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## Copyright Content on the YouTube Platform as Collateral for Creative Economy Financing

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**Abstract:** *The utilization of technology presents an opportunity for creative economy practitioners to expand their work, one of which is by leveraging digital platforms. The government provides support for creative economy practitioners through the implementation of Government Regulation Number 24 of 2022, which recognizes intellectual property rights as collateral for financing, similar to how copyright content on platforms like YouTube can be used as fiduciary collateral for intangible movable assets. Through this financing scheme, there is potential for content creators to utilize their content as collateral, aiming to secure financing for productivity. This research employs a juridical analysis method to explore the potential of copyright content on the YouTube platform as collateral for financing within the creative economy. The conclusion drawn is that it is indeed feasible to utilize copyright content on the YouTube platform as collateral for financing, in the form of tangible collateral. Valuation, on the other hand, can be based on the number of viewers or income approaches, even though as of now, there isn't a definitive standardization regarding this matter.*

**Keywords:** *Copyright, YouTube Content, Financing Collateral, Creative Economy.*

### INTRODUCTION

Digital development has led Indonesia to face the era of Society 5.0. This evolution began with the advent of digital transformation as a means of handling tasks through the utilization of information technology to achieve efficiency and effectiveness. The utilization of digital technology presents an opportunity for Indonesia's human resources to expand their creations, particularly within the creative industry. Digital technology in this context refers to information technology that emphasizes activities performed in a computer/digital environment, thereby widening the scope of space and time through the utilization of digital technology, which will have a broad and impactful effect, especially on the presence of the

creative industry and the advancement of Indonesia's creative economy. According to data from the Ministry of Tourism and Creative Economy, in 2019, the creative economy sector contributed Rp 1,153.4 trillion to the GDP, accounting for 7.3% of the national GDP<sup>1</sup>. One of the sub-sectors within the creative economy is the "Film, Animation, and Video" subsector, which can be connected to the existence of digital platforms as one of the spaces for creative work in the field of digital entertainment.

The creative economy in this context is a concept derived from the emergence of a new economic paradigm that prioritizes information and creativity based on ideas from human resources as a production factor. Viewed in terms of its contribution to companies, the creative economy offers a dependable concept when businesses face closure due to a national economic crisis, thereby bolstering national economic resilience<sup>2</sup>. In history, the inception of the creative economy traces back to the book titled "Creative Economy, How People Make Money from Ideas," authored by Howkins<sup>3</sup>. He explained that the creative economy is an economic endeavour where the inputs and outputs are in the form of ideas. In this context, it can be linked that the "ideas" referred to are notions or concepts that stem from human creativity, capable of generating considerable profits. Through the elucidation of the creative economy, it's evident that its contribution is relatively high, both on an individual level and within the national economy. One of the thriving activities within the creative economy lately is the emergence of platforms like YouTube, providing creators with a medium to share their creations.

YouTube is a global digital platform with video sharing features, allowing users to upload, watch, and share videos with other users for free<sup>4</sup>. According to We Are Social, there were 2.51 billion YouTube users in January 2023, with 139 million of them originating from Indonesia. These numbers highlight the significant enthusiasm of Indonesian society towards the platform<sup>5</sup>. The presence of YouTube and its content is linked to Intellectual Property Rights, particularly the copyright objects related to cinematographic works, including creations like moving images. Copyright is an exclusive right that is declarative or automatic, encompassing moral rights and economic rights for the creator, whether an individual or a group, who individually or collaboratively produces a distinctive and personal creation, as defined in Article 1 of Law Number 28 of 2014 concerning Copyright. Moral rights, as mentioned in the article, are perpetual rights inherent to the creator, while economic rights are the exclusive rights granted to the creator for economic utilization of their creation<sup>6</sup>. Furthermore, copyright, as a form of intellectual property rights, exists to support the intellectual property rights owned by creators, aiming to acknowledge their creative efforts and encourage others to further develop them. This legal system of intellectual property reflects societal interests through market mechanisms<sup>7</sup>.

Financing with copyright content collateral on the YouTube platform is an effort to realize the goals of Pancasila and the 1945 Constitution through strengthening society's

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<sup>1</sup> Kominfo, 'Pemerintah Dorong Optimalisasi Pertumbuhan Industri Kreatif Indonesia' *KOMINFO* (14 January 2022).

<sup>2</sup> Sri Wahyuningsih and Dede Satriani, 'Pendekatan Ekonomi Kreatif Terhadap Pertumbuhan Ekonomi' (2019) 8 *Iqtishaduna: Jurnal Ilmiah Ekonomi Kita* 195.

<sup>3</sup> Muhammad Alhada Fuadilah Habib, 'Kajian Teoritis Pemberdayaan Masyarakat Dan Ekonomi Kreatif' (2021). *Journal of Islamic Tourism, Halal Food, Islamic Traveling, and Creative Economy* 106.

<sup>4</sup> Y Fitriani, 'Pemanfaatan Media Sosial Sebagai Media Penyajian Konten Edukasi Atau Pembelajaran Digital' (2021). *JISAMAR (Journal of Information System, Applied, Management, Accounting and Research)* 1006.

<sup>5</sup> S Sadya, 'Daftar Negara Pengguna YouTube Terbesar Awal 2023' (*Data Indonesia*, 24 February 2023).

<sup>6</sup> JF Gunawan and Yunanto, 'Implementasi Penggunaan Kekayaan Intelektual Sebagai Jaminan Kredit Perbankan' (2022) 7 *Syntax Literate: Jurnal Ilmiah Indonesia* 18528.

<sup>7</sup> K Setyowati and others, 'Hak Kekayaan Intelektual Dan Tantangan Implementasinya Di Perguruan Tinggi'.

capacity for economic growth, as stated in Article 33, paragraph (4) of the 1945 Constitution, which declares that Indonesia's economy is a national economy based on the principles of togetherness, environmental awareness, self-reliance, as well as balanced progress and national economic unity. This financing represents a form of incentive for creative economy practitioners to accelerate their businesses through the productivity of their creations. Financing backed by Intellectual Property Rights (IPR) is ensured by the state through the implementation of Government Regulation Number 24 of 2022 concerning the Implementation Regulation of Law Number 24 of 2019 concerning the Creative Economy. In the explanation provided by this regulation, it is stated that the scheme of financing based on intellectual property rights aims to optimize human resources in the field of the creative economy, enabling them to develop productively and extensively, thus contributing to the national economy as a source of income through the utilization of the added value of intellectual property.

In the presence of a financing scheme, a key consideration is the provision of collateral for the debt provided by the borrower to the bank. Fiduciary collateral is imposed on the copyright content on the YouTube platform as stated in Article 16, paragraph (3) of Law Number 28 of 2014 concerning Copyright, classified as an intangible movable asset. This is in line with Article 499 of the KUH Perdata, which states that property includes any goods and any rights controlled by ownership. Under Law Number 42 of 1999 concerning Fiduciary Guarantee, there exists the legal foundation for the binding of movable property, whether tangible or intangible, as well as immovable property that cannot be encumbered by a Mortgage as collateral for debt repayment. Although copyright is a declarative form of intellectual property, when used as collateral for financing with a bank, the related copyright must meet the requirements of being registered with the Directorate General of Intellectual Property Rights (DJKI). Copyright as an object of fiduciary collateral has previously been adopted by several countries that have successfully developed credit based on intangible assets.

Furthermore, intellectual property as a collateral object in banking will undergo valuation or assessment of the debt collateral based on its economic value. The presence of collateral in banking is closely related to its inherent nature of having economic value and being easily marketable, especially when auctioned in the event of default. In connection with collateral in the form of intellectual property rights, as stipulated in Government Regulation Number 24 of 2022, valuation or assessment is conducted using cost approach, market approach, income approach, and/or other applicable assessment methods according to prevailing valuation standards. However, there are distinct differences in assessing collateral with an intellectual property rights financing scheme due to its differing characteristics from tangible collateral in general. There are several challenges and obstacles in valuing YouTube content as collateral, including: (1) the fluctuating nature of YouTube content value; (2) the readiness of banks and appraisers to evaluate YouTube content as collateral for debt. Therefore, the author is interested in researching the financing scheme involving intellectual property rights with the title 'The Potential of Copyright Content on the YouTube Platform as Collateral for Creative Economy Practitioners'.

The research method employed is normative juridical research. Normative juridical research is conducted with the aim of identifying legal principles and theories associated with existing practices in the field<sup>8</sup>. This research also used comparative study between Singapore and Indonesia. The legal regulations used in this research include Government Regulation on Creative Economy, Copyright Law, Fiduciary Guarantee Law, and several other legal regulations. The research also utilizes literature analysis from secondary legal sources, including books, journals, and articles. Furthermore, to obtain practical data, tertiary legal

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<sup>8</sup> S Soekanto and S Mamudji, 'Penelitian Hukum Normatif'. (2003). PT Raja Grafindo Persada.

materials related to the issues arising from the implementation of YouTube content copyright as collateral in banking are utilized. These materials are derived from the outcomes of Focus Group Discussions (FGDs) held jointly with the Directorate General of State Wealth (Ministry of Finance, Republic of Indonesia) and MAPPI.

## **METHODS**

The research method employed is normative juridical research. Normative juridical research is conducted with the aim of identifying legal principles and theories associated with existing practices in the field (Soekanto & Mamudji, 2003). This research also used comparative study between Singapore and Indonesia. The legal regulations used in this research include Government Regulation on Creative Economy, Copyright Law, Fiduciary Guarantee Law, and several other legal regulations. The research also utilizes literature analysis from secondary legal sources, including books, journals, and articles. Furthermore, to obtain practical data, tertiary legal materials related to the issues arising from the implementation of YouTube content copyright as collateral in banking are utilized. These materials are derived from the outcomes of Focus Group Discussions (FGDs) held jointly with the Directorate General of State Wealth (Ministry of Finance, Republic of Indonesia) and MAPPI.

## **RESULTS AND DISCUSSION**

### **Copyright Content on the YouTube Platform as Collateral**

Copyright is an exclusive right that arises declaratively or automatically, encompassing both moral and economic rights for the creator, who is an individual or a group of individuals, creating a distinctive and personal creation either individually or collaboratively, as stipulated in Article 2 of Law No. 28 of 2014 concerning Copyright. Copyright is a natural right that is absolute in nature and protected throughout the creator's lifetime or for 70 years after the creator's death<sup>9</sup>. The existence of copyright content on the YouTube platform is also intertwined with the Reward Theory put forth by Robert N. Sherwood, which pertains to intellectual works<sup>10</sup>. The presence of collateral for this financing scheme is an implementation of the Economic Growth Stimulus Theory, where the use of copyright content on the YouTube platform as collateral for financing creative economy practitioners can support economic development by enhancing the country's intellectual property assets<sup>11</sup>. Copyright fundamentally constitutes property, as stated in Article 499 of the Civil Code, which defines property as every object and every right that can be controlled by ownership. Intellectual property rights can serve as collateral in financing schemes based on economic rights, as outlined in Article 8 of Law No. 28 of 2014 concerning Copyright, which pertains to the economic benefits arising from the sale of goods or services, allowing for the assessment of assets. Economic rights have a positive impact on the development of the creative economy, and they must be safeguarded by the legal protection of copyright within Indonesia's national creative economy<sup>12</sup>.

The advancement of technology in the field of Copyright has given rise to digital Copyright, which can be linked to YouTube content through videos uploaded for educational,

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<sup>9</sup> KM Simatupang, 'Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital' (2021) 15 Jurnal Ilmiah Kebijakan Hukum.

<sup>10</sup> Helitha Novianty Muchtar and others, 'Urgensi Pengaturan Valuasi Paten Untuk Start Up Dalam Rangka Meningkatkan Perekonomian Di Era Industri 4.0' (2021) 6 Jurnal Bina Mulia Hukum 84.

<sup>11</sup> Hari Sutra Disemadi and Cindy Kang, 'Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0' (2021) 7 Jurnal Komunikasi Hukum (JKH) 54.

<sup>12</sup> AM Ramli, 'Hak Cipta Disrupsi Digital Ekonomi Kreatif' [2018] PT. Alumni.



business, and entertainment purposes. YouTube is a popular video-sharing website where users can upload, watch, and share video clips for free<sup>13</sup>. The content created by YouTubers on the platform is closely tied to Copyright, including cinematographic works and creations like moving images. The existence of YouTube content, classified as digital Copyright, can also be understood as property, opening up potential opportunities for creative economy practitioners to use their content as collateral for financing. This is further supported by data from We Are Social, reporting that there are 2.51 billion YouTube users<sup>14</sup>, indicating a significant potential to drive the creative economy industry through productivity on the YouTube platform. The stimulation of the creative economy industry through the YouTube platform is also related to data from the Ministry of Tourism and Creative Economy, which stated that in 2019, the creative economy sector contributed Rp 1,153.4 trillion to the GDP, accounting for 7.3% of the National GDP. This can be attributed to the presence of digital platforms as spaces for creative work in the digital entertainment field<sup>15</sup>.

In supporting the advancement of the creative economy in Indonesia, YouTube content as digital Copyright can be used as collateral for debts through fiduciary guarantee, as stated in Article 16, paragraph (1) of Law No. 28 of 2014 concerning Copyright, which declares that “Copyright is an intangible movable property”. Therefore, copyright can be used as an object of fiduciary guarantee, as further elaborated in paragraph (3). Fiduciary guarantee, as defined in Article 1, Number 1 of Law No. 42 of 1999 concerning Fiduciary Guarantee, is “the transfer of ownership rights to an asset based on trust, with the condition that the ownership of the transferred asset remains with the owner.” Given that the nature of a fiduciary guarantee agreement is supplemental, it can also be understood that a fiduciary guarantee agreement for Copyright collateral is an additional agreement stemming from a credit or financing agreement between the creditor and the debtor. Just as with fiduciary guarantee, and considering Copyright's declarative nature, when intending to use it as collateral for financing, a Copyright must first fulfilled the requirements for official registration with the Directorate General of Intellectual Property Rights, as stated in Article 10 of Government Regulation No. 24 of 2022.

YouTube content copyright can be subject to fiduciary guarantee because creators have the opportunity to generate economic benefits through AdSense from advertisements contained within the uploaded content. Due to this economic value, it can be presented as collateral in financing. The economic gain earned by creators is based on the advertisements featured within their content or the number of viewers for their video content. In this regard, YouTube is granted permission to insert advertisements into videos uploaded by creators, generating a profit of 45% for users and 55% for YouTube<sup>16</sup>. Therefore, the economic value derived from advertisements or content viewership holds significant potential for financing creative economy practitioners, especially if consistency is maintained in content production.

Linked to banking, in implementing financing schemes, while also acting as an intermediary institution that collects and channels funds to the public, banks must consider the implementation of the principle of prudence when providing funds. The principle of prudence is also related to the bank's role as an agent of development, playing a part in economic movement by offering opportunities for the public to engage in investment, distribution, and consumption of goods and services through funds channel by the bank<sup>17</sup>.

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<sup>13</sup> AAG Mahardhika, ‘Pelanggaran Dan Kebijakan Perlindungan Hak Cipta Di Youtube’ (2021) 13 Jurnal Ilmiah Living Law 100.

<sup>14</sup> Sadya (n 5).

<sup>15</sup> KOMINFO (n 1).

<sup>16</sup> *ibid.*

<sup>17</sup> L Abubakar and T Handayani, ‘Implementasi Prinsip Kehati-Hatian Melalui Kewajiban Penyusunan Dan Pelaksanaan Kebijakan Perkreditan Atau Pembiayaan Bank’ (2018) 13 Jurnal Rehtidee 62.

When applying the principle of prudence in banking, it can be associated with the 5C Principle, consisting of Character, Capacity, Capital, Collateral, and Condition of Economy, aligned with the prevailing legal basis in Article 8, paragraph (1) of the Banking Law, aimed at ensuring the soundness of banks.

Using YouTube content as collateral, specifically through Copyright, as a part of intellectual property rights, can be linked to the application of the 5C Principle, particularly Collateral, which involves placing collateral as a preventive measure by the bank when providing loans. Collateral in financing is a step to ensure debt repayment by the borrower and to facilitate the auction of the collateral in case of loan default. In applying the principle of prudence, YouTube content used as collateral for financing must have valid originality and assured economic prospects in the future as a form of risk mitigation for the bank in providing loans. According to interviews conducted with MAPPI, the economic value derived from YouTube content, in order to be used as collateral for creative economy practitioners, is assessed based on the number of viewers or viewership of the related content<sup>18</sup>.

In addition to the imposition of collateral on YouTube content Copyright, another option is also provided as a financing measure, as outlined in Article 9 of Government Regulation No. 24 of 2022, which includes contracts in Creative Economy activities and receivables in Creative Economy activities. Contracts refer to agreements originating from creative economy activities, such as licensing agreements, employment contracts/job orders received by Creative Economy practitioners. On the other hand, receivables pertain to the right to collect royalties that are required to be paid by users of songs and/or musical instruments for commercial use (Explanation Article 9 Government regulation Number 24 of 2022). However, regarding contracts in Creative Economy activities, in practice, they are mostly used to enhance a company's credibility during credit applications, rather than serving as separate collateral for the company. For example, the assessment of a company's Brand in Siloam is aimed at boosting branding as part of the company's portfolio.

In its implementation, it is also possible within YouTube content associated with AdSense to be subject to receivables through the earnings of creators, which can be redirected as payment to creditors. AdSense is an advertising program between site owners and advertisers intended to promote their products, implemented by Google with the objective of gaining economic benefits from ad revenue<sup>19</sup>. The imposition of these receivables is obtained from YouTube to video creators under specific conditions that every user must comply with in order to earn from the uploaded video content. One of these conditions is related to the monetization policy, which is automatically paid when the monetization feature is activated and approval is obtained to link the YouTube channel to Google AdSense<sup>20</sup>. However, in implementing this monetization policy, there are several requirements that must be fulfilled, such as content creators needing to have 4000 watch hours and 1000 subscribers in the past year<sup>21</sup>.

Nevertheless, these receivables can be replaced by a more common and straightforward method, which is through a scheme of transferring claims to banks, given

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<sup>18</sup> MAPPI, 'Aspek Hukum Jaminan: Kesiapan Perbankan Dalam Pembiayaan Berbasis Kekayaan Intelektual Bagi Pelaku Ekonomi Kreatif'.

<sup>19</sup> Viskha Purwita Lana and others, 'Urgensi Kelengkapan Teknis Dalam Regulasi Penggunaan Konten YouTube Sebagai Jaminan' (2022) 10 *Padjadjaran Law Review*.

<sup>20</sup> Sinurat Tedy Setiada, 'Perlindungan Hukum Atas Pelanggaran Pembajakan Hak Cipta Video Di Situs Youtube' (2020) 9 *Jurnal Ilmu Hukum* 331.

<sup>21</sup> Muhamad Fasya Nur Arbaien and Elis Nurhasanah, 'Analisis Program Monetisasi Youtube Menurut Hukum Ekonomi Syariah' (2023) 10 *Al-Muamalat: Jurnal Ekonomi Syariah* 51.

their almost similar nature. The transfer of claims can be executed through a Cession, as stipulated in Article 613 paragraph (1) of the KUH Perdata which states that “The transfer of claims on behalf of and for the benefit of another intangible object shall be effected by means of executing an authentic instrument or a private instrument, whereby the rights to the intangible object are transferred to another person.” Hence, when a transfer of claims occurs, the creditor's identity also changes from the old creditor to the new one, established through an authentic instrument or a private instrument in accordance with contract law. In this context, AdSense, as revenue obtained from YouTube content, can also be transferred through cession, as the copyright of the content contained therein can be deemed an intangible movable object with inherent ownership rights.

The practice of copyright on YouTube content can be associated with the existence of intellectual property as collateral for financing, as previously implemented by several countries worldwide. One of the Southeast Asian countries that has implemented a financing scheme based on intellectual property is Singapore. Singapore is a country quite responsive to the financing scheme based on intellectual property due to the presence of numerous intellectual property rights holders who operate as economic actors, such as inventors with patents or creators with copyrights. Based on data from Brand Finance, Singaporean food and beverage brands generated the highest brand value at S\$5.8 billion. The success of this financing scheme is closely tied to the presence of the Intellectual Property Office of Singapore (IPOS), which is the national authority responsible for registering and overseeing the administration of intellectual property rights in Singapore<sup>22</sup>. There are several comparisons that can be made between Singapore and Indonesia, such as Intellectual Property (IP) valuation standard, IP appraiser, and the number of IP appraiser.

**Table 1. Comparative Study Between Singapore and Indonesia**

	<b>Singapore</b>	<b>Indonesia</b>
1. IP Valuation Standard	1. Practice Note, Guidance Note (IVAS-SAC) 2. IVS 3. Other Valuation Standard 4. In the drafting process of valuation standard	1. SPI 320– Intangible Asset Valuation Standard (IVS 210) 2. In the drafting process of valuation standard
2. IP Appraiser	Appraisers/Companies accredited as Panel of Valuers (POV) by IPOS	Public Appraiser, Registered with the Ministry of Finance
3. Number of IP Appraiser	1. 7 Appraiser/ Company – Appraiser Panel (data 2018) 2. 198 - CVA Certified Valuation Analyst (Business Appraiser) 3. Appraiser from Big 4 Accounting Firms	1. 111 Certificate Business Appraiser P dan PB – MAPPI (**) 2. No Appraisers with Special Certification for IP Appraisal yet

Source: MAPPI 2023

Although there are potential and general legal provisions for YouTube content's Copyright to serve as collateral for financing in the creative economy, up to this point, no cases of such collateral implementation have been found, and even separate copyright used as

<sup>22</sup> IPOS, ‘Unlocking IP-Backed Financing: Country Perspectives Singapore’s Journey’.

collateral in financing have not been identified. In this regard, there are three main issues that pose challenges in utilizing intellectual property as financing collateral<sup>23</sup>:

1. Intellectual property has a distinct nature from tangible assets as defined in the Burgerlijk Wetboek.
2. There is a lack of standards to determine the economic value of intellectual property.
3. In case of debtor default, execution faces challenges due to the differing characteristics of intellectual property from tangible assets as defined in the Burgerlijk Wetboek.

### **Valuation of Collateral for Copyright Content on the YouTube Platform**

The valuation of collateral for copyright content on the YouTube platform is carried out to implement the bank's prudential principle along with the implementation of the 5C banking principle. The purpose of the prudential principle is to ensure that the bank is always in a sound condition or can be said to be consistently liquid and solvent<sup>24</sup>. By enforcing this principle, it is expected that the level of public trust in the banking system remains high, encouraging people to willingly and confidently deposit their money in banks. Collateral, serving as part of the 5C banking principle, can take the form of personal guarantees or property guarantees. Property collateral is a specific form of collateral designed as a preventive measure in case of debtor default. In property collateral agreements, the property remains the debtor's ownership, only being held as security against the possibility of debtor default<sup>25</sup>. Providing property collateral from the debtor for the settlement of their debt to the creditor constitutes an act of segregating the debtor's wealth for performance fulfilment<sup>26</sup>. On the other hand, personal guarantees are imposed on specific individuals and can only be upheld against particular debtors, involving the debtor's general wealth<sup>27</sup>. Regarding copyright content on the YouTube platform, as with other forms of intellectual property, it is categorized as property collateral subject to fiduciary collateral.

The valuation or assessment of collateral in the banking sector has previously been regulated in the POJK No. 40/POJK.03/2019 concerning Assessment of the Quality of Assets of Commercial Banks. However, unfortunately, this regulation does not provide specific guidance on the assessment of intellectual property as collateral. In conducting the valuation of copyright content on the YouTube platform, the related collateral must possess economic value and be easily marketable. The economic value referred to in copyright content on the YouTube platform arises from the utilization and exploitation of creative works by creators or copyright holders. Generally, the presence of intellectual property as collateral for debt can be linked to the International Valuation Standards (IVS) 210 concerning intangible assets. Intellectual property is categorized as an intangible asset that lacks physical substance and takes the form of non-monetary assets that manifest through their economic properties. The following are categories of intangible assets<sup>28</sup>:

1. Intangible assets related to marketing, which can also be associated with a type of intellectual property known as trademarks.

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<sup>23</sup> UB Jaman, 'Prospek Hak Kekayaan Intelektual (HKI) Sebagai Jaminan Utang' (2022) 1 Jurnal Hukum Dan HAM Wara Sains 15.

<sup>24</sup> E Mulyati and FA Dwiputri, 'Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan' (2018) 1 Acta Diurnal Jurnal Ilmu Hukum Kenotariatan 134.

<sup>25</sup> Niken Prasetyawati And Tony Hanoraga, 'Jaminan Kebendaan Dan Jaminan Perorangan Sebagai Upaya Perlindungan Hukum Bagi Pemilik Piutang' (2015) 8 Jurnal Sosial Humaniora 120.

<sup>26</sup> Gentur Cahyo Setiono, 'Jaminan Kebendaan Dalam Proses Perjanjian Kredit Perbankan (Tinjauan Yuridis Terhadap Jaminan Benda Bergerak Tidak Berwujud)' (2018) 1 Transparansi Hukum.

<sup>27</sup> S HS, 'Perkembangan Hukum Jaminan Di Indonesia' [2004] PT Raja Grafindo Persada.

<sup>28</sup> MAPPI (n 18).



2. Intangible assets related to customers.
3. Intangible assets related to art, which can be associated with a type of intellectual property known as copyright.
4. Intangible assets related to contracts, which can be linked to contracts arising from the existence of intellectual property rights.
5. Intangible assets related to technology, which can be associated with a type of intellectual property known as patents.

The copyright that can be used as collateral for debt must have the potential for future economic benefits and be able to restrict others' access to those benefits. The economic benefits referred to entail the ability to generate income from the sale of goods or services, which also encompasses cost savings or other advantages derived from the use of the related asset.

At present, the valuation of intellectual property rights, as also applicable to the valuation of Copyright content on the YouTube platform, is limited to its position as part of a debtor's or company's portfolio, rather than being treated as separate intellectual property rights to be used as collateral, as stipulated in PP Number 24 of 2022. Intellectual property rights that are part of a company can be leveraged to enhance business credibility, as seen in the case of the valuation of the Siloam hospital brand, which is linked to the company's branding strength in influencing market value. Therefore, even though legally every intellectual property right can be used as collateral, in practice, for intellectual property rights to be utilized as collateral, they must be officially registered with the Directorate General of Intellectual Property, have economic value from commercialization, be separable or identifiable, and tend to have stable value<sup>29</sup>.

In order for the Copyright content on the YouTube platform to qualify as collateral for financing, it must be assessed based on both its current and future value, leading to the conclusion that the related collateral holds a stable value. The valuation of Copyright content on the YouTube platform can be conducted through the earnings derived from metrics such as Cost Per Click (CPC), Revenue Per Mille Impression (RPM), and AdSense, each having varying values depending on factors such as country, view count, video category, and traffic source. However, according to insights gathered from MAPPI, the most influential factor in valuing Copyright content on the YouTube platform is the viewer count, which is directly linked to the debtor's sustainability and credibility. Consequently, the value of Cost Per Click (CPC) holds the highest significance. Additionally, AdSense revenue generated through viewers can also be associated with income calculations using a system of earnings per 1000 impressions or Cost Per Mille (CPM), which varies depending on the creator's location. For instance, Indonesia's average CPM stands at 0.5 dollars for videos with around 1000 viewers<sup>30</sup>. However, in practice, using Copyright content on the YouTube platform as collateral is not yet a common practice due to the fluctuating nature of its value. One challenge arising from the fluctuating value of Copyright content on the YouTube platform is the possibility of content piracy carried out by third parties. YouTube has actually introduced a complaint form for reporting indications of copyright violations committed by irresponsible parties, and such cases may result in the permanent removal of copyright-infringing channels. However, this still presents a potential risk of creators not having their rights fully upheld, as ownership of copyright cannot be enforced by YouTube itself, as stated on the YouTube support website<sup>31</sup>.

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<sup>29</sup> *ibid.*

<sup>30</sup> Alfi Nur'aini, 'Monetisasi Youtube Perspektif Tafsir Maqashidi' (2021) 22 *Jurnal Penelitian Agama* 65.

<sup>31</sup> Purwita Lana and others (n 19).

According to the YouTube Copyright provisions, creators are only allowed to upload their own videos or videos of others that have proper usage permissions. Creators are not permitted to upload content that they do not own or use someone else's creation without official permission from the creator. Originality, as a requirement for copyright on YouTube content, signifies ownership of the creator's work, without necessitating elements of novelty or innovation. It simply needs to fulfill the condition that the creation genuinely originates from the creator's work or thoughts<sup>32</sup>. Copyright for content on the YouTube platform is applicable when the content is published, automatically conferring copyright and legal protection based on declarative principles. Consequently, published YouTube content becomes subject to copyright and can undergo valuation for fiduciary collateral within the framework of intellectual property-based financing for creative economy participants.

The valuation of copyright content on the YouTube platform as intellectual property can be conducted using several approaches as stated in Article 12 paragraph (1) of Regulation Number 24 of 2022. Intellectual property valuation can employ the following methods:

1. Cost approach;
2. Market approach;
3. Income approach; and/or
4. other valuation approaches in accordance with applicable standards.

The assessment carried out using the above approaches is conducted by business appraisers. Article 5 of Ministry of Finance Regulation Number 228/PMK.01/2019 on the Second Amendment to Minister of Finance Regulation Number 101/PMK.01/2014 concerning Public Appraisers lists four categories of appraisal services: simple property appraisal, property appraisal, business appraisal, and personal property appraisal. When related to valuing intellectual property as collateral, the applicable category is business appraisal as specified in PMK 101. As of now, the Ministry of Tourism and Creative Economy (Kemenparekraf) has not established an intellectual property appraisal framework for collateral, thus there is a possibility that appraisal entities such as MAPPI may fulfill this role. In assessing intellectual property, business appraisers follow a hierarchy of valuation approaches as outlined below<sup>33</sup>:

1. The first hierarchy is the market approach, which involves seeking comparative data such as comparing with previous market transactions or other companies.
2. The second hierarchy is the income approach, where future income estimates serve as the basis for valuing intellectual property collateral. Factors influencing the income approach for intellectual property include:
  - a. Identifying the economic lifespan or economic period of the intellectual property;
  - b. Analyzing the intellectual property risk to estimate the risk compared to general assets.
3. The third hierarchy is the cost approach, involving debt value, registration costs, and other costs arising from the asset.

By employing the chosen valuation method, in its application to the Copyright of content on the YouTube platform used as collateral, the income approach can be utilized. This involves estimating future earnings through AdSense monetization, as long as the channel is eligible for association with Google AdSense. Additionally, it must be ensured that the content's originality is guaranteed, it doesn't contain prohibited elements, and it's officially registered with the Directorate General of Intellectual Property with a copyright certificate obtained for the content created by the creator. Copyright of content on the YouTube platform can indeed be subject to intellectual property collateral. However, this

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<sup>32</sup> Vinka Kurnia Dewi, Ferdiansyah Putra Manggala and Ferdiansyah Putra Manggala, 'Pembebanan Jaminan Fidusia Pada Konten Youtube Yang Telah Memiliki Iklan (Adsense)' (2022) 3 INICIO LEGIS 116.

<sup>33</sup> MAPPI (n 18).

should ideally be accompanied by specific regulations concerning the valuation methods used. Currently, the valuation of Copyright of content on the YouTube platform as separate collateral hasn't been conducted, and thus there hasn't been established and definite regulation regarding the methods involved. Nevertheless, according to input from MAPPI, the most plausible indicators for evaluating Copyright of content on the YouTube platform are credibility, originality, and the number of viewers on the related content.

Another aspect to consider when applying Copyright of content on the YouTube platform is ensuring compliance with the eligibility criteria for collateral set by banks, which are outlined as follows<sup>34</sup>:

1. Availability (presence of collateral in either form or supporting documents)

Copyright of content on the YouTube platform can be associated with intangible movable property. According to the Copyright Law, intangible property can be linked to fiduciary collateral, which is also in line with the provisions of Government Regulation Number 24 of 2022. Additionally, attention should be given to the existence of supporting documents. In this context, it can be linked to the requirements of an intellectual property right to be used as collateral, namely being register and obtaining a certificate from the Ministry of Law and Human Rights (Kemenkumham), specifically from the Directorate General of Intellectual Property (DJKI).

2. Compatibility (suitability as collateral)

Collateral in financing, which serves to provide confidence to creditors in extending funds to debtors, must have economic value that can cover potential risks in the future, particularly in the case of loan default. For Copyright of content on the YouTube platform as collateral for financing, the content should possess promising value. This ensures that the function of collateral in risk mitigation is achieved through the existence of economic value or benefits that the bank obtains when faced with loan default.

3. Executability (can be transferred or executed)

For Copyright of content on the YouTube platform, it must be ensured that there is ongoing economic value and a valid duration of the copyright, enabling its transfer through legal registration.

Up to the present time, there is no specific standardization in place for valuing Copyright of content on the YouTube platform as collateral. This is due to several challenges that fundamentally apply to the valuation of intellectual property rights in general. The challenges in conducting such valuation include difficulties in assessment due to limitations in acquiring market data. This issue arises from the time limitations associated with the protection period of various types of intellectual property rights, which are considered based on their economic lifespan<sup>35</sup>. As a result, transaction data is required, indicating the agreed-upon prices among participants based on cash flow assumptions. Additionally, a database of intellectual property transactions is needed, encompassing data on intellectual property registration, royalty or licensing data, and transaction data. This would enable the application of valuation methods.

In addition to the need for a database to facilitate the valuation of intellectual property rights, including Copyright of content on the YouTube platform, there is also a requirement for specific legal regulations that support the implementation of intellectual property rights as collateral in banking, similar to the enforcement of supporting regulations or policies, in line with Regulation No. 24 of 2022. This is necessary to ensure legal certainty for banks when assuming the risk of using intellectual property rights as collateral, based on the principle of

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<sup>34</sup> IA Sukihana and IGA Kurniawan, 'Valuasi Merek Sebagai Jaminan Kredit Perbankan: Relevansi Dalam Pembentukan Lembaga Penilai Kekayaan Intelektual' (2018) 9 Jurnal Magister Hukum Udayana.

<sup>35</sup> MAPPI (n 18).

banking prudence. This is particularly relevant given the challenges in valuing Copyright of content on the YouTube platform, which tends to have an unstable value. The existence of Copyright as collateral for financing also aligns with the principles of the Berne Convention, which fundamentally states that protection should not depend on compliance with formalities, emphasizing the principle of automatic protection. This principle is recognized in Indonesia, as copyright protection remains valid even if not registered. Nevertheless, specifically concerning Copyright intended as collateral in financing, it must be registered with the Ministry of Law and Human Rights or the Directorate General of Intellectual Property, aiming to ensure legal certainty for both creditors and debtors<sup>36</sup>.

## CONCLUSIONS

Copyright of content on the YouTube platform is a type of digital copyright that can be categorized as a property, as regulated in Article 499 of the Civil Code, with an absolute nature, granting creators the right to protection over their works. The contents on the YouTube platform encompass Copyright in the form of cinematographic works, including creations involving moving images. With YouTube's popularity and its contribution of 7.3% to the national GDP, it presents significant potential for creative economy participants to express their artistry. The government supports this endeavour through the enactment of Regulation No. 24 of 2022, which designates Copyright as collateral, particularly stipulated in Article 9, paragraph (2). Copyright of YouTube content can be subject to fiduciary collateralization due to the potential for creators to generate economic benefits through AdSense revenue from advertisements and based on the number of viewers of the related content. Apart from being used as collateral, Copyright of content on the YouTube platform can also be associated with contracts within the Creative Economy activities, including licensing agreements, employment contracts, or work orders received by Creative Economy participants. Moreover, Copyright of content on the YouTube platform can also be linked to receivables within Creative Economy activities, specifically the right to claim royalties or AdSense revenue from content. This revenue can be transferred as payments to creditors.

The valuation carried out on Copyright of content on the YouTube platform, used as collateral for financing, is related to the application of the prudential banking principle, particularly the 5C banking principle, with a focus on collateral. Currently, there are no implementing regulations or standardized norms related to intellectual property rights as collateral. Therefore, in the valuation of Copyright of content on the YouTube platform, it can be based on the number of viewers, which is associated with the debtor's sustainability and credibility, making the most influential value the Cost Per Click (CPC). The authorized entity to conduct this valuation is a business appraiser, as outlined in PMK 101, who must perform their duties based on the hierarchy of valuation methods: (1) market approach, (2) income approach, and (3) cost approach. However, to date, there has been no practice of utilizing Copyright of content on the YouTube platform as separable collateral from a company; it has mainly been restricted to portfolio needs of the company.

Therefore, the establishment of a transaction data repository for intellectual property rights, through an IP exchange, is needed to enable valuation methods. The author suggests that the government expedite the preparation of supporting instruments for Government Regulation No. 24 of 2022, such as data transaction validation, POJK, PBI, or other related regulations, so that banking institutions can have standardized practices and legal certainty in implementing this financing scheme. Furthermore, initial incentives or government guarantees are required to stimulate the implementation.

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<sup>36</sup> A Busro and others, 'Quo Vadis Copyright As Fiduciary Guarantee In Indonesian Legal Arrangement' (2018) 12 Journal Legal Ethical & Regulatory.

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