

# THE ROLE AND CHALLENGE OF THE IP (INTELLECTUAL PROPERTY) ATTORNEYS IN VALUATION OF IP ASSET PORTFOLIOS AS COLLATERAL

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## ABSTRACT

*Intellectual Property (IP) Attorney's as Professional in the field of intellectual property in Indonesia, involved and committed to the development of IP in the future. Challenges in the industry going forward, including problems concerning role of the IP Attorneys in valuation of IP Asset Portfolios as Collateral which has implications for aspects of Intellectual Property Rights (IPR) several regulation concerning Intellectual Property Rights (IPR), particularly in Copyrights and Patens. IPR owners often deal with complex contractual relationships that involve the parties in different forms of cooperation in research and development, production or commercialization of IPR. This includes cases in relation with IPRs assets that are exposed and exploited across national borders, including has rights to commerce (IP commercialization) their product (goods or services) on the basis of Intellectual property rights based on their exclusivity in financing and loan contractual scheme as collateral. The research problem, (1) How is the role and challenge for IP (Intellectual Property) Attorneys in valuation of IP Asset Portfolios as Collateral ? (2) What is IP (Intellectual Property) Asset as Intangible Property shall be valued on the Basis of Movable Property in Financing and loan contractual ?. This research method is normative legal research in which intended for studies that are literary and practical works which is Intellectual Property Rights (IPR) system in relation with professional frameworks in valuation of IP Asset Portfolios as Collateral. The result of this research is the most important aspect is capacity and competency with comprehensive basic knowledge on intellectual Property rights law national an international based on legal frameworks and deal with IP Asset as Collateral before Banks, finance company and others financial institution, then in valuating IP Asset that is requires should be appraised by Intellectual Property (IP) Valuator not only Appraisal in general knowledge background but must have Intellectual Property (IP) knowledge either theoretical and practical in the field of IP protection and prosecution.*

**Keywords:** *Intangible Asset Valuation, Movable Asset Collateral, Intellectual Property Attorneys*

The industry and commercial activities which is relation or as apart of intellectual property rights must have strong legal has is growing between trade and competition that produce industries similar products is getting higher. One of proof that a product is the best in its field is the existence of recognition from the public or the quality of a particular products or services (brand recognition), where this recognition does not necessarily arise, but must go through the process of a hard work of the stakeholders with various strategies that they have accompanied by evidence in the form of tangible results that it can be accepted and recognized by the community. These strategies include innovation in the field of technology in creating an innovative products and/or services, namely by creating products that have never existed before including innovation in the form of efforts to complement of the existing products.

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Innovation and creativity as a business strategy is an intellectual work that is an intellectual property rights (IPR/HKI)<sup>2</sup> that not only needs to be rewarded but also protection in exclusivity. Protection of Intellectual Property is inseparable from the efforts of the State in guaranteeing protection of intellectual property rights through strong legal instruments in the sense of having "forced power" in the form of criminal or civil sanctions for violations. Legal certainty that guarantees protection of intellectual property assets will stimulate industries to continue to develop themselves through their innovations which will certainly enliven the local industrial market to compete with products from abroad.

A creation or innovation derived from human thought within the scope of Intellectual Property Rights protection, there are strict limits between the development of a technology or Copyrighted work as part of previous innovations<sup>3</sup>, but which is often used as an excuse for an industry, namely on the grounds that its products are the result of the development of existing intellectual property. Common problems that often occur have an impact on the development of the creative industry in the country, as if it can be said to make something new does not get protection or appreciation because it will only be easily traced or hijacked. These industries (in the sense of corporate actors) often do not think about or do not care about the further consequences of cheating, which is very detrimental to the owners / holders of actual Intellectual Property Rights.

If a duplicated product is of good quality, then the act performance is still a complication of the reputation or popularity of the previous product, but if it turns out the duplication work is of poor quality, even to the point of endangering human health or safety, it can destroy the good reputation of an industry owned by the actual IPR owner. As a result, the business reputation and trust (trust) of the community that has been built with hard work over the years has a bad result because of the illegal actions of the parties who are not responsible.

Appreciation for innovation and creativity, this is where the strategic role of the IPR Attorneys to be involved and committed to the development of Intellectual Property in the future. Challenges in the digital industry going forward, not only for policy makers but stakeholders deal with with Intellectual Property Asset Portfolios as Collateral which has implications for aspects of Intellectual Property Rights (IPR) from intangible to be movable asset, this discourse will be one of the most important considerations for implementation IPR in the future given the implications for intellectual property, including trade, finance and business compliance.

Indonesian government has issued Government Regulation Number 24 of 2022 concerning the Creative Economy, where in Article 9 it is stated *that in implementing the Intellectual Property Based Financing Scheme, bank financial institutions and non-bank financial institutions use Intellectual Property as an object of debt collateral in the form of fiduciary guarantees for Intellectual Property, contracts in Creative Economy activities and/or collection rights in Creative Economy activities.*<sup>4</sup>

<sup>2</sup> The acronym HAKI /HaKI/ HKI is a translation of Intellectual Property Rights, previously this understanding was better known as HAKI /HaKI, before finally in the whole agreed with the acronym HAKI as H K I / IPR. And in its development, the acronym IPR as a Directorate General of Intellectual Property Rights (IPR) under a system subscription from the Indonesian Ministry of Law and Human Rights., Also see Zen Umar Purba., Paper presented at a national seminar organized by KADIN, Jakarta 31 January 2001., page. 2

Based on the Decree of the Minister of Law and Republic of Indonesia Law No. M.03.PR.07.10 of 2000 and Approval of the State Minister for Administrative Reform in Letter Number 24 / M / PAN / 1/2000 the term "Intellectual Property Rights" (without "Above"), can be abbreviated with "H.K.I."

<sup>3</sup> The opposite condition or reasoned in good faith - when in fact there is intention (bad intentions) or "bad faith" that is to ride the popularity of a certain brand / business reputation of another party for the benefit of its business and worse, the community in this case the market will associate a duplicated products are considered to be the same as the original products that already existed.

<sup>4</sup> Law no. 28 of 2014 concerning Copyright (Copyright Law) especially in Article 16 paragraph (3) of the Copyright Law which states explicitly that "copyright can be used as an object of fiduciary guarantee", and Law no. 13 of 2016 concerning Patents (Patent Law) Article 108 paragraph (1) of the Law which states that "the right to a patent can be used as an object of fiduciary guarantee"



Furthermore, in Article 10 Government Regulation Number 24 of 2022 concerning the Creative Economy it is stated that Intellectual Property that can be used as an object of debt collateral is in the form of Intellectual Property that has been recorded or registered with the ministry that carries out government affairs in the field of law and Intellectual Property that has been managed either independently and/or the rights have been transferred to another party.

To avoid the foregoing, this is where the role of Intellectual Property Attorneys in a business line of an industry from the initial stage, namely from the planning of a product to the launch of the product to the market. Considering that in an industry it is not only needed creative people who can only be demanded to find ideas or new things in terms of products, but also absolutely necessary a good strategy to protect all assets of intellectual work in the form of ideas or innovations that is the key to a company's success. It is a false perception when considering the role of IPR Attorneys as merely tools or means for applying for registration of Intellectual Property or their licenses.

The issue of IPR as collateral for credit or loans to banks has started to emerge again since the Government issued Government Regulation (PP) Number 24 of 2022 concerning the Creative Economy on 12 July 2022. The President wants to encourage the Creative Economy to grow further, considering that it is based on data from the 2020 Tourism Industry and Creative Economy Statistics. , the creative economy is one of the sectors that will become a pillar of the Indonesian economy in the future.<sup>5</sup>

On the contrary, the role of Intellectual Property (IP) Attorneys is needed in the business flow of an industry from the beginning, namely from the planning stage of a product to the launch of the product to the market. The existence of false perceptions coupled with a lack of understanding as well as awareness of business actors for the protection of intellectual property rights makes rampant acts of piracy an illegal act, but the state and interested parties cannot do much because their intellectual property rights have not been submitted for protection.<sup>6</sup>

Points of research problems concerning challenge of the IP Attorneys in valuation of Intellectual Property Asset Portfolios as Collateral, as follows:<sup>7</sup>

1. IP Attorney's Role in Intellectual Property under System and Protection particularly In registration & recordation, that object protection of Intellectual Property, such as Trademarks, Patents, Industrial Designs, and the owners of Intellectual Property has exclusive rights to commerce (i.e. publication and reproduction), by system of Intellectual Property licensing.
2. The Conception of Intellectual Property as valuable Assets, that exclusive belong to the IP Owners and as the owners of Intellectual Property has rights to commerce (commercialization) their product (goods or services) on the basis of Intellectual property rights including their exclusivity in financing and loan contractual scheme as collateral.
3. Intellectual Property as intangible shall be movable property asset in Creative Economy, therefore Intellectual Property Asset Collateral before Banks and others financial institutions. In the frame of Asset Collateral its requires to assess in order to valuating in financial perspectives its must be appraised by Intellectual Property Valuator, therefore frameworks in relation with this matters that IP Asset Valuation shall means opportunity & Strategic Development.

Intellectual Property (IP) Attorney's as Professional in the field of intellectual property in Indonesia update<sup>8</sup> according to and promulgated Government Regulation which is as regulated that provision

<sup>5</sup> <https://www.ojk.go.id/ojk-institute/id/capacitybuilding/upcoming/1110/prospek-hak-kekayaan-intelektual-hki-sebagai-jaminan-utang>

<sup>6</sup> [https://www.kompasiana.com/nadyadjajadiningrat/role-Attorneys-intellectual-property-rights-in-business-and-industry-why-needed\\_5554677b6523bdc5144aef1](https://www.kompasiana.com/nadyadjajadiningrat/role-Attorneys-intellectual-property-rights-in-business-and-industry-why-needed_5554677b6523bdc5144aef1)

<sup>7</sup> Suyud Margono, "The Role of the IP Attorneys in the Assessment of IP Asset Portfolios as Collateral" International Webinar: "Intellectual Property Valuation and Utilization as Practiced in Japan and Indonesia" organized by AIPPI Indonesia Group, Supported by Directorate General Intellectual Property (DJIP), Japan Patent Office (JPO) and Indonesian Intellectual Property Association (AKHKI), August 23, 2024



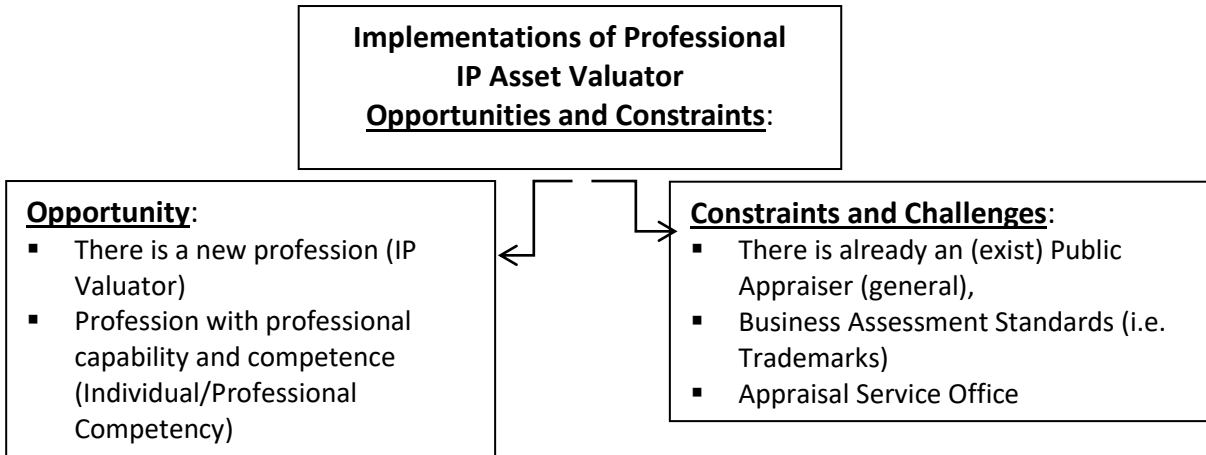
acting as "people who have expertise in the field of intellectual property and are registered as Intellectual Property Attorneys, and specifically provide services in the field of submitting and managing intellectual property applications"

Based on Article 12, Government Regulation Number 100 Year 2021 that Intellectual Property Attorney has expertise in the field of intellectual property, among others:

- provide services in the field of submitting and managing intellectual property applications.
- provide services in submitting and managing applications, Intellectual Property Attorneys. must have a power of attorney from the service user they represent.
- provide professional services in consulting in the field of intellectual property.

**Flow 1.**

**Implementation Matters of Professional Intellectual Property (IP) Asset Valuator**



Economic problems and legal problems arise when pledging objects in the sense of intellectual property rights for debts and Financing and Collateral guarantees. Besides that, is there anyone willing to buy Copyrights for a certain amount of money? Does a market for intellectual property rights really exist? This problem concerns Copyright as an object of fiduciary guarantee. This hypothesis is because the question is relevant to the fact that there is no clear mechanism for making Copyrights an object of fiduciary collateral, eventhough regulations regarding collateral are closely related to Indonesian economic development efforts which already exist, namely in the field of property in the sense of tangible objects, not intangible objects, but real (tangible).

Based on the provisions of Law Number 24 of 2019 concerning the creative economy, the State, through the central government or regional governments, will provide Intellectual Property Facilitation. As specified in Article 23, it is stated:

- (1) *The Government and/or Regional Government facilitates the recording of copyright and related rights as well as the registration of industrial property rights to Creative Economy Actors.*
- (2) *The Government and/or Regional Government facilitates the use of intellectual property for Creative Economy Actors.*

A valuable lesson from this is A valuable lesson from this is Bundle of Opportunity and Problems (Financing & IP Asset Collateral), therefore IP Attorney's Role in Intellectual Property field under System and Protection particularly In registration & recordation, has expertise not only In registration & recordation but also advisory in valuating IP Asset that its must be appraised by Intellectual Property (IP) Valuator, therefore frameworks in relation with this matters that IP Asset Valuation shall means opportunity and strategic development.

Critical Study on role and challenge of the Intellectual Property Attorneys in valuation of IP Asset Portfolios as Collateral, with the research problem, as follows:

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<sup>8</sup> Government Regulation Number. 100 Year 2021 concerning Intellectual Property Attorneys (Promulgated September 27, 2021, TLN 2021 224, TLNRI 6726).



1. *How is the role and challenge for IP (Intellectual Property) Attorneys in valuation of IP Asset Portfolios as Collateral ?*

2. *What is IP (Intellectual Property) Asset as Intangible Property shall be object of Guaranty on the Basis of Movable Property in Financing and Loan contractual ?*

This research method is intended for studies that are literary and practical works which is Intellectual Property Rights (IPR) system in relation with professional frameworks in valuation of IP Asset Portfolios as Collateral.

## 2. Research Method

The nature of the research in this study is prescriptive in nature. This type of research is normative research. The research material in this study is secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. After the data has been collected, a conceptual approach is used. This research method is intended for studies that are literary and practical works which in essence are a means of infrastructure for the development of science and technology, so the applied research methodology is adjusted to the main body of knowledge in the field of law.<sup>9</sup> This research is also an analysis process of observing and acting logically, methodically and systematically regarding phenomena, events or empirical facts that occur or exist around us to be reconstructed in order to reveal facts and information that are useful for life,<sup>10</sup> especially for the Intellectual Property Rights (IPR) protection system in relation with the role and challenge of the IP (Intellectual Property) Attorneys in valuation of IP Asset Portfolios as Collateral.

The research method is adapted to the research topic which is the main problem being researched by the author as part of the legal works research as described above, which is intended for the development of knowledge for society. So the research method in this scientific paper uses legal research methods with qualitative analytical descriptive. This method emphasizes the collection and analysis of the presentation of data and facts based on the method of literature research (literary study) from secondary data.

This literary work is written based on the material collected and analyzed based on data according to the topic to be discussed. As we all know that a research is an effort made by humans to find new things and solve a problem,<sup>11</sup> therefore written of this scientific paper uses an approach in the perspective of national interests, with a multidisciplinary analysis in accordance with the practical and theoretical framework of the role and challenge of the IP (Intellectual Property) Attorneys in valuation of IP Intellectual Property Portfolios as Collateral.

## 3. Discussion and Analysis

### 3.1. the Role and Challenge for IP (Intellectual Property) Attorneys Profession in Valuation of IP Asset Portfolios as Collateral

The term profession in the Second Pocket Edition Black's Law Dictionary states that "Profession: a vocation requires advanced education and training".<sup>12</sup> Whereas in the Webster New World Dictionary, a profession is defined as a job or position that requires advanced education or training and involves intellectual expertise. Thus, the profession can be interpreted freely as a permanent job in a particular field based on specific expertise that is carried out responsibly with the aim of earning income.<sup>13</sup> Another formulation of the understanding of the profession, as expressed by E.Y. Kanter,<sup>14</sup> A profession is a designation or position in which a person who bears it has special knowledge gained through training or other experience, or is obtained through both, so that profession persons can guide or give advice / advice or also serve others in their own fields.

<sup>9</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research*, (Jakarta: PT Raja Grafindo Persada), 2012, p. 1.

<sup>10</sup> Abdul Kadir Muhammad, *Law and Legal Research*, (Bandung: PT Citra Aditya Bakti), 2004, p. 2.

<sup>11</sup> Bambang Sunggono, *Method of Legal Research*, (Jakarta: PT Raja Grafindo Persada), 2001, p. 27.

<sup>12</sup> Bryan A. Garner, *Black's Law Dictionary*, second Pocket Edition, St. Paul Minn, 2001, p. 560.

<sup>13</sup> Wildan Suyuthi, *Professional Ethics Code of Ethics for Judges*, IKAHI: Jakarta, no year, p. 6.

<sup>14</sup> E.Y. Kanter, *Legal Professional Ethics: a socio-religious approach*, storia Grafika: Jakarta, 2001, p. 63.

The existence of Intellectual Property (IP) Attorneys<sup>15</sup> is intended to represent the Petitioner, specifically the Author / Right Holder, Brand Owner, Creator, Inventor, Designer or other interested parties in the framework of obtaining protection and submission of registration in the field of IPR to countries where each IPR field has its own characteristics and procedures. respectively. While IP Attorneys are also expected to provide various advice to IPR Applicants (as Clients in the scope of consultation), with respect to the application requirements in the field of IPR. It is important to understand that the understanding of IP Attorneys<sup>16</sup> as power of attorney is different from the notion of legal counsel in assisting / representing clients in or out of court or acting for and on behalf of clients in the context of seeking justice or upholding their rights, meaning that IPR Attorneys as special powers of the Applicant to apply for registration / management in the field of Intellectual Property practices.

According to Article 29 paragraph (1) Government Regulation Number 100 Year 2021 intended that Professional Organizations are intended for the Profession of Intellectual Property (IP) Attorneys, must gather in 1 (one) Professional Organization forum. The existing Association of Intellectual Property Rights Attorneys (herein after known as AKHKI), is recognized as the Association of Indonesian Intellectual Property Attorneys (Article 32). AKHKI as an existing Intellectual Property Rights Attorneys Professional organization is obliged to adjust as a legal entity The Association of Indonesian Intellectual Property Attorneys has been valid to become a legal entity.<sup>17</sup>

AKHKI established by the majority of the 1st batch of 2006, furthermore, based on Government Regulation No. 100 of 2021 is enforced 27 September 2021 it is determined that AHKKI, as an existing organization, is still recognized as a professional organization for Intellectual Property Attorneys in the form of a Legal Entity and for all registered Intellectual Property Attorneys at the Directorate General Intellectual Property (DGIP), The Ministry of Law and Human Rights of the Republic of Indonesia has an obligation to join in 1 (one) professional organization. AKHKI is a partner of the DGIP officially as signed Memorandum of Understanding dated 25 November 25th 2021., AKHKI provides membership program and regulation for all registered Intellectual Property Attorneys such as protocol, ethic code also provided for public collaboration to promotes the national Intellectual Property system.

<sup>15</sup> The existence of IPR Attorneys in Indonesia is regulated in Government Regulation (PP) No. 2 of 2005 concerning IPR Attorneys which is the implementation of various Laws on IPR (specify the Act). Before the presence of IPR Attorneys in 1991, PP No. 33 of 1991 concerning Special Registration of Patent Attorneys governing the existence of Patent Attorneys in Indonesia which is the implementation of Law No. 6 of 1989 concerning Patents.

<sup>16</sup> Article 1 paragraph (1) Government Regulation Number 2 of 2005 concerning Intellectual Property Rights Attorneys, is determined: IPR Attorneys are people who have expertise in the field of Intellectual Property Rights and specifically provide services in the field of filing and processing applications in the field of Intellectual Property Rights that are managed by the Directorate General and registered as a Attorneys of Intellectual Property Rights at the Directorate General at the Ministry of Law and Human Rights of the Republic of Indonesia.

The IPR Attorneys in this article is a Registered IPR Attorneys, a person who has undergone special education and is sworn in by an oath by the Indonesian Minister of Law and Human Rights, and is registered with the Directorate of Intellectual Property Rights at the Ministry of Law and Human Rights of the Republic of Indonesia.

Article 3 letter f, determines: To be appointed as an IPR Attorneys, one must meet the requirements for passing the Intellectual Property Rights Attorneys training.

Article 4 paragraph (1), determines: The training referred to in Article 3 letter f is held by a university designated by the Directorate General and

Article 4 paragraph (2) determines: The training referred to in paragraph (1) uses a curriculum determined by the Directorate General.

<sup>17</sup> [www.akhki.or.id](http://www.akhki.or.id)., AKHKI is registered Trademarks for logo and name, in several class belong Indonesia Intellectual Property Rights Attorneys Association, headquarter domicile in Jakarta City, for member registered Intellectual Property Attorneys listed in Directorate General Intellectual Property (DGIP), Ministry of Law and Human Rights Republic Indonesia.



AKHKI proactively and gives views on law changes or regulations as a response to the market needs on new technologies, administrative reform, and Intellectual Property enforcement. The association regularly contributes to the community by organizing workshops, seminars, discussions and trainings, observes international Intellectual Property issues, and cooperates with Intellectual Property related associations and institutions on Intellectual Property laws. Vision of AKHKI is a global professional association committed to protecting Intellectual Property, both nationally and internationally, and has a mission to enhance the nation's consciousness about the importance of Intellectual Property protection as follows:

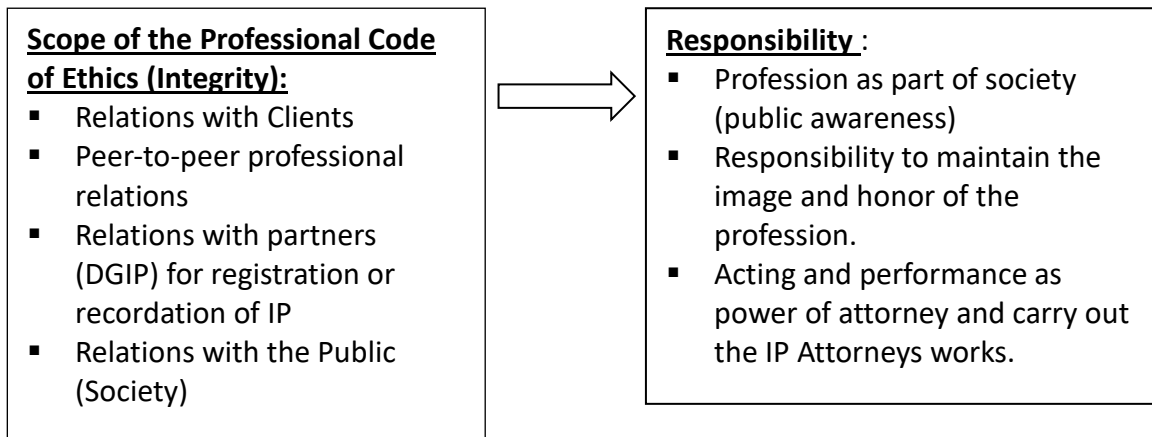
- To provide inputs to the regulatory bodies in order to strengthen the legal and administrative system of the Intellectual Property registration;
- To uphold the professionalism and quality of its members by establishing a code of conduct for Intellectual Property Attorneys in Indonesia;
- To maintain a partnership with the Directorate General Intellectual Property (DGIP) on Intellectual Property sustainable development in Indonesia.

For member registered Intellectual Property Attorneys, should be as professional Performance obligation (based on Article 13 Government Regulation Number 100 Year 2021), among others:

- Become a member of the Professional Organization (AKHKI);
- Reporting (updating) if there is an Intellectual Property Attorneys practice impediment (Age Limit; becoming a Public Official; resigning);
- Management Services (Registration and Recording of IP) and Professional consulting in the field of Intellectual Property practices};
- Providing socialization and assistance services (probono) including facilitation and advocacy.

**Flow 2:**

**Intellectual Property Attorneys Professional Performance  
(Public Services and Ethics)**



The development of the Intellectual Property Rights Attorneys Profession is very closely related (linked) to the Intellectual Property sector which is currently still generally seen in the scope of registered IP (IP registered) and protection within the boundaries of the State (countries territorial based IPR protections), therefore, (in the meantime) the IPR Attorneys profession solely a complementary agent for entities or individuals to obtain protection or registration of Intellectual property when a minimum requirement of an Intellectual Property must be assisted (agent by IPR Attorneys) by the IP Attorneys Profession to obtain patents to protect inventions, copyright protects films, art, literature, music, etc., brands to protect brands, naming includes geographical indications.<sup>18</sup>

<sup>18</sup> Suyud Margono, <https://kliklegal.com/world-ip-day-digital-industries-dan-reposisi-profesi-konsultan-hki/>



However, the profession of IP Attorneys is very important in the framework of increasing digital development and IP economic interests (Assets), among others:<sup>19</sup>

- Digital development and IP economic interests (Assets) are becoming a mainstay for business actors because they are becoming increasingly high (Needs) (For example: application-based information technology industry, internet of things, etc.).
- Portfolio of IPR Assets "as material security" for the Creative Industries, impacting Development Potential or Opportunities for both micro and medium scale industries
- Business transactions involving the IPR Asset Portfolio will have consequences that can cause problems, which can result in disputes/cases. Including involving IP assets as collateral/collateral for movable objects with fiduciary guarantees

The current development is that more business actors who own several IPR assets use exclusive rights and manage them (IPR Asset Management) to increase revenue (eg through licensing) or further corporate strategic objectives. The strategic role can be in the form of repositioning the Intellectual Property Rights Attorneys as well as examiner/auditing (IP Audit), appraiser (IP valuator), assistant (IP Partners), manager (IP Management) as well as promotional activities that are broader than just getting rights protection or intellectual property registration. This reposition includes a commitment to legal action against parties who use their technology in good faith, or without prior rights/permissions (unlawful act).<sup>20</sup>

The position of the professional organization for Intellectual Property Attorneys not only for gathering or discussion of the current issues topic usually make a standard practices In Example, that very Importance of the IP Attorneys Profession (Patent Registration), described with table below.

**Table 1:  
IP Attorneys Desk for Patent Protection & Commercialization<sup>21</sup>**

No	IP Attorneys Desk for Patent
1	<p><b>Consultation Stage</b></p> <ul style="list-style-type: none"> <li>▪ In providing Consultations (whether bound by a Non-Disclosure Agreement) with clients (inventors/IP rights owners)</li> <li>▪ Provide Consultation on IP registration system, IP ownership and Patentability</li> </ul>
2	<p><b>Search Stage</b></p> <p>Providing Patent Search Services (Patent Literature and Non-Literature) relevant to the Invention</p>
3	<p><b>3. Drafting stage</b></p> <p>Compile and arranged the Patent Specification and/ or Drafting Patents:</p> <ul style="list-style-type: none"> <li>▪ Description/ description,</li> <li>▪ Picture,</li> <li>▪ Claims of Invention,</li> <li>▪ Abstract</li> </ul>

<sup>19</sup> Suyud Margono., "The Role of the IP Consultant Profession in Valuing IP Asset Portfolios as Collateral", at Focus Group Discussion (FGD), "Preparation of Indonesian Appraisal Standards for Intellectual Property (SPI-KI)". Indonesian Ministry of Tourism and Creative Economy, Deputy for Resources and Institutions, June 16, 2023.

<sup>20</sup> Suyud Margono., *The Role of Intellectual Property Rights Consultants As A Legal Profession For Completion Of Disputes In The Digital Industry Era*, Journal Talenta – IPR Review, Publisher Faculty of Law, University North Sumatera, Vol. 2 No 01 January 2019, p. 103.

<sup>21</sup> Suyud Margono., *Patent System and Prior User Criteria: IP Attorney's Perspective* at FGD (Focus Group Discussion) "Expert Discussion of Patent Laws Regarding Prior Users", Bandung, 19-20 May 2022.



4	<b>Applying for a patent application (Registration)</b> <ul style="list-style-type: none"> <li>▪ Patent Application (Simple and/ Or Standard Patent)</li> <li>▪ Patent Substantive Examination Application</li> <li>▪ Filing a Patent Appeal</li> </ul>
5	<b>Applying for a patent registration (Recordation)</b> <ul style="list-style-type: none"> <li>▪ Patent License Registration (exclusive license and compulsory license)</li> <li>▪ Recording of Change of Name/ Address of Applicant/ Patent Owner</li> <li>▪ Registration of Transfer of Patent Rights (including mergers/acquisitions)</li> </ul>
6	<b>Patent Portfolio</b> <ul style="list-style-type: none"> <li>▪ Drafting a Patent License Agreement</li> <li>▪ IP Audit and Patent securitization</li> </ul>

The IP Attorneys profession, as specified in Government Regulation Number 100 of 2021 concerning Intellectual Property Attorneys, is a professional who has special expertise in providing services in the field of submitting and managing intellectual property applications to the Directorate General of Intellectual Property (DJKI) of the Indonesian Ministry of Law and Human Rights. It was explained that services in the patent sector range from Patentability Consultation, Patent Search, Preparation of Patent Descriptions, to Patent Registration applications. "Apart from that, it is related to client needs in the form of technology portfolio advisory for Patent Owners, including: IP Audit, Patent License Recordation, mergers and acquisitions and technology transfer.

This important reason for recording Intellectual Property licensing (exclusive License agreement) is to provide protection for a license agreement made. Recording is intended to facilitate proof if a dispute occurs in the future between the Licensor and Licensee, as well as to protect third parties if it is related to the implementation of the license agreement.<sup>22</sup>

In a disruptive era like now, change is so fast happening across national borders. Traffic in trade in goods, for example, now relies heavily on electronic transactions with the potential for infringement of intellectual property to remain and could even be greater, as Salvatore Caserta said, quoted,

*"One key societal institution that is likely impacted by these developments is law and relatedly, the legal profession. Law in practices whether understood as a profession, a method of handling, soliciting and solving disputes, a tool to achieve justice. In the other hand structure in the hands of the power to protect their interests and/or more simply, an instrument to guide human behaviour, is at its core an intellectual endeavour of legal profession in handling, storing, interpreting, and sharing knowledge as well as information. Recent advancements in digital technology are precisely transforming the ways in which information is created, stored, and conveyed. Moreover, these developments are making inroads into artificial knowledge production, thereby potentially entering the intellectual and human aspect of law".*<sup>23</sup>

Intellectual Property Attorneys in carrying out their duties are generally limited to the administration side of the application and are not intended as the power of attorney on the side of the right or defense of the Client's right to alleged violations of IPR, but can also play a role in transactions related to the commercialization of Intellectual Assets that are very vulnerable to disputes, this not only arises because of consideration of violations of the provisions that have been set forth in a contractual arrangement (contractual arrangement) for the commercialization activities of Intellectual Assets but often due to economic considerations, this generally takes

<sup>22</sup> <https://innews.co.id/ketum-akhki-perjanjian-lisensi-wajib-dicatatkan-agar-terproteksi/>

<sup>23</sup> Salvatore Caserta and Mikael Rask Madsen., *The Legal Profession in the Era of Digital Capitalism: Disruption or New Dawn.*, Laws 2019, 8, 1; doi:10.3390/laws8010001, www.mdpi.com/journal/laws, p. 2



advantage outside of its authority by overriding the interests of business partners from contractual party or violate the interests of third parties who are very interested in commercializing the Intellectual Property.

Intellectual property rights in the industrial sector have an important role for the development and progress of a nation. Related to this, through IPR gave birth to new innovations, high quality, standardized advanced technology. The more innovations, the more they show the high level of mastery of science and technology. Thus, it will further advance the industrial sector to penetrate the domestic and international markets. We find that the Intellectual Property Attorneys profession can come from a variety of disciplines<sup>24</sup>, this is because of the responsibilities that must be carried out as a Attorneys handling various fields related to leading edge technology, industry, commerce and even the arts.

In other IP fields, for example Trademarks, IP Attorneys will provide input with one of them suggesting to do a "search" for the relevant brand, so that it can be known whether there are already similar brands for the same class of goods / services (registered / filing the registrant) beforehand and being able to oversee the whole process of registering the mark and maintaining the validity of the mark and facing objections including when there is interference from parties who want to abuse the mark.

IP Attorneys Professionals, in addition to being consistent in providing advice on intellectual property in each field of IPR, ownership principles and all phases in the application for IPR registration. An IPR Consultant must be able to provide an opinion in the form of "IP Opinion" in the form of giving an opinion on the possibility of success of an intellectual property to be registered, besides that currently the Professional IP Attorneys can give an opinion on "IP valuation"<sup>25</sup> or the values of an IPR owned by IP Owner / Holder. The assessment includes whether an IP is appropriate or not, both for registration, extension of protection, including the economic value of the IPR which is still valid.

Article 1 point (3) jo (4) Government Regulation (PP) 24 of 2022 as the Implementation of Law No. 24 of 2019 concerning the Creative Economy, determines:

3). *Financing or credit, hereinafter referred to as financing, shall means the provision of money or equivalent bills based on an agreement or loan agreement between a bank financial institution or non-bank financial institution and another party which requires the financed party to return the money or bill after a certain period of time with compensation in the form of interest or profit sharing.*

4). *Intellectual Property Based Financing Scheme shall means a financing scheme that makes Intellectual Property an object of debt collateral for bank financial institutions or non-bank financial institutions so that can provide financing to creative economy actors.*

Therefore, it will be perfect if an Intellectual Property Attorneys can have a background in the field of Law and also from other fields such as engineering or other, because the basic knowledge obtained from these disciplines can support his professionalism as an IP Attorneys. Or can an IPR Attorneys office be strengthened by a team consisting of people with different and specific educational backgrounds, in order to be able to optimally serve various questions or problems raised by clients / applicants, as well as to handle specific cases as well related to inventions (Patents) in the field of technology. In the field of Patents, when an innovator manages to discover a new technology, the IP Attorneys can confirm whether the technology is a recent invention, the process of registering the patent, by describing up to guarding the entire process until the patent application is received (patent granted). The duties of the IP Attorneys in the field of patents include ensuring that there are other parties who will "disturb" the patent.

<sup>24</sup> Based on Government Regulation Number 2 Year 2005 concerning Intellectual Property Rights Attorneys.

<sup>25</sup> Since 2017, the author as the Indonesian National Work Competency Standards Formulation Team (SKKNI) IPR Valuator Profession which was initiated by the Indonesian Creative Economy Agency (Badan Ekonomi Kreatif)/BEKRAF RI.



### 3.2. Intellectual Property (IP) Asset as Valuable Asset on the Basis of Movable Property in Contractual Loan and Financing

Intellectual Property (IP) Rights including Copyrights ownership relates to the rights attached to or owned by the copyright holder. In general, copyright law provides several rights known as exclusive rights (a number of exclusive rights). In the following we quote some of the exclusive rights to a Copyrighted work, namely: <sup>26</sup>

*“These exclusive rights vary according to the different types of works and other subject-matter protected by copyrights. The owner of copyright in a literary, dramatic or musical work.*

According Indonesian Law that this provision for the Recordation of Works has the consequence that the Office of the Directorate General of Intellectual Property (DGIP/ Indonesia IP Offices) has the authority under the law to manage the recordation of Works. including administration, namely DGIP acts to receive, examine and publish it in the Public Register of Works. The consequence of this provision regarding the Recordation of Works is that the DGIP Office acts as an Examiner and determines whether a copyrighted work is eligible or not eligible to be registered. Even though there is no Substantive Examination in the Recordation of Works, this will be a problem, especially regarding the objectivity of the examiner.<sup>27</sup>

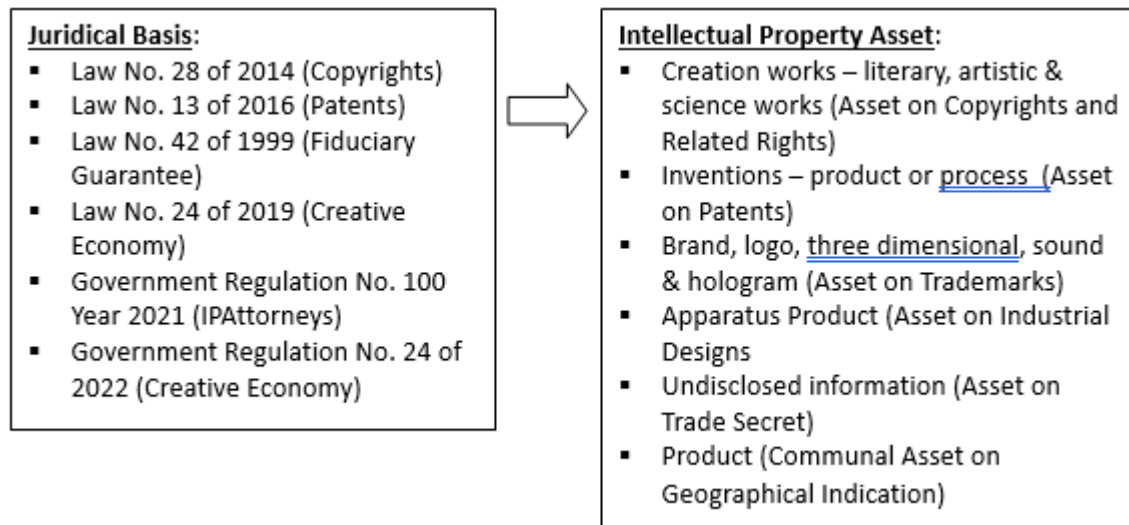
Economic problems and legal problems arise when pledging objects in the sense of intellectual property rights for debts and Financing and Collateral guarantees. Besides that, is there anyone willing to buy the Copyrights for a certain amount of money? How does the market for intellectual property rights really exist? This problem concerns copyright as an object of fiduciary guarantee. This hypothesis is because the question is relevant to the fact that there is no clear mechanism for making copyright an object of fiduciary guarantee, even though regulations regarding guarantees are closely related to Indonesia's economic development efforts. we already know and are currently aware of, namely the property sector (in the sense of tangible assets) and its implementation is sometimes not appropriate and not in line with the aim of debt guarantees to increase the economic resilience of a just society, then develop in the previous sense of tangible to objects that are not real (intangible) which is the concept of intellectual property ownership.

The problem is that material guarantees currently apply to tangible objects and special regulations regarding guarantees for movable objects are determined based on Law No. 42 of 1999 concerning Fiduciary Guarantees. This legislative product only specifically regulates movable objects which are the object of material collateral (as debt collateral), rules of the game, and settlement (execution) when submitted to banks or financial institutions, so special standards are needed to adapt financial and banking practices to the characteristics of specifically where copyright and/or Patent Inventions are the object of debt collateral or project financing required by the IP Owner including the Inventor or Creator (Authors).

<sup>26</sup> Attorney General's, Department Copyright Law Australia, Short Guide Copyrights Information, Attorney General's Department Copyright Law in Australia, January 2000.

<sup>27</sup> Suyud Margono, *Copyrights Protection On The Internet: Critical Study On Declarative Principle Of Digital Works Recordation In Indonesia.*, Russian Law Journal Volume XI (2023) Issues 5, page. 1407

### Flow 3: Juridical Basis For IP Portfolio for Financing and Collateral



Transaction problems related to commercialization activities Intellectual assets such as disputes arising from sale and purchase transactions, exclusive licenses, transfer of technology not only appear on transactions (contracts) that are local but also occur on international business contracts.<sup>28</sup> The problem that often arises is determining the legal system which country will be used. This issue is commonly known as the issue of "the proper law of contract", namely the choice of law that should be used in resolving disputes in the implementation of contracts between two or more different legal systems.<sup>29</sup> The emergence of IPR as a protector of creativity and innovation, therefore IPR law also needs protection, one of which is by including IPR law into the national legal system, while IPR considerations need to be protected including:

1. because it is non-economic, that is, for findings which have no material economic value. But it can increase self actualization and be able to increase development.
2. are economical. The findings that produce material benefits. This method is also used by inventors to protect their work from plagiarism against works that have been made.

Another problem is that there must be a distinction between objects of creation (copyrights) and objects or essence of invention (Patent) in the sense of property with Copyrights or Patents as intellectual property rights, so there are basic differences in meaning of property and intellectual property rights. In the Copyright System there is the right to publish and the right to reproduce. Pua explained that copyright gives rights to various commercialization of assets from creative works. Since the enactment of Law Number 28 of 2014 concerning Copyright (Copyright Law) to replace the old Copyright Law, a new regulation appears in the provisions of Article 16 that copyright can be an object of fiduciary guarantee, determined as follows:

*Article 16 Copyright Law:*

- (1) *Copyright is an intangible movable object.*
- (3) *Copyright can be used as an object of fiduciary guarantee.*
- (4) *Provisions regarding Copyright as an object of fiduciary guarantee as referred to in paragraph (3) are implemented in accordance with the provisions of statutory regulations.*

Article 17 paragraph (1) stipulates "The economic rights to a work remain in the hands of the creator or copyright holder as long as the creator or copyright holder does not transfer all

<sup>28</sup> Suyud Margono, *Industrial Property Rights: Regulation and Practice in Indonesia*, PT. Ghalia Indonesia, Jakarta, 2011., p. 240. International business contracts in this case specifically only relate to individuals or private institutions which in practice involve parties who are subject to two or more different national legal systems so that if there is a dispute in the implementation of the contract, legal problems always arise and resolved.

<sup>29</sup> Sudargo Gautama, *Introduction to Indonesian International Civil Law.*, Binacipta, 1987. hal. 11.

*economic rights from the creator or copyright holder to the recipient of the transfer of rights to the work."*

As with the provisions of the enactment of Law Number 13 of 2016 concerning Patents which also replaces the old Patent Law, there is a new regulation in the provisions of Article 16 that copyright can be the object of fiduciary guarantees, determined as follows:

**Article 56:**

- (1) *A Patent Certificate is proof of the right to a patent.*
- (2) *The right to a Patent as intended in paragraph (1) is determined by the scope of protection based on the Invention described in the claim.*
- (3) *The right to a patent as intended in paragraph (1) and paragraph (2) is an intangible movable object.*

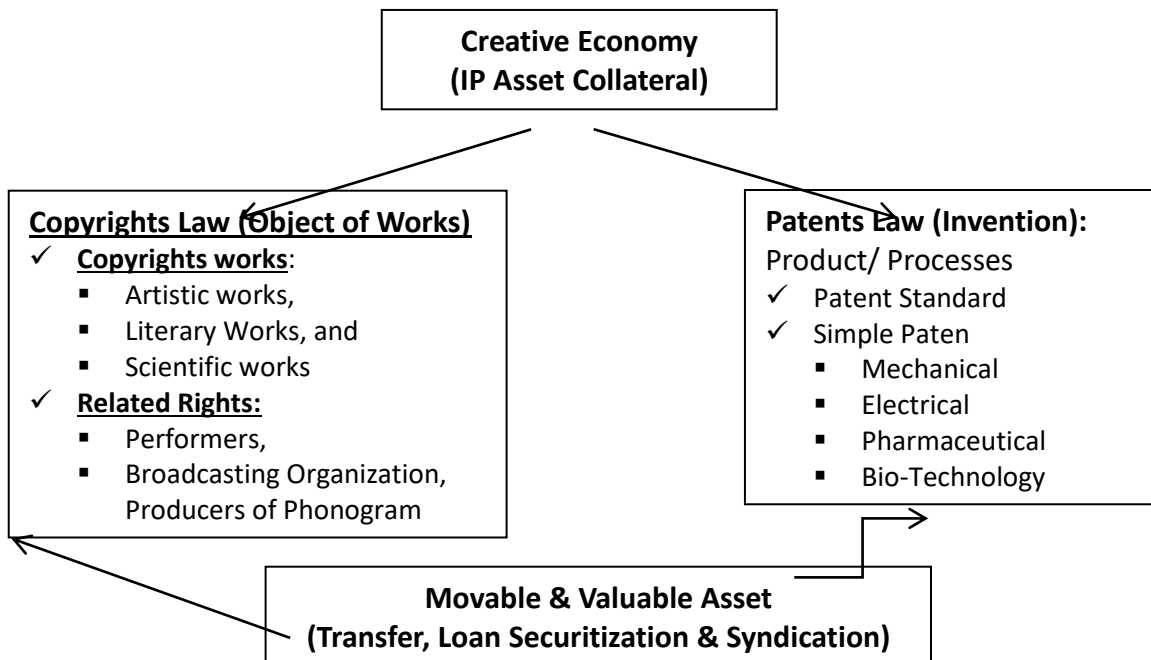
**Article 108:**

- (1) *Patent rights can be used as an object of fiduciary guarantee.*
- (2) *Provisions regarding the terms and procedures for Patent Rights as an object of fiduciary security as an object of fiduciary security are regulated by Government Regulation.*

Thus, the new provisions regarding Copyright as an object of fiduciary guarantee are closely related to Law Number 42 of 1999 concerning Fiduciary Guarantees which anticipates the possibility of making intangible movable objects as collateral objects. Meanwhile, in the Fiduciary Guarantee Law, it is also determined based on Article 1 Number 2, Law Number 42 of 1999 concerning Fiduciary Guarantees, stipulates that

*"Fiduciary Guarantee is a security right for movable objects, both tangible and intangible, and immovable objects, especially buildings which cannot be encumbered with mortgage rights as intended in Law Number 4 of 1996 concerning Mortgage Rights which remain in the control of the Fiduciary Giver, as collateral for repayment of certain debts, which gives the Fiduciary Recipient a preferred position over other creditors"*

**Flow 4:  
Creative Economy Opportunities (IP Assets) as Debt Collateral.<sup>30</sup>**



<sup>30</sup> Suyud Margono., *Future of Patent System: Role of Patent Attorneys on Ownership & Human Utilization.*, Presented at the National Symposium at the Faculty of Law, UPN Veteran University, Jakarta: October 17, 2023

In reality, making copyright an object of fiduciary guarantee is not an easy thing to do. Notary Profession qq The Official Land Deeds (PPAT), explained that he had never found any attempt to make intangible movable objects (such as creations or patented inventions) submitted as objects of fiduciary collateral. In practice, it is very rare, they have never even made a deed, and they have difficulty in assessing (price valuation) with money.<sup>31</sup>

The Intellectual Property Valuation regulation in the field of Creative Economy that will be used as collateral according to Article 12 Government Regulation Number 24 of 2022 as the implementation of Law No. 24 of 2019 concerning the Creative Economy, the law maker determines as follows:

*2) The Intellectual Property Valuation as intended in paragraph (1) is carried out by an Intellectual Property appraisal and/or a panel of assessors.*

*3) The Intellectual Property Appraiser as intended in paragraph (2) must meet the following criteria:*

*a. have a public appraisal permit from the ministry that handles government affairs in the field of state finance;*

*b. have competence in the field of Intellectual Property valuation; and*

*c. registered with the ministry which carries out government duties in the field of Creative Economy.*

*4) Competence in the field of Intellectual Property assessment as referred to in paragraph (3) letter b is obtained through competency certification which is carried out in accordance with the provisions of statutory regulations.*

*5) The Intellectual Property Appraisal as intended in paragraph (2) has the following duties:*

*a. carry out an assessment of the Intellectual Property that will be used as collateral;*

*b. carry out market analysis of the Intellectual Property that will be used as collateral;*

The Patent rights for inventions and the Copyrights for creations which are movable objects can be used as objects of fiduciary guarantees,<sup>32</sup> which are permitted by the Fiduciary Guarantee Law, and basically fulfill the elements of objects that can be used as objects of fiduciary guarantees because they have economic value and can be transferred.<sup>33</sup> If it is agreed that a breach of contract (default) has occurred, execution of patent rights which are the object of fiduciary guarantees can be carried out in the manner contained in Article 29 paragraph (1) of Law 42 year 1999 concerning Fiduciary Guarantee, namely:

1. implementation of executorial title;

2. selling under one's own power through public auction;

3. underhand sales.

Until now, there have been no guidelines for assessing the economic value of intangible objects such as Copyrights. These norms have been left as norms in law without any implementing regulations until now. In this writing, the Management and Team of the Indonesian Society of Appraisal (Indonesian Appraisal Professional Society abbreviated as MAPPI<sup>34</sup> have carried out a study with several stakeholders in assessing Intellectual Property Assets for Debt Collateral. Because it is

<sup>31</sup> <https://law.ui.ac.id/hak-cipta-sebagai-jaminan-fidusia-terhambat-sistem-valuasi/>

<sup>32</sup> Before this Patent Law (law Number 13 year 2016) and Copyright Law (Law Number 28 Year 2014) was promulgated, generally the objects that were the object of Fiduciary Guarantee were movable property objects consisting of objects in stock (inventory), merchandise, receivables, machine tools and motorized vehicles

<sup>33</sup> <https://www.hukumonline.com/klinik/a/eksekusi-paten-sebagai-objek-jaminan-fidusia-lt590af6f153f9d/>

<sup>34</sup> MAPPI is known as the abbreviation for the Indonesian Society of Appraisers (ISA). The MAPPI Central Management is domiciled in the Capital of the Republic of Indonesia, each Indonesian Appraiser profession is in its entirety as an individual. Founded on October 20 1981, with the name Indonesian Appraisal Professional Society, abbreviated as MAPPI, which is a Professional Association in Indonesia which specifically accommodates professionals involved in the Appraisal Profession with the current number of members being approximately 3500 people spread throughout Indonesia



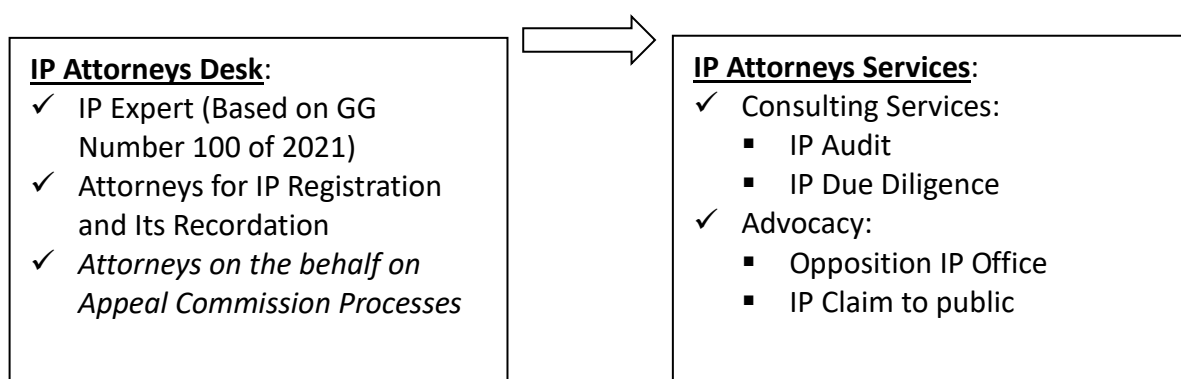
relatively new, the depth of valuation standards is very important because it has a big impact on the valuation results which are determined by the value of money.

Draft for Intellectual Property Assets Valuation Standard by the Indonesian Society of Appraisers (known as MAPPI) was initiated by the Ministry of Tourism and Creative Economy and as a follow-up to Government Regulation Number 24 Year 2022, as implemented regulation Law Number 24 Year 2019 concerning Creative Economy, has prepared an Indonesian Valuation Standard (SPI), together with stakeholders including Indonesian IP Attorneys in the Indonesian Valuation Standards (SPI) Drafting Team, currently holding a public expose on the Draft Indonesian valuation Standards (SPI) specifically for Intellectual Property Valuation for Debt Guarantee., and the MAPPI's mission as follows:<sup>35</sup>

1. Providing a platform for professional development of Indonesian appraisers through continuing education, research, ethics and standards
2. Developing Indonesian Appraisal with an international perspective
3. Improving the quality of Indonesian Appraisal
4. Participate in increasing national development
5. Create appraisers who are beneficial and maintain the honor and dignity of MAPPI
6. Creating and maintaining a conducive business climate for appraisal services and other services; and
7. Realizing good organizational governance from a national and international perspective

**Flow 5:**

**Problems of Professional IP Asset Valuator:  
IP Asset Valuator or Public Appraisal**



The problem does not stop when an IP asset has been assessed by an IP Valuator, in the future it will be revealed that the difficulty of implementing these provisions in the banking sector tends to reject creations (Copyrights) and inventions (Patents) as fiduciary collateral because of the issue of valuation in the form of monetary value. Banking parties in providing credit try so that the credit loan can be returned and if a credit loan occurs, the legal system and norms are clear regarding real movable property which can easily be executed or transferred, but if intellectual property rights will be difficult. in implementation, especially if there is a default and execution of guarantees for works and inventions where there is a high possibility that the creation or invention will no longer have commercial value.

Apart from that, it turns out that there is still a need for a comprehensive understanding regarding the appraisal profession which will later provide assessment results in monetary terms regarding the value of the creation and the value of the invention (specifically for Patents on the basis of registration ownership which must be accompanied by a certificate as proof of ownership of the Patent right). So when there is a financing scheme, especially for debt and guarantees based on intellectual property, which does not yet include the execution mechanism, if the credit for the

<sup>35</sup> <https://mappi.or.id/SitePages/Berita.aspx?item=18>



guarantee of the creation or invention has problems, then in the end, banks in Indonesia are not willing to provide financing with copyright or patent guarantees.

In Copyrights scheme that Creation Work and Invention protected claim of patents must first be registered at the Directorate General of Intellectual Property (DGIP) if it is to be used as an object of Fiduciary security. The goal is that if the debtor defaults, it can be interpreted that the debtor is the Copyright and/ or Patent owner. Then the execution of the object of Fiduciary collateral can then be carried out without having to go through the process and court decision. The shows that the Certificate of Intellectual Property Rights Copyrights and/ or Patent) until now has not been included in the list of collateral referred to by the authorities of Bank Indonesia.<sup>36</sup>

It must be acknowledged that the issue of copyright or Patents as a fiduciary guarantee is not an easy matter, this structural legal matters is at least:

**Firstly**, the Minister, through the Directorate General Intellectual Property (DGIP) Office, is given the authority in accordance with regulations to delete works that have been registered, if the work violates religious norms, moral norms, public order, state defense and security, as well as statutory provisions. Not to mention, if there is a dispute or lawsuit for the cancellation of a work in the Commercial Court which has been registered in the General Register of Works at the Directorate General Intellectual Property (DGIP) Office, it will have an impact on the cancellation of the debt agreement with the guarantee of the Copyright Registration Certificate, then this will be detrimental of the Creditor interests.

**Seconds**, the effectiveness of commercialization of inventions with a patent protection period (protection period of 20 years for standard patents and a period of 10 years for simple patents), because after the expiration date the patent becomes public domain. This condition is different from Copyright Protection which is carried out over a longer period of time in line with the application of regulations in various countries so that the period of Copyright protection in certain fields is enforced during the lifetime of the creator plus 70 (seventy) years after the Creator dies.

**Third**, it must be understood that the legal construction of copyright protection in Indonesia is divided into economic rights and moral rights. Regarding copyright, it can be a fiduciary guarantee limited to economic rights. Second, this transferable economic right must mean that the Copyright Holder is not always the Creator who has moral rights, as a simple example: For example, a book works (non-fiction) becomes commercial on the market when it is sold to consumers (buyers), Creators (Authors), has given a publishing license, which is bound by a publishing agreement, so in this case whether the creator (author) can enter into an agreement directly with a bank or financial institution or it could be that the debtor is the author or publisher.

**Fourth**, the problem becomes increasingly complex when it comes to copyright in the music industry. In the case of music creators, producers, and artists who perform musical performances, and composers, each of them has economic rights to the same form of work. "In fact, the product is a creation, namely from a musical work that was previously recorded with the responsibility and costs of the recording producer (producers of phonogram).

**Fifth**, other problems related to the implementation of alternative dispute resolution (ADR)<sup>37</sup> specific for intellectual property dispute as a standard clause for dispute resolution which must be stated in a debt agreement with collateral for the object of creation (Copyright) and object of invention (Patent), as the chosen and agreed forum (choice of forum). by Debtors (Creators or Inventors) and Creditors (Banking Parties or Financial Institutions).

<sup>36</sup> Christian Mauliate, *Legal Analysis of Copyright as an Object of Fiduciary Guarantee* <https://etd.repository.ugm.ac.id/penelitian/detail/180220>

<sup>37</sup> In relation to the Intellectual Property dispute resolution institution, on April 21 2011 an Intellectual Property Rights Arbitration and Mediation Board (BAMHKI) was established, domiciled in Jakarta, which provides IPR dispute resolution services that are adjudicative, namely arbitration and non-adjudicative, such as mediation, negotiation and conciliation.

With the establishment of BAMHKI, it is hoped that the community and/or business actors will have an alternative to seeking justice, active participation in dispute resolution other than Out of Court Settlement in seeking justice and legal certainty in resolving disputes related to IPR.





As is known, the concept of duplication (reproduction) means transferring the form of a new creation (for example, a novel (fiction) creation) which is then realized by the Film Producer in the form of a film creation with a title and character artist according to the content in the novel. The situation of transferring the creation of this (fiction) novel in fact must obtain approval/permission from the Creator (Author). Apart from that, in film production which involves several parties with their own creative works, for example the musical creations used in the film production, this is the condition so that many parties related, even if only to 1 creation.

Therefore, there needs to be clarity regarding matters and ensuring who has the right to be the debtor in fiduciary guarantees in the form of copyrights, for example written works, which were previously preceded by a debt or financing agreement related to the production and commercialization of the work, so the important role of a notary is needed to prepare the construction of the agreement. debt (authentic deed of agreement) between the artist (creator) as the debtor and the Bank or Finance Company as the creditor, including clauses related to any bundle of rights handed over by the debtor to the creditor as fiduciary collateral.

Another thing that needs to be provided is a market system that can systematically monetize the claim rights from collateral for debts of copyrighted works, because there can be a condition where the creditor holding fiduciary rights does not make a claim to the debtor (Creator), then in business practice a pass-through mechanism is implemented. Collective rights (or known as selling collection rights), then this condition is important to find a market for micro business.

Effectiveness of commercialization of inventions with a patent protection period (protection period of 20 years for standard patents and 10 years for simple patents), because after the expiry period the patent becomes public domain. This condition is different from Copyright Protection which is carried out over a longer period of time in line with the application of regulations in various countries so that the period of Copyrights protection in certain fields is enforced during the lifetime of the creator plus 70 (seventy) years after the Creator dies.

As a note in the practice of Copyright Protection, namely the problem of sale and purchase (sold flat pay) in the condition that the Creation is still not popular enough, but in the future the Creation sells well on the market, thus having the effect of forcing the Creator to buy back the Creation at a high price. Addressing this problem requires implementing regulations as a contractual basis for the use of works for commercial purposes (commercialization of economic rights) by creators and/or owners of related rights, including limiting the transfer of economic rights in the form of a sole flat.

Apart from that, there are also problems related to the publication of copyrighted works (especially music), the relationship between creators, copyright holders and related rights owners becoming members of the Collective Management Organization (CMO) Institution in order to be able to collect rewards or royalties. Creators and/or owners of Related Rights receive Royalty compensation for Works or Related Rights products that are created in a business relationship and used commercially. Collective Management Organization (CMO) Institutions whose function is to collect and manage the economic rights of Creators and owners of Related Rights are required to submit an application for an operational permit to the Minister. Use of Copyrights and Related Rights in multimedia facilities to respond to developments in information and communication technology. Related to the issue of publication and reproduction of Works on the internet, it really needs protection with several aspects including aspects of Protection of Rights (Owners and Licensees).<sup>38</sup>

Issues related to Intellectual Property development touch various aspects such as economic, technological, industrial, socio-cultural aspects, and so on. However, the most important aspect is the legal aspect/legal protection. The law must be able to provide protection for intellectual work so that society is able to develop its creative power which ultimately leads to the goal of successful IPR protection. As we all know, the process, time for alternative dispute resolution (Alternative

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<sup>38</sup>Suyud Margono, "Technical Standard Copyrights Recordation on Platform Digital", paper presentation Webinar., Indonesian Intellectual Property Attorneys Association supported Directorate General Intellectual Property (DGIP), Ministry of Law and Human Rights RI, September 29, 2022

Dispute Resolution/ ADR) and effectively through mediation, arbitration or court processes, as well as the implementation of complaint offenses for criminal prosecution. Trading place managers are responsible for sales places and/or violations of Copyright and/or Related Rights in the shopping centers they manage.

Intellectual Property Disputes include disputes arising from commercial transactions or disputes related to or involving the IP sector, including dispute resolution regarding IPR violations which must be resolved by the Parties to the case before criminal prosecution/remedies are carried out for Copyright violations as intended in Article 95 paragraph (4) Law no. 28 of 2014 concerning Copyright and Related Rights and Patent Infringement as referred to in Article 154 of Law no. 13 of 2016 concerning Patents.

In several laws regarding Intellectual Property Rights it has been accommodated that Parties can resolve civil disputes through dispute resolution outside of court. Intellectual Property Owners often deal with complex contractual relationships involving parties in various different forms of collaboration on research and development, production or marketing of Intellectual Property.

#### 4. Closing

Intellectual Property Rights is one of the company's main assets and therefore their economic interest in IPR becomes increasingly higher. As a consequence, disputes involving these rights can disrupt or even paralyze the activities of companies, especially problems or cases related to IP Assets which should be in the Company's portfolio as owner. The position and involvement of the Intellectual Property Attorneys profession does not stop when an IP asset has been assessed by an IP Valuator, because in the future there will still be a need for assistance and assistance regarding the application of the provisions on Creations (Copyrights) and inventions (Patents) as fiduciary collateral.

Creation protected under Copyrights Law and Invention protected Patent an intangible movable object can be used as an object of fiduciary security. Thus, the Government recognizes that the Copyrights and Patents as one of the objects that can be used as collateral for debt. The movable objects as IP asset referred to in this article occur because they are determined by law, not because they are easy to move. In its implementation, there are still various challenges and obstacles faced, including the limited period of IPR protection, the absence of a clear concept regarding due diligence, assessment of IP assets, and also the lack of juridical support in the form of regulations regarding IPR assets as collateral objects. credit. Based on the matters above, there is a need for further study and discussion regarding the implementation of IPR as collateral in obtaining credit in the financial services sector.

Intellectual Property Rights (particularly object Copyrights and Patent) may as an object of fiduciary guarantee is in accordance with Law Number 42 of 1999 concerning Fiduciary Guarantee where Copyright or Patents can be encumbered with collateral in the form of fiduciary, but not for the object that is encumbered with the Copyrights or Patents, but rather the economic value attached to the Copyright or Patents. Regarding the critical note that a reliable valuation system is needed if you still want to maintain copyright or Patents as a fiduciary guarantee. This valuation system needs to be managed by a special institution to ensure that the value of rights encumbered by fiduciaries can be enjoyed by fiduciary holders if the debtor breaks his promise.

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- [5] Law No. 31 of 2000 concerning Industrial Design;
- [6] Law No. 28 of 2014 concerning Copyright and Related Rights;
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