whether the value of intellectual property rights will later be able to cover the amount of principal and interest loans proposed by creative economy industry business actors. In article 12 paragraph 1 the approaches that can be used by the panel team in conducting the assessment are:

- a. Cost approach
- b. Market approach
- c. Income approach
- d. Other approach

With the approach related to the assessment of IPR, it can be hoped that it will be able to answer the stigma that has been attached so far that it is necessary to reassess IPR which will be used as collateral for debts to banking and non-banking parties.

Related to the marketing aspect of Intellectual Property Rights itself, in article 19 paragraph 1 it is stated that there are 10 types of facilities provided by the Government and Regional Governments but related to marketing the government provides 3 facilities namely

- a. Marketing promotion assistance

This marketing promotion assistance itself can be in the form of providing programs by the government to help smooth the marketing activities of creative economy industrial products in the form of Intellectual Property Rights.

- b. Marketing

This marketing access assistance itself can be in the form of intellectual property rights which are made a priority for the government in terms of procurement of goods and or services as well as forming a forum with various other creative economy industry business actors so that in this case it will be able to facilitate market availability for creative economy business actors.

- c. Marketing Incubation through designated parties

Marketing through other institutions in this case is marketing through the PMSE application where the PMSE application will certainly make it easier for business actors to market products from the creative economy industry in the form of Intellectual Property Rights.

Related to the marketing spec, I understand that the lender, which in this case is a bank, does not need to worry about the existing market aspect where of course the government as the regulator will adjust the policies that will be issued and not only provide benefits to the creative economy industry players but also to the bank as a creditor with the aim of maintaining the liquidity of the bank itself. If the creative economy industry players fail to pay or have the potential to fail to pay, then in this case the banking and non-banking parties in conducting auctions of Intellectual Property Rights that have been used as guarantees by creative economy industry business actors considering that the government has provided market access or markets that can be used by creditors in conducting auctions or selling Intellectual Property Rights if the debtor fails to pay

IV. CONCLUSION

The Creative economy industry is a type of industry based on digital technology where the products produced in this industry are digital products that attach aspects of Intellectual Property Rights. One type of facility provided by the government to the Creative Economy Industry players is financing based on Intellectual Property Rights, which has also been guaranteed in Law Number 42 of 1999 concerning fiduciary guarantees where Intellectual Property Rights can be used as fiduciary guarantees. However, the absence of implementing regulations that explain this has made creative economy industry business actors and banks as creditors not yet implemented the mandate of the Act. On July 19, 2022, the government then issued Government Regulation No. 24 of 2022 to provide guidance in terms of evaluating Intellectual Property Rights which are used as objects of debt guarantees and market access provided for selling Intellectual Property Rights if the debtor fails to pay.

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