

## ASSESSMENT OF CREATIVE ECONOMY PRODUCTS AS INTELLECTUAL PROPERTY THAT CAN BE USED AS COLLATERAL IN BANKING WITH LEGAL CERTAINTY

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Received : 18 March 2025

Published : 26 May 2025

Revised : 29 March 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i3.3020>

Accepted : 16 April 2025

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

### Abstract

This research aims to analyze the existence of the regulation in Government Regulation Number 24 of 2022 concerning the implementing regulation of the Creative Economy Law regarding financing based on intellectual property (namely: creative economy products) in Article 12 Paragraph 5. The appraiser in the a quo norm has the duty regarding intellectual property (creative economy products) to obtain financing from banking financial institutions and non-bank financial institutions. With the existence of intellectual property, there are benefits for aspects of community life and the enhancement of national growth. However, the reality that the regulation has not yet functioned ideally results in the development of intellectual property (creative economy products) needing to be followed up. This research is supported by normative (doctrinal) legal research methods with 2 (two) approaches, namely the statutory approach and the conceptual approach, all of which are analyzed prescriptively and analytically. Based on the research results, it is concluded that in a country it is very necessary: first, Government Regulation Number 24 of 2022 concerning the Implementing Regulation of the Creative Economy Law in the provisions of Article 12 paragraph 5 within legal certainty, the assessment of economic products as authorized appraisers has not yet had a standard for intellectual property appraisal because intellectual property is an intangible object that has different values (changing/not fixed) over time. Therefore, there is a need for a new government regulation to complement the existing regulations. This is because intellectual property plays a very significant role in the country's economic income.

**Keywords:** *Assessment; Economy Products; Intellectual Property.*

### INTRODUCTION

National economic growth is supported by the development of small community industries that have entered the fourth wave of the industrial era. The flow of the industrial revolution 5.0 has brought fundamental changes to the economic order of Indonesia, identified by the increasing development of creativity and innovation in small and medium industry economies. Based on BPS data, the creative economy sector contributes IDR 1,105 trillion to the gross domestic product (GDP). Accommodating this development, the government through Law Number 24 of 2019 concerning the Creative Economy (hereinafter referred to as the Creative Economy Law) followed up with implementing regulations, namely Government Regulation Number 24 of 2022 concerning the Implementing Regulation of the Creative Economy Law (hereinafter referred to as the Creative Economy Government Regulation). (Cahyaningrum, 2022). It issued regulations related to financing based on intellectual property as collateral in banking. The government's aim is to encourage creative economy actors to develop their businesses from their creativity and make it the backbone of the country in improving the economy, including development, income, and increasing the state's revenue that has superior human resources as a pillar of the country for national welfare. (Saadah, n.d.)

The existence of Intellectual Property Rights (hereinafter abbreviated as IPR) brings positive impacts as outlined in the Creative Economy Government Regulation (PP Ekraf), opening opportunities for creative economy actors to submit collateral/loan guarantees using their intellectual property. Based on PP Ekraf, the financing scheme based on intellectual property is a financing scheme that uses intellectual property (hereinafter abbreviated as IP) as the object of loan collateral by creative economy actors for banking financial institutions or non-bank financial institutions to provide financing for creative economy actors (Article 1 number 4 of PP Ekraf). Given the status of

the a quo norm regulation, the availability of financing is expected to be a solution to the capital limitations faced by creative economy actors, especially in producing creative economy products or works that have added economic value. (Rizkia & Fardiansyah, 2022). Considering intellectual property (IP) is a valuable asset, it needs to be registered so that creative economy actors obtain intellectual property rights (IPR). IPR is the right to obtain legal protection over intellectual property in accordance with the provisions of laws and regulations. Several forms of IPR include patents, trademarks, industrial designs, copyrights, geographical indications, trade secrets, and integrated circuit layout designs. For example, copyrights are regulated in Law No. 28 of 2014 concerning copyright, and trademarks are regulated in Law No. 20 of 2016 concerning trademarks and geographical indications. IPR is important to protect intellectual property from theft and infringement. In addition, creative economy actors who own IPR can also commercialize it and receive royalties if their intellectual property is used by other parties. (Soelistyo, 2014).

With the various benefits of intellectual property rights (IPR), it is hoped that creative economy actors are motivated to continue creating creative economy products or new works that are useful for society, the nation, and the state. However, only a few creative economy businesses currently have IPR. Of all creative economy businesses in 2020, only 27.63% had IPR, which is important, while 72.37% of creative economy businesses have not felt the urgency or importance of having IPR in order to be utilized and protected in conducting creative economy activities. (Kaunang, 2024).

Furthermore, based on Article 12 paragraph 5, the Creative Economy Government Regulation (PP Ekraf) stipulates the duties of the appraiser. The presence of Article 12 paragraph 5 in the PP Ekraf still contains problems because there are obstacles regarding the regulation and a lack of understanding of how an intellectual property right (IPR) can be realized as having a definite value in accordance with the mandate of the regulation and the normative rules written in the a quo PP Ekraf. (Soelistyo, 2014). Based on the explanation that has been presented regarding the financing scheme based on intellectual property, it is necessary to discuss: **Assessment of Creative Economy Products as Intellectual Property That Can Be Used as Collateral in Banking**. Therefore, in this writing, the focus of the problem formulation to be discussed is: how is the assessment of creative economy products as intellectual property that can be used as collateral in banking within legal certainty.

## **METHOD**

Within the conceptual/doctrinal framework, normative legal research is called rule/dogmatic research, and by character is an inventory of positive law, also containing prescriptive elements. In line with this, to thoroughly explore the issues in this research, the researcher will elaborate relevant results with primary legal materials sourced from legislation and secondary legal materials sourced from literature. The research approaches used are the statutory approach and the conceptual approach. (Mamudji & Soekanto, 1995).

## **RESULTS AND DISCUSSION**

### **A. Assessment of Creative Economy Products as Intellectual Property That Can Be Used as Collateral in Banking According to the Provisions of Article 12 Paragraph (5) in Legal Certainty**

Intellectual property or Intellectual Property (IP) according to WIPO refers to creations of the mind in the form of inventions, literary works, art, designs, symbols, names, and images used in commerce. The efforts of every country to protect the products of intellectual property resulting from human creativity are carried out by granting Intellectual Property Rights. Thomas W. Dunfee and Frank F. Gibson, in their book "Modern Business Law: An Introduction to Government and Business", explain that intellectual property is the physical manifestation of a practical, creative, or artistic idea and a particular method, which is granted legal protection. (Laipiopa et al., 2025).

Intellectual Property Rights, commonly referred to and abbreviated as HKI (Hak Kekayaan Intelektual), are rights arising from the results of intellectual thinking or creative processes that produce products beneficial to humans and which can be enjoyed economically. David I. Bainbridge explains that Intellectual Property (IP) is the right over property originating from human intellectual works, expressed in various forms of creations, and which are beneficial and useful for supporting daily life. In addition, OK Saidin as one of the professors in the field of Intellectual Property Rights (HKI), defines HKI as property rights, rights over an object that originate from human brainwork, namely reasoning that produces an immaterial object. In addition, Intellectual Property Rights (IPR) are intangible assets and require legal protection (exclusive rights), while the form of IPR can be manifested in physical or tangible objects (material objects). (Munajat et al., 2022).

John Locke, in his work *Second Treatise of Government*, Chapter V “Of Property,” section 27, explains “...yet every man has a property in his own person. This nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property...”. the concept of ownership: that every person has a right to his or her own property. Everything that is produced through their labor becomes their rightful property. (Karinda, 2016).

The link between the concept of Intellectual Property and John Locke’s concept of ownership lies in the recognition of an individual’s work or invention that is acknowledged by society and contains economic rights within it. John Locke’s concept of ownership focuses more on the effort to produce intellectual creativity as a right that must be respected and that directly implies economic compensation. This aligns with the general nature of Intellectual Property Rights (IPR), which protect works resulting from an individual’s intellectual creativity or ideas that hold economic value and therefore must be respected, protected, and guaranteed by the state. (Noviriska, 2022).

The development of Intellectual Property Rights (IPR) in Indonesia plays an important role in its implementation, especially considering that, as a developing country, it requires competitive capabilities to advance its economic sector—one of which is through the utilization and enhancement of intellectual works. (N. K. S. Dharmawan, 2018). In realizing this, it becomes the state's obligation to protect and guarantee the intellectual works produced by its citizens. It is akin to a form of recognition granted by the state to its people for creations produced through intellectual capability—by means of intelligence, critical thinking, imagination, or the result of human thought processes, or the creation of the human mind.

Intellectual Property Rights (IPR) protect various types of creations or intellectual works across different fields, such as industry, science, literature, and the arts. Additionally, IPR protection is granted to ideas or information that have a physical form, whether tangible or intangible, considering that the scope of protection provided is very broad and covers diverse types. Various definitions of Intellectual Property Rights (IPR) put forward by experts essentially describe it as an exclusive right granted and legally protected for works created by humans through their creativity, which contain economic value that can be utilized in daily life. Therefore, IPR is a private right for an individual who has produced a work, making this a distinctive characteristic of IPR, where a person is free to apply for or register their work, or conversely, choose not to. (Sinaga, 2020).

Furthermore, the form of Intellectual Property Rights (IPR) serves as an appreciation and recognition of an individual’s work or creativity. In 2022, the government issued legal regulations related to financing the creative economy based on Government Regulation No. 24 of 2022 concerning the Implementing Regulations of Law No. 24 of 2019 on the Creative Economy (hereinafter referred to as PP No. 24 of 2022). Article 4 of PP No. 24 of 2022 states:

- (1) The government facilitates an Intellectual Property-Based Financing Scheme through banking financial institutions and non-banking financial institutions for Creative Economy Actors.
- (2) Facilitation of the Intellectual Property-Based Financing Scheme for Creative Economy Actors is carried out through:
  - a. Utilization of Intellectual Property that has economic value; and
  - b. Valuation of Intellectual Property.

Referring to Government Regulation No. 24 of 2022, all creative economy products can obtain financing based on intellectual property. This is regulated in Article 9 of Government Regulation No. 24 of 2022. Article 9 of Government Regulation No. 24 of 2022 states:

- (1) In the implementation of the Intellectual Property-Based Financing Scheme, banking financial institutions and non-banking financial institutions use Intellectual Property as the object of debt collateral.
- (2) The debt collateral object as referred to in paragraph (1) is carried out in the form of:
  - a. Fiduciary security over Intellectual Property;
  - b. Contrasts in Creative Economy activities; and/or
  - c. Claims right in Creative Economy activities.

Creative economy products that can have Intellectual Property rights, referring to the 17 subsectors managed by the Ministry of Creative Economy/Creative Economy Agency, currently include: application and game developers; architecture; interior design; visual communication design; product design; fashion; film, animation, and video; photography; crafts; culinary; music; publishing; advertising; performing arts; fine arts; and television and radio. (Kamelo, 2004). Furthermore, Government Regulation No. 24 of 2022 mandates that creative economy products that possess intellectual property and receive funding schemes from banking or non-banking institutions

must undergo an appraisal as stipulated by an appraiser, as mandated in Article 8 letter c. The content of Article 8 letter c states:

“Banking financial institutions or non-banking financial institutions, in providing financing based on intellectual property, shall carry out:

- a. verification of the creative economy business;
- b. verification of the intellectual property registration letter or certificate used as collateral, which can be executed in case of dispute or non-dispute;
- c. appraisal of the intellectual property used as collateral;
- d. disbursement of funds to the creative economy actors; and
- e. receipt of financing repayments from the creative economy actors in accordance with the agreement.”

Referring to Government Regulation No. 24 of 2022, Article 12 paragraph (1) regulates the approach of the Intellectual Property appraiser in assessing Intellectual Property. The content of Article 12 paragraph (1) states: “The valuation of Intellectual Property as referred to in Article 8 letter c uses:

- a. cost approach;
- b. market approach;
- c. income approach; and/or
- d. other valuation approaches in accordance with applicable valuation standards

Referring to Government Regulation No. 24 of 2022, Article 12 regulates the Intellectual Property appraiser. Article 12 paragraph (5) states: The intellectual Property appraiser as referred to in paragraph (2) has the duties to:

- a. conduct an appraisal of the Intellectual Property that will be used as collateral;
- b. perform market analysis on the Intellectual Property that will be used as collateral; and/or
- c. review reports of analysis regarding the use of Intellectual Property previously utilized in the industry

The legal regulation PP No. 24 Year 2022, when analyzed and reviewed, does not further regulate who the intellectual property appraisers of creative economy products are, what the criteria for the appraisers are, who issues certification for the individuals or organizations acting as appraisers for creative economy products, what the scope of work regarding intellectual property is—whether in trademarks, copyrights, or patents related to creative economy products—and how long the appraisal profession’s term lasts. Furthermore, regarding the appraisal of creative economy products as intellectual property that can be used as collateral in banking, there is also no detailed regulation about what kind of creative economy products qualify after obtaining intellectual property rights.(Karinda, 2016).

Questions remain such as: Is there a production period based on the validity of the intellectual property certification? Can individuals or legal entities own creative economy products to obtain financing from banks? And what are the criteria or qualifications for creative economy products to receive financing facilities when referring to cost approach, market approach, income approach, and/or other valuation approaches in accordance with applicable valuation standards? Because these details are not clearly explained in Government Regulation No. 24 of 2022, the regulations regarding appraisers and the appraisal of creative economy products based on intellectual property contain incomplete norms (uncomplete norm), resulting in legal uncertainty in their implementation within society.(OK, 2015).

Economic activities in the creative economy are related to the creation, production, distribution, and consumption of goods and services that provide high added value. Furthermore, there are several elements contained within economic activities in the creative economy, which are as follows:

- a. Creativity, which relates to the ability to generate new and innovative ideas that can be implemented in every process of production or distribution of a created work, whether in the form of goods or services.
- b. Innovation, which relates to the discovery, development, and application of new and creative ideas in a work so that it can increase the added value of the resulting work.
- c. Intellectual property, in the creative economy, is something very fundamental. Considering that a work, whether goods or services produced by an individual, is based on their ideas, creativity, and innovation, this is inherently linked to intellectual property. The presence of intellectual property is an effort to provide legal protection and legal certainty to the creators or owners of a work so that it can be utilized, used, and traded.

Based on these elements, the creative economy essentially represents the results or works derived from an individual’s creativity or innovation, within which intellectual property rights are inherently attached to guarantee ownership of the work or result, and consequently, there is economic value contained within it. (Wawointana, 2013). Besides generating income and creating jobs, the creative economy also plays various roles such as increasing export earnings, advancing technology development, adding to intellectual property, and fulfilling other social functions. For these reasons, the creative economy is seen as a key driver of growth and economic development for a nation.



Therefore, it has become a special focus for the government regarding current and future economic growth, particularly in the creative economy sector. (Cahyaningrum, 2022). Assessment of Creative Economy Products as Intellectual Property That Can Be Used as Collateral in Banking According to the Provisions of Article 12 Paragraph (5) in Legal Certainty Does Not Have Legal Certainty. Because the regulation does not explain in detail regarding the appraiser and the assessment of creative economy products based on intellectual property. To ensure that the provisions of Article 12 Paragraph (5) of Government Regulation No. 24 of 2022 have legal certainty, several actions can be taken.

#### **B. The Existence of Implementing Regulations by the Ministry That Oversees the Duties and Functions in the Field of Creative Economy**

The current economic condition is largely based on the creative economy industry, where the economic sector is derived from knowledge and creative ideas or concepts, whether from individuals, groups, legal entities, or communities, and possesses very high economic value as well as becoming an important asset in the form of intellectual works. The creative economy industry produces various intellectual works that contain high economic value, which creates the potential for others to imitate or even have similar works to the original creator or producer. Therefore, it is necessary to prevent this through protection of Intellectual Property Rights (IPR). (Maharani, 2022).

The creative economy, as one of the factors in economic development, plays an important role today, especially in Indonesia, thus attracting the attention of the government and society to implement it. The elements contained in the creative economy, besides creative ideas, include Intellectual Property Rights (IPR) in a work, which then become an added economic value and deserve protection. Furthermore, IPR protection has the potential for very rapid development and benefits both creative economy actors and the national economy.

Creative economy actors or creators of intellectual works have the right to be protected for what they have produced. Based on the Preamble of the 1945 Constitution of the Republic of Indonesia (UDN NRI 1945), it is explained that it is the state's obligation to guarantee the rights of its citizens, including assisting in realizing creativity and an idea or concept into intellectual property. An intellectual property created and owned by someone, whether in the form of art, literature, science, or even an inventor of a technology, is called a creative economy product. Therefore, it is reasonable that something produced deserves recognition as a work that can have economic value. Furthermore, that work requires protection, which constitutes a right over intellectual property. (OK, 2015).

It is important for creative economy actors to understand the protection of intellectual property rights (IPR) for the works they have produced through creative ideas in order to preserve their originality. This form of IPR protection prevents claims or recognition of a work by others. Indonesia's significant potential, especially in the creative industry sector, contributes to national economic development, so the role of IPR protection needs to be considered by both creative industry actors and the government.

Creative economy products that continue to develop both domestically and internationally make the protection of intellectual property rights (IPR) a crucial aspect contained within these products, considering their purpose is to obtain economic benefits for the producers or creators. Furthermore, based on Law Number 24 of 2019 concerning the Creative Economy, it is explained in Article 24 paragraph (1) that the government and/or regional governments protect the creative results of creative economy actors in the form of intellectual property. (Wawointana, 2013).

The essence of creative economy products is closely related to the intellectual property legal system and receives legal protection as intellectual property rights (IPR). Legal protection of IPR has been regulated in several intellectual property regulations, such as copyrights, trademarks, patents, and so forth, which explain the processes or stages of registration, as well as the qualifications or requirements for such IPR.

Registration of intellectual property rights (IPR) for creative economy products is an important element to obtain legal protection and certainty regarding the rights and obligations that will be carried out by creative economy actors in the future. Considering that if a creative economy product is not registered, the creative economy actor will not receive recognition and protection granted by the state for the intellectual work they have produced. Additionally, from an economic perspective, IPR registration certainly provides benefits generated by the intellectual work, which then becomes one of the factors contributing to economic growth in Indonesia. (A. F. Dharmawan et al., 2022).

The government has a role as both a regulator and a facilitator to continuously increase socialization to the public, especially to creative economy actors, regarding the importance of IPR registration so that their works can be legally protected. In order to realize IPR protection, the government is assisted by the Directorate General of Intellectual Property to socialize to the public about the important role of IPR in national economic development,

particularly within creative economy products, considering the current economic condition which utilizes ideas or concepts that can produce intellectual works with commercial value. Regarding the Appraisers and Appraisal of Creative Economy Products as stated in Government Regulation No. 24 of 2022: First, Intellectual Property Appraisers for creative economy products. There should be established criteria for appraisers, a designated subject or authority responsible for issuing certifications for individuals or organizations acting as appraisers of creative economy products, a clearly defined scope of work for intellectual property appraisers in the fields of trademarks, copyrights, and patents related to creative economy products, and a specified duration or term for the appraiser's professional tenure in assessing creative economy products. (Kamelo, 2004).

Next, second, the appraisal of Intellectual Property for Creative Economy Products: the implementing regulation should establish the valuation and validation of creative economy products that already have intellectual property rights, specify the duration or validity period of the creative economy product's intellectual property certification in order to obtain financing, define the criteria for legal subjects—whether individuals or legal entities—that are eligible to own creative economy products to obtain financing from banks, and clarify the criteria or qualifications for creative economy products to be eligible for financing facilities based on the cost approach, market approach, income approach, and/or other valuation approaches according to applicable valuation standards. (Laipiopa *et al.*, 2025).

### **C. The Establishment of Cooperation Between Technical Ministries in the Creative Economy Sector and Banking Institutions**

The importance of establishing cooperation among relevant stakeholders to create a special regulation in the form of Technical Guidelines or Joint Regulations that ensure creative economy products that already have Intellectual Property rights can be used as collateral in banks, so they meet the requirements and qualifications set by the Appraisers. Considering that the provisions on the appraisal of creative economy products as intellectual property that can be pledged in banks, as regulated in Article 12 Paragraph (5), must have legal certainty, one way to achieve this is through cooperation between the Technical Ministries in the creative economy sector and institutions managing banking. This cooperation aims to establish legal regulations in the form of Technical Guidelines or Joint Regulations that guarantee that creative economy products with Intellectual Property rights can be pledged in banks, meeting the requirements and qualifications set by the Appraisers.

This is important because without clear regulations from the Government or Government Institutions that oversee the banking sector, in practice, it will be difficult or slow for creative economy products based on intellectual property owned by creative actors to obtain financing from banking or non-banking institutions. Therefore, the role of the Government as a Regulator must be fully implemented to support the development of the creative economy in Indonesia.

Next, the researcher conducted an interview with Sabar Tua Tapubolon, who served as Director of Regulation at the Ministry of Tourism and Creative Economy/Creative Economy Agency from 2020 to 2023 and is currently the Secretary of the Deputy for Digital Creativity and Technology at the Ministry of Creative Economy / Creative Economy Agency, who stated: "For creative economy products to have legal certainty, there must be assurance from the institution that oversees the banking sector to mandate the acceptance of creative economy products as collateral through regulations. Sabar Tua Tapubolon stated that, during a coordination meeting between the Ministry of Creative Economy and the Financial Services Authority (OJK), OJK had issued a regulation in 2022 allowing banks to provide financing for creative economy products. However, this OJK regulation does not contain any provision that obligates banks to accept or reject such financing. The decision is entirely left to the discretion of each bank. Ideally, the OJK should issue a regulation that mandates banks to accept financing for creative economy products under specific conditions and in coordination with relevant technical ministries such as the Ministry of Creative Economy. (Suryahartati & Herlina, 2022).

A similar situation applies to the Financial Services Authority Regulations (POJK) on the Assessment of Asset Quality of Commercial Banks and the POJK on the Assessment of Asset Quality of Sharia Commercial Banks and Sharia Business Units, which do not yet accommodate the assessment of intellectual property as one of the assets that can be used as collateral. Therefore, as a concrete effort to optimally implement the Creative Economy Government Regulation (PP Ekraf) and to help strengthen the development of the national economy, a specific regulation is needed regarding the assessment of the asset quality of intellectual property as collateral in both banking and non-banking financial institutions.

The urgency of a specific regulation for assessing the asset quality of intellectual property lies in supporting the realization of intellectual property as a collateral object, particularly in the creative economy sector, considering that the current development of the creative economy has a large and significant impact on the national economy. In addition, the assessment of intellectual property in Islamic banking and non-bank financial institutions is also intended to support the realization of intellectual property as a collateral object that complies with and aligns with Sharia principles, and to enable financial services—especially financing—to be provided efficiently and prudently.

## CONCLUSION

Based on analysis and discussion regarding the issues in the Valuation of Creative Economy Products as Intellectual Property That Can Be Used as Collateral in Banking, the Provision of Article 12 Paragraph (5) in Legal Certainty does not have legal certainty. Because the regulation does not explain in detail regarding the appraiser and valuation of creative economy products based on intellectual property. In order for the provision of Article 12 Paragraph (5) of Government Regulation No. 24 Year 2022 to have legal certainty, several actions can be taken, namely:

- a. The existence of legal rules or implementing regulations issued by the relevant Ministry which has duties and functions in the field of creative economy regarding Appraisers and Valuation of Creative Economy Products contained in Government Regulation No. 24 Year 2022 which regulates the appraisal of Intellectual Property of creative economy products and the valuation of Intellectual Property of creative economy products;
- b. The existence of cooperation between the Technical Ministry in the field of creative economy and the Institution that manages Banking to make legal rules in the form of Technical Instructions or Joint Regulations that guarantee creative economy products that already have Intellectual Property can be collateralized in Banking that meet the requirements and qualifications from the Appraiser;
- c. The existence of legal regulation rules issued by the Financial Services Authority (OJK) to Banking and Non-Banking Institutions that Creative Economy Products can be collateralized in Banking and Non-Banking to obtain financing facilities.

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