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LEGAL POSITION OF SONG COPYRIGHT AS AN OBJECT OF DEBT GUARANTEE IN A FINANCING SCHEME BASED ON INTELLECTUAL PROPERTY

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Abstract

Song copyright as a musical work is a form of intellectual property that has economic value and is protected by law. Regulatory developments in Indonesia, particularly Law Number 24 of 2019 concerning the Creative Economy and Government Regulation Number 24 of 2022, open opportunities for creative economy actors to utilize intellectual property as collateral in financing schemes. Although normatively, this provision provides a clear legal basis, the implementation of song copyright guarantees still faces challenges, particularly in aspects of assessing economic value and the mechanism for binding economic rights. This study aims to analyze the legal status of song copyright as collateral for debt in intellectual property-based financing schemes, as well as to outline the opportunities and obstacles to its implementation in Indonesia. The research method used is a normative juridical approach with a statutory and conceptual approach, which examines the relationship between intellectual property law regulations, collateral law, and creative economy policies. The results show that song copyright can be used as collateral through a fiduciary guarantee mechanism, as long as the economic rights inherent in the song can be valued and transferred for the purpose of debt repayment. This arrangement has the potential to encourage creative financing for musicians, but requires standardized assessment instruments and effective execution procedures to provide legal certainty for the parties.

Keywords: ***copyright, songs, debt guarantees, intellectual property.***

Introduction

The development of the creative industry in Indonesia demonstrates its strategic role in supporting national economic growth. The creative industry encompasses various sectors, including performing arts, design, film, music, and culinary arts, which contribute significantly to Gross Domestic Product (GDP) annually.(Noviriska, 2022)The music sector holds a crucial position due to its significant potential for generating economic value through sales, digital distribution, concerts, and copyright licensing. Songwriters, who also act as musicians, are key players in the music industry's value chain. This role is not only related to the creative process but also relates to the management of the economic rights inherent in the work. Song copyrights are included in the category of intellectual property with economic value, so they can be used as valuable assets in financing activities.(Siagian & Cahyono, 2021)The government has paid special attention to optimizing the use of intellectual property through Law Number 24 of 2019 concerning the Creative Economy. This regulation emphasizes that intellectual property can be used as collateral for financing for creative economy actors. This provision provides new opportunities for musicians to access financing without sacrificing physical assets. Government Regulation Number 24 of 2022, as the implementing regulation, provides a detailed explanation of intellectual property-based financing schemes, including the mechanism for assessing the economic value of creative works. This regulation stipulates that copyrights with economic value can be used as collateral for loans by banks and non-bank financial institutions.(Ida Ayu Ratna Kumala & Ida Ayu Putu Sri Astiti Padmawati, 2024). The practice of using song copyrights as collateral for financing is still relatively new in Indonesia. Several countries, such as the United States and South Korea, have already implemented intellectual property-based financing schemes, including for songs, with robust assessment mechanisms. Indonesia is beginning to develop a similar concept through the implementation ofLaw Number 24 of 2019 concerning the Creative Economy(hereinafter referred to as Law 24/2019) andGovernment Regulation of the Republic of Indonesia Number 24 of 2022 concerning Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy (hereinafter referred to as PP 24/2022)Despite having a legal framework, implementation in the field still faces limitations. Financial institutions tend to be cautious because the economic value of a song is volatile and dependent on market trends. A real-world example is the limited success of song copyright guarantees for financing. Most creative economy players still rely on physical assets such as property or vehicles as collateral for credit. Some musicians have attempted to apply for copyright-based financing, but face administrative and technical obstacles, such as an unstandardized assessment process, limited human resources with understanding of the legal and economic aspects of copyrighted works, and a lack of supporting infrastructure for professional economic rights management.(Balqis & Santoso, 2020)Even highly popular songwriters don't always easily obtain copyright-based financing. A song's popularity can decline over time, impacting projected royalty revenue. Financial institutions require assurance that the economic rights pledged as collateral will provide adequate returns in the event of default. This situation demonstrates that while regulatory arrangements exist, practical implementation requires strengthening legal, technical, and institutional instruments.

The disharmony between regulations and practice is a fundamental problem in utilizing song copyrights as collateral for financing. Statutory provisions have established a clear legal basis for the use of intellectual property as collateral, but implementation in the field has not yet demonstrated the desired optimization.(Noviriska, 2022). The main obstacle lies in the aspect of assessing economic value, considering that song copyrights as intangible assets require specific, transparent, and legally and economically accountable valuation methods. The absence of a standardized valuation method has the potential to lead to inaccurate collateral values, which in turn poses risks for financial institutions and debtors. In addition to valuation obstacles, the collateral binding mechanism is also an issue that requires attention. The provisions of Article 5 paragraph (1) and Article 11 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees (hereinafter referred to as Law 42/1999) provide an understanding that binding copyright as collateral must be carried out by a notarial deed and registered at the Fiduciary Registration Office. This requirement requires proof of legal copyright ownership, which in practice is proven through registration with the Directorate General of Intellectual Property. In reality, some creative economy actors, including musicians, do not yet understand this procedure, and some have not even officially registered the copyright for their songs, thus hampering the process of legally binding collateral and reducing legal certainty for the parties involved.

The above issues have several consequences that hinder the potential use of song copyrights as a source of financing. Access to financing for creative economy actors remains limited to conventional schemes based on physical assets. The music sector's immense potential is not being fully utilized to strengthen the national creative economy ecosystem. This has resulted in hampered innovation and growth in the music industry, as limited capital restricts musicians' freedom to create and produce new works. Another consequence is a decline in financial institutions' trust in intellectual property-based financing schemes. Unclear economic value assessments, unfamiliar binding procedures, and complex execution risks lead financial institutions to prefer conventional collateral. This situation delays the development of a more inclusive financing system for creative industry players.(Sutra Disemadi & Kang, 2021). The low legal and financial literacy of creative economy actors exacerbates the situation. Without adequate understanding, creative economy actors are at risk of losing their economic rights due to detrimental agreements or non-transparent execution. This situation can trigger legal disputes between musicians and financial institutions, which in turn undermines public trust in intellectual property-based financing schemes. This situation underscores the need for a comprehensive legal study regarding the status of song copyright as collateral for debt. This study is expected to provide a clear understanding of the legal basis, binding procedures, economic value assessment, and enforcement mechanisms, thereby providing legal certainty and encouraging the implementation of intellectual property-based financing schemes in Indonesia. Based on the above background, this study, entitledLegal Position of Song Copyright as an Object of Debt Collateral in Intellectual Property-Based Financing Schemes

Research methods

This research uses a normative juridical research method that focuses on the study of positive legal norms that regulate the use of song copyrights as collateral objects in intellectual property-based financing schemes.(Hehanussa et al., 2023)The approach used includes a statutory approach, which is carried out through a review of the provisions of Law Number 28 of 2014 concerning Copyright (hereinafter referred to as Law 28/2014), Law 24/2019, Law 42/1999, and Government Regulation 24/2022. This study also uses a conceptual approach to examine legal concepts related to copyright as intellectual property, fiduciary guarantees, and the principle of intangible asset-based financing. The legal materials used in this study consist of primary legal materials, namely relevant laws and court decisions; secondary legal materials, in the form of literature, scientific journals, previous research results, and expert opinions; and tertiary legal materials, including legal dictionaries, the Great Indonesian Dictionary, and other dictionaries used to clarify the legal terms and concepts discussed. All legal materials are analyzed qualitatively to produce legal arguments that are systematic and academically accountable.(Muhaimin, 2020).

Analysis and Discussion

1. Procedures for Song Copyright as Collateral in Financing Agreements in Intellectual Property-Based Financing Schemes

Song copyrights hold a strategic position as intangible assets with high economic value. Article 1 number 5 of PP 24/2022 explains that intellectual property is wealth born from human intellectual abilities through creativity, feeling, and will that can take the form of works in the arts, including music. Song copyrights themselves are protected by Article 1 of Law 28/2014, which explains that copyright is the exclusive right of the creator that arises automatically after the creation is realized in a tangible form. This provision is in line with the declarative principle, which means legal protection arises without the need for formal registration. Article 64 paragraph (1) provides space for creators or copyright holders to register creations with the Directorate General of Intellectual Property as initial proof of ownership. Moral rights and economic rights are the two main dimensions of copyright. Article 4 of Law 28/2014 emphasizes that moral rights are inherent in the creator. Article 5 paragraph (1) states that moral rights include the right to continue to include the creator's name and maintain the integrity of the creation. Economic rights, as regulated in Article 8 and Article 9 paragraph (1), authorize copyright holders to obtain economic benefits from the use of creations, for example through royalties, licenses, or transfer of rights. These economic rights are the main focus in intellectual property-based financing schemes, because they can be assessed financially and used as collateral.(Panri Tulus Harapan Hutagaol, 2025).

The procedure for making song copyrights the object of collateral refers to Article 1 number 4 of Government Regulation 24/2022, which defines an intellectual property-based financing scheme as financing that makes intellectual property the object of debt collateral for bank or non-bank financial institutions. The first stage in the procedure is to ensure that the song copyright has been registered with the Directorate General of Intellectual Property. Article 10 letter a of Government Regulation 24/2022 expressly states that intellectual property that can be used as debt collateral must be registered with the ministry that administers government affairs in the legal sector. This is crucial because financial institutions require legal certainty regarding ownership of rights. The next stage is the application for financing by creative economy actors to financial institutions. Article 7 paragraph (1) of Government Regulation Number 24 of 2022 stipulates that applications must be made to banks or non-bank financial institutions. Article 7 paragraph (2) stipulates minimum requirements that include a financing proposal, proof of ownership of a creative economy business, proof of an agreement related to intellectual property, and a letter of registration or copyright certificate. Fulfilling these requirements serves as both an administrative step and a risk mitigation effort for financial institutions.(Elfikri, 2017).

The economic value assessment stage of song copyrights is the most crucial point in this procedure. Article 4 paragraph (2) letter b of PP 24/2022 emphasizes that the government facilitates financing schemes through intellectual property valuation. This valuation is regulated in detail in Article 12 paragraph (1), which establishes four methods: the cost approach, the market approach, the income approach, and other approaches in accordance with applicable valuation standards. The cost approach calculates the total expenditure required to create the work. The market approach compares with similar copyright transactions. The income approach projects future cash flows generated from the copyright. The absence of standard valuation standards has the potential to create value disparities, so harmonization of valuation methods is an urgent need. The binding of song copyright guarantees is carried out through a fiduciary mechanism. Article 1 number 2 of Law 42/1999 defines fiduciary as the transfer of ownership rights to an object based on trust, provided that the object remains in the possession of the fiduciary grantor. Article 5 of Law 42/1999 requires the preparation of a fiduciary guarantee deed by a notary in Indonesian. Furthermore, Article 11 stipulates the obligation to register fiduciary guarantees with the Fiduciary Registration Office so that the agreement has enforceable force. Without registration, a fiduciary agreement has only ordinary civil force and does not confer any special rights on the creditor.(Ufatih, 2021).

Fiduciary registration of song copyrights must also be synchronized with the registration of the copyright itself. This synchronization is crucial to avoid ownership disputes that could hinder collateral execution. When the collateralized copyright is in dispute or has been transferred to another party, financial institutions risk losing the right to enforce it. Verification of copyright status through the Directorate General of Intellectual Property is a mandatory step before a fiduciary deed is created. The execution stage of fiduciary guarantees for song copyrights is regulated in Article 29 of Law 42/1999, which grants the fiduciary recipient the right to sell the collateralized object if the debtor defaults.(Manggala, 2023). Executing copyright differs from executing tangible assets because what is being sold is the economic right to utilize the work. For example, a fiduciary may transfer a song license to a third party to recover debts. This mechanism requires specialized expertise in copyright management to ensure the value obtained is not far below market value. The government has a strategic role in ensuring this procedure runs effectively. Article 4 paragraph (1) of Government Regulation 24/2022 mandates the government to facilitate intellectual property-based financing schemes. This facilitation, as outlined in Article 5 letters a and b, includes assistance in the copyright registration process and optimizing its use as debt collateral. Implementation of this government role can include providing technical guidance, training for creative economy actors, and developing copyright assessment standards. An analysis of this procedure reveals implementation challenges. First, the level of legal literacy among creative economy actors remains low. Many musicians do not understand the importance of copyright registration, even though Article 64 paragraph (1) of Law 28/2014 regulates the registration mechanism. Second, the capacity of financial institutions to assess intellectual property assets remains limited. Most financial institutions do not yet have dedicated divisions or experts capable of conducting comprehensive assessments of song copyrights. Third, coordination between the Directorate General of Intellectual Property and the Fiduciary Registration Office still requires improvement to expedite the administrative process.(Lumbanraja et al., 2021).

Criticism of existing regulations points to the lack of integrated technical regulations bridging the Copyright Law, the Fiduciary Guarantee Law, and Government Regulation No. 24 of 2022. This situation creates legal loopholes that can be exploited by irresponsible parties. This is due to the potential for double transfer of guaranteed song copyrights due to the lack of an integrated recording system. A possible solution is the establishment of an integrated information system that connects the copyright database at the Directorate General of Intellectual Property with the fiduciary guarantee database at the Ministry of Law and Human Rights. Overall, the procedure for making song copyrights the object of collateral in financing agreements requires synergy between creative economy actors, financial institutions, notaries, and the government. Legal certainty can only be achieved if all stages, from copyright registration, economic value assessment, fiduciary binding, and collateral execution, are carried out in accordance with statutory provisions. A thorough understanding of the articles governing each stage will minimize legal risks and increase financial institutions' trust in intellectual property-based financing schemes.

2. Strategies that can be implemented by the government in utilizing song copyrights as collateral in intellectual property-based financing schemes to create a legal system that provides certainty and protection for the parties in financing agreements.

Song copyrights are intellectual property assets with significant economic potential and can be transformed into financial instruments that guarantee financing. This potential demands a comprehensive government strategy to ensure their effective, safe, and optimal utilization for all parties. This strategy must combine legal policies, technical mechanisms, infrastructure support, and a collaborative approach that encourages active participation from the music industry, financial institutions, and the public. The government needs to initiate strategic steps by developing a national policy framework governing the use of song copyrights as collateral. This framework must include a long-term vision aligned with the development of the national creative industry.(Rayhan Syahbana Mahendra, 2023)This vision must ensure that song copyrights are viewed not only as works of art, but also as economic assets that can be capitalized legally and securely. This policy framework should involve synergy between relevant ministries, such as the Ministry of Law and Human Rights, the Ministry of Finance, the Ministry of Tourism and Creative Economy, and the Financial Services Authority. This synergy aims to ensure that the resulting policies are cross-sectoral, mutually supportive, and avoid overlapping regulations. Consistency between ministries will create the legal certainty needed by all parties. The principle of inclusivity must be a key foundation. Policies should not only facilitate major music players with extensive commercial track records, but should also provide equal opportunities for independent musicians and emerging creators. The principle of sustainability must also serve as a guiding principle, allowing policies to adapt to developments in music distribution technology and global industry trends. Accountability must be ensured through a transparent oversight system and clear accountability mechanisms for all parties involved.

The value of song copyrights must be objectively measurable to be eligible as collateral. The government needs to develop a standardized valuation system recognized by financial institutions. This system should combine valuation methods based on revenue, popularity, and a track record of commercial use. Revenue-based valuations refer to the amount of royalties generated over a specific period, thus reflecting the asset's ability to generate cash flow. Popularity-based valuations use statistical data such as the number of streams on streaming platforms, the rate of digital downloads, or physical sales. Commercial track record-based valuations consider the extent to which a song has been used in advertisements, films, television series, or other media with significant commercial value. A combination of these three methods will provide a more accurate picture of value. The government can assign a specialized public appraisal institution with expertise in music intellectual property. The existence of a credible valuation system will increase financial institutions' confidence in the suitability of song copyrights as collateral.(Ida

Ayu Ratna Kumala & Ida Ayu Putu Sri Astiti Padmawati, 2024). Data accuracy is a key factor in utilizing song copyright as collateral. The government needs to establish a nationally integrated music intellectual property database. This database will serve as an official information repository containing the identities of creators and copyright holders, the status of rights transfers, the estimated value of assets, and their commercial use history. Access to this database should be granted to financial institutions, appraisal bodies, and other relevant parties through a secure and protected system. Data integration with collective management bodies will ensure the validity of information related to royalty income. The database can also be used to monitor collateral status in real time, thereby avoiding disputes resulting from duplicate claims or document falsification. Music industry players' understanding of the procedures and benefits of PBKI remains low. The government should organize ongoing education programs to improve the legal and financial literacy of songwriters. These programs could include training on copyright management, asset valuation mechanisms, financing agreement procedures, and potential risks. Technical assistance could be provided through consultation clinics located in regional creative economy centers. These clinics could involve notaries, legal consultants, accountants, and intellectual property experts. Adequate guidance will help songwriters prepare documents, understand contracts, and optimize the economic value of their copyrights.(Abdad & Surakarta, 2024).

The participation of financial institutions is key to the success of PBKI. The government can encourage this participation by providing fiscal incentives. These incentives can take the form of income tax reductions on financing interest income, loan interest subsidies, or credit risk guarantee schemes through state-owned guarantee institutions. Incentives will reduce financial institutions' concerns about the risk of default. Credit guarantee schemes can also provide protection if the value of copyrights declines due to market changes.(Citra Ramadhan, Fitri Yanni Dewi Siregar, 2023)Appropriate incentive policies will create a competitive climate and encourage innovation in copyright-based financing products. Legal security in financing agreements can be strengthened through a standard contract model developed by the government. This contract model must include provisions for the protection of the creator's moral rights, a mechanism for the temporary transfer of economic rights, the rights and obligations of the parties, procedures for executing collateral, and a mechanism for the return of rights after repayment. The existence of a contract model will reduce the risk of abuse of unequal bargaining power. This contract can serve as a flexible reference, allowing it to be adapted to the characteristics of each financing without compromising legal protection. The development of a standard contract will also facilitate financial institutions in managing legal risk.

Administrative efficiency can be achieved through a digital platform that facilitates the entire PBKI process. This platform should support online asset registration, valuation, collateral binding, and payment monitoring. Integration with a music intellectual property database will expedite verification and minimize the potential for fraud. Additional features such as an estimated value calculator and online educational modules can improve songwriters' understanding before applying for financing. This digital platform will also facilitate government oversight of PBKI implementation nationally. PBKI's success depends heavily on cross-sector collaboration. The government should initiate partnerships with music streaming platforms, technology companies, collective management institutions, and industry associations. Streaming platforms can provide accurate data on streams and royalty revenues. Collective management institutions can facilitate the transfer of economic rights in accordance with the terms of the agreement. This collaboration will result in a more transparent, efficient, and trustworthy financing ecosystem. Technology companies can also assist in developing automated and verified song usage tracking systems.

The potential for disputes in the PBKI (Public Order for Music Copyright) based on song copyrights is quite significant. The government can establish a special unit to handle mediation and expeditious dispute resolution. This unit could be placed under the relevant ministry or collaborate with an independent arbitration body. A rapid dispute resolution process will reduce costs, prevent further losses, and maintain good relations between the disputing parties. The existence of this unit will increase the sense of security and trust of music industry players in utilizing the PBKI. The government can open broader access to funding by integrating the PBKI with the capital market. One form of this could be the issuance of royalty-based bonds or the securitization of song copyrights.(Taopik & Yuliawan, 2022)This instrument will attract investors and provide a new source of funding for songwriters. This integration requires specific regulations governing the issuance, management, and oversight of the instrument. Successful integration will significantly increase the economic value of song copyrights. Implementation of PBKI requires testing through pilot projects in several regions. Pilot projects will help identify technical barriers, gauge market response, and evaluate the system's feasibility. The government can select regions with active music ecosystems as pilot locations. The results of the pilot projects will inform evaluations before national implementation. Necessary adjustments can be made based on field findings to ensure system readiness. Each implemented strategy must be accompanied by regular evaluations. Evaluations can include indicators such as the number of copyright assets pledged as collateral, total financing disbursed, payment success rates, and the impact on music industry growth.

Evaluation results should be used as a basis for policy improvements. A continuous evaluation approach will ensure that PBKI remains relevant, effective, and adaptive to market developments.

Conclusion

The procedure for making song copyright collateral in a financing agreement under an intellectual property-based financing scheme requires a series of structured steps. The creator or copyright holder registers the song copyright with the Directorate General of Intellectual Property as official proof of ownership. The copyright holder submits a financing application to a financial institution, fulfilling all specified administrative requirements. The financial institution assesses the copyright's economic value using the cost method, market method, or income method in accordance with applicable valuation standards. The authorized party binds the collateral through a fiduciary deed drawn up by a notary and registers it with the Fiduciary Registration Office as valid proof of the binding. The financial institution executes the collateral if the debtor defaults by transferring economic rights to a third party. All parties involved synchronize data and coordinate to ensure legal certainty, reduce the risk of disputes, and increase confidence in the use of intellectual property as a financing instrument.

The government can develop an inclusive, sustainable, and cross-sectoral national policy framework to utilize song copyrights as collateral for intellectual property-based financing. The government needs to develop a standardized and credible copyright valuation system for recognition by financial institutions. The government can establish a nationally integrated music intellectual property database as an official source of information. The government can provide fiscal incentives and risk guarantee schemes to financial institutions that channel song copyright-based financing. The government can develop a standard contract model that includes balanced protection of the rights and obligations of all parties. The government can implement process digitization through an integrated platform that supports asset registration, valuation, and monitoring. The government can strengthen collaboration between the music industry, technology platforms, and collective management institutions to increase transparency and efficiency. The government can establish a rapid dispute resolution unit capable of providing effective solutions for all parties. The government can integrate song copyright utilization with the capital market by issuing royalty-based financial instruments. All of these steps can create a legal framework that provides certainty, protection, and trust for all parties in financing agreements.

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