

PROFESSIONAL VALUATOR ON INTELLECTUAL PROPERTY (IP) ASSET AS BANK COLLATERAL: CHALLENGE FOR INTELLECTUAL PROPERTY (IP) ATTORNEYS IN INDONESIA

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Abstract

Basically there is regulation for Intellectual Property (IP) Attorney's only as professional expert in the field of intellectual property, involved of IP prosecution including registration and/ or recordation before IP Office in the future. Opportunity 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 several regulation concerning particularly in Copyrights and Patent. In the other hand IP owners often deal with complex contractual relationships that involve the parties in different forms of cooperation in research and development, production or commercialization on IP. This includes cases in relation with IP assets that are exposed and exploited across national borders, including rights to commerce (IP commercialization) their product (goods or services) on the basis of Intellectual property on their exclusivity in financing and loan contractual scheme as collateral. Therefore, how is the role and challenge for IP Attorneys conducting as professional Valuator of IP Asset as Bank Collateral. This studies method is normative legal which intended for literary and practical works in relation with professional works in valuation IP Asset as Collateral. The result of this studies that important aspect regarding professional competency with comprehensive knowledge on intellectual Property law either national an international and deal with IP Asset as Collateral before Banks, and others financial institutions, in another words in valuating IP Asset that is requires competency to appraise by Intellectual Property (IP) Valuator not only Appraisal in general background, specifically must have Intellectual Property (IP) knowledge either theoretical and practical in the field of IP protection and prosecution, in the frame committed to the development of IP in the future.

Keywords: Intellectual Property Attorneys, Valuation Intellectual Property, Asset Collateral.

1. INTRODUCTION

Intellectual property development in relate to the industry and business activities which is 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.

Innovation and creativity as a business strategy is an intellectual work that is an intellectual property (IP/KI)² that not only needs to be rewarded but also protection in exclusivity through strong legal instruments in the sense of having "forced power" in the form of criminal or civil

sanctions if any 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 protection, there are strict limits between the development of a technology or Copyrighted work as part of previous innovations³, 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. 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 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.*⁴

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. Therefore, 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.

Basically the issue of IP Asset 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.⁵

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.⁶

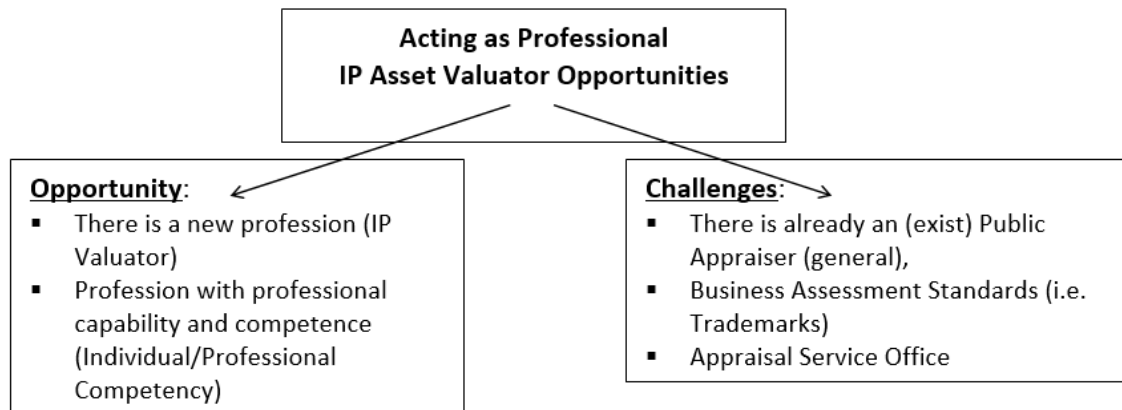
Points of research problems concerning challenge of the IP Attorneys in valuation of Intellectual Property Asset Portfolios as Collateral, as follows:⁷

- 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 update⁸ according to and promulgated Government Regulation which is as regulated that provision *acting as "people who have expertise in the field of intellectual property and are registered as Intellectual Property Attorneyss, 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
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, even though 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 studies is a bundle of opportunity and problems related in financing & IP Asset Collateral), therefore IP Attorney's Role in Intellectual Property field under particular registration & recordation system, has expertise not only in registration & recordation but also advising valuation and appraised by Intellectual Property (IP) Valuator, therefore study frameworks of this matters related to the IP Asset Valuation shall means opportunity and strategic IP national development. This article concerned about challenge of Intellectual Property Attorneys in valuation IP Asset Portfolios as Collateral, about qualitative 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

This type of research is normative research 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.⁹ This research is also an analysis process of observing and acting logically, and systematically regarding phenomena, and empirical facts that occur or exist around us to be reconstructed in order to reveal facts and information that are useful for life,¹⁰ especially for the Intellectual Property (IP) system in relation with IP (Intellectual Property) Attorneys in valuation of IP Asset portfolios as Bank Collateral. So the research method in this scientific paper uses legal research methods with qualitative analytical descriptive. This method emphasizes 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 know that this study is an effort made by humans to find new things, discourse and solve a problem in human and social activities,¹¹ therefore this paper uses perspective of national interests approach, with a multidisciplinary analysis in accordance with the practical framework of the role of the IP (Intellectual Property) Attorneys in valuation of IP Intellectual Property Asset Portfolios Before Bank and others financial as Collateral.

3. DISCUSSION AND ANALYSIS

3.1. IP (Intellectual Property) Attorneys Profession Prosecution IP Asset Portfolios

The existence of Intellectual Property (IP) Attorneys¹² 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 Attorneys¹³ 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. The term profession in the Second Pocket Edition Black's Law Dictionary states that Profession: a vocation requires advanced education and training.¹⁴ 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.¹⁵ Another formulation of the understanding of the profession, as expressed by E.Y. Kanter,¹⁶ 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.

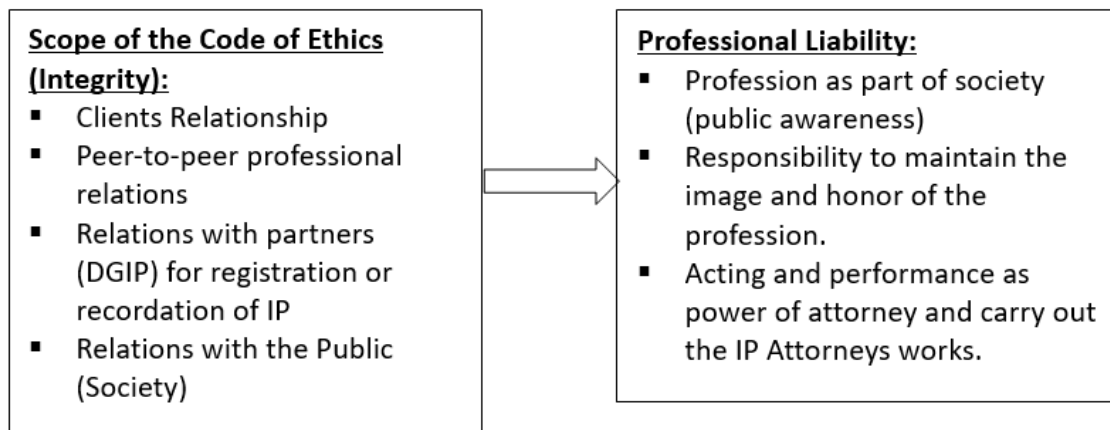
According to Article 29 paragraph (1) Government Regulation Number 100 Year 2021 intended that Professional Organizations are intended for the Profession of Intellectual Property (IP) Attorneys, must gather in 1 (one) Professional Organization forum. The existing Association of Intellectual Property 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.¹⁷

Professional Organization (known as 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.

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. 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 Awareness
(Public Services and Ethics)**



The development of the IP Attorneys Profession is very closely related 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 IP 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 to obtain patents to protect inventions, copyright protects films, art, literature, music, etc., brands to protect brands, naming includes geographical indications.¹⁸

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

- 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 repository includes a commitment to legal action against parties who use their technology in good faith, or without prior rights/permissions (unlawful act).²⁰

The position of the professional organization for IP Attorneys not only for gathering or discussion of the current issues topic usually make a standard practices, in example, that very Importance role of the IP Attorneys particularly regarding Patent Registration, described with table below.

Table 1: IP Attorneys Desk for Patent Prosecution & Commercialization²¹

No	IP Attorneys Desk for Patent Prosecution
1	Consultation Stage <ul style="list-style-type: none"> ▪ In providing Consultations (whether bound by a Non-Disclosure Agreement) with clients (inventors/IP rights owners) ▪ Provide Consultation on IP registration system, IP ownership and Patentability
2	Search Stage Providing Patent Search Services (Patent Literature and Non-Literature) relevant to the Invention
3	Drafting stage Compile and arranged the Patent Specification and/ or Drafting Patents: <ul style="list-style-type: none"> ▪ Description/ description, ▪ Picture, ▪ Claims of Invention, ▪ Abstract
4	Applying for a patent application (Registration) <ul style="list-style-type: none"> ▪ Patent Application (Simple and/ Or Standard Patent) ▪ Patent Substantive Examination Application ▪ Filing a Patent Appeal
5	Applying for a patent registration (Recordation) <ul style="list-style-type: none"> ▪ Patent License Registration (exclusive license and compulsory license) ▪ Recording of Change of Name/ Address of Applicant/ Patent Owner ▪ Registration of Transfer of Patent Rights (including mergers/acquisitions)
6	Patent Portfolio <ul style="list-style-type: none"> ▪ Drafting a Patent License Agreement ▪ IP Audit and Patent securitization

The IP Attorneys professional desk, 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.²²

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 that, *“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. 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”*.²³

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. Intellectual property rights in the industrial sector have an important role for the development and progress of a nation. Related to this, through IP 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 disciplines²⁴, 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, in example Trademark practices, that IP Attorneys will provide "search" for the relevant brand in literature data and non-literature data, so that it can be shown whether there are already similar brands for the same class of goods/ services (registered/ filing the applicants) 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.

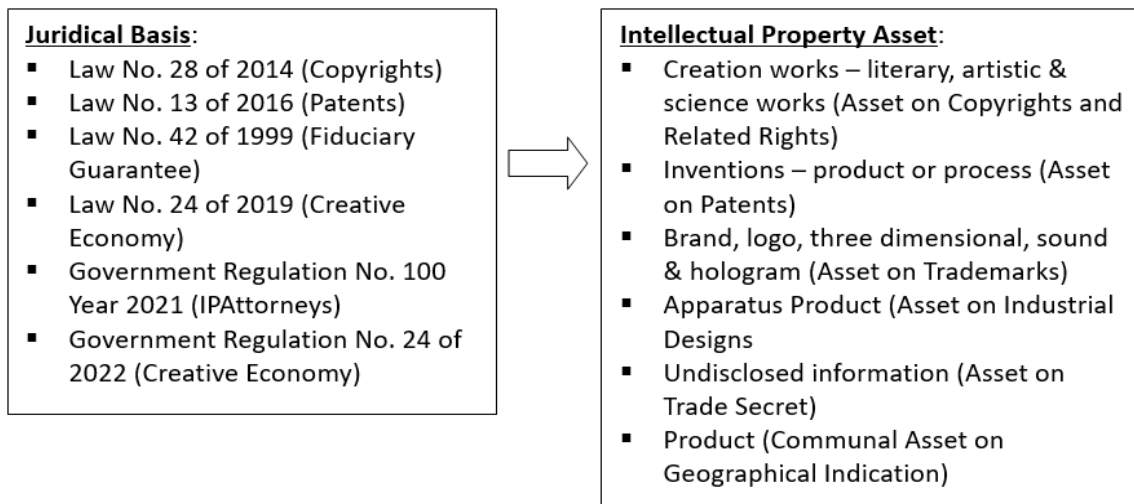
IP Attorneys in addition to being consistent in providing advice on intellectual property in each field of IP, ownership principles and all phases in the application for IP registration. An IP Attorneys must be able to provide an opinion in the form of "IP Opinion" in the form of giving an opinion on the registrability of an intellectual property registration, besides that currently the Professional IP Attorneys can give an opinion on "IP valuation"²⁵ or the values of an IP portfolio. The assessment includes whether an IP Asset is appropriate or not, both for registration, extension of protection, including the economic value of the IP 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 IP 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. 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.²⁶

**Flow 3:
Juridical Basis IP Portfolio Before Bank as Collateral**



3.2. Intellectual Property (IP) Asset as Movable Property as Bank Collateral

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: ²⁷

“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.

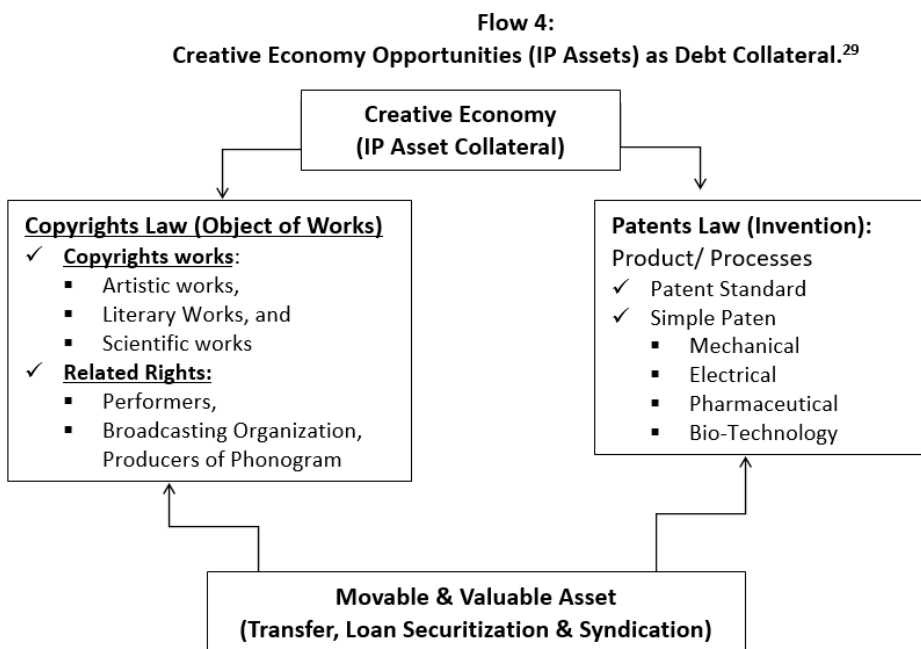
The consequence of this provision regarding the Recordation of Works is that the DGIP Office acts as an Examiner and determines whether a copyrighted work is eligible or not eligible to be registered. Even though there is no Substantive Examination in the Recordation of Works, this will be a problem, especially regarding the objectivity of the examiner.²⁸

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).



The possibility of Intellectual Property (IP) Asset to be used as collateral has already been envisioned in Indonesian Law Number 28 of 2014 on Copyrights and Indonesian Law Number 42 of 1999 on Fiduciary Security. However, the absence of any implementing regulations remains a hinderance to creative economy actors in actual implementation of this mechanism. Thus, in the spirit of furthering the creative economy industry, the Government has recently issued Government Regulation Number 24 of 2022 on Intellectual Property-Based Creative Economy Financing, which will come into force on 12 July 2023.³⁰

Creative Economy Infrastructure There are two types of infrastructure support that will be provided by the government. First, physical infrastructure will be provided in the form of exhibition space, training space, and creative space. Creative economy actors then can use these physical infrastructures to showcase their products, all aligned with the intellectual property-based creative economy marketing system. Secondly, in terms of information and communication technology infrastructure, the government will facilitate creative economy actors by providing technology to prepare, collect, process, analyze, store and announce information relating to their creative economy business' products. In providing the above-mentioned facilitation, the government can establish a technical work unit on its own or in partnership with third-party private entities.

Whereas previously Creative Economy Financing shall be implemented practically under IP asset as Collateral for Loans and actually there was no specific law regulating financing in the creative economy. Therefore, regulation now serves as a breakthrough instrument to solve the financing problems faced by many creative economy actors. Generally, there are two viable financing schemes for the creative economy, as governed under Government Regulation Number 24 of 2022 (i) schemes executed by financial institutions, either bank or non-bank;

and (ii) alternative schemes. Previously, business actors have found it difficult to secure bank financing due to the requirement to provide collateral security, as banks would rarely accept IP as collateral (despite existing regulations). Thus, to ease the process of bank financing schemes, Government Regulation Number 24 of 2022 now further governs IP as a collateral to secure loans, in the forms of:

- Fiduciary Security;
- Contracts In The Creative Economy Sector, Such As Licensing Contracts, Service Contracts, Or Work Orders; And/Or
- Collection Rights Over A Creative Economy Business, Such As Collection Rights Over Outstanding Royalties and Similar.

Under Government Regulation Number 24 of 2022, only particular IP Intellectual Property that are managed (commercialized) individually or by a third party, and those that are registered with the Ministry of Law and Human Rights, are eligible to be used as a collateral to secure loans. GR 24/2022 also governs the methods to assess the value of an IPR by utilizing a certified appraiser or panel of appraisers, *inter alia* through cost approach, market approach, and profit approach, all of which are non-exhaustive and open to other viable approaches in accordance with the recognized standards in the industry. Discourse concerning Intellectual Property (IP) based Creative Economy based on Marketing System performed by Creative economy actors will be able to utilize the marketing system facilitated by the government to further their businesses. As mentioned previously, one of the main issues in the creative economy industry is the lack of a marketing ecosystem to promote businesses, especially for micro, small, and medium enterprises.

Based on Government Regulation Number 24 of 2022 facilitates creative economy actors through a marketing system, based, *inter alia*, upon: licensing, franchise, transfer of technology, collaborations (*jenama bersama*) and transfer of rights. The government will provide an integrated marketing system, where eligible creative economy actors will be given technical assistance for their business needs, such as legality/licensing, intellectual property registration and management, financing, information services, and marketing incubation. One of the interesting features brought Government Regulation Number 24 of 2022 is the digital collective management system, whereby the creative economy can access assistance for product inventory, marketing platforms, and priority in government procurement. According to Government Regulation Number 24 of 2022,³¹ there are 6 (six) major governing limbs to further the creative economy industry, namely:

- 1) Creative Economy Financing;
- 2) Intellectual Property-Based Creative Economy Marketing System;
- 3) Creative Economy Infrastructure;
- 4) Incentive for Creative Economy Business Actors;
- 5) Government's Responsibility and the Role of Society; and
- 6) Creative Economy Financing Dispute Resolution.

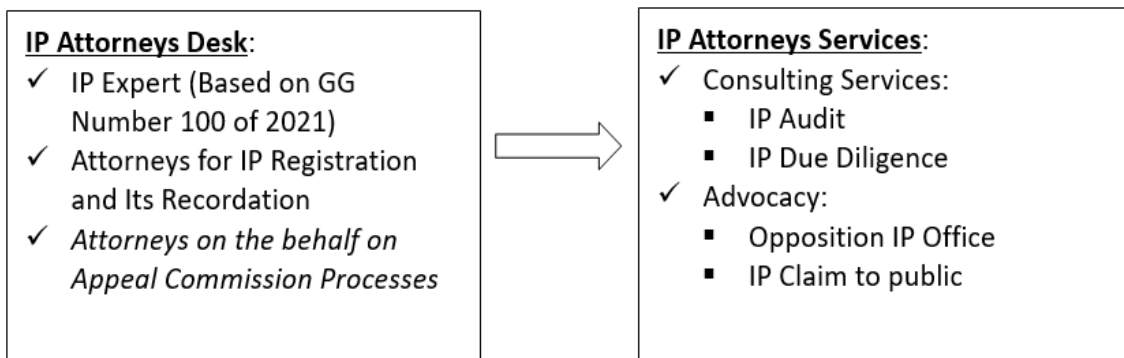
Until now, there have been no guidelines for assessing the economic value of intangible objects such as Copyrights. These norms have been left as norms in law without any implementing regulations until now. In this writing, the Management and Team of the Indonesian Society of Appraisal (Indonesian Appraisal Professional Society abbreviated as MAPPI³² have carried out a study with several stakeholders in assessing Intellectual Property Assets for Debt Collateral. Because it is 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.³³

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:³⁴

- 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 guarantee of the creation or invention has problems, then in the end, banks in Indonesia are not willing to provide financing with copyrights or patents 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.³⁵ 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 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.³⁶ The other problems related to the implementation of alternative dispute resolution (ADR)³⁷ 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).

4. CLOSING

One of the company's main assets is Intellectual Property, therefore their economic interest base on in IP portfolio becomes increasingly higher. 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. As a consequence, 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 IP 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 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 Bank collateral 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 can be enjoyed by fiduciary holders if the debtor breaks his promise.

Author(s) Biography

Dr. Suyud Margono, In short Bachelor of Law, Faculty of Law, Atmajaya Catholic University, Jakarta (1998)., Fellowship program, postgraduate studies on Intellectual Property Right at Faculty of Law, University of Technology Sydney, Sydney-Australia, 2000., Master of Law, Postgraduate Program, Tarumanagara University, Jakarta 2004., Doctor of Law, Postgraduate Program, Parahyangan Catholic University, Bandung, 2012. Complete and pass, workshop Legal Aid program, Legal Aid Foundation Indonesia (1998). Complete training Course for Receiver in Bankruptcy, University Indonesia (1999). Complete and pass the exam training Course for Arbitrator and join in The Chartered Institute of Arbitrators. 2006. Complete and pass the exam training Course for Mediator, accredited Supreme Court Republic Indonesia, 2007. Complete and pass the exam Intellectual Property Rights/IPR Consultant Training, University Indonesia (2005), Complete Intellectual Property Rights Training for Advanced IP Practitioners, HIDA -Tokyo Kenshu Center, Asia Pacific Intellectual Property Center (APIC), Tokyo

– Japan, 2014. International Workshop for Creator and Authors, held by The Confederation of Societies of Authors and Composers (CISAC), Seoul, Korea 2017; International Workshops - *Asia Pacific Meeting Reproduction Rights Organization* held by The International Federation of Reproduction Rights Organization (IFFRO), Hongkong, 2018. Completion and pass with highly recommended integrity future Leader – Executive Education program for High Level National Leader - (PPSA) 23, held by National Resilience Institute (Lemhannas) Republic Indonesia 2021. **Academic Activities:** in field business law for bachelor, master and doctoral degree in Faculty of Law Tarumanagara University (UNTAR); Jakarta 2001 – present; Lecture, Business Law for GS FAME Business School & Institute, Jakarta 2004 – 2010; Lecture, Master of Law program, postgraduate University Mpu Tantular (UMT), Jakarta 2010 – present, Head - Master of Law Studi program, 2018 - present, Dean Faculty of Law FH – 2021-present); Lecture, in Business Law University Multimedia Nusantara (UMN), Tangerang 2011 – 2019; Lecturing for Master and Doctoral Degree Postgraduate Parahyangan Catholic University; Lecturing on Master of Law, postgraduate Program University Esa Unggul, Jakarta 2012 – present; Lecturing on Master of Law, postgraduate Program University Suryadarma (UNSURYA), Jakarta 2020 – present.

Professional Organizations: Vice Secretary General - Indonesia Intellectual Property Society (IIPS), 2001 – 2003; Member - International Bar Association (IBA), 2001 – 2010, Founder/ Member, Indonesian IP Association), 2006 – Present; Head of – Research Regulations Commission, Indonesian IP Attorneys Association (AKHKI), (2010 – 2013); Vice Secretary General - Indonesian IP Attorneys Association (AKHKI), (2013 – 2016); Vice President Indonesian IP Attorneys Association (AKHKI)- (2016 – 2020); President- Indonesian IP Attorneys Association (AKHKI), (2020 – present). Member - Indonesian IP Lecture Association (APHKI), 2019-Present; Vice Secretary General, Indonesia Mediator Association (AMINDO), 2007 –2012; Secretary General, Indonesia Mediator Association (AMINDO), 2014 – present; Secretary General, Center for IP Arbitration & Mediation (BAMHKI); Associate member – The Chartered Institute of Arbitrator (CIArb), 2006 –present; Member, Indonesian Bar Society (PERADI), 2004 – present; Indonesian Advocate Association (AAI), 1999 – present;

Publication (Books): concerning Law and Business Issues, among others: Arbitration, Mediation and Negotiation (2017), Law in Intellectual Property Rights (2015), Legal Entity of Foundation: Dynamic of Practices, Effectiveness & Regulation in Indonesia (2014), Industrial Property Rights: Regulation & Practices Indonesia (2011), Business Dispute Resolution: Negotiation & Mediation (2010), Law of Copyrights: Theory & Analysis; Harmonization of Provisions on WTO-TRIPs Agreement (2010), Commercialization Intellectual Asset (2010), Law on Anti-Monopoly (2009), Corporate Law in Indonesia (2008), Investment Law in Indonesia (2007), Copyrights Law (2003), Alternative Dispute Resolution & Arbitration (2001), Renewal on Indonesian Trademarks Law (2001), Law on Foundation: Dilemma Between Charitable or Commercial Purposes (2000).

Footnotes

- 1) Dr. Suyud Margono, SH., MHum., FCIArb., Lecturer postgraduate programs in law studies, University Mpu Tantular, Chairperson – Indonesian Intellectual Property Attorneys Association (AKHKI), Secretary General - Arbitration and Mediation Board of Intellectual Property Rights (BAMHKI). Lecturer at several universities graduate programs in law studies, Professional Trainers in several training providers both national and multinational training centers in the field of corporate & commercial law, Certified Mediator-Chartered Arbitrator.
- 2) 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 aronym 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."

- 3) 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 product are considered to be the same as the original products that already existed.
- 4) 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"
- 5) <https://www.ojk.go.id/ojk-institute/id/capacitybuilding/upcoming/1110/prospek-hak-kekayaan-intelektual-hki-sebagai-jaminan-utang>
- 6) https://www.kompasiana.com/nadyadjajadiningrat/role-Attorneys-intellectual-property-rights-in-business-and-industry-why-needed_5554677b6523bdc5144aeff1
- 7) 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
- 8) Government Regulation Number. 100 Year 2021 concerning Intellectual Property Attorneys (Promulgated September 27, 2021, TLN 2021 224, TLNRI 6726).
- 9) Soerjono Soekanto and Sri Mamudji, Normative Legal Research, (Jakarta: PT Raja Grafindo Persada), 2012, p. 1.
- 10) Abdul Kadir Muhammad, Law and Legal Research, (Bandung: PT Citra Aditya Bakti), 2004, p. 2.
- 11) Bambang Sunggono, Method of Legal Research, (Jakarta: PT Raja Grafindo Persada), 2001, p. 27.
- 12) 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.
- 13) 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.
- 14) Bryan A. Garner, Black's Law Dictionary, second Pocket Edition, St. Paul Minn, 2001, p. 560.
- 15) Wildan Suyuthi, Professional Ethics Code of Ethics for Judges, IKAHI: Jakarta, no year, p. 6.
- 16) E.Y. Kanter, Legal Professional Ethics: a socio-religious approach, storia Grafika: Jakarta, 2001, p. 63.

- 17) 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.
- 18) Suyud Margono, <https://kliklegal.com/world-ip-day-digital-industries-dan-reposisi-profesi-konsultan-hki/>
- 19) 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.
- 20) 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.
- 21) 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.
- 22) <https://innews.co.id/ketum-akhki-perjanjian-lisensi-wajib-dicatatkan-agar-terproteksi/>
- 23) 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
- 24) Based on Government Regulation Number 2 Year 2005 concerning Intellectual Property Rights Attorneys.
- 25) 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.
- 26) 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
- 27) Attorney General's, Department Copyright Law Australia, Short Guide Copyrights Information, Attorney General's Department Copyright Law in Australia, January 2000.
- 28) 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
- 29) 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
- 30) Government Regulation Number 24 of 2022 acts as the implementing regulation of the previously promulgated Law Number 24 of 2019 on Creative Economy.
- 31) Government Regulation Number 24 of 2022 acts as the implementing regulation of the previously promulgated Law Number 24 of 2019 on Creative Economy, that the government's role is to support and develop the creative economy ecosystem, [iii] particularly with respect to facilitating financing, and providing infrastructure and marketing system
- 32) 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

- 33) The Role and Challenge of The IP (Intellectual Property) Attorneys in Valuation of IP Asset Portfolios as Collateral., *Russian Law Journal.*, Volume XI (2023) Issues 6.p. 152-153
- 34) <https://mappi.or.id/SitePages/Berita.aspx?item=18>
- 35) Christian Mauliate, Legal Analysis of Copyright as an Object of Fiduciary Guarantee <https://etd.repository.ugm.ac.id/penelitian/detail/180220>
- 36) 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
- 37) 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.

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- 23) <https://www.ojk.go.id/ojk-institute/id/capacitybuilding/upcoming/1110/prospek-hak-kekayaan-intelektual-hki-sebagai-jaminan-utang>
- 24) <https://www.hukumonline.com/klinik/a/eksekusi-paten-sebagai-objek-jaminan-fidusia-lt590af6f153f9d/>
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- 26) <https://www.akhki.or.id>
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- 2) Law No. 42 of 1999 concerning Fiduciary Guarantee
- 3) Law No. 29 of 2000 concerning Plant Varieties;
- 4) Law No. 30 of 2000 concerning Trade Secrets;
- 5) Law No. 31 of 2000 concerning Industrial Design;
- 6) Law No. 28 of 2014 concerning Copyright and Related Rights;
- 7) Law No. 13 of 2016 concerning Patents;
- 8) Law No. 20 of 2016 concerning Trademarks and Geographical Indications;
- 9) Law No. 19 of 2022 concerning Creative Economy;

- 10) Government Regulation No. 24 of 2022 concerning Implementation; Law No. 19 of 2022 concerning Creative Economy;
- 11) Government Regulation Number 2 of 2005 concerning Intellectual Property Rights Attorneys,
- 12) Government Regulation No. 42 of 2007 concerning Franchising
- 13) Government Regulation No. 36 of 2018 concerning Recording of Intellectual Property Rights License Agreements
- 14) Ministerial Regulation No. 39 of 2018 concerning Granting of Compulsory Patent Licenses
- 15) Other related legislation