

Intellectual Property-Based Financing Scheme For Creative Economic Players: An Opportunity And Challenge

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ABSTRACT

Intellectual property owned by actors in the creative economy is one of the most significant assets in the development of the creative economy. Capital is necessary for the development of businesses in the creative economy. Nevertheless, lending from financial institutions, especially banks, continues to be challenging in practice. As an example, in the creative economy sector, intellectual capital dominates, while creditors prefer conventional collateral such as land, buildings, vehicles, inventory, and bills. The issuance of Government Regulation Number 24 of 2022 regarding the Implementation of Law Number 24 of 2019 concerning the Creative Economy allows creative economy actors to obtain financing from Bank Financial Institutions or Non-Bank Financial Institutions by using intellectual property as collateral. Nevertheless, in order to implement the Government Regulations on the Creative Economy effectively, many aspects still need to be prepared, such as the binding of debt guarantees in the form of Intellectual Property Rights (IPR), intellectual property assessment methods, and technical implementation of execution.

Keywords: creative economy; intellectual property rights; financial scheme; intellectual property; industrial property rights

1. Introduction

An intellectual property (IP) can provide benefits, including economic benefits, if it is financed, since it contains moral rights and economic rights. In the field of intellectual property, it is defined as the right that arises from a human's intellectual abilities or that is born out of them (Drahos & Braithwaite, 2017). Intellectual property

right is a form of property right that includes the right to use a copy of another's invention, including rights to other products such as trademarks, geographical indications, patents, trade secrets, industrial designs, layout designs for integrated circuits, and plant varieties (Chattopadhyay, 2013).

Based on Correa (2020), there is a division which refers to provisions of the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPs Agreement), which was ratified by Indonesia through Law Number 7 of 1994 by the member countries of the World Trade Organization (WTO) that pertain to intellectual property rights. Regarding the Ratification of the Agreement Establishing the World Trade Organization, there are no agreements as comprehensive as this one in the sector of IP within the WTO since it has been the most comprehensive one to date.

As a result of the ratification, Indonesia will be obligated to adjust its domestic legal provisions to the TRIPs Agreement's provisions (Darwance & Sudarto, 2021; Nasirov, 2020). Throughout its development, including in Indonesia, intellectual property has become increasingly significant, especially when it comes to the growth of the creative economy. In the development of the creative economy, intellectual property has become an increasingly vital part of the development of the creative economy, especially in the development of the entrepreneurial sector (Cunningham, 2002). Economic growth depends on the Creative Economy, which provides employment, income, increases income, and strengthens non-oil and gas exports.

Furthermore, a creative economy actor needs capital for business development in order to succeed (Hidayat & Asmara, 2017). However, in practice financial institutions and in particular banks, there is several challenges when it comes to lending. The one that is relevant to the creative economy is related to

guarantees. In reality, creditors can have a preference for conventional collateral in the form of land, buildings, vehicles, inventories, and bills, while in the creative economy, intellectual capital is the dominant asset (Mayana et al., 2020).

Indonesia government issued Government Regulation Number 24 of 2022 about implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy to assist actors of the creative economy in obtaining financing sources. Government Regulation Number 24 of 2022 is referred to as Government Regulation Creative Economy in this section. The Government Regulation has been promulgated in Jakarta on July 12, 2022. It was published in the official Government Gazette of the Republic of Indonesia, Volume 151, Year 2022, on July 12, 2022. In order to implement the provisions of Article 16 paragraph (2) and Article 21 paragraph (2) of Law Number 24 of 2019 concerning the Creative Economy, the Government Regulation on the Creative Economy was issued.

Furthermore, in order to achieve the goals outlined in Article 19 and Article 22 of Law Number 24 of 2019 concerning the Creative Economy, it is necessary to build the infrastructure of the Creative Economy and create incentives for Creative Economy actors. There are two paragraphs in the Creative Economy Law, the first paragraph outlines how the Government facilitates intellectual property-based financing schemes for Creative Economy actors. The second paragraph describes how provisions regarding intellectual property-based financing schemes described in paragraph number one will be governed by

government regulation. Article 21 of the Creative Economy Law consists of two paragraphs. According to the first paragraph, the government and/or regional governments facilitate the development of a system of intellectual property-based creative economy product marketing. The second paragraph provides for the regulation of government regulation relating to the establishment of intellectual property-based marketing systems in the Creative Economy as referred to in Article 21 paragraph number one.

According to Collins (2018), it is true that the Creative Economy government regulation may facilitate the process of getting financing for creative economy actors. However, in reality it will certainly present obstacles and challenges. Consequently, it is necessary to study more deeply how creative economy actors can obtain financing through their intellectual property and what the challenges are.

2. Research Method

This study applies a normative juridical approach in order to figure out how to resolve legal issues. The normative juridical approach is a critical and interpretive method that seeks to understand the underlying reasons and justifications for legal rules and principles. It is concerned with the ethical and moral dimensions of law, and it seeks to evaluate the extent to which legal rules and principles reflect and promote social justice.

Meaning, it examines documents and use secondary data, like 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 bachelor's opinions. In normative legal research, data is analyzed qualitatively by explaining them in words instead of numbers. Primary and secondary legal materials were used in the research.

A primary source used in this study is the Republic of Indonesia Law. The issues discussed are governed by a number of government regulations. Among them is government regulation number 24 of 2022 concerning the creative economy. In the area of law, secondary traditional resources include textbooks, magazine articles, and scientific journals, which support primary traditional resources (Pebriana et al., 2021).

3. Result and Discussion

3.1 Intellectual Property and Creative Economy

According to Aoki (1998), as a result of human intellectual capabilities, intellectual property is a right to property. Furthermore, intellectual property is an exclusive right that is guaranteed by law to a person or group of people for their copyrighted works. This is in order to enable that person or group to reap economic benefits from their creations.

Since intellectual property contains both moral rights and economic rights, it has been widely recognized as an asset of great value. Through its development, intellectual property has also been able to provide economic benefits to its owners. Worldwide creative economy growth, including Indonesia, has raised the importance of Intellectual Property as one

of the business assets with a high valuation (Rahmah, 2017). Intellectual property must be realized, developed, and optimized as a creative idea and the need for capital cannot be separated from the need for loans from financial institutions, both banks and non-banks (Fachrizah et al., 2022).

Following studies from Howkins (2002), the term "Creative Economy" has become widely known throughout the world. A new wave of creativity-based economies was recognized by Howkins after he noticed that the United States produced intellectual property rights (IPR) products worth 414 billion dollars in 1997, making IPR the number one export of the country. Therefore, the creative economy can be defined as follows:

"There is a need for economic activities in society to spend most of their time developing ideas, rather than just repeating the same routine and repetitive tasks, because, for this society, the ability to generate new ideas is a must for progress."

According to the latest Creative Economy study carried out by the United Nations Conference on Trade and Development (UNCTAD) in 2010, the creative economy is a concept based on creative assets that have the potential to generate economic growth and development. Moreover Aniek (2020) argue economic creative can be classify as five function. First, promoting social awareness, cultural diversity, and human development while increasing income, job creation, and export earnings. Second, it is important to consider the social, cultural, and economic aspects of technology

development, IP rights, and tourism. Third, an overall macroeconomic and microeconomic collection of knowledge-based economic activities. Fourth, choose a development strategy that requires cross-ministerial, innovative action and policies. Fifth, the creative industry is at the heart of the Creative Economy.

There is no single definition of the term creative economy. As defined by the UNCTAD, it is the interaction between human creativity and ideas, intellectual property, knowledge, and technology that leads to the development of the creative economy (Garnham, 2005).

A formal legal perspective can be found in Article 1 number 1 of Law Number 24 of 2019 regarding the creative economy. According to this law, a creative economy embodies the added value derived from human creativity derived from cultural heritage, science, and/or technology. A presidential regulation referred to as Presidential Regulation No. 1 defines the creative economy as the expression of added value derived from an original idea or intellectual property idea that has been created by human intellectual creativity. This is based on science and technology, skills, and cultural heritage. This is stipulated in the Master Plan for the Development of the National Creative Economy as part of Master Plan 142 of 2018.

According to the Creative Economy Blueprint 2025, creativity is not limited to arts and culture, but includes science, technology, engineering, and communications science. Innovation, creativity, and invention are three factors which constitute the creative economy.

An individual's ability to create something unique, fresh, and generally acceptable can be described as creativity (Csikszentmihalyi & Sawyer, 2015). A creative process can also generate new or practical ideas as a solution to a particular problem. This is because it can generate ideas that differ from those that have already been suggested. Based on Csikszentmihalyi & Sawyer (2015), creativity is a valuable skill that can be maximized by people who are able to maximize their creative abilities.

A lifehack video on YouTube or other social media with the keyword "lifehack" is an example of innovation in which ideas are transformed into new products or processes through the use of existing inventions. This video illustrates how an existing product can be improved in order to be more valuable and more useful by using innovation.

It is important to understand that inventions are primarily concerned with creating something that has never existed before and has a unique function or has never been described before. Developing applications using Android and iOS is also an example of an invention based on technology and information that greatly facilitates the daily lives of humans (Pascasuseno, 2014).

According to The Ministry of Tourism and Creative Economy / Agency for Tourism and Creative Economy Indonesia, the creative economy has determined seventeen sub-sectors of the creative economy to be the focus to be managed and developed. Including game developers, architecture, interior design, music, fine arts, product design, fashion,

culinary, film, animation and video, photography, visual communication design, television and radio, crafts, advertising, performing arts, issuance, and application.

Intellectual property owned by creative economy actors is the most significant asset in the development of the creative economy. Intellectual property and actors within the creative economy are protected by law for the results of creative thinking abilities expressing themselves in various forms that are both useful to human life as well as economically valuable (Lingling, 2014). Additionally a study from Verspagen (2006) defines the concept of intellectual property can be broadly divided into two categories. First, according to applicable laws and regulations, copyrights give creators and recipients of rights the exclusive right to publish or reproduce their creations without reducing restrictions.

Second, industrial property rights which describe the field of technology, patents are exclusive rights granted by the state to inventors whose inventions they carry out themselves. These rights are granted for a specified period before they are marketed to third parties for implementation. Industrial design is a creation that is based upon a design of lines, colors, or combinations of colors in three or two dimensions that produces an aesthetic impression. It can be realized as three-dimensional or two-dimensional patterns that can be used in the production of products, goods, commodities, or crafts.

A trademark is a distinctive sign consisting of pictures, names, words, letters, numbers, or a combination of these elements that is used in trade or commerce. A geographical indication is a mark

indicating the area of origin of a product, which is the result of factors such as natural environment, human environment, or a combination of both, which give the product its characteristics and qualities (Verspagen, 2006).

In Indonesia, the layout design of integrated circuits is granted a special right to the Designer or his creation for a limited period of time to carry out his work, or to give his approval for another party to perform the work on his behalf (Labetubun, 2019). The term trade secret refers to information not available to the general public which is relevant to technology or business, has economic value because it has proven useful to business activities, and is kept confidential by the owner of the trade secret.

An Office of Plant Variety Protection is responsible for ensuring that plant varieties produced by plant breeders through plant breeding activities are protected by a special protection granted by the state, which, in this case, is represented by the government. This protection is implemented by the Office (Syafrinaldi, 2017). Based on Forere (2021), a right of intellectual property (IPR/KI) is a legal right that provides an inventor/creator with exclusive rights, materially and immaterially, to the work they produce. The term IPR/KI generally refers to two different types of rights, namely copyright and industrial property rights. As a result of human intellectual ability, works are the objects that are regulated in intellectual property law. Work that is protected by intellectual property is a product of human intellectual ability (Spinello, 2007).

Furthermore, Spinello (2007) argues that intellectual property is a private right. A person is free to apply or register his intellectual work or not. Individual intellectual property actors' exclusive rights (inventors, creators, designers, etc.) are nothing but recognition of their work or creativity by the State. As a result, other people are encouraged to further develop it, thereby ensuring the interests of the community are met by this intellectual property system. It is a private right to own intellectual property. Individuals are free to apply for or register their intellectual works. Individual intellectual property actors (inventors, creators, designers, etc.) are granted exclusive rights by the State in appreciation of their work or creativity. This is a method of fostering further development of the intellectual property system so that the interests of the community can be determined by this intellectual property system through market mechanisms.

Throughout the development of IP, it has become a major component of industries, including the creative industries (Foord, 2009). This can be seen as a manifestation of the concept of the creative economy, which is a new and growing industry that has the potential to generate economic growth. While Indonesian Creative Economy Agency reported that the creative economy is a transformation of the structure of the world economy where there is a change in economic growth from natural resource-based to human resource-based.

As a result, intellectual property is an extremely valuable asset. IP owners benefit economically from the IP they

produce. The IP owner is entitled to lease, license, or prohibit the use of the IP, and as a result is entitled to receive economic benefits from using the IP, this is what is called economic rights. Copyright is an example of intangible wealth, which is created as a result of thought-provoking activities that produce new creations, like changes in the artistic or literary fields. In addition to the economic benefits derived from the sale of his novel, the author of the novel may also benefit from the adaptation of the novel into other forms, such as theatrical productions or films (Foord, 2009; Spinello, 2007).

Throughout the development of IP, it has become an essential component of an industry, particularly the creative industry (Flew, 2002). It represents the idea of the creative economy, a new sector that can stimulate economic growth. As a result of the creative economy, the structure of the world economy has been transformed from one based on natural resources to one based on human resources.

A company's intellectual property is one of its most valuable assets. Forere (2021) defines IP owners derive economic benefits from the IP they produce. In principle, IP owners are able to lease, license, or prohibit the use of their intellectual property, thereby obtaining economic benefits. This is known as an economic right. As an example, Copyright is an intangible wealth derived from thought-provoking activities that produce new works of art and literature. A novelist will make money from selling his book, and he'll also make money if the book is adapted into other forms, like a musical or a film (Mayana et al., 2022)

2.2 Intellectual Property Financing Scheme through Government Regulation Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 Concerning the Creative Economy

Government Regulation (PP) Number 24 of 2022 concerning the Creative Economy has been issued by the government. According to Article 9 of the Regulation, banks and nonbank financial institutions may utilize intellectual property as an object of debt guarantees in the form of fiduciary guarantees for intellectual property, contracts involving creative economic activities, or collection rights involving creative economic activities.

Since the implementation of this government regulation on creative economy is hampered by several obstacles such as limited access to banks, promotion, infrastructure, building capacity among actors in the creative economy, and synergy among stakeholders, it regulates the development of the creative economy. The government regulation Creative Economy provides guidelines for creative economy financing, intellectual property-based marketing of creative economy products, creative economy infrastructure, incentives for creative economy actors, responsibilities of the government and/or regional governments, community involvement in the development of creative economies, and dispute resolution financing.

Generally, Article 1 of the government regulation Creative Economy

point 3 refers to financing or credit. It may also be referred to as financing. Stated this type of arrangement involves the provision of money or an equivalent claim by a bank financial institution or non-bank financial institution to another party on the basis of an agreement or loan agreement, in which the party being financed must return the funds or claims after a specified period of time with interest or profit sharing compensation provided by the bank financial institution or non-bank financial institution. In accordance with article 1 point 4, intellectual property-based financing schemes are defined as financial schemes that make intellectual property a guarantee for loans made to creative economy actors by financial institutions.

In article 1 of the government's Creative Economy regulation, it is defined as wealth created or born as the result of human creativity, taste, or initiative. Intellectual property can be expressed in the form of technology, science, art, or literature. According to Article 1 number 1 government regulation of Creative Economy, Creative Economy is to be understood as the manifestation of added value resulting from human creativity based on cultural heritage, science, and/or technology.

According to government regulation, creative economy financing comes from the State Revenue and Expenditure Budget (APBN), Regional Revenue and Expenditure Budget (APBD), and/or other authorized sources. Finances from APBNs and APBDs are adjusted according to the state's or region's financial capacity. There are also legal sources of financing that are not binding and are subject to the provisions

of the law. Through bank financial institutions and non-bank financial institutions, the government facilitates intellectual property-based financing schemes.

According to Santoso & Dachyar (2021), facilitation of intellectual property-based financing schemes for creative economy actors is carried out through utilization of intellectual property with economic value and intellectual property assessment. Facilitation the use of intellectual property with economic value in the form of facilitation in the process of applying for registration or registration of intellectual property following the provisions of laws and regulations in the field of intellectual property, and optimizing the use of the intellectual property as an object of debt guarantee. Facilitation of intellectual property assessment in the form of at least education and training.

Intellectual property-based financing is proposed by creative economy actors to bank financial institutions or non-bank financial institutions. The requirements for applying for intellectual property-based financing at least consist of financing proposal, having a creative economy business, having an engagement related to the intellectual property of creative economy products, and having a registration letter or intellectual property certificate (Santoso & Dachyar, 2021; Saragih & Widiarty, 2022).

Meanwhile Siciliani (2016) argues that bank financial institutions or non-bank financial institutions providing intellectual property-based financing carry out:

- a. verification of creative economy businesses,
- b. verification of registration letters or intellectual property certificates that can be used as collateral which can be executed in the event of a dispute or non-dispute,
- c. assessment of intellectual property used as collateral,
- d. disbursement of funds to creative economy actors, and
- e. receiving refunds from creative economy actors according to the agreement.

In implementing the intellectual property-based financing scheme, bank financial institutions and non-bank financial institutions use intellectual property as an object of debt guarantee (Mayana et al., 2020). The object of debt guarantees is carried out in the form of fiduciary guarantees for intellectual property, contracts in creative economic activities, and/or collection rights in creative economy activities (Mashdurohatun, 2021). Intellectual property that can be used as an object of debt guarantees in the form of intellectual property that has been registered or registered with the ministry that carries out government affairs in the legal field, and Intellectual property that has been managed (commercialized) either independently and/or the rights have been transferred to other parties.

The ministry that carries out government affairs in the field of law provides access to data on intellectual property that is used as an object of debt guarantees to bank financial institutions or non-bank financial institutions and the

public. The assessment of intellectual property used as collateral for debt uses cost approach, market approach, income approach, and/or other assessment approaches by applicable assessment standards (Howkins, 2002). Intellectual property assessment is carried out by an intellectual property appraiser and/or an appraisal panel. Study from Lemley (2002) defines intellectual property appraisers must meet the following criteria as below:

- a. having a public appraiser permit from the ministry that administers government affairs in the field of state finance,
- b. having competence in the field of intellectual property assessment, and
- c. registered with the ministry that carries out government tasks in the creative economy.

Competence in the field of intellectual property assessment is obtained through competency certification which is carried out following the provisions of the legislation. The duties of an intellectual property appraiser are conducting an assessment of the intellectual property to be used as collateral and conducting market analysis of the intellectual property to be used as collateral, and/or reviewing reports on the analysis of the use of intellectual property that has been used in the industry (Rahmah, 2017).

According to (Bradlow, 2010), an assessment panel is a group of people appointed by a financial institution. The appraisal panel conducts an assessment of an intellectual property that is not assessed by the intellectual property appraiser against creative economy actors who apply

for financing. The appraisal panel at financial institutions can jointly evaluate the intellectual property with intellectual property appraisers.

The issuance of the government regulation concerning creative economy is an opportunity for creative economy actors to develop their businesses because there are solutions to overcome capital problems that have been faced by creative economy actors. Objects that are used as debt collateral in intellectual property-based financing schemes are intellectual property. However, based on Article 10 of the government regulation creative economy, intellectual property that can be used as an object of debt guarantee is intellectual property that has been registered or registered with the ministry that carries out government affairs in the field of law. Unfortunately, only a few creative businesses have IPRs. Of all creative and creative businesses in 2020, only 1.98% of businesses have IPRs and 98.02% of businesses do not or do not have IPRs (Pascasuseno, 2014).

Although intellectual property-based financing schemes have been regulated in PP Ekraf, some parties feel the need for regulations that further regulate intellectual property as collateral. Several things that need to be further regulated are the binding of debt guarantees in the form of intellectual property rights, intellectual property assessment methods, and technical implementation of execution.

4. Conclusion

It is an opportunity for creative economy actors to make IP certificates as debt

guarantees through the issuance of Government Regulation Number 24 of 2022 concerning the implementation of Law Number 24 of 2019. A scheme based on intellectual property is defined in Article 1 Number 4 as a financing scheme in which bank financial institutions or non-bank financial institutions guarantee intellectual property as a means of providing financing to creative economy participants. Intellectual Property can be used as a guarantee for debt by creative economy actors. Since it is registered with the ministry that oversees the administration of government affairs in the field of law (the Directorate General of Intellectual Property), creative economy practitioners are required to record their Intellectual Property, given the low registration rate of Intellectual Property in the Creative Economy. In spite of the fact that intellectual property-based financing schemes have been regulated by the government regulation of Creative Economy, some parties feel the need for regulations that further regulate intellectual property as collateral, including regulations concerning debt guarantees in the form of intellectual property and key insight, intellectual property assessment methods, and technical execution.

5. Suggestion

One potential idea for an intellectual property (IP)-based financing scheme for creative economic players in Indonesia could be to establish a government-backed fund that provides low-interest loans or grants to individuals or businesses that have registered their IP with the government. This could include copyrights, trademarks,

and patents. The fund could be managed by a government agency or a consortium of private-sector organizations with expertise in IP and financing.

To qualify for funding, individuals or businesses would need to demonstrate that their IP has potential commercial value and that they have a viable business plan for leveraging their IP to generate revenue. The fund could also offer support and resources to help recipients develop and protect their IP, as well as connect them with potential investors or partners.

This type of financing scheme could help to promote innovation and creativity in Indonesia, while also supporting the growth of the country's creative economy. It could also help to provide a much-needed source of funding for individuals and businesses that may not have access to traditional forms of financing.

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