

Intellectual Property Rights as Bank Credit Guarantee

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Abstract

The development of banking is increasing rapidly, especially for creative economy actors based on Intellectual Property Rights that can be used as credit guarantees or bank financing. So that there is legal certainty, the government issues regulations, namely through Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 About the Creative Economy. This research uses normative legal analysis, which is library research that examines document studies, using secondary data such as laws and regulations, namely Law Number 28 of 2014 concerning Copyright, by using qualitative analysis. This study concludes that the regulation of Intellectual Property Rights can be used as collateral for debt credit/financing to banks through Government Regulations, namely the creative economy based on intellectual property, facilities for developing a marketing system for innovative economy products based on intellectual property, such as licenses, franchises, technology transfer, brands, jointly, transfer of rights, and other forms of partnership. The application of intellectual property rights regulations as objects of bank credit guarantees has been studied by the Financial Services Authority (OJK) because they need government support to prepare and form institutions for registration.

Keywords: Property right, intellectual, bank, credit guaranty

Introduction

The development of banking is currently experiencing growth, with many requests for public needs becoming a concern for banking products. Banking continues to strive to transform into a solid and stable financial institution by paying attention to essential aspects to increase the bank's sources of income from various sectors of community business activities—especially its significant contribution to the economic sector. Recently, the government issued Government Regulation 24 of 2022 concerning the Creative Economy, allowing Bank and non-bank institutions to make Intellectual Property Rights as collateral for loans to banks [1; 2]. This regulation regulates, among others related to financing schemes that creative economy actors can obtain through intellectual property-based banking and non-bank financial institutions. The government expects the existence of this regulation to protect and utilize the intellectual property rights owned by the community. Intellectual Property Rights are rights derived from human scholarly activities where the activity has economic value. Intellectual property rights classify intellectual property into several parts. One is copyright, “the creator's exclusive right that arises automatically based on declarative principles after work is realized in a tangible form without reducing restrictions following the Laws and Regulations” [3; 4]. “Copyright is the right granted to the creator to publish and reproduce his/her creations, and the creations protected by Intellectual Property Rights are works in literature, art, and science, and the copyright is an intangible movable object” [5; 6]. Intellectual Property Rights are assets in science, art, and literature that have a strategic role in supporting the nation's development as mandated in the 1945 Constitution of the Republic of Indonesia [7]. The result of economic law in Indonesia is coercive, prioritizing the prosperity of the community at large, not the wealth of the individual [8].

The presence of this Government Regulation that has been ratified is undoubtedly the answer for creative business actors, which is a breakthrough in favor of the government for innovative and creative actors in Indonesia [9]. Not all intellectual property rights can be used as collateral by banks. As stated in "Article 7 Paragraph (1) Government Regulation Number 24 of 2022 concerning the Creative Economy, it is stated that creative business actors propose intellectual property-based financing to bank financial institutions or financial institutions" [10; 11]. Several conditions must be met, namely, having a creative economy business financing proposal, having an engagement related to the intellectual property of innovative economy products, and having a registered letter or intellectual property certificate [12]. It is stated by the Director of PT that the relation between HAKI and bank credit guarantee. Bank Central Asia, Jahja Setiaatmadja, will consider Intellectual Property Rights as additional collateral to apply for credit [13]. However, suppose a bank receives a guarantee of intellectual property rights. In that case, there must be an assessment from an independent party to see the value of the intellectual property rights that will be used as bank credit guarantees. The problem is that the object guaranteed as an object of credit guarantee to the bank cannot be known with certainty for its economic value in the market because something collateralized must protect the security and legal certainty of the creditor. The loan will still return even though the customer, as the object of the guarantee, may default by executing the bank's credit against the customer.

The state is tasked with the welfare of its nation, known as a welfare state based on law, known as the concept of a welfare state, which is a concept that places the state's role in every aspect of its people's lives for the realization of social welfare for all people [14; 15]. Concerning the concept of a welfare state, the state that regulates the idea of a welfare state can carry out 4 (four) functions, namely [16; 17]:

1. "the state as a Servant;
2. the state as regulator;
3. the state as an entrepreneur;
4. the state as umpire".

The government in a welfare state is tasked with building public welfare in various fields by granting independence to the state administration in carrying it out [18]. The government must not be passive or act as a "night watchman" but must actively carry out efforts to build the economic and social life of the community. It shows that the government should protect all its citizens and realize general welfare, among others, by awarding copyrighted works to creators or creative economy actors as economic rights to work produced or a marketing system for innovative economy products based on intellectual property, which can be used as collateral credit/financing to the bank.

The government's efforts to carry out the obligations are realized through Law Number 28 of 2014 concerning Copyright, and Government Regulation of the Republic of Indonesia Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy. It is intended as a tool to bring prosperity, happiness, and justice to the state and the people, especially the people as creative economy actors who produce copyrighted works, namely "copyrights as the exclusive rights of creators in the fields of science, art, and literature, which are produced on the inspiration of ability, mind, imagination, dexterity, skills, or expertise that is expressed in a tangible form" [19], which needs to be given legal protection and certainty in intellectual property rights.

Therefore, based on the above background, there are several formulations of the problem: a) How are Intellectual Property Rights Arranged as Bank Credit Guarantees? B) How is implementing intellectual property rights as the object of the Bank guarantee?

17 Research Method

This study uses a normative juridical research method and library research by examining document studies and using various secondary data such as Legislation - Invitation, Law Number 28 of 2014 concerning Copyright, Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy, court decisions, legal theories, and opinions of bachelor. Normative legal research uses qualitative analysis by explaining existing data in words or statements, not numbers.

Discussion

1. Setting Intellectual Property Rights as Bank Credit Guarantee

The term Intellectual Property Rights or Intellectual Property Rights is “a translation of Intellectual Property Rights (IPR), as regulated in Law Number 7 of 1994 concerning the Ratification of the WTO (Agreement Establishing The World Trade Organization), which has the meaning of exclusive rights granted by law or regulation” [20]. To a person or group of people for their creations. Arrangement of Intellectual Property Rights, which consists of:

1. “Copyright is a special right for creators to publish or reproduce their creations. The protected works include innovations in science, literature, and the arts. Copyright regulation is Law Number 28 of 2014 concerning copyright, previously Law Number 19 of 2002 concerning Copyright. Cita rights as intangible movable objects can be used as objects of fiduciary guarantees.
2. A patent is an exclusive right granted by the state to an inventor or his invention in the field of technology, which for a certain period carries out the design himself or gives his approval to another party to implement it. Patent Regulation is Law Number 14 of 2001 concerning Patents.
3. A Mark is a sign in the form of a picture, name, word, letters, numbers, colour arrangement, or a combination of these elements that have distinguishing features and are used in trading goods or services. Marks are regulated in Law Number 15 of 2001 concerning Marks.
4. Industrial Design is a creation of configuration form, or composition of lines or colours or lines and colours, or a combination thereof in the form of three or two dimensions which gives an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used to produce a design product, goods, commodities, industry, or handicrafts. The industrial design regulation is Law Number 31 of 2000 concerning Industrial Design.
5. Plant Variety Protection or PVP is special protection granted by the state, representing the government in this case. The Plant Variety Protection Office implements plant varieties produced by plant breeders through plant breeding activities. The regulation on the protection of plant varieties is Law No. 29 of 2000 concerning the protection of plant varieties” [21; 22].

Intellectual property rights for a country are fundamental because they are usually used as collateral for financing to banks. Still, not all intellectual property rights can be used as bank guarantees. One type of intellectual property right that can be used as

collateral for bank credit is copyright, the creator's exclusive right, which arises automatically based on declarative principles after work is realized in a tangible form without reducing restrictions following the provisions of laws and regulations [23]. Article 16, paragraph (3), Law Number 28 of 2014 concerning Copyright states, "Copyright can be used as an object of fiduciary guarantee." Copyright is an intangible movable object [24; 25]. In contrast to other intellectual property rights, the Copyright Law, in its provisions, provides an explicit opportunity for a copyrighted work to be used as an object of fiduciary guarantee or loan guarantee to a bank. In addition, "copyright is also an economic right which is the exclusive right of the Creator or copyright holder to obtain economic benefits for his creation" [26]. The economic rights of the creator or copyright holder and intellectual property rights can be used as objects of debt guarantees.

Other regulations besides the Copyright Law are through Government Regulation number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy. This regulation regulates Intellectual property-based financing as an object of debt or bank credit guarantee. Intellectual property rights that can be used as debt collateral are in the form of fiduciary guarantees on intellectual property, contracts in creative economic activities, and collection rights in economic activities. creative [5; 27]. It is stated that "the Creative Economy is the embodiment of added value from human creativity based on the cultural heritage of science and or technology" [28]. These intellectual property rights are used commercially by the owner or right holder to obtain royalties or other forms.

Meanwhile, intellectual property-based creative economy products that can be used as collateral for debt are franchise license, technology transfer, joint brand, transfer of rights, and other forms of partnership. Meanwhile, the Financial Services Authority (OJK) is reviewing and preparing regulations governing intellectual property rights as collateral for loans from financial service providers that allow creative economy business actors to submit their copyrighted products as collateral to the bank [29; 30; 31]. Of course, the bank uses conservative principles and sound risk management in the financial services sector.

2. Application of Intellectual Property Rights as Bank Guarantee Objects

Through Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy, the government allows bank and non-bank institutions to make intellectual property rights as collateral loans to banks. Intellectual property rights in question are assets that arise from or are born due to human intellectual abilities through the creativity, taste, and initiative that can be in the form of works in the fields of technology, science, art, and literature. "Intellectual property can also be in the form of music, songs, films, books, paintings, technology applications, to YouTube content" [32]. It is enlightening for creative economy actors or creators who have copyrighted works that can be guaranteed as credit guarantees to banks. Although the regulation has been issued, it cannot be applied yet, because it is being reviewed by the Financial Services Authority (OJK). Before implementing it, there are still aspects that need to be regulated by the government [34]. Before the Government Regulation issuance, this intellectual property right was held in Article 16 of Law Number 28 of 2014 concerning copyright, regarding the legality of copyright which can be used as an object of bank credit guarantee. For the bank itself, the implementation uses the prudential principle of the bank, namely in determining the assessment of intellectual property and at least providing education and training to

creative economy actors. An intellectual property appraiser and an appraisal panel carry out intellectual property assessment.

In implementing the government's intellectual property-based financing scheme, the financing scheme uses the intellectual property as the object of debt guarantees. Objects of debt guarantees or bank credit guarantees in the form of; fiduciary warranties on intellectual property, contracts in creative economic activities, and collection rights in creative economic activities. Collateral is liability insurance for the engagement made by a person, group, or team [34]. Collateral is "a material right included in the law of objects as regulated in Book II BW" [35]. "Objects are everything that can be owned and transferred, tangible and intangible, registered or unregistered, movable and immovable, which cannot be encumbered with mortgage or mortgage rights" [36]. "Intellectual property can be used as a debt guarantee object in the form of Intellectual Property that has been registered with the Ministry that carries out government affairs in the field of law, and Intellectual Property that has been managed either independently and the rights have been transferred to other parties" [37].

The presence of this rule needs to get government support to accelerate the implementation of intellectual property rights as objects of credit or debt guarantees. Three (3) aspects need government support, namely [38]: First, the government's institutional side can form institutions to register transaction records and guarantee intellectual property rights. Second, there is a need for a liquid ecosystem and market for various products and types of intellectual property rights; third, incentives for guarantee programs and interest subsidies from the government through piloting intellectual property rights as collateral. It will create trust among banks and companies or creative economy actors so that they can contribute significantly to the national economy.

Conclusion

The regulation of intellectual property rights can be used as collateral for credit/debt to banks, as regulated in Government Regulation 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy. Regulation of the creative economy based on intellectual property, namely facilities for developing a marketing system for innovative economy products based on intellectual property, such as; licensing, franchising, technology transfer, joint branding, transfer of rights, and other forms of partnership. Previously, it has been regulated in Article 16 of Law Number 28 of 2014 concerning Copyright, mentioning economic transfer, that copyright can be used as an object of fiduciary guarantee. Copyright is the creator's exclusive right that arises automatically based on declarative principles after the creation is realized in a tangible form without reducing restrictions following the provisions of the legislation. The application of intellectual property rights as an object of credit guarantees to banks is still under review by the Financial Services Authority (OJK). In this case, it is necessary to obtain government support, and the government must prepare and establish institutional agencies for registration, recording transactions, and guaranteeing intellectual property rights. There is a need for a liquid ecosystem and market of various products and types of IPR and incentives for guarantee programs and interest subsidies from the government through piloting IPR as collateral. The government must prepare multiple other aspects so they can be implemented later. So it is hoped that the government must go through recruitment and conduct a fit and proper test in addition to preparing a panel of judges from financial institutions and assessors of intellectual property so as not to cause a conflict of interest.

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