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Strengthening Regulations Towards Implementation Of Intellectual Property-Based Financing Scheme With *YouTube* Content As Collateral

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Abstract

This research aims at examining how intellectual property based financing can be optimized by strengthening and harmonizing the regulation. As of now intellectual property based financing cannot be implemented as it faces some obstacle, few of those are valuation regulation, conflicting regulation, and executing intellectual property as collateral. This research is considered necessary, because besides Government Regulation Number 24 Year 2022 which becomes the basis to give financing under an intellectual property as a collateral, banking institutions might still be in doubt to implement such a financing scheme due to many weak supporting regulations. This research is conducted with a normative-juridical approach method. The research shows that there are still many regulations which have not accommodated the financing implementation of intellectual property-based financing scheme basis, especially those regulations related to valuation, recognition of intellectual property as a banking asset and execution of intellectual property when a debtor default. The weak regulation of these three aspects makes financial institutions doubtful to implement the intellectual property-based financing especially because bank activities are to collect and distribute funds to the society. The conclusions of this research show that basically there has been a method or way to anticipate the three problems, but it needs to be legalized in a form of regulation so that the bank has legal certainty and protection in its financing with intellectual property as the collateral. The regulators are supposed to be able to create regulation to optimize financing implementation with intellectual property as the collateral.

Keywords : Creative Economy, Collateral; Financing; Intellectual Property Rights

1. INTRODUCTION

Economic growth is important factor for a country, as the aim of economic growth is to improve the welfare for its people.¹ Therefore, a country shall create healthy and independent economy. To realize it, a country shall support economic practitioners as the economic drivers, either through regulations or direct support. The globalization era gives so many opportunities for the economic practitioners, especially the creative economy practitioners; they surely need capital in carrying out their businesses. In doing so, they can capital in many ways, where one of them is through a credit from the Bank.

Bank has strategic role in a country's growth, as bank is an institutions with function of collecting and distributing public funds.² Thus, the Bank is one of the economic pillars in Indonesia that can contribute to creating inclusive and sustainable economic growth.³

In carrying out its function as fund distributor, bank allowed to give credit or to facilitate a financing to the parties in need, such as economic practitioners. Such bank credit is one of

¹ Simangunsong Nina Amelia, Wardani Dila Ayu, Pramudya Aryabimo Reksa, Arrahman Muhammad Iqbal, and Sari Wulandari. "Peran Pertumbuhan Ekonomi Dalam Menunjang Kesejahteraan Masyarakat". *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam* 4, no. 5 (2023). <https://doi.org/10.47467/elmal.v4i5.2808>

² I Putu Pasek Bagiatha W and Habibi. "Fungsi Financial Intermedia Perbankan Dalam Hukum Hindu" *Jurnal Hukum Agama Hindu Widya Kerta* 6, no. 1 (2023). <https://e-journal.iahn-gdepudja.ac.id/index.php/WK/article/view/1015>.

³ Tri Handayani and Lastuti Abubakar. "Banks Contribution to Promote Indonesian Financial Inclusion." In *Proceedings of the 1st Borobudur International Symposium on Humanities, Economics and Social Sciences (BIS-HESS 2019)*. Magelang, Indonesia: Atlantis Press, 2020. <https://doi.org/10.2991/assehr.k.200529.204>.

important roles in national economic financing and a driving motor of economic growth.⁴ Credit availability can make the economic practitioners do investment which cannot be conducted by their own funding. In distributing credit to the economic practitioners, bank faces some risks so that it must be prudent. Risks of credit urge banking to manage them well to avoid its losses. One of the forms of credit risk management is the bank's urgency to apply prudential principles before distributing the credit. This is included ⁴³ the Explanation of Article 8, Law Number 7 Year 1992 Regarding Bank that changed by Law Number 10 Year 1998 (UU Perbankan), which states that before giving the credit, the bank shall obtain assurance of debtor's capability and willingness to pay its obligation. To ³ get such assurance, the bank can conduct 5C analysis or a thorough assessment of the debtor's character, capacity, capital, collateral, and condition of economic ⁴

One of the credit or financing forms existed nowadays is intellectual property-based financing scheme. The intellectual property-based financing scheme is arranged in the Government Regulations No. 24 Year 2022 ⁴ on Implementation Regulations of Law 24 Year 2019 on Creative Economy (PP 24/2022). This intellectual property-based financing scheme ²³ is a way to strengthen people's economic growth in order to achieve what is mandated in Article 33 point (4) the 1945 Constitution, which says that national economy shall be conducted based on economic democracy with the principles of togetherness, just, continuous and environmental-horizon efficiency, independence, and balanced stability of national economic progress and unity.⁵ With such a financing scheme, the creative economy practitioners can propose financing or credit to the bank by using their intellectual property as the debt collateral. PP 24/2022 does not limit the types of intellectual property to be guaranteed, which means any kinds of intellectual property acknowledged by the Indonesian law can be used as the objects of financing collateral, including work creation in digital formats such as *YouTube* videos.

The Intellectual Property-Based Financing Scheme is something new, especially if the collateral is a digital work such as *Youtube* Content. Bank cannot just count on its prudential principle in implementing the intellectual property-based financing scheme, but it needs a regulation which arranges technical aspects and guidance on how an *Youtube* Content can be accepted by the bank as a collateral.

Agus Suwandono in his research regarding *Youtube* as a collateral in financing, tries to describe the procedures of *Youtube* contents to be used as collateral.⁶ This research found that the procedure of usage *Youtube* as collateral in financing start from registering the *Youtube* contents to Ministry of Intellectual Property Rights and then proceeds to submit the proposal to Banks, after the proposal submitted and accepted by the bank, Bank and the Creative Economic Actor will enter agreement.

⁴ Ninuk Dwiastuti. "Pengaruh Kredit Perbankan Terhadap Pertumbuhan ¹⁵ Ekonomi dan Hubungannya Dengan Kesejahteraan Masyarakat Kabupaten/Kota di Provinsi Kalimantan Barat", *Prosiding Seminar Akademik Tahunan Ilmu Ekonomi dan Studi Pembangunan 2020* (2020). <https://feb.untan.ac.id/wp-content/uploads/2020/12/Ninuk-Dwiastuti.pdf>

⁵ Putri Azka Adriliya, Lastuti Abubakar and Tri Handayani. "Copyright ¹¹ Content on the YouTube Platform as Collateral for Creative Economy Financing" *UNES Law Review* 6, no. 3 (2024). <https://doi.org/10.31933/unesrev.v6i3.1702>

⁶ Agus Suwandono, "Konten YouTube Sebagai Jaminan Bagi Pelaku Ekonomi Kreatif Dalam Perspektif Hukum Jaminan" *Unes Law Review* 5, no. 4 (2023). <https://doi.org/10.31933/unesrev.v5i4.588>

Another research regarding *Youtube* Contents as collateral has been done by Putri Azka Adriliya, Lastuti Abubakar and Tri Handayani.⁷ This research seeks to find method of valuation for *Youtube Content* Collateral. This research shown that in Indonesia there is still no Law or any other Regulation regarding valuation of *Youtube* as collateral, however by comparing with Singapore, who already implemented *Youtube* as collateral there are existing regulation that can be used as guidance to do valuation to *Youtube* Contents.

Research by Andhy Saputra and Andi Irfan Effendi regarding implementation of *Youtube* content as collateral, shown that theres still much more to improve in various sectors especially technical guidance before *Youtube* can be used as collateral.

The difference between this research and those previous research above, that this research focuses on studying what are the constraints of how *Youtube* can be used as collateral and how can those constraints can be solved, so *Youtube* Content can be used as Collateral in financing. Bank still hesitate to implement intellectual property based financing, as up until now there is no bank that willing to implement this financing scheme. The aim of this research, is to provide regulator how can existing regulation can be strengthened and harmonized, so Bank won't hesitate to provide intellettual property based financing scheme to creative economic actors, as creative economic actors is one of the contributor is economic growth in Indonesia.

2. METHOD

The approach method used in this research is a normative-juridic approach method, a research that uses legal norms, legal principles, and legal doctrines to address legal questions usage of *Youtube* Content as collateral.⁸ The specification of this research is using descriptive-analytical, specification that describe the applicable laws and regulations that related to the legal theories and legal practices regarding problem of this research.⁹

This research use data from Primary Legal Sources such as Pancasila, UUD 1945, UU Perbankan, Law No. 28 year 2014 regarding Copyrights (UU 28/2014) and/or any other regulation that related to intellectual property based financing scheme; Secondary Legal Sources such as books or journals by professional and experts; and tertiary legal sources such as legal dictionaries, English Dictionaris, Internet Articles, etc).

The data that has been gathered are going to be analyzed by using qualitative analysis. Qualitative Analysis is a method for evaluating data based on its characteristics, significance or conditions, thus the he validity of research is measured or found through an understanding of the quality, value, or condition of the data involved.¹⁰

where it uses secondary data as the basic source for research. For the research specification, the writer is going to use analytical descriptive research specification which describes legal facts systematically and accurately. The secondary data obtained will be analyzed in a qualitative juridic manner.

3. RESULT AND DISCUSSION

⁷ Putri Azka Adriliya, *op. cit* 7993

⁸ Djulaeka and Devi Rahayu, *Buku Ajar Metode Penelitian Hukum*, ed. Devi Rahayu (Surabaya: Scopindo Media Pustaka, 2019)

⁹ Ronny Haditjo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta: Ghalia Indonesia, 1990)

¹⁰ Dian Ratu Ayu Uswatun Khasanah and Ronald Jolly Pongantung. "Analysis of the Influences of Mood and Emotions on Legal Compliance Levels in Society" *Jurnal Ius Constituendum* 9, no. 24 (2024). <http://dx.doi.org/10.26623/jic.v9i2.8820>

3.1. The Use of Collateral in Financing or Credit

Bank is a financial institution which has an important role in driving the economic wheel of a country. A banking institution functions as a collector and distributor of people's fund, where one of its implementations in the society is to give credit.¹¹ Based on the Law of Banking, credit is defined as provision of money or any similar to money collection, based on a lending-borrowing agreement between the bank and another party which requires the lender to pay up its debt within a certain period under the bank's interest rate as fund distributor which needs to be extremely prudent before distributing credit to another party, in which it is closely related to the bank function as the agent of trust where the bank has to be trustworthy in distributing the society's fund already collected by the bank. In addition to its function of being the agent of trust, bank also has a function of the agent of development, bank is considered as agent of development because of its capabilities to provide society with financial activities such as investment, distribution, consumption or any services that used money.¹² Bank as the society's fund collector must be prudent in distributing the credit to business practitioners because the fund entrusted shall not be misused to create bad impact of the fund loss. It means in distributing the credit to people's businesses, bank shall conduct a thorough analysis on risk ratios taken if such credit is given to business practitioners because the credit distributed is people's fund which needs to be returned to the bank together with the capital service already agreed upon during credit agreement.¹³ The prudential principle by the bank is very crucial, because bank's business activities are really influenced by the people's trust. Such prudential principle is basically maximum-security principle of a credit facility to comply with any norms in the process of giving the credit.¹⁴

In order to gain assurance of debtor's capacity, the bank needs to conduct analysis or assessment of various aspects. As the implementation of bank's prudential principle, the bank can carry out 5C analysis towards the debtor before giving the credit. The 5C analysis is a) Character, the principle which requires a bank to obtain debtor's data as detail as possible by Reviewing the curriculum vitae of a potential debtor, Looking at the potential debtor's credibility in his business environment, Observing the debtor's behavior in daily life, Searching some information to the other bank; b) Capacity, The principle which urges a bank to see the potential debtor's capacity in developing his business as well as using and paying back the credit given by the bank; c) Capital, Bank shall notice that the fund given is to increase the already existing debtor's business capital, not for a new business. This principle is to minimize risks of business failure that can cause payment failure by the debtor. d) Collateral, The principle which urges a collateral as requirement of credit proposal. This principle aims at minimizing a bank's loss when a debtor cannot pay back the loan or experiences payment failure. The collateral value given by the debtor shall exceed the credit value given and the

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¹¹ Trisa Neta Putri, Paramita Prananingtyas, Anggita Doramia Lumbanraja "Implementasi Objek Jaminan Kredit" *Notarius 13* No. 2 (2020). <https://doi.org/10.14710/nts.v13i2.31087>

¹² Claudio Kereh, Sri Murni and Joy Elly Tulun "Analisis Perbandingan Kinerja Keuangan Bank Devisa dan Bank Non-Devisa di Indonesia tahun 2012-2106" *Jurnal EMBA: Jurnal Riset Ekonomi, Manajemen, Bisnis dan Akuntansi* 8, no. 4 (2020). <https://doi.org/10.35794/emba.v8i4.31195>

¹³ Maidin Simamora, Syawal Amry Siregar, Mhd, Yasid Nasution, "Penerapan Prinsip Kehati-hatian dalam Penyaluran Kredit Pada Lembaga Keuangan Perbankan" (2022) *Jurnal Retentum* 4, no. 1 (2022). <http://dx.doi.org/10.46930/retentum.v4i1.1341>

¹⁴ Maidin Simamora. *op. cit.* 166

bank shall thoroughly oversee the ownership validity of the collateral items; e) Condition of Economics, The condition of economics in this principle shall be the sector in which the debtor carries out its business. The bank must examine business prospect conducted by the debtor. A business in the sector not really related with the condition of eco politics has a much lower risk.¹⁵

One of the 5Cs is collateral. Collateral in giving a credit or financing is very important elements in determining whether a credit can be executed or not. This is because collateral is the bank's risk management in facing risks of troublesome credit. In practices, however, the bank can only count on the debtor's capability assurance, therefore collateral or guarantee in distributing the credit is necessary. With such collateral, the bank can execute it to be used as payment when the debtor fails to pay its debt. In real, collateral might be in the form of items, projects or collection right being financed with such a credit.¹⁶

Based on Article 1131 Civil Law which states, that all items belonging to the debtor, movable or immovable, existing or to exist in the future, may become collateral or guarantee of all debts. Meaning collateral in general occurs or happens automatically from a credit agreement made by the parties, in this case the Law gives equal protection for all creditors.¹⁷ In practice, collateral is usually put in a separate collateral agreement. The collateral agreement is *accessoir*, which means it cannot stand alone without the main agreement. In the meantime, some collateral institutions which are usually in practice are a) Pawn, a collateral institution called pawn is arranged by the provisions in Article 1150 to Article 1160 of the Civil Law. Pawn is a collateral institution used to bind a debt collateral for moveable items.¹⁸ Moveable items such as jewelry (for example gold necklace and gold bracelet), securities and certificate with value (for example shares and certificate of deposit), machines not set firmly on the ground or building (for example: genset), and so on. Collateral binding through pawn is giving physical collateral to the creditor as the fiduciary holder, which means the creditor has the right to ask for paying up his receivable bound with such pawn. The collateral agreement through a pawn gives rights of being prioritized or preferred rights to the creditor as the pawn holder, which means that the creditor will get priority payment upon its receivable of disbursement (sales) of the items bound with the pawn compared with other creditors; b) Mortgage, mortgage is property rights for immovable items where the immovable items used as collateral for debts.¹⁹ Mortgage can only be imposed on items such on collateral of a ship with 20 m³ weight or more in accordance with the provisions of Article 314 Trade Law and the Law No.21 year 1992 on

¹⁵ Johanes Ibrahim "Bank Sebagai Lembaga Intermediasi Dalam Hukum Positif" (Bandung: CV Utoomo, 2004) 100-104

¹⁶ Rochmawati and Anggun Nila Kusuma Wardani. "Perlindungan Hukum Terhadap Kreditur Dalam Perjanjian Kredit Tanpa Agunan" *Justice Pro: Jurnal Ilmu hukum* 4, no. 2 (2020). <https://doi.org/10.53027/jp.v4i2.104>

¹⁷ Rivaldo Marcello Kaliey, Karel Yossi Umboh and Suriy Soewikromo "Kedudukan Benda Tak Bergerak Sebagai Jaminan Dalam Perjanjian Kredit" *Lex Privatum* 11, no. 1 (2023). <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/45539>

¹⁸ Dina Amanda and Hanafi Tanawijaya "Hukum Benda Bergerak Sebagai Objek Jaminan Dan Gadai (Hak Kebendaan) Atas Pelunasan Hutang Debitur" *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 10, no. 1 (2023). <https://doi.org/10.31604/jips.v10i1.2023.282-290>

¹⁹ Azra Balqis, Nabila Putri Syakila, Bbelyana Vega F.R, Nathasya Berlian "Pembebanan Hak Tanggungan Dan Hipotik pada Debitur Sebagai Bentuk Perwujudan Perlindungan Hukum Bagi Kreditur" *Diponegoro Law Review* 9, no. 1 (2022). <https://ejournal2.undip.ac.id/index.php/dplr/article/view/18426>

Shipment, by referring to, among others, the provisions of mortgage included in the Civil Law. Agreement the ship through a mortgage gives legal certainty for the creditor in accordance with the making of mortgage deed and certificate in real implementation of Mortgage Deed based on the loan agreement and the Power of Attorney in a Mortgage Use; c) ³³nd Mortgage, Land mortgage is collateral right borne to right on land as meant by Law No. 5 year 1960 on Basic Regulations on Agrarian Principles, including or excluding other objects as one unity with the land, for paying up a certain debt, which gives a prioritized condition to the creditor compared with other creditors.²⁰ Its use is an addition to the main agreement which creates loan agreement with paying up guarantee; d) Fiduciary, fiduciary born from jurisprudence to respond the needs and the challenges in society, this kind of collateral is not arranged in legislations but it develops based on jurisprudence. It was lately arranged in the law in 1999 under Law Number 42 Year 1999 Regarding Fiduciary (UU Fidusia).²¹ Fiduciary is development of mortgage institutions, therefore what becomes the collateral objects are movable objects, be it tangible or intangible and immovable objects specially building which does not bear any land mortgage right. Based on the general provisions in Article 1 point 1 Law UU Fidusia, fiduciary is an ownership transfer right of a based-on-trust object, under a provision that such object ownership being transferred is still under the control of the object owner.

Within banking institutions and financing institutions, the most favorite collateral is a special collateral especially that of material collateral. Such a material collateral becomes more favorable because it has material characteristics in a way of giving primary right of certain and agreement as well as following such material. Out of various material collaterals, the mortgage collateral, the fiduciary collateral, and the warehouse receipt are collaterals of moving materials.

Basically, collateral objects shall have economic values because they will be related to legal certainty and legal protection for a bank. If a collateral does not have economic values, it will be in line with the collateral that functions to secure the creditor's position when a creditor cannot pay up his debt. In general, a bank will not approve 100% credit plafond of the collateral object value, which aims at avoiding collateral depreciation when such credit takes place.²² Banking shall at least consider 2 (two) factors, which are a) Being secured, which means that collateral is accountable to bind juridically-formally, in accordance with legal provisions and legislations. If there is a debtor's default in the future, then the creditor has ³juridical power to carry out actions; b) Being marketable, which means that when collateral is to be executed it can immediately be sold or monetized to pay up all the debtor's obligation.²³

¹² 3.2. Intellectual property of YouTube content as collateral in intellectual property-based financing scheme

²⁰ Article 1 Number 1 Law Number 4 Year 1996 Regarding Land Mortgage On Land With Any Objects Related To Land (UU Hak Tanggungan) ⁵

²¹ Eliana Denggan Trianita, Lumban Raja, Azka Patria Fauzi, Berliana Alsa Sabila, Andromeda Nur Firdaus "Eksekusi Benda Jaminan Fidusia: Analisis Konseptual Dalam Undang-Undang Jaminan Fidusia" *Diponegoro Law Review* 8, no. 2 (2021). <https://ejournal2.undip.ac.id/index.php/dplr/article/view/18461>

²² Agus Suwandono, *op. cit.*

²³ Sri Redjeki Slamet, Anatomi Muliawan, Heddy Kandou, "Pembaharuan Hukum Jaminan Indonesia" *Lex Jurnalica* 19, no. 3 Desember (2022). <https://doi.org/10.47007/lj.v19i3.5971>

Technology advancement brings so many changes in various aspects of society including intellectual property as one of them. One of the aspects of intellectual property rights in Indonesia is copyright. The copyright is stipulated in the UU 28/2014. Article 1 Point 1 Law 28/2014 defines copyright as an exclusive right of creator, which is automatically based on declarative principles after a creation is realized in a real form without diminishing limitation in accordance with the provisions of legislative regulations. The copyright gives economic right to the creator. The economic right is the creator's right of copyright owner to enjoy economic benefit of a creation. The economic right is closely related to reward theory proposed by Robert N. Sherwood, where based on the reward theory an intellectual work created by someone shall get appreciation as a reward of his creative efforts in finding and creating the intellectual works.²⁴ As an object, copyright belongs to an immovable object which can be transferred by ways determined by law and can become one of fiduciary collateral objects carried out in accordance with legislative regulations.²⁵

Technology advancement really helps creators in their works, where various facilities can be given for them, especially in digital. The coming of digital work technology is helpful for all creators to enjoy economic benefits of their works. One of the general platforms used by digital art work creators or often called as content creators is *YouTube*. *YouTube* is a media site which makes users possible to share videos with open media platform.²⁶

The *YouTube* content one of art works in a form of video uploaded in a social media platform of *YouTube*.²⁷ *YouTube* gives advantages for the content creators to be able to enjoy economic benefits from their works uploaded into *YouTube* or more recognized as monetization. *YouTube* uses an adsense system for the content creators who upload their works in *YouTube*. The adsense system is basically a system where content creators can insert advertisement (ads) in their works, so that each content creator's work watched can get some money. To be able to use the adsense system in their works, the content creators shall have minimum 1,000 subscribers and their videos have been watched for 4,000 hours. After this requirement is met, the content creators may propose a request to be part of *YouTube* Partner Program. If the request is accepted, then they may apply the *adsense* system in their works uploaded in *YouTube*. When a content creator can use the *adsense* system in his works, then these works can create economic benefits. With such economic benefits, the work can be considered to have economic value because it can produce money.

The thriving use of *YouTube* pushes growth of creative economy practitioners in Indonesia. Creative Economy is a concept in the new economic era which prioritizes information and

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²⁴ Helitha Novianty Muchtar, An An Chandrawulan, Miranda Risang Ayu, Muhammad Amirulloh "Urgensi Pengaturan Valuasi Paten Untuk Start up Dalam Rangka Meningkatkan Perekonomian di Era Industri 4.0" *Jurnal Bina Jilia Hukum 1*, no. 1 (2021). <https://doi.org/10.23920/jbmh.v6i1.170>

²⁵ Viskha Purwita Lana, Switcha Differentia Ariapramuda, Irene Maria Angela, Azalia Rahma Utami, Valencia Gustin "Urgensi Kelengkapan Teknsi Dalam Regulasi Penggunaan Konten YouTube Sebagai Jaminan" *Padjajaran Law Review 10*, no. 2 (2022). <https://doi.org/10.56895/plr.v10i2.1035>

²⁶ Andhy Saputra and Andi Irfan Efendi "Implementasi Penggunaan Konten YouTube Sebagai Jaminan Hutang Berbasis Kekayaan Intelektual Dalam Mendukung Pertumbuhan Ekonomi Kreatif di Provinsi Sulawesi Tengah" *Inovasi: Jurnal Ekonomi, Keuangan and Manajemen 19*, no. 4 (2023). <https://doi.org/10.30872/jinv.v19i4.13901>

²⁷ Vinka Kurnia Dewi, Ferdiansyah Putra Manggala, Ferdiansyah Putra Manggala., "Urgensi Pembebanan Jaminan Fidusia Pada Konten YouTube Yang Telah Memiliki Iklan" *Jurnal Inicio Legis 3*, no. 2 (2022). <https://doi.org/10.21107/il.v3i2.17087>

creativity by counting on ideas and knowledge of human resources as the production factor.²⁸ Creative Economy⁶ is defined as realization of added values of intellectual property which source is people's creativity based on cultural heritage, knowledge, and/or technology.²⁹ This thriving growth of creative economy practitioners in Indonesia pushes government to give real support to these creative economy practitioners. As a form of government support, PP 24/2022 is promulgated. Based on Article 1 Point 3 PP 24/2022, the intellectual property-based financing scheme¹ is a scheme which treats intellectual property as the debt collateral object for banks or other non-bank financial institutions to be able to give financing to the creative economy practitioners. Looking at the definition, we can understand that what differentiates this financing scheme with others is the debt collateral object where the intellectual property-based financing scheme uses the intellectual property as the debt collateral and it is directed for creative economy practitioners.

As one of financial institutions, Bank is mandated as one of the financial institutions to give this financing facility to creative economy practitioners.³⁰ However, before giving the credit, the bank shall apply the 5C analysis to potential debtors, which in this financing are the Creative Economy. Where in the intellectual property-based financing scheme collateral that being used is intellectual property. In terms of legal perspectives, the intellectual property such as copy right is indeed used as a collateral since the legitimation of UU 28/2014. According on Article 7 PP 24/2022, in order to propose intellectual property-based financing, the creative economy practitioners shall be required to have a Financing Proposal, owning a Creative Economy business, have an agreement related to intellectual property of Creative Economy products and have a Registered Letter or intellectual property certificate.

PP 24/2022 also urges banking and non-banking financial institutions to conduct assessment before giving the intellectual property-based financing.⁴ The assessment is conducted towards creative economy businesses, a record or certificate of intellectual property as collateral and valuation of intellectual property assessment to be made as collateral. PP 24/2022 does not limit the types of intellectual property as collateral, but this intellectual property must already be registered at the Ministry of Law and Human Rights and such intellectual property shall be managed well. The implementation of collateral intellectual property is carried out in a form of fiduciary collateral on Intellectual property, contract in Creative Economy activities and receivable rights in Creative Economy activities.

How a work can create economic value in *YouTube* platform is basically for the work already uploaded into *YouTube* which can become a collateral of an intellectual property-based financing scheme. When a content creator is already able to monetize his works so the agreement between *YouTube* and the content creator is when a content creator uploads his work to be placed with an *adsense* system, then *YouTube* urges to give some money already determined to the content creator. This agreement can be the basis for proposing an intellectual property-based financing scheme, as confirmed in Article 7 PP 24/2022. The object to be made as collateral is a collection right of the creative economy activities which occurs from the agreement between *YouTube* and the content creator. The use of collection right as a collateral

²⁸ Sri Wahyuningsih, and Dede Satriani., "Pendekatan Ekonomi Terhadap Pertumbuhan Ekonomi" *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita* 8, no. 2 (2019). <https://doi.org/10.46367/iqtishaduna.v8i2.172>

²⁹ Pasal 1 angka 1 UU 24 Year 2019 tentang Ekonomi Kreatif

³⁰ Pasal 7 ayat (1) PP 24/2022

object is in line with what is confirmed in Article 9 point (2) letter C PP 24/2022, which is a collection right in Creative Economy.

3.3. Work constraints uploaded to *YouTube* as a collateral in intellectual property-based financing scheme

Intellectual property-based financing scheme is something new in financing matters. PP 24/2022 was promulgated on 12 July 2022, however based on Article 41 PP 24/2022 was effectively applied 1 year as of the promulgation, so it was on operation starting 12 July 2023. But up to now there has been no bank to accept intellectual property of *YouTube* content as collateral. At least there are 3 (three) constraints in using a *YouTube* content, which are valuation, harmonization and execution of YouTube Content when debtor default.

Valuation Regulation toward *YouTube* Content, valuation is very important in determining a collateral, especially for banking. This is because valuation is closely related to one of 5C analysis, i.e. collateral. As explained in the previous discussion, the collateral shall have economic values so that when there is a default, the bank may execute the collateral to pay the debtor's debt. A common assessment in banking is assessment in legal and economic aspects.³¹ In practice, banking will appoint a public appraiser to carry out assessment of the object to be a collateral. In carrying out such an assessment, the public appraiser uses Indonesian Assessment Unit or SPI as the basis of object assessment. Based on SPI, in general there are 2 category of Assessment, which is Assessment property and assessment business asset. Intellectual property fall into assessment business asset, not as collateral.³² This creates legal uncertainty for the bank in accepting an intellectual property as collateral, including the works uploaded to *YouTube* and already monetized. This will cause difficulty in determining the economic value of a work, especially determining the income of a work uploaded to *YouTube* will be determined by the video play frequency, which makes instability in the income received. This will really influence the bank consideration before giving its financing, because the availability of collateral will be used by the bank to assess whether such financing is feasible or not. Practically, valuation on the *YouTube* content can be conducted by looking at the video income such as Cost Per Clicks (CPC), Revenue Per Mille Impression (RPM) and AdSense.³³ On top of it, according to Article 12 PP 24/2022 also gives guidance in conducting assessment toward intellectual property which can be conducted using cost, market or income approach. However, there has been no standard guidance of assessment mechanism up to now, which can be used by a public appraiser to assess an intellectual property, especially a *YouTube* content.

Harmonization between regulation is an important factor, because conflicting regulation can cause legal uncertainty. PP 24/2022 has mandated the bank to be able to give financing with intellectual property, but there has been no regulation to accommodate intellectual property as collateral which can be accepted by the bank. Based on Article 45 Regulations of Financial Services Number 40/POJK.03/2019 on Assessment of Public Bank Asset Quality, the collateral which can be used as diminishing factor in the asset quality assessment is : a)

³¹ Siti Nurul Intan Sari Dalimunthe and Ridha Wahyuni, "Perkembangan hak Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan" *ADIL: Jurnal Hukum* 14, no. 1 (2023). <https://doi.org/10.33476/ajl.v14i1.3566>

³² Ni Wayan Nilandari and Putu Aras Samsithawrati "Kekayaan Intelektual Sebagai Objek Jaminan Fidusia: Perspektif Keabsahan Hukum dan Mekanisme Penilaian" *Acta Comitas Jurnal Hukum Kenotariatan* 8, no. 2 (2023) <https://doi.org/10.24843/AC.2023.v08.i02.p9>

³³ Putri Adzka Adriyana, *Op. Cit.* Hal. 7999

¹ securities and shares which are actively traded in the Indonesian Stock Exchange or the stock exchange in other countries included as major stocks, or with investment rank and agreement in a pawn; b) land, building, and residence agreement with land mortgage; c) an apartment, bound with fiduciary collateral; machines which are one unity with the land bound with land mortgage; d) airplane or ship of the size more than 20 (twenty) cubic meter, bound with a mortgage; e) motor vehicles and inventory, bound in fiduciary; f) warehouse receipt, bound with collateral right on warehouse receipt. Judging from these provisions, intellectual property is still not accepted as collateral which can be accepted by the bank and makes the bank hesitate in implementing intellectual property-based financing scheme.

Execution of collateral is another factor that bank has to consider before bank giving credit to debtor. If debtor default, then the only way bank to getting bank is by executing the collateral, however not every collateral can executed easily and not every collateral is easy to sell. Before a YouTube content can be proposed as collateral, one of its requirements is it must have agreement to intellectual property of creative economy product.³⁴ A content uploaded to YouTube can become collateral, but it must be able to monetize or use adsense system, because a collection right between the content creator and YouTube will appear only when the content uses adsense. In addition, the work shall be registered to the Ministry of Law and Human Rights. Referring to Article 9 PP 24/2022, the collateral institutions are using fiduciary collateral. So the execution also uses the provisions in the Law of Fiduciary Collateral, which are a) implementation of executorial title shall be based on fiduciary collateral certificate; b) sales of object upon the power of fiduciary receiver shall be through a public auction; c) Sales through an underhand agreement shall be of the highest price. However, in the context of YouTube content as collateral, it will be difficult to do the execution because the work is intangible. To anticipate his, the bank can do two ways, the first is to change the collection right to be an object, which is to change the collection right to be securities. The second is a *cessie* mechanism between creative economy practitioners and the bank, so that the bank can become the owners of new receivables.³⁵

4. CONCLUSIONS

By the passing of PP 24/2022, bank as one of financial institutions is mandated to be able and ready to distribute the intellectual property-based financing scheme to creative economy practitioners. This is related to the function of bank as the agent of development. However, another function of bank is the agent of trust, in which the bank as the financial intermediary shall be trusted in distributing the fund, because it is collected from the society. Therefore the bank must implement its prudential principles especially in implementing the intellectual property-based financing scheme. Eventhough bank is ready to carry out its job, in this case, giving the intellectual property-based financing to creative economy practitioners, Bank still lacking in terms of legal certainty, as there are still constraints before bank can implement the new financing scheme. With no strong supporting regulations, the intellectual property-based financing scheme will be difficult to implement. Especially, the intellectual property of a content uploaded to YouTube because of the high risk on such a collateral object, not to mention

³⁴ Pasal 7 PP 24/2022

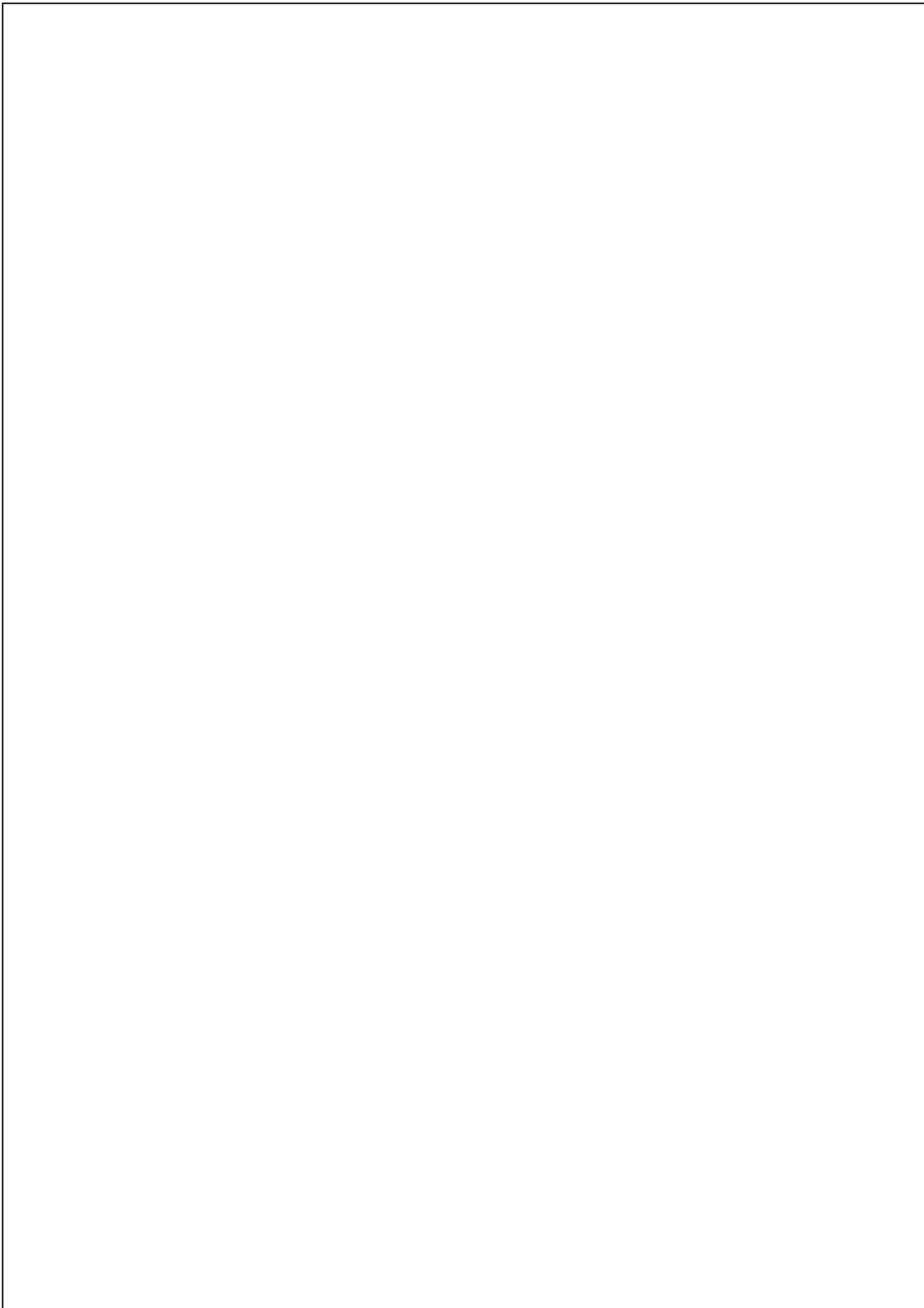
³⁵ Lastuti Abubakar, Dewi Kania Sugiharti, Tri Handayani "Readiness Banks in Intellectual Property-Based Financing (Regulation and Practice in Indonesia)" *i-Latinotary Journal: Internasional Journal of Latin Notary* 4, no. 1 (2023) <https://doi.org/10.61968/journal.v4i1.60>

difficulties to sell or auction the collateral of such intellectual property. There are already few regulation that stated on how to anticipate those constraints, however regulations are still needed because the Bank needs profound basis to give financing and its to avoid legal uncertainty. Regulator can use the existing laws and harmonizing the existing with upcoming regulation, this is to create legal certainty for Bank and also for intellectual property based financing scheme can be implemented with maximum optimalization.

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