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Academia Open

Vol. 11 No. 1 (2026): June
DOI: 10.21070/acopen.11.2026.13164

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Intellectual Property Rights as Fiduciary Collateral in Indonesian Legal Framework

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Abstract

General Background Intellectual Property Rights have evolved from moral recognition instruments into economically valuable intangible assets within modern legal systems. **Specific Background** In Indonesia, positive law has formally recognized Intellectual Property Rights as movable intangible objects eligible for fiduciary security through Law No. 42 of 1999 and Government Regulation No. 24 of 2022, particularly within the creative economy sector. **Knowledge Gap** Despite normative recognition, significant obstacles remain in valuation mechanisms, institutional readiness, and execution procedures, limiting practical utilization of Intellectual Property Rights as fiduciary collateral. **Aims** This study aims to examine the legal construction of Intellectual Property Rights as fiduciary objects and to analyze the legislative rationale for such classification using Richard A. Posner's Economic Analysis of Law approach. **Results** The findings demonstrate that Intellectual Property Rights satisfy property law criteria as fiduciary objects due to their economic value and transferability, yet Indonesia's fiduciary system exhibits structural inefficiencies, especially in asset appraisal and enforcement certainty. **Novelty** This research integrates Indonesian fiduciary law with Posner's efficiency-based legal theory to explain the normative justification of Intellectual Property Rights as bankable collateral. **Implications** The study highlights the need for regulatory synchronization, institutional reform, and valuation infrastructure to support Intellectual Property-based financing aligned with principles of legal certainty and economic efficiency.

Highlights:

- ♦ Indonesian positive law categorizes intangible rights with economic value as fiduciary objects.
- ♦ Valuation and execution uncertainty constrains acceptance of intangible collateral by financial institutions.
- ♦ Efficiency-based legal reasoning supports collateralization of non-physical economic assets.

Keywords: Intellectual Property Rights, Fiduciary Security, Economic Analysis of Law, Creative Economy, Legal Certainty

Published date: 2026-01-27

Introduction

The creative industry and entrepreneurs have shifted in understanding Intellectual Property Rights (hereinafter referred to as IPR), which are defined as exclusive rights owned by creators or inventors as a result of intellectual and creative activities that are new and distinctive. These intellectual works can be in the form of creations in the fields of science, art, and literature, as well as inventions in the field of technology.[1] Intellectual Property Rights (IPR) are generally classified into two main categories, namely copyright and industrial property rights. IPR is granted to an individual or group for their creations in order to obtain legal protection for intellectual property in accordance with laws and regulations. Currently, IPR is not conventionally seen as a form of moral recognition or as an economic incentive for a creation. The current paradigm in viewing IPR is the optimization of IPR as working capital. The context of optimizing IPR as working capital means that IPR serves as a collateral instrument used to secure debts, and of course, in this case, what can be guaranteed by IPR is not consumer loans.

Intellectual Property Rights (IPR) are essentially property rights that have economic value, because from a commercial perspective they have value that can be transferred, sold, or leased. In the context of civil law, this economic value constitutes the wealth of investors who hold rights to that intellectual property. Last year in Indonesia, there was a legal breakthrough in IPR being used as collateral for bank financing. The copyrights of the films *Ada Apa Dengan Cinta* (AADC) 1 and 2 were used as collateral to obtain financing from banks for the production of the next films. This demonstrates that today, the public not only recognizes IPR as a form of moral recognition or incentive for a work, but the current paradigm views IPR as capital for subsequent works.

The government, through the Creative Economy Agency, must be able to assist creative workers in gaining access to capital with debt guarantees. This aligns with the paradigm shift in the 1945 Constitution of the Republic of Indonesia as the constitution in viewing the creative economy, which, through the latest amendment, has shifted from a limited positive right to an extensive positive right. The consequence of this change is the empowerment of citizens towards independence to realize a welfare state. In practice, efforts to use intellectual property rights (IPR) as collateral for financing still leave several issues that need to be synergized by business actors, banks, and the Financial Services Authority in terms of using IPR Certificates as financing guarantees.[2] The complication of using intellectual property rights (IPR) certificates as collateral is the mechanism of securing IPR collateral, because this has not been explicitly regulated in Bank Indonesia Regulation No. 7/2/PBI/2005 in conjunction with Bank Indonesia Regulation No. 9/6/PBI/2007 on Banking Collateral. Considering that the use of IPR certificates is not explicitly regulated, some banks may be concerned about being accountable for IPR-based financing to the Financial Services Authority and the Audit Board of Indonesia for state-owned banks.[2]

Another issue is related to the valuation of collateral, because currently there is no banking-approved appraisal recognized for evaluating intellectual property rights (IPR), making it difficult for banks to determine the debt-to-collateral ratio and decide on the financing that can be approved. Collateral is one of the factors that banks must consider when granting credit. This is certainly reasonable. Banks operate on a trust-based business model, so in conducting their activities, including providing funds to the public, they are required to apply prudential principles, given that the credit provided comes from public funds that must be repaid. Having collateral carries the consequence that if the debtor defaults, the bank can immediately initiate execution to recover the loan that has been provided. However, even though the Government Regulation of the Republic of Indonesia Number 24 of 2022 (hereinafter referred to as PP No. 24 of 2022) concerning the Creative Economy provides legal certainty regarding the possibility of using intellectual property as collateral [3], Of course, banks and non-bank financial institutions also need commercial certainty.

The existence of this regulation does not automatically make intellectual property (IP) as a fiduciary guarantee bankable or creditworthy, considering there are still several issues and obstacles that arise. One of the obstacles that makes it difficult for IP to be accepted as collateral is its value. The absence of a specialized asset appraisal institution to evaluate IP makes it difficult for rights holders to use IP as collateral. The guarantee of IP assets as loan/credit collateral must be supported by the role of an asset appraisal institution. Both bank and non-bank financial institutions require certainty regarding the value of the IP assets being pledged. In the case of bank credit with house/land as collateral, the collateral is assessed internally by the bank's credit officer based on market price references and the taxable object sale value (NJOP). Banks can also seek assistance from external appraisers if the credit value is relatively large.

A breath of fresh air for creative workers to gain financing ease from banking institutions, the government's step in issuing Government Regulation No. 24 of 2022 on the Creative Economy, which came into effect on July 12, 2022, becomes a breakthrough that intellectual property rights can be used as collateral or guarantee to obtain bank loans.[3] The purpose of issuing Government Regulation No. 24 of 2022 is to facilitate creative workers in obtaining public appraisers for banking guarantees from both bank and non-bank financial institutions. With this regulation, it is expected that the creative industry can become the foundation of the national economy in the future. Based on Government Regulation No. 24 of 2022, Article 9 Paragraph (1) states, "In the Intellectual Property-Based Financing Scheme, Bank Financial Institutions as well as Non-Bank Financial Institutions use Intellectual Property as the object of debt guarantees." Meanwhile, Article 10 of Government Regulation No. 24 of 2022 states that intellectual property that has been recorded or registered with the Ministry of Law and Human Rights, or that has been managed either independently or transferred to another party, can be used.[4] Debt collateral is also implemented in three forms. First, fiduciary guarantees or the transfer of ownership rights of an asset over intellectual property. Second, contracts in creative economy activities or orders received by creative economy actors. Lastly, receivables in creative economy activities. The receivables referred to are claims to royalties that must be paid by users of songs or musical instruments for commercial use.

In Indonesia, intellectual property rights (IPR) are considered intangible movable property as regulated in Article 449 of the Civil Code (hereinafter referred to as the Civil Code). Referring to this article which defines IPR as intangible movable property, IPR is more appropriately formulated as collateral in the form of fiduciary security. IPR as fiduciary collateral is possible by referring to Article 1 Paragraph (1) of the Republic of Indonesia Law Number 42 of 1999 (hereinafter referred to as the Fiduciary Security Law) that fiduciary security is the transfer of ownership rights of an object based on trust. Furthermore, Paragraph (2) stipulates that fiduciary security can take the form of tangible and intangible objects that have economic value.[5] Thus, legally speaking, it is possible for intellectual property rights to serve as financing collateral through fiduciary guarantees. The concept of intellectual property as collateral through fiduciary guarantees is seen as providing legal certainty and protection for banks as creditors in financing, as well as providing legal certainty for inventors to continue working productively with access to capital from banks.

It is expected that Bank Indonesia can promptly follow up by creating a policy that recognizes intellectual property rights (IPR) as collateral in bank financing. Thus, the banking sector would not need to worry about accountability for providing credit based on IPR collateral to the Financial Services Authority (OJK) or the Supreme Audit Agency (BPK), considering that both valuation and regulatory aspects have been arranged for IPR-based financing. The thinking that has developed and been promoted so far has only focused on legal protection related to IPR and law enforcement concerning IPR violations. Currently, IPR should be directed towards national self-reliance. This means that the government and all stakeholders cannot merely carry out empowerment through socialization about the importance of intellectual property protection; rather, such empowerment must achieve economic independence. Currently, the Indonesian nation needs intellectual property more in the context of economic self-reliance, so the path that can be taken is to use intellectual property as collateral for financing subsequent works. In this way, intellectual property can realize economic empowerment with the goal of national self-reliance, in line with the direction of a welfare state.

Based on the explanation above, although the existence of a new law is considered a renewal in the law, especially for intellectual property (IP) inventors, on the other hand, there are obstacles in terms of banking guarantees. These constraints are not in line with the concept of legal certainty and protection. In the theory of legal certainty according to Hans Kelsen, law is defined as a norm that expresses the aspect of 'ought' or 'das sollen' by containing regulations on what should be done.

Every individual has freedom, but in communal life, individuals bear the responsibility to create an orderly way of living together. To achieve this goal, effective guidelines that must be collectively followed are needed. These guidelines are called laws, which serve as a foundation for creating and maintaining order in communal life. Once the law has established certain behavioral patterns, every individual should act according to those prescribed patterns. In line with Hans Kelsen's view, Gustav Radbruch sees that the law must encompass three values of identity, namely the principle of legal certainty (*rechtmatigheid*), the principle of legal justice (*gerechtigheid*), and the principle of legal usefulness (*zwechtigheid*). As an enforcer of justice, the law becomes the benchmark to assess whether a legal system is considered just or unjust. Nevertheless, the law does not always function as it should. There are situations in which a law or regulation is considered 'dead'[6].

Another legal issue that arises when intellectual property rights (IPR) are used as collateral in fiduciary guarantees lies in the procedural aspect when the debtor defaults or breaches the agreement, which results in the possibility of seizing the pledged object. In this case, the question is whether IPR can be seized as collateral. This is questioned considering the provisions of Article 29 paragraph (1) of the Fiduciary Security Law, which states: "if the debtor or the fiduciary giver defaults, the object that becomes the subject of the fiduciary guarantee can be executed." This article suggests that seizure of copyright can be carried out, but only in the context of copyright infringement proven to have been obtained through unlawful acts. However, the law does not specifically regulate whether IPR used as fiduciary collateral can be executed.

As financial institutions, both banks and non-banks, that provide credit with the expectation of repayment, face difficulties in assessing the value of intellectual property rights (IPR). Moreover, an aspect that remains unclear is the execution procedure in the event of problematic credit, making the execution of IPR a question that has yet to be resolved. Overall, this statement reflects the attitude of banking in Indonesia, which is less willing to provide financing with IPR as collateral, considering the valuation obstacles and the lack of clarity in the execution process. Based on this, the descriptive parameters include how the theoretical aspects of Intellectual Property Rights function as a category of fiduciary objects, and what constitutes the legislative rationale for categorizing Intellectual Property Rights as fiduciary objects from the perspective of the Economic Analysis of Law theory.

Method

This research is a normative juridical study that uses a statutory approach, a conceptual approach, and a case approach. The statutory approach is used to examine regulations related to copyright and fiduciary guarantees, while the conceptual approach refers to legal doctrines and theories from experts to build legal arguments. The case approach is used to study Constitutional Court decisions concerning the material review of the Copyright Law. The type of data used is secondary data, including primary legal materials (laws and court decisions), secondary materials (legal literature and journals), and tertiary materials (legal dictionaries and other supporting sources). Data collection techniques are conducted through library research, and all legal materials are analyzed qualitatively descriptively through inventory, systematization, and interpretation of relevant legal norms to address the legal issues discussed.

Results and Discussion

A. Theoretical Aspects of Intellectual Property Rights as a Category of Fiduciary Objects

Fiducia comes from the Latin word 'fides,' which means trust. In law, fiduciary security is the transfer of ownership rights over an object based on trust, where the object remains under the control of its owner. This is regulated in Article 1 number 1 of Law No. 42 of 1999 concerning Fiduciary Security. The Civil Code does not explicitly define 'object,' but Article 499 states that all goods and rights that can be owned are considered objects. Objects are classified as: tangible and intangible (Article 503 of the Civil Code) and movable and immovable (Articles 504–507 of the Civil Code). Examples of movable objects: vehicles, receivables, shares. Examples of immovable objects: land, buildings, and land rights. Recognized intangible objects include copyrights, patents, and business receivables.[7].

According to Subekti, objects are everything that can become the subject of property rights, including rights that have economic value. Soeroso emphasizes that objects can be physical or non-physical,[8] whereas Wirjono refers to it as anything that can become the object of a legal relationship[9]. Article 1 number 4 of the Fiduciary Guarantee Law states that the objects of fiduciary guarantees include: tangible and intangible movable objects, and immovable objects that cannot be encumbered with a mortgage. Fiduciary guarantees are accessory in nature, following the principal debt agreement, and public in nature, meaning they must be registered to bind third parties. The advantages of fiduciary guarantees include: the object does not need to be physically handed over, it does not interfere with the debtor's business activities, and it has direct executorial power in the event of default (Article 15 of the Fiduciary Law).

According to Munir Fuady, fiduciary is very important for supporting financing, especially for MSME actors who have minimal fixed assets. The object of fiduciary collateral must meet certain criteria, namely it can be owned individually (individualiteit); it can be transferred (verhandelbaarheid); and it has economic value (economic value). [10]. In the Civil Code (KUHPer), the concept of "goods" is broadly regulated, encompassing both tangible objects (movable and immovable objects) as well as intangible objects. Although the Civil Code does not explicitly mention intangible objects, modern doctrine and interpretation open the possibility that intangible objects such as intellectual property rights (IPR) can be included in the category of intangible movable goods, as long as they have economic value and can be transferred. In the development of modern law, the concept of "goods" is not limited to physical existence but also includes rights that can be made the object of obligations, such as copyrights, trademarks, and patents. Therefore, IPR can normatively be construed as "goods" in the sense of Indonesian civil law.

The Theory of Property Law according to Subekti is: 'Property law is the entirety of legal rules that regulate legal relationships that can be measured in terms of money between one person and another.'[11]. R. Setiawan stated that property law is part of civil law that regulates legal relationships of an economic nature, namely the relationships between legal subjects concerning objects and property rights. [12]. J. Satrio explained that 'Included in property law are the law of objects and the law of obligations. Both are related to rights that can be valued in money, whether tangible or intangible.' [13]. Van Dunne in Dutch legal doctrine stated, 'Property rights are subjective rights that grant their owner the power to derive economic benefits from an object, including rights over tangible and intangible objects.' [14]. The theory of property law is a part of civil law that regulates the legal relationship between legal subjects and a legal object called "benda" (zaak). According to classical theory in property law, an object is anything that can be the subject of ownership rights and has economic value. This is reinforced by Article 499 of the Civil Code, which states that "An object is anything that can be controlled by ownership rights." In a modern context, the concept of an object includes not only tangible goods but also intangible items such as intellectual property rights (IPR), claims (receivables), and rights to digital domain names. From the perspective of property law theory, the objects of fiduciary security include both tangible and intangible assets as long as these assets can be valued and sold. Intangible assets such as IPR, software licenses, and lease rights can be used as financing collateral because they have market value and potential returns.[15].

According to Gunawan Widjaja, fiduciary guarantees can include intangible property rights such as trademark rights and copyrights, as long as ownership can be proven and they are officially registered.[16] The criteria for intangible assets as objects of property law are that they can be legally owned, can be transferred (sale, inheritance, license), have economic value, and can be used as collateral. Intellectual Property Rights meet all of these criteria, and thus can be used as financing collateral through fiduciary schemes. This is regulated in the Copyright Act, the Patent Act, Government Regulation No. 24 of 2022 on the Creative Economy, and the Minister of Law and Human Rights Regulation No. 8 of 2016.

According to Munir Fuady, intellectual property rights (IPR) can be used as an object of debt through Fiduciary over Intellectual Property Rights because the securitization of IP (based on projected income), banks can accept IPR as collateral if registered with the Directorate General of Intellectual Property, provided that the IPR has a clear commercial value and an official appraisal.[10] According to the law of property theory, a right or object can be considered property if it has two main elements: economic value and the ability to be transferred. Intangible assets such as intellectual property (IP) fulfill both of these elements: they have measurable economic value, and legally they can be transferred, licensed, or used as collateral. Furthermore, IP is part of the intellectual property category that arises from the results of human thought and has the special characteristic of being physically intangible but possessing significant benefits and economic value. This right is comparable to tangible objects because its function can be capitalized and become the subject of commercial transactions. In property law theory, intangible assets like IP are recognized as movable intangible objects that can be used as fiduciary collateral because they have economic value and can be transferred.[17]

Article 1 point 2 of the Fiduciary Guarantee Law stipulates that the object of fiduciary may be movable goods, whether tangible or intangible, although it does not explicitly mention intellectual property rights, it includes intangible objects with

economic value such as copyrights.[5] Iswi Hariyani, through her article, affirms that intellectual property, as an intangible movable object, meets all legal requirements to be made the object of fiduciary security.[1] Law Number 28 of 2014 concerning Copyright, Article 16 paragraph (3) of the Copyright Law states that copyright can be used as an object of fiduciary guarantee, so that intellectual property that has been officially registered has legal status to be used as collateral for debt. Law No. 28 of 2014 concerning Copyright, Article 16 paragraph (3). According to Rina Puspitasari, the implementation of this norm allows the party holding economic rights to a creation to use those rights as credit collateral, with a notarial deed and fiduciary registration.[18] Highlighting that the Copyright Law explicitly opens up the possibility for copyright to be used as fiduciary collateral, but in practice it faces challenges such as the risk to the creator's moral rights and the limited duration of copyright.[19]

In addition to Article 1 point 2 of the Fiduciary Guarantee Law, several other provisions indicate support for the expansion of fiduciary objects, aside from Law No. 28 of 2014 on Copyright, Article 16 paragraph (3), which states that copyright can be used as an object of fiduciary guarantee. Law Number 13 of 2016 on Patents in Article 108 also states that patents can be used as objects of fiduciary guarantee. Law Number 20 of 2016 on Trademarks and Geographical Indications, Article 76 paragraph (3), also states that rights to registered trademarks can be used as objects of fiduciary guarantee. Although national regulations have opened legal opportunities, the implementation of IP fiduciary in Indonesian banking is still very limited and requires an update to the Fiduciary Guarantee Law.[20] This shows that Indonesian positive law recognizes intangible assets as collateral as long as they are legally registered and have economic value. Research by Tasa Gina Santoso reinforces that the recognition of intellectual property rights (IPR) as fiduciary collateral has been grounded in Government Regulation Number 24 of 2022, but notes weaknesses in banking technical infrastructure and IPR asset valuation. [21]. Minister of Law and Human Rights Regulation No. 8 of 2016 was issued to provide legal certainty for owners and holders of intellectual property rights, as well as licensees and the industry, so that IP license agreements can be recognized by interested third parties. [22].

Positive law in Indonesia explicitly recognizes that copyright (and other intellectual property rights) can be used as objects of fiduciary guarantees, based on Article 16 paragraph (3) of the Copyright Law and the Fiduciary Security Law. Although this recognition has been established at the normative level, its implementation challenges are still considerable, including in terms of valuation, mitigation of moral rights, and the readiness of financial institutions. Indonesian positive law has given explicit recognition to intellectual property rights as objects that can be used as fiduciary guarantees, as affirmed in Law Number 28 of 2014 on Copyright and Law Number 24 of 2019 on the Creative Economy, particularly Article 16 paragraph (1) of the Creative Economy Law, which states that intellectual property can be used as collateral for financing based on intellectual property. This shows that positive law has adapted to the realities of the digital economy and innovation, which demand recognition of the value of intangible assets. Furthermore, Constitutional Court Decision No. 84/PUU-XIX/2023 also reinforces the legal legitimacy of intellectual property rights (IPR) as an object of collateral, emphasizing the importance of protection for creative economy actors and creators of intellectual works. This underscores the position of IPR as a legal subject that is not only protected but also plays a strategic role in national economic activities.

The Economic Law Perspective in the Thought of Richard A. Posner with the Economic Analysis of Law (EAL) Approach. Richard A. Posner, an economist and also a federal judge in the United States, is widely known as a leading pioneer of the Economic Analysis of Law approach, which evaluates and analyzes law based on the principles of economic efficiency. From this perspective, law is not only a normative system with moral or dogmatic aspects but also a tool to allocate resources efficiently within society. From the perspective of the Economic Analysis of Law, as developed by Richard A. Posner, intellectual property rights are seen as a means of efficiency in the distribution and allocation of resources. In the context of fiduciary guarantees, the use of intellectual property as fiduciary objects creates economic added value through financing mechanisms based on intangible assets, encouraging innovation and economic growth.[23]

According to Posner's approach, the law must support transaction efficiency. Therefore, recognizing intellectual property as a fiduciary object supports the development of a market for intangibles and creates greater economic incentives for creators and investors in the following ways: Law as a Means of Resource Allocation. According to Posner, the law should be seen as a mechanism to regulate individual behavior in the market and society efficiently.[24] The efficiency referred to is Kaldor-Hicks efficiency, which means a policy or legal rule is considered efficient if the benefits received by the advantaged parties are greater than the losses suffered by the disadvantaged parties, even if compensation is not actually paid.[23] In this context, the law must: Reduce transaction costs, provide rational legal incentives, and encourage compliance in an economical way.

The Principle of Utility and Efficiency. Posner proposed that a good legal rule is one that maximizes the market value of resources, or at least approximates a distribution considered efficient within the framework of a free market. For example, in contract law, breaching a contract is not seen as unethical, but rather as an economic choice if the breach provides a net social benefit.[25] Application of Economic Analysis of Law in Various Fields of Law. The Economic Analysis of Law approach is applied by Posner in various fields, including: Contract Law: Contracts are viewed as tools for market efficiency, and breach of contract is considered rational if the outcome is socially more beneficial. Bankruptcy and Property Law, where the economic analysis of law supports a legal system that facilitates asset redistribution to make them more productive. Tort Law and risk. The tort system is analyzed based on incentives for actors to prevent future losses at the lowest cost.

Criticism and Relevance in the Context of IP. Economic Analysis of Law is also relevant to be applied in the development of IP. [26], Because intellectual property protection essentially provides economic incentives to create, innovate, and exploit works, Posner argued that legal protection of intellectual property would be optimal if it encourages the efficient allocation of creative resources—that is, promoting creation without extending monopolies too long, which would hinder the diffusion of information and knowledge. Richard Posner's approach through the Economic Analysis of Law offers the perspective that

law should be evaluated based on how much it optimizes social and economic efficiency. This is highly influential in formulating policies on intellectual property law, fiduciary duties, and liability, emphasizing that good law is law that creates incentives and efficient market structures.

From the perspective of economic analysis of law, the recognition of intellectual property rights (IPR) as an object of fiduciary collateral aims to increase the efficiency of resource allocation and promote knowledge-based economic growth. Richard A. Posner, a pioneer in the economic analysis of law, argued that the law should be designed to encourage economically efficient behavior. In this context, allowing IPR to be used as collateral would open up financing access for businesses that previously did not have physical assets. Using IPR as financing collateral promotes the monetization of intellectual property, creates added value, and provides incentives for innovation. This aligns with the principle that the law must be adaptive to economic dynamics, especially in the digital and creative economy era, where the main value of companies and individuals largely comes from ideas and innovation rather than physical assets.

Normatively, the recognition of intellectual property rights (IPR) as an object of fiduciary collateral has been established through Law Number 28 of 2014 on Copyrights and Law Number 42 of 1999 on Fiduciary Security. However, its practical implementation still faces various legal, technical, and economic challenges. First, from a legal perspective, the provisions regarding IPR as an object of fiduciary collateral have not been fully and effectively integrated into the national fiduciary registration system. In practice, the Fiduciary Registration Office has not actively facilitated the registration of IPR as collateral, making it difficult for creditors and debtors to obtain legal certainty over such agreements.[27] Secondly, from a technical aspect, the difficulty in determining the economic value of intellectual property rights (IPR) becomes the main obstacle. Unlike tangible assets such as land or buildings, IPR is intangible, so its valuation heavily depends on market perception, licensing, commercial potential, and sometimes the subjectivity of the appraisal institution.[28] This makes banks or financial institutions reluctant to accept intellectual property rights (IPR) as collateral because the risk is high. Third, economically, not all business actors or creators understand the economic potential of the IPR they own, let alone use it as a source of financing. Legal and economic literacy regarding IPR is still limited, especially among SMEs or local creative industry players, so the use of IPR as fiduciary collateral has not been optimal.[29]

Although legal recognition has been established, there are still challenges in applying intellectual property rights (IPR) as fiduciary objects, including: Valuation in determining the market value of IPR is very complex and often subjective. Proof of ownership required for formal documents and registration with relevant institutions. Enforcement of collateral, where the execution of auctions on IPR requires an assessment system and market mechanisms that are not yet fully developed. This situation indicates that there needs to be strengthening of regulations and intangible asset appraisal institutions so that IPR as fiduciary collateral is truly effective both legally and economically.

The producers of the film *Ada Apa Dengan Cinta?* (AADC) 1 and 2 used the film copyright certificate as a fiduciary guarantee to obtain financing from banks for further production funding. This turns intangible assets such as film copyrights into financial capital. This mechanism is possible because the film copyright has been officially documented at DJKI and has potential economic value through screenings and royalties. [30] It also recognizes intangible objects as a type of fiduciary guarantee as long as they have economic value. Supported by Government Regulation No. 24 of 2022, which emphasizes the potential of intellectual property rights (IPR) as financing collateral for the creative industry, it opens a legal space for schemes such as the AADC case related to copyright valuation assessment. Banks face difficulties in determining the monetary value of copyrights due to the lack of certified valuation standards. This complicates the design of appraisals acceptable to financial institutions. The role of a Notary becomes very important in drafting fiduciary guarantee deeds on copyrights, including determining the collateral object, estimated value, and the debtor or fiduciary receiver, in accordance with the provisions of the Fiduciary Guarantee Law Article 5 and the Copyright Law Article 16 paragraph (3): 'Copyright can be used as the object of a fiduciary guarantee.' This provides a legal basis that copyright, as an intangible movable object, meets the requirements as a fiduciary object.[31] And regarding the execution of collateral in cases of default, there is no definite mechanism for fiduciary execution of copyrights, such as how to sell the copyright or obtain royalties as debt repayment. This is a major obstacle to the implementation of the scheme.

Thus, there is a need for regulatory integration, improved literacy, and collaboration among institutions such as DJKI, OJK, and notaries to strengthen trust in fiduciary security practices based on intellectual property rights (IPR). This is because it has been explicitly regulated by the Copyright Law and the Fiduciary Security Law in terms of legality, and regarding its implementation, it has occurred in the practice of the film AADC, but in a limited and initial manner. Therefore, the potential for creative financing schemes using intangible assets is increasingly relevant, although there are obstacles in valuation, actor approval, execution, and limited bank acceptance. Although it is already recognized in positive law and has a basis in property law theory, there are still theoretical challenges in classifying IPR as a fiduciary object. One of the main challenges is the intangibility of IPR itself, which complicates the objective valuation and execution of collateral in the event of default. In addition, not all types of IP rights have a mature protection structure and market, such as copyrights for digital content on open platforms. Another challenge is the limited understanding and capacity of financing institutions in assessing and accepting IP rights as collateral. On the other hand, the lack of synchronization between intellectual property law and security law creates legal gaps in practice, such as the absence of a uniform mechanism for the registration and execution of IP-based collateral.

The Ratio Legis of Intellectual Property Rights Categorized as Fiduciary Objects from the Perspective of Richard A. Posner's Economic Analysis of Law. Through the Economic Analysis of Law, Posner places economic efficiency as the main principle in assessing the quality of law. Within this framework, law is not merely a normative tool but an instrument to allocate resources efficiently. One contemporary application of Posner's theory is in the recognition of intellectual property rights as fiduciary collateral, which is considered capable of improving access to financing and promoting the growth of the creative

industry. The discussion focuses on Richard Posner's theoretical approach in the Economic Analysis of Law, particularly regarding incentives through property rights. Within the framework of the economic analysis of law, Richard Posner argues that the main goal of law is to create economic efficiency, one way of which is through the establishment and protection of property rights. Property rights provide incentives for individuals to manage, develop, and transact resources optimally. According to Posner, "Property rights create incentives to use resources efficiently by enabling people to internalize the social costs and benefits of their actions" [23].

Through this approach, law does not merely serve as a tool of morality or justice, but as a means to promote efficient resource allocation. When someone has legal certainty over their ownership, they will be encouraged to use those resources in the most productive way. In the context of intellectual property rights (IPR), granting exclusive rights to creators/owners creates incentives for innovation and investment in creative works. When IPR is guaranteed as a legitimate property right, and can even be collateralized through fiduciary arrangements, it increases the economic value of IPR, motivates creative actors, and expands access to financing through legal guarantees. Posner views that a legal system providing strong ownership rights will reduce conflicts, prevent the use of resources for ownership disputes, and enhance social efficiency.[25]

By applying Posner's theory, the recognition of intellectual property rights (IPR) as an object of fiduciary guarantee can be considered efficient because it will provide economic incentives to IPR owners, transform intangible assets into productive financing sources, reduce the waste of resources that have so far not been monetized, and align national law with global economic practices. Thus, the implementation of property rights over IPR through fiduciary guarantees is not just a legal matter, but also a rational economic choice in creating efficiency and growth in the creative industry sector. IPR as an Economic Asset in the Approach of Richard Posner's Economic Analysis of Law argues that IPR promotes efficiency and economic growth because it provides incentives to individuals or entities.[23] to produce innovation and creative work, invest time and resources in research and development, monetize [32] his or her creations in the form of licenses, royalties, or even as collateral in a financing system [32]. "Intellectual property rights are economically justifiable because they allow the creator to internalize the benefits of their innovation, which would otherwise be taken by competitors." [25].

By providing legal certainty over the ownership of intellectual works, intellectual property rights (IPR) are transformed into economic assets that can be traded, inherited, used as collateral, and monetized, much like tangible assets such as land or buildings. The application of Posner's theory in the Indonesian context can be seen in legal efforts that promote IPR as an object of fiduciary security. Economically, this aligns with Posner's principle of efficiency: optimizing the use of intangible assets that previously could not be used as collateral. It increases access for creative industry players to financing, especially for SMEs and innovation-based startups. It creates a new market for financial institutions in the form of financing schemes based on IPR. Posner states that good law is law that promotes economic efficiency, which can be seen through two models: Pareto efficiency and Kaldor-Hicks efficiency. Law is also viewed as a tool to create economic incentives through the certainty of property rights. By providing certainty of rights, individuals are encouraged to act productively and innovatively[23]. Assets such as IP, according to Posner, become valuable when they can be economically utilized. In this case, property rights over IP must provide legal assurance so that they can be monetized in the form of licenses, royalties, or even used as collateral in financing.[23].

Marginal Value Theory (MVT) explains that the value of an object depends on the additional benefits it can generate. In the context of Intellectual Property Rights (IPR), value is determined not by its existence, but by its real economic potential. MVT provides an economic justification for recognizing IPR as an object of fiduciary security.[33]. The application of MVT in Intellectual Property Rights includes Potential royalties and licenses, Market monopoly rights, Financing attractiveness, and Asset valuation in financial statements. This makes Intellectual Property Rights worthy of being assessed as collateral assets with an approach based on actual marginal value, not just legal existence. From the perspective of Economic Analysis of Law, fiduciary is a legal instrument that creates efficiency through Reducing transaction costs, Strengthening legal certainty for creditors, Increasing debtor flexibility in utilizing assets. Fiduciary as an Instrument From the Perspective of the Theory of Economic Analysis of Law, fiduciary is the transfer of ownership rights of an object based on trust with the provision that the object whose ownership rights are transferred remains under the control of the owner. In this case, fiduciary is an instrument that must be analyzed based on the principle of economic efficiency. From this perspective, law is not merely seen as a normative system, but as a tool for efficiently allocating resources in society.

In this context, fiduciary as a security instrument is seen as part of the legal system that creates incentives to support economic activities, particularly by improving access to financing. This applies to both tangible collateral objects such as vehicles and buildings, as well as intangible ones like Intellectual Property Rights. Legal efficiency in Fiduciary Security Institutions, according to Posner, emphasizes that efficient law is law that minimizes transaction costs, creates legal certainty for market participants, and increases productivity and economic value through rational incentives. Posner states that the law should encourage the utilization of property rights to create added economic value. When intellectual property rights (IPR) are recognized as fiduciary objects, the legal system must enhance the economic value of intangible property, provide incentives for creative actors to continue innovating, and align the law with the reality of a modern market heavily supported by the digital economy and intellectual assets. Therefore, fiduciary arrangements must meet these three criteria: they do not require the physical handover of collateral, making them efficient and not hindering the debtor's operations; they provide strong legal protection to creditors through notarized deeds and official registration; and they encourage the use of non-traditional assets, including intangible assets such as IPR, as sources of productive financing.

Thus, fiduciary not only serves as a tool for the allocation of economic resources but also functions as a civil guarantee institution that is efficient and adaptive to the development of asset types in society. Fiduciary becomes a means of resource distribution that does not require the physical transfer of objects, making it ideal for intellectual property rights (IPR). When

IPR becomes the object of fiduciary, the legal system must be able to provide efficient legal protection for the rights of creditors and certainty regarding the value of the collateral object.[34] The Economic Analysis of Law theory developed by Richard A. Posner places efficiency as the main principle in assessing the goodness of a legal rule. Within this framework, the law is not only viewed from a moral or justice perspective, but also in terms of how far it promotes optimal resource allocation and creates net social value.[23] The Concept of Pareto and Kaldor-Hicks Efficiency, Posner divides legal efficiency into two main categories: Pareto Efficiency is when a policy or legal rule is considered efficient if it improves the situation of someone without harming others. Meanwhile, Kaldor-Hicks Efficiency refers to a change being considered efficient if those who benefit from the legal change are theoretically able to compensate those who are harmed, even if it is not actually done.[23] In the context of civil law, including contracts, guarantees, and intellectual property, this approach is used to assess whether a legal arrangement encourages the optimal use of assets, and whether the legal and transaction costs are less than the social benefits generated.

In the law and economics approach, valuation is not just about the nominal value of an object, but includes: The utility value of the legal object, The potential value based on future use, The marginal value obtained from the last unit of its use [35]. For example, IP has value not from its legal form, but from its ability to generate royalties or licenses, its appeal to investors or consumers due to its potential use as collateral in fiduciary financing agreements. In other words, the law that allows objects like IP to be monetized through fiduciary arrangements is a form of efficient law, because "It enables the productive use of underutilized resources by recognizing and protecting their economic value".[34]". Relevance to the Formation and Reform of Law. Through the Economic Analysis of Law, Posner advocates that new policies or legislation should be designed to minimize transaction and dispute resolution costs, enhance market efficiency, and create incentives that encourage innovation and productivity. In this regard, applying efficiency-based valuation to legal objects such as intellectual property, land, or digital assets will help courts and policymakers make economically rational decisions and ensure that the law functions as a value allocation mechanism, rather than merely a norm enforcer.[25]

Is the Indonesian Legal System Efficient When Compared to the Principles of Economic Analysis of Law? Conceptually, the Indonesian legal system has the potential to achieve efficiency as developed in the Economic Analysis of Law by Richard A. Posner. This is demonstrated by the existence of a national legal framework that has begun to take procedures into account, facilitating processes, for example, through an electronic court system. There is an increase in legal certainty within economic regulations, as well as recognition of market instruments in civil regulation such as fiduciary guarantees and intellectual property as economic objects. Normatively, Indonesian law has shown a consistent direction towards the principle of efficiency. Some important regulations reflect this approach, such as Law No. 42 of 1999 on Fiduciary Guarantees, which allows providing collateral on movable property without having to physically hand it over to the creditor. This creates efficiency because it reduces transaction costs while still allowing debtors to use the collateralized objects for productive activities. Law No. 6 of 2023 concerning Job Creation aims to simplify business licensing processes, accelerate investment, and reduce administrative barriers. In the logic of law and economics, this regulation is a form of legal intervention to lower bureaucratic costs and encourage more productive economic activities.[35] Government Regulation No. 24 of 2022 concerning the Creative Economy, regarding financing, this regulation governs an intellectual property-based financing scheme that allows intellectual property to be used as collateral in credit applications.

Recognition of intangible assets such as intellectual property rights as objects of legal collateral shows that the legal system has adopted the principle that rights to economic value (intangible rights) can be used as financing instruments. This aligns with Posner's theory that the law should provide incentives for the creation of economic value and innovation.[35]. However, the success of legal norms does not always correlate directly with their implementation. In practice, various structural and institutional obstacles prevent the Indonesian legal system from fully achieving efficiency, such as the registration and execution processes of fiduciary guarantees, which often face bureaucratic hurdles. The implementation of the Job Creation Law still raises controversy and disparities in its application across regions. Intellectual property as collateral is not yet fully accepted or utilized by financial institutions, especially in the banking sector. Therefore, it can be concluded that, normatively, the Indonesian legal system is already oriented towards the principle of legal efficiency, but in practice, there are still various challenges that cause systemic inefficiency. Although normatively the Indonesian legal system has accommodated many principles of efficiency, in practice it is not yet fully efficient according to the parameters of the Economic Analysis of Law. Some of the main factors causing this inefficiency include: High legal costs. Legal procedures in Indonesia, including registration of rights, business licensing processes, and civil lawsuit mechanisms, often require a long time, high costs, and are marked by bureaucratic complexities. According to Richard A. Posner's principles, a legal system that generates high transaction costs cannot be considered efficient because it hinders economic activities and reduces the incentive to comply with the law.[23]

The absence of legal certainty. Many court decisions in Indonesia are inconsistent, both between levels of courts and in similar types of cases. In addition, the weak enforcement of judgments, as well as the ongoing practices of corruption and political intervention in the legal process, also contribute to uncertainty. Posner stated that legal uncertainty is a form of systemic inefficiency, as it discourages economic actors from making productive decisions that involve legal risks.[36] Inequality in access to the law. Limited understanding of intellectual property valuation by financial institutions. Access to the formal legal system in Indonesia is still uneven. MSME actors, indigenous communities, and the creative industry often face difficulties in accessing adequate legal services, whether due to financial, geographical, or legal literacy limitations. From an economic analysis perspective, this indicates that the allocation of legal protection is uneven and causes distortions in resource distribution.[35] Thus, although the Indonesian legal system shows signs of reform, it still faces structural challenges that hinder the creation of legal efficiency within the framework of the Economic Analysis of Law, for example through Law No. 42 of 1999 on Fiduciary Guarantees, Law No. 6 of 2023 on Job Creation, and Government Regulation No. 24 of 2022 on the Creative Economy. However, implementation in the field still faces various challenges.

Conclusion

IPR is recognized as part of intangible assets that have economic value and can be transferred, inherited, and used as collateral, including in the form of fiduciary guarantees. The explicit acknowledgment of IPR as an object of fiduciary guarantee is affirmed in Law Number 42 of 1999 on Fiduciary Security and reinforced by Government Regulation Number 24 of 2022 on the Creative Economy. This indicates a shift in the legal paradigm from a formal approach to a functional approach, where wealth is no longer perceived solely based on its fiscal aspects, but based on its economic potential. The ratio legis of recognizing IPR as a fiduciary object can be categorized from the perspective of the Economic Analysis of Law with Richard A. Posner's approach, where efficient law is law that maximizes economic wealth or economic welfare. By making intellectual property rights (IPR) the object of fiduciary guarantees, the legal system potentially opens up financing access for creative economy actors, which aligns with the goal of economic efficiency. However, the implementation of this policy has not been fully efficient in practice due to a number of normative and institutional obstacles in making IPR the object of fiduciary arrangements, including the valuation problem, which refers to difficulties in determining economic value, the absence of recognized appraisal institutions, and the lack of detailed execution mechanisms, which creates legal uncertainty and makes financial institutions reluctant to accept IPR as collateral. This is due to the lack of synergy between regulations, institutional infrastructure, and market mechanisms in supporting IP-based financing schemes. The government needs to promptly issue implementing regulations and clear technical guidelines related to the registration, valuation, and execution of IP-based fiduciary guarantees to create legal and commercial certainty for all stakeholders by establishing an independent institution or accrediting an appraisal institution competent in assessing intangible assets such as IP, using a methodology that is transparent and legally and economically accountable. Synchronization is required between the Ministry of Law and Human Rights, the Financial Services Authority, Bank Indonesia, and banking institutions to build an inclusive, IP-based financing ecosystem in accordance with the principles of legal efficiency.

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