ARTIKEL ILMIAH

REGULATORY CERTAINTY AND RISK MITIGATION FOR BANKS IN INTELLECTUAL PROPERTY-BASED COLLATERAL FINANCING

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KEMENTERIAN PENDIDIKAN TINGGI, SAINS, DAN TEKNOLOGI

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RINGKASAN ARTIKEL ILMIAH

Pemerintah menerbitkan Peraturan Pemerintah Nomor 24 Tahun 2022 yang membawa implikasi langsung terhadap praktik administrasi hukum dan kegiatan usaha, termasuk dalam sektor perbankan. Penelitian bertujuan untuk menganalisis dampak yuridis Peraturan Pemerintah Nomor 24 Tahun 2022 terhadap kebijakan perkreditan bank umum di Indonesia serta mengkaji bentuk dan mekanisme perlindungan hukum bagi bank dalam pembiayaan berbasis Hak Kekayaan Intelektual berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2022.

Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan pendekatan konseptual serta dianalisis secara kualitatif melalui penelitian kepustakaan dan studi dokumen hukum. Hasil penelitian menunjukkan bahwa perluasan objek jaminan menimbulkan implikasi yuridis yang signifikan terhadap penerapan prinsip kehati-hatian perbankan, khususnya dalam aspek penilaian agunan, manajemen risiko, dan kepastian hukum pelaksanaan eksekusi jaminan berdasarkan Undang-Undang Nomor 42 Tahun 1999. Hak Kekayaan Intelektual sebagai aset tidak berwujud memiliki karakteristik yang berbeda dibandingkan jaminan konvensional, antara lain ketidakpastian dalam penilaian nilai, belum berkembangnya pasar sekunder, serta ketergantungan terhadap reputasi dan kreativitas penciptanya. Kondisi tersebut menimbulkan risiko hukum bagi bank sebagai kreditur, terutama terkait penurunan nilai jaminan dan kesulitan pelaksanaan eksekusi apabila debitur wanprestasi. Meskipun Peraturan Pemerintah Nomor 24 Tahun 2022 telah memberikan kerangka hukum secara normatif, perlindungan hukum bagi bank masih belum memadai. Oleh karena itu, diperlukan penguatan pengaturan kontraktual, pengembangan skema jaminan melalui perjanjian dengan pihak ketiga (off-taker), standarisasi sistem valuasi Hak Kekayaan Intelektual melalui lembaga profesional, serta penerapan skema jaminan hibrida sebagai strategi mitigasi risiko.

Kata Kunci: Kebijakan kredit perbankan; risiko kredit; kekayaan intelektual; perlindungan hukum; Peraturan Pemerintah Nomor 24 Tahun 2022.

KATA PENGANTAR

Puji syukur penulis panjatkan pada Allah SWT atas segala limpahan rahmat, kasih, dan karunia-Nya sehingga penulis dapat menyelesaikan artikel ilmiah yang berjudul *"Regulatory Certainty and Risk Mitigation for Banks in Intellectual Property-Based Collateral Financing"* dengan baik dan lancar.

Artikel ilmiah ini merupakan salah satu bentuk tugas akhir yang disusun sebagai alternatif pengganti skripsi sesuai dengan ketentuan Fakultas Hukum Universitas Palangka Raya, guna memenuhi salah satu syarat kelulusan untuk memperoleh gelar Sarjana Hukum.

Dalam proses penyusunan dan penyelesaian artikel ilmiah ini, penulis menyadari bahwa pencapaian ini tidak terlepas dari pertolongan Allah SWT serta dukungan, bimbingan, doa, dan bantuan dari berbagai pihak. Berbagai pengalaman, arahan, pengetahuan, serta ilmu yang berharga telah penulis peroleh selama proses penyusunan artikel ini. Setiap masukan dan dukungan tersebut menjadi bagian penting yang membantu penulis untuk terus belajar, memperbaiki diri, dan menyelesaikan tugas akhir ini, meskipun penulis menyadari bahwa karya ini masih jauh dari sempurna.

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Akhir kata, penulis berharap semoga artikel ilmiah ini dapat memberikan manfaat dan kontribusi positif bagi perkembangan ilmu hukum, khususnya dalam kajian kepastian regulasi dan mitigasi risiko bagi perbankan dalam pembiayaan berbasis kekayaan intelektual, serta dapat menambah wawasan dan menjadi referensi yang bermanfaat bagi para pembaca.

Palangka Raya, Oktober 2026

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Demi pengembangan ilmu pengetahuan, menyetujui untuk memberikan kepada dosen Pembimbing, Fakultas Hukum, dan Universitas Palangka Raya atas karya ilmiah saya yang berjudul: "*Regulatory Certainty And Risk Mitigation For Banks In Intellectual Property-Based Collateral Financing*" untuk menyimpan, mengalihmedia/formatkan, mengelola dalam bentuk pangkalan data (databese), merawat dan mempublikasikan tugas akhir saya selama tetap mencantumkan nama saya sebagai penulis. Dengan pernyataan ini saya buat dengan sebenarnya.

Palangka Raya, Oktober 2026
Yang membuat pernyataan,

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I. LETTER OF ACCEPTANCE

JUSTITIA Jurnal Hukum

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Letter of Acceptance

Surabaya, July 01, 2026

Dear;
Dahliani[1], Louise Theresia[2], Istani[3], Mulida Hayati[4]
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Congratulations, your submitted manuscript titled " **Regulatory Certainty and Risk Mitigation for Banks in Intellectual Property-Based Collateral Financing**" has been accepted for publication in the Journal of **Justitia Jurnal Hukum** https://journal.um-surabaya.ac.id/Justitia/index and published in **Volume 10, Issue 2, October 2026.**

Thank you for your interest in our journal.
Sincerely Yours

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Criminalizing Fraud in Intellectual Property Collateralization within Indonesia's Creative Economy

Abstract

This study aims to analyze the criminal liability of creative economy actors concerning fraud and digital asset manipulation within intellectual property collateralization in Indonesia. The formal recognition of intellectual property as debt collateral under recent regulatory frameworks introduces profound criminogenic vulnerabilities into the banking sector. Debtors can easily exploit valuation uncertainties and the absence of a mature secondary market to commit financial fraud or embezzle fiduciary objects. Analyzed through the Economic Analysis of Law, these unique intangible attributes generate severe information asymmetries that economically incentivize malicious digital metric manipulation. This research employs a normative juridical method utilizing statutory and conceptual approaches to formulate a robust criminal law enforcement framework. The findings indicate that domestic criminal provisions remain structurally inadequate to prosecute sophisticated digital asset fraud. Establishing precise criminal liability requires proving actual financial loss using global risk metrics such as the Basel III/IV capital adequacy standards and the World Intellectual Property Organization valuation guidelines. Integrating the UNCITRAL Model Law on Secured Transactions provides the indispensable legal certainty regarding digital ownership required to establish fraudulent intent and unlawful acts during collateral execution. Safeguarding the national banking sector from creative economy financial crimes demands a comprehensive penal policy integrating these global benchmarks to prosecute digital asset embezzlement effectively.

Keywords: Criminal Liability; Collateral Fraud; Intellectual Property; Economic Analysis of Law; Penal Policy.

INTRODUCTION

The Indonesian banking system operates under a strict public legal regime established by Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998. This domestic statutory framework is inextricably linked to the global banking architecture, particularly the capital adequacy and risk management standards established by the Basel Committee on Banking Supervision (Basel III/IV). Legislative mandates dictate that all credit activities operate strictly upon the prudential principle to safeguard institutional interests, protect depository customers,

and maintain national financial system stability. The prudential principle transcends mere technical and economic calculations to function as the primary juridical shield against financial crimes and banking fraud . Operational implementations of these policies materialize within internal institutional guidelines governing credit analysis procedures, debtor eligibility assessments, and collateral binding mechanisms. Inaccuracies or deliberate administrative manipulations generate significant legal risks, frequently culminating in massive institutional financial losses that trigger criminal investigations.

Regulatory landscapes shifted dynamically in 2022 following the issuance of Government Regulation Number 24 of 2022 concerning Implementation Regulations of Law Number 24 of 2019 concerning the Creative Economy. The regulatory framework introduces an intellectual property-based financing scheme (Mayana & Santika, 2025). The mechanism establishes intellectual property as a legally recognized object of debt collateral for banking and non-bank financial institutions providing capital to creative economy actors. Debt guarantee objects within this novel financing scheme manifest through fiduciary guarantees of intellectual property, specific contracts in creative economy activities, and billing rights within the creative sector (Zhang et al., 2021). Introducing intangible assets into the formal banking sector inadvertently creates a highly criminogenic environment ripe for sophisticated financial exploitation.

Intellectual property rights present distinct structural characteristics differentiating them fundamentally from conventional fiduciary guarantees such as real estate or motor vehicles (Heller et al., 2024). The creative economy sector relies heavily on information, creativity, and the accumulation of ideas as primary sources of economic value creation rather than natural resources. The foundational elements of the creative economy consist of creativity to produce unique solutions, innovation transforming existing ideas into higher-value outputs, and inventions creating entirely new functional works. These intangible characteristics eliminate physical boundaries, rendering traditional crime prevention mechanisms entirely obsolete when malicious actors attempt to hide or illegally transfer digital assets (X. Yang et al., 2023).

The economic valuation of intellectual property frequently depends on highly subjective factors complicating the collateral assessment process and inviting fraudulent manipulation (Su et al., 2023). Digital works produced by content creators derive economic value from personal branding, professional reputation, and sustained public popularity. The inherently subjective nature of these assets renders economic measurement exceedingly difficult without globally recognized benchmarks like the World Intellectual Property Organization (WIPO) valuation guidelines. Malicious actors frequently exploit this subjectivity by presenting artificially inflated digital metrics to secure disproportionately large credit facilities.

Debtors can easily orchestrate financial deception by purchasing fake subscriber services or manipulating algorithmic engagement data to deceive bank analysts (Yu et al., 2025).

Viewed through the lens of the Economic Analysis of Law, accepting intellectual property as collateral generates severe market frictions driven by extreme information asymmetry (Ioannidou et al., 2022). This profound asymmetry does not merely disrupt economic efficiency; it creates a direct economic incentive for debtors to commit collateral fraud. Tangible assets like land utilize predictable metrics such as the Selling Value of Tax Objects, whereas intellectual property lacks definite standardized valuation mechanisms. Complexities surrounding intellectual property collateralization include high transaction costs, expensive ongoing monitoring requirements, asset transfer difficulties, and widespread institutional unfamiliarity with intangible asset management (B. Wang, 2025). Perpetrators exploit these profound informational blind spots to embezzle royalty streams or secretly license the guaranteed assets to third parties without creditor consent.

The absence of a mature secondary market creates immense execution barriers when creative industry actors commit intentional payment defaults. Law Number 42 of 1999 concerning Fiduciary Guarantees mandates execution through executory titles, public auctions, or private sales. Banks face profound challenges selling depreciated intellectual property to recover outstanding debts while debtors unlawfully retain control over the digital access credentials. The domestic fiduciary framework fails to define the digital ownership parameters necessary to prove fraudulent intent and unlawful acts during collateral execution. Integrating the UNCITRAL Model Law on Secured Transactions becomes essential to establish the precise legal certainty regarding intangible property rights required for criminal prosecution. Law enforcement agencies and financial institutions must rapidly formulate a comprehensive penal policy integrating these global benchmarks to prosecute digital asset embezzlement effectively and prevent systemic banking vulnerabilities

Recent scholarly literature by David Heller (Heller et al., 2024) explores the systemic challenges and economic opportunities surrounding intellectual property as business loan collateral. Their research establishes that the successful collateralization of intellectual property relies upon a complex taxonomy of institutional and economic determinants. Heller and his co-authors emphasize that institutional foundations encompassing domestic contract law, public intellectual property registries, and international banking regulations fundamentally shape the transaction costs associated with intangible asset financing. Economic viability depends upon balancing the signaling benefits of intellectual property against inherent costs such as limited asset redeployability, complex valuation requirements, and elevated liquidation expenses. These scholars conclude that transparent registries and clear

legal ownership frameworks remain essential prerequisites for mitigating the severe informational asymmetries inherent in pledging intangible assets.

Building upon this global perspective, an empirical investigation by Chau Le (Le et al., 2024) demonstrates that identifiable intangible assets significantly enhance corporate access to external debt and equity financing within developing economies. Their study of Vietnamese enterprises reveals that small and medium businesses leveraging intellectual property successfully reduce credit frictions even within structurally underdeveloped financial markets. Le and his colleagues found that professional debt lenders exhibit a greater willingness to accept identifiable intangible assets as collateral compared to informal equity investors because banking institutions possess sophisticated valuation tools and secondary market knowledge. The friction-reducing capacity of intangible assets identified in their research enables smaller and younger enterprises to secure vital capital despite lacking traditional physical collateral. These researchers note that financial institutions mandate high-quality audits and reliable monetary quantification before accepting intangible assets to mitigate the risks associated with volatile salvage values upon debtor default.

Within the specific context of Indonesia, the regulatory landscape introduces unique complexities into this global financing paradigm following the enactment of Government Regulation Number 24 of 2022. The integration of creative economy products into the formal banking sector exposes creditors to unprecedented legal and economic vulnerabilities. Digital intellectual property works derive their economic value largely from subjective elements including creator popularity and personal branding. Executing fiduciary guarantees over these volatile assets becomes highly problematic under Law Number 42 of 1999 due to the complete absence of a mature secondary market capable of absorbing depreciated creative content. Banking institutions struggle to align these novel collateral types with established prudential principles mandating stable asset values and rapid liquidation mechanisms (Luo et al., 2024).

Existing literature predominantly examines the broad economic determinants of intellectual property financing or evaluates institutional risk frameworks within advanced economies. A critical research gap persists regarding the criminal law implications of exploiting intellectual property collateral regimes in developing nations. Prior studies overlook how severe information asymmetries and transaction costs inherent in pledging highly subjective digital assets incentivize fraudulent digital metric manipulation and asset embezzlement. The academic discourse lacks a comprehensive penal policy analysis translating the broad mandates of Government Regulation Number 24 of 2022 into actionable criminal liability frameworks for Indonesian banking institutions. Current literature fails to explore how integrating global benchmarks such as the UNCITRAL Model Law on Secured Transactions and

WIPO valuation guidelines can resolve the structural evidentiary deficiencies of domestic criminal law in prosecuting digital collateral fraud.

This study aims to analyze the criminal liability of creative economy actors concerning digital asset manipulation and fiduciary object embezzlement within the Indonesian banking sector. The research examines the specific forms of financial fraud emerging from the intellectual property collateralization mandated by Government Regulation Number 24 of 2022. By bridging domestic criminal law with global best practices the analysis constructs a robust penal policy framework utilizing the Economic Analysis of Law to identify criminogenic incentives. Formulating these criminal liability mechanisms integrates the UNCITRAL Model Law on Secured Transactions to establish definitive digital ownership and applies WIPO valuation guidelines alongside Basel III and IV capital adequacy standards to objectively quantify actual financial losses during criminal prosecutions.

METHODS

This study applies a normative juridical legal research method, which investigates secondary data through comprehensive library research focusing on doctrinal legal analysis (Marzuki, 2019). The research employs a statutory approach and a conceptual approach to examine criminal liability frameworks, penal policies, and digital asset fraud within intangible collateral systems. The statutory approach analyzes core domestic legislative acts governing criminal law, financial systems, and intellectual property regimes, including the Indonesian Criminal Code, Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998, Government Regulation Number 24 of 2022 concerning Implementation Regulations of Law Number 24 of 2019 concerning the Creative Economy, and Law Number 42 of 1999 concerning Fiduciary Guarantees. This approach integrates international legal standards such as the UNCITRAL Model Law on Secured Transactions to determine definitive digital ownership alongside the Basel III and IV capital adequacy frameworks to quantify actual financial losses in criminal cases. The conceptual approach utilizes the Economic Analysis of Law to evaluate criminogenic incentives and information asymmetries driving intellectual property collateral fraud, integrating World Intellectual Property Organization guidelines for objective intangible asset valuation during criminal investigations. Data collection relies heavily on primary legal materials consisting of these binding statutory regulations and international instruments, secondary legal materials comprising scholarly textbooks and peer reviewed scientific journals, and tertiary legal materials encompassing legal dictionaries (Rijadi, 2022).

Legal research seeks coherence truth by evaluating the formal conformity between rules of law and legal norms alongside the substantive alignment between legal norms and overarching legal principles. Literature and document studies serve

as the principal data collection techniques to systematically gather and evaluate legal sources concerning commercial banking fraud, penal policies, and intellectual property security rights.

Data analysis proceeds through systematic phases designed to formulate prescriptive legal arguments. Initial procedures involve identifying legal facts and eliminating irrelevant matters to isolate specific legal issues regarding criminal liability in intangible asset collateralization. Subsequent steps entail collecting and reviewing relevant statutory and doctrinal legal materials to analyze underlying penal problems across national and global contexts. Analytical procedures conclude by formulating conclusions consisting of rigorous legal arguments that resolve core legal issues while delivering prescriptive recommendations for criminal law enforcement and penal policy reform. Normative legal research aims to provide viable solutions to emerging legal problems through the systematic analysis of legal principles and statutory frameworks (Widiarty, 2024).

DISCUSSION AND RESULT

Juridical Impact on Commercial Bank Credit Policy

The legal relationship between a bank and a debtor emerges from a consensual credit agreement governed by civil law. Banking credit agreements possess a distinct peculiarity by operating under a strict public legal regime encompassing rigorous supervision and regulation. Operating under this strict public framework transforms these agreements into instruments requiring absolute integrity, where regulatory violations frequently intersect with criminal liability. Regulatory shifts impacting administrative legality directly alter commercial bank credit policies (Sarkar & Mitra, 2023). The implementation of Government Regulation Number 24 of 2022 transforms all lending stages from pre-contractual negotiations to post-disbursement monitoring. The expansion of collateral objects from tangible goods to intangible intellectual property fundamentally disrupts conventional banking prudential standards. The integration of creative economy products into the formal banking sector creates a complex intersection between private contractual freedom and criminal law enforcement against financial fraud.

Formal statutory recognition of intellectual property as a legitimate debt collateral fails to automatically generate effective creditor protection against malicious intent. A profound legal antinomy exists between the state objective of accelerating the creative economy and the rigid prudential principles designed to safeguard national financial stability from systemic financial crimes. Commercial banks function as intermediary institutions managing public trust through stringent risk mitigation protocols. Accepting intellectual property directly exposes financial institutions to an unprecedented convergence of legal vulnerabilities and sophisticated embezzlement schemes (Yang, 2026). The core juridical problem stems from three interconnected

legal uncertainties disrupting the traditional collateral function and inviting fraudulent exploitation within the banking ecosystem.

Valuation uncertainty represents the primary juridical obstacle undermining creditor protection and facilitating financial deception. Assessing the economic worth of digital assets remains highly subjective and lacks established standardized metrics comparable to the Selling Value of Tax Objects used for real estate. The economic value of intellectual property frequently derives from volatile subjective factors such as creator popularity, personal branding, and algorithmic social media trends. Current banking regulations lack an objective legal standard for determining the precise appraisal value of abstract creative works. Financial institutions face immense difficulties identifying artificially inflated digital metrics or synthetic follower counts orchestrated by malicious debtors. This absence of a standardized valuation methodology aligned with the World Intellectual Property Organization (WIPO) guidelines creates profound legal risks, allowing perpetrators to secure disproportionately large credit facilities through deliberate metric manipulation (Du & Yang, 2025).

Market liquidity uncertainty exacerbates these valuation risks due to the severe underdevelopment of secondary markets capable of absorbing intangible assets when creative industry actors commit intentional payment defaults. Ideal debt guarantees must resemble cash equivalents offering rapid liquidation mechanisms to ensure bank liquidity (Nasution et al., 2026). Intellectual property fails to meet this fundamental banking criterion because finding prospective buyers for highly specific digital content or niche brand trademarks involves immense transactional friction. Analyzed through the Economic Analysis of Law, this market absence generates exorbitant transaction costs and exacerbates extreme information asymmetries between creators and financial institutions. This profound asymmetry does not merely disrupt economic efficiency; it creates a direct economic incentive for debtors to commit collateral fraud. The legal framework surrounding intellectual property transfers remains complex and costly. Banks holding illiquid digital assets face direct threats to their operational liquidity caused by premeditated asset embezzlement.

Enforcement uncertainty emerges prominently during the execution process because recovering the original economic value of a depreciated digital asset through conventional legal mechanisms remains highly unpredictable. Law Number 42 of 1999 concerning Fiduciary Guarantees mandates execution through executory titles, public auctions, or private sales under mutual agreement. Executing intellectual property guarantees through these conventional statutory avenues poses immense practical challenges when debtors exhibit fraudulent intent. Public auctions for creative content frequently fail to attract bids due to the aforementioned absence of a secondary market. Private sales require the active cooperation of the defaulting debtor to transfer associated digital accounts or platform administrative rights. Perpetrators

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The credit contract stage requires drafting highly detailed agreement clauses completely adaptive to the unique characteristics of intellectual property to establish clear parameters for criminal liability. Banks can no longer rely on standardized civil law templates designed for physical goods. The contractual architecture must now anticipate complex premeditated scenarios involving platform policy violations, deliberate digital account suspensions, and the abuse of moral rights by creators to evade debt obligations. Post-disbursement phases compel financial institutions to implement continuous monitoring systems anticipating rapid fluctuations in collateral value and potential copyright disputes. Active surveillance becomes mandatory to ensure the debtor maintains the necessary creative output and to rapidly detect unauthorized royalty diversions or digital asset embezzlement throughout the credit tenure.

Imposing fiduciary guarantee rights upon intellectual property characteristically distinct from tangible objects necessitates an immediate paradigm shift in credit analysis mechanisms to incorporate criminal risk assessments. Conventional prudential frameworks utilizing standard analytical models require fundamental recalibration rather than mere descriptive administrative compliance (Mauer et al., 2026). The implementation of the 5C principle undergoes a radical transformation under Government Regulation Number 24 of 2022. The assessment of Character must now encompass thorough background checks to identify behavioral propensities toward digital fraud and metric manipulation. Capacity evaluations face new complexities because projected business cash flows rely entirely on volatile creative economy monetization susceptible to deliberate obfuscation. Capital requirements must account for the intangible nature of the underlying business investments. The Collateral component experiences the most severe disruption because the pledged asset remains physically inaccessible and vulnerable to seamless digital misappropriation. Assessing Conditions forces analysts to predict unpredictable digital market trends and identify algorithmic manipulations across social media platforms (Upadhyay, 2023).

The analytical frameworks of 4P and 3R face similar structural disruptions when confronting intellectual property collateral. Evaluating the Prospect of a creative venture requires rigorous forensic analysis of digital engagement metrics to rule out synthetic amplification. Determining Payment structures becomes increasingly hazardous because malicious content creators can easily redirect erratic revenue streams to hidden offshore accounts rather than fulfilling fixed contractual income obligations. Calculating Returns and Repayment schedules must accommodate the inherently volatile nature of intellectual property monetization while establishing strict safeguards against deliberate royalty concealment. Risk-bearing ability calculations must now incorporate the rapid depreciation of digital assets occurring when a debtor deliberately sabotages their market relevance to defraud the creditor.

Financial institutions must meticulously assess whether a content creator possesses the integrity to survive sudden shifts in public opinion without resorting to financial deception (Ongena et al., 2025).

Stricter application of the prudential principle serves as a mandatory preventive legal protection mechanism to minimize institutional losses resulting from financial crimes. Bank health levels depend upon comprehensive evaluations of capital adequacy, asset quality, management efficiency, earnings, and liquidity encapsulated within the CAMEL framework. Accepting illiquid intellectual property directly threatens the asset quality and liquidity metrics of financial institutions when debtors orchestrate intentional defaults. Non-performing loans backed by unsellable digital assets degrade the overall asset quality ratio. This degradation forces banks to allocate higher capital reserves to cover potential losses, directly impacting institutional profitability and earnings. Evaluated against global regulatory benchmarks like the Basel III and IV frameworks, holding highly volatile and illiquid intangible collateral requires significantly larger capital buffers. These international frameworks serve as objective metrics to quantify the actual financial losses suffered by banking institutions during criminal prosecutions for collateral fraud. Bank management must develop entirely new risk mitigation protocols to handle the unique criminal vulnerabilities posed by creative economy financing (Duarte et al., 2025).

The juridical impact of Government Regulation Number 24 of 2022 extends far beyond procedural adjustments to fundamentally challenge the core tenets of banking and criminal law. The regulatory mandate forcing the recognition of intellectual property as debt collateral demands a comprehensive systemic overhaul of internal bank policies to combat sophisticated digital fraud. Bridging the gap between the state objective of empowering creative industries and the absolute necessity of prosecuting financial crimes remains an unresolved legal challenge. Financial institutions must navigate a perilous legal landscape characterized by valuation ambiguities, missing secondary markets, and outdated execution mechanisms highly susceptible to criminal exploitation. Ensuring legal certainty and effective penal protection within this new paradigm requires profound innovations in contractual structuring and institutional crime prevention protocols.

Forms and Mechanisms of Penal Protection in Intellectual Property Financing

Protecting banking institutions engaging in intellectual property financing requires comprehensive legal mechanisms transcending basic civil law agreements to establish definitive boundaries for criminal liability. Commercial banks must construct robust juridical safeguards addressing the inherent criminogenic uncertainties of intangible collateral. The primary defensive strategy involves strengthening the contractual framework governing the credit relationship to

explicitly define unlawful acts and fraudulent intent. Standard credit agreements prove legally insufficient to accommodate the unique characteristics of digital assets. Financial institutions must integrate highly specific protective clauses directly addressing the exploitation and potential embezzlement of intellectual property. Assignment clauses become mandatory to guarantee the legal transfer of economic rights to the bank upon debtor default. License transfer clauses provide an alternative execution pathway allowing banks to assume control over royalty streams, where any deliberate obstruction by the debtor immediately constitutes criminal misappropriation (Heley & Joseph, 2023).

The legal architecture of the credit contract must establish explicit parameters governing the relationship between the financial institution, the creative debtor, and the underlying intellectual property asset. Contractual enforcement mechanisms must anticipate potential premeditated disputes arising from the intangible nature of the collateral. The inclusion of assignment and license transfer clauses shifts the legal posture of the bank from a vulnerable unsecured creditor to a secured party possessing direct exploitation rights. These clauses operate as preventive legal tools ensuring that the economic value embedded within the intellectual property remains accessible during financial distress, serving as concrete evidence of agreed upon digital ownership if the debtor attempts illegal asset transfers. Civil law principles of contractual freedom allow parties to design adaptive covenants that simultaneously function as stringent anti-fraud mechanisms tailored to the specific monetization patterns of creative industries.

The implementation of digital account control clauses generates critical legal considerations regarding platform governance and creator rights. Securing monetized social media applications or creative content requires establishing the legal possibility of account takeovers (Kariem, 2025). Banks must carefully navigate platform terms of service and overarching intellectual property laws to ensure such takeovers remain legally valid and enforceable without violating the inalienable moral rights of the creator. Contractual covenants must explicitly grant the creditor supervisory access to digital dashboards and revenue generation channels. This administrative oversight prevents debtors from unilaterally redirecting income streams to hidden accounts, effectively neutralizing attempts at digital asset embezzlement and financial concealment.

Establishing escrow account clauses provides a preemptive legal shield by routing all intellectual property royalties into a bank-supervised shelter account. This mechanism legally guarantees the prioritization of debtor obligations without requiring immediate asset execution (Pillay & Kasseeah, 2024). Viewed through the lens of the Economic Analysis of Law, escrow arrangements fundamentally mitigate moral hazard and overcome profound information asymmetries that otherwise incentivize malicious digital metric manipulation. Escrow arrangements eliminate the

commingling of commercial revenues with personal funds, thereby establishing a transparent audit trail required by banking supervisory standards to detect early indicators of financial fraud. Acceleration clauses remain essential to trigger immediate debt maturity upon the discovery of any intellectual property infringements or deliberate data falsifications committed by the debtor. Balancing these aggressive contractual protections with the fundamental rights of the creator requires meticulous legal drafting to prevent future nullification by civil courts on grounds of unconscionability while preserving their utility as forensic evidence in criminal proceedings.

Overcoming the profound market liquidity constraints associated with abstract digital assets necessitates establishing binding guarantee schemes with third parties. Off-taker agreements function as a vital legal bridge securing the future economic value of the pledged intellectual property. Banks compel debtors to secure supporting contracts with distributors or media companies willing to absorb the creative asset. Conditional sale agreements legally bind these third parties to purchase the intellectual property immediately upon intentional debtor default. License agreements grant third parties the right to exploit the intellectual property while obligating them to direct royalty payments to the creditor. These tripartite legal structures resolve the execution uncertainty plaguing conventional fiduciary guarantees, eliminating the possibility of debtors feigning market failure to conceal asset misappropriation (Gortsos, 2025).

Off-taker agreements transform abstract digital creations into highly liquid assets possessing guaranteed buyers. This tripartite mechanism serves as an essential economic instrument designed to drastically reduce transaction costs and eliminate the search friction that paralyzes conventional public auctions of intangible property (Tiagarassa Pillay & Kasseeah, 2025). Commercial banks gain immense operational confidence because the liquidation pathway is predetermined before credit disbursement. This contractual certainty provides a concrete legal basis for valuation by calculating exact royalty values or selling prices embedded within existing commercial agreements. Risk modeling becomes highly measurable when third-party corporate commitments back the underlying creative venture, making any subsequent unilateral deviation by the creator a clear indicator of fraudulent intent (Ciaramella et al., 2024).

Standardizing the intellectual property valuation system through independent professional institutions eliminates the subjectivity inherent in creative asset appraisals that perpetrators frequently exploit. The Public Appraisal Service Office and specialized intellectual property consultants provide the necessary legal legitimacy for credit risk analysis. Professional appraisers utilize comprehensive methodologies including the income approach based on projected future royalties. Appraisers also apply the market approach comparing recent transactions of similar

intellectual property or the cost approach calculating initial development expenses (Zahid & Islam, 2025). These methodological approaches align perfectly with international best practices outlined in the World Intellectual Property Organization (WIPO) Guidelines on IP Valuation, establishing a globally recognized standard for domestic banking compliance. National standardization of these assessment methodologies ensures that valuation results hold absolute legal weight during credit committee deliberations and serve as unassailable forensic evidence to prove fictitious markups during criminal court proceedings. Measurable assessment standards protect bank management from allegations of maladministration or violation of prudential principles when accepting abstract collateral, while simultaneously exposing deliberate debtor deception.

Implementing hybrid collateral schemes serves as the ultimate legal risk mitigation strategy during the transitional phase of creative economy financing. Utilizing intellectual property as a standalone collateral object exposes banks to unprecedented legal and financial hazards including sophisticated cyber laundering. Combining intangible rights with conventional tangible collateral such as land or motor vehicles creates a legally robust security package that anchors abstract digital assets to traceable physical properties. During the initial stages of this new regulatory regime banks accept intellectual property solely as supplementary collateral. As the creative ecosystem matures and secondary markets develop intellectual property can eventually serve as the primary debt guarantee backed by rigorous penal frameworks (Wang & Sun, 2026).

Financial institutions simultaneously implement structured risk management policies providing grace periods or financing restructuring to distinguish between genuine market failures and premeditated financial crimes. These flexible mechanisms accommodate the inherently volatile income character of the creative industry while maintaining strict legal compliance with banking prudential standards. Structured credit restructuring protocols ensure that temporary dips in creator popularity do not automatically trigger destructive default proceedings nor false criminal accusations. This balanced approach preserves the ongoing commercial viability of the creative enterprise while safeguarding the financial health of the intermediary institution from malicious actors. Harmonizing contractual innovation, tripartite off-taker commitments, professional valuation standards, and hybrid collateral structures establishes an unassailable legal protection framework capable of identifying, preventing, and prosecuting digital asset fraud in modern banking operations.

CONCLUSION

The enactment of Government Regulation Number 24 of 2022 transforms Indonesian banking credit practices by formally integrating intellectual property into the national debt collateral framework. This regulatory expansion generates profound criminogenic consequences across the financial sector, requiring commercial banks and law enforcement agencies to comprehensively recalibrate their fraud prevention protocols and criminal risk assessments. Formal statutory recognition fails to automatically guarantee effective creditor protection because intellectual property assets inherently suffer from severe valuation ambiguities and underdeveloped secondary markets. Analyzed through the Economic Analysis of Law, these structural weaknesses create profound information asymmetries that actively incentivize malicious actors to commit digital metric manipulation and deliberate collateral embezzlement. The intangible nature of creative economy assets creates distinct legal vulnerabilities that disrupt conventional criminal prosecution models, rendering the archaic physical possession doctrines of Law Number 42 of 1999 entirely inadequate for establishing unlawful acts in the digital domain.

Safeguarding the national financial system against sophisticated economic crimes necessitates a comprehensive penal policy reform integrating robust forensic protection mechanisms. Commercial creditors must systematically reinforce credit agreements with specialized clauses governing economic rights assignment, digital platform control, and escrow accounts to establish undeniable evidentiary trails of fraudulent intent during debtor default. Mitigating digital asset embezzlement requires establishing binding third-party off-taker agreements that eliminate the possibility of perpetrators feigning market failure to conceal premeditated misappropriation. Standardizing intellectual property valuation methodologies through independent professional appraisers aligned with World Intellectual Property Organization guidelines provides the absolute legal legitimacy required to prove fictitious markups in criminal court. Implementing these forensic safeguards alongside the UNCITRAL Model Law on Secured Transactions to define digital ownership and utilizing Basel III and IV standards to quantify actual institutional losses successfully modernizes domestic criminal law enforcement against intellectual property financing fraud.

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Sehubungan Dengan Pelaksanaan Tugas Akhir Sebagai Syarat Kelulusan Bagi Mahasiswa Program Studi Ilmu Hukum Fakultas Hukum Universitas Negeri Palangka Raya, Dengan Ini Menyatakan Bahwa:

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Telah menyelesaikan Penulisan Artikel sebagai Tugas Akhir Pengganti Skripsi bagi Mahasiswa Fakultas Hukum Universitas Palangka Raya dengan judul ***"Regulatory Certainty and Risk Mitigation For Banks In Intellactual Property-Based Collateral Financing "*** Pada **Justitia Jurnal Hukum and Published in**. Volume 10, Issue 2, October 2026 (SINTA 3).

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Palangka Raya, 17 Juli 2026
An. Dekan
Wakil Dekan Bidang Akademik,

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Balai Besar Sertifikasi Elektronik

Catatan :
1. UU ITE No. 11 Tahun 2008 Pasal 5 ayat 1 "Informasi Elektronik dan/atau Dokumen Elektronik dan/atau hasil cetaknya merupakan alat bukti hukum yang sah"
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