

LEGAL RECONSTRUCTION OF INTELLECTUAL PROPERTY VALUATION INSTITUTIONS AS FIDUCIARY SECURITY TO REALIZE LEGAL CERTAINTY

I. Irfan Ibrahiem^{1*}, Elfrida Ratnawati², Simona Bustani³

Doctoral Program in Law, Faculty of Law, Universitas Trisakti, Jakarta

E-mail: zakayah.ibrahiem@gmail.com^{1*}, elfrida.r@trisakti.ac.id², simona.bustani@trisakti.ac.id³

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Abstract

The utilization of Intellectual Property (IP) as an economic asset in Indonesia is significantly hampered when applied as fiduciary security due to profound legal uncertainty, particularly surrounding valuation mechanisms. A primary obstacle is the dearth of a standardized, legally recognized IP valuation institution, which inhibits the acceptance of IP as collateral by financial institutions. This study aims to analyze and reconstruct the legal framework governing these valuation institutions to establish legal certainty. Using a normative juridical method with statutory and conceptual approaches, the research identifies key issues: inadequate existing regulations, and the rejection of IP by banks owing to valuation difficulties, value fluctuation risks, and execution uncertainties. The findings conclude that a legal reconstruction of the IP valuation institution is essential. This reconstruction must establish standardized valuation criteria and fortify the legal framework, thereby enabling IP to function as an effective financing instrument and realizing legal certainty in Indonesia.

Keywords: *Fiduciary Security, Intellectual Property, Legal Certainty, Legal Reconstruction, Valuation Institution*

INTRODUCTION

The global economy has undergone a fundamental transformation, shifting from a resource-based economy to a knowledge-based economy where value is increasingly derived from intangible assets (Lev, 2001). In this paradigm, Intellectual Property (IP) such as copyrights, patents, and trademarks has emerged as a primary strategic asset for driving innovation, corporate value, and national economic growth (Smith & Parr, 2000). Recognizing this, the Indonesian government has endeavoured to create a legal framework that facilitates the economic exploitation of these assets. This intent is normatively enshrined in key legislation; the Fiduciary Security Law (Law No. 42 of 1999) explicitly allows for intangible movable assets to be used as collateral. This provision is reinforced by sectoral laws, such as the Copyright Law (Law No. 28 of 2014, Art. 16(3)) and the Patent Law (Law No. 13 of 2016, Art. 108(1)), which both definitively state that these IP rights can be used as objects of fiduciary security.

However, a profound and persistent gap exists between this progressive legal ideal (*das sollen*) and the practical reality (*das sein*). Despite this clear statutory allowance, Indonesian financial institutions, particularly banks, remain overwhelmingly reluctant to accept IP as a form of collateral. This rejection is not sporadic but systemic, effectively blocking a critical financing avenue for the nation's burgeoning creative and technology sectors (Hudzaefi, 2023). This is not a theoretical gap; it is a documented practical failure. Case studies reveal that technology startups offering patented software, animation studios leveraging popular copyrighted characters, and digital media firms with valuable content portfolios consistently have their financing applications rejected by national banks (Lembaga Penjamin Simpanan, 2023).

The urgency of this study is rooted in the specific, multi-layered legal obstacles that cause this institutional paralysis. The core problem is not a simple lack of awareness but a fundamental legal uncertainty stemming from critical flaws in the legal framework. Banks, bound by a mandatory prudential principle, identify three primary deterrents: (1) profound uncertainty in economic valuation, (2) high risks of value fluctuation, and (3) ambiguous legal pathways for foreclosure, given the lack of a liquid secondary market for foreclosed IP (Sardjono, 2010; Wulandari et al., 2024). This legal uncertainty is exacerbated by a direct substantive conflict within Indonesia's own regulations. While government regulations promoting the creative economy (PP No. 24 of 2022) actively

encourage using IP as collateral, the primary banking regulation, Bank Indonesia Regulation (PBI) No. 14/15/PBI/2012, dictates the specific types of collateral acceptable for a bank's asset quality assessment. This regulation provides an exhaustive list (e.g., land, buildings, vehicles, receivables) that does not include Intellectual Property. This omission effectively creates a legal barrier, forcing banks into a position where accepting IP as collateral could constitute regulatory non-compliance. This systemic failure can be analyzed through the lens of Lawrence M. Friedman's (1967) legal system theory, which posits that a system's efficacy depends on the alignment of its three components: substance (the rules), structure (the institutions), and legal culture (the attitudes of those who use the law). In this context, Indonesia's system is failing because: (1) the substance is contradictory (IP laws permit it, PBI regulation omits it); (2) the structure is absent (there is no state-accredited, legally recognized IP valuation institution); and (3) these failures logically create a negative legal culture of rational risk aversion within the banking sector.

While previous research has adeptly identified this regulatory gap (Huda, 2023; Susilo, 2022; Ridho, 2023), it has largely focused on diagnosing the problem, analyzing the normative conflicts, and highlighting bank reluctance. The novelty of this dissertation lies in its decisive shift from problem identification to institutional reconstruction. This research moves beyond analyzing the what (the problem) to constructing the how: a comprehensive legal model for the valuation institution itself. It argues that addressing the structural void is the prerequisite to resolving the substantive and cultural failures. Therefore, this research aims to formulate this necessary reconstruction. The objectives of this study are threefold: (1) to analyze the existing regulations and critical institutional weaknesses concerning IP valuation in Indonesia; (2) to identify the specific legal obstacles, including regulatory conflicts, that prevent financial institutions from accepting IP as fiduciary security; and (3) to formulate a comprehensive legal reconstruction model for an IP valuation institution, designed to provide the structural mechanism required to bridge the gap between law and practice and, ultimately, realize legal certainty.

LITERATURE REVIEW

The literature surrounding Intellectual Property (IP) overwhelmingly establishes it as a critical economic asset in the modern knowledge-based economy. Scholars such as Lev (2001) and Smith & Parr (2000) have extensively defined intangible assets, including IP, not merely as legal protections but as primary drivers of corporate value and economic growth. This economic consensus is mirrored in legal scholarship on security law, which functions to provide legal certainty for creditors in financing agreements (Salim HS, 2014). The literature on Fiduciary Security (Law No. 42 of 1999), specifically, identifies it as the appropriate legal mechanism for intangible movable assets, a category that explicitly includes IP (J. Satrio, 2002). Despite this clear foundation, a significant controversy dominates the literature: the persistent gap between normative law and banking practice. While statutes affirm that IP can be used as collateral, studies consistently show that financial institutions in Indonesia do not accept it (Sari, 2023). The literature identifies the primary obstacle as the profound uncertainty in valuation. Banks, operating under a mandatory prudential principle, are unable to reliably assess the economic value, value fluctuation, and liquidation process for intangible assets (Susilo, 2022). This practical rejection highlights a fundamental failure in the legal system to provide the necessary tools for implementation.

This study adopts key theoretical frameworks to analyze this systemic failure. Lawrence M. Friedman's (1967) theory of legal systems posits that law operates through three components: substance (the rules), structure (the institutions), and legal culture (public attitudes). This problem is not a failure of substance—as the laws exist—but a failure of structure, namely, the absence of an accredited valuation institution. This structural void directly fosters a negative legal culture of risk aversion within the banking sector. Furthermore, this failure contravenes the Law as a Tool of Social Engineering concept (Kusumaatmadja, 1976), where the law (e.g., PP No. 24 of 2022) was intended to foster the creative economy but was enacted without the necessary institutional tool to make it function. Previous empirical and normative research has clearly identified this problem. Studies by Huda (2023), Susilo (2022), and Ridho (2023) have meticulously analyzed the regulatory challenges and bank reluctance associated with using IP as fiduciary security. However, this body of work has largely focused on identifying the problem and analyzing the existing norms. A significant gap in the literature remains: there is no comprehensive legal-structural model for the solution. This study aims to fill that gap. It moves beyond diagnosing the problem of valuation to proposing a complete legal reconstruction model for the valuation institution itself, arguing that this structural component is the essential prerequisite for achieving legal certainty and making IP a viable form of collateral in Indonesia.

METHOD

This study utilizes a normative juridical research method, which focuses on the analysis of legal norms, principles, and regulations. The research design integrates this normative approach with an analysis of legal implementation to provide a comprehensive understanding of the gap between established law and banking practice. To achieve the research objectives, a multifaceted design is employed. First, a statute approach is used to systematically review, identify, and analyze the hierarchy and harmonization of all relevant legislation. This includes, but is not limited to, the 1945 Constitution, the Indonesian Civil Code, the Fiduciary Security Law (Law No. 42 of 1999), the Copyright Law (Law No. 28 of 2014), the Patent Law (Law No. 13 of 2016), the Creative Economy Law (Law No. 24 of 2019), and its key implementing regulation (PP No. 24 of 2022).

Second, a conceptual approach is applied to analyze the legal doctrines, scholarly opinions, and foundational theories such as the theory of legal certainty and Friedman's legal system theory—that underpin the legal issues. This approach is essential for interpreting the *ratio legis* (the reason) behind the laws and formulating a sound theoretical basis for the proposed reconstruction. Third, a comparative approach is utilized to benchmark Indonesia's legal framework against the established systems in other advanced economies, specifically Singapore, the United Kingdom, and the United States. This comparison serves to identify international best practices and alternative models for institutional design. Data collection techniques are centered on library research. The materials used consist of primary legal materials (the aforementioned statutes and regulations) and secondary legal materials (academic books, scholarly journals, previous dissertations, and legal commentaries). To substantiate the normative analysis with practical context, this research is also supported by primary data gathered through semi-structured interviews. The target audience for these interviews includes key stakeholders: officials from the Directorate General of Intellectual Property (DJKI), legal academics specializing in IP, representatives from financial institutions, and professional public appraisers. The data analysis technique employed is qualitative analysis. All legal materials and interview data are systematically analyzed to identify regulatory weaknesses, institutional gaps, and practical obstacles. Finally, conclusions are drawn using a deductive method, moving from general legal principles and established theories to specific findings regarding the formulation of an ideal legal reconstruction model for an IP valuation institution in Indonesia.

RESULTS AND DISCUSSION

This study was designed to systematically analyze the legal framework impasse regarding Intellectual Property (IP) as fiduciary security in Indonesia and to construct a viable reconstruction model. The findings are presented in alignment with the three primary research questions, moving from a diagnosis of the current regulatory failures to the formulation of a comprehensive solution.

Regulatory and Institutional Weaknesses

The first research question sought to identify the current regulations and legal weaknesses concerning IP valuation institutions. The findings reveal a system that is progressive in intent but critically flawed in its structure and substance. Normatively, Indonesia has established a clear legal intention to utilize IP as a financial asset. This is anchored in foundational laws, including the Fiduciary Security Law (Law No. 42 of 1999), which defines intangible movable assets as valid objects of security. This is explicitly reinforced by sectoral laws: the Copyright Law (Law No. 28 of 2014, Art. 16(3)), the Patent Law (Law No. 13 of 2016, Art. 108(1)), and the Trademark Law (Law No. 13 of 2016, Art. 41(1)) all affirm that their respective IP rights can serve as fiduciary objects. The government solidified this intent through the Creative Economy Law (Law No. 24 of 2019) and its key implementing regulation (PP No. 24 of 2022).

This implementing regulation, Government Regulation (PP) No. 24/2022, represents the most concrete step to date. It mandates that financing schemes can use IP as collateral (Art. 9) and outlines the valuation methods (Art. 12), adopting the internationally recognized cost, market, and income approaches (Smith & Parr, 2000). However, the analysis of this framework reveals two profound weaknesses that create systemic legal uncertainty. The most significant legal weakness identified is a direct and debilitating conflict in substance between the creative economy regulations and core banking regulations. While PP No. 24/2022 encourages banks to accept IP, Bank Indonesia Regulation (PBI) No. 14/15/PBI/2012 on Asset Quality Assessment for Commercial Banks, specifically Article 43, provides an exhaustive, limiting list of collateral types that can be counted to offset a bank's allowance for impairment losses (PPA). This list includes tangible assets like land, buildings (bound by Hak Tanggungan), vehicles, and inventory (bound by Fiduciary Security), as well as specific intangible assets like securities and Warehouse Receipts.

Crucially, Intellectual Property is not on this list. For a financial institution, this PBI is not a guideline; it is a binding rule that dictates its financial health and risk reporting. This omission places banks in an impossible position: if they accept IP as primary collateral, they may violate PBI No. 14/15/PBI/2012 and be penalized by their primary regulator. This single regulatory conflict effectively paralyzes the entire normative framework, rendering the progressive IP laws functionally void in the banking sector. The second critical weakness lies in the legal structure, as defined by Friedman's (1967) theory. While PP No. 24/2022 states who can conduct a valuation an IP Appraiser (*Penilai Kekayaan Intelektual*) or an Appraiser Panel (Art. 12(2)); it fails to create or empower such a body. It vaguely refers to appraisers with public appraiser permits from the Ministry of Finance, which are governed by Ministry of Finance Regulation (PMK) No. 101/PMK.01/2014. This regulation, however, is designed for general property and business valuation, not the highly specialized, complex, and distinct field of IP valuation. This research found that Indonesia currently lacks a state-accredited, specialized IP valuation institution. There is no specific *Standar Penilaian Indonesia - Kekayaan Intelektual (SPI-KI)* or (Indonesian Valuation Standard for IP) that is universally recognized by the financial industry. Without a trusted structure to perform the valuation and a standardized substance (SPI-KI) to guide it, any valuation submitted to a bank is perceived as subjective, unverifiable, and legally risky.

Legal Obstacles in Practice on Financial Institutions

The second research question examined the legal obstacles preventing financial institutions from accepting IP as collateral. The findings confirm that the weaknesses identified in RQ1 directly translate into rational, legally-grounded obstacles for banks, shaping a negative legal culture (Friedman, 1967). All banks operate under a strict prudential principle, which legally obligates them to manage risk to protect public funds. Their refusal to accept IP is not mere unwillingness but a rational application of this principle in response to the legal uncertainty identified. This manifests in three specific obstacles:

1. **Insurmountable valuation uncertainty**
Lacking a standardized (SPI-KI) and institutional (a state-accredited body) framework, banks have no reliable, objective, or legally defensible method to assess the economic value of an IP asset. This is the most frequently cited obstacle.
2. **High execution and liquidation risk**
This case is a critical practical barrier. In the event of a default, the bank must be able to foreclose and liquidate the collateral. However, as confirmed by legal scholarship (Sardjono, 2010), Indonesia lacks a secondary market for IP. A bank cannot easily or quickly sell a foreclosed patent or copyright in a public auction as it would a house or a car. This illiquidity makes the asset a poor form of security.
3. **Regulatory and legal risk**
As discussed, banks face direct regulatory risk from PBI No. 14/15/PBI/2012. Furthermore, they face legal risks from potential third-party infringement suits or invalidation challenges, which could instantly render the IP collateral worthless.

These obstacles are not theoretical but are demonstrated in documented rejections by financial institutions. A 2019 case involved Cortex, an Indonesian AI and data analytics software company. The firm sought financing from a national bank, offering its registered patent on its core algorithm as primary collateral. Despite the software's demonstrable use by major clients, the bank rejected the application, citing the lack of clear valuation standards for software patents and the high risk of technological obsolescence, which could render the patent valueless rapidly. This was followed by a similar 2021 case involving a software startup that was rejected by a state-owned bank. The bank's primary justification was the lack of a secondary market, which is directly linked to the obstacle of execution uncertainty. The bank argued that in the event of a default, it would have no clear mechanism to sell or liquidate the foreclosed software patent, making the collateral illiquid and commercially unviable.

The challenges extend beyond the tech sector. In 2022, a local animation company sought credit using the copyright of its popular animated characters as security. The bank refused, highlighting the high fluctuation of market trends. The value of creative characters is tied to public popularity, which can diminish quickly, making the asset too volatile to secure a long-term loan (Lembaga Penjamin Simpanan, 2023). Further illustrating the valuation obstacle, a 2022 case involving a digital media firm, Kreasi Digital, demonstrated the problem of unverifiable assessments. The firm presented a detailed internal valuation of its digital content portfolio. However, the bank rejected the application because there was no independent, accredited body to verify this valuation. The significant disparity between the company's valuation and the bank's inability to conduct a verifiable assessment led to the rejection (Hudzaefi, 2023). These findings collectively show that the problem is a systemic failure. The legal substance is

contradictory, and the legal structure is absent, leaving the banking culture with no choice but to reject IP collateral to remain compliant and prudent.

Comparative Analysis and the Proposed Reconstruction

To develop a viable model for Indonesia, a comparative legal approach (Zweigert & Kötz, 1998) was utilized, examining the frameworks in Singapore, the United States, and the United Kingdom. These nations were selected for their high rankings in global innovation (WIPO, 2024) and their distinct, successful models for IP financing.

1. **The United States (The Commercial-Standardization Model)**
The US system is arguably the most mature, built on a clear and robust legal substance. The Uniform Commercial Code (UCC) Article 9, which governs secured transactions, explicitly defines IP as a general intangible asset, creating a standardized legal basis for its use as collateral. This clear rule is supported by a deep, private-sector structure of highly specialized IP valuation professionals (e.g., Certified Valuation Analysts (CVA), American Society of Appraisers (ASA)) and a competitive market of specialized lenders who are comfortable with this asset class.
2. **The United Kingdom (The Market-Evolution Model)**
The UK model relies on the flexibility of its Common Law substance. Instead of a single codified rule, it uses established legal devices like mortgage, fixed charge, and floating charge which can be applied to IP assets. This legal flexibility is supported by a mature, self-regulating private structure of chartered professionals (e.g., Royal Institution of Chartered Surveyors - RICS) and accounting firms whose valuations are trusted by the market, allowing the system to evolve organically with business needs.
3. **Singapore (The Institutional-Catalyst Model)**
Singapore's model is the most relevant for Indonesia as it demonstrates a successful state-led intervention. Recognizing the same trust-gap that Indonesia faces, the Singaporean government acted as a catalyst. Its state agency, the Intellectual Property Office of Singapore (IPOS), created a specialized structure called the IP Value Lab. This body provides credible, state-backed, standardized valuations. This institutional trust anchor, combined with government schemes to co-share the initial risk, successfully built the confidence of its financial institutions.

Table 1. Comparative Analysis of IP Security Frameworks

Principle	Indonesia (Current)	Singapore (Institutional-Catalyst)	United Kingdom (Market-Evolution)	United States (Commercial-Standardization)
Legal System	New, regulation-driven (PP 24/2022). Lacks infrastructure.	Mature, state-catalyzed. Integrated with business law.	Mature, flexible, based on Common Law evolution.	Highly mature, standardized under Uniform Commercial Code (UCC) Art. 9.
Valuation Body	No central, accredited body. Relies on general public appraisers.	State-backed institution (IP Value Lab by IPOS) provides credible valuation.	Mature, competitive private market of specialized IP/finance firms (e.g., RICS).	Mature private market with strong professional certifications (e.g., ASA, CVA).
Bank Acceptance	Very low. High perceived risk and regulatory conflict.	High. Valuation is trusted; state-backed schemes reduce risk.	High. Standard practice for commercial banks and specialized lenders.	Very high. A foundational part of tech and media financing.
Legal Mechanism	Fiduciary Security (Law No. 42 of 1999)	PPSA (Personal Property Securities Act)	Mortgage, Fixed/Floating Charge	UCC Article 9 (Security Agreement)

This analysis reveals that a successful system requires two essential components that Indonesia currently lacks: (1) clear legal substance that is internally consistent, and (2) a trusted valuation structure. Singapore's model, in particular, demonstrates that direct government intervention to create this structure is a highly effective strategy for bridging the trust gap and building the market. Based on these findings, this study proposes a holistic legal reconstruction model designed to align Indonesia's legal substance, create the missing structure, and strategically shape its banking legal culture. This model is founded on three interconnected pillars, aligning with the Law as a Tool of Social Engineering concept (Kusumaatmadja, 1976).

Pillar I: Substantive Reconstruction (Harmonizing the Legal Substance)

This pillar directly addresses the regulatory conflict and standardization gaps identified in regulatory and institutional weaknesses. It is the immediate prerequisite for legal certainty.

1. Revise Bank Indonesia Regulation (PBI) No. 14/15/PBI/2012

This is the most urgent and impactful action. Article 43 must be amended to explicitly add *Kekayaan Intelektual yang diikat dengan jaminan fidusia* (Intellectual Property bound by fiduciary security) to the list of acceptable collateral that can be used in calculating the Allowance for Impairment Losses (PPA). This single change removes the primary legal barrier preventing banks from engaging with IP assets and resolves the central legal conflict.

2. Mandate a National Valuation Standard (SPI-KI)

The government, through the Ministry of Finance and in collaboration with the Professional Appraiser Association (MAPPI), must develop and mandate a formal SPI-KI. This standard would provide the detailed technical how-to for valuation, ensuring that the income, market, and cost approaches (stipulated in PP No. 24/2022) are applied consistently, transparently, and verifiably.

Pillar II: Institutional Reconstruction (Building the Structure)

This pillar addresses the central thesis of the dissertation: the structural void. It provides the mechanism to make the harmonized substance (Pillar I) operational.

1. Establish an Accredited IP Valuation Institution

The core of the reconstruction is the establishment or official empowerment of a specialized IP Valuation Institution. This body, whether a new state-affiliated entity (like Singapore's IP Value Lab) or an empowered existing body, must be formally accredited by the Ministry of Finance and OJK.

2. Create a Specialized Profession

This new institution must be supported by a new, specific Ministry of Finance Regulation (PMK) concerning the Profession of Public Appraiser for Intellectual Property. This new PMK would create a specialized certification, moving beyond the generalist PMK No. 101/PMK.01/2014 and ensuring a cadre of professionals with specific expertise in valuing intangibles.

3. Function as a Trust Anchor

The function of this institution is to serve as the trust anchor for the financial industry. Its valuation certificates would be legally recognized as objective, defensible, and reliable for the purpose of loan origination, satisfying the banks' prudential principle.

Pillar III: Cultural & Implementation Reconstruction (Shaping the Legal Culture)

This pillar addresses the practical barriers of risk aversion and illiquidity, strategically managing the prudential principle to build market confidence over time.

1. Phased Collateral Implementation

A phased rollout is essential to build banking confidence. In the phase 1 as building confidence, For the first 3-5 years, banks should be encouraged to accept valued IP as additional collateral. This allows them to build internal risk models, test the new SPI-KI and valuation institution, and gain experience without high capital exposure. Next, phase 2 as mature market, following a successful pilot period, banks can transition to accepting IP as primary collateral.

2. Develop a Secondary Market for IP

This development is the long-term solution to the execution and liquidation risk. The government should incentivize the creation of a specialized IP auction house or brokerage system. This secondary market structure is the final piece of the puzzle, ensuring that foreclosed IP assets are liquid and that banks have a clear pathway for recovery in the event of default.

3. System Integration

To support this entire framework, the government must build an integrated digital system connecting the DJKI (for IP registration status), the Fiduciary Registry Office (for security interest status), and the new IP Valuation Institution (for value). This provides a single source of truth for due diligence.

The findings of this discussion demonstrate that the failure to use IP as collateral in Indonesia is not an intractable cultural problem, but a solvable legal-structural one. The existing laws are rendered ineffective by a direct regulatory conflict (PBI No. 14/15/PBI/2012) and a critical institutional void (no accredited valuation body). The proposed three-pillar reconstruction model provides a concrete, synergistic, and actionable roadmap to fix these weaknesses. By aligning the legal substance, creating the missing structure, and strategically shaping the banking culture, this model offers a clear pathway to achieving legal certainty and finally unlocking the multi-billion-dollar economic potential of Indonesia's creative and innovative assets.

CONCLUSION

This research was initiated to address the critical gap identified in the introduction: while Indonesian law normatively permits Intellectual Property (IP) as a fiduciary object, financial institutions consistently refuse to accept it, citing profound legal uncertainty. The results and discussion confirm the conclusions of this study. The primary obstacle is a systemic legal failure, which manifests in three ways. First, a significant structural weakness exists due to the absence of an official, state-accredited IP valuation institution. Second, a severe substantive legal conflict is present, as the key bank regulation (PBI No. 14/15/PBI/2012) does not recognize IP as an acceptable class of collateral. Third, this institutional and regulatory vacuum creates a cultural barrier of risk aversion, as banks face insurmountable legal obstacles related to uncertain valuation, ambiguous execution, and regulatory non-compliance. Therefore, this study concludes that legal certainty can only be achieved through a comprehensive legal reconstruction. The proposed model, built on three pillars, serves as a plan for future implementation: (1) revise the conflicting Bank Indonesia regulation to substantively include IP as collateral; (2) establish an official, state-accredited IP valuation institution under the Ministry of Finance to provide structural certainty; and (3) implement this framework in phases, beginning with the acceptance of IP as additional collateral to build institutional capacity and confidence. This reconstruction model provides the necessary mechanism to bridge the gap between law and practice, thereby unlocking the economic potential of Indonesia's creative economy.

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