

## EVALUATION OF LEADERSHIP AND PERSONAL SKILLS IN ENGINEERING-INFORMATICS STUDENTS AT STIKOM PGRI BANYUWANGI

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### ABSTRACT

Intellectual Property Rights are a form of protection for everyone who has creative ideas by creating works. One form of Intellectual Property Rights is Trademark Rights which is a sign given to an item to differentiate it from other goods and has economic value so that it can be used as collateral in making credit with financial institutions. The goal of this article is to examine the use of brand certificates as collateral in banking credit transactions. This analysis was carried out using normative juridical methods. The results of this analysis say that the Mark is part of the Intellectual Property which can be used as collateral by using a certificate as proof of ownership and collateral objects.

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### INTRODUCTION

In regulations laws and regulations in force in Indonesia, the rules regarding IPR as a fiduciary guarantee, one example is a Mark that can be used as a fiduciary guarantee object because in this case, legally, every Mark registration will receive a certificate of rights over the Mark based on Law Number 42 of 1999 concerning Guarantee Fiduciary . If you look at Law Number 20 of 2016 concerning Marks and Geographical Indications (“Mark Law”), it does not explicitly stipulate what guarantees can be imposed on registered Marks. However, because trademark rights are movable objects that are intangible and have economic value and based on Article 41 of the Trademark Law, it states that rights to registered marks can be transferred or transferred due to an agreement. The right to the mark is proven by a certificate which can be used as collateral.

Mid In 2022, the Government will issue regulations regarding Intellectual Property Rights which can be used as collateral for bank and non-bank financial institutions as stipulated in Government Regulation Number 24 of 2022 concerning the Creative Economy (PP Creative Economy). PP Number 24 of 2022 is the implementing regulation of Article 16 Paragraph (1) of Law Number 24 of 2019 concerning the Creative Economy (Creative Economy Law). With the existence of this Creative Economy PP, it is hoped that it can help creative economy actors, especially Micro Small Enterprises (UMK) so that they can run their business optimally by being assisted in dealing with problems such as financing due to limited access to banking, promotion, infrastructure, capacity building for Creative Economy Actors, and synergy . between stakeholders interest (Amriani, 2012; Nugroho, 2014) .

In fact Banking it is still difficult to accept IPR as collateral for granting credit to the owner of the IPR. This is based on several factors originating from the HKI itself. IPR is considered to have a limited period of protection. For example, Marks that have a protection period of 10 (ten) years for brands registered under Article 35 Paragraph (1) of Law Number 20 of 2016 concerning Marks and Geographical Indications. In addition, banks cannot know the value of IPR assets that are used as collateral objects and there is also no juridical support either in the form of regulations related to IPR assets as objects of bank credit guarantees or revisions to Bank Indonesia Regulation (PBI) No. 9/6/PBI/2007 concerning the Second Amendment to PBI No. 7/2/PBI/2005 concerning Asset Quality Rating for Commercial Banks (PBI No. 9/6/PBI/2007) regarding credit collateral is one of the main factors why banks have not been able to practice this. (Kurnianingrum, 2017)

In the circumstances previously mentioned, this could lead to legal uncertainty and lack of legal protection for people who own intellectual property rights and will make them the object of collateral in carrying out credit with banks. because \_ that's the goal from writing article This is For analyze use certificate brand as guarantee in do credit with banking .

## RESEARCH METHODS

In terms of collecting the data needed a method to answer the main research problems. In the formulation of the first problem, the author will use library techniques either from books or online media literature to find out what type of collateral can be imposed on Brand Rights so that they can be used as collateral objects in making credit with banks.

About formula the second problem , the authors take qualitative research methods. Qualitative research methods focus more on an event with the aim of understanding the object under study thoroughly. Data collection techniques used in qualitative research methods can use observation, interviews, and also documentation. Observation is a data collection technique that uses observation through the human senses. While the interview is a data collection technique that uses questions to get answers to the object under study to someone. in terms of the research that the writer is doing, the writer will use data collection techniques through qualitative interviews. This interview will be conducted with the Ministry of Law and Human Rights, as well as the Ministry of Tourism and Creative Economy, to inquire about financing with intellectual property-based schemes, the characteristics of brands, and the intellectual property assessment process.

By carrying out this interview technique, it can reveal the actual facts regarding the reasons that make banks hesitate to accept brand certificates that have economic value and are a class of immovable valuables and can find out the steps of the bank to be able to overcome problems in granting credit by trademark guarantee. Of course, this will make it difficult for holders of certificates of trademark rights to develop their business. Meanwhile, to answer the third problem formulation, the author will use to analyze the data that has been obtained and provide an overview of

disputes that arise and dispute resolution during the process of granting credit with intellectual property guarantees because the process of providing credit guarantees with intellectual property is still new.

## RESULTS AND DISCUSSION

### Giving Process Credit With Guaranteed Brand Rights Certificate By Banking

Credit extended by banks according to the Elucidation of Article 8 Paragraph (1) of the Banking Law contains risks. Therefore, to reduce this risk, credit guarantees must be considered with the 5C principle in making credit. Guarantees in credit can only be made if the guarantor provides collateral only in the form of goods, projects or claim rights.

In the modern era, there are many people who have wealth in the form of intangible material, of course this has economic value that can be used as an object to be used as collateral in providing guarantees. credit by banks (Hardianti, 2022) . IPR which belongs to intangible material assets is still rarely used as collateral in making credit with banks due to several things that have not been accepted by banks, namely regarding the value of assets in the form of intellectual property and the existence of a time period for said intellectual property. Even though HKI is one of the supports for creative economic growth which can have a positive impact on the country's economy. As a result, creative economy actors who have IPR cannot develop these IPRs due to limited access to banking, promotion, infrastructure, capacity building for creative economy actors, and synergy among stakeholders.

In mid In 2022, the President of the Republic of Indonesia has just formalized Government Regulation Number 24 of 2022 concerning Implementing Regulations for Law Number 24 of 2019 concerning the Creative Economy (PP Creative Economy). The existence of PP Creative Economy can provide fresh air to creative economy actors to develop their businesses. Based on this, it means that the state through the Ministry of Tourism and Creative Economy is one of the agencies that guarantees the implementation of government policies and programs to facilitate creative economy actors so that they can develop their businesses with creative economy financing sourced from:

- a. State budget;
- b. Regional revenue and expenditure budget; and/or
- c. Other legitimate sources.

In providing sources of financing for the creative economy, both in the state revenue and expenditure budget and regional revenue and expenditure budgets, it is channeled through bank financial institutions and non-bank financial institutions. Later creative economy actors will receive this financing by providing facilities through:

- a. Utilizers of intellectual property with economic value; And
- b. Intellectual property valuation.

Utilization riches intellectual In this Creative Economy PP, it begins with the process of applying for the recording or registration of intellectual property which can be made to the Ministry of Law and Human Rights through the Directorate General of Intellectual Property in accordance with the category of intellectual property owned by creative economy actors. The recording or registration of intellectual property is intended to provide legal protection and guarantees by the state. In the event that the intellectual property has been registered or registered, the intellectual property can already be used as a debt guarantee object. This means that in this case, creative economy actors who want to make intellectual property must be registered or registered in advance at the Intellectual Property Directorate or in other words must have received protection beforehand. While the intellectual property assessment facilities provided by the Government are in the form of education and training.

In applying scheme intellectual property-based financing submitted by creative economy actors to bank financial institutions or non-bank financial institutions, must meet the submission requirements as referred to in Article 7 Paragraph (2) PP Creative Economy as follows:

- a. Financing Proposal;
- b. Have a Creative Economy business;
- c. Have an engagement related to intellectual property of creative economy products; And
- d. Have a registration letter or certificate of intellectual property.

This means that in this case, creative economy actors must make financing proposals to bank financial institutions or non-bank financial institutions as a form of application to make intellectual property owned by creative economy actors as collateral in making credit to bank financial institutions or non-bank financial institutions. Usually a financing proposal has been formed by a bank financial institution or non-bank financial institution with a different format.

After fulfilled condition In applying for intellectual property-based financing, financial institutions, both banks and non-banks, will conduct an examination before receiving or granting loans to creative economy actors. In accordance with Article 8 PP Creative Economy states that bank or non-bank financial institutions can:

- a. Verification of creative economy businesses;
- b. Verification of registration letters or certificates of intellectual property used as collateral that can be executed in the event of a dispute or non-dispute;
- c. Intellectual property valuation;
- d. Disbursement of funds to creative economy actors; And
- e. Receipt of return on financing from creative economy actors according to the agreement.

Giving process loan This has similarities to what is usually done without the use of intellectual property, the difference between which is the verification of intellectual property registration documents or certificates and the valuation of the intellectual property that will be used as collateral. Creative economy actors must have a certificate of intellectual property because as an intangible valuable asset it is proven by the ownership of the intellectual property certificate. In addition, with the existence of intellectual property certificates attached as collateral in obtaining financing, bank and non-bank financing institutions gain trust in creative economy actors and make these certificates as items that can be executed if disputes and non-disputes are committed by these economic actors. According to the elucidation of Article 8 letter b PP Creative Economy states what is meant by "execution in the event of a dispute" is that Creative Economy Actors do not comply with what has been agreed upon in the agreement, so that based on the results of dispute resolution an execution is carried out. Meanwhile, what is meant by "execution in the event of a non-dispute" is that the execution of Intellectual Property is carried out in accordance with what has been agreed in the agreement. Even though in carrying out the credit business they have carried out the principle of prudence, bank and non-bank financing institutions also have the right to control goods provided as collateral in providing financing to creative economy actors so that things do not occur that pose a risk to bank and non-bank financing institutions. The objects that can be used as collateral for debt in conducting intellectual property-based financing with bank and non-bank financing institutions are as follows:

- a. Fiduciary guarantee on intellectual property;
- b. Contracts in creative economic activities; and/or
- c. Billing rights in creative economic activities.

Guarantee fiduciary is a form of transfer of ownership rights of a body on the basis of trust provided that the object whose ownership rights are transferred remains in the control of the owner of the object. In this case what is transferred as collateral for the debt is the right to the item, not in the form of goods or objects. The owner of the rights

to the goods provides a deed of registration of the goods which is usually in the form of intellectual property. Objects of fiduciary guarantees or objects that can be used as fiduciary guarantees are usually movable and immovable goods, tangible or intangible, except for mortgages, marine mortgages, aircraft mortgages, and mortgages. (Widiyono, 2006). Intellectual property which is an object that has economic value in an intangible form is one of the objects of fiduciary guarantees. This has also been regulated in laws and regulations related to intellectual property rights such as Copyright in Article 16 Paragraph (3) of Law Number 28 of 2014 and Patents in Article 108 Paragraph (1) of Law Number 13 of 2016 as following :

Article 16 paragraph (3) of Law Number 28 of 2014

(3) Copyrights can be used as objects of fiduciary guarantees.

Article 108 paragraph (1) Law Number 13 of 2016

(1) Patent rights can be used as objects of fiduciary guarantees.

Besides that Trademark rights are part of the object of fiduciary guarantees, although they are not regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, trademark rights which are intangible movable objects are the same as copyrights and patents which can be used as collateral objects in financing intellectual property based.

object guarantee in other intellectual property-based financing is the existence of a contract in creative economic activities which can be in the form of a license agreement, work contract/work order received perpetrator economy creative. In this case intellectual property has the term license or license agreement. Usually licenses are formed in terms of doing business to achieve an advantage where the intellectual property licensee gets the exclusive rights of the intellectual property rights granted by the intellectual property rights holder or creator.

In addition, what is meant by rights to collect in creative economic activities as stipulated in Article 9 Paragraph (2) letter c PP Creative Economy are rights of royalty that are required to be paid by users of songs and/or musical instruments for commercial use. Claim rights can be used as collateral objects in the form of fiduciary guarantees through the establishment of a fiduciary guarantee deed in accordance with Article 1 Paragraph (4) Jo. Article 5 Ayat (1) Law Number 42 of 1999 concerning Fiduciary Guarantees.

Bank and non-bank financing institutions must support the existence of intellectual property-based financing programs in accordance with those regulated in PP Creative Economy. Through this regulation, the Financial Services Authority (OJK) fully supports the implementation of IPR as one of the objects of debt guarantees. But it needs to be coupled with the principle of prudence and good risk management.

In the event that the financing process using an intellectual property-based scheme has been accepted and approved by a financial institution by going through an inspection process of the requirements that must be passed by creative economy actors, then based on Article 13 Paragraph (1) PP 24 of 2022 the creative economy actor must register the financing. The registration is organized by the Ministry of Tourism and Creative Economy. However, in this case the Ministry of Tourism and Creative Economy is still trying to make the recording system.

Unfortunately, since PP 24 of 2022 was signed by the President of the Republic of Indonesia, there have been no financial institutions, both banks and non-banks, to discuss or make policies regarding the implementation of PP 24 of 2022. Indonesia is still lagging behind its neighboring country, namely Singapore. Singapore already practices providing credit guarantees with intellectual property. They have an institution that regulates all matters related to intellectual property in their country through the Intellectual Property Office of Singapore (IPOS). Through the official IPOS website page, IPOS is:

*“ is the national authority that registers and is responsible for the administration of intellectual property (IP) rights in Singapore. IPOS helps businesses use intangible assets (IA) and IP to grow and is committed*

*to building Singapore into an international IA/IP hub. IPOS is a statutory board under the Ministry of Law .”*

The translation is as follows:

*“is the national authority that registers and is responsible for the administration of intellectual property rights in Singapore. IPOS helps businesses use intangible assets and intellectual property to thrive and is committed to building Singapore into an international IA/IP hub. IPOS is a legal entity under the Ministry of Justice.”*

In case gift intellectual property-based credit , IPOS in collaboration with Participating Financial Institutions (PFIs). PFIs have a function which is to encourage financial institutions in Singapore to accept intellectual property as collateral in making credit institution finance (Kurnianingrum, 2017) . IPOS and PFIs have developed intellectual property-based financing by appointing three banks namely DBS, OCBC, and UOB to provide intellectual property-based credit. Then, in this case, PFIs have a role to carry out the inspection process in assessing a proposed credit worthiness. The stages are as follows:

“Step 1:

- a) *Ensure that they meet the eligibility criteria ;*
- b) *Approach any of the PFIs for a preliminary credit assessment;*
- c) *Complete and submit the 'Application for Intellectual Property Valuation' (“Form A”) form to IPOS.*
- d) *Approach any of the IP valuers from the Panel of Valuers (POV) for an IP valuation.*
- e) *Applicants should afterward obtain an IP Valuation report from the appointed IP valuer .*

Step 2:

*Complete the 'Loan Application' (“Form B”) and 'Claim for Valuation Subsidy (“Form C”) forms and submit to the PFIs together with the valuation report, and other supporting documents for the loan application within four weeks from the date of the valuation report.*

Step 3:

- a) *Upon successful application, sign the letter of offer and draw down the funds within;*
- b) *six months from the date of the letter of offer.”*

The translation is as follows:

“Step 1:

Ensure that they meet the eligibility criteria;

- a) Approach one of the PFIs for initial credit scoring;
- b) Complete and submit the 'Application for Intellectual Property Assessment' form ("Form A") to IPOS.
- c) Approach one of the IP assessors from the Assessment Panel (POV) for the IP assessment.
- d) The applicant must then obtain an IP Assessment report from the appointed IP assessor.

Step 2:

Complete the 'Loan Application' ("Form B") and 'Claim for Subsidy Valuation ("Form C") forms and submit to PFI together with the appraisal report, and other supporting documents for the loan application within four weeks from the date of the appraisal report.

Step 3:

- a) After the application is successful, sign the offer letter and withdraw the funds in it;
- b) Six months from the date of the offer letter.”

Draft financing scheme based on intellectual property that has been carried out by IPOS is different from the concept in PP 24 of 2022. Financing carried out by IPOS in Singapore is by placing a number of money/funds owned by IPOS to banks which will later carry out financing with a wealth-based scheme intellectual. Meanwhile in

Indonesia, through PP 24 of 2022, the Government of Indonesia will work hard to convince financial institutions to carry out financing using an intellectual property-based scheme. The Indonesian government wants financial institutions to play an active role in effectively realizing PP 24 of 2022.

because \_ That The Indonesian government through the Ministry of Tourism and Creative Economy in collaboration with other relevant ministries is trying to create a forum that can contribute to making financing with an intellectual property-based scheme effective when it expires in July 2023.

### **The Wealth Panel Intellectuals and/or Appraisal Panels in Assessing the Granting of Credit Guaranteed by Mark Rights Certificates**

In accordance with the mandate of PP Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy that in terms of conducting intellectual property assessments it is carried out by Intellectual Property Appraisers and/or Appraisal Panels. The Creative Economy PP does not explain the meaning of Intellectual Property Appraiser and/or Appraiser Panel. In fact, this has the same meaning as an appraiser, where the meaning of an appraiser is a person or party who can carry out an independent assessment based on the competence they have. The appraisal carried out by the Appraiser is a process of activity to provide a value opinion on an object of appraisal at a certain time. This means that a person can give his opinion on his expertise in assessing a particular object which value is difficult to know if the object is known. In practice, intellectual property-based financing certainly requires appraisers. Therefore in Article 12 Paragraph (2) PP Creative Economy authorizes Intellectual Property Appraisers and/or Appraisal Panels to conduct an assessment of intellectual property that will be used as the object of intellectual property-based financing guarantees.

related with understanding With this appraiser , it can be concluded that an Intellectual Property Appraiser is a person or party who has expertise in the field of intellectual property to conduct an assessment of the object of appraisal in the form of intellectual property. Based on Article 12 Paragraph (3) PP Creative Economy, Intellectual Property Appraisers must meet the following criteria:

- a. Have a public appraiser license from the ministry that administers government affairs in the field of state finance;
- b. Have competence in the field of intellectual property assessment; And
- c. Registered at the ministry that carries out government tasks in the Creative Economy sector.

In relation with criteria mentioned , the Intellectual Property Appraiser must have a public appraiser license. Based on the Regulation of the Minister of Finance Number 56/PMK.01/2017 concerning the Second Amendment to the Regulation of the Minister of Finance Number 101/PMK.01/2014 regarding Public Appraiser, it defines a Public Appraiser as an appraiser who has obtained the Minister's permission to provide services as stipulated in the Minister of Finance Regulation 56/PMK.01/2017. According to Article 9 of the Regulation of the Minister of Finance Number 56/PMK.01/2017 concerning the Second Amendment to the Regulation of the Minister of Finance Number 101/PMK.01/2014 concerning Public Appraiser (PERMENKEU Public Appraiser) the permit is obtained through a written application to the Secretary General up to the Head Center by fulfilling the following requirements:

- a. Have a domicile in the territory of the Republic of Indonesia as evidenced by an Identity Card or other evidence in accordance with the provisions of the laws and regulations;
- b. At least have a bachelor's degree or equivalent;
- c. Pass the Appraiser Certification Examination in accordance with the classification of the permit being applied for;
- d. Submit evidence that you have attended PPL at least 20 (twenty) SKP in the last 2 (two) years if the date of passing the Appraiser Certification Examination as referred to in letter c has passed the 2 (two) year period;

- e. Pass the ethics training organized by the Appraiser Profession Association;
- f. Become a member of the Appraiser Professional Association as determined by the Minister, as evidenced by a valid membership card or certificate from the said Professional Association;
- g. Have work experience in the field of Simple Property Appraisal in the last 2 (two) years, and among them at least 600 (six hundred) working hours as an Appraiser in an Appraisal assignment;
- h. Have a Taxpayer Identification Number;
- i. Never been subject to the sanction of revoking the Public Appraiser's license; And
- j. Complete the application form as listed in Appendix II which is an integral part of this Ministerial Regulation.

In case Currently , the Public Appraiser recognized by the Ministry of Finance is the Indonesian Appraiser Profession Society (MAPPI). However, MAPPI itself can only value tangible assets and intangible assets outside of intellectual property. Therefore the Ministry of Tourism and Creative Economy has formed a platform to carry out the process of screening candidates who can be used as Intellectual Property Appraisers. Later this MAPPI will also be equipped with knowledge in the field of intellectual property by the relevant Ministries or institutions because Intellectual Property Appraisers must have expertise in the field of intellectual property which can be proven by a special certification in the field of intellectual property. After that, the Ministry of Tourism and Creative Economy plays a role in recording appraisers who have met the requirements to become Intellectual Property Appraisers.

Apart from Appraisers Riches Intellectuals , in Article 12 Paragraph (2) PP Creative Economy states that those who can carry out intellectual property assessments are Appraisal Panels. Pursuant to Article 12 Paragraph (6) and (7) PP Creative Economy states that the Appraiser Panel is a group of people appointed by a financial institution to conduct an assessment of intellectual property that is not assessed by an Intellectual Property Appraiser on creative economic actors who apply for financing. In another sense, the Appraisal Panel is formed by financial institutions that provide credit financing facilities based on intellectual property. In accordance with the Elucidation of Article 12 Paragraph (6) PP Creative Economy states that what is meant by "appraiser panels" in bank financial institutions and non-bank financial institutions are credit/financing assessors and/or experts appointed by financial institutions.

So that can pulled conclusion that the Intellectual Property Appraiser is different from the Appraisal Panel. The difference is that the Intellectual Property Appraiser comes from outside or in the sense of a third party (external) from the parties that carry out intellectual property-based financing activities. Meanwhile, the Appraisal Panel comes from the party providing credit financing, in this case the financial institution itself. However, both the Intellectual Property Appraiser and the Appraisal Panel are parties that require special expertise in the field of intellectual property with proven training and eligibility certification.

Evaluator Riches Intellectuals and/ or Appraisal Panels given special authority by the Ministry of Finance to calculate the value or valuation of intellectual property that is used as collateral in intellectual property-based financing. Based on Article 12 Paragraph (1) it states that Intellectual Property Assessment can use the following methods:

- a. Cost Approach  
The cost approach is an approach used to produce an indication of value using economic principles, whereby a buyer will not pay for an asset more than the cost of acquiring an asset with the same or equivalent use, at the time of purchase or construction.
- b. Market Approach  
The approach is to produce an indication of value by comparing the assets being valued with identical or comparable assets, for which transaction or bid price information is available.
- c. Revenue Approach

- Approach in a way to produce an indication of value by converting future cash flows to their present value.
- d. Other Assessment Approaches in accordance with applicable assessment standards.

In this case the Intellectual Property Appraiser and/or Appraisal Panel conducts a valuation of the intellectual property that will be used as collateral in making credit with financing institutions. In Article 5 Paragraph (1) PERMENKEU Public Appraiser explains the field of Appraisal services which includes:

- a. Simple Property Valuation;
- b. Property Valuation;
- c. Business Assessment; And
- d. Personal Property Appraisal.

That riches intellectual is an intangible valuable asset included in the field of Business Appraisal services as stipulated in Article 5 Paragraph (4) of the PERMENKEU Public Appraiser as follows:

- a. Business entity;
- b. inclusion;
- c. Securities including their derivatives;
- d. Company rights and obligations;
- e. Intangible assets;
- f. Economic losses involved by certain activities or events to support various corporate actions or material transactions;
- g. Fairness opinion; And
- h. Financial instruments.

Assessment of brand rights which are valuable intangible assets as evidenced by a certificate can be carried out by an Intellectual Property Appraiser and/or an Appraiser who has a license as a Public Appraiser, but determining the valuation of intellectual property is difficult because in carrying out the methods listed in the Explanation of Article 12 Paragraph (1) PP Creative Economy only provides an understanding of each approach method. For this reason, an international article entitled Intangible Asset & Intellectual Property Valuation: A Multidisciplinary Perspective written by Paul Flignor and David Orozco provides the stages in carrying out the assessment process of each approach regulated in Article 12 Paragraph (1) PP Creative Economy. According to Paul and David the assessment method is divided into four methods, namely:

- a. *Transactional* (Transactional);
- b. *Cost* (Cost);
- c. *Income* (Revenue);
- d. *Binomial/Option* (Option).

Approach method on the same as what is regulated in PP Creative Economy. In determining the valuation using the Transactional Method or what is often referred to as the market approach method, where in this approach there are two steps to do it according to Paul and David, namely as following : (Flignor & Orozco, 2006)

*“ Usually, there are two steps to a transactional valuation method – screening and adjustments. Screening refers to the selection process of identifying candidate third party transactions with sufficient information on pricing, scope and terms and conditions to be deemed comparable to the intangible asset in question. Adjustments refer to an explicit quantifiable change in the valuation due to specific rationale. Adjustments are typically grounded in a baseline transaction (or transaction) that is sufficiently close to the subject of intangible assets, and for which sufficient information is available to analyze the technical, legal, business and financial terms. Adjustments are then based on either 'hard,'*

*quantifiable data where there is an explicit difference between the subject intangible asset and the outside evidence or subjective estimates by the analyst. Adjustments must be used with care, as too many may limit the comparability of the outside evidence and can compromise the credibility of the transactional method .”*

Which is translated as follows:

“Usually, there are two steps to transactional method assessment – screening and adjustment. Screening refers to the selection process to identify candidate third party transactions with sufficient information on price, scope, and terms and conditions deemed comparable to the intangible asset in question. Adjustment refers to an explicit measurable change in valuation for some reason. Adjustments are usually based on an underlying transaction (or transactions) reasonably close to the subject's intangible assets, and sufficient information is available to analyze the technical, legal, business and financial requirements. Adjustments are then based on 'hard' quantitative data where there are explicit differences between the subject's intangible assets and outside evidence or subjective estimates by analysts. Adjustments must be used with caution, as too much can limit the comparability of external evidence and can compromise the credibility of the transactional method.”

The process of evaluating intellectual property using the market approach method must be carried out in stages with screening and adjustments. The screening process according to Paul and David aims to identify the price, scope, and other terms and conditions that are comparable to the intellectual property that will be used as collateral. As well as the process of adjusting to intellectual property which is based on analyzing parts related to intellectual property such as rules and techniques related to said intellectual property.

Evaluation other use *Income Method* or what is known as a method with an income/assessment approach. Paul and David explain the income approach as *The most basic definition of 'value' is based on the ability of the asset to somehow generate future income* . In addition, Paul and David explain how the assessment of the basic value of intellectual property is as follows: (Flignor & Orozco, 2006)

*“ The income method has three components – projected cash flows, the economic life of the IP, and the discount rate. Projected cash flows are the future income attributable to the intangible asset. It is important that the analysis should capture all direct and indirect costs associated with the IP in question, including lost sales of bundled products or services, incremental overhead costs, necessary investment and the possible effects of competition on the price premium or costs savings derived from the asset. The economic life refers to the length of time that the IP will be able to command the price or cost premium. The economic life is generally bounded by the legal life of the assets but is often much shorter. For example, it is common in the electronics field for the technology to become obsolete in as little as 3 years, often well before the patent expires. The discount rate refers to the expected cost of financing the asset in question. For IP assets, the discount rates are generally quite a bit higher than the cost of capital of a company and should be thought of as more similar to venture capital types of investments, with a corresponding discount rate from anywhere from 20% - 50% per year. The income method, while highly analytic, is also quite subjective. Subjectivity is employed throughout the methodology, with particular care required to assess all the business and financial dynamics that impact the expected incremental cash flows. The use of a terminal value, which captures value beyond the years, can often represent a significant percentage of the total asset value. The income method has been well analyzed and published, with texts and software readily available. While care is required for all valuation methods, the subjectivity involved in the income method can be especially tricky .”*

Which is translated as follows:

“The revenue method has three components – the projected cash flow, the economic life of the IP, and the discount rate. Projected cash flow is future income attributable to an intangible asset. It is important that the analysis captures all direct and indirect costs associated *with* the IP in question, including lost sales of bundled products or services, additional overhead costs, required investments and possible effects of competition on price premiums or cost savings stemming from assets. Economic life refers to the length of time the IP will be able to control a price or premium fee. The economic life is generally limited by the legal life of the asset but is often much shorter. For example, it is common in electronics for a technology to become obsolete in as little as 3 years, often long before a patent expires. The discount rate refers to the estimated cost of financing the related asset. For IP assets, the discount rate is generally slightly higher than the company's cost of capital and should be considered more akin to a venture capital investment type, with appropriate discount rates ranging from 20% - 50% per annum.

The revenue method, while highly analytic, is also quite subjective. Subjectivity is used throughout the methodology, with special care needed to assess all business and financial dynamics affecting the expected additional cash flows. The use of terminal value, which captures the out-of-year value, can often represent a significant percentage of the total asset value. Revenue methods have been well analyzed and published, with text and software available. While caution is required for all valuation methods, the subjectivity involved in earnings methods can be especially tricky.”

In case This Appraisers who use the income method must be able to determine the source of income that will come from the intellectual property that is the object of valuation. In addition, the determination of income must also pay attention to the aspect of intellectual property itself, in the case of trademark rights which have a limited period of time, so that appraisers using the income method can determine future income much more quickly.

About *Cost Method* or cost approach, Paul and David explain more to Patents because *A common usage of the replacement cost method is the cost to design around a patent or set of patents* . This method is based on the principle of substitution – an investor will not pay more for an asset than it costs to obtain similar benefits from another asset (Flignor & Orozco, 2006) .

The last valuation method is the Binomial/Option Method. In this method Paul and David explain:

“*A t the core of each of these methods is a two step process: first, compute the probability of the favorable event occurring that will make the IP valuable (or 'in the money'), and second, compute the payoff if the favorable event occurs (usually using one of the traditional three methods described above).*”

Which is translated as follows:

“At the heart of each of these methods is a two-step process: first, calculate the probability of the occurrence of a favorable event that will make the intellectual property valuable (or 'in the money'), and second, calculate the payoff if that favorable event occurs. (usually using one of the three traditional methods described above).”

In this valuation method to determine the value of intellectual property that will be used as collateral or become an object of valuation by estimating things that can benefit the intellectual property by calculating the profit results using one of the methods previously described such as transaction (market) valuation , revenue valuation, and cost valuation.

all method evaluation This can only be done by a Public Appraiser who has expertise in the field of intellectual property. In Indonesia there is no specific institution that has the authority to determine the value of intellectual property. However, the existence of MAPPI which is a public appraiser is recognized by the Ministry of Finance. Even

though MAPPI has obtained a policy as an appraiser and its expertise as an appraiser is recognized by the Ministry of Finance, it still needs to be equipped with knowledge in the field of intellectual property which will later form a standard for valuing intellectual property. This is the main concern and focus of the government, especially the Ministry of Tourism and Creative Economy and related institutions to assist the establishment of a special assessment body for intellectual property other than the Public Service Agency in accordance with Article 37 Paragraph (1) PP 24 of 2022

### **Completion Disputes in Disputes Granting Credit With Guarantees Certificate Brand Rights**

Because PP Creative Economy has just been formed, several problems will arise that might occur in the future. One of them is regarding intellectual property-based financing disputes. It should be noted that every intellectual property has weaknesses when used as collateral in the intellectual property-based financing process. Trademark rights have a weakness in that it is difficult for brands to determine their valuation. Even though the mechanism for determining the value of the Mark is regulated in the Creative Economy PP, this does not rule out the possibility that disputes will occur in the future. Apart from being difficult in determining brand valuation, another weakness of brands is related to the limited protection period, which is 10 years and can be extended with the same protection period. Trademark protection can also apply if the Mark is registered with the agency that handles trademark issues, in this case the Directorate General of Intellectual Property, Ministry of Law and Human Rights.

Although from a number of problems that are likely to occur if financial institutions accept intellectual property as collateral in credit, but still creative economic actors in financial institutions that establish relationships in financing using intellectual property schemes need to understand the process of handling intellectual **property**-based financing disputes. The Creative Economy PP regulates the Financing Dispute Settlement in Chapter VII in Article 40 which reads as follows:

- “(1) Dispute settlement can be done through court or out of court;
- (2) Settlement of disputes on bank financial institutions and non-bank financial institutions outside the court is carried out by alternative dispute resolution institutions that obtain approval from the Financial Services Authority;
- (3) Out of court dispute resolution that does not involve bank financial institutions and non-bank financial institutions as referred to in paragraph (2) can be resolved through other dispute resolution institutions;
- (4) The out-of-court dispute resolution institution as referred to in paragraph (2) and paragraph (3) can provide an online dispute settlement mechanism;
- (5) Settlement of disputes through alternative institutions as referred to in paragraph (2) is carried out in accordance with the provisions of the laws and regulations regarding alternative institutions for resolving disputes in the financial services sector.

In terms Article 40 Paragraph (1) PP Creative Economy states that the settlement of intellectual property-based financing disputes can be done through the courts or out of court. Settlement of disputes in court or commonly referred to as Litigation. Procedures in this litigation route are more formal ( *very formalistic* ) and very technical ( *very technical* ). As J. David Reitzel said " *there is a long wait for litigants to get trial* ", let alone to get a decision that has permanent legal force, to settle in just one judicial institution, you have to wait in line (Harahap, 2017) . The dispute resolution process does take a long time, because many people use this method to solve their problems. In addition, the process of resolving disputes in court requires a lot of effort and costs, but the results issued by the court are legally enforceable ( *incracht* ).

Regarding dispute resolution out of court or usually called non-litigation, according to Article 40 Paragraph (2) PP Creative Economy, out-of-court settlements are carried out by alternative dispute resolution institutions that obtain

approval from the Financial Services Authority. However, with regard to the settlement of disputes outside the court as referred to in Article 40 Paragraph (2), according to Article 40 Paragraph (5) it is carried out through provisions of laws and regulations concerning alternative institutions for resolving disputes in the financial services sector. Where these rules are contained in the Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Financial Services Sector Dispute Resolution Institutions (LAPS) (POJK LAPS). Based on Article 4 of the POJK LAPS states that the LAPS of the Financial Services Sector has the following duties and authorities:

- a. Carry out handling and settlement of consumer disputes;
- b. Providing consultations on dispute resolution in the financial services sector;
- c. Conduct research and development of dispute resolution services in the financial services sector;
- d. Making regulations in the framework of dispute resolution in the financial services sector;
- e. Cooperate with consumer protection institutions/agencies both nationally and internationally; And
- f. Develop the competence of mediators and arbitrators registered with LAPS in the financial services sector.

LAPS cannot handle all disputes, only disputes with the criteria in accordance with Article 32 Paragraph (1) of the LAPS POJK that can be handled are as follows:

- a. Complaints have been resolved by the PUJK but rejected by the Consumer or the Consumer has not received a response to the complaint as stipulated in the Financial Services Authority Regulation concerning consumer complaint services in the financial services sector;
- b. The dispute submitted is not a Dispute in process or has ever been decided by a court, arbitration, or other alternative dispute resolution institution; And
- c. The dispute is civil in nature.

In the criteria for disputes that can be handled by LAPS, Paragraph (2) in the same article explains that LAPS in the financial services sector can also handle other disputes with OJK approval such as disputes filed by Financial Services Businesses. Apart from resolving disputes in court or out of court for intellectual property-based financing disputes, Article 40 Paragraph (3) PP Creative Economy regulates dispute resolution that does not involve bank or non-bank financial institutions and can be resolved through other dispute resolution institutions. In the elucidation of the article, it is understood that the other dispute resolution institution in question is the Intellectual Property Rights Arbitration and Mediation Agency.

Intellectual Property Rights Arbitration and Mediation Agency (BAM HKI) is an institution that provides alternative dispute resolution services in the field of Intellectual Property. BAM HKI was born in 2012 which was formed based on five considerations. First, the use of alternative dispute resolution (APS), especially arbitration, has been widespread. Almost all international business contracts contain provisions regarding arbitration. Second, there is increasing awareness that IPR is a company asset that needs to be protected by law. Third, several laws regarding IPR mention the possibility of using APS. The fourth consideration, BAM HKI will be able to contribute to law enforcement efforts in general. A major criticism of the current implementation of the Indonesian IPR system is the weak law enforcement dimension. Fifth, the world body that deals with IPR, WIPO ( *World Intellectual Property Organization* ) has a similar institution, namely the *WIPO Mediation and Arbitration Center* . (Purba & Umar, 2003) The many methods of dispute resolution provide legal protection for the parties to the dispute. This means that with the issuance of PP Creative Economy, the government has taken anticipatory steps in the event of a dispute. Although each method of dispute resolution has its own advantages and disadvantages. However, the Creative Economy PP has provided protection for the implementation of creative economy-based financing schemes that are still not effective. The absence of supporting regulations that assist the implementation of the creative economy from bank and non-bank financial institutions raises concerns that there will be disputes in the future in this field.

## CONCLUSION

Government Regulation Number 24 of 2022 concerning Regulations for Implementing Law Number 24 of 2019 concerning the Creative Economy (PP Creative Economy) became the start for implementing Intellectual Property-based financing schemes. Creative economy actors can give their intellectual property to bank and non-bank financing institutions as collateral in wanting to do credit. Intellectual property that will be used as collateral must meet the requirements in the sense according to Article 10 Paragraph (1) PP Creative Economy. In addition, the intellectual property must be properly managed. The process of intellectual property-based financing must also pay attention to the principles of prudence and good risk management, because there are still many financial institutions, both banks and non-banks, that are hesitant to accept intellectual property as collateral for credit. This is based on the fact that the valuation of intellectual property is difficult to determine as well as the factors contained in the intellectual property. Brand certificate as proof of ownership of the protection of Brand Rights obtained by someone is very difficult to determine its value and other reasons such as a limited period of time. Unlike Singapore, which has previously implemented an intellectual property-based financing scheme, they have a special institution called the *Intellectual Property Office of Singapore* (IPOS) to regulate all intellectual property in Singapore, including calculating the valuation of intellectual property carried out by a subsidiary company called *Intellectual Property Value Labs* (IPVL).

In fact, the Creative Economy PP regulates that parties who can evaluate intellectual property that will be used as collateral for credit are Intellectual Property Appraisers and/or Appraisal Panels who have Public Appraiser permits from the Ministry of Finance of the Republic of Indonesia and regulate methods for evaluating intellectual property valuations. However, with the stipulation of these rules, it cannot work effectively if financial institutions, both banks and non-banks, do not issue policies or respond to the existence of the Creative Economy PP.

Due to the fact that the Creative Economy PP cannot be implemented effectively, this will invite future disputes between creative economy actors who will apply for credit with bank and non-bank financing institutions. PP Creative Economy has resolved the issue of dispute resolution as stipulated in Article 40 PP Creative which can be resolved through court or outside the court. Dispute settlement outside the court is carried out by the Financial Services Sector Alternative Dispute Resolution Institution (LAPS) in accordance with the Financial Services Authority Regulation Number 61/POJK.07/2020. In addition, dispute resolution carried out without involving bank or non-bank financial institutions can be resolved through the Intellectual Property Rights Arbitration and Mediation Agency (BAM HKI).

In this research, as a form of the purpose and benefits of this research being carried out, in this case the author provides advice to the government, especially those overseeing the implementing part of the creative economy-based financing scheme so that its implementation becomes effective according to the mandate of the Creative Economy PP. As for the author's suggestions as follows:

1. Ministry of Law and Human Rights of the Republic of Indonesia, in particular the Directorate General of Intellectual Property to be able to form a special institution whose job is to regulate and supervise financing activities with intellectual property-based schemes. This will be important for carrying out PP Creative Economy regulations which serve as guidelines for making intellectual property as collateral for credit with financial institutions.
2. There is a difficulty factor in wanting to calculate the value of the intellectual property that will be used as collateral. Therefore, the Government should establish special rules and guidelines governing the process of implementing methods for calculating intellectual property values as stipulated in PP Creative Economy.

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